

No.

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN LOREN DANIELS,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

**CORRECTED PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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QUESTION PRESENTED FOR REVIEW

Whether a district court plainly errs by instructing a jury that “an actual effect on interstate commerce” is not required to convict an accused of a Hobbs Act robbery of a retail store?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below:

United States of America

Kevin Loren Daniels

RELATED CASES

There are no cases related to the case that is the subject of this petition.

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Petitioner Kevin Loren Daniels (“Petitioner” or “Daniels”) respectfully requests that a writ of certiorari will issue to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit entered in Case No. 24-3260 on January 7, 2026.

OPINION BELOW

On January 7, 2026, a three-judge panel of the United States Court of Appeals for the Sixth Circuit filed an opinion and judgment affirming Petitioner’s Hobbs Act robbery and firearms convictions. (App. 1a). The opinion is reported at 163 F.4th 992 . The United States District Court entered an unpublished criminal judgment on March 22, 2024. (App. 32a).

JURISDICTION

Petitioner seeks review of the opinion and judgment of the United States Court of Appeals for the Sixth Circuit entered on January 7, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1), which permits a party to petition the Supreme Court of the United States to review any civil or criminal case before or after rendition of judgment or decree.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

United States Constitution, Fifth Amendment:

No person shall . . . be deprived of life, liberty, or property, without due process of law[.]

United States Constitution, Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a [trial] by an impartial jury[.]

18 U.S.C. §1951:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

STATEMENT OF THE CASE

Shortly before closing time on Black Friday, November 26, 2021, an armed male, wearing a black hoodie and a blue neck gaiter covering his face, entered the front door of a T-Mobile retail store in Columbus, Ohio. He held the store clerks at gunpoint and stole 24 new cellular phones and \$648 in cash.

A federal grand jury in the Southern District of Ohio indicted Daniels for several felony counts relating to this robbery, including interference with commerce by robbery (Hobbs Act robbery), brandishing a firearm during an offense of violence, and possession of a firearm by a convicted felon. Daniels exercised his right to trial by jury.

During the prosecution's case-in-chief, a detective testified that the entire loot was recovered from Daniels' vehicle following a police chase. He said "I returned those [the cell phones] and the cash back to the store several days later."

One of the sales clerks testified that the store keeps at least half of its stock of new phones in a time-delay safe "in case of a robbery." She said the robber grew impatient and "didn't want to wait the ten minutes" for the second safe to open.

The Assistant United States Attorney ("AUSA") did not ask the sales clerk whether the inventory remaining in the time-delayed safe was sufficient to meet customer demand for the brief time span between the date of the theft and the return of the stolen phones by the police. During closing argument, the AUSA even conceded that "everything that was stolen from the T-Mobile that night was accounted for, consistent with what was found in this vehicle: 28 phones, approximately \$650." However, she insisted "[t]he government is not required to prove there was an actual effect on interstate commerce."

At the conclusion of the evidence, the district judge instructed the jury that one of the elements of a Hobbs Act robbery is an effect on interstate commerce. Yet, a few sentences later, he told the jurors that "[i]t is *not* necessary for you to find that there was an *actual* effect on interstate commerce." (emphasis supplied)

The jury returned a verdict finding Daniels guilty on all counts. The district judge sentenced him to an aggregate prison term of 181 months.

A Sixth Circuit panel affirmed the convictions and sentence. It expressly denied Daniels' claim that the district judge committed plain error when he instructed the jury that "an actual effect on interstate commerce" was not required to convict him of a Hobbs Act robbery of a retail store. It reasoned that this Court's opinion in *United States v. Taylor*, 579 U.S. 301 (2016) supported the district judge's instruction. (App. 16a)

However, the appellate panel failed to acknowledge that "[t]h[is] [] Court explicitly limited its holding in *Taylor* to Hobbs Act robberies in which a defendant targets drugs or drug proceeds; it did not purport to address the Government's burden for proving the jurisdictional element in other Hobbs Act cases." *United States v. Hill*, 927 F.3d 188, 220 (4th Cir. 2019) (Agee, J., dissenting). This petition squarely presents the question of the government's burden to prove the jurisdictional element in a Hobbs Act prosecution not involving illegal drugs or drug proceeds.

REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE

This Court has emphasized that "[i]n our federal system, Congress cannot punish felonies generally; it may enact only those criminal laws that are connected to one of its constitutionally enumerated powers, such as the authority to regulate interstate commerce." *Torres v. Lynch*, 578 U.S. 452, 457 (2016) (cleaned up). The Hobbs Act, 18 U.S.C. § 1951(a), establishes a federal crime of robbery or extortion that "in any way or

degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce.”

The Fifth and Sixth Amendments give a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged. *United States v. Gaudin*, 515 U.S. 506, 511 (1995). The jurisdictional element of the Hobbs Act statute requires the government to prove that a defendant’s commission of robbery (or extortion) had an effect on interstate commerce in “any way or degree.” In other words, the impact of the robbery must be actual, not hypothetical.

The district judge told Daniels’ jury something completely different. He instructed the jurors that an “actual effect” on interstate commerce was not required to convict him of a federal robbery.

Absent a timely objection in the district court, an instruction that fails to submit an essential element of the crime to the jury is reviewed for plain error. *Johnson v. United States*, 520 U.S. 461, 466-67 (1997). A plain error is a clear or obvious mistake in the proceedings that affected a defendant’s substantial rights and that seriously affected the fairness, integrity or public reputation of judicial proceedings. *Id.*

The district court’s radical departure from the statutory language of §1951(a) did not seem to trouble the Sixth Circuit panel that heard Daniels’ appeal. It theorized that a “realistic probability” of an effect on interstate commerce is good enough to justify prosecuting someone for a garden-variety robbery in federal district court. (App. 16a)

The appellate panel cited this Court's opinion in *Taylor* as supporting such an expansive application of the jurisdictional element of the Hobbs Act statute. (*Id.*) But *Taylor* is readily distinguishable from Daniels' case in that the former involved a robbery targeting drug dealers whereas the latter involved a robbery of a legal business.

In *Taylor*, the government successfully prosecuted Petitioner Taylor for two counts of Hobbs Act robbery relating to his participation in two home invasions targeting marijuana dealers to obtain their inventory and/or sale proceeds. Taylor contended his convictions lacked evidentiary support due to the prosecution's failure to prove that the marijuana originated or was destined for out of state, or that the dealers operated an interstate business. *Id.* 579 U.S. at 307.

This Court disagreed, emphasizing that Congress exercised its authority to regulate controlled substances, including marijuana, when it passed the Controlled Substances Act. The majority concluded "as a simple matter of logic that a robber who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction." *Id.* Yet near the end of the opinion, it cautioned that "[w]e do not resolve what the Government must prove to establish Hobbs Act robbery where some other type of business or victim is targeted." *Id.* at 310 (emphasis supplied).

The majority opinion in *Taylor* cites *Stirone v. United States*, 361 U.S. 212 (1959) as an example of a Hobbs Act prosecution involving some "other" type of business or victim. *Id.* In *Stirone*, the government prosecuted a union boss for extorting a concrete distributor

for the purpose of interfering with fulfillment of a contract to supply ready-mix concrete for erection of a steel-processing plant. The Court emphasized that “[t]he charge that interstate commerce is affected is critical since the Federal Government’s jurisdiction of this crime rests only on that interference.” *Id.* at 218 (emphasis supplied).

The government prosecuted Daniels for targeting a wireless carrier chain store. Unlike the situation in *Taylor*, Congress has not chosen to regulate retail stores as part of a comprehensive scheme directed at an entire economic market (such as the distribution of controlled substances). Like the situation in *Stirone*, the government’s theory of jurisdiction rested solely on the contention that Daniels’ robbery of the T-Mobile store interfered with interstate commerce.

The prosecution therefore had a burden to prove that the theft of the cell phones and money had an actual effect on interstate commerce. The district judge committed clear and obvious error when he instructed the jury that an actual effect was not required.

A defendant’s substantial rights are affected by an un-preserved instructional error if there is a reasonable probability that “he would have been acquitted” by a properly instructed jury. *Greer v. United States*, 593 U.S. 503, 508 (2010). As noted, the police recovered all of the stolen merchandise and cash within minutes of the completion of the robbery. Moreover, the store remained in possession of half of its inventory because the robber was unwilling to wait for the time-delay safe to open.

In sum, the government’s case as to the interstate commerce element of the Hobbs Act robbery count was far from a slam dunk. Surely a reasonable likelihood exists that if the

jury had been correctly instructed that an actual effect on interstate commerce is required to convict, it would have resolved the jurisdictional element against the government, and found Daniels not guilty. An acquittal as to the Hobbs Act count would necessarily have required a not guilty finding as to the firearm count which depended on the commission of a crime of violence, 18 U.S.C §924(c), *i.e.* the robbery.

An “unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings.” *Rosales-Mireles v. United States*, 585 U.S. 129, 140 (2018). If Daniels had been convicted solely of the felon-in-possession count, he would have faced an advisory imprisonment range of 21 to 27 months. This range is substantially less than the aggregate 181-month prison term that he received for all three counts. This disparity is sufficient to satisfy the last prong of the plain error standard.

CONCLUSION

In his dissenting opinion in *Taylor*, Justice Thomas expressed a concern that “[a]lthough the Court maintains that its holding ‘is limited to cases in which the defendant targets drug dealers for the purpose of stealing drugs or drug proceeds,’ its reasoning allows for unbounded regulation.” *Id.* 579 U.S. at 319 (internal citation omitted). The Sixth Circuit’s reliance on *Taylor* to uphold an instruction that permitted the government to convict Petitioner on a theory that eliminated the need for proof of the jurisdictional element of the offense is precisely the unbounded application that Justice Thomas predicted.

Acceptance of Daniels' case for review will provide this Court with a suitable vehicle for clarifying "what the Government must prove to establish Hobbs Act robbery where some other type of business or victim is targeted." *Id.* at 310 For these reasons, Daniels asks the Court to issue a writ of certiorari to the court of appeals for the purpose of deciding the important question presented for review by this petition.

Respectfully submitted,

s/Dennis C. Belli
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