

1 whole Federal investigation here, if you remember that
2 this was an investigation into the Southwest Goonz,
3 which was a gang that was engaged in particularly
4 violent and dangerous robberies in Roanoke. The DEA
5 tracked about 30 home invasions to this gang. There
6 were other prosecutions. This particular defendant was
7 a bit of a tagalong, and he was prosecuted. But the
8 main participants in this endeavor, which -- you know,
9 the DEA was contacted by local law enforcement which
10 said this is becoming a serious problem in Roanoke, and
11 DEA came in and busted this gang. This is just one
12 particular defendant.

13 CHIEF JUSTICE ROBERTS: The tagalong, he got
14 20 years.

15 MR. YANG: Well, and he was involved in some
16 very serious crimes. Actually, I think 30 home
17 invasions.

18 JUSTICE KENNEDY: Actually -- actually, I
19 think got 21, my chambers was telling me. You might
20 check that. Which is, to me, one -- one year too many,
21 but whatever.

22 CHIEF JUSTICE ROBERTS: A year's a year.

23 JUSTICE KENNEDY: Going -- going back to
24 this case, the example that you gave with reference to
25 the maritime jurisdiction, what you tell the jury is,

1 ladies and gentlemen of the jury, if you find that the
2 incidents that have been considered in this court
3 occurred on the high seas, then the jurisdictional
4 element is satisfied.

5 MR. YANG: Yes. And you'd probably have to
6 define what the high seas were as well.

7 JUSTICE KENNEDY: Pardon me?

8 MR. YANG: You'd also have to define what
9 the high seas were for the jury.

10 JUSTICE KENNEDY: Okay. Then in this case,
11 it suffices, in your view, if you say if you find there
12 was a robbery of a drug dealer, then the jurisdictional
13 element is satisfied?

14 MR. YANG: We think it's a little easier
15 than that in this case. If you find that there was a
16 robbery targeting the inventory, the marijuana of a drug
17 dealer engaged in the trade of that marijuana, then
18 it's -- there's a very direct and I think undeniable
19 effect on --

20 JUSTICE KENNEDY: And the only defense
21 evidence that could be introduced in the case is that
22 the -- that the drugs were not involved? The defense
23 could show that drugs were not involved.

24 MR. YANG: They could, and that would target
25 direct -- there were other --

1 JUSTICE KENNEDY: But that's about all they
2 can do with reference to the jurisdictional element?

3 MR. YANG: I think that's right in this
4 particular case because that's the only factual question
5 that's really relevant.

6 JUSTICE KAGAN: Well, maybe the person
7 wasn't a dealer.

8 MR. YANG: Yes, that's -- yes.

9 CHIEF JUSTICE ROBERTS: I'm sorry. Did you
10 concede that earlier, that it's not covered by the Hobbs
11 Act if the person's not a dealer?

12 MR. YANG: Well, I didn't concede it. What
13 I said is you'd have to have a different theory.

14 JUSTICE KAGAN: You said it was a very
15 different thing.

16 MR. YANG: It was a different thing. And it
17 supports --

18 JUSTICE KAGAN: And it would be a much
19 harder thing.

20 MR. YANG: It would be harder.

21 JUSTICE KAGAN: And it would be at least an
22 awfully good argument by the defendant that if the
23 person was not a dealer, it's not affecting commerce in
24 the regular -- in the relevant way?

25 MR. YANG: That's correct.

1 CHIEF JUSTICE ROBERTS: Even though Congress
2 can regulate that transaction?

3 MR. YANG: Well, there -- there would be a
4 question. I think that there are arguments to be made
5 that would go beyond the arguments that we're making
6 here, and we're not pressing those today for various
7 reasons. I think as the Court has recognized, this is
8 an area of some difficulty at times. Lopez recognizes
9 that commercial power is necessarily one of degree, and
10 that the Court's decisions have not provided precise
11 formulation in the nature of things it cannot.

12 And so what we're -- the Court -- I'm
13 sorry -- but the Court's taken an incremental approach,
14 and we're doing something similar here.

15 JUSTICE ALITO: I asked Mr. Jones whether
16 the Hobbs Act exercises the full measure of Congress's
17 Commerce Clause, an authority which I thought a number
18 of cases have said. Do you agree with that?

19 MR. YANG: It does. It does. Not only
20 that, but I think --

21 JUSTICE ALITO: Because then you do run into
22 these limitation -- in the search for a limiting
23 principle, which you seem to be addressing. So Congress
24 could prohibit and has prohibited a person from
25 possessing even a very small amount of marijuana, right,

1 a single cigarette, a single marijuana cigarette?

2 MR. YANG: That's correct.

3 JUSTICE ALITO: So if one person steals a
4 marijuana cigarette from another person, robs that
5 person of one marijuana cigarette, that's a violation of
6 the Hobbs Act?

7 MR. YANG: Well, there's a different
8 argument there, and let me tell you why. The pure
9 possession -- and we're not talking about the actual
10 trade in marijuana but just the personal possession,
11 that raises different questions. That was addressed by
12 Raich. Now, there is an argument that could be made
13 that that would fall within the Hobbs Act. At the same
14 time --

15 JUSTICE ALITO: It falls within the Commerce
16 Clause, doesn't it?

17 MR. YANG: It falls -- certainly the
18 possession is something that Congress can regulate as
19 Raich teaches. Now, whether the robbery of one
20 possessing, that's yet additional -- an additional link
21 into the Commerce Clause inquiry. And what I can say is
22 that the courts of appeals have recognized, as this
23 Court has, the -- in a search for the outer limits of
24 the Commerce Clause, the courts have pulled back and
25 they've suggested that when you're robbing just a mere

1 individual who's not a business or engaged in a business
2 in the -- in the context of the robbery, that raises
3 different questions and it's much more difficult to
4 establish necessary nexus.

5 We're -- we're not actually taking that on
6 in this case because we don't think we have to. What we
7 have in this case is robbery of the commodity,
8 marijuana, from people engaged in its trade when we
9 know -- we know that falls well within commerce over
10 which the United States has jurisdiction.

11 JUSTICE ALITO: Suppose someone robbed the
12 farmer in Wickard v. Filburn of the wheat that the
13 farmer was growing for personal consumption. Would that
14 be a violation of the Hobbs Act?

15 MR. YANG: Wickard is a little bit more
16 complicated because it was personal consumption but in
17 the context of a commercial enterprise, right? He was
18 growing wheat for his animals and growing wheat -- he
19 also grew wheat for sale. So -- but the wheat that
20 we're talking about is the wheat that he was growing for
21 his own use in his business. I think there would be a
22 stronger argument there than what you'd have if you just
23 happened to stumble upon someone, you rob them, and you
24 picked up, you know, some wheat or a marijuana cigarette
25 out of their house.

1 Again, we don't deny that there are, at the
2 fringes, difficult questions that this Court may have to
3 address at some point. But we're talking --

4 JUSTICE KENNEDY: What is your understanding
5 of what the defendant wanted to -- the evidence the
6 defendant wanted to introduce?

7 MR. YANG: I think the defendant wanted to
8 introduce evidence that not all marijuana in Virginia is
9 coming from out of State. And that's not legally
10 relevant to our --

11 JUSTICE KENNEDY: Was there any challenge to
12 the status of these victims as dealers?

13 MR. YANG: I think there might have been
14 indirectly through cross-examination, but what we're
15 talking about here is, remember, is an attempt. This is
16 an -- the Hobbs Act --

17 JUSTICE KENNEDY: I understand that.

18 MR. YANG: -- not only -- not only covers --

19 JUSTICE KENNEDY: It was an attempt against
20 persons who were in the drug trade?

21 MR. YANG: And at least at a minimum who the
22 defendants believed were in the drug trade, and that's
23 really what the relevant question is here. Because if,
24 for instance, there's -- you know, two people make an
25 elaborate plan to rob a bank and then they end up

1 showing up at a business that's not a bank, it's
2 actually someone's house, they can be charged with
3 either a conspiracy or an attempt charge based on the
4 facts as they -- as they understood them.

5 And here, I don't think there's much of an
6 argument that the evidence was sufficient to show that
7 these individuals had the understanding that the two
8 victims here were drug dealers that were engaging in
9 marijuana --

10 JUSTICE SOTOMAYOR: Mr. Yang, I'd like to --
11 for you to explain to me what the difference in charges
12 are between this robbery and a regular robbery, let's
13 say of a business. Because as you've noted, there are
14 many circuits that say if you just rob a person
15 individually, that's not a Hobbs Act robbery. But if
16 you rob a business, it is. So how does a judge charge
17 in a regular Hobbs Act case and this kind of case?

18 MR. YANG: Well, it will depend, I think, in
19 part on the government's theory of the case. The
20 government makes charging decisions and presents its
21 theory, and the judge would have to charge with
22 respect --

23 JUSTICE SOTOMAYOR: I understand the
24 charges, counsel.

25 MR. YANG: So in the normal case, and this

1 is the -- this is kind of the -- the mind run of cases
2 that all the courts of appeals have accepted are as kind
3 of a depletion-of-assets theory case.

4 Now, in those types of cases when you're
5 involving the robbery of a business, the government puts
6 on evidence -- this could be any type of business pretty
7 much -- that the business engages in some kind of
8 interstate commerce. That's kind of showing something
9 particularized, just like here you're showing it's the
10 marijuana dealer.

11 JUSTICE SOTOMAYOR: Engages how, either by
12 buying goods in commerce --

13 MR. YANG: Buying goods from out of State,
14 selling to out-of-State customers, buying equipment from
15 out of State, all types of things.

16 JUSTICE SOTOMAYOR: Let's assume that that's
17 true.

18 MR. YANG: Uh-huh.

19 JUSTICE SOTOMAYOR: Is the jury charged that
20 this particular robbery had to affect that?

21 MR. YANG: Yes, because what they end up --
22 the theory, the depletion of assets theory, which again,
23 this has been established in all the courts of appeals
24 for quite some time, is that even if you're robbing
25 not -- something that has not moved in commerce, say,

1 money --

2 JUSTICE SOTOMAYOR: Right.

3 MR. YANG: -- what you're doing is you're
4 depleting the assets of an enterprise that is engaging
5 in interstate commerce. And so by doing that, you're
6 hindering its ability to engage in interstate commerce
7 on a prospective basis.

8 JUSTICE SOTOMAYOR: So -- so the jury is
9 charged to make that determination, that this act of
10 robbing the money hindered the commerce in some way?

11 MR. YANG: Or has the potential to.

12 JUSTICE SOTOMAYOR: So how is that different
13 than his argument, your adversary's argument that --

14 MR. YANG: Oh, I think that that is his
15 argument. I think he accepts in his brief the depletion
16 of assets theory and says that the government has to
17 show that this marijuana moved in interstate commerce,
18 or that the dealers sold to people out of State, which I
19 will note parenthetically is a little difficult when
20 we're talking about an attempt, and we're talking about
21 people who trade in marijuana. They don't always -- are
22 not always forthcoming in their admissions to law
23 enforcement, but that's his theory.

24 Our position is that is not necessary
25 because we know already -- although that's one means of

1 showing an effect on interstate commerce, there are
2 other means. And the theory here is that the robbery
3 affects commerce over which the United States has
4 jurisdiction.

5 We know that commerce of the United States
6 has jurisdiction includes the inter- or intrastate trade
7 in marijuana, and that, therefore, in this theory --
8 which is different, it's a different way of proving the
9 same jurisdictional element -- that under our theory
10 here, the evidence was sufficient because there was
11 sufficient evidence to show that these -- the Southwest
12 Goonz, including Petitioners, were targeting these two
13 victims because they expected to gain marijuana from the
14 individuals who they thought were drug dealers.

15 If the Court has no further questions, we'd
16 ask that you affirm.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Jones, you have five minutes remaining.

19 REBUTTAL ARGUMENT OF DENNIS E. JONES

20 ON BEHALF OF THE PETITIONER

21 MR. JONES: Thank you, Your Honor.

22 The -- I'd like to digress to -- to the
23 question about a single cigarette, if -- if that is
24 stolen, would -- or subject of robbery, would -- would
25 that affect the Hobbs Act.

1 Taking the extension that my friend is
2 suggesting here, if we read the last phrase of the Hobbs
3 Act, it says, "All other commerce over which the United
4 States has jurisdiction."

5 The application of Raich to controlled
6 substances, the Controlled Substance Act, if the -- if
7 it has no limits on -- on this element of interstate
8 commerce, then the answer to that is if a person comes
9 up and -- and robs an individual of a single joint of
10 marijuana, it could possibly trigger a Hobbs Act
11 conviction because it's "all." It encompasses "all."

12 I don't think that under any interpretation
13 of -- of the Hobbs Act has it -- has it been discussed
14 that we're going to make robberies a -- a generalized
15 Hobbs Act --

16 JUSTICE KENNEDY: That isn't this case.
17 This case is a robbery of a drug dealer, correct?

18 MR. JONES: That's correct. And what we're
19 saying, Your Honor, is that in -- in the robbery of a
20 drug dealer, it still requires an independent finding
21 about whether or not there was this effect on commerce.
22 And that's what's lacking here. That's -- that's what's
23 lacking in -- in this case, and that's what we're
24 suggesting should take place.

25 The government should have to prove that

1 element so that the jury, in its deliberations, would
2 make that independent finding on that element on the
3 jurisdictional element.

4 Any questions?

5 With that, Your Honor, we would ask the
6 Court to reverse.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.

8 Case is submitted.

9 (Whereupon, at 10:58 a.m., the case in the
10 above-entitled matter was submitted.)

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| <p style="text-align: center;">A</p> <p>a.m 1:13 3:2 49:9 ability 4:15 9:23 46:6 Abingdon 1:15 able 5:13,13 20:17 20:18 above-entitled 1:11 49:10 absence 20:16 academic 25:14 accepted 45:2 accepts 46:15 accused 3:12 acknowledged 20:1 act 3:11 5:16,18,22 5:25 6:15,16,20 7:14,16 11:2,5 13:6,10,17,24,25 14:2,7,16 15:4 16:1 17:12 33:2 35:22 39:11 40:16 41:6,13 42:14 43:16 44:15,17 46:9 47:25 48:3,6 48:10,13,15 activities 22:8 activity 18:11 33:6 acts 17:12 actual 29:13 30:3 41:9 added 21:3 additional 36:15 41:20,20 address 6:18 19:12 20:19 43:3 addressed 6:13,14 12:8 17:24 41:11 addresses 6:20 addressing 22:9 40:23 admissions 46:22 admitted 8:13 35:23 adversary's 46:13 affect 13:18,25</p> | <p>14:3,16 15:3 24:16 26:14 28:19 28:19,20 31:22 33:2,12 45:20 47:25 affirm 47:16 agent 4:11,11 aggregate 18:12 ago 21:15 agree 13:16,20 14:6 14:22 16:8 40:18 ALITO 11:4,9,16 11:24 12:14 17:25 19:1 40:15,21 41:3,15 42:11 allowed 26:13 30:21 32:1 Amendments 17:21 amount 4:19 40:25 analyzed 25:7 animals 42:18 anomalies 26:12 answer 8:2 9:9 48:8 ANTHONY 1:3,17 2:6 22:20 appeals 23:15 41:22 45:2,23 APPEARANCES 1:14 application 48:5 applies 30:14 approach 40:13 area 5:11 9:19 18:7 40:8 argue 21:18 argument 1:12 2:2 2:5,8 3:3,7 7:22 20:8 22:20 35:24 39:22 41:8,12 42:22 44:6 46:13 46:13,15 47:19 arguments 40:4,5 articles 4:21 28:22 asked 40:15 asking 31:5 33:20 aspect 23:10</p> | <p>assets 24:1 45:22 46:4,16 Assistant 1:17 assume 33:23,24 45:16 assumes 21:17 ATF 4:11 attempt 31:18 43:15,19 44:3 46:20 attenuated 23:23 authority 11:6,18 16:24 19:7 35:6 40:17 aware 34:22 awfully 39:22</p> <hr/> <p style="text-align: center;">B</p> <p>back 15:11 17:20 37:23 41:24 bank 43:25 44:1 based 8:2 11:10 25:16 44:3 basically 18:16 28:10 basis 11:24 21:21 46:7 Beach 9:19 becoming 37:10 beginning 13:23 behalf 1:15,19 2:4 2:7,10 3:8 22:21 47:20 believe 17:23 20:25 21:3 35:22 believed 5:10 43:22 belonged 23:3 best 35:6 beyond 3:19 12:23 14:8 17:4 23:11 24:14,19,25 25:2 26:21 28:14,14 29:18,25 30:3,18 30:24 34:24 35:11 40:5 bit 37:7 42:15</p> | <p>board 12:1 borne 5:18 Botetourt 4:22 brief 4:2,18 9:15,16 26:4 28:10 35:23 46:15 bring 33:6 brother 24:1 35:22 burden 31:2 34:23 36:2 business 9:23 10:1 13:2 15:13,14,18 15:19,24 16:2 20:21 23:19 36:4 36:20 42:1,1,21 44:1,13,16 45:5,6 45:7 businesses 16:13 23:16 busted 37:11 buying 45:12,13,14</p> <hr/> <p style="text-align: center;">C</p> <p>C 2:1 3:1 call 4:10 case 3:4,22,22 6:10 6:22 8:23 9:2,17 18:10,20 19:12,14 19:18,24 20:3,15 20:25 21:5,21 22:10,25 26:4,13 27:23 28:5,23 29:10 30:14 31:14 32:4 34:23 35:3 35:17 36:7,23 37:24 38:10,15,21 39:4 42:6,7 44:17 44:17,19,25 45:3 48:16,17,23 49:8 49:9 case-by-case 11:24 cases 9:14 10:3 16:23 40:18 45:1 45:4 causation 23:23 cell 36:24</p> | <p>certainly 21:1 22:17 41:17 certainty 25:11 chain 23:23 challenge 28:6 43:11 challenges 16:15,22 16:22 challenging 18:8 chambers 37:19 characteristics 22:24 charge 28:3,11 36:8 44:3,16,21 charged 44:2 45:19 46:9 charges 44:11,24 charging 44:20 check 37:20 Chief 3:3,9 16:10 16:21 22:17,22 23:9 24:13,18,25 25:13 30:17,20,23 31:11,13,20,25 32:19 34:21 35:5 37:13,22 39:9 40:1 47:17 49:7 China 9:24 cigarette 41:1,1,4,5 42:24 47:23 Circuit 4:23 9:17 circuits 44:14 cited 4:17 9:15 Clause 11:6,18 18:14 19:3,5 23:1 23:21 24:4 35:25 40:17 41:16,21,24 cleaner 9:19 cleaning 9:25 clear 13:24 16:1 21:7 28:5 clearly 13:5 client 21:2 coat 9:23 Coleman 13:6 come 12:7 17:8</p> |
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