No. 14-6166

IN THE

Supreme Court of the United States

DAVID ANTHONY TAYLOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTION PRESENTED

1. Whether, in a federal criminal prosecution under the Hobbs Act, 18 U.S.C. §1951, the Government is relieved of proving beyond a reasonable doubt the interstate commerce element by relying exclusively on evidence that the robbery or attempted robbery of a drug dealer is an inherent economic enterprise that satisfies as a matter of law, the interstate commerce element of the offense.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, David Anthony Taylor was the defendant in the district court and the appellant in the Fourth Circuit.

Respondent the United States of America prosecuted the case in the district court and was the appellee in the Fourth Circuit.

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The opinion of the Fourth Circuit affirming the district court's judgment is reported, *United States v. Taylor,* 754 F.3d 217 (4th Cir. 2014), and reproduced at JA-K, pp. 71a – 86a. The relevant orders of the district court are unreported and reproduced at JA-G, pp. 59a – 60a.

JURISDICTION

The court of appeals issued its decision on June 6, 2014. JA-K, p. 71a. The petition for certiorari was timely filed and granted on October 1, 2015. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Hobbs Act, 18 U.S.C. § 1951, provides in relevant part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery, . . . shall be fined under this title or imprisoned not more than twenty years, or both.
>
> (b) As used in this section –

> (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.
>
> * * *
>
> (3) The term "commerce" means within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

STATEMENT OF THE CASE

The government charged petitioner with two counts of obstruction, delaying and affecting commerce by robbery under the Hobbs Act accusing him of the "robbery of marijuana and drug proceeds from another person against his will by the use of actual or threatened violence." Additionally petitioner was charged with two counts of "possession a firearm in furtherance of a crime of violence in violation of Title 18 U.S.C. § 924(c)." JA-B, pp. 11a – 14a. Following trial by jury the petitioner was found guilty of

two counts of violation of the Hobbs Act and one count of 18 U.S.C. § 924(c). JA-I, pp. 67a – 69a. The Fourth Circuit upheld petitioner's conviction, accepting the government's theory that drug dealing in the aggregate *per se* affects interstate commerce, requiring the government to simply prove that petitioner depleted or attempted to deplete the assets of such an operation. The Fourth Circuit rejected petitioner's theory that the government was required to prove that the subject of the robbery, marijuana and drug proceeds, traveled in interstate commerce.

A. Statutory Background

Congress enacted the Hobbs Act in 1946 to address acts of robbery and extortion committed by organized labor. *See* Act of July 3, 1946, ch. 537, § 1(c), 60 Stat. 420; *United States v. Culbert,* 435 U.S. 371, 376-77 (1978). The Act imposes criminal liability on "[w]hoever 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." 18 U.S.C. § 1951(a). It defines "robbery" as "the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining." *Id.* § 1951(b)(1). "Commerce" is defined as "commerce within the district of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, or Possession of the United States; all commerce between any point outside thereof; all

commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction." *Id.* § 1951(b)(3). Violations are punishable by up to twenty years' imprisonment. *Id.* § 1951(a).

B. Factual Background

Petitioner, David Anthony Taylor, is a resident of Roanoke, Virginia. Home invasions began occurring in the Roanoke area in late 2007 and ended in early 2010. Specifically the residences of William Lynch ("Lynch") on October 21, 2009 and Joshua Worley ("Worley") on August 27, 2009. ATF Special Agent William Cunningham became involved in the investigation along with members of local law enforcement, including but not limited to Roanoke County Police Office, Betsy Van Patten. The investigation led to the conclusion that the perpetrators were targeting drug dealers for armed home invasions. JA-A, p.4a, Record 159, pp. 123 – 124. Among the recurring names of suspects were George Fitzgerald, Dejuan Lemons, Warren Lemons, Kevin Ferguson, A. J. Claytor, and Chris Nichols (Mills). JA-A, p. 4a, Record 159, p. 2419: 12-13.

On May 24, 2012 Petitioner was indicted in a two count indictment alleging in Count One that on or about October 21, 2009 he affected commerce by robbery in the taking of "marijuana and drug proceeds, as well as a cellular telephone from the person and property of "WL,"" later identified as Lynch, a violation of the Hobbs Act. Count Two alleged that on or about October 21, 2009 that he possessed and brandished a firearm in furtherance of a crime of violence in violation of Title 18, U.S.C. § 924(c). Prior to trial a four count Superseding Indictment was

returned on July 26, 2012. In addition to the two counts in the original Indictment, Count Three alleged that on or about August 27, 2009 Petitioner affected commerce by robbery in the taking of "marijuana and drug proceeds from the person and property of "JW,"" later identified as Worley. Count Four alleged that on or about August 27, 2009 that he possessed and brandished a firearm in furtherance of a crime of violence in violation of Title 18 U.S.C. § 924(c). JA-B, pp. 11a – 14a.

C. October 22 – 24, 2012 Jury Trial – Hung Jury

Petitioner plead not guilty and proceeding to trial beginning October 22, 2012. During the trial evidence was adduced that suggested robberies had occurred. However, the evidence was unclear as to the element of "interstate commerce." At the conclusion of the evidence the Trial Court offered instructions regarding the elements necessary for a finding of a Hobbs Act violation:

> It is charged in Count One of the Indictment that on or about October 21, 2009, in the Western Judicial District of Virginia, the defendant, David Anthony Taylor, did knowingly willfully, and unlawfully obstruct, delay and affect commerce . . . by robbery . . . in that the defendant did . . . take and attempt to take and obtain marijuana and drug proceeds, as well as a cellular telephone from the person of W. L., against W. L.'s will, by means of actual and threatened force, violence, and fear of injury . . . in violation of 18, U.S.C., §§ 1951(a) and (2). Count One.

It is charged in Count Three of the Indictment that on or about August 27, 2009, in the Western Judicial District of Virginia, the defendant, David Anthony Taylor, did knowingly willfully, and unlawfully obstruct, delay and affect commerce . . . by robbery . . . in that the defendant did . . . take and attempt to take and obtain marijuana and drug proceeds from the person of J.W., against J. W.'s will, by means of actual and threatened force, violence, and fear of in jury . . . in violation of 18, U.S.C., §§ 1951(a) and (2).

To find the defendant guilty of these charges, the government must prove three elements beyond a reasonable doubt:

First, that the defendant knowingly obtained or took the personal property of another or from the presence of another;

Second, that the defendant took this property against the victims will by actual or threatened force, violence or fear of injury, whether immediately or in the future;

And, third, that as a result of the defendant's action, interstate commerce or an item moving in interstate commerce was delayed, obstructed, or affected in some way or degree.

In considering the third element, whether the robbery affected interstate commerce, I instruct you that the effect on interstate

> commerce need not be adverse or especially great, nor it is necessary for the government to prove that the defendant intended to affect interstate commerce; rather, this element may be proven by evidence that a defendant's actions were likely to affect interstate commerce, even though the actual impact on commerce was small.
>
> . . ..
>
> The term "commerce," as previously used in the instructions, means any commerce within the District of Columbia or any territory or possession of the United States, all commerce between any point in a state, territory, possession, or the District of Columbia, and any point outside thereof; all commerce between points within the same state through any place outside such state, and all other such commerce over which the United States has jurisdiction.

JA-A, p. 1a; Record 70, pp. 474 – 478.

During deliberations the jury sought clarification of the interstate commerce element asking "[I]n testimony do we consider "looking for stuff" interstate commerce." JA-A, p. 1a; Doc. 55, p. 140. The inquiry of the jury clearly demonstrating questions regarding proof of the interstate commerce element necessary for a conviction under the Hobbs Act.

Shortly thereafter the jury announced that they could not reach a unanimous verdict. *JA-A, p.2a , Record. 71, p.*

502: 18-21. The Trial Court then granted the Government's motion for mistrial and rescheduled for a new trial. *JA-A, p. 2a, Doc. 71, pp. 504:19*.

D. January 23 – 25, 2013 Jury Trial – Guilty Verdict, Counts One, Three and Four

January 23 – 25, 2013 Taylor was again tried in the Western District of Virginia, Roanoke Division, pursuant to the 4-count superseding indictment. On January 25, 2013 he was acquitted of one count of possessing a firearm in furtherance of a robbery. He was convicted of (1) two counts of Hobbs Act robbery and (2) one count of using a firearm in furtherance of a robbery. *JA-I, pp. 67a-69a.*

By final judgment entered April 24, 2013, Petitioner was sentenced to, *inter alia*, imprisonment for a term of 336 months. *JA-A, p. 3a; Record 135.* On April 25, 2013 Mr. Taylor filed a timely notice of appeal. *JA-J, p. 70a.*

E. Pretrial Motion

On December 13, 2012 the Government filed a Motion in Limine to preclude the introduction of evidence or argument that marijuana dealers dealing in marijuana grown "in-state" would not be a violation of the Hobbs Act. *JA-C, pp. 15a-17a.* Arguing that all robberies of "drug dealers" *per* se satisfied the interstate commerce element necessary for a Hobbs Act Conviction, the Government relied upon *United States v. Williams*, 342 F.3d 350 (4th Cir. 2003) in support of the Motion. Petitioner responded with a Motion to Dismiss (*JA-E, pp. 21a-22a*) arguing under the Fifth and Sixth Amendments to the United States Constitution he had a Constitutional due process

right to present evidence and argue that the robbery of a dealer of intrastate grown marijuana did not have an effect on interstate commerce. The District Court conducted a motions hearing on January 3, 2013. *JA-F, pp. 24a-58a.* Adopting the Government's reliance on *Williams, supra,* the District Court ruled in favor of the Government's Motion in Limine stating "the defendant may not present any evidence or argument that the robbery or attempted robbery of drug dealers who deal only in Virginia-grown marijuana would not violate the Hobbs Act." *JA-F, p. 46a.* The decision was followed by an Order of the District Court entered January 4, 2013. *JA-G, pp. 59a-60a.* This decision precluded the Petitioner from presenting his theory of defense that the robbery of marijuana dealers dealing in marijuana grown "in-state" had no proven effect on the interstate commerce element necessary for a Hobbs Act conviction, in essence denying him of due process and the right to call witnesses in his behalf as guaranteed by the Fifth and Sixth Amendments respectively.

F. Evidence at Trial

(i) Evidence with Respect to the Robbery of Worley

The Government's case against Petitioner for the robbery of Lynch was comprised principally of the testimony the victims and cooperating witnesses, George Fitzgerald ("Fitzgerald"), the organizer of the robberies and Anthony Claytor ("Claytor"), an accomplice.

According to the testimony of Fitzgerald, he, Claytor, Petitioner and Dejuan Lemons ("Lemons") on the evening of August 27, 2009 travelled to 3433 Ridgerun, Roanoke,

Virginia with the intent to rob Worley. Fitzgerald had been told that Worley was a marijuana dealer with access to drugs and cash. *JA-A, p. 4a; Record 159, p.2383: 1-15;* 2388: 2-3; 2406: 9-18. He had no specific knowledge that drugs would be found. *JA-A, p. 4a; Record 159, pp. 2405-2406: 16-7.*

Upon arriving at the residence Petitioner kicked the door open. Petitioner, Lemons and Fitzgerald entered the residence and made their way to the bedroom where Worley and his live-in girlfriend, Latasha Graham ("Graham") were found. *JA-A, p. 4a; Record 159, p. 2384: 17-18: p. 2386: 5-14*. Claytor waited outside the residence. *JA-A, p. 4a; Record 159, p. 2388: 4-7.*

During the course of the robbery no marijuana, drugs or money was found by the trio. Fitzgerald testified that Petitioner removed rings from the finger of Graham, taking the rings and some money from a pocketbook on the bedroom dresser. *JA-A, p. 4a; Record 159, p. 2388: 18-25; p. 2396: 1-6.* The trio then left the Worley residence.

Claytor testified that all four entered the residence and that Lemons was responsible for the forced entry. *JA-A, p. 5a; Record 160, p. 1930: 17-22; p. 1931: 6-9; p. 1938: 8-10.*

Worley, age 24, testified that he resided in the residence with his girlfriend, Graham, and her two children. *JA-A, p. 4a; Record 159, pp. 2462-2463: 25-1.* He provided testimony that he was not a drug dealer and specifically was not selling exotic weed. *JA-A, p. 4a; Record 159, p. 2466: 3-15; p. 2485: 5-19.* He testified that he had no drugs or money in the residence at the time of the robbery. *JA-A, p. 4a; Record 159, p. 2472: 1-2*.

Graham, age 27, testified that on the evening of August 27, 2009 three men came into their bedroom and they were robbed. *JA-A, p. 4a; Record 159, p. 2498: 2-5*. Graham had smoked marijuana from high school up to the time of the robbery, but neither she nor Worley sold marijuana or any other drugs. *JA-A, p. 4a; Record 159, p. 2498: 18-20*. When the three men entered the bedroom they stated they were looking for money and weed and she advised they didn't have any. *JA-A, p. 4a; Record 159, pp. 2505-2506: 17-7*. The net proceeds taken during the robbery was $40 and jewelry. *JA-A, p. 4a; Record 159, pp. 2511-2512: 20-25*.

There was no testimony that either Worley, Graham or the children residing in the residence were drug dealers or that anyone possessed marijuana or any other narcotics at the time of the robbery.

(ii) Evidence with Respect to Robbery of Lynch

Fitzgerald was again called by the Government as a principal witness in the Lynch robbery. He testified that a Chris Nichols and his cousin had robbed a guy for 20 pounds of marijuana in front of the Lynch residence and that he expected to find marijuana and probably money. *JA-A, 5a; Record 160, p. 2013: 13-18*; *Record 160, p. 2017: 7-9*. The Lynch robbery was carried out by himself, Lemons and Petitioner. *JA-A, 5a; Record 160, p. 1947: 1-9*. After entering the residence the trio controlled the residents and Fitzgerald question Lynch about the presence of weed. Lynch denied that there was weed in the house and stated a guy named Mark had weed. *JA-A, 5a; Record 160, p. 2019: 1-13*. After determining that there was no weed or money in the residence the trio left the residence. *JA-A, 5a; Record 160, p. 2021: 1-3*.

During questioning by the District Court, Fitzgerald testified they were operating in the blind and didn't know if there would be marijuana and/or money present. This was described as "hit or miss" operation, by Fitzgerald. *JA-A, 5a; Record 160, pp. 2027-2028: 20-18*.

Whitney Lynch, wife of Lynch, testified that she was in a bedroom when the trio entered her home. Instinctively she called 911 and placed her phone under the bed. *JA-A, 5a; Record 160, p. 2033: 13-17.* She was questioned about money and weed repeatedly, but responded that they had no money, weed or safe. *JA-A, 5a; Record 160, p. 2034: 4-6, 18-19*. During the time the trio was in the Lynch residence the only thing that was taken was a cell phone. *JA-A, 5a: Record 160, p. 2037: 15-17.* Following a thorough search of the residence one of the three said "everybody out of the house. Let's go" the trio then left. *JA-A, 5a; Record 160, p. 2036: 7-13*. Mrs. Lynch testified on cross examination that neither she nor her husband dealt in drugs, including but not limited to marijuana and that she had no knowledge of a previous drug robbery at or near her home of 20 pounds of marijuana. *JA-A, 5a; Record 160, p. 2048-2049: 23-17.*

The Government called Michelle Tringali, Roanoke City E-911 dispatcher to testify as to the 911 call of Whitney Lynch. In the call, admitted into evidence, a male voice can be heard directing Mrs. Lynch to get on the bed and asking her for money and for weed. *JA-A, 5a; Record 160, p. 1984: 23-25*.

The Government never called Chris Nichols to the stand to testify regarding the alleged 20 pound marijuana robbery. There was no testimony from any witness that marijuana or any other drugs were present in the

residence at the time of the robbery. To the contrary the testimony established that there was no marijuana or any other drugs present and that neither Mrs. Lynch nor Mr. Lynch were drug dealers, specifically marijuana distributors.

The Government offered no testimony, expert or otherwise, that marijuana traveled in interstate commerce or the interstate commerce of drugs in general. Neither was evidence offered by the Government that the subject robberies had an effect on interstate commerce.

G. Procedural History

At the conclusion of the evidence Taylor moved to strike the Government's case resulting from the failure of the Government to prove the jurisdictional element of interstate commerce. This motion was denied with the ruling that the District Court believed there was sufficient evidence to satisfy the interstate commerce requirement based upon an attempt to steal drugs and that drugs were the type commodity that impacted interstate commerce. *JA-A, 5a; Record 160, pp. 2192-2193: 10-7.* This ruling ignored the testimony from the victims and accomplices which clearly demonstrated that marijuana was the specific drug targeted in the robberies and named in the Superseding Indictment.

The jury heard arguments and was then instructed as to the law of the case regarding Counts One and Three. Specifically as to the element of interstate commerce "I tell you that the government has met its burden of proof if you find and believe from the evidence beyond a reasonable doubt that the defendant reduced the movement of articles

and commodities in interstate commerce, in this case illegal drugs and drug proceeds, or attempted to do so by the robberies charged in Counts one and Three." *JA-H, p. 63a*.

On January 25, 2013, after a three day trial, Taylor was convicted of two counts of robbery of items having an effect on interstate commerce and one count of possession a firearm in furtherance of robbery. *JA-I, pp. 76a-69a*. Taylor was acquitted of one count of possessing a firearm in furtherance of a robbery. The first robbery count was with respect to the alleged robbery of one William Thomas Lynch ("Lynch") on 3030 Parham Drive, Roanoke, Virginia which occurred on October 21, 2009. The second alleged robbery was of one Josh Worley ("Worley") on 3343 Ridgerun, Roanoke, Virginia which occurred on August 27, 2009. Taylor was also convicted of possessing and/or using a firearm in connection with the alleged robbery of Worley.

Taylor then made a motion to set aside the jury's verdict as being contrary to the law and evidence based upon the Government's failure to prove the element of interstate commerce. *JA-A, p. 5a; Record 161, p. 2289: 1-13*. The Trial Court denied the motion reasoning "[T]he Court understands the law to be that if the jury is satisfied beyond a reasonable doubt that the defendant engaged in a Hobbs Act robbery, the object of which was to recover drugs from a drug dealer, that suffices to satisfy the interstate commerce requirement under the Hobbs Act." *JA-A, p. 5a; Record 161, p. 2289- 2290: 21-5*.

SUMMARY OF AGRUMENT

This Court should reverse the Fourth Circuit's decision. It cannot be reconciled with the text and structure of the Hobbs Act, and it is contrary to basic principles of due process and federal criminal law.

I. The Hobbs Act imposes criminal liability on "whoever" affects "commerce" by "robbery," defining "commerce" as "all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the Unites States has jurisdiction" and "robbery" as "the unlawful taking or obtaining of personal property from the person . . . against his will, by means of actual or threatened force, or violence, ..." 18 U.S.C. § 1951 (a)(b)(1) and (3). The natural and only plausible reading of the statute requires that the robbery be of an item that has traveled in or affects commerce. The Hobbs Act does not regulate robbery for the sake of regulating robbery, rather, the Hobbs Act regulates interference with economic activity by robbery.

This straightforward reading is confirmed by the Hobbs Act's structure and the context in which the "affects commerce" language appears. The Act imposes liability on "whoever" "affects commerce" by "robbery" from a person of his/her personal property, making clear that the personal property taken or intended to be taken from the person has traveled in or affected commerce. The taking of personal property originating intrastate and never traveling interstate by robbery does not trigger liability under the Act.

Upon a proper interpretation of the Hobbs Act, petitioner's conviction cannot stand. The government offered no evidence at trial that the personal property made the subject of the robbery, marijuana, had traveled in or affected commerce. Indeed as a result of the district court's motion in limine ruling they were not required to offer such evidence. The greater gravamen of this ruling denied Petitioner of his due process by prohibiting him from presenting evidence regarding intrastate grown marijuana and its lack of impact on commerce, a theory critical to his defense. The district court should have denied the government's motion in limine or, failing that, the Fourth Circuit should have reversed his conviction.

II. The plain statutory text should have been the beginning and end of this case. The phrases "personal property," "affects commerce" and "robbery" are independent elements that must be proven beyond a reasonable doubt before Hobbs Act liability attaches. Instead, the Fourth Circuit adopted an interpretation of the Act that is contrary to the text and unpersuasive. The Fourth Circuit's interpretation ignores the statute's specific "personal property" element and erroneously substitutes a "class of acts" as an element of the offense. Simply put, the adoption of the Fourth Circuit's interpretation creates an irrebuttable presumption of guilt, when the specific personal property element made the subject of the robbery is substituted with a "class of acts" element.

ARGUMENT

I. To Establish A Hobbs Act Robbery, The Government Must Prove That A Person Committed A Robbery Of Personal Property Of Another Person And The Robbery Of The Personal Property Had An Effect On Commerce.

"In analyzing a statute," this Court "begin[s] by examining the text." *Carter v. United States,* 530 U.S. 255, 271 (2000). Unless otherwise defined, statutory terms are "interpreted as taking their ordinary, contemporary, common meaning." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.,* 134 S. Ct. 1749, 1756 (2014).

These basic rules of interpretation carry special force in the interpretation of criminal statutes, a contest where vagueness and imprecision are to be avoided. A criminal statute must give a "person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Gayned v. City of Rockford,* 408 U.S. 104, 108 (1972); *see also Smith v. Goguen,* 415 U.S. 566, 574 (1974) (criminal statute must draw "clear Lines" between conduct that is prohibited and conduct that is not). Accordingly, courts should not "give the text a meaning that is different from its ordinary, accepted meaning." *Burrage v. United States,* 134 S. Ct. 881, 891 (2014).

In this case, the statutory text, structure, and common sense all point in one direction: The crime of robbery under the Hobbs Act requires that the government prove that the specific personal property made the subject of the robbery affects commerce.

A. The Fourth Circuit's Holding That Drug Dealing Is An Inherently Economic Enterprise That Affects Interstate Commerce Such That The Government Is Not Required To Prove That A Specific Robbery Affected Interstate Commerce Is Inconsistent With The Due Process Requirement That The Government Prove Each Element Of A Criminal Offense Beyond A Reasonable Doubt.

Marijuana is the only major drug grown within the borders of the United States. Twenty-three states and the District of Columbia currently have laws legalizing marijuana in some form. Four states and the District of Columbia[1] have legalized marijuana for recreational use. In Alaska, adults 21 and older can now transport, buy or possess up to an ounce of marijuana and six plants.[2] As of July 1, 2015 Oregon allows adults to possess up to an ounce of marijuana in public and 8 ounces in their homes.[3] Colorado[4] and Washington[5] previously passed similar ballot measures legalizing marijuana in 2012.

"The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation." *In re Winship*,

1. D.C. Code § 48-904.01.

2. Alaska Stat. § 17.38.020.

3. ORS § 475.864.

4. Colo. Const. Art. XVIII, § 16.

5. Washington Initiative 502, November 6, 2012; Rev. Code Wash. § 69.50.101 et seq.

397 U.S. 358, 361, 90 S. Ct. 1068, 1071, 25 L. Ed. 2d 368 (1970). Under the Due Process Clause, "[t]he prosecution bears the burden of proving all elements of the offense and must persuade the factfinder beyond a reasonable doubt of the facts necessary to establish each of those elements." *Sullivan v. Louisiana*, 508 U.S. 275, 277-78, 113 S. Ct. 2078, 2080, 124 L. Ed. 2d 182 (1993) (citations omitted). The jury verdict, in turn, must necessarily be based on a finding of guilt beyond a reasonable doubt on every element of the offense charged. *Id.* at 278, 113 S. Ct. at 2081, 124 L. Ed. 2d 182. The primacy of this standard of proof in criminal matters is not subject to debate. The Fourth Circuit Court of Appeals' ruling in the case below, *United States v. Taylor*, 754 F.3d 217 (4th Cir. 2014), *cert. granted*, No. 14-6166, 2015 WL 5725547 (U.S. Oct. 1, 2015), impermissibly relieves the Government of its burden to prove an element of a charge under the Hobbs Act, 18 U.S.C. § 1951(a), in violation of this well-established due process right.

The Hobbs Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone v. United States*, 361 U.S. 212, 215, 80 S. Ct. 270, 272, 4 L. Ed. 2d 252 (1960). An offense under the Act has two elements: interference with commerce, and robbery or extortion. "The 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, 80 S. Ct. at 274, 4 L. Ed. 2d 252 (emphasis added). Without a clear basis for federal jurisdiction, the authority for defining and enforcing the criminal law rests with the

states. *United States v. Lopez*, 514 U.S. 549, 561 n.3, 115 S. Ct. 1624, 1631 n.3, 131 L. Ed. 2d 626 (1995).[6]

The basis for Hobbs Act jurisdiction in this case was that Petitioner was charged with robbery of suspected marijuana dealers. Thus, the pertinent jurisdictional inquiry was whether the business of the marijuana dealers affected commerce. Noting that "the jurisdictional predicate of the Hobbs Act requires only that the government prove a 'minimal' effect on interstate commerce," *Taylor*, 754 F.3d at 222, the Fourth Circuit went on to apply the so-called aggregation principle to the inquiry. Under the aggregation principle, "Congress may regulate conduct under the Commerce Clause that, in the aggregate, impacts interstate commerce." *Id.* Relying on its previous holding in *United States v. Williams*, 342 F.3d 350 (4th Cir. 2003), *cert. denied*, 540 U.S. 1169 (2004), that "[d]rug dealing . . . is an inherently economic enterprise that affects interstate commerce," *id.* at 355, the Fourth Circuit rejected the notion that it was necessary to examine the circumstances of the robberies and concluded that the Petitioner's belief that the targets of the robberies were marijuana dealers was all that was necessary to establish federal jurisdiction under the Hobbs Act. *Taylor*, 754 F.3d at 223. Because the court determined that drug dealing met the jurisdictional predicate *per se*, the Fourth Circuit found no error in the district court's grant of the Government's motion in limine precluding the Petitioner from introducing evidence that the marijuana at issue

6. In this case, for instance, armed robbery or robbery could have been prosecuted under Virginia law. *See Ali v. Commonwealth,*280 Va. 665, 668, 701 S.E.2d 64, 66 (2010) (setting forth elements of common-law robbery); *see also* Va. Code Ann. §§18.2-58; 18.2-90; and 18.2-10.

was grown in Virginia and, thus, did not affect interstate commerce. *Id.* at 225 n.*.

The Fourth Circuit's *per se* rule that all drug dealing affects commerce for purposes of the Hobbs Act, regardless of the circumstances of the charged offense, conflicts with the approach in the Second Circuit and the Seventh Circuit, in which the courts have held that drug dealing in and of itself is insufficient to establish that a crime affects commerce within the meaning of the Hobbs Act; there must be an individualized factual finding beyond a reasonable doubt supporting a legal conclusion of jurisdiction in a particular case. *See United States v. Needham*, 604 F.3d 673, 678 (2d Cir. 2010) (citing *United States v. Parkes*, 497 F.3d 220, 229-30 (2d Cir. 2007)), *cert. denied*, 562 U.S. 955 (2010); *United States v. Peterson*, 236 F.3d 848, 855 (7th Cir. 2001). The Fourth Circuit's *per se* rule is also inconsistent with its own Hobbs Act precedent, as well as with the due process guarantee that the Government shall prove each element of a criminal offense beyond a reasonable doubt. The Fourth Circuit has confused the *de minimis* standard that applies to proof of Hobbs Act jurisdiction with no standard. Just because the bar is low does *not* mean that the Government has no burden of proof on the jurisdictional element. *Cf. Stirone*, 361 U.S. at 218, 80 S. Ct. 270, 274, 4 L. Ed. 2d 252 (emphasizing the importance of proving jurisdiction in a Hobbs Act case). As the Fourth Circuit recognized in *United States v. Buffey*, 899 F.2d 1402 (4th Cir. 1990), "broadly as the extension of the interstate commerce requirement has spread, we are still a federal, not a unitary, government and, to satisfy the Act, the government still must show that an effect on interstate commerce is reasonably probable." *Id.* at 1404. While the

nexus between the challenged conduct—in this case, the robberies—and interstate commerce "may be *de minimis*, . . . it must nonetheless exist." *Id.* In *Buffey*, the court reversed the conviction because the Government failed to prove a reasonable probability that the defendants' attempted extortion of a wealthy businessman would have caused him to deplete company assets to satisfy the extortion demand, thus, affecting interstate commerce, because he had extensive personal assets. *Id.* at 1404-07. The court came to this conclusion only after making an individualized assessment of the facts surrounding the attempted extortion. *See also United States v. Tillery*, 702 F.3d 170, 174 (4th Cir. 2012) (finding jurisdiction based on evidence that dry cleaner where robbery took place was part of a larger network of cleaners that purchased its supplies out-of-state, including "cleaning solvents from Illinois; hangers from Alabama, Mexico, Vietnam, and China; spotting chemicals from Illinois and Missouri; gown boxes from Illinois; detergent from North Carolina; starch from Missouri; boiler conditioner from Illinois; and plastic garment bags from South Carolina. Additionally, there was testimony that the Petersburg branch used an out-of-state credit card processor and telephone company."), *cert. denied*, ___ U.S. ___, 133 S. Ct. 2369, 185 L. Ed. 2d 1088 (2013); *United States v. Robinson*, 119 F.3d 1205, 1215 (5th Cir. 1997) (jury properly found interstate commerce was affected when defendant Robinson's gang robbed stores of thousands of dollars, impairing their ability to cash out-of-state checks and to restock goods shipped from other states), *cert. denied*, 522 U.S. 1139 (1998). The rule should be no different for Hobbs Act cases related to drug dealing.

This Court's ruling in *Gonzales v. Raich*, 545 U.S. 1, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005), that Congress has the authority to regulate intrastate-grown marijuana under the Controlled Substances Act ("CSA") did not create a Commerce Clause exception for drugs. In *Raich*, the issue was whether Congress had a rational basis for "believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA." *Id.* at 22, 125 S. Ct. at 2197, 162 L. Ed. 2d 1. Here the pertinent inquiry was whether *in this prosecution* there was proof beyond a reasonable doubt that the robberies affected interstate commerce. As the Second Circuit observed in *Parkes*:

> Congressional findings cannot substitute for proof beyond a reasonable doubt. *See United States v. Chance*, 306 F.3d 356, 377-78 (6th Cir.2002) (rejecting the proposition that "the prosecution is relieved from proving an essential element of [a Hobbs Act] offense by proof beyond a reasonable doubt where Congress has made findings of fact concerning the area regulated"); *United States v. Peterson*, 236 F.3d 848, 855 (7th Cir.2001) (observing that "the government is conflating its burden of proof under two distinct statutory schemes—the Controlled Substances Act . . . and the Hobbs Act," and holding that the "specific findings" in the"CSA cannot excuse proof of an effect on interstate commerce in a Hobbs Act prosecution (internal citations omitted)); *United States v. Gomez*, No. 99 Cr. 740, 2005 WL 1529701, at *9 (S.D.N.Y. June 28, 2005) (McKenna, J.) ("Nothing in [Second Circuit case

> law] supports the view that the 21 U.S.C. § 801 findings have replaced the traditional Hobbs Act requirement that an effect [on interstate commerce] (however minimal or even potential) be proved."); *see also United States v. Balsam*, 203 F.3d 72, 89 (1st Cir.2000) (citing *Gaudin* for the proposition that the jury instruction that, "as a matter of law[,] the businesses at issue in this case were engaged in interstate commerce" was erroneous because it violated the defendant's constitutional "right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged" (internal quotation marks omitted)).

Parkes, 497 F.3d at 229-30.

Even if the holding in *Raich* leads to the conclusion that there is federal jurisdiction over CSA prosecutions involving intrastate marijuana, it does not lead to the conclusion that drug-related robberies are subject to federal jurisdiction under the Hobbs Act. The Hobbs Act does *not* regulate the drug trade. Rather, the Hobbs Act regulates robbery and extortion. *See United States v. Bolton* , 68 F.3d 396, 399 (10th Cir. 1995) ("In enacting the Hobbs Act, Congress determined that robbery and extortion are activities which through repetition may have substantial detrimental effects on interstate commerce. *See* H.R.Rep. No. 238, 79th Cong., 1st Sess., (1945), *reprinted in* 1946 U.S.C.C.A.N. 1360, 1370 ('[T]hose persons who have been impeding interstate commerce . . . shall not be permitted to continue such practices without a sincere attempt on the part of Congress to do its

duty of protecting interstate commerce.'"), *cert. denied*, 516 U.S. 1137 (1996).

The Fourth Circuit's conclusion that the nature of the robberies, including the type of drugs the victims were believed to have, is irrelevant to the Government's proof of the jurisdictional element is not supported by the cases on which the court purported to rely. The court did not mention, for example, that the defendant in *Williams*, from which the court derived it's *per se* rule, stipulated that "drug trafficking is a business that involves interstate commerce with the interstate commodities being cocaine and crack cocaine and proceeds from drug distribution." 342 F.3d at 353. Moreover, the court gave short shrift to the notion that any distinction should be made between Petitioner, who proffered evidence that the robbery victims dealt in Virginia-grown marijuana only, and the defendant in *Williams* whose crimes involved cocaine. *Taylor*, 754 F.3d at 224. However, both *Williams* and *Taylor* relied on *United States v. Marrero*, 299 F.3d 653 (7th Cir. 2002), *cert. denied*, 537 U.S. 1145 (2003), in which the court noted that even if the victims of the robbery had not been lured across state lines from Detroit to Chicago, because the drug involved was cocaine, and "cocaine originates overseas," the robbery affected commerce. *Id.* at 655; *see also Needham*, 604 F.3d at 680 (upholding Hobbs Act conspiracy convictions because the conspiracy targeted proceeds from the sale of cocaine and heroin, which "cannot be produced in New York, and thus necessarily travel in interstate commerce"); *Needham, 604 F.3d at* 681 (Reversing Hobbs Act robbery convictions because the Government presented "no proof that the marijuana sold by the victims had originated out of state, that it was sold to out-of-state customers, that the victims themselves

crossed state lines in conducting their business, or that the robbery depleted assets that would have purchased goods in interstate commerce.").

In affirming Petitioner's conviction the Fourth Circuit relied on its precedent in *Williams, supra*. A close examination of the facts in *Williams, supra,* demonstrates a stipulation of facts agreed to by the Government and Mr. Williams. The government read to the jury the stipulation in which Williams conceded, among other things, that "drug trafficking is a business that involves interstate commerce with the interstate commodities being cocaine and crack cocaine and proceeds from drug distribution." *Williams, 342 F.3d at 353.* Having stipulated the interstate commerce jurisdictional element, the only element remaining necessary for a Hobbs Act violation was proof of the robbery element. Hobbs Act convictions have been affirmed in a number of circuits where the interstate commerce jurisdictional element was proven or stipulated. See *United States v. Gomez,* 580 F.3d 94 (2nd Cir. 2009) (reinstating Hobbs Act robbery convictions where the Government's evidence regarding interstate commerce was that the object of the robbery was three kilos of cocaine); *United States v. Walker,* 657 F.3d 160 (3rd Cir. 2011) (affirming conviction for Hobbs Act robbery where Government presented reliable expert testimony that the cocaine sold in Harrisburg is manufactured outside of Pennsylvania and transported into the state); *United States v. McCraney*, 612 F.3d 1057 (8th Cir. 2010) (affirming Hobbs Act robbery conviction where the evidence showed that the cocaine stolen from the victim necessarily originated in South America and was intended to be sold in Iowa. The taking of that cocaine disrupted the movement of a commodity in interstate commerce); *United States v.*

Rutland, 705 F.3d (10th Cir. 2013) (upholding conviction for Hobbs Act robbery where Government produced evidence that a Rock Springs, Wyoming drug dealer who obtained his drugs from a source in Salt Lake City, Utah and robbery of one-half pound of methamphetamine and $24,000 -- $30,000 in drug proceeds). In Petitioner's case there was no evidentiary foundation to show either of the victims were regularly, substantially or minimally involved in interstate commerce and most significantly if by inference they were, the Petitioner was not allowed to produce evidence that the marijuana (personal property) made the subject of the robbery traveled in or affected commerce, thus denying Petitioner the basic due process guarantees of the Constitution. "Whether rooted directly in the *Due Process Clause of the Fifth Amendment* or in the *Compulsory Process* or *Confrontation clauses of the Sixth Amendment,* the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky,* 476 U.S. 683, 690 (1986). Petitioner was denied that opportunity.

Petitioner does not contest the long-established rule that the connection to interstate commerce may be *de minimis* under the Hobbs Act. However, the fact that proof of a tenuous connection to interstate commerce satisfies the jurisdictional element does not mean that the Government must produce no evidence. Given the *de minimis* standard, it most certainly does not mean that the defendant can be barred from presenting relevant evidence countering the Government's proof on jurisdiction. Just because drug dealing is the sort of enterprise that *may* affect interstate commerce does not mean that a robbery involving drug dealing *must* affect interstate commerce.

CONCLUSION

The decision of the fourth circuit should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted,

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