

Hobbs Act Robbery

Christopher Graveline
Chief
Violent and Organized Crime Unit
U.S. Attorney's Office
Eastern District of Michigan

Bonnie S. Greenberg
Assistant Director, Criminal Programs
Office of Legal Education
Executive Office for U.S. Attorneys
U.S. Department of Justice

I. Introduction

On March 8, 2017, Attorney General Sessions issued a memorandum emphasizing the Department's commitment to prosecution of violent crime, noting that one of the "substantial tools" prosecutors have at their disposal to target violent crime is the Hobbs Act robbery statute—[18 U.S.C. § 1951](#). We wholeheartedly agree. The authors of this article have 41 years of experience with the Department of Justice. We both believe that federal prosecution of criminals who commit robberies will make our communities substantially safer. We hope this article will assist you in prosecuting these types of cases in your district.

The Hobbs Act prohibits robbery that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce."³⁶ The elements of a Hobbs Act robbery are (1) robbery, and (2) interference with commerce.³⁷ The "minimal effect" on interstate commerce can be met when the robbery impacts the assets of an "inherently economic enterprise."³⁸

Of course, prosecuting a Hobbs Act robbery is not as simple as that. Interstate commerce, for example, can be a thorny factual and legal issue in Hobbs Act prosecutions. In 2012, Andrew Creighton, a trial attorney with the Criminal Division's Organized Crime and Gang Section, wrote a thorough and helpful United States Attorney Bulletin article outlining the legal elements of Hobbs Act robbery and the various interstate commerce issues. We recommend reviewing this article for an overview of the statute and the various interstate commerce issues.

Prosecutors should be aware of the United States Attorney's Manual policy regarding the Hobbs Act robberies, which provides: "[18 U.S.C. § 1951](#) is to be utilized, as a general rule, only in instances involving organized crime, gang activity, or wide-ranging schemes."³⁹ Note that there are many exceptions to the general rule. Some of the considerations include the egregiousness of the crime or the offender's recidivism. Prosecutors who are unsure whether a particular case would be appropriate to charge under the Hobbs Act should consult with the Organized Crime and Gang Section of the Criminal Division.

Within these parameters, there are many types of cases that could qualify for prosecution under

³⁶ [18 U.S.C. § 1951\(a\)](#) (2012).

³⁷ *Stirone v. United States*, 361 U.S. 212, 218 (1960).

³⁸ *United States v. Tillery*, 702 F.3d 170, 174 (4th Cir. 2012) (internal quotations omitted).

³⁹ [USAM § 9-131.040](#).

the Hobbs Act. The “typical” Hobbs Act cases, of course, are the convenience store or gas station robberies. However, the Hobbs Act reaches conduct broader than that. For example, in the spring and early summer of 1995, several small businesses in the Dallas area were victimized in a series of crimes that became known as the “driveway bank robberies.”⁴⁰ The perpetrators surveilled the stores and robbed the victims, usually in the drive-up lane at the bank or in their store parking lot, immediately after the victims had made substantial bank withdrawals for use in their check cashing activities. The effect on interstate commerce was based on the victims’ check-cashing activities and because the stores sold goods shipped in from outside of Texas. These robberies caused one victim’s store to permanently close.

Similarly, the Third Circuit and the Fourth Circuit affirmed Hobbs Act robbery convictions, reasoning that the interstate commerce nexus was met when the robbers knew that the business owners kept proceeds from their businesses at their home.⁴¹ These courts reasoned that the proceeds were business and not personal assets, and therefore met the interstate commerce requirement. Another example of an appropriate use of the Hobbs Act statute (prosecuted by one of your authors), involved a three-time convicted robber who robbed an elderly couple in their hotel room. The interstate commerce element was satisfied because the couple was refunded their hotel room rental for that night and cancelled their second night stay at the hotel.⁴² A word of caution in this area is to be sure to check your circuit-specific law regarding these types of robberies as to what is required to satisfy the “effect on interstate commerce” element.⁴³

Lastly, the Hobbs Act can be used to prosecute drug dealers who commit robberies of other drug dealers. This aspect of Hobbs Act robbery was featured in *The Wire*, an iconic HBO series that aired from 2002 to 2008. In the series, Omar Little was a Baltimore stick-up man, frequently robbing street-level drug dealers. This was known throughout the drug dealing community, as people on the street screamed "Omar comin'!" when they saw him approach. Last year the Supreme Court authorized Hobbs Act prosecutions of robbers like Omar Little, ruling that the interstate commerce element of the statute was met when the robber intentionally targeted drug dealers to obtain drugs and drug proceeds.⁴⁴

We believe that Hobbs Act prosecutions should be a vital part of any anti-violent crime program. Business robberies strike at the very lifeblood of any neighborhood or community. If business owners and customers do not feel secure in both their personal safety and property, they will go elsewhere. It is not uncommon for the victim companies to have such an economic loss that they close, as happened in the *Robinson* case, *supra*. As businesses leave an area, the vacant business fronts become emblematic of the lack of economic opportunity for the people who live in that area. Moreover, business closures have hidden costs. When a corner grocery or store closes due to repeated robberies, that departure equates into longer trips for the elderly residents in that area just to get the basic staples of life. Thus, protecting the business community has a direct bearing on the quality of life of a community and is of utmost importance.

By aggressively prosecuting Hobbs Act cases in federal court, with the mandatory consecutive [18 USC § 924\(c\)](#) count(s), the law enforcement community sends a strong message that business robberies will not be tolerated. An individual with a minimal criminal history will most likely face approximately 9 to 11 years in prison for an armed robbery of a business in federal court. Multiple Hobbs Act counts, with the potential of charging second or subsequent [18 USC § 924\(c\)](#) counts, quickly add up

⁴⁰ [United States v. Robinson](#), 328 F.3d 708 (5th Cir. 1997).

⁴¹ [United States v. Powell](#), 693 F.3d 398 (3d Cir. 2012); [United States v. Donahue](#), 607 Fed. App'x. 233 (4th Cir. 2015) (per curiam).

⁴² [United States v. Wiggins](#), No. CRIM. WDQ-13-0146, 2014 WL 3700345, at *1 (D. Md. July 23, 2014) (appeal pending).

⁴³ See [United States v. Wang](#), 222 F.3d 234, 240 (6th Cir. 2000) (no showing of a substantial connection between the robbery and the restaurant's business when robber robbed private citizens in their house, and \$1,200 of the \$4,200 stolen was restaurant proceeds).

⁴⁴ [Taylor v. United States](#), 136 S. Ct. 2074 (2016).

to lengthy sentences. Thus, these prosecutions directly lead to getting some of the most dangerous and brazen criminals off the streets for a significant period of time.

The combination of federal and state resources, and the sharing of information, is a force multiplier. Not only will the cases be more successful from the sharing of resources and intelligence, but it is likely that there will be less robberies as the robbery “sprees” will be stopped earlier.

Moreover, as the word spreads through the criminal underworld that these types of robberies will result in a trip to federal court, secondary benefits also begin to develop. The deterrence effect can curb armed robberies as individuals inclined to commit these crimes begin to learn that this misconduct will result in decades in prison. Additionally, robbers facing lengthy federal prison sentences are far more likely to cooperate with law enforcement authorities, not only to solve business robberies, but numerous other crimes as well, including murders, shootings, and illegal narcotics distribution. For example, in a recent Hobbs Act prosecution in Detroit for a string of Dollar General store armed robberies, one of the robbers decided to cooperate with the FBI, which led to state charges on four individuals for a previously unsolved murder. Finally, by bringing these cases in federal court, it is possible to bring multiple robberies committed in two or more jurisdictions (for example, over state county lines) in a single prosecution. This joinder can preserve law enforcement resources, allow juries to see the totality of the conduct, and permit sentencing courts to sentence on all the offense conduct.

If your district is not currently prosecuting these types of cases, or would like to prosecute more of them, communication and coordination is essential. First, within the U.S. Attorney's Office itself, a discussion should be had with office leadership to determine under what circumstances and how these cases should be brought. What are the office's thresholds—a single robbery or multiple robberies? Shots fired or firearm brandished? What is the office's policy on stacking [18 USC § 924\(c\)](#) counts? Once these questions are answered within the office, coordination with the local FBI and/or ATF office should be next to determine their level of interest and resources. Many FBI and ATF offices have existing violent crime task forces that can direct their attention to these types of crimes. If no task force exists, or if you are dealing with a smaller regional office, a conversation with local FBI and/or ATF leadership should identify how many agents they can devote to these cases and how they fit into the district's priorities.

Once the federal law enforcement partners are on the same page, coordination with local authorities is necessary. Certain jurisdictions may welcome the federal assistance in addressing this problem while others will push back, asserting territorial jurisdiction. In either case, establishing a clear protocol as to which cases should proceed in federal court and which should remain in state court will ease any misunderstandings as to who will prosecute.

The combination of state and federal law enforcement agencies to combat these types of offenses, typically referred to as a “task force,” has been successful in your authors’ districts. Once you have your task force set, here are some tips to help your task force be the best task force ever:

- Keep an eye on state deadlines.
- Coordinate frequently with your state and local partners. Try to have a meeting at least once a month. Make sure you include all relevant partners and keep them informed. Communication is the key.
- Don’t “cherry pick” the good cases.
- Educate your fellow AUSAs so you have help with the cases.

We hope that this information helps you prosecute Hobbs Act robberies in your district. Please contact either one of us if we can assist.

ABOUT THE AUTHOR

□ **Christopher Graveline** is the Chief of the Violent and Organized Crime Unit, Eastern District of Michigan. He has prosecuted numerous violent crime, gangs, and drug conspiracy cases in his time in the Eastern District of Michigan.

□ **Bonnie S. Greenberg** is an Assistant Director for the National Advocacy Center, on detail from the U.S. Attorney's Office in the District of Maryland. She has worked on a wide variety of cases, including violent crime, child exploitation, narcotics, immigration, and white collar.