

SEP 08 1997

For The Northern Mariana Islands

By _____
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,	)	Criminal No. 97-00009
	)	
Plaintiff	)	
	)	
v.	)	ORDER DENYING
	)	DEFENDANT'S MOTION
DU, Bo,	)	FOR JUDGMENT OF
	)	ACQUITTAL
Defendant	)	
_____	)	

THIS MATTER came before the court on Friday, August 22, 1997, for hearing of defendant's Fed.R.Crim.P. 29(c) motion for judgment of acquittal on grounds of insufficiency of the evidence. Plaintiff appeared by and through Assistant U.S. Attorney David T. Wood; defendant appeared personally and by and through his attorney, G. Anthony Long.

THE COURT, having considered the written and oral arguments of the parties, as well as the supplemental briefing it requested, rules as follows:

On June 13, 1997, defendant was convicted by a jury of one count of

1 Interference with Interstate Commerce by Extortion, in violation of 18 U.S.C. §
2 1951 (the Hobbs Act). Defendant filed this motion for judgment of acquittal on
3 June 27, 1997, and the motion was argued August 22, 1997. The court requested
4 supplemental briefing on defendant's contention that only "intra-territorial" activities
5 were involved in this crime, and that the Hobbs Act did not reach such activities.
6 Defendant filed his supplemental brief on August 27, 1997; plaintiff did not file a
7 supplemental brief.
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10 Defendant argues that plaintiff failed to prove two elements of the crime of
11 extortion under 18 U.S.C. § 1951. First, that it failed to prove the necessary "taking
12 of a property right;" specifically, Zhaoling Zhang's right to work at the Hollywood
13 Night Spot and Qing Shen Shi's right to conduct his business without unlawful
14 interference. Second, that plaintiff failed to show the required impact on or
15 connection to interstate commerce.
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18 As to Zhaoling Zhang, defendant agrees that, for purposes of the Hobbs
19 Act, the concept of "property" includes any valuable right considered as a source or
20 element of wealth, United States v. Zemek, 634 F.2d 1159, 1174 (9th Cir. 1980), and
21 that even illegal activity can constitute "commerce" under the Hobbs Act. United
22 States v. Hanigan, 681 F.2d 1127, 1131 (9th Cir. 1982). However, defendant
23 characterizes the question as properly being whether Zhaoling Zhang had a property
24 right to engage in unlawful activity; that is, whether she had a property right in her
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1 job of soliciting customers for the prostitution activities being conducted at her place
2 of employment, the Hollywood Night Spot. Plaintiff responds that the court need
3 not reach that issue, since she testified that some of her work involved waitressing,
4 which is certainly legal. Also, Mr. Shi testified that Zhaoling Zhang's responsibilities
5 at the Hollywood Night Sport included aspects of operating and managing the
6 business.
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9 Although the taking of testimony was labored and difficult due to the need
10 to translate it from Chinese to English, the court finds that a rational trier of fact
11 could have found from the testimony and evidence presented at trial that Zhaoling
12 Zhang's job involved activities which were not illegal, and which supplied the
13 "property right" element of 18 U.S.C. § 1951. Likewise, defendant's argument that
14 Qing Shen Shi had no property right which could be "taken" fails because the jury,
15 as fact-finder, found against defendant on that factual element. Defendant's claim
16 that American Eastern Company, Inc., and not Shi, owned the Hollywood Night
17 Spot, and that Shi had no interest in the corporation (and thus had no "property
18 right" which could be taken by defendant), was countered at trial by Shi's testimony
19 that he did have an ownership interest in the club and derived income from its
20 operation. Although Shi's testimony was often confusing and sometimes seemingly
21 contradictory, it is the function of the jury to assess credibility and the jury found
22 Shi's testimony more compelling and persuasive. The court will not set aside the
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1 jury's factual findings.

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3 Finally, defendant argues that plaintiff failed to prove beyond a reasonable
4 doubt that there was a sufficient impact on or connection to interstate commerce,
5 and that, rather, all of the acts here involved only intrastate activities. Defendant
6 maintains that the only evidence of any effect on interstate commerce was that the
7 club bought Budweiser beer in the Commonwealth from a store which purchased it
8 from a distributor located in the Commonwealth, which in turn had purchased it
9 from the mainland United States. Essentially, defendant is arguing that the effect on
10 interstate commerce must be substantial, while plaintiff maintains that even a de
11 minimis effect is sufficient for purposes of the Hobbs Act.

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14 Plaintiff is correct under current Ninth Circuit and Supreme Court case law.
15 In United States v. Atcheson, 94 F.3d 1237 (9th Cir. Oct. 3, 1996), the court
16 reiterated that the government need prove only that a defendant's acts have a de
17 minimis effect on interstate commerce to support a claimed violation of 18 U.S.C. §
18 1951. In specifically addressing the possible effect on the Ninth Circuit's position by
19 the Supreme Court's ruling in United States v. Lopez, 115 S.Ct. 1624 (1995)(that for
20 an activity to be within Congress' power to regulate under the commerce clause it
21 must substantially affect interstate commerce), the Ninth Circuit recognized that it
22 had not yet addressed the question, but noted that 7th, 8th, and 10th Circuits had, in
23 post-Lopez decisions, rejected similar challenges to the application of a de minimis
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1 test under the Hobbs Act, and that certiorari had been denied by the Supreme Court
2 in each of the cases. Atcheson, 94 F.3d at 1241. Also, the Ninth Circuit noted that
3 the Supreme Court, shortly after Lopez, had decided another case in which it stated
4 that the "substantially affects interstate commerce" test it applied in Lopez was
5 developed "to define the extent of Congress's power over purely intrastate
6 commercial activities that nonetheless have substantial interstate effects." United
7 States v. Robertson, 115 S.Ct. 1732, 1733 (1995). The Ninth Circuit went on to state
8 that "[t]o establish a de minimis effect on interstate commerce, the Government
9 need not show that a defendant's acts actually affected interstate commerce," but
10 that the jurisdictional requirement is satisfied "by proof of a probable or potential
11 impact." Atcheson, 94 F.3d at 1243, quoting United States v. Huynh, 60 F.3d 1386,
12 1389 (9th Cir. 1995). The Ninth Circuit reaffirmed that it "has consistently upheld
13 convictions under the Hobbs Act even where the connection to interstate commerce
14 was slight." Id. at 1243. Also, in United States v. Woodruff, 50 F.3d 673, 676-677
15 (9th Cir. 1995), the Ninth Circuit iterated that for purposes of a Hobbs Act violation
16 the effect on interstate commerce need only be probable or potential, rather than
17 actual. In the instant matter, however, Mr. Shi testified that the threats made by
18 defendant against the club's employees directly resulted in a loss of business at the
19 club, including a diminution in the amount of beer and liquor (which had traveled
20 interstate) sold to customers. Under current case law the facts as found at trial
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1 satisfied the "affect interstate commerce" element of the Hobbs Act.¹

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3 There is sufficient evidence to support a conviction if, reviewing the
4 evidence in the light most favorable to the prosecution, any rational trier of fact
5 could have found the elements of the crime beyond a reasonable doubt. Jackson v.
6 Virginia, 443 U.S. 307, 319 (1979); United States v. Vgeri, 51 F.3d 876, 879 (9th Cir.
7 1995). After reviewing the arguments made by defendant in support of his motion
8 for judgment of acquittal, the court finds that the jury could have found the elements
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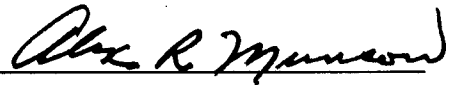
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16 ¹ To the extent that defendant again argues that the Hobbs Act does not
17 apply within or to the Commonwealth of the Northern Mariana Islands, the court
18 repeats the language of its order of April 11, 1997:

19 Defendant's contention that 18 U.S.C. § 1951 does not apply within
20 or to the Commonwealth is wrong. After full implementation of all
21 portions of the "Covenant to Establish a Commonwealth of the
22 Northern Mariana Islands in Political Union with the United States
23 of America" (Covenant), P. L. 94-241, 90 Stat. 263, all federal laws
24 apply within and to the Commonwealth. United States of America,
25 ex rel. James R. Richards v. Lorenzo de Leon Guerrero, "Decision
26 and Order Granting Enforcement of Administrative Subpoena,"
Misc. No. 92-00001, pp. 54-67 (D.N.M.I. July 24, 1992) (Covenant
§ 502 was an interim formula, valid until assumption of full
sovereignty by the United States, at which point all laws applicable
to the several States would be in effect of their own force, unless
elsewhere excluded by the Covenant or by Congress), aff'd 4 F.3d
749 (9th Cir. 1993).

1 of the crime beyond a reasonable doubt. Accordingly, the motion is DENIED.

2 IT IS SO ORDERED.

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4 DATED this 8th day of September, 1997.

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8 ALEX R. MUNSON
9 Judge
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