

Supreme Court, U.S.
FILED

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18-7802

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL HOPSON

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

The questions presented for review are:

- a) Whether the evidence at trial was insufficient to convict Petitioner of the racketeering conspiracy where the United States failed to prove Petitioner knowingly agreed to a pattern of racketeering?
- b) Whether the evidence at trial was insufficient to convict Petitioner of murder, conspiracy, or attempted murder in aid of racketeering where Petitioner did not share in the criminal intent of those who committed the criminal acts?

LIST OF INTERESTED PARTIES

- I. Michael Hopson 83631-083
USP McCreary
P.O. Box 3000
Pine Knot, KY 42635
- II. Circuit Judges,
U.S. Court of Appeals for the Fourth Circuit
1100 Main Street Suite 501
Richmond, VA 23219
Hon. Circuit Judge Agee
Hon Circuit Judge Keenan
Hon Circuit Judge Richardson
- III. Arenda L. Wright, United States District Court Judge for the District Court
for the Eastern District of Virginia at Newport News
United States Courthouse.
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- V. Jamison P. Rasberry
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Virginia Beach, VA 23451
- VI. Andrew Protopyrou
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- C.) Decisional conflicts within the Fourth Circuit.
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Hopson respectfully petitions for a Writ of Certiorari to review the judgment of the District Court and Fourth Circuit Court of Appeals in this case.

OPINIONS BELOW

The Court of Appeals opinions in Case No. 17-4724 is reproduced in the Appendix to this Petition.

JURISDICTION

The Jurisdiction of the High Court is invoked under 28 U.S.C. §1254(1) and Supreme Court Rule 10(a)(b)(c).

CONSTITUTIONAL PROVISIONS INVOLVED

This case presents questions under the Fifth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

A. THE FACTS AND CIRCUMSTANCES

The United States presented evidence from twenty-two witnesses during their case-in-chief. These witnesses described numerous criminal acts that had taken place on the Virginia peninsula cities of Newport News, Hampton, and Williamsburg within the Eastern District of Virginia. These acts were committed by various criminal actors and included drug distribution, burglary, robbery, conspired and attempted murder, and murder.

Testimony from law enforcement investigators linked these crimes to members of Peninsula criminal street gangs including the 10-1 Mafia Crips, Duct to the Lawnz, Thug Relations, and Warwick Lawnz. Most importantly these law enforcement investigators described a group called the Black P-Stones who were the target of the indictment before the Court.

The United States' principal witnesses were the Black P-Stones members themselves who established the inner workings of the group and alleged the Petitioner as their leader.

1. Concerning the Murder of Erique Shaw:

Erique Shaw was a Black P-Stones member who was shot and killed by fellow Black P-Stones member Darius Crenshaw on November 6, 2007. Several witnesses testified to the events leading up to and surrounding the murder including Rodney Coles, Desmond Finnell, Enrique Hinton, and Marcellus Williams. These witnesses described Shaw's loyalty being questioned after Black P-Stones members including Darius Crenshaw and Marcellus Williams were shot at on October 31, 2007.

That night, the group members were in an area of Newport News called Warwick Lawns that was populated by members of other groups creating a potential for violence. Aronte Jarvis was either a member of Thug Relations or Warwick Lawnz based on the testimony of the witnesses. Jarvis believed that the Black P-Stones had come to his door that night looking for trouble. In response, Jarvis surprised the Black P-Stones by jumping out of a vehicle and fired shots at Darius Crenshaw and Marcellus Williams. Williams ran away but was caught by Jarvis, held at gun point, and threatened that they should kill him before stealing Williams' firearm.

Halloween was considered the anniversary of the founding of the Black P-Stones and members were expected to go out together. Erique Shaw was not been

present that night because he had to work. Because Shaw was absent and maintained friendships with individuals in other groups, Darius Crenshaw questioned whether Shaw might have given away the Black P-Stones location or otherwise helped Jarvis that night. No final decisions were made that Shaw had done anything wrong, and no actions were to be taken against Shaw, other than to figure out what was happening.

Enrique Hinton specifically testified that Petitioner never order the death of Shaw. Crenshaw proceeded to kill Shaw on November 7, 2007 to the surprise of the other Black P-Stone members. When Williams learned what Crenshaw had done, he immediately went to Petitioner. Petitioner learned of Shaw's death when he received Crenshaw's voicemail that the leak was plugged. No evidence indicated that Petitioner was aware that Crenshaw intended to kill Shaw. Desmond Finnell described Petitioner as pushing Darius Crenshaw but agreed that all Petitioner actually ever said was that, "it needed to be handled".

After the murder Crenshaw remained a member of the group with conflicting testimony as to whether he increased in rank. Desmond Finnell testified that Crenshaw was never punished for the killing of Shaw. Rodney Coles testified that, "nothing really happened" to Crenshaw's rank after the murder of Shaw, because

Crenshaw remained the muscle after the murder just as he had been prior. Coles further testified of Petitioner's reaction to Crenshaw's killing of Shaw as being, "You don't do that." Likewise, Bruce Hinton recalled Petitioner's reaction to the killing of Shaw with respect to Chreshaw as, "That Dude, man he crazy, ha-ha-ha"

2. Concerning the Attempted Murder Courtney Holmes:

This incident involved Courtney Holmes being shot in response to Holmes punching of Marcellus Williams in the face and attempt at throwing him into oncoming traffic. Holmes was a member of the 10-1 Mafia Crips and had been looking for Williams in connection with a belief that Williams had fired shots at friends of Holmes. On a previous occasion Holmes had also brandished a firearm on Williams' girlfriend and told her he was looking for Williams. Williams testified that when Petitioner learned of Holmes actions regarding the girlfriend, he expressed to Williams a need to do something because Holmes had disrespected the hood.

Crenshaw then showed up at Williams home demanding that they go looking for Holmes or that Williams would have to be violated. It was while they were out

looking for him that Holmes approached Williams, punched him in the face and attempting to throw him in the street, that shots were fired in defense of Williams.

3. In Reference to the Attempted Murder of John Walker, III

This incident involved shots being fired in the residence of John Walker, III at 28 Wallace Road, Williamsburg, Virginia. Anthony Steward and Enrique Hinton conducted the shooting in response to Marcellus Williams having been ejected from a girl's home by "Nate Dawg" who stated "this GD and Crip hood". Enrique Hinton confirmed the shooting was over the disrespected girl and that he dropped off Williams prior to driving Steward to perform the shooting. Williams agreed that the reason for the shooting had been the incident with the girl but also claimed to have refused to go along because they did not know the girl and the guys would call the police.

Williams confirmed that Petitioner was not present during the shooting but claimed that Steward had called Petitioner for approval during the car ride. Enrique Hinton testified to no such call being made during that car ride. Detective Patrick Murray testified to Walker's two sons having general Crips Gang affiliation.

4. As to the Attempted Murder of Arnold Tucker/Kanewha Chavis:

This shooting involved shots being fired into the residence of Arnold Tucker's mother located at 334 Susan Constance Way. Williams testified to ongoing problems with Tucker who was going around the neighborhoods telling everyone he was going to kill Williams. Steward disliked all 10-1 Mafia Crips because they had beaten up his friends. The shooting was "spur of the moment" without any consultation of prior approval and occurred when Williams and Steward happened upon the residence of Tucker's mother. Kanewha Chavis was inside during the shooting and testified to no problems with the Black P-Stones. Detective Patrick Murray testified that both Tucker and Chavis had affiliation with the 10-1 Mafia Crips.

5. As to Obstruction of Justice:

The obstruction of justice claims were based on Enrique Hinton lying to authorities and intimidation. Hinton admitted lying when questioned by investigators in 2008, and again when he perjured himself to a federal grand jury in 2009, and finally lying a third time when questioned by the FBI in 2010. Hinton did not claim that Petitioner told him to lie or that Petitioner knew that he was communicating with law enforcement but instead claimed that he lied out of general fear of retaliation from the Black P-Stones.

As to the alleged intimidation, Hinton testified at a 2014 arraignment in which he was housed in lockup and subsequently arraigned with Petitioner in the United States District Court in Norfolk. Hinton described Petitioner as pointing out the presence of a known killer “Bull’s Eye” in the courtroom that day. Marcellus Williams, Desmond Finnell, and Chadrick Lard were also present at this hearing per Hinton. Each of these witnesses testified at trial but none to Petitioner having made any reference to “Bull’s Eye” on that day. Williams only testified to “Bull’s Eye” being Petitioner’s cousin.

6. Concerning the Attempted Murder at 170 Sesco Drive:

On March 17, 2009 a shooting occurred into the residence at 170 Sesco Drive. Desmond Finnell, testified to being with Christian Hatch, on the day that Petitioner telephoned asking that they ride with him to address an unspecified “problem”. Upon arrival, Finnell and Hatch knocked on the door and made contact with the occupants who refused to come outside as requested. When the occupants persisted in this refusal Finnell testified to Petitioner telling them to “light it up” resulting in them firing shots into the residence.

7. In Reference to the Robbery of R. Bins (Mariner’s Landing):

This drug deal turned robbery setup, occurred on October 12, 2010 at 497 Crescent Way. Desmond Finnell, testified to the planning and commission of the robbery by Jamaal Chamblee, Ernest Crudup, and Christian Hatch. Finnell testified that the motivation for the robbery was that R. Bins was a known marijuana dealer selling out of his house. Finnell stayed outside for the robbery but testified that afterward he was approached by members of the group, "From the Duct to the Lawnz" regarding the robbery, who threatened that they would "kill us". Based on the evidence at trial, Petitioner was never consulted before or after the robbery nor was he present during its commission.

8. As to the Robbery of T. Brown (Cleezy):

This drug deal turned robbery setup occurred in December 2010 at 498 Crescent Way. Lowell Knight, testified to the planning and commission of the robbery by Enrique Jones, Ernest Crudup, and Justin Brown. Knight testified that the motivation for the robbery was that he and Jones needed rent money.

9. & 10. Concerning the Murder/Robbery of Samuel Aaron:

This drug deal turned robbery setup occurred on October 16, 2010 at 2200 Roanoke Avenue and ultimately in the homicide of Aaron. Chadrick Lard, testified

to the events surrounding these events. Lard described having known Justin Brown and Ernest Crudup for many years from school. Lard further testified that after the robbery Crudup forced Jones to kill Aaron because, he had seen their faces and Jones needing to “clean up his mess”. For the first time at trial, Lard claimed the robbery was a Black P-Stones initiation having never mentioned this claim in prior interviews. Based on the evidence at trial, Petitioner was never consulted before or after the robbery nor was he present during its commission.

B: DISTRICT COURT PROCEEDINGS

On October 16, 2014, Michael Hopson (“Petitioner”) and his co-defendants were charged in case number 4:13-cr-00096-AWA-DEM-2 an eighteen-count second superseding indictment. Petitioner was charged with six of these counts and specifically Count One, Racketeering Conspiracy; Count Two, Murder in Aid of Racketeering; Count Six, Conspiracy to Murder in Aid of Racketeering; Count Seven, Attempted Murder in Aid of Racketeering; Count Eight, Possessing a Firearm during and in Relation to a Crime of Violence; and Count Eighteen, Distribution of Marijuana of the second superseding indictment.

Count One alleged racketeering conspiracy in violation of 18 U.S.C. § 1962(d). The gravamen of this offense was that Petitioner ran an enterprise called the Black

P-Stones for criminal purposes of committing at least two racketeering acts. Count Two alleged murder in aid of racketeering in violation of 18 U.S.C. § 1962(a)(1) and 2. The gravamen of this offense was the murder of Black P-Stones member Erique Shaw. Count Six and Count Seven alleged conspiracy to commit and attempted murder in aid of racketeering in violation of 18 U.S.C. § 1959(a)(5). The gravamen of these offenses was the shooting into the residence of 10-1 Mafia Crips member Arnold Tucker. Count Eight alleged using and carrying a firearm during and in relation to and possessing a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). The gravamen of this offense being that Petitioner possessed a firearm in connection with the other criminal acts described within the indictment. Count Eighteen alleged conspiracy to distribute and possess with intent to distribute marijuana in violation of 21 U.S.C. § 846. The gravamen of this offense was the groups alleged distribution of marijuana.

The Petitioner entered a not guilty plea to all counts, and a jury trial commenced on November 29, 2016 before the Honorable Arenda L. Wright Allen, United States District Court Judge. The United States presented its evidence and rested. At the close of the United States' case Counsel for Petitioner made motion for judgment of acquittal under Federal Rule of Criminal Procedure 29. The United

States District Court denied this motion. Petitioner then presented his evidence and rested. At the close of all evidence Counsel for Petitioner again made motion for judgment of acquittal under Federal Rule of Criminal Procedure 29. The United States District Court denied this motion. On December 5, 2016, the jury returned a verdict of guilty on Count One, Count Two, Count Six, Count Seven, and Count Eighteen; as well as a verdict of not guilty on Count Eight.

On November 16, 2017, the United States District Court sentenced Petitioner as follows: Count One, Racketeering Conspiracy, imprisonment for mandatory life, supervised release for five (5) years, special assessment of \$100.00; Count Two, Murder in Aid of Racketeering, imprisonment for life to be served concurrently to Count One, supervised release for five (5) years to run concurrently to Count One, special assessment of \$100.00; Count Six, Conspiracy to Murder in Aid of Racketeering, imprisonment for one hundred twenty (120) months to be served concurrently to Count One, supervised release for three (3) years to run concurrently to Count One, special assessment of \$100.00; Count Seven, Attempted Murder in Aid of Racketeering, imprisonment for one hundred twenty (120) months to be served concurrently to Count One, supervised release for three (3) years to run concurrently to count one, special assessment of \$100.00; Count Eight, not guilty by

jury verdict; and Count Eighteen, Distribution of Marijuana, imprisonment for sixty (60) months to be served concurrently to Count One, supervised release for five (5) years to run concurrently to Count One, special assessment of \$100.00. The final judgment of the United States District Court was entered on November 20, 2017. Petitioner timely filed his Notice of Appeal on November 16, 2017

C. APPELLATE COURT PROCEEDINGS

Following a five-day trial, a jury convicted Michael Hopson of several crimes related to an extensive racketeering conspiracy. As relevant to this petition, Hopson was convicted of racketeering (RICO) conspiracy, in violation of 18 U.S.C. § 1962(d) (2012) (Count 1); murder in aid of racketeering (and aiding and abetting), in violation of 18 U.S.C. §§ 1959(a)(1), (2) (2012) (Count 2); and conspiracy to commit murder in aid of racketeering, and attempted murder in aid of racketeering (and aiding and abetting), in violation of 18 U.S.C. §§ 1959(a)(5), 2 (2012) (Counts 6 & 7). The District Court sentenced Hopson to concurrent terms of life imprisonment on Counts 1 and 2, and concurrent 120-month sentences on Counts 6 and 7. Hopson was also convicted of conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C.

§ 841(a)(1), (b)(1)(D) (2012) and 21 U.S.C. § 846 (2012), but does not challenge that conviction or the related 60-month concurrent sentence.

Hopson appealed case number 17-4724, challenging the sufficiency of the Government's evidence on these counts of conviction. The Appeals Court denied relief on 11/05/2018. A judgement order was also issued on 11/05/18.

This Petition for Writ of Certiorari follows:.

REASONS FOR GRANTING THE WRIT

This case is an excellent vehicle for resolving important Constitutional and Due Process questions under the Fifth and Fourteenth Amendments regarding a citizens Due Process and equal protection rights.

The general, time honored criteria for granting certiorari of a Federal Circuit criminal case are met. R. Stern, E. Gressman, M. Shapiro, and K. Geller, Supreme Court Practice, (8th Ed. 2002)

First, the obligation of both the District and the Appellate Courts to actually review the merits of Petitioner's issues and sufficiency of the evidence against him and discuss the merits of appeal issues when reaching a final judgment on appeal –

this responsibility is examined under the Federal Constitution and is a substantial Federal Question meritorious of consideration by the Supreme Court.

Second, the District Court's and the Fourth Circuit's decisions manifestly conflict with the decisions of this Court, with other Federal Circuits' decisions, and with decisions within the Fourth Circuit itself. Review by Writ of Certiorari to the Fourth Circuit is appropriate under such circumstances to determine whether the Fourth Circuit "has properly interpreted, applied, or extended a prior Supreme Court decision in a given situation." Supreme Court Practice, *supra* at 273

The case at bar also involves questions of Constitutional Due Process as they relate to the application of Supreme Court and Circuit precedent concerning the level of protection afforded our citizenry from conviction without sufficient evidence and the Court of Appeals obligation to consider points of law and fact raised by Petitioner. Review by this Court is manifestly warranted.

A. Supreme Court review of the decisions of the Fourth Circuit in Petitioner's case is absolutely necessary. This is due to conflicts between the Supreme Court and Fourth Circuit precedent in applying applicable Constitutional protections against convictions without a sufficiency of evidence.

The Hopson decision conflicts with a multitude of decisions of the High Court on important questions of Federal Constitutional law, the violation of which impinges on citizen's expectation of privacy. Petitioner posits that the

District Court and Appeals Court misapprehended the Supreme Court holdings in Boyle v. U.S., 226 U.S. 938 (2009); Glasser v. U.S., 315 U.S. 60 (1942); H.J. Inc. v. N.W. Bell Tel. Co., 492 U.S. 229 (1989); Jackson v. Virginia, 443 U.S. 307 (1979); Pinkerton v. U.S., 328 U.S. 640 (1946); Rosemond v. U.S., 572 U.S. 65 (2014); Sedima, SPRL v. Imrex Co., Inc., 473 U.S. 479 (1985).

B. Supreme Court review is absolutely necessary.

This is due to conflicts between the Fourth Circuit and other District Courts and other Courts of Appeal. The High Court should resolve notable conflicts between the instant case and decisions rendered in other Courts on the issue of sufficiency of the evidence. The Hopson decision strongly conflicts with the decisions reached in U.S. v. Hutchinson, 573 F.3d 1011 (10th Cir. 2009); U.S. v. Nguyen, 255 F.3d 1335 (11th Cir 2001); U.S. v. Olson, 450 F.3d 655 (7th Cir. 2006); U.S. v. Orrico, 599 F.2d 113 (6th Cir. 1979); U.S. v. Smith, 413 F.3d 1253 (10th Cir. 2005); U.S. v. Wilson, 605 F.3d 985 (D.C. Cir. 2010).

C: Supreme Court review is necessary due to conflicts within the Fourth Circuit.

The Hopson decision conflicts with decisions on important questions of Federal Constitutional law reached in U.S. v. Argueta, 470 F. App'x 176 (4th Cir. 2012); U.S. v. Burgos, 94 F. 3d 849 (4th Cir. 1996); U.S. v. Habegger, 370 F.3d 441 (4th Cr. 2004); U.S. v. Louthian, 756 F.3d 295 (4th Cir. 2014); U.S. v. Pinson, 860 F.3d 152 (4th Cir. 2017); U.S. v. Samad, 754 F.2d 1091 (4th Cir.

1984); U.S. v. Savage, 885 F.3d 212 (4th Cir. 2018); U.S. v. Williams, 445 F.3d 724 (4th Cir 2006).

D: The Fourth Circuit's erroneous interpretation with respect to standards for determining sufficiency of the evidence in this case is not transitory,

Every single day prosecutors, defense counsel and the Court itself make practical trial and plea bargain decisions based on their understanding of the case law with respect to the type and amount of evidence necessary to imprison a man or woman for effectively the rest of their lives,

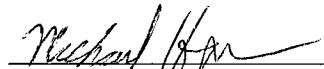
Subjective interpretation of the relevant caselaw as to what constitutes evidence sufficient to convict results in widely varying interpretations. Defendants in New Jersey, for example, receive decisions and sentences widely varying from that of California or Louisiana. This of course violates the strictures of both the Fifth and Fourteenth Amendments.

In sum, the correct standard for establishing sufficiency of the evidence to convict will continue to be abridged until the High Court establishes uniformity of decisions across the Circuits concerning the necessary standards for conviction. Without continued Supreme Court guidance and review, the continuing conflicting lower court rulings will perpetuate the anomalous results evidenced in the Hopson decision.

Conclusion

The Supreme Court should grant certiorari to decide the above Federal questions of Constitutional import. Review is appropriate pursuant to Supreme Court Rule 10.

Respectfully submitted,



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