

CASE NO. _____
SUPREME COURT OF THE UNITED STATES

RESHON TOLLIVER

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDENT

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE UNITED STATES**

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QUESTIONS PRESENTED FOR REVIEW

- I.** To resolve a circuit split, whether mere payment for drugs constitutes sufficient evidence for a conviction under 18 U.S.C. § 1956?

LIST OF ALL PARTIES TO THE PROCEEDINGS

Petitioner/Appellant/Defendant – Reshon Tolliver

Respondent/Appellee/Plaintiff – United States of America

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Reshon Tolliver, by court-appointed counsel, respectfully requests that a Writ of Certiorari issue to review the published opinion of the United States Court of Appeals for the Sixth Circuit in the case of *United States v. Reshon Tolliver*, No. 18-6034, filed on January 29, 2020 and attached to this Petition as Appendix B.

OPINIONS BELOW

Mr. Tolliver's appeal to the Sixth Circuit was taken from the Judgment entered following his conviction at trial for Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i). *See* Appendix A. Mr. Tolliver was acquitted of involvement in a related drug trafficking conspiracy.

On January 29, 2020, the Sixth Circuit issued a published opinion affirming Mr. Tolliver's conviction. *See* Appendix B; *United States v. Tolliver*, 949 F.3d 244, 247 (6th Cir.2020). The Court did so despite conflicting Fifth Circuit authority, noting that "the holdings of our sister circuits do not bind us." *Tolliver*, 949 F.3d at 247. This petition for a writ of certiorari now follows.

JURISDICTION

The Sixth Circuit issued its published opinion affirming Mr. Tolliver's conviction on January 29, 2020. *See* Appendix B. Mr. Tolliver invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

STATEMENT OF THE CASE

In 2017, Mr. Tolliver was one of seventeen defendants named in a Second Superseding Indictment in the Western District of Tennessee. [R. 320: Second Superseding Indictment, Page ID # 826-58]. Mr. Tolliver was charged with conspiracy to distribute controlled substances and conspiracy to violate 18 U.S.C. § 1956 through promotional and concealment money laundering. *Id.*

The government alleged that Leo Bibbs III and other individuals who resided “in California, agreed to send Marijuana...to defendants and their co-conspirators...in Memphis, Tennessee.” *Id.* at Page ID # 839. Participants in Memphis led by Larry Broadnax would provide “local addresses where the Marijuana was to be sent[,]” and conspirators in California would use the “United

States Postal Service (USPS) to ship packages” to those locations. *Id.* Broadnax then would direct others to send money through USPS, by courier, and through bank deposits to Mr. Bibbs and his associates in California as payment for the shipments. *Id.* at Page ID # 839-40.

Of particular relevance to Mr. Tolliver, the government alleged the Memphis conspirators committed money laundering by “agree[ing] to pay for controlled substances by making cash deposits in bank accounts” at local “Bank of America, U.S. Bank, and Wells Fargo” locations so participants in California like Mr. Tolliver could withdraw or transfer those funds immediately. *Id.* The government identified fourteen total transactions involving Mr. Tolliver’s U.S. Bank and Wells Fargo accounts it believed constituted money laundering under this theory. *Id.* at Page ID # 852-53.

At trial, the government presented evidence that Mr. Tolliver withdrew funds from his bank accounts close in time to deposits made by individuals connected to Mr. Broadnax in Memphis. Various witnesses including Mr. Broadnax’s mother testified that they knew the purpose of the transactions was to pay for shipments of marijuana from California. *See, e.g.*, [R. 696: Transcript, Jury Trial, Day 1, Page ID # 2954-60] (Testimony of Donna Broadnax); *id.* at Page ID # 3015-28 (Testimony of Teeka Shannon).

Mr. Tolliver was acquitted of involvement in the drug conspiracy, but the jury returned a guilty verdict as to the money laundering count. [R. 592: Jury Verdict, Page ID # 2149-50]. The district court similarly concluded at sentencing that it could not find by a preponderance of the evidence that Mr. Tolliver had been involved in the marijuana trafficking for which he was acquitted. [R. 700: Transcript, Sentencing, Page ID # 3316]. The court imposed a sentence of 70 months of imprisonment and a forfeiture obligation of \$515,913. *Id.* at Page ID # 3328.

REASONS FOR GRANTING THE WRIT

I. Mere payment for drugs is insufficient to sustain a conviction under 18 U.S.C. § 1956.

This case provides the Court with an opportunity to resolve a circuit split regarding the proof necessary to sustain certain convictions under 18 U.S.C. § 1956. Here, the government alleged that Mr. Tolliver engaged with others in promotional and concealment money laundering, alternative theories that could support a conviction under § 1956. Promotional and concealment money laundering each require proof that a defendant conducted or attempted to conduct a “financial transaction which...involves the proceeds of specified unlawful activity[.]” 18 U.S.C. § 1956(a)(1). But funds are considered “proceeds” only if they are “property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including gross receipts of such activity.”

18 U.S.C. § 1956(c)(9). *See United States v. Santos*, 553 U.S. 507, 511 (2008); *Wooten v. Cauley*, 677 F.3d 303, 309 n. 1 (6th Cir.2012) (recognizing that Congress amended 18 U.S.C. § 1956 in 2009 to define “proceeds” as “gross receipts”).

With that definition in mind, the Fifth Circuit has held that “a transaction to pay for illegal drugs is not money laundering, because the funds involved are not proceeds of an unlawful activity when the transaction occurs, but become so only after the transaction is completed.” *United States v. Harris*, 666 F.3d 905, 908 (5th Cir.2012) (citing *United States v. Gaytan*, 74 F.3d 545, 555-56 (5th Cir.1996)). *See also United States v. Anderson*, 932 F.3d 344, 351 (5th Cir.2019) (reaffirming holding in *Harris* that “money does not become proceeds until the underlying criminal transaction is complete”). Other circuits have addressed and agreed with the Fifth Circuit’s analysis. *See United States v. Gross*, 661 Fed.Appx. 1007, 1022 (11th Cir.2016) (laundering requires “proceeds from *prior* completed smuggling activity”) (emphasis in original); *United States v. Lucena-Rivera*, 750 F.3d 43, 49 (1st Cir.2014) (recognizing “funds do not become the proceeds of drug trafficking until a sale of drugs is completed”).

The Fifth Circuit reached this conclusion because “Congress aimed the crime of money laundering at conduct that follows in time the underlying crime rather than to afford an alternative means of punishing the prior specified unlawful activity.” *Harris*, 666 F.3d at 908 (citing *United States v. Dimeck*, 24 F.3d 1239,

1244 (10th Cir.1994)). As a result, it determined that “the mere delivery of alleged drug-money by one courier to a second courier, who was to deliver the money to the seller of the drugs, does not constitute money laundering[.]” *Id.* (citing *Dimeck*, 24 F.3d at 1241).

The Fifth Circuit’s analysis in *Harris* is significant because the circumstances are nearly indistinguishable from those in Mr. Tolliver’s case. Mr. Harris obtained narcotics in California and “shipped them to East Texas” to Mr. Miller. *Id.* at 906. In return, Mr. Miller and others “made cash deposits into the accounts of Harris, Harris’s supplier, and Harris’s friend[.]” *Id.* These funds “were then withdrawn by Harris and others” at various bank locations in the Los Angeles area. *Id.* In addition, Mr. Miller and others “wired money to Harris or to Harris’s associates using MoneyGram.” *Id.*

Mr. Harris and Mr. Miller were convicted of money laundering and appealed, arguing that there was “insufficient evidence to establish that they conducted financial transaction with the proceeds of unlawful activity” or that the transactions “were designed to conceal.” *Id.* The Fifth Circuit did not reach the arguments about concealment because it “agree[d] that the government failed to prove that the transactions involved proceeds of unlawful activity.” *Id.* The Court noted that it was “[c]lear[], in this case, we have ‘transactions’ in the form of deposits and withdrawals and wire transfers.” However, “mere payment of the

purchase price for drugs by whatever means (even by a financial transaction as defined in § 1956) does not constitute money laundering.” *Id.*

This is precisely what occurred in Mr. Tolliver’s case. As the government argued at trial, Mr. Bibbs had an agreement to sell marijuana to Mr. Broadnax in Memphis. After receiving the deliveries, Mr. Broadnax paid by enlisting couriers to make deposits into accounts controlled by Mr. Bibbs and his associates in California.¹ Mr. Tolliver was one of those associates and withdrew payments at Mr. Bibbs’s direction to complete the sales. Because these funds were payments for the drug transactions, they were not “proceeds of specified unlawful activity” at the time Mr. Tolliver withdrew them. Instead, Mr. Tolliver was simply a courier who received funds on Mr. Bibbs’s behalf from Mr. Broadnax’s courier associates.

Mr. Tolliver’s involvement in delivering drug payments from Mr. Broadnax to Mr. Bibbs was “not to confuse anyone as to the character of the funds or to assist the funds to enter legitimate commerce.” *Dimeck*, 24 F.3d 1239, 1244 (10th Cir.1994). Nor did his transactions involve taking an “additional step [to] attempt[] to legitimize...proceeds so that observers think [the] money is derived

¹ The government described the sequence of events involved in the drug transactions in its opening statement:

“You’re going to hear conversations between [Bibbs] and Larry Broadnax where the two of them talked about their day-to-day drug dealing operation in great detail. When they talked about where the drugs were coming from, how the drugs were getting from California to Memphis, you are going to hear that it was through the U.S. Postal Service that they mailed packages through the mail to various addresses sthat Larry Broadnax identified here in Memphis and in Olive Branch, Mississippi, and that *those packages would go to various individuals in Memphis and then payment for the drugs would go from Memphis to California.*” (emphasis added).

from legal enterprises.” *Id.* at 1247 (citing *United States v. Edgmon*, 952 F.2d 1206, 1213-14 (10th Cir.1991)).² Instead, Mr. Tolliver received funds from Mr. Broadnax’s couriers simply to consummate previously arranged sales of marijuana from Mr. Bibbs to Mr. Broadnax.

Despite clear similarities to *Harris*, the Sixth Circuit dismissed the Fifth Circuit’s analysis by noting that “the holdings of our sister circuits do not bind us.” *See Tolliver*, 949 F.3d at 247. The Court then concluded “binding precedent” in the Sixth Circuit “makes clear” that “payment for drugs *can* constitute promotional money laundering.” *Id.* (citing *United States v. Skinner*, 690 F.3d 772, 781 (6th Cir.2012); *United States v. Williamson*, 656 Fed.Appx. 175, 184 (6th Cir.2016)) (emphasis in original). These diametrically opposed interpretations of 18 U.S.C. § 1956 require resolution by this Court. Otherwise, similarly situated defendants like Mr. Harris and Mr. Tolliver will face contradictory outcomes based only on the geographic region where they are charged.

The Sixth Circuit’s opinion fails to address another important related issue—The government presented no evidence at trial establishing the source of the funds transferred by Mr. Broadnax to Mr. Bibbs for the marijuana purchases. No witness with knowledge of the origin of the funds testified, yet the Court assumed the

² Although the record contains discussion about Mr. Tolliver’s gambling activities allegedly involving money paid by Mr. Broadnax to Mr. Bibbs, that conduct was not part of the government’s theory of how Mr. Tolliver committed the money laundering offense. In fact, the government introduced no evidence relating to gambling at trial and explicitly argued that his “gambling winnings [were] not relevant” because they “occurred well after the financial transactions” identified in the Second Superseding Indictment and were “wholly unrelated to the criminal acts” charged. [R. 466: Government Motion in Limine, Page ID # 1458].

money was “gained from drug sales” and was being used to “buy more drugs[.]” *Tolliver*, 949 F.3d at 247. The Court’s failure to consider this proof issue may explain its misplaced reliance on *Skinner* and *United States v. Crossgrove*, 637 F.3d 646, 654 (6th Cir.2011), to conclude that Mr. Tolliver’s activities constituted promotional money laundering.

Because his transactions only involved “mere payment of the purchase price for drugs” by Mr. Broadnax to Mr. Bibbs, this Court should grant Mr. Tolliver’s petition to make clear that such conduct does “not constitute money laundering.” *Harris*, 666 F.3d at 906. Resolving this circuit split is essential for defendants like Mr. Tolliver who are acquitted of involvement in drug trafficking, yet convicted of money laundering based on the same conduct.³ Failing to address this issue would subvert Congress’s purpose in enacting the money laundering statute to criminalize “conduct that follows in time the underlying crime[.]” rather than simply providing the government with “an alternative means of punishing the prior specified unlawful activity.” *Id.* at 908 (citing *Dimeck*, 24 F.3d at 1244).

³ At closing argument, the government exacerbated this problem by conflating the two charged conspiracies—“This was a conspiracy that had a lot of different parts to it, but all of the people that were part of this conspiracy were working towards a common goal: to distribute marijuana, to engage in money laundering.” [R. 731-3: Transcript, Government Closing Argument, Page ID # 3500-01].

CONCLUSION

For the foregoing reasons, Mr. Tolliver respectfully asks this Court to grant his petition for the issuance of a writ of certiorari for the purpose of vacating his conviction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jarrod J. Beck, counsel for Petitioner Reshon Tolliver, do hereby certify that the original and ten copies of this Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, Washington, DC 20543. I also certify that a true copy of the Petition was served by mail with first-class postage prepaid upon Mark Erskine, Assistant United States Attorney, 167 North Main Street #800, Memphis, Tennessee 38103.

This 27th day of April, 2020.

JARROD J. BECK

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