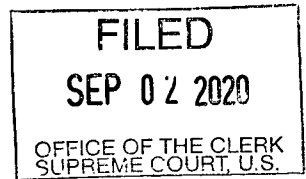


20-6073
No

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020



Desmond Littlejohn,
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 CERTIORARI

Desmond Littlejohn
Reg. No. 92495-083
201 Hazelton
P.O. Box 5000
Bruceton Mills, W.V. 26525

QUESTION PRESENTED

DESMOND LITTLEJOHN STAND CONVICTED UNDER 18 U.S.C. § 924(c) WITH THE CONTEMPORANEOUS OFFENSE OF HOBBS ACT. THE LATTER OFFENSE MAY BE AGAINST "PROPERTY" AND IN THIS COURT'S STOKELLING OPINION IT WAS MADE PLAIN THAT CRIMES AGAINST "PROPERTY" ARE NOT CATEGORICALLY CRIMES OF VIOLENCE. AGAINST THAT POINT, IS HOBBS ACT ROBBERY A CRIME OF VIOLENCE FOR PURPOSES OF § 924(c)?

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DESMOND LITTLEJOHN,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT:

DESMOND LITTLEJOHN ("LITTLEJOHN"), BY AND THROUGH THE UNDERSIGNED,
SEEKS A PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT:

I. JURISDICTION

THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 1254(2).

II. OPINIONS BELOW

THE FOURTH CIRCUIT AFFIRMED ON FEBRUARY 11, 2020, IN UNITED STATES v. LITTLEJOHN, No. 19-4344, AND REHEARING WAS DENIED JUNE 15, 2020, AND ARE REPRODUCED IN APPENDIX-A.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

THE FIFTH AMENDMENT IN PERTINENT PART:

"NO PERSON SHALL BE HELD TO ANSWER ... WITHOUT DUE PROCESS OF LAW."

STATUTES

18 U.S.C. § 1951(a) (HOBBS ACT ROBBERY)

18 U.S.C. § 924(c) (USE OR CARRYING A FIREARM DURING A CRIME OF VIOLENCE).

IV. STATEMENT OF THE CASE

DESMOND LITTLEJOHN WAS INDICTED ON JULY 25, 2018 AND CHARGED WITH CONSPIRACY TO INTERFERE WITH COMMERCE BY MEANS OF ROBBERY, A HOBBS ACT ROBBERY, AND BRANDISHING A FIREARM DURING A CRIME OF VIOLENCE. LITTLEJOHN PROTESTED HIS INNOCENCE AND PROCEEDED TO TRIAL. EVEN THOUGH THERE WAS NO DIRECT EVIDENCE AND THE DNA REPORTS WERE INACCURATE THE JURY RETURNED GUILTY VERDICTS ON ALL COUNTS.

KEY TO LITTLEJOHN'S ARGUMENTS WERE THAT HOBBS ACT IS NOT A CRIME OF VIOLENCE AND THAT COUNT-THREE WAS INVALID. EVEN THOUGH LITTLEJOHN INSISTED ON THIS POSITION HIS TRIAL ATTORNEY JAMES BROCCOLLETT DISREGARDED HIS FOSTERINGS. ON APPEAL, HOWEVER, NEW ATTORNEY LAURA TRYMAN SHARED LITTLEJOHN'S CONCERNS, BUT BECAUSE TRIAL COUNSEL FAILED TO CONFRONT THE ISSUE HE WAS REVIEWED FOR PLEIN ERROR. THE FOURTH CIRCUIT, HOWEVER, SIMPLY GAVE LIAISON SERVICE TO THE ISSUE IN LIGHT OF UNITED STATES v. MATHIS, 932 F.3d 242 (4th Cir. 2019).

IN CONTROL AT THE REHEARING STAGE, LITTLEJOHN REFINED THE ISSUE SEEKING TO OVERTURN MATHIS AS IT DID NOT ADDRESS PROPERLY WHETHER HOBBS ACT IS A CRIME OF VIOLENCE. LITTLEJOHN RESEARCH THE ISSUE AND FOUND COURTS ARE DIVIDED ON HIS ARGUMENT AND THIS COURT WILL ULTIMATELY

BE REQUIRED TO RESOLVE THE MATTER.

V. REASON FOR GRANTING CERTIORARI

LITTLEJOHN'S PETITION PRESENTS A QUESTION THAT WILL REOCCUR WITHOUT THIS COURT'S INTERVENTION. THE COURT'S BELOW ARE ENTANGLED IN A DISPUTE OF WHETHER HOBBS ACTS ROBBERY IS A CRIME OF VIOLENCE FOR PURPOSES OF 18 U.S.C. § 924(c). THAT IS, THE DECISION IN UNITED STATES V. BOWEN, 936 F.3d 1091 (10TH CIR. 2019), AND UNITED STATES V. CHEN, No. 98-CR-20005, 2019 U.S. DIST. LEXIS 177651 (N.D. CAL. 2019), ARE IN CONFLICT WITH MATHIS.

IN BOWEN, THE TENTH CIRCUIT ADDRESSED THE DISMISSAL OF A § 2255 BASED ON WHETHER 18 U.S.C. § 1513(b) WAS A CRIME OF VIOLENCE UNDER § 924(c). IT WAS AARON BOWEN'S POSITION THAT HIS PREDICATE OFFENSE DOES NOT SATISFY THE ELEMENTS CLAUSE, § 924(c)(3)(A), WHICH SURVIVES JOHNSON V. UNITED STATES, 135 S. CT. 2051 (2015). IN BOWEN'S MIND A DEFENDANT MAY BE CONVICTED OF RETALIATION IF, WITH INTENT TO RETALIATE, HE KNOWINGLY CAUSES OR THREATENS TO CAUSE BODILY INJURY TO A WITNESS OR KNOWINGLY CAUSES OR THREATENS TO CAUSE DAMAGE TO A WITNESSES PROPERTY. BOWEN FOSTERED THIS OFFENSE DOES NOT HAVE AS AN ELEMENT OF USE, ATTEMPTED USE, OR THREATENED USE OF PHYSICAL FORCE, AS IS REQUIRED TO SATISFY § 924(c)(3)(A). CAUSING BODILY INJURY DOES NOT NECESSARILY IMPLY THE USE OF PHYSICAL FORCE; A DEFENDANT CAN CAUSE BODILY INJURY BY, E.G., PLACING A BARRIER IN FRONT OF A CAR (CAUSING AN ACCIDENT). SIMILARLY, A PERSON CAN CAUSE PROPERTY DAMAGE WITHOUT USING PHYSICAL FORCE, SUCH AS BY TRANSMITTING A COMPUTER VIRUS, SPRAY-PAINTING A CAR, OR PLACING ELECTRONIC EQUIPMENT IN WATER. SEE UNITED STATES V. LANDEROS-GONZALES, 262 F.3d 424 (5TH CIR. 2001).

THE TENTH CIRCUIT TOOK BOWEN'S CLAIM[S] AND LOOKED, IN-PART TO STOKELING V. UNITED STATES, 139 S. CT. 544 (2019), SHIFTING TO OBSERVE THAT "WE PRESUME THAT THE CONVICTION RESTED UPON NOTHING MORE THAN THE LEAST OF THE ACTS CRIMINALIZED, AND THE DETERMINE WHETHER THOSE ACTS ARE ENCOMPASSED BY [§ 924(c)(3)'S ELEMENT CLAUSE]." BOWEN, 936 F.3d AT 1102 (QUOTING MONCRIEFFE V. HOLDER, 569 U.S. 184, 190-91 (2013) (BRACKETS AND QUOTATIONS OMITTED)). "BUT WE ALSO FOLLOW TH[IS COURT'S] INSTRUCTION THAT THERE MUST BE A REALISTIC PROBABILITY, NOT A THEORETICAL POSSIBILITY, THAT THE STATUTE AT ISSUE COULD BE APPLIED TO CONDUCT THAT DOES NOT CONSTITUTE A CRIME OF VIOLENCE." BOWEN, 936 F.3d AT 1102.

(QUOTING GONZALES V. DUENAS-ALVAREZ, 549 U.S. 183, 193 (2007)).

THE COURT GOES ON TO ADDRESS THE DIFFICULT QUESTION, THAT IS, THE PROPER MEANING "WHEN DETERMINING WHETHER PHYSICAL FORCE USED AGAINST PROPERTY IS A CRIME OF VIOLENCE." BOWEN, 936 F.3d AT 1107. LOOKING TO STORKLING THE TENTH CIRCUIT MADE PLAIN THAT: "AS WITH FORCE APPLIED AGAINST OR TOWARD PEOPLE, NOT ALL FORCE APPLIED AGAINST PROPERTY IS INHERENT VIOLENT." Id. (QUOTING STORKLING, 139 S.Ct. AT 553 (QUOTATIONS OMITTED). "IT IS, OF COURSE, EASY TO IMAGINE ANY NUMBER OF ACTIONS (SUCH AS SPRAY-PAINTING ANOTHER'S CAR) THAT DAMAGE PROPERTY BUT DO NOT HAVE THE SAME INHERENT VIOLENCE AS OVERCOMING THE WILL OF A ROBBERY VICTIM." BOWEN, 936 F.3d AT 1107.

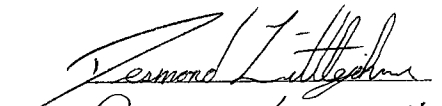
JUDGE CLAUDIA WILKIN, RELYING ON UNITED STATES V. DAVIS, 139 S.Ct. 2319 (2019), ANALYZED THE BOWEN DECISION APPLYING ITS REASONING TO THE HOBBS ACT ROBBERY STATUTE, CONCLUDING "THAT HOBBS ACT ROBBERY IS NOT CATEGORICALLY A CRIME OF VIOLENCE UNDER THE ELEMENTS CLAUSE OF § 924(c)(3), BECAUSE THE OFFENSE CAN BE COMMITTED BY CAUSING FEAR OF FUTURE INJURY OF PROPERTY, WHICH DOES NOT REQUIRE 'PHYSICAL FORCE' WITHIN THE MEANING OF § 924(c)(3)." SEE UNITED STATES V. REY CHIA, No. 98-cr-20005, 2019 U.S. DIST. LEXIS 177651 *2, ATTACHED AT APPENDIX-B. JUDGE WILKIN'S REASONING IS MORE THAN SOUND AND LITTLEJOHN ADOPTS THE OPINION IN WHOLE.

LITTLEJOHN RECOGNIZES THAT THE GOVERNMENT HAS APPEALED THE CHIA RULING, AND THE NINTH CIRCUIT HAS STAYED BRIEFING PENDING THE REHEARING EN BANC IN UNITED STATES V. DOMINGUEZ, 954 F.3d 1251 (9th Cir. 2020) (RESUBMITTED). THIS COURT, HOWEVER, SHOULD RESOLVE THE ISSUE IN THIS CASE BY GRANTING CERTIORARI.

CONCLUSION

LITTLEJOHN HAS SHOWN THAT THIS COURT SHOULD GRANT CERTIORARI.

FILED AUGUST 31, 2020


DESMOND LITTLEJOHN