

21-6102

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

OCT 14 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Anthony Bernard

Williams Jr — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Bernard Williams Jr
(Your Name)

USP Hazelton Po Box 2000
(Address)

Broceton Mills, WV 26525
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Does the absence of a specific unanimity instruction at trial require both distribution of PCP and accompanying 924(cc) count be vacated?
- 2) Does a conviction for a different offense than what the Grand Jury's indictment returned violate Mr. Williams Fifth Amendment rights?
- 3) Did the District Courts modification of proposed jury instructions cause prejudice to Mr. Williams substantial rights under both fifth and Sixth Amendment by constructively amending the Grand Jury's indictment?
- 4) Does the lack of PCP in toxicology report contradict the theory that defendant transferred a mixture or substance containing PCP... to another and thus requiring the distribution of PCP be vacated
- 5) Does four consecutive life sentences and 247 month constitute cruel and unusual punishment when relying on a juvenile criminal history, including a purse snatching predicate?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

18 USC § 2
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 18 USC § 924(c)
 18 USC § 1201(a)
 18 USC § 1951(a)
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 26 USC § 5861(h)
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U.S.C.A. Fifth Amendment
 U.S.C.A. Sixth Amendment
 U.S.C.A. Fourteenth Amendment

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at 19-3334; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at 19-3334; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 3-3-21.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 16, 2021, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment, or indictment of a Grand Jury...

The Sixth Amendment of the United States Constitution.

In all criminal prosecution, the accused shall enjoy the right... to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defense.

Amendment xiv of the United States Constitution.

STATEMENT OF THE CASE

At approximately 5 AM on April 9, 2016, officers with the Kansas City Kansas police department observed a silver Jaguar that had been reported stolen in the evening, and initiated a stop. (TR 2 at 27-28)¹. The Jaguar fled from the officers for a short time before crashing, at which time, Jamerl Wortham, co-defendant herein, exited the vehicle and led officers on a short foot pursuit until he was eventually apprehended. (TR 2 at 29). During a search of the vehicle, officers located a sawed-off shotgun, identified as a Coast to Coast Master-Mag, Model CC660, 20-gauge shotgun, loaded with 4 live rounds of ammunition. (TR 2 at 31-32). The serial number of the shotgun had been filed off and it was determined not to have been manufactured in the state of Missouri. (TR 2 at 51, 55).

On April 10, 2016 FBI Special Agent Jason Ramsey interrogated Mr. Wortham at the Wyandotte County Kansas jail. (TR2 at 74-75). Mr. Wortham said that the night before he and two other men whom he identified as C.J., a skinny guy and Billy, a heavy-set guy wearing a "Carhartt jacket" and red shirt stole the Jaguar and planned to rob someone at an ATM. TR2 at 78-80. The woman in the car at the time of Wortham's arrest was identified as M.M. (TR2 at 80). The co-defendant

¹ TR refers the reader to the Transcript, numeral following refers to the Transcript for the day of trial, i.e. TR 2 refers to the transcript for the second day of trial: DCD refers to the District Court Docket; TR Sent. Refers to the Sentencing Transcript; and PSR refers to the Presentence Report.

“Billy” was later identified as Defendant/Appellant herein Anthony Williams (TR2 at 102). C.J. was never identified. Mr. Wortham further told Ramsey that Billy and C.J. stole the Jaguar in Kansas City, Kansas to use for the ATM robbery. (TR2 at 80-87) After stealing the Jaguar, the three men drove to Kansas City, then to the Westport area. (TR2 at 80-81) Wortham told Ramsey that they saw a woman, M.M., standing outside the Embassy Suites hotel in Westport. (TR at 80-81). Wortham said that Anthony Williams, “Billy”, got out of the Jaguar and “steered” M.M. into the car. (TR2 at 79). In her testimony later in the trial, M.M. stated she was at a bar in the Westport District, around 1:20 a.m., on April 9, 2016, when she went outside to wait on an Uber that she had ordered. (TR 2 at 148-155). She had been drinking (TR 2 at 149). When the silver Jaguar pulled up, she thought it was the Uber she had ordered and got into the vehicle. She testified that there were three men and two women in the vehicle. (TR2 at 158-159) Later she stated that she did not actually remember getting into that vehicle. (TR 2 at 158).

Wortham, in his statement to Officer Ramsey, told Ramsey that after picking up M.M. at the hotel, they drove to Grand Slam, a gas station and liquor store in downtown Kansas City, just south of three Bank of America ATMS (TR 2 at 88-89) in Kansas City. He then drove from the Grand Slam over to the ATMs.

Y.C. testified that around 2:00 a.m. on April 9, 2016, she and T.J. ended their shift at the restaurant where they were both employed and went to the Bank of

America ATM in River Market located in Kansas City, Missouri. (TR 3 at 52). The two drove to the ATM in Y.C.'s red Toyota Camry. As they arrived, they noticed a silver Jaguar pull up right behind their vehicle. (TR 3 at 53). Two males exited the Jaguar. One of the males, OG (defendant Williams) walked up to the driver's side of the vehicle, Y.C. the driver, and demanded her money, saying, not word for word, but along the lines of "give me your money, this is not a joke, we will shoot." (TR 3 at 53-54) Wortham told Officer Ramsey that Billy and C.J. attempted to rob the women in the red Camry while he remained in the Jaguar (TR 2 at 81, 90). The unidentified suspect (variously referred to in the trial as "C.J." or "Little Bro") approached the passenger side of the Camry and pointed a shotgun at T.J., telling her to get in the backseat. (TR 3 at 9, 54). Mr. Williams then forced Y.C. into the rear passenger seat as he got into the driver's seat. He demanded their ATM cards and bags, all while the unidentified suspect held the two at gunpoint. (TR 3 at 15, 57).

Bank surveillance video of the incident showed two men exit the Jaguar, approach the Camry with a shotgun, interact with the driver, then force the occupants into the backseat of the Camry (TR 2 at 91-92) and both men got into the Camry and drove away. (TR 2 at 92) After leaving the ATM, Mr. Williams drove the Camry with T.J. and Y.C. and unidentified co-conspirator C.J. across the Missouri and Kansas state line, eventually stopping at the Chelsea apartment complex located in

Kansas City, Kansas. (TR 3 at 15-16, 59). At the apartment complex, they made contact with Wortham, and the third victim, M.M., both of whom were in the Jaguar. (TR 3 at 60). The unidentified suspect continued to hold the victims at gunpoint and made several threats towards T.J. (TR 3 at 16-17). After Mr. Williams, Wortham, and the unidentified suspect talked for several minutes, they all entered into the Camry with the three victims. (TR 3 at 60). Wortham drove the Camry with all the suspects and victims to a second ATM located in Kansas City, Kansas in an attempt to retrieve money. (TR 3 at 21, 61, 63-64). Mr. Williams, Wortham, and the unidentified suspect drove the victims to a BP gas station, located in Kansas City, Kansas, to purchase narcotics. (TR 3 at 26-27, 70). Wortham told Ramsey that "Billy made the white girl (M.M.) smoke PCP (TR 2 at 81-82). They eventually arrived back at the Jaguar and decided that Wortham would take T.J. in the Jaguar with him, while Y.C. and M.M. went with Williams and the unidentified suspect in the Camry. (TR 3 at 34-36, 76-77).

M.M. further testified that at some point she was seated in the rear passenger seat, and as the car pulled into an ATM the men told her to give them her money and debit card (TR 2 at 160-161), however she had neither (TR 2 at 162). She had no recollection of names of any of the occupants of the car, three men and two other women. (TR 2 at 159). She testified that one of the men was younger, the other two were older, but she could not see "a lot of differences because it was so dark outside"

(TR 2 at 169). At various times she sat on the lap of one of the older men who kept touching her chest and between her legs (TR 2 at 169), and that someone placed a gun on the console between the front driver and passenger seats. One of the men insinuated that he would murder the three women (TR 2 at 171, 177). M.M. testified that she slept or lost consciousness because she was very tired and had been drinking. (TR 2 at 181) She was told to smoke something from a glass pipe forced into her mouth. She could not identify the substance but said that "one of the men was repeatedly smoking it all night" (TR 2 at 181). About 6-7:00 a.m. M.M. testified that the women were split up, one woman and one of the older men left in another car while she stayed in the same car with the other woman, the younger man and the older man (TR 2 at 184-185). She saw the police stop the other car (TR 2 at 186). The older man, later identified as Anthony Williams, upon observing the police stop the car driven by Wortham, panicked and drove away. (TR 2 at 186). Williams continued to smoke the glass pipe she was forced to smoke earlier (TR 2 at 188-189). (TR 2 at 191). Mr. Williams continued to drive the victims around, and drove to Blue Springs, Missouri, where he stopped to purchase narcotics or paraphernalia. (TR 2 at 191, TR 3 at 79-80). Mr. Williams then proceeded to drive to liquor store slash convenience store State Line in Kansas City Kansas to drop the younger man, who went by the moniker "Little Brother", off to go to work (TR 2 at 190), (TR 3 at 82-83). Y.C. talked Mr. Williams into letting her drive, (TR 3 at 83). As they

were driving, M.M. jumped out of the backseat and escaped. (TR 2 at 191; TR 3 at 84). A few blocks away M.M. found a small store and borrowed a phone to call the police. (TR 2 at 193). After M.M.'s escape, Williams instructed Y.C. to drive away and Y.C. was also able to later, after a struggle, escape the Camry. (TR at 85-86).

The two women in the red Camry, Y.C. and T.J. both testified. T.J. testified that she and Y.C., her roommate and co-worker, went from work to the ATMs in the River Market to deposit their earnings after finishing their shifts at a restaurant in the River Market area. (TR 3 at 5-7). As Y.C. began using the ATM to deposit her money, T.J. saw a car pull up behind them, (TR 3 at 9) a man grabbed Y.C. through the window and asked her where the money was (TR # at 9). Another man put a shotgun through the passenger side window and told T.J. not to move. (TR 3 at 9). The man wearing a red shirt T.J. identified as "OG", and identified him as Anthony Williams, and the other man wearing a black hoodie as "Little Bro" or "Baby Bro", (TR 3 at 10-11). Both men kept asking for money (TR 3 at 12). T.J. told them she had her money (TR 3 at 12). Y.C. told OG that she had no money because she had just deposited it, OG tried to get the money out of the ATM but could not do so> (TR 3 at 12.) OG ordered the women to get into the back of the car, and he got into the driver's seat. Little Bro got into the passenger seat. OG told the women he had a gun. (TR3 at 13).

OG drove Y.C.'s Camry into Kansas to an apartment complex, and met up with "Cuz", Mr. Wortham and M.M in the silver Jaguar (TR # at 16-17) T.J. testified that Little Bro threatened to shoot her. They all got into the Jaguar, and then back into the Camry (TR 3 at 16-17). Y.C. sat on OG's lap behind the driver's seat, T.J. sat in the middle and M.M. sat behind the passenger seat (TR 3 at 18-19). The men took the women's' identification (TR 3 at 19). The men warned the women to not call the police, and T.J. testified that OG threatened to kill them (TR 3 at 20). They traveled to another ATM in Kansas, Y.C. used her debit card and T.J.'s card to get money (TR 3 at 21-23). T.J. testified that after they left the ATM in Kansas OG pulled out drugs, he said it was PCP. OG "proceeded to smoke it and made Y.C. and the other young lady smoke with him" (TR 3 at 25-26). Neither Cuz (Wortham) nor Little Bro (unidentified co-conspirator) did anything to prevent OG (Williams) from forcing the women to smoke the PCP. (TR 3 at 26). The shotgun was sitting on the console, pointed at the back seat of the car. (TR 3 at 26). After leaving the ATM in Kansas they went to a gas station, BP on the corner of Minnesota and 5th in Kansas City, KS. (TR 3 at 27). More drugs were purchased from a man in a black car at the station. (TR 3 at 28).

After leaving the BP gas station, they drove back to apartment complex. Cuz, (Wortham) told T.J. to relax because she was "going to go home tonight" (TR 3 at 32). Cuz gave the women \$25 from "his personal stash" (TR 3 at 32, 75). T.J. got

into the Jaguar with Cuz, who also placed the shotgun inside the car. (TR 3 at 35). Y.C. and M.M. stayed in Y.C.'s Camry with OG (Williams) and Little Bro (TR 3 at 36). Before leaving, OG told T.J. not to say anything or he would shoot Y.C. (TR 3 at 36).

Y.C. was the last victim to testify. She was clear and testified to her memory of the events, similarly to the testimony of T.J. Y.C. described OG as the ringleader, and was the one who approached her side of the car, driver's side, at the River Market ATM and demanded money. (TR 3 at 54) She testified that the young man, Little Bro was on the passenger side of her car (TR 3 at 54). After she and T.J. had been ordered to go to the rear seat of the Camry at the River Market ATM, Little Bro kept the shotgun pointed at them. (TR 3 at 57). OG told the women that they would be "shot, disposed and burned" if they tried to escape (TR 3 at 60). Y.C. sat on OG's lap in the backseat behind the driver (TR # at 61) OG forcibly touched her while she sat in his lap (TR 3 at 62-63).

Mr. Williams moved for judgment of acquittal at the close of the government's case. The Court overruled and denied the Motion. (TR 3 at 170-171).

At the close of the case, the Court provided the jury specific unanimity instruction regarding the victim of the offense, Hobbs Act robbery as charged in Count 11. (DCD 114, at 71-72) However, the Court did not provide the jury a

specific unanimity instruction as to the PCP distribution charge in Count 13, regarding the person that received the PCP. (DCD 114 at 78) Instead, Jury Instruction 39 provided that the jury had to find only that Mr. Williams intentionally transferred PCP “to another” (DCD 114 at 78; TR 4 at 20). In Government’s closing argument, the Government argued that OG, Mr. Williams, was the one who started the PCP around by passing it to Wortham who keeps the chains going. (TR 4 at 45).

On February 11, 2019, Mr. Williams (along with a co-defendant, Jamerl M. Wortham) proceeded to a jury trial presided over by the Honorable Brian C. Wimes, United States District Court for the Western District of Missouri. After a four-day trial, on February 14, 2019, the jury returned a verdict of guilty on all seventeen counts. (DCD 117).

On September 17, 2019 the Court granted the Government’s motion to dismiss three of the 18 U.S.C. § 924(c) counts predicated on the three kidnapping convictions based on *United States v Davis*, 139 S.Ct. 2319 (2019) (DCD 142, 146).

At sentencing on October 25, 2019, the court sentenced Mr. Williams to a term of Life on each of Counts 1, 2, 4, 6, 8, 10, 11, and 15; 240 months on Count 13; and 120 months on Counts 16 and 17; all counts to run concurrently with each other, for a total of Life. (TR Sent. at 33). On Counts 9, 12, and 14, a term of Life is imposed on each count - consecutive to each other and consecutive to all other counts, for a total term of imprisonment of Life. (TR Sent. 33). The court also

sentenced Mr. Williams to Supervised Release of 3 years on each of Counts 1, 2, 4, 6, 8, 9, 10, 11, 12, 14 and 15; and 3 years on Counts 13, 16 and 17; each count to run concurrently with each other, for a total of 5 years. (TR Sent. 34). (DCD 165)

The procedural history of the case was as follows:

On December 13, 2016, a superseding indictment was filed charging Mr. Williams with Conspiracy to Commit Kidnapping (Count 1), Kidnapping (Counts 2, 4, and 6), Possession of a Short-Barreled Shotgun in Furtherance of a Crime of Violence or Drug Trafficking Crime (Counts 3, 5, 7, 9, 12, and 14), Carjacking (Count 8), Conspiracy to Commit Hobbs Act Robbery (Count 10), Attempted Hobbs Act Robbery (Count 11), Distribution of Phencyclidine (Count 13), Felon in Possession of a Firearm (Count 15), Possession of an Unregistered Firearm (Count 16), and Possession of a Firearm with an Obliterated Serial Number (Count 17). (DCD. 23).

Mr. Williams was appointed an attorney under CJA, Casey J. Symonds, on December 21, 2016. A psychiatric report was ordered by the court to determine Mr. Williams' competency (DCD 43) and a hearing to determine competency was held on July 18, 2017. (DCD 48). Mr. Williams was ultimately deemed competent to stand trial. (DCD 54).

On October 10, 2017, an attorney appointment hearing was held, and Mr. Williams was appointed a new attorney under CJA, John G. Gromowsky. (DCD.

61). However, another attorney appointment hearing was held on August 8, 2018 and Mr. Williams was appointed a third attorney under CJA, the undersigned, who remained Mr. Williams' attorney throughout the trial. (DCD 73).

SUMMARY OF THE ARGUMENT

Mr. Williams's conviction for distribution of PCP violated his Sixth Amendment and due process right to a unanimous verdict because the jury instruction did not require the jury to agree on the person to whom the PCP was distributed, an essential element of the offense. Evidence could have been interpreted to support an inference that PCP was distributed to Y.C. and or M.M. However, the jury was not instructed that they had to all agree that the PCP was distributed to a certain person, whether it was Y.C., M.M. or even T.J., although there was in fact evidence that she did not smoke PCP. The evidence on the distribution charge as to the identity of which victim received PCP was contradictory and the instruction, leaving the jurors without direction that they had to come to unanimous agreement that PCP was distributed to a specific person created a genuine risk of juror confusion.

Mr. Williams's convictions for distributing PCP and possessing a firearm in furtherance of that offense also violated his Fifth Amendment right to grand jury indictment. Under the Statute, each act of distribution constitutes a separate offense. The jury instruction allowed conviction for distribution of PCP "to another", which constructively amended the indictment by allowing conviction of a different offense

REASONS FOR GRANTING THE PETITION

1) This Court should grant Mr. Williams' Petition for writ of Certiorari to resolve the Circuit split between *United States v D'Amico*, and *United States v Gipson*, *United States v Holley* and *United States v Escheverry* regarding the instructions to the jury for Sixth Amendment jury unanimity.

2) This petition should be granted to resolve the conflict between *United States v Karam*, *United States v Duncan*, *United States v Smith*, *United States v Pietrantonio* and *United States v Zuleta-Molina*.

Mr. Williams' conviction rest on a distribution of PCP count that is not duplicitous on its face but was rendered duplicitous by the evidence presented at trial. The evidence was insufficient to support a guilty verdict and the District Court erred as it did not provide a specific instruction informing the jury that it must unanimously find the defendant guilty with respect to the same act of distribution. The guilty verdict rest on a modified jury instruction, missing a specific unanimity instruction.

The evidence presented in Court does not support the charge returned by the Grand Jury. A bill of Particular can not save an invalid indictment. Mr. Williams' substantial rights to be tried only on the charges presented in an indictment returned by a Grand Jury. A Court can not permit Mr. Williams to be tried on charges that were not made in the indictment against him. The Federal Rules of Criminal Procedures require that the indictment recite the essential facts constituting the offense charged. An indictment that fails to comport with either the Fifth Amendment or Rule 7(c)(1) must be dismissed. Mr. Williams' trial proceeded on a defective indictment. Mr. Williams did object to the evidence and indictment by motion requesting dismissal.

Furthermore, Mr. Williams was denied his rights to an unanimous jury verdict. By modifying the jury's instructions the Court constructively amended the Grand Jury's indictment thus violating Mr. Williams' Constitutional Rights and creating a split.

For these reasons the Court should grant Mr. Williams petition

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony B. Williams

Date: Oct. 12, 2021