

A P P E N D I X

APPENDIX

Opinion, United States Court of Appeals for the Eleventh Circuit, <i>Iramm Wright v. United States</i> , No. 20-14869 (11th Cir. January 14, 2022)	A-1
Amended Judgment, United States District Court, Southern District of Florida <i>United States v. Iramm Wright</i> , No. 05-20437-Crim-Huck (S.D. Fla. Nov. 3, 2020)	A-2
Order Granting Motion to Vacate Pursuant to 28 U.S.C. § 2255, United States District Court, Southern District of Florida <i>Iramm Wright v. United States</i> , No. 19-24060-Civ-Huck (S.D. Fla. Oct. 8, 2020)	A-3

A-1

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-14869

Non-Argument Calendar

IRAMM WRIGHT,

Petitioner-Appellee,

versus

UNITED STATES OF AMERICA,

Respondent-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cv-24060-PCH

Before JILL PRYOR, BRANCH, and HULL, Circuit Judges.

PER CURIAM:

The government appeals the district court's order granting Iramm Wright's authorized successive 28 U.S.C. § 2255 motion to vacate his 18 U.S.C. § 924(c) conviction and sentence in light of *United States v. Davis*, 588 U.S. ___, 139 S. Ct. 2319 (2019). After review and given our binding precedent in *Granda v. United States*, 990 F.3d 1272 (11th Cir. 2021), we reverse the district court's grant of Wright's § 2255 motion and remand to the district court with instructions to deny the motion.

I. BACKGROUND

A. Offense Conduct

Wright's convictions arise out of a planned stash-house robbery. An undercover agent posing as a disgruntled drug courier approached Wright about robbing 20 to 30 kilograms of cocaine from his employers' stash house.

Three times Wright and a co-conspirator met with the undercover agent to plan the stash-house robbery. During their meetings, the conspirators discussed, among other things, the need to recruit an experienced robbery crew and bring firearms to the robbery because the stash house had armed guards, and how to split the stolen cocaine after the robbery.

On the day of the planned robbery, Wright and the rest of the crew were arrested after they arrived at a prearranged

rendezvous point. Agents found two loaded firearms, gloves, and a black ski mask in the Chevy Tahoe in which Wright had been riding.

B. Trial and Convictions

In 2005, a jury convicted Wright of: (1) conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) (Count 1); (2) conspiracy to possess with intent to distribute a controlled substance (cocaine), in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846 (Count 2); (3) attempt to possess with intent to distribute a controlled substance (cocaine), in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846 and 18 U.S.C. § 2 (Count 3); (4) using and carrying firearms during and in relation to a crime of violence and a drug trafficking crime “as set forth in Counts 1, 2, and 3,” in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2 (Count 4); and (5) possession of a firearm as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) (Count 5).

As to the § 924(c) firearm offense in Count 4, the trial court instructed the jury that Wright could be found guilty if the government proved beyond a reasonable doubt that Wright “committed a drug trafficking offense or a crime of violence as charged in Counts 1, 2 and 3 of this indictment” and that he carried the firearm in relation to or possessed the firearm in furtherance of “the crime of violence or drug trafficking crime.” The trial court further instructed the jury that the § 924(c) firearm offense in Count 4 was charged “in two separate ways”—that Wright “knowingly carried a firearm during and in relation to a drug

trafficking crime or a crime of violence and possessed a firearm in furtherance of [a] drug trafficking offense or a crime of violence.” The trial court instructed that the government could prove Wright committed the crime either way, but that the jury needed to “unanimously agree upon the way in which [Wright] committed the violation.” As to Count 4, the jury returned a general verdict and did not indicate which of the charged predicate offenses it relied on.

The district court sentenced Wright to 240 months’ imprisonment on Count 1 and 360 months imprisonment on Counts 2, 3, and 5, all to be served concurrently. As to Count 4, the district court imposed a consecutive 60-month sentence, for a total sentence of 420 months’ imprisonment.

C. Direct Appeal and First § 2255 Motion

Wright filed a direct appeal but did not challenge the validity of the predicate offenses supporting his § 924(c) conviction on Count 4 or argue that any part of § 924(c) was unconstitutionally vague. On December 19, 2007, this Court affirmed Wright’s convictions and sentences. *See United States v. Reed*, 259 F. App’x 289 (11th Cir. 2007).

In 2009, Wright filed his first § 2255 motion raising numerous claims, none of which are relevant to this appeal. Wright’s § 2255 motion was denied on the merits, and both the district court and this Court denied Wright’s requests for a certificate of appealability.

D. Authorized Successive § 2255 Motion based on *Davis*

In June 2019, the Supreme Court held in *United States v. Davis* that the residual clause definition of a “crime of violence” in § 924(c)(3)(B) was unconstitutionally vague. 588 U.S. ___, 139 S. Ct. 2319, 2323, 2336 (2019).¹ Shortly thereafter, this Court granted Wright’s application for leave to file a successive § 2255 motion attacking his § 924(c) conviction on Count 4 based on *Davis*.

Wright’s authorized successive § 2255 motion argued that his § 924(c) conviction on Count 4 must be vacated because one of the three predicate crimes—conspiracy to commit Hobbs Act robbery—was no longer valid given that it qualified as a crime of violence only under the residual clause invalidated in *Davis*. *See Brown v. United States*, 942 F.3d 1069, 1075 (11th Cir. 2019) (concluding shortly after *Davis* that conspiracy to commit Hobbs Act robbery did not qualify as a crime of violence under § 924(c)(3)(A)’s still-valid elements clause).

¹ Section 924(c) makes it a separate crime punishable by a mandatory consecutive sentence to use or carry a firearm during a “crime of violence” or a “drug trafficking crime.” 18 U.S.C. § 924(c). Under § 924(c)(3), a crime of violence is an offense that is a felony and (A) “has as an element the use, attempted use, or threatened use of physical force against the person or property of another,” or (B) “that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” 18 U.S.C. § 924(c)(3)(A), (B). Courts have referred to § 924(c)(3)(A) as the “elements clause” and to § 924(c)(3)(B) as the “residual clause.” *Davis*, 588 U.S. at ___, 139 S. Ct. at 2323.

The government opposed Wright’s motion, arguing that: (1) Wright had procedurally defaulted his *Davis* claim by failing to raise it on direct appeal and could not overcome the default; and in any event, (2) Wright’s *Davis* claim failed on the merits because he failed to show that the jury relied solely on the Hobbs Act conspiracy predicate to find him guilty of the § 924(c) offense.

E. District Court’s Order Granting § 2255 Motion

On October 7, 2020, the district court granted Wright’s § 2255 motion and vacated his § 924(c) conviction and sentence as to Count 4. The district court concluded, based on the jury instructions and the jury’s general verdict as to Count 4, that it was impossible to determine from the record whether Wright’s Count 4 conviction was based on the now-invalid Hobbs Act conspiracy predicate. The district court concluded there was error under *Stromberg v. California*, 283 U.S. 359, 51 S. Ct. 532 (1931), and that *Stromberg* “forbids” a finding that the error was harmless. The district court instead found the error was not harmless because it was “impossible to determine from the jury instructions and the jury’s general verdict the basis on which the jury’s conviction on Count Four rested.”

The district court also rejected the government’s procedural default argument, concluding: (1) Wright’s *Davis* claim was jurisdictional and thus not subject to procedural default; and (2) alternatively, Wright had demonstrated cause and prejudice to overcome the procedural default.

Shortly thereafter, the district court resentenced Wright to 240 months on Count 1 and 312 months on Counts 2, 3, and 5, all to run concurrently. This appeal by the government followed.²

II. DISCUSSION

On appeal, the government reasserts its arguments that Wright procedurally defaulted his *Davis* claim and, in any event, his *Davis* claim fails on the merits. While this appeal was pending, we issued our decision in *Granda v. United States*, 990 F.3d 1272 (11th Cir. 2021), which is materially indistinguishable from this case and supports both of the government's contentions.³

² The government's notice of appeal, filed December 29, 2020, sought to appeal both the October 7, 2020 order granting Wright's § 2255 motion and the November 3, 2020 amended criminal judgment. However, the government now states it challenges only the § 2255 order and not the amended criminal judgment. In light of the government's express abandonment, we need not address Wright's argument in response to this Court's Jurisdictional Question that the government's notice of appeal was untimely as to the amended criminal judgment and DENY AS MOOT Wright's construed motion to dismiss the government's appeal from the amended criminal judgment.

³ When reviewing a district court's denial of a § 2255 motion, we review questions of law *de novo* and factual findings for clear error. *Lynn v. United States*, 365 F.3d 1225, 1232 (11th Cir. 2004). Similarly, we review *de novo* whether procedural default precludes a § 2255 movant's claim, which is a mixed question of law and fact. *Granda v. United States*, 990 F.3d 1272, 1286 (11th Cir. 2021).

A. Procedural Default Principles

Section 2255 allows federal prisoners to obtain post-conviction relief and set aside prior convictions when a sentence “was imposed in violation of the Constitution or laws of the United States.” 28 U.S.C. § 2255. However, a § 2255 claim may be procedurally defaulted if the movant failed to raise the claim at trial or on direct appeal. *Granda*, 990 F.3d at 1285-86. A movant can overcome the procedural bar by establishing either (1) cause for the default and actual prejudice from the alleged error, or (2) that he is actually innocent of the crimes for which he was convicted. *Id.* at 1286.

B. *Granda*

In *Granda*, this Court applied these procedural default principles to a *Davis* claim that is indistinguishable from Wright’s in all material respects. The § 2255 movant in *Granda*, like Wright here, was arrested during a planned robbery where an undercover agent posed as a disgruntled drug trafficker who wanted to rob his boss. *Id.* at 1281. Granda and the rest of the robbery crew planned to dress up as armed police and steal a “stash truck” they believed contained cocaine. *Id.* Instead, when they arrived with guns at the prearranged rendezvous spot, Granda ultimately was arrested. *Id.*

Like Wright, Granda was charged with, and convicted of, both drug and Hobbs Act offenses as well as a § 924 firearm offense. One of Granda’s convictions was for a § 924(o) firearm conspiracy count where the five charged predicates were a mix of alleged

crimes of violence and drug trafficking crimes, including Hobbs Act robbery conspiracy. *Id.* at 1281-82. At trial, the district court gave a jury instruction much like the one given at Wright's trial. The district court instructed Granda's jury that it could convict Granda of the § 924(o) firearm conspiracy if it found that the object of the conspiracy was to use or carry a firearm during and in relation to *either* a drug trafficking crime *or* a crime of violence, *or* both, "as charged in Counts 1, 2, 3, 4, *or* 5" but that it had to unanimously decide on which predicate. *Id.* at 1281, 1285, 1291. And, as in Wright's case, the *Granda* jury returned a general verdict. *Id.* at 1282.

In 2009, Granda filed an unsuccessful direct appeal and later a first § 2255 motion. *Id.* at 1282. However, similar to Wright here, Granda on direct appeal did not raise a constitutional challenge to § 924(c)'s residual clause or argue that his Hobbs Act conspiracy predicate was invalid until his authorized successive § 2255 motion in 2016.⁴ *Id.* And, in Wright's case, the government responded that Granda had procedurally defaulted his claim. *Id.* The district court denied Granda's § 2255 motion on the merits, concluding Granda could not show it was more likely than not that the jury relied on

⁴ Granda originally brought his claim under *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551 (2015), which invalidated a similar residual clause in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii). This Court resolved Granda's claim under *Davis*, which was announced while Granda's appeal was pending.

the Hobbs Act conspiracy to convict him of the § 924(o) offense. *Id.* at 1282-83.

On appeal, this Court affirmed on two grounds: (1) Granda could not show either cause and actual prejudice or actual innocence to overcome the procedural default of his claim; and (2) Granda could not prevail on the merits. *Id.* at 1280-81.

As to procedural default, this Court concluded that Granda's constitutional vagueness claim was not sufficiently novel to constitute cause. *Id.* at 1286. The Court explained that while *Davis* announced a new constitutional rule of retroactive application, it was not a "sufficiently clear break with the past" that an attorney representing Granda "would not reasonably have had the tools" necessary to present the claim before *Davis*. *Id.* (quotation marks omitted). We also stated: "Moreover, the case law extant at the time of Granda's appeal confirms that he did not then lack the 'building blocks of a due process vagueness challenge to the § 924(c) residual clause.'" *Id.* at 1287-88 (citing cases going back to 1986 that demonstrated litigants had been raising similar vagueness challenges to other parts of § 924(c) "for years"). Therefore, this Court ruled that Granda's *Davis* claim was available in 2009 when he filed his direct appeal. *Id.*

Even if Granda could show cause, this Court also concluded he could not establish actual prejudice because he could not show "a substantial likelihood" that "the jury relied *only* on" the invalid predicate to convict him. *Id.* at 1288. The Court explained that it was "not enough for Granda to show that the jury may have relied

on the Count 3 Hobbs Act conspiracy conviction as the predicate” because “reliance on any of [the other valid predicates] would have provided a wholly independent, sufficient, and legally valid basis to convict” *Id.* In short, if the absence of the invalid predicate would not likely have changed the jury’s decision to convict, then the petitioner did not suffer actual prejudice. *Id.*

The Court found that Granda could not make this showing because: (1) the jury unanimously found him guilty of all the valid predicates, including conspiracy and attempted possession of cocaine with intent to distribute; (2) the trial record made “it abundantly clear” that the jury’s findings of guilt all “rested on the same operative facts and the same set of events” including “that Granda had conspired and attempted to rob the truck in order to possess and distribute the cocaine it held”; and (3) in light of the trial evidence, the jury could not have concluded he conspired to possess the firearm in furtherance of the robbery conspiracy without also finding he conspired to possess the firearm in furtherance of the drug conspiracy and the other valid predicates. *Id.* at 1289.

The *Granda* Court relied on *United States v. Cannon*, 987 F.3d 924, 947-50 (11th Cir. 2021), which held on direct appeal that a *Davis* error in submitting an invalid Hobbs Act conspiracy predicate to the jury was harmless where the trial record made clear that the invalid predicate was “inextricably intertwined” with a valid cocaine conspiracy predicate such that “no rational juror could have found that [the defendants] carried a firearm in relation

to one predicate but not the other.” *Id.* at 1289-90 (quotation marks omitted). The Court determined that, as in *Cannon*, Granda’s “alternative predicate offenses [were] inextricably intertwined—each arose from the same plan and attempt to commit armed robbery of a tractor-trailer full of cocaine.” And this “tightly bound factual relationship of the predicate offenses preclude[d] Granda from showing [on collateral attack] a substantial likelihood that the jury relied solely on” the one invalid predicate. *Id.* at 1291.

Finally, for the same reason—that no reasonable juror would have concluded Granda conspired to possess the firearm in furtherance of only the invalid Hobbs Act conspiracy and not the drug trafficking crimes—this Court also concluded that Granda could not establish actual innocence. *Id.* at 1292; *see also Parker v. United States*, 993 F.3d 1257, 1263 (11th Cir. 2021) (following *Granda* as “materially indistinguishable” to conclude the § 2255 movant had not shown actual innocence to overcome the procedural default of his *Davis* claim where it was “undeniable on this record” that the movant’s “valid drug trafficking predicates [were] inextricably intertwined with the invalid Hobbs Act conspiracy predicate”).

C. Wright’s *Davis* Claim is Subject to the Procedural Default Bar

Wright argues his *Davis* claim cannot be procedurally defaulted because the error is jurisdictional. On collateral review, a defendant can avoid the procedural default bar altogether “if the alleged error is jurisdictional.” *United States v. Bane*, 948 F.3d

1290, 1294 (11th Cir. 2020). Although a district court has the statutory power under 18 U.S.C. § 3231 to adjudicate the prosecution of federal offenses, *id.*, this Court has held “that a district court lacks jurisdiction when an indictment alleges only a non-offense.” *United States v. Peter*, 310 F.3d 709, 715-16 (11th Cir. 2002). On the other hand, “[s]o long as the indictment charges the defendant with violating a valid federal statute as enacted in the United States Code, it alleges an ‘offense against the laws of the United States’ and, thereby, invokes the district court’s subject-matter jurisdiction.” *United States v. Brown*, 752 F.3d 1344, 1354 (11th Cir. 2014).⁵

Here, Wright cannot claim that, in light of *Davis*, his indictment alleged only a “non-offense.” That is, he cannot, and does not, argue that Count 4 charged only conduct falling outside the sweep of § 924(c). This is so because Wright’s § 924(c) count alleged *both* the invalid Hobbs Act conspiracy predicate and two

⁵ As this Court has explained, *Peter* and other cases finding jurisdictional defects in indictments involve the “specific and narrow circumstances” in which the indictments “affirmatively allege facts that conclusively negated the existence of any offense against the laws of the United States.” *United States v. Brown*, 752 F.3d 1344, 1353 (11th Cir. 2014). In *Peter*, the indictment defect was jurisdictional because the only conduct affirmatively alleged “undoubtedly fell outside the sweep of the [federal criminal] statute.” *Id.* Absent such specific and narrow circumstances, the Supreme Court has made clear that “defects in an indictment do not deprive a court of its power to adjudicate a case.” *Id.* (quoting *United States v. Cotton*, 535 U.S. 625, 631, 122 S. Ct. 1781, 1785 (2002)).

undisputedly valid drug trafficking predicates.⁶ Thus, Wright’s indictment charged him with violating a valid federal statute and the indictment defect Wright points to here was nonjurisdictional. *See Brown*, 752 F.3d at 1354. Moreover, this Court has repeatedly held that a *Davis* claim like Wright’s—in which the § 924(c) count charges *both* valid and invalid predicates—can be procedurally defaulted. *See Granda*, 990 F.3d at 1286-92; *Parker*, 993 F.3d at 1262.

D. Wright Cannot Overcome His Procedural Default

On direct appeal in 2007, Wright did not argue that his § 924(c) conviction was invalid because the § 924(c)(3)(B) residual clause was unconstitutionally vague. Thus, like the petitioners in

⁶ For this reason, Wright’s reliance on *United States v. St. Hubert* is misplaced. The defendant in *St. Hubert* claimed that *neither* of the two predicates alleged in his § 924(c) count qualified as a crime of violence. *St. Hubert*, 909 F.3d 335, 343 (11th Cir. 2018) (concluding that St. Hubert’s *Johnson* claim was jurisdictional because he argued that *all* of the charged predicates were invalid and thus the indictment “consisted only of specific conduct” that as a matter of law was outside the sweep of § 924(c)), *abrogated on other grounds by Davis*, 588 U.S. at ___, 139 S. Ct. at 2332-36.

Here, however, Wright does not dispute that the two drug trafficking predicates alleged in his § 924(c) offense in Count 4 remain valid after *Davis*. Thus, Wright’s indictment alleged conduct—possessing a firearm in furtherance of two drug trafficking crimes—that constitutes a valid federal offense. Wright’s claim, which turns on the fact that the jury returned a general verdict, is not like the claim in *St. Hubert*, which turned on the indictment’s purported failure to allege any § 924(c) offense at all.

Granda and *Parker*, Wright procedurally defaulted his *Davis*-based challenge to his § 924(c) conviction.

Wright cannot show cause or actual prejudice to overcome his default. First, Wright cannot show cause because, as was true in *Granda*, the building blocks to bring a due process vagueness challenge to § 924(c)(3)(B)'s residual clause existed at the time of his 2007 direct appeal. *Granda*, 990 F.3d at 1286-92; *see also Parker*, 993 F.3d at 1265. As we explained in *Granda*, the Supreme Court's 2007 decision in *James v. United States*, 550 U.S. 192, 127 S. Ct. 1586 (2007), "indicated that at least three Justices were interested in entertaining challenges to the ACCA's residual clause, and perhaps to similar statutes." *Granda*, 990 F.3d at 1287. In addition, defendants had been raising similar vagueness challenges to various criminal statutes, including other parts of § 924(c), for many years leading up to 2007, indicating that by the time of Wright's 2007 direct appeal "the tools existed" to bring such a challenge to § 924(c)(3)(B). *See id.* at 1287-88 (citing examples from other circuits all decided before the conclusion of Wright's direct appeal).

Even if Wright could establish cause for his procedural default, he could not show actual prejudice. To do so, Wright would have to show a "substantial likelihood" that the jury actually relied only on his Hobbs Act conspiracy predicate to convict him of the § 924(c) count. *See id.* at 1288. But, based on the record before us, he cannot do so.

Given the trial evidence that Wright planned and attempted to rob at gunpoint a drug dealer's stash house containing 20 to 30 kilograms of cocaine so that he could then sell at least a portion of the cocaine himself, the jury unanimously found him guilty of all of the predicates: conspiracy and attempt to possess cocaine with intent to distribute it *and* conspiracy to commit Hobbs Act robbery. The trial record establishes (1) that all of these findings of guilt "rested on the same operative facts and the same set of events"; (2) that the objective of Wright and his crew—to take at gunpoint and then sell multiple kilograms of cocaine—was the same for the planned robbery and the planned drug crime; and (3) that all of the predicate offenses supporting the § 924(c) count "were so inextricably intertwined" that no reasonable jury could have convicted Wright of using and carrying the firearm in relation to only one of them. *See id.* at 1289-90. Moreover, Wright does not cite any record evidence allowing us to find the offenses are separate, nor did he offer a theory of defense at trial that would have permitted the jury to do so. *See id.* at 1290. And, because of the district court's unanimity instruction, we know that the jury unanimously agreed on the "way" in which Wright committed his § 924(c) offense, i.e., the predicates. *See id.* at 1291. In short, "the tightly bound factual relationship of the predicate offenses precludes [Wright] from showing a substantial likelihood that the

jury relied solely on” the Hobbs Act conspiracy predicate to convict him of Count 4. *See id.* at 1291.⁷

Further, for the same reasons, Wright cannot establish that he was actually innocent of his § 924(c) offense. To show actual innocence, Wright would have to show that no reasonable juror would have concluded he possessed a firearm in furtherance of “any of the valid predicate offenses.” *Id.* at 1292. And, as in *Granda*, the fact that Wright’s invalid predicate is “inextricably intertwined” with his valid predicates “makes it impossible” for him to make such a showing. *See id.*; *see also Parker*, 993 F.3d at 1263 (following *Granda* and concluding Parker could not show actual innocence because his “predicate offenses were inextricably intertwined so that if jurors found one applicable—which, given

⁷ Wright contends that for purposes of showing actual prejudice, *Granda* is materially distinguishable because Granda received a concurrent sentence on his § 924(o) conviction, while Wright received a consecutive sentence on his § 924(c) conviction. Wright’s claim that a consecutive sentence is inherently prejudicial misses the point. *Granda*’s prejudice analysis made no mention of the concurrent sentence and focused instead on the likely effect of the invalid predicate on “the jury’s decision to convict.” *See Granda*, 990 F.3d at 1288 (“If the absence of the invalid [Hobbs Act conspiracy] predicate would not likely have changed the jury’s decision to convict, Granda has not suffered actual prejudice.”).

We further note that Wright’s *Davis* claim is not a challenge to an extended prison term, such as a career offender designation under the Sentencing Guidelines or an armed career criminal designation under the ACCA, but to the validity of his conviction. Thus, contrary to Wright’s assertion, Wright’s consecutive sentence is not material to the prejudice inquiry here.

their guilty verdicts on Counts 4 and 5, we know they did—they had to reach the same conclusion with respect to the others”).

For purposes of preserving the issue for further review, Wright contends *Granda* is wrongly decided and that, under a proper reading of *Bousley v. United States*, 523 U.S. 614, 118 S. Ct. 1604 (1998), he needed to show only legal innocence, not factual innocence, to overcome his procedural default. As Wright acknowledges, however, we are bound by *Granda*. *See United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (explaining that under our prior panel precedent rule, the holding of a prior panel is binding on all subsequent panels unless or until it is overruled or is undermined to the point of abrogation by this Court sitting en banc or by the Supreme Court).

For these reasons and given our binding precedent, we conclude Wright has not shown either cause and prejudice or actual innocence to overcome the procedural default of his *Davis* claim.

E. Wright’s Claim Loses on the Merits

Even if Wright’s *Davis* claim were not procedurally defaulted, *Granda* and our subsequent decisions applying *Granda* compel us to conclude alternatively that it fails on the merits.

A § 2255 movant is entitled to relief on a *Davis* claim only if he can show that his § 924(c) conviction is supported solely by a predicate crime of violence under § 924(c)(3)(B)’s residual clause. *See In re Hammoud*, 931 F.3d 1032, 1041 (11th Cir. 2019) (citing

Beeman v. United States, 871 F.3d 1215, 1222-25 (11th Cir. 2017); *In re Cannon*, 931 F.3d 1236, 1243 (11th Cir. 2019) (same).

In *Granda*, we held that, notwithstanding procedural default, the harmless-error standard mandates that collateral relief for a *Davis* claim is appropriate only if the court has “grave doubt” about whether a trial error had “substantial and injurious effect or influence” in determining the verdict. 990 F.3d at 1292 (quoting *Davis v. Ayala*, 576 U.S. 257, 267-68, 135 S. Ct. 2187, 2197-98 (2015)). Applying the harmlessness standard in *Brecht v. Abrahamson*, 507 U.S. 619, 113 S. Ct. 1710 (1993), the *Granda* Court held that “the court may order relief” for a *Davis* error “only if the error resulted in actual prejudice” to the petitioner. *Id.* (noting that *Brecht* does not impose a burden of proof and that the reviewing court instead must “ask directly” whether the error substantially influenced the jury’s verdict).⁸

⁸ The *Granda* Court rejected several arguments against applying *Brecht*, including: (1) that it is improper to consider whether alternative valid predicates supplied the basis for the conviction based on *Stromberg v. California*, 283 U.S. 359, 51 S. Ct. 532 (1931), and *Parker v. Sec’y, Dep’t of Corrs.*, 331 F.3d 764 (11th Cir. 2003); and (2) that, in *Davis* cases, courts must apply a “categorical approach” to a § 924(c) conviction and assume that the conviction rested on the invalid predicate to avoid impermissible judicial factfinding prohibited by *Alleyne v. United States*, 570 U.S. 99, 133 S. Ct. 2151 (2013). See *Granda*, 990 F.3d at 1293-96. To the extent Wright raises these arguments in his appeal, they are foreclosed by *Granda*. See *Archer*, 531 F.3d at 1435.

On this record, we have no such “grave doubt” about whether Wright’s § 924(c) conviction rested on an invalid ground. The jury unanimously found Wright guilty of all three predicate crimes. And, as already discussed, all three predicate crimes were inextricably intertwined as they stemmed from the same plan and attempt to rob cocaine from a drug dealer’s stash house using firearms. *See id.* at 1293; *see also Parker*, 993 F.3d at 1265 (holding that the record made clear that if the jury relied on the invalid Hobbs Act conspiracy predicate, it also relied on the valid drug trafficking predicates because they were inextricably intertwined and therefore any error was harmless); *Foster v. United States*, 996 F.3d 1100, 1107 (11th Cir. 2021) (applying *Parker* and concluding, on virtually identical facts to those found in Wright’s case, that the jury “could not have found that Foster’s gun use or possession . . . was connected to his conspiracy to rob the stash house without also finding at the same time that they were connected to his conspiracy and attempt to possess with intent to distribute the cocaine he planned to rob from the same stash house” and thus “the inclusion of an invalid predicate offense in the indictment and jury instructions was harmless”).

The record establishes that Wright was actively involved in the planning of, and attempt to commit, the armed stash-house robbery. Specifically, Wright met with the undercover agent several times to plan the stash-house robbery; knew the stash house had armed guards; knew that they needed an experienced robbery crew and firearms in order to steal the cocaine from the

stash house; intended to divide the 20 to 30 kilograms of cocaine amongst the crew after the robbery; and had loaded firearms, gloves, and a ski mask in the vehicle with him while he was riding to what he believed to be the stash house to commit the robbery. Based on these facts, a reasonable jury could not have found that Wright committed the § 924(c) firearm offense in relation to the Hobbs Act conspiracy without also finding that he committed the § 924(c) firearm offense in relation to the drug trafficking crimes. We therefore do not have a grave doubt that Wright's § 924(c) conviction rested on only the invalid Hobbs Act conspiracy predicate, despite the jury's general verdict. As such, Wright cannot establish actual prejudice, and the inclusion of the invalid Hobbs Act conspiracy predicate in Count 4 of his indictment and in the jury instructions was harmless.

III. CONCLUSION

For the reasons discussed above, Wright cannot establish that he is entitled to collateral relief on his *Davis* claim. We recognize that the district court did not have the benefit of *Granda* or our subsequent decisions applying *Granda* when it granted Wright's § 2255 motion. Nonetheless, in light of *Granda*, the district court reversibly erred when it concluded that Wright had demonstrated cause and prejudice to overcome the procedural default of his *Davis* claim and that the *Davis* error was not harmless. Accordingly, we reverse the district court's order granting Wright's § 2255 motion and on remand the district court shall deny Wright's § 2255 motion.

22

Opinion of the Court

20-14869

REVERSED and REMANDED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 14, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-14869-BB
Case Style: Iramm Wright v. USA
District Court Docket No: 1:19-cv-24060-PCH
Secondary Case Number: 1:05-cr-20437-PCH-1

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, each party to bear own costs.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tonya L. Richardson, BB at (404) 335-6174.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1A Issuance of Opinion With Costs

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

IRAMM WRIGHT**Date of Original Judgment:** Click here to enter a date

§ AMENDED JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: **1:05-CR-20437-PCH(1)**

§ USM Number: **65210-004**

§

§ Counsel for Defendant: **Ian McDonald**

§ Counsel for United States: **Eric E. Morales**

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on counts 1-5 after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18:1951.F Interference W Commerce By Threat/Vio	10/29/2020	1
21:841A=Np.F Narcotics - Possession	10/29/2020	2
21:846=Nd.F Conspiracy To Distribute Narcotics	10/29/2020	3
18:922E.F Interstate Shipments	10/29/2020	5

The defendant is sentenced as provided in pages 2 through to the Sentencing Reform Act of 1984.

of this judgment. The sentence is imposed pursuant

Count 4 is vacated on the defendant's motion

Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 30, 2020

Date of Imposition of Judgment



Signature of Judge

PAUL C. HUCK**SENIOR UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

October 30, 2020

Date

DEFENDANT: IRAMM WRIGHT
CASE NUMBER: 1:05-CR-20437-PCH(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **312 months. This term consists of 240 months as to count 1; 312 months as to counts 2, 3 and 5, all terms to run concurrently.**

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: IRAMM WRIGHT
CASE NUMBER: 1:05-CR-20437-PCH(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years. This term consists of 3 years as to Count 1 and 5 years as to Counts 2, 3 and 5, all terms to run concurrently.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: IRAMM WRIGHT
 CASE NUMBER: 1:05-CR-20437-PCH(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: IRAMM WRIGHT
CASE NUMBER: 1:05-CR-20437-PCH(1)

SPECIAL CONDITIONS OF SUPERVISION

Community Service: The defendant shall perform community services as follows: If employed, 200 hours per year, if unemployed, 400 hours per year and if employed part time, on a pro rata basis. The defendant shall perform community service hours on a monthly basis as directed by the U.S. Probation Office.

Home Detention with Electronic Monitoring: The defendant shall participate in the Home Detention Electronic Monitoring Program for the first year of release. During this time, the defendant shall remain at his place of residence except for employment and other activities approved in advance and provide the U.S. Probation Officer with requested documentation. The defendant shall maintain a telephone at his place of residence without 'call forwarding', 'call waiting', a modem, 'caller ID', or 'call back/call block' services for the above period. The defendant shall wear an electronic monitoring device and follow the electronic monitoring procedures as instructed by the U.S. Probation Officer. The defendant shall pay for the electronic monitoring equipment at the prevailing rate or in accordance with ability to pay.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: IRAMM WRIGHT
 CASE NUMBER: 1:05-CR-20437-PCH(1)

CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$400.00	\$0.00	\$0.00	\$0.00	

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case* (AO245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input checked="" type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input checked="" type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$0.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: IRAMM WRIGHT
CASE NUMBER: 1:05-CR-20437-PCH(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$400.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$400.00 for Counts 1, 2, 3 and 5 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: IRAMM WRIGHT
CASE NUMBER: 1:05-CR-20437-PCH(1)

**ADDITIONAL FORFEITED PROPER
REASON FOR AMENDMENT**
(Not for Public Disclosure)

REASON FOR AMENDMENT:

- Correction of sentence on remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed.R.Crim.P.35(b))
- Correction of Sentence by Sentencing Court (Fed.R.Crim.P.36)
- Correction of Sentence for Clerical Mistake (Fed.R.Crim.P.36)
- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) top the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant to
 - 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-CV-24060-PCH
(CASE NO. 05-CR-20437-PCH)

IRAMM WRIGHT,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.



ORDER GRANTING MOTION TO VACATE PURSUANT TO 28 U.S.C. § 2255

THIS MATTER is before the Court upon Movant Iramm Wright's ("Movant") Motion to Vacate pursuant to 28 U.S.C. § 2255 ("Motion") [ECF No. 6], which was filed on November 14, 2019. The Government filed its Response [ECF No. 7] on November 29, 2019. Movant filed his Reply [ECF No. 8] on December 6, 2019. The Motion was referred to Magistrate Judge Reid and then later referred to Magistrate Judge Becerra for a Report and Recommendation [ECF Nos. 2, 9]. On October 7, 2020, however, the Court withdrew the referrals [ECF No. 10].

The Court has reviewed the Motion and the record and is otherwise fully advised. For the reasons set forth below, the Court grants the Motion. Accordingly, Movant's conviction and sentence on Count Four are **VACATED**.

BACKGROUND

In 2005, a federal grand jury in the Southern District of Florida returned a five-count indictment charging Movant as follows:

- Count One: Conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a);

- Count Two: Conspiracy to possess cocaine with intent to distribute, in violation of 21 U.S.C. §§ 841 and 846;
- Count Three: Attempt to possess cocaine with intent to distribute, in violation of 21 U.S.C. §§ 841 and 846;
- Count Four: Use and carry a firearm during and in relation to a crime of violence or a drug trafficking crime as set forth in Counts One, Two, and Three, in violation of 18 U.S.C. § 924(c); and
- Count Five: Felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g) and 924(e).

The jury instructions permitted the jury to convict Movant on Count Four based on the now-invalid predicate “crime of violence” of conspiracy to commit Hobbs Act robbery, with which Movant was charged in Count One. The jury ultimately convicted Movant on all five counts. Importantly, the jury returned a general verdict, in which the jury did not specify which one or more predicates were the basis for convicting Movant on Count Four. Movant was sentenced to a concurrent term of imprisonment of 240 months on Count One, a concurrent term of imprisonment of 360 months on Counts Two, Three, and Five, and a consecutive term of imprisonment of 60 months on Count Four, for a total sentence of 420 months.

On September 16, 2019, Movant filed an application in the Eleventh Circuit for authorization to file a successive motion under 28 U.S.C. § 2255 to vacate his conviction on Count Four. The Eleventh Circuit granted Movant’s application.

Movant now requests that this Court vacate his conviction and sentence on Count Four because, as Movant argues, the conviction may have rested on the now-invalid predicate “crime of violence” of conspiracy to commit Hobbs Act robbery. The Motion is granted. Accordingly, Movant’s conviction and sentence on Count Four are vacated.

DISCUSSION

I. Movant's Conviction And Sentence On Count Four Are Vacated.

A. Pursuant to *Stromberg and Knight*, Movant is entitled to relief on Count Four.

Movant was convicted and sentenced on Count Four for violating 18 U.S.C. § 924, which criminalizes using or carrying a firearm during and in relation to a “crime of violence.” A “crime of violence” is defined under § 924(c)(3) as follows:

an offense that is a felony and –

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Courts commonly refer to § 924(c)(3)(A) as the “elements clause” and § 924(c)(3)(B) as the “residual clause.” In 2019, the Supreme Court struck down the residual clause as unconstitutionally vague. *See United States v. Davis*, 139 S. Ct. 2319 (2019). After *Davis*, the Eleventh Circuit held that conspiracy to commit a Hobbs Act robbery does not qualify as a “crime of violence” under the elements clause. *See Brown v. United States*, 942 F.3d 1069 (11th Cir. 2019).

Movant argues that his conviction on Count Four should be vacated under *Davis* and *Brown* because it may have rested on the now-invalid predicate of conspiracy to commit Hobbs Act robbery. Movant directs the Court to the Supreme Court’s decision in *Stromberg v. People of State of Cal.*, 283 U.S. 359 (1931). In *Stromberg*, the appellant was convicted under a state statute that criminalized several actions—one of which was later ruled to be an unconstitutional restriction on free speech. At trial, the jury was instructed that it could convict the appellant based on one or more predicate offenses, one being the offense that was later deemed to be unconstitutional. *Id.* at 368. The jury convicted the appellant via a general verdict—i.e., one that did not specify the

predicate offense(s) on which the conviction rested. *Id.* at 367-68. After reviewing the instructions to the jury and the jury's general verdict, the Supreme Court concluded that the appellant's conviction could not be upheld because, considering the court's instructions to the jury and the jury's general verdict, it was "impossible to say" whether the appellant's conviction rested on the unconstitutional predicate offense. *Id.* at 368.

The Eleventh Circuit has since created a three-prong inquiry for courts to consider when presented with a *Stromberg*-challenge, as here: "a conviction cannot be upheld if (1) the jury was instructed that a guilty verdict could be returned with respect to any one of several listed grounds, (2) it is impossible to determine from the record on which ground the jury based the conviction, and (3) one of the listed grounds was constitutionally invalid." *Knight v. Dugger*, 863 F.2d 705, 730 (11th Cir. 1988) (quoting *Adams v. Wainwright*, 764 F.2d 1356, 1362 (11th Cir. 1985)).

Applying the three-prong inquiry, the Court concludes that Movant is entitled to relief on Count Four. First, at Movant's trial, the jury was instructed that it may convict him on Count Four if it found beyond a reasonable doubt that he committed one or more predicate offenses, one of which was the now-invalid predicate of conspiracy to commit Hobbs Act robbery. Second, because the jury returned a general verdict, it is indeed "impossible" for this Court to determine from the record whether Movant's conviction on Count Four was based on the now-invalid predicate of conspiracy to commit Hobbs Act robbery. And third, conspiracy to commit Hobbs Act robbery—with which Movant was charged in Count One—is not a constitutionally valid predicate "crime of violence" for Movant's conviction on Count Four. *See Davis*, 139 S. Ct. 2319; *Brown*, 942 F.3d 1069.

Accordingly, the Court is satisfied that *Stromberg* and *Knight* warrant that Movant's conviction and sentence on Count Four be vacated because of the errors arising from the jury

instructions and jury's general verdict. *See, e.g., Taylor v. United States*, Case No. 20-22618-CIV-HUCK, slip op. at 3-7 (S.D. Fla. Aug. 19, 2020) (granting § 2255 motion to vacate under *Stromberg* and *Knight* on identical issue); *Adside v. United States*, Case No. 19-24475-CIV-HUCK, slip op. at 3-8 (S.D. Fla. Sept. 25, 2020) (same); *Wainwright v. United States*, No. 19-62364-CIV-COHN, 2020 U.S. Dist. LEXIS 63247, at *41 (S.D. Fla. April 6, 2020) (applying *Stromberg* and *Knight* to a nearly identical scenario and determining that “[i]t is the uncertainty of the grounds for the jury verdict that triggers the entitlement to relief.”).

In opposition, the Government argues that the Eleventh Circuit's decision in *In re Cannon*, 931 F.3d 1236 (11th Cir. 2019) announces a new burden applicable here. However, this Court and other district courts within the Eleventh Circuit have rejected the application of *Cannon* when presented with the same argument. *See Taylor*, slip op. at 5-6; *Adside*, slip op. at 5-6; *Wainwright*, 2020 U.S. Dist. LEXIS 63247, at *38-43; *Watson v. United States*, No. 04-CR-00591-LMM-JMF, slip op. at 7-14 (N.D. Ga. Mar. 9, 2020); *Williams v. United States*, No. 03-CR-00155-CAP-ECS, slip op. at 9-16 (N.D. Ga. April 1, 2020). For the reasons explained in those decisions, the Court rejects the Government's argument.

Accordingly, this Court finds error as to Count Four under *Stromberg* and *Knight*—i.e., the jury instructions and jury's general verdict make it impossible to know whether Movant's conviction on Count Four was based on the now-invalid predicate offense of conspiracy to commit Hobbs Act robbery. The Court must now determine whether this constitutes harmless error.

B. The *Stromberg*-error created by the jury instructions and the jury's general verdict is not harmless error.

Once there is *Stromberg*-error, as above, the next question for a court to consider before vacating a conviction and sentence is whether that error is harmless. The Eleventh Circuit's

decision in *Parker v. Sec'y for the Dept. of Corr.*, 331 F.3d 764 (11th Cir. 2003) controls this inquiry. *See Taylor*, slip op. at 7; *Adside*, slip op. at 8.

In *Parker*, the Eleventh Circuit held that “our evaluation of harmlessness” is “limit[ed]” when the harmless error inquiry is in the context of a *Stromberg*-error. 331 F.3d at 778. In particular, the Eleventh Circuit explained that *Stromberg* “forbids” the conclusion that “a constitutional error in one basis for a jury’s verdict is harmless because of the availability of another, independent basis for the jury’s verdict.” *Id.* at 779. Yet this is precisely the type of forbidden conclusion that the Government, by citing to *Cannon*, asks this Court to make. The Court rejects the Government’s argument. Rather, the Court finds that the *Stromberg*-error articulated above as to Count Four is not harmless, as it is impossible to determine from the jury instructions and jury’s general verdict the basis on which the jury’s conviction on Count Four rested. *See Adams*, 764 F.2d at 1362 (holding that “[t]he proper approach” in undertaking a harmless error analysis of a *Stromberg* challenge “is to examine only the trial court’s instructions and the jury’s verdict, not the sufficiency of the evidence to support the verdict.”).

Accordingly, because the Court finds the *Stromberg*-error here is not harmless, Movant’s conviction and sentence on Count Four are vacated.

II. The Government’s Contention That Movant’s Arguments Are Procedurally Defaulted Fails.

Finally, this Court addresses the Government’s contention that Movant’s arguments are barred under the doctrine of procedural default. The Government’s argument fails for two reasons. First, a challenge arising from *Davis*, *Brown*, *Stromberg*, and *Knight*—as Movant’s here—is jurisdictional in nature and cannot be subject to procedural default. *See United States v. Bane*, 948 F.3d 1290, 1294 (11th Cir. 2020) (holding that a defendant “can avoid the procedural-default bar altogether, meaning he can raise a claim for the first time on collateral review without

demonstrating cause and prejudice, if the alleged error is jurisdictional."); *see also, e.g.*, *Wainwright*, 2020 U.S. Dist. LEXIS 63247, at *41 (rejecting an identical procedural default argument in a § 2255 proceeding because movant's challenge arising from *Davis, Brown*, and *Stromberg* was jurisdictional in nature); *Taylor*, slip op. at 7-8 (same); *Adside*, slip op. at 8 (same). Second, even if Movant's claim were not jurisdictional in nature, he has demonstrated "cause and prejudice" to overcome the procedural default rule. *See, e.g.*, *Adside*, slip op. at 8; *Watson*, slip op. at 5-6 (in a § 2255 proceeding arising from *Davis*, finding cause where movant "lacked a reasonable basis for challenging § 924(c)'s residual clause" and finding prejudice where movant "received a prison sentence longer than the one he would have received" absent the alleged error); *Williams*, slip op. at 7 (same). Accordingly, the Court rejects this final argument.

CONCLUSION

The jury instructions permitted the jury to convict Movant on Count Four based on the now-invalid predicate "crime of violence" of conspiracy to commit Hobbs Act robbery, with which Movant was charged in Count One. The jury then returned a general verdict, in which the jury did not specify which one or more predicates were the basis for the conviction on Count Four. As a result, it is impossible for the Court to know whether Movant was convicted on Count Four based on the invalid predicate of conspiracy to commit Hobbs Act robbery. The Court finds this error to be harmful, and accordingly finds that Movant's conviction and sentence on Count Four must be vacated. Accordingly, it is

ORDERED and ADJUDGED that (1) Movant Iramm Wright's Motion to Vacate pursuant to 28 U.S.C. § 2255 [ECF No. 6] is **GRANTED**, meaning his conviction and sentence on Count Four are **VACATED**; (2) the Court **SHALL** set a **RESENTENCING HEARING** for Movant at a date and time to be subsequently ordered by the Court in an entry on the docket in

Movant's related criminal case, Case No. 05-CR-20437-PCH; (3) the U.S. Probation Office **SHALL** promptly prepare and submit an amended presentence investigation report; (4) the Clerk of Court is directed to **CLOSE** this case; and (5) any pending motions are **DENIED** as moot.

DONE and ORDERED in Miami, Florida on October 7, 2020.



Paul C. Huck
United States District Judge

cc: All counsel of record