

No. [REDACTED] 21-7313

ORIGINAL

In The
Supreme Court of the United States

Supreme Court, U.S.
FILED

JAN 06 2022

OFFICE OF THE CLERK

Dominick D. Wright,
Petitioner,

v.
United States of America,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of
Appeals for the Eighth Circuit

Petition for Writ of Certiorari

District Court No. 0:17-cr-00301
Court of Appeals No. 21-2845

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Johnson v. United States this court has invalidated the residual clauses of 924(e), 16(b), and 924(c), most material to the court's analysis was the categorical approach.

The question presented is:

Does the categorical approach apply to Section 924(o) of title 18, and if so, is the term "an offense" indivisible rendering the statute categorically broader than section 924(c), making section 924(c) offenses, prior to the invalidation of the residual clause of 924(c)(3)(B) invalid based on the fact that the least culpable offense under section 924(c) was the residual clause?

List of Parties

All parties appear in the caption of the case on the cover page.

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Constitution

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Jurisdiction

The United States District Court for the District of Minnesota had jurisdiction based on 28 U.S.C. Section 2255. The district court denied Petitioner's 2255 motion on June 18, 2021, and he filed a timely notice of appeal and motion for a COA to the district court.

The United States Court of Appeals for the Eighth Circuit denied petitioner's request for certificate of appealability on October 8, 2021.

Petitioner timely invokes this court's jurisdiction based on 28 U.S.C. Section 1254(1), by depositing this petition for writ of habeas corp in the prison mailing system on 1-6-2022.

Statement of the Case

1) On August 18, 2016, Domanick D. Wright, Petitioner, prose was arrested by officers who conducted a pretextual stop of his vehicle with the intent to extend the scope of the stop in light of a hunch maintained by one of the officers, that Petitioner could have been engaged in a drug transaction.

Brooklyn Center Police Officer Soliday, who is also a member of the Northwest metro drug taskforce was at a Brooklyn Center gas station conducting surveillance as part of his drug interdiction duties. Officer Soliday testified at two separate suppression hearings, one for the state and one for the Federal prosecution, that during his surveillance he observed a vehicle parked in the rear parking lot of a movie theatre away from all of the other vehicles, he witnessed another vehicle pull along-side of the parked vehicle and something, he assumes was passed between the vehicles. The items were not large or descriptive, neither did officer Soliday testify that he saw what was passed, he noted it could have been anything but that he'd attempt to investigate further because he maintained no probable cause to stop Petitioner based on his prior observations.

On a stroke of luck officer Soliday noticed as

Petitioner was leaving the parking lot that it appeared Petitioner's window tint exceeded the legal limit.

Officer Soliday radioed other officer's who were working in concert with him, so that a pretextual stop of petitioner's vehicle could be conducted based upon the perceived tint violation, as officer Soliday was driving an unmarked vehicle.

When Petitioner was stopped 3 officer immediately approached the vehicle Brooklyn Center Police Officer Kate Deering had her weapon drawn. Petitioner was ordered to roll down his windows, and to provide his license and registration. While providing the requested information Petitioner asked what was going on. He was informed that his window tint exceeded the legal limit.

Officers Deering and Soliday left to run Petitioner information at which point Petitioner attempted to roll up his windows but was informed by another officer not to roll up the windows or they would be broken.

Officer Brutus, the officer that remained at the vehicle asked, did the car belong to Petitioner because the vehicle came back as rented, Petitioner offered to show his registration to clear up any confusion, but the officer declined to accept the information.

Officer's Deering and Soliday returned and asked where Petitioner was coming from, to which Petitioner responded he was coming from by the S.A. Gas Station (where Officer Soliday was conducting surveillance). Soliday "asked" Petitioner to step out of the car. Petitioner asked was there a problem, the officer responded "No, we would just like to talk to you." Petitioner responded he could hear the officers just fine, then the officer asserted that "it was for their safety." Petitioner responded that if this was just a traffic stop for a tint violation, to just write him a ticket. Petitioner asked if his license and insurance was good and was informed they were. At that point, Petitioner asserted there was no valid reason to step out of his vehicle. Petitioner also asserted that he was afraid to leave his vehicle.

because a weapon was drawn as soon as he pulled over for a tint violation.

Officer Soliday asserted "that if Petitioner did not step out of the vehicle he'd be arrested for obstruction of process," pursuant to this statement Petitioner asked "was he under arrest or had he done something wrong?" Petitioner ~~was~~ informed he was not under arrest by officer Deering and that they just wanted to ask some questions. Petitioner continued to state that he did not feel safe and feared for his life and mentioned that Philando Castle was recently killed in a similar situation, this back and forth continued for a few minutes until officer Soliday retorted "get out or be arrested." Petitioner continued to ask was he under arrest and whether his license and insurance were valid and if they were, why was he being asked to leave the vehicle for a tint violation. Petitioner asked the officers to just write the ticket so he could be on his way.

Officer Soliday continued to threaten Petitioner with arresting him and asserted that Petitioner

appeared nervous. Petitioner responded that he was nervous because the way the stop was being conducted for a tint violation and that guns were drawn as soon as officer's left their vehicles.

Becoming impatient officer Solislay pulled his taser, officer Deering pulled a firearm, and officer Brutus reached into the vehicle and unlocked the door, simultaneously the driver side door was opened and Petitioner was forced out of his vehicle. Petitioner was told that he was under arrest for obstruction of process; at that point he was hand cuffed and placed in a transport vehicle. Petitioner ~~witnessed~~ the officer's appear to locate something in the vehicle and the vehicle in which petitioner was confined left the scene.

Petitioner's vehicle, cash, and liberty was seized pursuant to Minnesota law and constitution. Petitioner ~~was~~ was charged with controlled substance offenses and weapons offenses associated

with the transaction.

During the pretrial proceedings in this case in the Minnesota prosecution a motion to suppress was litigated wherein Petitioner's attorney discovered that there was a dashcam recording of the stop. Counsel for petitioner was also made aware of the fact that the officer's were claiming that the video was somehow lost or destroyed. The attorney alerted the court to the fact that he believed evidence had been destroyed.

Clandestinely, the Government's agents and the United States attorney worked to interfere with and defeat the state prosecution. The United States Attorney filed a complaint against petitioner and obtained a bench warrant as petitioner was on bail pursuant to the state charges, arrested him and arraigned him regarding the same property and subject matter giving rise to the state charge. The state prosecutor has asserted that it abdicated its jurisdiction

a federal prosecution.

The Federal government charged Petitioner with the same crimes and with the same evidence giving rise to the State Proceedings. Petitioner ultimately plead guilty to violating section 924(o) and was sentenced to 10 years.

Reason For Granting the Petition

1. The Lower Courts have sanctioned a departure by the lower Courts, as to call for an exercise of this court's Supervisory powers;

this possibly is the most controversial petition in the last half-a-century, as it deals with the conflation and subversion of Constitutional and Statutory law.

The lower courts holdings that the "prior exclusive jurisdiction" does not apply to criminal cases creates a number of conflicts:

i) State constitutional and federal Constitutional due process violations.

The Fifth Amendment to the United States Constitution guarantees a person the right to his freedom and property, and that he should not be deprived of these right but upon due process of law. Minnesota's Constitution proscribes similar protections. In concert with the above noted protections Congress enacted Statutory law to secure ~~Constitutional liberties~~. This court has likewise

made laws which protect constitutional rights of the accused, See *Pongzi v. Ferranden*, 258 US 254 (1922), "the people for whose benefit these two systems are maintained are deeply interested that each system shall be effective and unhindered in its vindication of its laws," *Id.* at 259,

This Court held that the subversion of the rules deprived the court of jurisdiction of the subject-matter. See *Stipulation for Dismissal*.
... the property seized by the sheriff under the process of attachment from the State court, and while in the custody of the officer, could not be seized or taken from him by a process from the district court of the United States, and that the attempt to seize it by the marshal, by notice or other wise, was a nullity, and gave the court no jurisdiction over it, inasmuch as, to give jurisdiction to the district court in a proceeding in rem, there must be a valid seizure and an actual control of the res under the process."
Id. at

This conclusion cannot be underrepresented, based upon the substantive constitutional guarantees at issue. In *Elkins v. United States*, 364 US at 289

this Court established that evidence (property) seized by State law enforcement officer's in violation of the constitutional guarantee of the Fourth Amendment, cannot be entered into evidence in a federal prosecution over the defendant's timely objection, thus overruling the "Silver Platter Doctrine."

The district court allowing the agents of the United States to seize evidence (property) in control of State law enforcement officer's that is subject to the jurisdiction of the State court by issuance of process from the State court so that the Federal government could adopt the case for federal prosecution allows for a defendant to be deprived of his property without due process of law because, the State was not put to its burden "to exhaust its remedy to attain which it assumed control, before the government and its agents took the evidence (property) for its purpose. Notwithstanding the fact that there was not a valid seizure and actual control of the evidence under the process. This failure to exhaust its remedy dictates that all seized property be returned and that the defendant be

Sat at liberty. See *Hagan v. Lucas*,
10 Pet., 400,

In this case Petitioner obtained a concession from the state prosecutor that dictates that the state court abdicated its duty in favor of a federal prosecution, an admission that mandates the remand of this case in concert with this court's holding in *Kline v. Burke*.

Petitioner asserts further that the lower courts utilization of the dual sovereignty as a basis to skirt the prior exclusive jurisdiction doctrine flies in the face of this court's express recognition of the fact that, notwithstanding both sovereignties ability to prosecute the same act of transaction, the prior exclusive jurisdiction doctrine must be adhered to. The fact that almost no lower court acknowledges these legal principles dictates that the lower courts have departed and sanctioned a departure from the normal course of judicial procedures so compromising substantial rights of the

accused to call for this court's exercise of its supervisory powers to dictate the parameters of the prior exclusive jurisdiction doctrine as it applies to criminal proceedings in order to clearly establish the connection of the doctrine to the rights of the accused.

II. 924(c)'s constitutionality

2) The lower courts are answering an important federal question that has not been but should be answered by this Court.

Specifically, the lower courts apply the modified categorical approach to determinations of whether a person committed a crime of violence or a drug trafficking offense under 924(c), notwithstanding the fact that Section 924(c) penalizes a person for "conspiring to commit an offense under subsection (c)." *Id.* 924(c).

This court's holdings dictate that if a statute of conviction is categorically broad or

indivisible the modified categorical approach does not apply.

In this case Petitioner moved to have his conviction vacated based on this court's holding in *United States v. Davis*, invalidating the residual clause of 924(c)(3)(B), under Section 2253. Petitioner's assertion was based upon the fact that he was convicted under Section 924(o), and as manners and means of the conspiracy the Government charged that Petitioner and other co-conspirators committed crimes of violence and drug trafficking crimes. And, because the Government asserted that it could prove its case in the disjunctive by demonstrating that the defendant's ~~conspired~~ to used or carry a firearm during a crime of violence or a drug trafficking crime or that the defendant possessed a firearm during or in relation to a crime of violence or a drug trafficking offense, in a similar prosecution.

District Court Judge Patrick J Shiltz held that 924(o) and 924(c) are not the same crimes and cited this court holding that conspiracy is not the crime that it contemplates.

District Court Judge Patrick J. Schultz. Concluded that "924(c) punishes the possession or use or carry of a firearm during and in relation to a crime of violence or drug trafficking crime, but Doss was not convicted of violating 924(c), he was convicted of violating Section 924(o).

Responding to Petitioner's 2255 the Government continuously asserted that Petitioner's predicate offense was a "drug trafficking offense." Petitioner in turn asserted that he was not convicted of any "predicate offense under 924(c)," but was convicted of conspiring to violate Section 924(c), and that Section 924(o) disjunctively encompasses all modes of violating 924(c) and based upon the categorical approach Petitioner must be assessed the least culpable means of violating Section 924(c) which would be under 924(c)(3)(B), entitling Petitioner to the vacature of his 924(o) conviction.

The district Court evaded the question but used the modified categorical approach conclude that Petitioner's predicate offense was "a drug trafficking crime." The court did not overtly dictate its use of the Modified

categorical approach as though not stating the name, the approach would not be recognized, however, the court's conclusion applying the modified categorical approach mandates that the contours of Categorical approach be applied. Consequently, the question of "whether the term "an offense" renders section 924(c) indivisible rendering the statute prior to Davis unconstitutionally vague?" is an important federal question that has not been but should be answered by this court.

Conclusion

Petitioner Prays that this honorable Court grant his petition for Writ of Certiorari.

Certificate of Service

I, Aemetrus Derolen, hereby certify, under the declaration codified within title 28 U.S.C.S. Section 1746 that I sent a true and correct copy of this Petition for Writ of Certiorari to the clerk of Court at 1 First Street, N.E., Washington, DC 20543 on the Sixth day of January, 2022, by placing said motion in FedEx-Exford's Mailing System with First class postage paid.

Sincerely Submitted
Aemetrus Derolen

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FCI

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