

22-6414 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
NOV 28 2022
OFFICE OF THE CLERK

KEITH ANTONIO BARNETT — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KEITH ANTONIO BARNETT
(Your Name)

Reg.No. 34168-058
FCI - Gilmer

(Address)

P O Box 6000
Glenville, WV 26351

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE CONFRONTATION CLAUSE WAS VIOLATED WHEN PROSECUTORS RELIED, EXCLUSIVELY, ON HEARSAY TESTIMONY TO CONVICT THE PETITIONER?

WHETHER THE PETITIONER WAS DEPRIVED OF DUE PROCESS WHEN THE DISTRICT COURT REFUSED TO ISSUE A JURY INSTRUCTION COVERING HIS THEORY OF DEFENSE?

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:

RELATED CASES

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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 "A" 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☒ is unpublished.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 United States district 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☒ is unpublished.

☐ 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☐ is unpublished.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☐ is unpublished.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 September 1, 2022.

☒ 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: _____, 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

FIFTH: AMENDMENT DUE PROCESS CLAUSE

SIXTH AMENDMENT RIGHT OF CONFRONTATION

STATEMENT OF THE CASE

A federal grand jury charged Keith Antonio Barnett, in a superseding indictment, with conspiring to traffic crack-cocaine during the period of 2016 through 2018, under 21 USC § 846; and with distributing crack-cocaine, and possessing crack-cocaine with intent to distribute on September 22, 2017, under 21 USC § 841(a)(1), and § 841(b)(1)(C); and with possessing multiple controlled substances with intent to distribute on October 9, 2017, under 21 USC § 841(a)(1).

A jury trial followed, with witnesses for the Government testifying that a cousin of Keith Antonio Barnett lived at a house, with post office address of: 2708 South Calvary Street, Gastonia, North Carolina. Those witnesses testified to having seen Keith Antonio Barnett, at that same house on an everyday basis. Those same witnesses testified that Rodney Rhodes (Barnett's cousin), sold illegal drugs from his house, and that Barnett assisted him in distributing drugs. Law enforcement officers arranged for an informant to make a controlled purchase from Barnett on September 22, 2017, that was recorded on video.

Allen Isenhour, A Gaston County detective, testified that a subsequent search of the house resulted in the discovery of 45.2 grams of powder cocaine, 122.4 grams of crack cocaine, and drug paraphernalia. Also, a state prosecutor

testified that when Barnett appeared in a state court proceeding, on the same charges, Barnett admitted or accepted responsibility for the drugs seized from the subject house, and further asserted that his cousin - Rodney Rhodes, "had nothing to do with it".

In defense, Keith Antonio Barnett testified. It was his testimony that the state prosecutor's testimony was incorrect as he denied accepting full responsibility for the drugs seized from the house of his cousin - Rodney Rhodes. Barnett denied ever selling any illegal drugs to the informant, or fleeing from the police when they searched the house, and denied owning any drugs found in, or near the subject house. Barnett denied knowing anything about sales from the house of illegal drugs. Barnett further testified that he had only visited the subject house about three times, and that during the pertinent times, he was renting a room in a motel near Gastonia, North Carolina. However, the jury convicted Barnett on all three counts.

The Court sentenced Barnett to 276 months by enhancing the base offense level for maintaining a premises for the purpose of manufacturing or distributing a controlled substance. Other enhancements were added, but a variance was

given so as not to overly "punish for the enhancements".
Petitioner's appointed appellate counsel merely submitted
an Anders Brief. The petitioner supplemented the record with
a "pro se" brief, however, the appeals court panel failed to
address the "pro se" issues raised.

REASONS FOR GRANTING THE PETITION

The Court is requested to grant this application for a writ of certiorari because the petitioner's conviction was premised, exclusively, on hearsay and unsworn testimony presented to jurors. Furthermore, the district court refused to issue a jury instruction providing jurors with directions concerning petitioner's theory of defense, i.e., that he did not reside at the premises where law enforcement officers observed illegal drugs being trafficked, and a search warrant discovered the presence of controlled substances in small quantities. The petitioner further testified, at the jury trial, that he did not engage in the sale of controlled substances, and denied ever having sold illegal drugs from the subject premises. However, no jury instructions was issued providing jurors the option of acquitting the petitioner on the basis his sworn trial testimony, thereby, essentially, giving a directed verdict to the Government.

Appointed appellate counsel failed to present the foregoing issue to the appeals court, electing, instead, to file a Anders Brief. Consequently, petitioner submitted a "pro se" supplemental brief, which included this argument, and an argument pertaining to the denial of petitioner's right to confront witnesses and the evidence against him at the jury trial. The Sixth Amendment's Confrontation Clause

provides a criminal defendant the right to directly confront adverse witnesses, and the right to cross-examine adverse witnesses. Maryland v. Craig, 497 U.S. 836, 846 (1990)("face-to-face confrontation enhances the accuracy of factfinding by reducing the risk that a witness will wrongfully implicate an innocent person"); and Coy v. Iowa, 487 U.S. 1012, 1019 (1988)("It is always more difficult to tell a lie about a person 'to his face' than 'behind his back'").

The trial court permitted hearsay to be introduced at petitioner's jury trial which directly implicated him in the distribution of controlled substances. Although the petitioner took the witness stand and denied selling or distributing controlled substances, no jury instructions issued covering his defense, or an instruction warning the jury to view, with caution and suspicion, uncrossed examined and unsworn hearsay statements unless they believed such evidence beyond a reasonable doubt.

Compounding the error in admitting hearsay evidence was the district court's order denying the petitioner any access to the grand jury minutes in which the hearsay declarants' testimony was recorded. Those trial errors deprived

this petitioner of a fundamentally fair trial, in contradiction of the Due Process Clause of the Fifth Amendment. See United States v. Powers, 500 F.3d 500, 506 (6th Cir.2007) (ruling that the Confrontation Clause was violated when the trial court permitted admission of testimonial statements which were given to law enforcement officials by an informant, and the informant was not called as a witness); United States v. Walker, 673 F.3d 649, 658 (7th Cir.2012)(same); Slovik v. Yates, 556 F.3d 747, 753 (9th Cir.2009)(Confrontation Clause violated when the district court prevented a defendant from questioning a witness about his criminal history, which would have altered the jury's view on his credibility); and United States v. Glass, 128 F.3d 1398, 1402-03 (10th Cir.1997)(Confrontation Clause violation occurred when an arresting officer was permitted to repeat the statements uttered to him by a codefendant, which incriminated the defendant).

Except for the hearsay testimony, this petitioner could not have been ruled guilty of the offenses charged, since the remaining proof was insufficient to demonstrate his culpability, or connection to the subject residence. See Hemphill v. New York, 142 S.Ct. 681 (January 20, 2022)

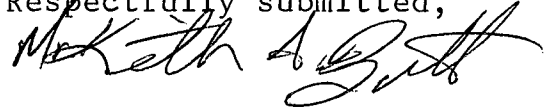
(vacating conviction where the district court allowed into evidence unsworn hearsay constituting testimonial proof in regards to evidence produced for the purpose of the jury trial); Crawford v. Washington, 541 U.S. 36 (2005)(same); United States v. Fennell, 65 F.3d 812 (10th Cir.1995)(same); Crawford v. Jackson, 323 F.3d 123, 127 (D.C.Cir.2003)(same); United States v. Hamann, 33 F.4th 759 (5th Cir.2022)(ruling that the Confrontation Clause analysis involves three questions: (1) did evidence introduce a testimonial statement by a nontestifying witness?; (2) was the statement offered to prove the truth of the matter asserted?; and (3) was the nontestifying witness available to testify, or was the defendant deprived of an opportunity to cross-examine him? If the answer is yes to all three, then the Confrontation Clause is violated). "A statement is testimonial if its primary purpose is to establish or prove past events potentially relevant to later criminal prosecution." Hamann, supra. In the latter case, the detective's trial testimony that "Cali was moving multiple ounces," as well as his testimony about the circumstances of the controlled purchase, both violated the defendant's right to confrontation." Id.

CONCLUSION

Based upon the foregoing facts and legal authorities,

the Court is requested to grant certiorari, and to order a briefing schedule on the issue, or issues, herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mr. Keith A. Barnett", written over the typed name.

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