

No. 22-6711

ORIGINAL

Supreme Court, U.S.
FILED

JAN 12 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ANTONIO WALTON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ANTONIO WALTON
(Your Name)

U.S.P. BIG SANDY P.O. BOX 2068
(Address)

INEZ, KY 41224
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1). WHETHER MR. WALTON WAS DENIED HIS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND DUE PROCESS OF LAW WHEN THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA REFUSED TO ADJOURN THE TRIAL DURING THE WAKE OF THE COVID-19 PANDEMIC AND THE PRESIDENTIAL DECLARATION OF A NATIONAL EMERGENCY.

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 US v. WALTON, 51 F.4th 705 (7th Cir 2022); 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 OCTOBER 14, 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

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

I. Background

As relevant here, on April 17, 2019, the government filed a second superseding indictment charging Antonio Walton and numerous co-defendants with drug conspiracy and related offenses in the Gary, Indiana area. R. 485. Count 1 alleged that Walton conspired with his sister Keana Porter and others to distribute crack and powder cocaine from July 2015 to November 2016, in violation of 21 U.S.C. §§ 841, 846. *Id.* The indictment also charged other defendants, but not Walton, with substantive drug and gun counts. *Id.* Walton and three others, Charles Gould, Telisha French, and John Tyson, proceeded to trial.

II. COVID-19 Outbreak and Trial

On Friday, March 6, 2020, health officials announced the first confirmed case of COVID-19 in Indiana, and its governor declared a public-health emergency.⁶ Three days later, on Monday, March 9, the district court selected a jury for Walton's trial. Trial Tr. 189. Two days after that, the

⁶ See Ind. Dep't of Health, *State Health Department Confirms 1st Case of Covid-19 in Hoosier with Recent Travel* (Mar. 6, 2020), <https://events.in.gov/event/state-health-department-confirms-1st-case-of-covid-19-in-hoosier-with-recent-travel/>.

World Health Organization declared COVID-19 to be a pandemic.² That same day, March 11, Walton's jury was sworn, and the trial began. *Id.* 224.

In the middle of the first witness's testimony, the trial judge severed Tyson because of health problems unrelated to COVID-19. *Id.* 327-29. Walton moved for a mistrial, citing possible jury confusion. *Id.* 329-30. The court denied the motion, and informed the jury that "[t]here's good reasons for why Mr. Tyson is no longer involved in the case." *Id.* 330-32.

The following day, March 12, the trial judge briefed the attorneys on an emergency court meeting regarding COVID-19. In no uncertain terms, the judge told counsel that he would not be postponing the trial: "This case is moving forward." *Id.* 715-16; App. 8-9.

On Friday, March 13, President Trump declared a national emergency.³ That same day, the Southern District of Indiana issued a general order immediately suspending all jury trials, finding that "[i]t is not possible to . . . conduct a jury trial in a manner that does not expose potential

² See Tedros Adhanom Ghebreyesus, Director-General, World Health Organization, *Opening Remarks at the Media Briefing on COVID-19* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

³ See White House Archives, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

jurors, counsel, court staff and litigants to substantial and unacceptable health risks, specifically, the danger of becoming infected with COVID-19.”⁴ Despite the order suspending all jury trials in the Southern District of Indiana, Walton’s jury trial in the Northern District of Indiana continued unabated.

That same day, March 13, the government’s key cooperating witness, Keana Porter, testified. Most notably, Porter asserted that she was in charge of a house on Massachusetts Avenue where crack was supplied by, and money was returned to, Walton. *Id.* 733, 811. According to Porter, several defendants, including Gould, Emmanuel French, Lafayette Caldwell, and Courtney Crouch, got crack from her at a cut-out window screen in her bedroom, sold the drugs next door at an abandoned “trap” house, and then returned the money to Walton or her. *Id.* 735-36.⁵ Walton’s primary defense

⁴ See S.D. Ind. General Order (Mar. 13, 2020), <https://www.insd.uscourts.gov/sites/insd/files/general-ordes/Court%20General%20Order%20RE%20COVID-19%20-%20203-13-20-Signed.pdf>.

⁵ The government also contended that the conspiracy included Yahtzee Harris and Ben Hickman, who distributed drugs supplied by Walton at different locations. *Id.* 228-29. But there was much less evidence to support that the conspiracy stretched this far. See, e.g., *id.* 501 (testimony of Christopher Green, who sold drugs for Harris, that he never received drugs from Walton), 675 (testimony of Hickman that he did not work for Walton and had other drug suppliers).

was that he did not join a conspiracy, but rather entered into buyer-seller relationships with certain co-defendants. *Id.* 1179-89.

The trial began a second week on Monday, March 16, the same day that the first Indiana death from COVID-19 was announced and the governor ordered all bars, restaurants, and nightclubs to close to in-house patrons.⁶ The Indiana Supreme Court also issued an order, directing local courts to consider suspending and/or rescheduling criminal and civil jury trials.⁷

Despite these development, that same day, after asking staff to bring in the jury, the trial judge indicated not only that he would not be postponing the trial, but also that the attorneys needed to be “efficient” with their cases, given the pandemic:

THE COURT: Okay. So, Shane, do you want to call the jury.

I want to impress upon everybody the need to be as efficient as you can today and tomorrow because **we have to get this thing through the system given what’s going on in the world right now**. Just try to be cognizant of that as best you can. Without rushing, just try to be efficient.

⁶ See WISH TV, *ISDH: 4 more cases of coronavirus identified in Indiana* (Mar. 11, 2020), <https://www.wishtv.com/news/local-news/isdh-4-more-cases-of-coronavirus-identified-in-indiana/>; see also State of Indiana, *2019 Novel Coronavirus (COVID-19)*, <https://www.coronavirus.in.gov/> (last visited Aug. 11, 2021).

⁷ See Ind. Sup. Ct. Order, Case No. 20S-CB-00123 (Mar. 16, 2020), <https://www.in.gov/courts/files/order-other-2020-20S-CB-123.pdf>.

[Counsel for Walton]: Is this the only trial going on in the state?

THE COURT: I don't know.

Id. 957; App. 12. Later that day, both sides rested with no defendant calling any witnesses. *Id.* 1122, 1141.

On Tuesday, March 17, the district court issued a general order making essentially the same findings regarding COVID-19 as the Southern District of Indiana had made four days earlier, but inexplicably allowing then-current jury trials to proceed.⁸ That day, the parties presented their closing arguments to the jury. Defense counsel for Walton began his remarks by verbalizing the disturbance that the pandemic outbreak caused for the trial: “you are thinking about it. I’m thinking about it. Everybody is thinking about it.” *Id.* 1179-80; App. 15-16.

The jury returned its verdict the same day, convicting Walton on Count 1 and finding that the conspiracy involved more than 280 grams of crack cocaine. *Id.* 1269-70.

After announcing the verdict, the trial judge acknowledged to the jury that the COVID-19 pandemic obviously had weighed on their minds, but

⁸ N.D. Ind. General Order No. 2020-05 (Mar. 17, 2020), <https://www.innd.uscourts.gov/sites/innd/files/2020-05.pdf>.

stated that he did not cancel the trial for one simple reason—because he did not want to redo it:

When we started this trial, it didn't seem as if things were quite as dramatic as they've sort of developed, and I received word that the most prudent thing was to just continue on and complete what's been started, and I do think that was the most prudent thing. **Had we canceled it in the middle of trial, we would have had to start all over again, start with a whole new group of people, and conduct the trial again.** I hope you understand where we're coming from in that regard.

Id. 1273; App. 17 (emphasis added).

The following day, Wednesday, March 18, the district court closed its buildings to the public.⁹

⁹ N.D. Ind. General Order No. 2020-06 (Mar. 18, 2020), <https://www.innb.uscourts.gov/sites/innb/files/2020-06.pdf>.

REASONS FOR GRANTING THE PETITION

It is the petitioner's belief that the Question presented is one of which is Debatable Amongst Jurists of Reason.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Antoine Walton

Date: January 12, 2023