

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____ Term 2022

ALEX SMITH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

***PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT***

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Appointed pursuant to 18 USC § 3006A

QUESTION PRESENTED

Does the Due Process Clause of the Fifth Amendment require a trial court to instruct, or refuse to instruct, the Jury on the fundamental meaning of “Beyond a Reasonable Doubt”?

The question presented, on which the Circuits are divided, has been long left open by the Supreme Court, resulting in Defendants in many Circuits being consistently denied due process.

Parties to the Proceeding

The Parties to the Proceeding are Petitioner Alex Smith and Respondent, the United States of America.

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UNITED STATES OF AMERICA, *Respondent*

***PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT***

The petitioner, Alex Smith respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled proceeding on 01 February 2023.

OPINIONS BELOW

The unpublished per curiam opinion of the Court of Appeals for the Fourth Circuit in case Number 21-4328 was decided on 01 February 2023; the opinion, notice of judgment and mandate are reprinted in the appendix. Pet. App. A1-A7.

JURISDICTION

This case arises out of an indictment in the United States District Court for the District of Maryland. The District Court had jurisdiction over this matter pursuant to 18 U.S.C. § 3231. On 15 June 2021, the District Court sentenced Petitioner Smith upon a jury verdict of guilty to Count 2 (18 USC § 1951(a) – Hobbs Act Robbery Conspiracy) and Count 3 (18 USC § 1951(a) – Attempted Hobbs Act Robbery / 18 USC § 2 - Aiding and Abetting). The convictions and sentence constituted a final judgment reflected by Order dated 16 June 2021. Petitioner timely noted an appeal. The United States Court of Appeals for the Fourth Circuit exercised review pursuant to 28 U.S.C. § 1291, affirming the conviction on 01 February 2023. This petition has been filed within 90 days of the order. The Court has jurisdiction pursuant to 28 U.S.C. § 1254.

Statutes Involved

United States Constitution, Amendment V

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 offense 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.

Preliminary Statement

The question in this case is one of Federal Courts uniformly administering the Due Process right to only be adjudged guilty when a jury has been convinced by proof beyond a reasonable doubt. The ability of Petitioner's Jury to reach a constitutionally valid verdict was impaired by the trial court's refusal of Petitioner's request to give an instruction on the meaning of "Proof Beyond a Reasonable Doubt". While this Court has previously ruled that the Constitution neither prohibits, nor requires, trial courts from giving an instruction defining reasonable doubt (*Victor v. Nebraska*, 511 U.S. 1 (1994)), that ruling has created a conflict among the Circuits. The "presumption of innocence"

and the requirement of “Proof Beyond a Reasonable Doubt” are fundamentally rooted principles in our constitutional values. Due Process is uniformly understood to require jury instruction on the elements of crimes to ensure that Juries understand the meaning of the component parts of the crimes that have been charged against a Defendant. In a contrast that defies logical understanding, there is no such uniform requirement for a jury instruction on the Due Process required standard of “Proof Beyond a Reasonable Doubt”. The Fifth, Sixth, Ninth and Eleventh Circuits, all provide standard jury instructions on the meaning of “Proof Beyond a Reasonable Doubt”; while in the Fourth Circuit, the instruction is disfavored to the point of being prohibited, even when requested by the Defendant. That conflict among the Circuits fundamentally impacts the ability of Juries to consistently render Due Process and Justice; and, presents an important question that only the Supreme Court can resolve.

Statement of the Case

The case stems, at heart, from the actions of Petitioner's Co-defendant, Cornell Slater, who engaged in two violent shooting offenses. The Government's evidence was that on the afternoon before the second offense, Slater recruited Petitioner as his back-up for a robbery of Restaurant Depot, a restaurant food supply business where Slater and his girlfriend had worked until just before the robbery. During the attempted robbery, Slater shot a Restaurant Depot employee, who suffered significant injury. Slater and a co-defendant, identified by the Government as Petitioner, ran from the building to the car of Slater's girlfriend, driven by an unidentified and uncharged co-defendant.

The Government's case against Petitioner was based principally upon cellphone data and video of the robbery itself. Slater was identified by one of the Restaurant Depot employees as the robber who did the shooting. On the morning of trial, Slater chose to enter a plea of guilty to some of the counts against him. Petitioner could not receive a plea offer for anything less than the counts with which he was charged,

and a sentence which exceeded the Sentencing Guidelines for the Hobbs Act Robbery count, standing alone. He chose to go to trial.

At the close of evidence, Petitioner requested and proposed language for a Jury Instruction on the meaning of proof “Beyond a Reasonable Doubt”. Pursuant to Fourth Circuit decisional law, the district court denied the motion. The Jury then found Petitioner guilty on each of the counts in which he was charged. At sentencing, the Trial Court ultimately dismissed Count 4, the firearms charge, because of binding Fourth Circuit precedent. After argument from counsel, an Amended Presentence Report was produced that calculated the guideline imprisonment range to be 135 months to 168 months. The Trial Court adjudged a sentence of 240 Months confinement.

Reasons for Granting the Petition

The Opinion below preserves the conflict amongst the Circuits with respect to a Defendant’s Due Process right to have the meaning of “beyond a reasonable doubt” defined to the Jury. This case presents an important opportunity for the Supreme Court to address and resolve the current disparate Due Process rights of Defendants.

I. Due Process requires that a trial court must, if requested by a Defendant, instruct the Jury on the meaning of proof “Beyond a Reasonable Doubt”.

While recognizing the central importance of “Proof Beyond a Reasonable Doubt” as the core value of due process in a criminal trial (see *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)), the Supreme Court has held that the Constitution neither prohibits trial courts from defining reasonable doubt, nor requires them to do so. *Victor v. Nebraska*, 511 U.S.1 (1994). Unfortunately, the prior failure of the Supreme Court to create a consistent regime has allowed a conflict in the Circuits that places Defendants in markedly different positions with respect to their fundamental right to have the jury instructed upon the meaning of Proof Beyond a Reasonable Doubt. Certiorari should be granted to remedy the conflict among the Circuits with respect to Defendants’ Due Process Rights.

In the Fourth Circuit, "although the district court may define reasonable doubt to a jury . . . the district court is not required to do so. *United States v. Walton*, 207 F.3d 694, 696-97 (4th Cir. 2000) (en banc); see also *United States v. Williams*, 152 F.3d 294, 298 (4th Cir. 1998)

("The trial court is not required to define reasonable doubt as a matter of course so long as the jury is instructed that a defendant's guilt must be proven beyond a reasonable doubt."). *United States v. Lighty*, 616 F.3d 321 at 380 (4th Cir. 2010, internal quotation marks omitted.) The Fourth Circuit has explained, "Not requiring such an instruction is based on this Circuit's belief that attempting to explain the words beyond a reasonable doubt is more dangerous than leaving a jury to wrestle with only the words themselves." *United States v. Hornsby*, 666 F.3d 296, 310-311 (4th Cir. 2012). However, the failure to instruct on the issue leaves juries to guess what "Proof Beyond a Reasonable Doubt" may be. Is it a higher, or lower, standard than proof beyond a preponderance of the evidence? Does it require clear and convincing evidence, something more, or something less? If a jury cannot be relied upon to guess the elements of a crime in a constitutionally sustainable manner; how, exactly, is a jury in the Fourth Circuit to guess the meaning of the "Beyond a Reasonable Doubt" standard that, in the words of the Supreme Court, "plays a vital role in the American scheme of criminal procedure [because it] is a prime instrument for reducing the risk of convictions resting on factual error"? *Cage v. Louisiana*, 498

U.S. 39, 40-41, 111 S. Ct. 328 (1990) (per curium) (citations omitted); See also *Duncan v. Louisiana*, 391 U.S. 145, 151-154, 88 S. Ct. 1444 (1968); *Sullivan v. Louisiana*, 508 U.S. 275, 277-278, 113 S.Ct. 2078 (1993).

The Commentary to Rule 1.03 of the Sixth Circuit Pattern Criminal Jury Instructions (Updated as of 1 July 2019 and 21 March 2021)["6thCir.PCJI"] outlines the legal quagmire created by the Supreme Court:

The reasonable doubt standard represents "a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship*, [397 U.S. 358], 397 U.S. at 372 (Harlan, J., concurring). Accord, *Francis v. Franklin*, 471 U.S. 307, 313 (1985). The purpose of the reasonable doubt standard is to reduce the risk of an erroneous conviction:

There is always in litigation a margin of error, representing error in factfinding [sic], which both parties must take into account. Where one party has at stake an interest of transcending value--as a criminal defendant his liberty--this margin of error is reduced as to him by the process of placing on the other party the burden of ... persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt.

In re Winship, supra at 364.

Despite repeated characterizations of the reasonable doubt standard as "vital," "indispensable," and

"fundamental," see *Winship*, supra at 363-64 and *Jackson v. Virginia*, [443 U.S. 307] at 317, the Supreme Court has been ambivalent about whether and to what extent the term "reasonable doubt" should be defined. On the one hand, the Court has stated on three occasions that "attempts to explain the term 'reasonable doubt' do not usually result in making it any clearer to the minds of the jury." *Holland v. United States*, [348 U.S. 121] at 140; *Dunbar v. United States*, 156 U.S. 185, 199 (1894); *Miles v. United States*, 103 U.S. (13 Otto) 304, 312 (1880). On the other hand, the Court has said that "in many instances, especially where the case is at all complicated, some explanation or illustration of the rule may aid in its full and just comprehension." *Hopt v. Utah*, [120 U.S. 430] at 440. And in several other cases, the Court has quoted some rather lengthy explanations of the term without criticism. See, e.g., *Wilson v. United States*, 232 U.S. 563, 569-70 (1913); *Holt v. United States*, 218 U.S. 245, 254 (1910); *Agnew v. United States*, [165 U.S. 36] at 51. 6thCir.PCJI, Rule 1.03 Commentary.

After further discussion, the Commentary explains the Sixth Circuit's sifting of Supreme Court guidance to craft the Circuit's recommended pattern instruction:

Supreme Court decisions provide a substantial amount of guidance on what instructions on reasonable doubt should say, some of it rather detailed. The Court has said that proof beyond a reasonable doubt does not mean proof to an "absolute certainty" or proof beyond all "possible" doubt. *Hopt v. Utah*, supra, 120 U.S. at 439-40. "[S]peculative minds may in almost every . . . case suggest possibilities of the truth being different from that established by the most convincing proof . . . [but] [t]he jurors are not to be led away by speculative notions as to such possibilities." *Id.* at 440.

In dictum, the Supreme Court has described the state of mind the jurors must reach as "a subjective state of near certitude." *Jackson v. Virginia*, [443 U.S. 307] at 315. Accord *Johnson v. Louisiana*, 406 U.S. 356, 360 (1972); *In re Winship*, supra, 397 U.S. at 364.

The Supreme Court has approved the concept that a reasonable doubt is "one based on reason," *Jackson v. Virginia*, supra, 443 U.S. at 317, and has noted with apparent approval that numerous cases have defined a reasonable doubt as one "based on reason which arises from the evidence or lack of evidence." *Johnson v. Louisiana*, [406 U.S. 356] at 360. The Court has also approved the analogy that a reasonable doubt is one that would cause reasonable persons to "hesitate to act" in matters of importance in their personal lives. *Holland v. United States*, [348 U.S. 121] at 140, citing *Bishop v. United States*, 107 F.2d 297, 303 (D.C.Cir. 1939). Accord *Hopt v. Utah*, supra, 120 U.S. at 441.

The Supreme Court has also disapproved or cast doubt on several concepts. In *Hopt v. Utah*, supra at 440, the Court said that "the words 'to a reasonable and moral certainty' add nothing to the words 'beyond a reasonable doubt' [and] may require explanation as much as the other." In *Victor v. Nebraska*, 511 U.S. 1 (1994), the Supreme Court held that use of the term moral certainty did not, of itself, make the reasonable doubt instruction unconstitutional. *Id.* at 14. This instruction does not use and never has used any moral certainty language. In *Cage v. Louisiana*, 498 U.S. 39 (1990), disapproved of on other grounds, *Estelle v. McGuire*, 502 U.S. 62, 73 n.4 (1991), the Court held that instructions defining a reasonable doubt as "an actual substantial doubt" and as one that would give rise to a "grave uncertainty" were reversibly erroneous. See also *Taylor v. Kentucky*, [436 U.S. 478] at 488, where the Court quoted the trial court's instruction defining a reasonable doubt as "a substantial doubt, a real doubt," and then said "[t]his definition, though perhaps not in itself reversible error, often has been

criticized as confusing." In *Holland v. United States*, *supra*, 348 U.S. at 140 the Court said that the language "hesitate to act" should be used instead of the language "willing to act upon." In *Harris v. Rivera*, 454 U.S. 339, 347 (1981), the Court indicated that a reasonable doubt may exist even if the factfinder cannot articulate the reasons on which the doubt is based. 6thCir.PCJI, Rule 1.03 Commentary.

Some Circuits have crafted jury instructions to provide guidance on the constitutionally essential concept of Proof Beyond a Reasonable Doubt. Though there are differences among the instructions, none of the following have been struck down by the Supreme Court.

In the **Fifth Circuit**, the jury is instructed as follows:

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all [and no inference whatever may be drawn from the election of a defendant not to testify].

The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that

you would be willing to rely and act upon it without hesitation in the most important of your own affairs. Fifth Circuit Pattern Jury Instructions (Criminal Cases), 2019 Edition, Instruction 1.05.

In the **Sixth Circuit**, the jury is instructed:

. . . (4) The government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

(5) Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict. Sixth Circuit Pattern Criminal Jury Instructions, Rule 1.03.

In the **Ninth Circuit**, the jury is instructed that:

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It

may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty. Ninth Circuit Manual of Model Criminal Jury Instructions (2022), Rule 6.5.

The **Eleventh Circuit** instructs:

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so. Eleventh Circuit Pattern Jury Instructions for Criminal Cases (2022), Instruction B3.

Each of the Circuits requiring an instruction on the meaning of “Proof Beyond a Reasonable Doubt” has sought to fulfill the proper role of the courts in a criminal case by determining the law and defining legal standards for the jury.

In other contexts, even the *Fourth Circuit* has recognized that **“it is the responsibility-- and the duty -- of the court to state to the jury the meaning and applicability of the appropriate law,** leaving to the jury the task of determining the facts which may or may not bring the challenged conduct within the scope of the court's instruction as to the law.” *Adalman v. Baker, Watts & Co.*, 807 F.2d 359, 366 (4th Cir. 1986) (citations omitted, emphasis added); *United States v. Wilson*, 133 F.3d 251, 265-6 (4th Cir. 1997). **There are “no circumstances which would shift this burden from the court to the jury, where the jury judgment would be influenced, if not made, on the basis of the usual pattern of conflicting ... opinions” of fellow jurors’ view of the law.** *Id.* But when defining the meaning of “Proof Beyond a Reasonable Doubt”, perhaps trying to avoid reversal by a Supreme Court that has not provided specific

guidance, the Fourth Circuit has evaded its requirement to state the meaning of the law.

Leaving a jury to determine the meaning of “proof beyond a reasonable doubt” abdicates the constitutional responsibility of the trial court and leaves the distinct possibility of an erroneous understanding of the standard. “It would not satisfy the Sixth Amendment to have a jury determine that the defendant is probably guilty.... the jury verdict required by the Sixth Amendment is a jury verdict of guilty beyond a reasonable doubt.” *Sullivan v. Louisiana*, 508 U.S. 275, 277-278 (1993). This is the very heart of the reason that, when a jury instruction incorrectly defines “beyond a reasonable doubt”, “a defendant’s Sixth Amendment right to jury trial is denied” and the verdict must be reversed. *Id.* A jury instruction that erroneously defines reasonable doubt is never harmless and must always invalidate the convictions. *Id.*; *Cage v. Louisiana*, 498 U.S. 39, 41; Cf. *Victor v. Nebraska*, *supra*, (in reviewing a state court’s definition of reasonable doubt the Supreme Court’s inquiry was limited to whether taken as a whole “there is a reasonable likelihood that the jury applied the reasonable doubt standard in an unconstitutional manner.”)

The danger of leaving twelve jurors to their own uninformed perceptions of the meaning of “Beyond a Reasonable Doubt” without a definition from the court is that the jury is likely to employ an unconstitutional understanding of the term. By declining to instruct on the critical issue, the trial court has just hidden the unconstitutional definition of reasonable doubt from the record and from appellate review.

The Jury is empowered to determine whether the Government’s evidence was adequate to prove guilt “beyond a reasonable doubt”: however, if a jury can choose between alternative theories of conviction on a specific count, the unconstitutionality of any of the theories requires that the conviction be set aside. See, e. g., *Stromberg v. California*, 283 U.S. 359 (1931); *Leary v. United States*, 395 U.S. 6, 31-32(1969); *Sandstrom v. Montana*, 442 U.S. 510, 526 (1979); *California v. Roy*, 519 U.S. 2, 6-8 (1996). In the same way, the potential of any unconstitutional understanding of “beyond a reasonable doubt” applied by the jury in Petitioner’s trial resulted in an unconstitutional verdict.

The refusal of the trial court to provide the requested instruction on the meaning of proof “Beyond a Reasonable Doubt” left the potential

for the uninstructed Jurors in Petitioner’s trial to have applied an unconstitutional understanding of “Beyond a Reasonable Doubt”. That circumstance could not occur in any of the Circuits that require a Jury Instruction on the meaning of Beyond a Reasonable Doubt. The Supreme Court should grant certiorari to create uniformity across the Circuits for a fundamental element of Due Process for Defendants facing criminal charges.

CONCLUSION

For the foregoing reasons, Petitioner, Alex Smith, respectfully prays that the Court grant certiorari and reverse the judgment of the Fourth Circuit Court of Appeals.

Respectfully submitted,

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