NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY DALE ROBINSON,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the U.S. Constitution requires a jury trial and proof beyond a reasonable doubt to find that a defendant's prior convictions were "committed on occasions different from one another," to impose an enhanced sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1).

2. Whether, in light of the multifactor test required by *Wooden v. United States*, 595 U.S. 360 (2022), a court may properly conduct an occasions-clause analysis based solely on information found in the arrest reports from the defendant's prior convictions when there was no admissible evidence in the record from which a jury would have been able to decide the question below.

LIST OF PARTIES

The only parties to the proceeding are those appearing in the caption to this petition.

LIST OF DIRECTLY RELATED PROCEEDINGS

United States v. Jeremy Dale Robinson, No. 2:21-cr-20002-PKH, U.S. District Court for the Western District of Arkansas. Judgment entered June 10, 2021.

United States v. Jeremy Dale Robinson, No. 21-2396, U.S. Court of Appeals for the Eighth Circuit, order entered on August 9, 2022. Rehearing and rehearing en banc denied November 1, 2023.

TABLE OF CONTENTS

Page

INDEX TO APPENDIX

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Constitutional Provisions

PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

On August 9, 2022, a panel of the Eighth Circuit Court of Appeals entered its opinion and judgment affirming the enhanced sentence the district court imposed upon Jeremy Dale Robinson under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1). *United States v. Robinson*, 43 F.4th 892 (8th Cir. 2022). Petitioner's Appendix ("Pet. App.") 1a-4a. On November 1, 2023, the Eighth Circuit entered an order denying Mr. Robinson's petition for rehearing and rehearing en banc; this order is unpublished but may be found at 2023 WL 7175727. Pet. App. 5a.

JURISDICTION

The order denying Mr. Robinson's petition for rehearing and rehearing en banc was entered on November 1, 2023. This petition is timely submitted. Jurisdiction to review the judgment of the court of appeals is conferred upon this Court by 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner refers this Honorable Court to the following constitutional and statutory provisions:

U.S. Const. amend. VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

18 U.S.C. § 924(e):

> (e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person

shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 941 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

STATEMENT OF THE CASE

1. On November 18, 2020, Jeremy Dale Robinson was charged in a one-count complaint for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924(c). On March 3, 2021, Mr. Robinson waived indictment and pleaded guilty to an information charging him with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g), 924(c), and 924(e). The information that charged Mr. Robinson with this offense did not identify any of his prior convictions or state that he had three prior convictions for ACCA predicates committed on occasions different from one another. Nonetheless, the presentence investigation report ("PSR") prepared by the U.S. Probation Office classified Mr. Robinson as an armed career criminal based on at least three prior Arkansas state convictions for residential burglary and aggravated assault that qualified as ACCA predicates.

2. Mr. Robinson objected to the ACCA enhancement in objections to the PSR, asserting that three of his burglary convictions and his conviction for aggravated assault as alleged in paragraphs 44 through 46 of the PSR were not committed on different occasions from each other within the meaning of the ACCA; therefore, Mr. Robinson argued, these could not be counted as separate ACCA predicates. The only record evidence of the prior burglary convictions was contained in paragraphs 44 through 46 of the PSR purporting to describe those convictions:

> Arrest records reflect that on June 29, 2011, [K.J.] reported . . . that her front door had been kicked open, and the following items were missing: two gaming systems, a laptop computer, and approximately 60 DVD's. . . .

> Arrest records reflect that on June 14, 2011, [J.C.] arrived at his residence, and he observed a light turned off, although no one should have been home. The front door appeared to have been kicked open. [J.C.] entered the home, and he found Robinson standing inside a bedroom. [J.C.] told Robinson to leave, at which time Robinson pointed a firearm at [J.C.] and told [J.C.] to get out of his way. [J.C.] advised that the firearm was a Ruger .357 revolver that was taken from [J.C.'s] bedroom. Robinson then left the residence. [J.C.] and his wife observed that several items were missing from their residence to include the following: another firearm, an iPhone, a camera, clothing, food, and a vacuum cleaner. . . .
>
> Arrest records reflect that on March 27, 2011, [B.M.] reported . . . that she arrived home to find her front door open, and that the door jam was damaged. Upon arrival, an officer observed that her front door had been kicked in, and the back door was also open. [B.M.] advised that the following items were missing from her home: an X-box gaming system, several video games, a digital camera, $10,000 in U.S. currency, and a purse.

The PSR contains only information gained from the arrest records, which are not proper documents under *Shepard v. United States*, 544 U.S. 13 (2005). It contains no other information about these convictions, nor does it include the underlying documents pertaining to the convictions or any other evidence.

3. On June 10, 2021, Mr. Robinson appeared before the district court for sentencing. The court rejected Mr. Robinson's argument that his 2012 burglary and aggravated assault offenses were committed on occasions different from one another. The court concluded these were separate offenses solely because they were committed on separate dates. The court found that the sentencing enhancement under the ACCA was applicable and sentenced Mr. Robinson to the mandatory minimum term of 180 months imprisonment—five years above the otherwise-applicable 10-year maximum prescribed for the offense of conviction.

4. Mr. Robinson appealed his sentence to the Eighth Circuit Court of Appeals. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, which gives it jurisdiction over all final decisions of the district courts of the United States. The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The Eighth Circuit affirmed the district court's decision to sentence Mr. Robinson as an armed career criminal under the ACCA. *United States v. Robinson*, 43 F.4th 892 (8th Cir. 2022); Pet. App. 1a-4a. Mr. Robinson argued on appeal to the Eighth Circuit that three of his predicate offenses were committed on the same occasion and should accordingly have been counted only as a single predicate. He also argued that the application of a sentencing enhancement under the ACCA violated his Fifth and Sixth Amendment rights because its requirements—*i.e.*, three prior qualifying convictions for offenses that were "committed on occasions different from one another"—were not charged in the indictment and proved to a jury beyond a reasonable doubt (or admitted by the defendant in a guilty plea). The panel rejected both arguments.

5. Before the case was submitted to the panel, this Court issued its opinion in *Wooden v. United States*, 142 S. Ct. 1063 (2022), resolving a circuit conflict over the meaning of the "occasions clause." The Court adopted a holistic and multifactored factual approach to the resolution of that question. The Court also noted, but did not decide, "another question arising from ACCA's occasions clause: whether the Sixth Amendment requires that a jury, rather than a judge, resolve whether prior crimes occurred on a single occasion." *Id.* at 1068 n.3.

The Eighth Circuit panel applied its pre-*Wooden* case law for resolving issues under the occasions clause, opining that *Wooden* generally did not supplant the three-factor test it had been utilizing. The panel looked to the facts in the PSR to determine that Mr. Robinson committed the burglaries on separate days and at separate locations, and that they involved separate victims. The panel also rejected Mr. Robinson's argument that the issue of whether his prior offenses were committed on different occasions was an issue that must be determined by a jury, finding the argument to be foreclosed by precedent that treated recidivism-related facts as those that can be resolved by a judge. The panel noted that "a sentencing court does not violate the Sixth Amendment when it considers information outlining the underlying facts of an offense. . . ." Pet. App.4a.

6. Mr. Robinson petitioned for rehearing on the question of whether the sentencing court had violated his Fifth and Sixth Amendment rights by imposing an ACCA sentence based on its own determination that his prior burglary convictions were committed on occasions different from one another. The petition argued that in light of the *Wooden* decision, the different-occasions issue is fact-intensive and cannot be resolved based on the fact of prior conviction alone. Accordingly, under a line of Supreme Court cases (including *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Alleyne v. United States*, 570 U.S. 99 (2013); *Descamps v. United States*, 570 U.S. 254 (2013); and *Mathis v. United States*, 579 U.S. 500 (2016)), the factual question of whether prior offenses were committed on different occasions was for the jury to resolve. On

November 1, 2023, the Eighth Circuit issued its order denying the petition for rehearing and rehearing en banc. Pet. App. 5a.

REASONS FOR GRANTING THE PETITION

1. This Court has already granted certiorari on the first question presented by this case.

This case first presents the same question as another case in which this Court recently granted certiorari—*Erlinger v. United States*, 77 F.4th 617 (7th Cir. 2023), *cert. granted*, 2023 WL 8007339 (U.S. Nov. 20, 2023) (No. 23-370). Again, that question is whether the Constitution requires a jury trial and proof beyond a reasonable doubt to find that a defendant's prior convictions were for offenses "committed on occasions different from one another," as is necessary to impose an enhanced sentence under the ACCA. As in *Erlinger*, the question has been properly preserved both in the district court and in the court of appeals below, and it is now ripe for decision by this Court. Because the first question presented here is identical to the one the Court has decided to consider in *Erlinger*, Mr. Robinson suggests that it would be appropriate to also grant his petition for review and consolidate the cases for decision, or alternatively to hold his petition in abeyance pending resolution of *Erlinger*.

2. This Court should address the second question presented to ensure that its recent *Wooden* decision is being properly applied in the lower courts.

If this Court decides the answer to the first question presented here is that a jury must decide whether ACCA predicates were committed on different occasions and that this fact must be charged in the indictment, Mr. Robinson submits that he

should simply be resentenced without the ACCA enhancement because his indictment contained no such charge. If the Court should determine that a harmless-error analysis may be applied to Mr. Robinson's situation, remand would still be required for such analysis to occur at the district court level based on the requirements of *Wooden*. The only evidence below bearing on the different-occasions issue is the PSR's recitation of the arrest documents from the prior state proceedings. The facts asserted in those documents are insufficient to carry the Government's burden of proof on the different-occasions issue beyond a reasonable doubt. Not only is the record undeveloped on the underlying facts, but the non-elemental facts from prior-arrest records that the PSR cited "are prone to error precisely because their proof is unnecessary" to conviction, thus making reliance on such non-elemental facts a source of "unfairness to defendants" when they "trigger[ ] a lengthy mandatory sentence." *Mathis*, 579 U.S. at 512. It is not even clear that such records would be admissible evidence that could be considered by a jury. The record thus contains no reliable basis for conducting the multi-factor analysis that *Wooden* requires, let alone enough to carry the Government's burden to show harmlessness.

The Eighth Circuit concluded that Mr. Robinson's case is distinguishable from *Wooden* because he "committed three different burglaries on separate and nonconsecutive days, at separate locations, arising from isolated conduct." *Robinson*, 43 F.4th at 896. Based on the wording of the PSR, Mr. Robinson admitted only that he was convicted of the crimes and that the arrest reports contained allegations to this effect but did not admit that the dates were correct in the arrest records. The

pertinent PSR paragraphs state: "*Arrest records reflect*," (emphasis added), and then proceed to allege specific dates, victims, and criminal acts. Mr. Robinson's admission that the PSR accurately reflected a conviction from his prior state cases is not equivalent to an admission that those arrest reports accurately reflected reality or exact dates.

Furthermore, Mr. Robinson contends that the court has failed to consider the crucial question of whether his prior burglary convictions could have arisen out of a single "criminal episode" and what could possibly constitute a "criminal episode" under *Wooden*. For example, if a defendant goes on a drug-fueled, multi-day crime spree, a jury could reasonably conclude that multiple different offenses should still be considered a single occasion under *Wooden*. Courts undertake a similar analysis when determining whether to permit introduction of evidence of "other acts" by a defendant that are not directly related to the charged offense. If such "other acts" are "inextricably intertwined" with the charged offense, or the other acts and the charged offense conduct are part of a "single criminal episode," or the other acts are "necessary preliminaries" to the crime charged, then the other-act evidence is considered intrinsic evidence that is properly admissible and that does not implicate Federal Rule of Evidence 404(b). *See, e.g.*, *United States v. Rice*, 607 F.3d 133, 141 (5th Cir. 2010). In *Rice*, the court found that the defendant's four unsuccessful robbery attempts over the course of a number of hours involving a number of unrelated

persons at a number of unrelated locations[1] were part of a "unified criminal episode" with the carjacking for which he was charged; evidence of these attempted crimes was accordingly found to be intrinsic and, therefore, admissible. *Id.* If such a disjointed collection of criminal activities can be found to constitute a single criminal episode to be used against a defendant in an evidentiary context, similar activities should receive similar treatment to aid a defendant in the sentence-enhancement context.

This Court should act to correct the Eighth Circuit's failure to properly apply *Wooden*. Such action will clarify to the lower courts that the *Wooden* test should be applied in analyzing every occasions-clause question, and that a key part of this test is consideration of whether prior offenses could have been committed in a single criminal episode. It is critical that this Court ensure that the lower courts are consistently and properly applying *Wooden* in cases where the ACCA may be applied.

[1] "Specifically, the Government introduced evidence that the [defendant and his co-conspirators] (1) attempted to rob a woman who had just won a prize playing bingo; (2) tried to rob a pizza delivery man; (3) attempted to rob an elderly couple Rice spotted at a grocery store; and (4) sought to rob a convenience store." *Rice*, 607 F.3d at 141.

CONCLUSION

For all of the foregoing reasons, Petitioner Jeremy Dale Robinson respectfully requests that this Court grant the petition for a writ of certiorari and accept this case for review or, in the alternative, that it hold this petition in abeyance until it renders its decision in *Erlinger v. United States*, Docket No. 23-370.

DATED: this 29th day of January, 2024.

Respectfully submitted,

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