

No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 2024

MAURICE OWEN WILEY, JR., a/k/a Tweet,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

DOES THE IMPOSITION OF CONSECUTIVE PUNISHMENTS FOR CONSPIRACY TO COMMIT HOBBS ACT ROBBERY IN VIOLATION OF 18 U.S.C. § 1951(a) and CONSPIRACY TO POSSESS FIREARMS IN FURTHERANCE OF A CRIME OF VIOLENCE IN VIOLATION OF 18 U.S.C. § 924(o) VIOLATE DEFENDANT'S RIGHTS UNDER THE UNDER THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION WHERE THE EVIDENCE PRESENTED SHOWED A SINGLE CONSPIRACY TO COMMIT A ROBBERY WITH A FIREARM?

LIST OF PARTIES

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

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The petitioner, Maurice Owen Wiley, Jr., respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit issued on February 15, 2024 and amended on February 21, 2024, affirming petitioner's convictions and sentences for both conspiracy to commit Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a) and conspiracy to possess firearms in furtherance of a crime of violence in violation of 18 U.S.C. § 924(o) where consecutive sentences were imposed for both offenses.

OPINIONS BELOW

Petitioner's convictions and sentences were affirmed by a Panel of the United States Court of Appeals for the Fourth Circuit in a published opinion, a copy of which appears as Appendix A.

JURISDICTION

This petition is filed within 90 days of the decision of the Court of Appeals and is therefore timely. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part, the following:

...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;

STATEMENT OF THE CASE

On January 4, 2021, a Federal Grand Jury for the Middle District of North Carolina returned a six-count superceding indictment against Petitioner and other co-defendants. In Count One, Petitioner was charged with conspiracy to commit Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a); in Count Two, Petitioner was charged with attempted Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a); in Count Three, Petitioner was charged with conspiracy to possess firearms in

furtherance of a crime of violence in violation of 18 U.S.C. § 924(o); and in Count Four, Petitioner was charged with possession of ammunition by a felon in violation of 18 U.S.C. § 922(g). Petitioner was not charged in the remaining two counts of the indictment. Petitioner entered pleas of not guilty to all charges and his jury trial began on April 19, 2021. On April 27, 2021, Petitioner's jury returned verdicts of guilty to Counts One through Three, and he was acquitted on Court Four.

The sentencing hearing took place on August 18, 2021. The court imposed a sentence of 240 months on Count One to be followed by a 240 month sentence on Court Two to be followed by an 80 month sentence on Count Three for a total of 560 months.

STATEMENT OF THE FACTS

The Government's evidence tended to show that Petitioner, Darryl Bradford, Hykeem Cox, Semaj Bradley, and Charles Daniels planned to rob Wai Ping Chan and Hong Zheng, who owned the China Wok Restaurant located in Durham, North Carolina. On April 13 and 14, 2018 the group conducted surveillance by driving to the China Wok and then to 4617 Carlton Crossing, Chan and Zheng's residence. The plan was to commit the robbery at the owners' residence, which was a short distance away from the restaurant.

On Sunday, April 15, 2018 at approximately 10:22 p.m., Chan and Zheng pulled into the driveway of their residence. Zheng remained in the vehicle while Chan went to the front door of the residence. As part of a planned routine, when

Ms. Chan got to the front door, her son, Eastern Zheng handed her a 9 mm semi-automatic handgun. As Chan stood on the front porch, she was approached by men armed with weapons who began shooting. Chan returned fire. After numerous shots were fired both by Chan and her assailants, the would be robbers fled the scene in a vehicle. The crime scene investigation revealed the recovery of numerous shell casings of 9 mm, .40 and .45 caliber. Mr. Zheng, whose vehicle was found at the bottom of the driveway, had been shot and killed during the exchange. Investigators later determined that the vehicle used in the crime was a Lincoln MKX that had been rented by Taquila House and used by Petitioner. A computer infotainment system installed in the vehicle provided accurate GPS information identifying it as the vehicle used in the attempted robbery. Hykeem Cox, one of the co-defendants, cooperated and testified on behalf of The Government. He admitted his involvement in the offense and identified the Petitioner as the driver of the vehicle. Cox also acknowledged that in the early stages of the investigations, he blamed the Petitioner as the “trigger man” who killed Mr. Zheng. Cox later would acknowledge that he was actually the person who shot and killed Mr. Zheng. Cox still maintained that Petitioner had fired a weapon during the attempted robbery.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the decision of the United States Court of Appeals for the Fourth Circuit appears likely in conflict with prior decisions of this Court. *Braverman v. United States*, 317 U.S. 49, 63 S.Ct. 99, 87 L.Ed.2d 23

(1942).

Petitioner was charged in count one with conspiracy to commit Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a). In count three, Petitioner was charged with conspiracy to possess firearms in furtherance of a crime in violation of 18 U.S.C. § 924(o). Both conspiracy charges stem from a single attempted Hobbs Act Robbery, hence the government was charging two separate conspiracies arising out of a single substantive offense. Petitioner challenged count three in pretrial proceedings, during his trial and on appeal. The trial court and appellate court not only upheld both convictions but approved of consecutive punishments being imposed for both conspiracies.

Discussion of the Issue

Count One alleged that Wiley conspired with his codefendants to commit a Hobbs Act robbery of the owners and employees of China Wok by means of actual and threatened force, violence, and fear of injury between April 13 and 15, 2018. Similarly, Count Three alleges that Wiley conspired with his codefendants between April 13 and 15, 2018, to possess firearms in furtherance of a crime of violence, which the Court instructed was a Hobbs Act robbery.

There was no testimony at trial as to there being anything but a single agreement to rob the Zheng family at their home. There was no evidence that there was an agreement to rob the family and then a separate agreement to use guns in the robbery. Codefendant Hykeem Cox was the only cooperating codefendant to testify at trial as to how the robbery was planned and conducted. He did not testify

that there was an agreement to rob the family and then a separate agreement to use guns in that robbery. Instead, he testified to a single agreement to commit an armed robbery of the family.

Cox testified that the group decided to rob the owners of China Wok at their home because they were believed to keep their money at home. The following dialogue took place between the prosecutor and Cox:

Q Why did you have guns?
A Because we was going to commit a robbery.
Q Was that the agreement between you-
A Yes, sir.
Q -- to have guns to commit a robbery?
A Yes, sir.

When asked later by the prosecutor why they had guns, Cox explained as follows: "Because we about to rob them." Further, Cox testified as follows:

Q Why was it necessary to make sure he (codefendant Charles Daniels AKA "Murda") was armed?
A Because everybody needs a gun.
Q Why do you need a gun?
A Because we fixing to go rob somebody.

Cox's testimony makes clear that there were not two separate conspiracies. Instead, the necessity that the robbers be armed was inherent in the nature of the conspiracy to commit a Hobbs Act robbery. Cox explained that the reason they were armed was that they were going to commit a robbery, a crime that in his mind necessarily includes guns. As stated above, Cox testified that "the agreement" was "to have guns to commit a robbery." This was a single agreement, a single conspiracy. The actors and goals of the conspiracies alleged in Counts One and

Three were the same, indicating that this was one conspiracy, not two. There was no evidence of two separate agreements. There was an overlap of key acts, methods, and goals.

Here, Wiley was sentenced to 240 months on Count One and 80 months consecutive on Count Three. Wiley submits this violates the Double Jeopardy Clause because Count One and Count Three were the same offense. While Count Three required proof that the conspiracy included use/carrying/possession of firearms that Count One did not, Count One did not require proof of any facts beyond those required by Count Three. As instructed by the district court, Count Three's predicate offense was a Hobbs Act robbery, the same object of the conspiracy charged in Count One. Thus, Count One did not require proof of any element not contained in Count Three. Therefore, application of the *Blockburger* test establishes that these were the same offense. Wiley's guarantee against Double Jeopardy was violated by being sentenced to a consecutive 80-month sentence on Count Three.

The allegation in a single count of a conspiracy to commit several crimes is not duplicitous, for "The conspiracy is the crime, and that is one, however divers its objects." *Frohwerk v. United States*, 249 U.S. 204, 210, 39 S.Ct. 249, 63 L. Ed. 561(1919).

For when a single agreement to commit one or more substantive crimes is evidenced by an overt act, as the statute requires, the precise nature and extent of the conspiracy must be determined by reference to the agreement which embraces and defines its objects. Whether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the state punishes. The one agreement cannot be taken to be several

agreements and hence several conspiracies because it envisages the violation of several statutes rather than one.

Braverman at 101-102. “The single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute... For such a violation only the single penalty prescribed by the statute can be imposed.” *Id.*

The panel below has run afoul of this court’s holding in *Braverman*. The panel rejected this Court’s proscription regarding a single agreement violating more than one statute.

Wiley, doesn’t dispute that each statutory provision authorizes a separate punishment. Rather, he claims that because these convictions arose from a single agreement, he can’t be punished under both provisions. Not so.

The Double Jeopardy Clause “protects against multiple punishments for the same offense.” *United States v. Ayala*, 601 F.3d 256, 264 (4th Cir. 2010). But the Clause doesn’t prohibit Congress from punishing the same course of conduct under different statutes. *Id.* at 265. When a single act violates two distinct statutory provisions, the district court may impose multiple punishments without violating the Clause if Congress authorizes it to do so.

United States v. Wiley, 93 F.4th 619, 632 (4th Cir. 2024).

Here, the panel of the Fourth Circuit has ignored this Court’s directive in *Braverman* and specifically holds that the double jeopardy clause does not protect against multiple punishments for a single conspiracy. While *Braverman* is an older case, it is still controlling authority. It is significant to this Court’s jurisprudence. This Court should grant certiorari to instruct the panel below that *Braverman*, still remains the law of the land as it relates to the double jeopardy protections of the Fifth Amendment.

CONCLUSION

For reasons set forth above, petitioner requests this Court grant a writ of certiorari to review the United States Court of Appeals for the Fourth Circuit Judgment below to answer this important question of constitutional law.

Respectfully submitted this the 9th day of May 2024.

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