No. 23-7778

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

DAVONTE WILLIAMS-DORSEY — 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 2ND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVONTE WILLIAMS-DORSEY
(Your Name)

PO BOX 9000
(Address)

SAFFORD, AZ 85548
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

I. Did the lower courts err in their preclusion of Petitioner's duress defense at trial, given the preexisting caselaw, wherein the Jury, not the Court, is to try the facts of said defense? See, United States v. Paul, 110 F.3d 869, 871 (2d Cir. 1997); United States v. Contento-Pancho 723, F.2d 691, 695 (9th Cir. 1984); and Sandstrom v. Montana, 442 U.S. 510, 523 (1974).

II. The lower courts affirmed the government's argument that a duress defense necessisated a fourth element of surrendering to authorities once reaching a position of safety, despite the 9th Circuit Court's ruling that such an element is "...required only in prison escape cases...," wherein other circumstances "...the defense has been defined to include only three elements." See, United States v. Contento-Pancho, 723 F.2d 691, 695 (9th Cir. 1984). With this established precedent, were the lower courts' affirmations of these arguments, which the ruling to preclude Petitioner's duress defense hinged upon, erroneous?

III. Both the pretrial and trial process contained additional cumulative errors, namely, access issues to protective order discovery, the Trial Judge's capricious ruling on the role of stand-by counsel, the improperly admitted and highly prejudical 404(b) act evidence, and the Trial Judge's frequent interruptions of Petitioner which was likewise prejudical before the Jury. These errors were deemed harmless by the 2d. Circuit Court, despite not having proven as such beyond a reasonable doubt. See, United States v. Lombardozzi, 491 F.3d 61, 76 (2d Cir. 2007); and United States v. Felder, 993 F.3d 57, 71 (2d Cir. 2021). Thus, would this neglect of precedure not contribute to the violation of Petitioner's right to due process under the Fifth Amendment and, therefore, also his right to a fair trial under the Sixth Amendment?

LIST OF PARTIES

[X] 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

UNITED SATES OF AMERICA V. DAVONTE WILLIAMS-DORSEY, [illegible] 22-13[illegible] C.

NOS. 22-1360-cr

22-1459-cr

22-1461-cr

2023 U.S. App. LEXIS 30782 (2d Cir. Nov. 20, 2023)

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Merriam-Webster.com/dictionary/smuggle

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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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at U.S. v DaVonte Williams-Dorsey; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished. 2023 U.S. App. LEXIS 30782
(2d Cir. Nov. 20, 2023)

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,
[X] is unpublished. Case No.: 5:20-cr-86-FJS Document 233

[ ] 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 20 November, 2023.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 24 January, 2024, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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

UNITED STATES CONSTITUTION:

FIFTH AMENDMENT

SIXTH AMENDMENT

FEDERAL RULES OF CRIMINAL PROCEDURE:

16(d)(1)

48(a)

52(a)

FEDERAL RULES OF EVIDENCE:

403

404(B)

PRELIMINARY STATEMENT

I, DaVonte Williams-Dorsey, am prayerfully petitioning the Supreme Court of the United States to hear and correct the deprevation of my Constitutional Rights, reversing and remanding my case for further review. Per the Constitution, the American People are entitled to rights to due process and a fair trial. These Rights ensure the protection and integrity which our justice System seeks to provide. Once one is deprived of these Constitutional Rights, it is incumbent upon the highest court in the land to correct this deprivation, lest justice be upended.

At issue in this case is my inability to present the crucial issue of duress to the Jury, which my case is centered upon. the lower courts improperly precluded me from introducing evidence of duress, preventing me, therefore, from mentioning before the Jury any evidence of facts pertinent to the origin of the charged conduct that would have directly affected the outcome of my trial. Any presentation of duress related events leading up to the charged conduct would have entirely undermined the government's case. In addition to the duress issue, the pretrial and trial process were likewise error ridden, further depriving me of my rights to due process and a fair trial; these procedural errors entail being unreasonably barred from access to Protective order materials, contradictory rulings regarding the role of standby counsel, improperly admitted and prejudical 404(b) act evidence, and doubly prejudical interruptions by the trial judge which placed doubt upon my credibility before the jury. I believe that the issues present in my case are especially important and a ruling will inevitably affect the rights of both incarcerated and Pro Se litigants.

STATEMENT OF THE CASE

On January 8, 2020, Mr. DaVonte Williams-Dorsey was arrested and charged with three offenses, namely, (1) Conspiracy to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §841(a)(1)(b)(1)(A) and §846; (2) Possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §841(a)(1)(B)(2)(A); (3) Possession of a firearm in furtherance of a drug trafficking crime, inviolation of 18 U.S.C. §924(C)(1)(A)(i). On June 27, 2022, the district court entered judgment against DaVonte Williams-Dorsey following the conviction on the three above named charges. Mr. Williams-Dorsey was principally sentenced to 180 months' imprisonment.

The district court improperly precluded Mr. Williams-Dorsey from raising the duress defense at trial, while also improperly including that ruling to not allow him to present any evidence at trial that may be related to duress. In fact, the lower court only allowed Mr. Williams-Dorsey to talk about the events of January 8, 2020, and nothing before that pertaining to his time in Mexico and reasoning for coming to Syracuse. At a trial evidentiary hearing, Mr. Williams-Dorsey testified that he engaged in the drug deal because he had been held captive in Mexico and that his captor told him that he would need to complete a drug deal in the United States in exchange for his release. To do so, Mr. Williams-Dorsey explained that he had to arrange for another individual to fly down to Mexico to be held in his place before he left and while he completed the drug deal. Mr. Williams-Dorsey testified that he engaged in the twenty kilogram methamphetamine transaction in Syracuse, New York, so that the hostage could be released and he [Williams-Dorsey] could be free of any future harm or capativity. The lower courts precluded Mr. Williams-Dorsey from raising a duress defense at trial.The appellate panel ignored that the district court had erred in its ruling based on its finding that Mr. Williams-Dorsey's testimony was not credible and that he recklessly and negligently placed himself in a situation that would subject him to duress. This is a finding that should have been left to the jury.

Now we ask the United States Supreme Court to remedy this issue in the interest of justice, by reversing and remanding this case back to the lower courts with Mr. Williams-Dorsey being afforded a fair trial with the duress defense. At issue in this case is my inability to present this case to the jury on the critical

issue of duress. By precluding the defense, the trial judge takes the ultimate factual issue from the jury. See, United States v. Paul, 110 F.3d 869, 871 (2d Cir. 1997).

FACTUAL ISSUES TO BE RESOLVED BY THE JURY

The factual issues underlying the theory should be resolved by the jury. A defendant has the right to have a jury resolve the disputed factual issues. See, Sandstrom v. Montana, 442 U.S. 510, 523 (1974); See United States v. Bifield, 702 F.2d 342, 347 n.2 (2d Cir. 1983). It is the role of the jury as the trier of fact and not the presiding judge to determine the credibility of the proferred evidence. See, United States v. Contento-Pachon, 723 F.2d 691, 695 (9th Cir. 1984); United States v. Lopez, 913 F.3d 807 (9th Cir. 2019).

DURESS

Duress is a legal excuse for criminal conductif, "at the time the conduct occured, the defendant was subject to actual or threatened force of such a nature as to induce well-founded fear of impending death or serious bodily harm from which there is no reasonable opportunity to escape other than by engaging in the unlawful activity." See, United States v. Bakhtiar, 913 F.2d 1053, 1057 (2d Cir. 1990) (citing United States v. Mitchell, 725 F.2d, 832, 837 (2d. Cir 1983)). The defense fails if the defendant recklessly placed himself in a position in which it would be probable that he would be subject to duress.

Upon a proper request, a defendant is entitled to a jury instruction in any defense theory for which there is a presumption in the evidence, United States v. Kersong, 69 F.3d 663, 667 (2d Cir. 1995); United States v. Brysen, 959 F.2d 79, 87 (2d Cir. 1992), even if the trial court determines that the evidentiary foundation of the defense theory is only tenuous, United States v. Hurtado, 47 F.3d 577, 584 (2d Cir. 1995). In such a case, the factual issues underlying the theory should be resolved by the jury. See, United States v. Bifield, 702 F.2d 342, 347 n.2 (2d Cir. 1983).

At the same time, we have recognized that it is appropriate for a court to hold a pretrial evidentiary hearing to determine whether a defense fails as a matter of

law. See ID at 347; [1997 U.S. App. LEXIS 7]; See also Bakhtiar, 913 F.2d at 1057. If after hearing, the court finds that the defendant's evidence is insufficient as a matter of law to establish the defense, the court is under no duty to give the requested jury charge or to allow the defendant to present the evidence to the jury. See United States v. Bailey, 444 U.S. 394, 416-17, 62 L.Ed. 2d 575, 100 S.Ct. 624 (1980); Agard, 605 F.2d at 667.

The appellate court of the 2nd Circuit ruled in United States v. Paul, 110 F.3d 869 (2d Cir. 1997) that the jury could have found it either way, that Paul did or did not recklessly place himself in a position of duress. Thus, "The resolution of these competing interpretations of the circumstance properly lies within the purview of a jury." The 2nd Circuit also concluded: "To be entitled to the jury charge, Paul only had to raise a factual issue regarding each element of the defense. See, Bifield, 702 F.2d at 347 n.2. We believe he did so and [110 F.3d 872] therefore hold that he was entitled to have the jury charged on the duress defense."

Again, Mr. Williams-Dorsey is prayerfully requesting that this case is reversed and remanded to have the duress charge presented to the jury. It is the case that not only was Mr. Williams-Dorsey not free to leave, his passport and identification were held outside of his possession while in Mexico, he remained with his captor at all times while in Mexico, his life was threatened through photos and videos of a person's body burned that was shown to him, while another person set in his place (by the name of Curtis Thompson) he was unable to leave and had to escape from Mexico even 4 months after Mr. Williams-Dorsey was already arrested. Mr. DaVonte Williams-Dorsey was forced to transport drugs in exchange for his freedom and that of another's. His identifiction that his captor held of his obviously had the address of his family's home in Arizona. Someone was always in the immediate reach of his captor. There was surely an immediate and impending threat of serious bodily harm or impending threat of death with no "reasonable opportunity" for anyone to escape. Given that alerting American authorities may have taken hours if not days or weeks to rescue an individual held by the Mexican Cartel. While it would just take seconds for a member of the Cartel to turn and harm the person that is being held. Clearly, to a jury the "reasonable" factor to escape or alert authorities could go either way, but I believe it would lie in Mr. Williams-Dorsey's favor given he was forced to transport drugs for a Mexican

Cartel while an individual was held as collateral. Furthermore, after his arrest he alerted authorities via his statement that "he had only done this crime to secure his release from the Mexican Cartel, and that an individual was being held in Mexico." Clearly, authorities did not get to him in time and after 4 months he had to evade the captors leaving without his passport adn identification.

The 9th Circuit in United States v. Contento-Pachon, 723 F.2d 691 (9th Cir. 1984) ruled "we reiterate the the opportunity to escape must be reasonable. To flee, Contento-Pachon, along with his wife and three year old child, would have been forced to pack his possessions, leave his job, and travel to a place beyond the reach of the drug traffickers. A juror might find that this was not a reasonable avenue of escape. Thus, Contento-Pachon presented a triable issue on the element of escapability." The 9th Circuit continued "...the duress is composed of at least three elements...although it has been expressly limited, this fourth element seems to be required only in prison escape cases." United States v Peltier, 693 F.2d 96, 98 (9th Cir. 1982) (per curiam); United States v. Michelson, 559 F.2d 567, 570 (9th Cir. 1977). Under another circumstance, the defense has been defined to include only three elements. "We hold that a defendant who has acted under a well-granted fear of immediate harm with no opportunity to escape may assert the duress defense if there is a triable issue of fact whether he took the opportunity to escape the threatened harm by submitting to authorities at the first reasonable opportunity."

Given that in the case of Mr. Williams-Dorsey while "Curtis Thompson" was held hostage in Mexico as collateral, alerting American authorities could have taken hours, days or weeks to rescue the individual held. While it could only take seconds for serious harm to occur to that individual held with the Mexican cartel individuals at the time. This clearly presents a triable fact that should be left to the jury to decide in the interest of justice for not only Mr. Williams-Dorsey's case, but other cases to be presented in the future where a defendant may be eligible for a defense that the American Justice System and Congress has sought to provide to offer true justice, due process, balance within the system, true empowerment of the public through the jury's ability to be presented issues, defenses and further have their full ability to be fact finders and decide within reason of the public. By precluding this defense after a showing of all elements were met by Mr. Williams-Dorsey, the courts are percluding jurors to be the fact

finders of issues and to decide on "reasonableness" of issues per standing precedent.

CUMULATIVE ERRORS (PROTECTIVE ORDER & STAND-BY COUNSEL)

The Protective Order as applied in this case created the principle impediment to Mr. Williams-Dorsey's access to discovery. Under the Protective Order, Mr. Williams-Dorsey, being incarcerated, was not permitted to have copies of critical discovery materials, which the government designated as "protected materials." The Protective Order defined "protected materials" as "discovery materials that (i) may reveal the identity of witnesses; (ii) might reveal sensitive, non-public information regarding individuals not involved in the crime alleged; and (iii) are otherwise protected from disclosure by federal statute" (A40-41)

The Order provided in part "the Protected materials may be shown to and reviewed with any incarcerated defendant, but such incarcerated Defendant may not maintain a copy of the Protected Materials while incarcerated" (A41). Given that Mr. Williams-Dorsey was Pro Se, he did not have counsel to show it to him. Additionally, his stand-by counsel was prohibited from assisting him with trial preparation until the eve of trial. The government acknowledged that the lower court had precluded stand-by counsel from providing assistance with trial preparation until three weeks before trial, which began on June 30, 2021.

The government designated as Protected Materials, among other things, reports of investigations and transcripts of recorded conversations. The Protected Materials also included voluminous cellphone extraction reports which were entered as exhibits at trial (A424, 668). These documents, of course, were inaccessible without a computer. The government recognized this problem at the hearing on December 16, 2020, but did not resolve it. Having notified the Magistrate Judge conducting the hearing that the defendant could not be left with protected materials at the jail facility, the prosecutor stated that if the Magistrate Judge granted the application to proceed Pro Se, stand-by counsel should be appointed to facilitate review of those materials (A144). However, the Magistrate Judge replied that he did not have the authority to "in any way amend or alter any orders that [Judge Scullin] has issued" (A145). While the lower court appointed stand-by counsel on December 18, 2020 (A163), the first session for Mr.

Williams-Dorsey to review documents was not scheduled until March 4, 2021, almost three months later (A168). As late as June 9, 2021, three weeks before trial, Judge Scullin denied Mr. Williams-Dorsey's request to have a copy of a transcript to prepare for trial (A22), despite stand-by council confirming that it did not contain any informationn identifying people involved (A336). In denying Mr. Williams-Dorsey's transcript request, the trial judge deferred to the prosecutor, who said he would review it and report back in a week, yet was inclined not to change the determination (A336) and never did so. Stand-by counsel also repeatedly raised this issue prior to the trial (See, e.g., A481).

Actions of the government to withhold on security grounds has resulted in dismissals. See, Diana D. Parker Prosecutorial Misconduct Requiring Dismissal of Federal Criminal Cases (April 5, 2023), citing, inter alia, United States v. Angwang, 1:20-cr-0442-EK (E.D.N.Y.) (after the prosecutors redacted discovery, restricted attorney's access and prevented attorney from sharing with client, court granted to dismiss pursuant to F.R. Crim. P. 48(a)).

While protective orders may be properly entered to protect witnesses, the defendant still retains the right to receive discovery under F.R. Crim. P. 16(a). F.R. Crim. P. 16(d)(1) provided that "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." A district court's decision to grant, modify, or vacate a protective order is reviewed for abuse of discretion. See, United States v. Delia, 944 F.2d 1018 (2d Cir. 1991); and United States v Cordova, 606 F.3d 1085, 1090 (D.C. Cir. 2015).

The lower court gave Mr. Williams-Dorsey only four opportunities to review the protected discovery materials prior to trial by ordering the U.S. Marshal to produce him from the jail where he was being held to the courthouse. These opportunities, which were limited to a total of fewer than 16 hours, were scheduled for March 4, 2021 (A168); May 5, 2021 (A171); May 26, 2021 (A256); and June 9, 2021 (A986). Once the trial began, Mr. Williams-Dorsey was only able to review the materials with stand-by counsel during lunch recess. Stand-by counsel confirmed that these visits were insufficient, in part, because the government continued to provide protected materials just prior to and during trial (A986).

The government does not dispute that Mr. Williams-Dorsey had very restricted access to Jencks materials which were also subject to the Protective Order. Mr. Williams-Dorsey was only allowed to review them with stand-by counsel during breaks in the trial. As previously established, he was not permitted to have copies outside that time. It is simply unreasonable to request that even just 422 of the 3,500 pages of materials could be analyzed in the time allowed. Additional claims by the governemtn that the materials were organized is not supported by the record. Mr. Williams-Dorsey specifically states during trial that he was having problems organizing the materials (A606). Materials were likewise produced early given the prohibition from having copies except in the presence of stand-by counsel. Denial of reasonable access to the Jencks materials undermines Mr. Williams-Dorsey's right to confront witnesses at trial under the Sixth Amendment.

(404[b] Act Evidence)

The government mischaracterized the evidence admitted in Rule 404(b) of the Federal Rules of Evidence. This evidence related to three "other acts" - the Oklahoma Stop; the Indiana Stop; and the Arizona Stop. From the government's mischaracterization of these other acts as drug and alien "smuggling," they argued that these acts showed that Mr. Williams-Dorsey engaged in a pattern of illegal smuggling, culminating in his delivery of the drugs to the CS on January 8, 2020. The record, however, reflects that none of these stops involved smuggling of narcotics or people over international borders and that Mr. Williams-Dorsey was never even convicted of any narcotics related activities. The only charge on which he was convicted was a misdemeanor for assisting illegal aliens after they had entered the United States based on the Arizona stop. The Oklahoma stop involved currency, not narcotics; at trial, Tyshawn Logan, the cooperating witness, said that the currency was the proceeds of a transaction involving drugs he obtained in California (A740-741). However, as DEA Special Agent Matt Niles testified at trial, this seizure was not made into a criminal matter (A843). In fact, the trial judge prevented Mr. Williams-Dorsey from developing this issue on cross-examination of Logan because the trial judge said it was "not relevant" (A779). Similarly, the Indiana stop did not show drug smuggling - this stop involved the discovery of marijuana in a car which the cooperating witness, Logan, was driving in which Mr. Williams-Dorsey was a passenger. While Logan pled guilty to a narcotics-trafficking offense (A788), Mr.

Williams-Dorsey was not even charged. As we mention above, the third stop, the Arizona stop, is the only one which resulted in Mr. Williams-Dorsey admitting a crime and did not even involve narcotics. In that instance, Mr. Williams-Dorsey pled guilty to the misdemeanor offense of being an accessory after the fact by assisting aliens after they entered into the United States (A683).

The prosecutor repeatedly told the jury that Mr. Williams-Dorsey engaged in smuggling activity leading up to the narcotics delivery in Syracuse knowing that no such evidence was offered. The prosecutor conflated the stop with illegal aliens with narcotics smuggling. There was no evidence that Mr. Williams-Dorsey played any role in "smuggling" illegal aliens over the border as this stop occured twenty miles from the Mexican border. Additionally, the government concedes that it deliberatley failed to introduce evidence relating to Mexico, to prevent the re-introduction of the duress defense barred by the lower court's ruling, yet, the government cannot use this strategic decision to withhold evidence to justify misconstruing what evidence was admitted. The government likewise, failed to offer the other act evidence to show "narcotics smuggling" rather than domestic drug trafficking, the offense charged in the indictment. Smuggling refers to the illegal movement of goods into or out of a country. The government argues that smuggling activity does not necessarily involve international smuggling. It claims that the Webster's Dictionary definition of the term is broader "to convey or introduce surreptitiously." However, that same entry shows that the principle definition of "smuggling" is "to import secretly contrary to the law and especially without paying duties imposed by law." See, http://www.merriam-webster.com/dictionary/smuggle. This is the common way in which courts have applied this term. See, e.g., United States v. Bodnar, 37 F.4th 833, 840 (2d Cir. 2022); United States v. Compton, 830 F.3d 55, 63 (2d Cir. 2016) citing United States v. Montoya de Hernandez, 472 U.S. 531, 537-39 (1985).

The other act evidence was admitted for the improper purpose of showing Mr. Williams-Dorsey's alleged propensity to commit crimes. Given its failure to show any intentional "smuggling of drugs," the danger of unfair prejudice before the jury far outweighed any probative value that the other act evidence actually had. Thus, the trial judge erred in admitting it into evidence and should have excluded it under F.R.E. 403,as Mr. Williams-Dorsey requested (A320). Evidence admissible under Rule 404(b) should be excluded under Rule 403 where, as here,

any probative value it may have is substantially outweighed by "the danger of unfair prejudice." Fed R. Evid 403; United States v. Aboumoussallem, 726 F.2d 906, 912 (2d Cir. 1984); United States v. Loera, 24 F.4th at 159. The prosecutor argued that the other act evidence "did not involve conduct more inflammatory then the charged crime." See, United States v. Baez, 349 F.3d 90, 93-94 (2d Cir. 2003); United States v. Livoti, 196 F.3d 322, 326 (2d Cir. 1999). Given the minimal, in any, probative value of the proferred evidence, the trial judge allowed the government to push this rule too far.

Finally the trial judge admitted the other act evidence without giving a contemperaneous limiting instruction. This court considers whether limiting instructions are given to ensure that the lower court properly insulated the jury from the unfair prejudical effects of other act evidence. See, United States v. Al-Moayad, 545 F.3d 139, 162 (2d Cir 2006). In this case, the lower court did not give a contemperaneous instruction, and in the instant case at hand, the lower court waited until final jury instructions. Judge Scullin told the jury that it should consider the prior act evidence limited to the purposes of: (1) demonstrating the state of mind or intent with which the defendant acted with respect to the charges in the indictment; or (2) demosntrating the relationship between the defendant and the co-defendant Tyshawn Logan (A577). However, this instruction was not only too late, it was also inaccurate.

The jury had heard the government open on how the other act evidence showed Mr. williams-Dorsey participated in illegal activity because it was his character to do so. Then the jury listened to testimony regarding these acts without any contemperaneous instructions on the limited purposes to which they could consider it. Only at the end of the trial did they learn that this evidence could not be used to determine character or guilt for the charged conduct. Even then, the trial judge misstated that the other act evidence showed that the defendant committed an act or offense for which he was convicted, despite his only conviction being a misdeameanor in violation of 8 U.S.C. §1352(a)(1), aiding illegal aliens after entering, which is both unrelated to the charged conduct and does not prove Mr. Williams-Dorsey's state of mind or intent in his alleged commission of it.

JUDGE SCULLIN'S INTERRUPTIONS

Now we turn to Judge Scullin's repeated interruptions of Mr. Williams-Dorsey, which set the pattern for improper behavior throughout the trial process, effectively depriving Mr. Williams-Dorsey of a fair trial. The first case in point is Mr. Williams-Dorsey's opening statement. Covering just five pages of transcript, Judge Scullin interrupted Mr. Williams-Dorsey approximately a dozen times (A500-505). The interruption the government attempts to justify occured when Mr. Williams-Dorsey responded to the government's inflamatory opening portraying him as a "bad guy," noting that his mother and brother were present in the courtroom (A502). There was nothing improper about this comment and this example cited by the government does not convey the constant intrusion by the judge. One example the government fails to address is when Judge Scullin interrupted Mr. Williams-Dorsey while he was telling the jury that the government had told them about the stops without mentioning the fact that he wasn't convicted of anything relevant to the charged conduct:

MR. WILLIAMS-DORSEY: So the evidence, let's start with...Indiana. I will be producing the reports. While the government's producing the witness, flying them out, I will be producing the reports to make sure that witness sticks to what they originally wrote. Black vehicle, black passenger vehicle driving on the highway. And what the government won't say is that I wasn't found guilty.
THE COURT: You're refering to what the government won't say. (A504)

Although Mr. Williams-Dorsey had the right to open on what he expected the evidence would not show, Judge Scullin suggested to the jury that his conduct was improper, undermining his capability as an advocate before the jury. Pertaining to the trial judge's interruptions of Mr. Williams-Dorsey during his cross-examination of the government witness, he frequently and excessively interrupted him before the jury in a demeaning and often sarcastic manner (e.g. A585-587; 5912-592; 598-599;604;606-608; etc.). He also prevented him from focusing on deficiencies in the evidence by questioning another law enforcement officer, New York State Police Investigator Keith Fox, who photographed the events, about Investigator Fox's failure to capture certain aspect of the events (A647-648). The trial judge's interruptions of Mr. Williams-Dorsey before the jury should never even have occured in their presence in the first place. His actions, additionally, placed Mr. Williams-Dorsey in a bind. If Mr. Williams-Dorsey tried to defend himself from the trial judge's criticisms before the jury, he would incure his wrath as a result. The most notable example of this was during Mr.

Williams-Dorsey's cross-examination of cooperating witness Tyshawn Logan, where Judge Scullin stated before the jury that his questions weren't relevant, then subsequently threatened to have him removed from the courtroom for simply responding (A828).

The final formulatic jury instruction did not cure any of the prejudice caused by the lower court. The instructions given by the judge (A927) were simply too little and too late to overcome the prejudice caused by his constant harangue. Curative instructions to the jury, to the effect that the jurors are sole judges of credibility, do not remove the impression that the judge had decided which witness should be believed once it was created. See, United States v. Grunberger, 431 F.2d 1062, 1067-68 (2d Cir. 1970). Telling the jury at the end of the trial that his comments throughout five days of trial were irrevelent "in no way ameliorate the prejudice he caused. As the 2nd. Circuit Court has previously ruled, "this impression, once conveyed, deprived the defendant fo the fair trial to which he is entitled" in United States v. Filani, 74 f.3d at 385.

Having brought to light a variety of cumulative errors, the government nonetheless argues them to be harmless. Yet, to be "harmless," the Court must be able to "confidently" find, on the whole record, that the errors were "harmless beyond a reasonable doubt." See, United States v. Lombardozzi, 491 F.3d 61, 76 (2d Cir. 2007); see also, United States v. Felder, 993 F.3d 57, 71 (2d Cir. 2021). The cumulative errors in this case violated Mr. Williams-Dorsey's Constitutional Rights requiring reversal. See, Kyles v. Whitley, 514 U.S. 419, 435 (1995). Asuming arguendo, one applies, the facts in this case would fail any "harmless error review" under F.R. Crim. P. 52(a). In order to find harmless errer, the 2nd Circuit Court has said it must "conclude with assurance" that the errors "did not substantially influence the jury." See United States v. Oluwanisola, 605 F.3d 124, 133-34 (2d cir. 2010); United States v. Ivezaj, 568 F.3d 88, 98 (2d Cir. 2009); United States v. Stewart, 907 f.3d 677, 689 (2d Cir. 2018). The government bears the burden of proving the error was harmless. See, United States v. Kaiser, 609 F.3d 556, 573 (2d Cir. 2010); and United States v. Lhong, 26 F.4th at 558. In the case at hand, the government cannot show that the cumulative errors were harmless and this Court likewise cannot conclude the same with a "fair assurance."

REASONS FOR GRANTING THE WRIT

I. In accordance with Rule 10(a), the 2nd Circuit Court of Appeals, in the immediate case, has entered a decision in direct conflict with pre-existing legal precedent within the same circuit, as well as in the 9th Circuit. The 2nd Circuit Court has thus departed from the accepted and usual course of judicial proceedings. Therefore, this necessitates further review by this Court.

II. Furthermore, the conditions of Rule 10(c) are triggered in this immediate case as a result of the 2nd Circuit Court of Appeals deciding an important question of federal law that has not been, yet should be, settled by this Court. As pertaining to other facts in this case, the 2nd Circuit Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

III. Pertaining to the duress defense in the immediate case, the 2nd Circuit Court of Appeals wrongfully affirmed the District Court's erroneous judgement, which was in direct contradiction to the established legal precedent, where the jury is to be the trier of factual issues, per United States v. Paul, 110, F.3d 869, 871 (2d Cir. 1997) and United States v. Contento-Pachon, 723 F.2d 691, 695 (9th Cir. 1984).

In addition, the 2nd Circuit Court of Appeals affirmed that the cumulative errors that were present in this case were harmless, most notably the Petitioner's barred access to protective order discovery material as a Pro Se litigant. Rule 52(a) establishes that a harmless error is one that "does not affect substantial rights," see Fed. R. Crim. P. 52(a). The cumulative errors in this case drastically affect substantial rights and, therefore, must not be disregarded. These judgements by the 2nd Circuit Court of Appeals has thus far departed from the accepted and usual course of judicial proceedings, prompting the need for review by this Court.

IV. The 2nd Circuit Court of Appeals affirmed the District Court's judgement in agreement with the Government's argument that the fourth element of duress ("a reasonable means to escape the threatening conduct 'by seeking the intervention of the appropriate authorities,'" see, United States v. Bakhtiari, 913 F.2d 1053, 1058 [2d Cir. 1990]) is a mandatory requirement for a duress defense to have validity, despite the fact that pre-existing caselaw in the 9th Circuit states that "this fourth element seems to be required only in prison escape cases," see, United States v. Peltier, 693 F.2d 96, 98 (9th Cir. 1982) (per curiam); United States v. Michelson, 559, F.2d 567, 570 (9th Cir. 1977). This specific matter requires review and definitive judgement from this Court.

The barred access to protective order discovery material, Trial Judge's contradictory instructions on the role of standby counsel, wrongful inclusion of prejudicial 404(b) act evidence, and Trial Judge's prejudicial interruptions of the Petitioner before the jury are all matters unsettled by the Supreme Court. Petitioner requests definitive judgement on these matters.

Additionally, the 2nd Circuit Court of Appeals affirmed the District Court, which directly contradicts the Supreme Court decision of Dixon v. United States, 509 U.S. 688, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993), which "held the jury instruction requiring the accused to prove duress by a preponderance of evidence." The 2nd Circuit Court's decision entirely overlooks that the Petitioner has established his duress defense by a preponderance of evidence, thus validating it to be presented and tried before a jury.

Thus, this Court should grant this writ for further review.

CONCLUSION

A remand to a different Judge is required where "the Judge's fairness or the appearance of the Judge's fairness is seriously in doubt." See, United States v. bradley, 812 F.2d 774, 782 n.9 (2d Cir. 1987). Given the Judge's conduct in this case, remanding this case to another Judge is warranted. In closing, for all of the reasons, this case should be vacated and remanded to the District Court for further proceedings.

The petition for a writ of certiorari should be granted.

Dated: April 24, 2024
Safford, Arizona

Respectfully Submitted,

DaVonte Williams-Dorsey

DaVonte Williams-Dorsey