IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

No. _____

RAYMOND CHRISTIAN,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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

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September 9, 2024

QUESTION PRESENTED

Does Williamson v. United States, 512 U.S. 594 (1994) permit a lower court to admit collateral statements in a non-testifying declarant's confession as providing 'context' such that they are admissible under the statement against penal interest exception to the hearsay rule, where the statements do not provide context for the circumstances surrounding the criminal activity involved?

List of All Proceedings

1. United States District Court, S.D.N.Y., Docket No. 12-cr-006-ER-1; judgment entered 3/25/2021; amended judgment entered 6/30/2023.

2. United States Court of Appeals for the Second Circuit, Docket No. 21-850; judgment entered 3/26/24; petition for rehearing/rehearing en banc denied 6/14/2024.

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TABLE OF AUTHORITIES

Petitioner, Raymond Christian ["Christian"], respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Second Circuit entered in this proceeding on March 26, 2024.

OPINION BELOW

The decision of the Second Circuit, United States v. Whitaker, 2024 WL 1266348 (2d Cir. 2024), appears in the Appendix hereto.

JURISDICTION

The judgment of the Second Circuit was entered on March 26, 2024. A petition for rehearing/rehearing en banc was timely filed on May 10, 2024, and was denied by the Second Circuit on June 14, 2024. This petition was timely filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. sec. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Constit., Amend. VI: In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him …

FEDERAL RULE OF EVIDENCE INVOLVED

Fed. R. Evid. 804(b): The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness …
(3) ***Statement Against Interest.*** A statement that:
(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

STATEMENT OF THE CASE

Following a jury trial in 2014, Christian and two co-defendants were convicted of various charges arising from the robbery of a narcotics stash house in 2010 during which someone was shot and killed. During trial, and over the vigorous and repeated objections of the defense, excerpts of a recorded conversation between a cooperating government witness (Jamar Mallory) and an unavailable witness (Kevin Burden) were admitted into evidence. The district court allowed these excerpts under the statement against penal interest exception to the hearsay rule. On appeal, the Second Circuit upheld the admission of these statements into evidence.

REASONS FOR GRANTING THE PETITION

This case presents an important question of federal law that has not been, but should be, settled by this Court:

Does Williamson v. United States, 512 U.S. 594 (1994) permit a lower court to admit collateral statements in a non-testifying declarant's confession as providing 'context' such that they are admissible under the statement against penal interest exception to the hearsay rule, where the statements do not provide context for the circumstances surrounding the criminal activity involved?

The Second Circuit held that excerpts from a recorded conversation between Mallory (who testified) and Burden (who was unavailable) were admissible as statements against Burden's penal interests. Two of these excerpts mentioned Christian by name (his nickname, Reckless). Excerpt 1 included the following exchange:

Mallory: … remember when them n*****s that jukes with the Joker?

Burden: Yeah, yeah, yeah, yeah. Like, Bash was there?

Mallory: Like, think about it. You remember, you remember who was there. Think about was it – it was Bow Wow – I'm gon' refresh your memory – it was Bow Wow, Gucci, **Reckless** – some fucking um… um… Besheltie's son …

Burden: Um, um Baynes.

Mallory: Baynes, Baby E, and Gucci.[1]

The Second Circuit characterized excerpt 1 as follows: "In excerpt 1, after Mallory describes who was involved in the robbery and that Whitaker and Thomas came to pick up guns from Mallory and Burden, Burden agrees with Mallory that he had a 'chrome .38' and that after the robbery he 'never seen that gun again.'" It concluded that "[a] reasonable person in Burden's position would consider these statements to be against his penal interest because Burden is admitting that he provided a gun for the robbery, which he never got back." United States v. Whitaker, 2024 WL 1266348 at *3.

However, the part of the excerpt that implicated Christian – that is, where Mallory describes who was involved in the robbery, and specifically names Christian – was not against Burden's penal interest. Nor was it

[1] Later in the excerpt, Mallory says that "Bow Wow and them n*****s came. Know what I'm saying. It was Bow Wow and Gucci. That's when you had, um, that's when you had the chrome .38." Burden says "I never seen that gun again, bro. I never seen that gun again."

necessary to give context for Burden's self-inculpatory acknowledgment later that he had a 'chrome .38' that he provided for the robbery. A reasonable person in Burden's shoes would not have perceived Mallory's recitation of the participants in the robbery as detrimental to Burden's own penal interest.

Excerpt 3 included a section discussing Christian, and specifically another robbery he allegedly committed:

Mallory: You know what I feel about Reckless... Reckless, Reckless, fuckin um… Reckless was like one of the first n*****s to get questioned for that shit, son, you know what I'm saying. And I feel like Reckless was coming around n*****s with some bullshit.

Burden: Reckless out right now?

Mallory: Reckless out right now. Member, member…

Burden: He just got knocked two weeks ago for like a robbery situation.

The Second Circuit characterized excerpt 3 as follows: "In excerpt 3, Mallory and Burden discuss the robbery and its fallout, with Burden saying that he 'remember[ed] exactly' in response to Mallory recounting that Whitaker and Thomas 'came through' to pick up guns from them. In addition, Burden says that he was 'nervous' after Henry was killed during the robbery." The appeals court concluded "[t]hese statements are detrimental to Burden's penal interest because he implicates himself in the

robbery, admitting that he was nervous after what happened because of his own involvement." Id.

Mallory's assertion that Christian was one of the first to be questioned about the incident was not detrimental to Burden's penal interest. It had nothing to do with Burden, and Burden did not adopt, or assent to, Mallory's assertion. Burden's assertion that Christian had been arrested for a recent robbery was not against Burden's own penal interest, as it did not implicate him at all. Neither of these points were necessary to give context to Burden's later statement that he 'remembered exactly' when Mallory described Whitaker and Thomas coming through to pick up guns, or that he was nervous when "that shit happened with that joker…"

In Williamson v. United States, 512 U.S. 594 (1994), this Court held that the statement against penal interest exception to the hearsay rule does not extend to "collateral statements … that are not in any way against the declarant's penal interest." Id. at 600. A court must inquire "whether each of the statements in [the declarant's] confession was truly self-inculpatory." Id. at 604.

Whether a statement is self-inculpatory "can only be determined by viewing it in context," id. at 603 – that is, in the context of "all the circumstances surrounding the criminal activity involved." Id. at 604. For example, statements that provide "significant details about the crime," even

if not at first glance incriminating, would in context fall within the penal interest exception to the hearsay rule. It is not the context in which the out-of-court statement was made that is important, but rather the context of the criminal activity implicated. This Court held that there was no reason why "collateral statements, even ones that are neutral as to interest, … should be treated any differently from other hearsay statements that are generally excluded." Id. at 600.

Neither the district court nor the Second Circuit examined each statement made by Burden to determine whether it was self-inculpatory. The Second Circuit affirmed the admission of statements concerning Christian that were simply collateral and in no way against Burden's penal interest. The Second Circuit characterized these statements as "appropriate to provide the necessary context for the unavailable declarant's statements," Whitaker at *2, but this misinterprets what the Williamson Court meant by 'context.'

Given that the admitted excerpts were not within the statement against penal interest exception to the hearsay rule, their admission against Christian violated his confrontation right under the Sixth Amendment. Rule 804(b)(3) is no technicality. It stems from bedrock constitutional principles in the Confrontation Clause which protect defendants against the admission of statements untested by cross-examination unless "the declarant's

truthfulness is so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility." Idaho v. Wright, 497 U.S. 805, 820 (1990). That was not the case here. Accordingly, Christian's convictions and sentence should be vacated.

Conclusion

For the foregoing reasons, Petitioner Raymond Christian respectfully requests that this Petition for Writ of Certiorari be granted.

September 9, 2024

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By his attorney:

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