No. 24-6044 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

.....

ANTONIO SHROPSHIRE

Petitioner,

v.

UNITED STATES OF AMERICA

Respondents.

.....

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

.....

PETITION FOR A WRIT OF CERTIORARI

.....

ANTONIO SHROPSHIRE #62637-037
Pro-Se Petitioner
P.O. Box 5000
Yazoo City, MS 39194

QUESTIONS PRESENTED

1. Were Shropshire's Sixth Amendment rights violated by the government's seizure of his trial preparation documents?

2. Did the government violate Shropshire's choice whether to testify, in violation of his Sixth Amendment autonomy interest?

LIST OF PARTIES

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:

1. The United States District Court For The District of Maryland.

2. The United States Court of Appeals For The Fourth Circuit.

RELATED CASES

United States v. Antonio Shropshire, No.1:16-cr-00051-CCB-3,
United States District Court For The District of Maryland
Judgment Entered March 1, 2018

United States v. Alexander Campbell, No. 18-4130,
United States Court of Appeals For The Fourth Circuit
Judgment Entered June 24, 2020

United States v. Antonio Shropshire, No. 1:21-cv-00202-CCB,
United States District Court For The District Court of Maryland
Judgment Entered May 9, 2022

United States v. Antonio Shropshire, No. 22-6642,
United States Court of Appeals For The Fourth Circuit
Judgment Entered April 24, 2024

United States v. Antonio Shropshire, No. 22-6642
United States Court of Appeals For the Fourth Circuit (En-Banc)
Judgment Entered July 30, 2024

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The opinion of The United States District Court For The District Court of Maryland appears at Appendix 2 and is reported at United - States v. Antonio Shropshire, 2022 U.S. Dist. Lexis 83353 2022 WL 1451649 (D. MD. May 9, 2022).

The opinion of The United States Court of Appeals For The Fourth Circuit (En-Banc) appears at Appendix 3 and is reported at United States v. Antonio Shropshire, 2024 U.S. App. Lexis 18888 (4th Cir. 2024).

JURISDICTION

The Judgment of The United States Court of Appeals For The Fourth Circuit was entered on April 24, 2024. Rehearing was sought and denied on July 30, 2024.

The Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Sixth Amendment, United States Constitution, provides:

> "In criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

2. The statute under which Petitioner sought post-conviction relief was 28

U.S.C. 2255:

Federal Custody: Remedies on Motion Attacking Sentence:

> "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

> "Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the courts finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate."

PROCEDURAL HISTORY

On February 23, 2017, in The District Court For Maryland, a federal grand jury returned a Third Superseding Indictment charging Shropshire, here as "Petitioner," along with co-defendants. Count one charged all defendants with conspiracy to distribute and possession with intent to distribute heroin, in violation of 21 U.S.C 846. Count three charged Petitioner with possession with intent to distribute and distribution of heroin in violation of 21 U.S.C. 841(a)(1). Count Seven charged Petitioner with possession with intent to distribute heroin and cocaine, in violation of 21 U.S.C 841.

A jury trial commenced on these charges on October 16, 2017. A jury convicted Petitioner on these charges on October 31, 2017, following an 11-day trial. The District Court sentenced Petitioner to 300 months imprisonment, entering its judgment on March 1, 2018. On June 24, 2020, the United States Court of Appeals for the Fourth Circuit issued an order affirming Petitioner's conviction.

On January 26, 2021, Petitioner filed a motion under 28 U.S.C 2255. (ECF 454.) (ECF here refers to case no. 1:16-cr-00051-SAG). On April 20, 2021, Petitioner filed a motion for an Expedited Evidentiary hearing Under 28 U.S.C 2255. (ECF 466.) The Government replied to Petitioner's motion. (ECF 479.) On May 9, 2022, the District Court denied Petitioner's motion. (App. 2) Petitioner sought C.O.A in the Fourth Circuit which was denied on April 24, 2024. (App. 1) The request for En-Banc review was denied on July 30, 2024. (App. 3) This Petition for a Writ of Certiorari follows:

STATEMENT OF THE CASE

In September of 2017, trial counsel requested a continuance of the October trial. Counsel explains Shropshire is a very hands-on client who insists on having ery active involvement in his case." Further, explaining that newly appointed trial counsel "needs time to review the voluminous discovery in this case." (ECF 219, Page 3.) The request was denied.

On October 8, 2017, Petitioner placed a jail call to his girlfriend, who was helping him prepare for trial. Petitioner explained to his girlfriend that he does not trust his attorney and has to assume he [his attorney] wasn't doing his job, so he [Petitioner] has to do his job. Petitioner gave his girlfriend the names of the Government's witnesses and asked her to look them up on Maryland Case Search, [a Judicial website] to see if the witnesses had any pending charges or prior convictions in the State of Maryland. (ECF 454-3, Petitioner's Sworn Affidavit.)

On October 13, 2017, three days before Petitioner's trial was to begin, a law enforcement officer came into his cell, without authority or consent, and removed all of Petitioner's legal documents that he was preparing for use at trial. After the seizure, the Government notified the District Court that there was "a potential breach of the court's protective order."

Trial commenced on October 16, 2017. During jury selection and the following days, trial counsel explains:

There's still things missing that he needs for trial. The Government explained that A.U.S.A Romano reviewed the documents and everything they seized was returned, except for one document. (ECF 398 Page 100-101.)

The day after counsel explains, "I think he's greatly prejudiced by not having his items." The U.S. Marshals have his materials, and he needs them for trial prep. Further explaining that him having his documents "would have been particularly helpful" in presenting his defense. The District Court explains, "I don't know what this other material is that would be prejudicial or, you know, or not." (ECF 399, Page 227-229.)

The following day, Petitioner wrote to the Court, "I have been held at Chesapeake Detention Facility (C.D.F.) since my arrest where it is impossible to effectively prepare for trial. I need my legal belongings to effectively prepare for trial and I don't have them." Further explaining, "I take my rights and freedom very seriously" and "my legal defense is compromised" (ECF 262.)

The following day, the District Court explained, "The Marshals, as was mentioned in Court yesterday, but also Deputy U.S. Marshal Sterling Johnson confirmed that the Marshals do not have/do not keep people's papers and specifically do not have Mr. Shropshire's papers." (ECF 400 Page 4/22-25.)

On October 20, 2017, Petitioner filed an informal complaint with C.D.F. staff explaining he needs his documents for trial and his attorney-client privilege has been violated. (ECF 454-1, Informal Complaint.)

After the Government closed its case, the District Court asked Petitioner, would he be testifying on his own behalf:

"I originally wanted to testify on my own behalf about the things that happen in this case, but I've been prepping over the time I've been incarcerated, and I wrote down a number of questions that I wanted my defense attorney to go over to prep for trial. And when my things were taken, everything was taken from me, my list of questions, and a lot of other things that I was preparing for trial, and I don't have those things. The only reason why I'm not testifying is because I don't have my belongings to go over the things I want to speak about, the things I wanted him [trial counsel] to ask me, and that is the only reason why I'm not testifying." (ECF 404, Page 152/18-22.)

The Government explained they seized Petitioner's material because he was on a jail call "discussing personal identifying information of likely government witnesses" and "out of concern over those witnesses' safety" his documents were seized. (ECF 404, Page 153/9-15.)

On November 20, 2017, Petitioner received a response to his informal complaint, which wasn't received by staff until November 6, 2017. (ECF 454-1) C.D.F. staff explains that U.S. Marshal David Ashton has confirmed that the documents were turned over to the Marshal's service. (ECF 454-2, Response To Complaint.) Some time in January or February of 2018, Petitioner's documents were returned to him. (ECF 454-3 Petitioner's Sworn Affidavit.)

On direct appeal, in The Fourth Circuit, Petitioner argued that his trial counsel failed to protect his Sixth Amendment rights after the Government's unjustified seizure of his trial preparation documents. Appeal: 18-4130, Doc 75. During oral arguments held on October 31, 2019, the following was said:

> APPELLANT COUNSEL: "I want to address, going back to the Sixth Amendment issue on behalf of Mr. Shropshire. I want to point out to the court in terms of the standard of review. The facts that Mr. Wise [The Government] presented the court about the nature of these [jail] calls, what the effect of that was, those are representations by the government. These were never the subject of an evidentiary hearing. The court below never made a finding of fact. Therefore, there are no findings to which this court can differ."
>
> THE FOURTH CIRCUIT: "Well isn't that reason why maybe we should leave this until a 2255, where there can be an evidentiary hearing?"
>
> APPELLANT COUNSEL: "It's our position that there should've been. The court should have sent this down to the magistrate for an evidentiary hearing to find out what did happen."
>
> (www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments United States v. Campbell; October 31, 2019 at 38:05-39:53)

In Petitioner's motion under 28 U.S.C. 2255, he argued that:

> (1.) "The government's seizure interfered with his attorney-client relationship and the right to prepare for trial." (ECF 454 Page 3-8.)
>
> (2.) "The government interfered with his Due Process and the right to choose whether to testify, in violation of his Sixth Amendment Autonomy Interest." (ECF 454 Page 10-14.)

The Government replied contending that Petitioner is procedurally barred from raising such claims. (ECF 479 Page 7-10.)

The District Court held, "Even assuming" Petitioner's documents were not returned, "he has demonstrated nothing specific that would interfere with his Due

Process or Sixth Amendment rights." Holding that "Nor has he shown how any missing documents interfered with his choice of whether to testify." (App. 2)

Petitioner requested for a C.O.A. on the above claims, further arguing that because he "Presented evidence that showed the Government recklessly misled the court to believe the documents were returned, was adequate to deserve encouragement to proceed further." (Appeal 22-6642 Opening Brief, Page 4.)

REASONS FOR GRANTING THE PETITION

A. GOVERNMENT INTERFERENCE

This is a Government Interference case into Petitioner's Sixth Amendment. Justice Sutherian famously explained in Powell v. Alabama:

The right to be heard would be in many cases of little avail if it did not comprehend the right to be heard by counsel... Even the intelligent and educated layman lacks both the skills and knowledge adequately to prepare his defense, even though he may have a perfect one. He requests the guiding hand of counsel at every step in the proceeding against him. 287 U.S. 45, 68, 53, S. Ct. 55, 77 L. Ed. 158 (1932).

The Fourth Circuit Court of Appeals held that Justice Sutherian's poignant words make plain that only when a defendant is heard by counsel can a defendant be heard through counsel. The mere physical presence of competent counsel is not enough: It is the marriage of the attorney's legal knowledge and mature judgment with the defendant's factual knowledge that makes for an adequate defense. United States v. Smith, 648 F .3d at 588 (4th Cir. 2011).

The District Court, in these section 2255 proceedings, held that Petitioner "was represented by counsel, who properly had possession of the discovery material and was prepared to present Shropshire's case at the time." (App. 2) Petitioner argued in his 2255 that the law in Smith, quoting Powell v. Alabama..... Clearly establishes that it is the marriage of attorney's legal knowledge and the defendant's

factual knowledge of the case that makes for an adequate defense. Simply having an attorney, who has possession of the discovery is not enough. As The Fourth Circuit explains, "Mere physical presence of competent counsel is not enough." Smith at 588.

Petitioner's argument is that the Government's action in not returning his documents chilled his ability to communicate with his trial counsel. This is a clear case of Government interference into the attorney-client relationship, infringing on Petitioner's ability to participate in his own defense, and, consequently, with his counsel's ability to provide an adequate defense as Smith quoting Powell v. Alabama explains.

Trial counsel's statements that Petitioner having his documents "would have been particularly helpful" in presenting his defense, constitutes not only counsel's need of Petitioner's factual knowledge of the case but displays the Government's failure to return the documents, interfered with counsel's ability to make decisions about how to conduct the defense.

Perry v. Leeke, 488 U.S. 272, 109 S. Ct. 594, 599 (1989) (The government can violate the Sixth Amendment by interfering in certain ways with counsel's ability to make independent decisions about how to conduct the defense).

The District Court, despite explaining "I don't know what this other material is that would be prejudicial, or you know, or not" (ECF 399 Page 229/16-17) did not hold a hearing to determine what did or did not happen. Failing to proceed in conformity with the provisions of 28 U.S.C 2255, when it made finding of

controverted issues of fact, such as Petitioner's counsel was prepared for trial, without notice to the Petitioner and without a hearing.

Machibroda v. United States, 368 U.S. 487 7 L Ed. 2d, 82 S. Ct. 510 (1962).

This Court has decided two cases involving court-ordered interference with attorney-client communication: Geders v. United States and Perry v. Leeke. In Geders, This Court held that a defendant's Sixth Amendment right to counsel was violated when the trial court prohibited Geders from speaking with his attorney during overnight recess that interrupted his testimony. 425 U.S at 91, 96 S. Ct. 1330, 47 L. Ed 2d 592 (1976). In Perry, this Court considered whether the Geders Rule applied to an order directing a defendant not to consult with his attorney during a 15-minute recess in the middle of the defendant's trial. 488 U.S. at 274, 109 S. Ct. 594, 102 L. Ed 2d 624 (1989).

The situation is not much different here. Government interference that inhibits a criminal defendant's ability to speak with his counsel, such as by seizing documents that were prepared to inform counsel of the facts, could be effectively the same as the court physically depriving the defendant an opportunity to speak with counsel.

Booth v. Jackson, 2023 U.S Dist. Lexis 60201 at Lexis 29 (W.D. Washington April 5, 2023).

B. AUTONOMY INTEREST

This Court in McCoy v Louisiana, notes that some errors implicate "a client's autonomy, not counsel's competence" and the traditional Strickland v. Washington

or United States v. Cronic analysis does not apply. The type of errors that implicate a client's autonomy must be "structural errors in the trial process itself," such as "impinging on the right to counsel of choice" or "a judge's failure to tell the jury that it may not convict unless it finds the defendant's guilt beyond a reasonable doubt." Some decisions, however, are reserved for the client-notable, whether to plead guilty, waive a jury, testify on his or her own behalf, or take an appeal. 138 S. Ct. at 1508-11, 200 L. Ed 821 (2018).

During Petitioner's trial, he explains:

> "The only reason why I'm not testifying is because I don't have my belongings to go over the things I want to speak about." (ECF 404 Page 152/18-22.)

The same belongings the Government recklessly misled the Court to believe they did not have.

This Court in Weaver v. Massachusetts has presented three broad rationales to identify errors as structural: (1) If the right at issue is not designed to protect the defendant from errors conviction but instead protect some other interest; (2) If the effects of the error are simply too hard to measure; and (3) If the error always results in fundamental unfairness.

137 S. Ct. 1899, at 1907-08, L. Ed 2d 420 (2017).

Petitioner's right to choose whether to testify falls within the first, if not all of Weaver's categories. Like the right to represent oneself, it is "based on the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." McCoy, 138 S. Ct. at 1509 (citing Weaver, 137 S. Ct. at 1908). In this case, Petitioner raised the need for the

return of the documents before it was time to choose whether to testify. Petitioner's choice not to testify was not his own. It was the result of the Government's actions in not returning the documents, violating his autonomy interest. Indeed, the Sixth Amendment contemplated that "The accused is the master of his own defense" and thus certain decisions, including the choice whether to testify, are reserved for the defendant. McCoy, 138 S. Ct. at 1508.

The District Court's ruling that "the information he says he wanted to explain to the jury was all information known to him," was clear error and beside the point. The District Court cites Petitioner's 2255 as evidence everything was known to him at the time. (App. 2) As Petitioner explains in his sworn affidavit, (ECF 454-3) his documents were returned 2-3 months after the trial, which is how he was able to cite some of what he was going to testify to in his 2255.

In sum, the choice falls within the first category of structural errors because it "is not designed to protect the defendant from erroneous convictions but instead protects some other interest." Namely, the defendant's right to choose how best to protect his own liberty. Weaver, 137 S. Ct. at 1908.

C. NATIONAL IMPORTANCE

Government Interference claims, such as Petitioner's are of national importance because they have significant national implications for the administration of justice, and the protection of constitutional rights. Such cases have a profound impact on law enforcement practices, prosecutorial conduct, defense strategies, and rights of defendants.

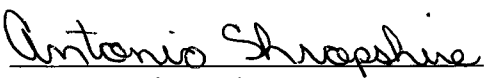
While there are cases such as Geders (1976); Weatherford v. Bursey (1977); Strickland (1984); Cronic (1984) and Perry (1989), courts have struggled to define what burden a defendant must meet to demonstrate Government Interference into their defenses. Geders and Perry address court-ordered interference, Strickland and Cronic do not address Sixth Amendment claims based on State/Government Interference with counsel's assistance, and Weatherford deals with the privacy of communication with counsel.

Granting a Certiorari in this case will define Government Interference and lead to important court cases that protect civil liberties, which can strengthen the safeguard against Government overreach and ensure that the rights of citizens are upheld.

CONCLUSION

The judgment below is a unique departure from decisions of this Court that require convictions based on Government Interference be set aside. This Court should grant this Petition for Writ of Certiorari.

Respectfully Submitted,



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