

No.

IN THE
SUPREME COURT OF THE UNITED STATES

BURTE GUCCI RHODES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF *CERTIORARI* TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF *CERTIORARI*

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I. QUESTION PRESENTED FOR REVIEW

Whether a conviction for murder-for-hire can properly be affirmed when the jury was instructed that it need not conclude an interstate facility was used before the murder took place.

TABLE OF CONTENTS

	Page
I. QUESTION PRESENTED FOR REVIEW	ii
II. OPINION BELOW.....	1
III. JURISDICTION.....	1
IV. CONSTITUTIONAL PROVISIONS AT ISSUE.....	1
V. STATEMENT OF THE CASE	2
VI. PROCEEDINGS BELOW.....	4
VII. REASON FOR GRANTING THE WRIT	6
VIII. CONCLUSION.....	9

TABLE OF AUTHORITIES

	Page(s)
 Federal Cases	
<i>Ng v. Att’y Gen. of the United States</i> , 436 F.3d 392 (3d Cir. 2006)	6
<i>United States v. Bredimus</i> , 352 F.3d 200 (5th Cir. 2003)	7
<i>United States v. Delpit</i> , 94 F.3d 1134 (8th Cir. 1996)	6
<i>United States v. Frampton</i> , 382 F.3d 213	7
<i>United States v. Preacher</i> , 631 F.3d 1201 (11th Cir. 2011) (per curiam)	6
<i>United States v. Ransbottom</i> , 914 F.2d 743 (6th Cir. 1990)	7
<i>United States v. Smith</i> , 755 F.3d 645 (8th Cir. 2014)	7
 Statutes	
18 U.S.C. § 1958	passim
18 U.S.C. § 371	1

18 U.S.C. § 924(j),.....	4
28 U.S.C. § 1254(1).....	1
Constitutional Provisions	
Fifth Amend., U.S. Const.....	1
Sixth Amend., U.S. Const.	2

II. OPINION BELOW

The Ninth Circuit, in a memorandum disposition, affirmed petitioner's convictions for murder-for-hire and conspiracy to commit murder for hire as well as his mandatory life sentence. *See* 18 U.S.C. § 1958, § 371. (Appendix A.)

III. JURISDICTION

The Ninth Circuit affirmed petitioner's convictions and sentence on April 28, 2025. (App. A.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

IV. CONSTITUTIONAL PROVISIONS AT ISSUE

The Fifth Amendment, U.S. Const., states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of

law; nor shall private property be taken for public use, without just compensation.”

The Sixth Amendment, U.S. Const., states: “In all 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 previously be 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 defence.”

V. STATEMENT OF THE CASE

The original indictment in this case charged several people with a narcotics RICO conspiracy based in Louisiana, with ties to Texas and Northern California. (2-ER-82.) The victim had been accused of skimming off the top of money used during a buying trip in California. (2-ER-288.) Following the reported theft, several of the RICO conspiracy members converged on the Bay Area. (2-ER- 289, 3-ER-405.) One of Mr. Rhodes’ codefendants, Craig Marshall, was initially charged with the victim’s murder.

He denied knowing who the shooter was. (3-ER-449-450.) Once he began cooperating with the government, Marshall identified Mr. Rhodes as the killer. (*Id.*)

Mr. Rhodes was not identified as an existing member of the RICO conspiracy. (*Id.*) The charges against him, added nearly two years after the indictment was initially filed, pertained to the murder for hire in which Marshall implicated him and an unrelated drug possession charge. (2-ER-69.)

The government's story at trial was that Mr. Rhodes, who lived in Oakland, had met up with members of the RICO conspiracy and offered to kill the victim. A cooperating codefendant, Marshall, was present during the shooting death of the victim and testified that he recognized the shooter, whose face was covered by a ski mask, as Mr. Rhodes. (3-ER-421.) A witness for the defense testified that Marshall had initially inculpated himself in the murder. (4-ER-830.)

Besides the codefendants' testimony, the government introduced phone records showing calls between Mr. Rhodes and a non-cooperating codefendant, Mario Robinson. (3-ER-518.) No evidence revealed the content

of these calls. (3-ER-535.) In addition, the government introduced evidence that Robinson had transferred around \$4,000 to Mr. Rhodes piecemeal, over several months. No physical evidence connected Mr. Rhodes to the crime. (4-ER-652, -758.)

After an initial attempt to convict Mr. Rhodes ended in a mistrial, the second jury convicted Mr. Rhodes of murder for hire and murder for hire conspiracy. (CR 699.)

VI. PROCEEDINGS BELOW

Appellant was initially charged with murder for hire, murder for hire conspiracy, and gun and drug charges. The drug charge, unrelated to the remainder of the counts, was severed and Rhodes later pled guilty to that charge. (CR 873.) Two of Rhodes' codefendants, whose charges centered on a RICO and money laundering conspiracy that Mr. Rhodes was not party to, pleaded guilty to multiple charges. (CR 518, 519.) Two others, who cooperated with the government, have not entered pleas. Mr. Rhodes proceeded to trial on the murder for hire and conspiracy counts. (CR 683.) After a mistrial, the

government dismissed one count (18 U.S.C. § 924(j), use or possession of a firearm in a murder).

Despite defense arguments to the contrary, the district court embraced the government's theory that wire transfers made to Mr. Rhodes after the shooting satisfied the interstate commerce requirement of the murder for hire statute, 18 U.S.C. § 1985B. (5-ER-1049.) The district court explicitly instructed the jury to this effect, telling jurors "[t]here is no requirement that the use of the interstate commerce facility happened before the murder." The jury convicted Mr. Rhodes on both of the tried counts. (CR 847.)

The Ninth Circuit's memorandum decision in this case (App. A) indicated that the court properly instructed the jury on the temporality issue. It further held that any error with respect to the instructions on this point was harmless because the government presented evidence that Mr. Rhodes and Robinson communicated by phone prior to the murder. (*Id.*)

The district court's instruction that the use of interstate commerce need not precede the murder cannot be reconciled with the statute's requirement that a facility of interstate commerce must be used "with intent that murder be

committed.” (18 U.S.C. 1958(a).) This Court should grant certiorari to resolve the important question of whether, under these circumstances, such an imprecise jury instruction denied the appellant his constitutional rights to due process and an adequate defense.

VII. REASON FOR GRANTING THE WRIT

The government did not introduce any testimony or other evidence about the subject of the calls between Mr. Rhodes and Robinson, whose relationship predated the events at issue. The only testimony offered about Mr. Rhodes’ involvement in planning the shooting concerned an interaction that did not involve an instrumentality of interstate commerce: an in-person conversation.

The plain meaning of the statute is that the intent must precede or co-occur with the use of the instrumentality of interstate commerce. Intent is a forward-looking term. Myriad cases support this plain language interpretation. *See United States v. Preacher*, 631 F.3d 1201, 1203 (11th Cir. 2011) (per curiam) (“[O]nce the defendant uses an instrument of interstate commerce with the intent that a murder-for-hire be committed, the crime is completed.”); *Ng v.*

Att’y Gen. of the United States, 436 F.3d 392, 397 (3d Cir. 2006) (noting that § 1958 requires “only proof of intent to enter into a murder-for-hire agreement and not of an actual agreement”); *United States v. Delpit*, 94 F.3d 1134, 1149 (8th Cir. 1996) (“[Section 1958] outlaws using interstate-commerce facilities with the intent that murder-for-hire be committed. Once the interstate-commerce facility is used with the required intent the crime is complete.”); *United States v. Frampton*, 382 F.3d 213, 217 n.3 (2d Cir. 2004) (“According to the plain language of § 1958, the act of traveling in, or using a facility of, interstate commerce, coupled with the *intent* that a murder take place in consideration of anything of pecuniary value, is itself a substantive offense . . .”); *United States v. Ransbottom*, 914 F.2d 743, 746 (6th Cir. 1990) (“On its face, the statute at issue allows a conviction if the government proves that a defendant traveled in interstate commerce with the intent that a contract murder be committed.”); *see also United States v. Bredimus*, 352 F.3d 200, 207 (5th Cir. 2003) (noting, in dicta, that “[s]ection 1958 requires only that the government prove the defendant traveled in interstate or foreign commerce with the intent that a murder be committed for hire.”); *United States v. Smith*,

755 F.3d 645, 647 (8th Cir. 2014) (“To be convicted of violating 18 U.S.C. § 1958(a) an individual need only travel or use a facility of interstate commerce, or cause another to do so, *intending* a murder be committed for hire . . .”).

To arrive at a guilty verdict in this case, then, the jury had to follow several inferential chains. It had to believe the cooperating defendant, whose testimony was insufficient to satisfy the interstate commerce prong of the offense. It had to accept that Mr. Rhodes received less than \$4,000 worth of wire transfers from Robinson after the murder based on an agreement that Mr. Rhodes would kill the victim for \$5,000. And, crucially, it had to infer that the calls between Mr. Rhodes and Robinson coincided with an intent that a murder occur, despite having no information about the content of those communications.

The Ninth Circuit erred by validating the district court’s instruction that the post-hoc wire transfers could satisfy the interstate commerce element of the murder for hire offense. This misstatement of the law tainted Mr. Rhodes’s convictions.

VIII. CONCLUSION

The clear consensus is that the intent for a murder to be committed must be formed before or during use of an instrumentality of interstate travel or commerce. The government's inconclusive evidence on this element of the offense should not have been bolstered by a misleading instruction from the bench. The Ninth Circuit's decision in this case allowed a crucial misstatement of the law to stand. This Court should grant certiorari to consider this important question.

Respectfully submitted,

GAIL IVENS

DATED: July 25, 2025

s/ Gail Ivens

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