

No. _____

In The
Supreme Court of the United States

ANTONIO NATHANIEL DAVENPORT, JR.,

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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QUESTIONS PRESENTED

1. Whether the Trial Court Erred by Failing to Give A Properly Requested Jury Instruction as to the North Carolina Crime of Murder in Violation of N.C. Gen. Stat. § 14-17(a) and (b)(1).

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ORDER BELOW

The order appealed from is the Judgment located at the CM/ECF Docket of the Fourth Circuit in United States v. Antonio Davenport, Case No. 22-4660, Docket Entry No. 70, entered on February 5, 2025. A copy of the published opinion of the Fourth Circuit issued that date is attached as Exhibit A.

JURISDICTIONAL STATEMENT

This petition for writ of certiorari is from a final judgment by the Fourth Circuit Court of Appeal entered on February 5, 2025 in a direct appeal of a conviction and sentence imposed against Petitioner Antonio Davenport in the United States District Court for the Middle District of North Carolina in M.D.N.C. No. 1:20-cr-463-WO-1. Accordingly, this Court has jurisdiction over this petition for writ of certiorari and the matter referenced herein pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISIONS INVOLVED

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

"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 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." U.S. Const. amend VI.

STATEMENT OF THE CASE

A. Procedural History.

On October 27, 2020, a federal grand jury in the Middle District of North Carolina returned a three-count indictment against Antonio Nathaniel Davenport, Jr. and Dival Nygee Magwood. [JA18-23.] Count One charged Mr. Davenport and Mr. Magwood with violating 18 U.S.C. § 1959. Count Two charged them with violating 18 U.S.C. § 924(c). Count Three charged them with violating 18 U.S.C. § 924(j). [JA18-23.]¹

Mr. Magwood pled guilty, while Mr. Davenport decided to take the matter to trial. On April 8, 2022, Mr. Davenport filed pretrial motions, including a motion to dismiss the Indictment [JA24-28.]

On May 6, 2022, the Government filed an omnibus response. [JA139-224.] On May 19, 2022, the trial court held a hearing on the motions. [JA225-323.] On June 2, 2022, the trial court entered an order disposing of most of them. [JA324-345.]

Mr. Davenport's trial commenced on June 27, 2022 and continued through July 7, 2022. [JA399-1903.] On July 7, 2022, the jury returned a verdict finding Mr. Davenport guilty on all three counts of the Indictment. [JA1904-1905.]

On October 4, 2023, Mr. Davenport was sentenced to life imprisonment. [JA1906-1993.] The written judgment was entered on November 7, 2023. [JA1994-2008.]

¹Record references are to the Joint Appendix filed in the Fourth Circuit below in Case No. 22-4660.

On November 17, 2022, trial counsel for Mr. Davenport filed a timely notice of appeal. [JA2009-2010.] On January 4, 2023, the trial court entered an Amended Judgment. [JA2011-2025.] On February 5, 2025, the Court of Appeals issued an unpublished opinion upholding Mr. Davenport's conviction and sentence. See Ex. A.

B. Statement of the Facts.

At trial, thirty nine witnesses were called, including the Petitioner who testified on his own behalf. [JA707-1463.] Prior to the submission of the case to the jury, most of the jury instruction issues were resolved, but the trial court refused the request by Petitioner's trial counsel to include a North Carolina pattern jury instruction which defines reasonable doubt for North Carolina murder cases. [JA1658-1660.] The trial court refused to give this instruction. [JA1661.]

The parties conducted oral arguments without incident. [JA1676-1754.] The trial court read the jury instructions, and sent the jury into deliberations. [JA1757-1852.] On July 7, 2022, the jury returned a guilty verdict against Mr. Davenport on all three counts of the Indictment. [JA1884-1891.] The Fourth Circuit upheld the trial court on the jury issue, writing:

Davenport contends that the district court should have given his proposed instruction on reasonable doubt that correctly stated North Carolina state law because the instruction was required for a murder conviction, and any lesser quantum of proof would not violate state law and thus not violate 18 U.S.C. § 1959(a)(1). He also contends that the district court's determination that it had no discretion to give the proposed instruction on reasonable doubt "overstated" this court's precedent. We disagree.

In *United States v. Williams*, 152 F.3d 294, 298 (4th Cir. 1998), this court explained that a federal district court "is not required to define reasonable doubt as a matter of course so long as the jury is instructed

that a defendant's guilt must be proven beyond a reasonable doubt; the Constitution does not obligate a court to further define the standard." "*Williams* remains good law" and forecloses Davenport's argument. *United States v. Watkins*, 111 F.4th 300, 313 (4th Cir. 2024).

Ex. A.

Further facts will be adduced below as necessary.

REASON WHY CERTIORARI SHOULD BE GRANTED

I. The Court Should Grant Certiorari to Clarify Whether Federal Courts Should Give a Properly Requested Jury Instruction With Respect to Reasonable Doubt in an Underlying State Crime in a VICAR Prosecution.

Under the Court's longstanding precedent, while the "beyond a reasonable doubt standard is a requirement of due process," nevertheless "the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course." *Victor v. Nebraska*, 511 U.S. 1, 5 (1994) (citing *Hopt v. Utah*, 120 U.S. 430, 440-441 (1887)). Thus, "so long as the court instructs the jury on the necessity that the defendant's guilt be proven beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof." *Victor*, 511 U.S. at 5 (citing *Jackson v. Virginia*, 443 U.S. 307, 320, n. 14 (1979); *Taylor v. Kentucky*, 436 U.S. 478, 485-486 (1978)). "Rather, taken as a whole, the instructions [must] correctly convey the concept of reasonable doubt to the jury." *Victor v. Nebraska*, 511 U.S. 1, 5 (1994) (quoting *Holland v. United States*, 348 U.S. 121, 140 (1995)).

Respectfully, the Court should grant certiorari in this case in order to clarify that federal Courts are not prohibited from defining reasonable doubt, which the trial court believed the precedent of the Fourth Circuit to proscribe. Second, the Court should grant certiorari in order to clarify that where an underlying state crime is being tried as an element of a federal crime, all substantive jury instructions appropriate under that state's law, including an instruction about reasonable doubt, should be given upon request.

In this case, the Fourth Circuit did not discuss the factual distinction that makes this case unique, i.e. that Mr. Davenport "contends that the district court should have given his proposed instruction on reasonable doubt that correctly stated North Carolina state law because the instruction was required for a murder conviction, and any lesser quantum of proof would not violate state law and thus not violate 18 U.S.C. § 1959(a)(1)." Ex. A. Specifically, the Fourth Circuit did not analyze this argument in the context of an argument about an instruction on all of the elements required under North Carolina state law. Instead, it reiterated its previous holding generally applicable in the context of a generic request to define reasonable doubt for a federally delineated crime in a federal jury trial.

Nor did the Fourth Circuit apply its even more general rule that a district court will be reversed for declining to give a proposed jury instruction only when the requested instruction "(1) was correct; (2) was not substantially covered by the court's charge to the jury; and (3) dealt with some point in the trial so important, that failure to give the requested instruction seriously impaired that party's ability to make its

case." United States v. Kivanc, 714 F.3d 782, 794 (4th Cir. 2013) (quoting Noel v. Artson, 641 F.3d 580, 586 (4th Cir. 2011)). In this respect, the Fourth Circuit precedent is to look to "whether the district court's instructions, construed as a whole, properly informed the jury of the controlling legal principles without misleading or confusing the jury." Hartsell v. Duplex Prods., 123 F.3d 766, 775 (4th Cir. 1997).

Instead, the Fourth Circuit merely relied on its previous more specific precedent in United States v. Williams, 152 F.3d 294, 298 (4th Cir. 1998) (a federal district court "is not required to define reasonable doubt as a matter of course so long as the jury is instructed that a defendant's guilt must be proven beyond a reasonable doubt; the Constitution does not obligate a court to further define the standard.")

Respectfully, this did not address the question before the trial judge, who faced in his mind a dilemma between two opposing requirements, one from federal law, and one from state law.

Under North Carolina law, "It is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence." State v. Shaw, 322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988). "Failure to instruct upon all substantive or material features of the crime charged is error. State v. Bogle, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989).

In this case, defense counsel requested to the following instruction with respect to the definition of murder under North Carolina state law, taken from the North Carolina Pattern Jury Instructions: "For these elements of murder, proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the

Defendant's guilt of murder." [JA1579.] Counsel for defense argued: "[T]his is a correct statement of law, is required for a conviction of murder in North Carolina, and any quantum of proof of less than this would not be a violation of state law and thus not a violation of 18 U.S.C. Sec. 1959(a)(1)." [JA1579.]

Prior to this case, the Fourth Circuit Court of Appeals had recognized that:

The North Carolina Pattern Jury Instructions are promulgated by the North Carolina Conference of Superior Court Judges, and they are predicated on legal principles derived from decisions of the Supreme Court of North Carolina. Although the North Carolina courts are not obliged to always utilize the pattern instructions, it is "recognized that the preferred method of jury instruction is the use of the approved guidelines of the North Carolina Pattern Jury Instructions.

U.S. v. White, 571 F.3d 365, 368 n.3 (4th Cir. 2009) quoting State v. Sexton, 153 N.C. App. 641, 571 S.E.2d 41, 45 (2002) (internal quotation marks omitted).

In State v. Shaw, The North Carolina Supreme Court stated that "the trial judge need not define reasonable doubt unless requested to do so, and if he undertakes the definition he is not limited to the use of an exact formula. The definition is sufficient if it is in substantial accord with those approved by this Court." State v. Shaw, 284 N.C. 366, 374 (1973). In Shaw, the North Carolina Supreme Court upheld the following instruction as being in substantial accord with those it has previously approved: "Proof beyond a reasonable doubt means that you must be fully satisfied and entirely convinced or satisfied to a moral certainty of the defendant's guilt." Shaw, 284 N.C. at 374.]

The trial judge, however, declined to give this instruction based on his understanding of the federal rule, which according to him, “prohibits” defining reasonable doubt.

I think it's a -- it's a close issue. But the way I see it is the tension is not between definitions or specific language defining reasonable doubt. The tension is between the state rule, which requires a court to define reasonable doubt, if requested to do so by the defendant, and the federal rule, which prohibits a court from defining reasonable doubt over and above what's included in the instructions already.

[JA1661.]

Respectfully, the trial judge’s understanding that he had no discretion to give the requested instruction was erroneous under the Court’s precedent, as stated in Victor v. Nebraska, 511 U.S. 1, 5 (1994), that “the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course.” Id. Respectfully, the decision in this case does not specifically address whether or not Fourth Circuit precedent is in fact in conflict with this Court’s rule and actually affirmatively proscribes trial judges from rendering any definition of reasonable doubt, even on the request of the defendant.

The Fourth Circuit has previously held that under the United States Constitution, “[t]here is no constitutional requirement to define reasonable doubt to a jury.” U.S. v. Walton, 207 F.3d 694, 696 (4th Cir. 2000). Further, “we have repeatedly held that a district court need not, and in fact should not, define the term “reasonable doubt” even upon request.” U.S. v. Williams, 152 F.3d 294, 298 (4th Cir. 1998) (citing United States v. Reives, 15 F.3d 42, 45 (4th Cir. 1994)).

The Reives case does appear to contain the Fourth Circuit's most prolonged discussion of defining reasonable doubt. United States v. Reives, 15 F.3d 42 (4th Cir. 1994). According to the Court in Reives, "[t]he Fourth and Seventh Circuits seem to be alone in admonishing trial courts to refrain from attempting any definition. U.S. v. Reives, 15 F.3d 42, 44 (4th Cir. 1994) quoting United States v. Hall, 854 F.2d 1036 (7th Cir. 1988) ('An attempt to define reasonable doubt presents a risk without any real benefit.')." Cf. United States v. Moss, 756 F.2d 329, 333 (4th Cir. 1985) ("District courts are again admonished not to define reasonable doubt in their jury instructions, but merely because they do so does not require reversal." In reviewing applicable precedent, the Reives court noted that:

Controversies regarding definition of the term generally arise in one of the following three ways, the first two of which we have had occasion to consider in a variety of factual settings: (1) the court refuses to give an instruction requested by the defendant or stipulated by the parties; (2) the court gives a definition on its own or when requested by the jury or a party; (3) the jury requests clarification or definition, and the court refuses.

Reives, 15 F.3d at 44.

Notably, the Fourth Circuit in Reives concluded "It is difficult to distill a rule from our cases." Id. It further explained its precedent as follows:

We have never found a refusal of a party's request for a clarifying instruction to be error. *See United States v. Woods*, 812 F.2d 1483 (4th Cir. 1987) (defendant's request denied); *United States v. Ricks*, 882 F.2d 885 (4th Cir. 1989) (same), *cert. denied*, 493 U.S. 1047, 110 S.Ct. 846, 107 L.Ed.2d 841 (1990). In cases where a defendant has complained about a definition that was given, although we have spoken of "this circuit's rule against elaborating on the meaning of 'reasonable doubt' . . ." (*Woods*, 812 F.2d at 1487), we usually examine the instructions as a whole to see whether the reasonable doubt instruction was prejudicially misleading or confusing. *See, e.g., United States v. Love*, 767 F.2d 1052,

1060 (4th Cir. 1985), *cert. denied*, 474 U.S. 1081, 106 S.Ct. 848, 88 L.Ed.2d 890 (1986). And although we have sometimes found error in such situations, we have not reversed on this ground alone. *See United States v. Moss*, 756 F.2d 329, 333 (4th Cir. 1985) (holding the unsolicited giving of the following definition to be harmless error: "proof of such a convincing character that you would be willing to rely upon it without hesitation in your most important affairs of your own" [sic]); *Murphy v. Holland*, 776 F.2d 470, 475-78 (4th Cir. 1985) (finding harmless error in unsolicited definition), vacated on other grounds, 475 U.S. 1138, 106 S.Ct. 1787, 90 L.Ed.2d 334 (1986); *Love*, 767 F.2d at 1060 (finding no plain error in unsolicited instruction); *but see United States v. Russell*, 971 F.2d 1098, 1108 (4th Cir. 1992) (declaring as "frivolous" claim that it was error to give pattern jury instruction "approved" in *Moss* after request by jury), *cert. denied*, ___ U.S. ___, 113 S.Ct. 1013, 122 L.Ed.2d 161 (1993).

Rieves, 15 F.3d at 44-35. The Court noted that "[I]t is in this somewhat uncertain atmosphere that we approach for the first time a denial of a jury request." Id. at 45.

In this case, the trial judge stated he was unable to find specific controlling precedent in which a state murder charge was subsumed as an element in a federal charge under 18 U.S.C. § 1959((a)(1). [JA1661.] Thus, for him his analysis seemed to turn on whether the North Carolina requirement to give an instruction conforming to North Carolina law when requested by the defendant is derived from the federal constitution. Specifically, the trial judge cited the holding in State v. Montgomery, 311 N.C. 559 (1992).

I think reasonable doubt is a constitutional matter, not necessarily a matter that's controlled by state law. In that same case, Montgomery, the Court found or stated this: "Having determined that the trial court's instruction gave rise to error under the Constitution of the United States, we must next determine whether the state has met its burden showing that the error was harmless beyond a reasonable doubt." So ultimately that case was decided not specifically on state law grounds, but by comparison to the requirements of the United States Constitution.

[JA1659-1660.]

It is true that Montgomery was decided on a comparison to the requirements of the United States Constitution as set forth in Cage v. Louisiana, 498 U.S. 39, 112 L.Ed.2d 339 (1990) (per curiam). That is because that was Montgomery's chief argument in that case. State v. Montgomery, 311 N.C. 559 (1992). See also State v. Moseley, 336 N.C. 710, 716-18 (N.C. 1994) (discussing further legal developments with respect to the issue.) North Carolina Supreme Court and Court of Appeal precedents and Pattern Jury Instructions, however, also incorporate not only federal constitutional but also state constitutional, statutory, and common law considerations. Thus, the trial judge's stated rationale for his ruling was erroneous.

The bottom line is that the statutory language in 18 U.S.C. § 1959 requires a substantive state crime. North Carolina state law defines reasonable doubt in a specific way, and all North Carolina criminal defendants, especially and including murder defendants, have the substantive right to have the jury instructed in that way as part of the jury's consideration of their guilt. This is a substantive and not merely procedural right. By refusing to accord Mr. Davenport with the same North Carolina constitutional, statutory, and common law rights to have his state murder case within the federal case adjudicated under the same standards and definitions possessed by all murder defendants in the state of North Carolina, the trial judge reversibly erred and structurally erred.

Like the trial judge, the undersigned has not been able to find federal precedent on this specific issue in which a state murder charge was subsumed as an element in a federal charge under 18 U.S.C. § 1959((a)(1). [JA1661.] But the

argument here is not based on the specific federal constitutional right to a jury instruction on reasonable doubt, it is based on Mr. Davenport's state constitutional and statutory rights as defined by the North Carolina Supreme Court. As such, this error thus met all three elements necessary for reversal in that the instruction under United States v. Kivanc, 714 F.3d 782, 794 (4th Cir. 2013). Even if it didn't, however, this is an error which would still require reversal in that it deals with the issue of reasonable doubt in the context of the elements of an included state crime. See Sullivan v. Louisiana, 508 U.S. 275 (1993) (A constitutionally deficient reasonable doubt instruction cannot be harmless error.)

For these reasons, the Court should overturn Defendants' convictions and remand the case to the Middle District of North Carolina

CONCLUSION

For the above stated reasons, Petitioner respectfully requests that the Court grant this Petition for Certiorari, vacate his conviction and sentence, remand the matter to the district court with appropriate instructions, and grant whatsoever other relief the Court may find just and proper.

Respectfully submitted this the 11th day of June, 2025.

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