No. _____

In the

Supreme Court of the United States

MICHAEL DENNIS WILLIAMS, 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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QUESTIONS PRESENTED

Petitioner Michael Williams was convicted of conspiracy to commit Hobbs Act Robbery; Hobbs Act Robbery; and use and discharge of a firearm during a crime of violence in violation of §924(c).

The jury returned a general verdict which did not identify the theory of liability upon which the verdict rested. Williams therefore contends that his §924(c) conviction must be reversed if any of the predicates is an invalid predicate crime of violence. Alternatively, he contends that each of the three potential predicates (conspiracy to commit Hobbs Act Robbery, Hobbs Act Robbery as a principal, and Hobbs Act Robbery under a *Pinkerton* theory) are invalid predicate crimes of violence.

The questions presented are:

1. Whether Hobbs Act Robbery under a *Pinkerton* theory is not a predicate crime of violence under §924(c) because *Pinkerton* requires only a negligence standard of reasonable foreseeability, and this Court has held that a crime of violence requires a greater mens rea than negligence.
2. Whether Hobbs Act Robbery is not a predicate crime of violence under §924(c) because it does not categorically require the "use, attempted use, or threatened use of physical force against the

person or property *of another*" as required by 18 U.S.C. §924(c)(3)(A) (emphasis added).

3. Whether conspiracy to commit Hobbs Act Robbery is not a predicate crime of violence under §924(c) because it does not categorically require the "use, attempted use, or threatened use of physical force."

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 14.1(b)(i), petitioner submits that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner Michael Dennis Williams was the defendant in the district court and the appellant in the Ninth Circuit Court of Appeals. Respondent United States of America was the plaintiff in the district court and the appellee in the Ninth Circuit Court of Appeals.

RELATED PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

United States v. Williams, No. 16-56640

Order denying petition for rehearing and rehearing en banc filed on January 26, 2026 (App. 1)

Unpublished Memorandum disposition affirming the district court's denial of Williams' 28 U.S.C. §2255 motion filed on June 3, 2025 (App. 2-4)

Johnson v. United States, No. 19-55717 (codefendant)

Opinion affirming the district court's denial of Johnson's 28 U.S.C. §2255 motion filed on June 3, 2025, *Johnson v. United States*, 139 F.4th 830 (9th Cir. 2025) (App. 5-28)

United States District Court for the Central District of California

United States v. Williams, No.: 2:16-cv-02569-RSWL

Order denying Williams' Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. §2255 filed on October 31, 2016 (App. 29-51)

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Michael Dennis Williams petitions for a writ of certiorari to review the judgment and Memorandum decision of the United States Court of Appeals for the Ninth Circuit in his case.

OPINIONS BELOW

The Ninth Circuit's Memorandum decision in *United States v. Williams*, No. 16-56640, was not published. (App. 2-4) In the Memorandum, the Ninth Circuit relied upon the published Opinion issued in the appeal of Mr. Williams' codefendant, *Johnson v. United States*, 139 F4th 830 (9th Cir. 2025). (App. 5-28) The district court's Order in *United States v. Williams*, Central District of California Case No. 2:16-cv-02569-RSWL, was not published. (App. 29-51)

JURISDICTION

The Ninth Circuit issued its Memorandum decision affirming the district court judgment on June 3, 2025. (App. 2) The Ninth Circuit issued its order denying rehearing and rehearing en banc on January 26, 2026. (App. 1) This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

18 U.S.C. §924(c)(1)(A), (j)

18 U.S.C. §1951(a)

These provisions are included in Appendix D. (App. 52-61)

STATEMENT OF THE CASE

A. First Superseding Indictment

In 2007, Williams, along with Johnson and two other defendants, was charged with conspiracy to commit Hobbs Act Robbery, in violation of 18 U.S.C. §1951(a) (Count One); (2) Hobbs Act Robbery, aiding and abetting, in violation of 18 U.S.C. §1951(a), 18 U.S.C. §2(a) (Count Two); and (3) use of, carrying, brandishing and discharge of a firearm during a crime of violence, namely, the armored truck robbery charged in Counts One and Two, causing death, aiding and abetting, in violation of 18 U.S.C. §924(c)(1)(A)(iii), (j)(1), and 18 U.S.C. §2(a) (Count Three). (ER-244-50) The charges arose from the 2004 robbery by four men of an armored truck making a cash delivery to a bank branch, in which one of the armored truck guards was fatally shot.

B. Trial Evidence

Despite numerous witnesses observing the robbers as they grabbed bags of money from the armored truck and ran down the street, no

eyewitness identified Williams as one of the robbers. Although Williams' DNA was identified on a glove found under debris down the street from the bank (in the neighborhood where Williams hung out), no eyewitness saw the robbers wear or drop gloves. The gloves were not tested for gunshot residue.[1]

The remaining evidence connecting Williams to the offense was the testimony of two snitches, gang members with significant criminal histories. The snitches' credibility was impeached by numerous inconsistencies, contradictions, errors, and self-interested bias. For example, the district court denied codefendant Johnson's ineffective assistance of counsel claims concerning one of the snitches, on the ground, inter alia, that there was no prejudice since the snitch's credibility had been thoroughly impeached at trial. The snitch admitted to lying under oath, suborning perjury, and being involved in multiple murders for which he was not prosecuted.

C. Jury Instructions

As to Count One, the Hobbs Act conspiracy count, the court instructed that the jury had to find three elements:

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[1] Since the gloves were not otherwise connected to the robbery or to the use of a firearm, the fact that Williams' DNA was found on a glove covered with debris in the street did not establish any involvement in the robbery.

"First, beginning on or about at least February 27, 2004, and ending on or about at least March 1, 2004, there was an agreement between two or more persons to interfere with commerce by robbery, in violation of Title 18, United States Code, Section 1951(a);

"Second, the defendant became a member of the conspiracy knowing of its object and intending to help accomplish it; and

"Third, if successful, the robbery would have affected interstate or foreign commerce." (ER-158)

The jury was then instructed that there were two ways that the government could prove that Williams was guilty of Count Two: "first, by committing the crime himself, or, second, by being part of a conspiracy as charged in Count One, during or in furtherance of which the reasonably foreseeable crime of robbery affecting interstate commerce was committed." (ER-227)

The court further instructed the jury that it could find Williams guilty of Count Two, the substantive crime of robbery, first on the ground that he committed the crime himself, or second on an alternate theory:

"The second way in which a defendant may be found guilty of robbery affecting interstate commerce is if you find that the defendant entered into the conspiracy as charged in Count One of the Indictment, and that the robbery affecting interstate commerce as charged in Count

Two of the Indictment was foreseeable as a natural or necessary consequence of that conspiracy."

Similarly, the jury was instructed that there were two ways for the government to prove Williams guilty of Count Three, §924(c)(1)(A)(iii), "first, by committing the crime himself, or, second, by being part of a conspiracy as charged in Count One, during or in furtherance of which occurred the reasonably foreseeable crime of robbery and the knowing use of the firearm during and in relation to that crime." (ER-234)

D. Jury Arguments

The government's Answering Briefs in Johnson's and Williams' appeals acknowledged that the government and the district court assumed that the jury was instructed that the conspiracy charged in Count One was a predicate crime of violence for the §924(c) count, and that the §924(c) conviction rested on Hobbs Act conspiracy as well as Hobbs Act Robbery. (GAB-27-28) That was the position taken by the government in its argument to the jury.

E. Conviction

The jury returned a general verdict of guilt on all counts; the verdict form did not specify whether the jury convicted Williams of violating §924(c)

based on having been a principal in a Hobbs Act Robbery or having been a participant in a conspiracy. (ER-216-18)

Notably, the jury required "nearly four days of deliberation" to reach its verdict. *United States v. Johnson*, 767 F.3d 815, 820 (9th Cir. 2014).[2]

Williams was sentenced to 480 months on Counts One and Two, and Life on Count Three, to be served concurrently.

F. Memorandum and Opinion on Appeal

Williams' convictions were affirmed on appeal and he filed a §2255 motion challenging his §924(c) conviction, which was denied by the district court. The Ninth Circuit granted a Certificate of Appealability on the following issues: whether Williams' §924(c) conviction must be vacated in light of *Johnson v. United States*, 576 U.S. 591 (2015); whether Hobbs Act Robbery is a crime of violence; and whether Hobbs Act Robbery under a *Pinkerton* theory of liability qualifies as a crime of violence (App.-2).

On June 3, 2025, the Court issued a Memorandum disposition affirming the district court's order denying Williams' §2255 motion. First,

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[2] This Court has acknowledged that lengthy deliberations establish that the jury struggled to convict, meaning that an error was not harmless. See, e.g., *Parker v. Gladden*, 385 U.S. 363, 365 (1966) (fact that jurors deliberated for 26 hours indicated a difference among them as to petitioner's guilt).

the Memorandum held that its Opinion in Johnson's appeal controlled the outcome of Williams' appeal. The Memorandum stated that like Johnson's §924(c) conviction, Williams' §924(c) conviction remained lawful because it was based on one of two valid predicate offenses: Hobbs Act Robbery or Hobbs Act Robbery under a *Pinkerton* theory of liability. (App.-2)

Second, the Memorandum held that even if the jury could have interpreted the district court's instructions to mean that the §924(c) charge could be predicated on the conspiracy charged in Count One of the Indictment, any such error would have been harmless. Relying again upon its Opinion in *Johnson*, the Memorandum stated that the jury could not have reasonably concluded that Williams used a firearm in the course of the conspiracy but not in the course of the Hobbs Act Robbery. (App.-2-3)

REASONS FOR GRANTING THE WRIT

A. Williams' §924(c) Conviction Must Be Reversed Because Hobbs Act Robbery Under a *Pinkerton* Theory Is Not a Valid §924(c) Predicate

The jury was instructed that it could convict Williams on Counts Two and Three on a *Pinkerton*[3] theory: to wit, that Williams could be found guilty if a person named in Count Three committed the crime of robbery and

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[3] *Pinkerton v. United States*, 328 U.S. 640 (1946).

knowingly used the firearm during and in relation to that crime; the person was a member of the conspiracy charged in Count One; the person committed the crime of robbery and knowingly used the firearm in furtherance of the conspiracy; the defendant was a member of the conspiracy when the offense in Count Three was committed; and the offense fell within the scope of the agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement. (ER-236-37; see also 14-SER-2969-76)

A conviction of Hobbs Act robbery under a *Pinkerton* theory is not a valid §924(c) predicate. (GAB-28) The Memorandum's decision that *Pinkerton* is a valid predicate for a §924(c) conviction is irreconcilable with this Court's precedents, including *Rosemond v. United States*, 572 U.S. 65 (2014); *Borden v. United States*, 593 U.S. 420 (2021); *United States v. Taylor*, 596 U.S. 845 (2022), and *Delligatti v. United States*, 604 U.S. 423 (2025).

In *Taylor*, the Supreme Court held that attempted Hobbs Act robbery does not qualify as a "crime of violence" under §924(c)(3)(A). *Taylor* established that the court must employ a categorical approach in determining whether a conviction is a valid predicate crime of violence. The categorical approach examines whether the government is always required to prove beyond a reasonable doubt, as an element of its case, that the defendant used, attempted to use or threatened the use of force. Id. at 850, citing

Borden v. United States, 593 U. S. 420 (2021) (the facts of a given case are irrelevant; the least culpable act criminalized must involve the level of force described in the crime of violence definition; offense that "requires only a mens rea of recklessness—a less culpable mental state than purpose or knowledge" cannot qualify as violent); *United States v. Davis*, 588 U.S. 445 (2019); *Leocal v. Ashcroft*, 543 U.S. 1, 7, 9-11 (2004) (crimes of violence require a higher degree of intent than negligent conduct). To obtain a conviction, the government must prove that the defendant engaged in the unlawful taking or obtaining of personal property from the person of another, against his will, by means of actual or threatened force. Id. at 850. The *Taylor* Court held that attempted Hobbs Act robbery does not satisfy the elements clause because "it does not require the government to prove that the defendant used, attempted to use, or even threatened to use force against another person or his property." Id. at 851.

In *Delligatti*, this Court reiterated that it applies the "categorical approach" to determine whether an offense falls within the elements clause. Under that approach, the Court does not examine the defendant's actual conduct. Instead, the Court asks whether the offense in question "always" involves the use, attempted use, or threatened use of force. If the offense can be committed without the use, attempted use, or threatened use of force, it is not a crime of violence under the elements clause. *Delligatti*, 604 U.S. at 426.

Here the *Pinkerton* instructions did not require the government to prove that Williams used, attempted to use or even threatened to use force, but only that it was reasonably foreseeable. Under the *Pinkerton* instructions, Williams could have been convicted under §924(c) based solely on the use of a firearm by a conspirator, simply if such use was foreseeable. But simple foreseeability -- a negligence standard[4] -- is not a mens rea that constitutes a crime of violence under this Court's precedents.

A conviction based upon a *Pinkerton* theory has impermissibly diluted the elements of the offense so that it no longer encompasses the requisite mens rea. As *Taylor* instructs, in performing the categorical analysis, the court must examine the elements that the government is required to prove to obtain a conviction, and determine whether such elements comprise a crime of violence. The court must consider the elements of accomplice liability in its

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[4] The states of mind that give rise to criminal liability are, "in descending order of culpability: purpose, knowledge, recklessness, and negligence." *Borden v. United States*, 593 U.S. 420, 426 (2021). Notably, *Borden* held that recklessness is insufficient. The *Pinkerton* standard of reasonable foreseeability is a negligence standard, *Alvarez-Cerriteno v. Sessions*, 899 F.3d 774, 782 (9th Cir. 2018), which is an even lesser standard than the recklessness standard found deficient in *Borden*.

categorical analysis. *Alfred v. Garland*, 64 F.4th 1025, 1033 (9th Cir. 2023). A conviction premised upon a *Pinkerton* theory does not include the requisite elements of a crime of violence.

In *Rosemond v. United States*, 572 U.S. 65 (2014), this Court held that "knowledge"—not just reasonable foreseeability—is required for aiding-and-abetting liability. Under *Rosemond*, use of a gun during a crime by a co-conspirator that was reasonably foreseeable to the defendant is not sufficient to sustain a conviction as an aider or abettor. *Rosemond* requires proof of the defendant's advance knowledge that a firearm would be present.

Thus the *Pinkerton* instruction, which requires only foreseeability, does not comply with *Rosemond*. The jury instructions did not require the element of knowledge or intent. The *Pinkerton* instructions only required the jury to find foreseeability, not knowledge: "the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement." (ER-236-27; see also ER-226, ER-227, ER-229, ER-30, ER-234)

The requisite categorical approach inquiry is whether the elements that the government must prove to convict the defendant comprise a crime of violence. Since under *Pinkerton* the government no longer need prove the necessary mens rea, then Hobbs Act Robbery under a *Pinkerton* theory is not a crime of violence.

B. Williams' §924(c) Conviction Must Be Reversed Because Hobbs Act Robbery Is Not a Valid §924(c) Predicate

Hobbs Act Robbery is not categorically a crime of violence because it can be committed through threats of self-harm.

Hobbs Act Robbery may be committed by the means of actual or threatened force, violence, or fear of injury to the person or property of a relative or member of the victim's family or of anyone in his company at the time of the taking or obtaining. §1951(b)(1). Where the victim of the Hobbs Act Robbery is a member of the perpetrator's family, the actual or threatened force or violence can be directed against the perpetrator himself or his property. This would not constitute actual or threatened use of force against the person or property of another. Likewise, if the perpetrator is in the company of the victim at the time of the taking or obtaining, as will nearly always be the case, the actual or threatened force or violence could be directed against the perpetrator himself or his property. This, also, would not constitute actual or threatened use of force against the person or property of another. Force directed at oneself is not force against another. For this reason, Hobbs Act Robbery is not categorically a crime of violence.

As discussed above, the categorical approach requires the court to: "Look at the elements of the underlying crime and ask whether they require the government to prove the use, attempted use, or threatened use of force"

against the person or property of another. *Taylor*, 596 U.S. at 860. Because "another" means "one other than oneself," 'the person [or property] of another in § 924(c)(3)(A) means a person 'other than' the perpetrator of the crime of violence." *United States v. Kepler*, 74 F.4th 1292, 1305 n. 15 (10th Cir. 2023) (citing dictionaries). Hobbs Act Robbery does not require the government to prove the use or threat of force against a person other than the perpetrator. Rather, Hobbs Act Robbery may be committed by means of actual or threatened force, or violence, or fear of injury to (1) the person or property of the individual from whom the personal property is taken; (2) the person or property of a relative or member of his family; or (3) the person or property of anyone in his company. §1951(b)(1).

If the perpetrator is a relative or member of the victim's family, or if the perpetrator is in the company of the victim, the threat could be directed at the perpetrator himself. For example, the perpetrator robs his brother, a drug dealer, of drugs with the threat that if the drug dealer does not hand over his drugs, the perpetrator will kill himself. Or go to a competitor drug dealer, whose drugs are known to be contaminated with deadly toxins. The perpetrator may be convicted of Hobbs Act Robbery because he has obtained his brother's property through the threatened use of force against the perpetrator himself or through causing his brother fear that the perpetrator will injure himself. See *United States v. Culbert*, 435 U.S. 371, 380 (1978)

("Congress intended to make criminal all conduct within the reach of the statutory language"); *United States v. Rodriguez*, 360 F.3d 949, 955–56 (9th Cir. 2004) (robbery of drug dealers is Hobbs Act Robbery). This is true even though the perpetrator has not used, attempted to use, or threatened to use physical force against the person or property of another. And that is because Hobbs Act Robbery does not have as an element the use, or attempted use, or threatened use of physical force against the property of another. As a result, Hobbs Act Robbery does not satisfy the requirements of §924(c)(3)(A).[5]

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[5] See *United States v. Portee*, 941 F.3d 263, 271-73 (7th Cir. 2019) (holding that a defendant's conviction for felony intimidation under state law did not qualify as a violent felony under elements clause of ACCA since the plain language of the intimidation statute encompassed situations involving self-harm or threats of self-harm); *United States v. Bolden*, 741 F.Supp.3d 280, 286 (E.D. Penn. Jul. 23, 2024) (holding that federal attempted armed bank robbery is not a crime of violence for §924(c) because it could be committed through threats of self-harm); *United States v. Plunkett*, 2024 WL 4173806, *7 (W.D. Va. Sept. 12, 2024) (holding that federal interstate stalking is not a crime of violence for §924(c)(3)(A) because it could be committed by threats of self-harm); *United States v. Brooks*, 2020 WL 5984350 (E.D. Tenn. Oct. 8, 2020) (holding state felony of riot-in-a-penal-institution did not qualify as a violent felony under the elements clause of the ACCA because it could involve, inter alia, acts of self-harm); cf. *United States v. Gamez*, 2025 45377 (N.D Indiana Jan. 7, 2025) (certifying question to Indiana Supreme Court

Finally, *Gonzales v. Duenas-Alvarez*, 549 U.S. 1883, 193 (2007), notwithstanding, because §1951(b)(1) is facially overbroad, Mr. Williams need not identify an actual case where the government has prosecuted Hobbs Act Robbery based on a threat of self-harm. As the Supreme Court held in *Taylor*, 596 U.S. at 859, *Duenas-Alvarez* is inapposite for "at least two reasons." Id. at 858. First, the Supreme Court explained, "the immigration statute at issue in *Duenas-Alvarez* required a federal court to make a judgment about the meaning of a state statute," and therefore the decision reflected a "federalism concern" that was not present in *Taylor* because the Hobbs Act is a federal statute. Id. at 858–59. Second, the Court explained that "in *Duenas-Alvarez* the elements of the relevant state and federal offenses clearly overlapped and the only question the Court faced was whether state courts also 'appl[ied] the statute in [a] special (nongeneric) manner.' " Id. at 859 (quoting *Duenas-Alvarez*, 549 U.S. at 193). The Court did not need to "reach that question" in *Taylor* because the "[a]ttempted Hobbs Act robbery does not require proof of any of the elements § 924(c)(3)(A) demands." Id. "That ends the inquiry, and nothing in Duenas-Alvarez suggests otherwise." Id. Where, as here, the elements of §1951(a) do not require the government to prove the use,

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whether Indiana robbery can be committed by using or threatening self-harm).

attempted use, or threatened use of force against the person of another, there is no categorical match, and the court does not reach *Duenas-Alvarez'* "realistic probability" standard.

Because Hobbs Act Robbery does not have as an element the use, attempted use, or threatened use of force against the person of another, it is not a "crime of violence" for the purposes of 18 U.S.C. §924(c).

C. Williams' §924(c) Conviction Must Be Reversed Because Conspiracy to Commit Hobbs Act Robbery Is Not a Valid §924(c) Predicate

1. Conspiracy to Commit Hobbs Act Robbery Is Not a Valid §924(c) Predicate

In *United States v. Taylor*, 596 U.S. 845, 869 (2022), this Court observed that "the Government conceded that conspiracy to commit Hobbs Act robbery—the predicate crime for the defendants' §924(j) convictions—was not a crime of violence under this Court's elements-clause precedents."

Various Circuit Courts have held that under this Court's precedents, conspiracy to commit Hobbs Act Robbery is not a valid predicate crime of violence. That is because conspiracy to commit Hobbs Act Robbery does not categorically "necessitate[] the existence of a threat or attempt to use force." *Brown v. United States*, 942 F.3d 1069, 1075 (11th Cir. 2019); see also *United States v. Barrett*, 937 F.3d 126 (2d Cir. 2019); *United States v. Simms*, 914

F.3d 229, 233 (4th Cir. 2019). In *United States v. Reed*, 48 F.4th 1082, 1087-1088 (9th Cir. 2022), the Ninth Circuit held that Reed's conspiratorial cooperation to commit a Hobbs Act Robbery could, in theory, "manifest itself in any one of countless non-violent ways." *Brown*, 942 F.3d at 1075. Thus, applying the categorical approach in the wake of *Davis*, the Ninth Circuit concluded that that conspiracy to commit Hobbs Act Robbery is not a "crime of violence."

2. The Memorandum Erroneously Stated that the Jury Did Not Rely Upon Conspiracy to Commit Hobbs Act Robbery (Count One), an Invalid §924(c) Predicate

a. The Memorandum Acknowledged that Conspiracy Is an Invalid Crime of Violence Predicate

The Opinion correctly held that conspiracy to commit Hobbs Act Robbery could not have served as a valid predicate crime of violence for the §924(c) charge. (App.-22) However, the Opinion held that conspiracy was not in fact a predicate; instead, according to the Opinion, the instructions required the jury to find guilt only on one of two alternative theories: either direct or *Pinkerton* culpability. (App.-22)

b. The Memorandum's Conclusion that There Was No Conspiracy Predicate for §924(c) Is Erroneous

However, the Memorandum erred in concluding that there was no conspiracy predicate. The jury was instructed by the district court and told

by the government that conspiracy in Count One was a predicate crime of violence for Count Three. As the Opinion acknowledged, the government and the district court assumed that the jury was instructed that the conspiracy charged in Count One was a predicate crime of violence for the §924(c) count, and that the §924(c) conviction rested on Hobbs Act conspiracy as well as Hobbs Act Robbery. (App.-23 n.8) The government additionally acknowledged that it similarly contended in codefendant Johnson's appeal that both Hobbs Act Robbery and conspiracy were §924(c) predicates in this case. (GAB-29 n.8) After over 14 years of litigation, the government's 2024 Answering Brief for the first time took the position that the only predicate for the §924(c) count was Hobbs Act Robbery, and that the jury was not instructed on a conspiracy predicate. (GAB-29, citing ER-172)

However, the government's acknowledgement that it proceeded in the district court, and through 2024, as though conspiracy was a §924(c) predicate is fatal to the Court's conclusion. The government charged conspiracy as a predicate, proceeded at trial as if conspiracy was a predicate, and told the jury that conspiracy was a predicate. Thus, in its closing argument, the government told the jury to convict Williams of Count Two, robbery, and Count Three, §924(c), on a simple conspiracy theory. For example, the government told the jury that it could convict Williams of

robbery merely by finding that a member of the conspiracy (not even Williams) committed robbery, without more. (14-SER-2805)

The government then similarly told the jury that it could convict Williams on the §924(c) count, Count Three, again merely if a member of the conspiracy (not necessarily Williams) committed a crime of violence and that conspirator used a firearm in relation thereto. (14-SER-2806)

The government's direction to the jury that it could convict on Counts Two and Three on a simple conspiracy basis was reinforced by a paragraph in the court's jury instructions which instructed the jury that it could convict on a conspiracy theory:

> "Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime." (ER-174)

Additionally, Count Three of the indictment, which the jury was told to look at, charged defendants with use of firearms during and in relation to a crime of violence "as charged in Counts One [conspiracy] and Two [robbery] of this first superseding indictment." (ER-250)

Accordingly, the indictment, the jury instructions and the government repeatedly told the jury that it could convict Williams of Hobbs Act Robbery

and §924(c) on a simple conspiracy theory, which is not a valid predicate. If, as the government acknowledges, the district court and the government believed that conspiracy was a predicate, the less-experienced jury could not have believed otherwise.

D. Williams' §924(c) Conviction Must Be Reversed If Any One of the Three Alleged Predicates Is Not a Valid §924(c) Predicate

Since the jury returned a general verdict which did not identify the theory of liability upon which the verdict rested, Williams' §924(c) conviction must be reversed if any of the predicates is an invalid predicate crime of violence. *United States v. Reed*, 48 F.4th 1082, 1090 (9th Cir. 2022). The Memorandum erred in holding that even if the instructions allowed the jury to predicate the §924(c) charge on conspiracy as charged in Count One, any such error would have been harmless. (App.-2) The Memorandum held that the evidence presented against Williams demonstrated his participation in the robbery. (App.-2) The Memorandum further held that evidence supporting the Hobbs Act Robbery and conspiracy charges was so coextensive and inextricably intertwined that no rational juror could have found that Williams carried a firearm in relation to the conspiracy charge and not in relation to the robbery charge. (App.-3)

The Memorandum further misconstrued the application of the principle in *Reed* that an instruction error is harmless when an invalid predicate is

inextricably intertwined with a valid predicate. In *Reed*, and all of the cases cited by the government on this issue, the defendant's role was undisputed and there were two completely coextensive conspiracies (one valid, one invalid) based upon identical facts. Those cases do not apply here, where the firearm allegation, the robbery and the conspiracy were not coextensive. Moreover, the evidence of Williams' involvement was disputed and the verdict rendered in this case does not disclose what the jury found Williams had done. There were numerous eyewitnesses who saw the robbers, but no eyewitness identified Williams. Various contradictions, inconsistencies and errors rendered the snitch testimony unbelievable; notably, the district court characterized one of the snitches as thoroughly impeached. Although Williams' DNA was identified on a glove found under debris down the street away from the bank, that fact does not identify any specific connection with the robbery. There was no evidence that any of the robbers were wearing gloves or dropped gloves, so a glove with DNA does not identify any particular robber. Furthermore, the government did not test the glove for gunshot residue, so the wearer of the glove was not proven to be a shooter. And the glove was located under debris in the street, which was in Williams' neighborhood, meaning that the glove could have been deposited there at any time earlier in the course of Williams' activities in the neighborhood. Since the gloves were not otherwise connected to the robbery, the fact that

Williams' DNA was found on a glove in the street does not establish the nature of his involvement, if any, in the robbery.

The lack of any eyewitness testimony implicating Williams is significant because (apart from the discredited snitch testimony) the evidence does not identify Williams' role in the robbery. Therefore it is unclear whether the jury found that Williams was a shooter as claimed by the snitch testimony, or found that he had some other connection to the robbery that did not involve firearms.

Because the evidence implicating Williams was disputed and inconclusive, and the §924(c) predicates were not coextensive, the *Reed* principle relied upon by the Memorandum is inapposite here. The instructional error was prejudicial.

CONCLUSION

For the foregoing reasons, Williams respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

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