

No. 12-9527

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IN THE SUPREME COURT OF THE UNITED STATES

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PAUL HARDY, PETITIONER

v.

UNITED STATES OF AMERICA

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

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether petitioner's indictment, read with maximum liberality, adequately alleged that he conspired to violate a person's civil rights, resulting in death, and that he deprived a person of civil rights under color of law, resulting in death.

2. Whether the omission of an essential element from an indictment may be found to be harmless error.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is not published in the Federal Reporter but is reprinted in 499 Fed. Appx. 388. A prior opinion of the court of appeals (Pet. App. 29a-38a) is reported at 380 F.3d 821. A prior order of the district court (Pet. App. 6a-28a) is unreported. Another prior opinion of the court of appeals is reported at 185 F.3d 407.

JURISDICTION

The judgment of the court of appeals was entered on December 6, 2012. The petition for a writ of certiorari was filed on March

5, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted of conspiracy to violate civil rights resulting in death, in violation of 18 U.S.C. 241 (Count 1); deprivation of civil rights under color of law resulting in death, in violation of 18 U.S.C. 242 and 2 (Count 2); and tampering with a witness, in violation of 18 U.S.C. 1512(a)(1)(C) and 2 (Count 3). Petitioner was sentenced to death. The court of appeals affirmed petitioner's convictions on Counts 1 and 2, reversed as to Count 3, and remanded for resentencing. 185 F.3d 407. On remand, the district court held that petitioner was eligible for a maximum sentence of life imprisonment but not a sentence of death. Pet. App. 6a-28a. The government appealed, and the court of appeals vacated and remanded. Id. at 29a-38a. On remand, the district court found under Atkins v. Virginia, 536 U.S. 304 (2002), that petitioner's mental incapacity rendered him ineligible for a death sentence and instead sentenced petitioner to life imprisonment. The court of appeals affirmed. Pet. App. 1a-5a.

1. Len Davis, a New Orleans police officer, solicited petitioner and Damon Causey to kill Kim Marie Groves after Groves filed a complaint against Davis with the New Orleans Police

Department's internal-affairs office. Groves had seen Davis engage in police brutality. Petitioner, a drug dealer who had done favors for Davis in the past in exchange for police protection, discussed with Davis plans to murder Groves to prevent her from testifying against Davis. Petitioner ultimately shot Groves in the head, killing her. Pet. App. 2a, 31a-32a.

2. In December 1994, a grand jury indicted petitioner, Davis, and Causey. Pet. App. 32a. In July 1995, the government gave notice of its intention to seek the death penalty against petitioner under the Federal Death Penalty Act of 1994 (FDPA), 18 U.S.C. 3591 et seq. The notice included the required FDPA factors. Pet. App. 32a; 18 U.S.C. 3593(a).

In August 1995, the grand jury returned a third superseding indictment, which is at issue in this case. App., infra, 1a-6a. Count 1 charged that petitioner, Davis, and Causey "willfully \* \* \* conspire[d] \* \* \* to injure, oppress, threaten and intimidate Kim Marie Groves and another individual \* \* \* in the free exercise and enjoyment of the rights and privileges secured to them by the Constitution and laws of the United States \* \* \* , resulting in the death of Kim Marie Groves," in violation of 18 U.S.C. 241, and that it was "part of the plan and purpose of this conspiracy that Kim Marie Groves and the other individual known to the grand jury would be killed." App., infra, 1a-2a. The indictment alleged that among the overt acts of the conspiracy were

that "Davis contacted [petitioner] on several occasions \* \* \* to arrange the murder of Kim Marie Groves"; that "Davis, during a cellular telephone conversation, ordered [petitioner] \* \* \* [to] murder \* \* \* Kim Marie Groves" and "[petitioner] agreed to kill Kim Marie Groves"; and that less than an hour after the telephone call, "[petitioner] shot Kim Marie Groves in the head with a 9 mm firearm, which resulted in her death." Id. at 2a-3a (capitalization omitted).

Count 2 charged that petitioner, Davis, and Causey "did willfully deprive" Groves of her civil rights by use of excessive force, i.e., "by shooting [her] in the head with a firearm, resulting in her death," in violation of 18 U.S.C. 242 and 2. App., infra, 4a. Count 3 charged petitioner, Davis, and Causey with willfully killing Groves to prevent her communications to a law enforcement officer regarding a possible federal crime, in violation of 18 U.S.C. 1512(a)(1)(C) and 2. App., infra, 4a.

3. After trial in April 1996, the jury found petitioner guilty on all counts, found that petitioner had the requisite intent under 18 U.S.C. 3591(a)(2)(A), and found the statutory aggravating factor of substantial planning and premeditation under 18 U.S.C. 3592(c)(9). The jury recommended that petitioner be sentenced to death, and the district court imposed a death sentence. 185 F.3d at 411-412.

The court of appeals affirmed petitioner's convictions on Counts 1 and 2, but it reversed on Count 3, finding the evidence insufficient to support the verdict on that count. 185 F.3d at 421-423. Because the court of appeals had reversed the conviction on Count 3, and because the jury's recommendation of the death penalty for petitioner was not specifically tied to conviction on a particular count, the court vacated petitioner's death sentence and remanded for resentencing. Id. at 423. This Court denied petitioner's petition for a writ of certiorari. 530 U.S. 1277 (2000) (No. 99-8165).

4. Between the time of petitioner's first sentencing hearing and his resentencing hearing on remand from the court of appeals, this Court decided Apprendi v. New Jersey, 530 U.S. 466 (2000), and Ring v. Arizona, 536 U.S. 584 (2002). In August 2002, relying on Ring, petitioner and Davis argued for the first time that the indictment was insufficient to support the death penalty because it did not allege the requisite FDPA elements establishing their eligibility for a death sentence. The district court agreed that, under Ring, a federal indictment must allege mental culpability and a statutory aggravating factor in order to render a defendant death-eligible. Pet. App. 6a-12a. The district court further concluded that because the indictment had not sufficiently alleged those factors, petitioner and Davis were not eligible for a death sentence. Id. at 12a-19a, 27a.

Petitioner also argued in passing that he could not be sentenced to life imprisonment, but only to Section 241's and 242's base statutory maximum sentences of ten years of imprisonment, because "[n]either Count 1, nor Count 2 of the third superseding indictment specifically alleges that the death of Kim Marie Groves resulted from acts committed in violation of the pertinent statute" or "that the defendants intended that a death result from acts committed in violation of the pertinent statute." Dkt. 1066, at 2. The district court rejected that argument, concluding that petitioner and Davis "[stood] before the Court properly convicted of the 'mid-level' violations of Sections 241 and 242" that would support a sentence of life imprisonment. Pet. App. 25a & n.28; see also id. at 7a n.1 ("[B]oth defendants stand currently exposed to a sentence up to life imprisonment.").

5. The government appealed the district court's ruling precluding the death penalty. Petitioner did not cross-appeal the district court's conclusion that the indictment adequately alleged facts to support a life sentence. The court of appeals vacated and remanded. Pet. App. 29a-38a. The court of appeals concluded in light of Ring and its decision in United States v. Robinson, 367 F.3d 278, 284-285 (5th Cir.), cert. denied, 543 U.S. 1005 (2004), that the deficiencies in the indictment constituted error, Pet. App. 34a-36a, but it further held that the error was harmless because the government had given the defendants notice of its

intent to seek the death penalty before trial and had provided them with a list of the aggravating factors on which it relied. Id. at 37a-38a. This Court denied petitioner's petition for a writ of certiorari. 544 U.S. 1034 (2005) (No. 04-8171).

6. a. On remand, Davis was sentenced to death. On his appeal, Davis renewed his objections to the sufficiency of the indictment for death-penalty purposes. The court of appeals affirmed, concluding that it was bound under law-of-the-case principles by its ruling in the prior appeal. United States v. Davis, 609 F.3d 663 (5th Cir. 2010) (Davis II). This Court denied Davis's petition for a writ of certiorari. 131 S. Ct. 1676 (2011) (No. 10-7564).

b. The district court found petitioner ineligible for a death sentence under Atkins because of mental incapacity. At sentencing, petitioner orally renewed his claim that the indictment was insufficient to support the elements of the offenses under 18 U.S.C. 241 and 242 authorizing life imprisonment. 12/21/11 Sent. Tr. 5 (Dkt. 2258). The district court sentenced petitioner to life imprisonment. Pet. App. 3a.

The court of appeals affirmed. Pet. App. 1a-5a. The court of appeals relied on its holding in Davis II that its earlier decision upholding the sufficiency of the indictment for death-penalty purposes barred Davis's challenge to his death sentence. The court reasoned that the earlier decision likewise barred petitioner's

indictment-based challenge to his life sentence. Id. at 3a. The court of appeals pointed out that petitioner "fail[ed] to cite any authority for the proposition that harmless error for imposition of the death penalty can suddenly become reversible error for a lesser sanction." Ibid. The court concluded in the alternative that viewing the matter afresh under Robinson, any defect in the indictment was harmless. Id. at 3a-5a.

The court of appeals explained that in light of its reasoning, it did not need to "decide whether there actually was an error in the indictment and whether [petitioner] adequately briefed this point" or "whether [petitioner] waived this point by failing to cross-appeal" in connection with the government's appeal of the district court's order holding the indictment insufficient to support the death penalty. Pet. App. 4a n.4. It "note[d]," however:

[O]nly in passing does [petitioner] state what he claims is wrong with the indictment: that it failed to contain an "allegation that death resulted from the acts committed in violation of the pertinent statute" and "that defendants intended that a death result from acts committed in violation of the statute." We observe that the indictment charged [petitioner] with conspiring to deprive Groves of constitutional rights, that "part . . . of the purpose of this conspiracy [was] that . . . Groves would be killed, and that [petitioner] "shot . . . Groves in the head with a 9 mm firearm, which resulted in her death."

Ibid.

## ARGUMENT

Petitioner contends (Pet. 9-13) that the court of appeals erred in holding that the failure of the indictment to include an element of a criminal offense is subject to harmless error analysis. That question is not suitably presented here because petitioner's indictment sufficiently alleges the elements necessary to establish the aggravated civil rights offenses under 18 U.S.C. 241 and 242 that apply when "death results" from the charged conduct. That is especially apparent when the indictment is read with "maximum liberality," as an indictment must be when it is first challenged after trial. Further review is not warranted.

1. Petitioner states without elaboration that "[i]t is beyond dispute that the indictment here was defective." Pet. 12. That is incorrect. Although the Fifth Circuit held that the indictment was insufficient for capital sentencing purposes because it failed to allege the aggravating elements under the FDPA (see Pet. App. 34a-37a; United States v. Robinson, 367 F.3d 278, 284-285 (5th Cir.), cert. denied, 543 U.S. 1005 (2004)), the pertinent question in petitioner's case -- which is no longer a capital case -- is simply whether the indictment sufficiently alleges the elements necessary to establish the aggravated civil rights offenses under 18 U.S.C. 241 and 242 that apply when "death results" from the charged conduct. The indictment meets that standard.

a. An indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant of the charge against him, and contains sufficient information to enable him to plead an acquittal or conviction as a bar to future prosecutions. See, e.g., United States v. Resendiz-Ponce, 549 U.S. 102, 108 (2007); Hamling v. United States, 418 U.S. 87, 117 (1974). An indictment that tracks the language of the statute is generally adequate for these purposes. See, e.g., United States v. Bailey, 444 U.S. 394, 414 (1980); Hamling, 418 U.S. at 117.

The courts of appeals agree that where, as here, an indictment is challenged after the completion of the government's case, the indictment should be construed "liberally, in favor of sufficiency." United States v. Sabbeth, 262 F.3d 207, 218 (2d Cir. 2001). Thus, "[w]here a defendant first challenges 'the absence of an element of the offense' after a jury verdict," the indictment is "sufficient unless it is so defective that by any reasonable construction, it fails to charge the offense for which the defendant is convicted." United States v. Avery, 295 F.3d 1158, 1174 (10th Cir.), cert. denied, 537 U.S. 1024 (2002) (quoting United States v. Gama-Bastidas, 222 F.3d 779, 786 (10th Cir. 2000)). An indictment that may be held insufficient if challenged before the verdict may survive a challenge that is first raised after the verdict, when the indictment must be read with "maximum liberality." Gama-Bastidas, 222 F.3d at 786 (quoting United States

v. Fitzgerald, 89 F.3d 218, 221 (5th Cir.), cert. denied, 519 U.S. 987 (1996)); accord United States v. Henry, 288 F.3d 657, 660 (5th Cir.), cert. denied, 537 U.S. 902 (2002); United States v. Gibson, 409 F.3d 325, 331 (6th Cir. 2005); United States v. White, 241 F.3d 1015, 1021 (8th Cir. 2001). After the verdict, the proper inquiry is whether the indictment "contains words of similar import to the element in question." Avery, 295 F.3d at 1174 (quoting United States v. Dashney, 117 F.3d 1197, 1205 (10th Cir. 1997)).

In this case, petitioner did not challenge the sufficiency of the indictment until August 2002, more than six years after the jury's guilty verdict in April 1996. The rule of "maximum liberality" or "any reasonable construction" applies to petitioner's challenge because he waited until long after he was found guilty -- long after jeopardy had attached and the government lost its ability to obtain a superseding indictment -- to challenge the supposed absence of specific elements from the indictment.

b. Petitioner's indictment sufficiently alleges the elements necessary to establish the aggravated civil rights offenses under 18 U.S.C. 241 and 242 that apply when "death results" from the charged conduct, especially when read with "maximum liberality."

Count 1 alleged a violation of 18 U.S.C. 241, which makes it unlawful to conspire to deprive a person of a right secured by the Constitution or laws of the United States. 18 U.S.C. 241. Count 2 alleged a violation of 18 U.S.C. 242, which makes it unlawful to

deprive a person of a right secured by the Constitution or laws of the United States while acting under color of law. 18 U.S.C. 242. Both statutes prescribe an escalating range of punishments, depending upon the injury the victim suffered. Section 241 supports a maximum of ten years of imprisonment if no injury occurred, but "if death results" from the acts committed during the conspiracy, then the offender "may be sentenced to death" or "imprisoned \* \* \* for life." 18 U.S.C. 241. Similarly, a violation of Section 242 is treated as a misdemeanor offense if no injury occurs, but if bodily injury results, the statute supports a maximum of ten years of imprisonment, and "if death results," the offender "may be sentenced to death" or "imprisoned \* \* \* for life." 18 U.S.C. 242.

Both civil rights counts in the indictment alleged the "death results" element, satisfying the test later set out in Apprendi v. New Jersey, 530 U.S. 466 (2000), and United States v. Cotton, 535 U.S. 625 (2002), that any fact that increases the punishment for a crime above the otherwise-applicable maximum penalty must be charged in the indictment, submitted to a jury, and proved beyond a reasonable doubt. See App., infra, 1a-2a ("[Petitioner] \* \* \* did willfully \* \* \* conspire \* \* \* with others \* \* \* to injure \* \* \* Kim Marie Groves \* \* \* resulting in the death of Kim Marie Groves") (emphasis added); id. at 4a ("[Petitioner] \* \* \* acting under the color of laws \* \* \* did willfully

deprive Kim Marie Groves \* \* \* of the rights and privileges which are secured and protected by the Constitution and the laws of the United States \* \* \* by shooting Kim Marie Groves in the head with a firearm, resulting in her death." ).

Petitioner contends that the indictment failed to allege "that death resulted from the acts committed in violation of the pertinent statute." Pet. 8; see Dkt. 1066, at 2. Even if the allegations above were somehow insufficient to meet that objection, the indictment's explanation of the conspiracy's purpose and the conspirators' overt acts in connection with Count 1 removes any possible doubt on the manner in which Groves's death resulted from petitioner's offense: "It was part of the plan and purpose of this conspiracy that Kim Marie Groves \* \* \* would be killed because a civil rights complaint had been made against [Davis]"; "Davis contacted [petitioner] on several occasions \* \* \* to arrange the murder of Kim Marie Groves"; "Davis, during a cellular telephone conversation, ordered [petitioner] \* \* \* [to] murder \* \* \* Kim Marie Groves"; "[petitioner] agreed to kill Kim Marie Groves"; less than an hour after that telephone call, "[petitioner] shot Kim Marie Groves in the head with a 9 mm firearm, which resulted in her death." App., infra, 2a-3a (capitalization omitted).

Petitioner also objects that the indictment fails to allege "that defendants intended that a death result from acts committed

in violation of the statute." Pet. 8; see Dkt. 1066, at 2. Although establishing intent to cause a death can be an element in an FDPA capital prosecution, intending the resulting death is not an element of the aggravated offenses under 18 U.S.C. 241 or 18 U.S.C. 242 themselves, and that intent therefore need not be alleged in the indictment to support a life sentence. As the courts of appeals recognize, the statutes prescribe only that the defendants' actions must be "willful" (that is, they must be intended to violate the victim's rights).<sup>1</sup> No court has held, and petitioner offers no argument, to the contrary. Cf. Pet. App. 4a n.4 (court of appeals noting that it "need not decide whether there actually was an error in the indictment and whether [petitioner] adequately briefed this point"). And in any event, even if intent to cause a death were an element of the aggravated offenses under

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<sup>1</sup> See, e.g., United States v. Marler, 756 F.2d 206, 215-216 (1st Cir. 1985) (Section 242's requirement for enhanced punishment is met when the defendant's willful violation of the statute results in the victim's death); United States v. Harris, 701 F.2d 1095, 1101 (4th Cir.) (holding that the "if death results" language of 18 U.S.C. 241 "requires only that the 'death ensued as a proximate result of the accused's willful violation of a victim's defined rights'"), cert. denied, 463 U.S. 1214 (1983); United States v. Guillette, 547 F.2d 743, 749 (2d Cir. 1976) (holding that life imprisonment may be imposed if death results from violations of 18 U.S.C. 241 when the defendant's violation of that statute is a proximate cause of the victim's death), cert. denied, 434 U.S. 839 (1977); United States v. Hayes, 589 F.2d 811, 821 (5th Cir.) (explaining in a Section 242 case that "[n]o matter how you slice it, 'if death results' does not mean 'if death was intended'"), cert. denied, 444 U.S. 847 (1979).

Section 241 and 242, the indictment sufficiently alleges such an element. "It was part of the plan and purpose of this conspiracy that Kim Marie Groves \* \* \* would be killed," and indeed, "[petitioner] agreed to kill Kim Marie Groves." App., infra, 2a-3a (emphasis added).<sup>2</sup>

2. Petitioner argues (Pet. 9-13) that the court of appeals erred in holding that the omission of an element from a federal indictment may be harmless error. Although the court of appeals' reasoning rests in part on the proposition that such an error may be harmless, that issue is not suitably presented for review in this case because, as explained above, petitioner's indictment is sufficient for imposing a sentence of life imprisonment.

As petitioner notes (Pet. 9-11), this Court granted certiorari in Resendiz-Ponce, 549 U.S. at 103-104, to decide "whether the

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<sup>2</sup> This Court has granted certiorari in Burrage v. United States, cert. granted No. 12-7515 (Apr. 29, 2013), to address the proper interpretation of provisions in 21 U.S.C. 841(b) that prescribe enhanced penalties when "death or serious bodily injury results from the use of [a controlled] substance." The petition should not be held pending the disposition of Burrage, for two independent reasons. First, even if the "death results" language in the three statutes should be interpreted in parallel, the interpretive question posed here (which relates to the defendant's mens rea with respect to the resulting death) appears to diverge from those raised in Burrage (which relate primarily to issues of the causal connection between the drug-distribution offense and the death). Second, as explained in the text, the allegations of the indictment (especially when read with "maximum liberality") would satisfy even the most demanding mens rea and closest causal nexus between offense and death that could be inferred from the "death results" provisions in 18 U.S.C. 241 and 242.

omission of an element of a criminal offense from a federal indictment can constitute harmless error," but the Court ultimately did not decide the issue. The majority of courts of appeals to consider the issue have held that the omission of an element of an offense is subject to harmless-error review (or plain-error analysis, if not timely raised). See United States v. Dentler, 492 F.3d 306, 310 (5th Cir. 2007); United States v. Cor-Bon Custom Bullet Co., 287 F.3d 576, 580-581 (6th Cir.), cert. denied, 537 U.S. 880 (2002); United States v. Prentiss, 256 F.3d 971, 981-985 (10th Cir. 2001) (en banc), overruled in part on other grounds by Cotton, 535 U.S. at 633; United States v. Corporan-Cuevas, 244 F.3d 199, 202 (1st Cir.), cert. denied, 534 U.S. 880 (2001).

The Third and Ninth Circuits, by contrast, have held, in decisions predating this Court's decision in Cotton, that such omissions constitute structural error and thereby necessitate automatic reversal. See United States v. Du Bo, 186 F.3d 1177, 1179-1181 (9th Cir. 1999); United States v. Spinner, 180 F.3d 514, 515-517 (3d Cir. 1999). The Ninth Circuit has since limited Du Bo, and has not applied its ruling when an indictment challenge was untimely. See United States v. Velasco-Medina, 305 F.3d 839, 846-847 (2002), cert. denied, 540 U.S. 1488 (2004). Although the Third Circuit has not issued a published decision revisiting Spinner in light of Cotton, in a recent unpublished decision, that court declined to apply Spinner (which set aside a guilty plea) to set

aside a conviction entered after a jury trial at which the petit jury was instructed on all elements of the offense. United States v. Green, No. 11-2454, 2013 WL 1122632, at \*9 (Mar, 19, 2013). Green alluded to Neder v. United States, 527 U.S. 1, 15 (1999), to support its conclusion that any error in the indictment was harmless, given the petit jury's findings beyond a reasonable doubt. 2013 WL 1122632, at \*9.

This case, like Resendiz-Ponce is not a suitable vehicle for addressing that disagreement. Resendiz-Ponce explained that this Court's preference not "'to decide questions of a constitutional nature unless absolutely necessary to a decision of the case'" led it to reinstate Resendiz-Ponce's conviction on the statutory ground that the indictment there was sufficient, "without reaching the [constitutional] harmless-error issue." Resendiz-Ponce, 549 U.S. at 104 (quoting Ashwander v. TVA, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring)). It is entirely predictable that if the Court granted plenary review in this case, it would find itself in precisely the position that led the Court to decide Resendiz-Ponce without reaching the harmless-error issue. This case is therefore an unsuitable vehicle for resolving the question Resendiz-Ponce left open.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 2013

## APPENDIX

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

THIRD SUPERSEDING INDICTMENT FOR  
CIVIL RIGHTS MURDER AND WITNESS INTIMIDATION

UNITED STATES OF AMERICA	*	CRIMINAL DOCKET NO. 94-381
v.	*	SECTION: "C" (4)
LEN DAVIS	*	VIOLATION: 18 USC § 241
PAUL HARDY	*	18 USC § 242
a/k/a "P", a/k/a "Cool"	*	18 USC § 1512(a)(1)(C)
DAMON CAUSEY	*	18 USC § 2
	* * *	

FILED  
 U.S. DISTRICT COURT  
 EASTERN DISTRICT OF LOUISIANA  
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The Grand Jury charges that:

COUNT 1

From on or about October 11, 1994, up to on or about December 6, 1994, in the Eastern District of Louisiana, defendant **LEN DAVIS**, who was then employed as an officer with the New Orleans Police Department, and defendants **PAUL HARDY**, a/k/a "P", a/k/a "Cool", and **DAMON CAUSEY**, did willfully combine, conspire, confederate and agree with each other and with others known and unknown to the grand jury to injure, oppress, threaten and intimidate Kim Marie Groves and another individual known to the grand jury, persons in the State of Louisiana, in the free exercise and enjoyment of the rights and privileges secured to them by the Constitution and laws of the United States, which include (1) the right not to be deprived of liberty without due process of law, that is, the right to be free from the use of unreasonable force by one acting under color of law, in that defendants **LEN DAVIS**, **PAUL HARDY**, a/k/a "P", a/k/a "Cool", and **DAMON CAUSEY** were acting under color of the laws of the State of Louisiana at all times relevant to this indictment,

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right to provide information to law enforcement authorities about a federal crime, resulting in the death of Kim Marie Groves.

It was part of the plan and purpose of this conspiracy that Kim Marie Groves and the other individual known to the grand jury would be killed because a civil rights complaint had been made against defendant **LEN DAVIS** and another New Orleans Police officer known to the grand jury as a result of a beating of the known individual by the officers. The murders were planned to prevent Kim Groves and the known individual from making additional statements to law enforcement authorities regarding that civil rights complaint.

In furtherance of this conspiracy and to accomplish its plan and purposes, the defendants did commit the following overt acts, among others:

**OVERT ACTS**

1. After learning that Kim Marie Groves had filed a civil rights complaint against him, defendant **LEN DAVIS** contacted defendant **PAUL HARDY**, a/k/a "P", a/k/a "Cool", on several occasions by cellular telephone on or about October 13, 1994, to arrange the murder of Kim Marie Groves.
2. On or about October 13, 1994, defendant **LEN DAVIS** contacted defendant **DAMON CAUSEY** by cellular telephone to arrange a meeting whereby defendant **LEN DAVIS** would identify Kim Marie Groves to defendants **PAUL HARDY**, a/k/a "P", a/k/a "Cool", and **DAMON CAUSEY**, thereby facilitating the murder of Kim Marie Groves.
3. On or about October 13, 1994, defendant **LEN DAVIS**, while on-duty and while using his official police car, conducted surveillance of Kim Marie Groves for the purpose of

reporting Groves' physical description and location to defendant **PAUL HARDY**, a/k/a "P", a/k/a "Cool".

4. On or about October 13, 1994, at 10:01 p.m., defendant **LEN DAVIS**, during a cellular telephone conversation, ordered defendant **PAUL HARDY**, a/k/a "P", a/k/a "Cool", to "get that whore," thereby ordering the murder of Kim Marie Groves. Defendant **PAUL HARDY**, a/k/a "P", a/k/a "Cool", agreed to kill Kim Marie Groves and stated in response, "Alright, I'm on my way."

5. On or about October 13, 1994, at 10:55 p.m., defendant **PAUL HARDY**, a/k/a "P", a/k/a "Cool", shot Kim Marie Groves in the head with a 9 mm firearm, which resulted in her death.

6. Defendant **DAMON CAUSEY** did conceal the 9 mm firearm used to kill Kim Marie Groves by hiding the firearm in a chest-of-drawers in his bedroom, located at 3930 Florida Avenue, Apartment B, New Orleans, Louisiana.

7. On or about October 14, 1994, **LEN DAVIS**, in a cellular telephone conversation, spoke with **PAUL HARDY** about killing the known individual and **PAUL HARDY** replied that he wanted to kill the person that night. **LEN DAVIS** asked **PAUL HARDY** to "hold off" killing that individual that night because it would be "too suspicious."

8. On October 17, 1994, **LEN DAVIS** told **PAUL HARDY**, in a cellular telephone conversation, that there was no need to kill the other known individual unless he was persistent in complaining against **DAVIS**. **DAVIS** added that if the individual complained about **DAVIS**, it would be "Rock-A-Bye, Baby" (death) for the person.

All in violation of Title 18, United States Code, Section 241.

**COUNT 2**

On or about October 13, 1994, in the Eastern District of Louisiana, defendant **LEN DAVIS**, who was then employed as an officer with the New Orleans Police Department, and defendants

**PAUL HARDY**, a/k/a "P", a/k/a "Cool", and **DAMON CAUSEY**, all while acting under color of the laws of the State of Louisiana and while aiding and abetting each other, did willfully deprive Kim Marie Groves, a person in the State of Louisiana, of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely, the right not to be deprived of liberty without due process of law, which includes the right to be free from the use of unreasonable force by one acting under color of law, by shooting Kim Marie Groves in the head with a firearm, resulting in her death.

All in violation of Title 18, United States Code, Sections 242 and 2.

**COUNT 3**

On or about October 13, 1994, in the Eastern District of Louisiana, defendant **LEN DAVIS**, who was then employed as an officer with the New Orleans Police Department, and defendants **PAUL HARDY**, a/k/a "P", a/k/a "Cool", and **DAMON CAUSEY**, while aiding and abetting each other, willfully, deliberately, maliciously, and with premeditation and malice aforethought, did unlawfully kill Kim Marie Groves by shooting her in the head with a firearm with the intent to prevent the communication by Kim Marie Groves to a law enforcement officer of information relating to the commission and possible commission of a federal offense, that is, the beating by police officers of an individual known to the grand jury, in violation of Title 18, United States Code, Section 242.

All in violation of Title 18, United States Code,  
Sections 1512(a)(1)(C) and 2.

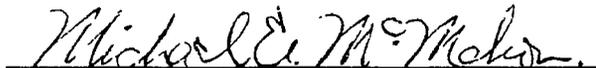
A TRUE BILL:

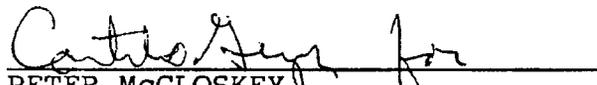
  
FOREMAN

  
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Criminal Section  
U.S. Department of Justice

New Orleans, Louisiana  
August 18, 1995

FORM OBD-  
APR. 5,

No. \_\_\_\_\_  
**UNITED STATES DISTRICT COURT**  
EASTERN District of LOUISIANA  
Division

THE UNITED STATES OF AMERICA  
vs.  
PAUL HARDY, LEN DAVIS, DAMON CAUSEY

**INDICTMENT**  
THIRD SUPERSEDING INDICTMENT FOR CIVIL RIGHTS  
MURDER AND WITNESS INTIMIDATION  
VIOLATION: 18 USC 241  
18 USC 242  
18 USC 1512(a)(1)(C)  
18 USC 2

A true bill.  
*Malcolm S. Adcock III*  
Foreman

Filed in open court this \_\_\_\_\_ day,  
of \_\_\_\_\_ A.D. 19 \_\_\_\_\_  
Clerk

Bail, \$ *Constantine D. Georges*

CONSTANTINE D. GEORGES, Asst. U.S. Atty.