

1997

Constitutional Law - A Petty Mail Fraud Case with Serious Implications: The Supreme Court Extends the Petty Offense Doctrine to Multiple Petty Offenses in *Lewis v. United States*

Melissa Ryan

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Ryan, Melissa (1997) "Constitutional Law - A Petty Mail Fraud Case with Serious Implications: The Supreme Court Extends the Petty Offense Doctrine to Multiple Petty Offenses in *Lewis v. United States*," *Land & Water Law Review*. Vol. 32 : Iss. 2 , pp. 859 - 871.
Available at: https://scholarship.law.uwyo.edu/land_water/vol32/iss2/30

This Note is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

Case Notes

CONSTITUTIONAL LAW—A Petty Mail Fraud Case with Serious Implications: The Supreme Court Extends the Petty Offense Doctrine to Multiple Petty Offenses in *Lewis v. United States*, 116 S. Ct. 2163 (1996).

INTRODUCTION

Ray Lewis was a Brooklyn postal handler charged with two counts of obstructing the mail after postal inspectors watched him open several pieces of mail, including “test” mail, and pocket the contents.¹ Each count carried a maximum authorized prison sentence of six months in addition to a fine of \$100.00.² Prior to trial, Lewis moved for a jury trial, while the government moved for a bench trial. The magistrate granted the government’s motion.³ After the ensuing bench trial, Lewis was convicted on both counts and sentenced to three years’ probation on each count to run concurrently.⁴

Lewis appealed the denial of his motion for a jury trial to the United States District Court for the Eastern District of New York.⁵ The district court affirmed the magistrate’s decision,⁶ and the United States Court of Appeals for the Second Circuit affirmed the district court’s judgment.⁷

1. *Lewis v. United States*, 116 S. Ct. 2163, 2165 (1996). “Test mail” is mail containing marked currency which postal inspectors route through a postal worker’s station. *Id.* Lewis was charged under 18 U.S.C. § 1701 (1988) (amended 1994). *Id.*

2. 18 U.S.C. § 1701: “Obstruction of Mails Generally: Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined not more than \$100 or imprisoned not more than six months, or both.”

3. *See United States v. Lewis*, 65 F.3d 252, 253 (2d Cir. 1995), *aff’d*, 116 S. Ct. 2163 (1996). The magistrate indicated that “[s]he would not sentence Mr. Lewis to more than six months in prison under any circumstances” *Id.* (internal quotation marks omitted). A magistrate was hearing the case pursuant to 28 U.S.C. § 636(a)(3) (1988) (giving magistrates the power to conduct trials under 18 U.S.C. § 3401(a) (1988) (defining magistrates’ power to try persons accused of misdemeanors)).

4. *See* 65 F.3d at 252.

5. *Id.*

6. *See id.* The district court found that [a] defendant is entitled to a jury trial only if he faces a maximum prison sentence greater than six months for any single offense charged. *Id.*

7. *Id.* at 256.

The United States Supreme Court granted certiorari⁸ to address two issues: 1) whether a defendant who is prosecuted in a single proceeding for multiple petty offenses has a constitutional right to a jury trial where the aggregate prison term authorized for the offense exceeds six months; and 2) whether a defendant who would otherwise have a constitutional right to a jury trial may be denied that right because the presiding judge has made a pretrial commitment that the aggregate sentence imposed will not exceed six months.⁹ The Court affirmed the Second Circuit's decision.¹⁰

This case note evaluates the Court's decision in *Lewis* to deny defendants charged with multiple petty offenses a jury trial where the aggregate authorized prison term exceeds six months. The note examines the importance of the jury to criminal defendants, and traces the development of the petty offense doctrine, an exception to the Sixth Amendment right to a jury trial. It also examines the treatment of the petty offense doctrine in the United States Court of Appeals for the Tenth Circuit, and the Wyoming Supreme Court's interpretation of the Wyoming Constitution's jury trial provision. The note contends that the United States Supreme Court placed inappropriate emphasis on legislative intent as to whether defendants charged with multiple petty offenses are entitled to a jury trial, and insufficient emphasis on the aggregate potential prison term which these defendants face. It concludes with a discussion of the practical implications that *Lewis* may have on Tenth Circuit cases and on Wyoming.

BACKGROUND

The Constitution and the Role of the Jury

Article III of the Constitution provides that "[t]he Trial of all Crimes . . . shall be by Jury."¹¹ The Sixth Amendment to the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right

8. *Lewis v. United States*, 116 S. Ct. 807 (1996). The Court granted certiorari to resolve a conflict in the Courts of Appeals. *Compare v. Lewis*, 65 F.3d 252 (2d Cir. 1995), *cert. granted* 116 S. Ct. 807 (1996); *United States v. Coppins*, 953 F.2d 86 (4th Cir. 1991) (holding that where a defendant is charged with multiple petty offenses growing out of a single incident, the statutory maximum sentences should be aggregated to determine entitlement to a jury trial); *United States v. Bencheck*, 926 F.2d 1512 (10th Cir. 1991) (holding that a where a defendant is charged with multiple petty offenses, and the trial judge has made a pretrial commitment not to sentence defendant to more than six months in prison for all counts, defendant is not entitled to a jury trial); *Rife v. Godbehere*, 814 F.2d 563 (9th Cir. 1987) (holding that if the actual sentence imposed by a judge is six months or less on all counts, defendant is not entitled to a jury trial).

9. *Lewis v. United States*, 116 S. Ct. 2163, 2165 (1996).

10. *Id.* at 2168.

11. U.S. CONST. art. III, § 2, cl. 3.

to a speedy and public trial, by an impartial jury.”¹² It is no accident that the right to a jury trial appears twice in the text of the Constitution. The founding fathers realized the importance of the jury in protecting a criminal defendant from abuse of the government’s power to imprison.¹³ While the prosecutor and judge are employed by the same government which is seeking to imprison a defendant, a jury is comprised of citizens from the defendant’s community who are “less tutored perhaps than a judge . . . but who at the same time are less likely to function or appear as but another arm of the Government that has proceeded against him.”¹⁴

Like the founding fathers, the Supreme Court has long recognized the important role of the jury in criminal prosecutions. In *Duncan v. Louisiana*, the Supreme Court reaffirmed the important role the jury plays:

[P]roviding an accused with the right to be tried by a jury of his peers [gives] him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge [T]he jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power — a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges.¹⁵

The Petty Offense Exception to the Sixth Amendment

For almost one hundred years after the ratification of the Bill of Rights, the United States Supreme Court construed the phrase “in all criminal prosecutions”¹⁶ to confer a jury trial right on *all* criminal defendants.¹⁷ However, in 1888, the Court held in *Callan v. Wilson* that the

12. U.S. CONST. amend. VI.

13. See, e.g., THE FEDERALIST NO. 83, at 331 (Alexander Hamilton) (The Legal Classics Library ed., 1983):

The friends and adversaries of the [proposed Constitution], if they agree in nothing else, concur at least in the value they set upon the trial by jury: or if there is any difference between them it consists in this; the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government.

Id.

14. *Baldwin v. New York*, 399 U.S. 66, 72 (1970) (plurality opinion) (noting that “[t]he primary purpose of the jury is to prevent the possibility of oppression by the government”).

15. 391 U.S. 145, 156 (1968) (finding a jury trial right for a defendant charged with one count of simple battery which carried a two year prison term).

16. U.S. CONST. amend. VI.

17. See e.g., *Ex parte Milligan*, 71 U.S. 107, 123 (1886):

[T]his right [to a jury trial] — one of the most valuable in a free country — is preserved to every one accused of every crime [except military personnel] The sixth amendment

Sixth Amendment right to a jury trial does not extend to petty offenses.¹⁸ Decisions after *Callan* attempted to distinguish petty from serious offenses by looking at the moral nature of an offense at common law.¹⁹

In *Duncan v. Louisiana*, the Court shifted its focus from the moral nature of the offense to the maximum penalty authorized for a particular crime.²⁰ To determine whether the offense of simple battery under Louisiana law was petty or serious, the Court looked at Congress' definition of petty offenses, "those punishable by no more than six months in prison and a \$500 fine."²¹ The Court then looked at the maximum penalty authorized by Louisiana for simple battery, two years.²² From this the Court concluded that simple battery under Louisiana law was a serious offense and thus subject to jury trial protection.²³

In decisions after *Duncan*, the Court looked exclusively at the maximum authorized prison sentence for an offense to determine whether it was petty or serious. In *Baldwin v. New York*, the Court used its decision in *Duncan* to draw a bright line between petty and serious offenses at six

affirms that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury," language broad enough to embrace all persons and cases. *Id.* (quoting U.S. CONST. amend. VI).

18. *Callan v. Wilson*, 127 U.S. 540, 556 (1888). Although the Court found that the Sixth Amendment does not apply to petty offenses, it upheld petitioner's right to a jury trial on a conspiracy charge which carried a penalty of a thirty-day prison sentence and a twenty-five dollar fine, because "the nature of the crime of conspiracy at common law . . . [was] an offense of a grave character, affecting the public at large" *Id.* (emphasis added).

19. *See, e.g.*, *District of Columbia v. Clawans*, 300 U.S. 617, 630 (1937) (finding no jury trial right for a defendant charged with the offense of selling second-hand goods without a license, because the offense did not have the "character of a common law crime or major offense" and did not "offend the public sense of propriety and fairness [so] as to bring it within the sweep of a constitutional protection which it did not previously enjoy"); *Schick v. United States*, 195 U.S. 65, 67 (1903) (finding no jury trial right for a defendant convicted of buying oleomargarine that had not been stamped in accordance with the tax statute, because the crime did not involve any moral delinquency); *Natal v. Louisiana*, 139 U.S. 621, 624 (1890) (finding no jury trial for a defendant convicted of violating a city ordinance prohibiting the keeping of a private market within six squares of any public market of the city). *See also Callan*, 127 U.S. at 556. For two famous commentaries on the petty offense exception, see Felix Frankfurter & Thomas G. Corcoran, *Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury*, 39 HARV.L.REV. 917 (1926) (arguing that courts should determine whether an offense is petty based on which offenses received a jury trial at common law); and George Kaye, *Petty Offenders Have No Peers!*, 26 U. CHI. L.REV. 245 (1959) (interpreting the Sixth Amendment strictly to include all criminal prosecutions within the jury trial guarantee).

20. 391 U.S. 145, 161 (1968). *Duncan* is also notable for holding that the Sixth Amendment's guarantee of a jury trial applies to the states through the Fourteenth Amendment. *Id.* at 149.

21. *Id.* at 161 (citing 18 U.S.C. § 1 (1948) (repealed 1987)). The Court looked to the federal, as opposed to Louisiana's, definition of a petty offense because *Duncan* also held that the federal guarantees of a jury trial apply to the states. *See supra* note 20.

22. *Id.* at 160. *See also* LA. REV. STAT. ANN. § 14:35 (West 1950) (amended 1968).

23. *Duncan*, 391 U.S. at 162.

months of imprisonment.²⁴ Additionally, the Court acknowledged the need to balance a defendant's Sixth Amendment right to a jury trial with judicial economy in determining whether to try petty offenses without a jury.²⁵ Later, in *Blanton v. North Las Vegas*, the Court interpreted the Constitution to require that courts look at *objective* indications of seriousness, particularly the maximum *authorized* penalty for the offense, not the penalty the defendant *actually* faced.²⁶

The Court applied the *Baldwin* test in *Codispoti v. Pennsylvania*²⁷ to hold that a judge had incorrectly denied Codispoti's motion for a jury in a trial on several criminal contempt charges, where the judge had sentenced him to consecutive six-month prison terms for each of six contempt counts and a three-month term for the seventh count, for a total prison term of thirty-nine months.²⁸ The Court found that "the contempts arose from a single trial, were charged by a single judge, and were tried in a single proceeding. The individual sentences imposed were then aggregated"²⁹ The Court rejected Pennsylvania's argument that Codispoti was not entitled to a jury trial because no more than a six-month sentence was imposed for any *single* offense, so that each contempt was a petty offense.³⁰

The Petty Offense Doctrine in the Tenth Circuit Court of Appeals

In *Haar v. Hanrahan*, the United States Court of Appeals for the Tenth Circuit adopted a "penalty-oriented" approach to determine whether a jury trial right applied.³¹ Under a "penalty-oriented" approach, if a

24. 399 U.S. 66 (1970) (plurality opinion) (holding that no offense can be deemed "petty" for purposes of the right to trial by jury where imprisonment for more than six months is authorized).

25. *Id.* at 73-74 (noting the "benefits that result from speedy and inexpensive non-jury adjudications" but interpreting the Constitution to guarantee the right to a jury trial when "what is at stake is the deprivation of individual liberty for a period exceeding six months").

26. 489 U.S. 538, 544 (1989) (emphasis added). *See also infra* notes 31-35 and accompanying text.

27. 418 U.S. 506, 512 (1974). At the conclusion of Codispoti's criminal trial, the presiding judge had imposed a sentence of one to two years for each of seven criminal contempt counts, for a total prison term of seven to fourteen years. *Id.* at 507. The United States Supreme Court vacated the Pennsylvania Supreme Court's judgment upholding the contempt sentences, and directed that a different judge hear the contempt charges and sentence the defendant on remand. *Mayberry v. Pennsylvania*, 400 U.S. 455, 466 (1971) (ordering that a judge "not bearing the sting of these slanderous remarks and having the impersonal authority of the law . . . [should sit] in judgment on the conduct of the petitioner as shown by the record"). On remand, the contempt charges were tried before a different judge. *Codispoti*, 418 U.S. at 507.

28. *Id.* at 518.

29. *Id.* at 517.

30. *Id.*

31. 708 F.2d 1547 (10th Cir. 1983).

judge makes a pretrial promise not to sentence a defendant to more than six months in prison, then a defendant is not *actually* threatened with greater than six months in prison for Sixth Amendment purposes and is not entitled to a jury trial.³²

The most recent Tenth Circuit case to address the petty offense exception is *United States v. Bencheck*.³³ In the lower court, the judge had promised not to sentence Bencheck to more than six months in prison if he was found guilty, so she refused to impanel a jury.³⁴ The Tenth Circuit applied the penalty-oriented approach adopted in *Haar* to conclude that since the judge had promised not to sentence the defendant to more than six-month's imprisonment on all offenses, Bencheck did not face an *actual* term of imprisonment of more than six months and therefore was not entitled to a jury trial.³⁵

The Wyoming Constitution's Jury Trial Provision

The Wyoming Constitution's jury trial provision is slightly different from Article III of the Constitution and from the Sixth Amendment.³⁶ It provides: "[T]he right of trial by jury shall remain inviolate in criminal cases."³⁷ The Wyoming Supreme Court interpreted this provision in *Brenner v. City of Casper* to find that "a crime punishable by any jail term, regardless of length, is a serious crime subject to the constitutional right to a jury trial . . . [because] no offense which carries with it a potential jail sentence can be deemed so minor as to warrant denying the

32. *Id.* at 1553. The court in *Haar* found that the right did not apply because New Mexico law ensured that the defendant was not "actually threatened at the commencement of trial with an aggregate potential penalty of greater than six months' imprisonment." *Id.* (emphasis added). *But see* *United States v. Potvin*, 481 F.2d 380, 381 (10th Cir. 1973) (holding that to determine whether a defendant is entitled to a jury trial, a court should aggregate the maximum authorized punishment for all petty offenses, and if it exceeds six months, a jury trial is required).

33. 926 F.2d 1512 (10th Cir. 1991). The defendant was tried for multiple petty offenses in federal district court under the Assimilative Crimes Act. *Id.* at 1513 (citing 18 U.S.C. §§ 7,13 (1988)). The purpose of the Assimilative Crimes Act is "to provide a method of punishing a crime committed on [federal] government reservations in the way and to the extent that it would have been punishable if committed within the surrounding jurisdiction." *Id.* (quoting *United States v. Sain*, 795 F.2d 888, 890 (10th Cir. 1986)). The various offenses charged were related to a routine traffic stop on a military base, which escalated when Bencheck refused to recognize the military police's jurisdiction. *Id.* See also *supra* note 8.

34. *Id.*

35. *Id.* at 1512, 1520. *But see* *Blanton v. North Las Vegas*, 489 U.S. 538, 544 (1989) (Court explicitly rejecting the argument that it should look at the penalty a defendant *actually* faced to determine whether a jury trial right exists). See also *supra* note 26 and accompanying text; *Bencheck*, 926 F.2d at 1521-22 (dissenting opinion).

36. See *supra* notes 11-12 and accompanying text.

37. WYO. CONST. art. I, § 9.

fundamental right to a jury trial."³⁸ In a subsequent case, the court held that, conversely, a person charged with a crime which provides for no jail time upon conviction is not entitled to a trial by jury.³⁹

PRINCIPAL CASE

Justice O'Connor began the majority opinion in *Lewis* by holding that "[t]he Sixth Amendment's guarantee of the right to a jury trial does not extend to petty offenses, and its scope does not change where a defendant faces a potential aggregate prison term in excess of six months for petty offenses charged."⁴⁰ The majority maintained that the maximum penalty attached to an offense reveals the legislature's judgment about the offense's severity, and concluded that "[a]n offense carrying a maximum prison term of six months or less is presumed petty."⁴¹ Therefore, the majority found, the fact that a defendant is charged with multiple counts of a petty offense does not change the legislative judgment as to the seriousness of any one offense.⁴² The opinion distinguished *Codispoti*⁴³ by limiting the holding of that case to contempt proceedings only.⁴⁴ Because the majority found that no jury trial right exists for a defendant charged with multiple petty offenses where no single offense charged carries a maximum authorized penalty of more than six months, it did not reach the question of whether a judge's pretrial promise that the aggregate sentence imposed will not exceed six months can deny a defendant the jury trial right.⁴⁵

Justice Kennedy concurred in the judgment only. He reasoned that Lewis was not entitled to a jury trial because the magistrate had promised

38. 723 P.2d 558, 560 (Wyo. 1986) (reversing a non-jury conviction for driving under the influence, finding that "state courts are at liberty to find within the provisions of their own Constitutions a greater protection than is afforded under the federal constitution") (quoting *City of Pasco v. Mace*, 653 P.2d 618, 623 (Wash. 1983)). *But see id.* at 563 (Brown J., dissenting) (advocating following the *Baldwin* test, arguing that the majority opinion established a policy not required by the Wyoming Constitution and noting that "[e]ven the Warren Court did not make it as difficult to try an accused as the majority in this court has").

39. *City of Casper v. Fletcher*, 916 P.2d 473, 474 (Wyo. 1996) (holding that defendant was not entitled to a jury trial for violating a Casper ordinance prohibiting assault and battery which does not provide for imprisonment as a punishment).

40. *Lewis v. United States*, 116 S. Ct. 2163, 2167 (1996) (citing *Blanton v. North Las Vegas*, 489 U.S. 538 (1989); *Baldwin v. New York*, 399 U.S. 66 (1970); *Duncan v. Louisiana*, 391 U.S. 145 (1968); distinguishing *Codispoti v. Pennsylvania*, 418 U.S. 506 (1973)).

41. *Id.* at 2166.

42. *Id.*

43. *Codispoti v. Pennsylvania*, 418 U.S. 506 (1973). *See also supra* notes 27-30 and accompanying text.

44. *Lewis*, 116 S. Ct. at 2167.

45. *Id.* at 2168.

not to sentence him to more than six months in prison if he was found guilty.⁴⁶ However, he raised three concerns with the majority's holding. First, he disagreed with the majority's focus on the maximum prison term authorized only for any *single* offense, rather than for all offenses.⁴⁷ Second, he criticized the majority's attempt to limit *Codispoti* to contempt proceedings.⁴⁸ Third, Justice Kennedy emphasized that the majority's decision would have greater practical implications than it imagined. He feared that the majority's decision would affect many defendants accused of violating administrative regulations which carry stiff penalties.⁴⁹

Justice Stevens's dissenting opinion, in which Justice Ginsburg joined, asserted that Lewis was entitled to a jury trial.⁵⁰ While accepting the general validity of the petty offense doctrine, the dissent raised two concerns with the majority's application of the doctrine to the facts in *Lewis*. First, the dissent urged adoption of the aggregation theory because it found that "petitioner . . . was charged with offenses carrying a statutory maximum prison sentence of more than six months."⁵¹ Second, it criticized the majority for "relying exclusively on cases in which the defendant was tried for a single offense" and "extend[ing] a rule with those cases in mind to a wholly dissimilar circumstance."⁵²

ANALYSIS

Since the Court announced the petty offense doctrine over one hundred years ago, its decisions on the doctrine's application have tried to balance the defendant's right to a jury trial with the policy of judicial

46. *Id.* at 2169. See also *supra* note 3 and accompanying text.

47. *Id.* at 2169.

48. *Id.* (reminding the majority that the Court in *Codispoti* rejected Pennsylvania's argument that the Court should consider each contempt offense separately and conclude that since no one offense carried a prison term of more than six months, the defendant was not entitled to a jury trial, and noting that this was the same argument that the United States had made in *Lewis*).

49. *Id.* at 2172. Justice Kennedy noted that the decision would affect: more than repeat violators of traffic laws, persons accused of public drunkenness, persons who persist in breaches of the peace Just as alarming is the threat the Court's holding poses to millions of persons in agriculture, manufacturing, and trade who must comply with minute administrative regulations, many of them carrying a jail term of six months or less.

Id.

50. *Id.* at 2174 (arguing that the jury trial right attaches at the beginning of the prosecution, and, therefore, a judge's pretrial commitment cannot eliminate the right).

51. *Id.*

52. *Id.* at 2173. The dissenting opinion agreed with Justice Kennedy's argument that *Codispoti* had precedential value in *Lewis*. *Id.*

economy.⁵³ Decisions have generally considered two interrelated factors: the maximum prison term faced by a defendant, and legislative intent about the seriousness of an offense, which can be embodied in the maximum prison term.⁵⁴

In *Lewis*, the Court changed course from previous decisions and gave legislative intent almost exclusive weight in the analysis, giving only cursory attention to the aggregate maximum prison term for all offenses.⁵⁵ The Court's failure to fully analyze the second factor, the aggregate potential prison term for both counts of obstructing the mail, is inconsistent with accepted notions of the importance of the jury, the function of the judiciary, and with previous decisions related to the petty offense doctrine.

First, in its analysis of legislative intent, the Court asserted that *Congress* had answered the question of whether *Lewis* was entitled to a jury trial when it prescribed a maximum penalty of six months in prison for *one* count of obstructing the mail. The Court concluded that the offense was petty, and used the petty offense doctrine to find that because the *offense* charged was petty, no jury trial right existed.⁵⁶ The Court was unimpressed by the fact that *Lewis* was charged with *two* counts of obstructing the mail.

However, legislative intent is only one factor in the analysis. The Court should analyze this factor in view of the maximum prison term which a defendant faces.⁵⁷ The Sixth Amendment is a right which protects a defendant from abuses of both the prosecutor's and the judge's power to imprison by interposing a jury between the accused and the prosecutor and judge.⁵⁸ Therefore, the most influential factor for a court to consider

53. See, e.g., *Blanton v. North Las Vegas*, 489 U.S. 538 (1989); *Baldwin v. New York*, 399 U.S. 66 (1970); *Duncan v. Louisiana*, 391 U.S. 145 (1968); *District of Columbia v. Clawans*, 300 U.S. 617 (1937). See also Christine E. Pardo, Note, *Multiple Petty Offenses With Serious Penalties: A Case for the Right to Trial By Jury*, 23 FORDHAM URB. L.J. 895, 903 (1996) (describing the "need to efficiently allocate limited judicial resources and the need to fulfill the Sixth Amendment's fundamental purpose of protecting defendants from government oppression").

54. See, e.g., *Baldwin*, 399 U.S. at 73 (finding a jury trial right for defendant facing a one year prison term for pickpocketing); *Duncan*, 391 U.S. at 156 (disregarding Louisiana Legislature's characterization of the offense of simple battery as a misdemeanor where it carried a maximum prison term of two years, finding it a serious crime deserving jury trial).

55. 116 S. Ct. at 2168. Addressing *Lewis*' potential imprisonment, the Court noted that "[c]ertainly the aggregate potential penalty faced by petitioner is of serious importance to him. But to determine whether an offense is petty or serious for Sixth Amendment purposes, we look to the legislature's judgment, as evidenced by the maximum penalty authorized." *Id.*

56. *Id.* at 2166.

57. See *supra* note 54 and accompanying text.

58. See *supra* notes 13-15 and accompanying text.

in determining whether the Sixth Amendment jury trial right applies to a defendant should be the total potential imprisonment that the defendant faces.⁵⁹ After considering this factor, the Court would be free to apply any legislative or judicial limitations on the scope of the Sixth Amendment protection, such as the petty offense exception, as long as the limitations are in accord with the Sixth Amendment.

Second, the judicial branch exists to check actions of the legislative and executive branches. It is the function of the *judicial* branch "to ensure that the Constitution's procedural guarantees are available to accused persons, and that includes the Sixth Amendment right to a jury trial."⁶⁰ While it is appropriate for the Court to consider legislative intent, it is inappropriate to give this factor almost sole consideration where a right so fundamental as the right to a jury trial is concerned.

Third, the Court's analysis is inconsistent with previous decisions interpreting the petty offense doctrine. For example, the Court cited *Blanton*, *Baldwin*, and *Duncan* as support for its conclusion that the petty offense doctrine extends to multiple petty offenses tried in a single proceeding where the defendant faces a potential sentence of more than six months in prison.⁶¹ However, in each of these cases, the defendant was on trial for a single offense, and the Court's decisions focused on the length of the maximum prison term authorized for that single offense.⁶² None of these cases involved a defendant on trial for multiple counts of a petty offense, each carrying a maximum prison term of six months.

Conversely, the majority distinguished precedent which applied to *Lewis*. First, the majority erred when it distinguished *Codispoti* by emphasizing the lack of a legislative determination about the seriousness of

59. See, e.g., *Baldwin*, 399 U.S. at 72 (interpreting the Constitution to guarantee right to jury trial when "what is at stake is the deprivation of individual liberty for a period exceeding six months").

60. Timothy Lynch, *Rethinking the Petty Offense Doctrine*, 4 KAN. J. L. & PUB. POL'Y, 7, 16 (1994) (arguing that the petty offense doctrine ignores both the text and the spirit of the Constitution).

61. *Lewis*, 116 S. Ct. 2163, 2167 (also citing English common law cases to support its holding: *The Queen v. Matthews*, 88 Eng. Rep. 609 (Q.B. 1712); *The King v. Swallow*, 101 Eng. Rep. 1392 (K.B. 1799)). But see Reply Brief for Petitioner, at 3, *Lewis v. United States*, 116 S. Ct. 2163 (1996) (citing another English common law case which suggests that the practice of trying multiple petty offenses in a single proceeding was *not* universally accepted: *The King v. Salomons*, 1 T.R. 249-252 (K.B. 1786)).

62. See, e.g., *Blanton v. North Las Vegas*, 489 U.S. 538 (1989) (involving a defendant on trial for one count of Driving Under the Influence, punishable by up to six months in prison); *Baldwin*, 399 U.S. at 67 (involving a defendant on trial for one count of pickpocketing, punishable by up to one year in prison); *Duncan v. Louisiana*, 391 U.S. 145 (1968) (involving a defendant on trial for one count of simple battery, punishable by up to two years in prison). See also *Lewis*, 116 S. Ct. at 2173 (dissenting opinion).

the offense of criminal contempt.⁶³ The lack of a legislative determination about the seriousness of the offense did not stop the *Codispoti* Court from aggregating the contempt sentences, and using the *Baldwin* six-month test to conclude that the defendant was entitled to a jury trial.⁶⁴ The Court in *Lewis* should have applied the same reasoning and concluded that when Lewis was tried for two counts of obstructing the mail, he was tried for what was equivalent to a serious offense.

Second, the majority erred when it limited the holding in *Codispoti* to its facts because of the "special concerns raised by the criminal contempt context."⁶⁵ The nature of a contempt proceeding was not essential to the holding in *Codispoti*. The Court in *Codispoti* specifically noted that the special concerns did not apply because "[i]n the case before us, the original trial judge filed the contempt charges against . . . petitioner, while another judge tried them and imposed the sentences."⁶⁶

A final problem with *Lewis* is that it is unclear to what degree the Court considered the administrative burdens that jury trials for multiple petty offenses would place on the federal criminal system. In *Baldwin*, the Court specifically stated that "administrative conveniences" [cannot] "justify denying an accused the right to trial by jury where the possible penalty exceeds six months' imprisonment."⁶⁷ However, oral argument transcripts indicate that some members of the Court were concerned about judicial economy.⁶⁸ One commentator asserts that the administrative burdens which finding a jury trial right for defendants charged with multiple petty offenses would place on the federal system are most likely exaggerated by opponents of the right.⁶⁹

63. *Lewis*, 116 S. Ct. at 2168 (citing *Codispoti v. Pennsylvania*, 418 U.S. 506, 517 (1974)); see also *supra* notes 27-30 and accompanying text.

64. *Codispoti v. Pennsylvania*, 418 U.S. 506, 517 (stating that "[i]n terms of the sentence imposed, which was obviously several times more than six months, [the] contemnor was tried for what was equivalent to a serious offense and was entitled to a jury trial").

65. *Lewis*, 116 S. Ct. at 2168 (noting that the benefit of a jury trial is particularly important in the criminal contempt context because it "strikes at the most vulnerable and human qualities of a judge's temperament" and "[i]n the face of a courtroom disruption, a judge may have difficulty maintaining the detachment necessary for fair adjudication" (quoting *Codispoti*, 418 U.S. at 515)).

66. *Codispoti*, 418 U.S. at 516.

67. *Baldwin*, 399 U.S. at 73-74.

68. See United States Supreme Court Official Transcript of Oral Argument, at 13-14, 37, *Lewis v. United States*, 116 S. Ct. 2163 (1996) (questioning petitioner and respondent about the administrative burdens on the federal system if forced to try multiple petty offenses to a jury).

69. See Timothy Lynch, *Rethinking the Petty Offense Doctrine*, 4 KAN. J. L. & PUB. POL'Y, 7, 16 (1994) (arguing that "[t]he hyperbolic notion that jury trials for petty offenders would somehow impose an intolerable burden upon the federal government, the wealthiest institution in the history of humankind, is patently absurd").

The proper approach for courts to determine whether the jury trial right applies is to view multiple petty offenses in terms of the aggregate maximum authorized penalty a defendant faces. The Court's previous decisions endorse this approach, and the accepted notions of the importance of the jury and the function of the judiciary mandate it.

Practical Implications for the Tenth Circuit

Bencheck endorsed the idea that a judge's pretrial promise of a sentence of six months or less could circumvent the accused's Sixth Amendment right to a jury trial.⁷⁰ *Lewis* renders *Bencheck* moot, since magistrates and judges will no longer need to promise a defendant a lesser sentence in order to avoid a jury trial and speed up their dockets. In practice, *Lewis* may deprive a defendant of a significant bargaining chip in the pretrial process: the ability to waive his jury trial right in exchange for the promise of a lesser sentence.

Practical Implications for Wyoming

The holding in *Lewis* does not explicitly affect the right to a jury trial for defendants in Wyoming state courts.⁷¹ However, *Lewis* makes clear that no person charged in federal court with violating administrative regulations or with multiple petty offenses is entitled to a jury trial unless a single offense authorizes more than six months in prison. In addition, Justice Brown's dissent in *Brenner* advocated following the Supreme Court's lead to find no right to a jury trial for state offenses which carry a jail term of less than six months.⁷² Since Supreme Court opinions can greatly influence state court opinions, Justice Brown's position in *Brenner* could gain support. This is undesirable because the decision in *Lewis* was based almost solely on legislative intent and did not adequately consider other important factors such as the maximum potential prison term.

CONCLUSION

In *Lewis*, the Supreme Court extended the petty offense exception to defendants charged with multiple petty federal offenses who face aggregate punishment of more than six months in prison. The Court heavily weighed legislative determinations about whether the jury trial right ap-

70. *United States v. Bencheck*, 926 F.2d 1512 (10th Cir. 1991); see also *supra* notes 33-35 and accompanying text.

71. See *supra* note 38 and accompanying text.

72. *Brenner v. City of Casper*, 723 P.2d 558, 563 (Wyo. 1986). See also *supra* note 38.

plied, but the Court barely considered the most important aspect of the case, the fact that Lewis could face up to one year in prison without the benefit of a jury imposed between him and the prosecutor and judge. The decision to deny Ray Lewis a jury trial will affect more defendants than postal handlers accused of obstructing the mail. As Justice Kennedy noted, it will affect those accused of violating administrative regulations, repeat violators of traffic laws, those who commit petty offenses on federal land, and many others. In addition, the ability to cite *Lewis* as precedent may provide state courts with just the motivation they need to limit the right.

MELISSA RYAN