

No. _____

In the Supreme Court of the United States

BARRY DRUILHET, JR.

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Can a federal court consider enhance a defendant's sentence for obstruction of justice where the defendant was seeking out witnesses to testify on his behalf?

LIST OF PARTIES

BARRY DRUILHET, JR., Petitioner

UNITED STATES OF AMERICA, Respondent

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Barry Druilhet, Jr., petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in *United States v. Druilhet*, No. 17-31009 (5th Cir 2018) (unpublished).

OPINIONS BELOW:

The Fifth Circuit decision sought to be reviewed, *United States v. Druilhet*, No. 17-31009 (5th Cir 2018) (unpublished) is attached as Appendix 1.

JURISDICTION

The decision of the Fifth Circuit Court of Appeals affirming the District Court's enhancement of Mr. Druilhet's sentence for obstruction of justice was entered on November 28, 2019. There was no request for rehearing. This petition is timely filed. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1)

STATUTES/PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution which provides:

In all criminal prosecutions, the accused shall enjoy the right... to have compulsory process for obtaining witnesses in his favor....

U.S.S.G. §3C1.1 Obstructing or Impeding the Administration of Justice provides:

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing or the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendants' offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.

STATEMENT OF THE CASE

While awaiting trial, Barry Druilhet was housed in the same jail as an individual, Mr. McDaniel, who was a witness for the government. McDaniel and Druilhet attended the same bible study class and had some disagreements over issues in the bible study class. At one point, outside of bible study class, Druilhet approached McDaniel and asked McDaniel to testify for Druilhet at Druillet's trial. Druilhett had some

papers in his hand at the time that may have been McDaniel's plea agreement, but this is uncertain. McDaniel declined and informed Druilhet that McDaniel would instead be testifying for the government.

Druilhett proceeded to trial and was convicted. At sentencing, the District Court imposed a two-level enhancement to Druilhett's sentence under the United States Sentencing Guidelines for obstruction of justice pursuant to U.S.S.G. §3C.1. The District Court found Druilhet's had obstructed justice by approaching McDaniel with McDaniel's plea agreement in hand.

Druilhett appealed. The Fifth Circuit Court of Appeals affirmed the imposition of the enhancement, finding that the district court had not erred in inferring that Druilhet's actions were a conscious and deliberate attempt to obstruct or impede the administration of justice, and that the district court was entitled to reject Druilhet's explanation as incredible.

REASONS FOR GRANTING THIS PETITION

Certiorari should be granted because the Fifth Circuit Court of Appeals has decided an important question of federal law in a way that conflicts with the 6th Amendment to the Constitution.

Finding that a defendant who seeks out witnesses on his own behalf is guilty of obstruction of justice violates the 6th Amendment. Nothing should prohibit a defendant from seeking out witnesses to help his case so long as no threat or intimidation occurs.

Here, there was no testimony that McDaniel was threatened, felt threatened, or perceived any threat. Druilhet asked. McDaniel declined. That was the end of the conversation. It is not clear what, if any, papers Druilhet had in his hand at the time of the conversation.

To enhance a defendant's sentence for reaching out to a potential witness where there is no evidence as to how the witness perceived the conversation, and no evidence of the defendant's demeanor has a chilling effect on a Defendant's ability to seek out witnesses on his behalf and to mount a defense.

This Court should grant Certiorari to determine the parameters of the Defendant's right to seek out witnesses on his own behalf.

CONCLUSION

For the forgoing reasons this Court should grant Certiorari.

Respectfully Submitted

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Appendix:
1. Fifth Circuit Opinion