No. _____

In the
Supreme Court of the United States

SERGIO MEJIA-DUARTE,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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September 20, 2019

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A CRUCIAL MANDATE OF THE INTERNATIONAL EXTRADITION TREATY BETWEEN THE UNITED STATES AND HONDURAS WAS VIOLATED WHEN THE PROSECUTION AT TRIAL PRESENTED EVIDENCE AGAINST THE DEFENDANT OF ACTS WHICH OCCURRED BEFORE THE DATE ALLOWED BY THE LANGUAGE OF THE TREATY.

II. WHETHER PETITIONER'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WERE VIOLATED WHEN THE TRIAL COURT ALLOWED THE ADMISSION OF HEARSAY EVIDENCE SUGGESTING THAT THE DEFENDANT WAS INVOLVED IN AN UNRELATED MURDER OF WHICH HE HAD NO PARTICIPATION IN VIOLATION OF FRE 403 AND FRE 404(B).

PARTIES TO THE PROCEEDING

PETITIONER SERGIO NEFTALI MEJIA-DUARTE WAS THE DEFENDANT IN THE DISTRICT COURT PROCEEDINGS AND APPELLANT IN THE COURT OF APPEALS PROCEEDINGS. RESPONDENTS UNITED STATES OF AMERICA WAS THE PLAINTIFF IN THE DISTRICT COURT PROCEEDINGS AND APPELLEES IN THE COURT OF APPEALS PROCEEDINGS.

CORPORATE DISCLOSURE STATEMENT

There are no corporations that are a party to the present criminal case.

PROCEEDINGS IN FEDERAL COURTS

- United States of America v. Sergio Neftali Mejia-Duarte, No. 15-20540-CR-KMM, United States District Court for the Southern District of Florida
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STATEMENT OF JURISDICTION

On July 2, 2019, the United States Court of Appeals for the Eleventh Circuit issued its decision in United States of America v. Sergio Neftali Mejia-Duarte, No. 18-12196 (11th Cir., July 2, 2019), (Appendix A).

The statutory provision which confers on this Court jurisdiction to review the above-described decision of the Court of Appeals for the Eleventh Circuit by Writ of Certiorari is Section 1254(1) of Title 28, United States Code.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall

> private property be taken for public use, without just compensation.

U.S. Const. amend. VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the District Court and the Court of Appeals

Petitioner, Sergio Mejia-Duarte, was a defendant in the trial court and respondent, United States of America, was the prosecution. Record references will be made by referring to the document number and page number with the document, as reflected in the docket sheet.

Petitioner, Sergio Mejia-Duarte was indicted in the Southern District of Florida in a one defendant (Mejia), one count indictment with conspiracy to distribute a controlled substance, five or more kilograms of a mixture and substance containing cocaine in violation of Title 21, United States Code, Section 963.

The Petitioner is and has always been a citizen of Honduras and had never been to the United States. The Petitioner was arrested in Honduras and was extradited from Honduras pursuant to a treaty between the two countries (hereinafter the "Treaty"). It is agreed by the prosecution (and verified by the appellate court), that the Treaty required that the United States would only try or punish the defendant "for events that have taken place after the amendments to the constitution that allows the extradition of Hondurans, effective as of February 27, 2012. There is no dispute by the parties as to the date limitation in the interpretation of the Treaty. The Petitioner, confident that he had not participated in any criminal conspiracy taking place after February 27, 2012, did not fight extradition, confiding in the language of the Treaty and was held without bond until the time of his trial.

The Petitioner filed a pretrial Motion to Limit the Presentation of Evidence at Trial Pursuant to the Extradition Treaty with Honduras. (DE 31). The government filed a Response (DE 42) and the defense filed a Reply. (DE 47). The District Court referred the motion to the Magistrate for resolution and findings of law. The Magistrate entered an Order, (DE 53) in which the motion was:

> "denied with respect to a limitation on the evidence that the government may introduce to prove the conspiracy offense for which the defendant was extradited; and is granted to the extent it requests the Court to limit the offense

> charged to a conspiracy that began on February 27, 2012."

The Petitioner proceeded to jury trial on January 8, 2018. The prosecution presented over ninety percent of its evidence, (under the guise of FRE 404(b)), of acts that occurred before February 27, 2012 and after a two day trial, the Petitioner was found guilty of the one count of conspiracy charge.

On May 21, 2018, after entertaining numerous objections to the pre-sentence investigation report, the District Court, denying all objections, sentenced the Petitioner to life in prison under guideline level 43, criminal history category I. The defendant filed a timely Notice of Appeal on May 23, 2018 to the Eleventh Circuit Court of Appeals.

The Petitioner appealed two issues pertaining to his trial and two issues pertaining to his sentencing in his appeal to the Eleventh Circuit. The two issues pertaining to his trial and the violation of the extradition Treaty with Honduras, are the two questions Petitioner argues for review by this Honorable Court in the present Petition for Writ of Certiorari. On July 2, 2019, the Eleventh Circuit issued an unpublished opinion affirming Defendant's conviction and sentence (App. A) Per Curiam.

The Petitioner Sergio Mejia-Duarte is currently incarcerated and serving his life term of imprisonment.

B. Statement of the Facts

The Petitioner was born and lived all of his life in the Republic of Honduras. During the two day trial, a series of prosecution witnesses were presented, who testified they were all former drug dealers (currently incarcerated) and who had done drug deals with the Petitioner before February of 2012. Only one witness, Warner Benitez-Lopez (DE 73, pgs. 10-45) testified that he had done a drug deal with the defendant's brother-in-law, Jairo, in 2013 or 2014 and he assumed that the Petitioner had approved it because the two, Petitioner and his brother-in-law worked together. There was also testimony presented that the Petitioner had been "seen" with other known drug dealers after February 2012. There was however no, non-speculative real evidence of the Petitioner having been involved in a drug conspiracy after February 2012.

Three witnesses also testified to what they admitted to were rumors, that a former rival of the Petitioner's partner was murdered in El Salvador, all suggesting that the Petitioner was in some way involved. Again, this was before February of 2012 and brought in under the guise of FRE 404(b) evidence. The truth, later verified by an official inquiry into the death of one Jose Pena, was that he was shot in a gambling dispute, of which the Petitioner had no participation or knowledge. The prosecution's intent to suggest that the Petitioner was in some way involved, led the Judge (and undoubtedly the jury) to believe and state at sentencing:

> "during trial, multiple witnesses testified that the defendant was responsible for multiple acts of violence perpetrated in Honduras including the murder of Jose Pena." (DE 92, pgs. 12-13)

At trial, the District Court erroneously allowed the prosecution to present pre-February 2012 evidence (including false evidence of his involvement in a murder) under the guise of 404(b) evidence to convict the Petitioner.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS CLEARLY ERRED IN FINDING THAT THE DISTRICT COURT PROPERLY ALLOWED THE PROSECUTION, AT TRIAL, TO PRESENT EVIDENCE OF THE PETITIONER'S ALLEGED CONSPIRATORIAL ACTIVITIES BEFORE FEBRUARY 27, 2012 IN VIOLATION OF THE EXTRADITION TREATY BETWEEN THE UNITED STATES AND THE REPUBLIC OF HONDURAS.

The amendments to the constitution of Honduras that allows the extradition of Honduran nationals under the Treaty between the United States of America and the Republic of Honduras became effective on February 27, 2012. The "Extradition Conditions" stated in the Resolution of the Court of Extradition of First Instance of Honduras, in its second paragraph states:

> "The requiring State can only impute Mr. Sergio Neftali Mejia-Duarte, for events that have taken place after the amendment to the constitution

> that allows the extradition of Honduras, effective as of February 27, 2012."

The prosecution, the District Court, and the Appellate Court agree with the literal translation of the text above into English from the original Spanish, the issue is what evidence against the defendant at trial and what exceptions, if any, are allowed.

The operative word in the text of the Treaty is to "impute", the exact translation of the Spanish "imputar" as stated in the Treaty. Webster's unabridged Dictionary defines impute as "to consider, to lay responsibility or blame for". Webster's New College Dictionary defines "imputed" as used in legal phrases: "this words means attributed vicariously"… Perhaps the best definition applicable to the present issue is found in the letter sent by the U.S. Department of Justice, Washington, D.C. to the trial prosecutor in the present case, it stated:

> "Generally, the detention, trial or punishment of Mejia- Duarte for any offenses beyond those for which extradition was granted is strictly forbidden by the Extradition Treaty between the United States of America and the Republic of Honduras". (DE 31-1)

Under any of these definitions the introduction of evidence by the prosecution at trial of events predating February 2012 was in violation of the very specific language of the Treaty. Under the guise of it being admissible under FRE 404(b), the District Court permitted the prosecution to convict the defendant of the one count conspiracy charge and then sentenced

him to life imprisonment. If in accordance with the Treaty, only alleged criminal acts occurring after February 2012 had been introduced, the prosecution's case, as reflected by the trial record, would not have survived a Rule 29 motion at the conclusion of the prosecution's case.

The District Court admitted all of the pre February 2012 evidence under FRE 404(b). However, there was no relation between the witnesses and their testimony of acts that exclusively occurred before February 2012 and the evidence presented of acts that occurred after February 2012. The prosecution's theory of the case basically was: all of this evidence shows that the defendant was involved in a criminal conspiracy before February 2012, hence, as members of this jury you can assume that he continued to participate after February 2012, even though we have no credible evidence that he did. Clearly that is not the intent of FRE 404(b) and really falls in line with the "Prohibited Uses" as clearly stated in FRE 404(b)(1).

The Court of Appeals' Opinion does not address the improper admissibility of trial evidence before February 2012 in violation of the terms of the Treaty, but instead only focuses on FRE 403 in its decision, (which is pertinent to the second question for review).

Petitioner's Reply Brief argues this issue in response to the government's brief's statement that the "overwhelming evidence of Mejia-Duarte's guilt should not be disturbed" (Appellee's Brief, pg. 12). The Eleventh Circuit Opinion correctly concludes that the ultimate question at trial was:

> "the only real question is whether Mejia-Duarte knowingly and voluntarily partook in that conspiracy at some point after February 2012" (Appendix A, pg. 8)

The Eleventh Circuit Opinion then goes on to state: "The Government presented sufficient evidence of Mejia-Duarte's involvement. To be sure, it presented no smoking gun." Citing, United States v. Vernon, 723 F.3d 1254, 1273 (11th Cir. 2013) and United States v. Toler, 144 F.3d 1423 (11th Cir. 1998), the Appellate Court states: "multiple witnesses testified that Mejia-Duarte and his partner were in fact co-conspirators." (Appendix A, pg. 8) As the trial record reflects all of this testimony was relating to events before February of 2012. The Appellate Opinion then states: "Two witnesses described trafficking with Mejia-Duarte through the partner." (Appendix A, pg. 8). There was only one witness, Warner Benitez-Lopez, who testified that in 2014 he sent an individual to Honduras to talk to another individual, who was the brother-in-law of the petitioner. Based on the fact that it was the brother-in-law of the petitioner, Warner believed he was also working with Mejia-Duarte. (DE 73, pgs. 30-31). The Appellate Court finds this speculative testimony to be "sufficient" proof citing United States v. Sosa, 777 F.3d 1279, 1290 (11th Cir. 2015) and United States v. Miranda, 425 F.3d 953, 959 (11th Cir. 2005).

The Appellate Court states that this evidence meets the knowledge element without questioning how the witness was not able to state at trial that he knew that

the brother-in-law was indeed partnered with the Petitioner in 2014.

The Opinion then states that: "two witnesses described being present at meetings in which Mejia-Duarte proposed a planned trafficking." (Appendix A, pg. 9)

The trial record shows that one witness, Warner Benitez-Lopez testified that "he traveled to the Dominican Republic, the Petitioner was there and there was a meeting, but he (Warner) did not attend the meeting", again it was Warner's partner, Jose Perez who attended the meeting. (DE 73, pg. 31). The second witness testified at trial that he had seen the Petitioner at a hotel in Honduras talking with known drug dealers. Neither witness was actually present at the so-called meetings. Based on this testimony, the Appellate Court finds that the voluntariness element is satisfied citing United States v. Vernon, 733 F.3d 1234, 1273 (11th Cir. 2013) and United States v. Rivera, 775 F.2d 1559, 1561 (11th Cir. 1985). The Appellate Court states that: "Mejia- Duarte offers us no reason to view this testimony as unbelievable on its face." The fact that neither witness was actually present at the so-called meetings and therefore they couldn't testify as to what they actually heard at the meetings, makes their testimony purely speculative at best and hence unbelievable as to the ultimate issue.

The Appellate Court's Opinion does not cite any reliable evidence that supports its conclusion that "Mejia-Duarte knowingly and voluntarily partook in the conspiracy at some point after February 2012." (Appendix A, pg. 9)

Rule 404(b) by definition is a prosecutorial tool by which otherwise inadmissible evidence is brought in to support the prosecution's weak case in the eyes of the jury. The admission of the evidence of pre-February 2012 conduct in the present case makes the Treaty worthless. Why have a provision limiting the evidence that can be "imputed" to an extradited defendant if under the "backdoor" of FRE 404(b) it is all going to come in anyway? To realistically expect that a "limiting instruction" by the District Court is going to cure the prejudice created by almost all of the evidence presented is not realistic. As the trial attorney stated at sentencing:" this trial was all 404(b) evidence and very little substantive stuff" (DE 92, pg. 6). The Petitioner relied on the language of the Treaty when he agreed to not fight extradition and proceed to a fair trial. The process of the trial made the language of the Treaty on which the Petitioner relied a toothless document. The fact that the Petitioner was charged with just one count of conspiracy made the issue of the interpretation of the limitations under the Treaty even more important.

The international doctrine of specialty is well established in our legal system. In United States v. Rauscher, 119 U.S. 407, 7 S.Ct. 234, 30 L.Ed 425 (1886), the Supreme Court established as a judicially enforceable principle of our domestic law that an extradited defendant may not be charged and tried in crimes not enumerated in the applicable extradition treaty. Valentine v. United States, ex rel. Neidecker, 299 U.S. 5, 57 S.Ct. 100, 81 L.Ed 5 (1936); Factor v. Laubenheimer, 290 U.S. 276, 54 S.Ct. 191, 78 L. Ed 315 (1933). The doctrine was later carried further to

provide that even if the treaty specifies crimes for which the defendant may be criminally responsible, prosecution for such offenses will be barred if the asylum state did not grant extradition for such crimes. Johnson v. Browne, 205 U.S. 309, 27 S.Ct. 539, 51 L.Ed. 816 (1907). In modern times the more relevant questions have been in deciding whether certain offenses which the government seeks to prosecute fall outside the contemplated scope of the foreign sovereign's extradition treaty. Shapiro v. Ferrandina, 478 F.2d 894 (2d Cir. 1973). The prosecution, correctly argued that the doctrine of specialty does not allow a foreign power to intrude in the evidentiary or procedural rules of the requisitioning state. Under this theory the prosecution at trial basically tried the Petitioner almost exclusively on evidence improperly admitted under FRE 403 and FRE 404(b). The one count conspiracy charge, facilitated the open door to any and all evidence, in order to prove the Petitioner was in a conspiracy for which there was no reliable evidence after February 2012, the date clearly stated and acknowledge by the Courts and prosecutor as the cutoff date for the crimes for which the defendant could be charged, tried and punished.

II. THE APPELLATE COURT'S OPINION THAT THE DISTRICT COURT PROPERLY ALLOWED TESTIMONY ABOUT A MURDER THAT WAS COMPLETELY UNRELATED TO THE PETITIONER WAS ERROR.

During the trial, the prosecution presented testimony from three witnesses about a "drug war" and the subsequent killing of a former drug gang leader, Jose Pena, who was killed in El Salvador, after he had left Honduras to reside in El Salvador. The testimony of three government witnesses was presented to suggest that the defendant was somehow involved in the murder of the former Honduran drug dealer. The truth, as verified by police records of the killing in El Salvador, was that Mr. Pena had been killed by a Salvadorian individual pursuant to a dispute over a gambling debt. The testimony was pure hearsay and trial counsel objected to its introduction. The District Court permitted the evidence both over a hearsay objection as well as a FRE 403 objection. The net result was that the jury was tainted by what could only be considered prejudicial, "false" testimony of any involvement by the Petitioner in the killing of Jose Pena.

The Appellate Court's Opinion considered Mejia's argument against the introduction of the murder evidence as "making a mountain out of a molehill as it related to the risk of unfair prejudice." (Appendix A, pg. 4) The Appellate Court conducted a Rule 403 analysis and found that the prosecution properly used this testimony to show that the witnesses must have testified truthfully because each witness's testimony

was corroborated by the other witness' testimony. The trial record however shows that the testimony, as to what happened to Jose Pena, was not corroborated by the three witnesses. Quite the contrary it was quite inconsistent, showing that it was either unreliable hearsay or totally made up by each of the three separate witnesses.

In discussing the prejudice prong, the Appellate Opinion concludes that there was no prejudice because of "nothing about the evidence connects Mejia-Duarte to the death" ('Appendix A, pg. 7) so the final conclusion of the Appellate Court is:

> "The evidence was relevant to a necessary part of the Government's case: witness credibility. And the risk of unfair prejudice was almost nonexistent."

The inconsistency in the testimony as to Jose Pena's killing from the three witnesses could not have added to the government's theory, the three witnesses did not corroborate each other's testimony. The suggestion that the evidence of the killing was not prejudicial to the Petitioner in tainting the jury and providing him with a fair trial is equally implausible. The best evidence of the prejudice that this false, hearsay and prejudicial evidence had on the jury, can best be seen in the statement of the District Court trial judge at the sentencing hearing when the Court stated:

> "During trial, multiple witnesses testified that the defendant was responsible for multiple acts of violence, perpetrated in Honduras including the murder of Jose Pena.: (DE 92, pgs. 12-13)

If an experienced District Court Judge found that the witnesses testified that "Mejia was responsible for violence including the murder of Jose Pena", how could this evidence have not been prejudicial enough to taint the jury and deny the Petitioner a fair trial?

Federal Rule of Evidence 403 demands a balancing approach between degrees of probative value and its prejudicial effect. Old Chief v. United States, 519 U.S. 172, 117 S.Ct. 644, 136 L.Ed. 2d 574 (1997). The prejudice is clearly reflected in the Court's reliance on the evidence in its sentencing hearing statement. Additionally, trial counsel objected to the evidence as hearsay and the prosecution offered no applicable exception to the hearsay rule, yet the Court still admitted it. The case law in the Eleventh Circuit has shown that when the prejudice is present and the probative value is either minimal or as in the present case, nonexistent, the conviction must be reversed, vacated and a new trial ordered. United States v. Hands, 184 F.3d 1322 (11th Cir. 1999); United States v. Marshall, 173 F.3d 1312 (11th Cir. 1999).

The prosecution had a duty to verify that the testimony of its three witnesses was not made up or at best rank, unreliable hearsay. All it had to do, with its abundant resources, was review the police inquiry report into the death of Jose Pena in El Salvador. It did not and allowed the witnesses to present their prejudicial testimony without any basis of truth. The District Court, after objection, from trial defense counsel should have not admitted the clearly hearsay testimony. The Appellate Courts' statement that

Petitioner's argument "makes a mountain out of a molehill" is contra the record of the trial.

Clearly, by the prosecution presenting the three witnesses' testimony as to the killing of an individual and the District Court allowing its admission, the Petitioner was prejudiced in the eyes of the jury and he was denied his constitutional right to a fair trial before an untainted jury.

CONCLUSION

A series of intertwined errors during the Petitioner's trial resulted in the Petitioner's conviction on the one count of conspiracy and a life in prison sentence.

The Eleventh Circuit's Opinion did not correctly analyze the intertwined issues of interpreting the language of the Extradition Treaty with Honduras vis-à-vis the applicable Federal Rules of Evidence resulting in its affirming the Petitioner's conviction and sentence.

WHEREFORE, SERGIO MEJIA-DUARTE, prays that this Court issue its Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted this 20th day of September, 2019.

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