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IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT LEDBETTER, Petitioner,

VS.

UNITED STATES OF AMERICA, Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where the evidence is insufficient to convict on conspiracy and murder charges, can the defendant be convicted on those charges?

And

2. Whether a defendant convicted of multiple murder offenses, but encompassing the same conduct and same victim, can be sentenced on all of the counts related to one victim under the Fifth Amendment of the U.S. Constitution which provides in relevant part: "...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb...?"

PARTIES TO THE PROCEEDINGS

All parties appear in the caption to the case on the cover page.

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Petitioner Robert Ledbetter respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion United States Court of Appeals for the Sixth Circuit (Pet. App. A) is reported at *United States v. Robert B. Ledbetter*, 6th Cir. No. 17-3299, (July 3, 2019), recommended for full text publication.

JURISDICTION

The judgment of the Court of Appeals was entered on date July 3, 2019. (Pet. App. A). This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment of the U.S. Constitution provides in relevant part: "...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb... ."
2. 18 U.S.C. §1512 conspiracy to murder a witness, provides in relevant part:

(a)(1) Whoever kills or attempts to kill another person, with intent to—
...prevent the attendance or testimony of any person in an official proceeding...prevent the production of a.. document, or other object, in an official proceeding; or ..prevent the communication by any person to a law enforcement officer or judge ...of information relating to the commission or possible commission of a Federal offense ...shall be punished ...

(a)(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—
influence, delay, or prevent the testimony of any person in an official proceeding; cause or induce any person to— withhold testimony, or withhold a record, document, or other object, from an official proceeding;...shall be punished.....

3. 18 U.S.C. § 1959 Violent Crimes in Aid of Racketeering provides in relevant part:

(a) Whoever, as consideration for the receipt of...anything of pecuniary value from an enterprise engaged in racketeering..., or the purpose of ... maintaining or increasing position, murders....or threatens to commit a crime of violence ... or attempts or conspires so to do, shall be punished:

(1) for murder, by death or life imprisonment...;

4. RICO 18 U.S.C § 1962 Prohibited Activities (Racketeering) provides in relevant part:

(a) It shall be unlawful for any person who has received any income ... from a pattern of racketeering activity ...in which such person has participated as a principal ...to use ... any part of such income.... of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. ..

(b) It shall be unlawful for any person through a pattern of racketeering activity ... to maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

5. 18 U.S.C. § 924 (c), provides in relevant part:

“...whoever (C) knowingly imports or brings into the United States
...any firearm or ammunition...shall be fined under this title,
imprisoned, or ..both. .

STATEMENT OF THE CASE

Petitioner Ledbetter was erroneously caught up in a very large RICO conspiracy case involving the "Short North Posse"—a criminal street gang that operated in Columbus, Ohio, from roughly 2005 until 2014. After a 10-week trial with over 100 witness, the jury found petitioner Ledbetter guilty of the conspiracy and 8 other counts related to 4 different murders. However, throughout the entire trial, it was clear that Mr. Ledbetter was not a member of Short North Posse and he would not have been involved with this conspiracy of low-level drug dealers. Rather, he acted on his own as an admittedly large-scale drug dealer, moving in drugs from Mexico and wanting to sell to dealers.

At sentencing, petitioner Ledbetter said he gave condolences to the victim's families, but he couldn't apologize for something he didn't do. He even explained that he disliked gangs, and was never even in one. He admitted he sold drugs.

The district court imposed the mandatory life without parole in Counts 1,4, 9, 29, and Joined Count 1, to run concurrently; life on Count 10 and

Joined Count 2, to run consecutively to each other and the other counts; and 120 month on count 31, to be served consecutively to all other counts.

Mr. Ledbetter appealed to the 6th Circuit, and raised 7 errors: (1) that the motion to suppress should have been granted; (2) that defense counsel provided ineffective assistance; (3) that the trial court abused its discretion by not ordering a mistrial; (4) that the sentence was in violation of Double Jeopardy; (5) that the trial court improperly calculated the guideline range; (6) that the Rule 29 motion to dismiss should have been granted; and (7) unfair trial through cumulative error. The Sixth Circuit in a 35-page Opinion affirmed the case as to Mr. Ledbetter.

REASONS FOR GRANTING THE PETITION

This honorable court should accept this case as: (1) there was a complete lack of evidence and an incorrect verdict, and (2) the sentence was unconstitutional. While petitioner Ledbetter was an admitted large-scale drug dealer, at the underlying trial he was incorrectly convicted of the conspiracy and murder offenses as the evidence was insufficient. Further, the trial court then compounded the error when it sentenced him to life in prison on multiple counts in violation of the prohibition against Double Jeopardy, for crimes he didn't commit. Review by this Court is therefore necessary to decide these two important issues.

Insufficient Evidence

First, despite the fact that the government failed to prove all the essential elements of the 9 counts against Mr. Ledbetter, the jury found him guilty anyway. Petitioner submits that a review of the facts and evidence presented shows the government fell well short of their burden. They failed to do so because even after viewing the evidence in the light most favorable to the prosecution and giving it the benefit of all reasonable inferences from the testimony, any rational trier of fact could not have found the essential elements of the crimes beyond a reasonable doubt as to Mr. Ledbetter.

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979). And the trial court's judgment was not supported by substantial and competent evidence. *Glasser v. United States*, 315 U.S. 60, 80, 62 S. Ct. 457, 86 L. Ed. 680 (1942).

There were nine charges the government brought against petitioner Ledbetter. Count 1 of the Indictment alleged a conspiracy to commit racketeering, in violation of 18 U.S.C. § 1962(d). The remaining 8 counts were based on 4 separate murders and included: 4 counts of murder in aid of racketeering; 2 counts of murder through use of a firearm during and in relation to a drug trafficking crime; conspiracy to murder a witness; and use of a firearm during and in relation to a crime of violence.

Count 1 failed as petitioner Ledbetter never agreed to participate in a conspiracy. It is axiomatic that a conspiracy requires three things:

"(1) an object to be accomplished;
(2) a plan or scheme embodying means to accomplish that object;
(3) an agreement or understanding between two or more of the defendants whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means." *United States v. Bostic*, 480 F.2d 965, 968 (6th Cir.1973).

The main issue is that there was no evidence that petitioner Ledbetter agreed to form a conspiracy with the Short North Posse, which there must have been. He had no presence in the Short North Area. Numerous Columbus officers testified at trial, but they had no involvement with Mr. Ledbetter, didn't see him at the SNP hangout, and didn't see him wearing gang colors. There were no pictures of Mr. Ledbetter holding bags of money or driving fancy cars. The government even admitted that all of the defendants lived off of the grid, except for Mr. Ledbetter, who lived in the open, had a job and paid taxes.

There must be an agreement between two or more conspirators to have a conspiracy with a corrupt agreement between not less than two with guilty knowledge of each. *Morrison v. California*, 291 U.S.82, 92 (1934). That did not occur. Petitioner Ledbetter was admittedly a large-scale drug dealer, and was not doing nor was he interested in the small time robberies for other drug dealers with SNP. DEA agent Timothy Reagan arrested him in 2011 for

receiving 2100 pounds of marijuana worth almost \$2 million. Obviously, SNP activity did not forward Mr. Ledbetter's agenda as a large-scale drug dealer, so he did not participate in it. This shows that there was no proof beyond a reasonable doubt that Mr. Ledbetter was a member of SNP. There was no testimony of homage being paid to Mr. Ledbetter, or that he had enforcing authority and power. The government's evidence proved that Mr. Ledbetter independently sold a lot of drugs as a large-scale drug dealer.

Then as to the remaining murder counts, there was no proof beyond a reasonable doubt that petitioner Ledbetter committed the alleged acts of violence. The elements of murder in aid of racketeering are: (i) the murder of a person; (ii) "for the purpose of gaining entrance to or maintaining or increasing position"; (iii) "in an enterprise engaged in racketeering activity." *United States v. Keairus Wilson and Rondarius Williamson*, Case no.12-6115, (6th Cir. August 27, 2014), see also 18 U.S.C. § 1959(a)(1).

As to Count 4, the murder of Alan Johnson, no witness had any personal knowledge of what occurred. Witnesses simply repeated what codefendants told them, and/or no personal knowledge. As to the Rodriccos Williams murder in Count 9 (murder in aid of racketeering) and 10 (murder through use of a firearm during drug trafficking), it was all that was presented was self-serving testimony by cooperating witnesses. Then as to the Marschell Brumfield murder in Joined Counts 1 (murder in aid of racketeering) and 2 (murder though use of firearm during/in relation to drug

trafficking crime), the cooperating witness said petitioner Ledbetter wasn't even in their van at the scene, and he admitted he didn't even see petitioner Ledbetter do a thing the date of the murder.

Finally, and most egregiously, as to the Chrystal Fyffe murder in Counts 29 (murder in aid of racketeering), 30 (conspiracy to murder a witness), and 31 (use of a firearm during and in relation to a crime of violence), petitioner Ledbetter was incarcerated in Franklin County jail when it happened for having 2000 pounds of marijuana worth \$2 million. In fact, petitioner Ledbetter had been in prison for 13 months prior to the murder of Fyffe.

Thus the evidence did not show petitioner Ledbetter to be a murderer, but rather a drug dealer when he was caught with the \$2 million of drugs. He was not a murderer or conspirator.

Double Jeopardy

Second, at sentencing petitioner Ledbetter was subject to punishment for the same conduct in multiple ways. The trial court sentenced him multiple time on multiple counts that all related to the same murder victims, as the government charged the same crimes under different theories. Assuming *arguendo* the verdicts were lawful, petitioner Ledbetter should have been sentenced to one count for each of the four murder victims. To do otherwise, as the trial court did here, violated the Double Jeopardy Clause, which "protects against multiple punishments for the same offense." U.S.

Const. Amend. V., *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969).

Offenses are not the same when, looking at their statutory elements, they each “require proof of a fact which the other does not.” *Blockburger v. United States*, 284 U.S. 299, 304 (1932). This honorable court has said the *Blockburger* test is an inquiry that asks “whether each offense contains an element not contained in the other; if not, they are the ‘same offence’ and double jeopardy bars additional punishment and successive prosecution.” *United States v. Dixon*, 509 U.S. 688, 696, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993).

In this case below, the government charged petitioner Ledbetter for the same alleged victim multiple times under alternative theories: twice for the death of Rodriccos Williams in Cts 9 and 10; twice again for the death of Marschell Brumfield in Joined Cts 1 and 2; and three times for the death of Chrystal Fyffe in Cts 29, 30,31- all alternative theories - murder in aid of racketeering; conspiracy to murder a witness, and use of a firearm during and in relation to a crime of violence.

Under the *Blockburger* test, these various counts do have elements not contained the other. But the primary element for each count is killing, so as such the multiple counts doubly or triply charge Mr. Ledbetter with murdering the same victim. While he is charged only once for the death of Alan Johnson in Count 4, he was charged twice for the death of Rodriccos Williams in Counts 9 and 10, twice for Marschell Brumfield in Joined Counts

1 and 2, and finally three times for the death of Chrystal Fyffe in Counts 29, 30, 31. On its face this was fundamentally unfair.

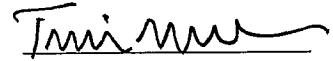
Thus the counts successively charge in the indictment for the various murders using the same evidence as to each individual victim. As such petitioner Ledbetter received multiple, different punishments for the deaths of Williams, Brumfield, and Fyffe. The Double Jeopardy Clause "protects against multiple punishments for the same offense." U.S. Const. amend. V. Yet the trial court sentenced petitioner Ledbetter to life on Counts 1,4,9, 10, and JC 1 and 2. The trial court clearly erred in sentencing petitioner Ledbetter multiple time on multiple counts that all related to the same murder victims.

In summary, the Court should accept this case as the petitioner has been unjustly convicted with insufficient evidence for involvement with a conspiracy and the related murders. While he admitted he was a large scale drug dealer, he would not have been nor did he need to be involved in a street level thug gang. And beyond that, he was sentenced numerous times for the same murders in violation of the constitution.

CONCLUSION

For the reasons given above, the petition for writ of certiorari should be granted.

Respectfully submitted,



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