19-8160

No. SC19-951 (Florida Supreme Court)

4TH DCA Case # 4D17-3659

Lower Tribunal case # 50-2008-CF-000919-AXXX-MB

IN THE

SUPREME COURT OF THE UNITED STATES

EDDIE VINCENT RUTLEDGE – PETITIONER

VS.

STATE OF FLORIDA – RESPONDENT

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FOURTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

FILED
MAR 10 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

EDDIE VINCENT RUTLEDGE

DC # W36300

Okaloosa Prison (Main Unit)
(Institution)

3189 Col. Greg Malloy Road
(Address)

Crestview, Florida. 32539
(City, State, Zip Code)

* It Should Be Noted; That This Pro-Se Litigant was Transfered Between "Four" Prison Facilities starting in October of 2019. At No Fault of His own. The Legal Documents Submitted Here, Arrived To The Pro-Se Litigant (From A previous Prison) On March 6TH 2020. In Light of This Unpreventable and Unforseeable Event I Would pray (To The Most High Most Merciful) That These Legal filings are Deemed Timely.

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on 3-10-20 Fm
for mailing, by EYR

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QUESTION PRESENTED

DID THE FLORIDA TRIAL COURT VIOLATE THE FIFTH AMENDMENT'S GUARANTEE AGAINST DOUBLE JEOPARDY WHEN IT REFUSED TO APPLY THE DOCTRINE OF ISSUE PRECLUSION TO ALLOW FOR EVIDENCE TO BE ADMITTED OF AN ACQUITTED CRIME WHERE PETITIONER WAS CONVICTED OF CONSPIRACY BUT ACQUITTED OF SOLICITATION IN A PRIOR TRIAL AND THE STATE CONCEDED THAT THERE WAS OTHER RECORD EVIDENCE SUGGESTIVE OF THE CONSPIRACY THAT DID NOT INVOLVE EVIDENCE OF THE SOLICITATION?

LIST OF PARTIES

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

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest State Court to review the merits appears at Appendix A to the Petition and has been designated for publication but is not yet reported.

The opinion of the Fourth District Court of Appeal appears at Appendix B to the Petition and is reported at Rutledge v. State, 268 So. 3d173 (Fla. 4th DCA 2019).

JURISDICTION

The date on which the highest State Court decided my case was November 22, 2019. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The decision for which Certiorari review is being sought involves the requirement of due process of law embodied in the Fifth Amendment's guarantee against double jeopardy.

STATEMENT OF THE CASE

In this criminal proceeding, Petitioner was charge by Indictment in the state court with first degree Murder with a Firearm, conspiracy to commit First Degree Murder, and solicitation to commit First Degree Murder. Petitioner proceeded to trial and was found guilty of the murder and conspiracy counts as charge but was acquitted of the solicitation count. On direct appeal, Florida's Fourth District Court of Appeal reversed the convictions and remanded for a new trial when the trial court failed to inquire into a potential conflict between Petitioner and his counsel. See Rutledge v. State, 150 So, 3d 830 (Fla. 4th DCA 2014).

Prior to the commencement of the second trial, Petitioner moved to preclude introduction of an acquaintance's testimony about the solicitation on the premise that such testimony would violate double jeopardy principles where Petitioner was acquitted of solicitation at the first trial. The Florida trial court denied Petitioner's motion, and evidence of the solicitation was presented to the jury in the second trial.

On direct appeal, Petitioner argued in Point I of his briefs that the trial court erred in overruling his objection to the acquaintance's testimony where the subject matter of his testimony involved the solicitation for which he had previously been acquitted.

Notwithstanding the well-established precedent in the State of Florida that "evidence of crimes for which a defendant has been acquitted is not admissible in a subsequent trial, "Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences. See Rutledge v. State, 268 So, 3d 173 (Fla. 4th DCA 2019). In so doing, the Fourth District acknowledged the aforesaid precedent pronounced in State v. Perkins, 349 So. 2d 161, 164 (Fla. 1977), but Selied upon this Court's decision in Bravo-Fernandez v. United States, 137 S. Ct. 352, 262-63 (2016) to affirm on the premise that the double jeopardy clause does

not bar the government from retrying a defendant "after a jury has returned irreconcilably inconsistent verdicts of conviction and acquittal, and the convictions are later vacated for legal error unrelated to the inconsistency." Id.

Petitioner next sought discretionary review in the Florida Supreme Court which was denied on November 22, 2019.

Petitioner submits that the Florida trial court violated the Fifth Amendment right against double jeopardy when it allowed for admission of evidence of a crime for which he had been acquitted, and that the Florida appellate court then misapplied the holding in Bravo-Fernandez to deny his legal challenge to such ruling and affirm where the verdicts were not irreconcilably inconsistent.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully contends that this Honorable Court should grant this present petition and answer the question presented herein to insure uniformity throughout the states with regard to the matter of issue preclusion and the double jeopardy clause of the Fifth Amendment. Specifically, Petitioner forwards that by way of its articulated opinion on this case, the Court should clarify whether irreconcilably inconsistent verdicts exist when the government needs the evidence of an acquitted crime to prove a similar crime beyond a reasonable doubt notwithstanding that other evidence exists to suggest that the crime for which the state seeks a conviction actually occurred.

Here, Petitioner was convicted of First Degree Murder with a Firearm and Conspiracy to Commit First Degree Murder but was acquitted of Solicitation to Commit First Degree Murder. On direct appeal these convictions were vacated and the state trial court was directed to conduct a new trial.

On retrial, the State of Florida again sought convictions for First Degree Murder with a Firearm and Conspiracy to Commit First Degree Murder, but opposed Counsel's pre-trial motion to exclude the testimony of an acquaintance who was allegedly solicited to commit the murder. The Florida trial court denied the defense motion and the State admitted the testimony of the solicitation over objection. Again, the jury returned guilty verdicts for First Degree Murder with a Firearm and Conspiracy to Commit First Degree Murder.

On direct appeal, Petitioner argued, inter alia, that the trial court erred in admitting evidence of a crime for which he had been acquitted in violation of the Double Jeopardy Clause of the United States Constitution's Fifth Amendment. After substantial briefing was completed on the issues, Florida's Fourth District Court of Appeal affirmed the convictions and sentences while specifically addressing in detail its rationale that collateral

estoppel did not bar the State from introducing evidence of a crime Petitioner had been acquitted of.

The appellate court recognized the general proposition that evidence of an acquitted crime is inadmissible in a subsequent trial as pronounced by the Florida Supreme Court in State v. Per Kins, 349 So. 2d 161, 164 (Fla. 1977), but then excused the Florida trial Court's allowance of the same by applying the rule pronounced by this Court in Bravo-Fernandez v. United States, 137 S. Ct. 352 (2016) concerning issue preclusion. Significant to the question presented here, this court explained that for purposes of issue preclusion, a defendant cannot meet the burden of demonstrating that an issue was actually decided by a prior jury's acquittal "when the same jury returns irreconcilably inconsistent verdicts on the question she seeks to shield from reconsideration. "Id. At 359.

In expounding upon its reliance, the Florida appellate court explained that "the first jury could not have found" the existence of a conspiracy "beyond a reasonable doubt" without considering evidence of the solicitation, but then interestingly conceded that "there was other evidence suggestive of a conspiracy between Petitioner and his co-defendant independent if the solicitation testimony. Rutledge, 268 So. 3d at 177.

While this Court explained in Bravo-Fernandez that a rationally inconsistent verdict was one where there was no basis to conclude that the jury actually decided that a defendant was not guilty, the Florida appellate court extended this holding to include a scenario where evidence of an acquitted crime was necessary to prove another related crime, notwithstanding that other evidence of the related crime independent of the acquitted crime could be presented to a jury. Petitioner forwards that a basis did exist to conclude that the jury actually decided that he was not guilty of solicitation, as the jury could have chosen to disbelieve the testimony of the acquaintance who testified to being solicited while at the same time accepting the "other evidence

Suggestive of or conspiracy between appellant and the co-defendant to murder the victim" as proof of the conspiracy. Rutledge, supra. Even when faced with a rational basis to conclude that the jury actually decided that Petitioner was not guilty of solicitation, the Florida appellate court allowed for admission of evidence of an acquitted crime because the prosecutor needed it to solidify its conviction for conspiracy and then cited to Bravo-Fernandez in support. Petitioner contends that this Court should consider this application of its holding in Bravo-Fernandez, supra and Pender an opinion as to its propriety.

CONCLUSION

WHEREFORE, based upon the foregoing, Petitioner humbly prays this Honorable Court GRANT certiorari review and answer the question presented to insure the fair administration of justice.

Respectfully submitted,

Eddie Vincent Rutledge
DC # W36300
Petitioner, pro se

Date: MARCH 10TH 2020

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