

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

No.

GEORGE SKLAR CLOUD

PETITIONER

-VS-

UNITED STATES OF AMERICA

RESPONDENT

MOTION FOR LEAVE TO PROCEED
ON FORMA PAUPERIS

Pursuant to Title 18, United States Code Section 3006A(d)(6) and Rule 39 of this Court, Petitioner, GEORGE SKLAR CLOUD, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of fees or costs and to proceed in forma pauperis.

The Petitioner was represented by counsel appointed pursuant to Title 18, United States Code Section 3006(a) on appeal to the Ninth Circuit Court of Appeals.

Dated this 21st day of January 2021.

Respectfully Submitted,

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PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Petitioner, GEORGE SKLAR CLOUD, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on October 22, 2020.

ISSUE PRESENTED

Did the district court error when it allowed the government to introduce into evidence the Petitioner's guilty plea, in a separate pending matter, to the federal charge of Discharge of a Firearm During a Crime of Violence in violation of 18 U.S.C. 2119 and the facts of his pending federal charge of Possession of Contraband in Prison in violation of 18 U.S.C. §1791.

OPINION BELOW

On October 22, 2020, the Ninth Circuit entered its opinion affirming the conviction and sentence of the Petitioner for Murder in the First Degree and Discharging a Firearm During a Crime of Violence in violation of 18 U.S.C. §§ 1111, 924(c). A copy of that opinion is attached as Appendix A.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28 United States Code Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. §1111 and 18 U.S.C. §924(c)

STATEMENT OF THE CASE

The Petitioner, hereinafter, Mr. Cloud is charged by Indictment with First Degree Murder and Aiding and Abetting in violation of 18 U.S.C. §§§1111, 1153 and 2. He was also charged with Discharge of a Firearm During a Crime of Violence and Aiding and Abetting in violation of 18 U.S.A §924(c)(1)(A) and 2. Mr. Cloud was found guilty by a jury on all counts on January 17, 2019. The

district court sentenced Mr. Cloud to life in prison counts 1 and 10 years on count 2, consecutive.

During the trial, Mr. Cloud filed several motions. He moved to exclude certain evidence that the government sought to introduce. The information included Mr. Cloud's involvement in a prior carjacking and shooting; Mr. Cloud's plea to a federal charge; and Mr. Cloud's alleged attempt to escape from custody while this matter was pending. The district court denied the motion.

During proceedings, Mr. Cloud move to exclude evidence that he was allegedly involved in a carjacking and the shooting of a person in that vehicle. He also moved to exclude evidence that he had planned to escape from custody during the pendency of the proceedings. Finally, he moved to exclude evidence that he had plead guilty in 17-CR-2007 to Discharge of a Firearm During a Crime of Violence; and in 16-CR-2053 to Felon in Possession of Ammunition.

The government maintained that the evidence of the shooting and the carjacking were relevant to their theory to show that the victim was perceived by Mr. Cloud to be a snitch and thus the reason that he killed her. They further maintained that the car the body was found in was the same car in the carjacking. Mr. Cloud disputed these facts.

As noted, the district court allowed the government to present the evidence on these issues. The district court also did give a limiting instruction regarding the evidence that was admitted.

REASONS FOR GRANTING WRIT

Mr. Cloud maintained that the district court denied him a fair trial when the district court allowed the introduction of the facts of the two pending criminal matters.

Fed. R. Evid. 404(b), unequivocally prohibits the use of prior bad acts to show a defendant's propensity to commit criminal acts: "Under Rule 404(b), evidence of a defendant's prior crimes or wrongful acts may not be introduced to show that the defendant has a bad character and is therefore more likely to have committed the crime with which he is charged." *United States v. Decinces*, 808 F.3d 785, 790 (9th Cir. 2015); *United States v. Brown*, 880 F.2d 1012 (9th Cir. 1989), citing, *United States v. Hodges*, 770 F.2d 1475, 1479 (9th Cir.1985). It is true that Rule 404(b) does permit the use of prior bad acts for purposes other than demonstrating propensity. Such purposes include showing motive, knowledge, opportunity, intent, preparation, plan, and absence of mistake. See, Fed. R. Evid. 404(b)(2) (2013).

Federal Rule of Evidence 403 bars the admission of evidence when the danger of unfair prejudice substantially outweighs the probative value of the evidence. See *United States v. Lloyd*, 807 F.3d 1128, 1151 (9th Cir. 2015). “A district court’s Rule 403 determination is subject to great deference, because the considerations arising under Rule 403 are susceptible only to case-by-case determinations, requiring examination of the surrounding facts, circumstances, and issues.” Id. at 1152

This general rule reflects the concern that a person charged with a crime be convicted only if its elements are proved beyond a reasonable doubt. A person should not be convicted merely because he or she has done prior bad acts. Rule 404(b) will not be violated if the prior bad acts are relevant on some issue in the current prosecution, such as “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Fed.R.Evid. 404(b). But when bad acts are not relevant, they can only be viewed as being presented to inflame prejudice in the trier of fact, in which case they are at odds with our fundamental premises on the need for a fair trial. And even when relevant on some issue, evidence of prior bad acts should not, under Federal Rule of Evidence 403, be admitted when its “probative value is substantially outweighed by dangers of unfair prejudice, confusion on issues, waste of time, or needlessly presenting cumulative evidence.” Fed.R.Evid. 403.

A four-part test is used to determine the admissibility of evidence pursuant to Rule 404(b): Such evidence may be admitted if: (1) the evidence tends to prove a material point; (2) the other act is not too remote in time; (3) the evidence is sufficient to support a finding that defendant committed the other act; and (4) (in certain cases) the act is similar to the offense charged. *United States v. Romero*, 282 F.3d 683, 688 (9th Cir. 2002).

The government “has the burden of proving that the evidence meets all of the above requirements.” *United States v. Arambula-Ruiz*, 987F.2d 599, 602 (9th Cir. 1993). “If the evidence meets this test under Rule 404(b), the court must then decide whether the probative value is substantially outweighed by the prejudicial impact under Rule 403.” *Romero*, 282 F.3d at 688.

In the case at bar, the district court allowed the government to present evidence that Mr. Cloud was involved in a drive by shooting; that he had plead guilty to Drive By shooting in a pending federal case; and that he planned on escaping from federal custody, which was also a pending federal case.

The Ninth Circuit Court ruled that it was not unduly prejudicial as the information was relevant to the charge. The Circuit Court found that even if it was error, it was harmless.

Mr. Cloud maintained that the carjacking and the shooting were not relevant and were unrelated. The car in which the body was found was not seen

at the trailer where the crime occurred. Additionally, the victim was not the victim in the shooting and the carjacking. As for the evidence of escape and the photo of the knife that was introduced, this also was not relevant.

Even if the evidence was relevant it was far too prejudicial to be admitted. It was not harmless error. These were separate incidents charged in separate causes. The admitted evidence portrayed Mr. Cloud as a violent offender and had a propensity for violence. This prejudiced Mr. Cloud as it is clear that jury most likely focused on these violent acts. This is further true given the fact the jury was informed that Mr. Cloud plead guilty to the carjacking case.

CONCLUSION

For the forgoing reasons, petitioner respectfully submits that the petition for the writ of certiorari should be granted.

Dated this 21st of January 2021.

Respectfully Submitted,

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