

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM MARCELLUS CAMPBELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court violated the Confrontation Clause of the Sixth Amendment by limiting cross-examination of the cooperating witnesses who testified against petitioner about the precise sentences the witnesses faced.

2. Whether the court of appeals applied the correct standard of review in considering petitioner's claim that the district court's limitation on his cross-examination of co-operating government witnesses violated the Confrontation Clause.

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No. 21-5666

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. D1-D33) is reported at 986 F.3d 782. An order of the district court (Pet. App. G1-G11) is not reported in the Federal Supplement but is available at 2018 WL 4517458.

JURISDICTION

The judgment of the court of appeals (Pet. App. C1) was entered on January 21, 2021. A petition for rehearing was denied on April 16, 2021 (Pet. App. B1). The petition for a writ of certiorari was filed on September 13, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Iowa, petitioner was convicted on one count of conspiring to distribute cocaine and cocaine base, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2012), 21 U.S.C. 846 and 851; and two counts of distributing cocaine base, in violation of 21 U.S.C. 841(a)(1), (b)(1)(C), and 851. Judgment 1. The court sentenced petitioner to 360 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. D1-D33.

1. In 2016, a task force began investigating drug trafficking by petitioner and his family in eastern Iowa. Pet. App. D2. The multiyear investigation employed confidential informants, controlled buys and payoffs, wiretaps, and surveillance. Id. at D1. Through confidential informants, officers oversaw multiple controlled buys from petitioner and recorded his conversations related to those transactions. Trial Tr. 133-137, 146-151, 161, 434-436; see Gov't C.A. Br. 22-23. Wiretap evidence revealed that petitioner supplied drugs to numerous people, Trial Tr. 578; see Gov't C.A. Br. 25, and witness testimony corroborated that evidence, Trial Tr. 436-437, 519-521, 722-724; see Gov't C.A. Br. 30, 32-34. During a search of an address associated with the drug-trafficking organization, officers found a vehicle registered to petitioner's wife, a plastic bag with marijuana residue, and a scale and container with traces

of cocaine and cocaine base. Trial Tr. 149, 240-252, 255; see Gov't C.A. Br. 29. And during a separate search of petitioner's residence, officers found a loaded firearm, inositol powder (a cutting agent), a baggie with cocaine residue, and thousands of dollars in cash. Trial Tr. 359-366; see Gov't C.A. Br. 30.

Following the investigation, a federal grand jury in the Northern District of Iowa charged petitioner and several other defendants with various drug-trafficking offenses. Pet. App. D3-D4. The grand jury charged petitioner with conspiring to distribute five kilograms or more of a mixture or substance containing a detectable amount of cocaine and 280 grams or more of a mixture or substance containing a detectable amount of cocaine base, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2012), and 21 U.S.C. 846; and distributing cocaine base and cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Superseding Indictment 2, 3, 6. After several defendants pleaded guilty, petitioner and the remaining defendants proceeded to trial. Pet. App. D2.

At trial, the government presented testimony from, inter alia, four cooperating witnesses who had entered into plea agreements but had not yet been sentenced. Pet. App. D9. In their plea agreements, the cooperating witnesses acknowledged that they faced statutory minimum sentences of either ten or 20 years (depending on the witness). The plea agreements further specified that the witnesses could avoid those minimum sentences if the

government, in its "sole discretion," filed a motion for departure based on the defendant's "'substantial assistance'" to the prosecution. Pet. App. 132, 147, Alston Campbell, Jr. v. United States, No. 20-1790 (June 21, 2021); id. at 161, 176-177; id. at 191, 197-198; id. at 208, 225. The government objected to defense counsel's planned introduction of the plea agreements on cross-examination of the cooperating witnesses. Trial Tr. 4. The district court sustained that objection on the grounds of relevance and juror confusion, but noted that defense counsel could still ask the cooperating witnesses about the substance of their plea agreements. Id. at 9.

The government also requested that defense counsel not be allowed to ask the cooperating witnesses about the precise penalties they were facing. Trial Tr. 11. The government observed that because the witnesses and petitioner faced similar charges, the witnesses' sentencing exposure could "be extrapolated by the jury" to determine the penalty that would apply to petitioner, thereby inviting jury nullification. Id. at 11; see id. at 4. The district court granted the government's request, instructing that defense counsel could question the cooperating witnesses "as to whether they're facing a substantial amount of time" -- including that they were "facing a mandatory minimum" or "an increased amount of time in prison because of their prior criminal history" -- but not as to the precise term of imprisonment they were facing. Id. at 12-14; see id. at 83. The court further

permitted defense counsel to question the witnesses about a sentencing court's inability to depart downward from the applicable statutory minimum "without a government motion." Id. at 400. The court explained that the judge, not the jury, determines punishment and that the limitation on cross-examination was necessary to prevent the jury from inferring the specific sentence that petitioner himself might face if convicted of the crimes with which he was charged. See id. at 11-12, 387-388.

A jury found petitioner guilty on all three counts, Judgment 1, and the district court denied petitioner's motion for a new trial based on the alleged violation of his Confrontation Clause rights, see Pet. App. G4-G6. The court sentenced him to 360 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3.

2. The court of appeals affirmed. Pet. App. D1-D33. As relevant here, petitioner contended that the district court's limitation on cross-examination of the cooperating witnesses violated his Confrontation Clause rights. Id. at D7. The court of appeals reviewed that claim for abuse of discretion, quoting this Court's observation in Delaware v. Van Arsdall, 475 U.S. 673 (1986), that trial courts "retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only

marginally relevant." Pet. App. D7 (quoting Van Arsdall, 475 U.S. at 679). At the same time, the court of appeals recognized "the sanctity of a defendant's ability to expose witness bias," observing that a limitation on cross-examination may violate the Confrontation Clause when the defendant "'shows that a reasonable jury might have received a significantly different impression of the witness's credibility had defense counsel been permitted to pursue his proposed line of cross-examination.'" Id. at D7-D8 (quoting United States v. Dunn, 723 F.3d 919, 934 (8th Cir. 2013), cert. denied, 571 U.S. 1145 (2014)) (citation omitted).

The court of appeals found that the district court did not abuse its discretion when it "allowed defense counsel to cross-examine the government's cooperating witnesses about looming mandatory minimum or 'substantial' sentences they faced, the possibility of receiving an increased sentence based on prior criminal history, and their hopes of earning a reduced sentence through their cooperation," but precluded "cross-examination that would reveal the precise amount of incarceration, in years, that any witness was facing." Pet. App. D8-D9. The court of appeals noted that the "degree of leniency" each witness would receive "in exchange for his cooperation" was "unascertainable at the time of cross-examination," because the record showed only that the witnesses "'hoped through [their] assistance to reduce by an undefined degree the sentence that [they] otherwise faced.'" Ibid. (citation omitted; brackets in original). And finding no error,

the court declined to decide whether the limitation prejudiced petitioner. Id. at D9.

ARGUMENT

Petitioner contends (Pet. 7-18) that the district court violated the Confrontation Clause by not allowing him to elicit testimony about the precise sentences that the cooperating witnesses faced, and that the court of appeals erred in reviewing that claim for abuse of discretion. As petitioner acknowledges (Pet. 8), this case presents the same questions and raises the same arguments as the pending petition for a writ of certiorari filed by petitioner's co-defendant in Alston Campbell, Jr. v. United States, No. 20-1790 (June 21, 2021). For the reasons explained in the government's brief in opposition to that petition, a copy of which has been served on petitioner and is available on this Court's online docket, further review is unwarranted. This Court has repeatedly denied review on both questions presented, see Gov't Br. in Opp. at 6, Campbell, supra (No. 20-1790), and should do the same here.

The petition here cites an additional decision, United States v. Landerman, 109 F.3d 1053 (5th Cir. 1997), opinion modified on reh'g, 116 F.3d 119 (5th Cir. 1997) (per curiam), cert. denied, 522 U.S. 1033 (1997), as purported evidence of a circuit conflict on the first question presented. See Pet. 9. Unlike in this case, however, the district court in Landerman precluded all questioning about a pending state charge, not just questioning about the

precise sentence the witness faced on that charge. See 109 F.3d at 1061, 1063. And because Landerman involved cross-examination about a state charge entirely unrelated to the charges against the defendants, the court had no occasion to consider the substantial risk of prejudice that arises where, as here, disclosure of the sentence faced by a cooperating witness would allow the jury to infer the sentence to which a conviction would subject the defendant himself. Id. at 1060-1061.

In any event, this case would be a poor vehicle for considering petitioner's arguments because he would not be entitled to relief even if this Court agreed with them. Prevailing on the second question alone would not be sufficient, because no Confrontation Clause violation occurred under any standard of review. See Gov't Br. in Opp. at 7-11, Campbell, supra (No. 20-1790). And even if petitioner prevailed on the first question presented, any error was harmless beyond a reasonable doubt.

As this Court has explained, "the constitutionally improper denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation Clause errors, is subject to * * * harmless-error analysis." Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986). Whether an error was harmless depends on a "host of factors," including "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-

examination otherwise permitted, and, of course, the overall strength of the prosecution's case." Ibid.

In this case, the government's other evidence both corroborated the testimony of the cooperating witnesses and independently supported petitioner's convictions. See Pet. App. G2 (summarizing evidence against petitioner). The two distribution instances alleged in the indictment, see Superseding Indictment 3, 6, involved controlled buys overseen by law enforcement, see Trial Tr. 131-138, 146-151, 161; see also Pet. App. G2; Gov't C.A. Br. 22-23. Wiretap evidence revealed that petitioner supplied drugs to numerous people. Trial Tr. 578; see Gov't C.A. Br. 25. During a search of an address associated with the drug-trafficking organization, officers found a vehicle registered to petitioner's wife, a plastic bag with marijuana residue, and a scale and container with traces of cocaine and cocaine base. Trial Tr. 149, 240-252, 255; see Gov't C.A. Br. 29. And during a search of petitioner's residence, officers found a loaded firearm, inositol powder, a baggie with cocaine residue, and thousands of dollars in cash. Trial Tr. 359-366; see Gov't C.A. Br. 30.

In addition, the district court permitted defense counsel to explore the cooperating witnesses' incentives to testify favorably for the government, precluding inquiry only as to the granular details of their sentencing exposure. See, e.g., Trial Tr. 12, 83, 400. Particularly in light of the overwhelming evidence of

petitioner's culpability, any marginal value gleaned from additional cross-examination would not have affected the jury's verdict. See United States v. Larson, 495 F.3d 1094, 1108 (9th Cir. 2007) (en banc) (finding error harmless because "the Government offered significant evidence" of guilt and defense counsel was allowed to explore the cooperating witness's "desire to obtain a lesser sentence"), cert. denied, 552 U.S. 1260 (2008).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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