

IN THE SUPREME COURT OF UNITED STATES

NO. _____

DAERON JOHNSON MERRETT,
Petitioner-Plaintiff,

vs.

UNITED STATES OF AMERICA,

Respondent-Defendant.

PETITION FOR WRIT OF CERTIORARI FROM THE EIGHTH CIRCUIT
COURT OF APPEAL
CRIMINAL NO. 20-2801

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

QUESTION NO. 1

A SPLIT EXISTS IN THE COURTS OF APPEALS REGARDING THE GRANTING BUYER-SELLER INSTRUCTION IN THE TRIAL OF FEDERAL CONSPIRACY AND DISTRIBUTION CASES.

Authorities:

United States v. Conway, 754 F.3d 580, 591-92 (8th Cir. 2014)

United States v. Boykin, 794 F.3d 939, 948-49 (8th Cir. 2015)

United States v. Cruse, 805 F.3d 795, 814-17 (7th Cir. 2015)

QUESTION NO. 2

BRIEF POINT IV

PETITIONER'S IOWA DRUG CONVICTIONS DOES NOT QUALIFY AS A "SERIOUS DRUG FELONY" UNDER AS USED IN § 841(b)(1)(B) FOR IMPOSITION OF A MANDATORY MINIMUM SENTENCE OF 120 MONTHS.

IDENTIFICATION OF THE PARTIES

The Petitioner is DAERON JOHNSON MERRETT. Petitioner is in the custody of the U.S. Bureau of Prisons from sentences of imposed in U.S. District Court in the Southern District of Iowa for a total sentence of 180 months on multiple federal offenses. The Respondent is the United States of America. On direct appeal, the Eighth Circuit Court of Appeals affirmed Petitioner's convictions and sentences on August 16, 2021.

LIST OF ALL PROCEEDINGS

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

On January 30, 2020, in the Southern District of Iowa, Case No. SDI No. 4:19-cr-00061, Daeron Johnson Merrett was convicted by jury in Count 1 – Conspiracy to Distribute 500 Grams or More of a Mixture and Substance Containing Cocaine, from approximately October 2018, until March 27, 2019, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), 846, 851; Counts 2, 3, 4 5-9, 10 – Distribution of a controlled substance cocaine/methamphetamine on specific dates, and Count 12 – Felon in Possession of a Firearm, on or about March 27, 2019, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). Mr. Merrett was found not guilty of Count 11 – Possession of a Firearm in Furtherance of a Drug Trafficking Crime, on or about March 27, 2019. A timely Notice of Appeal was filed on August 27, 2020.

EIGHTH CIRCUIT COURT OF APPEALS

On August 16, 2021, the Eighth Circuit Court of Appeals affirmed Petitioner's convictions in Eighth Circuit Case No 20-2801.

OPINION BY THE EIGHTH CIRCUIT COURT OF APPEALS

The opinion entered by the Eighth Circuit Court of Appeals is attached in the Petitioner's Appendix.

BASIS FOR JURISDICTION OF THE U.S. SUPREME COURT

Pursuant to 28 U.S.C. Section 1254, jurisdiction over this Petition for Writ of Certiorari is conferred as follows:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C Section 1254

STATUTORY PROVISIONS

21 U.S.C. § 841(a)(1)
21 U.S.C. § 841(b)(1)(B)
21 U.S.C. § 841(b)(1)(C)
21 U.S.C. § 846
21 U.S.C. § 851
Iowa Code § 124.401
Iowa Code § 124.401(1)
Iowa Code § 124.401(1)(c)(3)
Iowa Code § 703.1

STATEMENT OF THE FACTS

On January 30, 2020, in the Southern District of Iowa, Daeron Johnson Merrett was convicted by jury in Count 1 – Conspiracy to Distribute 500 Grams or

More of a Mixture and Substance Containing Cocaine, from approximately October 2018, until March 27, 2019, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), 846, 851; Counts 2, 3, 4 5-9, 10 – Distribution of a controlled substance cocaine/methamphetamine on specific dates, and Count 12 – Felon in Possession of a Firearm, on or about March 27, 2019, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). Mr. Merrett was found not guilty of Count 11 – Possession of a Firearm in Furtherance of a Drug Trafficking Crime, on or about March 27, 2019.

On August 24, 2020, he was sentenced to 180 months of incarceration on Counts I through 10 of the Superseding Indictment and 120 months incarceration on Count 12 of the Superseding Indictment to be served concurrently, with a terms of eight years of supervised release to be served on Counts 1-10 of the Superseding Indictment and three years supervised release on Count 12 of the Superseding Indictment to be served concurrently. A timely Notice of Appeal was filed on August 27, 2020.

On August 16, 2021, the Eighth Circuit Court of Appeals affirmed Petitioner's convictions and sentences. The Eighth Circuit Court of Appeals rejected Petitioner's claims on appeal. Including the QUESTIONS PRESENTED in this Petition.

For purposes of this Petition, the Eighth Circuit Court of Appeals held:

- a. The district court's refusal to give the jury a buyer-seller instruction was not an abuse of discretion.

b. PETITIONER'S conviction under Iowa Code § 124.401(1)(c)(3) was a "serious drug felony" under § 841(b) and § 851 notice of prior conviction and his argument was foreclosed by *United States v. Boleyn*, 929 F.3d 932, 937-38 (8th Cir. 2019).

BASIS FOR JURISDICTION IN THE LOWER COURTS

Jurisdiction of the district court was based on 18 U.S.C. § 3231, as Appellant was charged with an offense against the laws of the United States. The jurisdiction of the Eighth Circuit Court of Appeals was based upon 28 U.S.C. § 1291, which provides for jurisdiction over a final judgment from a United States District Court. Final judgment was entered in this case on August 24, 2020. Timely notice of appeal was filed August 27, 2020 to the Eighth Circuit Court of Appeals.

REASONS FOR GRANTING OF WRIT

Petitioner contends that there appears to be a split in the circuits, or some circuits, regarding the circumstances in which a federal drug charge defendant may be granted a so-called “buyer-seller” instruction. The Eighth Circuit Court of Appeals has taken a very restrictive view of circumstances in which such defense instruction should be considered much less granted. *See United States v. Conway*, 754 F.3d 580, 591-92 (8th Cir. 2014); *United States v. Boykin*, 794 F.3d 939, 948-49 (8th Cir. 2015).

Petitioner contends that the Seventh Circuit analysis set forth in *United States v. Cruse*, 805 F.3d 795, 814-17 (7th Cir. 2015) reflects a more liberal and appropriate standard for consideration and granting of a federal drug defendant’s request for a buyer-seller instruction.

Prior to trial Mr. Merrett filed proposed instructions to the jury requesting specifically the following instruction from the Seventh Circuit:

BUYER-SELLER INSTRUCTION

A conspiracy requires more than just a buyer-seller relationship between the Defendant and another person. In addition, a buyer and seller of cocaine do not enter into a conspiracy to distribute cocaine simply because the buyer resells the cocaine to others, even if the seller knows that the buyer intends to resell the cocaine.

Authority: 7th Circuit Uniform Jury Instruction 5.10(A)

The Eighth Circuit has effectively limited buyer-seller instruction to “single transaction case involving small quantities of drugs consistent with personal use”. *United States v. Conway*, 754 F.3d 580, 591-92 (8th Cir. 2014); *United States v. Boykin*, 794 F.3d 939, 948-49 (8th Cir. 2015); *United States v. Davis*, 867 F.3d 1021, 1033-34 (8th Cir. 2017)(“when a case involves multiple sales of controlled substances and quantities that are greater than that for personal use, a buyer-seller instruction is not appropriate.”). The court has also upheld the sufficiency of a conspiracy conviction as conduct more than mere buyer-seller based upon one transaction of distribution quantities. *United States v. Hamilton*, 929 F.3d 943 (8th Cir. 2019).

Petitioner contends and invites the court to review split in circuit authority and resolve any split in favor of liberal granting of a requested buyer-seller instruction consistent with *United States v. Cruse*, 805 F.3d 795, 814-17 (7th Cir. 2015) and the Seventh Circuit Uniform Criminal Jury Instruction No. 5.10(A); *See also United States v. Conway*, 754 F.3d 580, 591-92 (8th Cir. 2014)(J. Bright dissenting)(given the difficulties associated with defending conspiracy allegations and potential penal

consequences involved, denial of buyer-seller instruction may be an abuse of discretion); *United States v. Brown*, 726 F.3d 993, 999 (7th Cir. 2013)(non-exhaustive list of characteristics distinguishing between conspiracy buyer-seller relationships).

Petitioner reasserts in this Court that the buyer-seller arrangement is a common societal event with the components of contract- offer and acceptance. Moreover, federal drug conspiracy law punishes criminal objectives beyond the sale itself and that credit or fronting does not necessarily constitute a criminal objective beyond the sale itself. Petitioner contends that the Seventh Circuit's approach and model instruction ensures that the defendant charged in a drug conspiracy receives fair consideration by the jury that conspiracy is a crime separate and apart from mere distribution.

Second, Petitioner contends that the Eighth Circuit Court of Appeals has erroneously affirmed the legal conclusion that Petitioner's Iowa drug convictions were prior drug felony for purposes of imposition of at least 10 years pursuant to 21 U.S.C. § 851.

Petitioner asserts that existing Eighth Circuit precedent as to whether his prior delivery convictions qualify as serious drug offense for purposes of statutory mandatory minimum enhancement are in error. *United States v. Maldonado*, 864 F.3d 893, 901 (8th Cir. 2017); *United States v. Boleyn*, 929 F.3d 932, 938 (8th Cir. 2019); *United States v. Clayborn*, ____ F.3d ____ (8th Cir. 2020).

Petitioner was previously convicted of two counts of delivering “[f]orty grams or less of a mixture or substance . . . which contains cocaine base” In Iowa state courts pursuant to Iowa Code § 124.401(1)(c)(3). Those counts were affirmed on appeal. See *State v. Merrett*, 828 N.W.2d 325 (Iowa App. 2013)(Table).

Petitioner has conceded this was an offense under State law and that it is a felony. He maintains his State offense is not a “serious drug felony” as used in § 841(b)(1)(B) because Iowa Code § 124.401(1) is overly broad because aiding and abetting is inherent in every conviction under § 124.401 and Iowa Code § 703.1. His argument was previously rejected by the Eighth Circuit Court of Appeals in *Boleyn*.

The Eighth Circuit Court of Appeals held in *United States v. Boleyn*, 929 F.3d 932, 938 (8th Cir. 2019) that “[l]ooking only to the fact of a prior conviction and the statutory definition of a drug offense under Iowa Code § 124.401, including the Iowa law of aiding and abetting liability, as the categorical approach requires, we conclude that convictions under this state statute categorically “involve” and “relate to” the offenses described in 18 U.S.C. § 924(e)(2)(A)(ii) and 21 U.S.C. § 802(44).’ Accordingly, the district courts properly imposed the ACCA and CSA statutory enhancements based on prior convictions of Bell, Boleyn, and Green under Iowa Code § 124.401.”

As the district court labored under the erroneous understanding the Petitioner was subject to a mandatory minimum sentence of 120 months, Petitioner believes

this Court should authoritatively address the question of whether a State drug offense qualifies for a predicate offense subjecting a federal drug defendant to a mandatory minimum sentence of 120 months where aiding and abetting is inherent in that State drug offense.

CONCLUSION

WHEREFORE, Petitioner requests that this Court grant Writ of Certiorari on each of the two questions presented.

Respectfully submitted,

/s/ F. Montgomery Brown



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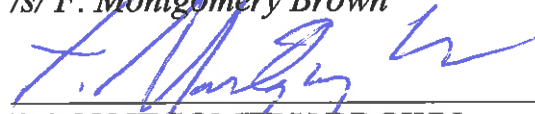
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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, F. Montgomery Brown, hereby certify that on November 16, 2021, did file electronic proof of Petitioner's Petition for Writ of Certiorari to the Clerk of Supreme Court of the United States, 1 First Street, NE Washington, DC 20543 and sent by overnight delivery an original and 10 copies of the Petition for Writ of Certiorari, Appendix, and Motion to Proceed in Forma Pauperis.

/s/ F. Montgomery Brown



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CERTIFICATE OF COMPLIANCE

This supplemental brief was prepared using Times New Roman, 14 point font proportional typeface in Microsoft Word 2007 and complies with the type-volume limitations as set forth by the Rule of the US Supreme Court 33.1 and 34. Number of words in the brief: 2100.

The undersigned counsel further certifies that pursuant to Rule of the US Supreme Court 34.6 the electronic .pdf copy of this opening brief was virus free.

/s/ F. Montgomery Brown



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