

No. _____

In The
Supreme Court of the United States

LEILA VARETTA HECTOR, a/k/a
Leila Varretta Hector-Dykes, a/k/a Rita Hector,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the imposition of joint and several liability on a forfeiture award under 21 U.S.C. § 853(a) violates the Court's holding in Honeycutt v. United States, 137 S. Ct. 1626 (2017).

PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioner Leila Varetta Hector and the United States of America.

STATEMENT OF RELATED CASES

No. 20-4052 (2:18-cr-00003-JPJ-PMS-1) - UNITED STATES OF AMERICA Plaintiff
- Appellee v. ROY LEE DYKES Defendant – Appellant

No. 20-6414 (2:18-cr-00003-JPJ-PMS-2) - UNITED STATES OF AMERICA Plaintiff
- Appellee v. LEILA VARRETTA HECTOR, a/k/a Leila Varetta Hector-Dykes, a/k/a
Rita Hector Defendant - Appellant

No. 20-6467 (2:18-cr-00003-JPJ-PMS-1) - UNITED STATES OF AMERICA Plaintiff
- Appellee v. ROY LEE DYKES Defendant - Appellant

TABLE OF CONTENTS

| | Page: |
|---|--------------|
| QUESTION PRESENTED | i |
| PARTIES TO THE PROCEEDING | ii |
| STATEMENT OF RELATED CASES | ii |
| TABLE OF CONTENTS..... | iii |
| TABLE OF AUTHORITIES | v |
| INTRODUCTION | 1 |
| OPINIONS BELOW | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS AND OTHER TEXTS INVOLVED..... | 2 |
| STATEMENT OF THE CASE..... | 2 |
| REASONS FOR GRANTING THE WRIT | 4 |
| I. THE FOURTH CIRCUIT’S DECISION CONTRADICTS THE COURT’S RULING IN <i>HONEYCUTT</i> | 4 |
| CONCLUSION..... | 7 |
| APPENDIX: | |
| Opinion United States Court of Appeals For the Fourth Circuit filed February 9, 2022 | App. A |
| Judgment in a Criminal Case United States Court of Appeals For the Fourth Circuit filed February 9, 2022 | App. B |

| | |
|---|--------|
| Preliminary Order of Forfeiture United States District Court Western District of Virginia Abingdon Division filed December 19, 2019 | App. C |
|---|--------|

| | |
|--|--------|
| Order Denying Petition for Rehearing United States Court of Appeals For the Fourth Circuit filed March 15, 2022 | App. D |
|--|--------|

TABLE OF AUTHORITIES

Page(s):

Cases:

| | |
|--|---------------|
| <u>Honeycutt v. United States</u> , 137 S. Ct. 1626 (2017) | <u>passim</u> |
| <u>United States v. Cingari</u> , 952 F.3d 1301 (11th Cir. 2020) | 5, 6 |
| <u>United States v. Thompson</u> , 990 F.3d 680 (9th Cir.), <u>cert. denied</u> , 142 S. Ct. 616, 211 L. Ed. 2d 384 (2021) | 6 |

Statutes:

| | |
|--------------------------------------|---------|
| 18 U.S.C. § 853(a) | 1, 2, 5 |
| 18 U.S.C. § 981(a)(1)(C) | 5 |
| 18 U.S.C. § 982(a)(6) | 5 |
| 18 U.S.C. § 3231 | 3 |
| 21 U.S.C. § 841(a)(1) | 3 |
| 21 U.S.C. § 841(b)(1)(A)(viii) | 3 |
| 21 U.S.C. § 841(b)(1)(B)(viii) | 3 |
| 21 U.S.C. § 841(b)(1)(C) | 3 |
| 21 U.S.C. § 841(b)(2) | 3 |
| 21 U.S.C. § 846 | 3 |
| 21 U.S.C. § 853 | 4 |
| 21 U.S.C. § 853(a)(1) | 5 |
| 28 U.S.C. § 1254(1) | 2 |

INTRODUCTION

The Fourth Circuit affirmed the imposition of a joint and several forfeiture judgment against Ms. Hector following her conviction, upheld on appeal, on drug charges. The Fourth Circuit recognized but evaded the Court’s holding in Honeycutt v. United States, 137 S. Ct. 1626 (2017), forbidding joint and several liability for forfeiture judgments imposed pursuant to 18 U.S.C. § 853(a), the statute applicable to Ms. Hector’s conviction. The Fourth Circuit’s failure to hew to the Court’s decision in Honeycutt requires the Court’s intervention and correction.

OPINIONS BELOW

The preliminary order of the United States District Court imposing forfeiture is reprinted at App. C¹ but is not reported. The Fourth Circuit’s unpublished, per curiam, opinion affirming the judgment (per Motz, Agee, and Harris, JJ) is reprinted at App. A and App. B but is not reported. The Fourth Circuit’s denial of the petition for rehearing is reprinted at App. D but is not reported. Other pertinent documents are contained in the Joint Appendix in the record of the United States Court of Appeals for the Fourth Circuit.

¹ Citations to the Appendix for this Petition for Certiorari will be noted “App” and citations to the Joint Appendix contained in the record in the Fourth Circuit will be noted “J.A.”

JURISDICTION

The Fourth Circuit rendered its decision on February 22, 2022 and denied rehearing on March 15, 2022. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND OTHER TEXTS INVOLVED

Title 18, United States Code, Section 853(a), provides in pertinent part:

Any person convicted of a violation of this subchapter or subchapter II punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation[.]

STATEMENT OF THE CASE

Ms. Hector and her husband Roy Dykes lived in Watkinsville, Georgia. Test. of M. Taylor, Sept. 17, 2019, J.A. 476. The Government presented evidence through law enforcement agents that Mr. Dykes had sold controlled substances to law enforcement agents Cox and Mullins, both acting in an undercover capacity, on trips by Mr. Dykes to Western Virginia. Test. of R. Cox, Sept. 16, 2019, J.A. 260-72, 281-84, 292-96, 310-21, 332-41; Test. of L. Mullins, Sept. 17, 2019, J.A. 374-89, 396-401, 404-13. The investigation culminated in the arrest of Mr. Dykes and Ms. Hector on March 1, 2018, in Big Stone Gap, Virginia. Test. of W. Duke, Sept. 18, 2019, J.A. 582-83.

Cox made controlled buys from Mr. Dykes in Virginia on five separate occasions; Ms. Hector accompanied Mr. Dykes on only two of those five trips, but Cox had no interactions whatsoever with Ms. Hector during the two controlled buys that occurred on trips where she had accompanied Mr. Dykes to Virginia. Test. of R. Cox, Tr. of Sept. 17, 2019, J.A. 361-62. Even as to the two trips where she did accompany Mr. Dyles, Ms. Hector was never present in the vehicles when Cox bought drugs from Mr. Dykes. Id., J.A. 272, 283. She was absent from every trip when Mullins purchased drugs from Mr. Dykes. Test. of L. Mullins, September 17, 2019, J.A. 386, 398, 406.

The Government charged Ms. Hector, Mr. Dykes, and nine other defendants with various drug offenses. Superseding Indictment, J.A. 93-96. The district court had jurisdiction on the charges pursuant to 18 U.S.C. § 3231. Ms. Hector and Mr. Dykes proceeded to trial. Docket nos. 544, 549, 553, 558, 574, J.A. 60-64. The jury returned a verdict of guilty against Ms. Hector, for, respectively, conspiracy to distribute and possess with intent to distribute 5 grams or more of methamphetamine and a quantity of heroin, oxycodone, cocaine, and alprazolam in violation of 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(A)(viii), (b)(1)(C), and (b)(2) and distribution and possession with intent to distribute 5 grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(viii). Superseding Indictment, JA 93-96; Verdict, J.A. 2019-21.

The matter came on for sentencing on December 19, 2019. Docket no. 645, J.A. 69. The district court entered an order of forfeiture against both Ms. Hector and Mr. Dykes for \$11,917.68 in seized currency and an additional money judgment against

each of \$108,719.00. Prelim. Order of Forfeiture, App. C. Ms. Hector timely noted her appeal from the convictions and Judgment. Not. of Appeal, J.A. 2139.

REASONS FOR GRANTING THE WRIT

I. THE FOURTH CIRCUIT'S DECISION CONTRADICTS THE COURT'S RULING IN *HONEYCUTT*

Before entering a forfeiture judgment pursuant to 21 U.S.C. § 853, the district court must determine how much property the defendant herself “obtained,” meaning what she “actually acquired as the result of the crime.” Honeycutt v. United States, 137 S. Ct. 1626, 1635 (2017) (citations omitted). Joint and several liability for forfeiture among members of a conspiracy is not available under Section 853. Id. at 1633.

The district court failed to make any findings as to what Ms. Hector herself obtained. Instead, at the forfeiture hearing the district court accepted the Government's calculation of the total proceeds of narcotic sales transacted by Mr. Dykes and then pronounced money judgments in that exact amount against both Mr. Dykes and Ms. Hector, jointly and severally, without any analysis of a division between them. Tr. of Dec. 19, 2019, J.A. 2126-28; but see Preliminary Order of Forfeiture, App. C (omitting joint and several liability, but entering identical money judgments against both Mr. Dykes and Ms. Hector).² This clearly violated Honeycutt.

² The extent of the factual predicate for the joint and several forfeiture judgment proffered by the Government and adopted by the district court was:

Judgment may be entered against both Hector and Dykes. There is little doubt from evidence at trial that Dykes and Hector obtained proceeds from drug sales, directly and indirectly. Dykes admitted to selling drugs during his

“Section 853(a)’s limitation of forfeiture to tainted property acquired or used by the defendant, together with the plain text of § 853(a)(1), foreclose joint and several liability for co-conspirators.” Honeycutt, 137 S. Ct. at 1633. The Government was obliged to prove by a preponderance of the evidence the money Ms. Hector herself obtained but failed to do so. Id. at 1635.

The Fourth Circuit fashioned an unwarranted exception to the clear holding in Honeycutt for married defendants. Op., App. A, pp. 15-16 (citing United States v. Cingari, 952 F.3d 1301, 1306 (11th Cir. 2020)). It erred in doing so. First, Cingari did not involve forfeiture under Section 853(a) but under different statutes, 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(6), statutes that the Cingari court admitted contain language unlike that analyzed by the Court in Honeycutt. Cingari, 952 F.3d at 1306. Second, the Cingari court put the burden on the defendant to show he or she did not obtain all of the proceeds of the offenses, setting on its head the proper standard enunciated in Honeycutt. Compare id. with Honeycutt, 137 S. Ct. at 1633. Third,

testimony, and traveled with Hector for this purpose on a routine basis. Hector was the money manager for the business in addition to assisting with sales, as established through numerous text communications and Cleghorne’s testimony. See Trial Ex. 62-63; PSR ¶ 30. Consistent with her financial role, Hector was holding nearly \$5,000.00 in prerecorded buy money on the date of her arrest, immediately following drug sales for which both she and Dykes were present. The weight of evidence is that they worked together to manage their mobile narcotics buffet, with Dykes focused principally on sales and Hector on bookkeeping and related communications on the back end. They obtained proceeds from the business as a result.

Gov’t Mot. for Order of Forfeiture and Money Judgment, J.A. 2090.

the defendants in Cingari conceded the gross proceeds of the offenses were jointly received by “going into the family coffers,” Cingari, 952 F.3d at 1306, a concession completely absent from the record here.

Indeed, the Fourth Circuit relied on the Government’s argument to the district court, not any facts in evidence, to support its holding, yet that argument failed to address what proceeds Ms. Hector obtained, focusing instead solely on their joint involvement in the conspiracy. Op., App. A, p. 15 (citing JA 2080). Similarly, the district court’s Order describes the amount as “in aggregate the amount of the proceeds of the offenses of conviction, whether obtained directly or indirectly as a result of said violations,” Prelim. Order Forf., App. C, without any finding as to the amount obtained by any particular Defendant. That is the analysis Honeycutt specifically rejected. Honeycutt, 137 S. Ct. at 1631-32. Whether Mr. Dykes and Ms. Hector “worked together” and had different roles, while relevant to the elements of conspiracy, is irrelevant to the forfeiture inquiry and insufficient to establish each personally obtained the gross proceeds of the offenses. For example, there was no evidence presented that the proceeds of the offenses were invested in jointly-held property or a joint bank account. See United States v. Thompson, 990 F.3d 680, 691 (9th Cir.), cert. denied, 142 S. Ct. 616, 211 L. Ed. 2d 384 (2021) (reversing joint and several forfeiture judgment, noting only “[i]f the money came to rest in a joint account, or property owned jointly or as tenants by the entirety, the swindlers would each have an unfettered right to enjoy the whole, as in United States v. Cingari”). The record established that Mr. Dykes engaged in drug transactions on trips to Virginia from

Georgia unaccompanied by Ms. Hector. Yet Ms. Hector was made jointly and severally liable for the entire sum of all proceeds calculated by the Government, including from trips she was absent from, based on a bookkeeping and communications role.

The decision of the Fourth Circuit fails to follow the Court's imperative from Honeycutt and should be reversed.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that the Court grant her petition for a writ of certiorari.

Respectfully submitted this 8th day June 2022.

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