

No. 23-5090

IN THE SUPREME COURT OF THE UNITED STATES

TRAVIS J. BROWN,

PETITIONER

V.

STATE OF CALIFORNIA,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

REPLY TO BRIEF IN OPPOSITION

TRAVIS J. BROWN
CDCR # AS-9709
P.O. BOX 2199
BLYTHE, CA. 92226
IN PRO PER

NOVEMBER 14, 2023

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATEMENT

1. ALL FACTS, PROCEDURAL HISTORY, AND ARGUMENTS ARE OUTLINED IN THE PETITION FOR CERTIORARI AND ARE HEREBY INCORPORATED BY REFERENCE.

ARGUMENT

1. BROWN'S DOUBLE JEOPARDY QUESTIONS WARRENT REVIEW

A. The respondent posits that there are no persuasive reasons for this Court to grant review. Opp. 12. That Brown is incorrect in his assertion that the Court of Appeals in Brown I relied on United States v. Powell, 469 U.S. 57 (1984), to deny his Jeopardy claim; but instead, relied on well-established Double Jeopardy principles to hold that retrial was not barred. Opp. 14. Respondent is incorrect.

The only case from the United States Supreme Court offered in the Court of Appeals ruling was Powell.

Central to the California Courts ruling to allow retrial was their analysis of Powell in People v. Brown, Brown I, 247 Cal.App. 4th 211, 229-232. ALTHOUGH The Court distinguished the

Present Case From Powell, The Court still followed the recourse outlined in that case when a Court encounters inconsistent verdicts: allow the verdict to stand. Had the trial court not deprived Brown of counsel at a critical stage, no retrial would have been granted at all.

What respondent fails to address is the questions at the heart of the petition: What is a Court to do when a jury returns a guilty and a not guilty verdict on the same count, against the same defendant? And are there protections emanating from the Double Jeopardy Clause which would bar retrial in the present circumstance?

The California Courts suggest that Trial Courts should allow these "unintelligible" or "ambiguous" verdicts to stand. See: Brown I, *Supra*, ; People v. Carbajal, 56 Cal. 4th 521 (2013). While the Federal Circuit Courts suggest Principles of Double Jeopardy prohibit retrial. See: *United States v. Pierce*, 940 F.3d 817 (2nd Cir. 2019); *United States v. Randolph*, 794 F.3d 602 (6th Cir. 2015); *United States v. Shippley*, 690 F.3d 1192 (10th Cir. 2012).

That is the Controversy here. The respondent will have this Court deny Brown's petition on the basis of Labels the different Courts have given to the same legal issue. Whether a Court has labeled this anomaly as ambiguous, internally inconsistent, or unintelligible has no bearing:

"But we have emphasized THAT Labels do not control our analysis in this context; rather, the substance of a Court's decision does." Evans v. Michigan, 568 U.S. 313, 322.

The respondent is correct that Brown's Case and the Federal Circuit cases are factually distinguishable. Opp. 16. The Federal Cases dealt with special findings which negated an element of an offense. Opp. 17. While Brown deals with a general verdict of acquittal on a substantive count. But what respondent refuses to acknowledge is that both Circumstances present a separate means to the same end: an implication of a Criminal defendant's rights under the Double Jeopardy Clause, which makes these cases indistinguishable for the purpose of the 5th Amendment Protections.

BECAUSE, The California Courts in The Brown matter and the Federal Circuit Courts of Appeals conflict on the substance of their decisions regarding the recourse to follow when confronted with both guilty and not guilty verdicts on the same count against the same defendant; and Powell's Authority when deciding this issue. This Court should Grant Certiorari to clarify this split.

B. The respondent is Confused about the Second Question raised in Brown's Petition. Do to some misrepresentations Brown would like to reiterate His position.

Oregon v. Kennedy, 456 U.S. 667 (1982), normally deals with prosecutorial misconduct which was intended to goad a Defendant into moving for a mistrial. This conduct may implicate a Bar to reprosecution. Brown is not contending that This Standard applies in his case as the respondent suggests. Opp. 18.

Brown's contention is what the Concurring Justices in Kennedy foreshadowed: "where

a defendant's mistrial motion is necessitated by Judicial or prosecutorial impropriety designed to avoid an acquittal, reprosecution may well be barred.." Kennedy, supra, 456 U.S. at pp. 678-679 [emphasis added].

The Court knew separate standards were going to be needed in the future, but were declaring a standard best suited for the circumstances and decision relative to Kennedy. Id at 678, fn. 8.

Brown has demonstrated Judicial Impropriety. Brown has demonstrated a likelihood of an acquittal absent the Judges impropriety. And the reversal on appeal should not be counted against him since the misconduct came to light after the completion of trial. United States v. Wallach, 979 F.2d 912 (2nd Cir. 1992). And every attempt by Brown to discover the full extent of the trial Court's ex parte communications was stonewalled thereafter.

Brown is asking this Court to Grant Certiorari To Define a standard on Judicial Impropriety

Add a standard to evaluate intent by a Judge who may commit misconduct to avoid an acquittal That is in harmony with the Kennedy doctrine.

C. The Waltreus rule is not a bar in the Present case. Brown did not raise the Kennedy claim on appeal. It was first raised on Habeas Corpus. Therefore the Orange County Superior Court's Citation of that rule should not prohibit Jurisdiction in this Court.

Conclusion

The Petition For Writ of Certiorari Should be Granted.

Respectfully Submitted,

TRAVIS J. BROWN



November 14, 2023