23-7575

ORIGINAL

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OSCAR DILLON III

PETITIONER,

V.

UNITED STATES OF AMERICA

RESPONDENT.

On Writ of Certiorari

TO THE United States Court of Appeals

For The Eigth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Eighth Circuit United States Court of Appeals determined that criminal culpability derived from verdicts of aquittals are admissible in separate trials - even if the charged crimes are unrelated. As this acquitted criminal culpability is being introduced pursuant to Rule 404 (b). (Federal Rule of Evidence), does the Fifth Amendments' Double Jeopardy Clause protect relitigating criminal culpability already determined and finalized by a preexisting jury - that the defendant lacks the capacity to be responsible for those criminal acts?

PARTIES TO THE PROCEEDING

Pursuant to United States Court Rule 14(1)(b), your petitioner states that the parties to this petition are:

Petitioner: Oscar Dillon III

Respondent: United States of America

The opinion of the United States Court of Appeals for the Eighth Circuit that is the subject of this appeal also addresses the consolidated appeal of co-defendant Michael Grady. Dillon is not aware of Grady filing a separate petition for Writ of Certiorari to the United States Court of appeals for the Eighth Circuit, also seeking review of the Eighth Circuit opinion that is the subject of this appeal.

RULE 14(B) statement

The following proceedings are directly related to this case within the meaning of Rule 14(b) (iii)

United States v. Oscar Dillon III Case No. 4:15-cr-00404-HEA, in the Eastern District of Missouri ("E.D. Mo") (Final order following jury verdict entered April 8, 2021 (Doc. # 3232); order denying Motion for Judgment of Acquittal, or in the Alternative Motion for New Trial, June 9, 2022 (Doc.# 3616))

United States v. Oscar Dillon III, United States Court of Appeals ("USCA") for the Eight Circuit, Appeal No. 22-2447 (Judgment entered December 19, 2023).

United States v. Oscar Dillon III, USCA Eighth Circuit Appeal No. 22-2447 (Judgment entered February 2, 2024).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Oscar Dillon III, respectfully petitions for a writ of ceriorari to review the judgment of the Eighth Circuit of the USCA.

OPINIONS BELOW

The opinion of the USCA for the Eighth Circuit (Appeal N. 22-2447) is reported at 88 F. 4th 1246 (8th Cir. Dec. 19, 2023); Petition for Rehearing and Rehearing En banc USCA for the Eighth Circuit (denied February 2, 2024).

JURISDICTION

The USCA for the Eighth Circuit entered its judment December 19, 2023, 88 F. 4th 1246 (8th Cir. Dec. 2023); followed by the denials of Rehearing and Rehearing En banc, February 2, 2024, and Issuance of Mandate February 15, 2024. This court has jurisdiction under 28 U.S.C. Section 1254 (1).

RELEVANT CONSTITUTIONAL PROVISIONS

No person shall be held to answer for a capital, or otherwise infamous crime unless or a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just conpensation.

U.S. Cont.amend. V

STATMENT OF THE CASE

In 2021, Oscar Dillon III, was tried in the Eastern District of Missouri ("E.D.Mo.") on Case # 4:15-CR-00404-HEA ("404-HEA"). But, also in 2020 in the E.D.Mo. he, ("Dillon") was tried on Case# 4:17-CR-0096-RWS ("95-RWS"). Both cases 404-HEA, and 95-RWS charged 21 U.S.C.sections 841 and 846, in violation of conspiracy to distribute and possess with intent to distribute controlled substances. In 2020, Dillon was acquitted by a jury on all counts charged in the indictment on 95-RWS. Guilty..... on 404-HEA (Doc.# 3232) and 95-RWS (Doc.#424) Acquitted.

Federal Rule of Evidence ("Rule 404(b)") provides two standards to which other acts evidence are to be introduced as admissible. (1) Intrinsic: where evidence is "inextricably intertwined" with the charged offense; and (2) Extrinsic: Which admits evidence of other acts relevant to a trial issue except where such evidence tends to prove only criminal disposition. E.g. proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Therefrom, there is no legislative inquiry that distinguished the Rule 404(b)'s admissibility between uncharged other acts evidence and/or conviction versus other act evidence from acquittals.

By contrast, with other acts evidence that derived from verdicts of acquittals - the Double Jeopardy Clause provide that "no person shall... be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const., Amend. 5. Thereby, the conviction must be vacated and remanded for a new trial.

In Dillon's case 404-HEA (Doc.# 3063) P.6 Intrinsically opined that ("The Court agrees that the evidence which provides the nature of the parties relationships and establishes how the phones were legally obtained is intrinsic. It proved the background for the interrelationships between the alleged coconspiritors. It provides contextual information, therefore "inextricably intertwined" with - and completes the story of - how the parties are (all) a part of the alleged conspiracy"). This allowed for the other acts evidence to be admitted in 404-HEA's trial extrinsically and intrinsically. The District Court further opined that it did not offend the Double Jeopardy Clause. See Doc.#3063, p.16.

On Appeal, the Eighth Circuit held that: "Dillon's September 7, arrest for his involvement with an unrelated drug organization does not complete the story of the crime charged here and (not) therefore intrinsic evidence." But, nevertheless held that extrinsically: the September 7, arrest was relevant to his knowledge of drug conspiracies and law enforcement investigations and his intent to participate in these types of organizations. See Eighth Circuit's opinion decided December 19, 2023, Appeal No. 22-2447, pp. 10-12. Affirming the district court.

A.

Nature of the Case

The case 404-HEA stems from and investigation into large-scale drug trafficking organizations based in St. Louis and Mexico. That investigation led to sprawling indictments that charged all these organizations together. This indictment charged a total of 34 defendants. Oscar Dillon III ("the Petitioner") was severed from 32 of the defendants before the beginning of the trial. These groups dealt massive amounts of drugs on a continual basis. Yet, the Petitioner was not involved with any of these drug deals. In fact, the government conceded that he had no connection to any of these transactions. And, also both government cooperating witnesses testified at trial that the Petitioner had no knowledge of their drug activities nor violent acts. One cooperating witness even attested in the same while being cross-examined about his self handwritten sworn affidavit.

Instead, the government charge the Petitioner based on his work as an investigator for Seals and Bailey Paralegal and Consulting Services, which was owned by Michael Grady. According to the government, the petitioner and Michael Grady became involved with Derrick Terry, a drug trafficker - turned cooperating witness subsequent to being charged, who actually ran one of the charged "sub" organizations. The government in grand jury proceedings alleged that the Petitioner had access to sealed and privileged government information, but changed in trial theory that the Petitioner began advising Terry by using publicly available documents from PACER to help him identify cooperating witnesses - albeit admitting at trial that PACER does not reveal who's cooperating. And when the indictments rolled out, - both advised Terry to flee and retained a lawyer on his behalf using drug proceeds. For this, Petitioner was charged with conspiring to distribute drugs and commit concealment to money laundering and obstruction of justice.

During the course of the government's investigation to which were the years between 2012-2016 as stated in the indictment on case 404-HEA, the petitioner was not alleged to have been on any wire-taps, nor photographed or videoed in the presence of any criminal activity involving any of the charged conspirators. What the government availed themselves to were PACER inquiries and law school articles retrieved from the petitioner's alleged phone which was confiscated by law-enforcement while being arrested on September 7, 2016 - to which those events were charged on case 95-RWS.

These PACER inquiries depict a multitude of individuals that were charged with drug crimes- which (some) of those individuals were indicted on 404-HEA. Nothwithstanding other PACER inquiries of individuals charged for various criminal acts as well. The government's position was that the Petitioner was a corrupt Paralegal / Investigator acting in furtherance of joining Derrick Terry's conspiracy by revealing cooperating witnesses. And this theory was being presented although the government themselves conceded that PACER does not reveal who's cooperating. No other corroberating evidence was presented to the revealation of Petitioner exposing any cooperating witnesses. Terry testified that it was merely "Dialogue". There was no evidence that Petitioner knew of any of Derrick Terry's criminal activity or his intent to subsequently commit any crime.

B.

Course of Proceedings Below

On December 1, 2016, Oscar Dillon II, ("the Petitioner") was charged on the fourth superseding indictment on case 404-HEA E.D.M.. On March 22, 2021 the Petitioner and co-defendant Michael Grady proceeded to trial which lasted approximately some two weeks or so. On April 8, 2021, the jury reached their verdict finding the Petitioner guilty of violating 21 U.S.C. Sections 841 (a)(1) and 846, to distribute and possess with intent to distribute controlled substances; 18 U.S.C. sections 2 and 1512 (c)(2) knowingly attempt to abstruct, influence and impede said official proceeding and in furtherance thereof; and 18 U.S.C. sections 1956 (a)(1)(B)(i) and (h), knowingly conducted and attempted to conduct financial transactions affecting interstate or foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, distribution of cocaine and heroin which are scheduled controlled substances.

On July 6, 2022, Petitioner filed his Notice of Appeal to the Eighth Circuit. On September 21, 2023, Petitioner had oral arguments before a 3 panel of judges. On December 19, 2023, the Eighth Circuit opined affirming the district court. After Petitioner filed his Rehearing and Rehearing En banc, on February 2, 2024, the Eighth Circuit rendered its decision denying it. On February 15, 2024, USCA Eighth Circuit issued its mandate. On or about April 9, 2024, the Petitioner filed his motion to Recall the Mandate, because of the U.S. Supreme Court's decision in McElrath v. Georgia regarding Double Jeopardy (decided February 21,2024). Preceeding this appeal, the district court, on June 22, 2022, Sentenced Petitioner to 187 months.

REASONS FOR GRANTING THE WRIT

Allowing Dillon to be retried on the charges for which he was previously acquitted allowed for evidence to be conflated in a manner as that if 95-RWS and 404-HEA were inextricably intertwined. And, according to the district court, the evidence completes the story.... and the parties are all a part of the alleged conspiracy - on 404-HEA. The evidence from 95-RWS September 7, 2016 comprised of nearly 90 exhibits, at least 3 witnesses testified over approximately 3 days in 404-HEA's trial - as to these events from 95-RWS. In addition, there were repeated depicted exhibits along with multifarious assertions by the government during their closing arguments requesting to find Dillon guilty of acquitted conduct - conflated to the jury. The Fifth Amendment's guarantee that no person shall be "twice put in jeopardy of life or limb" were violated.

This Court has long held - emphasizing that "[i]+ has been half a century since [this Court] first recognized that the Double Jeopardy Clause bars retrial following a cour - decreed acquittal, even if the acquittal is 'based upon an egregiously erroneous foundation'" and collecting cases applying that principle. Evans v. Michigan, 568 U.S. 313,318 (2013) (quoting Fong Foo, 369 U.S. at 143)). Fong Foo v. United States (1962). Even the Eighth Circuit recognizes it noting the United States v. Burrage, 744 F.3d 593, 595 (8th Cir. Iowa, Mar. 7, 2014) ("The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.") (citing Burks v. United States, 437 U.S. 1, 11, 98 S.ct. 2141, 57 L. Ed. 2d 1 (1978).

In Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L. Ed. 2d 469 (1970), the Supreme Court held that the Double Jeopardy Clause precludes the government from relitigating any issue that was necessarily decided by a jury's aquittal in a prior trial. But Ashe Id. also states that the court should "examine the record of a prior proceeding, take into account the pleadings, evidence, charge, and other relevant matter and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclse from consideration."

Recently, the Supreme Court February 21, 2024, in its decision on McElrath v. Georgia No. 22-721, 601 U.S. 87 (2024) extended what is prohibited with respect to the Double Jeopardy Clause. Concise e.g.

speculation, and second-guessing any reason an acquittal. And this is even when there are specific jury findings that provide a factual basis for such speculation. And further held that that speculating will be improperly delving into the Jurors' deliberations - concluding that the court otherwise would impermissibly authorize judges to usurp the jury's rights if done.

THIS COURT SHOULD UNDERTAKE REVIEW OF THIS CASE TO ESTABLISH A BRIGHT LINE BETWEEN CONVICTION VERSUS ACQUITTED CONDUCT FOR THE SAKE OF PROTECTING THE INTEGRITY OF THE 5th AMENDMENT U.S. CONSTITUTION'S DOUBLE JEOPARDY CLAUSE.

In cases like the recent McClinton v. United States 143 S. Ct 2400; 216 L.Ed.2d 1258 (2023), it was opined that: Justice Sotomayor mentions three other arguments in favor of a rule barring consideration of acquitted conduct. (1) A jury that returns a not-guilty verdict may have thought even the preponderance-of-evidence standard was not met, but it would be odd indeed to base a constitutional rule on such speculation. (2) Jurors who vote for acquittal may be surprised and even offended when they learn that the judge took acquitted conduct into account... (3) the woman on the street would be surprised to learn that a sentence was based on acquitted conduct. McClinton Id. at 143 S. Ct 2404-05. (statement respecting denial of certiorari). Condurred by KAVANAUGH and ALITO. Aspects should be considered in the same (with) Retrials, and Sentences. McClinton, Id. at 143 S. Ct. 2402, Also notes that-the fact is that even though a jury's specific reasons for an acquittal will typically be unknown, the jury has formally and finally determined that the defendant will not be held criminally culpable for the conduct at issue. And, so far as the criminal justice system is concerned, the defendant "has been set free or judicially discharged from an accusation; released from a charge or suspicion of guilt."

Seemingly, McELRATH answered the ambiguity when it comes to a defendant's capacity to be responsible for - criminal acts derived from verdicts of acquittals. The U.S. Supreme Court in McElrath denotes: For double jeopardy purposes, a jury's determination that a defendant is not guilty... is a conclusion that "criminal culpability had not been established," just as much as any other form of acquittal. McElrath Id. (2024)

p. 11, citing Burks v. United States, 437 U.S. 1, 10, 98 S.Ct. 2141, 57 L. Ed. 2d 1 (1978). Extending any equivocal reasons to question what's noted herein - above with respect to Justice Sotomayor's mentioning of 3 "other arguments" in favor of barring consideration of acquitted conduct as interpreted in McClinton Id.at 143 S. Ct. 2404-05, was actually clarified in McElrath Id. at p.11. And below states the following:

"We have long recognized that, while an acquittal might reflect a jury's determination that a defendant is innocent of the charge, such a verdict might also be "the result of compromise, compassion, lenity or misunderstanding of the governing law." Citing Bravo-Fernandez v. United States 580 U.S. 5, 10, 137 S.Ct. 352, 196 L.Ed. 2d 242 (2016); see also United States v. Powell, 469 U.S. 57, 65, 105 S. Ct. 471, 83 L. Ed. 2d 461 (1984). (Whatever the basis), the Double Jeopardy Clause prohibits second-guessing the reason for a jury's acquittal. The "controlling constitutional principle" of the Double Jeopardy Clause "focuses on prohibition against multiple trials." U.S. Const., Amdt. 5. Citing United States v. Martin Linen Supply Co., 430 U.S.564, 569, 97 S. Ct. 1349, 51 L. Ed. 2d 642 (1977). (Juxtaposing McClinton Id. at 2402, 2404-05, and McElrath Id., pp.10-11).

The importance of what's denoted above, and necessitating a bright line rule between conviction versus acquitted conduct in trials, are due to Rule 404 (b)'s allowance of a defendant's criminal culpability to be second-guessed, cloaked in a court's jury instruction under a so-called lower standard (than proof beyond) reasonable doubt. In an example, the Petitioner's trial case 404-HEA, the court's jury instruction (2.08) commanded upon the jury to consider the events on September 7, 2016 from case 95-RWS. Stating that: "if you (unanimously) find it is more likely true than not true that the defendant Oscar Dillon committed the conduct." According to McElrath Id. at 3-4, not only does this impermissibly authorizes the judge to usurp the jury's right, citing Smith v. United States, 599 U.S. 252 pp. 7-10, but also considered now improperly delving into the jurors' deliberation. Citing Smith v. United States, 599 U.S.252-253 (2023). And this is because of a prior jury's findings resulting in an acquittal.

The contextual language set forth in the recent 9-0 decision in McElrath, Id., appears to call into question Dowling v. United States, 493 U.S. 342, 349, 110 S. Ct. 688, 107 L. Ed. 2d 708 (1990), holding, that "an acquittal in a criminal case does not preclude the government from relitigating an issue when it is presented in a subsequent action

governed by a lower standard of proof". In Dowling, Rule 404(b) acquitted conduct is admissible as offered proof, thus not extending due process protections beyond those the double jeopardy clause already affords. Dowling, 493 U.S. at 354, 110 S. Ct. 688. (footnote omitted.) Comparing Dowling to the Petitioner's prejudice, Dowling was ..... at least afforded the opportunity by and thru the trial court's instructions to inform the jury that the defendant had been acquitted of the crimes charged in the first trial; in the Petitioner Dillon's case 404-HEA, the court instructed the defendant (not) to inform the jury of his acquittal in the first trial.

Even more of a reason to grant the Petition for Writ of Certiorari, the McElrath Court's recent February 21, 2024, decision completely contradicts Dowling's holdings. Simply putting, overall, the McElrath court's position is: the Double Jeopardy Clause prohibits second-guessing an acquittal for any reason. Citing Martin Linen 430 U.S., at 571, 97 S.Ct. 1349, 51 L. Ed. 2d 642.

CONCLUSION

The petition for writ should be granted.

For record keeping purposes, the cited page numbers noted with respect to Mc Elrath v. Georgia comes from the LEXIS NEXIS Legal Law Library Database which that is what's available to Federal Inmates incarcerated In The Bureau of Prisons.

In light of Haines v. Kerner, 404 U.S. 519, 520 (1972) it is respectfully requested that this petition for writ of certiorari be liberally construed as it is submitted pro se.

Respectfully Submitted,

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