

NO. 23-7575

IN THE
SUPREME COURT OF THE UNITED STATES

OSCAR DILLON III
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

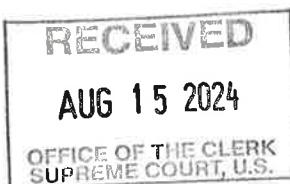
On Petition for writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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ADDITIONAL QUESTION PRESENTED

Whether 18 U.S.C. section 1512 (c)(2) Obstruction of Justice's statute is interpreted so broad in context that it operates as a catch-all and allowed to consume other subparts of related sections and statutes reaching beyond the scenarios prompted by legislation.

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CONSTITUTIONAL PROVISIONS

Congress shall make no law respecting an establishment of religion, or prohibiting the Free exercise thereof; or abridging the Freedom of Speech, or of the Free press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. CONST. AMEND. I.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in the land or naval forces, or in the militia, when in actual service in the time of war or public danger; nor shall any person be subject for 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 shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. V.

STATUTORY PROVISION

Tampering with a witness, victim, or a informant

* * * * *

(c) Whoever corruptly ---

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the objects integrity or availability for use in an official proceeding ; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempt to do so,

shall be fined under this title or imprisoned not more than 20 years or both.

18 U.S.C. Section 1512 (c)(2)

THE MANDATE

Upon discovering the Supreme Court's June 28, 2024, decision in *Fischer*, dated July 9, 2024 Mr. Dillon filed with the Eighth Circuit his respectful request to "Recall The Mandate, Reinstate Appeal, and Reopen the Case" in light of the Supreme Court's holding in *Fischer*. Also, preceding Mr. Dillon's July 9, 2024, submission referenced herein, he filed with the Eighth Circuit dated June 20, 2024 a request to hold in abeyance ruling on a Recall the Mandate subject to a favorable ruling on *Fischer*, at that time pending decision in the Supreme Court. In a lack of adherence to Vertical Stare Decisis, the Eighth Circuit dated July 8, 2024, and July 19, 2024, denied Mr. Dillon's request, and that no action will be taken, as it was crossed mailed with prior order. Please see attachments hereto. Whereupon, this legitimizes Mr. Dillon's subsequent action to Supplement his Petition for Writ of Certiorari as a result pursuant to Rule 15.8

For all purposes relevant, in Mr. Dillon's July 9, 2024 Certificate of Service dated submission to the Eighth Circuit as referenced above on page 9, thereto, Mr. Dillon importantly made reference to a "Clerical Error" citing Trial Transcript Vol. 8, pp 76-78 that was inaccurately noted on page 3 of their December 19, 2023 Opinion, which may be relevant to their decision pursuant to section 1512 (c)(2). Akin to that matter was that : (Appellants) encouraged "Terry to throw his phones away". But the reality of that matter was that the evidence elicited at trial it was not- Mr. Dillon - according to the government's witness : "Grady said" ... "throw away his phones". The Eighth Circuit thereafter misapprehended those facts as well.

The Mandate is cited as *United States v. Grady* 88 F. 4th 1246 (8th Cir. 2023). Order denying the Recall the Mandate attached hereto.

INTRODUCTION

Pursuant to United States Supreme Court Rule 15.8 which provides in relevant part that any party may file a supplemental brief at any time while a Petition for a Writ of Certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing.

The Petition was originally written to ask for relief in that of violations of the U. S. Constitutional 5th Amendment occurred, thus allowing the Petitioner to be "Retried" for conduct to which he was previously acquitted of by a prior jury. Thereby making the U.S. Supreme Court's February 21, 2024 decision in *McElrath v. Georgia*, 601 U.S.87 (2024) a predicate to the reasons the Petitioner ("Mr. Dillon")'s case should be vacated and / or remanded in light of the implications opined with respect to Double Jeopardy by the U.S. Supreme Court.

Mr. Dillon's Petition For Writ of Certiorari was docketed by this Supreme Court May 28, 2024, and is pending to be "Distributed For Conference" September 30, 2024. While his petition is currently pending, this Honorable Supreme Court on June 28, 2024 set forth Precedent in *Fischer v. United States* Cert.#23-5572, finding that to prove a violation of 18 U.S.C. section 1512 (c)(2) it must involve evidence tampering, and held that the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects or other things used in an official proceeding, or attempted to do so.

Mr. Dillon was also charged with obstruction of justice under section 1512 (c)(2), which was noted on page 6, of his original pending petition for writ of certiorari before this Supreme Court. And also this matter was raised in the district court on case 4:15-cr-00404-HEA, E.D.MO. and in the Court of Appeals for the Eighth Circuit. Thereby preserved, Mr. Dillon raised in both aforementioned courts that section 1512(c)(2) lacked any basis in the text of the statute for which the crime was charged.

SUPPLEMENTAL STATEMENT OF THE CASE

Albeit Mr. Dillon was charged in violation 21 U.S.C. sections 841(a) (1) and 846 conspiracy to distribute controlled substances, the government conceded in their Opening Statements and Closing Arguments that they were not alleging that Mr. Dillon was a hands-on drug dealer or a drug dealer, but that he played an ancillary role. The ancillary role alleged was of Mr. Dillon aiding and abetting Derrick Terry by and through "Dialogue" about who was cooperating with the government via "PACER" which is a Public Access to Court Electronic Records, that the government themselves concedes PACER does not actually reveal. And after the indictment was unsealed the government alleged that Mr. Dillon advised Derrick Terry to stay away for 18 to 24 months and let the court do their thing. For this Mr. Dillon was charged with violating section 1512 (c)(2), although Derrick Terry, prior to trial, proffered in sworn statements that he advised Mr. Dillon that he Terry was the one who wanted to stay away for 18 to 24 months

Subsequent to Mr. Dillon's May 28, 2024 docketed Petition For Writ of Certiorari before the U.S. Supreme Court, on June 28, 2024 Fischer v. United States, 603 U.S. ____ (2024) held findings contrary to the Eighth Circuit Court of Appeals December 19, 2023, opinion with respect to Mr. Dillon, Appeal No. 22-2447. Please see pp. A57-59 of Mr. Dillon's "Appendix C" submitted to this U.S. Supreme Court Cert. # 23-7575.

A. Based on the Eighth Circuit's preceding determination referenced herein it would have been impossible to make a "Fischer Argument" before the case was actually decided. Justifying supplementation.

Indispensably contravening, it was not alleged of any evidence tampering with respect to Mr. Dillon altering, destroying, mutilating, or concealing a record document, or other object, to which the Supreme Court decided June 28, 2024, in Fischer.

Turning the Supreme Courts attention towards Mr. Dillon's Appendix C submission, which is the Eighth Circuits Opinion, page numbered A59; their findings was that : "Appellants' advice to Terry to abscond indicated that they knew their actions were likely to affect an official proceeding."

As previously mentioned above herein, the governments' alleged conduct pursuant to section 1512 (c)(2) with respect to Mr. Dillon lacked any basis in the text of the statute for which the crime was charged.

B. Post the Eighth Circuit's December 19, 2023 Opinion (AppendixCC), the United States Supreme Court has decided Two Cases relevant to findings contrary to decisions affirmed by this above referenced Court of Appeals. (1) McElrath V. Georgia decided February 21, 2024 as expatiated in Mr. Dillon's original petition for Writ of Certiorari; and (2) Fischer V. United States decided June 28, 2024 to which is the subject matter of this Supplemental submitted.

The now governing Precedent opined by this Supreme Court in its Fischer decision nullifies the elements of corruptly, obstruct, influence and impede, in that to which Mr. Dillon not only objected to in pretrial, but also trial and post trial. See 'Appendix A' pp. A 10-11 as to the sufficiency of the Evidence; and p. A22, in that of "Jury Instructions". previously objected as aforementioned.

SUPPLEMENTAL REASONS TO GRANT CERTIORARI

The Supreme Court in its decision in Fischer answered the operative question as to whether the allegations were sufficient to permit a jury to conclude that a defendant committed the criminal offense as charged. Simply putting that, accordingly, the Supreme Court's recent findings is that it must involve evidence tampering to which Mr. Dillon was not accused.

The Eighth Circuit refused to adhere to their own reasoning as opined in United States v. Petrucci, 781 F.3d 438,441 (8th Cir. 2015), that clearly states if the argument turns upon statutory interpretation, "we review

the district courts interpretation de novo." Exclusively, Mr. Dillon cited this case in his attempt to Recall the Mandate due to the Supreme Court's contravening position, and the fact that Petrucci Id., directly speaks solely to the interpretations regarding section's 1512 (c)(2). But the outcry was to no avail.

Noteworthy, the noted continuums with respect to addressing the government's concession that Mr. Dillon was not a hands-on dealer or drug dealer goes to the weight of the Sufficiency of Evidence, because the 21 U.S.C. 841 (a)(1) section to the conspiracy to distribute drugs charge was not predicated on those principles. The alleged ancillary role was that Mr. Dillon as an Investigator / Paralegal aided Derrick Terry by and through some ways to obstruct an official proceeding, thus making section 1512 (c)(2) the crux of the investigation which are inextricably intertwined with the other charged offenses. Example, the hyperbolic allegations of Mr. Dillon having Dialogue with Terry via PACER about cooperating witnesses that the government themselves concedes PACER does not reveal is a matter of interpretation in ways to obstruct justice, making it the actual crux of the case, but Mr. Dillon was not charged conducive to this conduct under section 1512 (c)(2). The conduct under section 1512 (c)(2) was that Mr. Dillon allegedly advise Terry who was not cooperating at the time to stay away for 18 to 24 months and let the court do their thing.

Relevant - what's noted above, based on the Supreme Courts decision in Fischer, if Mr. Dillon's trial would have been minus the included element of corruptly and the other elements referenced herein, the defense theory would have been one of an inclusion of mens rea and that his conduct was of professional and sound judgment. Also noteworthy, Chief Justice Roberts in his Opinion addressed the fact that the government themselves

conceded that "Corruptly" was not even meant for the purposes of "section 1512". Please See p.12 (Opinion of the Court) Fischer Id. 603 U.S. _____ (2024). Therefore, the outcome of Mr. Dillon's trial would have been different absent the obstruction of justice's elements included.

CONCLUSION

Wherefore, in accordance with Supreme Court's Rule 15.8, providing that a party may file a supplement brief at any time while a petition for writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing, Mr. Dillon hereby submits his Supplemental Brief, and respectfully asserts that certiorari is unquestionably - warranted. And in light of *Haines v. Kerner*, 404 U.S. 519 (1972), due to this submission being filed *pro se*, it is respectfully requested that it be liberally construed and that he be held to a less stringent standard than formal pleadings drafted by lawyers.

Respecfully Submitted,



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Date: August 12, 2024

Prose Litigant

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-2447

United States of America

Appellee

v.

Oscar Dillon, III, also known as Ant, also known as Chest, also known as Muscles

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:15-cr-00404-HEA-30)

ORDER

The motion to recall the mandate is denied.

July 08, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 07/19/2024

Case Name: United States v. Oscar Dillon, III
Case Number: 22-2447

Docket Text:

DOCUMENT FILED - Pro Se document filed, no action taken, crossed in the mail with the order of July 8, 2024 filed by Oscar Dillon, III. w/service by USCA8 07/19/2024 [5415128] [22-2447]

The following document(s) are associated with this transaction:

Document Description: Motion for Leave to Supplement

Notice will be mailed to:

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