NO.

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

CURTIS DICKERSON

PETITIONER,

v.

UNITED STATES OF AMERICA

RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

Peter L. Goldman
527 Bellvue Place
Alexandria, Virginia 22314
(240) 401-4973 (o)

Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether the Fourth Circuit erred by dismissing Mr. Dickerson's appeal, where the District Court improperly entered a $2,400,000.00 Order of Monetary Forfeiture based on insufficient evidence consisting of hearsay from felons and co-conspirators, speculation, guesswork, and "extrapolations" from so-called experts and Government witnesses?

RULE 14.1(b) STATEMENT

There are no parties in addition to those listed in the caption.

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OFFICIAL OPINION BELOW

The Judgment of the United States Court of Appeals for the Fourth Circuit was entered on April 24, 2025. The Fourth Circuit Opinion is attached hereto as Appendix I.

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Fourth Circuit was entered on April 24, 2025. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS

There are no constitutional provisions cited in the Petition for a Writ of Certiorari.

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v.

CURTIS DICKERSON

Defendant-Appellant.

STATEMENT OF THE CASE/STATEMENT OF FACTS

A. THE RECORD BEFORE THE DISTRICT COURT AND FOURTH CIRCUIT.

1. The Indictment Against Mr. Dickerson.

Mr. Dickerson was indicted on March 20, 2023, in the United States District Court for the Eastern District of Virginia, Richmond Division. He was charged with Conspiracy to Distribute Cocaine and Fentanyl, under 21 U.S.C. Secs. 841(a)(1) and 846 (Count I), Possession with Intent to Distribute Fentanyl, under 21 U.S.C. Sec. 841(a)(1)(Count II), Maintaining Drug Involved Premises, under 21 U.S.C. Sec. 856(a)(2), Possession of a Firearm/Ammunition by a Convicted Felon, under 18 U.S.C. Sec. 922(g)(1), and a Forfeiture allegation.

The Government generally alleged that Mr. Dickerson was the leader of a drug distribution (cocaine, fentanyl) organization in the Eastern District of Virginia. The Government alleged that Mr. Dickerson possessed a Palmetto State Armory Model PA-15 .223 caliber semi-automatic pistol, after he had been convicted of a prior felony.

On February 6, 2024, a Superseding Indictment was handed down from a Grand Jury in the United States District Court for the Eastern District of Virginia, Richmond Division. Mr. Dickerson was charged with Conspiracy to Distribute Cocaine, Fentanyl and Heroin, under 21 U.S.C. Secs. 841(a)(1) and 846 (Count I), Possession with Intent to Distribute Fentanyl, under 21 U.S.C. Sec. 841(a)(1)(Count II), Maintaining Drug Involved Premises, under 21 U.S.C. Sec.

856(a)(2), Possession of a Firearm/Ammunition by a Convicted Felon, (amending the description of the firearm), under 18 U.S.C. Sec. 922(g)(1), and a Forfeiture allegation.

On February 12, 2024, Mr. Dickerson filed a Motion and Memorandum of Points and Authorities to Dismiss the Superseding Indictment, under Fed. R. Crim. P. 12(b). Mr. Dickerson also filed a Motion to Dismiss the Superseding Indictment under Fed. R. Crim. P. 48(b).

On February 15, 2024, the District Court for the Eastern District of Virginia (the Honorable Henry E. Hudson) issued a written order granting Mr. Dickerson's Motion under Rule 48(b), and denying his Motion under Rule 12(b). While the district court concluded that the Superseding Indictment was not motivated by vindictiveness, the district court found that the Superseding Indictment was a product of unnecessary delay. The Superseding Indictment was dismissed, and the original Indictment remained as the charging document.

2. Mr. Dickerson's Plea Agreement.

On February 16, 2024, Mr. Dickerson appeared before the district court and entered his plea. Mr. Dickerson entered a plea of guilty on Count I and Count V of the original Indictment. On the same February 16, 2024, Mr. Dickerson entered a plea agreement with the Government, as set forth in a written Plea Agreement. The Plea Agreement included a Statement of Facts, and a Consent Order of

Forfeiture.

As part of the Plea Agreement between Mr. Dickerson and the Government, the parties stated in the written Plea Agreement that "the parties have agreed to recommend to the Court the imposition of a sentence of 15 years' incarceration on Count One and 15 years' incarceration on Count Five, with the two 15-year sentences to run concurrently."

3. Mr. Dickerson's Sentencing.

Mr. Dickerson pled guilty to Count I in the Indictment, Conspiracy to Distribute Cocaine and Fentanyl, under 21 U.S.C. Secs. 841(a)(1) and 846. This carried a statutory period of incarceration of 10 years to life of imprisonment, a $10,000,000.00 fine, and 5 years of supervised release. (Presentence Report ("PSR"), p. 2.)

Mr. Dickerson pled guilty to Count V in the Indictment, Possession of a Firearm/Ammunition by a Convicted Felon, under 18 U.S.C. Sec. 922(g)(1). This carried a statutory period of not more than 15 years of imprisonment, a $250,000.00 fine, and 3 years of supervised release. (PSR, p. 2.)

According to the PSR, under the United States Sentencing Guidelines, Mr. Dickerson's Offense Level was 43, and his Criminal History was Category III. His Guidelines range was life. (PSR, p. 28.)

On July 19, 2024, the district court conducted a sentencing

hearing. Both the Government and the defense moved the court to impose a variance sentence, consistent with the Plea Agreement. The district court granted the parties' motions for a variance sentence, and sentenced Mr. Dickerson to 180 months on each of Count I and Count V, to run concurrently, along with 8 years of Supervised Release.

The initial Judgment in a Criminal Case Form was entered by the Court on July 24, 2024.

At the July 19, 2024 sentencing hearing, the district court heard extensive testimony and evidence about the monetary amount of the forfeiture to be imposed on Mr. Dickerson. After this hearing, the district court entered an Order of Forfeiture on August 7, 2024 (Doc. 126).[1] The district court entered an Order of Forfeiture on August 7, 2024, finding that "the government has met its burden to prove that the proceeds the defendant obtained from the conspiracy in Count One is $2,400,000.00." (August 8, 2024 Order of Forfeiture, Doc. 126, p. 2.)

An Amended Judgment in a Criminal Case Form was entered by the Court on August 8, 2024. The information in the Order of Forfeiture was added to the Amended Judgment Form.

4. Mr. Dickerson's Post-Sentencing Motions.

Mr. Dickerson filed post-sentencing motions. First, Mr.

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[1] The parties filed briefs on the monetary forfeiture issue after the July 19, 2024 sentencing hearing: Government - Doc. # 118; Defendant's Response Memorandum; Government's Reply.

Dickerson filed a Motion to Appoint [New] Counsel, on July 24, 2024. Mr. Dickerson's counsel argued that counsel was retained only for the district court matter, and certain ethical issues and conflicts had emerged between Mr. Dickerson and counsel.

On July 29, 2024, Mr. Dickerson filed a Supplemental Memorandum arguing that he intended to file a motion to withdraw his guilty plea, and that due to conflicts with his current counsel, he needed new independent (court-appointed) counsel to evaluate and present his arguments to the district court and an appellate court.

On August 5, 2024, the district court entered an Order denying Mr. Dickerson's motion to withdraw his plea, and motion to appoint counsel, following a hearing on July 30, 2024.

On August 8, 2024, Mr. Dickerson filed another Motion to Withdraw his Guilty Plea, seeking court-appointed counsel where current counsel had a conflict.

Mr. Dickerson filed a timely Notice of Appeal on August 8, 2024. The Fourth Circuit appointed undersigned counsel from the CJA Panel to represent Mr. Dickerson on appeal. Trial counsel does not represent Mr. Dickerson on appeal.

On April 24, 2025, the Fourth Circuit granted the Government's Motion to Dismiss Mr. Dickerson's appeal based upon the appeal waiver in his plea agreement. (*See* Attachment 1.)

SUMMARY OF ARGUMENT

The Government's evidence on money proceeds from drug activities was based on hearsay testimony of co-conspirators, felons, and drug users. The Government's evidence was vague, amorphous, and was the product of random speculation, guesswork and "extrapolations" of information from unreliable sources. The Government's evidence did not meet the preponderance of evidence standard, and was unreliable.

A. ARGUMENT

1. THE GOVERNMENT'S EVIDENCE WAS INSUFFICIENT TO SUPPORT THE FINDING OF A $2,400,000 MONETARY FORFEITURE.

A. Standard Of Review.

The Fourth Circuit reviews all sentences for "reasonableness" by applying the "deferential abuse-of-discretion standard." *United States v. McCain*, 974 F.3d 506, 515 (4th Cir. 2020). Once the Fourth Court ensures that the district court committed no significant procedural errors, *see Gall v. United States*, 552 U.S. 38, 51 (2007), the Court then proceeds to substantive reasonableness by considering "the totality of the circumstances." *Id.*

As the Government acknowledges in its own Memorandum filed in the district court, "[t]he United States *must* prove the nexus between the property to be forfeited and the offenses of conviction by a preponderance of the evidence." *See United States v. Martin*, 662 F.3d 301, 307 (4th Cir. 2011) (emphasis added). *See also United*

States v. Herder, 594 F.3d 352, 364 (4th Cir. 2010) (same).

B. The Government's Evidence Was Unreliable, Speculative, General, To Establish The Requisite Nexus.

The Government's evidence of alleged monetary forfeiture was based on information from unreliable sources, i.e., hearsay from co-conspirators, drug dealers and felons, speculation, guesswork, and "extrapolations", a fancy word really meaning - "we don't know". Such evidence fell far short of the preponderance of evidence standard necessary for the district court to make a finding of a specific amount of money to be forfeited.

i. The Testimony Of Special Agent Jason McLendon.

Special Agent McLendon had been with ATF since 2017. He had previously worked with the Richmond Police. He had experience with drug matters. He was not qualified by the court as an expert witness.

He reviewed a drug weight/price per kilogram distributed by Mr. Dickerson. McLendon then testified about information - drugs and drug weights - from various "co-conspirators" (i.e., drug distributors, felons, criminals) - hearsay.

Out of this information McLendon testified that he could determine "a price per kilogram". But he didn't testify how he was able to do so.

Indeed, McLendon didn't testify as an expert witness. The Government asked him a series of leading questions, and McLendon just answered "Correct". In fact, it was Government counsel who

testified, not McLendon.

Somehow, McLendon testified that the drug conspiracy generated $5,320,000.00. The basis of his testimony was general, speculative, and devoid of any specifics leading to the amount he claimed as drug proceeds.

His testimony about the gaming machines was general, non-specific, and it is unclear how this was part of he nexus to the drug conspiracy. Indeed, the trial court injected at one point "Why don't you lay a little better foundation, and I'll allow him to answer the question."

His testimony about vehicles and their value was subject to a an objection which the court sustained.

He testified about businesses that Dickerson owned, most unprofitable. He testified about money counters (criminals, felons, co-conspirators) and they amounts of money from Dickerson that they allegedly counted. Of course, none of these co-conspirators were in court to be cross-examined. All of this information and testimony from and through McLendon was hearsay.

McLendon was allowed to testify about his "opinion" of the reliability of information received from co-conspirators and criminals, over an objection from the defense. However, the court later held "But he can't state an opinion as to the credibility of it [information he received from co-conspirators]. That's up to the Court to decide."

On cross-examination, McLendon acknowledged that his sources were co-conspirators/felons/drug users. All were prosecuted in the same general drug conspiracy. Other sources that contributed to the Government's Report were also drug users and felons.

McLendon was unable to testify about the length of time that Dickerson had various gaming machines. He could not testify about the amount of money Dickerson took out of the machines.

Other than speaking with Mr. Dickerson, McLendon was unable to determine what money came in through vehicle painting or the towing business.

McLendon testified that he made 24 independent buys of drugs through two co-conspirators. This was the apparent basis for his analysis of drug proceeds. He later clarified that he was buying drugs from Dickerson through three people. From those buys, he was able to determine the price per ounce.

ii. The Testimony Of David Miller.

Mr. Miller is a forensic accountant with the United States Attorney's Office for the Eastern District of Virginia. He previously worked for the Virginia State Police as an accountant, and before that he performed similar duties for the FBI. He is a CPA.

He has extensive experience in drug investigations. He produced a written report on the investigation of Mr. Dickerson. The court qualified Miller as an expert in forensic accounting.

Miller identified various vehicles, properties, businesses and checks as belonging to Mr. Dickerson. Miller continued to identify various accounts and transactions associated with Dickerson. He identified Dickerson's failure to file state tax returns.

He continued by identifying purchases of real estate, jewelry and vehicles. Further, it did not appear that Dickerson borrowed money to purchase these various items.

Miller testified that drug dealers operate on cash. Miller identified a jewelry appraiser who conducted a review of the replacement for the jewelry identified in the case. The appraisal was for 8 pieces of jewelry. But there were dozens of pieces of jewelry identified with Dickerson. However, Miller did not include the jewelry appraisals in his report.

Cash deposits for 2020 and 2021 were $1,800,000.00. Miller conceded that he did not investigate legitimate sources of income for Mr. Dickerson, a glaring omission in his report.

Miller testified that the $1,800,000.00 was only one-half of the overall money that came in during the operative period. The real number would be $3,600,000.00. However, Miller offered only a vague theory for this doubling of the traceable proceeds.

On cross-examination, Miller repeatedly could not link Mr. Dickerson's name to various statements, receipts and documents, related to autos. Also, statements dis not indicate that Mr.

Dickerson paid in cash; deposits were not linked to Dickerson. Vehicles appeared to be bought and driven by individuals other than Dickerson. There was no accountability for income and expenditures for machines that Dickerson allegedly controlled.

Miller acknowledged that he never interviewed Mr. Dickerson about his income. A lot of his information came from other government agents working on the case. His opinions were only accurate to the extent that the information provided to him was accurate.

iii. The Government *Concedes* That Its Evidence Is Speculative.

Special Agent McLendon's testimony was undermined by the fact that the Government repeatedly asked leading questions. In fact, the Government testified, not McLendon.

McLendon then testified about information - drugs and drug weights - from various "co-conspirators" (i.e., drug distributors, felons, criminals) - hearsay. This was not an organized, scientific or exacting review of drug weights and prices. Instead, McLendon relied on a random sample of transactions, and information from felons and co-conspirators.

Out of this information McLendon testified that he could determine "a price per kilogram". But he didn't testify how he was able to do so, as opposed to averages from random sample transactions.

Moreover, McLendon did not testify as an expert witness. Yet,

he was allowed to offer his opinions on drug pricing, as opposed to the facts of his random drug transactions.

However, the court later held "But he can't state an opinion as to the credibility of it [information he received from co-conspirators]. That's up to the Court to decide."

Miller acknowledged various omissions and issues in his expert analysis. Miller conceded that he did not investigate legitimate sources of income for Mr. Dickerson, a glaring omission in his report.

Miller testified that the $1,800,000.00 was only one-half of the overall money that came in during the operative period. The real number would be $3,600,000.00, although this opinion was based on a theory (50% of drug business in cash). Miller offered only a vague theory for this doubling of the traceable proceeds.

On cross-examination, Miller repeatedly could not link Mr. Dickerson's name to various statements, receipts and documents, related to autos. Also, statements did not indicate that Mr. Dickerson paid in cash; deposits were not linked to Dickerson. Vehicles appeared to be bought and driven by individuals other than Dickerson. There was no accountability for income and expenditures for machines that Dickerson allegedly controlled.

Miller acknowledged that never interviewed Mr. Dickerson about his income. A lot of his information came from other government agents working on the case. His opinions were only accurate to the

extent that the information provided to him was accurate.

This Court has no better evidence of the Government's vague and amorphous "guesstimate" of the correct amount of monetary forfeiture than its own Memorandum submitted to the District Court.

The Government stated the following to the District Court:

> First, ATF Special Agent ... McLendon [SA Mclendon] *established* that the defendant's drug proceeds were *in the vicinity of $5.3MM*. Second, ... Miller ... [Auditor Miller] placed the number at *3.6MM*.

(Government Memorandum, Doc. 118, pp. 7-8.) (Emphasis added.)

The problems in the Government's position are obvious:

* McLendon "established" the drug proceeds to be "in the vicinity of" $5.3MM. This oxymoron undermines any notion of the reasonable certainty or amount of drug proceeds as "established" by McLendon.

* Miller then completely undermined McLendon's testimony by placing the number at $3.6MM. So much for McLendon's "established" amount.

* Miller's testimony is undermined by his theory that 1.8MM should be doubled because of his generalized theory that one-half of drug proceeds can be identified in a bank account, while the other half is transacted in cash only, this allowing Miller to opine that the cash proceeds should be automatically doubled.

However, Miller's "doubling" theory is general and vague. It has no evidentiary or practical application to the facts of Mr. Dickerson's case. An "expert" cannot hide behind an expert

qualification to offer unsupported and general theories.

This Court must and should wonder, what is the *actual amount of drug proceeds* that should be applied to Mr. Dickerson: $5.3MM? $3.6MM? $1.8MM?

From there, the Government submitted to the district court *yet another amount*, and the court found, that "the amount of drug proceeds the defendant's drug trafficking organization generated are in excess of the $2.4MM money judgment." (Government Memorandum, Doc. 118, p. 7.) (*See* August 8, 2024 Order of Forfeiture, Doc. 126, p. 2.)

"The burden is on the Government to establish, by a preponderance of the evidence, that *the property at issue is subject to forfeiture.*" *Herder*, 594 F.3d at 364 (emphasis added). The Government failed to do so at the district court. Instead, the Government presented a wide range of proposed money forfeiture amounts ($1.8MM to $5.3MM), and proposed a rough "guesstimate" to the district court. In the process, the district court has imposed a money judgment on Mr. Dickerson based on speculation, information from felons and co-conspirators (hearsay), and differing, vague theories and estimates from its witnesses.

This Court must review and reverse this decision, and remand this matter to the district court with instructions to determine a reasonably accurate amount of monetary forfeiture, or simply drop the entire issue from the judgment against Mr. Dickerson.

C. CONCLUSION

WHEREFORE, Mr. Dickerson respectfully requests that the Court grant this Petition for a Writ of Certiorari, order briefing and argument in this case, and reverse and vacate the Judgment of the Fourth Circuit, consistent with the relief sought.

Respectfully submitted,

/S/

Peter L. Goldman, Esq.
527 Bellvue Place
Alexandria, VA 22314
(240) 401-4973 (o)
(301) 560-6677 (f)
pgoldmanatty@aol.com
Counsel for Appellant
Curtis Dickerson

APPENDIX I

FILED: April 24, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4418
(3:23-cr-00037-HEH-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CURTIS DICKERSON,

Defendant - Appellant.

ORDER

Curtis Dickerson seeks to appeal the forfeiture order imposed by the district court. The Government has moved to dismiss the appeal as barred by Dickerson's waiver of the right to appeal included in the plea agreement. Upon review of the record, we conclude that Dickerson knowingly and voluntarily waived his right to appeal and that the issue Dickerson seeks to raise on appeal falls squarely within the

scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Entered at the direction of the panel: Judge Richardson, Judge Benjamin, and Senior Judge Traxler.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: April 24, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4418
(3:23-cr-00037-HEH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CURTIS DICKERSON

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK