
In the Supreme Court of the United States

CHASE LEE COLLINS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL FOR
THE SECOND APPELLATE DISTRICT**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a court's review of a conviction for sufficiency of the evidence may take account of evidence that was also the basis for a separate enhancement allegation that the jury rejected.

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STATEMENT

1. Petitioner Chase Collins was tried jointly with a codefendant, Robert Zygo, for robbery, assault with a deadly weapon, and assault by means of force likely to produce great bodily injury. Pet. App. A9.

Viewed in a light favorable to the judgment, the trial evidence showed that on the night of July 18, 2015, Lionel Ricard and Jesse Holcombe went to a neighborhood bar in Lancaster, California. Pet. App. A2. While there, Ricard met Collins and Zygo. *Id.* Ricard, Collins, and Zygo agreed to go outside and smoke marijuana. *Id.* Holcombe said he would meet the others outside. *Id.* Ricard, Collins, and Zygo left the bar and walked across the parking lot to a dark corner of an adjoining building. *Id.* After Ricard rolled a marijuana cigarette, Collins told him, “You’re gonna pay for what you did to SDV Kid.” *Id.*¹ Collins punched Ricard in the face, knocking off his glasses. *Id.* Zygo placed Ricard in a chokehold from behind, and both Collins and Zygo kicked and punched Ricard. Pet. App. A2-A3. When Ricard fell, Zygo picked up a rock and hit Ricard in the head repeatedly while Collins continued to kick Ricard. Pet. App. A3. Zygo pulled a semiautomatic handgun from his waistband, chambered a round, and handed it to Collins. *Id.* Collins held the gun pointed

¹ “SDV” is an acronym for “Small Dick Virgins,” a social group committed to extreme sports and partying, to which Collins and Zygo belonged. Pet. App. A2. Ricard had previously committed a crime against an SDV member known as “Kid.” Pet. App. A4.

downward. *Id.* Zygo took \$1,000 in cash, a wallet, a cell phone, and keys from Ricard's pockets. *Id.* Collins and Zygo then went back to the bar. *Id.*

Holcombe, meanwhile, had been waiting elsewhere due to a misunderstanding. Pet. App. A3. When he arrived, he helped Ricard up. *Id.* Ricard found his wallet, cell phone, and keys on the ground. *Id.* Ricard's head and face were bleeding, one tooth was loose, his shoulder and back were bruised, and he was dizzy. *Id.* He walked back to the bar and cleaned up in the restroom. *Id.* Collins and Zygo ran out of the bar through a back door. *Id.*

The bar's surveillance video corroborated portions of these events. It showed that Ricard and Holcombe entered the bar together, and Ricard shook hands with Collins and Zygo. Pet. App. A5. Collins and Zygo twice walked back and forth from the bar to the parking lot, before all four men walked to the parking lot. *Id.* A few minutes later, Collins and Zygo returned from the parking lot and re-entered the bar. *Id.* Ricard then walked back to the bar and spoke to a bouncer. *Id.* at A6. Another individual went inside and around to a patio where Collins and Zygo had moved, and Collins and Zygo then walked to the back door and ran outside. *Id.*

2. The jury found both defendants guilty of robbery and assault by means of force likely to produce great bodily injury. Pet. App. A10. It also found true a special allegation that Zygo personally used a deadly or dangerous weapon (a rock) in committing the robbery. *Id.* The jury, however, found Collins and

Zygo not guilty of assault with a deadly weapon, and found not true special allegations that each of them personally used a firearm during the robbery. *Id.*

As a recidivist, Collins was sentenced to 35 years to life in state prison. Pet. App. A2, A9-A10.

3. The California Court of Appeal affirmed the judgment. Pet. App. A17. Collins argued, among other things, that the evidence was insufficient to show that he aided and abetted the robbery. In rejecting that claim, the court pointed to several conclusions the jury could have drawn from the evidence: (1) Collins was friends with Zygo, and smoked marijuana with Zygo and Ricard outside the bar; (2) Collins told Ricard he was going to “pay” for something he had done, and then punched him; (3) Collins held a gun, pointed downwards, while Ricard lay on the ground and Zygo removed items from Ricard’s pockets; (4) Collins and Zygo ran back to the bar together; and (5) Collins and Zygo fled the bar when Ricard returned looking for them. *Id.* at A15-A16. The court did not identify any of these conclusions as necessary or determinative by itself. *Id.* With regard to the third factor, the court noted that “[t]he jury’s not true finding on the firearm allegations [did] not preclude [its] consideration of [Ricard’s] testimony that Collins held the gun during the robbery in considering the sufficiency of the evidence to support [Collins’s] conviction as an aider and abettor.” *Id.* at A16 n.4.

The California Supreme Court denied Collins’ petition for review. Pet. App. B1.

ARGUMENT

Collins argues that the state court of appeal violated his Sixth Amendment right to a jury trial when it rejected a sufficiency challenge to his conviction for aiding and abetting the robbery of Lionel Ricard based in part on evidence that Collins held a gun during the robbery, where the jury had separately rejected a specific enhancement allegation that Collins had personally used a firearm in committing the offense. On the record here, it is not clear that the rule Collins seeks would result in any different outcome in his case. In any event, the decision below correctly applies settled law to particular facts. There is no reason for further review.

1. The judgment below does not turn on the Sixth Amendment question Collins seeks to raise in this Court. Although Collins argues that the state court of appeal viewed the evidence that he held a gun during the robbery of Ricard as necessary to its sufficiency determination (Pet. 8-9, 16), that is not correct. That evidence was only one of several factors the court relied on. Pet. App. A15-A16. As the court explained, under California law, “[a]iding and abetting may be inferred from the defendant’s presence at the scene of the crime, companionship with the perpetrator and conduct before and after the offense, including flight.” *Id.* at A14. “No one factor is dispositive; a combination of these circumstances, however, may satisfy the substantial evidence test.” *Id.* (footnote omitted). Here, in rejecting Collins’ argument that the jury could not properly have found that he was any more than a bystander

to the robbery, the court relied on evidence supporting not just the gun use but also Collins' "companionship with Zygo, his instigation of the joint assault on Ricard, . . . and his flight with Zygo from the scene of the crime" when Ricard returned to the bar after the assault. *Id.* at A15-A16. Particularly in light of the evidence that Collins instigated and participated actively in the assault that immediately preceded the robbery (*see id.* at A2-A3), there is no reason to conclude that the court would have found the evidence insufficient if it had not considered the additional evidence that Collins was handed and held a gun during the robbery. *See also id.* at A15 ("The jury rejected the defense theory that no robbery had taken place.").

2. In any event, this case involves only the application of settled law.

a. As a preliminary matter, Collins' reliance on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), is misplaced. *See* Pet. 8-10, 14-15. *Apprendi* holds that a defendant's maximum potential punishment may not be increased by judicial fact-finding on issues other than the existence of prior convictions. *See, e.g., Southern Union Co. v. United States*, 567 U.S. 343, 346 (2012) ("The Sixth Amendment reserves to juries the determination of any fact, other than the fact of a prior conviction, that increases a criminal defendant's maximum potential sentence."). Here, Collins' sentence was predicated on the jury's verdict finding him guilty of assault and robbery, combined with his admission that he had two prior serious felony convictions under California's "three strikes" law. *See* Pet. App. A9-A10. The trial court made no factual finding

that increased his sentence beyond the maximum otherwise prescribed by statute. Nor did the court of appeal, in relying on the evidence of gun use as part of its sufficiency review, make or rely on any factual finding prohibited by *Apprendi*. Cf. *United States v. Watts*, 519 U.S. 148, 157 (1997) (in sentencing within range authorized by jury's verdict on count of conviction, court may rely on judicial findings concerning conduct underlying charge on which defendant was acquitted).² Because Collins' sentence was authorized by the jury's findings and his admission of prior convictions, *Apprendi* is inapposite.

b. Collins' claim about the proper scope of the court of appeal's sufficiency analysis is instead informed by inconsistent-verdict principles discussed in *United States v. Powell*, 469 U.S. 57 (1984). See Pet. 19-21. In *Powell*, this Court observed that "the fact that inconsistency may be the result of lenity, coupled with the Government's inability to invoke review, suggests that inconsistent verdicts should not be reviewable." 469 U.S. at 66. It explained that, as to any count on which the jury does convict, a defendant "is afforded protection against jury irrationality or error by the independent review of the sufficiency of the evidence undertaken by trial and appellate courts." *Id.* at 67. And it cautioned that such review "should not be confused with the problems

² It is not true that, on this analysis, "[a]s a practical matter, effect is not given to the jury's finding" that the prosecution failed to prove the firearm-use enhancement allegation. See Pet. 16. The jury's refusal to find that allegation true reduced by 10 years the portion of Collins' prison sentence that he must serve before becoming eligible for parole. See Cal. Penal Code § 12022.53(b).

caused by inconsistent verdicts. Sufficiency-of-the-evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilt beyond a reasonable doubt,” and it “should be independent of the jury’s determination that evidence on another count was insufficient.” *Id.* The Court continues to adhere to these principles. *See Bravo-Fernandez v. United States*, 137 S. Ct. 352, 359-361 (2016).

Here, there is nothing inconsistent about the verdicts the jury rendered—convicting Collins of aiding and abetting the robbery of Ricard, while declining to find that either defendant personally used a firearm in committing that offense. *See* Pet. App. A9-A10. Collins instead argues that, in light of the verdict on the personal-use allegation against him, the court of appeal should not have relied on evidence that he used a gun in evaluating the sufficiency of the evidence on the aiding-and-abetting charge. *E.g.*, Pet. 9-10. In considering the evidence of gun use, however, the court acknowledged and properly applied controlling authority on inconsistent verdicts. Pet. App. A16 n.4 (citing state cases discussing *Powell*). As Collins correctly observes, Pet. 16-17, California law recognizes that a jury’s inconsistent finding on a special allegation does not affect sufficiency-of-the-evidence review of a related conviction. *See People v. Lewis*, 25 Cal. 4th 610, 655 (2001) (“Even if we were to view the jury’s findings on the sentencing allegations in counts 3, 4, and 5 as inconsistent, however, defendant is not entitled to reversal on this basis. It is well settled that, as a general rule, inherently inconsistent verdicts are allowed to stand.”);

People v. Miranda, 192 Cal. App. 4th 398, 405-407 (2011) (“Under [California Penal Code] section 954, the jury’s ‘not true’ finding on the personal firearm use enhancements may be logically inconsistent with a finding that defendant was the direct perpetrator of the charged offenses, but, by statute, the inconsistency is not grounds for reversal because substantial evidence supported the verdict.”).

That authority is consistent with *Powell*. Although the jury declined to return a special finding that Collins used a firearm during the robbery, the reason for that is unclear. *See Powell*, 469 U.S. at 64-65. What matters for purposes of sufficiency review is that the evidence independently supported the robbery conviction. *See id.* at 67. Collins suggests that an inconsistency involving a jury’s special finding, as opposed to a separate offense, justifies a different approach. Pet. 15-17. But nothing in *Powell* or any other authority supports such a distinction. Just as in the case of an inconsistent acquittal on a separate count, the jury’s failure to return a true finding on the gun enhancement allegation here may have been based on “mistake, compromise, or lenity.” *Powell*, 469 U.S. at 65. And there is certainly nothing about the jury’s verdicts and the court of appeal’s sufficiency analysis in this case that is less reconcilable than the two substantive verdicts in *Powell*, which involved an acquittal on a conspiracy charge returned in conjunction with a conviction for using a telephone to commit the same conspiracy. 469 U.S. at 60; *see, e.g.*,

id. at 69 (concluding that “there is no reason to vacate respondent’s conviction merely because the verdicts cannot rationally be reconciled”).³

Collins identifies no other jurisdiction that applies a rule in conflict with California’s treatment of special findings in this context. *See Lewis*, 25 Cal. 4th at 656 (quoting *Powell*). Although Collins points to contrary reasoning in *Mitchell v. Prunty*, 107 F.3d 1337, 1340 (9th Cir. 1997), *see* Pet. 17, that panel decision was later overruled, at least in substantial part. *Santamaria v. Horsley*, 133 F.3d 1242, 1248 (9th Cir. 1998) (en banc). There is accordingly no basis for concluding that the Ninth Circuit would currently disagree with the court below about the proper result on the facts of this case.⁴

³ Collins suggests that “[t]his Court pointed out in *Powell* that, though inconsistent, the jury’s findings could be logically reconciled.” Pet. 21; *see also*, e.g., Pet. 19, 25. That is incorrect. The *Powell* Court repeatedly acknowledged as its starting point that the conviction and acquittal in the case before it could not be logically or rationally reconciled. *See* 469 U.S. at 60-61 & nn.4-5; *id.* at 64-65 (discussing rule for “truly inconsistent verdicts”); *id.* at 66 n.7; *id.* at 68 (in inconsistency cases, principles “predicated on the assumption that the jury acted rationally . . . are no longer useful”); *id.* at 69 (verdicts at issue “cannot rationally be reconciled”). As noted above, there is much less (if any) tension in this case between the jury’s special enhancement verdict and the court of appeal’s sufficiency analysis on the robbery count.

⁴ Collins also discusses (Pet. 23-24) the California Supreme Court’s decision in *People v. Santamaria*, 8 Cal. 4th 903, 920 (1994), which held that, under the Double Jeopardy Clause, a jury’s not-true finding on a special allegation at a first murder trial did not preclude the prosecution from pursuing the factual theory underlying the special allegation at a second trial for the murder. As this Court has observed, however, the analysis governing inconsistent verdicts is separate from collateral estoppel principles under the Double Jeopardy Clause. *Powell*, 469 U.S. at 64. In any event, *Santamaria* is consistent with this Court’s authority, *see Bravo-Fernandez*, 137 S. Ct. at 362-

c. Nor does this case implicate any exception there may be to the general inconsistent-verdicts rule. See Pet. 21-23. In *Powell*, the Court declined to address “the proper resolution of a situation where a defendant is convicted of two crimes, where a guilty verdict on one count logically excludes a finding of guilt on the other.” 469 U.S. at 69 n.8. Collins was not subjected to conflicting convictions—a scenario that might present different concerns, since such convictions could not be explained by lenity or compromise. Some courts have recognized possible exceptions to the usual inconsistency rule for acquittals that conflict with a guilty verdict, under unusual circumstances. See, e.g., Pet. 21-23 (citing cases); *United States v. Randolph*, 794 F.3d 602, 610-612 (6th Cir. 2015) (noting exceptions and addressing situation where special verdict that no drugs were involved in conspiracy was inherently inconsistent with conviction on the same conspiracy count). But Collins points to no case reaching a different result on facts like those at issue here. Any disagreement over the precise scope or application of *Powell*’s inconsistency principles in other situations provides no basis for further review in this case.

363, and with the Ninth Circuit’s, see *Santamaria v. Horsley*, 133 F.3d at 1245-1248.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted

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A handwritten signature in black ink, appearing to read 'Colleen M. Tiedemann', with a long horizontal flourish extending to the right.

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