

No. 11-10669

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BARRY LAMAR BONDS,

Defendant-Appellant.

UNITED STATES’S MOTION TO STAY THE MANDATE

The United States, through its undersigned counsel, hereby moves to stay the mandate in the above-captioned case. The United States is currently considering whether to file a petition for a writ of certiorari in this case. Accordingly, the government asks that the Court stay the issuance of mandate until the deadline for filing of a certiorari petition or, if a certiorari petition is filed, until the petition is finally resolved.

1. On April 13, 2011, a federal jury unanimously found Defendant-Appellant Barry Lamar Bonds (“Bonds”) guilty of obstructing justice, in violation of 18 U.S.C. § 1503. The jury was divided on the remaining three false statement charges, and the district court dismissed these without prejudice at the government’s request.

2. On August 25, 2011, the district court denied Bonds's motion under Federal Rules of Criminal Procedure 29 and 33 for a judgment of acquittal or a new trial.

3. On November 15, 2013, a three-judge panel of this Court unanimously affirmed Bonds's conviction, following argument on February 13, 2013.

4. On July 1, 2014, the Court ordered the case be reheard en banc. Oral argument was held on September 18, 2014. The Court reversed the jury conviction on April 22, 2015. The per curiam opinion stated that there was insufficient evidence to support the jury's verdict, and that Bonds could not be tried again on the obstruction of justice count. There were four concurrences authored by then-Chief Judge Kozinski (joined by four other judges), Judge N.R. Smith (joined by three other judges), Judge Reinhardt, Judge W. Fletcher, and one dissent by Judge Rawlinson.

5. The United States Attorney's Office is currently considering whether to recommend to the Solicitor General that the government file a petition for certiorari. A petition would be due on July 22, 2015.

6. The jury verdict was based on Bonds's December 4, 2003, immunized testimony before a federal grand jury investigating alleged illegal activities, including the possession or distribution of illegal substances and money

laundering, undertaken by Victor Conte and Bonds's athletic trainer, Greg Anderson.

7. This case presents a "substantial question" within the meaning of Federal Rule of Appellate Procedure 41(d)(2)(A). Although the different concurring opinions presented differing interpretations of Section 1503, the concurring judges found that there was insufficient evidence that Statement C was material. In so doing, the Court failed to properly apply *Jackson v. Virginia*, 443 U.S. 307 (1979), and *United States v. Nevils*, 598 F.3d 1158 (9th Cir. 2010) (en banc). *Jackson* requires that in reviewing whether evidence was sufficient to support a verdict, this Court must view all trial evidence in the light most favorable to the prosecution, and presume that all inferences to be drawn from the evidence were made in favor of the prosecution. The government is considering whether to seek certiorari on this issue.

8. There is good cause for the stay. If the mandate is not recalled, and the reversal of Bonds's conviction becomes final, the Supreme Court may be deprived of the opportunity to further review this case.

9. Appellant is not in custody.

10. On April 28, 2015, Dennis Riordan, Appellant's attorney, informed the undersigned counsel that he did not object to the government's motion for a stay of the mandate.

For the foregoing reasons, this Court should grant the motion to stay the mandate.

DATED: April 28, 2015

Respectfully submitted,

MELINDA HAAG
United States Attorney

BARBARA J. VALLIERE
Chief, Appellate Division

 /s/ Merry Jean Chan
MERRY JEAN CHAN
Assistant United States Attorney

9th Circuit Case Number(s) 11-10669

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