

19-1698

United States v. Sindzingre

United States Court of Appeals
for the Second Circuit

AUGUST TERM 2020

No. 19-1698

UNITED STATES OF AMERICA,
Appellee,

v.

MURIEL BESCOND,
Defendant-Appellant,

DANIELLE SINDZINGRE,
Defendant.

ARGUED: SEPTEMBER 3, 2020

DECIDED: AUGUST 5, 2021

AMENDED: FEBRUARY 3, 2022

Before: LIVINGSTON, Chief Judge, WALKER, JACOBS, Circuit Judges.*

Muriel Bescond, a citizen and resident of France, is charged with violating the Commodity Exchange Act (“CEA”). She appeals from the memorandum and order of the United States District Court for the Eastern District of New York

* This amended opinion and amended dissent supersede the opinion and dissent decided on August 5, 2021. The motion for panel rehearing is otherwise denied.

(Seybert, L), which applied the fugitive disentitlement doctrine and denied her motions to dismiss the indictment on grounds of (inter alia) extraterritoriality and due process. On appeal, Bescond argues that the collateral order doctrine confers appellate jurisdiction to review the application of the fugitive disentitlement doctrine, and that there is pendent appellate jurisdiction to review the merits of her challenges based on extraterritoriality and due process. As to merits, she argues that the district court misapplied the fugitive disentitlement doctrine, that the indictment impermissibly charges her with extraterritorial violations of the CEA, and that her prosecution is inconsistent with due process. We conclude that we have jurisdiction to review the disentitlement ruling, but none to review the merits of extraterritoriality or due process. We conclude that Bescond is not a fugitive and, even if she were a fugitive, the district court abused its discretion in disentitling her. Accordingly, we **REVERSE** the order disentitling Bescond and **REMAND** for further proceedings to consider or reconsider the merits of her motions to dismiss, and we **DISMISS** this appeal insofar as it seeks review of the (alternative) rulings on extraterritoriality and due process.

Chief Judge Livingston dissents in a separate opinion.

JEREMY R. SANDERS, Appellate Counsel (David C. James, Alixandra Smith, Andrey Spektor, Assistant United States Attorneys, for JACQUELYN M. KASULIS, Acting United States Attorney for the Eastern District of New York; Carol L. Sipperly, Senior Litigation Counsel; Timothy A. Duree, Trial Attorney; Brian A. Benczkowski, Assistant Attorney General; John P. Cronan, Deputy Assistant Attorney General; on the brief), Washington, DC and Brooklyn, NY, for Appellee United States of America.

LAURENCE S. SHTASEL, Blank Rome LLP, New York, NY, for Defendant-Appellant Muriel Bescond.

DENNIS JACOBS, Circuit Judge:

Muriel Bescond, a French banker, is charged with transmitting false, misleading, and knowingly inaccurate commodities reports, and with conspiracy to do the same, in violation of the Commodity Exchange Act (“CEA”). A citizen and resident of France, she allegedly participated in the LIBOR benchmark interest rate calculation process from her office in Paris. It is alleged that, by causing an artificial reduction in LIBOR rates, she affected the pricing of futures contracts traded on the Chicago Mercantile Exchange. Bescond remains in France today and has not submitted to the district court’s jurisdiction.

Through counsel, Bescond moved to dismiss the indictment on the grounds that (1) it impermissibly charged her with extraterritorial violations of the CEA, (2) the prosecution violated her Fifth Amendment due process rights, (3) the government selectively prosecuted her because she is a woman, and (4) the statute of limitations had run. The United States District Court for the Eastern District of New York (Seybert, L) concluded that Bescond was a fugitive, exercised discretion to apply the fugitive disentitlement doctrine, and declined to decide the merits of her motions. Under the doctrine of fugitive disentitlement, a court may decline to entertain the claims of a defendant who is a fugitive from justice. Molinaro v. New Jersey, 396 U.S. 365, 366 (1970) (per curiam); Nen Di Wu v. Holder, 646 F.3d 133, 135 & n.2 (2d Cir. 2011).

In the alternative, the district court rejected the extraterritoriality and due process challenges on the merits. Since additional briefing would have been needed to decide the claims of selective prosecution and statute of limitations, the court did not reach them, even hypothetically.

Because Bescond appeals from a memorandum and order issued pre-trial, we must first ascertain appellate jurisdiction. Bescond contends (i) that the collateral order doctrine affords jurisdiction to entertain the challenge to her

designation as a fugitive and the exercise of discretion to disentitle her, and (ii) that there is pendent appellate jurisdiction to decide whether the indictment impermissibly charges extraterritorial violations of the CEA and whether the prosecution violates her due process rights. We conclude that we have jurisdiction to review the order disentitling Bescond, which we reverse, and we remand for further proceedings to consider or reconsider the merits of her motions to dismiss. However, we conclude that we lack jurisdiction to review the merits of the extraterritoriality and due process challenges and dismiss the appeal to that extent.

BACKGROUND

Muriel Bescond is a French citizen living in France who worked as the head of the Paris treasury desk at Société Générale (“SocGen”), a global bank headquartered in France. The indictment charges that, between May 2010 and October 2011, she participated in a scheme to manipulate the United States Dollar London Interbank Offered Rate (“USD LIBOR”).

LIBOR is a benchmark interest rate, calculated for various currencies and borrowing periods, that averages the rates at which certain banks borrow

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