[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-11292

Non-Argument Calendar

IN RE:

Grand Jury Investigation.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-gj-00003-UNA-1

Before BRANCH, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

The government's motion to dismiss this appeal for lack of jurisdiction is GRANTED. This case involves an investigation which required multiple sealed grand jury proceedings. In connection with its investigation, the grand jury issued a subpoena to a litigation support company seeking recordings and transcripts. The subject of the investigation moved to quash the subpoena, and the district court entered an order denying his motion. This appeal followed.

The government argues that appellate review is not available until after a conviction. It argues that the Supreme Court's decision in *Perlman v. United States*, 247 U.S. 7 (1918), does not apply to parties who are not precluded from a post-judgment appeal. It argues that the Supreme Court's decision in *Mohawk Indus. Inc. v. Carpenter*, 558 U.S. 100 (2009) limits the *Perlman* doctrine to those who, as a class, cannot appeal from a final judgment.

Interlocutory discovery orders are generally not immediately appealable. *See Doe No. 1 v. United States*, 749 F.3d 999, 1004 (11th Cir. 2014); *Drummond Co. v. Collingsworth*, 816 F.3d 1319, 1322 (11th Cir. 2016). However, we have recognized five exceptions to the general rule: the *Perlman* doctrine; the collateral-order doctrine; a certification provided by statute, 28 U.S.C. § 1292(b); a petition for writ of mandamus; or an appeal of a contempt citation. *See Doe No. 1*, 749 F.3d at 1004. Only the first two exceptions are implicated here.

Under the collateral order doctrine, an order is immediately appealable if it "(1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment." *Mohawk*, 558 U.S. at 105. The Supreme Court has strictly interpreted the collateral-order exception to the final judgment rule in criminal cases, so far limiting its application to four types of orders: (1) orders denying motions to reduce bail; (2) orders denying motions to dismiss on double jeopardy grounds; (3) orders denying motions to dismiss under the Speech or Debate Clause; and (4) orders permitting involuntary medication to restore competence to stand trial. *See Sell v. United States*, 539 U.S. 166, 176-77 (2003); *Flanagan v. United States*, 465 U.S. 259, 265-66 (1984); *United States v. Shalhoub*, 855 F.3d 1255, 1260 (11th Cir. 2017) (examining the limited types of pretrial orders in criminal cases that the Supreme Court has determined "are important enough to fall within this 'narrow' exception to the final judgment rule").

Because the subject of the investigation is a party who will be able to appeal from any adverse final judgment, given that he has been indicted and a trial has been set, we decline to extend the collateral order doctrine to the order denying his motion to quash. *See Shalhoub*, 855 F.3d at 1260; *Mohawk*, 558 U.S. at 105, 108 (holding that an appeal failed under the third prong of the collateral order doctrine where the individual claiming the privilege was a party who could appeal from a final judgment); *Drummond Co.*, 816 F.3d at 1324-25 (dismissing the defendant's appeal because he was a

party to the underlying litigation and could challenge the discovery order on appeal from a final judgment).

The *Perlman* doctrine permits an intervenor to file an interlocutory appeal of a discovery order directed at a disinterested third party because the third party presumably lacks a sufficient stake in the proceeding to risk contempt by refusing compliance in order to appeal from the contempt citation. *See Doe No. 1*, 749 F.3d at 1004-05; *see also Church of Scientology of Cal. v. United States*, 506 U.S. 9, 18 n.11 (1992); *In re Grand Jury Proc. (Fine)*, 641 F.2d 199, 202 (5th Cir. Unit A Mar. 1981).

The *Perlman* doctrine only applies where the intervenor would lose meaningful appeal of the issue. *See Fine*, 641 F.2d at 203 n.3; *Doe No. 1*, 749 F.3d at 1006 (stating that absent an interlocutory appeal, the intervenors would be left with no recourse to appeal the disclosure order); *Drummond Co.*, 816 F.3d at 1324 (stating that the critical question is whether the privilege holder has some other adequate means of obtaining appellate review). Here, the subject of the investigation would be permitted to have his allegedly compromised privilege interests reviewed after final judgment, and, accordingly, the *Perlman* doctrine does not permit his immediate appeal. *See Drummond Co.*, 816 F.3d at 1324-25 (stating that the fact that fraction of orders adverse to the attorney-client privilege may nevertheless harm individual litigants in ways that are only imperfectly reparable does not justify making all such orders immediately appealable as of right under 28 U.S.C. § 1291).

Accordingly, this appeal is DISMISSED for lack of jurisdiction. The government's motion for summary affirmance and its motion to consolidate are denied as MOOT.