

No. 19-6236

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Respondent,

v.

CHRISTINA MARIE EICHLER,

Petitioner,

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

REPLY TO BRIEF IN OPPOSITION

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Appointed pursuant to 18 U.S.C. § 3006A
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I. INTRODUCTION

The Government concedes that there is a circuit split on what the “buyer-seller” rule is and how the courts should apply it. The district court did not perform a factual analysis whether to instruct the jury on the buyer-seller rule and, instead, simply applied Tenth Circuit precedent that precludes the instruction unless the defendant is an end-user. Refusing to instruct the jury on the buyer-seller rule whenever there is evidence of sales to end users radically increases the likelihood that a defendant’s conviction for conspiracy to distribute drugs is based on evidence that, by definition, is not part of a conspiracy. Thus, this case is a good vehicle for the Court to settle the circuit split so that the state in which a defendant is charged does not dictate the outcome of their trial.

II. ARGUMENT

The crime of which Defendants were convicted was conspiracy to distribute 500 grams or more of methamphetamine. *See* Brief of the United States in Opposition (“Opposition Br.”) at pp. 2, 6. The evidence that the conspiracy included 500 grams or more of methamphetamine came from testimony from those who purchased, for their personal

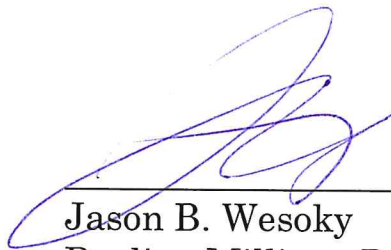
consumption, drugs from Defendants. *See id.* at p.2 (Eichler's customers included Gilson) *id.* at p.3 (sold methamphetamine to Maestas and bought a car from Gilson for money and drugs and sold drugs to Flores). Thus, the basis for the conviction of a conspiracy to distribute 500 or more grams came from buyer-seller transactions. But buyer-seller agreements do not support a conspiracy conviction. *See United States v. Donnell, supra*, 596 F.3d 913, 924-25 (8th Cir. 2010). The Government's Opposition argues Petitioner's conviction would have stood in the Seventh Circuit as well, but this ignores the crime charged: it wasn't just a conspiracy to distribute any amount of drugs, it was a conspiracy to distribute at least 500 grams of methamphetamine.

Despite Petitioner's request, the trial court refused to give the instruction and the Tenth Circuit confirmed. It is probable, if not certain, that if Petitioner was in the Seventh Circuit, the instruction would have been given and the jury would not have been permitted to consider the buyer-seller transactions as evidence of the conspiracy, which would have impacted the amount of drugs the jury found were part of the conspiracy.

III. CONCLUSION

Allowing the Seventh and the Tenth Circuit instructions and interpretations of the buyer-seller rule to persist creates and perpetuates disparate convictions and sentences. The Court should grant this Petition to resolve the circuit split and provide definitive guidance to the lower courts on the buyer-seller rule.

Respectfully submitted this 26th day of February 2020.



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