

Case No. 19A361

**IN THE
SUPREME COURT OF THE UNITED
STATES**

December Term 2019

**Savon Germain Carter,
*Applicant/Petitioner,***

v.

**United
States of
America,
*Respondent.***

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

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QUESTIONS PRESENTED

A federal jury convicted Savon Carter and Christina Eichler of the sole count charged against them, conspiracy to distribute 500 grams or more of a mixture or substance containing a detectible amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. Based on the evidence presented during the trial, Mr. Carter requested that the District Court instruct the jury regarding the buyer-seller rule. The District Court rejected Mr. Carter's request. The Tenth Circuit affirmed the District Court's ruling, reasoning that the buyer-seller instruction is appropriate only when the defendant is merely an end user. In doing so, it acknowledged a circuit split regarding the buyer-seller rule.

This circuit split raises two main issues:

1. Whether the buyer-seller rule (that a mere agreement to buy and sell is insufficient to establish a drug conspiracy) applies to all participants – not just the end-users.
2. Whether defendants charged with a drug conspiracy are entitled to a buyer-seller jury instruction when the evidence supports their theory of defense.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Savon Germain Carter, respectfully petitions for a writ of certiorari in this case to review the opinion of the Tenth Circuit Court of Appeals in *United States v. Savon Germain Carter and Christina Marie Eichler*, 2019 U.S. App. LEXIS 20559, 2019 WL 3034736, 781 Fed. App'x. 707, No. 18-8014 and 8015 (10th Cir. July 11, 2019). *See also Eichler v. United States*, Case No. 19-6236 (Oct 10, 2019) (Ms. Eichler's Petition for Writ of Certiorari).

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals in *United States v. Carter*, 781 F. App'x 707 (10th Cir. 2019) is attached as Appx. A.

JURISDICTION

The Tenth Circuit Court of Appeals entered its judgment on July 11, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. The District Court had jurisdiction pursuant to 28 U.S.C. § 3231.

STATUTORY PROVISIONS INVOLVED

21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846.

STATEMENT OF THE CASE

The circuit courts of appeals are split in defining the purpose and scope of the “buyer-seller” rule in drug conspiracies. Pursuant to the buyer-seller rule, a mere agreement to buy and sell is insufficient to establish a drug conspiracy.

Most circuits apply this rule to all defendants in drug conspiracies. The Tenth Circuit, however, has limited its application only to defendants who are the end users of those drugs.

As a result, similarly situated federal criminal defendants charged with drug conspiracy are treated differently, depending on the jurisdiction in which they have been arrested, during the critical stage of the criminal proceeding when they assert their right to a buyer-seller jury instruction. In most cases, the evidence of the alleged conspiracy is mainly circumstantial – from which a reasonable jury could also infer that the defendant merely bought or sold drugs but did not engage in a conspiracy. Depriving the defendants of their right to have the jury instructed regarding the critical difference between mere buy-sell agreements and drug distribution conspiracies greatly and negatively impacts the jury’s understanding of the applicable law and the government’s burden to prove the elements of a drug conspiracy (not merely distribution).

In addition, there are dramatic consequences for punishment: a sentence of years versus decades in prison, due to the applicable mandatory minimum

sentences and the Court's holding in *Pinkerton v. United States*, 328 U.S. 640, 641 (1946) that the defendant in a conspiracy case can be held criminally liable not only for acts he committed in furtherance of the conspiracy but also for the reasonably foreseeable illegal acts of his co-conspirators.

REASONS FOR GRANTING THE PETITION

Congress intended to create a sharp difference in punishment for the offense of conspiracy and lesser drug offenses. The circuit split on buyer-seller jury instructions in drug conspiracies thus creates a pressing need to address this extremely consequential divergence in federal court practice.

The Tenth Circuit deems the purpose of the buyer-seller rule to be only to “separate consumers, who do not plan to redistribute drugs for profit, from street-level, mid-level, and other distributors, who do intend to redistribute drugs for profit, thereby furthering the objective of the conspiracy.” *Carter*, 781 F. App'x at 716 (citing *United States v. Ivy*, 83 F.3d 1266, 1285 (10th Cir. 1996)); *id.* (“But *Carter* and *Eichler* argue that the government, under the Seventh Circuit's buyer-seller rule, needed also to prove that their drug customers in turn sold those drugs to others and then returned some of the profits to *Carter* and *Eichler*. But our circuit has explicitly rejected the Seventh Circuit's interpretation of the buyer-seller rule.” (citing *United States v. Gallegos*, 784 F.3d 1356, 1360 (10th Cir.

2015) (“[The Seventh Circuit’s] interpretation of the buyer-seller rule is contrary to this court’s precedent.”)).

Therefore, in the vast majority of drug conspiracy cases in courts within the Tenth Circuit, as in Mr. Carter’s, juries are not instructed to distinguish between mere buy-sell agreements and drug conspiracies – even when evidence supports this theory of defense.

Conversely, though, the Seventh Circuit, like most other circuits – consistent with the principle that the conspiracy offense must involve an agreement separate from the immediate distribution conduct that is the object of the conspiracy – considers the purpose of the buyer-seller rule to be the means to distinguish between distribution and conspiracy charges and, therefore, instructs the juries regarding the buyer-seller rule. *See, e.g.*, Fed. Crim. Jury Instr. 7th Cir. 5.10(A) (Buyer/Seller Relationship) (2012 ed. [updated 4/15/19]); <http://www.ca7.uscourts.gov/pattern-jury-instructions/pattern-jury.htm> (last visited Dec. 8, 2019),¹ *United States v. Tingle*, 183 F.3d 719, 724 (7th Cir. 1999) (“To

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A conspiracy requires more than just a buyer-seller relationship between the defendant and another person. In addition, a buyer and seller of [name of drug] do not enter into a conspiracy to [distribute [name of drug]; possess [name of drug] with intent to distribute] simply because the buyer resells the [name of drug] to others, even if the seller knows that the buyer intends to resell the [name of drug]. The government must prove that the buyer and seller had the joint criminal objective of further distributing [name of drug] to others.

Fed. Crim. Jury Instr. 7th Cir. 5.10(A).

establish the existence of a drug conspiracy, as opposed to a series of mere buy-sell agreements, the government must provide proof of an agreement to commit a crime other than the crime that consists of the sale itself.” (internal citation and quotation marks omitted).

The later approach is in line with the Congress’s intent to create a pronounced distinction between conspiracy and other drug crimes. Because *Pinkerton* liability for all the reasonably foreseeable offenses committed by co-conspirators in furtherance of the conspiracy makes a huge difference in terms of punishment, it is understandable that Congress would want both to limit its applicability to actual drug conspiracies, which often involve trafficking, use of weapons, etc., and to avoid punishing too harshly lesser offenders, such as those engaged in mere buy-sell agreements.

CONCLUSION

Wherefore, Mr. Carter respectfully requests that this Honorable Court grant his petition for a writ of certiorari to resolve this circuit split.

DATED this 9th day of December 2019.

Respectfully submitted,

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