

No. 20-7934

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

John Patrick Couch, pro se — PETITIONER
(Your Name) (INCARCERATED)

vs.

United States of America — RESPONDENT(S)

FILED
APR 05 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

the United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Patrick Couch, pro se
(Your Name)

P.O. Box 9000
(Address)

Forrest City, AR 72336
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the trial court error by conflating the valid defense of a crime as an element of that crime in its instruction to the jury regarding a physician alleged to have violated 21 U.S.C section 841(a)?
2. Did the trial court error by not explaining or adequately defining "good faith" in its instructions to the jury regarding a Controlled Substances Act case involving a physician?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

United States of America
X. W. ROAN (CO-DEFENDANT)
JOHN PATRICK COUCH

RELATED CASES

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at 966 F.3d 1101; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 10, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 4, 2020, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case presents the question of how important it is to differentiate the elements from a defense exception of a criminal statute to a jury, and the degree to how objective or subjective "good faith" is regarding a practicing physician.

REASONS FOR GRANTING THE PETITION

A. This court should clarify the proper jury instructions as to the criminal elements and defense exceptions regarding physicians who are accused of violating 21 U.S.C. 841.

Dr. Couch, a physician, was charged and convicted of violating 21 U.S.C. section 841(a). In it's instructions to the jury on February 17, 2017 regarding Dr. Couch the trial court stated:

" The defendant can be found guilty of each offense only if all of the following facts are proved beyond a reasonable doubt as to that offense: one, on or about the date charged, the defendant dispensed by prescription the identified controlled substance to the identified individual; two, the defendant did so knowingly and intentionally; and, three, the defendant did not have a legitimate medical purpose to do so or did not do so in the usual course of professional practice,

As I stated previously, for a controlled substance to be lawfully dispensed by a prescription, the prescription must have been issued by a practitioner both within the usual course of professional practice and for a legitimate medical purpose. If the prescription was issued either, one, not for a legitimate medical purpose or, two, outside the usual course of professional practice, then the prescription was not lawfully issued.

A controlled substance is prescribed by a physician in the usual course of professional practice and therefore lawfully if the substance is prescribed by him in good faith as part of his medical treatment of a patient in accordance with the standard of medical practice generally recognized and accepted in the United States. The defendants in this case maintain at all times they acted in good faith and in accordance with standard of medical practice generally recognized and accepted in the United States in treating patients.

Thus, a medical doctor has violated section 841 when the government has proved beyond a reasonable doubt that the doctor's actions were either not for a legitimate medical purpose or were outside the usual course of professional practice."
(Doc. 722-28, 26-27)

In the above instructions, the court is conflating the defense exception to the jury as an element of violating 21 U.S.C. section 841(a). To convict a practitioner

under Section 841(a), the government must prove (1) that the practitioner distributed controlled substances, (2) that the distribution of those controlled substances was outside the usual course of professional practice and without a legitimate medical purpose, and (3) that the practitioner acted with intent to distribute the drugs and with intent to distribute them outside the course of professional practice. Simply put, a crime is committed under Section 841 by a physician when the government proves beyond a reasonable doubt that the physician has committed the requisite elements of the statute and proves that the physician has failed to meet either of the defense exceptions of Section 841. The course of professional practice exemption, indeed all exceptions to the prohibition against manufacturing, distributing, dispensing, and processing controlled substances, are defenses, not elements, of Section 841.

The above instruction could mislead a jury because the instructions referring to an applicable standard of care suggests that a breach of that standard alone is sufficient to sustain a criminal conviction. An absence of medical necessity by a prescribing

physician falls short of the criminal standard for prescribing outside the scope of medical practice. Even when a defense exception under Section 841 has not been met the elements of Section 841 must be proven beyond a reasonable doubt by the government for a crime, and not a lesser civil standard of care, to have been committed. The trial court's instructions to the jury in this case were misleading and failed to distinguish the elements of Section 841 from the statute's defense exceptions. The above instructions to the jury glazes over the elements of Section 841 and instead makes focus on the defense exception of the statute. By doing so, this guided the jury to focus, not on whether the government has proven that Dr. Cauch violated Section 841's criminal elements, particularly the elements of intent, but on whether Dr. Cauch has demonstrated his innocence thru Section 841's defense exception. The framing of this particular jury instruction placed Dr. Cauch on thin ice by making him appear guilty until proven innocent. The above jury instructions conflated the defense exception of the statute as a criminal element of the statute, and blurred the lines between

the civil standard of care and criminal conduct. This prejudiced Dr. Cauch's defense and substantially effected his XIV Amendment Right to Due Process.

B. This court should clarify to the lower courts that "good faith" must be clearly defined and adequately explained to a jury in context when a physician is accused of violating the Controlled Substances Act.

At issue is the term "good faith" in the context of a physician charged with violating the Controlled Substances Act, and whether the inquiry into a physician's "good faith" in treating his patients is subjective or objective. While the instructions given in this case, based on prior circuit precedent, charges the jury to consider "good faith" the instructions do not clearly define "good faith" in context. See Doc. 722-28, 26-27. The Eleventh Circuit's use of prior precedent case law for jury instructions of "good faith" are insufficient; those instructions do not explain or properly define

what "good faith" means, see e.g. United States v. Joseph, 709 F.3d 1082, 1097

(11th Cir. 2013); United States v. Williams, 445 F.3d 1302, 1309 (11th Cir. 2006);

United States v. Lewis, 492 F.3d 1219 (11th Cir. 2007). Dr. Cauch was rejected

18 times for his requested instructions to the jury regarding an explanation of

what "good faith" means as the trial court deemed it an incorrect statement of law

because it was too subjective. Instead, the trial court gave an ambiguous definition

of what "good faith" means in its given instruction to the jury.

As other circuits recognize, there are inherently subjective and objective components

in the liability of physician's under the Controlled Substances Act. See for example

United States v. Hurwitz, 459 F.3d 463, 480 (4th Cir. 2006) at 560 ("The inclusion of

a good faith instruction is therefore a plainspoken method of explaining to the jury a

critical difference between the [criminal and civil] standards."). In Dr. Cauch's case,

the trial court instructed the jury that a doctor acts in "good faith" when he

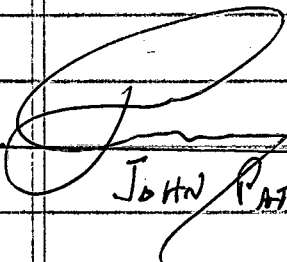
distributes a controlled substance in the usual course of professional practice and for a legitimate medical purpose, two standards that were not defined by the trial court and do not have a definitive national standard in the medical community. Basically, the trial court gave the jury an instruction for a term [good faith] ill explained for standards [usual course of professional practice and legitimate medical purpose] that have no controlling definition in law or in the medical profession.

"Good faith" was at the heart of Dr. Couch's defense at trial. Even if Dr. Couch's requested jury instruction was too subjective, not offering a clear explanation of "good faith" at all prejudiced his defense. The above is an issue of ambiguity of the term "good faith" regarding a physician accused of violating the Controlled Substances Act, and vagueness in what is within the uncertain boundaries that constitute "outside the course of professional practice" and "for no legitimate medical purpose."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



JOHN PATRICK COUCH

DATE: MARCH 18, 2021