

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN THOMAS SEIGLER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether sufficient evidence supported petitioner's conviction
for conspiracy to distribute methamphetamine.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (W.D. Va.):

United States v. Seigler, No. 16-cr-41 (June 20, 2019)

United States v. Seigler, No. 17-cr-34 (June 20, 2019)

United States Court of Appeals (4th Cir.):

United States v. Seigler, No. 19-4491 (Mar. 3, 2021)

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No. 20-8231

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-33a) is reported at 990 F.3d 331.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 2021. A petition for rehearing was denied on March 31, 2021 (Pet. App. 43a). The petition for a writ of certiorari was filed on June 1, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Virginia, petitioner was convicted on one count of conspiring to manufacture, distribute, or possess with intent to distribute a controlled substance or to use a communication facility in committing or facilitating a controlled-substance offense, in violation of 21 U.S.C. 841, 843(d), and 846; and one count of failing to appear, in violation of 18 U.S.C. 3146. Judgment 1-2. He was sentenced to 286 months of imprisonment, to be followed by five years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-33a.

1. In 2014, federal, state, and local law enforcement agencies initiated a joint investigation into the Stone Drug Trafficking Organization, which was suspected of coordinating the distribution of methamphetamine and prescription drugs in the southwest Virginia area. Pet. App. 2a; see Presentence Investigation Report (PSR) ¶¶ 8-9. The investigators determined that most, if not all, of the controlled substances distributed by the Stone outfit originated in Las Vegas, Nevada -- specifically, from Las Vegas resident Stephen Cino. Pet. App. 2a; see PSR ¶ 9. In mid-February 2016, Las Vegas police obtained a 30-day warrant for a wiretap on Cino's cell phone, and through that wiretap recorded at least two conversations between Cino and petitioner. Pet. App. 2a-3a; see PSR ¶ 14.

In the first recorded call, placed on March 8, 2016, Cino told petitioner that "from what I understand, it looks like it's gonna be a deuce" -- which officers understood to refer to two pounds of methamphetamine -- and that Cino would be able to confirm the amount the next morning. Pet. App. 3a; see id. at 3a n.2. Cino and petitioner agreed to meet the following day, and petitioner said that he would call his contact immediately to ensure that everything was ready. Id. at 3a.

In the second recorded call, on March 9, Cino confirmed to petitioner that he wanted "two." Pet. App. 3a; see PSR ¶ 14. Petitioner indicated that he was prepared to meet any time, and they discussed how long it would take for Cino to get to petitioner. Pet. App. 3a. The two men agreed that Cino would pick up lunch for their meeting from a restaurant near petitioner's location. Ibid.

Law enforcement stopped Cino shortly after his meeting with petitioner and found two pounds of methamphetamine in a bag in his car. Pet. App. 3a-4a; see PSR ¶¶ 14-15. Cino later told police that he had begun purchasing methamphetamine from petitioner around the beginning of 2016 and had made bulk purchases from petitioner on at least four to six occasions, all of which Cino then shipped to coconspirators in southwest Virginia for distribution. PSR ¶ 17.

2. A federal grand jury in the Western District of Virginia indicted 22 individuals, including petitioner and Cino, for

conspiracy offenses relating to the distribution ring operated by the Stone Drug Trafficking Organization. Indictment 1-6. Petitioner was charged with one count of conspiring to manufacture, distribute, or possess with the intent to distribute methamphetamine, oxycodone, and buprenorphine, and to use a communication facility to commit a felony controlled-substances offense. Indictment 1-3.

Petitioner's jury trial was scheduled to begin on May 1, 2017, but petitioner failed to appear. Pet. App. 5a; see PSR ¶ 20. When officers arrived at his residence the following day, they reported seeing petitioner jump over a wall in the back to flee from them. Pet. App. 5a. After an investigation by the U.S. Marshals Service, petitioner was ultimately apprehended in March 2018. PSR ¶ 21. In October 2018, a federal grand jury indicted petitioner on an additional charge of failure to appear. PSR ¶ 20. Petitioner pleaded guilty to the failure-to-appear count but went to trial on the conspiracy count. Pet. App. 5a.

The jury found petitioner guilty of the charged conspiracy, noting on the special verdict form that it found that the government had proved both the distribution objective and the communications-facility objective. Pet. App. 5a. The jury also found that petitioner participated in a conspiracy involving methamphetamine and that the conspiracy involved 500 grams or more of methamphetamine. Ibid. The district court sentenced petitioner to 262 months of imprisonment on the conspiracy count and a

mandatory consecutive term of 24 months of imprisonment on the failure-to-appear count. Judgment 3.

3. The court of appeals affirmed. Pet. App. 1a-33a.

a. As relevant here, the court of appeals rejected petitioner's argument that the evidence was insufficient to support the jury's finding that he joined in the objectives of the drug-distribution conspiracy. See Pet. App. 7a-14a. The court described "the March 9, 2016 sale of two pounds of methamphetamine to Cino" as "the principal evidence against [petitioner]." Id. at 9a. And it noted that it had "repeatedly recognized that evidence of a single buy-sell transaction involving a 'substantial quantity of drugs' can support a 'reasonable inference' of knowing participation in a distribution conspiracy." Ibid. (citation omitted). The court acknowledged Seventh Circuit decisions in which evidence of a single large-quantity buy-sell transaction, standing alone, was deemed insufficient to establish a conspiracy. Id. at 10a (citing United States v. Townsend, 924 F.2d 1385 (7th Cir. 1991)). The court observed, however, that "the March 9 transaction is not the only record evidence supporting the conclusion that [petitioner] knowingly entered into the distribution conspiracy." Id. at 11a.

Specifically, the court of appeals identified further evidence of the conspiracy in "the two recorded conversations between Cino and [petitioner]," including the fact that "both men use[d] coded and circumlocutory language" and that petitioner

"sa[id] he would call another individual to set things up on his end, from which the jury could reasonably infer that each man was part of a vertically oriented distribution chain." Pet. App. 11a. And the court determined that "the evidence of [petitioner]'s sale of two pounds of methamphetamine to Cino, the substance of the two recorded conversations between [petitioner] and Cino, and [petitioner]'s flight and failure to appear at his initial trial date constitutes substantial evidence sufficient for the jury to have found that [petitioner] and Cino 'acted in concert to achieve an illegal goal,' i.e., the charged distribution conspiracy." Id. at 13a (citation omitted).

b. Chief Judge Gregory concurred in the judgment. Pet. App. 28a-33a. He agreed that "[t]he majority correctly holds that the Government presented sufficient evidence at trial to convict [petitioner] of the conspiracy offense." Id. at 28a. Chief Judge Gregory would have declined to rely on the evidence of petitioner's flight, id. at 29a, and took the view that "the [Seventh Circuit's] reasoning in [United States v.] Townsend," supra, "is instructive in assessing the adequacy of the evidence here," id. at 32a. He explained, however, that even under that approach, "the record evidence supports [petitioner]'s conviction." Ibid. He observed that "[t]he recorded conversations between [petitioner] and Cino" were "pivotal to the Government's case," and that "[t]his evidence, together with the evidence of a large-quantity drug sale, constitutes 'substantial evidence' to support the jury's verdict

that [petitioner] knew of and knowingly participated in a conspiracy to distribute methamphetamine." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 5-17) that insufficient evidence supported his conspiracy conviction. The court of appeals correctly rejected that argument, and its factbound determination does not conflict with any decision of this Court or another court of appeals. And this case would be an unsuitable vehicle for addressing the circumstances in which evidence of a single sale of bulk narcotics alone permits an inference that a defendant knowingly joined a drug-distribution conspiracy because, as explained in both the panel-majority opinion and the concurrence, substantial additional evidence supported petitioner's knowing participation in the methamphetamine-distribution scheme established at trial. This Court has recently and repeatedly denied certiorari on the question presented and the related question of whether and under what circumstances a district court must instruct the jury that a buyer-seller relationship is insufficient on its own to prove a drug-distribution conspiracy.* It should follow the same course here.

* E.g., St. Fleur v. United States, 141 S. Ct. 1695 (2021) (No. 20-6367); Carter v. United States, 140 S. Ct. 2521 (2020) (No. 19-6942); Eichler v. United States, 140 S. Ct. 2517 (2020) (No. 19-6236); Martinez v. United States, 140 S. Ct. 1128 (2020) (No. 19-5346); Davis v. United States, 138 S. Ct. 1441 (2018) (No. 17-7207); Kelly v. United States, 137 S. Ct. 1577 (2017) (No. 16-6388); Randolph v. United States, 135 S. Ct. 1491 (2015) (No. 14-

1. The court of appeals correctly upheld the jury's determination that petitioner knowingly joined in the charged methamphetamine-distribution conspiracy.

a. “[T]he essence of a conspiracy is ‘an agreement to commit an unlawful act.’” United States v. Jimenez Recio, 537 U.S. 270, 274 (2003) (quoting Iannelli v. United States, 420 U.S. 770, 777 (1975)). In criminal prosecutions involving drug sales, the courts “have cautioned against conflating [an] underlying buy-sell agreement” with the agreement needed to find conspiracy. United States v. Johnson, 592 F.3d 749, 754 (7th Cir. 2010). A conspiracy does not arise simply because one person sells goods to another “know[ing] the buyer will use the goods illegally.” Direct Sales Co. v. United States, 319 U.S. 703, 709 (1943). Rather, the “gist of conspiracy” in such a circumstance would be that the seller not only “knows the buyer’s intended illegal use” but also “show[s] that by the sale he intends to further, promote and coöperate in it.” Id. at 711.

This Court has made clear, however, that although “single or casual transactions, not amounting to a course of business,” may be insufficient to prove a conspiracy, a seller’s “prolonged coöperation with a [buyer’s] unlawful purpose” can be enough to establish that the seller and buyer have conspired together. Direct Sales Co., 319 U.S. at 712-713 & n.8. Additional relevant

6151); Brown v. United States, 572 U.S. 1060 (2014) (No. 13-807); Baker v. United States, 558 U.S. 965 (2009) (No. 08-10604).

considerations recognized by this Court include whether the buyer or seller exhibits "informed and interested coöperation" or has a "stake in the venture." Id. at 713.

b. Under the principles articulated in those precedents, the court of appeals correctly determined that the evidence at petitioner's trial, viewed in the light most favorable to the government, supported the jury's finding that petitioner knowingly participated in the conspiracy charged in this case. As the court observed, petitioner "d[id] not contest that the Government * * * proved the existence of a conspiracy between Cino and individuals in southwest Virginia." Pet. App. 8a. And the evidence that petitioner knowingly joined that conspiracy was not limited to the March 9 sale of two pounds of methamphetamine to Cino. In particular, "the recordings were additional evidence that allowed the jury to infer [petitioner]'s knowledge and participation in the distribution conspiracy." Id. at 12a.

For example, "the jury heard the informality of initial conversation [on the recorded telephone calls,] from which it could infer the existence of an established relationship between Cino and [petitioner]." Pet. App. 11a; see ibid. ("There were no introductions to each other or the subject matter of the call."). Taken in the light most favorable to the verdict, that evidence reflected petitioner's "prolonged coöperation with [Cino's] unlawful purpose," supporting the inference of an ongoing conspiracy between the transacting parties. Direct Sales Co., 319

U.S. at 713; see id. at 712-713 & n.8. In addition, the court observed that jurors "heard both men use coded and circumlocutory language," which supported an inference "that Cino was acting as a middleman and had to confirm the quantity a third-party wanted to buy from him before finalizing the purchase from [petitioner]." Pet. App. 11a. The jury also heard petitioner "say he would call another individual to set things up on his end, from which the jury could reasonably infer that each man was part of a vertically oriented distribution chain." Ibid. That evidence likewise supports a finding that petitioner exhibited "informed and interested coöperation" and likely had a "stake in the venture." Direct Sales Co., 319 U.S. at 713.

2. Petitioner argues (Pet. 5) that "[t]he federal courts of appeals are divided on whether evidence of a drug deal between one buyer and one seller is sufficient to support a conviction for conspiring to distribute illegal drugs." But in light of the substantial evidence, beyond a single bulk sale, of petitioner's participation in the particular conspiracy here, this case does not implicate any disagreement in the courts of appeals.

a. The courts of appeals are in general agreement that the mere existence of a buyer-seller relationship by itself does not establish a conspiracy to distribute narcotics. Instead, they apply a fact-specific inquiry considering all of the circumstances to determine whether a conspiracy is established. See United States v. Hawkins, 547 F.3d 66, 74 (2d Cir. 2008) (describing

courts' approaches to the "highly fact-specific inquiry into whether the circumstances surrounding a buyer-seller relationship establish an agreement to participate in a distribution conspiracy"); see also, e.g., United States v. Mitchell, 596 F.3d 18, 24-25 (1st Cir. 2010); United States v. Gibbs, 190 F.3d 188, 197-200 (3d Cir. 1999), cert. denied, 528 U.S. 1131, and 529 U.S. 1030 (2000); United States v. Reid, 523 F.3d 310, 317 (4th Cir.), cert. denied, 555 U.S. 1061 (2008); United States v. Delgado, 672 F.3d 320, 333-334, 341 (5th Cir.) (en banc), cert. denied, 568 U.S. 978 (2012); United States v. Deitz, 577 F.3d 672, 680-682 (6th Cir. 2009), cert. denied, 559 U.S. 984 (2010); Johnson, 592 F.3d at 754-756; United States v. Ramirez, 350 F.3d 780, 784-785 (8th Cir. 2003); United States v. Moe, 781 F.3d 1120, 1125-1126 (9th Cir.), cert. denied, 577 U.S. 932 (2015); United States v. Small, 423 F.3d 1164, 1182-1183 (10th Cir. 2005), cert. denied, 546 U.S. 1155, 546 U.S. 1190, and 547 U.S. 1141 (2006); United States v. Brown, 587 F.3d 1082, 1089-1090 (11th Cir. 2009); United States v. Baughman, 449 F.3d 167, 171-172 (D.C. Cir.), cert. denied, 549 U.S. 966 (2006).

"[I]n making that evaluation," courts have considered a variety of factors, such as "the length of affiliation" between the transacting parties; "whether there is a demonstrated level of mutual trust"; and "whether the buyer's transactions involved large amounts of drugs." Gibbs, 190 F.3d at 199. The presence of

such factors "suggests that a defendant has full knowledge of, if not a stake in, a conspiracy." Ibid.

b. Petitioner asserts (Pet. 12) that the court below maintains an outlying position that "a single buy-sell transaction is sufficient to support a conviction for conspiracy to distribute." Petitioner also asserts that the Seventh Circuit "has reached the polar opposite view," ibid., and held that "a drug sale alone does not prove a conspiracy to distribute illegal drugs," Pet. 6. And petitioner contends that the Second and Ninth Circuits are aligned with the Seventh Circuit's approach, Pet. 7 (collecting cases), and that the Eleventh Circuit "leans in th[at] direction," Pet. 10.

But those courts have not taken the absolute and categorical positions that petitioner ascribes to them, and as a result petitioner overstates the extent of any disagreement among the courts of appeals. The Seventh Circuit, for example, has stated that although "a buyer-seller arrangement can't by itself be the basis of a conspiracy conviction," the "government may use circumstantial evidence to prove a resale agreement" -- that is, a "common objective of reselling the drugs" -- to establish a conspiracy. United States v. Long, 748 F.3d 322, 325-326, cert. denied, 573 U.S. 922 (2014). And although that court has also stated that "large quantities of controlled substances, without more, cannot sustain a conspiracy conviction," United States v. Lechuga, 994 F.2d 346, 347 (en banc) (emphasis added; citation

omitted), cert. denied, 510 U.S. 982 (1993), it has emphasized that "there is no rigid list or formula to prove a conspiracy," United States v. Pulgar, 789 F.3d 807, 813 (2015), and has acknowledged that "sales of large quantities of drugs, repeated and/or standardized transactions, and a prolonged relationship between the parties constitute circumstantial evidence of a conspiracy," Johnson, 592 F.3d at 754 (2010). The Seventh Circuit's decision in United States v. Townsend, 924 F.2d 1385 (1991), on which petitioner principally relied in the court of appeals, see Pet. App. 10a, 31a, additionally cites factors such as "evidence of 'informed and interested cooperation,'" "'a close working relationship,'" "'an ongoing business,'" and "use of a common code by all of the defendants." 924 F.2d at 1395 & n.5 (citations omitted).

The Second and Ninth Circuits agree that those or similar factors can constitute circumstantial evidence of a conspiracy. See, e.g., United States v. Brock, 789 F.3d 60, 64 (2d Cir. 2015) (explaining that "certain factors relevant to the analysis" include "'whether there was a prolonged cooperation between the parties, a level of mutual trust, standardized dealings, sales on credit, and the quantity of drugs involved'") (brackets and citation omitted); Moe, 781 F.3d at 1125-1126 (explaining that relevant factors include "whether the drugs were sold on credit or on consignment; the frequency of sales; the quantity of drugs involved; the level of trust demonstrated between buyer and seller,

including the use of codes; the length of time during which sales were ongoing; whether the transactions were standardized; whether the parties advised each other on the conduct of the other's business; whether the buyer assisted the seller by looking for other customers; and whether the parties agreed to warn each other of potential threats from competitors or law enforcement") (footnotes omitted). And as petitioner recognizes (Pet. 10-12), other courts of appeals likewise have taken a nuanced and fact-dependent approach.

Whatever the extent of disagreement in the courts of appeals might be, this case is not an appropriate vehicle in which to review it because it is not implicated here. Contrary to petitioner's contention (Pet. 12), neither the majority nor the concurring opinion below rests on a determination that petitioner's "one sale to Mr. Cino on March 9, 2016" was alone "enough to prove conspiracy to distribute drugs." Instead, both opinions expressly cited, discussed, and relied on evidence beyond that single episode. While the panel majority described that large transaction as "the principal evidence against [petitioner]," Pet. App. 9a, it made clear that "the March 9 transaction is not the only record evidence supporting the conclusion that [petitioner] knowingly entered into the distribution conspiracy," id. at 11a, and it upheld his conviction in light of the full sweep of the trial evidence, including "the evidence of [petitioner]'s sale of two pounds of methamphetamine to Cino, the substance of the two

recorded conversations between [petitioner] and Cino, and [petitioner]'s flight and failure to appear at his initial trial date," id. at 13a.

Chief Judge Gregory likewise recognized that the government had introduced into evidence and relied on "'something more than the simple exchange of drugs for money'" -- namely, "[t]he recorded conversations between [petitioner] and Cino" -- to establish the conspiracy. Pet. App. 32a (citation omitted). He found that additional evidence to be "pivotal to the Government's case," ibid., because those "conversations provide[d] the 'something more' beyond a single, large-quantity drug transaction that was sufficient for a jury to find beyond a reasonable doubt that [petitioner] knew of the drug conspiracy and knowingly participated in it when he received the methamphetamine he sold to Cino," id. at 33a. Chief Judge Gregory thus recognized that the evidence here was sufficient to support the conviction even on the Townsend-based approach that petitioner favors. See id. at 32a. Petitioner would therefore not be entitled to relief even if the first question presented were resolved in his favor. Nor is review warranted on the wholly factbound second question.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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