

21-6264

IN THE
SUPREME COURT FOR THE UNITED STATES

MARION CAMPBELL, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT(S)

FILED

NOV 05 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

REQUEST FOR
WRIT OF CERTIORARI
TO THE
FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Marion Campbell
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QUESTION(S) PRESENTED

· WHETHER THE DISTRICT COURT IMPROPERLY ALLOWED FEDERAL
RULE OF EVIDENCE 404(b) & 702 IN PETITIONERS TRIAL

LIST OF PARTIES

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

RELATED CASES

None

TABLE OF AUTHORITIES CITED

Cases	Page Number
Daubert v. Merrell, 509 U.S. 579 (1993)	6
Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)	6, 7
Federal Rule of Evidence	
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18 U.S.C. §3922(g)	4
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APPENDIX B	FOURTH CIRCUIT DENIAL OF REHEARING

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

Federal Court

The opinion of the United States Fourth Circuit Court of Appeals appear at Appendix A to the petition and is an unpublished opinion.

JURISDICTION

Federal Court

The date on which the United States Court of Appeals decided my case was 06/07/2021. A timely petition for rehearing was timely filed and denied on _____, order denying rehearing appears at Appendix B.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner has been denied the Constitutional right listed in Amendment Five and Six.

Petitioner was denied the rights to a fair trial as guaranteed by the Sixth Amendment, and denied the right of a fair trial regarding self incriminalization.

STATEMENT OF CASE

Petitioner Marion Campbell was indicted on three counts: indictment after a traffick stop: (1) possession of meth with intent to distribute in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C); (2) possession of a firearm in furtherance of drug trafficking in violation of 18 U.S.C. § 924 (c)(1)(A)(i); and (3) possession of a firearm as a felon in violation of 18 U.S.C. §§ 922 (g)(1), 924(a)(2), (e). Petitioner proceeded to trial on the listed charges. The jury returned a guilty verdict on all three counts of the indictment. Petitioner was sentenced to 360 months in prison and filed a timely appeal.

On Petitioner's direct appeal he argued that the recorded jail calls were overly prejudicial evidence that should not have been admitted pursuant to the Federal Rule of Evidence 404(b). Unfortunately, Petitioner's counsel failed to explore or present a question of the weight of evidence, instead, he presented a question of admissibility regarding two phone calls admitted at trial. Subsequently, counsel presented the issue on a question of the weight of evidence.

Secondly, Petitioner argued that the district court improperly admitted Agent Briggs as an expert witness. He argued that the government failed to establish Briggs's methodology in deciphering the drug lingo on the calls. Actually, the conversations occurred nine months after Petitioner was arrested and could easily be construed as an infringement of Petitioner's

Fifth Amendment right to self incrimination. The conversations may or may not have been the subject of drug dealings, if so, it seems that the government could have indicted the Petitioner for those alleged phone conversations, instead, they presented testimony from an agent that did not and could explain his methodology in deciphering petitioners phone calls nine months after his initial arrest. At issue is the Federal Rule of Evidence 404(b), and Rule 702 regarding the expertise regarding the drug jargon (alleged drug jargon) used by petitioner while speaking on the telephone.

The Fourth Circuit described this as an error that was harmless.

Petitioner now seeks a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

There is an issue of whether the Fourth Circuit Court of Appeals overlooked the plain error regarding the elements and proof of petitioner's knowledge that he could not possess those weapons. Did the government prove that petitioner charged with 18 U.S.C. § 922(g) knew he belonged to that class of people/persons prohibited from possessing a firearm.

REASON FOR GRANTING WRIT

This is a Constitutionally compelled issue which resulted in a fundamental unfairness of firmly established federal court proceedings against Petitioner, and a writ of certiorari grant by this United States Supreme Court would not alter the decision of the Fourth Circuit Court of Appeals, but would only affirm that the federal question must be resolved by the United States Supreme Court. The federal question is deeply rooted in Supreme Court precedent in *Daubert v. Merrell Dow*, 509 U.S. 579 (1993), and the denial from the Fourth Circuit Court of Appeals and the ruling from the United States District Court, raises significant questions about the standard of review on "whether"----Federal Rule of Evidence 702-imposes a special obligation upon a trial judge to "ensure that any and all scientific testimony...is not only relevant, but reliable." And whether this testimony was unreliable under Federal Rule of Evidence 702 as elucidated by this Court in *Daubert*. Whether the testimony of agent's methodology in deciphering drug lingo on calls, where he failed to explain that methodology, which substantially affected Petitioner's rights and directly affected the outcome of his case in trial. This standard of review by the Fourth Circuit Court of Appeals will serve as precedent in other reviews of other courts in the decision making process.

The District Court and the Fourth Circuit court of appeals has failed to ground its analysis in any particular provision of the Constitution, other than using *Kumho Tire Co. v. Carmichael*,

526 U.S. 137, 141-42 (1999)(explaining that district courts have "broad latitude" in "how to determine reliability" such that engineers can be evaluated differently from scientists, id at 142 (emphasis omitted)). This case involves a legal principle of major significance to the district courts jurisprudence and the decision from the Fourth Circuit Court of Appeals is in conflict with precedent of this Court's precedent. Where this is a narcotics case, and the government presented expert testimony, but yet, the testimony of this expert witness fails to provide a lay jury with the methodology which did not properly aid the trier of fact to understand the evidence or to determine a fact in issue. Therefore, it is imperative that this United States Supreme Court grant certiorari to resolve the issue of whether Federal Rule of Evidence 702 can be admitted, or the Federal Rule of Evidence 404 (b) to determine the defendant's character from phone calls that occurred nine months after his indictment in this matter.

Therefore, Petitioner has compelling reasons why this Court should grant certiorari where the district court has used overly broad latitude in allowing Federal Rule of Evidence 404(b) and Federal Rule of Evidence 702, evidence into his trial, where the intent was not to prove only criminal disposition, but such evidence only place a thought in the juries mind that Petitioner was still active in the drug trade. That's the only plausible reason for the government, district court to allow such evidence into trial where the evidence probative value was substantially outweighed by unfair prejudice in the sense that it tended to subordinate reason to the juries emotion in the factfinding

process. The decision of the Fourth Circuit Court of Appeals to ignore this error and classify it as an harmless error should be sufficient reason to grant certiorari in this matter where they have departed from the accepted and usual course of judicial proceedings where the Fourth Circuit has sanctioned such a departure by the district court, that call for the exercise of this Supreme Court's supervisory power is warranted. The importance of this issue not only affects petitioner, but others in similarly situated cases. The Fourth Circuit has ignored an important federal question in a way that conflicts with a number of this Court's prior decisions.

CONCLUSION

Based on the improper use of Federal Rule of Evidence 404(b), and Federal Rule of Evidence 702 in this matter. The petition for a writ of certiorari should be granted.

Respectfully submitted, 3rd Day of November 2021

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