

No. 21-7299

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IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
FEB 25 2022
OFFICE OF THE CLERK

RASHEED ALI MUHAMMAD PETITIONER
(Your Name)

vs.

UNITED STATES of AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Rasheed Ali Muhammad #18035-043
(Your Name)

P.O. BOX 7000
(Address)

Florence, Colorado 81226
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether Petitioner WAS prejudiced by improper jury instruction when the government elucidated analogues be treated like cocaine?

WAS Petitioner's conviction affirmed in violation of due process where the district and appellate court failed to apply this Court's test for knowledge?

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:

RELATED CASES

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(see motion)

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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 B to the petition and is

☒ reported at UNKNOWN; 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☐ is unpublished.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 A(1) to the petition and is

☒ reported at 5TH CIRCUIT DISTRICT COURT; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 SEPTEMBER 16, 2021.

☐ 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: OCTOBER 13, 2021, 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

1. The Fifth Amendment of the United States Constitution provides:

"No person shall be ... deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

2. The Sixth Amendment of the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to ... be informed of the nature and cause of the accusation ... and to have the assistance of counsel for his defense."

3. The statutes involved and under review are, Title 21 U.S.C. § 841(a)(1) held to require the Federal Government to show that criminal defendant, when controlled substance was analogue, knew that he was dealing with substance regulated under Controlled Substance Act or Analogue Act

4. The Controlled Substance Analogue Enforcement Act of 1986 § 802(32)(A), § 813, and § 841(a)(1).

(see motion Attached)

STATEMENT OF THE CASE

ON April 22, 2014, Petitioner, Rashad Ali Muhammad (hereinafter "Muhammad") and one co-defendant were charged in an eight-count indictment. Muhammad was charged in one of the eight counts with conspiracy to possess with intent to distribute controlled substances and controlled substance analogues, all in violation of §§ 841 and 846.

ON December 9, 2014, Muhammad was solely charged in an eight-count indictment with possession of and conspiracy to possess with intent to distribute each of the substances. Two of these were Methylen and AM2201, which are Schedule I controlled substances and covered under the Controlled Substance Act. The other three substances were q-PVP, 4-MEC, and XLR-11, which are controlled substance analogues and covered under the Controlled Substance Analogue Act.

Counts Two, Four, Six, Seven and Eight dealt exclusively with the controlled substance analogues. Counts Three and Five dealt exclusively with the Schedule I controlled substances.

Muhammad entered a plea of not guilty to the charges brought against him, and a jury trial was held January 5, 2015. After five days of trial, Muhammad was found guilty by the jury on Counts One (partial), Three, Four, Five, Six and Seven of the superseding indictment. Muhammad was sentenced on April 23, 2015 to 240 months as to each conviction to run consecutively, for a total of 1,440 months (or 120 years) imprisonment in the Bureau of Prisons. Judgment was entered on April 23, 2015.

ON September 16, 2021, the United States Court of Appeals for the Fifth Circuit delivered its opinion affirming Muhammad's conviction and sentence.

REASONS FOR GRANTING THE PETITION

THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN DIRECT CONFLICT WITH THE APPLICABLE DECISION OF THIS COURT IN MCFADDEN AND NEDER

The defense objected to the proposed jury instruction in the district court regarding the knowledge for possession of a controlled substance analogue. It is the defendant's position that the government must prove beyond a reasonable doubt that Muhammad did in fact know it was an Analogue.

The district court overruled the defense's objection. The district court acknowledged the split amongst the circuits. Ultimately on the issue of knowledge requirement of the Controlled Substance Analogue Act, the court changed the jury: The defendant need not have known that the substance was an Analogue. The government need only prove that defendant knew what the substance was, and the defendant possessed the substance or conspired to possess it with the intent to distribute it.

The district court did not adhere to § 813's command to treat a controlled substance analogue as a controlled substance listed in schedule I by applying § 841(a)(1)'s mental-state requirement. Instead, it concluded that the only mental-state requirement for analogue prosecutions is the one in § 813 that an analogue be "intended for human consumption. This Court has stated "That conclusion is inconsistent with the text and structure of the statute."

The charge given by the district court that ignorance of the law is no defense would have been consistent with McFadden if it had been limited to the second alternative. The district court failed to limit its charge to the second alternative which was error. It would have been permissible because according to McFadden, ignorance of the law is not a defense when guilt is shown by proving the defendant awareness of the substantial similarities of the analogue substance to a listed substance 135 S. Ct. at 2306. But see id. at 2308 (Roberts, C.J. concurring in judgment) ("But when there is arguably a legal element in Section 841(a)(1) that the substance be controlled." (internal citations and quotation marks omitted)).

Because the district court did not so restrict the charge, the charge applied equally to the first alternative - which contrary to the district court's instruction, does require proof of knowledge of law. The Fifth Circuit Court of Appeals erred and prejudiced the petitioner when it failed to examine the whole record and apply Neder's test for harm analysis, to both alternatives.

Under the Neder test for harm, the district court's error was harmful because Muhammad put on ample evidence that he lacked the required mental-state for conviction, and yet the jury was denied the opportunity to consider his guilt based on that evidence. Unlike in Neder Muhammad put on ample evidence to refute the government's claim that he knew

the substances were analogues, (Neder v. United States 527 US 1).

The focus of trial was proving the substances were intended for human consumption not that Muhammad knew the substances were analogues. In its closing arguments the Government emphatically rejected Muhammad's jury instructions... that the Government must prove Muhammad knew the substances were analogues. In light of the intervening decision in McFadden the error in instructing the jury was not harmless beyond a reasonable doubt.

The record does not contain evidence that could rationally lead to a contrary finding with respect to the omitted elements. The government has failed to meet its burden establishing harmless error with respect to the analogues in Count One, Count Four, Count Six, and Count Seven.

The court of Appeals erred when it failed to do a harm analysis under both tests for knowledge, which prejudiced the petitioner and denied him due process. The court of appeals erred when it affirmed the conviction based on controlled substances, and failed to cite evidence for the controlled substance analogues.

Petitioner respectfully urges that all aspects of the lower circuit decision is erroneous and at a variance with this **CONCLUSION** Courts decision in McFadden

(please see Motion Attached)

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rashid Ali Muhammad

Date: January 5th, 2022