

No. _____

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

LOUIS ZAYAS,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

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

LOUIS ZAYAS' PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Supreme Court grant certiorari to consider whether the erroneous decision of the Trial Court to instruct the jury that the United States was not required to prove Zayas's knowledge that the individual to whom he delivered a controlled substance was pregnant constituted harmless error when the effect of said instruction was to grant a directed verdict in favor of the United States?
2. Should the Supreme Court grant certiorari to consider whether a disclosure by the United States of evidence favorable to Zayas on the final day of trial before the testimony of the final government witness constituted harmless error?

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CORPORATE DISCLOSURE STATEMENT

None of the parties to this case are corporations.

OPINIONS DELIVERED BY OTHER COURTS

Judgment and Opinion of the United States Court of Appeals for the Third Circuit dated April 21, 2022.

Bench Opinion of trial judge denying Zayas's Motion to Dismiss on Brady Motion.

Bench Opinion of trial judge denying Zayas's Motion to Dismiss Count 4 of the Indictment in which the court concluded that the United States was not required to prove that Zayas had knowledge that Kathryn Price was pregnant when he delivered a controlled substance to her.

STATEMENT OF JURISDICTION

Defendant, Louis Zayas ("Zayas"), was indicted on August 9, 2016 (Doc. #1). A superseding indictment was issued on January 15, 2019 (Doc. #94). Zayas was found guilty by a jury on June 21, 2019 (Doc. #133).

The United States District Court for the Middle District of Pennsylvania had original jurisdiction over these proceedings pursuant to 18 U.S.C. §3231, which provides that district courts have subject matter jurisdiction over all offenses against the laws of the United States.

The United States Court of Appeals for the Third Circuit had appellate jurisdiction over these proceedings pursuant to 28 U.S.C. §1291, which provides that the Court of Appeals shall have jurisdiction over appeals from all final decisions of the District Courts of the United States of America.

The United States Supreme Court has jurisdiction over the Petition for a Writ of Certiorari pursuant to 28 U.S.C. §1254, which provides that the Supreme Court has jurisdiction to review, by certiorari, final decisions of the United States Court of Appeals.

**CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES,
ORDINANCES AND REGULATIONS INVOLVED**

Sixth Amendment, United States Constitution

21 U.S.C. § 841(a)(1)

21 U.S.C. § 841(b)(1)(C)

21 U.S.C. § 861(f)

STATEMENT OF THE CASE

On August 9, 2016, Zayas was indicted on a three-Count Indictment and charged with 1) Drug Delivery Resulting in Death, 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841 (b)(1)(C); 2) Possession with Intent to Distribute Fentanyl within 1,000 feet of a daycare center with an attached playground in violation of 21 U.S.C. § 841(a)(1) (b)(1)(C), and 21 U.S.C. §860; and 3) Possession with Intent to Distribute Fentanyl to a Pregnant Individual in violation of 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841 (b)(1)(C), and 21 U.S.C. § 861(f).

Zayas entered a guilty plea on all charges on April 10, 2017. Zayas then withdrew his guilty plea on August 9, 2018.

A superseding indictment was filed against Zayas on January 15, 2019, charging him with 1) Conspiracy to Distribute and Possess With Intent to Distribute a Mixture and Substance Containing Fentanyl Resulting in Death [21 U.S.C. § 846]; 2) Distribution and Possession With Intent to Distribute a Mixture and Substance Containing Fentanyl Resulting in Death, Aid and Abet [21 U.S.C. § 841(b)(1)(C) and 18 U.S.C. § 2]; 3) Distribution and Possession With Intent to Distribute a Mixture and Substance Containing Fentanyl Within 1,000 Feet of a School, Aid and Abet [21 U.S.C. § 841(b)(1)(C) and 21 U.S.C. § 860 and 18 U.S.C. § 2]; and 4) Distribution and Possession With Intent to Distribute a Mixture and Substance Containing Fentanyl to a Pregnant Individual, [21 U.S.C. § 841(b)(1)(C), 21 U.S.C. § 861(f) and 18 U.S.C. § 2] (superseding indictment 1/15/2019).

Zayas entered a not guilty plea on January 17, 2019, to the charges contained in the superseding indictment. Following a jury trial, starting on June 17, 2019, and ending on June 21, 2019, Zayas was found guilty on all counts.

Zayas was sentenced on January 31, 2020, to life imprisonment for both Counts 1 and 2, and 1 year of imprisonment for both Counts 3 and 4, with all to run concurrently.

A Notice of Appeal was filed by Zayas on February 5, 2020. In its April 21,

2020 Opinion, The Third Circuit Court of Appeals, affirmed the convictions of Count One, Two and Four, and reversed and vacated the conviction of Count Three, Distribution and Possession With Intent to Distribute a Mixture and Substance Containing Fentanyl Within 1,000 Feet of a School and remanded for resentencing.

On August 25, 2022, Zayas filed a Petition for Rehearing. The United States Court of Appeals for the Third Circuit denied the Petition on October 5, 2022.

REASONS FOR GRANTING THE WRIT

I. Should The Supreme Court grant certiorari to consider whether the erroneous decision of the Trial Court to instruct the jury that the United States was not required to prove Zayas's knowledge that the individual to whom he delivered a controlled substance was pregnant constituted harmless error when the effect of said instruction was to grant a directed verdict in favor of the United States.

Zayas was charged in Count 4 of the superseding indictment with delivery of a controlled substance to Kathryn Price at a time when she was pregnant. Zayas moved for a judgment of acquittal on Count 4 at the conclusion of the evidence. The court denied the Motion concluding that the United States was not required to prove Zayas's knowledge of Price's pregnancy.

Subsequently, the Trial Court instructed the jury as follows:

Count 4 of the superseding indictment charges the defendant with distribution of a controlled substance to a pregnant individual,

namely Kathryn Price. This is a separate violation of federal law. In order to find the defendant guilty of this offense, in addition to those elements that I've already explained to you, you must also find that the government prove beyond a reasonable doubt that the defendant distributed a controlled substance to a pregnant individual, namely Kathryn Price. The government need not prove that when the defendant distributed the controlled substance, he knew that the individual was pregnant.

(Appeals Court Appendix pp. A736-737).

The Court of Appeals held that the Trial Court erred in holding that the United States did not have to prove Zayas's knowledge of Price's pregnancy to sustain the charge against him. The court, however, declined to reverse the conviction on the grounds that the error was harmless in that the evidence was such that a rational jury could only have concluded that he knew she was pregnant.

In Rose v. Clark, 478 U.S. 570, 106 S. Ct. 3101 92 L. Ed 2d. 460 (1986), the Supreme Court had occasion to discuss the circumstances in which harmless error analysis is appropriate in a criminal proceeding. One of the circumstances identified by the court that could not constitute harmless error would be a directive by the Trial Court to the jury to enter a judgment of conviction:

Similarly, harmless-error analysis presumably would not apply if a court directed a verdict for the prosecution in a criminal trial by jury. We have stated that "a trial judge is prohibited from entering a judgment of conviction or directing the jury to come forward with such a verdict...regardless of how overwhelmingly the evidence may point in that direction." United States v. Martin Linen Supply Co., 430 U.S. 564. 572-573 (1977) (citations omitted). Accord, Carpenters v. United States, 330 U.S. 395 408 (1947). This rule stems from the Sixth Amendment's clear command to afford jury trials in serious criminal cases. See Duncan v. Louisiana, 391 U.S. 145 (1968). Where that right is altogether denied, the State cannot contend that the deprivation was

harmless because the evidence established the defendant's guilt; the error in such a case is that the wrong entity judgment the defendant guilty. Id. at 578.

In the case at bar, Zayas did not contest the fact that he had delivered controlled substances to Price on the evening of her death. Nor, did he contest the fact that Price was pregnant at the time. Rather, as to Count 4 the only fact that Zayas contested was his knowledge of Price's pregnancy. Thus, when the Trial Court instructed the jury that the United States was not required to prove Zayas's knowledge of Price's pregnancy it was in effect directing the verdict to convict Zayas on the charges. In our system of law, the jury is required to follow the instructions of the court. "In the courts of the United States it is the duty of juries in criminal cases to take the law from the court and apply that law to the facts as they find them to be from the evidence." Sparf v. United States, 156 U.S. 51, 97, 15 S. Ct 237, 294 39 L. Ed 343, 361 (1895). Thus, in the context of this case, where the only issue was Zayas's knowledge of Price's pregnancy, the jury was precluded from concluding he was not guilty under the erroneous instructions it received from the court. Such erroneous instructions by the court cannot be considered harmless error because they a sanction a clear violation of the Sixth Amendment's right to a jury trial in serious criminal cases and are contrary to the holding of the Supreme Court in Rose, *supra* and Sparf *supra*. Zayas requests therefore that the Supreme Court grant certiorari to decide this important federal question which was decided by the

Court of Appeals in conflict with the provisions of the United States Constitution and relevant decisions of the Supreme Court.

II. Should the Supreme Court grant certiorari to consider whether a disclosure by the United States of evidence favorable to Zayas on the final day of trial before the testimony of the final government witness constituted harmless error.

The United States presented the testimony of 10 witnesses at the trial of this matter. The final government witness was Joseph Begley, who was from the Drug Enforcement Administration, testified on direct examination concerning a search of Zayas's residence and an interview of Zayas both of which occurred on August 10, 2016. Begley also testified about his review of video surveillance of the area outside Price's home prior to her death.¹

During pretrial discovery, the United States provided Zayas with a report prepared by Begley concerning the search of Zayas's residence and the statement made by Zayas at the time of the search. The report indicates that Zayas admitted delivering what he believed to be heroin to Price on the evening of July 6th and that he thought the heroin was in a white bag.

Just before Begley testified at trial, the United States provided Zayas, for the first time, with a second report prepared by Megan R. Cutrona of the Drug

¹ Price's parents installed video surveillance of the area outside their home prior to July 6, 2016.

Enforcement Administration concerning an interview, at which Begley was also present, of Zayas on April 28, 2017. That report contained information that a vehicle belonging to Dee, the individual who had provided drugs to Price a few days before July 6th, was observed on Diamond Avenue in Hazleton in the general vicinity of Price's home. (Appeals Court Appendix pp. A824-A826). The report did not reflect a statement by Zayas that he delivered the drugs to Price in a white bag, but Begley testified that Zayas had made such a statement to him in both interviews. (Appeals Court Appendix pp. A658-A659).

The significance of this late disclosure of material evidence is reflected in the overall positions taken by Zayas. Zayas did not dispute that he sold drugs to Price on July 6th. He admitted this to the investigators in August of 2016 and again in April of 2017. On each of those occasions he stated that he believed that the drugs he delivered to Price were heroin and that they were contained in a white bag.

Zayas challenged, however, the claim of the United States that the drugs he had delivered to Price were the cause of her death. At trial, Zayas through his counsel, pointed to the fact that Price had purchased drugs from a dealer named Dee shortly before her death and that the drugs purchased from Dee were in a blue bag. Zayas also pointed to the fact that the bags found at his residence, when it was searched, were all white and that except for one blue bag, all of the bags found in Price's bedroom, where she had died, were white. Zayas also stressed the fact that

Price died from an overdose of fentanyl and that the only residue of fentanyl found in her room was contained in the one blue bag.

In light of the above, it is clear that the evidence surrounding the April 2017 interview and the report thereof, that: 1) Dee's vehicle had been seen in the area of Price's home on the date of her death; and 2) that Zayas had stated on a second occasion that he believed the bag he delivered to Price was white and that it contained heroin, was clearly material evidence which should have been disclosed to him prior to trial.

The Court of Appeals concluded that the failure to disclose the evidence until very late in the trial constituted a harmless error because it did not prejudice him at trial. Zayas submits, however, that the late disclosure was clearly prejudicial to him. First, as to the color of the bag, the record contains no evidence that Zayas had been informed of the blue bag/white bag issue prior to his second statement. On this point Begley testified that he had no reason to believe that Zayas knew of the blue bag/white bag issue as of the August 2006 interview and the court itself held on August 9, 2018, when it allowed Zayas to obtain new counsel, that prior counsel had not turned the discovery over to him. (Appellate Court Appendix p. A682). Thus, Zayas's argument that the drugs he delivered were in a white bag would have been enhanced and made more credible in the eyes of the jury. Moreover, while it is correct as the Trial Court and Court of Appeals pointed out that this evidence was disclosed before the trial was complete Zayas was, by this late disclosure, denied the

opportunity to use it in an opening statement or in the examination of any the witnesses who preceded Begley on the stand. Zayas submits therefore that it cannot be considered harmless.

The evidence as to Dee's vehicle being in the vicinity of the Price home at the time of her death was clearly something that should have been turned over to Zayas given his primary argument that it was drugs from Dee rather than him that caused Price's death. Nor, can the failure to disclose this evidence be considered harmless as it clearly could have been used by counsel in an opening statement and in the cross examination of witnesses who preceded Begley. In addition, it would have certainly resulted in an investigation to determine the reason Dee was present in the area at the time.

CONCLUSION

Zayas requests therefore that the Supreme Court grant certiorari to consider whether he was provided with his constitutional right to a fair trial.

Respectfully submitted,

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