

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

ANTOINE ROBERT THREEFINGERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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SUBMITTED: May 23, 2023

QUESTIONS PRESENTED

WHETHER THE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DECISION THAT PETITIONER'S FIFTH AMENDMENT RIGHTS WERE NOT VIOLATED?

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The Petitioner, Antoine Robert Threelfingers, respectfully petitions for a Writ of Certiorari to review the United States Court of Appeals for the Ninth Circuit's memorandum affirming the District Court's decision that Mr. Threelfingers' Fifth Amendment Due Process Right to a Fair Trial was not violated.

JURISDICTION

The court of appeals issued its memorandum of Mr. Threefingers' appeal on February 23, 2023. Appendix A. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

OPINION BELOW

United States Court of Appeals for the Ninth Circuit issued its memorandum affirming the District Court's judgement. The memorandum is attached as Appendix A.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

This case involves the Fifth Amendment to the Constitution of the United States. Appendix B.

STATEMENT OF THE CASE

On September 1, 2020, BIA Officer Stallings attempted to make a traffic stop on a 2014 red Dodge Dart, traveling at a high rate of speed in a 65-mph zone. The vehicle initially pulled over; however, when Officer Stallings got out of his patrol vehicle, the driver, later identified as Mr. Threefingers, sped away. During the pursuit, Mr. Threefingers drove on a dirt road eventually ending back on Highway 212 heading east towards Ashland, Montana. Officer Stallings notified dispatch of his situation and Cherokee Nation Marshal Mead

and BIA Officer Keahbone joined Officer Stallings in the pursuit. Officer Stallings then requested assistance from the Rosebud County Sheriff's Office and Deputy Lavatsky responded. Deputy Lavatsky arrived in the Ashland flats area to lay spike strips and waited for Mr. Threefingers. Mr. Threefingers approached the spike strips but drove into the ditch to avoid them.

In Ashland, Mr. Threefingers turned south and continued to the "T" intersection of Birney, Montana. As Officer Keahbone began getting closer to Mr. Threefingers' vehicle, he stated over his radio that Mr. Threefingers was holding something to his head. This ended up being a firearm. Once the pursuit reached the "T," Mr. Threefingers turned north which allowed Officer Stallings to get closer. Officer Stallings observed as he got closer to Mr. Threefingers, he pointed a gun and fired before continuing north.

Mr. Threefingers then turned west onto a dirt driveway one mile north of Birney and Route 4 and eventually turned broadside to Officer Stallings' vehicle, stopping about 50 to 60 yards away from him. Officer Stallings stated he and Mr. Threefingers then locked eyes and as he was stopping his vehicle, he rolled down the window and

drew his pistol. Officer Stallings stated he began firing his pistol after Mr. Threefingers' gun came up but he could not recall if he or Mr. Threefingers fired first.

Officer Stallings stated Mr. Threefingers started running from his vehicle, stopped, and "squared up" to him. Officer Stallings reported firing at Mr. Threefingers and saw a "ripple" in his chest before firing again. Mr. Threefingers then fell to the ground. After falling, Mr. Threefingers continued to shoot and Officer Stallings returned fire, again striking Mr. Threefingers causing him to roll backwards into the bushes.

Agents from numerous departments helped process the scene and were able to locate spent shell casings, Mr. Threefingers's handgun, and Mr. Threefingers' clothes. Officers ultimately collected 32 - 9 mm shell casings and one 17 round 9mm magazine near Officer Stallings vehicle; four .223 shell casings were located near Officer Marvin's vehicle; one .556 round and two .45 caliber shell casings were discovered near Mr. Threefingers' vehicle. In the ditch where Mr. Threefingers fell and was handcuffed, eleven .45 caliber casings were discovered. In the pockets of Mr. Threefingers' shorts,

officers located a white powdery substance, which tested positive for methamphetamine and weighed 15.7 grams. A DEA lab analysis report confirmed the white substance was 10.3 grams of 98% pure methamphetamine.

An ATF report revealed Mr. Threefingers' firearm was a Colt, model Mark IV Series 80, .45 caliber semi-automatic pistol (S/N: FA37949) and was manufactured by Colt in Connecticut.

The 2014 red Dodge Dart Mr. Threefingers was driving, which was registered to his father, was towed to the FBI warehouse in Billings, Montana. Evidence collected from the vehicle included: .223 caliber rounds, .45 caliber rounds and casings, 12-gauge shotgun shells, a full box of Browning .308 Win Rounds, a partial box of Federal .45 Auto Rounds (approximately 16 rounds), .300 Win caliber rounds, 9 mm caliber rounds, a loaded .45 caliber magazine (approximately 8 rounds), drug paraphernalia consisting of a lighter, glass pipes, baggies, scales, tubing, foil, glass cases and pipes, all with possible residue, and a black leather holster.

On September 10, 2020, Mr. Threefingers was interviewed at the BIA Detention Facility in Hardin, Montana, by Special Agents (SA)

Whitefoot and McGrail. Mr. Threefingers reported on the day of the instant offense, he was driving to Rabbit Town to see his girlfriend when he passed a BIA Officer going 70 miles per hour. After dealing with a vehicle that was slowing down in front of him, Mr. Threefingers stated that “out of nowhere” four police vehicles were chasing after him.

After a five (5) day jury trial, the jury returned a verdict of Guilty to counts I, III, IV, and VII. Mr. Threefingers argued at trial that he should be found Not Guilty by reason of insanity. The jury failed to find Mr. Threefingers Not Guilty by the Clear and Convincing evidentiary standard. The jury did find Mr. Threefingers Not Guilty in counts II and V and hung on counts VI and VIII.

SUMMARY OF ARGUMENT

The proof at trial established that Mr. Threefingers disengaged from reality due to severe PTSD developed due to his time in the Iraq War rendering him unable to comprehend the criminality of his actions. He therefore should have been found not guilty by reason of insanity as to counts I, III, and IV.

ARGUMENT

THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF THREEFINGERS' RULE 29 MOTION FOR ACQUITTAL ON ALL COUNTS WHERE THERE WAS INSUFFICIENT EVIDENCE TO FIND HIM GUILTY.

There was enough evidence to find Mr. Threefingers not guilty by reason of insanity to counts I, III, and IV. The jury heard from a number of witnesses who not only defined the term PTSD and Dissocation, but also described why Mr. Threefingers would have such a state of mind.

For the purposes of his appeal to the Ninth Circuit, Mr. Threefingers argued that he had proved by clear and convincing evidence that he was insane at the time of the offense because he could not appreciate the nature and quality of his conduct. Due to this mindset, he fell into a dissociative state of mind during the encounter with law enforcement due to his war experience in Iraq.

The jury's sanity verdict of guilty to counts I, III, and IV was inapposite to the evidence presented, especially from his expert witness, Dr. Suzanne Best. Mr. Threefingers had several witnesses including himself to meet his burden of proof of establishing the

insanity defense. Therefore, the jury's finding of sanity at the time of the offenses should not stand because as a matter of law, the evidence of insanity in terms of dissociation was overwhelming.

In short, the decision by the Ninth Circuit violated Mr. Threelfinger's Fifth Amendment Rights under the United States Constitution. As it pertains to this petition, the Fifth Amendment states in part that, "No person shall be held to answer for a capital, or otherwise infamous crime . . . nor be deprived of life, liberty, or property, without due process of law."

The Threelfingers Panel observed in its memorandum that to meet the clear and convincing standard, Mr. Threelfingers had to "present sufficient evidence to produce in the ultimate factfinder an abiding conviction that the truth of its factual contentions [was] highly probable." *Sophanthalvong v. Palmeeter*, 378 F.3d 859, 866 (9th Cir. 2004). In holding that Mr. Threelfingers failed to meet his burden, the Panel observed that all of the evidence was presented to the jury, and the district court was similarly presented when it denied the Rule 29 motion.

The Panel opined that Mr. Threelfingers testified, and both parties presented testimony of opposing expert psychologists. In the

end, according to the Panel, it was the fact that the jury credited Dr. Low over Dr. Best. *Memorandum*, at 4. “Threefinger’s [sic] argument rests almost entirely on Dr. Best’s testimony, and he does not contend with Dr. Low’s testimony to the contrary, so he cannot show by clear and convincing evidence that his PTSD precluded him from appreciating the wrongfulness of his actions.” *Id.* See also *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010).

There was no doubt based upon the testimony from both parties that on the day in question, Mr. Threefingers was suffering from suicidal ideation. In addition, both parties’ experts agreed that Mr. Threefingers suffered from combat-related PTSD. Where the parties disagreed concerned whether Mr. Threefingers dissociated during the gun fight with law enforcement. Armed with specific experience in combat-related PTSD, Dr. Best, not Dr. Low, administered the “gold standard” in PTSD testing, the Clinician-Administered PTSD Scale (CAPS), to determine and assess not only his PTSD, but also his dissociated state during the shoot-out. Thus, Dr. Best not only had superior knowledge on the subject, but also she used far more reliable testing methods to determine the issue at hand.

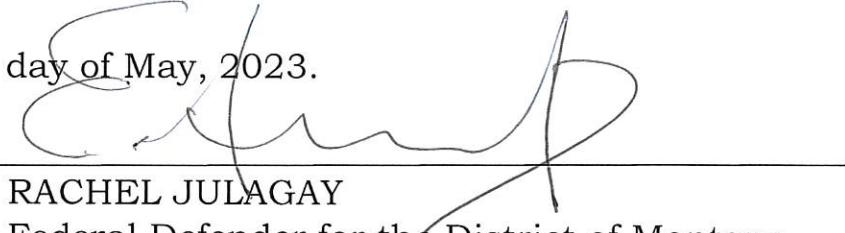
Finally, the district court erred in overruling Mr. Threefingers' Rule 29 Motion for Acquittal, and in turn, the Ninth Circuit Panel erred when it affirmed the conviction.

Therefore, Mr. Threefingers' Fifth Amendment Right under the Due Process Clause of the United States Constitution was violated.

CONCLUSION

FOR THESE REASONS, Petitioner asks this Honorable Court to grant a writ of certiorari and review the judgement of the Ninth Circuit Court of Appeals.

Dated this 23rd day of May, 2023.


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