

23-5587

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JUN 26 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DANIEL CARRINGTON

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

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

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANIEL CARRINGTON

(Your Name)

USP-HAZELTON/P.O. BOX 2000

(Address)

BRUCETON MILLS, WEST VIRGINIA 26525

(City, State, Zip Code)

Not Applicable (Petitioner is in Federal Prison)

(Phone Number)

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QUESTION(S) PRESENTED

WHETHER THIS COURT'S DECISION IN UNITED STATES V. BURRAGE, 571 U.S. 204 (2014), CREATED A BRIGHT LINE RULE ESTABLISHING A RIGHT OF THE DEFENDANT TO PROOF BEYOND A REASONABLE DOUBT THAT THE DECEDENT'S DEATH WAS THE PROXIMATE CAUSE OF THE CONTROLLED SUBSTANCE, ALONE, DISTRIBUTED BY THE DEFENDANT; THAT IS, PROOF, THAT "BUT FOR" THE CONTROLLED SUBSTANCE THE DECEDENT WOULD NOT HAVE EXPIRED AND/OR NO OTHER FACT, CIRCUMSTANCE, OR EVENT, OCCURRING NATURALLY OR OTHERWISE CAN BE SAID TO HAVE CONTRIBUTED TO THE DEATH OF THE DECEDENT?

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:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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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-Exh 1 to the petition and is ("Exh" means Exhibit)

☐ reported at NA ("N/A" means Not Applicable); or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished. USCA No. 22-4239, 22-4240; USA v. Daniel Carrington

The opinion of the United States district court appears at Appendix N/A to the petition and is

☐ reported at USD No. 2:20-cr-00106-JAG-LRL-1; USA v. Daniel Carrington; 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☒ is unpublished.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 N/A to the petition and is

☐ reported at Not Applicable; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the Not Applicable court appears at Appendix _____ to the petition and is

☐ reported at Not Applicable; 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 February 14, 2023.

☐ 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: April 4, 2023, and a copy of the order denying rehearing appears at Appendix-Exh 2.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

The Judgement of the U.S. District Court for the Eastern district of Virginia was entered on April 6, 2022 (in Case No. 2:20-cr-00106-JAG-LRL-1, USDC), and a timely notice of appeal was taken to the Fourth Circuit Court of Appeals, and a final disposition in the appeals was entered on February 14, 2023, with Rehearing & Rehearing En Banc being denied on April 4, 2023. Thus the District Court had jurisdiction pursuant to 18 U.S.C. § 3231; and the Court of Appeals had jurisdiction pursuant to 18 U.S.C. § 1291, and whereby, this Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254

☐ For cases from state courts:

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: Not Applicable, 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 N/A (date) on N/A (date) in Application No. A.

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

Specifically, 28 U.S.C. § 1254, as this is a Federal Court Case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No Person should suffer adversely as a result of the application of a law or proceeding, without first enjoying notice thereof and the proper application and process of that law and proceeding, pursuant to the right, guarantee, and protection under the Fifth Amendment to the United States Constitution. (Amendment V).

STATEMENT OF THE CASE

Daniel Carrington seeks review in this Court from his jury trial finding of guilt and the resulting enhanced/aggravated sentence in the United States District Court for the Eastern District of Virginia (Norfolk Division), which involved the recently added element to 21 U.S.C. § 841(a)(1)'s drug distribution offense, when the distributed drug (controlled substance) results in death, and based on the overdose death of the decedent, "D.J.," allowing for the significantly more severe sentence otherwise inapplicable.

Beginning in 2017, and following an investigation thereafter of Carrington's conduct, which included several controlled substance purchases of illegal drugs from him, the Government charged Carrington with one count of conspiracy to traffic in heroin, acetyl fentanyl, in violation of 12 U.S.C. § 846 (Count One); one count of distribution of acetyl fentanyl, resulting in death, in violation of 21 U.S.C. § 841(a)(1) and § 841(b)(1)(C) (Count Two); and three counts of distribution on April 28, 2020, May 1, 2020, and on May 7, 2020 (Counts Three, Four and Five, respectively).

After a four day trial, a jury returned a verdict on May 21, 2021, finding Carrington guilty on all counts, including the overdose death of decedent, "D.J.," charged in Count Two. And at sentencing, over Carrington's objection, the Court applied U.S.S.G. § 2D1.1(a)(1), which establishes a base offense level of 43 for drug distribution offenses when death results. Combined with Carrington's criminal history category of IV, the Court found Carrington's guideline range to be life imprisonment, but then imposed a downward variant sentence of 540 months imprisonment.

Carrington then filed a timely notice of appeal, and presented to the Fourth Circuit Court of Appeals, among other things, that the evidence was insufficient to support the jury's verdict and the Court's judgement, specifically, with regards to the cause of "D.J.'s" death, in the absence of a full/complete autopsy (forensic

examination) report, establishing that the acetyl fentanyl, and that substance alone, was the "proximate cause" of "D.J.'s" death. However, the Fourth Circuit Court of Appeals affirmed Carrington's conviction and sentence without regard, explanation, or illumination why this Court's holding in Burrage (United States v. Burrage, 571 U.S. 204 (2014)) was inapplicable or irrelevant to the instant circumstances in Carrington's case.

In his Petition for Rehearing & Rehearing En Banc, Carrington argued that, in keeping with his rights under Burrage, it was not only applicable, but controlling law from this Court on the issue and circumstances presented in his case, and that absent a full autopsy, ruling out any prevalent circumstances, fact, or event, naturally occurring or otherwise, contributing to "D.J.'s" death, proof beyond a reasonable doubt as to the proximate cause of her death (that is, but for the fentanyl alone, "D.J." would not have expired) was absent(period) and thus guilt insufficient under the Burrage standard.

REASONS FOR GRANTING THE PETITION

The U.S. District Court for the Eastern District of Virginia erroneously entered a jury's finding of guilt against Carrington for causing "D.J.'s" death as a result of the controlled substance he was accused of distributing, in complete disregard to this Court's holding in United States v. Burrage, 571 U.S. 204 (2014), and the Fourth Circuit Court of Appeals furthered the error in affirming Carrington's appeal seeking review of the "resulting in death" judgement, also in complete disregard to Burrage's controlling authority on the issue.

The Eastern District of Virginia District Court and the Fourth Circuit Court of Appeals failed to apply this Court's controlling law in U.S. v. Barrage, 571 U.S. 204 (2014), upon Carrington's objection and claim that the prosecution's (Government) lack of a complete and full autopsy (forensic examination) report, establishing that the decedent, "D.J.'s" death was the proximate cause of the controlled substance distributed by Carrington, and not any other fact, event, or other prevalent circumstance, occurring naturally or otherwise; that is, but for the controlled substance, alone, "D.J." would not have expired.

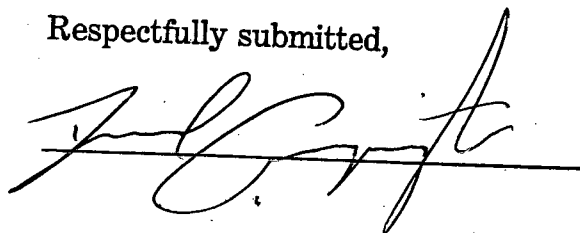
Here, the Government's forensic examiner testified and presented evidence establishing only that no other narcotic, toxin, virus, or other prevalent defect was discovered in "D.J.'s" blood as a result of his post mortem examination (that only included blood toxicology tests/exams), but no other examination of the body (bones, tissue, etc.) was conducted, and that this was so because in the State of Virginia, full autopsies were not done on decedents younger than the age of thirty one years, regardless of the circumstance surrounding the death. Thus, this partial styled examination could not determine, rule out, or say that there was no other fact, even, or other prevalent circumstance, occurring naturally or otherwise, present in and with "D.J.'s" body, health, and life that, alone or in conjunction with the controlled substance distributed by Carrington, which did or

could have caused or resulted in the death; that is, "but for" the heroin alone, "D.J." would not have died.

As such, not only was the lack of a full autopsy insufficient to rule out another injury, debilitating disease or defect, occurring naturally or otherwise, to satisfy Burrage's proximate cause standard, but the lack of a complete autopsy also violated Carrington's due process right to the "causation" and "but for" theories of proof established by Burrage. Hence, certiorari is necessary to clarify whether Burrage creates a bright line rule/right of the defendant to forensic proof beyond a reasonable doubt that his distributed substance, alone, caused the decedent's death; in otherwords, the prosecution should not have the luxury of foregoing a complete autopsy at the expense and **CONCLUSION** right of the defendant. Otherwise, the "causation" and "but for" standards of proof are rendered moot, superflous and/or flexible or usurpable.

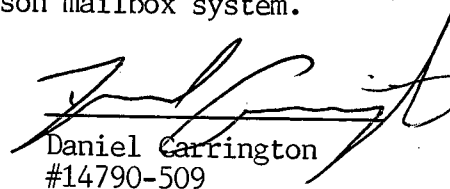
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 26, 2023

I HEREBY SWEAR, under penalty of perjury, pursuant to the federal criminal code and rule(s) for perjury, that I forwarded a copy of this foregoing Petition for Writ of Certiorari was forwarded to the U.S. Solicitor General's Office, at 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, this 26th day of June, 2023, via first class-mail, postage prepaid via the prison mailbox system.



Daniel Carrington
#14790-509