

IN THE SUPREME COURT OF THE UNITED STATES

RONELL WHITEHEAD, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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No. 23-6087

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Petitioner contends (Pet. 20-21) that expert testimony regarding the behavior of participants in a drug-trafficking operation was admitted in violation of Federal Rule of Evidence 704(b), on the theory that it amounted to an opinion about whether petitioner had the requisite mental-state element for a drug-trafficking conspiracy offense. In particular, petitioner contends (Pet. 20-21) that the expert's testimony that certain evidence indicated the existence of a "group," rather than individuals operating independently of each other, amounted to an opinion that petitioner intended to engage in a conspiracy.

As petitioner notes (Pet. 20), on November 13, 2023, this Court granted a petition for a writ of certiorari in Diaz v. United States, No. 23-14, to consider whether the admission of certain expert testimony in a criminal trial regarding the practices of drug-trafficking organizations violated Rule 704(b). Petitioner requests (Pet. 21) that the Court hold the petition in this case pending the Court's decision in Diaz. In this case, however, the court of appeals not only rejected petitioner's Rule 704(b) argument on the merits, but also determined that, "even assuming arguendo" that the disputed testimony was admitted in violation of Rule 704(b), any error "was harmless and not reversible error in light of the evidence that supports [petitioner's] membership in the conspiracy." Pet. App. 7a; see ibid. (discussing the other evidence, including testimony from cooperating witnesses and undercover officers, as well as video and audio recordings of drug transactions). In light of that alternative ground for affirming petitioner's conspiracy conviction, the correct disposition of this case will not be affected by Diaz. The petition should therefore be denied.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
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* The government waives any further response to the petition unless this Court requests otherwise.