

IN THE SUPREME COURT OF THE UNITED STATES

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MUSTAFA DEVILLE REYNOLDS, PETITIONER

v.

UNITED STATES OF AMERICA

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

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether petitioner's distribution of a fentanyl-heroin mixture is subject to the enhanced penalty that applies when "death \* \* \* results from the use of such substance," 21 U.S.C. 841(b)(1)(C), where petitioner sold the mixture to an intermediary acting on behalf of the victim, and fentanyl and heroin were a but-for cause of the victims' deaths.

2. Whether the sufficiency-of-the-evidence standard set forth in Jackson v. Virginia, 443 U.S. 307 (1979), should be overruled in cases involving circumstantial evidence.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (W.D. Mich.):

United States v. Reynolds, No. 20-cr-24 (May 12, 2022)

United States Court of Appeals (6th Cir.):

United States v. Reynolds, No. 22-1431 (Nov. 9, 2023)

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No. 23-6692

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-28a) is reported at 86 F.4th 332.

JURISDICTION

The judgment of the court of appeals was entered on November 9, 2023. The petition for a writ of certiorari was filed on February 3, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Michigan, petitioner was convicted on two counts of distributing heroin and fentanyl resulting in death,

in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C), and an additional count of distributing heroin and fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). See Pet. App. 29a. The district court sentenced petitioner to 328 months of imprisonment, to be followed by three years of supervised release. See id. at 30a-31a. The court of appeals affirmed. See id. at 1a-28a.

1. On August 20, 2019, petitioner sold a fentanyl-heroin mixture to Allen McAllister. See Pet. App. 2a. Later that day, McAllister visited his parents for dinner, and his parents noticed that he was "kind of messed up." Id. at 3a (citation omitted). But McAllister "began to act normally as the night wore on," and his parents believed that he "'was pretty much fine'" when he left at around 10:30 p.m. Ibid. (citation omitted). McAllister drove back to his own home, arriving at around 11 p.m. See ibid. At around 2:30 a.m., one of McAllister's roommates found him unconscious in his parked car and called 911. See ibid. Paramedics took McAllister to the hospital, but he died hours later. See ibid. The medical examiner found that McAllister had died from a fentanyl overdose, and a toxicologist found that fentanyl was a but-for cause of his death. See id. at 5a.

Also on August 20, 2019, petitioner sold a fentanyl-heroin mixture with a purple hue to a middleman. See Pet. App. 4a, 7a. The middleman provided half of the mixture to Brett Dame and retained the other half "for his 'middling' services." Id. at 4a.

The middleman later used some of the drugs, overdosed, and then called Dame to warn him about the drugs' strength. Ibid. Dame "said he felt fine," but at approximately 5 a.m. the next morning, his roommate found him "discolored and not breathing," with a purplish powder next to his body. Ibid. (brackets and citations omitted). The roommate called 911, and paramedics took Dame to the hospital, but Dame died several days later. See ibid. The medical examiner found that Dame died from a mixed-drug overdose, and a toxicologist found that fentanyl and heroin were but-for causes of his death. See id. at 5a.

2. A grand jury indicted petitioner on two counts of distributing heroin and fentanyl resulting in death, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C), and one additional count of distributing heroin and fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). See Superseding Indictment 1-3. The first two counts rested on petitioner's distribution of drugs to McAllister and Dame, and the third count rested on separate conduct of selling drugs to an undercover officer. See ibid.

Following a trial, a jury found petitioner guilty on all counts. See Pet. App. 5a. The district court sentenced him to 328 months of imprisonment, to be followed by three years of supervised release. Id. at 30a-31a.

3. The court of appeals affirmed. See Pet. App. 1a-28a.

The court of appeals rejected petitioner's claim that insufficient evidence supported his conviction for the distribution of heroin and fentanyl resulting in death. See Pet. App. 6a-9a. Petitioner argued that McAllister and Dame could have acquired and used fatal drugs from a different source in the hours after they obtained the drugs sold by petitioner, but the court found that "these speculative possibilities" fell "well short of showing insufficient evidence." Id. at 9a.

The court of appeals also rejected petitioner's contention that the sentence enhancement in 21 U.S.C. 841(b)(1)(C) -- which applies "if death \* \* \* results from the use of [the] substance," ibid. -- did not apply to Dame's death because petitioner had sold the drugs to an intermediary rather than directly to Dame. Pet. App. 8a. The court explained that the statutory text "requires proof that the drug that a defendant sold was the 'but for' cause of a victim's death," but "does not require proof that a defendant sold the fatal drugs directly to the victim." Ibid. (citation omitted). The court added that it had rejected an argument identical to petitioner's in United States v. Davis, 970 F.3d 650 (6th Cir. 2020), cert. denied, 141 S. Ct. 1108 (2021). See Pet. App. 8a-9a.

#### ARGUMENT

Petitioner contends (Pet. 6-9) that the death-results enhancement in 21 U.S.C. 841(b)(1)(C) does not apply to Dame's

death because petitioner sold the drugs to an intermediary rather than directly to Dame. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of any other court of appeals. Petitioner also contends (Pet. 9-12) that this Court should overrule the sufficiency-of-the-evidence standard set forth in Jackson v. Virginia, 443 U.S. 307 (1979), and should adopt a different standard for cases involving circumstantial evidence. That contention lacks merit, and petitioner in any event fails to show that he would be entitled to relief under his preferred standard. The petition for a writ of certiorari should be denied.

1. Section 841(b)(1)(C) prescribes increased punishment for the distribution of an illegal substance "if death or serious bodily injury results from the use of such substance." 21 U.S.C. 841(b)(1)(C). Here, the verdict shows the jury's finding that Dame's "death \* \* \* result[ed] from the use of [the] substance" that petitioner sold. Ibid. The death-results enhancement therefore applies by its plain terms.

Petitioner errs in suggesting (Pet. 6-7) that the statute requires the government to prove that the defendant directly distributed the drug to the victim who died. No such requirement appears anywhere in the statutory text, and this Court "ordinarily resist[s] reading words or elements into a statute that do not appear on its face." Bates v. United States, 522 U.S. 23, 29

(1997). The statutory text instead “requires the government to prove only that the specific drug underlying a defendant’s violation of § 841(a) is the same drug that was the but-for cause of the victim’s death.” United States v. Davis, 970 F.3d 650, 656 (6th Cir. 2020), cert. denied, 141 S. Ct. 1108 (2021). “If so, the enhancement applies whether or not the defendant has a connection to (or even knowledge of) the person who died.” Ibid.

Petitioner also errs in suggesting (Pet. 8-9) that the statute required the government to prove that he either aided and abetted, or conspired with, the middleman who sold the drugs to Dame. Principles of accomplice liability and conspiracy liability may be relevant when the government seeks to hold one person criminally liable for another person’s acts. Specifically, an accomplice who aids and abets another person in the commission of a crime is punishable as though he committed that crime himself. See 18 U.S.C. 2(a); Rosemond v. United States, 572 U.S. 65, 70-74 (2014). Similarly, a conspirator is liable for a co-conspirator’s foreseeable acts committed in furtherance of the conspiracy. See Pinkerton v. United States, 328 U.S. 640, 647-648 (1946). In this case, however, the government did not seek to hold petitioner vicariously liable for the middleman’s acts.

Instead, in this case, the government sought to hold petitioner liable for his own acts. Petitioner personally distributed the controlled substances at issue, and the death-

results enhancement in Section 841(b)(1)(C) applies because Dame's death resulted from the use of those very substances. The application of the death-results enhancement thus did not require proof that petitioner was responsible for someone else's actions as an accomplice or co-conspirator. See Davis, 970 F.3d at 657.

Contrary to petitioner's contention (Pet. 7-8), the decision below does not conflict with the Seventh Circuit's decision in United States v. Anderson, 988 F.3d 420 (2021). In Anderson, the defendant was convicted of distributing a fatal dose of heroin to the victim based on "an aiding-and-abetting theory," but the Seventh Circuit vacated that conviction because it found insufficient evidence that the defendant had aided and abetted that particular transaction. Id. at 424-425. The court also vacated the defendant's sentencing enhancement for causing serious bodily injury "because it [wa]s impossible to tell from the jury's verdict whether that enhancement applied only to her flawed distribution conviction, only to her unchallenged conspiracy conviction, or both." Id. at 422; see id. at 425-427.

Anderson did not suggest, much less hold, that a defendant who is convicted of distributing a controlled substance as a principal can escape the death-results enhancement simply because he did not sell the substance directly to the victim who died. To the contrary, in United States v. Harden, 893 F.3d 434, cert. denied, 139 S. Ct. 394 (2018), the Seventh Circuit upheld the

application of the materially identical death-results enhancement in 21 U.S.C. 841(b)(1)(B) to a defendant who sold drugs to intermediaries, who in turn resold them to a user who died. See 893 F.3d at 439, 447-449; see also id. at 449 ("[T]he issue presented simply does not implicate \* \* \* limitations on co-conspirator liability.").

2. Certiorari also is not warranted to review petitioner's contention (Pet. 9-12) that this Court should overrule Jackson's sufficiency-of-the-evidence standard. In Jackson, the Court held that a guilty verdict in a criminal case rests on sufficient evidence if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." 443 U.S. at 319. That standard precludes a reviewing court from asking "whether it believes that the evidence at the trial established guilt beyond a reasonable doubt," id. at 318-319 (citation omitted), and instead "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts," id. at 319.

Jackson accordingly declined to adopt "a theory that the prosecution was under an affirmative duty to rule out every hypothesis except that of guilt beyond a reasonable doubt," explaining that the Court had previously rejected that theory in

Holland v. United States, 348 U.S. 121, 140 (1954). Jackson, 443 U.S. at 326. Petitioner criticizes the “abolition of the reasonable hypothesis of innocence rule,” which he claims was “‘thoroughly settled’” before Holland. Pet. 9-10 (citation omitted). But this Court observed in Holland that lower courts were divided on the propriety of such a rule. See 348 U.S. at 139. The Court also explained that it would be “confusing and incorrect” to instruct a jury that “where the Government’s evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt.” Id. at 139-140.

In any event, overruling precedent requires a “‘special justification,’ over and above the belief ‘that the precedent was wrongly decided.’” Allen v. Cooper, 589 U.S. 248, 259 (2020) (citation omitted). Petitioner provides no special justification for revisiting Jackson and Holland. Indeed, petitioner “fail[s] to discuss the doctrine of stare decisis or the Court’s cases elaborating on the circumstances in which it is appropriate to reconsider a prior constitutional decision.” Randall v. Sorrell, 548 U.S. 230, 263 (2006) (Alito, J., concurring in part and concurring in the judgment). “Such an incomplete presentation is reason enough to refuse [petitioner’s] invitation to reexamine [Jackson and Holland].” Ibid.

To the extent that petitioner means to suggest (Pet. 12) that the government had an obligation at trial to negate all reasonable

hypotheses of innocence, he does not explain how such an obligation would differ from the government's well-settled burden of proving the defendant's guilt beyond a reasonable doubt. The district court instructed the jury that petitioner was presumed innocent and that the government bore the burden of presenting evidence that "overcomes the presumption and convinces you beyond a reasonable doubt that he is guilty." D. Ct. Doc. 176, at 42 (Sept. 12, 2022). The court further explained that "[p]roof beyond a reasonable doubt" is proof that "is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives." Ibid. Petitioner does not explain why a jury that found him guilty under that well-settled standard, which mandates acquittal if the jury has a reasonable doubt of his guilt, might have reached a different result if the court had added an instruction reiterating that the evidence must be "inconsistent with every reasonable hypothesis of innocence." Pet. 9 (citation omitted).

At all events, this case would be an unsuitable vehicle for reviewing the second question presented because petitioner has not shown that he would be entitled to relief under his preferred standard of appellate review. The trial evidence definitively established that petitioner distributed the drugs that killed McAllister and Dame. Petitioner did not dispute in the court of appeals that a reasonable jury could find that McAllister and Dame

(through an intermediary) each acquired fentanyl-heroin mixtures from petitioner in the late afternoon or early evening of August 20, 2019, and that, by the next morning, McAllister had overdosed on fentanyl and Dame had overdosed on both fentanyl and heroin. See Pet. App. 6a-7a. The evidence also showed that "McAllister bought no other drug from the time that he purchased [petitioner's] drugs to the time that he overdosed," and there was "no evidence" that McAllister had either fentanyl or heroin at home. Id. at 7a. Similarly, the evidence showed that petitioner (through an intermediary) supplied Dame with a fentanyl-heroin mixture with a purple hue, id. at 4a, 7a, and that Dame had a "a purplish powder next to his body" when he overdosed, id. at 4a. Petitioner hypothesizes that McAllister and Dame each might have acquired and overdosed on a different distributor's drugs that evening, but he fails to show that those "speculative possibilities," id. at 9a, constitute reasonable hypotheses of innocence, especially given that the jury heard petitioner's arguments and still found him guilty beyond a reasonable doubt.\*

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\* Furthermore, contrary to petitioner contention (Pet. 12), the court of appeals' opinion did mention the testimony from McAllister's father and Dame's middleman that petitioner now invokes in support of his reasonable-hypothesis claim. See Pet. App. 3a (explaining that McAllister's parents "noticed that 'he was kind of messed up'" when he arrived for dinner around 5:00 p.m. but believed that "he 'was pretty much fine'" when he left around 10:30 p.m.) (citations omitted); id. at 9a ("[The middleman] also provided the following testimony about what Dame told him during [his] nighttime warning call: Dame 'said he was meeting up

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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with someone to pick up marijuana, I think something else, but I don't remember what.'"") (citation and emphasis omitted).