

No._____

IN THE SUPREME COURT OF THE UNITED STATES

RONNIE COLLINS JR., PETITIONER

V.

UNITED STATES OF AMERICA

**PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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QUESTION PRESENTED FOR REVIEW

Whether the limits placed on Collins's right to cross-examine the central witness against him constituted harmful error.

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Ronnie Collins Jr. asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on December 15, 2023.

PARTIES TO THE PROCEEDING

The caption of the case names all the parties to the proceedings in the court below.

RELATED PROCEEDINGS

United States v. Collins, U.S. District Court for the Western District of Texas, Number 5:20 CR 00468-DAE-4, Judgment entered December 19, 2022.

United States v. Collins, U.S. Court of Appeals for the Fifth Circuit, Number 22-51042, Judgment entered December 15, 2023.

OPINION BELOW

The unpublished opinion of the court of appeals is appended to this petition.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the court of appeals were entered on December 15, 2023. This petition is filed within 90 days after entry of judgment. *See* Supreme Court Rule 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

U.S. CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part, that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]”

STATEMENT

Petitioner Ronnie Collins Jr. was charged in a third superseding indictment with conspiring to possess more than 50 grams of methamphetamine with the intent to distribute it, and with possessing fifty or more grams of methamphetamine in a school zone with the intent to distribute it. 21 U.S.C. § 841(a)(1), (b)(1)(A), § 846(A)(ii),

and § 860. Collins pleaded not guilty, and a jury trial was held. The jury acquitted Collins of the possession count but convicted him of the conspiracy count.¹

The most critical evidence on the conspiracy charge against Collins was the testimony of co-defendant Anthony Lopez. Lopez admitted to being a long-time drug dealer who had moved significant quantities of drugs in and through San Antonio. He had been charged in the same indictment as Collins, had pleaded guilty, and had agreed to testify against Collins. Lopez received significant benefits for his cooperation. The government had recommended a sentence of only 135 months for him on his current drug and gun convictions. It also recommended that those sentences run concurrently with each other and with the sentence on Lopez's upcoming supervised-release revocation.² Lopez hoped by his testimony to reduce that sentence even further. Lopez's testimony was the only evidence that directly implicated Collins in a conspiracy to possess methamphetamine with the intent to distribute it. Nonetheless, the district court twice limited Collins's cross-examination of Lopez.

Lopez was convicted of methamphetamine trafficking in 2011. That did not slow him down. He continued to run his drug organization from prison, using a smuggled cell phone. In 2018, after his release from prison, the Lopez moved to San Antonio. He brought methamphetamine, heroin, and other drugs smuggled from

¹ The district court exercised jurisdiction under 18 U.S.C. § 3231.

² Collins received a 360-month sentence for going to trial on the charges.

Mexico in kilogram quantities up from Laredo, Texas, to San Antonio for distribution in that city and other parts of the country.

Lopez said that he met Collins in 2019, and that Collins became one of the people who helped him out in San Antonio. Lopez said that he stored drugs at Collins's apartment and that later Collins had obtained a property on LeCompte Street in San Antonio to use for storage. Lopez also claimed that Collins would take some of the drugs to a house on South Gevers Street, where Raymond Holloway would sell it. Lopez asserted that Collins was in charge of the South Gevers house and was the one who typically dealt with Holloway. According to Lopez, no methamphetamine was kept at the South Gevers house; Holloway had to contact Collins when he had a customer.

Lopez had multiple cell phones, one of which he used for drug transactions. On that phone, there was a contact known as "R.T." Lopez claimed that R.T. was Ronnie Collins. The R.T. number was not the phone number ending in 6000 that the testifying agents had linked to Collins. No one but Lopez claimed it was Collin's number.

Lopez identified several texts messages from R.T. on his phone. He said that one was about the sale of a pound of methamphetamine. In another text, R.T. sent Lopez the address of the house on Lecompte. Two other texts were about black, which Lopez said meant heroin, and cream, which Lopez said meant methamphetamine.

According to Lopez, Collins picked him up on August 31, 2020. Lopez said the men went in Lopez's Mercedes to the Lecompte house to get nine ounces of methamphetamine to bring to Holloway at the South Gevers house. When they arrived at the house, according to Lopez, Collins was driving the Mercedes. Lopez claimed Collins got out of the Mercedes and went up to the South Gevers house with the methamphetamine. That claim contradicted the factual basis for Lopez's plea, which stated Lopez had exited the Mercedes and taken the methamphetamine up to the house. Lopez did not deny that factual basis and he acknowledged that his plea agreement did not even mention Collins.

Lopez's trial testimony did not merely contradict his factual basis. It also directly contradicted Agent Brian Hutchinson's testimony that the passenger in the Mercedes had been the one who went into the house. Lopez flatly contradicted Hutchinson again when he denied that he had approached and spoken to Hutchinson after noticing him surveilling the house.

Lopez also claimed that, when Collins came to his house on September 28, he had a sale lined up for 18 ounces of methamphetamine. Lopez agreed to go along with the deal and to go to Lecompte Street to pick up methamphetamine. When they began driving away from the house, Lopez heard a helicopter and later he saw two marked police cars. He advised Collins, who was driving, to pull off the road and let him drive. The two parted ways at a Wal-Mart. Both men were arrested. No drugs were found.

Lopez testified that, in addition to selling drugs in San Antonio, he also moved drugs through San Antonio to Florida. For these shipments, he recruited people to drive the load vehicle and he accompanied them in a separate vehicle to provide surveillance and, if law enforcement appeared, distraction. Lopez said that Collins had gone with him on two of these trips.

During his testimony, Lopez testified that his drugs came from his “godfather” in Mexico. On cross-examination, he declared that he was getting kilogram shipments of drugs from his “godfather.” Lopez denied that his father-in-law was his godfather. When defense counsel tried to inquire into the identity and relation of this godfather, the district court sustained the prosecutor’s objection.

The district court also blocked counsel’s attempt to cross-examine Lopez about his statements that Collins, not him, had exited the car on August 31 at the South Gevers house. When counsel inquired “Would it surprise you that the agents that testified that you’re the individual that got out on that date,” the district court refused to allow the inquiry.

Apart from Lopez’s testimony claiming Collin’s involvement, the evidence was lacking. Collins was seen at the South Gevers house a couple of times, and he was stopped twice. No drugs were found, despite the use of a narcotics-detecting dog during one of the stops. Holloway was shown to have made at least one call to the 6000 number that belonged to Collins. Historical cell site records showed the 6000

phone had been in Florida two times during the summer of 2020. But no evidence linked Collins to the R.T. phone.

The surveilling officers who saw the Mercedes pull up on August 31 identified Lopez as the man who went up to the house. A cooperating informant later left the house with 251 grams of methamphetamine. Surveilling supervisory agent Brian Hutchinson also testified that the Mercedes had turned to enter the lot he was sitting in and drove up to his car. Lopez exited the car from its front passenger seat and demanded to know why Hutchinson was there. Hutchinson could not see who the driver of the Mercedes was.

Collins appealed, arguing that the district court's restrictions on his cross-examination of Lopez violated his confrontation rights and that the restrictions were not harmless error. The Fifth Circuit rejected that argument. It affirmed Collins's conviction. Appendix.

REASONS FOR GRANTING THE WRIT

BECAUSE THE JUDGMENT BELOW PERMITS A RESTRICTION ON CROSS-EXAMINATION THAT RUNS CONTRARY TO PRECEDENT, THE COURT SHOULD GRANT CERTIORARI.

The Sixth Amendment to the Constitution guarantees an accused in a criminal prosecution the right “to be confronted with the witnesses against him.” U.S. CONST. amend. VI. Confrontation includes the right to face a witness physically and to have the jury view the witness’s demeanor, *California v. Green*, 399 U.S. 149 (1970), but the “primary interest secured by” the confrontation clause “is the right of cross-examination.” *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (quoting *Douglas v. Alabama*, 380 U.S. 415, 418 (1965)). Cross-examination provides “the principal means by which the believability of a witness and the truth of his testimony are tested.” *Davis*, 415 U.S. at 316.

Cross-examination functions as an engine of truth, *Green*, 399 U.S. at 158, by permitting the accused to explore a witness’s story, by allowing him to “test the witness’s perceptions and memory,” and by providing an opportunity to “impeach” or “discredit” the witness. *Davis*, 415 U.S. at 316. Effective cross-examination requires that the accused be permitted to present matters relevant to the motivations of those who testify against him at trial. *Delaware v. Van Arsdall*, 475 U.S. 673, 678-79 (1986). The opportunity provided must permit exploration of the particular witness and case. Cross-examination must be sufficient to reveal “possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is

‘always relevant as discrediting the witness and affecting the weight of his testimony.’” *Davis*, 415 U.S. at 316 (quoting 3A J. Wigmore, Evidence s 940, p. 775 (Chadbourn rev. 1970)).

Restrictions on cross-examination affect not only the accused, but the criminal justice system. This is because cross-examination “is essentially a ‘functional’ right designed to promote reliability in the truth-finding functions of a criminal trial.” *Kentucky v. Stincer*, 482 U.S. 730, 737 (1987). A jury needs to have the benefit of the defense theory of the witness’s credibility put before it to “make an informed judgment as to the weight to place on” the testimony of a prosecution witness who “provide[s] ‘a crucial link in the proof . . . of petitioner’s act.’” *Davis*, 415 U.S. at 317 (citing *Douglas*, 380 U.S. at 419)).

Of course, this does not mean that an accused may cross-examine “in whatever way, and to whatever extent, the defense might wish.” *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). A court retains “broad discretion” to “preclude repetitive and unduly harassing interrogation[.]” *Davis*, 415 U.S. at 316. But restrictions imposed on cross-examination that harm the accused require vacatur of his conviction. *Cf. Van Arsdall*, 475 U.S. at 684. The factors to be considered in determining harm include “the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.” *Id.* at 684.

The district court's refusal in this case to allow Collins to cross-examine Lopez about the identity of his drug supplier and the likelihood that the supplier was a relative hampered Collins's efforts to show that Lopez was not a credible witness. The possibility that Lopez was blaming Collins for his relative's acts in order to divert attention from his relative would have been important information for the jury. Lopez's story about Collins was riddled with contradictions. His tales of long drives from his Churchwood home to places around San Antonio with Collins were inconsistent with his claims to not want to be around drugs.

Moreover, if Collins were truly in charge of the South Gevers house as Lopez claimed, there would be no reason for Lopez to be involved. But if Lopez were using Collins as cover for his own actions, the drives from one side of San Antonio to the other made sense. A jury that had the opportunity to hear about Lopez's relation to other participants would have been better able to evaluate his claims that Collins was a participant. Information about possible involvement in Lopez's crimes by Lopez's relatives would have given the jury information that would have put his testimony in a different light.

The district court also improperly restricted Collin's cross-examination into whether Lopez would be surprised to learn that an agent had testified that it was Lopez who went in the South Gevers house on August 31. That question was an attempt to have the jury observe Lopez's demeanor in response to an important matter relevant to his credibility—was he lying when he denied delivering drugs to the South Gevers house on August 31. Lopez had baldly denied that he went into the

South Gevers house. That testimony was diametrically opposite that given by Agent Hutchinson. Allowing the jury to hear Lopez cross-examined on that contradiction was critical to the jury's assessment of Lopez's credibility.

The restrictions placed on cross-examination prevented Collins from adequately exploring Lopez's possible biases and his credibility. The facts asked for by Collins's questions would have been important to the jury. Part of Collins's theory of the case was that Lopez was blaming him to shift attention away from a person Lopez was trying to protect. Cross-examination into the identity and name of this "godfather" would have pursued that theory and tested Lopez's credibility, motives, and bias. *Cf. Davis*, 415 U.S. at 315-17 (affirming need for cross-examination that allows full exploration of bias). If Lopez had declined to name his godfather, or otherwise tried to shy away or avoid the question, it would have shown the jury that Lopez was trying to protect the godfather. That would have directly supported Collins's defense that Lopez was falsely implicating him.

The second question that the district court refused to permit was likewise crucial to Lopez's credibility. Agent Hutchinson had testified that Lopez had taken something into the house on South Gevers Street the police were surveilling as a drug-distribution point. Lopez had testified that Collins had been the one who took something into the house. In asking Lopez whether he would be surprised to hear an officer had testified differently, Collins was seeking to show the jury Lopez's reaction to the conflict. This implicated a crucial value of the confrontation right: that the jury "may look at him, and judge by his demeanor upon the stand and the manner in

which he gives his testimony whether he is worthy of belief.” *Green*, 399 U.S. at 158 (quoting *Mattox v. United States*, 156 U.S. 237, 242-43 (1895)).

How Lopez answered the question would have allowed the jury to hear and see evidence that revealed important information about his credibility, motivation, and possible bias. The question was therefore an important one, and contrary to the government’s argument, the question did not ask for Lopez to comment on the officer’s veracity. It asked Lopez only to answer was he surprised to hear that another witness had made a diametrically opposite statement.

A full cross-examination into Lopez’s biases and credibility was necessary. Lopez was the key witness against Collins on the conspiracy charge. Collins was not shown to have actually possessed methamphetamine. There was no audio recording of him making a deal as there was of Ramiro Estrada and Raymond Holloway. Agent Hutchison could not identify Collins as the person who was in the car with Lopez when Hutchinson saw Lopez go into the South Gevers house. Without Lopez’s testimony, the evidence merely showed an association between Collins and the others. Only Lopez directly claimed that Collins participated in a conspiracy to possess methamphetamine with the intent to distribute it. For this reason, full cross-examination to explore Lopez’s credibility, motives, and biases was necessary.

The restrictions on cross-examination imposed by the district court and affirmed by the Fifth Circuit appear contrary to this Court’s teachings. The restrictions cannot be said

to be harmless beyond a reasonable doubt. Because the opinion and result below is at odds with this Court's precedent, the Court should grant certiorari.

Conclusion

FOR THESE REASONS, Petitioner asks that the Court grant a writ of certiorari and review the judgment of the court of appeals.

/s/ PHILIP J. LYNCH
Counsel of Record for Petitioner

DATED: February 6, 2024.