

No. _____

In The
Supreme Court of the United States

NATHANIEL BLAYN BECKER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the obstruction of justice enhancement for “false” trial testimony by the defendant violates the right to testify when the court did not make a finding the allegedly false testimony was willful and did not consider the defendant’s psychotic disorder diagnosis’ impact on the testimony?
2. Whether the court’s application of the base offense level for explosive devices that create a substantial risk of death or serious bodily injury violates due process where the unlit, “not very energetic” devices could at most simply melt and not explode?

LIST OF PARTIES

NATHANIEL BLAYN BECKER, *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

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PETITION FOR WRIT OF CERTIORARI

Nathaniel Becker, an inmate currently incarcerated at USP Hazleton in Bruceton Mills, WV by and through Richard W. Weston, Criminal Justice Act panel attorney, respectfully petitions this court for a writ of certiorari to review the judgment of the Fourth Circuit Court of Appeals.

OPINIONS BELOW

The opinion of the United States Fourth Circuit Court of Appeals appears at Appendix 1a to the petition and is unpublished.

JURISDICTION

Mr. Becker's appeal was denied on January 17, 2024. Judgment was entered on the same date. Appendix 1B. He did not file a rehearing petition. The Court has jurisdiction under 28 U.S.C. §1254(1) having timely filed this petition for a writ of certiorari within ninety days of the Fourth Circuit Court of Appeal's judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment VI provides in relevant part:

No person shall be...deprived of life, liberty, or property with due process of law.

STATEMENT OF THE CASE

On November 16, 2021, Mr. Becker was indicted on four counts: two for knowingly placing a destructive device on a vessel and, relatedly, two for knowingly possessing a destructive device that was not registered with the National Firearms Registration and Transfer. Mr. Becker's indictment alleged he placed a pipe bomb on a vessel in the Ohio River on October 21, 2021 and again on October 25, 2021. He was also indicted for possessing the pipe bombs, as destructive devices, on those same days. A jury trial was held on April 18 and 19, 2022. The evidence displayed that on October 21, 2021, one device was found on an empty barge towed by the Janice R. Brewer tugboat near Pleasants County, West Virginia. The device was a pipe bomb made up of a 1¼-inch by 24-inch pipe with two reducer couplings and filled with ammonium nitrate and aluminum. On October 25, 2021, around 8:30 p.m., two other similar devices were found on the Connie K. tugboat. An expert witness for the Government testified that this pipe bomb satisfied the legal definition of a destructive device. The Government's forensic chemist, Malinda Durand, testified that the mixture of ammonium nitrate and aluminum, when lit with a flame, "kind of melts. It's not very energetic, but that's what we expect to see with that type of mixture." On October 26, two benign devices were found after the MV Findlay, another tugboat, travelled south under the I-77 bridge. They contained a blue powder later determined to be sodium chloride (consistent with what the septic cleaner RID-X contains).

During the trial, the evidence showed that Mr. Becker bought several items from Lowe's in Marietta, Ohio, which is very close to the I-77 bridge that runs from

Ohio to West Virginia. The items were purchased on the 20th, 21st, 25th, and 26th of October 2021. Some of the items purchased were consistent with some parts comprising the three devices and two others filled with a non-dangerous material. Some of the items he purchased were not part of any device. And for some parts of the devices, no evidence was introduced that Mr. Becker had ever purchased or possessed them. Mr. Becker purchased many items similar to the items found on the boats regarding the other devices. He was also seen on video purchasing a 24-inch galvanized pipe and other plumbing pieces and then walking along a recreational path that went under the I-77 bridge while carrying the pipe and a backpack. He was then seen on video almost two hours later with the backpack but not the pipe.

Mr. Becker exercised his constitutional right and testified at trial regarding purchasing the items. He stated they were for a future project to reconnect a spring water line on his property to a pump so that the land would have this additional, outside water supply. He also said that he wanted galvanized steel pipe to use in some places because he had been told that reinforcing plastic piping this way would help prevent breakage in the plastic line. As stated, Mr. Becker was seen on video leaving Lowes and going in the direction of the bridge. He testified that he went fishing under the bridge and used one pipe to hold a rod. No witness saw Mr. Becker with any destructive device in his possession, whether near the I-77 bridge or ever. No witness saw Mr. Becker on the I-77 bridge at the times the Janice R. Brewer, Connie K., or MV Findlay passed under the I-77 bridge.

On April 19, 2022, the jury convicted Mr. Becker on all four counts.

The PSR added two levels for obstruction of justice under U.S.S.G. § 3C1.1. It reasoned that Mr. Becker gave “false information regarding his actions between October 20, 2021 and October 26, 2021” when he testified in his own defense at trial. At the sentencing hearing on December 1, 2022, the District Court agreed with the PSR and ruled that the proper guideline range to consider was 97-121 months. The District Court also accepted the PSR’s enhancement for obstruction of justice. It noted that Mr. Becker did more than just exercise his right to testify and that he instead offered a full, alternate story for his actions. The lower court acknowledged that it should consider whether any potential obstruction of justice resulted from confusion, mistake, or faulty memory. Furthermore, although the lower court was fully aware that Mr. Becker had been diagnosed with a psychotic disorder, the sole reasons it gave for rejecting any confusion, mistake, or faulty memory was:

defendant’s continued insistence of the accuracy of his testimony.

He did not state that he could not recall or state some details with inaccuracy. Instead, his defense denied the charge all together and presented a convoluted alternative explanation for the evidence. His testimony was roundly rejected by the jury, and the jury’s verdict necessitated a finding that his testimony was false.

However, the lower court never addressed Mr. Becker’s health or how any illness, delusion, or hallucination may have impacted his trial testimony or memory. “Where the enhancement for obstruction of justice is based on a defendant’s perjurious testimony, trial court findings should encompass the factual predicates for perjury, namely that the defendant (1) gave false testimony; (2) concerning a material matter; (3) with willful intent to deceive.” *United States v. Andrews*, 808 F.3d 964, 969 (4th Cir. 2015). The district court failed to address whether there was a willful intent to deceive.

Direct Appeal

On direct appeal, Mr. Becker argued that the obstruction of justice enhancement was improper. The appellate court acknowledged the law that a “district court can apply the enhancement based on trial testimony when a defendant gives ‘false testimony’ concerning a material matter with the willful intent to provide false testimony.” *United States v. Dunnigan*, 507 U.S. 87, 94 (1993); see *United States v. Perez*, 661 F.3d 189, 192 (4th Cir. 2011). The court summarily dismissed Mr. Becker’s arguments holding “[w]e conclude that the district court properly found the necessary elements to apply the two-level enhancement for obstruction of justice.”

Regarding the base offense level, the court also tersely concluded that it had “reviewed the record and conclude that the district court did not err in finding that the pipe bombs tossed on to barges in the Ohio River created a substantial risk of death or serious bodily injury to persons other than Becker.”

REASONS FOR GRANTING THE WRIT

I. To Avoid Erroneous Deprivations of the Criminal Defendant’s Right to Testify on his Own Behalf, this Court should Clarify that an Obstruction of Justice Should not Apply if the Court Doesn’t Consider Mental Illness regarding a “Willful Intent to Deceive”

This Court has repeatedly recognized the paramount importance of allowing a defendant to tell his version of events in his own words to the jury. *Rock v. Arkansas*, 483 U.S. 44, 52 (1987). It is a right “essential to due process of law in a fair adversary process.” *Id.* at 51 (quoting *Faretta v. California*, 422 U.S. 806, 819 n.15 (1975)). The accused is “the most important witness for the defense” and his testimony is “[l]ogically included in [his] right to call witnesses whose testimony is “material and

favorable to his defense.” ” *Id.* (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)). If the accused is deprived of “an opportunity to be heard,” we simply cannot say he has been afforded his “day in court.” *Id.* (emphasis omitted) (quoting *In re Oliver*, 333 U.S. 257, 273 (1948)).

In our case, Mr. Becker was allowed the opportunity to be heard but was punished for it afterward. This violated the Court’s holding in *United States v. Dunnigan* that only willfully false testimony can be punished. *Dunnigan* at 94. In our case, the court never found that the testimony was willfully false. It also did not consider that Mr. Becker was diagnosed with Psychotic Disorder: Not Otherwise Specified which can cause delusions and hallucinations. Any allegedly false testimony could have resulted from this and therefore the court erred by failing to consider it when applying the obstruction of justice enhancement.

II. To Avoid Erroneous Deprivations of the Criminal Defendant’s Right to Procedural Due Process the Court should not have Applied a Higher Base Offense Level when No Evidence Displayed the Devices Created a Risk of Death or Serious Bodily Injury

“The district court should begin all sentencing proceedings by correctly calculating the applicable guideline range, and “to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007). The fundamental concept of due process underlies the procedural requirements in federal sentencing. *Burns v. United States*, 501 U.S. 129, 137–38 (1991) In our case, the guideline range was incorrectly calculated because the base offense level was elevated even though the government’s testimony provided the “explosive” devices would only melt if lit. Although the devices on the barges did have

wicks, there was no evidence they were lit or even attempted to be lit. An “explosive” device without ignition cannot cause any harm. Furthermore, the government’s expert witness testified that even if the devices were lit, “it kind of melts. It’s not very energetic...” An “explosive” device that simply melts and does not expel energy cannot create a risk of death or serious bodily injury. Therefore, Mr. Becker’s due process rights were violated when the court enhanced his base offense level.

CONCLUSION

This court should grant certiorari.

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