[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10332

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES HYDE,
a.k.a Chuck,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 2:19-cr-00005-LGW-BWC-2

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Before WILSON, LUCK and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Charles Hyde appeals his convictions for drug and firearm-related offenses and the imposition of his 444-month sentence. Hyde raises several arguments on appeal: (1) that the district court erred by finding his waiver of counsel valid; (2) that the district court erred by failing to declare that 18 U.S.C. §§ 922(g)(1) and (k) violated his Second Amendment rights; (3) that the district court erred by constructively amending his superseding indictment, warranting reversal of his conviction and sentence for brandishing a gun in furtherance of a drug-trafficking crime; (4) that the evidence that he brandished a firearm in furtherance of a drug-trafficking crime was so insufficient as to render this conviction a manifest miscarriage of justice; (5) that the district court erred by sentencing him as an armed career criminal; and (6) that the district court plainly erred by enhancing his sentence without submitting his prior convictions to a jury. Having read the parties' briefs and reviewed the record, we affirm Hyde's convictions and sentence.

I.

We review *de novo* whether a waiver of the right to counsel was knowing and voluntary, which is a mixed question of law and fact. *United States v. Garey*, 540 F.3d 1253, 1268 (11th Cir. 2008) (*en banc*). On appeal, it is the government's burden to show the validity of the waiver. *United States v. Cash*, 47 F.3d 1083, 1088 (11th Cir.

1995). We have not yet decided whether a *Faretta* challenge raised for the first time on appeal is reviewed *de novo* or for plain error. *See United States v. Owen*, 963 F.3d 1040, 1048 n.5 (11th Cir. 2020).

Under the Sixth Amendment, all criminal defendants are entitled to the assistance of counsel. U.S. Const. amend. VI. To waive the right to counsel, the defendant "must clearly and unequivocally assert the right of self-representation," and this waiver must be "knowing, intelligent, and voluntary." *Owen*, 963 F.3d at 1048 (quotation marks omitted). When a defendant asks to represent himself, the district court should ideally hold a hearing pursuant to *Faretta v.California*, 422 U.S. 806, 819 (1975) to inform him of the charges against him, the possible punishments, basic trial procedure, and the hazards of self-representation. *United States v. Kimball*, 291 F.3d 726, 730 (11th Cir. 2002). This hearing allows the district court to determine that the defendant understands the risks of self-representation and makes a fully informed choice. *Id.* "As long as the record establishes that the defendant understood the risks of self-representation and freely chose to face them, the waiver may be valid." *Owen*, 963 F.3d at 1049 (quotation marks omitted).

We consider eight factors in determining whether the defendant's waiver was knowing and voluntary:

> (1) the defendant's age, health, and education; (2) the defendant's contact with lawyers prior to trial; (3) the defendant's knowledge of the nature of the charges and possible defenses and penalties; (4) the defendant's understanding of the rules of evidence,

> procedure and courtroom decorum; (5) the defendant's experience in criminal trials; (6) whether standby counsel was appointed and, if so, the extent to which standby counsel aided in the trial; (7) any mistreatment or coercion of the defendant; and (8) whether the defendant was attempting to manipulate the trial.

Kimball, 291 F.3d at 730-31. A defendant's waiver may be valid when most of these factors do not weigh in his favor. *Id.* at 731. Importantly, a defendant need not have the skill and experience of a lawyer to make a valid waiver. *Faretta*, 422 U.S. at 835.

Here, as an initial matter, although Hyde raises a *Faretta* challenge for the first time on appeal, we need not decide whether to review the claim *de novo* or for plain error because his claim fails even on *de novo* review. *See Owen*, 963 F.3d at 1048 n.5. Based on a review of the record and the *Faretta* inquiry, we conclude that the district court did not err in concluding that Hyde's waiver of counsel was knowing, intelligent, and voluntary. The magistrate judge covered most of the *Kimball* factors at two hearings, warning Hyde of the risks he faced by proceeding without counsel. The magistrate judge informed Hyde of the nature of the charges against him by detailing each of the five counts in the superseding indictment; he addressed the statutory prison terms for each of the charges; he warned Hyde of the dangers of self-representation; and he questioned Hyde about his knowledge of basic legal procedures. The magistrate judge appointed stand-by counsel, the same counsel

who had represented Hyde for 13 months at that time, and after Hyde insisted that his waiver was entirely voluntary, the magistrate judge granted his motion to proceed *pro se*. "As long as the record establishes that the defendant understood the risks of self-representation and freely chose to face them, the waiver may be valid." *United States v. Stanley*, 739 F.3d 633, 645 (11th Cir. 2014) ("The ultimate test is not the trial court's express advice, but rather the defendant's understanding.").

The trial court also considered the information provided in the psychiatric evaluation requested by defense counsel, which included Hyde's background and history of substance abuse. In the evaluation, Hyde denied any history of mental health symptoms. The psychologist concluded that Hyde was able to understand the nature and consequences of the criminal proceedings against him and assist in his defense and, thus, was competent to stand trial. Based on all these factors, the district court granted Hyde's motion to proceed *pro se*. We conclude, based on this record, that the district court did not err in granting the motion, and we affirm as to this issue.

II.

Hyde argues that 18 U.S.C. §§ 922(g)(1) and (k) violate his Second Amendment rights. Generally, we review *de novo* the constitutionality of a statute, as it is a question of law. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). However, if the issue is raised for the first time on appeal, as it is here, we review for plain error only. *Id.* Under plain-error review, we will reverse a district

court's decision only if "there is: (1) error, (2) that is plain, and (3) that affects substantial rights, and if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Doyle*, 857 F.3d 1115, 1118 (11th Cir. 2017) (quotation marks omitted). An error is plain if it is clear or obvious—if the explicit language of a statute, rule, or precedent from the Supreme Court or this court directly resolves the issue. *United States v. Innocent*, 977 F.3d 1077, 1085 (11th Cir. 2020).

Under the prior panel precedent rule, we are bound by our prior published decisions unless and until they are overruled or undermined to the point of abrogation by the Supreme Court or this court sitting *en banc*. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). "While an intervening decision of the Supreme Court can overrule the decision of a prior panel of our court, the Supreme Court decision must be clearly on point." *Id.* (quotation marks omitted). "The prior panel precedent rule applies regardless of whether the later panel believes the prior panel's opinion to be correct, and there is no exception to the rule where the prior panel failed to consider arguments raised before a later panel." *United States v. Gillis*, 938 F.3d 1181, 1198 (11th Cir. 2019).

Section 922(g) of Title 18 of the United States Code prohibits anyone who has been convicted of a crime punishable by more than one year "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition." 18 U.S.C. § 922(g)(1). Section 922(k) of Title 18 of the United States Code makes it unlawful to "receive . . . any firearm

which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(k).

The prior panel precedent rule bars Hyde's challenge to the constitutionality of § 922(g)(1). Our conclusion in *Rozier* that § 922(g)(1) is a constitutional restriction on a defendant's Second Amendment rights is still binding precedent, and we are bound to follow that panel's decision. *United States v. Rozier*, 598 F.3d 768, 772 (11th Cir. 2010); *Archer*, 531 F.3d at 1352. Further, Hyde cannot establish plain error as to his § 922(k) argument. First, weapons with altered or obliterated serial numbers are not usually possessed by law-abiding citizens for lawful purposes and, thus, fall outside the protection of the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 625, 128 S. Ct. 2783, 2815-16 (2008). Second, neither we nor the Supreme Court have held that § 922(k) is unconstitutional under the Second Amendment. *Innocent*, 977 F.3d at 1085. Thus, we affirm as to this issue.

III.

We review *de novo* whether a district court's instructions constructively amended an indictment. *United States v. Gutierrez*, 745 F.3d 463, 473 (11th Cir. 2014). Where a defendant did not object to jury instructions at trial, we review for plain error. *United States v. Whyte*, 928 F.3d 1317, 1331 (11th Cir. 2019). Similarly, when a defendant fails to object that the jury instructions

constructively amended the indictment, we review for plain error. *United States v. Madden*, 733 F.3d 1314, 1322 (11th Cir. 2013).

When reviewing a jury instruction for plain error, we will reverse only when the error is so fundamental that it results in a miscarriage of justice. *Gutierrez*, 745 F.3d at 471. The instruction must be an incorrect statement of law that was "probably responsible for an incorrect verdict, leading to substantial injustice." *Whyte*, 928 F.3d at 1332. Finally, when reviewing an alleged constructive amendment, the court's instructions should be viewed in context. *United States v. Castro*, 89 F.3d 1443, 1453 (11th Cir. 1996).

Here, because Hyde did not object at trial to the jury instructions on the basis that they constructively amended the indictment, we review for plain error. *Whyte*, 928 F.3d at 1331; *Madden*, 733 F.3d at 1322. At trial, the government had to show that Hyde either used or carried a firearm during and in relation to a drug trafficking crime or possessed a firearm in furtherance of a drug trafficking crime. 18 U.S.C. § 924(c)(1)(A). Hyde takes issue with the brandishing element, but the record shows that the government sufficiently proved this element, which can be a separate element of either method of a § 924 charge. We conclude that any error in the jury instruction relating to the wording of the charge was not so fundamental that it resulted in a miscarriage of justice. *See Gutierrez*, 745 F.3d at 471. Thus, we affirm as to this issue.

IV.

We generally review *de novo* a sufficiency of the evidence challenge, asking whether a reasonable jury could have found the

defendant guilty beyond a reasonable doubt. *United States v. House*, 684 F.3d 1173, 1196 (11th Cir. 2012). However, if the defendant did not move for a judgment of acquittal, or otherwise preserve a sufficiency of the evidence challenge below, we will only set aside his conviction if we find a manifest miscarriage of justice, which exists if the evidence on a key element of the offense is so tenuous that a conviction would be shocking. *Id.* Further, we will not upset a jury's decision to credit a witness's testimony unless in the rare circumstance that the testimony is incredible as a matter of law. *United States v. Isaacson*, 752 F.3d 1291, 1304 (11th Cir. 2014) (noting that testimony "is incredible if it concerns facts that the witness physically could not have possibly observed or events that could not have occurred under the laws of nature") (quotation marks omitted). Yet, "when a defendant chooses to testify, he runs the risk that if disbelieved the jury might conclude the opposite of his testimony is true." *United States v. Brown*, 53 F.3d 312, 314 (11th Cir. 1995) (quotation marks omitted).

To obtain a conviction under the "in furtherance of" element requires proof that the firearm "helped, furthered, promoted, or advanced the drug trafficking." *United States v. Timmons*, 283 F.3d 1246, 1252 (11th Cir. 2002). There must be some nexus between the firearm and the drug-selling operation. *Id.* at 1253. Factors that we consider include whether the gun is accessible, loaded, close in proximity to drugs, and the circumstances surrounding the gun's discovery. *Id.*

Here, Hyde does not dispute that he possessed a gun or sold drugs, thus the government need only to have proved that Hyde brandished his gun to further his drug crimes. 18 U.S.C. § 924(c)(1)(A). The record shows that when the officers arrived at Hyde's home, there were numerous weapons in the room where Hyde kept the drugs. The handgun Hyde possessed, along with another loaded semiautomatic pistol, two loaded magazines, spare pistol parts, ammunition, and a bulletproof vest, was in the same bedroom as 30 bags of methamphetamine, 4 bags of marijuana, and a digital scale. This evidence, along with Hyde's testimony, was sufficient for a jury to determine that Hyde brandished a firearm in furtherance of his drug trafficking scheme and was not tenuous enough to make his conviction shocking. *See House*, 684 F.3d at 1196. Thus, we affirm as to this issue.

V.

To preserve an issue for appeal, a defendant "must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds upon which appellate relief will later be sought." *United States v. Straub*, 508 F.3d 1003, 1011 (11th Cir. 2007) (quotation marks omitted). However, "once a party has preserved an issue, it 'may make any argument in support of that claim; parties are not limited to the precise arguments they made below.'" *United States v. Brown*, 934 F.3d 1278, 1306-07 (11th Cir. 2019) (quoting *Yee v. City of Escondido*, 503 U.S. 519, 534, 112 S. Ct. 1522, 1532 (1992)).

Error that is plain must be "clear under current law" for this court to correct it. *United States v. Olano*, 507 U.S. 725, 734, 113 S. Ct. 1770, 1777 (1993). "Clear under current law" means that "at least where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it." *United States v. Chau*, 426 F.3d 1318, 1322 (11th Cir. 2005) (quotation marks omitted). Further, we do not assign "precedential significance" to grants of *certiorari* by the Supreme Court. *See Thompson v. United States*, 924 F.3d 1153, 1156 n.4 (11th Cir. 2019). Until the Supreme Court issues a decision that changes the law, we must follow binding precedent. *Id.*

Federal law binds the construction of the Armed Career Criminal Act ("ACCA"), and state law governs the analysis of the elements of state-law crimes. *United States v. Braun*, 801 F.3d 1301, 1303 (11th Cir. 2015). In *United States v. Jackson*, we held that the federal controlled-substances schedules, in effect at the time of a previous state conviction, govern whether a conviction qualifies as an ACCA predicate. 55 F.4th 846, 856 (11th Cir. 2022).

Here, as an initial matter, we review the district court's finding on this issue for plain error because Hyde's objection that his cocaine charge was dismissed "because of entrapment" did not sufficiently put the trial court, and the government, on notice that he would later appeal his sentence under *Jackson*. *See Straub*, 508 F.3d at 1011. The record demonstrates that Hyde cannot show that the district court plainly erred because he has cited no binding

precedent holding that his 2003 Florida cocaine conviction does not qualify as an ACCA predicate offense. Instead, Hyde argues that, if the Supreme Court overrules *Jackson*, his 2003 Florida cocaine conviction would no longer serve as an ACCA predicate offense. Although the outcome of the Supreme Court's decision might change our analysis in our earlier panel decision in *Jackson*, a grant of *certiorari* has no precedential value on this case before us. *See Thompson*, 924 F.3d at 1156 n.4. Thus, we conclude the district court did not plainly err in determining that Hyde's 2003 Florida conviction qualifies as an ACCA predicate offense. Accordingly, we affirm as to this issue.

VI.

Facts that increase mandatory minimum sentences must be submitted to a jury and proven beyond a reasonable doubt. *Alleyne v. United States*, 570 U.S. 99, 103, 133 S. Ct. 2151, 2155 (2013). But the fact of a prior conviction is not an "element" of the crime that must be submitted to the jury. *Almendarez-Torres v. United States*, 523 U.S. 224, 243-47, 118 S. Ct. 1219, 1230-33 (1998); *see Alleyne*, 570 U.S. at 111 n.1, 2159-60 n.1 (declining to revisit *Almendarez-Torres*). In *Almendarez-Torres*, the Supreme Court held that the government need not prove beyond a reasonable doubt that a defendant had prior convictions, or allege those prior convictions in the indictment, to use those convictions to enhance a defendant's sentence. 523 U.S. at 243-47, 118 S. Ct. at 1230-33.

As he concedes, Hyde's argument is foreclosed by *Almendarez-Torres*. We are bound to follow *Almendarez-Torres* until it

is overturned by the Supreme Court or this court sitting *en banc*. *See Archer*, 531 F.3d at 1352. Thus, the district court was entitled to apply the ACCA enhancement to Hyde's sentence based on his prior convictions. *See Almendarez-Torres*, 523 U.S. at 226-27.

Based on the aforementioned reasons, we affirm Hyde's convictions and sentence.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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February 22, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-10332-AA
Case Style: USA v. Charles Hyde
District Court Docket No: 2:19-cr-00005-LGW-BWC-2

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received in the clerk's office within the time specified in the rules. **A petition for rehearing must include a Certificate of Interested Persons and a copy of the opinion sought to be reheard.** See 11th Cir. R. 35-5(k) and 40-1.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or

cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

APPENDIX A

TABLE OF CONTENTS

~~CJP FORMS MISSING~~ - PLEASE EXCUSE LOST ALSO EXCUSE HANDWRITING - HYDE WAS SHOT IN THE HAND - "AND THE EVIDENCE WITHHELD" EVIDENCE NOT IN RECORD PURPOSELY DNA BULLET IS HYDE'S DEFENSE WITHHELD - TO SAIN FABRICATED SCENARIO — AUSA'S SUPPORT PERJURY - (EG: BRADY)

* THE INJURY OUTWEIGHS THE FAILURE TO OBJECT

Sincerely

CHARLES HYDE 10332-018

INTRODUCTION

"CORE RATIONALE": An officer who shoots a non violent homeowner thru hurried misconduct (43 seconds) and leaves the scene immediately after w/o an interview (probably upset over his bad choice), Then returns 2 weeks later with an attorney and tells 3 different stories, finally settling on the non-sensical (Embellished and Modified) version of; Hyde pointed a gun at Captain's head, squeezing the trigger is so unsupported and far reaching! Because of training and suppresion of forensics.

Reasons Being: #1 Shooter had several officers right behind him and none of the officers did anything to counter the squeezing (e.g. officers would have shot Hyde dead). #2 The Lead Prosecutor who demonstrated the squeezing at closing would have charged Hyde with attempted murder on a law enforcement officer, (if it really happened). #3 The AUSA's would not have suppresed the science that would have supported their bald assertions, instead they kept the evidence from jury and Hyde. #4 A 2 day search followed the shooting to stage and tamper evidence to justify w/o the shooter who left the scene w/o an interview. Leaving GBI to fill in the blanks (GBI wasn't there).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Eleventh Circuit has jurisdiction to consider this appeal pursuant to 18 U.S.C. § 3742, 28 U.S.C. §1291, and rule 3 and 4 of the Federal Rules of Appellate Procedure. Final Judgement was imposed on January 28, 2021 in the U.S. District Court for the Southern District of Georgia Brunswick Division.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 22-10332-A

UNITED STATES OF AMERICA, Plaintiff-Appellee,

versus

CHARLES HYDE Defendant-Appellant

Appeal from the U.S. District Court
for the Southern District of Georgia
CASE NO. 2:19-CR-5

Charles Hyde, A federal prisoner appeals his 444 month total sentence and convictions for conspiracy to possess w/intent to distribute methamphetamine (actual) U.S.C. §§841(a)(1), 846, possession w/intent to distribute methamphetamine (actual) and marijuana, §841(a)(1), possession of a firearm an ammunition by a felon, 18 U.S.C. §922(g)(1), possession of a firearm w/ obliterated serial number, §922(k), possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. §924(c).

The Court has GRANTED permission to proceed informa pauperis on appeal. Coppedge vs. U.S. 396 U.S. 438, 447-48 (1962) USCA 11 Case 22-10332-A on 8-16-2022 GRANTED.

Appellant Charles Hyde-(pro-se) Appealing the following issues: DENOVO.

Relief Requested, is to remedy the effects of unlawful conduct.

I. OBJECTIONS- Appellant objects at trial about how all the evidence was obtained, not only how the State Agents obtained evidence, but how Govt. and Defendant obtained it! (All 3 obtained their evidence illegally!)

FIRST- Appellant requests leniency to standards for inexperienced Pro-se. US v. Fernandez (11th Cir. 1991)

Alot of Hydes objections were done on witness stand!

A) How State Agents Obtained Evidence (Illegally).

1) Shooting a non-violent, Compliant Homeowner (Not Going Any-where) "Who's Already Seized" is A Unreasonable Seizure.

2) Using Deadly Force, 43 seconds w/o warnings or alternatives to Excessive Force. 4th Amend. U.S. Const. Shooting A Homeowner Not Escaping. See (e.g. Tennessee v. Garner 471 U.S. (1985).

3) Leaving the Scene Immediately After Standing on Hydes face Handcuffed and Bleeding, w/o interview is Against the Law and Tampers w/investigation and Evidence.

4) Flash Bang that Stunned Homeowner, Throwing w/o clearing see (e.g. Dukes v. Deaton (11th Cir. 2017).

5) Excessive Force During Arrest violates 4th Amendment Reasonableness Clause, Officers who violate constitutional and training have no respect for rules.

B) Unreasonable Search 2 Warrants? Banned No-Knock was put in to cover the first warrants knock/announce violations (e.g. destroying property unnecessarily. No-Knock app. Not signed by affiant violates state constitution statues Ga. Code ann. §§8:116 see (Barnett v. State 2012) Invalid no-knock app. un signed by affiant violates the warrant-warranting the exclusion of evidence seized. No reasonable suspicion I.D. for issuance see (Richards S. Ct. (1998). Relying on a defective warrant is objectively unreasonable. 4th Amendment violations don't require physical injury, and physical entry is the chief evil against 4th Amendment wording see (Payton v. N.Y. 445 us. 513 (1980). Using unconstitutionaly seized evidence is unconstitutional, Barring illegal seizures of tampered evidence see (Mapp v. Ohio 376 us. 643 (1961).

C) How Govt. Obtained Evidence (Illegaly)

2 Special Prosecutors, Never investigated or corroborated state agents misconduct for reliability. Basically vouched for w/ o a modicum of credibility. Govt. has the duty to not prosecute innocence, see (Kyle v. Whitley, 514 us. 419, 439 (1995).

D) How Defendant (Pro-se) Obtained Evidence

Through Discovery Violations and Late Entries at Trial, No preperation. Withholding exculpatory evidence e.g. (Forensics, interviews)

II. PROSECUTOR MISCONDUCT

a) Dismissing expert testimony and suppressing exculpatory evidence, favorable to defendant Hyde that might have led to a not guilty verdict see (e.g. Brady v. Maryland, 373 us. 83 (1963)

b) Knowingly using false evidence and vouching a modified scenario 3 diffenent stages, see (e.g. Napue v. Illinois 360 us. 264 (1959)

c) The AUSA's statements are a faulty and flawed theory w/o support and AUSA's failure to present expert testimony on a police shooting and suppressing the forensics report that shut down a search fell below an objective standard of reasonableness that deprived Hyde of evidence of innocence.

d) An officer who shoots a homeowner inside homeowners constitutionally protected area and tells a story w/o a modicum of support relying on Govt. to sell it to the jury. The cumulative effect on jury, see (e.g. Berger v. US., 295 us. 78 (1935) Can't disregard.

e) The pattern of conduct is so egregious it infected the whole trial with unfairness making Hyde's conviction a denial of due process see (e.g. US. v. Young 470 us. 1, 16 (1985)

f) The misconduct by both AUSA's at Hyde's trial was plain error resulting in a miscarriage of justice see (Kyles v. Whitley 514 us. (1995)

*Despite The Failure to Object From Inexperienced Prose

g) AUSA's kept all evidence of Hyde's injury from jury by suppressing forensics report and cancelling forensics expert 3 days befor trial e.g. Forensics Expert was on first witness list and could have confirmed Hyde's innocence by corroborating forensics report. See (e.g. Pyle v. Kansas 317 us. (1942).

III. DRUG QUANTITY

a) The Volume of Drugs in Hyde's case are based off a coerced interview done less than 12 hours after Hyde was shot. (e.g. Next morning still in shock afraid of more harm) Rule 32 cal-

culating volume?

b) Supreme Court has long held that when police ellicit a statement, mental condition becomes a factor in the volluntary analysis see Colorado v. Connelly (1986) 479 us. 157 e.g. still in shock after being shot.

c) Hyde was involved in conspiracy for 5 months-Kingpin was involved 2016-2018 2 years and Govt. gave Hyde more drugs? DISPARITY.

d) No Factual Findings, Hyde's meth was argued at trial, the expert could not describe the ingredients during cross examanation. Pumping up the volume to turn low grade meth into (actual). "That's like turning coal into diamonds" % is not actual, % is mixture.

IV. SENTENCING ERRORS

a) All 3 sentencing doc's #440, 453, 455 show Hyde's criminal history under statute §4A1.2(e) which clearly states after 15 years cannot be counted

b) Judge failed to explain how uncharged accusations can be enhanced?

c) Stacking same conduct concurrent sentences?

d) Never explaining the "Parsimony Principle" enshrined in §3 553(a) Depriving Hyde of accurate info throughout trial violates due process, convictions obtained in violation of constitutional rights may not be used to enhance punishment for other offenses.

f) Rebutting Hyde's Reliable Indicia §6A1.3 (from memory) Memories fail!

g) 924(c) Guns were recorded as self protection in affidavit signed by judge. Govt. made up the story how the guns were used (No-Element of Mens Rea) see Borden v. U.S. (No. 195410) S. Ct. 6-10-21 (Since Day 1, Self Protection)

h) 4B1.1 & 4B1.2 (a & b) Both Commentary under §4A1.2(e) 15 yrs. (don't count.) INCHOATE offenses ARE NOT PREDICATES 5246

i) 851 (Attempt)? More Embellished Enhancements w/o a Scintilla of Support. B.O.P. and Doc. 440 (psi) both show Hyde at Cat. II Level 30.

j) Govt. used 2002 Offence of purchasing of cocaine for an undercover female officer with the promise of sex, ENTRAPMENT! The Court had Hyde plea to the offence for no jail, no probation, go home that day. This is 3rd predicate (Overlybroad).

k) Congress has instructed sentencing court to impose sentences that are not greater than necessary see Dean v. U.S., 581 us. 2017. Accurate info is central ingredient to due process. And a 37 year sentence to a 62 yr old man is a potential life sentence.

V. SUMMARY OF THE FACTS

a) Trial was shoved down throat 3 days dismissing experts. Experts explain to a jury what to think.

b) 1 officer being excused for so much unlawful conduct e.g. #1 assault with a deadly weapon on a non-violent homeowner, #2 Destroying property (unnecessarily), #3 standing on the side of Hyde's face, while handcuffed and bleeding, #4 leaving the scene "immediately" after shooting, by shooter, #5 which is against the law and tampers with the investigation and evidence, #6 obstruction of justice, #7 conspiring with offici-

als to falsify evidence and purge the testimony and withholding evidence of innocence see Connick v. Thompson, S. Ct. 13 1, 1350, 1360 (2011).

b) Preponderance of Evidence- Points to if Hyde would have pointed a gun, squeezing a trigger, attempting to murder Bowman, Hyde would be shot dead by other officers (who did nothing) Or Hyde would be charged for most serious crime of attempted murder of a Law Enforcement Officer!

c) Hyde challenges the procedural and substantive reasonableness of the upward variance from PSI 440 Cat II Level 30 to Cat. VI Level 38 which is 3 times excessive.

d) The fact that force was used "When Unnecessary" or in A "Manner Excessive to Need" is in it self evidence see Hudson v. Mcmillian 503 us. 1 5-6 112 S. Ct. 995 (1992).

e) Forensics would prove that officers were covering for Bowman and show evidence tampering as well.

QUESTIONS PRESENTED

1) Why didn't Govt. investigate Hyde's shooting that shut down search for 2 days?

2) Why didn't officers video the Arrest, Officers videoed for Affidavit 3 hours earlier? (Video is required in Georgia Sheriffs Manual 2016)

3) Aren't Sheriffs trained for alternatives to deadly force?

4) If Hyde was attempting to murder Capt. Bowman, why wasn't Hyde charged?

5) Why would 2 AUSA's withhold forensics at a police shooting?

6) Rule 32-How can Govt. determine amount of drugs off of coerced shock talk?

7) How can you turn low grade meth into (actual)? It's like turning Coal into Diamonds.

8) Were Hyde's constitutional rights violated when:

a) When Hyde's property was destroyed (unnecessarily)

b) When Hyde was shot without warnings or alternatives

c) When 2 special AUSA's deprived Hyde and jury of evidence that effects the outcome.

9) Isn't leaving the scene of a shooting against the law when shooter leaves w/o an interview?

10) Does the Judge's instructions of Hearsay is Proof effect the jury when all the evidence is Hearsay (unsupported)?

JUSTICE QUOTES

Notorious RGB-Ruth Bader Gensburgh "The Taint of Official Lawlessness is More Harmful To Society Than All Lawlessness Cobined"

JUSTICE QUOTES CONTINUED:

Justice Thomas-"Violations Count Against DA's for Failure to Disclose Blood Evidence, A Crime Lab Report, Physical or Scientific Evidence of Any Kind". See Connick v. Thompson 131 S. Ct. (2011)

Justice Souter-"Prosecutors Have an Obligation to Seek the Truth". See Kyles v. Whitley, 514 us. 419,455,439, (1995)

STATEMENT OF ISSUES

1) Whether Appellates Constitutional Rights were violated by being shot and the evidence withheld.

2) Whether AUSA's exclusive control of evidence deprived appellate of fair trial see (Brady v. Maryland 373 us. 83 (1963).

3) Whether unsupported testimony is sufficient to convict see (Napue v. Illinois, 360 us. 264 (1959).

4) Whether procedural violations of botched training and withholding of exculpatory evidence should count against officials despite the failure to object from Pro-se *The Prejudice outweighs the failure to object, Plain error review.

5) Whether deadly force was justified without any direct evidence and dozens of alternatives to a way out "Duty to retreat or negotiate".

6) This Case hinges on Credibility and unsupported testimony is not Credible, Suppressing CSI Expert shows No Concern to share the Critical information that shut down search for 2-days.

CITATIONS OF AUTHORITY

ARGUMENT

"Legal Innocence" Expert Witnesses tell the jury what to think and to suppress the most important witness to defense is Prejudice and Violates Confrontational Clause 6th Amendment Constitutional Guarantee.

Dismissing this Expert helps unsupported testimony by lay witnesses affect on jury through piling on of officers (Cumulative).

POINT Cross Examanation of Expert Witness Agent Smith Crime-Scene Expert who testified for Prosecution that he doesn't do trajectory or forensics. Dismissed Forensics Expert, 1 week Before Trial - (No Confrontation) No Defense

The Prosecution did not prove Hyde's guilt-AUSA's just talked the jury into it, (e.g. By vouching a demonstration during closing) W/O A Scintilla of Support or A Modicum of investigation for Credibility.

* The Science that would prove these dynamic factors was Suppressed by AUSA's. Show the DNA Bullet - I spent Last 3 yrs, Being Denied FOIA -

Hyde has PTSD and Nerve Damage from being shot.

924(c) Brandishing (Never Proven) Only vouched by AUSA's.

Not Actual Meth, A percentage is a mixture, Actual is pure.

Catagory II Level 30 and first PSI ducument 440 same as BOP.

Stacking Same Conduct Sentences 10+10+10=30 yrs. Procedurely Unreasonable 300% over sentenced.

Not ACCA, No 3rd Predicate (Overlybroad) 2002 Offense, Purchased Cocaine for sex for Undercover Agent ENTRAPMENT.

CONCLUSION 1990 Conviction - 846 Conspiracy - Precursor Chemical Possession Bought w/ ID for Resale

Officers Violated Warrants, Training, Personal Property, Safety, Bodily Injury, Evidence Tampering, Ethics and Integrity.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS

AND CORPORATE DISCLOSURE STATEMENT (CIP)

USA V. CHARLES HYDE APPEAL NO. 22-10332-A

Pursuant to 11th Cir R. 26.1-1, Alphabetical Order

GBI Agents

Debbie Gilbert.....Court Reporter

Darron Hubbard.....AUSA

Liberty County Sheriff

Jen Solari.....AUSA

Lisa Godbey Wood.....Judge

United States of America, Appellee

CORPORATE DISCLOSURE STATEMENT

No Publicly Traded Company or Corporation has an interest in the outcome of this case or appeal.

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not desire oral Argument.

CERTIFICATE OF SERVICE

This is to Certify that Appellate Charles Hyde has served the following officials with copies of this Appeal.

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION
125 BULL STREET RM. 304
SAVANNAH, GA 31401

ELBERT P. TUTTLE
U.S. COURT OF APPEALS
56 FORSYTH ST. N.W.
ATLANTA, GA. 30303

APPELLATE PRO-SE
CHARLES HYDE 10332-018
FED. CORRECTIONAL COMPLEX USP-1
P.O. BOX 1033
COLEMAN, FL. 33521

On this day of November 16, 2022 Respectfully submitted

CHARLES HYDE
PRO-SE

Appendix D

IN THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

22-10332-AA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

Versus

CHARLES HYDE

Defendant-Appellant.

A DIRECT APPEAL OF A CRIMINAL CASE
FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

UNOPPOSED MOTION TO EXTEND DEADLINE FOR FILING INITIAL BRIEF

LEIGH ANN WEBSTER
Georgia State Bar Number: 968087
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Attorney for Appellant

Dated: this 11th day of May, 2023.

/s/ Leigh Ann Webster
Leigh Ann Webster
Georgia Bar No. 968087
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UNOPPOSED MOTION TO EXTEND DEADLINE
FOR FILING INITIAL BRIEF

COMES NOW, CHARLES HYDE, by and through undersigned counsel, and moves to extend the deadline for filing his initial brief.

After a jury trial, Mr. Hyde was convicted of conspiring to possess with intent to distribute and to distribute methamphetamine, possession with intent to distribute marijuana and methamphetamine, possession of a firearm by a prohibited person, possession of a firearm with an obliterated serial number, and possession of a firearm in furtherance of drug trafficking. He was sentenced to 444 months in prison. His appeal is currently pending before this Court. The deadline for Mr. Hyde's initial brief is currently May 22, 2023, which was set after a previous motion for an extension of time was granted.

Mr. Hyde requests an additional 30-day extension to file the brief. Mr. Hyde proceeded pro se at trial and sentencing, and counsel was appointed to represent him on appeal. As described in the prior motion, the facility at which Mr. Hyde is housed has made it extremely difficult to consult with him, requiring that calls be scheduled over a month in advance and then not making Mr. Hyde available for the long-awaited phone call. To date, counsel has not been able to speak with Mr. Hyde. Currently, the facility has insisted

that it cannot accommodate a phone call with Mr. Hyde until June 9, 2023. Counsel needs to be able to speak with Mr. Hyde before filing the initial brief, especially in light of his repeated requests to speak with counsel prior to the filing of the brief. Therefore, counsel is requesting that the Court continue the briefing deadline for 30 days, to allow counsel to speak with Mr. Hyde and to incorporate any arguments into the initial brief. Undersigned counsel has consulted with the government, and the government does not object to this extension.

Accordingly, Mr. Hyde submits that a 30-day extension is appropriate in this matter, which would result in a deadline of June 21, 2023.

WHEREFORE Mr. Hyde requests that this Court extend the briefing deadline to June 21, 2023.

Dated: This 11th day of May, 2023.

Respectfully submitted,

/s/ Leigh Ann Webster
Leigh Ann Webster
Georgia Bar No. 968087
Attorney for Charles Hyde

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CERTIFICATE OF COMPLIANCE

This brief contains 349 words, excluding the parts of the Motion exempted by Fed.R.App.P. 32(a)(7)(B)(iii).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was filed by uploading it with the Eleventh Circuit's Electronic Filing System which will automatically serve opposing counsel with the pleading.

Dated: This 11th day of May, 2023.

/s/ Leigh Ann Webster
Leigh Ann Webster
Georgia Bar No. 968087
Attorney for Charles Hyde

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