

No.

In the
SUPREME COURT OF THE UNITED STATES

JOSHUA PETERS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

*On Petition for Writ of Certiorari to
the United States Court of Appeals for the Third Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Before trial, the district court barred the Government from commenting that the defense had the opportunity to conduct independent forensic testing on the firearms which were the subject of prosecution. That order was to prevent impermissible burden shifting. Only if the defense “put on evidence” or “noted that the Government failed to test the firearms for DNA and fingerprints” could the Government comment in closing. The Government did so nonetheless, flouting the pretrial order.

Is this sort of burden-shifting, no matter the strength of the Government’s case, so improper and contrary to the presumption of innocence that a new trial is warranted?

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Joshua Peters*, No. 23-1725 (3d Cir. 2024) (Judgment affirmed Mar. 14, 2024);
- *United States v. Joshua Peters*, D.C. No. 2-22-cr-00220 (W.D.Pa.)(Judgment entered Apr. 13, 2023).

There are no other proceedings in state or federal courts, nor in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joshua Peters respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS AND ORDERS BELOW

The Third Circuit's non-precedential opinion, *see* 2024 WL 1114729, is reproduced at App. A. The district court's memorandum order, *see* 2022 WL 16836209, is reproduced at App. B.

JURISDICTION

The Third Circuit affirmed the underlying judgment on March 14, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment provides in relevant part:

No person shall be held to answer for a capital, or otherwise infamous crime . . . nor be deprived of life, liberty, or property, without due process of law;

U.S. Const. amend V.

STATEMENT OF THE CASE

A. Factual background.

Josh Peters was a drug dealer. Appx63. He dealt in quantities of cocaine and fentanyl. Appx98, 121, 147-148. He did so in rural Greenville, located in Mercer County, Pennsylvania, dealing out of a one-story house he rented. Appx105, 134-137, 191.

The house Peters rented was a “trap house”—a shared communal space from which other users and dealers came and went to buy, use, and store drugs. Appx87-89, 139-140, 166-167. The house had its regulars. Appx117-122, 148-149.

One of those regulars—turned confidential informant—was Ryan Snyder. Appx97-102, 126. Snyder was an addict who had known Peters for much of his life, as their parents were friends with one another. Appx97-98. On two occasions in March 2022, Snyder had conducted two controlled buys from Peters at the house Peters rented. Appx180-186. Snyder was so familiar with the place that he could identify other addicts who frequented the house on a regular basis. Appx100-106, 117-122.

Based on Snyder's controlled buys, law enforcement executed a search warrant of the Greenville property. Appx187. They did so early in the morning. Appx187. Inside they only found Peters and his girlfriend. Appx188. In the way of contraband, they found drugs, money, user paraphernalia, ammunition, as well as multiple firearms. Appx190-210

All the firearms, except a Glock handgun, were stored in a gun cabinet located in a spare bedroom, which had been padlocked. Appx200, 205-206, 380, 381-385. The Glock was recovered from the floor of the living area. Appx200, 380. Six firearms in total, along with ammunition, were recovered. The five firearms in the gun cabinet were identified as handguns, shotguns, and rifles, more specifically: a DPMS AR-15, an Akkar shotgun, a Remington hunting rifle, a Ruger .357 revolver, and a Ruger .380 semiautomatic. Appx206-208.

Each of the firearms were traced to someone other than Peters. Appx212-213, 229-232. Two, in fact, were traced to persons who frequented the Greenville property: Nicholas Campbell and Shawn Kilpatrick. Appx213-214. The Glock belonged to Nicholas

Campbell. Appx202, 213. Indeed, his registration paperwork for the Glock was recovered during the execution of the warrant. Appx202. The AR-15, too, was attributed to Kilpatrick. Appx213-214. Previously, his girlfriend—the owner of the AR-15—reported it as having been stolen. Appx214.

Ultimately, Peters was originally charged for both the guns and drugs by the Commonwealth of Pennsylvania. Appx234, 448. He had a prior felony conviction in Pennsylvania for possessing with intent to distribute a small quantity of cocaine. Appx352-355. For that prior conviction, Peters had been sentenced to 189 days to 12 months and two days' imprisonment, which was four months prior to the instant conduct. Appx13, 352

Eventually, the United States adopted Peters' case. Appx234. A federal grand jury returned an indictment against Peters alleging three separate violations of federal law: (1) drug trafficking, (2) possessing a firearm in furtherance of drug trafficking, and (3) felon in possession of a firearm/ammunition. Appx13-17. His federal prosecution proceeded thereafter.

B. Procedural History.

1. On August 30, 2022, a grand jury sitting the Western District of Pennsylvania handed down a three-count indictment against Joshua Peters. Appx13-17. The indictment alleged that, on or about March 15, 2022, Peters possessed with the intention to distribute a quantity of cocaine (Count 1); possessed a firearm in furtherance of drug trafficking (Count 2); and possessed a firearm as a felon (Count 3). Appx13-17.

2. On September 9, 2022, Peters made his initial appearance in the Western District of Pennsylvania. ECF 16. The same day he was arraigned, waived detention, and sought a 45-day extension of time to file pretrial motions. ECF 17, 19, 21. Shortly thereafter, Peters challenged his detention, a detention hearing was held, and he was ordered detained pending trial. ECF 24, 26, 29, 30.

3. Near the deadline for filing pretrial motions, the district court held a status conference. ECF 31. At that time, Peters asserted his right to a speedy trial, foregoing the filing of any pretrial motions. *Id.* The district court entered an order scheduling pretrial and trial dates, but a day later the Government moved to continue

those dates. ECF 32-33. Peters objected. ECF 35. The district court maintained the trial schedule. ECF 36.

4. In the lead up to trial, Government's counsel entreated Peters with the opportunity to conduct his own independent testing of the at-issue firearms recovered from the Greenville property mentioned above. Appx19. The defense perceived a ploy, however: the Government creating the circumstances from which to burden shift and argue to the jury that Peters had the opportunity to demonstrate his innocence but declined to do so. Appx19-20. Accordingly, Peters filed a motion *in limine* to bar the Government from engaging in this sort of impermissible burden shifting at trial. Appx18-23. The Government responded exposing its intentions. Appx24-28.

5. Ultimately, the district court sided with Peters. Appx11-12. It entered a pretrial order barring the Government from commenting to the jury that Peters had the opportunity to conduct independent forensic testing on the firearms, unless Peters first noted during trial that the Government failed to test the firearms for fingerprints or DNA. Appx12.

With that pretrial issue settled, the case set off for trial. Jury selection occurred on November 28, 2022, and the first day of trial was scheduled a week thereafter. ECF 32.

6. With trial underway, Peters conceded in his opening that he was a drug dealer, but he denied being a “gun-totting drug dealer” as the Government alleged. Appx63-65. The contest between the parties squarely focused on whether Peters possessed firearms, whether he possessed them in furtherance of drug trafficking, and whether he possessed them knowing that he had previously been convicted of crime punishable by more than a year. Appx65-66.

The Government called only four witnesses in its case-in-chief: Agent Eric Harpster, who testified in an expert capacity, Appx73-95; cooperating witnesses Ryan Snyder and Elizabeth Mangilo, Appx96-173; and, finally, case agent, Marc Frampton. App174-237.

7. During the trial, the defense was vigilant not to open the door to permit the Government to engage in impermissible burden shifting. Appx211. At no point in opening nor in the Government’s case did Peters question whether the Government forensically examined the firearms at issue. Appx63-237. Yet, with its last witness, the

Government took the opportunity to flout the district court's pretrial order with this exchange:

Q. Was the evidence that was found inside 485 Hadley Road, was that made available for testing by the defense?

A. Yes.

Appx211.

Peters objected, sought a sidebar, and expressed surprise by the Government's move. Appx211. He moved for a mistrial. Appx211-212. The district court denied the motion for a mistrial, siding with Government counsel's interpretation of the district court's pretrial order. Appx212.

After cross-examination of Agent Frampton, the Government rested. Appx237. So did the defense, but not until it after it moved for a judgment of acquittal on the firearm offenses. Appx238, 244. That motion was denied. Appx240. Trial then adjourned but recommenced the following day. Appx253, 256.

8. On the second day of trial, the parties closed to the jury. Appx257-302. Peters again conceded the drug-trafficking count, but he focused his argument on the Government failing to prove its case

on the firearm counts. Appx279-280. After the Government's rebuttal, Peters renewed his motion for a mistrial. Appx302-303. The jury sided with the Government, however. Appx345-348. It convicted Peters of all three counts of the indictment. Appx404-407.

9. The district court sentenced Peters to an aggregate term of 180 months' imprisonment. Appx4.

REASONS FOR GRANTING THE WRIT

2. **The presumption of innocence is fundamental, yet the Government had little regard for its fundamental character, flouting a pretrial order that barred impermissible burden-shifting questions. This Court ought to reaffirm the sanctity of the presumption of innocence and the fundamental principle of criminal law that the defense bears no burden whatsoever.**

“The presumption of innocence is a principle of justice so rooted in the traditions and conscience of the people as to be ranked as fundamental.” *Nelson v. Colorado*, 581 U.S. 128, 136 n.9 (2017). Although not articulated in the Constitution, the presumption of innocence is “a basic component of a fair trial under our system of criminal justice.” *See Estelle v. Williams*, 425 U.S. 501, 503 (1976).

The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary,

and its enforcement lies at the foundation of the administration of our criminal law.

Coffin v. United States, 156 U.S. 432, 453 (1895).

“To implement the presumption, courts must be alert to factors that may undermine the fairness of the fact-finding process. In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt.” *Estelle*, 425 U.S., at 503 (citing *In re Winship*, 397 U.S. 358, 364 (1970)).

Fundamentally, “prosecutors ‘may not improperly suggest that the defendant has the burden to produce evidence.’” *United States v. Robinson*, 21-1667, 2022 WL 3666293, at *5 (3d Cir. 2022) (quoting *United States v. Balter*, 91 F.3d 427, 441 (3d Cir. 1996)). In *Robinson*, where the defense was that the defendant had “never touched the gun” and the defense argued that the prosecution failed to put on DNA evidence to prove otherwise, the Third Circuit held “the prosecution may use its closing argument to issue a ‘comment that points to a lack of evidence in the record which supports a defendant’s argument.’” *Id.* at 5-6 (quoting *United States v. Walker*, 155 F.3d 180, 187 (3d Cir.

1998)). The rule was qualified, however, to cases “where defense counsel puts on a case.” *Id.* at 5.

That was not this case. Here, Peters had not put on a case. Appx344. Nor did he open the door during the Government’s case to suggest it could’ve forensically tested the firearms but didn’t. Appx211. Nonetheless, the Government insinuated to the jury that Peters bore some responsibility, or obligation, to test its evidence.

Q. Was the evidence that was found inside 485 Hadley Road, was that made available for testing by the defense?

A. Yes.

Appx211.

Acceding to the Government’s effort to impermissibly shift the burden to Peters, after specifically prohibiting the Government from doing so, was improper. It fundamentally struck at the heart of the presumption of innocence. *Compare* Appx211-212 (overruling objection to Government informing jury that evidence was made available to defense for testing) *with* Appx12 (limiting the Government to closing argument to comment on lack of testing by defendant “if Defendant puts on evidence to show that the Prosecution did not test the weapons at issue for fingerprints or DNA”).

What the weight of the evidence was bearing on the question of Peters's possession of firearms is not important to this issue. That's so because the Government made a calculation to burden shift, despite the weight of its evidence, when it did not need to. *See* Appx19. In other words, it was purposefully toying with the presumption of innocence. Pretrial litigation over this issue certainly put the Government on notice that undermining the presumption of innocence and burden of proof was out of bounds. Appx11-12, 18-28. Yet, the Government went there anyway. Appx211. This is a distinguishing fact from *Robinson* and other cases where this issue has arisen **during the course of trial** and not in pretrial litigation. *See, e.g., Hayes v. State*, 660 So.2d 257, 265-66 (Fla. 1995) (holding that a prosecutor's line of questioning to a crime lab employee as to whether the defense had requested any testing of blood stains was prejudicial and inconsistent with the accused's defense obligations); *State v. Rocha*, 890 N.W.2d 178, 209 (Neb. 2017) ("A defendant is entitled to inquire about the weaknesses in the State's case, but this does not open the door for the state to point out that the defendant has not proved his or her innocence.")

What's implicated here, accordingly, is the importance of the presumption of innocence—not whether the verdict would've been the same despite the Government's effort at burden shifting.

The district court got it right the first time when it barred the Government from engaging in impermissible burden-shifting efforts. Appx12. It was appropriately “alert to factors that may undermine the fairness of the fact-finding process.” *See Estelle*, 425 U.S., at 503.

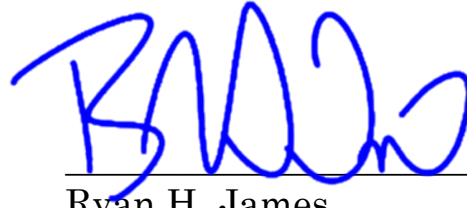
The Government's burden-shifting question was improper; it was on notice that it was improper; and it infringed upon the fundamental notion of the presumption of innocence all the same. That the district court, and the Third Circuit, saw no problem with the Government's burden-shifting question, warrants correction by this Court to reaffirm the sanctity of the presumption of innocence and the fundamental principle of criminal law that the defense bears no burden whatsoever.

* * *

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.



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