

No. 24-5240

IN THE SUPREME COURT OF THE UNITED STATES

=====

BRADLEY HULL,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

=====

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

=====

BRIEF FOR PETITIONER IN REPLY TO UNITED STATES OPPOSITION

=====

Stephen R. Hormel  
Hormel Law Office, L.L.C.  
17722 East Sprague Avenue  
Spokane Valley, WA 99016  
Telephone: (509) 926-5177  
Facsimile: (509) 926-4318

Attorney for Petitioner Hull

1. Is it incumbent upon a trial court when determining whether the probative value of other-act evidence offered under Rule 404(b) is substantially outweighed by unfair prejudice under Rule 403 to consider a defendant's concession to the element of intent for a crime, and also consider whether other credible evidence proves such intent before admitting inherently prejudicial other-act evidence?

**TABLE OF CONTENTS**

QUESTION PRESENTED FOR REVIEW .....	i
<b>PETITIONER’S REPLY TO UNITED STATES OPPOSITION ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT .....</b>	<b>1</b>
<b>CONCLUSION .....</b>	<b>8</b>
REPLY APPENDIX .....	19
Reply to United States Response on Motion for New Trial (pertinent part) .....	1
Opening Brief (CA No. 22-30156) (pertinent part) .....	4
Reply Brief (CA No. 22-30156) (pertinent part) .....	6
Transcript of Trial (DC No. 2:20-cr-128-TOR-2) (pertinent part) .....	9
Criminal Docket for Case #: 2:20-cr-128-TOR-2 (pertinent part) .....	17

## **TABLE OF AUTHORITIES**

### **Case Authority**

<i>Old Chief v. United States</i> , 519 U.S. 172 (1997) .....	<i>passim</i>
<i>United States v. Tan</i> , 254 F.3d 1207 (10th Cir. 2001) .....	4

### **Federal Statutes & Rules**

18 U.S.C. § 924 .....	4
Fed. R. Evid. 403 .....	<i>passim</i>
Fed..R. 404(b) .....	<i>passim</i>

---

---

IN THE UNITED STATES SUPREME COURT

=====

BRADLEY HULL,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

=====

**PETITIONER’S REPLY TO UNITED STATES OPPOSITION ON  
WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT**

1. The government referenced the district court’s observation that “petitioner ... had ‘never sought a limiting instruction’” under Fed. R. Evid. 404(b) during trial. Brief in Opposition (Opp.)
5. In his post-trial motion for new trial and on appeal, Hull maintained that he was prejudiced because trial counsel never sought a limiting instruction for 404(b) other act evidence because the district court rested admissibility of the text messages solely on the ground that they were evidence “inextricably intertwined” with the allegations. Reply Appendix (Reply App.) 1-2, 5, 7-
8. In other words, counsel would not have sought a limiting instruction that “‘explain[ed] to the jury that the text messages were ‘inextricably intertwined’ with the conduct charged against Hull.’” Reply App. 3.

2. The government claims that the fact that the jury heard of Hull's prior 2016 conviction for conspiracy deliver heroin in the Spokane County Superior Court "reduce[s] any prejudicial impact of the text messages." Opp. 9. The prosecutor offered the prior conviction and the district court admitted it solely for impeachment purposes and no other purpose. Reply App. at 9.

3. The petition asks the Court to determine what factors the lower courts are to consider under Rule 403 when determining whether the probative value of other act evidence, particularly when offered to prove a criminal defendant's intent, "substantially outweighs" the prejudice in admitting other act evidence. Fed. R. Evid. 403. Hull is not claiming that the text messages were offered by the government for an impermissible purpose under Rule 404(b).

Yet, the government in section 1b of the brief in opposition builds the case that the text messages were admissible under Rule 404(b), even though Hull's trial counsel conceded that the evidence proved the intent to distribute element of the charges, therefore, taking that element out of dispute at trial. Opp. 9-12. The question presented, however, centers what analysis trial courts are to employ in weighing the probative value of other act evidence versus the prejudicial impact of such evidence under Rule 403. The questions does not center on whether the text messages would be admissible for a proper purpose under Rule 404(b).

The Ninth Circuit concluded that the text messages could be admitted for a proper purpose under Rule 404(b) to prove intent. Pet. App. 4. The court then agreed with the district court's single sentence, "Defendant has not shown that the evidence was unduly prejudicial." Pet. App. 4-5. The record does not establish that either the district court or the court of appeals made a prejudice determination by examining any of the considerations set out by the Court in *Old Chief v. United States*, 519 U.S. 172 (1997). See, Pet. 10-13.

Moreover, the question is not resolved by determining whether Hull put the government “the burden to prove [his] intent with respect to the drugs he denied having anything to do with.” Opp. 12. The question is whether trial courts and the courts of appeals are to consider a defendant’s concession to the element of intent that is the subject of the Rule 404(b) other act evidence, *and* is to consider the amount of other evidence that proves the element of the intent in determining whether the probative value of the other act evidence substantially outweighs the prejudice under Rule 403. *Old Chief*, 519 U.S. at 184-85.

It seems the government’s position is that, so long as the other act evidence fits a proper purpose in Rule 404(b), and involves an element of the offense, such other act evidence is automatically admissible. Opp. 9-12. *Old Chief* does not support such a broad application. *Id.* Such a broad application would render Rule 403 superfluous in the Rule 404(b) context when intent is an element of the crime and the prosecution offers other act evidence under Rule 404(b) to prove intent. The only way a reviewing court can ensure that the trial court conducted a proper analysis under Rule 403 is to provide lower courts with factors they are to consider in making probative value versus prejudice determination. *Old Chief* provides those considerations. *Old Chief*, 519 U.S. at 184-85; Pet. 10-13.

The government overplays the “the ‘accepted rule’” from *Old Chief* that, “except for a defendant’s status as a prior convicted felon, “the prosecution is entitled to prove its case free from any defendant’s option to stipulate the evidence away.” Opp. 11 (citing *Old Chief*, 519 U.S. at 189). *Old Chief* does not establish a bright-line rule that a trial court never abuses its discretion by admitting other act evidence so long as the government must prove as an element of the crime one and the other act evidence fits within a proper purpose for admissibility under the Rule

404(b). What *Old Chief* establishes is that Rule 404(b) “guarantees the opportunity to seek admission.” *Old Chief*, 519 U.S. at 190. *Old Chief*, thus, recognizes a “general presumption that the prosecution may choose its evidence....” *Id.* at 191. And, “the prosecutor’s choice will generally survive a Rule 403 analysis.” *Id.* at 192.

*Old Chief* does not dispense with a Rule 403 analysis simply because the government must prove the element of the crime that fits a proper purpose for admissibility under Rule 404(b). In fact, *Old Chief* requires such analysis. *Id.*

When *Old Chief* is evaluated in its entire context, this case presents the Court with other important considerations. *Old Chief* involved a proposed stipulation to avoid admission of the name of a prior conviction where the prior conviction only proved the status of the petitioner as a convicted felon which prohibited his firearm possession under 18 U.S.C. § 922(g)(1). *Id.* at 174-75, 191-92. The Court held that a trial court abused its discretion in failing to accept such a stipulation. *Id.* at 191.

The Court recognized that, as a general rule, a defendant should not be permitted to “stipulate the evidence away” so as to interfere with the prosecutions need for “evidentiary depth to tell a continuous story.” *Id.* at 190. When put into context, *Old Chief* recognizes, generally, that a defendant should not be able to avoid admission of a prior conviction by a stipulation if such prior conviction is offered for a proper purposes under Rule 404(b), and a stipulation would prevent the jury from hearing the entire story. *Id.*; see also, *United States v. Tan*, 254 F.3d 1207, 1213 (10th Cir. 2001) (“[t]he district court must assume at the threshold that those [prior] convictions are offered for a proper purpose in this case and should consider our discussion of their significant probative value and of the negligible effect of the Stipulation.”). In other words,



such a stipulation would “become a break in the natural sequence of the narrative evidence.” *Old Chief* 519 U.S. at 189.

In this case, Hull’s concession that the prosecution’s evidence proved the element of intent to distribute did not interrupt that “natural sequence of the [prosecutions] narrative evidence.” *Id.* Indeed, Hull’s concessions and his examinations of law enforcement enhanced the prosecutions’s narrative on the element of intent to distribute.

Moreover, since the text messages did not involve prior convictions or other act evidence that occurred prior to February 7, 2020, there would be no “missing link” between the other act evidence that occurred prior to, and up to, the time of the alleged crimes against Hull. *Id.* In the general case, a defendant attempting to stipulate away an element of the crime to avoid admission of a prior conviction would leave a “gap in the story of a defendant’s *subsequent criminality*.” *Id.* at 191 (emphasis added). No such “gap” would have been left in this case considering the text messages occurred two to three month after the alleged criminality. *Id.*

In sum, this case provides the Court with an ideal vehicle to resolve the question presented. This case presents the Court with several unique circumstances.

Hull’s trial counsel clearly conceded to the jury that the element of intent to distribute was established, from opening statement through examination of the government’s law enforcement witnesses. An abundance of direct evidence proved the element of intent to distribute which was emphasized by both the prosecution and the defense during trial. The government acknowledged that the defense conceded the intent element during closing argument. Pet. App. 37. The other act evidence occurred some two to three months after the allegations and did not interrupt the narrative evidence, or create a missing link in the prosecution’s story.

Finally, the jury's note provides evidence that the text messages created jury confusion and prejudice. Pet. App. 39. The note suggests that the jury was prejudicially influence by "later evidence [Hull] had intent to sell/distribute." p. 39.

4. The government states that Hull failed to identify a circuit conflict or show that circuits are divided. Opp. 12. The Petition here set out the varying ways the circuits address the interplay between Rule 403 and Rule 404(b). Pet. 13-23. The Petition here seeks the Court's guidance to establish consistency among lower courts in the application of Rule 403 when the prosecution offers other act evidence for a proper purpose under Rule 404(b), such as in this case to prove intent.

Moreover, both the district court and the Ninth Circuit failed to set out any analysis for concluding there was no showing that the text messages were "unduly prejudicial." Pet. App. 4-5. Resolution of the question gives the Court the opportunity lay out the standards for trial courts making a Rule 403 analysis on evidence offered for a proper purpose under Rule 404(b), and also give the Court the opportunity to require trial courts to make "more complete records" that would "promote more effective appellate review." Pet. 24-26.

The government states "petitioner does not explain how any differences in articulation [among the circuits] lead to a difference in outcome – let alone why any other circuit's formulation would have resulted in a different outcome of his case." Opp. 13. If the Court sets out the factors in *Old Chief* that are relevant to a Rule 403 analysis when the prosecution offers Rule 404(b) other act evidence for a proper purpose, those factors would weigh in favor of an abuse of discretion by the district court in this case. Those factors include Hull's concessions before the jury at trial, and the abundance of evidence beyond the text messages that proved

intent, considering the fact that the text messages did not create a missing link or break in the prosecution's story or the narrative evidence. *Old Chief*, 519 U.S. at 184-85, 189-91.

5. Because Hull's appeal resulted in a remand to the district court for resentencing, the government maintains that this case "is a poor vehicle to address the question presented." Opp. 14. The government claims that the interlocutory nature of this petition "'furnishe[s] sufficient ground for denial' of certiorari." Opp. 15.

Should Hull prevail on the merits, resulting in the conclusion that the district court abused its discretion in admitting the text messages upon a proper 403 analysis, the case would be remanded for a new trial so long as the error is non-harmless.<sup>1</sup> In this case, the district court has delayed the resentencing hearing pending resolution of the petition for writ of certiorari. Reply App. 19 (DC No. 2:20-cr-128-TOR-2, ECF No. 336). This petition does not create a problem with piecemeal litigation since the petition is a trial issue and the resentencing will be cancelled should Hull receive a new trial.

The government argues, prematurely, that the error in admitting the text messages was harmless. Opp. 15-16. A harmless error analysis is typically conducted after error is determined, in this case whether the district court abused its discretion by admitting the text messages after a proper Rule 403 analysis. Nonetheless, harmless error would be difficult to conclude on the merits here since the jury's note went right to the heart of the prejudice equation and provided the jury with evidence that Hull had the propensity to deal drugs. Pet. App. 39. Under these circumstances Hull should get a new trial.

---

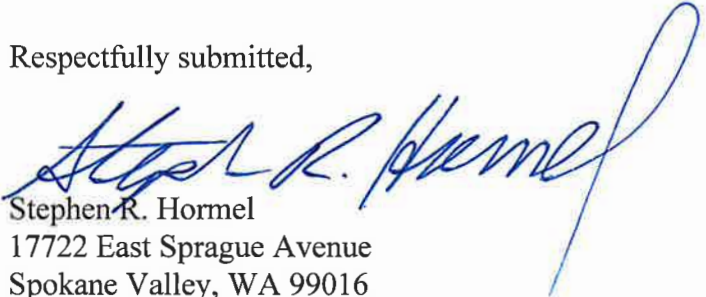
<sup>1</sup> If certiorari is granted on the question presented, harmless error could be determined by the Court on the merits, or on remand to the Ninth Circuit should Hull prevail on the Rule 403 abuse of discretion determination.

## CONCLUSION

This case provides the Court with an excellent vehicle to resolve the question presented, Therefore, it is requested that this Court grant the petition for writ of certiorari.

Dated this 14th day of December, 2024.

Respectfully submitted,



Stephen R. Hormel  
17722 East Sprague Avenue  
Spokane Valley, WA 99016  
Telephone: (509) 926-5177  
Facsimile: (509) 926-4318  
Attorney for Hull

# Appendix

1 Stephen R. Hormel  
2 Hormel Law Office, L.L.C  
3 17722 East Sprague Avenue  
4 Spokane Valley, WA 99016  
5 Telephone: (509) 926-5177  
6 Facsimile: (509) 926-4318

7 Zachary L. Ayers  
8 Ayers Law Firm, P.L.L.C.  
9 1312 N. Monroe Street, Suite 133  
10 Spokane, WA 99201  
11 Telephone/Fax: (509) 252-6005  
12 Email: zach@ayerslawfirm.net

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF WASHINGTON  
15 (HONORABLE THOMAS O. RICE)

16 UNITED STATES OF AMERICA, )  
17 )  
18 Plaintiff, )  
19 )  
20 vs. )  
21 )  
22 BRADLEY DALE HULL, )  
23 )  
24 Defendant. )  
25 )

No. 2:20-CR-0128-TOR-2

REPLY TO UNITED STATES'  
RESPONSE ON MOTION FOR  
MOTION FOR NEW TRIAL

BRADLEY DALE HULL, through counsel, Stephen R. Hormel for Hormel Law Office, L.L.C. and Zachary Ayers of Ayers Law Firm, submits the following reply to the United States' response to the motion for new trial. (ECF No. 293).

1. Exhibits 39, 40 and 43 should not have been admitted and was prejudicial as proof of "intent" under FRE 404(b).

The government cites several cases it maintains supports its view that the text messages were admissible to prove "intent." (ECF No. 293 at 2-3). Initially,

REPLY ON MOTION  
FOR NEW TRIAL

1 counsel would seek a final jury instruction relating to other act evidence.<sup>4</sup>

2 In this case, no such limiting instructions were sought since the Court  
3 admitted the text messages as evidence “inextricably intertwined” with the charged  
4 conduct. (ECF No. 290-1 at 18-19). Having admitted the text messages for that  
5 reason, defense counsel would not want the jury to know that the text messages  
6 were admitted as “inextricably intertwined” with the charged conduct by seeking  
7 some sort of instruction. The government’s closing argument informing the jury  
8 that the text messages proved Hull’s intent to distribute the drugs in Misty Haynes’  
9 car, contrary to this Court’s ruling, prevented this Court from properly instructing  
10 the jury during trial and in the final instructions to the jury.

11 Normally, a district court’s failure to *sua sponte* give limiting instructions is  
12 not reversible error. “[I]t is ‘well-settled that where no limiting instruction is  
13 requested concerning evidence of other criminal acts, the failure of the trial court to  
14 give such an instruction *sua sponte* is not reversible error.’” *United States v.*  
15 *Hardrick*, 766 F.3d 1051, 1056 (9th Cir. 2014) (quoting *United States v.*

---

16  
17 <sup>4</sup> Instruction No. 3.3 states:

18 **3.3 Other Crimes, Wrongs, or Acts of Defendant**

19

20  
21 You have heard evidence that the defendant committed other  
22 [crimes] [wrongs] [acts] not charged here. You may consider this  
23 evidence only for its bearing, if any, on the question of the  
24 defendant’s intent and for no other purpose. You may not consider  
25 this evidence as evidence of guilt of the crime for which the  
defendant is now on trial.

1 *Multi-Mgmt., Inc.*, 743 F.2d 1359, 1364 (9th Cir.1984)).

2 Here, however, the Court would not have given an instruction to explain to  
3 the jury that the text messages were “inextricably intertwined” with the conduct  
4 charged against Hull. Such an instruction would have been highly prejudicial.  
5 With the Court’s ruling on the text messages at admissible for that reason, counsel  
6 would not have sought a limiting instruction during trial or before the reading of  
7 the final instructions. In this case, the failure to have limiting instructions further  
8 prejudiced Hull’s trial, and such prejudice was created by the government.

9 2. Admission of pictures of the gold coin was prejudicial.

10 The government states that “it is unclear how Exhibits 35, 36, and 37 – three  
11 photographs of coins – had *any* prejudicial impact, and the Defendant does not  
12 provide any explanation concerning how he suffered prejudice.” (ECF No. 292 at  
13 5). The government’s response does well to highlight the prejudice.

14 The government reiterated: “the photographs recovered from the Defendant’s  
15 cell phone ... make the Defendant’s possession of the bag and its contents “more  
16 probable than it would be without the evidence ...” *Id.* (citing FRE 401(a)). It  
17 reasons that such evidence is relevant because Hull “testified that he owns a coin  
18 collection.” *Id.* Therefore, the photographs show that Hull “is associated with a  
19 relatively unique item in both locations.” Again, this reasoning flies in the face of  
20 the FRE 404(a)’s exclusion of evidence simply to prove propensity .

21 Essentially, the government argues that since Hull possessed a picture of a  
22 gold coin, the he must have possessed the large quantity of drugs in the grocery bag  
23 since there were plastic collector cases in the same bag. The government is



No. 22-30156

---

In the United States Court of Appeals  
for the Ninth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

BRADLEY HULL,

Defendant-Appellant.

On Appeal from the United States District Court  
for the Eastern District of Washington  
District Court No. 2:20-CR-00128-TOR-2

The Honorable Thomas O. Rice  
United States District Court Judge

Defendant-Appellant's Opening Brief

---

Stephen R. Hormel  
Hormel Law Office, L.L.C.  
17722 East Sprague Avenue  
Spokane Valley, WA 99016  
Telephone:(509) 926-5177  
Facsimile:(509) 926-4318

Attorney for Hull

prejudicial text messages cleared that up.

In addition, the district court ruled that the text messages fell outside Rule 404(b), but were admissible as evidence “inextricably intertwined” with the allegations. Due that ruling, no limiting instruction was sought or given regarding 404(b) evidence. This further prejudiced Hull’s trial. Therefore, a new trial is justified under the facts of this case.

2. The district court erred in denying the pretrial motion to suppress evidence, by denying the post-trial motion to suppress evidence and by denying a *Frank*’s hearing based on proof of intentional misstatements or statements made in reckless disregard of the truth relating to the meth pipe seizure.

#### Standard of Review

This Court reviews “a district court’s rulings on motions to suppress and the validity of search warrants *de novo*.” *Underwood*, 725 F.3d at 1081. “[G]reat deference” is given “to an issuing judge’s finding that probable cause supports a warrant and review such findings for clear error.” *Id.* (citing *United States v. Krupa*, 658 F.3d 1174, 1177 (9th Cir.2011)).

#### Standing

The Supreme Court has made it clear that standing is established if facts demonstrate that a passenger of an vehicle must show more than just a mere presence in a vehicle to establish standing. *Rakas*, 439 U.S. at 134. A reasonable

No. 22-30156

---

In the United States Court of Appeals  
for the Ninth Circuit

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

BRADLEY HULL,

Defendant-Appellant.

---

On Appeal from the United States District Court  
Eastern District of Washington  
District Court No. 2:20-CR-128-TOR-2

Honorable Thomas O. Rice  
United States District Court Judge

---

Defendant-Appellant's Reply Brief

---

Stephen R. Hormel  
Hormel Law Office, L.L.C.  
17722 East Sprague Avenue  
Spokane Valley, WA 99016  
Telephone:(509) 926-5177  
Facsimile:(509) 926-4318

trafficking activity as contained in the text messages conveyed to the jury the Hull was involved in drug trafficking, thus, diminishing his credibility, and his defense.

The government's case, identifying Hull as the person who placed the grocery bag of drugs in the trunk of Haynes's car, came from one witness, Detective Melton. The defense attempted to impeach Melton by showing the jury that he manufactured the evidence about using binoculars. Melton did not reference binoculars in his reports, nor did his reports identify Hull in bare feet until after the traffic stop. (3-ER-242-43). Any doubt Hull was involved in drug trafficking was dispelled by the contents of the text messages.

Furthermore, it is obvious the jury relied on and considered the text messages before finding Hull guilty. The jury asked the district court, in part, "are we to determine based off of later evidence he had intent to sell/distribute?" (4-ER-486). This inquiry establishes that the jury used the later criminal conduct in the text messages as evidence of Hull's drug trafficking, even though he denied involvement in the offenses charged. The text messages had little-to-no-relevance at Hull's trial, and could have only prejudiced the jury.

Hull was further prejudiced because no limiting instruction was given to the jury about the use of the criminal acts contained in the text messages. *See,*

Opening Brief at 7-8. There was no request made for a limiting instruction because the district court ruled that the text messages were “inextricably intertwined” with the offenses. *Id.*

Therefore, this Court should grant a new trial.

C. **The district court erred in calculating the sentencing guideline range.**

1. **The district court erred by including drug quantities from the “Clark Counts” in the superseding indictment as relevant conduct.**

The government recognizes that *United States v. Hahn*, 960 F.2d 903, 911 (9th Cir. 1992) is important to determination of this issue. AB at 42-43. The inquiry here is whether the “extraneous conduct” alleged in the superseding indictment that involved the co-defendant Russell Clark, from the end of August to October 16, 2019, should have been included as relevant conduct. *Id.* at 910; *see*, (4-ER-526-27) (Clark Counts 2,3 and 4, Haynes Counts 5 and 6).

*Hahn* instructs that district courts must analyze three “essential components” to determine if “extraneous conduct” should be included in relevant conduct. *Id.* Those components are: (1) similarity; (2) regularity; and (3) temporal proximity.

The government maintains the 6-month gap between the Clark Counts and the Haynes Count is not temporally remote. AG at 42-43. The government

1 THE COURT: Ladies and gentlemen of the jury, we're  
2 going to take a -- just a five-minute recess. Please do not  
3 discuss the case. Do not do any independent research.

4 (Jury exits at 3:13 p.m.)

5 THE COURT: Please be seated.

6 MR. ELLIS: Your Honor, I indicated during our  
7 pretrial conference yesterday that I would not -- I would ask  
8 for a conference with the Court before going into Mr. Hull's  
9 prior conviction. Mr. Hull just testified that he has never  
10 ever, quote -- he used the word "ever" -- been involved in  
11 selling heroin. He has a prior conviction from 2016 for  
12 conspiracy to deliver heroin. I -- I genuinely can't believe it  
13 but I think I'm entitled to ask him about it now and admit the  
14 document.

15 THE COURT: Mr. Hormel, I think Mr. Ellis is right.  
16 He's opened the door.

17 MR. HORMEL: He did open the door. I know that he  
18 said a very broad statement.

19 THE COURT: He can be impeached.  
20 Anything else?

21 MR. HORMEL: I will --

22 MR. ELLIS: No, your Honor, just that one point.

23 MR. HORMEL: I'll reserve an objection to it, but I  
24 understand.

25 THE COURT: Well, you agree with me, he answered flat

1 out.

2 MR. HORMEL: I'm just reserving an objection, your  
3 Honor. I'm not going to concede anything.

4 THE COURT: All right. Should we get the jury? Are  
5 we ready, then?

6 MR. ELLIS: Yes, your Honor.

7 THE COURT: Are there any other issues that you needed  
8 to raise with the Court?

9 MR. ELLIS: No, your Honor. It was just that one  
10 thing.

11 (Jury enters at 3:17 p.m.)

12 THE COURT: Please be seated.

13 Mr. Ellis, you may proceed.

14 MR. ELLIS: Thank you, your Honor.

15

16 CROSS-EXAMINATION

17 BY MR. ELLIS:

18 Q. Good afternoon, Mr. Hull.

19 A. Good afternoon.

20 Q. I want to put up on the screen what's been admitted as  
21 Government's Exhibit 60, and please if it can be published?

22 THE COURT: Publish, yes.

23 Q. (BY MR. ELLIS) A photograph of someone who's been  
24 identified as Marcus Mueller.

25 A. Correct.

1 Q. Do you agree that that photograph depicts Marcus Mueller?

2 A. Yes.

3 Q. And do you agree with Ms. Fanning that that's what Marcus  
4 Mueller basically looked like on February 7th of 2020?

5 A. Basically. He's cleaned up, but yes.

6 Q. Who cleaned up?

7 A. He's cleaned up a little bit from -- yeah.

8 Q. And do you agree -- you heard Ms. Fanning testify that  
9 Mr. Mueller is maybe 5-11, six foot, 6-1, somewhere in there?

10 A. Yes.

11 Q. Do you agree with that?

12 A. I do.

13 Q. You heard Ms. Fanning testify that Mr. Mueller is skinny.  
14 She couldn't quite put a number on it. But would you agree that  
15 he's skinny?

16 A. Yes.

17 Q. All right. Mr. Hull, is it fair to say that you testified  
18 on direct with Mr. Hormel that you have never ever been involved  
19 in selling heroin?

20 A. That's correct.

21 Q. Is that true?

22 A. That is true.

23 Q. Were you convicted in 2016 of conspiracy to deliver heroin  
24 across the river in Spokane County Superior Court?

25 A. I was.



1 Q. Okay.

2 MR. ELLIS: Your Honor, the Government offers 24.

3 MR. HORMEL: No objection.

4 THE COURT: Exhibit 24 is admitted.

5 (Exhibit No. 24 admitted into evidence.)

6 MR. ELLIS: Permission to publish?

7 THE COURT: Yes.

8 Q. (BY MR. ELLIS) And so, I just put 24 on the screen. Is  
9 that your judgment from when you were convicted of conspiracy to  
10 deliver a controlled substance, heroin, back in 2016?

11 THE COURT: There's nothing on the screen.

12 MR. ELLIS: Oh, I apologize. I need to switch over.

13 THE COURT: And that may be published.

14 MR. ELLIS: Thank you, your Honor.

15 Q. (BY MR. ELLIS) So I'll repeat the question. Is that the  
16 judgment from Spokane County Superior Court where you were  
17 convicted after pleading guilty to conspiracy to deliver a  
18 controlled substance?

19 A. Yes, it is.

20 Q. All righty.

21 MR. ELLIS: I have no other questions. Thank you,  
22 your Honor.

23 THE COURT: Mr. Hormel, redirect?

24

25 //

REDIRECT EXAMINATION

BY MR. HORMEL:

Q. So you indicated that you were convicted of conspiracy to deliver heroin in 2016, correct?

A. Yes, I was convicted of that, but I didn't sell heroin. I didn't sell any drugs.

Q. So what's a conspiracy?

A. I believe it's an agreement to sell drugs.

Q. So were you involved with somebody else who did?

A. I was involved with somebody else who did, but I wasn't selling drugs. They -- I bought drugs off them. They called me back a couple hours later because they told me that they had some meth they wanted to give me. I still had the drugs I bought off them. And when I got there, the cops came out of their hotel and arrested me.

And so what happened was they sold me drugs, they got their door kicked in, the cops asked who you got the drugs from. They knew they had just unloaded drugs on me and called me over.

Q. So conspiracy to deliver a controlled substance in the State of Washington, what's your understanding of the type of -- it is a felony, but what's the type of offense under the sentencing guidelines?

A. It's an unranked felony. I was sentenced to one day in jail, six months' probation.

Q. So this is what you pled to was a felony where you got one

1 day in jail and it's an unranked felony in the State of  
2 Washington?

3 A. That's correct.

4 MR. HORMEL: Thank you.

5

6 RECROSS--EXAMINATION

7 BY MR. ELLIS:

8 Q. Mr. Hull, because you talked about the facts a little bit,  
9 you talked about a controlled informant, right, who you found  
10 out did some buys from Misty Haynes at that East Broadway  
11 residence.

12 A. That's what I heard, yes.

13 Q. Okay. So, did you remember when you were charged in  
14 Spokane County Superior Court, do you remember reading the  
15 police reports as part of the discovery process?

16 A. Yes.

17 Q. Because isn't it the case there that you basically got set  
18 up by a CI and you showed up at a hotel room to get heroin and  
19 there were cops there instead?

20 A. They weren't a CI. They were a dealer. And they got set  
21 up by a CI where the cops came to bust them. They said who is  
22 your source, we need to get -- you know, so they called me up  
23 because they had just unloaded the dope on me that I bought. So  
24 they knew I had it. They had me come back because they said  
25 they were -- under the premise of getting some meth. And when I

1 came around the corner, the cops came out of their room and  
2 arrested me, yeah.

3 Q. So I'm going to break that down just a little bit. So your  
4 conviction was for you -- you're saying you bought heroin from  
5 someone?

6 A. Correct.

7 Q. The same day they were being set up by a CI?

8 A. I don't know if it was the same day.

9 Q. But you bought heroin from someone who -- and then left?

10 A. Yes.

11 Q. And then got a call from that person to come back?

12 A. Yes.

13 Q. Brought the heroin you just brought back?

14 A. Well, I had it with me.

15 Q. Okay. And then pled guilty?

16 A. Yes.

17 Q. Okay. Okay.

18 MR. ELLIS: I don't have any other questions.

19

20 FURTHER REDIRECT EXAMINATION

21 BY MR. HORMEL:

22 Q. If you recall, was your initial charges a conspiracy to  
23 deliver controlled substances?

24 A. No.

25 MR. HORMEL: I'm showing you what's the front page of

1 Exhibit 24. If we could publish -- turn it on.

2 THE COURT: Yes. Publish.

3 MR. HORMEL: I'm not real seasoned at that.

4 Q. (BY MR. HORMEL) Do you see down at the bottom of the page  
5 of Exhibit 24?

6 A. Yes.

7 Q. And what does that say?

8 A. "To the Amended Information."

9 Q. Okay. Were your original charges changed in order for you  
10 to get the one day in jail?

11 A. They were.

12 Q. So it was a plea bargain so that you could get --

13 A. One day in jail, yeah.

14 Q. -- one day in jail.

15 MR. HORMEL: That's all I have. Thank you.

16 MR. ELLIS: I'm done. Thank you, your Honor.

17 THE COURT: All right. Mr. Hull, you may step down.

18 THE DEFENDANT: Thank you.

19 Mr. Hormel, Mr. Ayers, any further witnesses?

20 MR. HORMEL: Your Honor, the defense rests.

21 THE COURT: All right. Mr. Ellis?

22 MR. ELLIS: There's not going to be any rebuttal.

23 Thank you.

24 THE COURT: All right. Ladies and gentlemen of the  
25 jury, the parties have rested the case. This is the time now

CLOSED,9CCA REMAND,LOCATION-RELEASED,PROTO  
**U.S. District Court**  
**Eastern District of Washington (Spokane)**  
**CRIMINAL DOCKET FOR CASE #: 2:20-cr-00128-TOR-2**

Case title: USA v. Clark et al

Date Filed: 10/21/2020

Date Terminated: 09/15/2022

---

Assigned to: Judge Thomas O. Rice

Appeals court case number:  
22-30156 9CCA

**Defendant (2)**

**Bradley Dale Hull**  
*TERMINATED: 09/15/2022*

represented by **Stephen R Hormel**  
Hormel Law Office  
17722 East Sprague  
Spokane Valley, WA 99016  
509-926-5177  
Fax: 509-926-4318  
Email: [steve@hormellaw.com](mailto:steve@hormellaw.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Designation: CJA Appointment*

**Sandy D Baggett**  
Law Office of Sandy Baggett  
PO Box 1069  
Spokane, WA 99201  
509-822-9022  
Email: [sdbaggett@hotmail.com](mailto:sdbaggett@hotmail.com)  
*TERMINATED: 08/26/2021*  
*Designation: CJA Appointment*

**Zachary Lynn Ayers**  
Ayers Law Firm PLLC  
1312 N Monroe Street  
Suite 133  
Spokane, WA 99201  
509-252-6005  
Email: [zach@ayerslawfirm.net](mailto:zach@ayerslawfirm.net)  
*TERMINATED: 09/19/2022*  
*Designation: CJA Appointment*

**Pending Counts**

21 U.S.C § 841(a)(1), (b)(1)(B)(i):  
POSSESSION WITH INTENT TO  
DISTRIBUTE 100 GRAMS OR  
MORE OF A MIXTURE OR  
SUBSTANCE CONTAINING A  
DETECTABLE AMOUNT OF  
HEROIN  
(5s)

21 U.S.C. § 841(a)(1),  
(b)(1)(A)(viii): POSSESSION WITH  
INTENT TO DISTRIBUTE 50  
GRAMS OR MORE OF ACTUAL  
(PURE) METHAMPHETAMINE  
(6s)

**Disposition**

CAG: 200 months each count to run concurrent;  
Supervised Release: 5 years each count to run  
concurrent; Fine: Waived; and SPA: \$100.

CAG: 200 months each count to run concurrent;  
Supervised Release: 5 years each count to run  
concurrent; Fine: Waived; and SPA: \$100.

**Highest Offense Level (Opening)**

Felony

**Terminated Counts****Disposition**

21 U.S.C. §§  
841(a)(1),(b)(1)(A)(viii); 846 –  
CONSPIRACY TO DISTRIBUTE  
50 GRAMS OR MORE OF  
ACTUAL (PURE)  
METHAMPHETAMINE)  
(1)

Dismissed.

21 U.S.C. §§ 841(a)(1),  
(b)(1)(A)(viii); 846: CONSPIRACY  
TO DISTRIBUTE 50 GRAMS OR  
MORE OF ACTUAL (PURE)  
METHAMPHETAMINE  
(1s)

Dismissed.

21 U.S.C. §§  
841(a)(1),(b)(1)(A)(viii) –  
DISTRIBUTION OF 50 GRAMS  
OR MORE OF ACTUAL (PURE)  
METHAMPHETAMINE  
(2)

Dismissed.

21 U.S.C. § 841(a)(1),  
(b)(1)(A)(viii): DISTRIBUTION OF  
50 GRAMS OF MORE OF  
ACTUAL (PURE)  
METHAMPHETAMINE  
(2s)

Dismissed.

21 U.S.C. §§  
841(a)(1),(b)(1)(A)(viii) –  
DISTRIBUTION OF 50 GRAMS  
OR MORE OF ACTUAL (PURE)  
METHAMPHETAMINE  
(4)

Dismissed.

21 U.S.C. § 841(a)(1),  
(b)(1)(A)(viii): DISTRIBUTION OF  
50 GRAMS OF MORE OF  
ACTUAL (PURE)  
METHAMPHETAMINE  
(4s)

Dismissed.

**Highest Offense Level  
(Terminated)**

Felony

**Complaints****Disposition**

None

**Witness**

**Kristen Fanning**  
*TERMINATED: 05/20/2022*

represented by **John Gregory Lockwood**  
Law Office of J Gregory Lockwood PLLC  
421 West Riverside Avenue  
Suite 960  
Spokane, WA 99201

509-624-8200  
 Fax: 509-623-1491  
 Email: [jgregorylockwood@hotmail.com](mailto:jgregorylockwood@hotmail.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
 Designation: CJA Appointment

**Plaintiff**

**USA**

represented by **Michael James Austen Ellis**  
 U S Attorney's Office – SPO  
 920 West Riverside Avenue  
 Suite 340  
 PO Box 1494  
 Spokane, WA 99210  
 509-835-6336  
 Email: [usawac.MEllisECF@usdoj.gov](mailto:usawac.MEllisECF@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
 Designation: Assistant US Attorney

Date Filed	#	Docket Text
08/07/2024	<u>337</u>	Letter from US Supreme Court to Clerk, 9CCA dated 8/6/2024 received as to Bradley Dale Hull (2). The petition for a writ of certiorari was filed on August 1, 2024 and placed on the docket August 6, 2024 as No. 24-5240. (TNC, Case Administrator) (Entered: 08/07/2024)
06/18/2024	336	ORDER Granting <u>335</u> Motion to Delay Resentencing Proceedings. Pending resolution of a petition for writ of certiorari to the United States Supreme Court, this matter will be delayed. Counsel for Defendant shall promptly notify the Court of the Supreme Court's decision. Signed by Judge Thomas O. Rice. TEXT ORDER ONLY – NO PDF ATTACHED (Entered: 06/18/2024)
06/17/2024	<u>335</u>	MOTION to Stay <i>Resentencing Proceedings</i> by Bradley Dale Hull (2). Motion Hearing set for 6/20/2024 Without Oral Argument before Judge Thomas O. Rice. (Hormel, Stephen) (Entered: 06/17/2024)
06/17/2024	<u>334</u>	MEMORANDUM <i>re Resentencing</i> by USA re <u>333</u> Order Setting Briefing Schedule as to Bradley Dale Hull (2) (Ellis, Michael) (Entered: 06/17/2024)
05/24/2024	<u>333</u>	ORDER SETTING BRIEFING SCHEDULE as to Bradley Dale Hull (2). No later than June 17, 2024, counsel for each Party shall file and serve a brief pertaining to Defendant's resentencing. Signed by Judge Thomas O. Rice. (TNC, Case Administrator) (Entered: 05/24/2024)
05/15/2024	<u>332</u>	MANDATE from 9CCA as to Bradley Dale Hull (2) re <u>320</u> 9CCA Notice of Appeal. Decision of the District Court is <b>Affirmed in part; Dismissed in part; Remanded in part</b> . 9CCA: 22-30156. (TNC, Case Administrator) (Entered: 05/15/2024)
05/07/2024	<u>331</u>	COPY OF 9CCA ORDER re <u>320</u> 9CCA Notice of Appeal as to Bradley Dale Hull (2). The petition for panel rehearing and the petition for rehearing en banc are <b>DENIED</b> . 9CCA: 22-30156. (TNC, Case Administrator) (Entered: 05/07/2024)
12/05/2023	<u>330</u>	COPY OF 9CCA ORDER re <u>320</u> 9CCA Notice of Appeal. 9CCA: 22-30156 as to Bradley Dale Hull (2). (BM, Case Administrator) (Entered: 12/05/2023)
11/24/2023	<u>329</u>	9CCA Slip Opinion: Decision of the District Court is Affirmed in part; Dismissed in part; Remanded in part. 9CCA Case No. 22-30156 as to Bradley Dale Hull (2). (BM, Case Administrator) (Entered: 11/27/2023)
10/02/2023	<u>328</u>	COPY OF 9CCA ORDER as to Bradley Dale Hull (2) re <u>320</u> 9CCA Notice of Appeal. 9CCA: 22-30156. (BM, Case Administrator) (Entered: 10/02/2023)
02/22/2023	<u>327</u>	COPY OF 9CCA ORDER re <u>320</u> 9CCA Notice of Appeal. 9CCA: 22-30156 as to Bradley Dale Hull (2). (BM, Case Administrator) (Entered: 02/28/2023)