

24-6749

No. 23-2234

ORIGINAL

Supreme Court, U.S.
FILED

DEC - 1 2024

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

FOSTER LEE SCOTT – PETITIONER (PRO SE)

VS.

UNITED STATES OF AMERICA – RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FOSTER LEE SCOTT (PRO SE)

P.O. BOX 3725

ADELANTO, CA. 92301

N/A VICTORVILLE PRISON

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SUPREME COURT, U.S.

QUESTIONS PRESENTED:

1. Does the two officer's testimony at trial, particularly Sergeant Helms' testimony establish the required mens rea for the offense?
2. How does the testimony by Helms conflict with Rule 704(b) of the Federal Rules of Evidence?
3. Does that testimony violate the plain error standard under the Supreme Court's decision in "Diaz"?
4. Does Counsel have to specifically ask experts to distinguish between "most people" or "all people"?
5. How much weight does the prosecutor's statements have upon a jury? So much as to render a guilty verdict by offering an expert to testify as his opinion is fact?
6. Since it is a constitutional violation, does the Government have to prove harmlessness beyond a reasonable doubt?
7. Does using hypotheticals with experts on the stand during trial establish an opinion that can be construed as fact with the jury?
8. Does the expert's testimony in the mens rea context "in his expert opinion" close the door entirely on another possibility for the Defendant possessing the drugs for any other reason than for sales?
9. Does the alleged violation impact the Defendant's right to a fair trial?
10. To what extent was Sergeant Helms' testimony critical in establishing the intent of the Defendant?
11. Could the case have been decided on other evidence alone?
12. What is the relevance of associating intent based on quantity to determining use versus distribution?

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CASES

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NOBARI – 9TH CIR. 2009

SIMTOB – 9TH CIR. 1990

STATUTES AND RULES

RULE 704(b) – RULES OF EVIDENCE/TESTIMONY /EXPERT

HARMLESS ERROR

TESTIFYING

OTHER

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JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 18, 2024.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. FEDERAL RULES OF EVIDENCE, RULE 704(b)
2. HARMLESS ERROR
3. MENS REA
4. EXPERT TESTIMONY

STATEMENT OF CASE

Key Arguments and Points:

The Meaning of “Absolutely Not”, Judge Desai interprets the witness’s unequivocal statement “Absolutely Not” as a clear indication of belief regarding the circumstances of drug possession.

AUSA Williams argues that the statement is not universally applicable to all drug dealers, but rather indicates the officer’s personal belief about typical scenarios, maintaining that “each case is independent.”

Harmless Error Analysis:

AUSA Williams posits that any error in the expert’s testimony is harmless due to the overwhelming evidence against the Defendant – specifically the amount of cash and methamphetamine found, and the implausibility of the Defendant’s claims regarding personal use.

Plain Error Framework:

Judge Miller points out that the discussion revolves around prong three and four of plain – error specifically focusing on whether the error had a substantial effect on the outcome of the trial. AUSA Williams argues that this case does not violate substantial rights that would merit overturning the judgement. However, Kate Morris highlights exactly what the error is and why.

Discussion of Diaz Case:

AUSA Williams asserts that the Diaz case did not alter the standard for expert testimony relevant mens rea and is consistent with the Circuit’s precedents. Kate Morris counters that

Diaz addresses mirroring hypotheticals and implies limitations on how expert witnesses can frame their testimonies regarding the Defendant's mindset.

Prejudice Under Plain Error:

Kate Morris emphasizes that to establish prejudice under prong three, a "reasonable probability" of a different trial outcome is sufficient, arguing that the expert's testimony heavily influenced the jury by asserting that the Defendant could not possibly possess drugs for personal use.

Closing Arguments and Context:

AUSA Williams defends the prosecutor's closing argument comments, suggesting they relate to inconsistencies in AUSA Williams defends the prosecutor's closing argument comments, suggesting they relate to inconsistencies in the Defendant's testimony rather than alleging collusion between defense counsel and the Defendant. Kate Morris expresses concern regarding the implications of the prosecutor's insinuations and their potential impact on the jury's perception.

REASONS FOR GRANTING

Harmless Error Analysis:

How do the facts presented support or contradict the motion that the alleged misconduct was harmless? What weight does the Court assign to expert testimony when determining harmlessness in the Context of the overall evidence? How do these issues get resolved?

Defendant's Rights:

The alleged violation impacts the Defendant's Right to a fair trial, particularly concerning the jury's interpretation of His statements about drug use and what He said and how it was implied to mean other than His intention when He said it.

Misconduct and Jury Influence:

The significant nature of the prosecutor's closing arguments, when they conflict with the jury's ability to assess the evidence impartially is not harmless.

CONCLUSION

Highlighting the critical nature of an expert's testimony and/or their opinions and their potential to mislead a jury, advocates for a reevaluation based on principles established in Diaz. It appears there is still a decision needing to be made on what is tolerable under "Diaz" and what is truly harmless, in a jury trial proceeding. Mr. Scott urges this Honorable Supreme Court for a reevaluation of His Case.

Respectfully Submitted,

Dated:

2/21/2025

Signed:

Forster L. Scott