

MAR 09 2018

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ORIGINAL

No. 18-7356

IN THE
SUPREME COURT OF THE UNITED STATES

JACK GOSSETT — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JACK GOSSETT/REG. NO. 54023-177
(Your Name)
FEDERAL CORRECTIONAL INSTITUTION
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(Address)

EL RENO, OK. 73036
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I.

QUESTION(S) PRESENTED

1. Did the testimony of a government agent, having not been tendered as an expert witness after interpreting and explaining events that he DID NOT observe, be potentially or likely to be seen by the jurors in a criminal trial as substantial to prove "beyond a reasonable doubt" a persons guilt because other direct evidence of involvement was unavailable to them and greatly influenced their decision?
2. Did the government agent's testimony severely prejudice the defendant's substantial rights and caused reversible error?
3. Did the District Court err in allowing untendered expert testimony that was used to establish guilt?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

District Judge:	Honorable Judge Reed O'Connor
Appellant:	Jack Gossett
Attorneys for the Defendant:	Loren Green Leon Haley Jr. (Trial)
United States Attorney for The Northern District of Texas:	John Parker
Assisstant U.S. Attorney for The Northern District of Texas:	Shawn Smith Kate Rumsey (Trial) J. Wesley Hendrix (Appeal)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 11, 2017.

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

STATEMENT OF THE CASE

A jury convicted Jack Gossett of Conspiracy to Distribute and to Possess with Intent to Distribute Methamphetamine 21 U.S.C. § 846, 21 U.S.C. § 841 (a) (1) and (b) (1)(B) on July 25, 2016. The District Court imposed a sentence of three hundred (300) months imprisonment, three (3) years supervised release, and a one hundred dollars (\$100) special assessment.

This Petition follows his prosecution in The United States District Court For The Northern District Of Texas, Fort Worth Division and his Appeal to The United States Court Of Appeals For The Fifth Circuit. His prosecution was based on the submission of thousands of text messages retrieved by the DEA during its investigation of a North Texas based drug ring led by Chad Everett Clifton. The network distributed methamphetamine through intermediaries Chris Nicholson, Amber Shaw, and others. The government alleged that Jack Gossett received distributable amounts of methamphetamine through this network, and served as an enforcer and debt collector.

Jack Gossett argues that in his trial, the District Court violated Rule 701 of the Federal Rules of Evidence when it permitted the DEA's case agent to testify about his understanding of coded drug trade language, drug notes, and user versus distributable drug amounts. The agent offered opinion testimony as a witness having participated as an investigator on the case. DEA case agent Crum was the key witness against Jack Gossett at trial.

The government did not attempt to qualify Agent Crum as an expert witness under Rule 702 of the Federal Rules Of Evidence. Instead, he offered opinion testimony. Agent Crum testified that he had twenty (20) plus years of law enforcement experience at the time of this trial. Agent Crum testified that he was the supervisor of the DEA agents conducting the investigation. In this capacity, he performed physical surveillance, and provided reports to the United States Attorney's Office. Agent Crum also testified that he had participated in the prosecution of over one hundred (100) drug conspiracies as well as over a thousand (1000) drug related methamphetamine interrogations. The government offered Agent Crum's testimony to clarify the context of the evidence used at Gossett's trial and to try to explain how he thought this drug distribution network operated. He also explained the differences between distribution amounts and personal use amounts of methamphetamine.

He also testified on Scientific, Technical and other Specified knowledge including but not limited to coded drug terminology, pricing, and cellular telephone data download interpretation.

On December 11, 2017, The United States Court Of Appeals For The Fifth Circuit Affirmed Gossett's conviction after concluding that the evidence supported his involvement with a group of traders and sellers of methamphetamine, "particularly helping drug traffickers get paid." This brings us to the filing of this Petition.

REASONS FOR GRANTING THE PETITION

For many years, the criminal conspiracy laws have been the subject of great controversy. As early as 1843, a Pennsylvania judge commented, "The law of conspiracy is certainly in a very unsettled state. The decisions have gone in no distinctive principle; nor are they always consistent."

In this criminal case the evidence fails to support a conspiracy conviction for Gossett. Clearly, the testimony presented by Agent Grum is insufficient to establish guilt and should have been ruled inadmissible by The District Court when presented. Most District Courts have been weighing and balancing (walking a fine line) when it comes to the admittance of evidence under Federal Rules of Evidence 701 & 702. Some courts have reversed convictions, In Grinage, F.3d at 390, The Second Circuit reversed the conviction on the basis that a federal agent was permitted to testify about the meaning of wiretapped phone calls. In Garcia, Federal 3d at 413, The Second Circuit ruled that a DEA agent may not testify, either as an expert, or as a matter of his lay opinion, about the defendant's role in the conspiracy based on the totality of his experience. "When an agent testifies as a matter of lay opinion, the opinion must be based on his personal observations." In Johnson, F.3d at 617, The government offered the testimony of a DEA agent to "interpret" and "explain" the meaning of wiretapped phone calls. The agent was never tendered as an expert. The testimony was not properly admitted as opinion testimony under Rule 701, because the agent did not observe the events about which he was

testifying. Even if he had been tendered as an expert, the government did not offer any evidence explaining the agent's "methodology or guiding principles that would enable him to decode the wiretapped phone calls in the case."

In this trial, Agent Crum provided two forms of opinion testimony "interpreting" text messages and other interactions between the alleged co-conspirators that he had observed during the DEA investigation, and expert testimony on the "interpretation of words and phrases used by drug traffickers." All of Agent Crum's included testimony interpreting text message conversations between Gossett and others was offered as Lay opinion testimony. These recovered text messages between Gossett and others involved vague language and ambiguous conduct but never explicitly referred to methamphetamine or any other illegal substances. The messages also never established that Gossett received or was receiving methamphetamine from any source whatsoever.

Agent Crum testified after being asked by the prosecutor what he believed or understood Gossett to be doing that he was possessing, buying and selling methamphetamine. In Miller, 738 F.3d at 373, the FBI agents and detective similarly claimed to have based their Lay opinion on their "knowledge of the overall investigation." Neither explanation was ruled to be sufficient under Rule 701. As the prosecutor and agent offered essentially the same objective basis for the agent's Lay opinions, here as in Gossett, the requirements of FRE 701 were not met.

Instead, when asked whether he had an opinion regarding the

meaning of certain conversations and interactions based on his review of the specified evidence, the FBI agent stated his interpretation. Hampton, 718 F.3d at 981. Nowhere did the agent establish that the evidence referenced in the prosecutor's question was a factual basis for his Lay opinion testimony, let alone a complete and accurate statement of the basis on which he relied. Nor could the prosecution's questions alone necessarily establish the basis for the agent's Lay opinion. On this record, only the FBI had personal knowledge of what perceptions and reasoning he relied on in formulating his Lay opinion, only he was able to provide the "sufficient factual foundation" necessary "to admit Lay opinion evidence rationally based on his perception" the objective bases for his opinion, not the attorney directing the examination.

Hampton, 718 F.3d at 981.

The inter-related requirements of FRE 701(a), 701(b) have not been close to being met in this case. Courts have applied the principles and methods of these Rules of Evidence to the facts of each case and their circumstances but while doing this they must consider the reasonable understanding of an average juror and the weight placed on the testimonies these individuals must navigate through in order to obtain a fair and just outcome to the proceedings they have been privileged to serve. In Cruz, 363 F.3d 187, The Second Circuit ruled that The District Court erred when they erroneously admitted the expert testimony of a special agent from the DEA. The Court concluded that, "even if we were to take into account the improperly admitted testimony, the government failed

to introduce sufficient evidence such that a reasonable trier of fact could find Cruz guilty beyond a reasonable doubt." The same applies to this case that is before this Honorable Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 3/9/18