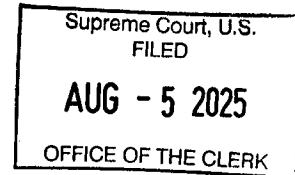


No. 25-5454

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

MARQUIS LUIS ROSADO

- PETITIONER

VS.

LEGAL MAIL PROVIDED TO
COLUMBIA CORRECTIONAL INSTITUTION
ON 8/5/25 (DATE) FOR MAILING
LC STAFF INITIAL MR I/M INITIAL

STATE OF FLORIDA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FIFTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

MARQUIS LUIS ROSADO

COLUMBIA CI ANNEX

216 SE CORRECTIONS WAY

LAKE CITY, FLORIDA 32025

QUESTION(S) PRESENTED

WHETHER THE TRIAL COURT VIOLATED TO UNITED STATES CONSTITUTION BY DEVIATING FROM FLORIDA'S STANDARD JURY INSTRUCTION ON DEATH BY UNLAWFUL DISTRIBUTION OF FENTANYL?

WHETHER THE TRIAL COURT VIOLATED THE UNITED STATES CONSTITUTION IN NOT GIVING AN INSTRUCTION ABOUT LACK OF KNOWLEDGE OF THE ILLICIT NATURE OF A CONTROLLED SUBSTANCE

WHETHER THE TRIAL COURT VIOLATED THE UNITED STATES CONSTITUTION IN DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL

LIST OF PARTIES

[X] 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:

RELATED CASES

N/A

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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☐ is unpublished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☐ is unpublished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 merit appears at
Appendix A 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☐ is unpublished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 Fifth Judicial Circuit Court and appears at Appendix B
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 _____.

☐ 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 and including _____ (date) on _____ (date) in application No. __A_____.

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

☒ For cases from **state courts**:

The date on which the highest court decided my case was July 1, 2025.
A copy of that decision appears at Appendix A.

☐ 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 and including _____ (date) on _____ (date) in application No. __A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**FIFTH AND SIXTH AMENDMENTS OF THE UNITED STATES CONSTITUTION
THROUGH THE FOURTEENTH AMENDMENT OF THE UNITED STATES
CONSTITUTIONAL**

STATEMENT OF THE CASE AND FACTS

The Petitioner went to trial on a single count indictment alleging that he had caused a death by unlawful distribution of fentanyl said to have occurred on October 12th, 2021 (R:16). He ultimately went to a jury trial, where he was convicted and sentenced to life in prison and given credit for 707 days already served (R:602).

Testimony began with Layla Lane, the decedent's half-sister. She had accompanied the decedent to his probation check-in on the morning of the 12th (TT:201). That evening she saw a black sedan pull up into her home's driveway, and her brother went out and got inside of the car (TT:202-03). Her brother returned about 15 minutes later and immediately went to his bedroom (TT:203-04). Her mother went to check on her brother and found him unresponsive (TT:204-05). She yelled, and Lane came to see what was going on, and saw her brother unresponsive (TT:205). She then called 911 for help (TT:206). She was unaware of the decedent having consumed any alcohol that day (TT:208-10).

Testimony was then provided by Corey Hines, a paramedic firefighter. He arrived on scene at 9:44 P.M. and discovered the decedent on his knees bent over backwards (TT:215-16). He discovered no signs of life and noticed

that rigor mortis had begun to set in (TT:216-17). He was not able to tell how long the decedent had been dead for (TT:219-20).

Deputy Paul Youmans then testified. He arrived on scene at 10:05 P.M. (TT:222). He testified that Deputy Burgess was already on scene (TT:223). He saw no apparent wounds on the decedent (TT:225-26). He saw no evidence of drugs, and a medical examiner was summoned (TT:226-27). Katherine Medina, a forensic crime scene technician then testified. She arrived around 10:58 P.M. (TT:231). She took numerous photographs of the scene and of the decedent (TT:231-45). She discovered an alcohol container near the bed (TT:236). She discovered two pills in a plastic bag underneath the decedent's pillow, one of which was missing a half (TT:237-38). The pills were sent to FDLE for testing (TT:240). She testified that detective Canterbury collected the two cell phones located near the decedent (TT:242-43).

Detective Andrew Canterbury then testified. He recovered two cell phones near the decedent (TT:253). He found an alcoholic beverage in a yellow container near the bed (TT:254). He also saw the pills located underneath the pillow (TT:255). The case was referred to medical examiners, and the detective identified the phones he collected and the pills (TT:257-60).

The decedent's father, Marcus Lane, then testified. He testified that he had a Nest doorbell camera at his home (TT:266). When reviewing the footage

later, he saw a black car pull into the driveway on October 12th (TT:270). He saw his son walk out and get into the car (TT:270). The car then backed up to the end of the driveway (TT:270). After a few minutes, his son got out of the car and went back inside the home (TT:271).

Angelique Garcia, the decedent's significant other, then testified. She testified that the decedent had previously struggles with Percocet, marijuana, and alcohol (TT:280-81). She testified that the decedent had only been released from jail and was on probation, and that his probation subjected him to drug testing (TT:281-82). She testified that she had met the Petitioner on several occasions prior (TT:287-88). She told the decedent's father that she recognized the black car on the Nest footage as the Petitioner's (TT:287-88).

The next witness was Jessie Newbanks, a digital forensic technician. Detective Canterbury turned the two cell phones recovered on the scene over to Newbanks (TT:292). Newbanks used Cellbrite to extract data from the phones (TT:292-93). A call log from the Android phone was then discussed, and logs were introduced into evidence as State's 10 (TT:299). The messages appear to depict a conversation about purchasing two Percocet tablets (R:167-69).

The decedent's probation officer then testified. He administered a drug screening on October 12th, which returned negative results in a six-panel test

of the decedent's urine (TT:310-12). Next was Deputy Tingue, who testified that he was a system administrator for a program used by the Sheriff's Office called vigilant (TT:316-17). Vigilant is a license plate reading system consisting of a series of cameras placed at intersections throughout Marion County (TT:317-18). He then discussed State' 12, a detection report for the plate associated with the black sedan (TT:322-23).

Detective Canterbury was called to testify again. He discussed the text conversation contained in State's 10 in more detail (TT:325-31). The detective filed a subpoena seeking subscriber information for the number 352-277-7511 from T-Mobile (TT:332-33). The name of the subscriber for that number appeared to match the Petitioner's name and his address (TT:334-35). The phone was apparently disconnected on October 13th (TT:335). He then discussed plate reader data tracking the petitioner's vehicle on October 12th (TT:337-40). He later interviewed the Petitioner and confirmed that the car belonged to him (TT:341-43). He also confirmed that the Petitioner knew the decedent (TT:343).

Further testimony was provided from Deputy Lightle, who assisted Canterbury in analyzing cell phone records (TT:365). He used a program called Cellhawk to obtain location data from cellular towers (TT:367-68). The data can be used to determine a general location of where the phone was used

(TT:369). He used Cellhawk to generate a map using information from the cell phone records linked to the Petitioner (TT:374-75). He was able to link the cell phone calling a tower near the Petitioner's residence (TT:377-78).

Next Gilberto Torres, testified that Petitioner had told him he might be in trouble for selling some pills to a man who had died (TT:382-83). Next Katherine Bible, an FDLE chemist testified (TT:385). She was responsible for testing the pills found on scene (TT:388-89). The intact pill tested positive only for fentanyl (TT:390-91). The partial pill also only tested positive for fentanyl (TT:391-92). She did acknowledge that the field notes she had received prior to testing indicated a negative field test result for fentanyl (TT:396).

Next was testimony from forensic toxicologist Justin Brower. He examines samples and performed testing of blood taken from the decedent (TT:402-03). He found alcohol equating to 121 milligrams per deciliter in the decedent's blood (TT:410-411). He found 6 nanograms per milliliter of fentanyl in the decedent's blood (TT:412). He indicated this would be a potentially lethal amount and absent other circumstances would be a primary death (TT:412-13). He further testified that substance levels could rise in concentration over time, thus an iliac sample like the ones he tested was preferable (TT:418-21).

Testimony was then provided from forensic pathologist Shanedelle Norford. She saw indications of fluid buildup in the brain and lungs (TT:446-47). She found this to be a frequent occurrence in drug overdose cases (TT:446-47). She found the limit of fentanyl in his blood sample to be twice the ordinary lethal level (TT:449). She found that the fentanyl was a primary or moving cause and substantial factor in causing the decedent's death (TT:450-51). She further testified that the alcohol would not have killed the decedent but for the fentanyl (TT:455).

A motion for judgment of acquittal was made and denied (TT:456-59). The motion focused on lack of proof that fentanyl alone killed the decedent (TT:457).

There was then dispute regarding the jury instructions. The court elected to give a definition of proximate cause derived from case law which predated the creation of a standard jury instruction for the instant offense. The definition was later included in the standard jury instruction from October 7th, 2022, to May 20th, 2024 when it was replaced by the current definition which replaced proximate cause altogether. Notably, the instruction given by the court was different than the standard instruction that was given from August 1st, 2020, to October 6th, 2022, which trial counsel wished the

jury to be instructed on. The specifics of this exchange will be the focus of the argument section of this brief.

Closing arguments then commenced, and the jury returned its verdict after as described above, with the Petitioner ultimately being sentenced as described above. A notice of appeal was timely filed, and this appeal follows (R:313-14).

REASONS FOR GRANTING THE PETITION

WHETHER THE TRIAL COURT VIOLATED TO UNITED STATES CONSTITUTION BY DEVIATING FROM FLORIDA'S STANDARD JURY INSTRUCTION ON DEATH BY UNLAWFUL DISTRIBUTION OF FENTANYL?

“The standard jury instructions are presumed correct and are preferred over special instructions.” *Stephens v. State*, 787 So.2d 747, 755 (Fla. 2021). The trial court does have some level of discretion as to the use of standard instructions, particularly when there is a problem with a standard instruction or when the instruction is inappropriate for the case at bar. If the trial court determines that the standard instruction is erroneous or legally inadequate, the court may modify the instruction, but it must also “state on the record or in a separate order the respect in which the judge finds the standard instruction erroneous or inadequate and the legal basis for varying from the standard instruction.” Florida Rule of Judicial Administration 2.580(a). The trial court included an order explaining its rationale. This rule is predicated on the idea that “confidence in the use of [standard] instructions is undermined when their use is rejected without explanation.”

In this instant case, the trial court had to choose between three options in creating jury instructions. The court found that the recently amended version of standard instruction 7.3(a) (released in 2024) was confusing and

erroneous, and a potential violation of the ex post facto clause if the current substantial factor standard were given, the court, then shifted its attention to which version of the proximate cause standard it would give the jury, either the original version in effect from August 1st, 2020 to October 6th, 2022 or the version in effect from October 7th, 2022 to May 20th, 2024. The first version (as referred to in the court's order) gave the following definition of proximate cause: "A defendant's conduct is the proximate cause of another's death if the conduct was the primary or moving cause of the death; and the death would not have occurred but for the defendant's conduct; and the death was a natural and reasonably anticipated consequence of the defendant's conduct." The second version provided the following: "The State is required to prove that the fentanyl that the defendant unlawfully distributed was the proximate cause of death. This means that you must find that the fentanyl was the primary or moving cause in producing the death, and without it, the death wouldn't have happened."

The court elected to use the second definition, in support it noted that the definition was given as far back as 2007 (before the creation of a standard jury instruction) in *Aumuller v. State*, 944 So.2d 1137 (Fla. 2d DCA 2006). *Aumuller* additionally involved other discussion about a break in the chain of causation (or intervening circumstance) that does not appear to be at issue in

the instant case. The Aumuller court found that the definition discussed above to be sufficient in explaining that a linkage must exist between the distribution of the substance and death. *Id.* at 1142. *Aumuller* dealt with facts from 2002, and thus based its analysis on Florida Statutes §782.04(1)(a)(3) (2001). The statute at that time provided the following in pertinent part “[death] Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the proximate cause of the death of the user.” The Statute had the same definition until its most recent amendment, which provides that substance “... is proven to have caused, or is proven to have been a substantial factor in producing, the death of the user.” Fla. Stat. 782.04(1)(a)(3) (2023).

WHETHER THE TRIAL COURT VIOLATED THE
UNITED STATES CONSTITUTION IN NOT GIVING AN
INSTRUCTION ABOUT LACK OF KNOWLEDGE OF THE
ILLICIT NATURE OF A CONTROLLED SUBSTANCE

“Lack of knowledge of the illicit nature of a substance is distinct from lack of knowledge of the presence of the substance.” *Maestas v. State*, 76 So.3d 991, 994 (Fla. 4th DCA 2011). Although a different offense, the court in *Goldsby v. State*, declined to give an instruction on the affirmative defense of lack of knowledge of the illicit nature of a controlled substance. The court found a

lack of evidence to warrant giving the instruction, noting that the Petitioner did not testify, and the theory of defense at trial appeared to be that *Goldsby* did not knowingly possess a substance. *Goldsby*, 390 So.3d 1241 (Fla. 1st DCA 2024). A defendant is entitled to this affirmative defense when he contends his “admittedly illegal conduct should not be punished.” *Id.* quoting *State v. Adkins*, 96 So.3d 412, 423 (Fla. 2012). The jury instruction must be given “if any evidence supports the theory, irrespective of how weak the evidence is.” *Id.* quoting *Barnes v. State*, 108 So.3d 700, 702 (Fla. 1st DCA 2013) (citing *Quick v. State*, 46 So.3d 1159, 1160 (Fla. 4th DCA 2010)).

In deciding whether to give a requested charge, a “trial judge may not weigh the evidence before him in determining whether the instruction is appropriate; it is enough if the defense is suggested by the evidence presented.” *Terwilliger v. State*, 535 So.2d 346, 347 (Fla. 1st DCA 1988).

WHETHER THE TRIAL COURT VIOLATED THE
UNITED STATES CONSTITUTION IN DENYING THE
MOTION FOR JUDGMENT OF ACQUITTAL

“Generally, an appellate court will not reverse a conviction which is supported by competent, substantial evidence. If, after viewing the evidence in the light most favorable to the State, a rationale trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction.” See *Pagan v. State*, 830 So.2d 792, 803

(Fla. 2002); *Gonser v. State*, 183 So.3d 1106 (Fla. 5th DCA 2015). The Defense moved for a judgment of acquittal which was denied with the Court appearing to make findings that the State had provided sufficient evidence such that the matter should be decided by the jury.

CONCLUSION

For the above-stated reasons, the undersigned counsel requests permission to withdraw as counsel for the Petitioner. Further, counsel requests this Court to allow Petitioner, in their own behalf or through other counsel, sufficient time to submit a brief on point he or she may deem appropriate.

If this Court finds reversible error in this appeal, counsel requests that this application be withdrawn, and an opportunity be granted to file another brief for Petitioner.

Respectfully Submitted,

A handwritten signature in black ink, reading "Marquis Rosado", is written over a horizontal line.

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