ORIGINAL

No. 25-6856

IN THE

SUPREME COURT OF THE UNITED STATES

JOSE O. MAES — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSE O. MAES
(Your Name)
FCI PHOENIX #31318-509
37910 NORTH 45TH AVENUE
(Address)

PHOENIX, AZ 85086-7055
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. THE DISTRICT COURT COMMITTED PLAIN ERROR IN GIVING STANDARD JURY INSTRUCTIONS THAT - WHEN READ IN CONJUNCTION WITH ONE ANOTHER - PROVIDED INCORRECT OR CONFUSING STATEMENTS OF LAW.

II. THE DISTRICT COURT ERRED WHEN IT DENIED THE PETITIONER'S MOTION TO SUPPRESS EVIDENCE RELATED TO AN ILLEGAL SEARCH AND SEIZURE.

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:

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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

[X] For cases from **federal courts**:

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

[X] reported at 23-1640; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[X] reported at Case No. 4:21-cr-3028; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 28, 2024.

[X] 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

Petitioner, Jose O. Maes, was charged with one count of Conspiring to Distribute or Possess with the Intent to Distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine. Mr. Maes entered a plea of not guilty, and he had a trial and was found guilty. Mr. Maes was sentenced to a lengthy term of imprisonment as a result of the conviction.

Mr. Maes argues that the trial court committed plain error in giving incongruent and confusing jury instructions and therefore, the conviction must be vacated and remanded for a new trial.

In addition, Mr. Maes argues that the trial court committed plain error when it failed to suppress evidence seized during the traffic stop that resulted in the Indictment, as the search and seizure was unlawful and unconstitutional.

REASONS FOR GRANTING THE PETITION

Jose Maes appeals from the judgment and sentence imposed by the Honorable John M. Gerrard, United States District Judge for the District of Nebraska, following entry of judgment of guilty after trial. The case number from the District Court is 4:21-cr-03028.

Mr. Maes filed his direct appeal with the United States Court of Appeals for the Eighth Circuit, and was assigned case number 23-1640. The Eighth Circuit Court of Appeals affirmed the district court's findings and closed the case.

Federal subject matter jurisdiction is provided by 18 U.S.C. §924 and 18 U.S.C. §1951. Appellate jurisdiction is proper pursuant to 28 U.S.C. §1291, which provides for review of a final order subject to appeal.

The Sentencing Hearing was held in the District Court on March 22, 2023. The district court entered judgment the same day. (R. Doc. 169). Mr. Maes then filed his Notice of Appeal on April 04, 2023. (R. Doc. 171).

On May 23, 2023, Mr. Maes submitted his Opening Brief in the Appeals Court. The Government filed their Appellee Brief on June 12, 2023. The United States Court of Appeals rendered their decision on February 28, 2024, wherein the decisions of the District Court were affirmed. This Petition for Writ of Certiorari now follows.

The facts supporting the Government's case was that Mr. Maes either conspired with on or two other persons, or perhaps joined a conspiracy in which those individuals had formed on their own, for purposes of selling methamphetamine.

On February 11, 2021, Kelly Jablonski ("Jablonski") was being followed by law enforcement officers as she was suspected of distributing methamphetamine. Law enforcement officers followed Ms. Jablonski from Lincoln, Nebraska to Omaha, Nebraska, where she was observed in a casino in Iowa interacting with Jeff Hogan ("Hogan").

The pair was followed into a casino parking garage where Mr. Maes was present. A bag was taken out of Mr. Maes' vehicle and put into a vehicle with Ms. Jablonski and Mr. Hogan.

Later that same evening, Hogan and Jablonski were arrested on their way from Omaha to Lincoln, Nebraska. Both Hogan and Jablonski were found in possession of methamphetamine. One or both stated that the meth in their possession was provided to them by Mr. Maes, and at the time of their arrest, Mr. Maes was still in Iowa.

Law enforcement officers started looking for Mr. Maes at the casino, and upon seeing him, officers attempted to detain him. Mr. Maes got into a vehicle, eluded attempts to stop him, and he fled through Iowa. Eventually Mr. Maes was stopped and arrested in Iowa.

To support the Government's contention that there was a conspiracy and Mr. Maes was a part of it, the Government had Jablonski and Hogan both testify that the meth found in their respective possessions was provided by Mr. Maes. Law enforcement officers also testified about how they had been observing Hogan and Jablonski for weeks before the arrest, and specifically, how they had followed the pair in the several hours prior to their arrests which led them to observe interactions with Mr. Maes. The Government also offered into evidence the collective total of four pounds of methamphetamine, which was found on Jablonski and Hogan when they were

arrested.

Jeffrey Hogan

At trial, Hogan testified that he was from Colorado and had been coming to Nebraska to sell methamphetamine since July 2020. (R. Doc. 159, at 104:3-7). In October 2020, Hogan met Jablonski and started selling methamphetamine to her. (R. Doc. 159, at 105:15-18). Hogan met Mr. Maes in Colorado towards the end of 2020 and started purchasing methamphetamine from Mr. Maes in Colorado and then traveling to Nebraska to sell it in various quantities to various persons. (R. Doc. 159, at 111:3).

Hogan testified that he traveled to Nebraska in early February 2021, with five pounds of methamphetamine Hogan acquired from Mr. Maes. (R. Doc. 159, at 111:4 through 112:4). The day Hogan arrived in Nebraska, he either sold most or all five pounds to Jablonski. (R. Doc. 159, at 111:21-112:7; 112:10-11).

Hogan testified that while he was still in Nebraska, Mr. Maes came to Nebraska, met Hogan, and stayed with Hogan at an Air BNB in Lincoln. According to Hogan, Mr. Maes brought ten pounds of methamphetamine to the AirBNB. (R. Doc. 159, at 112:12-113:20). Hogan provided seven of the ten pounds of methamphetamine to Jablonski at first, and then another two or three pounds of methamphetamine to her while Hogan and Mr. Maes were still in Lincoln. (R. Doc. 159, at 113:25-114:6).

After a few days, Hogan and Mr. Maes moved to an AirBNB near downtown Omaha. (R. Doc. 159, at 114:3-12). While in Omaha, Hogan testified that he

provided Jablonski with three pounds of methamphetamine at a casino in Iowa on February 11, 2021 (the day before everyone was arrested). (R. Doc. 159, at 119:10-20). The three pounds of methamphetamine Hogan provided to Jablonski at the casino was provided by Mr. Maes.

Although the drugs were exchanged at a casino in Iowa, payment for the drugs occurred at a gas station away from the casino. (R. Doc. 149, at 122:4-21). Hogan testified after the drugs were retrieved at the casino, the parties met at a nearby gas station, and he provided money to Mr. Maes. The parties then returned to the Omaha AirBNB. Hogan testified that while at the AirBNB, Mr. Maes packed his bags to eventually return to Colorado.

Hogan and Jablonski then departed for Lincoln, traveling in separate vehicles. While en route to Lincoln, both vehicles were stopped by law enforcement, and both Hogan and Jablonski were arrested. (R. Doc. 159, at 128:17-23).

Kelly Jablonski

Jablonski testified she met Hogan in April 2020, and that she started buying methamphetamine from him at that time. Jablonski continued buying methamphetamine from him until her arrest in February 2021. (R. Doc. 159, at 135:8-25). Jablonski claimed to have met Mr. Maes in September 2020, when Hogan sold Jablonski two pounds of methamphetamine. (R. Doc. 159, at 138:3-140:4). Jablonski was unsure about the last time she interacted with Mr. Maes before her arrest in February 2021, testifying the last interaction was in "September, November...maybe December, 2020," when she bought ten pounds of methamphetamine from Mr. Maes in Lincoln. (R. Doc. 159, at 138:18-140:3).

Jablonski testified that shortly before her arrest, Hogan had been in Lincoln for a few days, staying at Annabel Suites, then he left for a week, and then traveled back to Nebraska and got an AirBNB in Omaha. (R. Doc. 159, at 141:18-141:25).

Jablonski testified that she met Hogan at the casino in Iowa on February 11, 2021 in order to get five pounds of methamphetamine from him. (R. Doc. 159, at 143:13-24). Jablonski testified she gave Hogan money, and after going to Mr. Maes' vehicle, Hogan came back and gave Jablonski the five pounds of methamphetamine she needed. (R. Doc. 159, at 145:15-146:1).

Jablonski and Hogan both then drove to Lincoln (in separate vehicles), and each vehicle was stopped by law enforcement. (R. Doc. 159, at 128:17-24). In Hogan's vehicle, officers located approximately one-half pound of methamphetamine. (R. Doc. 159, at 63:23-25). In Jablonski's vehicle, officers located approximately three pounds of methamphetamine. (R. Doc. 159, at 40:13-24).

Arrest of Jose Maes

Law enforcement associated with the investigation and arrest of Jablonski and Hogan began to suspect that Mr. Maes was the distributor of the methamphetamine after observing him at the casino with Jablonski and Hogan. Nebraska law enforcement officers contacted Iowa law enforcement officials and asked them to be on the "lookout" for the vehicle driven by Mr. Maes. (R. Doc. 159, at 188:15-25). Iowa law enforcement officers found

Mr. Maes' vehicle at a parking garage at a casino in Iowa, and they subsequently attempted to contact Mr. Maes as he got into his vehicle. (R. Doc. 159, at 189:1-25; 191:1-8). Mr. Maes refused to stop for law enforcement; he fled from the parking garage; and he eluded law enforcement attempts to stop his vehicle for eight to ten miles. (R. Doc. 159, at 191:13-15). Once stopped, a subsequent search of Mr. Maes' vehicle was conducted and several items were located: approximately $34,000.00 in cash; a handgun; methamphetamine; and some pills. (R. Doc. 159, at 220:24-25; 221:1-5).

In short, a summary of the conspiracy was, simply, that Mr. Maes provided Hogan with methamphetamine, and Hogan then provided some of that methamphetamine to Jablonski for resale. There is no doubt that a conspiracy to distribute methamphetamine existed and both Hogan and Jablonski were participants in that conspiracy.

At the conclusion of the testimony, Mr. Maes was found guilty, and the district court imposed a sentence on March 22, 2023. (R. Doc. 169).

Mr. Maes contends that the conviction must be vacated and the matter remanded for a new trial, as the confusing and incongruent jury instructions prejudiced Mr. Maes' Sixth Amendment right to have the jury decide two important elements of the charge.

Mr. Maes further contends that the conviction must be vacated and the matter remanded for a new trial as the illegal search and seizure conducted by law enforcement violated Mr. Maes' Fourth and Fifth Amendment rights.

The particular errors argued herein -- errors regarding jury instructions and failure to suppress illegally obtained evidence -- were not raised at trial, and therefore, the standard of review is "plain error." United Staes v. Fast Horse, 747 F.3d 1040 (8th Cir. 2014).

A. THE TRIAL COURT COMMITTED PLAIN ERROR IN GIVING JURY INSTRUCTIONS WHICH MISSTATED THE LAW. THE ERROR AFFECTED APPELLANT'S SUBSTANTIAL RIGHTS, SERIOUSLY AFFECTED THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS, AND REQUIRES THE JUDGMENT OF CONVICTION BE VACATED AND THE MATTER REMANDED FOR A NEW TRIAL.

The jury instructions provided to the jury are incorrect and confusing, and as such, violated Mr. Maes' right to due process by taking the determination as to whether the Government proved each element of the charge away from the jury and created a reasonable chance that, but for the errors, the result of the trial would have been different.

Simply summarized for the purposes of clarity and moving forward, jury instruction number 9 and jury instruction number 11 hold the Government to a conflicting burden of proof. Of course, the instructions have been used in countless trials in the past, but to a reasonable person, instructions number 9 and 11 are misleading.

Summarized once more for clarity, if the Jury followed instruction number 11, Mr. Maes could be found guilty without the Government having proved all elements of the crime charged beyond a reasonable doubt.

Jury Instruction number 9, identified the three elements of the "crime of conspiracy", to wit: (1) two or more persons reached an agreement or understanding to distribute or possess with the intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine; (2) Mr. Maes voluntarily and intentionally joined the agreement or understanding at the time it was first reached or while it was still in effect; and (3) that when Mr. Maes joined the agreement or understanding, he knew the purpose of the agreement or understanding. (Jury Ins. No. 9, R. Doc. 133).

At the end of Instruction Number 9, the Jury was instructed that if the Government proved each element beyond a reasonable doubt, the Jury must convict Mr. Maes; otherwise, the Jury must find Mr. Maes not guilty. Id.

Jury Instruction Number 9 is where the problems begin as the instruction was captioned, "JURY INSTRUCTION #9: CONSPIRACY." A reasonable reading of the isntruction's caption is that Jury Instruction #9 defines "conspiracy" for the Jury, and that "conspiracy" and "the crime of conspiracy" have the same meaning and may be used interchangeably. (Jury Ins. No. 9, R. Doc. 133).

That is a misstatement of the law, as the terms do not have the same meaning, nor may they be used interchangeably, and the misstatement is reinforced when reading the first and second paragraphs of Jury Instruction Number 11.

The first paragraph of Jury Instruction Number 11 incorrectly states, "The indictment charges a conspiracy to either distribute a mixture..." The instruction is incorrect for a couple reasons. First, "conspiracy" is a

noun. It is not a criminal act of a person. One cannot "conspiracy." Federal law, 21 U.S.C. §846, criminalizes an action (i.e., the verb), to wit: conspiring to violate §841 (and other sections). Conversely, Jury Instruction Number 8, in grammatically accurate fashion, stated that Mr. Maes was charged with an illegal action, to wit, he "...committed the crime of conspiracy..." (Jury Ins. No. 11, R. Doc. 133).

The second paragraph of Jury Instruction Number 11 provides, "To find that the Government has proved a conspiracy..." The implication from the instruction is that the Government's burden is simply to prove a conspiracy existed, as opposed to proving Mr. Maes conspired to violate §846. The problem is magnified with consideration of the entirety of the second paragraph in Jury Instruction Number 11, which identifies what the Government must prove in order for the Jury to find the Government "proved a conspiracy," and concluded with, "If you are unable to unanimously agree [the Government proved a conspiracy], you cannot find the defendant guilty of conspiracy." Again, this at least implicitly instructed the Jury that the proof of the existence of a conspiracy was all that must be proved to convict Mr. Maes.

Succinctly summarized, if a jury reads instruction number 11, it is reasonable to conclude a jury could find someone guilty based upon the instructions in the second paragraph (e.g., if the jury agrees that the Government proved the existence of a conspiracy, you can find the Defendant guilty).

The reality is that the existence of a conspiracy is but one element of the crime of conspiracy, but the instructions not only failed to make

that clear, the instructions misstated the law by instructing the Jury that the existence of a conspiracy and the crime of conspiracy are one and the same.

A jury instruction is plainly erroneous if it misstates the law. United States v. Fast Horse, 747 F.3d 1040 (8th Cir. 2014). In reviewing for plain error, the reviewing court has the discretion to reverse the district court if the defendant shows "(1) an error, (2) that was 'plain', (3) 'affects substantial rights', and (4) 'the error seriously affects the fairness, integrity or public reputation of judicial proceedings. A jury instruction is plainly erroneous if it misstates the law. United States v. Fast Horse, 747 F.3d 1040, 1042 (8th Cir. 2014).

In this case, Mr. Maes contends that Jury Instruction Number 11 misstates the law by indicating that, if the Government proves the existence of an agreement to distribute drugs, the defendant must be guilty. Again, Mr. Maes concedes the existence of a conspiracy between Hogan and Jablonski, and the instruction erroneously suggests that if the Jury finds a conspiracy exists (even if Maes was not part of it), then the Jury must find Mr. Maes guilty.

The charge for which Mr. Maes was Indicted was committing the crime of conspiracy to distribute or possess with the intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine." (Jury Ins. No. 8, R. Doc. 133).

The charge for which Mr. Maes was Indicted, and the instructions contained in Jury Instruction Number 11, are not consistent and cannot be read in conjunction with one another and hold the Government to the burden

of proof to convict the defendant of all elements of the crime beyond a reasonable doubt. The existence of an agreement (Jury Instruction Number 11) does not equate to proof beyond a reasonable doubt that Mr. Maes is guilty of conspiracy to distribute or possess with the intent to distribute methamphetamine (Jury Inst. No. 8).

Mr. Maes contends that the incongruent reading of Jury Instruction No. 11 with Instruction Numbers 8 and 9 result in plainly erroneous instructions to the Jury.

In order for any error to effect Mr. Maes' substantial rights, it "...must have been prejudicial, meaning that there was not a certainty, but a 'reasonable probability that but for [the error claimed], the result of the proceeding would have been different.'" Id.

The bulk of the testimony by the Government's trial witnesses related to the agreement between Hogan and Jablonski to sell methamphetamine. There was very little testimony about Mr. Maes' role in any agreement - other than supplying Hogan and Jablonski - with methamphetamine.

Substantial evidence was offered to prove that Hogan and Jablonski had an agreement to distribute methamphetamine in Nebraska. But, there was little or no evidence to suggest that Mr. Maes had anything other than a "buyer/seller relationship" with Hogan and Jablonski. The problem is - simply - that even if Mr. Maes had a "buyer/seller relationship" with Hogan and Jablonski, Instruction No. 11 suggests that since a conspiracy existed between Hogan and Jablonski, the defendant must be found guilty merely because the conspiracy existed. Instruction Number 11 provided "If you are

unable to unanimously agree [the Government proved a conspiracy], you cannot find the defendant guilty of conspiracy." Again, that instruction - at least implicitly - instructed the Jury that the proof of the existence of a conspiracy was all that must be proved to convict Mr. Maes.

This creates a reasonable possibility that but for the errors in the instructions, Mr. Maes would have been found not guilty.

Last, Mr. Maes must show the error "...seriously affects the fairness, integrity, or public reputation of judicial proceedings." Fast Horse, at 1042. The error deprived Mr. Maes of his Sixth Amendment right to having the Jury determine the elements of the crime and hold the government to the burden of proof to prove Mr. Maes guilty of all elements of the crime. This jeopardizes the integrity of the judicial proceeding. Fast Horse, at 1044.

All four prongs of the test under Fast Horse are met, and this matter must be reversed and remanded for a new trial.

B. THE TRIAL COURT COMMITTED PLAIN ERROR IN REFUSING TO SUPPRESS EVIDENCE THAT WAS OBTAINED THROUGH AN ILLEGAL SEARCH AND SEIZURE BY LAW ENFORCEMENT OFFICIALS, AND REQUIRES THE JUDGMENT OF CONVICTION BE VACATED AND REMANDED FOR A NEW TRIAL.

On February 11, 2021, law enforcement officers had received information that a woman - Kelly Jablonski - was selling methamphetamine in Lincoln, Nebraska. The officers also believed that Jablonski was regularly traveling from Lincoln to Omaha where she obtained the methamphetamine being sold in Lincoln.

On February 11, 2021, law enforcement officers followed Jablonski from Lincoln to Omaha and observed her at a casino in Council Bluffs, Iowa. While observing Jablonski at the casino in Omaha, she met a man named Jeff Hogan. Officers used casino surveillance to observe Jablonski and Hogan gambling in the casino, and then observed them meeting Mr. Maes in the parking garage. Mr. Maes was with a woman, Valerie Sanchez.

Officers observed Mr. Maes and Ms. Sanchez meet and have a conversation with Jablonski and Hogan in the parking garage.

Officers then conducted traffic stops on Jablonski and Hogan. Hogan was stopped by law enforcement and in his vehicle was a backpack with methamphetamine, $5,000 in cash, and a 9mm handgun. Jablonski was stopped by law enforcement and in her vehicle was a scale and 2.9 pounds of methamphetamine.

During a statement from Jablonski to law enforcement, she indicated that Hogan was her "main source" for methamphetamine, and that he was providing methamphetamine from Colorado. Jablonski gave a statement indicating that Mr. Maes was going to be taking over methamphetamine sales in Omaha.

On the following day, February 12, 2021, officers from Iowa observed Mr. Maes leave the casino and get into a vehicle in the casino parking garage. The officers then attempted to stop the vehicle, and Mr. Maes accelerated and left the parking garage. The vehicle was pursued into Council Bluffs, Iowa and subsequently stopped through the deployment of a spike strip.

The law is well-settled that "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Brendlin v. California, 551 U.S. 249 (2007).

Furthermore, "...a traffic stop entails a seizure of the driver 'even though the purpose of the stop is limited and the resulting detention quite brief.'" Id. at 255.

In this case, Mr. Maes requested that the district court issue an Order suppressing the traffic stop for the reason that there was no traffic violation, and thus, no probable cause to stop the driver of the vehicle.

In addition to the lack of probable cause based upon a traffic violation, law enforcement also lacked reasonable suspicion to conduct an investigatory stop, as there was no "reasonable articulable suspicion" that there was any criminal activity afoot that involved Mr. Maes.

The subsequent stop and detention of Mr. Maes violated his Fourth and Fifth Amendment rights, as provided by the Constitution of the United States.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jose O. Maes, Petitioner

Date: May 26, 2024