

No. 25-7140

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

PIERRE CINE MARC - PETITIONER

(Your Name)

VS.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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

PETITION FOR WRIT CERTIORARI

PIERRE CINE MARC

(Your Name)

FCC COLEMAN MEDIUM P.O BOX 1032

(Address)

Coleman, FL 33521

(City, State, Zip code)

(Phone Number)

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QUESTION(S) PRESENTED

1. Whether due process permits a conviction for a charged drug and threshold quantity 5 kilograms or more of cocaine, 21 U. S. C. § 841 (a) (1), (b) (1) (A) when the Government's trial evidence proved only a different controlled substance (fentanyl) and no cocaine, and the jury nonetheless returned a verdict finding '5 kilograms or more of cocaine."
2. "Whether a federal court of appeals may affirm a conviction by declining to review the sufficiency of the evidence because the defendant did not renew a Rule 29 motion after the Government's case, where the record reflects a complete failure of proof on an element (identity of the controlled substance and threshold drug-quantity element)."
3. "Whether, at minimum, the court of appeals must review such a claim for plain error or to prevent a manifest miscarriage of justice, rather than treating it as unreviewable or forfeited."

CORPORATE DISCLOSURE STATEMENT

This appeal does not involve a non-Governmental corporate defendant. There are no parent companies subsidiaries or affiliate companies that have been issued to shares to the public.

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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 A to the petition and is

reported at United States v. Pierre C. Marc; or, Case No. 24-12378
Docket # 64 (11/21/2025)
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at United States v. Marc; or, (DCC:398)
NO. 2:21-CR-00071-WFE-AAS-1
 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 is unpublished.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 _____.

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: January 8, 2020, and a copy of the order denying rehearing appears at Appendix C.

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

Fifth Amendment of the United States Constitution

Sixth Amendment of the United States Constitution

21 U.S.C. §841 (a) (1)

21 U.S.C. §841 (b) (1) (A)

STATEMENT OF THE CASE

A. Indictment and Charged Offense

A federal grand jury charged Petitioner with distribution/possession with intent to distribute 5 kilograms or more of cocaine in violation of 21 U.S.C. §841(a) (1) and the penalty provision §841 (b) (1)(A). The identity of the controlled substance (cocaine) and the threshold quantity (5 kilograms or more) were elements that increased the statutory range and therefore had to be proved to the jury beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Alleyne v. United States*, 570 U.S. 99, 103 (2013).

B. Trial Evidence

At trial, however, the Government's proof concerning drugs consisted of 10 grams of fentanyl. The Government presented no cocaine and no competent evidence that the substance involved was cocaine or that any cocaine quantity approached 5 kilograms.

C. Verdict

Despite the absence of cocaine proof, the jury returned a verdict finding Petitioner guilty and specifically found 5 kilograms or more of cocaine.

D. Post-Trial Motion Practice

Petitioner did not renew a motion for judgment of acquittal under Federal Rule of Criminal Procedure 29 after the Government rested (or at the close of all the evidence).

E. Direct Appeal

On direct appeal, Petitioner raised a sufficiency-of-the-evidence challenge. The Court of Appeals affirmed, stating: Petitioner failed to preserve his sufficiency challenge. The Court did not address the merits of whether the evidence supported a conviction of 5 kilograms or more of cocaine. 4.

REASONS FOR GRANTING THE PETITION

- I. The judgement permits imprisonment for a crime the Government did not prove an element failure of proof violating Due Process and the Sixth Amendment.

A criminal conviction cannot stand except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime. *In re Winship*, 397 U.S. 358, 364 (1970). This includes the elements that define the offense and the facts that increase the statutory penalty range. *Apprendi*, 530 U.S. at 490; *Alleyne*, 570 U.S. at 103.

Here, the charged offense and the jurys special finding were cocaine and 5 kilograms or more, invoking (A). But the Government proved only fentanyl (10 grams). Identity of the controlled substance is not a technicality; it is the very object of the offense and determines the penalty range under §841 (b). A conviction for cocaine on proof of fentanyl is a complete mismatch between charge/verdict and proof.

This Court held that evidence is constitutionally insufficient where, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Where the Government proves a different offense than charged. Here, fentanyl instead of cocaine, no rational juror could find the cocaine element beyond a reasonable doubt because the record contains no cocaine proof at all.

That is not merely weak evidence. It is an element failure, akin to a conviction with no evidence on an element, precisely the kind of due process violation *Jackson* forbids. This Court has repeatedly intervened where lower courts upheld convictions in the face of proof that did not satisfy statutory elements. See, e.g. *Musacchio v. United States*, 577 U.S. 237, 243 (2016) (sufficiency review measures evidence against the elements of the charged crime); *Fiore v. White*, 531 U.S. 225, 228-29 (2001) (due process violated when defendant convicted without proof of an element as

REASONS FOR GRANTING THE PETITION CONTINUED

properly understood under state law).

Relatedly, convicting Petitioner of "5 kilograms or more of cocaine" based on 10 grams of fentanyl also implicates the Sixth Amendment jury-trial right, because the jury's quantity finding must be supported by evidence. *Apprendi*, 530 U.S. at 490; *Alleyne*, 570 U.S. at 103.

This case thus presents a stark question: whether a conviction may stand when the Government evidence proves only a different controlled substance than the one charged and found by the jury.

II. The Court of Appeals' refusal to review sufficiency because Rule 29 was not renewed conflicts with the constitutional minimum required by *Jackson* and with how federal appellate courts typically handle forfeited sufficiency claims.

The Court of Appeals affirmed solely because Petitioner "failed to preserve his sufficiency challenge." But sufficiency of the evidence is a "due process" claim under *Jackson*, 443 U.S. at 319, and a conviction based on a complete absence of proof on an element is a paradigmatic "manifest miscarriage of justice."

Federal courts generally treat unpreserved sufficiency claims as "forfeited": not jurisdictionally barred, and they review at least for "plain error" under Fed.R.Crim.P. 52(b) or under a "manifest miscarriage of justice" standard. See *United States v. Olano*, 507 U.S. 725, 731, 37(1993) (plain error framework). This Court has recognized that plain error review exists to correct particularly serious errors affecting the fairness and integrity of judicial proceedings. "*Id.*"; *Rosales-Mireles v. United States*, 585 u.S. 129, 135 (2018).

A conviction for cocaine where the evidence showed fentanyl is the sort of error that "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Olano*, 507 U.S. at 736 (quotation omitted). It also implicates the principle that the government must prove what it charged and what the jury found,

REASONS FOR GRANTING THE PETITION CONTINUED

otherwise, the criminal trial is reduced to a nullity.

Even where the procedural default rules exist, this Court has emphasized that the Constitution does not tolerate imprisonment for an unproven crime. Jackson, 443 U.S. at 316; Winship, 397 U.S. at 364. The decision below effectively allows an appellate court to avoid any review, even plain-error review of a conviction resting on no proof of an element.

This Court should grant certiorari to clarify that Courts of Appeals must at least apply plain-error review (or an equivalent miscarriage-of-justice standard) to sufficiency claims not preserved by a renewed Rule 29 motion, especially where the record demonstrates a complete failure of proof.

III. This case presents an exceptionally clean vehicle: the record shows no cocaine proof, yet the conviction and special finding are for "5 kilograms or more of cocaine." The vehicle problems that often complicate sufficiency cases are absent here. This is not a close question about inferential proof of credibility determinations. It is a direct mismatch: "fentanyl proof," "cocaine conviction," and a dramatic "quantity disparity" (10 grams versus 5 kilograms). The Court of Appeals did not affirm on an alternative merits ground; it affirmed solely on "failure to preserve," making the preservation question squarely presented.

IV. The error is structural in practical effect and cannot be deemed harmless.

Where a defendant is convicted of an offense that was not proved, the problem is not merely trial error; it is the absence of evidence supporting the verdict on an essential element. This Court has treated such errors as constitutionally intolerable. Jackson, 443 U.S. at 319; Fiore, 531 U.S. at 228-29.

And even under plain-error principles, where the evidence, is insufficient as a matter of law, the defendant's substantial rights are affected and the integrity of the

REASONS FOR GRANTING THE PETITION CONTINUED

proceedings is compromised. Olano, 507 U.S. at 734, 36. The proper remedy is reversal with directions to entered a judgment of acquittal on the unproved offense. See generally Burks v. United States, 437 U.S. 1, 18 (1978) (Double Jeopardy bars retrial after reversal for insufficiency).

For the foregoing reasons, the judgment of the Court of Appeals should be reversed, and the case should be remanded with instructions consistent with this Courts decision, including entry of a judgment of acquittal on the charge of 5 kilograms or more of cocaine.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PIERRE CINE MARC

PIERRE CINE MARC

DATE 02/13/2026