

23-14 DIAZ V. UNITED STATES

DECISION BELOW: 2023 WL 314309

LOWER COURT CASE NUMBER: 21-50238

QUESTION PRESENTED:

Federal Rule of Evidence 704(b) provides: "In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone." Fed. R. Evid. 704(b).

The question is: In a prosecution for drug trafficking-where an element of the offense is that the defendant *knew* she was carrying illegal drugs-does Rule 704(b) permit a governmental expert witness to testify that most couriers know they are carrying drugs and that drug-trafficking organizations do not entrust large quantities of drugs to unknowing transporters?

CERT. GRANTED 11/13/2023