

# Testifying on Trial: Guiding Law Enforcement Through Expert Testimony in *Diaz v. United States*

## Description

The Supreme Court recently issued a decision in an important case that could affect how law enforcement officers act as expert witnesses. *Diaz v. United States* deals with a niche yet significant topic: the role of police officers as expert witnesses and the admissibility of law enforcement testimony regarding the defendant's specific mental state.

This case began after Delilah Diaz was stopped at a U.S.-Mexico border checkpoint while attempting to return to California after a trip to Mexico. Her travels took an unexpected turn when she reached the San Ysidro Port of Entry at 2:00 AM, where she was stopped by a concerned Border Patrol agent. Diaz explained to the customs officers that she was traveling alone to San Diego in a car owned by her boyfriend. When she attempted to lower the car's manual window, the inspector heard a concerning "crunching" noise, leading to Diaz being directed to a secondary inspection area. There, Homeland Security Investigations (HSI) agents conducted a thorough search of the vehicle, uncovering approximately 54 pounds of methamphetamine concealed within the doors and quarter panels, along with two cell phones.

After waiving her Miranda rights, Diaz agreed to talk with the HSI agent, stating she had been visiting her boyfriend in Mexico and denying any knowledge of the narcotics concealed in the vehicle. Charged with importing and possessing methamphetamine, prosecutors called HSI Special Agent Andrew Flood as an expert witness at her trial. A central question arose during the trial: Did Diaz know about the drugs in her vehicle? After the trial ended in a guilty verdict, Diaz challenged her conviction, seeking review by the Ninth Circuit. When the case reached the Ninth Circuit, the Court affirmed her conviction, rejecting Diaz's argument that the agent's testimony violated Rule 704(b).

The prosecution's burden was to prove this knowledge beyond a reasonable doubt, which is where expert testimony became crucial. Agent Flood testified that most individuals transporting large quantities of drugs, like those found in Diaz's case, are aware of the narcotics they carry. This generalization aimed to establish a pattern that could indirectly suggest Diaz's awareness without directly stating she knew—navigating a fine line set out by Federal Rule of Evidence 704(b). Rule 704(b) is a critical rule for law enforcement experts to understand. It aims to prevent experts from unduly influencing the jury by making direct opinions about a defendant's mental state, which is for the jury to decide. The text of Rule 704(b) reads:

*"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."*

When Diaz's case reached the High Court, the Justices were tasked with determining whether Federal Rule of Evidence 704(b) permits a government expert witness to testify in a drug trafficking prosecution, where the defendant must know she was carrying illegal drugs, that:

1. Most couriers are aware they are carrying drugs.

2. Drug-trafficking organizations typically do not entrust large quantities of drugs to unknowing transporters.

The Supreme Court affirmed the Ninth Circuit's decision, ruling that an expert's conclusion that "most people" in a group have a particular mental state is not an opinion about "the defendant" and, therefore, is within the permissible bounds of Rule 704(b). The Court explained that the government's expert did not testify that "Diaz herself knowingly transported methamphetamine." Rather, the expert's testimony left it to the jury to decide whether Diaz was like the majority of couriers, who know they are transporting drugs, or not.

Premised on its finding that this statement did not explicitly opine on Diaz's knowledge, the Court found that the officer's testimony did not breach the rule. The Court declined to adopt Diaz's argument that the expert "functionally" gave an opinion about her mental state. That would only be true, the Court said, if the government's expert testified that "all" couriers know they are transporting drugs.

The decision highlighted a subtle but crucial distinction: while experts cannot directly comment on a defendant's mental state, they can discuss general knowledge or practices relevant to similar situations. This decision is instructive for law enforcement officers who may serve as expert witnesses in criminal cases. It underscores the importance of understanding the limits of what can be testified to under Rule 704(b).

When discussing the behaviors, practices, or typical knowledge of individuals in similar circumstances to the defendant, officers must carefully avoid implying the defendant's specific mental state. This protects the integrity of the trial by ensuring that the jury, not the expert witness, makes the ultimate determination about the defendant's state of mind based on the evidence presented.

Law enforcement agencies should provide comprehensive training for qualified officers who might serve as expert witnesses. This training should include scenarios and witness-examination exercises to help officers practice delivering testimony that adheres to legal standards. It is crucial for law enforcement officers acting as expert witnesses to work closely with prosecutors to ensure that their testimony is prepared and presented in compliance with evidential rules. This collaboration will help safeguard the admissibility of their testimony and its impact on the jury.

## **Diaz v. United States, No: 23-14 (SCOTUS 2024)**

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