

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10510
Non-Argument Calendar

VICTOR GRULLON,

Petitioner-Appellant,

versus

WARDEN, CARROLL COUNTY CORRECTIONAL
INSTITUTE,
COMMISSIONER, GEORGIA DEPARTMENT OF
CORRECTIONS,

Respondents,

WARDEN, BULLOCH COUNTY CORRECTIONAL
INSTITUTE,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:24-cv-00203-JPB

Before JILL PRYOR, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Victor Grullon, a Georgia prisoner serving a 30-year sentence, appeals the denial of his federal petition for a writ of habeas corpus. After careful consideration, we affirm.

I.

Grullon was charged in state court with trafficking heroin in violation of O.C.G.A. § 16-13-31(b)(3). In this section, we review the trial court proceedings in Grullon’s criminal case. We also discuss his direct appeal and his federal habeas case.

A.

Grullon pleaded not guilty to the trafficking charge against him and went to trial. We summarize the evidence introduced at trial.

Grullon came to the attention of law enforcement during an investigation of Marcelo Enciso-Rodriguez, who served as a middleman in a heroin trafficking operation that involved a supplier in Mexico known as “Mariachi” and buyers from New York and Philadelphia. The buyers would drive to the Atlanta area and meet Enciso-Rodriguez at a QuikTrip gas station where he would give them car batteries that had large quantities of heroin hidden inside.

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At trial, the State introduced evidence of two transactions involving Enciso-Rodriguez. The first transaction occurred in January 2016, when Enciso-Rodriguez met buyer Tomas Hernandez at the gas station and gave him a car battery. Before and after the meeting, Enciso-Rodriguez spoke with Mariachi on the phone and used coded phrases to refer to Hernandez and the amount of money involved in the transaction.

The second transaction occurred a few weeks later. The day before the transaction, Mariachi told Enciso-Rodriguez that he had a buyer who “had left today” and would meet Enciso-Rodriguez the next day. Doc. 8-2 at 194.¹ The next morning, Enciso-Rodriguez spoke on the phone several times with an unidentified man, later identified as Grullon. On the calls, they discussed meeting at the QuikTrip.

Later that day, Grullon and Hernandez, the buyer from the January transaction, arrived at the QuikTrip in a car with New York plates. The car was registered to Grullon. Enciso-Rodriguez handed Hernandez a car battery, which Hernandez placed in the car. Hernandez and Grullon then drove away.

Law enforcement officers followed Hernandez and Grullon. An officer saw that their car’s license plate was displayed in a manner that violated Georgia law, and he initiated a traffic stop. During the stop, Hernandez, who was driving the car, consented to a search of it. He told the officers that he and Grullon had been in

¹ “Doc.” numbers refer to the district court’s docket entries.

Atlanta for two days visiting a friend and that the battery belonged to him. The officers noticed that when they asked about the battery, Grullon became nervous and looked like he was going to pass out. When officers cut into the battery, they found six packages hidden inside it. One package, which weighed 465 grams, was tested in a laboratory and found to contain heroin.

At the conclusion of the trial, the court instructed the jury. It explained that Grullon had been charged with trafficking heroin by unlawfully possessing 28 grams or more of a mixture containing heroin. It told the jury that the State had the burden to prove “every essential element of the crime charged beyond a reasonable doubt” and that “the burden never shifts to the defendant to introduce evidence or to prove innocence.” Doc. 8-3 at 84–85.

The trial court instructed that the State had to prove, among other things, that Grullon both knowingly and intentionally committed the crime. It gave detailed instructions about the intent element. It told the jury that intent was “an essential element of any crime and must be proved by the State beyond a reasonable doubt.” *Id.* at 89. The trial court offered the following further instructions about intent:

Intent may be shown in many ways, provided you, the jury, believe that it existed from the proven facts before you. It may be inferred from the proven circumstances or by acts and conduct, or it may be, in your discretion, inferred when it is the natural and necessary consequence of the act. Whether or not you

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draw such an inference is a matter solely within your discretion.

Id. The court cautioned that to satisfy the intent element the State did not have to prove that Grullon had “an intention to violate the law or to violate a penal statute.” *Id.* Instead, it was sufficient for the State to prove that Grullon had an “intention to commit the act that is prohibited by a statute.” *Id.* The court also directed that a “defendant will not be presumed to have acted with criminal intent.” *Id.* Instead, it was up to the jury to “find such intention or the absence of it upon a consideration of words, conduct, demeanor, motive, and other circumstances connected with the act for which the accused is being prosecuted.” *Id.* at 89–90.

The court also discussed the knowledge requirement. It explained that if the jury found “from the evidence in this case that the defendant had no knowledge that a crime was being committed,” it should acquit him. *Id.* at 92. The court also discussed deliberate ignorance. It began the instruction by saying that the “element of knowledge, intent, may be satisfied by inferences drawn from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him.” *Id.* Although this part of the instruction mentioned intent, the remainder of the deliberate ignorance instruction discussed knowledge only. The court instructed that “[a] finding beyond a reasonable doubt of conscious purpose to avoid enlightenment would permit an inference of knowledge” and “a defendant’s knowledge of a fact may be inferred

from willful blindness to the existence of the fact.” *Id.* at 92–93. After giving these instructions, the court reminded the jury that “whether or not you draw such an inference is a matter solely within your discretion.” *Id.* at 93. There were no objections to the court’s jury instructions.

The jury found Grullon guilty. The court imposed a sentence of 30 years’ imprisonment.

B.

Grullon appealed. On appeal, he challenged the sufficiency of the evidence as well as the jury instruction on deliberate ignorance. As to the deliberate ignorance instruction, he argued that the court had improperly conflated the elements of knowledge and intent. He asserted that this error “reduced the State’s burden of proof” and violated his “Fourteenth Amendment rights to due process of law and a fair trial.” Doc. 1-1 at 9. In a series of decisions, Georgia appellate courts rejected Grullon’s challenges and affirmed his conviction.

In an initial decision, the Georgia Court of Appeals addressed Grullon’s challenges to the sufficiency of the evidence and the jury instruction. It concluded that there was sufficient evidence to support Grullon’s conviction. Because he owned the vehicle where the heroin was found, there was an evidentiary presumption that he constructively possessed the heroin. Other circumstantial evidence also supported an inference that Grullon was in constructive possession of the heroin, including his phone calls with Enciso-Rodriguez, that he was present when Hernandez placed the battery

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in the car, and that he appeared visibly disturbed when officers asked about the battery. The court concluded that the circumstantial evidence was sufficient to support the jury's finding that Grullon had knowingly and intentionally possessed the heroin.

The Georgia Court of Appeals then turned to Grullon's challenge to the deliberate ignorance instruction. The trial court told the jury that the "element of knowledge, intent, may be satisfied by inferences drawn from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him." Doc. 1-2 at 10 (citation modified). On appeal, the State conceded that the charge included an erroneous statement of the law. The Georgia Court of Appeals agreed that the charge was erroneous because "a charge on deliberate ignorance that equates intent with knowledge, or which tends to confuse those concepts is erroneous." *Id.* (citation modified). But it held that Grullon had affirmatively waived his challenge to the instruction at trial when he stated that he had no objections to the court's instructions.

The Georgia Supreme Court granted certiorari to review whether "Grullon affirmatively waived his claim that the trial court gave an erroneous jury instruction on deliberate ignorance." Doc. 1-3 at 1. It concluded that Grullon's statement at trial that he had no objection to the trial court's instructions did not affirmatively waive his challenge. It remanded the case to the Georgia Court of Appeals for further proceedings.

On remand, the Georgia Court of Appeals reviewed the jury instruction under a plain error standard. It explained that to establish plain error, Grullon had to show (1) there was “an error or defect”; (2) the legal error was “clear or obvious”; (3) the error “affected [his] substantial rights”; and (4) “the error seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” Doc. 1-4 at 5 (citation modified).

The Georgia Court of Appeals concluded that the trial court’s deliberate ignorance instruction was erroneous and that the error was clear.² It explained that the instruction was erroneous because it referred to the elements of knowledge *and intent* when Georgia law is clear that a “deliberate ignorance instruction applies only to the knowledge element of a criminal offense.” *Id.* at 12 (citation modified).

The Georgia Court of Appeals then considered whether Grullon had established that the error affected his substantial rights—that is, whether it “probably affected the outcome” of the

² Grullon had also argued on direct appeal that the trial court plainly erred in giving the deliberate ignorance instruction, saying that the evidence did not warrant any instruction on the issue. The Georgia Court of Appeals rejected this argument, explaining that the State had introduced circumstantial evidence that supported an inference that “even if Grullon did not actually know what was in the battery, he was aware of a high probability that the battery contained a trafficking level of heroin.” Doc. 1-4 at 8. Given this evidence, the Georgia Court of Appeals concluded there was “no obvious error in the trial court’s decision to give a charge on the subject of deliberate ignorance.” *Id.* at 9.

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trial. *Id.* at 10. It explained when considering the effect of an erroneous instruction, “jury charges cannot be read in isolation but must be read and considered as a whole.” *Id.* at 14 (citation modified). The court stated that the remainder of the deliberate ignorance instruction “omitted any reference to ‘intent’” and properly instructed the jury that “knowledge of a fact may be inferred from willful blindness to the existence of the fact.” *Id.* at 13 (citation modified). In addition, the trial court had instructed the jury that the State had the burden to prove every element beyond a reasonable doubt and gave detailed instructions about the intent element. After considering the jury charges as a whole, the Georgia Court of Appeals held that Grullon had “not met his burden of showing that the error affected the outcome of the trial court proceedings.” *Id.* at 14–15. Because he had not shown plain error, the Georgia Court of Appeals affirmed his conviction.

Grullon petitioned the Georgia Supreme Court for a writ of certiorari. It denied the petition.

C.

Grullon, represented by counsel, filed a federal habeas petition pursuant to 28 U.S.C. § 2254.³ He named as respondent the warden of the Carroll County facility where he was incarcerated.⁴

³ Grullon did not seek postconviction relief in Georgia state court.

⁴ After his conviction, Grullon was committed to the custody of the Georgia Department of Corrections. He ended up incarcerated at the Carroll County facility pursuant to a contract between the Department of Corrections and Carroll County.

Grullon claimed that the state trial court's erroneous instruction on deliberate ignorance violated his Fourteenth Amendment right to due process. He asserted that the decision from the Georgia Court of Appeals affirming his conviction was not entitled to deference because it had "misapplied clearly established federal constitutional law." Doc. 1 at 13 (citation modified).

After hearing from the warden, the magistrate judge issued a recommendation that the district court deny Grullon's petition. Grullon objected. The district court adopted the magistrate judge's recommendation and denied the petition. It issued a certificate of appealability on the question of whether Grullon's due process rights were violated by the trial court's erroneous jury instruction. This appeal followed.⁵

II.

We review *de novo* a district court's denial of a petition for a writ of habeas corpus. *Morrow v. Warden, Ga. Diagnostic Prison*, 886 F.3d 1138, 1146 (11th Cir. 2018).

In his petition, Grullon also named Tyrone Oliver, the commissioner of the Georgia Department of Corrections, as a respondent. Oliver argued that he was not a proper party to the proceeding because Grullon was not in his custody. The district court dismissed Oliver as a respondent.

⁵ While Grullon's federal habeas petition was pending, he was transferred to the Bulloch County Correctional Institute. On appeal, we substituted the warden of the Bulloch County Correctional Institute in place of the warden of the Carroll County Correctional Institute.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs our review of federal habeas petitions. *See* 28 U.S.C. § 2254(d). “AEDPA prescribes a highly deferential framework for evaluating issues previously decided in state court.” *Sears v. Warden GDCP*, 73 F.4th 1269, 1279 (11th Cir. 2023). Under AEDPA, a federal court may not grant habeas relief on a claim that was “adjudicated on the merits in State court” unless the state court’s decision was (1) “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or (2) “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d).

A state court decision is “contrary to” clearly established law if the court “applie[d] a rule that contradicts the governing law” set forth by the United States Supreme Court or the state court confronted facts that were “materially indistinguishable” from United States Supreme Court precedent but arrived at a different result. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). To meet the unreasonable-application-of-law standard, “a prisoner must show far more than that the state court’s decision was merely wrong or even clear error.” *Shinn v. Kayer*, 592 U.S. 111, 118 (2020) (citation modified). The decision must be “so obviously wrong that its error lies ‘beyond any possibility for fairminded disagreement.’” *Id.* (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)). This standard is “difficult to meet and . . . demands that state-court decisions be given the benefit of the doubt.” *Raulerson v. Warden*, 928 F.3d 987, 996

(11th Cir. 2019) (quoting *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)).

We also must defer to a state court’s determination of facts unless its decision “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(2). “We may not characterize . . . state-court factual determinations as unreasonable merely because we would have reached a different conclusion in the first instance.” *Brumfield v. Cain*, 576 U.S. 305, 313–14 (2015) (citation modified). We presume that a state court’s factual determinations are correct, absent clear and convincing evidence to the contrary. *See Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1035 (11th Cir. 2022) (en banc).

III.

The Due Process Clause of the Fourteenth Amendment “protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime upon which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). “This bedrock, axiomatic, and elementary constitutional principle prohibits the State from using evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime.” *Francis v. Franklin*, 471 U.S. 307, 313 (1985) (citation modified).

When a defendant raises a due process challenge to a trial court’s jury instruction, the threshold inquiry “is to determine the

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nature of the presumption” that the trial court directed the jury to apply. *Id.* at 313–14. That is, a court “must determine whether the challenged portion of the instruction create[d] a mandatory presumption, or merely a permissive inference.” *Id.* at 314 (citation modified).

“A mandatory presumption instructs the jury that it must infer the presumed fact if the State proves certain predicate facts.” *Id.* A mandatory presumption violates the Due Process Clause when it “relieve[s] the State of the burden of persuasion on an element of the offense.” *Id.*; see *Ulster Cnty. Ct. v. Allen*, 442 U.S. 140, 157–59 (1979) (explaining that a mandatory presumption tells the trier of fact that it “*must* find the elemental fact upon proof of the basic fact” and does not permit the trier of fact to reject the presumption “based on an independent evaluation of the particular facts presented by the State”).

But the same due process issues do not arise when a court instructs a jury that it may draw a permissive inference. A permissive inference “suggest[s] to the jury a possible conclusion to be drawn if the State proves predicate facts, but does not require the jury to draw that conclusion.” *Francis*, 471 U.S. at 314. Because a permissive presumption “allows, but does not require, the jury to infer the elemental fact from proof by the prosecutor of the basic one,” this type of instruction “places no burden of any kind on the defendant.” *United States v. Myers*, 972 F.2d 1566, 1573 (11th Cir. 1992) (citation modified). Instead, the instruction “leaves the trier of fact free to credit or reject the inference and does not shift the

burden of proof” and thus generally raises no due process issue. *Allen*, 442 U.S. at 157.

In determining whether an instruction violates the Due Process Clause, a court “must focus initially on the specific language challenged, but the inquiry does not end there.” *Francis*, 471 U.S. at 315. “If a specific portion of the jury charge, considered in isolation, could reasonably have been understood as creating a presumption that relieve[d] the State of its burden of persuasion on an element of an offense,” the court then must consider “the potentially offending words . . . in the context of the charge as a whole.” *Id.* “Other instructions might explain the particular infirm language to the extent that a reasonable juror could not have considered the charge to have created an unconstitutional presumption.” *Id.* “This analysis requires careful attention to the words actually spoken to the jury for whether a defendant has been accorded his constitutional rights depends upon the way in which a reasonable juror could have interpreted the instruction.” *Id.* (citation modified).

Here, Grullon asserts that the trial court’s erroneous instruction on deliberate ignorance violated his right to due process. He focuses on the portion of the ignorance instruction where the trial court told the jury that “[t]he element of knowledge, intent, may be satisfied by inferences drawn from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him.” Doc. 8-3 at 92. He says that because the deliberate ignorance instruction conflated the knowledge and intent elements, it effectively created a mandatory presumption.

We conclude that Grullon’s due process claim fails under *de novo* review.⁶ In considering whether the instruction violated Grullon’s due process rights, we start by considering whether the instruction directed the jury to apply a mandatory presumption or merely set forth a permissive inference. We conclude that it set forth a permissive inference, not a mandatory presumption. The trial court’s instruction told the jury that it *may* draw inferences about intent and knowledge from a finding of deliberate ignorance, not that it was required to do so.⁷ See *Baxter v. Thomas*, 45 F.3d 1501, 1509 (11th Cir. 1995) (explaining that an instruction that told the jury what it “may infer” set forth a permissive inference, not a mandatory presumption, and thus did not improperly shift the burden of proof). Because the trial court’s instructions did not relieve the

⁶ We need not decide whether the Georgia Court of Appeals decision affirming Grullon’s conviction is entitled to deference under AEDPA because even if this claim was “eligible for *de novo* review, it would still fail.” *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009); see *Reese v. Sec’y, Fla. Dep’t of Corr.*, 675 F.3d 1277, 1291 (11th Cir. 2012) (explaining that, even when it is clear that AEDPA deference applies, we may affirm the denial of federal habeas relief based on *de novo* review).

⁷ A jury instruction that sets forth a permissive presumption violates a defendant’s due process rights if the jury is told that it may draw an inference that is “irrational.” *Yates v. Everett*, 500 U.S. 391, 402 n.7 (1991); see *Francis*, 471 U.S. at 314–15 (explaining that a permissive inference violates the Due Process Clause “only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury”). But Grullon has not argued that the permissive inference described in the jury instruction was irrational. And we cannot say that this standard is satisfied here.

State of its burden on any element, we conclude that Grullon's due process challenge fails.

Moreover, even if we assumed that the court's single statement conflating the knowledge and intent elements when read in isolation somehow relieved the State of its burden of persuasion on the intent element, we still would conclude that Grullon's due process challenge fails. This is because we then must consider the "potentially offending words . . . in the context of the charge as a whole." *Francis*, 471 U.S. at 315. Here, the trial court also instructed the jury that the State was required to prove each element of the crime beyond a reasonable doubt. It gave detailed jury instructions about the intent requirement. These instructions described only permissive inferences, and they directed the jury that a "defendant will not be presumed to have acted with criminal intent." Doc. 8-3 at 89. In addition, in the remainder of the deliberate ignorance instruction, the trial court did not reference intent and properly discussed only the knowledge element. Given the entirety of the trial court's instructions in this case, we conclude that a reasonable juror could not have considered the court's instruction to have created an unconstitutional presumption. *See Francis*, 471 U.S. at 315. Accordingly, we affirm the district court's denial of the habeas petition.

AFFIRMED.