07-544 CHRONES V. PULIDO

DECISION BELOW:487 F3d 669

LOWER COURT CASE NUMBER: 05-15916, 05-16308

QUESTIONS PRESENTED:
Stromberg v. California, 283 U.S. 359 (1931), required the reversal of the judgment if a general verdict could have rested on an instruction that defined a constitutionally defective alternative theory of criminal liability. However, a modern line of cases, including Neder v. United States, 527 U.S. 1 (1999), establishes that error in instructing on an element of a charged crime is not “structural error,” so as to require automatic reversal, but is instead “trial error” and, as such, may be harmless.
The question presented is:
Did the Ninth Circuit fail to conform to “clearly established” Supreme Court law, as required by 28 U.S.C. § 2254(d), when it granted habeas corpus relief by deeming an erroneous instruction on one of two alternative theories of guilt to be “structural error” requiring reversal because the jury might have relied on it?

CERT. GRANTED 2/25/2008