

No. _____

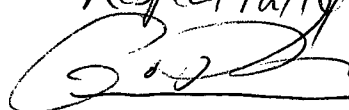
IN THE
Supreme Court of THE United States
June Term, 2018

Gary Robinson,
Petitioner,

VS
United States of America,
Respondent

Petition For Writ of Certiorari to the
United States Court of Appeals For the Fourth Circuit

Petition For Writ of Certiorari

Respectfully Submitted,
 #40362-037

Gary Robinson, pro se.

Reg. #40362-037

U.S.P. Coleman - 2

P.O. Box 1034

Coleman, Florida 33521
(Supreme Court Rule 12(2))

Table of Contents

Page

Question Presented	ii
Parties	iii
Opinions Below	iv
Jurisdiction	iv
Table of Cases	v
Statement of the Case	i
Reason For Granting Writ	5-13

1. The Critical question in this case is, Whether a trial Attorney Can Constitutionally Stipulate Elements of a charged Crime over the expressed objections by a defendant under the fifth, sixth and fourteenth Amendments of the United States Constitution? 5-10

2. Whether in this case, any error was waived by the defendant? 11-12

Conclusion	13
Certificate of Service	14

Appendix A: Opinion from United States Court of Appeals Fourth Circuit	
Appendix B: Denial of Rehearing and Rehearing En Banc	
Appendix C: Request Latent Finger-Print Analysis	
Appendix D: Assistant Counsel Letter / Ms. Kathryn Frey Balter	
Appendix E: Attorney Ms. Natapoff Letter	
Appendix F: Assistant Counsel Letter / Ms. Balter	
Appendix G: Ms. Natapoff's Letter to Robinson's objection at trial	

Question Presented

1. The Critical question in this case is, Whether a trial Attorney Can Constitutionally Stipulate Elements of a Charged Crime over the expressed objections by a defendant under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution?

2. Whether in this case, any error was waived by the defendant?

Parties

Petitioner Gary Robinson, was one defendant tried and convicted in this matter.

Opinions Below

The opinion of the United States Court of Appeals For the Fourth Circuit that gives rise to this Petition is attached hereto as Appendix "A". In the same vein, By order filed June 5, 2018, The Fourth Circuit denied Robinson's Petition for Rehearing and Rehearing En Banc; see Appendix "B".

Jurisdiction

The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254 (1).

CasesTable of CasesPages

- 1.) United States v. Williams, 632 F. 3d 129 (4th Cir. 2011) _____ 5-10
- 2.) Re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970) _____ 7
- 3.) Mathews v. United States, 485 U.S. 58, 64-65, 108 S.Ct. 883, 99 L.Ed. 2d 54 (1988) _____ 7

Statement of the Case

On January 28, 2002, Petitioner, Gary Robinson, was apprehended by authorities after he was said to have fit the description of the person described in a 911 call.

A foot-race was said to have occurred, by an Officer who was later a witness for the prosecution. Officer Heffernan testified to a play-by-play account of said chase, ending with his alleged witnessing of Robinson's discarding of a gun he supposedly dropped at a sewer drain, mistakingly being kicked by the officer into the sewer, then helplessly watching the assailant get away through and under heavy brush, of which the officer stated he had too much equipment on to pursue.

Officer Heffernan also testified that although he couldn't follow him through the brush, he was still able to keep track of the assailant's whereabouts long enough to communicate to other officers what street the suspect was then traveling. Finally, losing sight of the suspect, he later learned that he was apprehended by an officer Thompson (also a witness for the prosecution).

Officer Heffernan then alleged that he went back to the sewer where the suspect was said to have dropped the gun, where an officer Wilkes handed him an evidence bag with a weapon and a magazine for bullets inside that was supposedly retrieved from the sewer. Later, Officer Thompson was said to have given Officer Heffernan another evidence bag with a .45 caliber magazine in it, which was said to have been found in Robinson's pockets. Incredulously, Robinson's Fingerprints weren't on the firearm nor magazine which were seized at the same time, see Appendix C, Requested Latent Fingerprint Analysis.

Robinson was booked and charged on weapons charges. While adamantly maintaining the position of innocence, he was eventually charged by criminal indictment with knowingly and unlawfully possessing a firearm in and affecting commerce, to wit one (1) Colt, Government Model, .45 caliber, semi-automatic pistol, in violation of 18 U.S.C. § 922 (g)(1) having been previously convicted of one or more crimes punishable by imprisonment for a term exceeding one year (count one); and with knowing and unlawfully possessing ammunition in and affecting commerce to wit: Five (5) .45 caliber rounds, in violation of 18 U.S.C. § 922 (g)(1), having been

previously convicted of one or more crimes punishable by imprisonment for a term exceeding one year (count two).

On November 4, and 5, 2002, Robinson was tried by a jury and found guilty on both counts by a stipulation which Robinson did not sign or had knowledge of until Assistant United States Attorney announced at trial, we have a stipulation, which was read to the jury before deliberation. Robinson objected to the stipulation, to the judge, which he said, you'd have to consult that with your attorney, and if I made another outburst like that again he'd hold me in contempt of court, Robinson then objected to his attorney Ms. Natapoff and she said it was too late all the evidence was in, the trial proceeded and the jury found Robinson guilty by a stipulation of 18 U.S.C. § 922(g)(1), that violated Robinson's Fifth, Sixth and Fourteenth Amendment U.S. Const. Right. The court imposed Concurrent terms of 216 months for each of the convictions of firearm and ammunition.

No. _____

IN THE
Supreme Court OF THE United States

June Term, 2018

Gary Robinson,
Petitioner,

Vs.

United States of America,
Respondent.

Petition For Writ of Certiorari to the United
States Court of Appeals For the Fourth Circuit

Petition For Writ OF Certiorari

Gary Robinson respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals For the Fourth Circuit entered in this proceeding on June 5, 2018, in order to decide the issues of constitutional importance presented herein.

Reasons For Granting the Writ

One

The Question in this case is, Whether a trial Attorney Can Constitutionally Stipulate elements of a charged Crime over the expressed objections by a defendant under the fifth, sixth and fourteenth Amendments of the United States Constitution?

Robinson's case is similar to the fourth circuit case in United States v. Williams 632 F.3d 129 (4th Cir. 2011), which is in conflict with the fourth circuit court, violating the fifth, sixth and fourteenth amendment United States Constitutional rights. On September 3, 2008 the district court held a hearing to discuss pretrial matters of a stipulation that the government wished to enter, but Williams objected to, his attorney signed the Stipulation and the Stipulation was submitted to the jury over Williams objection at that pretrial hearing.

Robinson had a pretrial hearing regarding ineffective assistant of counsel because of the conflict petitioner and Attorney had of Ms. Natapoff wanting to continuously Plea Petitioner guilty to 18 U.S.C. § 922(g)(1), possession of a firearm and ammunition. Counsel had an assistant, Ms. Kathryn Frey Balter, help her with defendant case. Defendant Attorney, Ms Natapoff, did not want to pursue trial with defendant making the government prove all elements of 18 U.S.C. § 922(g)(1). At the pretrial hearing Judge William M.

Nickerson said you have the right to go to trial without having to stipulate or plea guilty, and if counsel take defendant to trial will you keep her and defendant said "yes", see Appendix D, Assistant counsel letter verifying the hearing of the Conflict of Attorney with defendant.

On August 2, 2002, a letter was sent by Attorney without defendant knowledge of Attorney "again," attempting to plea Petitioner guilty by stipulation to 18 U.S.C. § 922(g)(1), not long after the pretrial hearing, Judge Nickerson knew that defendant did not want to plea or stipulate to the charges. Judge Nickerson approved to what attorney initially set out to do, stipulate a plea of guilt. Defendant never stood a chance at trial because according to the judge, attorney and government, defendant was guilty before he went to trial without ever signing to a Plea agreement or stipulation to the charges, See Appendix E, Attorney Ms Natapoff Letter stating that you never signed any stipulation. Also see Appendix E, Stipulation that was withheld from Ms. Natapoff later being forwarded on April 18, 2014 by assistant attorney Ms. Balter which defendant objected to at trial. see also Appendix G, Ms. Natapoff Letter to Robinson's objection at trial.

Analysis

"Propriety of a Stipulation over the Defendant's Objection"

Robinson argue that the decision to enter a stipulation at trial is exclusively within the defendant's discretion. Accordingly, Robinson argues that before a stipulation can be entered, a court must engage in a colloquy with the defendant to ensure that the defendant is entering the stipulation knowingly and voluntarily. Although the decision to stipulate an element of the crime does not generally require a colloquy on the record with the defendant, such a decision may not be made over the defendant's known and expressed objection.

The decision to stipulate to an element implicates more than merely trial tactics. Under the due process clauses of the fifth and fourteenth Amendments to the United States constitution, a criminal defendant has the right to require the government prove every element constituting the crime. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970); see also Mathews v. United States, 485 U.S. 58, 64-65, 108 S.Ct. 883, 99 L.Ed. 2d 54 (1988). This right is anchored in principles of due process

existing under the fifth and fourteenth amendments. When the parties stipulate to the facts that establish an element of the charged crime, the jury need not find the existence of that element and the stipulation therefore constitutes a waiver of the "right to a jury trial on that element, as well as the right to require the government prove that element beyond a reasonable doubt. Here, the defendant's attorney signed a stipulation to all the elements of a charged crime. Stipulations such as this required a trial court to personally question the defendant to determine voluntariness, as is required for the entry of guilty pleas. When a stipulation is agreed to by the defendant's attorney in the presence of the defendant, the trial court may presume that the defendant consents, unless the defendant objects at the time the stipulation is made. Here, Robinson did object. Although courts can presume a defendant consents to a stipulation, this presumption disappears where the defendant expressly objects, see United States v. Williams, 632 F.3d 129 (4th Cir. 2011). The defendant refused to sign the stipulation, but the court allowed the defense counsel to sign it over the defendant's objection, and the stipulation was read to the jury. Williams, 632 F.3d at 133 n. 2. The result

recognized that trial courts cannot compel a defendant to enter stipulations to elements of a crime where an objection is made.

Here, in pleading not guilty, Robinson invoked his due process right to require that the government meet its burden of proof as to every element of the crime. Robinson was charged with unlawful possession of a firearm and ammunition, which make it a crime for a person to possess or control a firearm and ammunition. The Stipulation establishing these elements of a prohibited person for purposes of prosecution under 18 U.S.C. § 922(g)(1) possession of firearm and ammunition, "prohibited person" as defined at 18 U.S.C. § 921(a)(20) and that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, thereby conceding all elements of a crime. Had Robinson not voiced an objection, the trial court would have been correct in assuming that he consented to the stipulation because Robinson objected, however, the trial court could not accept the stipulation and compel Robinson to waive his constitutional rights. With minimal analysis, a trial court cannot accept counsel's decision to stipulate to elements of a charged crime when it knows the defendant disagrees.

• Yet, it is critical, since Robinson did object before, at trial and did not sign the stipulation at no time, his fifth, sixth and fourteenth amendment due process rights of the United States constitution have been violated. Also in conflict with the fourth circuit court, case United States v. Williams, 632 F.3d 129 (4th cir. 2011).

Reasons For Granting the Writ

Two

Whether in this case, any error was waived by defendant?

Waiver of a constitutional right must be, knowing, involuntary, and intelligent. Instead of examining the validity of the stipulation, Robinson's decision not to sign the stipulation did not waive his objection or abandoned his challenge to the stipulation on appeal. Here, counsel erroneously told Robinson that his consent to the stipulation was not required, well as it was too late, the stipulation and all the evidence was already turned in to the jury. Even though the waiver of a constitutional right may be informed by strategic considerations, it cannot be involuntary.

Entering the stipulation as to all elements of the crime over Robinson's known objection did constitute an involuntary waiver of his due process right to hold the government to its burden of proof. The trial court erred when it allowed the stipulation to be read to the jury over Robinson's known objection. Without the stipulation being entered to the jury at trial, no reasonable jury could have found possession of a firearm and ammunition to be a waiver when there was no fingerprints on the firearm or ammunition/magazine(s).

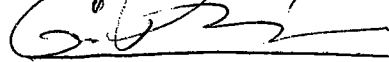
In any event, however, the stipulation to all elements of the crime over Robinson's known objection did constitute and violated an involuntary waiver of his fourteenth amendment

United States constitutional due process right to hold the government to it's burden of proof.

Conclusion

For the foregoing reasons, this petition for writ of Certiorari should be granted.

executed this 29th day of June, 2018.

Respectfully Submitted,
 #40362-037

Gary Robinson, pro se.
Reg. # 40362-037

Certificate of Service

I, the undersigned, do hereby state and declare, pursuant to penalty of perjury, 28 U.S.C. § 1746, that a true and accurate copy of the foregoing "Petition For Writ of Certiorari" has been forwarded to the Government's Attorney and Office of the Clerk of the Supreme Court of the United States, #1 First Street, N.E. Washington, DC 20534:

1. Paul Clement
U.S. Solicitor General
Department of Justice
Room 5614
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

2. OFFICE OF THE CLERK OF
THE UNITED STATE Supreme
Court
#1 First Street, N.E.
Washington, DC 20534

executed this 29th day of June, 2018.

Si G. J. #40362-037
Gary Robinson, pro se.
Reg. No. 40362-037
USP-Coleman-2
P.O. Box 1034
Coleman, Florida 33521