

NO: 18-7950

IN THE
SUPREME COURT of the UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

FEB 03 2019

OFFICE OF THE CLERK

MARQUETTE WALKER

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

To The UNITED STATES DISTRICT COURT OF TENNESSEE
WESTERN DIVISION

PETITION FOR WRIT OF CERTIORARI

MR. MARQUETTE WALKER

PRO SE,

FCC P.O. BOX 9000

FORREST CITY, AR 72336

RECEIVED
FEB 12 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

DOES NONEXCLUSIVE POSSESSION OF A PREMISES SERVE TO ESTABLISH
CONSTRUCTIVE POSSESSION OF ITEMS FOUND WITHIN THE PREMISES.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

UNITED STATES OF AMERICA
167 NORTH MAIN ST. #800
MEMPHIS, TN 38103

FITZGERALD, HARRIS, & FITZGERALD
44 N. SECOND STREET SUITE 201
MEMPHIS, TN 38103

UNITED STATES COURT OF APPEALS
6th CIRCUIT
CINCINNATI, OHIO

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

UNITED STATES V. BAILEY, 553 F.3d 940 (6th Cir. 2009)
UNITED STATES V. CAMPBELL, 549 F.3d 364 (6th Cir. 2008)
UNITED STATES V. CRUMPTON, 824 F.3d 593 (6th Cir. 2016)
UNITED STATES V. GUADARRAMA, 591 Fed. Appx. 347 (6th Cir. 2014)
SCARBOROUGH V. UNITED STATES, 431 U.S. 563 (1977)
JACKSON V. VIRGINIA, 443 U.S. 307 (1979)
UNITED STATES V. ARNOLD, 486 F. 3d 177 (6th Cir. 2007)
UNITED STATES V. BLAKENEY, 942 F. 2d 1001 (6th Cir. 1991)
UNITED STATES V. CARAWAY, 411 F.3d 679 (6th Cir. 2005)
UNITED STATES V. CLAY, 667 F.3d 689 (6th Cir. 2012)
UNITED STATES V. FREDRICK, 406 F.3d 754 (6th Cir. 2005)
UNITED STATES V. GARDNER, 488 F.3d 700 (6th Cir. 2007)
UNITED STATES V. GRUBBS, 506 F.3d 434 (6th Cir. 2007)
UNITED STATES V. MARTIN, 375 F.2d 956 (6th Cir. 1967)
UNITED STATES V. PUGH, 405 F.3d 390 (6th Cir. 2005)
UNITED STATES V. WALKER, 734 F.3d 451 (6th Cir. 2013)
UNITED STATES V. WRIGHT, 16 F.3d 1429 (6th Cir. 1994)

STATUTES AND RULES

18 U.S.C. §922(g)
18 U.S.C. §922(g)(1)
18 U.S.C. 3231
21 U.S.C. §841(a)(1)
28 U.S.C. §1291

OTHER

FED. R. APP. P. 32(a)(7)(B)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 19 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF JURISDICTION

The District Court had jurisdiction in this case pursuant to 18 U.S.C. §3231, because defendant was indicted by a Federal Grand Jury for offenses against the Laws of the United States. This Court had Jurisdiction pursuant to 28 U.S.C. §1291, which granted that Court Jurisdiction over final decisions of the District Court. As the Supreme Court of the land, this Honorable Court maintains the authority and final jurisdiction over final decision of the Courts within the United States of America.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION AMENDMENT VI

STATEMENT OF THE CASE

Mr. Walker has been in a romantic relationship with Doris Murrell for nearly 30 years. (RE 74, Trial Transcript, Page ID 697-98). In approximately 2009/10 Ms. Murrell moved into a residence located at 3040 Shannon Avenue in Memphis, Shelby County, Tennessee. (RE 74, Trial Transcript, Page ID 698-718). Mr. Walker moved in with Ms. Murrell at this residence in 2013/14. (RE 74, Trial Transcript, Page ID 698-718).

On September 30, 2016 at approximately 10:00 a.m., Law enforcement officials executed a search warrant at 3040 Shannon as a result of their investigation into a string of burglaries of commercial businesses. (RE 73, Trial Transcript, Page ID 447-48,495-96). Officers knocked on the door but did not get a response. (RE 73, Trial Transcript, Page ID 448-49). Officers located a window at the rear of the residence, removed an air conditioner unit from the window, and entered the residence through the window. (RE 73, Trial Transcript, Page ID 449). At that point, Mr. Walker emerged from the master bedroom walking down the hallway in his underwear and was detained by law enforcement officials. (RE 73, Trial Transcript, Page ID 449).

The officers then began searching the residence. (RE 73, Trial Transcript, Page ID 451). The officers found a .40 caliber Taurus handgun in a drawer in the master bedroom of the residence. (RE 73, Trial Transcript, Page ID 452-53). In the kitchen of the residence, officers located a Ziploc baggie containing ammunition. (RE 73, Trial Transcript, Page ID 469). The Ziploc baggie contained .38 caliber and .40 caliber ammunition. (RE 73, Trial Transcript, Page ID 469-70).

Mr. Walker was arrested and transported to a police station. (RE 74, Trial Transcript, Page ID 577). While there, he was questioned about the handgun but was not questioned about the ammunition. (RE 74, Trial Transcript, Page ID 577,586-88) Ms. Murrell testified that the .38 caliber ammunition may have belonged to her father. (RE 74, Trial Transcript, Page ID 715). Ms. Murrell further testified that .40 caliber ammunition may have

belonged to her but the ammunition should have been in a box rather than in Ziploc bags. (RE 74, Trial Transcript, Page ID 715).

On or about March 30, 2017, a federal grand jury returned a three-count indictment against Mr. Walker arising from the September 30, 2016 events. (RE 2, Indictment, Page ID 3-4). On or about August 15, 2017, a federal grand jury returned a four-count superseding indictment against Mr. Walker. (RE 31, First Superseding Indictment, Page ID 39-41). Mr. Walker was charged with: (Count 1) being a convicted felon in possession of a firearm, in violation of 18 U.S.C. §922(g), (Count 2) intentionally possessing with intent to distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. §841(a)(1), (Count 3) intentionally possessing with intent to distribute hydrocodone, in violation of 21 U.S.C. §841(a)(1), and (Count 4) being a convicted felon in possession of ammunition, in violation of 18 U.S.C. §922(g). (RE 31, First Superseding Indictment, Page ID 39-41). Prior to trial, the District Court granted the Government's motion to dismiss Count 3 of the First Superseding Indictment. (RE 39, Order Dismissing Count 3, Page ID 55). The case proceeded to trial on the three remaining counts.

After hearing all of the evidence presented at trial, the jury was unable to reach a verdict on whether Mr. Walker possessed the .40 caliber Taurus handgun. (RE 47, Jury Verdict, Page ID 95). The jury found Mr. Walker not guilty of Count 2 of the First Superseding Indictment. (RE 47, Jury Verdict, Page ID 95). The jury found Mr. Walker guilty of Count 4 of the First Superseding Indictment. (RE 47, Jury Verdict, Page ID 95). After the trial, the District Court granted the Government's motion to dismiss Count One of the First Superseding Indictment. (RE 55, Order Dismissing Count One, Page ID 108).

Mr. Walker's sentencing hearing was held on November 1, 2017. Mr. Walker was sentenced to 78 months of imprisonment. (RE 64, Redacted Judgment, Page ID 178). On November 12, 2017, Mr. Walker timely filed his Notice of Appeal. (RE 67, Notice of Appeal, Page ID 186).

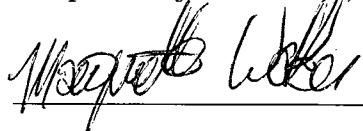
REASONS FOR GRANTING THE PETITION

One of the most basic and fundamental rights under the United States Constitution is a criminal defendant's Sixth Amendment right to a jury trial. This right requires that the Government prove each and every element of a crime to the jury beyond a reasonable doubt. In this case, the Government produced insufficient evidence to prove beyond a reasonable doubt that Mr. Walker was guilty of being a convicted felon in possession of ammunition. More specifically, the Government failed to prove that Mr. Walker actually or constructively possessed ammunition on or about September 30, 2016. Therefore, the evidence presented at trial was insufficient to sustain Mr. Walker's conviction and the District Court erred when it denied Mr. Walker's Motion for judgment of acquittal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-1-19