

IN THE SUPREME COURT OF THE UNITED STATES

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RONALD F. WHITE, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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#### QUESTION PRESENTED

Whether the evidence was sufficient to prove that petitioner knew that his unregistered shotgun had a bore diameter greater than one-half inch, thereby bringing it within the registration requirement of 26 U.S.C. 5861(d).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (W.D. Mo.):

United States v. White, No. 13-cr-440 (Apr. 15, 2015; May 29, 2018)

United States Court of Appeals (8th Cir.):

United States v. White, No. 15-2027 (June 2, 2016; July 11, 2017 (en banc))

United States v. White, No. 18-2233 (Feb. 15, 2019)

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No. 19-5098

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-5) is reported at 915 F.3d 1195. Prior opinions of the court of appeals are reported at 824 F.3d 783 and 863 F.3d 784. A prior order of the district court is not published in the Federal Supplement but is available at 2015 WL 13696617.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 2019. A petition for rehearing was denied on March 27, 2019 (Pet. App. 6). The petition for a writ of certiorari was filed on

June 25, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### STATEMENT

Following a bench trial in the United States District Court for the Western District of Missouri, petitioner was convicted of possessing an unregistered firearm, in violation of 26 U.S.C. 5841, 5861(d), 5871. Pet. App. 3. He was sentenced to 46 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. The court of appeals affirmed. Id. at 3-5.

1. In October 2013, Kansas City law enforcement began investigating petitioner in connection with a series of violent crimes. 863 F.3d 784, 785-786. During that investigation, officers obtained a search warrant for petitioner's parents' home. While executing the warrant, "officers recovered a black duffel bag from the top shelf of a closet in the bedroom that [petitioner] occupied" when visiting. Id. at 785. The bag contained five guns, including an unregistered "Street Sweeper" shotgun with a bore diameter greater than one-half inch; multiple gun magazines; and an Amtrak ticket and credit card receipt, both in petitioner's name. Id. at 785-786.

A federal grand jury charged petitioner with, as relevant here, possessing an unregistered firearm in violation of 26 U.S.C. 5861(d). 863 F.3d at 786-787; see D. Ct. Doc. 28, at 1 (June 27,

2014).<sup>\*</sup> Section 5861(d) makes it a crime to possess an unregistered firearm. 26 U.S.C. 5861(d). A “‘firearm’” includes, among other things, “a destructive device,” 26 U.S.C. 5845(a)(8), which is defined (with an exception not relevant here) to include “any type of weapon” that can “expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter,” 26 U.S.C. 5845(f)(2). In Staples v. United States, 511 U.S. 600 (1994), this Court held that, to obtain a conviction under Section 5861(d), the government must prove that the defendant “knew of the features of his [firearm] that brought it within the scope of the Act.” Id. at 619.

At trial, petitioner argued that, under Staples, the government was required to prove that he knew that the shotgun’s barrel had a bore of more than one-half inch in diameter. 863 F.3d at 786-787. Relying on then-existing circuit precedent, the district court rejected that argument and instructed the jury only that it had to find that the shotgun barrel’s bore was greater than one-half inch. See ibid. The jury found petitioner guilty. Id. at 787.

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<sup>\*</sup> Because one of the other firearms in the bag had been stolen, the grand jury also charged petitioner with possessing a stolen firearm in violation of 18 U.S.C. 922(j), 924(a)(2). Petitioner’s conviction on that count was overturned on appeal due to insufficient proof that he knew the firearm was stolen, see 863 F.3d at 785-786, and that charge is no longer at issue in this case.

The court of appeals ultimately issued an en banc decision in which it agreed with petitioner that the jury instructions were erroneous because they allowed petitioner to “be convicted of possessing the unregistered Street Sweeper without knowing that the Street Sweeper had” a bore diameter of more than one-half inch. 863 F.3d at 792. It further concluded that the instructional error was not harmless, and it vacated the conviction and remanded for further proceedings. Id. at 790-792.

On remand, the district court conducted a bench trial and found petitioner guilty. Pet. App. 3; see D. Ct. Doc. 179, at 1 (May 29, 2018). The court sentenced him to 46 months of imprisonment, which constituted time served, to be followed by three years of supervised release. Pet. App. 3; see D. Ct. Doc. 179, at 2-3.

2. Petitioner appealed, contending that the evidence was insufficient to establish either that he possessed the shotgun or that he knew that the barrel’s bore was greater than one-half inch. Pet. App. 3. The court of appeals rejected both arguments and affirmed. Id. at 1-5.

First, the court of appeals found the evidence sufficient to prove that petitioner possessed the shotgun. Pet. App. 4. The court of appeals explained that the district court had made a number of factual findings linking petitioner to the shotgun: the duffel bag containing the gun was found in a bedroom where he stayed when he visited his parents; the bag was in a closet that

also contained some of his clothes; the bag contained an Amtrak ticket in his name; and a revolver found in the bag had his DNA on it. Ibid. Based on those findings, the court of appeals found “ample circumstantial evidence for the district court to reasonably infer [petitioner] constructively possessed the shotgun.” Ibid. The court also rejected petitioner’s argument that, even if the evidence showed he possessed the duffel bag, it did not establish his knowledge that the shotgun was in the bag. See ibid. The court of appeals explained that, given the district court’s factual findings, it was a “reasonable inference” that petitioner had been “in the bag at some point in time” after the shotgun was placed in the bag and therefore knew that the shotgun was there. Ibid.

Second, the court of appeals found the evidence sufficient to prove petitioner’s knowledge that the shotgun had a bore diameter of more than one-half inch. Pet. App. 5. The court explained that a factfinder may permissibly “infer the requisite knowledge [of the physical characteristics of a firearm] from the condition of the” firearm, including “any external indications signaling the nature of the weapon.” Ibid. (citation omitted; brackets in original). The court of appeals recounted the district court’s finding that “the person possessing the [Street Sweeper shotgun] is easily aware of the bore being more than a half inch,” ibid., and observed that the shotgun was admitted into evidence along with testimony that it in fact had a bore diameter of approximately



three-quarters of an inch, see id. at 3 (describing the diameter as .729 inches); id. at 5 (describing the diameter as "approximately .752 inches"). The court of appeals determined that the evidence about the shotgun, in combination with the "sufficient evidence of [petitioner's] knowing possession" of it, provided "ample circumstantial evidence for the district court to reasonably infer [petitioner] knew the shotgun had a bore diameter of more than one-half inch." Id. at 5.

#### ARGUMENT

Petitioner contends (Pet. 10-18) that the court of appeals erroneously permitted his conviction for knowing possession of an unregistered shotgun with an oversized bore in the absence of evidence that he had seen the shotgun. But petitioner's argument misreads the decision below. The court determined only that, on the facts of this case, sufficient evidence existed from which a reasonable factfinder could have inferred that petitioner had viewed the shotgun, which had an obviously oversized bore. That factbound determination is correct and does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

1. At a prior stage of this case, the en banc court of appeals considered Staples v. United States, 511 U.S. 600 (1994), and concluded that "in all cases in which a defendant is prosecuted under the National Firearms Act for unlawful possession of an unregistered firearm, the government must prove beyond a

reasonable doubt that the defendant knew of the physical characteristics of the weapon bringing the weapon within the ambit of the Act.” 863 F.3d 784, 790. Petitioner does not contend that Staples requires a greater or different showing, or dispute that the district court on remand correctly complied with the en banc decision by imposing a legal requirement that the government prove his knowledge that the shotgun had a bore diameter greater than one-half inch.

Instead, petitioner raises only a claim about the specific way that the court below allowed the government to meet its burden of proving knowledge. Specifically, petitioner contends (Pet. i, 10-11) that the court improperly permitted the factfinder to infer his knowledge of the bore’s diameter from the firearm’s external characteristics without any evidence that he had actually seen the firearm.

Petitioner misreads the court of appeals’ decision. As explained above, see pp. 4-5, supra, the court first addressed petitioner’s argument that the evidence was insufficient to show that he knew the shotgun was in the duffel bag, and therefore, insufficient to establish his knowing possession of the gun. Pet. App. 4-5. In rejecting that argument, the court determined that it was a “reasonable inference” from all the evidence that petitioner had been “in the bag” after the shotgun was placed in the bag. Id. at 4. The evidence supporting petitioner’s knowing

possession of the shotgun was thus evidence that he had seen the shotgun. See ibid.

The court of appeals then turned to petitioner's claim that the evidence was insufficient to establish his knowledge that the shotgun's bore was larger than one-half inch. Pet. App. 5. In rejecting that claim, the court relied on the combination of: (1) the district court's finding that the bore size is an observable external characteristic apparent to anybody viewing the gun, and (2) the "sufficient evidence of [petitioner's] knowing possession of the shotgun," to find "ample circumstantial evidence for the district court to reasonably infer [petitioner] knew the shotgun had a bore diameter of more than one-half inch." Ibid.

Thus, contrary to petitioner's contention (Pet. 10), the court of appeals did not hold that it is permissible for a court to infer knowledge from a gun's external characteristics even in the absence of evidence that the defendant viewed the weapon. Instead, the court first found that the evidence here supported the determination that petitioner had seen the shotgun and only then permitted the reasonable inference that petitioner knew of the bore diameter.

The court of appeals' decision is correct. As discussed above, see pp. 4-5, supra, the evidence at trial established that the duffel bag was stored, along with some of petitioner's clothes, in a closet in the bedroom of petitioner's parents' house where he slept; that an Amtrak ticket in petitioner's name was found in the

bag; and that petitioner's DNA was found on one of the firearms in the bag. Given all of that evidence (and given the deferential standard of review of evidentiary sufficiency claims, see Pet. App. 3), the court of appeals correctly recognized that a reasonable factfinder could have inferred that petitioner saw the shotgun inside the bag. Id. at 4. And given the district court's factual finding -- which petitioner does not challenge here -- that any observer of the shotgun would have seen that the bore diameter was greater than one-half inch, the court of appeals correctly recognized that a reasonable factfinder could have inferred that petitioner knew that the bore diameter was greater than one-half inch. Id. at 5.

2. Petitioner contends (Pet. 10-18) that the decision below implicates a circuit conflict about the circumstances in which knowledge can be inferred from the weapon's obvious external characteristics in a Section 5681(d) prosecution. But properly understood, the decision below does not conflict with any of the decisions cited by petitioner.

a. As a threshold matter, the Ninth and Seventh Circuit decisions he cites each affirmed a defendant's conviction based on reasoning consistent with the court of appeals' reasoning here. Specifically, in United States v. Gergen, 172 F.3d 719 (9th Cir. 1999), the court determined that the circumstantial evidence in that case -- that the defendant and a shotgun (wrapped in a jacket) had both been in the backseat of a car and that the defendant had

moved the gun from the seat to the floor -- was sufficient to allow a reasonable inference that the defendant had observed the gun. Id. at 725. It accordingly found it was permissible to infer that he knew that the gun's barrel was short enough to bring it within the registration requirement because the barrel length was an observable external characteristic. Ibid. Similarly, in United States v. Jamison, 635 F.3d 962 (2011), the Seventh Circuit found evidence that the defendant had handled the shotgun in question, in combination with evidence that the barrel was observably shorter than permitted, sufficient to support an inference that the defendant knew the barrel was too short. Id. at 968.

Although the First Circuit in United States v. Nieves-Castaño, 480 F.3d 597 (2007), and the Tenth Circuit in United States v. Michel, 446 F.3d 1122 (2006), reversed convictions on the facts of those cases, the reasoning of those decisions does not suggest that they would have done so on the facts here. In Nieves-Castaño, the First Circuit concluded that it was impermissible to infer the defendant's knowledge that the rifle she possessed had been modified to fire automatically (the characteristic that subjected it to the registration requirement) from evidence that she had seen the gun. 480 F.3d at 601. But the First Circuit explicitly recognized that the requisite knowledge may be established by circumstantial evidence, including "external indications signaling the nature of the weapon." Ibid. (citation omitted). The problem with making the inference in that

case was that the only external evidence of the modification was a small "hole or mark between the fire and safety settings of the weapon," and "no evidence" existed either "that one would see, simply by looking [at the weapon], a small mark" or, even had the defendant seen the mark, "that this hole would have \* \* \* tipped off a lay person about the weapon's capabilities." Id. at 600-601 (emphasis omitted).

Similarly, in Michel, the Tenth Circuit concluded, based on the specific facts of that case, that the evidence did not establish that the defendant knew the shotgun he possessed had a barrel length of less than 18 inches. 446 F.3d at 1129. In that case, the defendant was riding in the passenger seat of a car when the shotgun was recovered from the back seat, but the car in question was not his, "the evidence indicated that it was getting dark" when he was first seen in the car, and no evidence existed that he had previously handled the shotgun. Id. at 1131. Given those circumstances, the court concluded that a jury could not have reasonably inferred that the defendant had seen the shotgun. Ibid.

b. Petitioner also contends (Pet. 11-12) that the Eleventh Circuit has, on two occasions, concluded that a jury may permissibly infer the requisite knowledge that a shotgun's barrel was less than 18 inches without any evidence that the defendant had seen the weapon, in conflict with the other court of appeals decisions. See United States v. Miller, 255 F.3d 1282 (2001);

United States v. Hutchins, 292 Fed. Appx. 842 (2008) (per curiam), cert. denied, 555 U.S. 1018. But petitioner misreads both of those cases.

In Miller, the court of appeals relied on the observable nature of the shotgun barrel to uphold the defendant's conviction for possession of an unregistered firearm. 255 F.3d at 1287. Although the court did not detail the evidence showing that Miller had seen the gun (which officers had found in the trunk of his car), it described Miller in passing as someone who had "observe[d] the gun," ibid., a point that the defendant had not disputed. And although the Eleventh Circuit's unpublished decision in Hutchins did not explicitly discuss the evidence showing that the defendant had actually seen the relevant firearms in a padlocked area of his property that he regularly entered, as in Miller, the defendant had not argued that the evidence of observation was insufficient. Neither decision either states or holds that such evidence is altogether unnecessary.

Moreover, even if petitioner's reading of those decisions were correct, this case would not implicate petitioner's purported split between the Eleventh Circuit and the First, Seventh, Ninth, and Tenth Circuits, because the court below determined that the evidence supported the inference that petitioner had seen the shotgun. See Pet App. 4-5. To the extent that petitioner disputes that determination, see Pet. 17, the record amply supports the decision below, see pp. 4-5, supra, and further review of

petitioner's factbound claim would be unwarranted in any event. Determining the sufficiency of the evidence is primarily the responsibility of a court of appeals, see Hamling v. United States, 418 U.S. 87, 124 (1974), and this Court does not ordinarily grant review to reevaluate the evidence or discuss specific facts, United States v. Johnston, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10. Petitioner has identified no sound reason to apply a different rule here.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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