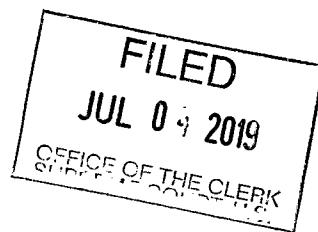


19-5260  
No. 18A1141

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

Michael Levon Jackson — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit No. 16-17119  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Levon Jackson — Reg. No.: 63298-018  
(Your Name)

P.O. Box 1031

(Address)

Coleman, FL 33521-1031

(City, State, Zip Code)

(Phone Number)

## **QUESTION(S) PRESENTED**

### **Question One**

The Constitution requires that a jury find every element of the crime beyond a reasonable doubt. The district court, however, did not properly instruct the jury concerning the intent elements of 18 U.S.C. § 922(g), hence the jury did not have an opportunity to render an accurate verdict.

Does an inaccurate jury instruction on an element of a crime violate due process of law?

### **Question Two**

The Constitution requires a jury to unanimously find every element of a crime beyond a reasonable doubt before a court may punish an individual. This Court, however, permits a court to determine punishment based on a lower standard and allows a court to consider conduct for which a jury acquitted the individual.

Does the Constitution allow a district judge to effectively nullify a jury finding of acquittal?

## 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:

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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**

**[x] 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 is unpublished.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 B 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 09/19/2018.

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: 02/15/2019, 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. 18 A 1141.

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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **18 U.S.C. § 922(g)(1):**

"It shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year."

### **18 U.S.C. § 924(a)(2):**

"Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

## **STATEMENT OF THE CASE**

The United States indicted Michael Jackson for possessing a weapon and selling drugs. He proceeded to trial, and the jury found him guilty of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), but acquitted him of the controlled substance crimes. The district Court for the Middle District of Florida, Tampa Division sentenced Mr. Jackson to a 120 month sentence.

Mr. Jackson challenged his conviction and sentence. The Eleventh Circuit Court of Appeals affirmed both in a per curiam opinion. "No reversible error has been shown." (Appendix "A" at p.2).

## **STATEMENT OF THE FACTS**

A search warrant was exercised at a duplex Mr. Jackson occupied with his girlfriend and son. During the search, officers discovered three guns in their home. At trial, although the jury found Mr. Jackson not guilty of the charged drug trafficking offense, the jury convicted him of the gun possession charge. At sentencing, the district court found by a preponderance of the evidence that Mr. Jackson had possessed the guns in connection with felony drug possession and applied a four level enhancement under U.S.S.G. § 2K2.1(b)(6)(B), which resulted in the district imposing the maximum sentence.

Mr. Jackson objected to the imposition of the sentencing enhancement based on the acquitted conduct. The Court of Appeals stated: "[R]elevant conduct of which a defendant was acquitted nonetheless may be taken into account in sentencing for the offense of conviction, as long as the government proves the acquitted conduct relied upon by a preponderance of the evidence." (Appx. "A" at 6).

Now, Mr. Jackson challenges the jury instruction that did not include the correct intent elements of § 922(g)(1).

This petition ensued.

REASONS FOR GRANTING THE WRIT

1. This Court concluded that an elevated degree of intent applies to each element of 18 U.S.C. § 922(g)(1). Neither the trial court nor the appellate court reviewed the jury verdict under that standard. The conviction and its affirmation are in conflict with this Court's decision.

This Court's intervening decision in **Rehaif v. United States**, 588 U.S. \_\_\_ No. 179560 (June 21, 2019), establishes that the district court inaccurately instructed Mr. Jackson's jury as to the elements of the crime. The district court followed Eleventh Circuit precedent and pattern instructions, which this Court found to insufficiently describe the required intent for guilt. (Id.) (Rehaif case arose from the Southern District of Florida).

This Court holds that its decision are retroactively applicable to cases on direct appeal. **Griffith v. Kentucky**, 479 U.S. 314 (1987). Mr. Jackson's petition timely seeks review of the Eleventh Circuit's ruling in Mr. Jackson's direct appeal. **United States v. Jackson**, App. No. 16-17119 (11th Cir. Sept. 19, 2019) (rehearing denied) (Appendix "A").

Obviously, the appeals court did not have the benefit of **Rehaif** when it affirmed Mr. Jackson's 18 U.S.C. §§ 922(g)(1), 924(c)(2) conviction and sentence. An affirmation that rejected Mr. Jackson's arguments that involved his knowledge that his status as a residence made his culpable for someone else's properly owned and registered firearm.

This Court should grant the writ, vacate the court of appeals judgment, and remand for review in the light of the **Rehaif** ruling.

2. This Court permits a district court to consider acquitted conduct in determining a sentence within the statutory prescribed penalty range. The district court imposed the maximum statutory penalty on Mr. Jackson expressly because of conduct the jury acquitted Mr. Jackson of committing. This Court should revisit its precedent that allows a district court judge to effectively nullify a jury verdict.

Mr. Jackson recognizes that a sentencing court may consider conduct for which a defendant has been acquitted when determining the degree of punishment for conduct of which the defendant has been found guilty. **United States v. Watts**, 519 U.S. 148, 153 (1997). This Court's dicta that rationalizes the apparently paradoxical rule emerges from variations in the standards of review: preponderance of the evidence versus beyond a reasonable doubt. **Id.**.

Although the federal circuits generally toe the line, a conflict arises from an increasingly vocal minority which suggests that jurists, like ordinary citizens, are finding the application of the **Wade** holding unsettling. "In a constitutional system that relies upon the jury as the great bulwark of our civil and political liberties, allowing courts at sentencing to materially increase the length of imprisonment based on conduct for which the jury acquitted the defendant guts the role of the jury in preserving liberty and preventing oppression by the government." **United States v. Brown**, 858 F.3d 385, 408 (D.C. Cir. 2018)(quoting **United States v. Bell**, 808 F.3d 926, 929-30 (D.C. Cir. 2015)(Kavanaugh, J.)).

A position in sharp contrast with the Eleventh Circuit's more orthodox view "that a sentencing court may consider [acquitted] conduct...if the government proves the conduct...by a preponderance of the evidence." **United States v. Duncan**, 400 F.3d 1297, 1304 (11th Cir. 2005).

This Court should revisit it's rule announced in **Watts**, which did not even have the benefit of full briefing or oral arguments.<sup>/1</sup> See **Watts**, 519 U.S. at 171 (Kennedy, J. dissenting).

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<sup>/1</sup> Watts presented a very narrow question regarding the interaction of the Guidelines with the Double Jeopardy Clause a mole hill that became the legal equivalent of the Swiss Alps.

The district court imposed the statutory maximum sentence of ten years expressly because of the conduct for which the jury acquitted Mr. Jackson. (Appx. "A" at 5). "Although the jury found Jackson not guilty of the charged drug trafficking offense, the district court found—by a preponderance of the evidence—that Jackson had possessed the guns in connection with **felony** drug possession and distribution. Accordingly, the district court applied a four-level enhancement...." *Id.* The Eleventh Circuit affirmed *Id.* at 6.

Of course, current "precedent allow the government to engage in this acquitted conduct alchemy: but the Constitution and public reputation of the administration of a criminal justice cry out for this Court to correct the grave constitutional wrong." **United States v. Settles**, 530 F.3d 920 (D.C. Cir. 2008).

#### CONCLUSION

This Court's statutory interpretation rule, announced in **Rehaif**, applies to Mr. Jackson, the rule generates claims of actual innocence and due process. This court should grant writ of certiorari and remand the case to the Eleventh Circuit.

Respectfully submitted on this 4th day of July, 2019, by:



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Michael Jackson

**Appendix "A"**

**Opinion of the Eleventh Circuit Court of Appeals  
Including denial for rehearing**