

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 19a0171n.06

Case No. 17-5883

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT****FILED**

Apr 03, 2019

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
 v.) THE EASTERN DISTRICT OF
) TENNESSEE
 DARRIES LEON JACKSON,)
)
 Defendant-Appellant.)

BEFORE: COOK, STRANCH, and NALBANDIAN, Circuit Judges.

COOK, J., delivered the opinion of the court in which STRANCH and NALBANDIAN, JJ., joined. STRANCH, J. (pg. 16), delivered a separate concurring opinion.

COOK, Circuit Judge. A jury found Darries Jackson guilty of two counts of possessing ammunition as a felon. Deciding that Jackson's prior convictions qualified as "violent felonies" under the Armed Career Criminal Act (ACCA), and in light of other evidence implicating him in a murder and a shooting, the district court sentenced him to concurrent life sentences. He appeals, arguing the Eastern District of Tennessee's grand jury pool unconstitutionally underrepresented African Americans, tainting his indictment, and that the court should have excluded as privileged his wife's trial testimony. He also appeals his sentence, claiming that his predicate Florida convictions are not "violent felonies," and that his sentence is substantively unreasonable. We AFFIRM.

Appx. A1

No. 17-5883
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 28, 2019
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DARRIES LEON JACKSON,

Defendant-Appellant

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ORDER

BEFORE: COOK, STRANCH, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT


Deborah S. Hunt, Clerk

Appx. A 2

Case No. 17-5883, *United States v. Jackson*

JANE B. STRANCH, Circuit Judge, concurring. I join fully in the panel opinion. I write separately to express my concern about the increasing statistical underrepresentation of African American jurors in the grand jury pool of the Eastern District of Tennessee. The percentage of African Americans in this pool decreased from 2005 to 2009, and then again from 2009 to 2013, even as their percentage of the district's population held steady. By 2013, the percentage of African Americans in the jury pool was less than a third of the percentage of African Americans in the district. Although I agree that Jackson has not shown an underrepresentation extreme enough to establish "a per se systematic exclusion" of a cognizable group from the grand jury pool, our caselaw allows for such a claim. *See Bates v. United States*, 473 F. App'x 446, 450 (6th Cir. 2012). If the disparity demonstrated in this case continues, the question may merit revisiting in a future case. "Community participation in the administration of the criminal law . . . is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system." *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975).