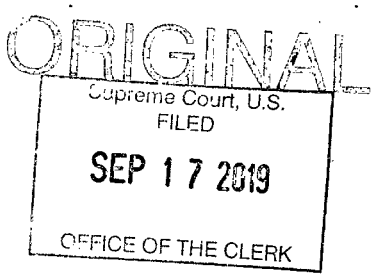
No. 19-6252



IN THE
SUPREME COURT OF THE UNITED STATES

LIDDON YOUNG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

On Petition for a Writ of Certiorari to the
United States Court Of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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September 12, 2019

QUESTIONS PRESENTED

1. Since the Supreme Court has now held, in Rehaif v. United States, that in a prosecution under §922(g) and §924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm, does the Government have to prove, in a prosecution under §922(d) and §924(a)(2), that the defendant knew that the person he disposed a firearm to belonged to the relevant category of persons barred from possessing a firearm?

2. Since every sale or disposing to a felon can be described as aiding and abetting a felon's possession of the firearm, should the Government's burden of proof be lowered simply because it chooses to prosecute a defendant under §922(d) instead of §922(g) under aiding and abetting?

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INTRODUCTION

The issues of whether this Court's holding in Rehaif v. United States, No. 17-9560 (S. Ct. June 21, 2019) should apply in prosecutions under §922(d) is a novel question that is likely to reoccur throughout the Circuit Courts of the United States, but has never been addressed by this Court. The Petitioner respectfully asks this Court to grant his Petition for a writ of certiorari and address this issue.

OPINIONS AND ORDERS BELOW

The Circuit Court affirmed the Petitioner's sentence and conviction, where Petitioner challenged his conviction under 18 U.S.C. §922(d)(1) and his sentence. United States v. Young, 726 Fed. Appx. 94 (2d Cir. 2018). Petitioner's petition for panel rehearing was denied on July 30, 2018. Petitioner then petitioned this Court for a writ of certiorari which was denied on December 10, 2018. Subsequent to this Court's decision in Rehaif v. United States, No. 17-9560 (S. Ct. June 21, 2019), Petitioner petitioned the circuit court to recall the mandate, which was denied on August 27, 2019. (See Appendix E)

JURISDICTION

The judgement of the Second Circuit entered on August 27, 2019. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process

of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. V.

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof.

18 U.S.C. §3231

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. §371

It shall be unlawful for any person except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufactoring, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce;

18 U.S.C. §922(a)(1)(A)

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 to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. §922(g)(1)

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.

18 U.S.C. § 924(a)(2)

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon petition of any party to any civil or criminal case, before or after rendition of judgement or decree[.]

28 U.S.C. § 1254(1)

STATEMENT OF CASE

I. BACKGROUND FACTS

On December 5, 2013 the Petitioner pled guilty to three indictmented firearm offenses, without the benefit of a plea agreement. Count 1: Conspiracy to engage in the business of dealing firearms without a license and, in the course of such business, to transport firearms in interstate commerce in violation of 18 U.S.C. § 371. Count 2: Unlawful dealing of firearms in violation of 18 U.S.C. § § 922(a)(1)(A), 924 (a)(1)(D). Count 3: Selling firearms to a person knowing or having reasonable cause to believe that such a person has been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. § § 922 (d)(1), 924(a)(2). Count three is the focus of this petition. Petitioner always contended that he did not know that the person he sold the firearms to was a felon, but Petitioner was given the option to either plead guilty to the entire indictment or the Government would supercede, adding three additional charges. Petitioner offered to plea to counts one and two but the Government responded by saying it was unwilling to "split the baby". Faced with the possibility of having an additional 40 years added to his combined statutory minimum, Petitioner (Mr. Young) reluctantly pleaded guilty to count three as well. When Mr. Young expressed to his attorney that he didn't think he could go through with pleading guilty to count three when he did not know the guy he sold the firearm to (Paul Davis) was a felon, his attorney (David Pilato) relayed that message to the prosecutor (Robert Marangola). Mr. Marangola replied that Mr. Young could plead to having reason

to believe that Paul Davis was a felon. Mr. Young subsequently pled guilty to count three under the reason to believe prong (B 2-3).

II. PETITIONER PLED GUILTY TO §922(d)(1) UNDER THE REASONABLE CAUSE TO BELIEVE PRONG OF THE STATUTE BUT EXPLICITLY DENIED HAVING ANY SPECIFIC KNOWLEDGE

Petitioner clearly denied having knowledge that Paul Davis was a felon, as is shown by the transcripts of Mr. Young's plea colloquy:

THE COURT: The third count involves the charge of disposition of a firearm to a convicted felon. This alleges on February 6th, 2013, in the Western District of New York, that you, Liddon Young did knowingly sell and dispose firearms, and these are the same firearms we just went through in Count 1, knowing or having reason to believe that Paul Davis had previously been convicted of a crime punishable by imprisonment of greater than one year for a felony; is that correct?

MR. PILATO: Yes, Judge. My client is prepared to answer, but, Your Honor, we had a pretrial conference. My client is in a position to plead guilty that he had reasonable cause to believe that Paul Davis was a felon, not that he knew with any specific knowledge that he was.

THE COURT: Tell me why you had reasonable cause to believe that he was a felon?

THE DEFENDANT: By the great lengths that he went to obtain these firearms from me and having me get specific firearms for him would give me reason to believe that maybe he didn't have the ability to obtain them legally his self.

THE COURT: Based upon the price as well that was exchanged for the firearms; is that correct?

THE DEFENDANT: Yes, Judge. (see B-2-3).

Petitioner clearly never said that he had reasonable cause to believe that Paul Davis had been convicted of a crime punishable by imprisonment for

a term exceeding one year, or that he was a felon. What Mr. Young had reasonable cause to believe was exactly what he stated, that "maybe he didn't have the ability to obtain them legally himself." There are many reasons why Paul Davis would not have been able to obtain firearms, or not want to buy them in his own name even if he was not a felon. For example, he would have needed a concealed carry license to buy handguns in New York, which he did not have and Mr. Young did. He could want to buy guns on the private market out of fear that the Government will one day confiscate all traceable firearms, which is a widely held practice and belief in the firearm's community and among NRA members. Petitioner would know because he was himself an NRA member. Mr. Young knew that Paul Davis intended to sell the firearms, so it made sense that Paul Davis would not want to purchase the firearms in his own name. Only after being coaxed and feeling terrified that his plea would not be accepted did Mr. Young satisfy the Government by agreeing to the elements of § 922(d)(1), as is clear from the transcripts.

THE COURT: Okay. Anything further on that?

MR. MARANGOLA: Not on the guidelines, Judge, but with respect to the colloquy on Count 3, the Court had asked the defendant upon his knowledge that Mr. Davis was a felon, and then I think Mr. Pilato had indicated Mr. Young would be in a position to admit that he -- that there were circumstances that gave him reasonable cause to believe that. But when the Court asked, "What were those circumstances?" I don't think the defendant himself has actually admitted that he did have reasonable cause to believe Paul Davis was a felon at the time he transferred those firearms. So to the extent there can be an admission to the element of the crime I think specifically from the defendant's own mouth, I think we would need that.

THE COURT: I think he did say that, but I could ask him again.

MR. MARANGOLA: Okay.

THE COURT: Did you have reasonable cause to believe that Mr. Davis

was a felon at the time you transported these firearms to him?

THE DEFENDANT: Yes, Judge.

THE COURT: You indicated the basis for that when I articulate that again?

THE DEFENDANT: Yes, Judge. Considering the lengths that he went to acquire these firearms from me, that would give me reason to believe maybe he couldn't acquire them legally.

THE COURT: And that he was, in fact -- you had reason to believe that he was a felon, somebody who had been previously convicted of an offense which involved an imprisonment of a period more than one year; is that correct?

THE DEFENDANT: Yes, Judge.

MR. MARANGOLA: Thank you, Your Honor. (See B-7-9)

This dialogue shows that even after being coaxed and pressured by the Government and the Court to articulate his reasonable cause to believe that Paul Davis was a felon, Mr. Young repeatedly stated, "... that would give me reason to believe that maybe he couldn't acquire them legally." (See B-8). At no point did Mr. Young ever say from his own mouth that he had reasonable cause to believe that Paul Davis was a felon, at the time of the transaction.

III. JURISDICTION IN THE COURT OF FIRST INSTANCE

The Federal District Court of the Western District of New York had jurisdiction pursuant to 18 U.S.C. § 3231.

REASONS FOR GRANTING THE PETITION

I. WITH RESPECT TO THE FIRST QUESTION PRESENTED, THIS COURT'S HOLDING IN Rehaif v. United States CALLS INTO QUESTION THE INTEGRITY OF A PROSECUTION UNDER § 922(d) WITHOUT REQUIRING THE GOVERNMENT TO PROVE KNOWLEDGE OF STATUS

On direct appeal Petitioner argued that the reasonable cause to believe prong of 18 U.S.C. § 922(d)(1) was void for vagueness and that he did not

have the required knowledge of Paul Davis' criminal history to be guilty of §922(d)(1), and that § § 922(g)(1) and 922(d)(1) are the same and interchangable and that every sale or disposing of a firearm to a felon can be described as aiding and abetting a felon's possession of the firearm.

The Second Circuit affirmed the judgement of the district court, finding Mr. Young's arguments to be without merit on June 12, 2018. Mr. Young subsequently petitioned the Second Circuit for a panel rehearing, which was denied on July 30, 2018. Mr. Young then petitioned this Court for a writ of certiorari which was denied on December 10, 2018.

On June 21, 2019 this Court ruled that in a prosecution under 18 U.S.C. § § 922(g) and 924(a)(2), the Government must prove that the defendant knew he possessed a firearm and that he possessed specific knowledge that he belonged to the relevant category of persons barred from possessing a firearm. (see Rehaif v. United States, No. 17-9560 (S. Ct. June 21, 2019). Mr. Young then petitioned the Second Circuit to recall its mandate on July 9, 2019, which was denied on August 27, 2019. Mr. Young now petitions this Court for a writ of certiorari. Obviously, the same ruling would apply in a prosecution of aiding and abetting a § 922(g), or in a prosecution under § 922(d), since they both cover the same conduct. (see United States v. Ford, 821 F. 3d 63, 73-74)(1st Cir. 2016)(holding that "every sale or disposing of a firearm to a felon can be described as aiding and abetting a felon's possession of the firearm."). With this Court's ruling in Rehaif, the "reasonable cause to believe" prong in § 922(d)(1) can no longer stand and the Government should have to prove actual knowledge of status.

A. JUSTICE ALITO'S STATEMENT IN HIS DISSESNT OF THIS COURT'S HOLDING IN Rehaif AND ITS POTENTIAL EFFECT ON § 922(d)

Justice Alito wrote a dissent from this Courts ruling in Rehaif, which Justice Thomas joined him in. In that dissent Justice Alito stated, "Another

provision of § 922 - i.e., § 922(d)(5)(A) - prohibits firearms sellers from selling to persons who fall within a § 922(g) category, but this provision does not require proof that the seller had actual knowledge of the purchaser's status. It is enough if the seller had "reasonable cause" to know that a purchaser fell into a prohibited category. A person who falls into one of the § 922(g) categories is more likely to understand his own status than a person who sells this individual a gun. Accordingly, it is hard to see why an individual who may fall into one of the § 922(g) categories should have less obligation to varify his own situation than does a person who sells him a gun. Yet that is where the majority's interpretation leads." (see Rehaif v. United States, No. 17-9560 (S. Ct. June 21, 2019)(Justice Alito's dissent, joined by Justice Thomas. pg. 17). The Petitioner agrees with Justices Alito and Thomas that the Government's burden of proof in a prosecution under § § 922(g) and 922(d) should be the same.

II. WITH RESPECT TO THE SECOND QUESTION PRESENTED, THE FIRST CIRCUIT HAS RULED THAT THERE IS NO DIFFERENCE BETWEEN § 922(g), UNDER AIDING AND ABETTING, and § 922(d).

The First Circuit Court of Appeals, in United States v. Ford, 821 F. 3d 63 (1st Cir. 2016) stated that "every sale or disposing of a firearm to a felon can be described as aiding and abetting a felon's possession of the firearm." (citing Xavier, 2 F. 3d 1281, 1286). § 922(d) and aiding and abetting § 922(g) cover the exact same conduct, therefore the burden of proof should not be lower just because the Government chooses to allege one statute over the other. (see United States v. Ford, 821 F. 3d at 73)(1st Cir. 2016).

III. THIS ISSUE IS WORTHY OF THIS COURT'S REVIEW, AND THIS CASE IS AN EXCELLENT VEHICLE FOR REVIEW

A. WITH RESPECT TO THE FIRST QUESTION, Rehaif's EFFECT ON § 922(d) IS WORTHY OF REVIEW

The issue before the Court will continue to come up in every court in

every circuit court in the country, as this Court's holding in Rehaif seriously calls into question the integrity of prosecutions under § 922(d) when the Government does not have to prove a firearms seller had actual knowledge of the buyer's status, but does have to prove the buyer knew his prohibited status. This flies in the face of fairness, due process, and logic. The first circuit has expressed its disagreement with this unfairness, so there is some circuit split and confusion in regards to reconciling this Court's holding in Rehaif with § 922(d).

B. WITH RESPECT TO THE SECOND QUESTION, THE GOVERNMENT HAVING DIFFERENT BURDENS OF PROOF FOR STATUTES COVERING THE EXACT SAME CONDUCT IS WORTHY OF REVIEW

18 U.S.C. § 924(a)(2) sets the penalty for violations § § 922(g) and 922 (d). § 922(a)(2) reads "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."

This Court's holding in Rehaif centered around the interpretation of the word "knowingly" in § 924(a)(2). This Court ruled that a defendant "knowingly" violates § 922(g) when he possesses a firearm knowingly while "knowing" he belonged to the relevant category of persons barred from possessing a firearm. (See Rehaif v. United States, No. 17-9560 (S. Ct. June 21, 2019)(Pp. 3-12). Since § 924(a)(2) covers § § 922(g) and 922(d), knowledge of status should apply to both statutes.

Had the Government charged Mr. Young with aiding and abetting § 922(g) instead of § 922(d), it would have to prove Mr. Young had actual knowledge that the buyer of the firearm fell into the relevant category of persons barred from possessing a firearm. Since every sale or disposing of a firearm to a

felon - i.e., § 922(d)(1) - can be described as aiding and abetting a felon's possession of the firearm - i.e., § 922(g)(1) - these statutes cover the exact same conduct, therefore the Government's burden of proof should not be lowered just because it chooses to allege one over the other. (see Ford, 821 F. 3d at 73)(1st Cir. 2016).

CONCLUSION

For the reasons stated above, and for the sake of due process, justice, and fairness, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX