

FILED: January 10, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4762
(1:17-cr-00157-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DERRICK MICHAEL ALLEN, SR.

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is vacated. This case is remanded to the district court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: October 24, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4762
(1:17-cr-00157-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DERRICK MICHAEL ALLEN, SR.

Defendant - Appellant

O R D E R

In light of the United States Supreme Court's judgment vacating and remanding this case for further consideration in light of *Rehaif v. United States*, 588 U. S. __ (2019), the parties are directed to file supplemental briefs specifically addressing what impact, if any, *Rehaif* has on this case. The clerk is directed to establish an appropriate briefing schedule.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: January 10, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**No. 17-4762
(1:17-cr-00157-LCB-1)**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK MICHAEL ALLEN, SR.,

Defendant - Appellant.

O R D E R

Derrick Michael Allen, Sr., appeals his conviction for unlawfully possessing a firearm in violation of 18 U.S.C. §§ 922(g)(8), 924(a)(2) (2018). Upon consideration of the Government's motion to remand this case, the court grants the motion. The court vacates Allen's conviction, and remands for proceedings not inconsistent with the Government's representations in the motion to remand.

Entered at the direction of: Judge Wynn, Judge Diaz, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, :
Appellee, :
:
v. : No. 17-4762
:
DERRICK MICHAEL ALLEN, SR, :
Appellant. :

MOTION TO SUSPEND BRIEFING AND REMAND

NOW COMES the Appellee, the United States of America, by and through Matthew G.T. Martin, United States Attorney for the Middle District of North Carolina, pursuant to Rule 27 of the Federal Rules of Appellate Procedure, and moves this Court to remand the above-captioned case and to suspend briefing pending a decision on the motion to remand. In support of these motions, the Government states the following:

1. Derrick Michael Allen, Sr., ("Allen") was convicted at trial of possession of a firearm while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8).
2. At the time of his trial, the government was not required to prove a defendant had knowledge of his status. See United States v. Langley, 62 F.3d 602 (4th Cir. 1995) (en banc).

3. However, after Allen's conviction, the Supreme Court held in Rehaif v. United States, 139 S. Ct. 2191 (2019), that a defendant's knowledge "that he fell within the relevant status (that he was a felon, an alien unlawfully in this country, or the like)" is an element of a Section 922(g) offense.

4. In light of the unique facts in Allen's case, the government will not be arguing harmless error, and believes that the correct resolution is to vacate the conviction and remand the case.

5. Allen argues in his supplemental briefing that remand should be for the purpose of entering a judgment of acquittal based on a theory of collateral estoppel. See 17-4762, Docket Entry 60, p. 9 et seq. This Court need not reach this issue.

6. In the years since Allen's conviction, the lead federal investigator is no longer in government service and all attempts to locate necessary civilian witnesses who testified at the original trial have been unsuccessful. Because the government is not in a position to retry the case, the requested remand would be for the purpose of dismissal and not retrial.

7. In light of the foregoing dispositive motion, the undersigned requests that any additional briefing be suspended until the Court rules on the motion to remand.

8. The undersigned has been unsuccessful in efforts today to reach counsel for the Appellant to determine his position on the motion.

WHEREFORE, the United States respectfully requests that this Court vacate the sentence and remand this case to the district court for the entry of a dismissal by the government. Further, the government requests that any additional briefing be suspended until the Court rules on the motion to remand.

This, the 29th day of November, 2019.

Respectfully submitted,

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Attorney for Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 29, 2019, the undersigned electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF user:

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**Additional material
from this filing is
available in the
Clerk's Office.**