

CASE NO. _____
SUPREME COURT OF THE UNITED STATES

STELLA JAMES

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDENT

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE UNITED STATES**

JARROD J. BECK
LAW OFFICE OF JARROD J. BECK, PLLC
101 WEST SHORT STREET
LEXINGTON, KENTUCKY 40507
270.860.2025
JARROD.BECK@GMAIL.COM

COUNSEL FOR STELLA JAMES

QUESTIONS PRESENTED FOR REVIEW

- I.** Whether due process requires the government to establish actual or constructive possession of a prohibited object in order to sustain a conviction under 18 U.S.C. § 1791(a)(1) for providing that prohibited object to an inmate at a federal correctional facility?

LIST OF ALL PARTIES TO THE PROCEEDINGS

Petitioner/Appellant/Defendant – Stella James

Respondent/Appellee/Plaintiff – United States of America

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Stella James, by court-appointed counsel, respectfully requests that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit in the case of *United States v. Stella James and Charles Sturgill*, No. 19-5387/5419, filed on January 10, 2020 and attached to this Petition as Appendix B.

OPINIONS BELOW

Mrs. James's appeal to the Sixth Circuit was taken from the Judgment relating to her conviction for Providing a Prohibited Object to an Inmate, in violation of 18 U.S.C. § 1791(a)(1). *See* Appendix A. Mrs. James previously was convicted at trial on December 10, 2018.

On January 10, 2020, the Sixth Circuit issued an order affirming Mrs. James's conviction. *See* Appendix B, Page 2. While agreeing that the evidence did not establish Mrs. James's prior possession of the contraband at issue, the Court concluded that "a rational trier of fact could have concluded from the evidence presented, beyond a reasonable doubt, that James had transferred" narcotics to Mr. Sturgill during a visit at Federal Correctional Institution (FCI) Ashland. *Id.* This petition for a writ of certiorari now follows.

JURISDICTION

The Sixth Circuit Order affirming Mrs. James's Judgment was filed on January 10, 2020. *See* Appendix B. Mrs. James invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V: "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 or 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.”

STATEMENT OF THE CASE

On September 6, 2018, Stella James was indicted in the Eastern District of Kentucky. [R. 1: Indictment, Page ID # 1-3]. The sole count of the Indictment pertaining to Mrs. James alleged that she knowingly and intentionally provided “a prohibited object, to wit, Suboxone, a Schedule III narcotic controlled substance” to her son, Charles William Sturgill (Mr. Sturgill), “an inmate at FCI Ashland” during a visit on July 28, 2018, in violation of 18 U.S.C. § 1791(a)(1). *Id.* at Page ID # 1.

Trial occurred on December 10, 2019. [R. 78: Transcript, Jury Trial, Page ID # 653]. The government noted that Mr. Sturgill had two visitors in July 2018: his mother, Mrs. James, and his daughter, Stella Sturgill (Ms. Sturgill). *Id.* at Lines 14-17. Mrs. James and Ms. Sturgill visited together on July 27 and July 28. *Id.* at Page ID # 661, Lines 24-25. Both passed through extensive security as they entered FCI Ashland and were required to execute forms indicating that they were not in possession of prohibited items. *Id.* at Page ID # 662, Lines 1-20. Mrs.

James also placed “all of her personal contents in a ziploc bag” before being searched by BOP personnel. *Id.* at Page ID # 696, Lines 18-20.

Despite these circumstances, the government alleged that Mrs. James “secretly gave her son six Suboxone strips” on July 28 “after about an hour of visiting and having food from the vending machines...in the visitors room.” *Id.* at Page ID # 663, Lines 6-9. The government insisted that Mrs. James transferred the strips as “[t]hey were about to eat some ice cream sandwiches that they’d purchased” by handing Mr. Sturgill “a handful of white napkins with the Suboxone tucked underneath.” *Id.* at Lines 11-13. However, witnesses agreed the surveillance video did not show a blue balloon or other item protruding from the napkins allegedly utilized to transfer the contraband. *Id.* at Page ID # 755, Lines 16-25. The government also acknowledged that the “prison guard who was in the room at that point didn’t see anything.” *Id.* at Page ID # 663, Lines 22-23. Nevertheless, FCI Ashland Lieutenant Thomas Van Gundy was watching a surveillance feed and believed Mr. Sturgill had “put an object in his mouth and swallow[ed] it down.” *Id.* at Page ID # 664. At that point, Van Gundy terminated the visit and escorted Mrs. James and Ms. Sturgill out of the facility. *Id.* at Lines 6-10.

“[N]othing was found” when officers searched Mr. Sturgill, but he was placed in a dry cell for monitoring. *Id.* at Lines 11-20. Later that evening, Van

Gundy returned to determine if Mr. Sturgill had passed any contraband. *Id.* at Page ID # 665, Lines 4-6. Mr. Sturgill then admitted that he had ingested Suboxone. *Id.* at Lines 7-11. A day and a half later, FCI Ashland Lieutenant Eric Heaney “found a package” inside Mr. Sturgill’s stool specimen. The package consisted of “two balloons” that contained “six strips that resembled Suboxone.” *Id.* at Lines 17-21. A field test and subsequent testing by the Kentucky State Police confirmed that the strips contained Suboxone. *Id.* at Page ID # 665-66, Lines 21-25, 1-4.

Mr. Sturgill testified on his own behalf at trial and admitted that he possessed Suboxone on July 28. *Id.* at Page ID # 760. Mr. Sturgill insisted that he retrieved the drugs from the visitation room at the direction of another inmate in his cell block. *Id.* at Lines 16-22; *id.* at Page ID # 765, Lines 22-23. Mr. Sturgill explained that this inmate had arranged “to have something dropped” and he “was to bring it back in.” *Id.* at Page ID # 765, Lines 22-23. Mr. Sturgill said the Suboxone strips were placed “by the trash can...by the vending machines” and that the same “spot had been used in the past” by other inmates. *Id.* at Page ID # 766, Lines 4-7. He also admitted that he had been using Suboxone every day at FCI Ashland, purchasing it from others at the facility. *Id.* at Page ID # 763, Lines 9-23. Mr. Sturgill was adamant that his daughter and mother would never have brought contraband to him in prison and that “[t]hey didn’t know anything about it.” *Id.* at Page ID # 765, Lines 15-16.

In closing, the government noted Mr. Sturgill had admitted his guilt, but Mrs. James's culpability was a "more questionable case[.]" *Id.* at Page ID # 807, Lines 21-22. Despite this acknowledgement, the jury convicted Mrs. James. *Id.* at Page ID # 828-29; [R. 42: Jury Verdict, Page ID # 118]. At sentencing, the district court noted that it "recalls" the surveillance footage from FCI Ashland "all the time" and reiterated that Mrs. James's case could "go up on appeal" based on a challenge to the sufficiency of the evidence. [R. 73: Transcript, Sentencing, Page ID # 519, Lines 22-23.

Mrs. James told the district court at sentencing that "prison is the only place [her] son has ever been" where she "had peace of mind that he wasn't on drugs and that he would not have a drug overdose." *Id.* at Page ID # 520, Lines 20-23. Mrs. James insisted that she "didn't know he was still taking drugs" and that she did not "know where he gets his drugs from, but it [was] not from [her]." *Id.* at Lines 24-25. Mrs. James emphasized that she would never do anything of the sort, particularly given her concern about Mr. Sturgill's drug use. *Id.* at Page ID # 521, Lines 1-2 ("That is the one thing that will never, ever happen is for me, his mother, to hand him drugs."). The district court imposed a sentence of twelve months and a day of incarceration, but it also permitted Mrs. James to remain on bond pending appeal, again reiterating that she could challenge her conviction based on

“sufficiency of the evidence[.]” *Id.* at Page ID # 525, Lines 16-21; *id.* at Page ID # 530, Lines 11-12.

REASONS FOR GRANTING THE WRIT

I. Due process requires the government to establish actual or constructive possession of a prohibited object in order to sustain a conviction under 18 U.S.C. § 1791(a)(1) for providing that prohibited object to an inmate at a federal correctional facility.

This case is unique. The district court expressed some reservation about Mrs. James’s conviction at the time of sentencing, permitting her to remain on bond pending appeal to litigate the sufficiency of the evidence presented by the government at trial. Mrs. James now asks this Court to do what the Sixth Circuit did not—correct this mistake.

This Court should grant Mrs. James’s petition because “[d]ue process commands that no [person] shall lose [her] liberty unless the government has borne the burden of...convincing the factfinder of [her] guilt” as to each and every element of the offense beyond a reasonable doubt. *United States v. Damra*, 621 F.3d 474, 494 (6th Cir.2010). “Mere speculative inferences are never allowable, and cannot be regarded as evidence.” *United States v. Catching*, 2019 WL 4164769 at *3 (6th Cir. September 3, 2019) (citing *Goodman v. Simonds*, 61 U.S. (20 How.) 343, 360 (1857)). Rather, “[i]nferences are ‘legally tenable only if a reasonable jury could find that’ the party bearing the burden *proved* them” beyond a reasonable doubt. *Id.* (quoting *Pittington v. Great Smoky Mountain Lumberjack*

Feud, LLC, 880 F.3d 791, 801 (6th Cir.2018)) (emphasis in original). “If pure speculation is necessary in order to infer from the evidence the requisite elements of the offense, then the government has failed to prove...that the defendant committed the offense in question.” *Id.* (citing *United States v. Pryor*, 19 Fed.Appx. 234, 237-38 (6th Cir.2001)) (internal quotation marks omitted).

As Mrs. James argued below, the Jury Instructions for her count of conviction outlined the elements of the offense as follows:

- (1) The defendant knowingly provided, or attempted to provide, an object to an inmate of a prison;
- (2) The object was a prohibited object; and
- (3) [T]he act of providing such an object violated a statute, rule, or a rule or order issued under a statute.

[R. 44: Jury Instructions, Page ID # 135]. While styled as three elements, the first encompasses at least two distinct requirements—The defendant must have “knowingly” engaged in the conduct at issue, and the defendant must have “provided, or attempted to provide” an object of some sort to an inmate at a prison. *Id.*

This final requirement—proof that Mrs. James “provided, or attempted to provide” something to her son, Mr. Sturgill—is of particular significance. Because the record contains no evidence establishing that Mrs. James ever possessed the six Suboxone strips at issue, it follows that there is insufficient proof that she ever

“provided or attempted to provide” them to Mr. Sturgill. *Id.* Furthermore, the evidence regarding how Mr. Sturgill came into possession of the contraband “gives equal or nearly equal circumstantial support to a theory” of Mrs. James’s guilt or innocence. *United States v. Lorenzo*, 534 F.3d 153, 159 (2d Cir.2008). The government’s reliance on speculative inferences to argue that Mrs. James committed the offense was insufficient to sustain her conviction.

Part of the government’s burden at trial was to establish beyond a reasonable doubt that Mrs. James “provided, or attempted to provide” the six Suboxone strips in question to Mr. Sturgill. The term “provide” is not defined by statute, thus it must be “construe[d]...in accord with its ordinary or natural meaning.” *United States v. Miller*, 734 F.3d 530, 540 (6th Cir.2013) (citing *Smith v. United States*, 508 U.S. 223, 228 (1993)). Merriam-Webster defines “provide” as “to supply or make available (something wanted or needed).” See “provide.” Merriam-Webster Dictionary (Online). 2020. <https://www.merriam-webster.com/dictionary/provide>. (last visited April 7, 2020). Because it involves supplying or making something available to another person, “providing” in this context necessarily requires that Mrs. James had actual or constructive possession of the Suboxone strips at some point before the alleged transfer to her son. Without evidence that she ever had “direct physical control” or “knowingly ha[d] the power and intention...to exercise dominion and control” over the Suboxone strips “either directly or indirectly

through others[,]” it was impossible for the government to establish that Mrs. James’s conduct satisfied each element of the offense. *See United States v. Bailey*, 553 F.3d 940, 944-45 (6th Cir.2009) (citing *United States v. Frederick*, 406 F.3d 754, 765 (6th Cir.2005); *United States v. Craven*, 478 F.2d 1329, 1333 (6th Cir.1973)) (discussing actual and constructive possession in the context of firearms).

The only direct evidence of Mrs. James’s alleged possession of the Suboxone strips was the surveillance video from the visitation room. However, the video was inconclusive, and none of the witnesses testified that they observed or discovered Mrs. James in possession of a prohibited object. *See, e.g.*, [R. 78: Transcript, Jury Trial, Page ID # 678, Lines 15-16]; *id.* at Page ID # 678-79, Lines 25, 1-2; *id.* at Page ID # 755, Lines 16-25 (nothing visible beneath napkin before Mrs. James passed it to Mr. Sturgill).

No evidence was presented establishing that Mrs. James ever possessed the Suboxone strips at any time, and no other proof confirmed that she provided them to Mr. Sturgill instead of Mr. Sturgill retrieving them at the direction of a cell mate as he testified. It follows that the record is “devoid of evidence pointing to guilt” and “no rational trier of fact could have found the essential elements of the crime” beyond a reasonable doubt. *United States v. Kuehne*, 547 F.3d 667, 696 (6th Cir.2018). Sustaining Mrs. James’s conviction under these circumstances would

result in a “manifest miscarriage of justice” and permit the government to seek convictions in other cases without establishing necessary underlying facts to prove each element of the offenses charged. This outcome is why it is imperative for this Court to grant Mrs. James’s petition.

CONCLUSION

For the foregoing reasons, Mrs. James respectfully asks this Court to grant her petition for the issuance of a writ of certiorari for the purpose of vacating her conviction.

Respectfully submitted,

JARROD J. BECK

LAW OFFICE OF JARROD J. BECK, PLLC
101 WEST SHORT STREET
LEXINGTON, KENTUCKY 40507

COUNSEL FOR STELLA JAMES

CERTIFICATE OF SERVICE

I, Jarrod J. Beck, counsel for Petitioner Stella James, do hereby certify that the original and ten copies of this Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, Washington, DC 20543. I also certify that a true copy of the Petition was served by mail with first-class postage prepaid upon Charles P. Wisdom and John Grant, Assistant United States Attorneys, 110 West Vine Street, Suite 300, Lexington, Kentucky.

This 8th day of April, 2020.

JARROD J. BECK

COUNSEL FOR STELLA JAMES