

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRYANT LEGGETT – PETITIONER

v.

UNITED STATES OF AMERICA – RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

- I. The district court applied a two-level enhancement for maintaining a drug house. This was applied despite no evidence being presented that Mr. Leggett's primary or principal purpose for maintaining a premises was for drug activity. Did the district court improperly apply the enhancement and did the appellate court improperly affirm the trial court?

List of Parties

All parties appear in the caption of the case on the cover page.

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Appendix A

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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

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished. It is attached as Appendix A.

Jurisdiction

The date on which the United States Court of Appeals for the Sixth Circuit decided Mr. Leggett's case was January 29, 2020. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

18 U.S.C. § 3553(a)

Statement of the Case

Bryant Leggett pleaded guilty to count seven of the indictment, possession with intent to distribute an unspecified quantity of heroin. (Sentencing Transcript, RE 42, Page ID # 432.) The court calculated a drug quantity level based, in part, on the testimony of Nakaleff Love. (Sentencing Transcript, RE 42, Page ID # 503-504.) The court also applied a two-level enhancement for maintaining a drug house. (Sentencing Transcript, RE 42, Page ID # 507.) Based on the court's rulings, the guideline range was 110 to 137 months. (Sentencing Transcript, RE 42, Page ID # 508.) The court assessed the factors in 18 U.S.C. § 3553(a) and varied upward one level when sentencing Mr. Leggett to 144 months. (Sentencing Transcript, RE 42, Page ID # 513.) The United States Court of Appeals for the Sixth Circuit affirmed Mr. Leggett's sentence. (Opinion, RE 45, Page ID # 530.)

Reasons for Granting the Petition

I. The district court improperly enhanced Mr. Leggett's sentence by two levels for maintaining a drug house.

The district court enhanced Mr. Leggett's sentence by two levels for maintaining a drug house. (Sentencing Transcript, RE 42, Page ID # 507.) The court scored the enhancement "based on the totality of the testimony of the investigator here as well as the information contained in the presentence report." (Sentencing Transcript, RE 42, Page ID # 507.)

Section 2D1.1(b)(12) of the United States Sentencing Guidelines states, "If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels." Mr. Leggett did not maintain a premises for the purpose of manufacturing or distributing a controlled substance.

The Commentary to the Guidelines further states the following:

Subsection (b)(12) applies to a defendant who knowingly maintains a premises (i.e., a building, room, or enclosure) for the purpose of manufacturing or distributing a controlled substance, including storage of a controlled substance for the purpose of distribution.

Among the factors the court should consider in determining whether the defendant "maintained" the premises are (A) whether the defendant held a possessory interest in (e.g., owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises.

Manufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses for the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes. [Application Note 17.]

An investigator at the sentencing hearing testified about three different homes. The investigator discussed a home on West Prouty that he said was "associated" with Mr. Leggett through previous investigations and surveillance. (Sentencing Transcript, RE 42, Page ID # 442.) Notably, alleged drug distribution activities involving another man—Robert Richardson—appeared to be the reason that a search warrant was sought for the home. (Sentencing Transcript, RE 42, Page ID # 442.) When the search warrant was conducted at the home, Mr. Leggett was present at the home early in the morning, but no drugs were found at the home. (Sentencing Transcript, RE 42, Page ID # 442.) Thus, there is no drug evidence linking Mr. Leggett to the home and certainly insufficient evidence to enhance for maintaining the premises for the purpose of manufacturing or distributing a controlled substance.

The investigator then discussed a home on Cobb Street. (Sentencing Transcript, RE 42, Page ID # 443.) This home is owned by Mr. Leggett's aunt, and Mr. Leggett and his aunt were living at the home. (Sentencing Transcript, RE 42, Page ID # 443, 452.) Mr. Leggett was being investigated for allegedly selling user amounts of heroin to individuals. (Sentencing Transcript, RE 42, Page ID # 443.) As it related to the Cobb home, heroin was seized from a car that Mr. Leggett was in. (Sentencing Transcript, RE 42, Page ID # 444.) The heroin was found in the lap of a passenger. (Sentencing Transcript, RE 42, Page ID # 444.)

Finally, the investigator spoke about a search warrant executed on North Rose. Heroin was found in the fence post. (Sentencing Transcript, RE 42, Page ID # 445.) Another person was at the North Rose Street address at the time the search warrant was executed. (Sentencing Transcript, RE 42, Page ID # 451.) Multiple people lived at the North Rose Street home, but Mr. Leggett did not live there. (Sentencing Transcript, RE 42, Page ID # 452.) The investigator said that Mr. Leggett had been seen at the North Rose Street address "on occasion" and he had been seen leaving there. (Sentencing Transcript, RE 42, Page ID # 445.) None of this testimony establishes that Mr. Leggett maintained this

premises—or any premises—for the purpose of manufacturing or distributing a controlled substance.

In assessing whether a person maintained a premises for the purpose of manufacturing or distributing controlled substances, the United States Court of Appeals for the Sixth Circuit has stated, “We assess the primary or principal use of the home, or some part of it, by comparing the frequency of lawful to unlawful use.” *United States v. Bell*, 766 F.3d 634, 637 (6th Cir. 2014). The court further stated that, at its core, the issue is whether a residence played a significant part in distributing drugs. *Id.* In *Bell*, the defendant cooked cocaine in the kitchen of his house for over a year, and there were numerous items associated with drug dealing found in the home, as well as money. *Id.* Drugs and guns were also found inside the defendant’s truck. *Id.*

The court emphasized that drug activity must constitute one of the defendant’s primary or principal purposes for maintaining the premises. *Id.* at 638; see also *United States v. Johnson*, 737 F.3d 444, 447 (6th Cir. 2013). There was insufficient evidence presented that Mr. Leggett’s primary or principal purpose for maintaining any premises was for drug activity. Mr. Leggett was present at the Prouty address when a search

warrant was executed, but no drugs were found at the home. (Sentencing Transcript, RE 42, Page ID # 442.) Mr. Leggett lived at the Cobb home, and a small amount of heroin was seized from the lap of a passenger in a car outside the home. (Sentencing Transcript, RE 42, Page ID # 443-444, 452.) This provides no evidence that the primary purpose of the home that Mr. Leggett lived in with his aunt was for drug activity. Finally, while heroin was found in the fence post of the North Rose address, there was no link that the heroin was associated with Mr. Leggett. (Sentencing Transcript, RE 42, Page ID # 445.) Another person was at the North Rose Street address at the time the search warrant was executed, and multiple people lived there. (Sentencing Transcript, RE 42, Page ID # 451-452.) While Mr. Leggett was said to have visited the address “on occasion,” there was no evidence that he maintained the premises in any manner.

Courts from around the nation have examined the enhancement, and this analysis provides further support that Mr. Leggett was improperly enhanced and that additional guidance is needed from this Court. In assessing whether a person maintained a premises for the purpose of manufacturing or distributing controlled substances, the United States Court of Appeals for the Fifth Circuit stated that a court

typically considers “whether a defendant (1) has an ownership or leasehold interest in the premises, (2) was in charge of the premises, or (3) exercised ‘supervisory control’ over the premises.” *United States v. Guzman-Reyes*, 853 F.3d 260, 264 (5th Cir. 2017), quoting *United States v. Barnes*, 803 F.3d 209, 216 (5th Cir. 2015). The court also said that the government must show that the defendant exercised *sufficient* dominion and control over the premises, not just any showing of dominion and control will suffice to support a finding of maintenance. *Id.* The court further stated that the court must look at the defendant’s primary purpose in using the premises. *Id.* at n. 1. In *Guzman-Reyes*, the court held that the enhancement was proper because the defendant paid the owner of the premises \$1,000 a month in drugs to use the property solely to store drugs. *Id.*

The United States District Court for the Eastern District of Texas held that the enhancement was improper given the circumstances of the defendant’s case in *United States v. Morales-Ortuno*, 879 F. Supp. 2d 608, 608 (E.D. Tx. 2012). The court held that “[w]hile it was clear that Mr. Morales-Ortuno rented the apartment, had access to it, and had drugs on the premises, the evidence presented did not establish the temporal

aspect that distinguishes maintenance for purposes of distribution from mere possession of the premises.” *Id.* The court held that the term “maintain” means a degree of continuity and duration that is not part of the term “possession.” *Id.* at 609. In *Morales-Ortuno*, the court noted the limited duration of the controlled buys and that no drug activity occurred at the apartment. *Id.* at 610. Notably, approximately 180 grams of cocaine was found inside the apartment. *Id.*

In *United States v. Winfield*, 846 F.3d 241, 242-243 (7th Cir. 2017), the United States Court of Appeals for the Seventh Circuit held that the enhancement was properly assessed. In *Winfield*, the defendant had sold drugs from his home and stored drugs in the home. *Id.* In *United States v. Evans*, 826 F.3d 934, 938 (7th Cir. 2016), the court also stated that courts must look at the defendant’s primary or principal use of the premises and how often the defendant used the premises for drug trafficking rather than lawful purposes. In *Evans*, the enhancement was proper because the defendant stored drugs at the residence, packaged drugs at the residence, and dealt drugs over 50 times from the residence in just a few months. *Id.*

The United States Court of Appeals for the Tenth Circuit has noted that the analysis is a totality of the circumstances assessment that includes examining “(1) the frequency and number of drugs sales occurring at the home; (2) the quantities of drugs bought, sold, manufactured, or stored in the home; (3) whether drug proceeds, employees, customers, and tools of the drug trade (firearms, digital scales, laboratory equipment, and packaging materials) are present in the home, and (4) the significance of the premises to the drug venture.”

United States v. Murphy, 901 F.3d 1185, 1192 (10th Cir. 2018). Moreover, the court indicated that the size and scope of the drug-related use of the home must be examined. *Id.* The United States Court of Appeals for the Seventh Circuit stated that there are other factors to consider, such as quantities dealt, customer interactions, storage of “tools of the trade,” maintenance of business records, using family to deliver drugs, and accepting payments at the home. *United States v. Flores-Olague*, 717 F.3d 526, 533 (7th Cir. 2013). In the instant case, the enhancement was improperly applied. Given that courts have listed different factors to consider, consistent guidance from this Court would assist defendants throughout the country.

Conclusion

Mr. Leggett was improperly enhanced and guidance from this Court would assist in the consistent application of this enhancement for numerous defendants. Accordingly, Mr. Leggett respectfully requests that this Court grant his petition.

Respectfully submitted,

06/26/2020

Date

/s/MARY CHARTIER

Mary Chartier
