

No 20 - 577

SUPREME COURT OF THE UNITED STATES

MOAZE IBRAHIM,
Petitioner, vs.
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.

By: Moaze Ibrahim, Pro SE
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I. Question Presented

Whether Moaze Ibrahim was afforded his Due Process right of the 5th and 14th amendment when prosecuted for transporting an alien, and evidence of non culpable mens rea was not considered and whether the government provided sufficient evidence to prove Ibrahim, knowing or in reckless disregard of the fact that Hachim Rachid, an alien, had come to the United States in violation of law, willfully transported him in furtherance of such a violation.

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IV. Petition for Writ of Certiorari

Moaze Ibrahim, Pro Se, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

V. Opinions Below

The decision by the United States Court of Appeals for the Second Circuit denying Mr. Ibrahim direct appeal is not reported, however a copy is attached. (Appendix 1). Mr. Ibrahim petition for a rehearing was denied by the Second Circuit Court of appeals on May 21, 2020. Same order is attached. (Appendix 6).

VI. Jurisdiction

Mr. Ibrahim petition for a rehearing was denied by the Second Circuit Court of appeals on May 21, 2020. Same order is attached. Mr. Ibrahim invokes this Court's Jurisdiction under 28 U.S. C. 1254, having timely filed this petition for a writ of certiorari within the 150 days pursuant to the United States Supreme Court Order relative to Extensions. (Appendix 7).

VII. Constitutional Provisions Involved

The Due Process Clause of the Fourteenth Amendment to the United States **Constitution** requires the State to prove every element of a charged criminal offense **beyond a reasonable doubt**.

8 U.S.C. 1324

(A) Any person who—knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii)

knowing or in reckless disregard of the fact that an alien has come to, entered, or

remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii)

knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv)

encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)

(I)

engages in any conspiracy to commit any of the preceding acts, or

(II)

aids or abets the commission of any of the preceding acts,

VIII. Statement of the Case

On January 10, 2018, a federal grand jury returned a single count indictment charging Ibrahim with transporting an alien, Hachim Rachid, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii).

The district court held a three-day jury trial in March of 2019. The government's evidence established that Hachim Rachid illegally entered the United States on December 29, 2017 and was picked up in a SUV shortly thereafter by Moaze Ibrahim. Several minutes after that, the two were stopped by border patrol agents and separately arrested on immigration related offenses. Rachid pled guilty to illegal entry, in violation of 8 U.S.C. § 1325. Ibrahim was charged with transporting Rachid, an illegal alien, in violation of 8 U.S.C. § 1324.

As summarized by the 2nd Circuit Court of Appeals please note the following facts. Ibrahim and Rachid were friends and blood relatives, albeit to an unknown degree. Before Ibrahim moved to the United States, the two lived together for some period of time in Saudi Arabia. Rachid, who is a citizen of Mali, made three unsuccessful attempts to obtain a visa to the United States. He was able to secure a Canadian visa, however, and in December 2017, he flew to Toronto and then traveled to Montreal. On December 28, Rachid texted Ibrahim his geographic coordinates in Canada using a function on WhatsApp that allowed Ibrahim to view Rachid's location

on a map. The next day, Rachid texted Ibrahim the geographic coordinates of “the place” where he (implicitly) proposed that the two would meet.

The pick-up spot was located on Glass Road, a small residential street in Champlain, New York. Glass Road ends near the Canadian border and is situated approximately one mile from Champlain’s official port of entry from Canada. Proceeding then on foot, Rachid walked south across the U.S.-Canada border, using the GPS on his phone to navigate through fields and forests. As he did so, he periodically texted his coordinates to Ibrahim, allowing Ibrahim to track Rachid’s movement in real time. Ibrahim drove several hours to meet Rachid.

Along the way, he texted his own coordinates to Rachid, apparently familiar with the WhatsApp mapping function. When Ibrahim arrived in Champlain at about 3:00 in the afternoon, he spent some time driving in the area nearby the Champlain port of entry. In addition, he visited Glass Road briefly about an hour and a half before Rachid arrived there at approximately 5:30 pm. Having seen the area, Ibrahim knew well in advance that the pick-up would occur in a residential neighborhood that was surrounded by fields and forests and that had none of the vestiges of an official port of entry.

The Court opined that a factfinder could reasonably infer from the WhatsApp exchange that Ibrahim knew that Rachid did not enter the United States through an

official port of entry.

The record contains some evidence suggesting that Ibrahim may have acted with an innocent state of mind. Ibrahim, for example, rendezvoused with Rachid just moments after being tailed by a marked Border Patrol vehicle. According to Rachid's deposition, moreover, Ibrahim expressed "surprise" when Rachid first entered Ibrahim's vehicle, asking: "What are you doing here?"

This application is submitted because the Circuit needs to recognize that all mens rea evidence must be weighed in making a determination if there is sufficiency of evidence. A mens rea refers to the state of mind statutorily required in order to convict a particular defendant of a particular crime. See, e.g. *Staples v. United States*, 511 US 600 (1994). ... Rather, the defendant must be conscious of the "facts that make his conduct fit the definition of the offense."

IX. REASONS FOR GRANTING THE WRIT

The cornerstone to our country's Jurisprudence is that the accused is presumed innocent until guilt is proved beyond a reasonable doubt. The US Supreme Court held that "the Due Process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. The US Supreme Court first discussed the term in *Miles v. United States* 103 US 304 (1880) "The evidence upon which a jury is justified in returning a verdict of guilty must be sufficient to produce a conviction of guilt, to the exclusion of all reasonable doubt [W]e explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *Id.*

As per Rule 10 of the United States Supreme Court Rules a writ of Certiorari will be granted only for compelling reasons. A compelling argument or reason is one that convinces you that something is true or that something should be done. I put forth this application with an earnest belief there is a compelling reason to grant the application. The right to a fair trial is a core staple of the constitution. This is clearly articulated within the 5th and 14th amendment. It is clear that the 2nd Circuit court did not fully recognize the importance of mens rea evidence. Mens Rea is the mental element of a person's intention to commit a crime; or knowledge that one's action or

lack of action would cause a crime to be committed. It is a necessary element of many crimes.

A state must prove beyond a reasonable doubt a mens rea requirement in an underline criminal case. I am hoping this court will take into account the mens rea element. Defendant submits that the US Attorney's Office in the underline trial did not present enough mens rea evidence to show that defendant committed a violation of 8 U.S.C. § 1324.

To be purposely is to have requisite understanding of what one is doing. Reckless is a term of art. Black's Law Dictionary defines recklessness in American law as "Conduct whereby the actor does not desire harmful consequence but ... foresees the possibility and consciously takes the risk", or alternatively as "a state of mind in which a person does not care about the consequences of his or her actions" Recklessness usually arises when an accused should be aware of the potentially adverse consequences to the planned actions, but has gone ahead anyway, exposing a particular individual or unknown victim to the risk of suffering the foreseen harm but not actually desiring that the victim be hurt. Essentially it means that an individual may not know exacting what he or she is doing however, they should have, and the fact they do not leads to reckless state.

To avoid erroneous deprivations to right to fair trial, this court should reverse

the decision of the 2nd Circuit. A defendant may not be convicted of a criminal offense except by proof that establishes guilt beyond a reasonable doubt. See *In re Winship*, 397 U.S. 358 (1970). As the United States Supreme Court has noted numerous times defendant challenging the sufficiency of the government's evidence faces a "heavy burden." *United States v. MacPherson*, 424 F.3d 183, 187 (2d Cir. 2005). The relevant inquiry for determining sufficiency is "whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt." *United States v. Autori*, 212 F.3d 105, 114 (2d Cir. 2000). The evidence will be found sufficient if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original).

At trial, Ibrahim presented a limited defense. For example, he did not contest elements (1) and (3), i.e., that Hachim Rachid was an alien and that Ibrahim transport Rachid. Nor did Ibrahim contest the fact that Rachid had "come to, entered or remained in the United States in violation of law," a component of element (2). However, Ibrahim contented at trial and maintains on appeal that the government failed to adduce sufficient evidence to demonstrate that he acted with the requisite

mental state to satisfy elements (2) and (4). More particularly, Ibrahim argued that government failed to prove that he either knew or acted in reckless disregard of the fact that Rachid had illegally come to, entered, or remained in the country. Absent knowledge of (or a reckless disregard for) that fact, the government could not satisfy element (4), which required proof that Ibrahim willfully transported Rachid in furtherance of his known violation of law.

On the issue of knowledge, the government relied on the following evidence. First, Ibrahim and Rachid were related. Second, they communicated through a cellphone application, which allowed them to share their respective locations during the day of travel. Third, Ibrahim traveled to Champlain, New York by car and had already driven along Glass Road at least one hour before picking up Rachid. Fourth, Ibrahim was seen driving around the area prior to the meeting and was observed by a warehouse worker driving past the warehouse parking lot on a couple occasions. Fifth, when confronted by the worker, Ibrahim indicated that he was trying to find Glass Road, because he planned to meet someone there. Sixth, Glass Road is in a residential area approximately one mile west of the nearest port of entry. Seventh, the weather on the date of travel was cold and snowy, less than ideal for a border crossing by foot. Eighth, when Rachid got into the SUV, he took off his hat, backpack, and gloves before being arrested several minutes

later. Finally, when told he was under arrest for alien smuggling, Ibrahim apparently responded, "It's not alien smuggling. My friend needed a ride, so I picked him up."

Even viewed in the light most favorably to the government, the evidence merely establishes that Ibrahim knew Rachid was traveling (somehow) from Canada and that they planned to meet on Glass Road, where Ibrahim would pick him up and transport Rachid within the United States. There is no evidence that Ibrahim had any knowledge (or that he recklessly disregarded any fact)' as to how and where Rachid crossed the border. There was nothing in the record to suggest Ibrahim had ever been to Champlain, New York before or had any knowledge as to where a port of entry was in relation to Glass Road. As the day in question was described as "horrible" with snow and frigid temperatures, it is unlikely he gained any knowledge of the area in the two hours he spent looking for his friend. Indeed, the warehouse worker testified that

Ibrahim appeared to be lost and could not find Glass Road. While Ibrahim wondered how Rachid arrived at Glass Road, he was stopped by Border Patrol Agents before he could learn. Rachid indicated as much during his deposition, when he testified that Ibrahim expressed surprise and wondered how Rachid arrived at Glass Road. Moreover, the government deliberately failed to elicit evidence as to whether Ibrahim had advance knowledge of the illegality of Rachid's border crossing. Rachid was designated a material witness and deposed by the government. The government failed to ask a single question as to whether Rachid informed Ibrahim of his plan to illegally cross the border, which the district court noted Nor was there any question as to whether Rachid shared with Ibrahim how he planned to cross the border at all. Ibrahim's ignorance was reflected in his surprise as to how Rachid arrived at Glass Road.

As defense counsel noted below, the evidence leaves the question of knowledge wholly unanswered. "Nobody knows if Mr. Rachid duped Mr. Ibrahim, tricked Mr. Ibrahim, deceived Mr. Ibrahim into going north to pick up Mr. Rachid and drive him away from the border with absolutely

no clue about Mr. Rachid's intention to come into the U.S illegally"See *United States v. Perez-Tosta*, 36 F.3d 1552 (11th Cir. 1994) (noting a defendant present at the sight of a criminal act may be an "unwitting dupe").

Further in this connection, the evidence failed to establish that Ibrahim acted with a guilty conscience. When followed closely by a Border Patrol agent in a marked car, he twice attempted to pull over, an act that would only draw unwanted attention if, in fact, he knew Rachid was illegally entering the country. Even though the Border Patrol agent continued to closely follow him, Ibrahim, in full view of the agent, turned on to Glass Road, where he planned to meet and pick up Rachid. After picking up Rachid, Ibrahim made no effort to hide him in the SUV. Ibrahim pulled over when the agent conducted a vehicle stop and provided his identification without hesitation. When ordered to follow the agents to the Border Patrol station, Ibrahim did so and, though he had an opportunity to flee when he was temporarily lost, arrived at the station shortly after the arresting agent. Finally, when informed he was being arrested, Ibrahim responded that he was merely picking up his

friend. See *United States v. Salinas-Calderon*, 585 F.Supp. 599 (D. Kan. 1984) (noting lack of concealment or harboring demonstrated defendant did not act willfully in furtherance of aliens' illegality).

While knowledge "often can be proved only by circumstantial evidence," *United States v. Gaskin*, 364 F.3d 438, 461 (2d Cir. 2004), the evidence as to whether Ibrahim knew or recklessly disregarded the fact that Rachid illegally came into and entered the country was, at best, in equipoise. When a fact to be proven is also an element of the offense, "it is not enough that the inferences in the government's favor are permissible." *United States v. Martinez*, 54 F.3d 1040, 1043 (2d Cir. 1995). Instead, a court "must also be satisfied that the inferences are sufficiently supported to permit a rational juror to find that the element, like all elements, is established beyond a reasonable doubt." *Id.* Therefore, if "the evidence viewed in the light most favorable to the prosecution gives 'equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence,' then 'a reasonable jury must necessarily entertain a reasonable doubt.'" *United States v. Glenn*, 312 F.3d 58, 70 (2d Cir. 2002) (quoting *United States v. Lopez*, 74 F.3d 575,

577 (5th Cir. 1996)). Because the inference to be drawn concerning the Ibrahim's knowledge is, at most, equally supportive of guilt as it is innocence, the Circuit Court should have found the evidence insufficient, vacated the judgment, and remand with instructions to enter judgments of acquittal.

CONCLUSION

For the foregoing reasons, Mr. Ibrahim respectfully requests that this Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

Submitted by



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