

CASE NO. \_\_\_\_\_  
**SUPREME COURT OF THE UNITED STATES**

**LAWRENCE WESTBROOK III**

**PETITIONER**

**V.**

**UNITED STATES OF AMERICA**

**RESPONDENT**

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

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## **QUESTIONS PRESENTED FOR REVIEW**

- I. Whether the district court erred by applying a six-level enhancement pursuant to USSG § 2K2.1(b)(1)(C).
- II. Whether the district court erred by applying a four-level enhancement pursuant to USSG § 2K2.1(b)(6)(B).

## **LIST OF ALL PARTIES TO THE PROCEEDINGS**

Petitioner/Appellant/Defendant – Lawrence Westbrook III

Respondent/Appellee/Plaintiff – United States of America

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**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF  
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Lawrence Westbrook III, by court-appointed counsel, respectfully requests that a Writ of Certiorari issue to review the unpublished opinion of the United States Court of Appeals for the Sixth Circuit in the case of *United States v. Lawrence Westbrook III*, No. 20-5015, filed on October 28, 2020 and attached to this Petition as Appendix B.

## **OPINIONS BELOW**

Mr. Westbrook’s appeal to the Sixth Circuit was taken from the Judgment entered following his convictions for controlled substance and firearms offenses.

*See* Appendix A. On October 28, 2020, the Sixth Circuit issued an unpublished opinion affirming Mr. Westbrook’s sentence. *See* Appendix B. This petition for a writ of certiorari now follows.

## **JURISDICTION**

The Sixth Circuit issued an unpublished opinion affirming Mr. Westbrook’s sentence on October 28, 2020. *See* Appendix B. Mr. Westbrook 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 August 23, 2019, Lawrence Westbrook III entered a guilty plea to Counts 2, 6, 7, 9, and 10 of the Superseding Indictment charging him with narcotics and firearms offenses. *See* [R. 98: Minute Entry for Rearraignment, Page ID # 597]. In his Plea Agreement, Mr. Westbrook acknowledged that he possessed narcotics with intent to distribute and a Springfield .45 caliber pistol on June 23, 2018. *See* [R. 99: Plea Agreement, Page ID # 600]. Mr. Westbrook also admitted to possessing methamphetamine with intent to distribute and a Sig Sauer .380 caliber pistol on August 31, 2018. *Id.*

The Plea Agreement referenced a forensic examination of cell phones found in Mr. Westbrook’s vehicle on June 23, 2018. *Id.* at Page ID # 601. Photographs

from those phones showed Mr. Westbrook holding a Century Arms Micro Draco on May 22, 2017. *Id.* A Micro Draco also appeared in additional photographs dated “June 5, 2017 [and] July 10, 2017, as well as a video dated September 14, 2017[.]” *Id.* This video depicted several firearms accompanied by audio commentary from Mr. Westbrook. *Id.*

At sentencing, the district court applied a six-level enhancement pursuant to USSG § 2K2.1(b)(1)(C) after determining the offense involved more than 25 firearms. [R. 166: Transcript, Sentencing, Page ID # 1215-16]. The court also applied a four-level enhancement pursuant to USSG § 2K2.1(b)(6)(B) based on its finding that Mr. Westbrook possessed firearms in connection with another felony offense. *Id.*

In doing so, the district court relied on the testimony of Agent Jack Morgan of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). *Id.* at Page ID # 1138. Agent Morgan discussed co-defendant Ronald Harrison’s statements to investigators about having purchased firearms eventually attributed to Mr. Westbrook. *Id.* at Page ID # 1143. More specifically, Mr. Harrison said he purchased ‘two Tauruses’ and a “Micro Draco pistol” at Mr. Westbrook’s direction. *Id.* at Page ID # 1146, Lines 21-24; *id.* at Page ID # 1147, Lines 6-9. Mr. Harrison also indicated he traded two other firearms, another Taurus and a Glock, “to Mr. Westbrook for narcotics.” *Id.* at Lines 16-19. The timing of these

transfers was not established. Morgan mentioned two additional firearms Mr. Harrison said he “sold to Mr. Westbrook[,]” but Mr. Harrison did not indicate when those transfers occurred; they could have been “before” 2017. *Id.* at Lines 19-25. Agents were unable to locate documentation for Mr. Harrison’s purchase of these two guns. *Id.* at Page ID # 1148, Lines 1-3.

A search of cell phones found in Mr. Westbrook’s vehicle on June 23, 2018 revealed “text messages, various pictures, [and] photos.” *Id.* at Page ID #1148, Lines 23-25. Some of these images included firearms, cash, and suspected narcotics. *Id.* Agent Morgan recalled “two videos of firearms[,]” the first of which “had a firearm and cash, and the other one had a display of firearms on the floor of a bedroom.” *Id.* at Page ID # 1149, Lines 14-17. Morgan said he counted 26 firearms in one video, but he acknowledged that some of the guns “were seen in other photographs” already reviewed. *Id.* at Page ID # 1149, Lines 7-11.

On cross-examination, Agent Morgan agreed that Mr. Westbrook’s wife was an avid purchaser of firearms and owned several of her own.<sup>1</sup> *Id.* at Page ID # 1175, Lines 15-22. Morgan said Mr. Westbrook split time between two different residences and did not always reside with Mrs. Westbrook. *Id.* at Page ID # 1182, Lines 5-11. Regarding the various photographs recovered from cell phones, Morgan repeatedly concurred that many of the images showed “the same guns...in

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<sup>1</sup> Mrs. Westbrook also was charged in this case with violating 18 U.S.C. § 922(a)(6) in connection with her purchase of a firearm on May 22, 2017. *See* [R. 48: Superseding Indictment, Page ID # 272]. Mrs. Westbrook was acquitted of this offense at trial. *See* [R. 112: Redacted Jury Verdict, Page ID # 646].

different settings[.]” *Id.* at Lines 16-19; *id.* at Lines 20-23; *id.* at Page ID # 1182-83, Lines 24-25, 1; *id.* at Page ID # 1183, Lines 2-10; *id.* at Page ID # 1184, Lines 6-15. As to his determination about the total number of firearms from Exhibit 20, Morgan said he had to watch the video “several times” to attempt to count them. *Id.* at Page ID # 1186, Lines 4-13.

Mr. Westbrook argued that the evidence showed only that he “likes firearms” and was in possession of firearms at various times. *Id.* at Page ID # 1203, Lines 4-6. Mr. Westbrook emphasized that it is relatively common in our society for people to “glorify certain types of conduct” like possessing firearms. *Id.* at Lines 18-21. Regarding his videos and his comments in those recordings about firearms and drug activity, Mr. Westbrook reiterated that people often “parrot” certain ideas favorably depicted in music videos and other media. *Id.* at Page ID # 1204, Lines 15-18.

Mr. Westbrook also noted that many of the photographs were taken outside the “relevant conduct period” of May 22, 2017 to September 14, 2017. *Id.* at Page ID # 1207, Lines 17-20. Mr. Westbrook argued the number of firearms enhancement can apply only when the various instances of possession are connected by some “similarity” of purpose other than simply because someone enjoys possessing guns. *Id.* at Page ID # 1208, Lines 1-14.

Regarding the four-level enhancement under USSG § 2K2.1(b)(6)(B), Mr. Westbrook argued that the person receiving a firearm in exchange for narcotics does not possess it in connection with the drug offense. *Id.* at Page ID # 1209-10. Mr. Westbrook emphasized that this is what occurred when Mr. Harrison traded guns to Mr. Westbrook for narcotics. *Id.* at Page ID # 1210. Mr. Westbrook also noted that the photographs depicting firearms with cash or suspected narcotics were consistent with the idea that he was “caught up” in attempting to create images similar to what we see in “music videos, [on] television, [and] in movies[.]” *Id.* at Page ID # 1211, Lines 3-13.

The district court found that Mr. Westbrook’s possession of the firearms depicted in the photographs and videos was part of a “common scheme or plan” and was “the same course of conduct.” *Id.* at Page ID # 1215, Lines 1-3. The court identified Mr. Westbrook’s common purpose as “acquir[ing] weapons to protect drug trafficking activities and also to intimidate others to prevent them from either robbing him or confronting him to acquire the drugs that he was peddling.” *Id.* at Lines 12-16. The court held that Mr. Westbrook possessed each of the firearms depicted in the photographs and videos and concluded that the total number “would be 26 or greater” triggering the six-level enhancement pursuant to USSG § 2K2.1(b)(1)(C). *Id.* at Page ID # 1216, Lines 2-9. Regarding the four-level enhancement under USSG § 2K2.1(b)(6)(B), the court found that the firearms

were possessed in connection with “continuing drug trafficking activity” by Mr. Westbrook “during the period in question.” *Id.* at Lines 11-16.

The district court imposed a total sentence of 300 months. *Id.* at Page ID # 1234-35, Lines 11-25, 1-3. The Sixth Circuit subsequently affirmed the district court’s determinations. *See* Appendix B.

## **REASONS FOR GRANTING THE WRIT**

### **I. The district court erred by applying a six-level enhancement pursuant to USSG § 2K2.1(b)(1)(C).**

Under USSG § 2K2.1(b)(1), a defendant’s offense level is increased if “the offense involved three or more firearms[.]” The extent of the enhancement rises depending on the total number of firearms involved in the offense. *See, e.g.*, USSG § 2K2.1(b)(1)(A)-(E). Firearms properly considered as relevant conduct pursuant to USSG § 1B1.3 may be included in this calculation. To determine relevant conduct, courts consider the time period during which the offense occurred and whether the activity was “part of the same course of conduct or common scheme or plan as the offense of conviction.” USSG § 1B1.3(a)(2). Three factors guide this analysis: regularity, similarity, and timing. USSG § 1B1.3, comment. (n.5(B))).

For this analysis to apply, however, the record first must confirm that the defendant actually or constructively possessed the firearms at issue. Because the record fails to establish Mr. Westbrook’s actual or constructive possession of the

firearms displayed in the September 14, 2017 video, the district court erred by applying and the Sixth Circuit by affirming the six-level enhancement for possession of 25 or more firearms under USSG § 2K2.1(b)(1)(C).

The number of firearms enhancement was triggered by Mr. Westbrook's conviction for being a felon in possession of a firearm. This conviction specifically related to his possession of the Century Arms Micro Draco depicted in photographs dated May 22, 2017, June 5, 2017, and July 10, 2017. *See* [R. 99: Plea Agreement, Page ID # 601, Paragraph 7(c)]. The government presented these photos as Exhibits 2, 3, and 4 at Mr. Westbrook's sentencing hearing. *See* [R. 166: Transcript, Sentencing, Page ID # 1153-54]. This evidence establishes that Mr. Westbrook actually possessed the Micro Draco during the relevant time period outlined in Count 2 of the Superseding Indictment. *See* [R. 48: Superseding Indictment, Page ID # 271-72].

The September 14, 2017 video depicting the Micro Draco is different. Unlike the photographs showing Mr. Westbrook in actual possession of firearms on previous occasions, Exhibit 20 shows guns "displayed on the floor." [R. 166: Transcript, Sentencing, Page ID # 1171, Line 7]. It does not depict Mr. Westbrook holding, handling, or otherwise exerting physical control over the Micro Draco or the additional firearms. *Id.* This is significant because the record reflects Mr. Westbrook's wife was an avid purchaser of firearms and owned several of her

own. *Id.* at Page ID # 1175, Lines 15-22. Agent Morgan also testified that Mr. Westbrook did not regularly stay with Mrs. Westbrook, instead living at his mother's house and an apartment. *Id.* at Page ID # 1182, Lines 5-11.

“Constructive possession exists when a person does not have actual possession but instead *knowingly* has the power and the *intention* at a given time to exercise dominion and control over an object[.]” *United States v. Barron*, 940 F.3d 903, 916 (6<sup>th</sup> Cir.2019) (citing *United States v. Bailey*, 553 F.3d 940, 944 (6<sup>th</sup> Cir.2009)) (emphasis in original). “[D]ominion over the premises where [a] firearm is located is sufficient to establish necessary control over the object.” *Id.* (citing *United States v. Grubbs*, 506 F.3d 434, 439 (6<sup>th</sup> Cir.2007)). “However,” it is “without question that ‘[p]resence alone’ near a gun...does not ‘show the requisite knowledge, power, or intention to exercise control over’ the gun to prove constructive possession.” *Grubbs*, 506 F.3d at 439 (quoting *United States v. Arnold*, 486 F.3d 117, 183 (6<sup>th</sup> Cir.2007) (en banc)).

Contrary to the findings of the district court and the Sixth Circuit, the record in this case fails to establish that Mr. Westbrook exercised “dominion” over the residence where the firearms were videoed on September 14, 2017. *Barron*, 940 F.3d at 916. As Agent Morgan acknowledged at sentencing, Mr. Westbrook did not live with Mrs. Westbrook; rather, he stayed “at his mother’s house and an apartment[,]” splitting time “between two residences.” [R. 166: Transcript,

Sentencing, Page ID # 1182, Lines 7-10]. The video’s similarity to Exhibit 13 confirms that it was taken at Mrs. Westbrook’s home where she lived with the couple’s son. *See id.* at Page ID # 1165-66 (discussing baby items visible in photograph showing various firearms on display).

Because the firearms in the video were not at a location “maintained” by Mr. Westbrook, it is unreasonable to infer that he “constructively possess[ed] contraband” stored on those premises. *Compare United States v. Tolliver*, 992 F.2d 1218 at \*3 (6<sup>th</sup> Cir.1993) (Table) (citing *United States v. Johnson*, 944 F.2d 396, 400-01 (8<sup>th</sup> Cir.1991); *United States v. Long*, 905 F.2d 1572, 1578 (D.C.Cir.1990); *United States v. Alvarado*, 882 F.2d 645, 654 (2d Cir.1989); *United States v. Robinson*, 857 F.2d 1006, 1010 (5<sup>th</sup> Cir.1988)). While the video establishes Mr. Westbrook was present at Mrs. Westbrook’s residence, “[p]resence alone” near firearms “does not show the requisite knowledge, power, or intention to exercise control over” them “to prove constructive possession.” *Grubbs*, 506 F.3d at 439 (citing *Arnold*, 486 F.3d at 183) (internal quotation marks omitted). *See also United States v. Beverly*, 750 F.2d 34, 37 (6<sup>th</sup> Cir.1984) (constructive possession not established where defendant was found “standing close to a waste basket which contained two guns, and [defendant] had at some point touched one of the guns”).

Without the guns from Exhibit 20, the district court’s determination that Mr. Westbrook’s 18 U.S.C. § 922(g) offense involved more than 25 firearms was clearly erroneous, and its application of a six-level enhancement under USSG § 2K2.1(b)(1)(C) was an abuse of discretion. *See* [R. 166: Transcript, Sentencing, Page ID # 1208-09] (discussing how “close” the number of firearms was to triggering a lesser enhancement).

The relevant conduct analysis under Footnote 5 to USSG § 1B1.3 also weighs against applying the enhancement. Even if the September 14, 2017 video established Mr. Westbrook’s constructive possession of the depicted firearms, it does not confirm that any alleged possession by Mr. Westbrook was with the same “regularity” or for the same purpose as his possession of the Micro Draco other than a desire simply to possess firearms. USSG § 1B1.3, comment. (n.5(B)).

The Sixth Circuit’s decision in *United States v. Bowens*, 938 F.3d 790, 798-99 (6<sup>th</sup> Cir.2019) is instructive. There, the Court determined that the number of firearms enhancement “should not have been applied” because the defendant’s possession of additional guns “was not relevant to the charged offense under the Guidelines’ relevant conduct provision.” *Bowens*, 938 F.3d at 798-99. Law enforcement found a handgun underneath a pillow at the defendant’s mother’s residence in the room where the defendant slept. The sentencing court determined that the firearm plus two guns found at the time of the defendant’s arrest four

months later supported application of a two-level enhancement under USSG § 2K2.1(b)(1)(A). *Id.*

The Sixth Circuit reversed in part because the instances of possession were “similar only in the broadest of terms” in that “they were both illegal gun possessions.” This was “too broad” to be considered similar because there must be “characteristics about the possession that show similarity *beyond* the act of unlawfully possessing a gun.” *Bowens*, 938 F.3d at 799 (citing *United States v. Amerson*, 886 F.3d 568, 578 (6<sup>th</sup> Cir.2018) (citing *United States v. Phillips*, 516 F.3d 479, 485 (6<sup>th</sup> Cir.2008)) (emphasis in original)). Without additional evidence confirming that the “motivation and surrounding circumstances” were similar, simply establishing that a particular defendant possessed firearms on more than one occasion was insufficient to justify the enhancement. *Id.* (citing *Phillips*, 516 F.3d at 485). *Compare United States v. Hill*, 79 F.3d 1477, 1484 (6<sup>th</sup> Cir.1996) (selling crack one year was not “relevant” to selling crack the next year just because both episodes involved selling crack; there had to be some other connection). *See also Amerson*, 886 F.3d at 575 (prior unlawful possession of a firearm “a few months earlier” was not relevant conduct because the circumstances surrounding the firearm possession were “unrelated to the circumstances surrounding the offense of conviction”).

The record fails to establish that Mr. Westbrook’s possession of the Micro Draco was similar to his alleged possession of the additional firearms in the video “beyond the act of unlawful[] possess[ion]” itself. *Bowens*, 938 F.3d at 799. There was no “commonality of victims” because the offense at issue was simply the unlawful possession of a firearm. USSG § 1B1.3, comment. (n.5(B)(i)). Likewise, the origin of the vast majority of the firearms in the video was not proven, thus there was no evidence of an “ongoing conspiracy” involving these guns. *Id.* Without evidence of similar “motivation and surrounding circumstances” beyond mere possession itself, applying the enhancement was an abuse of discretion. *Bowens*, 938 F.3d at 799.

Rulings to the contrary by the district court and the Sixth Circuit were erroneous. This Court should grant Mr. Westbrook’s petition to address this issue.

**II. The district court erred by applying a four-level enhancement pursuant to USSG § 2K2.1(b)(6)(B).**

USSG § 2K2.1(b)(6)(B) provides for a four-level enhancement to a defendant’s offense level if he “used or possessed any firearm or ammunition in connection with another felony offense.” However, this enhancement applies only if the government specifically identifies an independent felony and proves that “the defendant possessed or used a gun in connection” with it. *United States v. Bullock*, 526 F.3d 312, 317 (6<sup>th</sup> Cir.2008) (citing *United States v. Burns*, 498 F.3d 578, 580 (6<sup>th</sup> Cir.2007)). The government also must demonstrate “the weapon facilitated or

potentially facilitated the felonious conduct or emboldened the defendant during the felonious conduct.” *United States v. Taylor*, 648 F.3d 417, 432 (6<sup>th</sup> Cir.2011) (citing *United States v. Carter*, 355 F.3d 920, 925 (6<sup>th</sup> Cir.2004)). To do so, the government must establish a “nexus between the firearm and [the] independent felony.” *Id.* (citing *United States v. Angel*, 576 F.3d 318, 321 (6<sup>th</sup> Cir.2009)). The government bears the burden of proving each of these elements by a preponderance of the evidence. *United States v. Jackson*, 877 F.3d 231, 236 (6<sup>th</sup> Cir.2017) (citing *United States v. Shields*, 664 F.3d 1040, 1043 (6<sup>th</sup> Cir.2011)).

At sentencing, the government first argued that the enhancement should apply because “any of the firearms...possessed during this period of time” would be relevant conduct to the drug charges to which Mr. Westbrook pleaded guilty. [R. 166: Transcript, Sentencing, Page ID # 1200, Lines 13-18]. However, the drug offenses in Counts 6 and 9 occurred on June 23, 2018 and August 31, 2018, respectively. [R. 48: Superseding Indictment, Page ID # 274-75]. Both took place approximately one year after the photographs and videos relied upon by the government in support of the enhancement.

While there is no “bright-line rule defining what constitutes the same course of conduct or common scheme or plan as the offense of conviction,” Mr. Westbrook’s possession of firearms in 2017 lacks sufficient temporal proximity to his drug activities in 2018 to be considered relevant conduct. *See Hill*, 79 F.3d at

1484 (citing *United States v. Hahn*, 960 F.2d 903, 910-11 (9<sup>th</sup> Cir.1992) (five-month gap between two instances of conduct was “relatively remote” and would require stronger showing of similarity and regularity to constitute relevant conduct); *United States v. Sykes*, 7 F.3d 1331, 1337 (7<sup>th</sup> Cir.1993) (reversing district court’s finding that fraudulent credit application occurring fourteen months after offense of conviction constituted relevant conduct); *United States v. Mullins*, 971 F.2d 1138, 1143 (4<sup>th</sup> Cir.1992) (finding temporal proximity “extremely weak” where conduct occurred six months prior to offense of conviction); *United States v. Jones*, 948 F.2d 732, 737-38 (D.C.Cir.1991) (embezzlement from art gallery occurring over one year before other embezzlement was not part of same course of conduct or common plan). The Sixth Circuit failed to address this temporal distinction in its unpublished opinion denying relief. *See* Appendix B, Pages 9-11.

The government also claimed two photographs showing suspected narcotics, a scale, and a firearm were sufficient to apply the enhancement. [R. 166: Transcript, Sentencing, Page ID # 1200-01]. The government suggested photos depicting “firearms with large quantities of cash” and showing Mr. Westbrook’s “watches” were “related to drug trafficking in and of itself.” *Id.* These arguments stretch the concept of relevant conduct beyond its proper limits.

First, the record contains no evidence establishing that the items visible in the referenced photographs are narcotics. As discussed at sentencing, the photos

and videos at issue were consistent with someone mimicking positive depictions of drug and firearms activity on television, in movies, and in popular music. [R. 166: Transcript, Sentencing, Page ID # 1203, Lines 18-21]. The Sixth Circuit takes issue with Mr. Westbrook for discounting Agent Morgan's testimony that the photographs appeared to "depict suspected narcotics[,"] but this is precisely the point. Appendix B, Page 10. There is no evidence establishing Mr. Westbrook was engaged in drug trafficking at the time the photos were created. Moreover, there is no proof that the "suspected narcotics" were, in fact, controlled substances. Mr. Westbrook was not charged with drug trafficking during this time period. Nor is there evidence that Mr. Harrison's firearms transfers to Mr. Westbrook for narcotics were contemporaneous with the creation of the photos showing suspected drugs. If the substances in question were not illegal narcotics, the district court's reliance on the photos to conclude Mr. Westbrook possessed firearms "in connection with another felony offense" was clearly erroneous. USSG § 2K2.1(b)(6)(B).

These photographs and videos appear to be nothing more than puffing. *See, e.g., United States v. Apolinar*, 2011 WL 722406 at \*5 (D.Mass February 22, 2011) (court noting its experience presiding over drug trials and acknowledging that drug traffickers often exaggerate the scope of their criminal conduct). This conclusion is supported by the fact that Mr. Westbrook had no funds to afford bond

at the time of his arrest on June 23, 2018. Despite the impression conveyed by the photos and videos at issue, Mr. Westbrook's wife had to borrow the money to secure his release. *See* [R. 166: Transcript, Sentencing, Page ID # 1174-75]. These circumstances stand in stark contrast to the persona Mr. Westbrook sought to portray. Together, they demonstrate the impact of "media modeling" that appears "to glorify undesirable behavior (such as drug use and criminal activity) and to discount desirable behavior (such as doing well in school)."<sup>2</sup>

The government's argument that the enhancement was justified based on other images showing Mr. Westbrook in possession of money and guns is also unavailing. Mr. Westbrook's apparent possession of firearms in these photos is insufficient to trigger the enhancement on its own because the underlying offense itself was possession of a firearm by a convicted felon. Simply adding money or watches to the equation does not alter the outcome because there is nothing illegal about possessing a firearm and these items at the same time. This evidence is insufficient to meet the government's burden of identifying a specific felony offense and proving that Mr. Westbrook's possession of firearms was connected to and facilitated that crime. *Bullock*, 526 F.3d at 317 (citing *Burns*, 498 F.3d at 580); *Taylor*, 648 F.3d at 432 (citing *Carter*, 355 F.3d at 925).

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<sup>2</sup> See Shay Sayre and Cynthia King, *Entertainment and Society: Influences, Impacts, and Innovations* at 125 (2d ed. 2010) (discussing disinhibitory effects of media in context of social cognitive theory).

To reiterate, the district court’s determination that Mr. Westbrook was engaged in drug trafficking at the time the relevant photos and videos were created is unsupported by the record. The government presented no evidence establishing that Mr. Westbrook was trafficking in narcotics at the time the images were made. Even if the government had proved that some of the photographs show actual narcotics, at best the images only would confirm the “presence of drugs in a home” where a defendant committed a firearms offense. This is “insufficient to support...application of the enhancement.” *United States v. Jackson*, 877 F.3d at 237 (citing *Taylor*, 648 F.3d at 432).

The district court’s factual findings to the contrary were clearly erroneous, and its application of the enhancement was an abuse of discretion. The Sixth Circuit’s denial of Mr. Westbrook’s appeal was equally unsound. This Court should grant Mr. Westbrook’s petition to address this issue.

## **CONCLUSION**

For the foregoing reasons, Mr. Westbrook respectfully asks this Court to grant his petition for the issuance of a writ of certiorari for the purpose of vacating his sentence.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Jarrod J. Beck, counsel for Petitioner Lawrence Westbrook III, 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 Assistant United States Attorney Francisco J. Villalobos II, 260 West Vine Street, Suite 300, Lexington, Kentucky 40507-1612.

This 22<sup>nd</sup> day of January, 2021.

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