No. 20-7083

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JAN 22 2021
OFFICE OF THE CLERK

JEREMY BROWN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeremy Brown
(Your Name)

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Memphis, TN 38184
(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether A Criminal Defendant Substantial Rights To Due Process Under The Fifth Amendment Of The United States Constitution Denied In Light Of Rehaif v. United States, 139 S.Ct. 2191(2019)

2. WHETHER A CRIMINAL DEFENDANT PRESUMPTION OF ACTUAL INNOCENCE RESUMES IN LIGHT OF REHAIF V. UNITED STATES, 139 S.CT. 2191(2019)

3. WHETHER THIS COURT DECISION IN REHAIF V. UNITED STATES, 139 S.CT. 2191(2019) CREATED A NEW SUBSTANTIVE RULE THAT APPLIES RETROACTIVE TO CASES ON COLLATERAL REVIEW

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______________________ court appears at Appendix ______ to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 25, 2020.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. __A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ____________. A copy of that decision appears at Appendix ____.

[ ] A timely petition for rehearing was thereafter denied on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. __A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

* FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION DUE PROCESS CLAUSE
* 18 U.S.C. 922(g)(1)
* 18 U.S.C. 924(a)(2)
* 28 U.S.C. 1254(1)
* 28 U.S.C. 2255

Statement Of The Case

On June 30, 2016, a federal grand jury in the Western District of Tennessee returned a single count indictment against Mr Brown charging him with possessing a firearm after a felony conviction. See 16-cr-20143. Mr Brown maintained his innocence and proceeded to a jury trial, at which the jury found Mr Brown guilty as to 3 of 4 of the essential elements constituting 18 U.S.C. 922(g)(1). Id. at ECF 51-57.

On August 16, 2018, Mr Brown filed a motion to vacate, set-aside or correct sentence pursuant to 28 U.S.C. 2255. See 18-cv-02568. While Mr Brown 2255 motion was pending, this Court issued its decision in Rehaif v. United States, 139 S.Ct. 2191. In Rehaif, this Court held that "in a prosecution under 18 U.S.C. 922(g) and 924(a)(2), the Government 'must prove' both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." Rehaif, 139 S.Ct. at 2200.

On November 8, 2019, Mr Brown filed an amended 2255 motion to add a claim in light of Rehaif, asking whether Mr Brown is entitle to relief based on Rehaif. See 18-cv-02568 ECF 37. In support of this claim

Mr Brown argued that, the Due Process Clause of the U.S. Const. V. Amend. requires the Government bear the burden of proving every element of the crime charged beyond a reasonable doubt, which it failed to do at trial, and that his presumption of actual innocence has not been overcame, and that this court decision held in Rehaif apply retroactive to cases on collateral review. Id. at pp. 39-42.

On December 18, 2019, the District Court denied this claim and arguments. See Appendix B. The District Court factually found that Rehaif did not apply to those defendants convicted under 18 U.S.C. 922 (g)(1), and that Mr Brown stipulated to being a convicted felon and did not require the Government to prove that element of the charged offense, and that Rehaif did not announce a new rule of constitutional law made retroactive to cases on collateral review. Id. at pp. 13-14. The District Court also denied Mr Brown request for a certificate of appealability. Id.

The District Court record is silent on whether Teague v. Lane renders Rehaif retroactive to cases on collateral review, and whether the Due Process Clause of the U.S. Const. V. Amend. offended when the Government did not present any evidence to prove an essential element of the charged crime, and whether Mr Brown presumption of actual innocence resumes, in light of Rehaif, where the Government did not prove an essential element of the crime and no juror found nor was instructed to find whether Mr Brown is guilty or innocent of the element announced in Rehaif. Id. Because of the District Court erroneous factual findings and legal conclusions, and its silence on important Constitutional issues, Mr Brown appealed its order.

On January 24, 2020, Mr Brown appealed from the District Court order. See Appellate # 20-5090. Mr Brown filed a application in the Sixth Circuit Court of Appeals for a certificate of appealability. Id. ECF 6 at pp. 24-26. The Sixth Circuit Court denied his claims, finding that even if it is assumed that Rehaif applies retroactively to cases on collateral review these claims does not deserve encouragement to proceed further, and that Mr Brown stipulated at trial that he was a convicted felon, and that Mr Brown previous conviction is sufficient beyond a reasonable doubt, post-trial, to establish knowledge of his status as a felon. See Appendix A at pp. 8.

The Sixth Circuit record is also silent on the issues of whether Rehaif apply retroactive on collateral review, and whether a Due Process Clause violation occurred when the Government did not present any evidence to prove an essential element of the charged offense, and whether Mr Brown presumption of actual innocence resumes, where the Government did not present any evidence to prove an essential element of the crime, and no juror found nor was instructed to find whether Mr Brown is guilty or innocent of the essential element announced in Rehaif.

Because the Sixth Circuit factual findings and legal conclusions is also erroneous, and is silent on important constitutional issues, Mr Brown now petition this Supreme Court of the United States for a Writ of Certiorari.

Reasons For Granting The Petition

I

In Rehaif this Court held that "in a prosecution under 18 U.S.C. 922(g) and 924(a)(2), the Government 'must prove' both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." See Rehaif v. United States, 139 S.Ct. at 2200. This Court interpreted the 18 U.S.C. 922(g) and 924(a)(2) statutes in Rehaif. Id. When this Court clarifies a statute in this manner, "it is explaining its understanding of what the statute has meant continuously since the date when it became law." See Rivers v. Roadway Exp., Inc., 511 U.S. 298, 313 n. 12.

Prior to this Court decision in Rehaif, every federal circuit court of appeals that has addressed this issue relieved the Government of its burden of proving the essential element announced in Rehaif. See United States v. Olender, 338 F.3d 629, 637 (CA6 2003); United States v. Smith, 940 F.2d 710, 713 (CA1 1991); United States v. Huet, 665 F.3d 588, 596 (CA3 2012); United States v. Langley, 62 F.3d 602, 604-608 (CA4 1995) (En banc); United States v. Rose, 587 F.3d 695, 705-06, and n.9 (CA 5 2009)(per curiam); United States v. Lane, 267 F.3d 715, 720 (CA7 2001); United States v. Thomas, 615 F.3d 895, 899 (CA 8 2010); United States v. Kind, 194 F.3d 900, 907 (CA 8 1999); United States v. Miller, 105 F.3d 552, 555 (CA 9 1997); United States v. Games-Perez, 667 F.3d 1136, 1142 (CA 10 2012); United States v. Jackson, 120 F.3d 1226, 1229 (CA 11 1997) (per curiam); United States v. Bryant, 523 F.3d 349, 354 (CA DC 2008). Therefore, nearly every defendant convicted under 18 U.S.C. 922(g) and 924(a)(2) prior to this court decision in Rehaif is unconstitutional and invalid, under the strictures of the Due Process Clause of the U.S. Const. V. Amend., and must be acquitted. See In re Winship, 397 U.S. 358, 364; Fiore v. White, 531 U.S. 225, 228-29.

Federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution. See Herrera v. Collins, 506 U.S. at 400; also, eg., Moore v. Dempsey, 261 U.S. at 87-88 (what we have to deal with on habeas review is not the petitioners innocence or guilt but solely the question whether their constitutional rights have been perserved). "A conviction or sentence imposed in violation of a substantial rule is not just erroneous but contrary to law and, as a result, void. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." See Montgomery v. Louisiana, 136 S.Ct. at 731. This Court generally adhere to its prior decisions, even if it question their soundness, because doing so promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. See Alleyne, 570 U.S. at 118.

II

Under the Due Process Clause of the Fifth Amendment, the prosecutor is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. See In re Winship, 397 U.S. 358, 364. Failure to do so constitute automatic reversal. See Fiore v. White, 531 U.S. 225, 228-29 (due process violated when defendant convicted for operating without permit despite fact that prosecution failed to show defendant did not possess hazardous waste permit).

The Winship reasonable doubt standard protects three interests.

First, it protects the defendant's liberty interest. See Winship, 397 U.S. at 363. Second, it protects the defendant from the stigma of conviction. See id. Third, it engenders community confidence in the criminal law by giving "concrete substance" to the presumption of innocence. Id. at 363-64. The Winship requirement applies to elements that distinguish a more serious crime from a less serious one, as well as to those elements that distinguish criminal from noncriminal conduct. Therefore, the defendant must be acquitted, see Winship, 397 U.S. at 363, if the Government fails to sustain its burden of proof. See Fiore v. White, 531 U.S. 225, 228-29.

A

In the case at issue, Mr Brown amended his 2255 motion to add a claim based on this Court decision in Rehaif. See 18-cv-02568 at ECF 37. Mr Brown asked whether he was entitle to relief in light of Rehaif. Id. In support of this claim, Mr Brown argued that his substantial rights under the Due Process Clause of the U.S. Const. V. Amend. has been violated in light of Rehaif, because the Government did not present any evidence during trial to prove the essential element announced in Rehaif. Id. at pp. 39-42.

The District Court denied this claim and did not require the

Government to respond to this claim and argument. See Appendix B at pp. 13-14. Instead, the District Court factually found that Rehaif was an immigrant who overstayed his visa, not a felon. That Mr Brown is not similarly situated. That Brown stipulated that he was a convicted felon and did not require the United States to prove that element of the crime, and that Rehaif did not announce a new rule of constitutional law made retroactive to cases on collateral review. Id.

Surprisingly, the District Court record is silent on the issue of whether a Due Process Clause violation occurred as argued by Mr Brown. Id. Moreover, the District Court factual findings are clearly erroneous. First, the District Court found that Rehaif doesn't apply to those defendants under 18 U.S.C. 922(g)(1). Id. But this Court made it clear that it does apply to 18 U.S.C. 922(g)(1). See Rehaif, 139 S.Ct. 2191. Second, the District Court found that Mr Brown stipulated to the essential element announced in Rehaif. See Appendix B at pp. 13-14. The record shows that Mr Brown stipulated to two essential elements, that is, (a) as of the date of the charged conduct, December 25th, 2015, Mr Brown was a convicted felon and (b) the firearm affected interstate commerce. See 16-cr-20143 ECF 22+23. Mr Brown did not stipulate to having knowledge of his felony status. Id. Therefore, the Government was required to prove that Mr Brown knew he belonged to the relevant category of persons barred from possessing a firearm. See Estelle v. McGuire, 502 U.S. at 69 (a defendant tactical decision not to contest an essential element of the crime does not remove the prosecution's burden to prove that element). Third, the District Court found that Rehaif did not announce a new rule of constitutional law made retroactive to cases on collateral review. See Appendix B at pp. 13-14. Mr Brown addressed this issue below in section II C.

Mr Brown filed an application for a certificate of appealability in the Sixth Circuit Court of Appeals. See Appeallate case # 20-5090. Mr Brown made the Sixth Circuit Court of Appeals aware of the Due Process Clause violation. Id. The Sixth Circuit Court of Appeals ignored this argument. See Appendix A at pp. 8. Instead, the Sixth Circuit Court of Appeals factually found and legally concluded that Mr Brown stipulated that he was a convicted felon on the date of offense, and that Mr Brown previous conviction is sufficient to establish knowledge of his status as a felon. Id. These contentions made by the Sixth Circuit Court of Appeals furthered the infringement upon the Due Process Clause of the U.S. Const. V. Amend.

First, Mr Brown did not stipulate to having knowledge of his status. Mr Brown stipulated that he was a felon as of the date of offense and that the firearm affected interstate commerce. See 16-cr-20143 ECF 22-23. Therefore, the Government was required to prove that Mr Brown had knowledge of his status beyond a reasonable doubt to the jurors at trial. See Estelle v. McGuire, 502 U.S. at 69; Rehaif, 139 S.Ct. at 2200. Second, the Sixth Circuit found that Mr Brown previous conviction is sufficient to establish knowledge of his status as a felon, see Appendix A at pp. 8, but that evidence was not submitted before the jurors at trial and the jurors was not instructed to find whether there was knowledge of status beyond a reasonable doubt, see 16-cr-20143 ECF 22, 55, and to allow this evidence to be proof beyond a reasonable doubt post-trial would undermine Winship. See In re Winship, 397 U.S. 358, 364.

The law presumes Mr Brown to be actually innocent until he is proven guilty by the evidence, this presumption remains with him until jurors are satisfied of guilt beyond a reasonable doubt. See Coffin v. United States, 156 U.S. 432; also, Agnew v. United States, supra, 165 U.S. at 51. "The presumption of innocence is a conclusion drawn by the law in favor of the citizen, by virture whereof, when brought to trial upon a criminal charge, he must be acquitted, unless he is proven to be guilty." Id. at 458-59. In other words, the presumption is an instrument of proof created by the law in favor of one accused, "whereby his innocence is stablished until sufficient evidence is introduced to overcome the proof which the law created." Id. This presumption on the one hand, supplemented by any other evidence he may adduce, and the evidence against him on the other, constitute the elements from which the legal conclusion of his guilt or innocence is to be drawn. Id. See Taylor v. Kentucky, 436 U.S. 478 (The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials, it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment, or custody, or from other matters not introduced as proof at trial).

The fact that the presumption of innocence is recognized as a presumption of law and is characterized by the civilians as a presumptio juris, demonstrates that it is evidence in favor of the accused. For in all systems of law legal presumptions are treated as evidence giving rise to resulting proof to the full extent of their legal efficacy. Concluding then, that the presumption of innocence is evidence in favor of the accused introduced by the law in his behaif. See Coffin, 156 U.S. at 460.

In the instant case, it's undisputed that the Government failed to present evidence that showed Mr Brown had knowledge of his status as held in Rehaif, because the Sixth Circuit Court of Appeals relieved the Government of its burden to do so years ago. See Olender, 338 F.3d at 637(Sixth Circuit holding that mens rea does not apply to the status element); also, 16-cr-20143 ECF 22. It's undisputed that the jurors was not instructed to find that Mr Brown had knowledge of his status. See 16-cr-20143 ECF 55. Therefore, it's undisputed that Mr Brown presumption of innocence has not been overcame, and he must be acquitted. See Coffin, 156 U.S. at 59; Agnew, 165 U.S. at 51.

Consequently, an innocent man has been incarcerated for nearly four years in violation of the Due Process Clause of the U.S. Const. V. Amend. See In re Winship, 397 U.S. at 363-65. Mr Brown raised this issue in his argument in the amended 2255 motion, see 18-cv-02568 ECF at pp. 39-42, and included this claim and argument on appeal, see Appellate # 20-5090, both the District Court and Sixth Circuit Court ignored this issue. See Appendix A+B.

C

Mr Brown also argued that this Court decision in Rehaif applies retroactive to cases on collateral review citing Teague v. Lane, 489 U.S. 288, 310. See 18-cv-02568 ECF 37 at 39-42; Appellate # 20-5090 ECF 6 at 24-26. Mr Brown showed that the new rule announced in Rehaif prohibits a certain category of punishment for a class of defendants because of their status of offense. Id. Both the District and Circuit Courts ignored this argument. See Appendix A at pp. 8; Appendix B at pp. 13-14.

More particularly, Rehaif is a new rule of substantive law because it is a new rule of statutory law that clarifies that courts have, until the issuance of the Rehaif rule, construed 922(g) too broadly, in violation of the seperation of powers, to criminalize conduct that Congress did not, in fact, criminalize. In other words, the Rehaif rule alters the range of conduct or the class of persons that the law is understood to punish. See Welch v. United States, 136 S.Ct. 1257, 1264. It does so by narrowing the previously understood scope of a criminal statute by interpreting its terms. Id. at 1265. And new substantive rules of statutory law are retroactively applicable on collateral review to the same extent that new substantive rules of constitutional law are. Indeed, Welch teaches that the Supreme Court does not distinguish between the retroactivity of new substantive rules of law that are statutory in nature and that of those that are constitutional in nature. See Id. at 1264-65.

The Suspension Clause - as demonstrated by Bailey, 516 U.S. 137, 116 S.Ct. 501, 133 L.Ed. 2d 472, and Bousley, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed. 2d 828- requires that this retroactivity applies with equal force to cases on collateral review. Indeed, the Supreme court has explained that "a conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void." See Montgomery v. Louisiana, 136 S.Ct. 718, 731.

It's no disputing the fact that Mr Brown conviction and sentence is erroneous and contrary to the law in light of Rehaif, as the Government entirely failed to prove an essential element of the charged crime, in violation of a substantive rule.

III

The lower courts are fully aware of this Court decision held in In re Winship and the presumption of innocence that's attached to the accused, in fact, the cases are legion, but for the sake of conserving time and space Mr Brown cites only two. See Burton v. Bock, 187 Fed. Appx. at 471; Thomas v. Stephenson, 898 F.3d at 698. These facts leaded Mr Brown to concluded that he's being prejudiced from evidence of the alleged theft that allegedly occurred 15 months prior to the charged date in the indictment, and the alleged shooting that allegedly occurred at least an hour prior to finding the firearm at issue. See Appendix A + B.

As Mr Brown showed in his amended 2255 motion, the alleged theft and shooting was inadmissible because the Government failed to give pre-trial notice and offer the evidence for a permissible purpose under Fed. R. Evid. 404(b). See 18-cv-02568 ECF at pp. 18-22. Furthermore, Mr Brown was never indicted for the alleged theft, and the indictment for the alleged shooting was dismissed for a lack of prosecution in state court. Moreover, there's no confirmed connection between the alleged shooting and the firearm at issue. No fingerprints, no balistics report, no shell casing, no witness testified to seeing Mr Brown shooting, and Mr Brown was nowhere near the firearm when it was found, in fact, Mr Brown surrendered himself to authorities days later after discovering there was a warrant for his arrest. Taking those facts into consideration, it's reasonably doubtful that Mr Brown actually possessed the firearm or that the firearm had been fired.

Now that this Court has held that the Government should have proved that Mr Brown had knowledge of his status during his trial, Rehaif, 139 S.Ct. at 2200, the evidence in this case is not only insufficient, but shows that Mr Brown is factually innocent, because his presumption of actual innocence has not been overcame, due to the fact that the Government did not present any evidence in support of the essential element and the jurors was not instructed to find the essential element.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: January 20, 2021