ORIGINAL

No. 20-7330

In the Supreme Court of The United States

James M. Lloyd III – Petitioner

VS.

United States of America – Respondent(s)

The United States Court of Appeals for the Fourth Circuit

James M. Lloyd III

5608 Wescott Rd.

Columbia, SC 29212

803-477-8129

QUESTIONS PRESENTED

1. Whether petitioners constitutional right to due process and his constitutional right to, "decide to proceed to trial or, plead guilty" was "denied" because, the district court as well as, petitioner's trial counsel failed to, inform petitioner before trial or, during jury instructions of, the "essential element" of the offense to, convict him of the § 922(g) offense and, that this type of error – this denial of due process – is a structural error that, requires the vacatur of petitioners trial and conviction. Was this error a structural error, and did this error at trial affect petitioners substantial rights?

2. Was the Court of Appeals for the Fourth Circuit in error when, it invoked that, they could not decide on the merits of petitioner's Actual Innocence Claim of his § 2241 motion due to, there "lack of jurisdiction" over his claim and, refused petitioner to be appointed counsel, even though petitioner is currently confined and incarcerated within the District of South Carolina and, this denial by the Fourth Circuit Court of Appeals to, challenge the validity of his underlying conviction. Were the courts in error?

3. Was the Grand Jury Indictment "Insufficient and defective" when, it did it not give the "true nature and, full notice" of, an "essential element" of the charged offense and, the grand jury was not "informed," as well as, the petitioner of "all the essential facts" constituting the § 922(g) charged offense. The Grand Jury "never" got to "vote" or hear of, the "omitted essential element" which, was missing from the charged offense. Did this violate the petitioners Due Process?

4. Did the Rule 29 Judgement of Acquittal at petitioners' trial and, the blanket denial that, it did not "rise to the level of affecting petitioners' substantial rights." Under this "New Rehaif" standard which, relates back to petitioners original § 2255 motion which, was denied by the District judge. Was the District Court in error?

LIST OF PARTIES

Petitioner- James M. Lloyd III

Respondent- The United States of America

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STATUES AND RULES

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

[ ] 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,
[✓] 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,
[✓] 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

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

The date on which the United States Court of Appeals decided my case was 9/25/20.

[✓] 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

United States Constitution Amendment V, provides pertinent part:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

United States Constitution Amendment VI, provides pertinent part:

"To be informed of the nature and cause of the accusation."

United States Constitution Amendment XIV, provides pertinent part:

"No state shall make or enforce any law which shall abridge the privileges or, immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property, without due process."

Title 18 United States Code, Section 922(g)1, 924(a)(2) provides pertinent part:

A defendant having been convicted of a crime punishable by imprisonment for a term exceeding 1 year, did knowingly possess, in and affecting interstate and foreign commerce.

Title 18 United States Code, Section 2461(c) Provides pertinent part:

A person shall forfeit any firearm and ammunition involved in the commission of the offense.

STATEMENT OF THE CASE

Petitioner was tried before a jury in 2014 and 2015 in the United States District Court for the Middle District of Georgia of felon in possession of a firearm. Petitioners first trial ended in a hung jury. His second trial petitioner was found guilty of violating U.S.C. § 922(g)1.

On May 13, 2014 the appellant was indicted on, one count of gun possession. The petitioner proceeded to a trial by jury and, was found guilty on March 4, 2015. On June 9, 2015 petitioner was sentenced to a term of 96 months (8 years) imprisonment and (3) years supervised release.

The judgement was handed down three days later on June 12, 2015. A timely notice of appeal was filed. Petitioner subsequently filed an appeal with the United States Appeal of the Eleventh Circuit. Court of Appeals which was denied on September 21, 2016.

The petitioner, then on August 11, 2017 filed a motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. 2255. On November 1, 2018 the order dismissing the petitioners § 2255 motion was handed down by the District Court. On November 11, 2018 the petitioner filed a motion pursuant to, Fed. R. Civ P.59(e) asking the District Courts to address specific questions about, "Giglio/Brady material evidence" found on the day of, Petitioners arrest. "A black cell phone" and, "2,000 dollars in cash." Petitioners personal effects that were never addressed during, "either of his two trials" that, took place or, "seen" by the "jury nor grand jury."

On November 7, 2019 the petitioner filed an application for leave to file a successive motion to vacate, set aside, or correct the sentence. On December 5, 2019 the Eleventh Circuit Court of Appeals denied the motion on the grounds that, "Eleventh Circuit Case Law" foreclosed on, a successive motion and such a claim of "Rehaif" could not, be brought in their District Court or, ruled on by the merits.

On March 25, 2020 the petitioner filed a § 2241 motion in the District of South Carolina where, petitioner was currently being held. Petitioners § 2241 motion was denied on September 25, 2020 by the Fourth Circuit Court of Appeals without, the District Courts ruling on the merits of his motion.

REASONS FOR GRANTING THE PETITION

I AND II

The Constitutional Guarantees of Due Process and The Right to be "informed" that, under U.S.C. § 922(g)1 which, the Supreme Court has already expressly "required" the government, to prove "all essential facts" constituting the offense charged and, "must" be "plain, concise, and written in the charged Indictment." This "New Rehaif Standard" demands that, the government prove that, the defendant knew his status beyond a reasonable doubt to the jury. Rehaif Vs. United States, 139 S. ct. 2191 (2019).

This "essential element" was "never" charged in the petitioners "Insufficient Indictment." This "essential element" was missing and "omitted" from petitioner's charged offense. The "grand jury" never got a "chance" to hear or, more importantly "vote" on this "omitted element" and, the petitioner was "never informed" by his counsel nor, by the courts before trial or, during trial that, this "essential element" was "required" to, prove this offense.

A trial does not qualify as "intelligently entered into" unless a criminal defendant "first" receives "Real Notice" of the "True Nature" of the charges against him. This is the first and most universally recognized requirement of "Due Process." Id. (citing, Smith Vs. O. Grady, 312 U.S. 329, 334 (1941)) Similar, in Henderson Vs. Morgan, 426 U.S. 637, 645 (1976). The Supreme Court invalidated a "guilty plea" to second degree murder where, the defendant was "not informed" of the "Mens Rea requirement." Such a plea, the court held, could "not" support a judgment of guilt unless it was "voluntary in a Constitutional sense" and, the plea "could not" be voluntary i.e. An "intelligently admission" that, he committed the offense, "unless" the defendant received a "REAL NOTICE OF THE TRUE NATURE OF THE CHARGED OFFENSE against him." Id. At 645-46. The court "assumed the prosecutor" had "overwhelming evidence" of the defendant's guilt.

Not even the "defendants' admission" that, he killed the victim could "substitute" for a finding or, "Voluntary admission" that, he had the "requisite intent." Surely; a defendant who, "stipulates and, is not advised by counsel nor, the courts" of, the "omitted essential element" of the charged offense before, he decides to go to trial. Petitioner has the right to, "decide his or her own fate." Furthermore petitioner "tried twice" to, fire his counsel before his trial started but, was denied by the courts. "Plea-out or Trial." This "Choice" is the "defendants" constitutional right to decide. "His alone."

Petitioner had a constitutional right to be "Totally Informed" of the "essential elements" that, "constitutes the charge offense" before, deciding to, proceed to trial and, the petitioner could not make an "Intelligent, Informed Decision" about his "life, freedom and liberty." Petitioner was "denied" his constitutional right of "CHOICE." United States Vs. Gary, 954 F. 3d 194 (4th Cir. 2020) S. ct. At 1907-08 (citing Arizona Vs. Fulminate, 499 U.S. 279, 310, 111 S. ct. 1246. 113 L.Ed.2d 302 (1991)) Structural errors are "defects in the constitution of trial mechanism which, defy analysis by "harmless error" standards, fulminate, 499 U.S. at 309. 111 S. ct. 1246 and "deprives defendants of basic protections without which, a "criminal trial" cannot reliably serve its function as a vehicle for determination of "guilt or innocence" .... and no criminal punishment may be regarded as fundamentally fair.

First the petitioner was "denied the right to be informed" of the "required essential mens-rea element" of the charged offense. "Before trial and during jury instructions."

Second; petitioner was denied the constitutional right to, object to the "omitted essential element" and, "mount a defense." Petitioners right to "challenge" this required essential element during his trial was, "taken away from him" because, he was "never informed" of this "essential element" during trial which, had to be proven by the government to the jury beyond a reasonable doubt. Petitioner had the constitutional right to "choose" to, accept plea if, he had been "advised by his counsel or the courts" that, the "essential element" which, was "omitted" could be proven by the USA attorney and, trial would have been an uphill battle.

No matter what "choice" the petitioner had decided to make. This "decision" was, "his alone to make" and, it was taken away by this "Structural Error" during petitioner's trial. Petitioner "did not" and "could not" make an "Informed, Intelligent, decision" before choosing to proceed to trial.

Petitioners argument is supported by the U.S. Supreme Court long-held view that, there is "a special category of forfeited errors" that, "can be corrected," "regardless of their effects on the outcome and, that "not every case" does a defendant have to, make a "specific showing" of prejudice to satisfy the affecting substantial rights prong.... "Olano, 570 U.S. at 735. The Fourth Circuit also; recognized this language refers to "Structural Errors." United States Vs. David, 83 F.3d 638, 647 (4th Cir.1996); See also United States Vs. Marcus, 560 U.S. 258, 263 (210) (certain "structural errors" might affect substantial rights regardless of their actual impact on an appellant's trial); United States Vs. White, 405 F.3d 308, 221 (4th Cir.2005). (Olano recognizes a "special category of unpreserved errors... that may be noticed "regardless of their effect on the outcome"). Such errors are referred to, as "structural" because they are, "fundamental flaws" that undermine the structural integrity of a criminal tribunal. See Vasquez Vs. Hillery, 477 U.S. at 263-64.

As the Fourth Circuit remarked in United States Vs. Ramirez Castillo, 748 F.3d 205, 212-13 (4th Cir.2014). The Due Process clause of the Fifth Amendment and jury trial guarantee of the Sixth Amendment "require criminal convictions to rest upon a jury determination" that, the defendant is guilty of "EVERY ELEMENT" of the crime with which, he is charged, beyond a reasonable doubt. "United States Vs. Gaudin, 515 U.S. 506, 509-10, 115 S. ct. 2310, 132 L. Ed.

2d 444 (1995). The right to a trial by jury "includes of course, as its most important element, the right to, have the jury, rather than the judge, reach the "requisite finding of guilty." Sullivan Vs. Louisiana, 508 U.S. 275, 277, 113 S. ct. 2078, 124 L. Ed. 2d 182 (1993) (citing Sparf Vs. United States, 156 U.S. 51, 105-06, 15 S. ct. 273, 39 L. Ed. 343 (1895)); see also United States Vs. Muse, 83 F.3d 672, 679 (4th Cir. 1996) (explaining that it is a "fundamental principle that, if a defendant avails himself of his Sixth Amendment right to trial by jury only the jury can reach the requisite finding of guilty" (internal quotation marks omitted)). When a defendant has "not" "knowingly, voluntarily and intelligently waived his or her right to a trial by jury," see Fed R. Crim P. 23(a); United States Vs. Boynes, 515 F.3d 284, 287 (4th Cir.2008), a court may not enter judgment of conviction "no matter how over whelming the evidence," Sullivan, 508 U.S. at 277; see also United States Vs. Martin Linen Supply Co., 430 U.S. 564, 572-73, 97 S. ct. 1349, 51 L. Ed. 2d 642 (1977).

As the Supreme Court has noted, "[T]he right to have a jury make the ultimate determination of guilt has an impressive pedigree. "Gaudin, 515 U.S. at 510. The jury trial guarantee embodied in the Sixth Amendment "reflect[s] a fundamental decision about the exercise of official power- a reluctance to entrust plenary powers over the life and liberty of the citizen to, one judge or group of judges. "Duncan Vs. Louisiana, 391 U.S. 145, 156, 88 S. ct. 14444, 20 L. Ed. 2d 491 (1968). In addition to the jury trial's historical underpinnings, "[t]he more modern authorities... also confirm that, the jury constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence. "Gaudin, 515 U.S. at 514 (internal citations omitted)."

United States Vs. Jinwrights, 683 F.3d 471, 479 (4th Cir.2012) (explaining that "[a] court runs afoul of the Fifth and Sixth Amendments'] protection when it issues an instruction that, relieves the government of its burden of proof with respect to an element of a charged offense").

The courts told the jury that, they did not have to prove the "Mens Rea element" of the offense which intern "interfered with the jury's determination on the predicate element of § 992(g) charge. Petitioners counsel did not object which, was ineffective assistance of counsel. Petitioner was prejudice by his counsel's failure to object because, the error here was "Structural." The effect on petitioner's trial "cannot" be gauged or estimated. Because of the importance of the right of Due Process and the dangers presented by the Fourth Circuit to, deny indigent defendants and deprive them of their Constitutional-protected interest to, be heard and, protected against arbitrary practices, this court should grant certiorari to clarify these issues.

III

Rule-29

Judgement of Acquittal-Rule 52(b) intern allows Plain-error review. Petitioner presented a general motion of sufficiency of the evidence. This short exchange "PRESERVED" all possible challenges to the "sufficiency of the evidence" including the "Post Rehaif" argument that, the government "failed" to prove that, petitioner knew his status. A specific argument waives issues not presented. General motions preserve every objection. Petitioner's second trial judge denied his rule 29 motion and, simply "adopted" the petitioner's first trial judge's rulings.

Before trial; petitioner objected to, the insufficiency of the evidence as required by Rule 12(b)(3)(B)(V).

The accumulative errors of the courts denying petitioner's Judgement of Acquittal due to, the insufficiency of the evidence along with the "REHAIF STRUCTURAL" error complied with courts "refusal" to, call a "mistrial" due to, "juror's premature deliberation." Petitioners right to, Giglio/Brady evidence was also violated by the government during trial. The USA attorney along with petitioner's counsel "hid and concealed" "vital evidence of, a black-cell phone on petitioner's waistline" during his arrest and, "omitted" evidence of $2,000.00 in currency "not recorded" on the "booking/intake report" which, the government asserted was not a part of "their discovery." The government "claimed" that, the booking/intake report, of these items was part of some "Internal Document" that, was "not given to them by the arresting police department." Even though the government "took over the petitioners state case." The government "should or should have known" that, this "evidence" existed. The government relied on the fact that, the petitioner "knew" before trial of, this evidence and, his counsel should have gotten the report with due diligence. True indeed counsel was ineffective for "not" obtaining this booking/intake report but, this does "not avail" the USA attorney of "their duty" to, "disclose" "Giglio/Brady material evidence" during discovery. Petitioners counsel "refused" to obtain this evidence, even though she was told to do so, by the petitioner. The jurors "NEVER" got to hear or, "lay eyes" on this "intentionally hidden evidence." Petitioners Due Process was violated at trial by the government and, only through several F.O.I.A request was petitioner able to even assert this violation after, trial of Giglio/Brady violation in petitioners § 2255 motion. Only to be denied that, the courts couldn't establish "when the evidence was found or, who found it?" Even though the "material evidence" was "recorded" the "very same day" of petitioner's arrest.

The arresting officer "purposely omitted" the evidence of these items from his "initial" report which, was a "summary report" and, he "never" wrote or, "admitted to, finding the "black-cellphone which, "somehow" "MAGICALLY APPREARED." Along with $2,000.00 in cash that, was "omitted" in the "suppressed" booking/intake report.

Only through the petitioners filing F.O.I.A request did, petitioner get the "bonding paperwork" which, "showed" "conclusively" the petitioner "did in fact" possess these items at the time of his arrest but, the police report "did not" "list" or, even "speak about these items." The booking/intake report "only" reflected the "black-cell phone that, was "attached to the petitioner's waistline" at, the time of the "chase and arrest." The arresting officer did a "Terry Frisk" for "weapons" and there is "no way" he "did not" discover $2,000.00 in cash and petitioner's black-cell phone. There is "no other police reports" by, the "other officers" on the scene according to the government. "No other officer" "reported" finding, "$2,000.00 in cash and, a black-cell phone." So "where" did this evidence come from? The District Court "did not" want to know. No "hearing" was granted and, the officer who answered the F.O.I.A request stated: "I do not know why money was, not documented on the day of your arrest and, I do not want to speculate as to, why it was not recorded." The arresting officer at both of petitioner's trials "Lied" about what "items" he really found on the day of petitioner's arrest. "Twice he committed perjury" to, the "courts and the jury." Petitioner's fingerprints were "NEVER" found

on the "alleged weapon" and, "NONE" of the "arresting officers" at the scene "testified" to, seeing the petitioner reaching for a weapon as, "alluded to" by the arresting officer. The "Policce Dash Camera" "did not" show petitioner "dropping or throwing the weapon." "Still; to this very day." The USA attorney for the government has "ignored" "Two F.O.I.A request" to release the "BODY CAMERA FOOTAGE" of petitioner's arrest on June 24, 2013 or, the BOOKING/INTAKE VIDEO" of petitioner's "booking process" when, he "arrived at the County Jail."

Petitioner has "even tried" to, "enlist" the help of, his presiding trial judge the Honorable: Leslie J. Abrams, as well as the Appeals Court for the Eleventh Circuit to, acquire this "vital" evidence to, "no avail." This evidence is "material evidence" and, "would prove" petitioner's innocence "conclusively." "All these errors" combined at trial denied the petitioner of his constitutionally secured right to, a fair and impartial trial. The court should therefore grant certiorari to endorse the principle that, individuals must not be subject to risk of conviction based on their ethnic background, or their prior arrest record.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James M. Lloyd III

Date: 01/18/2021