

No. ____

October Term, 2020

IN THE
Supreme Court of the United States

JAMES INNOCENT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

This Court held in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), that in a prosecution under 18 U.S.C. §§ 922(g), 924(a)(2), the government must prove not only that the defendant knew he possessed a firearm, but also that he knew he belonged to the relevant category of persons banned from possessing a firearm. Recently this Court, in *Greer v. United States*, 19-8709 (Jan. 8, 2021), issued a writ of certiorari to the Eleventh Circuit to determine whether the Eleventh Circuit properly relied on matters outside the trial record to determine whether a finding of plain error under *Rehaif* required a reversal of the conviction. Mr. Innocent raises the exact same question as the petitioner in *Greer*.

The question presented is:

Whether when applying plain-error review based upon an intervening United States Supreme Court decision, a circuit court of appeals may review matters outside the trial record to determine whether the error affected a defendant's substantial rights or impacted the fairness, integrity or public reputation of the trial?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED CASES

United States v. Innocent, No. 18-cr-60224-KMM (S.D. Fla.)

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	i
INTERESTED PARTIES	ii
TABLE OF AUTHORITIES	iiiv
PETITION FOR WRIT OF CERTIORARI	1
OPINION BELOW.....	2
STATEMENT OF JURISDICTION	2
STATUTORY AND OTHER PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT	5
I. This Court recently issued a writ of certiorari to the Eleventh Circuit in <i>Greer v. United States</i> , 19-8709 (Jan. 8, 2021), on the question of whether the Eleventh Circuit could beyond the trial record to determine whether an error pursuant to <i>Rehaif v. United States</i> , 139 S. Ct. 2191 (2019), met the criteria for plain error relief. Mr. Innocent’s case raises the exact same issue where the Eleventh Circuit acknowledged that there was <i>Rehaif</i> error in Mr. Innocent’s trial and conviction, but then looked beyond the trial record, at the “entire record,” to hold that Mr. Innocent could not meet the third and fourth prongs of the plain error analysis.....	5
CONCLUSION.....	7
APPENDIX	
Decision of the Eleventh Circuit Court of Appeals, <i>United States v. Innocent</i> , No. 19-10112, 977 F.3d 1077 (11th Cir. Oct. 8, 2020)	A-1
Judgment in a Criminal Case <i>United States v. Innocent</i> , No. 18-cr-60224-KMM (S.D. Fla Jan. 8, 2019).....	A-18

TABLE OF AUTHORITIES

Cases:

Greer v. United States,

No. 19-8709 (Jan. 8, 2021) i, 5, 6

Rehaif v. United States,

139 S. Ct. 2191 (2019) i, 4, 5, 6

United States v. Greer,

798 Fed. App’x 483 (11th Cir. 2020) 5

United States v. Innocent,

977 F.3d 1077 (11th Cir. 2020) 4, 6

Statutory and Other Authority:

U.S. Const., amend. V 2

18 U.S.C. § 922(g) i

18 U.S.C. § 922(g)(1) 3

18 U.S.C. § 924(a)(2) i

18 U.S.C. § 924(c)(1)(A)(i) 3

18 U.S.C. § 3742 2

21 U.S.C. § 841(a)(1) 3

21 U.S.C. § 841(b)(1)(D) 3

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1291 2

Sup. Ct. R. 13.1 2

Part III of the Rules of the Supreme Court of the United States 2

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**On Petition for Writ of Certiorari to the
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PETITION FOR WRIT OF CERTIORARI

Mr. James Innocent, respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 19-10112 in that court on October 8, 2020, *United States v. James Innocent*, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on October 8, 2020. This petition is timely filed pursuant to Sup. Ct. R. 13.1.¹ The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provision:

U.S. Const., amend. V:

No person shall be . . . subject for the same offence 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.

¹ On March 19, 2020, this Court extended the deadline for filing all petitions for writ of certiorari to 150 days after the decision in the lower court.

STATEMENT OF THE CASE

On August 10, 2018, a federal grand jury in Broward County, in the Southern District of Florida, filed a three count indictment against James Innocent charging him with possession with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(D) (Count 1); possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count 2); and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count 3). (DE 1). The indictment also contained a forfeiture provision. Count 2 of the indictment alleged in pertinent part, that:

On or about June 11, 2018, in Broward County, in the Southern District of Florida, the defendant, James Innocent, having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1).

(DE 1).

A jury trial began on October 9, 2018. (DE 33). At the conclusion of the two day trial, the jury returned verdicts of guilty as to all three counts. (DE 39). Before sentencing, Mr. Innocent filed a motion for downward *Booker* variance based on overrepresentation of criminal history category and/or a downward *Booker* variance so that his sentence would not be greater than necessary “to achieve the goals of sentencing.” (DE 50:4). In the motion, Mr. Innocent requested a total sentence of 218 months. (DE 50:4,10). On December 18, 2018, the district court sentenced Mr. Innocent to 300 months imprisonment as to Count 1; 120 months imprisonment as to Count 2, to run concurrent to each other; and 60 months imprisonment as to Count

3, to run consecutive to Counts 1 and 2; followed by five years of supervised release as to Counts 1 and 3 and three years supervised release as to Count 2, to run concurrently with Counts 1 and 2. (DE 55). Mr. Innocent timely filed a notice of appeal. (DE 56).

On appeal, Mr. Innocent argued that this Court's intervening decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), required a reversal of his conviction. Reviewing for plain error, the Eleventh Circuit acknowledged that *Rehaif* demonstrated error in Mr. Innocent's trial in that the jury was not instructed and the jury did not find that Mr. Innocent knew he belonged to the class of individuals prohibited from possessing a firearm by federal law. The Eleventh Circuit further acknowledged that *Rehaif* made the error plain. However, the Eleventh Circuit looked at the entire record including matters outside of the trial to determine whether reversal was warranted. *United States v. Innocent*, 977 F.3d 1077 (11th Cir. Oct. 8, 2020). Specifically, the Eleventh Circuit looked at Mr. Innocent's criminal record which was contained in the presentence report prepared by the probation office after his conviction but prior to sentencing as the name of the report suggests. *Id.* at 1083. The Court focused on the number of prior felony conviction and the length of the sentences to conclude that Mr. Innocent could not meet his burden of proving that reversal was required on plain error review. *Id.*

REASONS FOR GRANTING THE WRIT

- I. This Court recently issued a writ of certiorari to the Eleventh Circuit in *Greer v. United States*, 19-8709 (Jan. 8, 2021), on the question of whether the Eleventh Circuit could go beyond the trial record to determine whether an error pursuant to *Rehaif v. United States*, 139 S. Ct. 2191 (2019), met the criteria for plain error relief. Mr. Innocent's case raises the exact same issue where the Eleventh Circuit acknowledged that there was *Rehaif* error in Mr. Innocent's trial and conviction, but then looked beyond the trial record, at the "entire record," to hold that Mr. Innocent could not meet the third and fourth prongs of the plain error analysis.

In *Greer v. United States*, 19-8709 (Jan. 8, 2021), this Court issued a writ of certiorari to the Eleventh Circuit Court of Appeals on the following issue:

Whether when applying plain-error review based upon an intervening United States Supreme Court decision, a circuit court of appeals may review matters outside the trial record to determine whether the error affected a defendant's substantial rights or impacted the fairness, integrity, or public reputation of the trial?

Mr. Greer was convicted, following a jury trial, of being a previously-convicted felon in possession of a firearm. His conviction was affirmed by the Eleventh Circuit Court of Appeals in an unpublished opinion. *United States v. Greer*, 753 Fed. App'x 886 (11th Cir. 2019). However, this Court vacated that judgment and remanded the matter back to the Eleventh Circuit in light of its decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019). On remand, the Eleventh Circuit acknowledged that there was error that was plain in light of this Court's decision in *Rehaif*. See *United States v. Greer*, 798 Fed. App'x 483, 486 (11th Cir. 2020). However, reviewing the "entire

record,” including prior convictions listed in the presentence report, the Eleventh Circuit held that Greer could not prove that the error affected his substantial rights or that the error “affected the fairness, integrity, or public reputation of his trial.” *Id.* at 485, 486.

Here, Mr. Innocent was also convicted, following a jury trial, of being a previously-convicted felon in possession of a firearm and ammunition. On appeal, Mr. Innocent argued, inter alia that his conviction should be vacated in light of this Court’s intervening decision in *Rehaif*. As in *Greer*, the Eleventh Circuit agreed that there was error that was plain in light of *Rehaif*. See *United States v. Innocent*, 977 F.3d 1077, 1082-1083 (11th Cir. 2020). Also as in *Greer*, the Eleventh Circuit looked to matters beyond the trial record to determine whether Mr. Innocent could meet the third and fourth rings of plain error review. *Id.* Specifically, the Eleventh Circuit focused on Mr. Innocent’s criminal record which was contained in the presentence report prepared post-trial by the probation office. After consulting these matters outside of the trial record, the Eleventh Circuit held that Mr. Innocent had failed to meet his burden under the plain error analysis to show “a reasonable probability that a jury could conclude he lacked the knowledge *Rehaif* requires.” *Id.* at 1083. Because Mr. Innocent’s petition raises the exact same question as in *Greer*, this Court should grant Mr. Innocent’s petition and hold his case in abeyance until this Court decides *Greer v. United States*.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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March 5, 2021

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