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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

JULIA ANN POFF, PETITIONER

VS.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR REHEARING ON

WRIT OF CERTIORARI

TO UNITED STATES COURT OF APPEALS FOR THE

FIFTH CIRCUIT

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TO THE HONORABLE JUSTICES OF THIS COURT:

COMES NOW, Julia Ann Poff, pro se and respectfully requests this Honorable Court to reconsider the denial of her Writ of Certiorari. Ms. Poff received verbal notice on June 22, 2021 when she called the Court of Appeals checking the status of her other two (2) appeals still pending. The clerk told her it had been denied on June 16, 2021. However, the notice received on June 25, 2021 is dated June 14, 2021. There are serious mail issues where Ms. Poff is incarcerated and all legal mail is opened, read, and copied before the inmate receives it. In compliance with Rule 44, she now presents this Petition for Rehearing.

This denial shows that the words of the United States Constitution mean absolutely nothing and that the Government is involved in a big conspiracy - to get a conviction through any means necessary. With no accountability for law enforcement, prosecutors, and even Judges, this is why there is unjust in America. This is why we will continue to see innocent blood being shed and why the population of innocent people being incarcerated will continue to exceed 20%. Out of 150,000 federal inmates that is 30,000+ lives not including their families and children whose life is turned upside down in the blink of an eye. Ironically what goes around comes around and all the prosecutors and Judges will one day stand before the Ultimate Judge and have to plead their case just as Ms. Poff

Continues to plead hers, the question is will their pleads fall upon deaf ears just as hers has?

Our justice system is based upon money and power. What happened to ethics, integrity, and the truth? Ms. Poff was convicted on fraud, perjury, and threats. So this denial tells society and everyone this is OK.

1. It's OK for the prosecutors to create fraudulent videos;

2. It's OK for FBI agents to lie under oath;

3. It's OK for them to illegally seize and destroy exculpatory evidence;

4. It's OK for a Judge to waive a defendant's rights without their knowledge;

5. It's OK to threaten families and children;

6. It's OK for a Judge to ignore filings from someone fighting for their rights;

7. It's OK to intentionally deny medication from someone causing permanent damage to force or coerce them to plead guilty.

But yet all of this goes against other rulings from this Court from years ago, have they all been overturned how? This may be a bit emotional but put yourself in Ms. Poff's place fighting a wrongful conviction and seeking her freedom, and ask yourself how you would feel?

I. Due Process: Is There Such A Thing?

Going all the way back to 1896 this Court held:

> "Under the Due Process Clause of the Fifth Amendment a defendant may not be punished prior to the adjudication of guilt in accordance with due process of law." Bell v. Wolfish, 441 U.S. 520 (1979); Ingram v. Wright, 430 U.S. 651 (1977); Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963); and Wong Wing v. United States, 163 U.S. 228 (1896).

What has changed? Have these been overturned? Ms. Poff pled, "Not Guilty," on November 16, 2017 and was immediately punished by not being able to receive mail. Then when she denied the first plea agreement and filed her first Habeas Corpus the Government retaliated against her and filed a superseding indictment adding three (3) counts of 18 U.S.C. Section 924(c) to give her basically a life sentence. At her second arraignment, she again pled, "Not Guilty," then the Government attacked and threatened her family. She was also intentionally denied "Hydroxychloriquine," which is her medication for Systemic Lupus Erythematosus (lupus), she was diagnosed with in 2015. For 315 days she suffered daily in pain and agony without it. One morning she woke up in a severe flare with blisters covering both hands and she had to be taken to the emergency room. This punishment has caused her permanent damage. She now has Raynaud's Syndrome which is a complication of lupus, and lupus also attacked her heart, leaving her with Stage I heart disease and congestive heart failure. As a result she filed her second habeas corpus and the Government demanded she dismiss it. She refused their demand so again they retaliated and filed a second superseding indictment making their threats a reality by adding her husband to the indictment. At her third arraignment she again pled, "Not Guilty," and this time her punishment was no visitation rights with her husband and youngest son.

The Judge then denied her right to a fair trial by denying the funds that were requested to hire her own expert witnesses. But with the falsifying of her medical records, that was something the Government couldn't allow. Ms. Poff has NEVER seen a Psychiatrist while incarcerated, however on February 27, 2019 a diagnosis of "Borderline Personality Disorder," appeared on the records. At this same time is when the Government received

Ms. Poff's military records from the United States Navy. In 1993 after she was raped and attempted suicide, she was diagnosed with "Borderline Personality Disorder," to allow her discharge from the service. She has never received any treatment or received any follow-up care for this. So how did a diagnosis from 28 years ago become a "current" diagnosis and diagnosed by a medical doctor and not a Psychiatrist? To dispute this, the defence counsel requested funds to hire a psychiatrist to do an assessment but this request was also denied by the Judge. At this point her attorneys told her that "you will never get a fair trial and if you want to see your family again then you will have to take a plea deal, or the government will make you sit in detention until you do." At this point, she had been denied visitation for 12 weeks and her health had deteriorated so much she was in a wheelchair.

A plea agreement was done on Count 7 of the second superseding indictment, "Transportation of Explosives With the Intent to Kill, Injure, or Intimidate." To prove they were threatening her family, Ms. Poff made them add a statement to the plea agreement:

"(d) the United States agrees that the investigation of this case is complete and the United States

Will not prosecute additional family members."

This is not standard language in a plea agreement. There were also verbal agreements that the charges against her husband would be dismissed and that she would receive better medical care. The charges were dismissed but the medical care has been worse. Ms. Poff has not seen a Rheumatologist since April 2019 and has never received any breathing treatments that were ordered then.

In 1954, this Court held, "that a prisoner couldn't be convicted by the use of a confession or guilty plea obtained from him through physical or mental coercion." Leyra v. Denno, 74 S. Ct. 716. Has this case been overturned? Also what about Watts v. Indiana, 69 S. Ct. 1347 (1949); and Turner v. Pennsylvania, 69 S. Ct. 1352 (1949)?

Ms. Poff reminds this Court that she is filing pro se and per Erickson v. Pardus, 551 U.S. 89 (2007), it should be liberally construed. Anyone can see Ms. Poff's plea was coerced through punishment and the denial of medical care.

It is also a violation of due process to present fraudulent or fabricated evidence. Black's Law Dictionary defines fraud as:

"a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."

The long-settled rule has been the knowing use by the prosecution of false evidence or perjured testimony is a denial of due process. Mooney v. Holohan, 294 U.S. 103 (1935); and Giglio v. United States, 405 U.S. 150, (1972). The same rule applies if the prosecution allows false evidence to go uncorrected or allows the jury to be presented with a materially false impression. Napue v. Illinois, 360 U.S. 264 (1959); and Alcorta v. Texas, 355 U.S. 28 (1957). Other than 50+ years, what has changed, do prosecutors now have the ability to present fabricated evidence? Then they need to be held accountable and Ms. Poff's conviction vacated. The substantive component of the Due Process Clause "bars certain arbitrary wrongful government actions regardless of the fairness of the procedures used to implement them." Foucha v. Louisiana, 504 U.S. 71, (1992)(quoting Zinermon v. Burch, 494 U.S. 113 (1990)).

It's time again, that these prosecutors are held accountable for their actions. If they continue doing what they want, the next victim could be one of your family members. Never say never, because Ms. Poff never expected to be put in this situation either.

2. Statutory Construction: Does "intimidation" fall under a crime of violence and does it call for a cross-reference with attempted murder?

A "crime of violence" is a felony that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," or "by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 18 U.S.C. Section 924.

The crime Ms. Poff was forced to plead to, 18 U.S.C. Section 844(d) is an indivisible statute that contains alternative means of committing an offense. It is, therefore, subject to the categorical approach and is not a crime of violence as defined above. Alternative means are common in criminal statutes. "Leglislatures frequently enumerate alternative means of committing a crime without intending to define separate elements or separate crimes." Schad v. Arizona, 501 U.S. 624 (1991).

In United States v. Strange, 892 F. 2d. 1044 (6th Cir. 1989), the court described the alternative means provided in Section 844 (d) as being reflective of different degrees of seriousness.

1. Was there intent to kill?
2. Was there intent to injure?

3. Was there intent to intimidate?

The Strange court's analysis suggested that a statute, containing elements, might also include alternative means of satisfying those elements in ascending order of severity. Put another way, the alternative means of the statute were laid out from most to least serious to highlight the most significant means of satisfying the element and violating the law. As the Sixth Circuit explained, "Obviously, it makes a difference whether the conduct of the defendant represented a threat to persons or property. Similarly, it makes a difference as to whether injury or death occurred." id.

To determine let's look at the facts of this crime as documented in the Probation Officer's Second Addendum filed on November 15, 2019:

> "To acknowledge the sandpaper in the friction ignition mechanism of all three IEDs the defendant constructed were not the red phosphorous bearing striking surface required to light the safety matches and all three would not operate as the defendant intended."

The perpetrator of this crime intentionally used safety matches so there was no intent to kill or injure because that was impossible. That leaves only the intimidation element to determine, and the only court which has had to decide that factor has ruled that it does not meet the definition of a crime of violence. In United States v. Montoya, 486 F. Supp. 2d. 996 (D. Ariz. 2007), it stated:

> "The charged criminal acts, i.e., manufacturing a fake bomb and placing the device in a mailbox to be found by a United States Postal Service Employee which the defendant knew could not result in injury to another or himself is not a 'crime of violence,' and the acts alleged do not involve a crime of violence."

If Section 844(d) is a categorical offense, then the Court must look at the entire range of conduct criminalized by the statute then it would appear that 844(d) is not a crime of violence. Congress must have also agreed when in 2004 they passed the statute entitled, "False Information and Hoaxes," which specifically criminalizes the conduct at issue in this case. There was no element of this crime that involved the "use, attempted use, or threatened use of physical force" against the person or property of another because it was a hoax.

> "If neither serious bodily injury nor death occurs as a result of the hoax, as

was the case here, then the maximum term of imprisonment under the new statute would be 60 months or 5 years." See 18 U.S.C. Section 1038 (a)(1)(A).

The packages in this case don't even meet the statutory definition of an "Improvised Explosive Device (IED)," as defined in the Texas Penal Code 46.01 which states:

"a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using non-military components."

This makes her indictments defective and they should be dismissed. Looking at the same section of definitions, they do however meet the definition of a "hoax bomb" which states:

"a device that reasonably appears to be an explosive or incendiary device, or that by design, causes alarm or reaction of any type by an official of a public safety agency."

In the United States v. Keyser, 704 F.3d. 631 (9th Cir. 2012) case it states:

"the hoaxes covered under Section 1038(a)(1) will often result in actions including:

deployment of first responders, evacuations, hazardous materials units, S.W.A.T. teams, bomb squads, extensive investigations concerning the threat and more."

In this case, at the Governor's mansion only the maintenance workers were sent home and the tours for the day were cancelled. The device was inspected and "deemed not an explosive device." That is why this never made the news when it happened, because no one was ever in any danger unlike the Government wants the society to believe.

The Court clearly abused its discretion when it accepted the cross-reference of "attempted murder." "To be convicted of an 'attempt' of a federal crime, a defendant must: 1) have the specific intent to engage in the criminal conduct with which he is charged; and 2) have taken a substantial step toward commission of the offense that strongly corroborates his criminal intent." United States v. Murrell, 368 F. 3d. 1283 (11th Cir. 2004). In fact there has been only one other case in which Section 844 (d) was cross-referenced with attempted murder and that sentence was enhanced by the Fifth Circuit Court of Appeals and not the District Court. In United States v. Rankin, 487 F. 3d. 229 (5th Cir. 2007), the defendant sold a "real bomb" to an undercover ATF agent that told him she was going to use to kill her ex-husband. He guaranteed it would work and he knew it was going to be used for murder. The difference being a real bomb set to kill someone and a "fake bomb" that could only intimidate someone if even that. The District Court had only sentenced him to 51-months and the Government appealled. All other sentences under 844(d) have been 21-51 months. The appropriate guidelines were U.S.S.G. 2K1.3 which gives a base of 18 and then since it was the President you would apply U.S.S.G. 3A1.2(b) for Official Person (+6), then apply U.S.S.G. 3E1.1(a) for acceptance of responsibility of (-3) which resulted in a ~~so~~ score of 21. Ms. Poff has a criminal history score of 1, so the sentence should have been 37-46 months. Even 18 U.S.C. Section 871, "Threat to the President," the statutory maximum is 5 years or 60 months. Ms. Poff has already been forced to do 44 months with no good-time credits. If you add in time credits under the First Step Act, she has actually done over 70 from taking over 600 hours of classes.

Conclusion:

There may be a number at the top of this document but that number represents a person, a live and breathing human being fighting for her life. A famous person (Martin Luther King, Jr.) once said a Speech beginning with, "I have a dream..." Ms. Poff has a dream too and that is "not another innocent person will have to go through what her and her family has for the last five (5) years." Recent uproar in

America held a law enforcement officer accountable for the death of George Floyd, but when does that accountability reach the courts and prosecutors? These packages accomplished what they were designed to do... hurt the Poff family and stop the lawsuits that were being legally filed against a vindictive landlord who locked them out of their home for 41 days due to greed. It was ironic how the only two (2) Character letters for the Government were from these landlords. But when you read these two (2) letters exhibited in the Government's Response to the PSR, ask yourself these two (2) questions:

1. Why did a U.S. Marshal call him at the beginning of this investigation? These packages were sent to "Authority Figures," so why was a civilian contacted?

2. Why would a U.S. Marshal send ANYONE pictures of evidence on a cellphone?

These are questions that make a normal person question motives and sounds like an obstruction of justice. It's amazing how far someone will go to destroy another person's life but when does the Government step in to stop it? This injustice will no doubt be a best seller and an incredible movie, but how and when will it end? Ms. Poff knows that those who wronged her won't be punished in this lifetime and she has forgiven them for what she has been through but isn't it time her and her family stop being punished too?

Ms. Poff prays this Court will vacate her conviction and order her immediate release from custody.

John 8:32 - "The truth shall set you free."

Respectfully Submitted,

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