

Docket number

Supreme Court of the United States

Trent Slone,
Petitioner,

vs

United States of America,
Respondent.

On Petition for Writ of Certiorari to the United States Court of
Appeals
for the Seventh Circuit

Petition for Certiorari

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Question Presented

1. Does the presumption of innocence and the due process clause of the Fifth Amendment protect a defendant at a firearms violation sentencing when the government claims that the defendant possessed the firearm in connection with another offense—possessing drugs even though the defendant was acquitted of the drug possession charge?

2. Parties

1. Petitioner, Trent Slone.

2. Respondent, United States of America.

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The opinion of the United States Court of Appeals for the Seventh Circuit was decided March 10, 2021 in case No. 20–2721 and has not yet been reported in the Federal 3rd Reporter. A copy is reproduced in the Appendix.

Jurisdiction

The judgment and opinion of the Court of Appeals sought to be reviewed was entered March 10, 2021. No extension of time to file this petition for writ of certiorari was sought. Petitioner seeks to invoke this Court's certiorari jurisdiction under 28 USC § 1254 by filing this petition by first class mail within 90 days of March 10, 2021 and on or before Tuesday June 8, 2021.

Constitutional Provision Involved

Fifth Amendment

Amendment 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.

Sixth Amendment

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Statement of the Case

Trent Slone was charged with Possession with intent to distribute methamphetamine 21USC§841(a)(1) Count 1 and felon in possession of firearms 18 USC§922(g)(1) Count 2 (doc 11). At trial he was found not guilty of the drug charge and guilty of the firearms charge.

On December 5, 2019 Bureau of Alcohol Tobacco Firearms and Explosives agents broke down the door and searched (tr pg 100, 145 3//9/20) Sam Dillon's house at 1836 Johnson Street South Bend Indiana (tr pg 94 3/9/20). Trent Slone was not in Sam's house. (tr pg 101 line 1 3/9/20) Trent had lived in Sam's house for the three or possibly four years before October 27, 2019 (tr pg 29 3/10/20) Trent occupied a bedroom on the first floor right behind the kitchen, (tr pg 30 3/10/20) but everyone hung out in the basement. (tr pg 30 3/10/20) On October 27, 2019 Sam got enraged at Trent (tr pg 29 3/10/20). Trent was back with his girlfriend and Sam was trying to make a move on her. (tr pg 29 3/10/20) Sam told Trent to leave after Trent had sex with a girlfriend in one of the bed rooms off of the kitchen (tr pg 110 3/9/20). Shortly after Trent left Sam's house Trent's friends helped him move six truckloads of belongings out of Sam's house and into Victoria Brow's garage (tr pg 29-30 3/10/20) When Trent and his friends went to Sam's to get the rest of Trent's stuff the locks had

already been changed and Trent had to wait for Sam to get home from work to let them in. (tr pg 40 3/10/20). Before Thanksgiving 2019 Trent moved out of Sam's premises. (tr pg 112-113 3/9/20).

On December 5, 2019 ATF agent TJ Worthen was part of the entry team searching 1836 Johnson Street (tr pg 143-145 3/9/20) In the sleeping area of the basement a gun case caught agent Worthen's attention. (tr pg 147-148 3/9/20) The case contained a Jericho 941 handgun (tr pg 148 3/9/20) . ATF Task Force Officer Caleb Anderson located a purple rifle case on top of a clothing shelf or dresser (tr pg 150 3/9/20) The rifle case contained a Winchester model 94AE 30-30 caliber rifle (tr pg 151 3/9/20).

A black bag, referred to by agent Worthen as a shaving kit, was found on the basement floor by Task Force Officer Bayne Bennett (tr pg 154 3/9/20) The black bag contained plastic baggies which contained a total weight of 80 grams of methamphetamine (tr pg 189 3/9/20).

On December 20, 2019 agents searched Linda Hastings' red Chevy van and found a model M877 .367-Magnum Rossi revolver. Trent Slone was interviewed by ATF agent Lerch about the Rossi and other topics. In the interview agent Lerch said to Slone, "I know you touched it." and Slone responded, "Sure, absolutely. Somebody left it in the van and I put it away." He also said, "Well, he left it in the

Tahoe originally, so I just set it in the bag in the van.” (tr pg 45 3/10/20)

The jury found defendant not guilty of count 1 (possession of controlled substance with intent to deliver) and guilty of felon in possession of firearms (doc 35).

In connection with sentencing the government sought to punish the defendant for the commission of a crime when he had not been convicted of it by seeking to increase the offense level by 4 levels pursuant to guideline 2K2.1(b)(6)(B). Defendant objected (doc 50).

The government offered evidence that Cassandra Gienger took packages from South Bend to Fort Wayne for Trent Slone (tr pg 127-132 3/9/20) No guns were involved with those package deliveries in any way. Slone acknowledged that he served as a middle man between buyers and sellers of drugs. (tr pg 193 3/9/20). There was no showing that guns played any role in those introductions of buyers to sellers. At sentencing the district court overruled the objection to the four level enhancement (tr pg9-12 9/9/20) and imposed a sentence of 41 months imprisonment , 1 year supervised release , and a \$100 special assessment (document 71). The Seventh Circuit held: “Though he was acquitted of drug possession, sentencing courts may consider acquitted conduct provided that its findings are supported by a preponderance of the evidence. *See United States v.*

Watts, [519 U.S. 148, 154](#) (1997); *United States v. Holton*, [873 F.3d 589, 591](#) (7th Cir. 2017). There was more than enough evidence to meet that threshold here. “ *United States v Trent Slone* ____ F 3d ____ (20-2721) and affirmed.

Reasons for Granting the Writ

The presumption of innocence and the Fifth Amendment to the Constitution protects a defendant at sentencing from having the Court enhance defendant’s sentence because of another felony offense when the defendant has been acquitted of that other offense.

At trial the jury acquitted Trent Slone of Possession with intent to distribute methamphetamine 21 USC § 841(a)(1). At sentencing for possession of firearms (18 USC § 922(g) the government argued that his offense level should be increased because the firearms “facilitated another felony offense” Sentencing Guideline § 2K2.1(b)(6)(B). Defendant asserted that the acquitted conduct should not be used to enhance his sentence. The district court and the Seventh Circuit relied on *United States v Watts* 519 US 148, 117 S. Ct 633 (1997) to hold that acquittal was no barrier to finding that defendant engaged in “another felony offense.”

The presumption of innocence was embedded in the common law when the Republic was founded. Eighteenth Century barrister William Garrow summarized the concept with the phrase that the accused is “presumed innocent until proven guilty” Mueiler, Christopher B.; Laird Kirkpatrick (2009) *Evidence 4th ed.* Aspen (Wolters, Kluwere) ISBN 978-0-7355-7968-2 pp 135-34. The Universal Declaration of Human Rights article 11 states, “Every one charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all guarantees necessary for his defense.” The Due Process requirement that the presumption of innocence be included in jury instructions in a criminal trial was recognized in *Coffin v United States* 156 US 432, 15 S.Ct. 394, 39 Led 480 (March 4,1895) The failure to expressly include the presumption of innocence jury instruction violated due process and required reversal in *Taylor v Kentucky* 436 US 478, 98 S.Ct. 1930, 56 Led2d 468 (1978). In *Estelle v Williams* 425 US 501, 96 S.Ct 1691, 48 Led2d 126 (1976) the court observed “The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice. Long ago, this Court stated: ‘The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies

at the foundation of the administration of our criminal law.’ *Coffin v United States* 156 US 432, 15 S.Ct. 394, 39 Led 480 (March 4,1895) “

When Slone was acquitted of the drug charge, due process and axiomatic presumption of innocence applied to him. In the case *Nelson v Colorado* 581 US ____; 137 S.Ct. 1249 ; 15-1256 (2017) the court held that the presumption of innocence and due process require the refund of monetary penalties to a defendant once a criminal conviction under which the money was collected is set aside. Citing *Johnson v Mississippi* 486 US 578, 585 (1988). The presumption of innocence is fundamental .

In *United States v Watts* 519 US 148, 117 S.Ct. 633; 95-1906 (1997) the court held, “We therefore hold that a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence. “ The holding in *Watts* bypasses the presumption of innocence which attaches when a jury acquits.

Regardless of how the proof of other crimes at sentencing are established, the failure to honor the presumption of innocence violated due process. A variety of procedures have been suggested

for dealing with acquitted conduct: e.g *Jones v United States* 574 US ___(2014 case #13-10026) ; Erica K Beutler *A Look at the Use of Acquitted Conduct in Sentencing* 88 Journal of Criminal Law Criminology 809 Spring 1998. Certiorari should be granted to re-examine *Watts* and that case's failure to honor the due process presumption of innocence.

Conclusion

For the foregoing reasons This court should grant certiorari.

Respectfully Submitted,
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Appendix

Court of Appeals Opinion