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In The
Supreme Court of the United States

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JERRY DOUGLAS, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

—◆—
ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

—◆—
PETITION FOR WRIT OF CERTIORARI
—◆—

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Dated: June 23, 2021

QUESTION PRESENTED

Is a defendant entitled to a justification jury instruction on a charge of possession of ammunition in commerce by a felon when the defendant is acting to protect the safety of a minor child?

STATEMENT OF RELATED CASES

Counsel is unaware of any proceedings directly related to the case in this Court.

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NO. _____

**In The
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_____ **Term** _____

JERRY DOUGLAS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

**Petition for a Writ of Certiorari
To the United States Court of Appeals for the Fourth Circuit**

The Petitioner, Jerry Douglas, Jr., in the Middle District of North Carolina, pled not guilty to possession of ammunition in commerce by a felon, was found guilty of, and was sentenced for possession of ammunition in commerce by a felon. The petitioner filed a timely notice of appeal to the United States Court of Appeals for the Fourth Circuit. The United States Court of Appeals for the Fourth Circuit affirmed the decision of trial court. [Appendix 1a- 6a]. Petitioner respectfully asks this Court to issue a writ of certiorari to review the opinion of the Fourth Circuit Court of Appeals.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in this case is unpublished. The opinion is appended to this petition. [Appendix 1a-6a]

JURISDICTION

This important question justifies review by this Court whose jurisdiction is invoked under 28 U.S.C. § 1254(1).

Subject matter jurisdiction was conferred upon the United States District Court pursuant to, and in accordance with, Title 18 U.S.C. § 3231. The district court judgment was entered on July 9, 2020.

Subject matter jurisdiction was conferred upon the Fourth Circuit Court of Appeals pursuant to, and in accordance with, 18 U.S.C. § 3742(a), Title 28 U.S.C. § 1291. The opinion of the United States Court of Appeals for the Fourth Circuit was filed on May 13, 2021.

CONSTITUTIONAL PROVISION INVOLVED

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. United States Constitution, Amendment VIII.

STATEMENT OF THE CASE

A. Procedural History

Jerry Douglas was charged in a single count superseding indictment filed on July 30, 2019 in the Middle District Of North Carolina with possession of ammunition in commerce by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). (JA 7).

Douglas filed a motion to suppress evidence of bullet. (JA 21).

A hearing was held on Douglas' motion to suppress on December 9 and 11, 2019. (JA 44).

The district court denied Douglas' motion to suppress in a written order filed on December 13, 2019. (JA 186).

Douglas' case proceeded to a three day jury trial. The jury returned on December 18, 2020 a verdict of guilty of possession of ammunition in commerce by a felon.

Douglas was sentenced on July 2, 2020 to a term of one hundred and twenty (120) months imprisonment, three (3) years of supervised release, and a special assessment of \$100. (JA 627).

Judgment in a Criminal Case was entered on July 9, 2020. (JA 627).

Douglas filed Notice of Appeal on July 7, 2020. (JA 625).

The Fourth Circuit Court of Appeals affirmed the judgment of the district court in an opinion and a judgment filed on May 13, 2021.

B. Facts

Two North Carolina state probation officers on August 27, 2018 visited Douglas for a home visit. (JA 56, 57).

One probation officer noticed two firearms on the floor. (JA 60)

The officer handcuffed Douglas (JA 60, 61).

The other officer called for backup assistance. (JA 62).

A High Point, North Carolina police officer arrived on the scene and assisted in arresting Douglas. (JA 96).

The police officer found a red bandana, a bag of marijuana, a cigar with marijuana inside, and a green tipped bullet in Douglas' right pocket. (JA 96).

During the suppression hearing, the trial court found that Douglas resided on Madison Avenue in High Point. The owner of the house allowed Douglas to stay in a spare bedroom. (JA 187)

Douglas was not charged with the possession of the firearms on the floor; he was charged with the ammunition found in his right pocket.

Douglas testified on his own behalf.

Jerry Douglas got off of work about 7 p.m. on August 27, 2018. (JA 457).

He was staying on Madison Avenue in High Point, North Carolina. (JA 457).

Douglas got to the house about 8:15 pm. He did not have a key to the house. A female let Douglas into the house. There were kids in his room, the bedroom with the bunk beds. (JA 459).

Douglas stays on the top bunk. (JA 460).

Douglas was watching TV. About 10 minutes after he got to the house the youngest baby girl brought to Douglas a shell. There was one single shell. (JA 463).

Douglas took the shell from the child and placed the shell in his pocket. Douglas did this for the safety of the child. It was the safest thing that Douglas could do at the moment. (JA 464).

Douglas remarked "You know, a child can swallow a bullet at this age of the child that were talking about". (JA 465).

"... I saved the child's life, because who knows if I didn't take matters in my own hands and put the bullet in my pocket what the child could have did." (JA 465).

REASONS FOR GRANTING THE WRIT

- A. A justification defense involving the safety of a minor child is an important federal question that should be settled by the Supreme Court. The trial court denied Douglas' request for a justification jury instruction.

The Fourth Circuit Court of Appeals affirmed the four part test for jury instructions on a justification defense in a firearm case in United States v. Perrin, 45 F.3d 869 (4th Cir. 1995) and United States v. Mooney, 497 F.3d 397 (4th Cir. 2007)

The four elements of a justification defense jury instruction are:

- 1.) The defendant was under an unlawful and present threat of serious body injury or death.
- 2.) The defendant did not recklessly place himself in a situation whereby he would be forced to engage in criminal conduct.
- 3.) The defendant did not have a reasonable legal alternative but to engage in the criminal conduct and avoid the threatened harm.
- 4.) There was a direct casual relationship between the criminal conduct and avoidance of the threatened harm.

The Fourth Circuit in Mooney, *supra*, cites United States v. Bailey, 444 U.S. 394, 415 n.11, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980) in stating that congress enacts criminal laws against the common law background. "And it is equally clear that firmly entrenched in the common law is the justification defense." United States v. Mooney, 497 F.3d 397, 403 (4th Cir. 2007).

Douglas argues that the legal factors which warrant a justification defense jury instruction in an 18 U.S.C. § 922(g)(1) firearm case also warrant a justification defense jury instruction in an 18 U.S.C. § 922(g)(1) ammunition case, particularly involving the safety of a minor child.

Douglas argues that it is cruel and unusual punishment to allow a defendant to be sentenced under 18 U.S.C. § 922(g)(1) for ammunition when there is sufficient justification for the defendant to possess the ammunition without the trial court instructing the jury on a justification defense.

All four elements of a justification defense jury instruction were present in Douglas' case.

First, the danger a bullet posed to a small child was a present threat of serious body injury. Second, Douglas did not create the threat. Third, there was no reasonable alternative but for Douglas to take the bullet away from the child. The placing of the bullet in Douglas' pocket was mere temporary inadvertence. Fourth, there was a clear casual connection between Douglas taking temporary possession of the bullet and avoiding harm to the small child.

The Fourth Circuit discussed the four part test for a justification defense as to a firearm case in Douglas' case. United States v. Douglas, No. 20-4361, p. 4, 2021 [Appendix p. 4a].

The Fourth Circuit did not address the application of the four part justification defense test to the defense of the minor child. United States v. Douglas, No. 20-4361, pp. 4,5, 2021 [Appendix pp. 4a, 5a].

A justification defense is warranted when the possession of ammunition is necessary to protect the safety of a minor child.

CONCLUSION

Jerry Douglas, Jr. seeks that the United States Supreme Court issue a Writ of Certiorari to the Fourth Circuit Court of Appeals in order to address the question as to the circumstances under which a justification defense involving a third party is warranted.

Respectfully submitted

This the 23rd day of June, 2021.

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