No. 21-5505

IN THE SUPREME COURT OF THE UNITED STATES

MAURICE LAMONT DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

BRIAN H. FLETCHER
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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1. Petitioner contends (Pet. 8-12) that his conviction following trial for possessing a firearm as felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), should be vacated on the theory that the evidence was insufficient to establish that petitioner knew about his prior felony conviction. See Rehaif v. United States, 139 S. Ct. 2191 (2019). Petitioner argues in particular (Pet. 12) that his stipulation at trial that he had previously been convicted of a felony offense would not allow a rational jury to conclude that he was aware of it. The court of appeals correctly rejected that contention.

In Greer v. United States, 141 S. Ct. 2090 (2021), this Court observed that "[i]f a person is a felon, he ordinarily knows he is a felon." Id. at 2097. The Court accordingly explained that, "absent a reason to conclude otherwise, a jury will usually find that a defendant knew he was a felon based on the fact that he was a felon." Ibid. The court of appeals applied that logic to reject petitioner's sufficiency claim here. It noted that petitioner "stipulated that he was a felon," "d[id] not claim that he was ignorant of his status as a felon when he committed his [Section] 922(g) offense," and failed to "point to any evidence showing" such ignorance. Pet. App. 4a.

Petitioner errs in suggesting (Pet. 11-12) that another court of appeals would necessarily have granted relief. The two circuit decisions on which he relies both predate Greer and involved indictment- and trial-error claims, not sufficiency claims. See United States v. Medley, 972 F.3d 399 (4th Cir. 2020), reh'g en banc granted, 828 Fed. Appx. 923 (4th Cir. 2020); United States v. Maez, 960 F.3d 949 (7th Cir. 2020), cert. denied, 141 S. Ct. 2813, 141 S. Ct. 2814, and 141 S. Ct. 2838 (2021). Unlike the former type of claim, the standard for a sufficiency claim simply asks whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" after reviewing the defendant's stipulation "in the light most favorable to the prosecution." Jackson v. Virginia, 443 U.S. 307, 319 (1979). Moreover, even in the absence of the superseding logic in Greer,

neither passage on which petitioner relies would be binding authority. One of the decisions was vacated by a grant of en banc review, and the other involved other evidence in addition to the stipulation. See United States v. Medley, 828 Fed. Appx. 923 (4th Cir. 2020); Maez, 960 F.3d at 967; see also 4th Cir. R. 35(c) ("Granting of rehearing en banc vacates the previous panel judgment and opinion."). No further review is warranted.

2. Petitioner also contends (Pet. 12-29) that the court of appeals erred in determining that his three prior convictions for burglary of a building, in violation of Texas Penal Code § 30.02(a) (2008 and 2012), constitute convictions for "burglary" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(ii). For the reasons explained in the government's brief in opposition to the petition for a writ of certiorari in Herrold v. United States, 141 S. Ct. 273 (2020) (No. 19-7731), that contention lacks merit and does not warrant this Court's review. See Gov't Br. in Opp. at 11-16, Herrold, supra (No. 19-7731).[1] This Court has recently and repeatedly denied petitions for writs of certiorari raising the same question regarding Texas Penal Code § 30.02(a). See Adams v. United States, No. 20-8082 (Oct. 4, 2021); Smith v. United States, No. 20-6773 (Apr. 19, 2021); Lister v. United States, 141 S. Ct. 1727 (2021) (No. 20-

[1] The government has served petitioner with a copy of the government's brief in opposition in Herrold, which is also available on this Court's online docket.

7242); Webb v. United States, 141 S. Ct. 1448 (2021) (No. 20-6979); Wallace v. United States, 141 S. Ct. 910 (2020) (No. 20-5588); Herrold v. United States, supra (No. 19-7731). The Court has likewise recently and repeatedly denied petitions for writs of certiorari raising the identical question with respect to Tennessee's burglary statute. See Gann v. United States, No. 20-7701 (Oct. 4, 2021); Greer v. United States, 140 S. Ct. 1234 (2020) (No. 19-7324); Ferguson v. United States, 139 S. Ct. 2712 (2019) (No. 17-7496). The same result is warranted here.[2]

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General

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[2] The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.