

Supreme Court, U.S.
FILED

AUG 24 2021

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No. _____

21-6109

I N T H E
SUPREME COURT OF THE UNITED STATES

Jackie Harris - Petitioner

Vs.

United States of America - Respondent

On Petition for a writ of
Certiorari to

United States Court of Appeals
Eighth Circuit

Petition for writ of Certiorari

Jackie Harris
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ORIGINAL

QUESTIONS PRESENTED

1. When a lower Court removes a waiver and assigns counsel for appeal, then by asserting the waiver, they had removed, **covers under its scope the denial of Constitutional Right** that were violated.

Should the Supreme Court use its Judicial authority, when lower Court's actions destroys validity of the whole system, by ruling on the **Reasons for Granting petition** where Constitutional violations are clearly shown ?

2. Can a statute be redefine so broadly by the Court as to violate several Constitutional Amendments ?

3. Can Probable Cause on one person be used to issue a search warrant on home of a different person, when the one person that created probable cause neither came out of or has access to that home while the actual owner was not there?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Appendix A

PER CURIAM

Appendix B

Judgement

TABLE OF AUTHORITIES CITED

Cases	Pages
DeRoo Vs. United States,	223 F. 3d 919, 924 (8th Cir. 2000).
Roe Vs. Flores-Ortega,	120 S.Ct. 1029, 145 LED 2d 985, 528 U.S. 470 (2000).
United States Vs. Michelsen,	141 F3d, 867, 877 (8th Cir. 1998).
Bailey Vs. United States,	133 L.Ed 2d 472, 116 S.Ct. 501; 505-08 (1995).
Whalen Vs. United States,	445, U.S. 684, 698 (1980).
Kolender Vs. Lawson,	461 U.S. 352, 357-358, S.Ct. 1855, 75 L. Ed 2d 903 and N.7 (1983).
United States Vs. L. Cohen Grocery Co.,	255 U.S. 84, 89-91, 41 S.Ct. 298, 656, Ed 516 (1921).
United States Vs. Reese,	92 U.S. 214, 221, 236, Ed 563 (1876).
United States Vs. Rehkop,	96 F. 3d 301 (8th Cir. 1996).
Pettibone Vs. United States,	148 U.S. 197, 23 S.Ct. 542 L. Ed. 419 (1893).
United States Vs. Vonn,	535 U.S. 55, 152, L. Ed 2d 90, 122 S.Ct. 1043 (2002).
United States Vs. Davis,	139 S.Ct. 2319, 204C Ed 2d 757 (2019).
Myers Vs. United States,	272 U.S. 52, 182-183 (1920).
North Carolina Vs. Alford,	400 U.S. 25, 35, N.8 S.Ct. 160 27, L. Ed. 2d 162 (1970).
Michigan Vs. Clifford,	446 U.S. 287, 294, 104, S.Ct. 641, 78 L. Ed 2d 477 (1984).
Berger Vs. New York,	388 U.S. 41, 58, 87 S.Ct. 1873, 18 L. Ed 2d 1040 (1967).

STATUTES AND RULES

18 U.S.C. §924(c)(1)(A)

21 U.S.C. §841(a)(1), (b)(1)(B)

OTHER

Webster 9th Ed. College Dictionary 1985.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was JULY 20, 2020 (See Appendix B)

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States of America

ARTICLE I, Section 8

- Powers of the Congress -

The Congress shall have power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

...To define and punish Piracies and Felonies committed the high Seas, and Offences against the law of Nations;

...To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Amendment II

A well regulated Militia, being necessary to the security of a free State, The right of the people to keep and bear Arms shall not be infringed.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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 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; nor shall private property be taken for public use, without just compensation.

18 U.S.C. §924(c)(1)(A)

-Possession of firearm in furtherance of a drug trafficking crime-

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a Court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drugs trafficking crime.

21 U.S.C. §841(a)(1), (b)(1)(B)

-Prohibited Acts-

(a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally -

(1) To manufacture, distribute, or dispense or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(b) Except as otherwise provided in section 409, 418, or 420 [21 U.S.C. §§§ 849, 859, 860, or 861], any person who violates subsection (a) of this shall be sentence as follows:

(1)(B) In case of a violation of subsection (a) of this section involving

(i) 100 grams or more of a mixture of substance containing a detectable amount of heroin;

S T A T E M E N T O F C A S E

It becomes imperative that the Supreme Court hear this case to maintain the belief that the Courts operate for justice and fairness for common citizen. This belief is only achieved when the law is applied equally. To avoid this case would show that conviction only matter and that the system does not care about of protect common people, only operates for unknown agenda. Shown by facts that I clearly did not violate the statutes charged with and thus, I was factual innocent of those counts.

Prior to JUNE 27, 2018 a "CI" for the D.E.A. was involved in a controlled buy with a individual that I, Mr. Harris employed from time to time in my Contractor/ Handyman business. This event occurred at Mr. Harris address, but outside the residence, unknown to defendant, due to the fact that I **was not at my home** when this happened. On June 27, 2018 the D.E.A. served a unlawful Search Warrant at Mr. Harris home, since the "controlled buy" **was not inside the residency** and **did not** involve Mr. Harris, or occurred while he was there. Further more the D.E.A. has no real supporting evidence prior too or after the execution of the unlawful Search Warrant connecting the Defendant to a conspiracy to distribute a controlled substance, heroin. During the execution of the unlawful Search Warrant, two firearms Mr. Harris owned were took by the D.E.A.

One 22 rimfire pistol stored unloaded without ammo in a safe in the closet of the owners bedroom, and one 22 rimfire rifle Marlin model 60, stored in a zipped close case in the rafters of the basement. The Marlin 22 rimfire rifle was also kept unloaded and was no ammo with or available to it. After hours of searching, D.E.A. agents found 86 grams of heroin located in a A/C duct.

Mr. Harris informed the agents in a statement that after a friend passed away he started using a 50 (\$50.00 US dollars) about 3 times a week. It seems the Government has tried to say 50 grams as to try to increase prison time. Then the government went on to claim Mr. Harris had \$85,000 worth of vehicles, when in reality, two trucks were work trucks, purchased used, and the cars were of similarly valued cars, purchased used. Their purchase price and true value was a fraction of what the government claims.

The defendant expressed his concerns with the Constitutionally of several aspects in his case with Counsel. But only through coercion and treats of 25 to 35 years did he grudgingly sign the plea. Which up until he was signing, believed it was for the 86 grams I had for my personal use. Upon seeing the plea was for 100 grams or more, which WAS NOT what was found ! When he realized that the plea was not for the truth, 86 grams, and was for 100 grams or more, he expressed his objection, and Counsel said "You are a black man in a white town with a white prosecutor! If you don't sign this plea you will get at least 25 years or more!" Mr. Harris's Counsel showed prejudice toward this case and used misinformation and coercion, providing complete ineffectiveness in the Assistance he provided 'A purported waiver may not be "knowingly and voluntary" when the waiver itself is tainted by ineffective Assistance of Counsel' DeRoo Vs. United States, 223 F 3d 919, 924 (8th Cir. 2000).

Following the sentencing hearing Mr. Harris instructed Counsel of his desire to Appeal the decision. "Supreme Court held that **Strickland Vs. Washington** provided the proper framework for evaluating a claim the Counsel was Constitutionally ineffective for failing to file Notice of Appeal, as, among other matters, (1) Counsel had a Constitutionally imposed duty to consult the criminal defendant only when there was reason to think either that (a) A rational defendant would have wanted to appeal, or (b) A particular defendant reasonably demonstrated to Counsel that he was interested in appealing; and (2) The defendant was required to demonstrate that there was a reasonable probability that, but for Counsel's deficient failure to consult with him about an Appeal, the defendant would have timely Appealed." **Roe Vs. Flores-Ortega**, 120 S.Ct. 1029, 145 L. Ed 2d 985, 528 U.S. 470 (2000). After a few months, and not receiving a docket sheet for Appeal, Mr. Harris sent his own "Notice of Appeal". The Court almost immediately sent a response, claiming not filed in timely manner. They realized the error with that because of the pandemic's general special order applying with automatic extensions. Then issued Notice to Mr Harris of **Granting Appeal**, thus **removing waiver and Time Barr**, by assigning Counsel to Mr. Harris Appeal. This Counsel was the same Counsel who failed to file "Notice to Appeal" I immediately terminate that Counsel and request new Counsel. New Counsel on legal call, informed of several substantial constitutional issues that he could be address in appeal. Several months later he issued an Anders brief to Court. The Court sent Notice of Anders brief Granting permission for supplement Pro Se brief.

Not being an attorney, I researched what a "Anders Brief" was and I determined that the Counsel assigned, whether through incompetence or in coordination of what the government wanted. Had attempted to deny me outrageously apparent Constitutional violations. At which time I researched and drafted the "Pro Se Supplement" as if it was the complete brief.

Eight Circuit Appeal Court's response to my supplement brief was in absolute contradiction with it's own precedences. Clearly the original Counsel was ineffective not only by him failing to file Notice of Appeal which I had ask. **Roe Vs. Flores- Ortega**, 120 S.Ct. 1029, 145, L. Ed. 2d. 985, 528, U.S. 470 (2000). But also by failing to do any research such as look at the **Search Warrant's Probable Cause**, which was based off someone else and their activities, which brings into question, why the Appeals Court contradicting with **De Roo Vs. United States**, 223, F. 3d 919, 924 (8th Cir. 2000). Which would also remove waiver that Court removed to allow Appeal and assign Counsel.

The Supplemental brief presented multiple Constitutional violations, as to how my rights were violated and to the case law that showed my claims where of nature to grant request for relief. Instead the Court's response was these Constitutional violation were covered by a waiver, the Court had removed to allow to appeal and assign Counsel. Even though I showed that due to the ineffectiveness of Counsel, the waiver was not voluntary. The Court claims the scope of the waiver covers Constitutional violations, which goes against another 8th Circuit precedence in **United States Vs. Michelsen**, 141 F.3d 867, 872 (8th Cir. 1998). Were if "waiver results in 'miscarriage of justice' of illegal sentence it should not be enforced"

If allowed to stand, it shows common citizens that the Courts themselves will violate the Constitution to affirm unlawful convictions.

REASONS FOR GRANTING THE PETITION

1). Amendment II Issue :

Amendment II

A well regulated militia, being necessary to the security of the free state, the Right of the people to **KEEP** and bear Arms, shall **NOT** be **INFRINGED**.

Mr. Harris was charged on **Count 2** with 18 U.S.C. §924(c)(1)(A): Possession of a firearm in the furtherance of a drug trafficking crime:

Webster's 9th Ed. College Dictionary 1985

Furtherance : The Act of furthering; Advancement.

Advancement : Progression to high stage of development.

Possession : The act of having or taking into control.

It is well established that Mr. Harris had one 22 rimfire pistol he kept in a safe in his bedroom closet and one Model 60 Marlin 22 rimfire rifle he store in a gun case up in the rafters of the basement of his home. Both these firearms were 22 rimfires which provide no real self defense power. Mr Harris's ownership of, was for the purpose of gun safety educations for his child and to teach them to shoot a gun accurately and safely. He also stored them in a manner as to require multiples steps just to access them, again without ammo being available for their use. So for Mr. Harris to **KEEP** his arms stored in such a way as to provide layers of safety to access, while making ammo unavailable, clearly shows he did not and never intended to use either in a manner of criminality.

So for the government to prosecute for mere ownership, would go against the Supreme Court requirement for 18 U.S.C. §924(c) were it must ' "USE" in §924(c)(1) requires evidence sufficient to show an active employment of firearm by defendant, a use that makes the firearm a operative factor in relation to the predicate offense. They specifically determined that mere storage of a weapon near drugs or drug proceeds **does NOT constitute active use** ' **Bailey Vs. United States**, 133 L. Ed 2d 472, 116 S.Ct. 501-08 (1995). The reason is simple for their ruling. Storage, regardless where, denotes ownership **NOT USE**. Because criminalizing ownership would be directly infringe on **Right to KEEP Arms** under the 2nd Amendment Right Constitutionally protected.

So the way the Court applies 18 U.S.C. §924(c)(1)(A) Against Mr. Harris and it's details clearly infringes his 2nd Amendment Right to KEEP Arms. And the Infringement affects every citizen of Eighth Circuit not just Mr. Harris. The Court who's Oath is to the Constitution and bill of Rights is bound by that obligation to protect the freedoms of all Americans citizens, so it should VACATE 18 U.S.C. §924(c)(1)(A) to maintain confidence in our Judicial System.

For the foregone reasons I respectfully pray the Supreme Court **GRANT** petition for writ of certiorari and **REVERSE, VACATE** conviction then **DISMISS**.

2). Amendment V Due Process :

A. Violation of Due Process by applying §924(c) were it does NOT apply.

In Count 2 the government took a unconstitutionally broad defining of the elements of 18 U.S.C. §924(c)(1)(A). Neither the prosecutor nor the Court has the power to define laws beyond the common meaning of the words they are drafted with "the power to define crimes and punishments, resides wholly with Congress" **Whalen Vs. United States**, 445 U.S. 684, 698 (1980).

The Constitution's Article I Section 8 gives only our elected officials the right to write laws and define it. When prosecutors or the Court attempts to define key element words how they want, they are violating a basic principle of our System [It's NOT the responsibility for defining crimes to the relatively unaccountable police, prosecutors and judges; eroding the people's ability to oversee the creation of laws they are expected to abide "first essential of Due Process of law" fair notice of what the law demands of them.] See **Kolender Vs. Lawson**, 461 U.S. 352, 357-58, 103 S.Ct. 1855, 75 L.Ed 2d 903 and N.7 (1983); **United States Vs. L. Cohen Grocery Co.**, 255 U.S. 81, 89-91, 41 S.Ct. 298, 656, Ed 516 (1921); **United States Vs. Reese**, 92 U.S. 214, 221, 236 Ed 563 (1876).

The 8th Circuit has already determined that merely having, does not meet **§924(c)** when they Reversed and Vacated **Rehkop's** 924(c). "government must prove more than mere possession of a firearm. Rather, there must be some relation or connection between the firearm and the underlying crime of possession of methamphetamine with intent to distribute" **United States Vs. Rehkop**, 96 F. 3d 301 (8th Cir. 1996). And the Supreme Court carried it further when they determined that mere storage of a weapon near drugs or drugs or drugs proceeds DOES NOT constitute active use, for 924(c) in **Bailey Vs. United States**, 133 L. Ed 2d 472, 716 S.Ct. 501, 505-08 (1995). They did this to keep Courts from infringing on the 2nd Amendment. Just as the Eighth Circuit Court's unconstitutionally broad defining of the elements has done in Mr. Harris's case. The Court's application and expanded defining of the statute in Count 2 against the defendant, violates both his 5th Amendment Due process Clause and his 2nd Amendment Right to KEEP Arms. For the Court to maintain validity and it's Constitutional duty it should VACATE the **§924(c)(1)(A)**.

For the foregone reasons I respectfully pray the Supreme Court **GRANT** petition for Writ of Certiorari and **REVERSE, VACATE** conviction then **DISMISS**.

B. Unconstitutionally Broad defining of Elements

The defendant's Due Process Rights were violated when the Court allowed and took a unconstitutionally broad defining of 21 U.S.C. §841(a)(1), (b)(1)(B); specifically sub (a) and (i).

In sub (a) **"...Knowingly or Intentionally..."**

The government DOES NOT have a single piece of evidence that implicates Jackie Harris has any knowledge of or intent to distribution. These elements require more than the government just implying or claiming "In an indictment, all material facts and circumstances embraced in the definition of the offense must be stated or the indictment will be defective. No essential element of the crime can be supplied by implication" **Pettibone Vs. United States**, 148 U.S. 197, 23 S.Ct. 542 L. Ed 419 (1893).

And as stated in "Statement of Case" the defendant was under the belief he was under the belief he was signing for what was factual correct, **86 grams**. When he objected to his Counsel about the plea stating 100 grams or more, he was told by his Counsel **"you are a black man in a white town with a white prosecutor! If you don't sign this plea you will get at least 25 years or more!"** So the defendant unwillingly signed the plea, not knowing what else to do, not ever being in a Courtroom like this before. Not only does the factual basis elements not match the actual evidence against Mr. Harris but it doesn't match the whole record. **"Factual basis for a guilty plea must be based on the whole Record."** **United States Vs. Vonn**, 535 U.S. 55, 152 L. Ed 2d 90, 122 S.Ct. 1043 (2002).

Sub (i) -It would clearly not ever give a ordinary person fair warning what the law demands, when the government indicts a person for 100 grams or more of heroin **when only 86 grams was found** and listed as evidence. Not only would this not give fair warning of what the law demands but it would be judges making the law as they see fit, not as it was wrote. **"Only the people's**

elected representatives in Congress have the power to write new federal criminal laws. And when Congress exercises that power, it has to write statutes that give ordinary people fair warning about what the law demands of them" but also it "would be effectively stepping outside our role as judges and writing new law rather than applying the one Congress adopted" **United States Vs. Davis**, 139 S.Ct. 2319, 204C Ed 2d 757 (2019). And the Court doesn't have the power to imply something, not there, to match the elements of a law Congress wrote "...It is usurping the functions of a legislator, and deserting those of an expounder of the law. Arguments drawn from impolicy or inconvenience ought here to be of no weight. The only sound principle is to declare, it a lex scripta est ["so the law is written"] to follow and obey" **Myers Vs. United States**, 272 U.S. 52, 182-183 (1926).

Because the fact is, that the evidence the government has **does not match** the essential elements of the statutes the defendant is indicted on. Due to coercion and extremely poor information from Counsel the defendant signed a plea based off a indictment where the **evidence did not support the factual basis**, which the judge was obligated to determine " judge must establish factual basis for a guilty plea independent of the defendant's statement. (See Bench book)" **North Carolina Vs. Alford**, 400 U.S. 25, 35, N.8 S.Ct. 160, 27 L. Ed 2d 162 (1970).

The government could not/did not factually prove that Mr. Harris had knowledge or attempted to or conspired to distribute heroin. And the **evidence is 86 grams of heroin**. So no mathematics a ordinary person uses makes 86 grams becomes 100 or more. Under Sub (i) in 21 U.S.C. §841(a)(1) the law clearly states **100 grams or more of heroin**.

For the foregone reasons I respectfully pray the Supreme Court **GRANT** petition for Writ of Certiorari and **REVERSE, VACATE** conviction then **DISMISS**.

3). **Amendment IV Violation**

"...No Warrant shall issue but upon probable cause..."

The facts effecting the unlawfulness of the warrant issued for Mr. Jackie Harris's house are simple. The government didn't have a single piece of evidence to support probable cause for Mr. Harris's home. "a criminal search warrant may be obtained only on a showing of probable cause to believe that relevant evidence will be found in the place to be searched" **Michigan Vs. Clifford**, 446 U.S. 287, 104 S.Ct. 641, 78 L. Ed 2d 477 (1984). A individual was involved with a "CI" in a controlled buy **in front** of defendant's home while he was out of town. The individual did not have access to Mr. Harris's home, so the whole buy could have been D.E.A. staged. If the agents are allowed to get Warrants, where it has no evidence that the owner was involved in a crime, they can just generate a controlled buy in front of any house they want. Then get warrant issued to search and seized "fishing expedition". So simple by producing a controlled buy in front of a residency when the **owner was not even home**. This would result in the government getting blanket grants for searching for mere evidence "it was a blanket grant of permission... no matter the nicety and precision with which a warrant may be drawn, because it is a search for 'mere evidence' " **Berger Vs. New York**, 388 U.S. 41, 58, 87 S.Ct. 1873 18 L. Ed 2d 1040 (1967).

Because the Warrant was generated on a unlawful premise, the Warrant truly had no probable cause and thus was unconstitutional from it incipient. Any and all items seized in the exercise of that unlawful Warrant are "fruit of poisonous tree" and are inadmissible. So by Constitutional standart, **Count 1** and **Count 2** should be **VACATE**.

For the foregone reasons I respectfully pray the Supreme Court **GRANT** petition for Writ of Certiorari and **REVERSE, VACATE** conviction then **DISMISS**.

C O N C L U S I O N

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jackie Harris
Jackie Harris

Date: 8-23-21