

CASE NO. _____
SUPREME COURT OF THE UNITED STATES
October 2021 Term

DAMON WILLIS,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

APPLICATION DIRECTED TO JUSTICE GORSUCH FOR ADDITIONAL TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI TO EIGHTH CIRCUIT COURT OF APPEALS

Submitted on Behalf of Petitioner

Submitted By:

Charles J. Banks
Assistant Federal Public Defender
1010 Market, Suite 200
St. Louis, MO. 63101
(314) 241-1255

ATTORNEY FOR PETITIONER

To Justice Neil M. Gorsuch:

Petitioner Damon Willis, through his attorney of record, Assistant Federal Public Defender Charles J. Banks, requests an additional 60 days in which to file a petition in this Court seeking certiorari to the Eighth Circuit Court of Appeals, up through January 25, 2022. He requests this extension under Supreme Court Rule 13.5. In support, he states:

JURISDICTION

Petitioner seeks an extension to file a petition for writ of certiorari. Petitioner is requesting review of the judgment issued by the Eighth Circuit Court of Appeals on July 1, 2021, affirming his conviction for unlawful possession of a firearm following a jury trial in which police officers testified he fervently maintained his belief that he could lawfully possess any firearm he did not transport across state lines. Appendix 1. Petitioner filed a motion for rehearing which the Eighth Circuit denied on August 27, 2021. Appendix 1. The petition for writ of certiorari is originally due to be filed Friday, November 26, 2021 (due to the federal Thanksgiving Holiday). Petitioner files this request for additional time at least 10 days before the date the petition is currently due, in compliance with Supreme Court Rule 13.5.

REASONS FOR APPLICATION FOR EXTENSION


1. Petitioner Willis believes that his case raises a recurrent issue of exceptional importance concerning the culpable mental state the government must prove beyond a reasonable doubt to convict a person of unlawful possession of a firearm by one who has previously been convicted of an offense punishable by more than one year in prison. This Court's decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), overruled the previous uniform of the Circuits to declare that the government must prove that a person belonging to a class of people prohibited

from possessing a firearm must know they belong to the relevant prohibited class. *Id.* at 2200. In *Rehaif*'s case, the government had to prove that he knew he was unlawfully in the United States in violation of 18 U. S. C. §922(g)(5). The Court specifically indicated that it was "not taking a position on the applicability of *mens rea* requirements in other status-based offenses," *id.* at 2213 (Alito, J., dissenting), citing *id.* at 2197. The Court's decision in *Rehaif* appears to revitalize the defense of mistake of law, *id.* at 2198, and stressed that guilty knowledge is essential to distinguish criminal conduct worthy of sanction and innocent behavior. *Id.* at 2197.

2. Petitioner's counsel is an assistant federal public defender in the Eastern District of Missouri, where federal prosecutions of firearm offenses have increased drastically. The daily demands of counsel's district court docket leave little time for the research and drafting counsel needs to properly present petitioner's claim for certiorari to this Court. Counsel makes this request with no dilatory purpose, but rather seeks to ensure proper presentation of the important federal questions raised in petitioner's case while also providing the effective representation of her dozens of other appointed clients.

WHEREFORE, petitioner requests leave to file his Petition for Writ of Certiorari, up through and including January 25, 2022.

Respectfully submitted,



CHARLES J. BANKS
Assistant Federal Public Defender
1010 Market Street, Suite 200
St. Louis, Missouri 63101
Telephone: (314) 241-1255
Fax: (314) 421-3177
E-mail: Charles_Banks@fd.org
ATTORNEY FOR PETITIONER

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SUPREME COURT OF THE UNITED STATES
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Appendix to Petitioner's Motion for More Time to File Petition for a Writ of Certiorari

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United States Court of Appeals
For the Eighth Circuit

No. 19-3361

United States of America

Plaintiff - Appellee

v.

Damon Willis

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: December 17, 2020

Filed: July 1, 2021

[Unpublished]

Before SMITH, Chief Judge, WOLLMAN and LOKEN, Circuit Judges.

PER CURIAM.

A grand jury charged Damon Willis with three counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The counts related to arrests that occurred in 2015, 2016, and 2017. According to evidence presented at trial, Willis had claimed during two arrests that he was a “sovereign citizen” who

could lawfully possess any firearm that he did not deface or take across state lines. The petit jury returned guilty verdicts on two counts after being instructed that the government need not prove that Willis knew that he was prohibited from possessing a firearm.

Before sentencing, the Supreme Court decided Rehaif v. United States, which held “that in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.” 139 S. Ct. 2191, 2200 (2019). After recounting Willis’s extensive criminal history, the district court¹ determined that any error in instructing the jury did not affect Willis’s substantial rights.

In light of Rehaif, it was plain error to not present to the grand and petit juries the question whether Willis knew that he belonged to the relevant category of persons barred from possessing firearms—*i.e.*, that he knew that he was a felon. See United States v. Davies, 942 F.3d 871, 874 (8th Cir. 2019) (“Under Rehaif, [the defendant] needed to know only that he had been convicted of a crime punishable by imprisonment for a term exceeding one year at the time he possessed the firearms.”); United States v. Hollingshed, 940 F.3d 410, 415 (8th Cir. 2019) (“Here, the absence of an instruction requiring the jury to find that Hollingshed knew he was a felon was clear error under Rehaif.” (cleaned up)).

These plain errors did not affect Willis’s substantial rights, however, because he cannot show a reasonable probability that he would not have been charged or that he would have been acquitted, if the correct question had been presented. See United States v. Olano, 507 U.S. 725, 732–34 (1993) (to establish plain error, a defendant

¹The Honorable Rodney W. Sippel, Chief Judge, United States District Court for the Eastern District of Missouri.

must show an error, that is plain, and that affected the defendant's substantial rights); Molina-Martinez v. United States, 136 S. Ct. 1338, 1343 (2016) (to show that an error affects substantial rights in the ordinary case, the defendant must show "a reasonable probability that, but for the error, the outcome of the proceeding would have been different" (cleaned up)); Greer v. United States, No. 19-8709, 2021 WL 2405146, *4 (U.S. June 14, 2021) (to establish that a Rehaif jury-instruction error affects substantial rights, the defendant must show "that, if the District Court had correctly instructed the jury on the *mens rea* element of a felon-in-possession offense, there is a reasonable probability that he would have been acquitted" (internal quotation marks omitted)). To demonstrate Willis's knowledge, the government has pointed to Willis's previous federal conviction for being a felon in possession of a firearm, his multiple state felony convictions, his several sentences exceeding one year, and his stipulation at trial that he was a felon. See Davies, 942 F.3d at 874 (explaining that the government usually "will be able to point to evidence in the record demonstrating that a defendant knew he was convicted [of a felony], preventing the defendant from showing a reasonable probability of a different outcome absent the error"); United States v. Welch, 951 F.3d 901, 907 (8th Cir. 2020) (concluding that because defendant had "received and served several prison sentences longer than one year for felony convictions," it was not reasonably probable that he would have been acquitted if the government had been required to prove the defendant's knowledge of a previous felony conviction); see also Greer, 2021 WL 2405146, at *5 ("[W]hen an appellate court conducts plain-error review of a Rehaif instructional error, the court can examine relevant and reliable information from the entire record—including information contained in a pre-sentence report."). This record leaves no question that Willis knew that he previously had been convicted of a felony—regardless of whether he believed that the United States now lacked jurisdiction over him as a "sovereign citizen." Willis has not shown a reasonable probability that a grand or petit jury would have found otherwise. See United States v. Cotton, 535 U.S. 625, 633 (2002) (failing to submit element of the offense to grand jury not structural error requiring

reversal); Greer, 2021 WL 2405146, at *7 (Rehaif error in jury instructions not structural error).

Willis next argues that the district court erred in admitting certain testimony by detective Daur Nodari concerning Willis's possession of a firearm on September 5, 2015. Nodari was among the officers who responded to a call reporting gunfire. Upon arriving at the scene, the officers discovered Willis, who was injured and who said that he had been shot on Corbitt Avenue. They also found a Hi-Point C9 firearm. Officers spoke to witnesses on Corbitt Avenue. Nodari interviewed Willis two days after the shooting.

Over Willis's objection, Nodari testified regarding what three men had told officers about the shooting. The men said that an individual approached them on a front porch on Corbitt Avenue, demanded money, and "tr[ie]d to rob them at gunpoint." They admitted to shooting the would-be robber after he had shot at them. Nodari further testified that the men had cooperated with law enforcement and had legally possessed firearms.

Willis argues that Nodari's testimony regarding what the men had said should have been excluded as inadmissible hearsay, to which the government responds that the testimony was not offered to prove the truth of the matter asserted. See Fed. R. Evid. 801(c) (defining "hearsay" as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement"); United States v. Davis, 449 F.3d 842, 847 (8th Cir. 2006) ("A statement is not hearsay if it is offered for the limited purpose of explaining why a police investigation was undertaken." (cleaned up)). Even assuming that the testimony should have been excluded as inadmissible hearsay, any error in admitting it was harmless in light of the overwhelming evidence that Willis possessed the firearm that was found at the scene. Specifically, Nodari testified that when he showed Willis a photo of Hi-Point C9, Willis said, "That's my

gun.” Willis also admitted to Nodari that he brought the firearm to Corbitt Avenue, that he planned to purchase drugs there, and that he “ha[d] the gun out” when he was shot.

The judgment is affirmed.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-3361

United States of America

Appellee

v.

Damon Willis

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:17-cr-00128-RWS-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 27, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans