

IN THE
Supreme Court of the United States

JAMES CALVIN BREEDEN,
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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QUESTION PRESENTED

Whether the district court erred under *Rehaif v. United States* by denying requested jury instructions and a Rule 29 motion for acquittal on the felon-in-possession count where the government never proved that Breeden knew his felon status barred him from possessing a firearm?

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINION BELOW.....	1
LIST OF PRIOR PROCEEDINGS	1
JURISDICTION.....	2
STATUTORY PROVISION INVOLVED	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION.....	7
CONCLUSION.....	11
APPENDIX A: Opinion of the U.S. Court of Appeals for the Fourth Circuit (December 14, 2021)	1a

TABLE OF AUTHORITIES

CASES

<i>Liparota v. United States</i> , 471 U.S. 419 (1985)	10
<i>Rehaif v. United States</i> , 139 S. Ct. 2191 (2019)	<i>passim</i>
<i>Staples v. United States</i> , 511 U.S. 600 (1994)	8-9
<i>United States v. X-Citement Video, Inc.</i> , 513 U.S. 64 (1994)	8

STATUTORY PROVISIONS

18 U.S.C. § 922(g)(1)	<i>passim</i>
18 U.S.C. § 924.....	2
18 U.S.C. § 924(c)(1)(A)(i)	2
21 U.S.C. § 841(a)(1)	2
28 U.S.C. § 1254(1)	2

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Petitioner James Calvin Breeden respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 2021 U.S. App. LEXIS 36962, 2021 WL 5905715 (4th Cir. Dec. 14, 2021); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

- (1) *United States v. James Calvin Breeden*, District Court No. 7:19-CR-117-BR, Eastern District of North Carolina (final judgment entered August 26, 2020).
- (2) *United States v. James Calvin Breden*, United States Court of Appeals for the Fourth Circuit, No. 20-4449 (decision issued December 14, 2021).

JURISDICTION

The Fourth Circuit issued its opinion on December 14, 2021. Pet. App. 1a. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 922(g)(1) of Title 18 of the United States Code provides: “It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

STATEMENT OF THE CASE

A. District Court Proceedings

On July 10, 2019, a federal grand jury in the Eastern District of North Carolina indicted the Petitioner, James Calvin Breeden, on three charges: (1) possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924; (2) possession with the intent to distribute 28 grams or more of cocaine base (crack), in violation of 21 U.S.C. § 841(a)(1); and (3) possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). (Fourth Circuit Joint Appendix 14–17, hereinafter “J.A.”). The grand jury later returned a superseding indictment against Petitioner, but the counts did not change. (J.A. 18–21).

Petitioner pled not guilty and proceeded to trial. At trial, the government presented witnesses who testified to the following: On March 22, 2017, Robeson

County Sheriff's Office deputies attempted to serve an outstanding child support warrant on a man named Aquino Hill at the Turner Terrace Apartments in Lumberton, North Carolina. As they approached the apartment complex, they spotted Hill in the parking lot standing next to a white Chevrolet Impala, but they soon lost sight of him when he ducked down. The Impala then began backing out of its parking spot. As the Impala backed out, one of the approaching patrol cars was forced to brake to avoid a collision. The deputies then initiated a traffic stop. But when they stopped the Impala, Hill was not inside. Instead, Kenny Ray Rogers was driving the car, and Petitioner sat in the passenger seat. (J.A. 181-182; 194-195; 207).

The deputies ordered both men to hold up their hands. When Petitioner was slow to comply, one of the deputies reached into the car and grabbed his hands. While holding up Petitioner's hands, the deputy saw a gun in his waistband. The deputies secured the firearm and removed Petitioner from the car. As they removed him, they saw a black Crown Royal bag fall to the floor between Petitioner's right leg and the passenger side door. One of the deputies placed the bag on the passenger seat. The driver, Rogers, grabbed the bag and tossed it onto the back seat. The deputy then returned the bag to the front seat. By this point, the bag had opened, and the deputies saw inside the bag what they suspected to be marijuana, crack, and powder cocaine. The deputies arrested Rogers and Petitioner and took them to the Robeson County Sheriff's Office. When they arrested Rogers, the deputies found \$2,700 in his pants pocket. (J.A. 183-188; 190-198; 205-209).

Following his arrest, Petitioner waived his Miranda rights and agreed to an interview. At Petitioner's request, the interview was not recorded, so an officer wrote Petitioner's statements "as best [he] could" as the interview progressed. (J.A. 215). Petitioner signed the statement at the bottom, but he did not initial each line. In the statement, Petitioner said he had the gun for protection because "[y]ou never know what people will do out in these streets." (J.A. 217; 472). The statement also said, "What Kenny Ray told y'all was true. Everything was mine." (J.A. 217; 472). The statement did not mention drugs. (J.A. 217–20; 472).

At trial, the government presented testimony from four officers from the Robeson County Sheriff's Office detailing the traffic stop, the interview with Petitioner, and Petitioner's statement. (*See generally* J.A. 180–221). The government also presented three expert witnesses. (*See generally* J.A. 222–60). A forensic chemist with the Drug Enforcement Administration testified that the substances recovered from the Impala consisted of 55.31 grams of cocaine base (crack) and 24.49 grams of powder cocaine. The analyst did not test the green vegetable matter found in the car. (J.A. 223–227).

The second expert was a Lumberton Police Department detective who served on a task force with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). (J.A. 229–30). He testified as an expert "in the drug trafficking trade in Robeson County, North Carolina" about drug distribution within the county, including common drug trade practices. (J.A. 233). The final expert witness was an ATF special agent who testified that the firearm recovered from the traffic stop had

traveled through multiple states and thus affected interstate commerce. (J.A. 257–59).

The final government witness was Brandon Bryant, a North Carolina probation/parole officer who worked at a Robeson County facility for convicted felons on probation or parole. (J.A. 260-261). Bryant testified that he had supervised Petitioner at the facility in 2016, after Petitioner violated the terms of his probation on an assault conviction. For that conviction, Petitioner received a 25 to 39 month suspended sentence and was placed on probation. (J.A. 264). When he subsequently violated his probation, he served a 90-day sentence at the Robeson County facility. Bryant testified that Petitioner appeared to understand he had been convicted of a felony, because the facility was “for felons only and during the time [Petitioner] was there he was on felony probation.” (J.A. 263). Neither Bryant nor any other witness testified Petitioner knew that his felony conviction barred him from possessing a firearm. Although the government introduced the judgment of conviction and transcript of the plea for Petitioner’s assault conviction, neither document contained information indicating Petitioner’s status as a convicted felon would permanently bar him from possessing firearms. (J.A. 473-480).

Once the government rested its case, Petitioner’s counsel moved for acquittal under Rule 29. The district court denied the motion. (J.A. 267-268).

Before closing statements, the court and counsel discussed the jury instructions. (*See generally* J.A. 268–72). Petitioner’s counsel requested the court change its instruction as to the third element of the § 922(g) count based on *Rehaif*.

Specifically, counsel wanted the instruction to include language indicating the government had to prove that as a result of his felony conviction, Petitioner “knew he was prohibited from possessing a firearm.” (J.A. 270). This aligned with Petitioner’s proposed jury instructions, which requested the third element for the 922(g) count read:

The government must prove each of the following elements beyond a reasonable doubt in order to sustain its burden of proving the defendant guilty: . . . Third, that the defendant knew, at the time that he possessed the firearm, that he had been convicted of a crime punishable by imprisonment for a term exceeding one (1) year, and that as a result of that conviction, *he knew he was prohibited from possessing a firearm . . .*

(J.A. 52) (emphasis added). After hearing argument, the court denied Petitioner’s request to change the instruction. (J.A. 270–71).

In its instructions to the jury, the court repeatedly defined the third element of the § 922(g) charge as requiring the government to prove: “That at the time of the charged act, the defendant knew he had been convicted in any court of a crime punishable by a term of imprisonment exceeding one year.” (J.A. 307–10). The court’s written instructions defined the third element of the § 922(g) count the same way. (J.A. 340, 342). After the court instructed the jury, Petitioner’s counsel renewed the objection to the instruction. (J.A. 315).

Following deliberation, the jury found Petitioner guilty on all three counts. (J.A. 352–53). At sentencing, the district court sentenced Petitioner to 60 months on Counts 1 and 2, followed by a consecutive term of 60 months on Count 3, for a total term of imprisonment of 120 months. (J.A. 369–71). The court entered its judgment

on August 26, 2020. Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit. (J.A. 385).

B. Court of Appeals Proceedings

On appeal to the Fourth Circuit, Petitioner argued, *inter alia*, that the district court erred under *Rehaif* by denying his requested jury instructions and motion for acquittal where the government never proved Petitioner knew his felon status prohibited him from possessing a firearm. The Fourth Circuit rejected that argument as foreclosed by recent Fourth Circuit precedent and affirmed the judgment of the district court. This petition followed.

THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

Petitioner argued to the Fourth Circuit that the district court erred under *Rehaif*. The Court of Appeals rejected Petitioner's argument and affirmed the district court. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court's consideration.

REASONS FOR GRANTING THE PETITION

In *Rehaif v. United States*, this Court held that in a prosecution under 18 U.S.C. § 922(g), the government must prove “that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.” 139 S. Ct. at 2194. Although the defendant in *Rehaif* was prosecuted under the section of 18 U.S.C. § 922(g) barring “alien[s] unlawfully in the United States” from possessing firearms, 139 S. Ct. at 2194, the Court made clear its extension of the knowledge requirement to the relevant status element applied to all prosecutions

under § 922(g). *Id.* at 2200. In *Rehaif*, the Court focused on the trial court’s failure to give a jury instruction requiring any proof of knowledge as to the status element, 139 S. Ct. at 2194–95, but the decision also provides guidance where, as here, the trial court instructed the jury it had to find knowledge of the status but not knowledge of why that status was relevant.

Rehaif directs courts reading § 922(g) to apply the term “knowingly” in a way that “helps to separate wrongful from innocent acts.” See 139 S. Ct. at 2196–97 (explaining applying the word knowingly to the status element in § 922(g) advances “the purpose of scienter,” which is to ensure such separation). At the outset, the Court explained its analysis was grounded in “a longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state regarding ‘each of the statutory elements that criminalize otherwise innocent conduct.’” *Rehaif*, 139 S. Ct. at 2195 (quoting *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994)). The Court also highlighted that cases where it has “emphasized scienter’s importance in separating wrongful from innocent acts are legion.” *Rehaif*, 139 S. Ct. at 2196–97 (listing cases). The Court then explained that applying the term “knowingly” to § 922(g)’s status element is critical in separating wrongful from innocent acts because “[a]ssuming compliance with ordinary licensing requirements, the possession of a gun can be entirely innocent.” *Rehaif*, 139 S. Ct. at 2197 (citing *Staples v. United States*, 511 U.S. 600, 611 (1994)). As a result, without knowledge related to his status, the defendant may be making “an innocent mistake to which criminal sanctions

normally do not attach.” *Rehaif*, 139 S. Ct. at 2197 (citation omitted). *Rehaif* applies the knowledge requirement to the status element to ensure only wrongful acts, not innocent ones, are penalized.

To fulfill *Rehaif*’s purpose of separating wrongful acts from innocent ones, the knowledge requirement for § 922(g)’s status element must require knowledge both of the relevant status and of why that status is relevant, *i.e.*, that it bars firearm possession. As *Rehaif* recognized, “the possession of a gun can be entirely innocent.” 139 S. Ct. at 2197 (citing *Staples*, 511 U.S. at 611). Consequently, the only way to separate wrongful acts from innocent ones is for the government to prove, and the trier of fact to find, that the defendant knew his status barred him from possessing a gun.

The Court’s determination that Congress would not “have expected defendants under § 922(g) and § 924(a)(2) to know their own statuses” bolsters this conclusion. *Rehaif*, 139 S. Ct. at 2197–98 (including an example with the felon status provision). If defendants could not be expected to know their own status, they could not be expected to know further that their status also barred them from the otherwise innocent act of possessing a gun. Thus, to follow *Rehaif*’s direction to separate innocent from wrongful conduct by applying a knowledge requirement to the status element of § 922(g), the element must require knowledge not just of the relevant status, but also that such status barred the defendant from possessing a firearm.

Just as in *Rehaif*, the “well-known maxim that ‘ignorance of the law’ . . . is no excuse” does not apply here. *See* 139 S. Ct. at 2198. The maxim does not generally apply when the defendant “has a mistaken impression concerning the legal effect of some collateral matter and that mistake results in his misunderstanding the full significance of his conduct thereby negating an element of the offense.” *Id.* (citation and quotation marks omitted). As an example, the Court cited *Liparota v. United States*, a case in which it “required the Government to prove that the defendant knew that his use of food stamps was unlawful,” despite that being a question of law. *Rehaif*, 139 S. Ct. at 2198 (citing 471 U.S. 419, 425 n.9 (1985)). Here, even if a defendant knows he has a relevant status, he may have a “mistaken impression concerning the legal effect” of that status; he may not know that such a relevant status prohibits him from possessing a firearm for the reasons stated above. *Rehaif*, 139 S. Ct. at 2198. This situation resembles *Liparota* where there is a question of law, but a scienter requirement is still necessary. Without the scienter requirement, wrongful conduct cannot be separated from innocent acts.

Notably, before the Supreme Court decided *Rehaif*, “every single Court of Appeals to address the question” had incorrectly ruled the knowledge requirement did not apply to the status element in § 922(g). *Rehaif*, 139 S. Ct. at 2201 (Alito, J. dissenting). Here, on the question of whether the knowledge requirement necessitates a defendant to know his relevant status barred him from possessing a firearm, every single Court of Appeals to address the question has again erred. The

best reading of *Rehaif* requires the government to prove a defendant knew his relevant status barred him from possessing a firearm.

For these reasons, the district court erred in instructing the jury and erred in denying Petitioner's motion for acquittal. If the jury had been properly instructed, it would lack sufficient evidence to support all the elements of the § 922(g) count and thus could not have convicted Petitioner on that count. The government did not present any evidence that Petitioner knew he could not possess a firearm based on his prior conviction. Thus, even taking the evidence in the light most favorable to the prosecution, there is not substantial evidence to sustain the jury's verdict. Because there was no evidence as to this critical element, Petitioner's conviction should be set aside and the case remanded.

For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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