21-7821

No. 18-4472

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Mandrail Jamar Woodberry — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mandrail Jamar Woodberry
(Your Name) Reg. No. 34123-057

USP-Atwater
(Address)
P.O. Box 019001
Atwater, California 95301
(City, State, Zip Code)

n/A
(Phone Number)

QUESTION(S) PRESENTED

I. Whether Possession Of A Firearm Beyond The Five Year Post-Release Period Is A Crime In The State Of North Carolina?

II. Whether There Exist A Reasonable Doubt whether Appellant Knew He Had Been Convicted of A Crime Punishable By More Than One Year Imprisonment?

III. Whether Appellant's Guilty Plea Was Constitutionally Voluntary

IV. Whether Failure To Include The Knowledge of Status Element In Appellant's Indictment Was Plain Error Affecting His Substantial Rights?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Rehaif v. United States, 139 S.Ct. 2191 (2019)

United States v. Medley, 972 F.3d 399 (2020 4th Cir.)

United States v. Green, 973 F.3d 208 (4th Cir. 2020)

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OTHER

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[✓] is unpublished.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 N/A to the petition and is

[ ] reported at N/A; 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[ ] is unpublished.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[ ] is unpublished.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.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment & 4th Amendment

18 U.S.C. § 922 (g)(1)

STATEMENT OF THE CASE

Appellant received relief from this Court in light of Rehaif, wherein the case was Remanded to the Fourth Circuit.

Now Appellant seeks Certiorari review again from this Honorable Court in the interest of justice.

REASONS FOR GRANTING THE PETITION

The Circuits are split, in regards to the First Question that Appellant presents.

Appellant, presents novel issues of law in Questions Three and Four.

I. Question Presented: Whether Possession of A Firearm Beyond The Five Year Post-Release Period Is A Crime In The State of North Carolina?

Standard of Review: United States v. McLean, 904 F.2d 216 (4th Cir. 1990), cert. den. 498 U.S. 875 (1991).

Argument And Law:

When Congress enacted the Firearms Owner's Protection Act of 1986. "Congress empowered [each] state to determine if ex-felons would be legally permitted under 'federal' law to possess firearms.'" As a result, each state is able to carve out exemptions to the general federal proscription against possession of any firearm by any ex-felon. United States v. Cassidy, 899 F.2d 543 (6th Cir. 1990).

The state of North Carolina's exemption and answer to the general federal firearm proscription for felons is found in its legislative statutes; specifically N.C. Gen.

Stat. 14-415.1. Which states in relevant part, to wit:

"(a) It shall be unlawful for any person who has been convicted of any crime set out in subsection (b) of this section, to purchase, own, possess, or have in his custody, care or control any handgun or other firearm with a barrel length of less than 18 inches, or an overall length of less than 26 inches, or any weapon of mass death and destruction defined in G.S. 14-288(c) '<u>within five years from the date of such conviction</u>' or the unconditional discharge from a correctional institution, or termination of a suspended sentence, probation, or parole upon such conviction, which ever is later'"

N.C. Gen. Stat. § 14-415.1
(emphasis added)

Accordingly, ex-felons regain the right to possess firearms in North Carolina by the mere passage of time. The issue was first discussed by the Fourth Circuit in United States v. McLean, 904 F.2d 216 (4th Cir. 1990), cert. denied, 498 U.S. 875 (1991). McLean involved a conviction under §922(g)(1) in which both the predicate felony conviction and the alleged federal violation occurred in North Carolina. Same as your appellant's convictions, and in Mc Lean, the district court dismissed the indictment on the grounds that the "general restoration of Mc Lean's civil rights precluded the federal prosecution." The government appealed, and the Fourth Circuit; looking to "the whole of state law" to determine whether any restoration of state civil rights relating to firearms possession would bring the ex-felon Mc Lean outside the reach of §922(g)(1). The Court concluded that North Carolina General Statute §13-1 considered in conjunction with N.C. Gen. Stat. §14-415.1 "clearly restored the general citizenship rights of an ex-felon, and that such restoration of rights included a limited right to possess firearms." The Fourth Circuit Court of Appeals held that because Mc Lean was carrying a handgun within the five years of his release from prison, he fell "squarely within the express provisions of N.C. Gen. Stat. §14-415.1."

Under the North Carolina firearm statutes, the only difference between the rights of an ex-felon and the one who has never been convicted of a felony, is that the former must wait [five] years before being legally allowed to possess a handgun or other firearm with a barrel less than eighteen inches in length.

Appellant's state conviction on September 15, 2016 for Felon In Possession of A Firearm/ Possession of A Firearm By A Felon is "null and void" under North Carolina state law because his possession of a firearm at that time fell "squarely within the express provisions of North Carolina General Statute 14-415.1." Simply put, Appellant's possession of a firearm at that time was "beyond the five year post-release period" as he was carrying a firearm five years after his release from prison. Therefor Appellant's alleged 922(g)(1) conviction is "null and void."

Not only is your Appellant's aforementioned State of North Carolina conviction (i.e., Possession of A Firearm By Felon) both null and void. It is duplicive and originates from conduct, a Possession Of A Firearm By Felon that Appellant was charged with originally in 2011; "five years prior".

See., Appendix-A, State of North Carolina Docket Sheet, which provides that Appellant was convicted of two felony conspiracy to commit robbery with a dangerous weapon ("RWDW") offenses (Case No.s 07CRS53404 and 07CRS53405) that were consolidated for judgement, for which Appellant was sentenced to a suspended term of 24 to 38 months imprisonment, this judgement (of March 12, 2009) included 36 months of supervised probation.

Again, your appellant was charged with Possession of A Firearm By Felon in 2011. Case No. 2011CR-053893, See, Appendix-A, wherein Appellant was confined in the County Jail. Appellant went to a Probable Cause Hearing in February 2013, wherein the Possession of A Firearm By Felon charge was dismissed for lack of evidence. Subsequently Appellant was booked back into the County Jail for a violation of his term of supervision (aforementioned) and was reindicted for the same firearm charge on August 28, 2013. Appellant posted bond, and in 2016 your appellant pled guilty to the "same firearm charge that originated in 2011", which ultimately surfaced again in 2016 Case No. 16 CRS050635 where upon it was adjudicated. See, Appendix-A. More than "five years [after] Appellant's original possession". Mc Lean, supra. Therefor, not only was Possession of A Firearm By Felon null and void, in 2016. Appellant can not lawfully be charged with 18 U.S.C. § 922(g) because "N.C. Gen. Stat. § 14-415.1 placed appellant squarely within the express provisions of North Carolina Law to lawfully possess a firearm." United States v. Mc Lean, supra; even the Tenth Circuit agrees. United States v. Burns, 934 F.2d 1157 (10th Cir. 1991). In addition, unbeknownst to your appellant, his civil rights had been restored under North

Carolina law, specifically under the express provisions of N.C. Gen. Stat. § 13-1. Even though Appellant did not understand the legal ramifications of his Restoration of Civil Rights. See, Appendix-B, "Certificate of Restoration of Civil Rights" issued by the State of North Carolina to your appellant on MAY 25, 2014. Accordingly, on October 30, 2017 when the federal Grand Jury seated in the Middle District of North Carolina returned an indictment charging your appellant with Possession of A Firearm in violation of 18 U.S.C. § 922(g)(1)." Appellant was squarely within his right under North Carolina law to possess a firearm."

Circuit Split

The federal Courts of Appeals are split on whether the inquiry of the federal district courts charging a defendant with an 18 U.S.C. § 922(g)(1) offense should be limited to an issuing state's Certificate of Restoration restoring a felons rights; or should the charging district court prove that a defendant possessed a firearm within the five of his release from prison. Some courts hold that section 18 U.S.C. § 921(a)(20) "limits the inquiry to the language of the certificate" United States v. Thomas, (5th Cir. 1993); United States v. Glaser, 14 F.3d 1213, 1218 (7th Cir. 1994); and United States v. Herron, 45 F.3d 340, 343 (9th Cir. 1995). Others hold that the "whole of state law" must be reviewed in order to determine whether a felon's firearms privileges are restricted. Mc Lean, supra; United States v. Burns, 934 F.2d 1157, 1160-61 (10th Cir. 1991). In addition, section § 921(a)(20) excludes from the definition of a predicate offense any conviction for which a defendant has had his civil rights restored, including the right to carry a firearm. United States v. Clark, 993 F.2d 402, 403, (4th Cir. 1993).

Conclusion:

In the state of North Carolina then, the government at a minimum must prove that a defendant possessed a firearm within five years of release from prison or the supervision resulting from prior North Carolina felony. Otherwise then, your appellant would "as a matter of law" stand in the same position as any other person who had not been previously convicted of a felony. In North Carolina, an ex-felon who is more than five years beyond his release date simply has the same civil rights regarding firearms as non-felons for purposes of § 922(g)(1), as such Appellant's § 922(g)(1) conviction MUST BE VACATED.

II. Question Presented: Whether There Exist A Reasonable Doubt Whether Appellant Knew He Had Been Convicted of A Crime Punishable By More Than One Year's Imprisonment?

Summary of Argument

Appellant's argument is based on the premise that because Appellant has 14 convictions and sentences of 8 to 10 month imprisonments, that in the few cases wherein Appellant received a sentence punishable by more than one year's imprisonment., it may have been unclear to Appellant whether the sentence imposed was for a crime punishable by a term in excess of one year's imprisonment or was a combination of lesser sentences.

There is a reasonable probability that Appellant would have pled not guilty if he had been correctly informed of the "mens rea element" of possession of a firearm in commerce by a felon in violation of 18 U.S.C. § 922(g)(1).

This reasonable probability is based on a plausible jury argument, and because Appellant's advisory guidelines were at the statutory maximum sentence. Appellant thus had nothing to lose by going to trial and had everything to gain by going to trial.

Standard of Review

The standard of review for a Rehaif error not raised in the district court is that of plain error review. Greer v. United States,

The test of the "substantial rights" prong of plain error review in the context of Rehaif, is if the district court had correctly advised Appellant of the mens rea elements of the offense there is a "reasonable probability" that your appellant would not have pled guilty. United States v. Greer,
"At the appellate level on this issue the burden of proof is on your appellant."

Argument And Law:

The mens rea element of possession of a firearm in commerce by a felon in violation of 18 U.S.C. § 922(g)(1) is that the appellant must have had knowledge that at the time of the offense he had been previously convicted of an offense punishable by more than one year's imprisonment.

In evaluating the issue whether there is a reasonable probability that Appellant would have pled not guilty and would have proceeded to trial if he had been informed at the Rule 11 change of plea hearing of the mens rea element for possession of a firearm in commerce by a felon charge, it is [necessary] to examine Appellant's position at the district court level.

"At the district court level, the government bears the burden of proof."

Justice Sotomayor points out that the government bears the burden of proof; that the government must prove beyond a reasonable doubt the knowledge of the status element just as it must prove any other element. Defendants seeking relief based on Rehaif errors bear only the usual burden on plain error. Greer, supra. Justice Sotomayor, concurring as to Greer, and concurring in part, dissenting in part, and dissenting from the judgement in Gary, ___ U.S. ___ 2021.

Appellant's argument here is plausible, as Appellant had six judgements punishable by more than one year imprisonment. See, Appendix-B, State of North Carolina Docket Sheet. Two were consolidated for 24 to 38 months imprisonment. Three were consolidated for 14 to 17 months imprisonment. One was for 6 to 17 months imprisonment.

Appellant had fourteen judgements punishable by 8 to 10 months imprisonment. Appellant's argument is that in serving these fourteen 8 to 10 month sentences "he could easily have thought that as he served the consolidated 24 to 38 month sentences, he was again serving consecutive sentences, rather than one sentence greater than one year's imprisonment."

Appellant's plausible argument as to the 14 to 17 month consolidated sentences and the 6 to 17 month sentence is that "due to the [actual] time he served for these offenses, Appellant may have not Known that he had been convicted of a crime punishable by more than one year in prison."

Appellant's projected release date for the 14 to 17 month consolidated sentences was 1 year, 9 days following conviction.

Appellant's projected release date on the 6 to 17 month sentence was 6 months following his conviction.

Appellant's guideline total offense level was 28, his Criminal History Category was VI, and his advisory guidelines range of imprisonment was 140 to 175 months, reduced to the statutory maximum of 120 months.

Appellant would have consequently known that his advisory guidelines were at the statutory maximum of 120 months.

Appellant had nothing to lose and everything to gain by pleading not guilty and going to trial "based on reasonable doubt as to the mens rea element".

It is therefor reasonably probable that Appellant would have pled not guilty, and would have gone to trial "if the district court had correctly informed him of the mens rea elements," since Appellant had a plausible jury argument and was facing the maximum 10 year sentence on a guilty plea.

"Criminal History Summary"

Appellant was convicted on March 12, 2009 of 17 felonies. See, Appendix-B, State of North Carolina Docket Sheet.

A consolidated sentence of 8 to 10 months was imposed in 6 convictions, "first set," immediately effective.

A consolidated sentence of 8 to 10 months was imposed in 4 convictions, "second set" which began at the expiration of the first set of 6 convictions.

A consolidated sentence of 8 to 10 months was imposed in 4 convictions, "third set" which begin at the expiration of the second set of 3 sentences.

As to the aforementioned 14 convictions, Appellant received an 8 to 10 month consolidated sentence "plus an 8 to 10 month consolidated sentence."

"Not one of these 14 sentences as to Appellant is a sentence in excess of a year."

Appellant is convicted of two offenses on March 12, 2009 for which he did receive terms of imprisonment for longer than one year. These convictions are for 2 felony counts of felony conspiracy to commit robbery with a dangerous weapon. Appellant received a consolidated judgement, 24 to 38 months imprisonment, which was suspended. Appellant's probation was revoked and this sentence was placed into effect.

This 24 to 38 month sentence was imposed to run at the expiration of all the aforementioned "three sets" of 8 to 10 month sentences.

The 17th conviction imposed on March 12, 2019 was for larceny from the person which was consolidated with the conspiracy to commit robbery offense. This was a conviction for which Appellant received a term of imprisonment greater than one year. See, Appendix-B, State of North Carolina Docket sheet.

Appellant was convicted of four felonies on September 15, 2016.

Appellant received a consolidated judgement of 14 to 17 months imprisonment which was suspended and Appellant was placed on probation.

Appellant's probation was revoked and the 14 to 17 months imprisonment was placed into effect.

These were convictions for which your appellant received a term of imprisonment greater than one year.

Appellant was convicted on October 26, 2017 of one felony. He received a 6 to 17 month term of imprisonment; this was a conviction for which your appellant received a term of imprisonment greater than one year.

Appellant concludes that there is a reasonable probability that he would have pled not guilty and would have proceeded to trial "if he had been correctly informed at the 'change of plea hearing' of the 'mens rea' element for the offense'" of possession of a firearm in commerce by a felon in violation of 18 U.S.C. § 922 (g) (1).

III. Question Presented: Whether Appellant's Guilty Plea Was Constitutionally Voluntary

Standard of Review

"Constitutionally involuntary guilty pleas are per se reversible under Boykin v. Alabama, 395 U.S. 238 (1969) and the contemporary 'structural error doctrine' Because 'a plea of guilty is a conviction' anything less than an 'affirmative showing' that it was made intelligently and voluntarily amounts to plain error." Pardue v. Burton, 26 F.3d 1093, 1096 (11th Cir. 1994) (quoting Boykin v. Alabama, 395 U.S. 238, 243 (1969)

Argument And Law:

Appellant's guilty plea was constitutionally involuntary. The first and most universally recognized requirement of due process Smith v. O'Grady, 312 U.S. 329, 334 (1941) is that a guilty plea is not voluntary without real notice of the true nature of the charge... Grady v. Linahan, 780 F.2d 935, 943 (11th Cir. 1986) (citations omitted). "Real notice" means that a defendant is aware of the "elements" of the charge. Id. Moreover, "Because a guilty plea is an admission of all the elements, it cannot be truly voluntary unless the defendant possess an understanding of the law in relation to the facts" Mc Carthy v. United States, 394 U.S. 459, 466 (1969).

A. Appellant pleaded guilty without understanding the Rehaif element. So he did not Knowingly stipulate to that element or voluntarily waive the Rights associated without trying the element., and his guilty plea was involuntary and void.

Your appellant did not Know the essential elements when he pleaded guilty. In Rehaif v. United States, 139 S.Ct. 2191, 2195, 2198 (2019). The Supreme Court held that the "Knowingly" mens rea of 18 U.S.C. § 924(a)(2) applies not only to the possession of the firearm, but also the unlawful status, and its "collateral consequences." Rehaif overruled all of the courts of appeal to address the question. Id. at 2210 (Alito, J. dissenting) see e.g., United States v. Jackson, 120 F.3d 1226 (11th Cir. 1997). In pleading guilty Appellant did not Knowingly stipulate to this element, so he did not voluntarily waive the rights associated with trying the element. The guilty plea therefor violated Due Process, and was void. Bousley v. United States, 523 U.S. 614 (1998) is on all fours; for e.g., Five years after he pleaded guilty to "using" a firearm in violation of 18 U.S.C. § 924 (c)(1), the Supreme Court clarified that the "use" element required the government to show "active employment" of the firearm. Id. at 61 (quoting Bailey v. United States, 516 U.S. 137, 144 (1995).) Bousley argued "that neither he, nor his counsel, nor the Court correctly understood the essential elements" of his offense when he pleaded guilty. Id. at 618. The Court held, if proven, his claim would mean his guilty plea was "constitutionally invalid" Id. at 618-19.

Likewise, here the record substantiates that neither Appellant, his counsel, nor the Court understood the Rehaif element when he pleaded guilty. The government recited three elements during his plea colloquy, and Appellant stipulated to same. The status element was that "he had been convicted of a felony crime that was punishable by a term of imprisonment of more than one year. His stipulation to this fact merely shows that he knew by the time he pleaded guilty that he qualified for this status. Reviewing his indictment would not have clarified this. In Appellant's indictment, the word "Knowingly" [modified] "possess" and its object "a firearm". It did not modify the preceding independent "having been convicted" clause, and the indictment's mere citation of the statute would not have provided Appellant with sufficient notice, nor knowledge of the element, or an understanding thereof. At best the language is ambiguous and inconclusive definitively. As shown by

Jackson, 120 F.3d 1226.; construing "Knowingly" not to apply to status.

Not only did the plea colloquy fail to inform your appellant that he was stipulating that he Knew he had a prior conviction for an offense punishable by over one year when he possessed a firearm, but it also failed to inform him that his conviction triggered a bar on his possessing firearms. Rehaif, 139 S. ct. at 2194 suggests that he must possess this Knowledge. It framed the issue as "whether...the Government must prove that a defendant Knows of his status as a person barred from possessing a firearm", and when the government relied upon the well Known maxim that: "ignorance of the law (or a mistake of law) is no excuse". This Court responded;

> that this "maxim does not normally apply where a 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. at 2198

Thus, Appellant did not Know the "legal effect" of his prior conviction, (The Rehaif element); Appellant did not stipulate to Knowing the collateral effect of his prior conviction; i.e., (that he was barred from possessing firearms). In arguendo, even if he had Known as a factual matter about his status, and the firearm prohibition. That would not mean that he understood that his Knowledge was an element. So he could not intelligently waive his rights associated with putting the government to its burden of proving the element. As he did not possess an understanding of the law in relation to the facts. So his guilty plea violated the Due Process Clause and is void. Mc Carthy, 394 U.S. at 466.

B. Constitutionally involuntary guilty pleas are per se reversible under BoyKin v. Alabama, 395 U.S. 238 (1969), and the contemporary structural error doctrine. "Because a plea of guilty is a 'conviction' anything less than an 'affirmative showing' that it was made intelligently and voluntarily amounts to plain error" Pardue v. Burton, 26 F.3d 1093, 1096 (11th Cir. 1994) (quoting BoyKin v. Alabama, 395 U.S. at 243 (1969). In BoyKin, this Court refused to presume that the defendant's plea was Knowing and voluntary, based on a silent record and reversed. This Court's decisions after BoyKin, have characterized BoyKin violations as creating a "presumption of invalidity."

Parke v. Raley, 506 U.S. 20, 28 (1992) a presumption of prejudice. United States v. Owens, 15 F.3d 993, 1001 (11th Cir. 1994) or as showing that the guilty plea was "presumptively void". United States v. Melock, 12 F.3d 185, 189 (11th Cir. 1994). Justice Alito recognized the categorical implication of the Rehaif holding, stating:

> "those for whom direct review has not ended will be entitled to a new trial."

Rehaif, 139 S.Ct at 2213 (Alito, J. dissenting). Thus, unlike run-of-the mill violations of Fed. Crim. P. R. 11. "No showing of prejudice is required". This Court recognized this in United States v. Dominguez-Benitez, 54 U.S. 74 (2007), when it articulated the showing of prejudice under plain error review of a Rule 11 error. It found the defendant would have to show a reasonable probability that but for the error he would have not pleaded guilty. Id. at 83. It flagged a "point of contrast with the constitutional question of whether a defendant's guilty plea was knowing and voluntary". Id. at 84 n. 10. Court's reviewing a Rule 11 violation should "consider any record evidence tending to show that a misunderstanding was inconsequential to a defendants' decision or evidence indicating the relative significance of other facts that may have borne on his choice regardless of any Rule 11 error." Id. at 84. But a conviction based upon a constitutionally involuntary guilty plea "must be reversed, despite overwhelming evidence that the defendant would have pleaded guilty regardless." Id. at 84, n. 10 See also United States v. Jones, 266 F. Appx. 901-02 (11th Cir. 2008) (recognizing that involuntary guilty pleas unlike Rule 11 violations are reversible notwithstanding overwhelming evidence of guilt or probability that the defendant would have entered a guilty plea absent the error.") The Boykin per se rule applies to guilty pleas entered without knowing the elements. In, Henderson v. Morgan, 426 U.S. 637, 639 (1976) the defendant did not understand that "intent to kill" was an element when he pleaded guilty to second degree murder. Rejecting that it was a "technicality." This Court held that "even if the prosecutor had overwhelming evidence of guilt [nothing] in the record could substitute for either a finding after trial., or a voluntary admission that respondent had the requisite intent." Id. at 644, 646. Likewise, here the weight of the evidence is irrelevant. An admission in the context of a guilty plea is "more than a confession, it is a stipulation that no proof ~~by the~~ prosecution needs to be advanced;"

Boykin, 395 U.S. at 242-43, and n.4. "Even if there was overwhelming evidence of the Rehaif element. Appellant did not voluntarily stipulate to that element." Put another way, the error is "structural". Prejudicial is irrelevant because the error offends an interest independent of the need "to protect the defendant from erroneous conviction". Weaver v. Massachusetts, ___ U.S. ___ 137 S.Ct. 1899, 1907 (2017). A number of structural error cases protect defendants' rights to make certain decisions autonomously. In McKaskle v. Wiggins, 465 U.S. 168, 177 n.8 (1984), the Court found that the right to self-representation was structural, even though its exercise "usually increases the likelihood of a trial outcome unfavorable" to him. See also, Weaver, supra (noting "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty"). United States v. Gonzalez-Lopez, 540 U.S. 140 (2006) (denial of counsel of choice is structural error) McCoy v. Louisiana, ___ U.S. ___, 138 S.Ct. 1500, 1508 (2018) (discussing decisions reversed for defendants).

Accordingly, Appellant was not permitted to decide whether to contest the Rehaif element, to investigate the government's evidence of it, or to negotiate his stipulation to it. Without understanding the element, he was not able to "make his own choices about the proper way to protect his own liberty." Weaver, 137 S.Ct. at 1908. Moreover, it will always be fundamentally unfair. Id., to tell a defendant that, by his guilty plea, he is stipulating to one thing, only for him to find out later that his guilty plea represented a stipulation to something additional. The implications of this error are even more problematic than those errors that the Weaver Court considered to be "always... fundamentally unfair": the denial of the right to counsel, and the giving of an erroneous reasonable doubt instruction. Id., (citing Gideon v. Wainright, 372 U.S. 335, 343-45 (1963) and Sullivan v. Louisiana, 508 U.S. 275, 279 (1993).) At least defendants without counsel or defendants burdened by a misleading reasonable doubt instruction still remain the basic decision of whether to admit or contest an essential element.

C. Alternatively, Appellant's involuntary guilty plea caused prejudice. Even if we avoid labeling involuntary guilty pleas as a structural error, this involuntary guilty plea caused prejudice. Perhaps some involuntary guilty pleas, such as guilty pleas entered without being informed of a particular right waived would not be prejudicial. But the error here... a guilty plea entered without knowledge of an essential element (mens rea element) that seperated wrongful from innocent acts, Rehaif, 139 S.Ct. at 2196, is more pervasive implicating every right waived.

Dominguez-Benitez, 542 U.S. at 84 & n. 10, at least made clear that whatever showing is necessary to reverse involuntary guilty pleas is not the same as the prejudice inquiry relevant to Rule 11 violations.

Hence, the issue is not whether Appellant would have entered a guilty plea, notwithstanding the unexplained element, and the weight of the evidence as to the element remains irrelevant." Appellant was prejudiced in a different aspect. He unknowingly stipulated to an element without having an opportunity to investigate the government's evidence in relation to that element." The reasons the error was prejudicial are analagous to the reasons Appellant argues that it is structural. But this Court need not hold that Constitutionally involuntary guilty pleas are always reversible to find that the error here prejudiced Appellant's rights to defend his interests.

D. Failing to correct the error would seriously affect the fairness, integrity and public reputation of the judicial process. This Court should exercise its discretion to reverse because the involuntary guilty plea here seriously affects the integrity of the judicial proceedings. United States v. Olano, 507 U.S. 725, 736 (1993). It is difficult to imagine a practice that could more completely discredit the criminal proceedings, than to attribute to a guilty plea a stipulation to an element of which the defendant was unaware. Although the Rehaif element is a new development. A judicial construction of a statute is an authoritative statement of what the statue meant before as well as after the decision of the case giving rise to that construction. Rivers v. Roadway Exp Inc., 511 U.S. 298, 312-313 (1994).

Attributing to the guilty plea a stipulation that the defendant did not Knowingly make might be perceived as a "bait-and-switch" which is universally perceived as unfair. It would seem even more unfair when not having the Knowledge of what makes a prohibitive offense a crime. Its analogous to a child's familiar exculpatory statement: "But I didn't mean to" Morissette v. United States, 342 U.S. 246, 251 (1952). Rosales-Mireles v. United States, 138 S.Ct. 1897, 1906 (2018) made clear that errors can be sufficiently disreputable without "shocking the conscience". Even "inadvertent or unintentional errors" can tarnish the judicial proceedings that tolerate them. Id., (noting it "repeatedly has reversed these types of errors under plain error review). Nor may it limit reversal to "circumstances in which a miscarriage of justice would result, that is to say, where a defendant is actually innocent." Id. We understand now (before Appellant's conviction becomes final) what the law, properly construed, has always required. Affirming his conviction and guilty plea, though he did not have the understanding when he pleaded guilty would degrade the integrity of the criminal process. For these reasons, this Court should VACATE Appellant's conviction and guilty plea, and Remand to the district court to dismiss the indictment. See, Appendix-C, Docket Entry #51 U.S. Court of Appeals-Fourth Circuit.

IV. Question Presented: Failure To Include The Knowledge of Status Element In Appellants Indictment Was Plain Error Affecting His Substantial Rights

Standard of Review: United States v. Kingrea, 573 F.3d 186 (4th Cir. 2009) If an indictment fails to charge an "essential element of the crime, it fails to state an offense."

Argument And Law:

Appellant's conviction for being a felon in possession of a firearm in violation of 18 U.S.C. 2922 (g)(1) must be vacated., and the case remanded with instructions to dismiss with prejudice since his indictment failed to provide him with notice that the government would attempt to prove that he Knew his prohibited status. Appellant's "indictment" was "invalid" and his conviction was predicated on an indictment that failed to allege an essential element.

In addition, the grand jury failed to consider whether Appellant "Knew he belonged to the relevant category of persons barred from possessing a firearm" Rehaif, 139 S.Ct at 2200. As such., the errors here occurred at the inception of the government's case and continued throughout.

Accordingly, the "Fifth Amendment of the United States Constitution provides that '[n]o person shall be held to answer for a capital., or otherwise infamous crime., unless on a presentment or indictment of a Grand Jury'" United States v. Moore, 810 F.3d 932, 936 (4th Cir. 2016)., and mere reference to the applicable statute does not cure an indictment's failure to include every essential element of an offense. United States v. Kingrea, 573 F.3d 186, 191 (4th Cir. 2009). The purpose of the presentation clause of the Fifth Amendment is two-fold. It entitles defendants to be in jeopardy [only] for offenses charged by a group of his fellow citizens acting independent of the prosecutor and judge. It entitles a defendant to be apprised of charges against him so that he may choose his best defense.

Here, your appellant rights were violated at the inception of the adversary process against him United States v. Fogel, 901 F.2d 23 (4th Cir. 1990), and Appellant respectfully avers that the only cure here is for his conviction to be VACATED.

Respectfully Submitted

Mandrail Woodberry

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Manchuil Woodberry

Date: 4/20/22

gave to officers on this date
to be processed as outgoing legal mail.
Houston v. Lack S.Ct.