

22-5768
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

SEP 27 2022

OFFICE OF THE CLERK

Issa Battle

— PETITIONER

(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court of Pennsylvania

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Issa Battle #37857-068

(Your Name)

PCI - Gilmer - Po Box 6000

(Address)

Glensville, WV. 26351

(City, State, Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

- 1) whether, after the Supreme Court's decision with *Rohaf*, a well known deficient indictment can stand
- 2) whether the Supreme Court's decision abrogated longstanding precedent of 18 U.S.C. §922(g)

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

Luke Patterson v. R.M. Wolfe, Warden, No. 21-8258

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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 B 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 is unpublished.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 A 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 is unpublished.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 is unpublished.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 is unpublished.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Rehaif v. United States, U.S. , 139 S. Ct. 2191 (2019)	
United States v. Lockhart, 947 F.3d 187, 196 (4th Cir. 2020)	
Apprendi, 530 U.S.	
United States v. Reese, 92 U.S. 214, 232-33 (1875)	
United States v. Pupo, 841 F.2d 1235, 1239 (4th Cir. 1988)	
United States v. Daniels, 973 F.2d 272, 274 (4th Cir. 1992)	
United States v. Cochran, 17 F.3d 56, 57 (3d Cir. 1994)	
United States v. Huet, 665 F.3d 588, 595 (3d Cir. 2012)	
United States v. Dominguez Benitez, 542 U.S. 74, 83 (2001)	
Compare Promise, 225 F.3d	

STATUTES AND RULES

- 18 U.S.C. §922(g)(1)
- 18 U.S.C. §924(a)(2)

OTHER

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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: 8/11/2022, and a copy of the order denying rehearing appears at Appendix C.

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

18 U.S.C. §922(g)(1)-felon in possession of a firearm:

"(g)-it shall be unlawful for any person-
(1)-who has been convicted in any court of, a crime
punishable by imprisonment for a term exceeding one
year..."

18 U.S.C. §924(a)(2)-Knowingly element

"whoever knowingly violates subsection (a)(6), (d), (g),
(h), (i), (j), or (o) of section 922 shall be fined as
provided in this title, imprisoned not more than 10 years,
or both."

STATEMENT OF THE CASE

- 1) On 09-23-2015, a grand jury charged Mr. Battle within a single count of felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1);
- 2) On 05-23-2016, Mr. Battle pled guilty to the single count indictment with specific emphasis that the §922(g)(1) is the ONLY charge he is pleading guilty to;
- 3) On 09-28-2016, Mr. Battle was sentenced to 188 months of imprisonment;
- 4) Mr. Battle appealed such sentence to the Appeals Court for the Third Circuit which was affirmed on 07-24-2017;
- 5) Upon the decision within Rehaif, Mr. Battle requested appointment of counsel to pursue such claim. Said request was denied and appealed, again, to the Third Circuit which was reversed and allowed Mr. Battle to proceed with his Rehaif claim;
- 6) Within the proceeding, Mr. Battle, (with counsel, argued the relationship of Mr. Battle's §922(g) offense and the Supreme Court's decision within Rehaif;
- 7) On , the District Court denied Mr. Battle's request for relief. Mr. battle promptly file his N.O.A. which was denied as well as his C.O.A.

REASONS FOR GRANTING THE PETITION

The Supreme Court issued its opinion in Rehaif v. United States, ___ U.S. ___, 139 S. Ct. 2191 (2019). The Court held that: "in a prosecution under 18 U.S.C. §922(g)...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." (id at. 2200)(emphasis added). As a result, Rehaif abrogated longstanding precedent, holding that knowledge of one's prohibited status is not an element of a §922(g). (See United States v. Lockhart, 947 F.3d 187, 196 (4th Cir. 2020)(en banc)(recognizing that Rehaif abrogated law regarding §922(g) offenses)).

In accordance with the Supreme Court's decision within Rehaif, Mr. Battle argued that the failure to include the "Knowledge-of-status element", (18 U.S.C. 924(a)(2)), in his indictment affected his substantive rights. Specifically, he claims he was prejudiced by not receiving notice that the government had to prove he knew his prohibited status at the time of the offense. Such a prejudice can be demonstrated when the charging instrument fails to fulfill the notice purpose of an indictment.

Mr. Battle argues that, even under the most liberal construction, his charging instrument fails to put him on notice of the "Knowledge-of-status element" (18 U.S.C. §924(a)(2)). Even with governments counsel making specific notation that Mr. Battle was ONLY pleading guilty to 18 U.S.C. §922(g)(1), (Doc. 89 at 5, 8, 22). The "Knowledge-of-status element" (18 U.S.C. §924(a)(2)) was never mentioned therein, (see Doc. 89 at 22, 23-24

and 28-29). The singular offense of 18 U.S.C. §922(g)(1) was agreed upon by all listed parties (see Doc. 89).

As the Supreme Court has put it, "the indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted." (see Apprendi, 530 U.S. at 490 n.15)(quoting United States v. Reese, 92 U.S. 214, 232-33 (1875)(Clifford, J., concurring)). Merely to infer that someone knew that he was a prohibited person in possessing a firearm at the time of the offense based upon a stipulation that he was, in fact, a prohibited person can not cure this deficiency and would render the Supreme Court's language in Rehaif pointless. (see, e.g., Rehaif, ___ U.S. ___, 139 S. Ct. at 2197) ("nor do we believe Congress would have expected defendant's under §922(g) and 924(a)(2) to know their own statuses".)

Court's have long held that an indictment that omits an essential element of an offense is **deficient**. (see Apprendi, 530 U.S. at 500-18)(Thomas, J., concurring)(discussing cases and treaties since the 1840's, which repeatedly emphasizes the importance of including every element in an indictment." Thus, "[a]s a general rule, criminal proceedings were submitted...after being initiated by an indictment containing 'all the facts and circumstances which constitutes the offense,...stated with certainty and precision, that the defendant...may be enabled to determine the species of the offense they constitute, in order that there may be no doubt as to the judgment which should be given, if the defendant be convicted,'" (see Apprendi, 530 U.S. at 473).

In this matter, on 09-23-2015, Mr. Battle was indicted in violation of 18 U.S.C. §922(g)(1)-felon in possession of a firearm (see Doc. 1). Within said instrument, the "Knowledge-of-status element", (18 U.S.C. §924(a)(2)), was omitted from the charging instrument leaving only the 18 U.S.C. §922(g)(1) offense.

The "Knowledge-of-status element" comes from §924(a)(2) NOT §922(g)(1). In Rehaif, the Supreme Court has explained that there is NO PROSECUTABLE, stand-alone violation of title 18 U.S.C. §922(g). Rather, a valid prosecution must be "under [both] 18 U.S.C. §§922(g)(1) and 924(a)(2)". (see Rehaif, ____ U.S. ____ 139 S. Ct. at 2200); see also (id at 2195) ("we granted certiorari to consider whether, in prosecutions under §922(g) and §924(a)(2) the government must prove that a defendant knows of his status as a person barred from possessing a firearm.")

Alone, a 922(g) offense states:

"(g)-it shall be unlawful for any person-
(1)-who has been convicted in any court of, a crime
punishable by imprisonment for a term exceeding one
year..."

(18 U.S.C. §922(g)(1)). Its ONLY with the application of the "Knowledge-of-status element" (18 U.S.C. §924(a)(2)) that the offense becomes an imprisonable and/or prosecutable offense of it is stated:

"whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j) or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

(18 U.S.C. §924(a)(2); see also Rehaif, ____ U.S. ___, 139 S. Ct. at 2194, 2195, 2196 and 2197) (where the Supreme Court repeatedly

referenced prosecution under BOTH title 18 U.S.C. §922(g) and §924(a)(2)).

With the exclusion of said provision from the charging instrument, a defendant, like Mr. Battle, cannot contest every element of the offense alleged against him. Thereby making the indictment improper and the sentence unconstitutional. (see United States v. Pupo, 841 F.2d 1235, 1239 (4th Cir. 1988)(en banc) ("It's well established that an indictment is defective 'if it fails to allege elements of scienter that are expressly contained in the statute that describes the offense.'"); see also United States v. Daniels, 973 F.2d 272, 274 (4th Cir. 1992) ("This court, sitting en banc, has left no room for doubt as to the law concerning the requirements of constitutionally adequate indictment)).

In this matter, Mr. Battle's indictment fails to include the essential, 18 U.S.C. §924(a)(2), that is required to activate the 0 to 10 year sentence for an offense to be prosecuted pursuant to 18 U.S.C. §922(g)(1). With this failure, Mr. Battle's indictment is, in deed, deficient and cannot stand nor Mr. Battle be held to such an unconstitutional sentence. (see United States v. Cochran, 17 F.3d 56, 57 3d Cir. 1994) and United States v. Huet, 665 F.3d 588, 595 (3d Cir. 2012)(An indictment is sufficient if it "(1) contains the elements of the offense intended to be charged; (2) sufficiently apprises the defendant of what he must be prepared to meet and; (3) allows the defendant to show with accuracy to what extent he may plead a former acquittal or conviction in the event of subsequent prosecution.")(internal quotation

in 2019. There was NO CONCEIVANBLE probability that Mr. Battle could have known that Rehaif would be decided when it was.

Furthermore, had these matters been known at the time of Mr. Battle's proceedings, Mr. Battle would not have been indicted, prosecuted and/or convicted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Issa Battle

Date: 9/15/22