

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 2022

Mashour Howling, *Petitioner*

v.

State of Maryland, *Respondent*.

*Application for Extension of Time to File Petition for Writ of Certiorari
to the Court of Appeals of Maryland*

To the Honorable John G. Roberts, Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit including State of Maryland:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Petitioner Mashour Howling respectfully requests for a 30-day extension of time to file his petition for certiorari to this Court to and including October 13, 2022.

1. Under this Court's Rule 13 (1), Certiorari "is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment." As Certiorari was granted by Maryland's "Court of Last Resort," Supreme Court Rule 13(3), applies to this case. That Rule

provides “[t]he time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate...” This makes the effective final judgment date of the Court of Appeals of Maryland¹ on June 15, 2022 and Petitioner's time to file a petition for certiorari in this Court expires on September 13, 2022.² This application is being filed more than 10 days before that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1) and §1257.

2. Originally, in an unreported opinion in the Court of Special Appeals of Maryland, three (3) Questions Presented were sought review by Petitioner, then represented by the Maryland Office of Public Defender. *See Attached “B,” Howling v. State of Maryland, Sept. Term 2019, Case No. 2087 (Dec. Feb. 4, 2021).*³ Among the issues

¹ A referendum is before the Maryland voters on Election Day November 8, 2022, to change the name of Maryland’s High Court, from the “Maryland Court of Appeals” to the “Supreme Court of Maryland.” Should this Court grant Certiorari in this matter, this name change may be in effect.

² The Maryland Court of Appeals’ denial of a timely Motion for Reconsideration, took place on June 15, 2022. *See Attached “A.”* A non-substantive Corrected Order was issued on August 11, 2022. *Id.* This Corrected Order, apparently arose due to a timing inadvertence, as the recently elevated and appointed Chief Judge was listed on the original Order on the Reconsideration motion but not part of the decision at the Court of Appeals. However, due to the new Chief Judge also being part of the 3-Judge panel at the intermediate appellate Maryland Court of Special Appeals in Mr. Howling’s case, technically the Senior Judge for the Maryland Court of Appeals should have been listed in the denial of Reconsideration Order, as is reflected in the Corrected Order. *See Attached “B.”*

³ A review of the Maryland Court of Special Appeals’ unreported opinion, explains many of the factual matters for this Court. *See Attached ‘B,’ Howling v. State of Maryland, Sept. Term 2019, Case No. 2087 (Dec. Feb. 4, 2021).*

examined, include Issue 1 whether Petitioner’s felony conviction for illegal possession of a firearm, should be reversed when the Maryland pattern jury instruction given over objection, lacked any *mens rea* requirement as the common law presumption requires, and this Court adopted for all federal convictions in the analogous federal statute, in *Rehaif v. United States*, 139 S.Ct. 2191 (2019). *Id.* at pg. 2-12.

3. Subsequently, after the unreported opinion was issued affirming the lower Court, timely Certiorari was sought by new lead and private Counsel on appeal. A number of Supplemental Authority filings were noted by counsel, *inter alia*, due to this Court’s pending decisions on *Greer v. United States* [and *United States v. Gary*], 141 S.Ct. 2090 (Dec. June 14, 2021). Petitions for writ of certiorari were granted by the Maryland Court of Appeals on September 29, 2021, in Petitioner Howling’s case, and a companion case raising similar issues, of *Abongnelah v. State*. *See Howling v. State, certiorari granted*, 259 A.3d 797 (2021). These appear to be the first successful Certiorari petitions seeking to adopt on a state level,⁴ this Court’s

⁴ The Michigan Supreme Court has, however, recently adopted the *Rehaif* framework, in a different criminal statute on sales tax and licensing requirements for large amounts of cigarette sales in *People v. Magnant*, 2021 WL 3235864 (Dec. July 30, 2021, Mich. S.Ct.).

holdings in *Rehaif* and *Morrisette v. United States*, 72 S.Ct. 240 (1952)(J. R. Jackson) to certain gun possession cases, where the “label” given from ancillary sources, wholly separates guilty misconduct from innocent acts.

4. Eventually, in a Reported Opinion, the Maryland Court of Appeals, denied all relief to Petitioner, and his convictions were affirmed. *See Attached “C,” Howling v. State of Maryland, Sept. Term 2019, Case No. 2087 (Dec. April 25, 2022); see also, Howling v. State, 478 Md. 472 (2022), reconsideration denied (June 15, 2022).* A timely motion for reconsideration was sought, which was denied on June 15, 2022, the same date the mandate issued. *See Attached ‘A.’*
5. Petitioner’s Counsel Michael Wein is an attorney licensed in the State of Maryland, various Federal appellate courts, and a member of the Bar of this Court. This case directly involves at least two important Federal Questions Presented, both Questions of First Impression for this Court, and invoking important state comity, common law, and federalism issues and concerns.⁵
6. The 1st Question Presented is:

⁵ These are draft Questions Presented, and are subject to further determinations as to the most salient arguments to be presented, and wording revisions upon a Petition for Writ of Certiorari being filed with this Court.

Whether as a matter of multi-state comity⁶ and public policy supporting the presumption from the Common Law as also adopted in *Rehaif v. United States*, 139 S.Ct. 2191 (2019), did the State of Maryland erroneously fail to include a “guilty mind” *mens rea* jury instruction, when the specific felony statutory provision Petitioner was charged and convicted, is premised upon an alleged “crime of violence” of an almost 20 year-old “simple assault” conviction in his home state of Pennsylvania, resulting in no jail time, and Pennsylvania, not only didn’t find it a disqualifying offense, but legislatively and factually determined Petitioner was qualified to possess a firearm.

The 2nd Question Presented is:

Whether this Court’s decision in *Morrisette v. United States*, 72 S.Ct. 240 (1952)⁷ by Justice Robert Jackson,

⁶ Petitioner Howling, in the Questions Presented in the granted Certiorari Petition by the Maryland Court of Appeals, and thereafter, argued the “state comity” issue. However, for unknown reasons, the Published opinion by that Court, leaves out the verbatim wording from the Certiorari Petition and Brief, noting *inter alia* the “state comity concerns of a Pennsylvania resident briefly visiting in Maryland.”

⁷ “The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. A relation between some mental element and punishment for a harmful act is almost as instinctive as the child's familiar exculpatory ‘But I didn't mean to,’ and has afforded the rational basis for a tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution. Unqualified acceptance of this doctrine by English common law in the Eighteenth Century was indicated by Blackstone's sweeping statement that to constitute any crime there must first be a ‘vicious will.’ Common-law commentators of the Nineteenth Century early pronounced the same principle, although a few exceptions not relevant to our present problem came to be recognized.

Crime, as a compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand, was congenial to an intense individualism and took deep and early root in American soil. As the state codified the common law of crimes, even if their enactments were silent on the subject, their courts assumed that the omission did not signify disapproval of the principle but merely recognized that intent was so inherent in the idea of the offense that it required no statutory affirmation. Courts, with little hesitation or division, found an implication of the requirement as to offenses that were taken over from the common law. The unanimity with which they have adhered to the central thought that wrongdoing must be conscious to be criminal is emphasized by the variety, disparity and confusion of their definitions of the requisite but elusive mental element. However,

reaffirmed in *Rehaif*, and thoroughly addressing the history and “universal” “common law presumption” as existed for the original 13 colonies like Maryland for a *scienter* requirement functioning in serious criminal felonies like those charged against Petitioner, was properly addressed and applied by Maryland in this case.

7. Petitioner Howling, is a Pennsylvania resident. Despite objections at trial, Howling was not permitted to argue his “non-blameworthiness” and reasonable lack of a guilty *mens rea*, with a jury instruction that included *scienter* to the Maryland jury. After conviction, Howling was sentenced to a nine-year suspended sentence, and is presently a convicted felon. This is for possessing a gun as a disqualified person under Maryland law,⁸ by Maryland’s

courts of various jurisdictions, and for the purposes of different offenses, have devised working formulae, if not scientific ones, for the instruction of juries around such terms as ‘felonious intent,’ ‘criminal intent,’ ‘malice aforethought,’ ‘guilty knowledge,’ ‘fraudulent intent,’ ‘wilfulness,’ ‘scienter,’ to denote guilty knowledge, or ‘mens rea,’ to signify an evil purpose or mental culpability. By use or combination of these various tokens, they have sought to protect those who were not blameworthy in mind from conviction of infamous common-law crimes.”
Morissette v. United States, 342 U.S. 246, 250–52 (1952)(J. Robert Jackson)

⁸ The specific subsection of conviction, potentially leading to fifteen (15) years imprisonment, was as a “crime of violence” because Maryland considers a “second degree assault” conviction as a disqualifying violation, and thus Howling’s 2002 Pennsylvania conviction of “simple assault” while he was apparently a grad student, and despite the minor misdemeanor not disqualifying from gun ownership in Pennsylvania, was “re-interpreted” by the State of Maryland, as a violation of MD Code, Public Safety, § 5-133 “Restrictions on possession of regulated firearms” which states as follows:

[...]

“(c)(1) A person may not possess a regulated firearm if the person was previously convicted of:

(i) a crime of violence;

(ii) a violation of, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or

(iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State. [...]

“re-interpretation” lacking comity concerns, of his 20-year old Pennsylvania non-disqualifying “simple assault” misdemeanor he received probation for and served no jail time. Nevertheless, the State of Maryland judicially determined, as affirmed on appeal, no circumstances can exist, to allow Mr. Howling to argue his *mens rea* was reasonable, to a jury, he did not have a guilty mind of his “status” of having a previous “crime of violence,” that disqualified him from possessing a firearm—a felony conviction in Maryland. (the sovereign State, that knew best, Pennsylvania, confirmed he was not). Yet, Maryland instead applied a mechanistic meaning to the Statute, regardless of state comity concerns and the common law applicable to all the original States, potentially permanently labelling Mr. Howling as a “felon.”

8. Petitioner Howling, has only recently obtained adequate compensation to support undersigned private counsel assisting in seeking Certiorari with this Court on the appeal errors claim herein. Particularly in light of the important questions presented by this case, it is important that additional time be provided to Counsel to properly frame and argue these complex matters to this Court.

Wherefore, Petitioner Mashour Howling respectfully requests that an Order be entered extending his time to petition for Certiorari with this Court to and including October 13, 2022.

Respectfully Submitted,

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