

23-5314

NO. _____

ORIGINAL

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

JOE CRAWFORD - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

WHETHER IN LIGHT OF *Rehaif v. United States*, 139 S. Ct. 2191 204 L.Ed.2d (2019), WAS THE EVIDENCE INSUFFICIENT TO SUSTAIN A CONVICTION WHEN THE GOVERNMENT FAILS TO PROVE BEYOND A REASONABLE DOUBT THERE WAS NO EVIDENCE PETITIONER KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE CONFIDENTIAL INFORMANT HAD BEEN CONVICTED OF ONE OF A NARROW RANGE OF FELONY OFFENSES?

LIST OF PARTIES

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

RELATED CASES

NONE

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT 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☒ is unpublished

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was May 5, 2023.

☐ 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: _____, 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. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

On August 23, 2018, the "Grand Jury" for the Northern District of Mississippi, Greenville Division returned a "Three Count Indictment" charging Defendant with the following:

A. INTRODUCTION

1. At various times relevant to this "Indictment," Defendant worked as a Bail Bondsman in Bolivar County Mississippi. Additionally at all times relevant to this "Indictment," Defendant owned and operated a Bail Bonding Company entitled "Crawfords Bail Bonding."

2. At various times relevant to this "Indictment," Defendant received firearms from arrestee's as collateral for bail bonds. Then Defendant sold said firearms to other individuals, including convicted felons.

B. STATUTORY ALLEGATIONS

COUNT ONE

On or about February 17, 2018, in the Northern District of Mississippi, the Defendant did knowingly sell a firearm, that is a Maadi 7.62x39 mm semi automatic rifle, to a person knowing and having reasonable cause to believe that said person had been convicted of a crime punishable by imprisonment for a term exceeding one year, all in violation of Title 18 U.S.C. Sections 922(d) and 924(a)(2).

COUNT TWO

On or about June 14, 2018, in the Northern District of Mississippi, the Defendant did knowingly sell firearms, namely a Smith & Wesson M&P-15 .223 caliber rifle and a Taurus .45 caliber pistol, to a person

knowing and having reasonable cause to believe that said person had been convicted of a crime punishable by imprisonment for a term exceeding one year, all in violation of Title 18 U.S.C. Sections 922(d) and 924(a)(2).

COUNT THREE

On or about June 14, 2018, in the Northern District of Mississippi, the Defendant did knowingly sell firearms, namely a Norinco model MAK-90 Sporter 7.62x39 mm caliber rifle, a Nodak Spud LLC 5.45x39mm caliber rifle, two Glock .45 caliber pistols, a Taurus .40 caliber pistol, a Berretta .32 caliber pistol, and a "bump stock," to a person knowing and having reasonable cause to believe that said person had been convicted of a crime punishable by imprisonment for a term exceeding one year, all in violation of Title 18 U.S.C. Sections 922(d) and 924(a)(2).

On August 28, 2018, two months after the final sale of firearms between Defendant and Louis West the Government executed a "Search Warrant" on Defendant's residence. During the search of Defendant's home the agents examined 379 firearms, of those, 50 firearms was seized. Two of the firearms were stolen and two of the firearms had obliterated serial numbers.

On August 29, 2018, an "Arrest Warrant" was executed for Defendant's arrest.

On August 31, 2018, Defendant appeared for "Arraignment" and entered a "Plea of Not Guilty" as to Count's 1, 2, and 3. He was released on bond the same day.

On December 4, 2018, the "Grand Jury" for the Northern District of Mississippi, Greenville Division returned a "Two Count Superseding Indictment" charging Defendant with the following:

COUNT ONE

On or about March 20, 2018, in the Northern District of Mississippi, the Defendant did knowingly sell firearms, that is a Magnum Research Inc., Desert Eagle .44 caliber pistol, a Federal Arms Corp. FA91 .308 caliber rifle, and a Nodak Spud LLC 5.45x39mm caliber rifle to a person knowing and having reasonable cause to believe that said person had been convicted of a crime punishable by imprisonment for a term exceeding one year, all violation of Title 18 U.S.C. Sections 922(d) and 924(a)(2).

COUNT TWO

On or about June 14, 2018, in the Northern District of Mississippi, the Defendant did knowingly sell firearms, namely a Norinco model MAK-90 Sporter 7.62x39 mm caliber rifle, a Nodak Spud LLC 5.45x39 mm caliber rifle, two Glock .45 caliber pistols, a Taurus .40 caliber pistol, a Berretta .32 caliber pistol, and a "bump stock," to a person knowing and having reasonable cause to believe that said person had been convicted of a crime punishable by imprisonment for a term exceeding one year, all in violation of Title 18 U.S.C. Sections 922(d) and 924(a)(2).

On June 7, 2021, Defendant's "Jury Trial" was held before the Honorable Judge Debra M. Brown.

On June 9, 2021, after a 3 day "Jury Trial" the jury returned a "Guilty Veredict" as to Count's 1 and 2 of the "Superseding Indictment."

On September 15, 2021, a "Sentencing Hearing" was held before the Honorable Judge Debra M. Brown with the District Court adopting the "Presentence Report" in its entirety as follows:

SENTENCING TABLE

<u>OFFENSE(S)</u>	<u>BASE OFFENSE LEVEL</u>
Selling Firearm to Convicted Felon 18 U.S.C. Section 924(d).....	20
10 Firearms Sold U.S.S.G. Section 2K2.1(b)(1)(B).....	+ 4
Obliterated Serial Number U.S.S.G. Section 2K2.1(b)(4)(B).....	+ 4
Trafficking Firearms U.S.S.G. Section 2K2.1(b)(5).....	+ 4
Total Offense Level.....	<u>32</u>

With a Base Offense Level of 32 and a Criminal History Category of I, the District Court sentenced Defendant to a 120 months of imprisonment on Count 1 and one month on Count 2 to run consecutive, for a total of 121 months imprisonment, with 3 years supervised release, and \$200 special assessment.

On July 1, 2021, Defendant filed a "Motion For Acquittal" or alternatively a "New Trial" to the Fifth Circuit Court of Appeals.

On July 23, 2021, the Fifth Circuit Court of Appeals denied the "Motion For Acquittal" and "New Trial."

On September 28, 2021, a timely "Notice of Appeal" was filed to the United States Court of Appeals for the Fifth Circuit from the final judgement entered on September 17, 2021.

On July 13, 2022, Defendant filed his "Direct Appeal" with the United States Court of Appeals for the Fifth Circuit raising the following issues:

- I. WHETHER THE DEFENDANT'S CONVICTION WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

- II. WHETHER THE DISTRICT COURT COMMITTED ERROR IN APPLYING A FOUR LEVEL ENHANCEMENT TO THE DEFENDANT'S SENTENCE PURSUANT TO U.S.S.G. SECTION 2K2.1(b)(4)(B)
- III. WHETHER THE DISTRICT COURT COMMITTED PLAIN ERROR IN APPLYING A FOUR LEVEL ENHANCEMENT TO THE DEFENDANT'S SENTENCE PURSUANT TO U.S.S.G. Section 2K2.1(b)(5).

On August 10, 2022, the Government filed a response to Defendant's "Direct Appeal" raising the following:

- I. THERE WAS AMPLE EVIDENCE TO SHOW DEFENDANT KNEW AND HAD REASONABLE CAUSE TO BELIEVE LOUIS WEST WAS A CONVICTED FELON BEFORE DEFENDANT SOLD WEST MULTIPLE FIREARMS.
- II. THE DISTRICT COURT DID NOT CLEARLY ERR WHEN IT DETERMINED THAT DEFENDANT'S POSSESSION OF TWO HANDGUNS WITH OBLITERATED SERIAL NUMBERS CONSTITUTED RELEVANT CONDUCT.
- III. THE DISTRICT COURT DID NOT PLAINLY ERR IN FINDING THAT DEFENDANT ENGAGED IN PROHIBITED FIREARMS TRAFFICKING UNDER U.S.S.G. SECTION 2K2.1(b)(5), MEANING THAT HE TRANSFERRED FIREARMS TO A PERSON THAT HE KNEW OR SHOULD HAVE KNOWN WAS A PROHIBITED PERSON.

On May 5, 2023, the United States Court of Appeals for the Fifth Circuit Affirmed Defendant's "Direct Appeal."

REASONS FOR GRANTING THE PETITION

Petitioner asserts that pursuant to Rehaif, the government must prove beyond a reasonable doubt that petitioner had actual knowledge as to what description of felony the confidential informant was convicted of?

In order to sustain a conviction under Title 18 U.S.C. Section 922(d)(1), the government must prove beyond a reasonable doubt that the petitioner either knew or had a reasonable cause to believe the confidential informant had sustained a conviction for a crime punishable by imprisonment exceeding one year. Pursuant to Title 18 U.S.C. Section 921(a)(20), definitions section of the statute:

The term "crime punishable by imprisonment for a term exceeding one year" does not include:

- (A) Any federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.

In September of 2017, the Cleveland Police Department noticed a rise in violent crime and contacted the FBI for help. As a result, FBI agent Dustin Blount partnered with the Cleveland Police Department to form a violent crime task force. The task force then began to develop confidential informants in an effort to gather intelligence, and potentially purchase narcotics and firearms.

Ultimately, the task force recruited a confidential informant named Louis West. Mr. West was tasked with developing targets for investigation, and making controlled buys of narcotics, and identifying

people willing to sell firearms. In total Louis West conducted forty controlled buys for the FBI and Cleveland Police Department, purchasing firearms and illegal drugs. Four of these controlled purchases were from petitioner.

On February 17, 2018, Louis West was introduced to the petitioner through a man named Leon Hughes. On that day, Louis West asked if Leon Hughes could find him a firearm. Leon Hughes agreed, coordinating a meeting for Louis West to purchase a firearm. Afterwards, Louis West drove to the Wild Bills gas station in Boyle, Mississippi, and met with Leon Hughes. Upon arrival, Leon Hughes, on behalf of petitioner, sold Louis West an AK-47. After that purchase, the petitioner became a target of the task force investigation.

Two weeks later, on March 1, 2018, Louis West again through Leon Hughes purchased two more firearms from the petitioner. This sale occurred at Wild Bills gas station in the parking lot. This was the last time Louis West went through Leon Hughes and began to deal directly with the petitioner.

Leading up to the third firearms buy, Louis West made recorded calls to petitioner wherein they discussed the sale and purchase of firearms. The agents instructed Louis West to explicitly tell petitioner that he was a convicted felon on the recorded calls and videos. However, the agents gave Louis West a warning to be less obvious when he told petitioner he was a felon. For example in one of the calls on March 19, 2018, Louis West told petitioner he wanted "AK's and shit like that," and then Louis West stated:

"Let me, let me explain something to you first of all. Who am I? You bailed me out a million times man. One time before, you know what I'm saying? I'm a felony man, you ain't gotta worry I got 90,000 of them bitches. I just got out of prison. So, on my

momma I got 9,000 of them bitches. So you ain't gotta, that's why I was just trying to peep you and put you on that. That's it. So far as that, I need what I asked you. But if you got some .44s I take them too, and some .45's."

On March 20, 2018, Louis West met petitioner at Will Bills gas station and purchased four firearms from petitioner.

On June 14, 2018, the final meeting Louis West purchased five firearms from petitioner.

Louis West communicated to petitioner that he had more than one felony conviction. However, at no point in the four firearm transactions or audio or video did Louis West state to petitioner specifically what those convictions were for? Due to Louis West's boasts, lies, language barrier and being high on marijuana everyday, petitioner did not take Louis West's exaggerated claims seriously.

On August 23, 2018, a federal grand jury returned an indictment charging petitioner with federal firearm violations.

On August 28, 2018 two months after the last firearm sale between Louis West and petitioner, federal agents executed a search warrant for petitioners residence. During the search, agents examined 379 firearms of those fifty firearms were seized and til date still have not been returned.

On December 4, 2018, the grand jury returned a two count superseding indictment charging petitioner with violations of Title 18 U.S.C. sections 922(d) and 924(a)(2).

A trial commenced on June 7, 2021. The government presented four witnesses:

- (1) Travis Tribble a detective with Cleveland Police Department and task force officer with the FBI;
- (2) Louis West;
- (3) Special Agent Dustin Blount, an agent for the FBI; and

(4) Special Agent Jackson Price, an agent for ATF.

The defense moved for judgment of acquittal, which the court denied. The defense then presented one witness which was petitioner. The petitioner testified that based upon his experience as a bail bondsman, he knew that people usually don't know the differences between a felony or misdemeanor and sometimes confuse misdemeanor convictions with felonies. Soon after they met Louis West began to wildly exaggerate his claims stating repeatedly that he had either 90,000 or 9,000 of them bitches (felonies). This wild exaggeration, along with other bizarre behavior, led the petitioner to believe that Louis West was not being serious.

The petitioner assessment of Louis West was that through all his exaggerated claims, lies and boasting was just a simple ruse to look like something he was not. If the ATF agent testified under oath that Louis West boasts got to the point he was unbelievable. Then logic dictates that petitioner surely did not believe Louis West. Louis West lied under oath about receiving money from the FBI. Louis West insisted that he received no financial compensation for his work as a confidential informant. In fact, he received around \$20,000.00 in compensation. Louis West lied under oath about receiving leniency for new criminal charges, when he in fact "worked off," more than one new prosecution. Louis West lied about having claimed to the defendant that he had 90,000 of them bitches (felonies) and then turned around within a few sentences to admit that he did make that claim.

The petitioner's impression of Louis West as a serious person was borne out by his testimony which was marked by bizarre behavior. When

asked if he was a convicted felon, Louis West told the jury that he had 100,000 felonies. Louis West repeatedly used profanity during his testimony. He became belligerent with defense counsel and refused to answer questions. He repeatedly referred to counsel for the government and counsel for the defense as "cuz." At one point Louis West even referred to the District Judge as "babe." Louis West's believability was further undermined by his admissions that he smokes a lot of marijuana and it makes him mellowed out and forgetful. At one point in his testimony he admits that, "All I do is smoke weed." However, even under the above circumstances a jury found petitioner guilty on June 9, 2021.

On June 1, 2021, petitioner filed a motion for judgment of acquittal or, alternatively, a new trial raising a Rehaif issue as follows:

- (1) The government failed to prove petitioner knew Louis West was a convicted felon,
- (2) the government failed to provide sufficient evidence that petitioner possessed Rehaif knowledge under sections 922 and 924, and
- (3) the jury instructions should have included the definition for "convicted by term of imprisonment exceeding one year" as limited by the exclusions set forth in section 921(a)(20).

On July 23, 2021, the trial court denied petitioner's motion finding that

- (1) The Rehaif standard does not apply to section 922(d) but even if it did apply to section 922(d) violations, the evidence would have supported a conviction;
- (2) Louis West's repeated references to his general status as a felon was sufficient to support conviction; and
- (3) there was requirement for the exclusion definition of section 921(a)(20) to be included as a jury instruction.

A. ACTUAL KNOWLEDGE

Petitioner asserts that pursuant to Rehaif the government "must prove beyond a reasonable doubt that petitioner had actual knowledge as to what kind of felony Louis West was convicted of?"

In order to sustain a conviction under Title 18 U.S.C. Section 922(d), the government "must prove beyond a reasonable doubt" that that the petitioner either knew or had a reasonable cause to believe Louis West had sustained a conviction for a crime punishable by imprisonment exceeding one year. However, pursuant to Title 18 U.S.C. Section 921(a)(20), definitions section of the statute:

The term "crime punishable by imprisonment for a term exceeding one year" does not include:

- (A) Any federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or similar offenses relating to the regulation of business practices.

There is not one shred of evidence as to what kind of felony Louis West was convicted of. The sole issue in Rehaif, a felon in possession case, was whether "in prosecutions under Section 922(g) and Section 924(a)(2), the government must prove that a defendant knows of his status as a person barred from possessing a firearm." 139 S.Ct. at 2195. Section 922(g), the provision at issue, provides that "it shall be unlawful" for certain classes of persons to possess a firearm "in or affecting" interstate commerce. Section 924(a)(2), the relevant penalty provision, provides "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."

This Court recognized "a presumption that criminal statutes require

the degree of knowledge sufficient to make a person legally responsible for the consequences of his or her act or omission." 139 S.Ct. at 2195. This Court then held that "the term knowingly' in Section 924(a) (2) modifies the verb 'violates' and its direct object, which in this case in Section 922(g)." *Id.* Accordingly, the issue was "what it means for a defendant to know that he has 'violate[d] Section 922(g)." To answer this question, this Court observed:

Section 922(g) makes possession of a firearm or ammunition unlawful when the following elements are satisfied: (1) a status element (in this case, "being an alien...illegally or unlawfully in the United States"); (2) a possession element (to "possess"); (3) a jurisdictional element ("in or affecting commerce"); and (4) a firearm element (a firearm or ammunition"). *Id.* at 2195-96.

Setting aside the jurisdictional element, which was not at issue, the *Rehaif* court held that "as a matter of ordinary English grammar, we normally read the statutory term 'knowingly' as applying to all the subsequently listed elements of the crime." *Id.* at 2196. Because *Rehaif* was "not a case where the modifier 'knowingly' introduces a long statutory phrase, such that questions may reasonably arise about how far into the statute the modifier extends, this Court held that "Congress intended to require the Government to establish that the defendant knew he violated the material elements of Section 922(g)." This Court noted that this conclusion was consistent with the policy that scienter requirements should ordinarily be included in criminal statutes. *Id.* at 2196-97.

In light of the above, applying the *Rehaif* analysis to Section 922(d) does it require an actual knowledge requirement as to the type of felony Louis West was convicted of? To be sure, Section 924(a) the penalty provision under which petitioner (like *Rehaif*) has been charged, includes a knowledge requirement which modifies the term

"violate" and its object in this case Section 922(d). Thus, consistent with Rehaif, this Court must determine how far the modification extends into the elements of a Section 922(d) violation.

By its express terms, Section 922(d) contains two elements: a sale or disposal element ("sell or otherwise dispose of any firearm or ammunition to any person") and like Section 922(g), a status element (that the recipient of the firearm fell into a prohibited class).

However, unlike Section 922(g), Section 922(d), contains an express scienter requirement in its status element, specifically that the defendant "know or have reasonable cause to believe" that the recipient of the firearm fell into a prohibited class. Thus, there is not one shred of evidence or Louis West's testimony in the record, other than a stipulation before the trial, of what specific conviction he was convicted of. If one was to believe Louis West's exaggerated boasts that he was a felon, petitioner points out, the statute includes a carve-out from those prohibitions, however, for individuals convicted of certain commercial-type crimes. Under that provision, the "business practices exception," the term "crime punishable by imprisonment for a term exceeding one year" does not include any Federal or State offense pertaining to antitrust violations, unfair trade practices, restraints of trade, or similar offenses related to the regulation of business practices and convictions for which a person has had his civil rights restored under federal law are exempted from these prohibitions. See Cuti v. Garland, U.S. LEXIS 177747 (D.D.C. September 29, 2022) ("Because plaintiffs predicate offenses of securities fraud, conspiracy to commit securities fraud and making false filings with SEC had primary purpose of protecting consumers of securities from economic

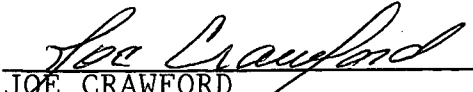
harm, they fell under business practices exception and did not trigger application of 18 U.S.C. Section 922(g)(1), and 922(d)(1) prohibitions."); see also Reyes v. Sessions, 342 F. Supp. 3d 141 (D.C. September 28, 2018)(before the Court is the government's motion to dismiss the as-applied statutory and constitutional challenges brought by plaintiff Gregory Reyes to certain provision of the federal criminal prohibition on possession of firearms by felons. Eight years ago, Reyes was convicted of violations of the Securities Exchange Act of 1934 (the "Exchange Act") and sentenced to eighteen months in prison. He now wishes to obtain a firearm but has been prevented from doing so by 18 U.S.C. Section 922(d)(1) and (g)(1), which prohibit the transfer of firearms to and possession of firearms by individuals convicted of a "crime punishable by imprisonment imprisonment for a term exceeding one year." This category of crimes, however, is statutorily defined to exclude "offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices." 18 U.S.C. section 921(a)(20)(A). Because the Court finds that Reye's convictions fall within this exception, the Court will deny government's motion to dismiss.); United States v. Coleman, 609 F.3d699, 705 (5th Cir.2010)(noting that "courts have looked to the legislature history of a statute in order to determine whether it falls within the business practices exception.") In sum, since the record is silent on what type of felony Louis West was convicted of, then petitioner had no reason to believe Louis West's felony did not fall under section 921(a)(20) exclusions.

CONCLUSION

For all the reasons stated above petitioner requests This Honorable Court to grant his writ of certiorari.

July 26 2023

Respectfully submitted,


JOE CRAWFORD