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In The
Supreme Court of the United States

RANDALL GRAY STONEMAN JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

James B. Craven, III
ATTORNEY AT LAW
349 West Main Street
P. O. Box 1366
Durham, NC 27702
919-688-8295
jbc64@mindspring.com

Counsel of Record for Petitioner

QUESTIONS PRESENTED

- A. WAS THE DISTRICT COURT IN ERROR IN DENYING THE MOTION TO SUPPRESS THE EVIDENCE SEIZED PURSUANT TO THE APRIL 19, 2020 VIDEO?
- B. WAS THE SIX LEVEL ENHANCEMENT PURSUANT TO SECTION 3A1.2(c)(1), FEDERAL SENTENCING GUIDELINES JUSTIFIED BY THE EVIDENCE?
- C. WAS THE 4 LEVEL ENHANCEMENT FOR USING BODY ARMOR JUSTIFIED BY THE EVIDENCE?
- D. WAS THE CROSS REFERENCE TO ATTEMPTED FIRST DEGREE MURDER, AS OPPOSED TO ATTEMPTED SECOND DEGREE MURDER, JUSTIFIED BY THE EVIDENCE?

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OPINION BELOW

The Court of Appeals for the Fourth Circuit decided this case on September 22, 2023 in a per curiam opinion affirming the conviction and sentence, United States v. Stoneman, No. 22-4124 (4th Cir. 2023). The order appears in the Appendix herein, p. A-1.

JURISDICTION

The case in the Court of Appeals was decided on September 22, 2023. This petition is timely filed within 90 days, pursuant to Rule 13.1 of the Rules of this Court.

CONSTITUTIONAL PROVISION INCLUDED

U.S. Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On March 29, 2021 Randall Gray Stoneman Jr. was charged in a Superseding Indictment in the Middle District of North Carolina as follows:

COUNT ONE

Possession with intent to distribute a quantity of marijuana on April 29, 2020, in violation of 21 U.S.C. 841(a)(1) and 21 U.S.C. 841(b)(1)(D).

COUNT TWO

Maintenance of a residence in Greensboro, North Carolina for the purpose of manufacturing, distributing, and using marijuana, in violation of 21 U.S.C. 856(a)(1).

COUNT THREE

Carrying and using, by discharging, firearms (three shotguns and a rifle) during and in relation to federal drug trafficking crimes, in violation of 18 U.S.C. 924(c)(1)(A)(iii).

COUNT FOUR

Possession in and affecting commerce three shotguns and a rifle, having been convicted of felonies, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2).

COUNT FIVE

Possession of body armor, a ballistic vest which had been sold and offered for sale in commerce, as defined in 18 U.S.C. 921(a)(3), having been convicted of a felony crime of violence, in violation of 18 U.S.C. 924(a)(7) and 18 U.S.C. 931(a).

All acts charged were on April 29, 2020 in Guilford County, North Carolina. Stoneman went to trial, representing himself pro se, with appointed standby counsel.

The jury convicted him on the charges in Counts One, Three, Four and Five and he was sentenced on January 5, 2022 to a total term of 552 months, or 46 years. Judgment was entered on February 22, 2022, and timely notice of appeal was filed. The Court of Appeals for the Fourth Circuit affirmed the conviction and sentence in

a per curiam opinion on September 22, 2023, United States v. Stoneman, NO. 22-4124 (4th Cir.). This certiorari petition is thus timely filed.

REASONS WHY THE COURT SHOULD GRANT THE WRIT

There are legitimate Fourth Amendment and Sentencing Guideline issues in this case. In all candor, we must admit that although we believe our position on those is meritorious, there is in truth nothing out of the ordinary about them in a certiorari context. And, we are confident Stoneman realizes now that he should have not opted to go pro se at trial.

That said these cases do have an impact on human lives. Randall Stoneman is 53 years old, and will be 54 on December 6. He is serving a sentence of 46 years at USP Hazelton in Bruceton Mills, West Virginia, with a BOP release date of August 6, 2059 when he will be 90 years old, if he lives that long. Life expectancy in a maximum security penitentiary is often problematic. Regardless, we suggest he will have aged out of crime considerably before he turns 90. Fast forward to December 6, 2039, when he will turn 70. Taxpayers will then have 20 more years to pay for his incarceration at the current DOC rate of \$44,258 a year, or \$885,160 just for the last 20 years of his sentence.

We concede it is unusual, but in a nutshell that's why the Court should grant the writ.

STATEMENT OF THE FACTS

On April 29, 2020, at approximately 5:30 a.m., the Guilford County Sheriff's Office (GCSO) received information from a 911 caller (JF) who indicated that

Randall Stoneman, Jr., had assaulted his girlfriend, Rosalind Long, and JF while at the residence of 610 Boxer Lane, Greensboro, NC. When officers arrived on scene, JF was at the neighbor's house. She reported that she was at the residence earlier when the defendant and his girlfriend, Rosalind Long, began arguing. JF stated the defendant slapped and punched his girlfriend. She also advised the defendant threw his girlfriend, Rosalind Long, around the house and had a handgun and shotgun inside the residence. JF stated the defendant shot Rosalind Long. She stated she observed Rosalind Long lying on her back on the floor with her eyes shut when the defendant told JF to "run bitch." She reported she ran to the neighbor's house and heard several gunshots while doing so. JF provided law enforcement with Stoneman's telephone number.

A GCSO deputy called the defendant's phone six times between 5:56 am and 6:05 am and no one answered. At 6:12 am, Stoneman answered and advised that his "old lady" was inside the house with him sleeping and stated she was not hurt. During the conversation, Stoneman stated, "I'm looking for a good death here, so come with me." Stoneman then began insulting the deputy and cursing at him, while talking about coming out of the house and dying. The deputy asked to speak with the girlfriend and heard him arguing with a female. The deputy spoke with Rosalind Long and she agreed to exit the residence. When Rosalind Long exited the residence, she told law enforcement that she did not know what happened as she was drinking alcohol the night before, "passed out" inside when she was awoken and asked by law enforcement to exit the residence. Rosalind Long told deputies

that Stoneman had a black powder revolver and advised he may have a shotgun in the house as well.

A deputy spoke to Stoneman on the telephone again and he continued talking about the deputies coming in the residence shooting. He also made statements about him exiting the residence while shooting. Stoneman told the deputy, "Well, I figure today's a good day to die. But don't send no one with children." He told the deputy to "Come get me" and stated, "You're going to die today." Eventually, the phone call was disconnected, and law enforcement attempted to contact him multiple times; however, the calls were sent directly to voicemail. Law enforcement repeatedly commanded Stoneman to exit the residence with his arms up; however he never complied. The Greensboro Police Department (GPD) blocked incoming traffic to the area and Duke Energy was contacted to cut off the residence's electricity.

At approximately 8:46 a.m., law enforcement officers deployed distraction devices at the residence. Stoneman, while wearing body armor, fired several gunshots from a window towards officers in the yard. One of the deputies had damage to his body armor and uniform, along with bruising on his arm, consistent with being caused by gunfire. Another deputy had a hole in the left side of his shirt and a corresponding bruise and a swollen injury to his left side near his rib cage that measured approximately 35 mm x 25 mm, which was caused by the gunfire.

Stoneman exited the home at approximately 9:46 a.m. and was taken into custody. Due to law enforcement's use of tear gas, the Pinecroft Sedgefield Fire

Department arrived to decontaminate the residence before a search warrant was executed. A search of the residence yielded the following firearms and ammunition:

- 1) Remington, Model 870 Express Magnum, 12-gauge, pump action shotgun, serial number (S/N): B073419M
- 2) Mossberg, Model 835, 12-gauge, pump action shotgun, S/N: UM491478 (reported stolen)
- 3) Colt, Sporter Target Model, .223 caliber, semi-automatic rifle, S/N: ST003685 (seized with high capacity, 30 round magazine)
- 4) Remington, Model 870 Wingmaster, 12-gauge, pump action pistol grip shotgun, S/N S434075V
- 5) A black powder revolver which the defendant legally possessed
- 6) Ammunition
- 7) Spent 12-gauge shotgun shells and spent .223 rounds

A vest labeled as “Body Armor” was recovered from the house, along with numerous rounds of spent and unspent ammunition, which were located throughout the living room and only bedroom in the residence. Inside the bedroom, deputies found a bloody empty AR-15 magazine and a blood-covered bag of 106.01 grams (net weight) of marijuana, as verified by NMS Laboratories.

ARGUMENT

- A. Randall Stoneman stands by his motion filed July 21, 2021 to suppress evidence seized on April 29, 2020 pursuant to a search warrant, and by his motion to suppress an audio video recording made April 29, 2020. Both

motions were denied in the District Court, but we have nothing to add now to Stoneman's pro se argument at trial.

B. We object to the 6 level enhancement in the PSR for creating a substantial risk of serious bodily injury, knowing or having reasonable cause to believe that a person who was a law enforcement officer, by assaulting such officer during the course of the offense, pursuant to Section 3A1.2(c)(7), Federal Sentencing Guidelines. As in United States v. Robinson, 608 F.3d 379 (8th Cir. 2010), the defendant here contended he did not know for sure that the officers were law enforcement. Also see United States v. Weaver, 8 F.3d 1240 (7th Cir. 1993). It should be noted too that Stoneman was not charged with assault or battery.

In United States v. Robinson, 608 F.3d 379 (8th Cir. 2010), Robinson fired a weapon while a person was knocking on his mobile home door. It turned out that the person knocking on his door was a police officer, but the Court held the evidence insufficient to support an inference that Robinson knew or had reason to know that the person knocking on his door was a police officer

In United States v. Castillo, 924 F.2d 1227 (2nd Cir. 1991) drug defendants were concerned that a buyer might be an undercover agent, so they forced him to snort cocaine as a method of assuring themselves he was not a cop. The Court held that the evidence was insufficient for the six level enhancement under Section 3A 1.2(c)(1), for assaulting an official victim. The defendant's belief that the buyer might be an undercover agent was not enough.

Robinson and Castillo are in our favor here, and are distinguishable from United States v. Fisher, 421 F.Supp.2d 785 (D. Delaware 2006), and United States v. Tejas, 868 F.3d 1242 (11th Cir. 2017). The six level enhancement should not have been applied here.

- C. We object also to the 4 level enhancement for using body armor during the commission of the offense, pursuant to Section 3B1.5(1) and (2)(B). A “ballistic vest” was found and seized pursuant to the search warrant (App. p. 84), i.e. it was found in Stoneman’s home. But did he wear it that morning? We contend the evidence on that was very much inconclusive, unlike in United States v. Johnson, 913 F.3d 793 (9th Cir. 2019).
- D. We object as well to the cross reference for attempted first degree murder pursuant to Section 2K2.1(C)(1)(A) and Section 2A2.1. The District Court clearly considered a cross reference to second degree murder, and we contend the rule of lenity should be applied, as plausible arguments could be made for either degree of attempted homicide.

CONCLUSION

For the reasons set forth above, we respectfully contend that the District Court should have suppressed the fruits of the April 29, 2020 search warrant, and should have stricken the six level and four level enhancements at sentencing. The case should be remanded for resentencing.

Randall Gray Stoneman Jr. was born December 6, 1969 and is almost 54 years old. He was sentenced to a total of 552 months, or 46 years. He is now at USP

Hazelton in Bruceton Mills, Virginia with a BOP release date of July 18, 2059 when he will be 90 years old. If he lives that long, we suggest he will likely have aged out of crime by then.

For all the reasons set forth above, the writ should be granted, the judgment below should be vacated, and the case remanded for resentencing.

Respectfully submitted,

/s/ James B. Craven III
James B. Craven III, Esquire
ATTORNEY AT LAW
Post Office Box 1366
Durham, North Carolina 27702
(919) 688-8295
JBC64@MINDSPRING.COM
Attorney for Petitioner

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APPENDIX

James B. Craven, III
ATTORNEY AT LAW
349 West Main Street
P. O. Box 1366
Durham, NC 27702
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jbc64@mindspring.com

Counsel of Record for Petitioner

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4124

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDALL GRAY STONEMAN, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:20-cr-00152-WO-1)

Submitted: July 24, 2023

Decided: September 22, 2023

Before HARRIS and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: James B. Craven, III, Durham, North Carolina, for Appellant. Sandra J. Hairston, United States Attorney, Veronica L. Edmisten, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Randall Gray Stoneman, Jr., was convicted after a trial of felony possession of marijuana with intent to distribute, discharging a firearm during and in relation to a drug trafficking crime, being a felon in possession of a firearm, and being a felon in possession of body armor. He was sentenced to 552 months' imprisonment. Stoneman argues that the district court erred by denying his motion to suppress evidence seized from his home and an audio/video recording from a law enforcement officer's bodycam. He also argues that the district court erred in overruling his objections to Sentencing Guidelines enhancements for creating a substantial risk of bodily injury when he shot at persons he had reasonable cause to believe were law enforcement officers, U.S. Sentencing Guidelines Manual § 3A1.2(c)(1), wearing body armor during the offense, U.S.S.G. § 3B1.5(1), (2)(B), and attempted first degree murder, U.S.S.G. §§ 2K2.1(c)(1)(A), 2A2.1(a)(1). We affirm.

On appeal from an order denying a motion to suppress, we review the district court's legal conclusions de novo, its factual findings for clear error, and the evidence in the light most favorable to the Government. *United States v. Sueiro*, 59 F.4th 132, 139 (4th Cir. 2023). A search warrant "is generally required for a search of a home." *Fernandez v. California*, 571 U.S. 292, 298 (2014). "Under the Fourth Amendment, a [search] warrant must be supported by probable cause[.]" which "requires only a fair probability that contraband or evidence of a crime will be found in a particular place." *Sueiro*, 59 F.4th at 139 (internal quotation marks omitted). In other words, "[t]here must . . . be some nexus between the suspected crime and the place to be searched." *United*

States v. Orozco, 41 F.4th 403, 409 (4th Cir. 2022). “[W]hether a nexus exists is a practical, commonsense determination” that “may be established by the normal inferences of where one would likely keep the evidence being sought.” *Id.* (citation and internal quotation marks omitted). “We afford great deference to a judicial officer who issues a search warrant and ask only whether the judicial officer had a substantial basis for finding probable cause.” *Sueiro*, 59 F.4th at 139 (internal quotation marks omitted). We have reviewed the record and the district court’s decision to deny the suppression of evidence and conclude that there was no error.

In evaluating Guidelines calculations, we review the district court’s factual findings for clear error and its legal conclusions de novo. *United States v. Shephard*, 892 F.3d 666, 670 (4th Cir. 2018). Under the clear-error standard, “we will not disturb the district court’s finding unless we are left with the definite and firm conviction that a mistake has been committed.” *United States v. Dix*, 64 F.4th 230, 238 (4th Cir. 2023) (internal quotation marks omitted). “The government bears the burden of proving the facts supporting [a sentencing] enhancement by a preponderance of the evidence.” *United States v. Andrews*, 808 F.3d 964, 968 (4th Cir. 2015); *see United States v. Manigan*, 592 F.3d 621, 631 (4th Cir. 2010) (explaining that preponderance standard “requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence” (internal quotation marks omitted)). The district court made explicit findings of fact in supporting each of the challenged sentencing enhancements. We conclude that there was no clear error in any of those findings.

Accordingly, we affirm the district court's judgment of conviction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED