

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA

DEVADRICK MARKEVIN BOOKER  
Petitioner-Defendant

v.

UNITED STATES OF AMERICA  
Respondent

On Petition for Writ of Certiorari from the  
United States Court of Appeals for the Fifth Circuit.  
Fifth Circuit Case No. 23-60076

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

Whether the district court erred by finding that the prosecution produced sufficient evidence at trial for a reasonable jury to return guilty verdicts against Mr. Booker.

## **PARTIES TO THE PROCEEDING**

All parties to this proceeding are named in the caption of the case.

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## **I. OPINIONS BELOW**

On October 6, 2020, the Grand Jury for the Southern District of Mississippi returned an Indictment charging Mr. Booker with: count 1, assault of a federal officer while the officer was engaged in official duties, in violation of 18 U.S.C. § 111(a)(1) and (b); and count 2, use of a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A). The district court case number is 3:20cr134-KHG-LGI. The case was tried before a jury beginning November 1, and ending November 3, 2022. The jury returned a guilty verdicts on both counts.

The district court sentenced Mr. Booker to serve a total of 144 months in prison, followed by supervised release for five years. The court entered a Final Judgment on February 16, 2023. The district court's Final Judgment is attached hereto as Appendix 1.

Mr. Booker filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on February 16, 2023. The Fifth Circuit case number is 23-60076. The Fifth Circuit affirmed the district court's rulings via an Opinion filed October 18, 2023. It filed a Judgment on the same day. The Fifth Circuit's Opinion and Judgment are attached hereto as composite Appendix 2.

## **II. JURISDICTIONAL STATEMENT**

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on October 18, 2023. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

### **III. CONSTITUTIONAL PROVISION INVOLVED**

The subject sufficiency of the evidence issue implicates the right to a fair trial under the Sixth Amendment to the United States Constitution. The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## IV. STATEMENT OF THE CASE

### A. Basis for federal jurisdiction in the court of first instance.

This case arises out of criminal convictions entered against Mr. Booker in federal district court. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charges levied against Mr. Booker arose from the laws of the United States of America.

### B. Statement of material facts.

#### 1. Facts about Mr. Booker's background.

To put the subject convictions in context, we must consider Mr. Booker's background. He is a 25-year-old African American man living in one of the most dangerous cities in our country. In fact, Jackson, Mississippi, the city where Mr. Booker lives, had the highest murder rate in the country in years 2021 and 2022. Analysis: For Second Straight Year, Jackson's Homicide Rate Ranks Highest in U.S. Among Major Cities, published Jan. 6, 2023, at

<https://www.wlbt.com/2023/01/07/analysis-second-straight-year-jacksons-homicide-rate-ranks-highest-us-among-major-cities/>. As Mr. Booker attested, gang violence and shootings are common in his neighborhood.

Mr. Booker is one of ten children in his family. When he was 14 years old, his father went to prison. Mr. Booker was raised primarily by his mother and

grandmother. Notwithstanding his childhood environment, Mr. Booker has never been affiliated with a gang. Also to his credit, he graduated from high school and completed 49 hours of education at a local community college.

As presented in detail below, this case involves an initial drive by shooting in which Mr. Booker was a victim, and a second shooting about an hour and a half later. In the second shooting incident, Mr. Booker fired shots at a person he believed was an assailant, but the person was actually a federal law enforcement officer. As a result of the drive by shooting in which Mr. Booker was a victim, he was later diagnosed with PTSD. He was prescribed Zoloft and Zyprexa to treat his PTSD symptoms. He still has bad dreams about the drive by shooting.

## **2. Facts about the trial.**

### **a. The charges, the relevant jury instructions, the verdict and the sentence.**

The grand jury charged Mr. Booker with assault of a federal officer while the officer was engaged in official duties (Count 1), and use of a firearm during a crime of violence (Count 2). It is undisputed that Mr. Booker fired two shots toward a car driven by Micah Snyder, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (hereinafter “ATF”). But that does not end the analysis about whether he is guilty of the crimes charged.

At issue is whether Mr. Booker acted in reasonable self-defense when he fired shots toward Agent Snyder’s unmarked car. To analyze this issue, we must

look at the relevant portion of the district court's jury instruction regarding count 1.

As to the elements of the offense, the court instructed the jury as follows:

First, that the defendant forcibly assaulted a federal officer as described below; second, that the federal officer was forcibly assaulted while engaged in the performance of his official duty or on account of the performance of official duties; and third, that the defendant did such acts intentionally; and fourth, that in doing such acts, the defendant used a deadly or dangerous weapon.

The following jury instruction pertains to justifiable self-defense:

On the other hand, the defendant would not be guilty of an assault if the evidence leaves you with a reasonable doubt concerning whether the defendant knew the victim to be a federal officer and only committed such act because of a reasonable, good faith belief that the defendant needed to defend himself against an assault by a private citizen.

The jury found Mr. Booker guilty of both counts. However, the verdicts did not come easily. The jury asked several questions during deliberations. One was: "Is it on us to determine if Booker was assaulted or not?" Another was: "Is it on us to determine if Booker believes he was assaulted?" And yet another was: "What is the definition by law of reasonable?" Finally, the jury asked for an explanation of the self-defense instruction, which stated,

the defendant would not be guilty of an assault if the evidence leaves you with a reasonable doubt concerning whether the defendant knew the victim to be a federal officer and only committed such act because of a reasonable, good faith belief that the defendant needed to defend himself against an assault by a private citizen.

The court's response to the jury's questions was: "You have received all of the Court's instructions with respect to the law applicable to this case. Your verdict

must be based on all of the instructions, and you must not single out any one instruction, including this one.”

At sentencing, the court ordered a total prison term of 144 months, followed by five years of supervised release. The court entered a Judgment reflecting this sentence, and the Fifth Circuit affirmed the district court’s rulings.

**b. Evidence presented at trial.**

**(i) Introduction.**

Two shooting incidents are relevant to the issue on appeal. Both shootings occurred during the early morning hours of September 8, 2020. Also, both shootings occurred at or near Mr. Booker’s residence at 1019 Terrace Avenue, Jackson, Mississippi.

**(ii) Evidence about the first drive by.**

On September 7, 2020, Mr. Booker attended a family barbecue event. His close friends Javonte Washington and Travonte Gibson went with him. They left the gathering and drove to Mr. Booker’s home at around 1:00 or 2:00 on the morning of September 8.

As they were getting out of the car at Mr. Booker’s residence, two cars drove down Terrace Avenue in front of the home. The cars then made U-turns and came back toward the home. One of the two cars was “silverish color” and the other was a “dark-color car, dark gray.” Both had tinted windows.

As the cars drove by Mr. Booker's home the second time, one of the occupants fired multiple gunshots. After that, Mr. Booker heard Mr. Washington screaming in agony. One of the bullets struck Mr. Washington's wrist. “[I]t was an intense wound.” “His wrist was barely on. It was barely hanging on.” Mr. Gibson also suffered a gunshot wound. Both were taken to the hospital by ambulance.

After the drive by shooting, Mr. Booker was in shock and felt helpless. This was a reasonable reaction since, as stated above, Jackson had the highest murder rate in the United States in years 2021 and 2022. *See Analysis: For Second Straight Year, Jackson's Homicide Rate Ranks Highest in U.S. Among Major Cities*, published Jan. 6, 2023, at <https://www.wlbt.com/2023/01/07/analysis-second-straight-year-jacksons-homicide-rate-ranks-highest-us-among-major-cities/>. Also, in an incident not related to Mr. Booker, a drive by shooter fired gunshots at his next door neighbor's home about a week before the subject shooting.

**(iii) Evidence about the second drive by.**

The police and ambulance eventually left the scene after the drive by shooting. Mr. Booker was afraid that the shooter would return, so he went inside and retrieved his handgun. He went back outside and talked a friend in the driveway.

A short time later, Mr. Booker believed his fears had come to fruition regarding the shooter returning. About one and one half hours after the drive by

shooting, which was also about ten minutes after law enforcement left the scene of the shooting, a car drove down Terrace Avenue, then turned around and began driving back toward Mr. Booker's home. This was the same scenario that Mr. Booker experienced when the drive by shooting occurred about an hour and a half earlier. Also, just like the drive by shooter's car, the car that drove by this time was dark colored and had "dark tinted" windows. The driver began rolling down the window while slowly approaching Mr. Booker.

Because of the similarities between the drive by shooting incident and the incident involving the second car driving by his house, Mr. Booker thought "[t]hey were probably coming back to try to finish what they had already started". He was understandably afraid. As the car drove by Mr. Booker's home, he fired two shots "to scare off whoever it was so that they would know [he had] a firearm." One of the bullets struck the car, but the driver was not harmed. After firing shots, Mr. Booker threw the gun aside, went into his home, and hid behind a couch.

Unknown to Mr. Booker, the car was not driven by the same person who fired shots at him earlier in the evening. Instead, the driver was Micah Snyder, a Special Agent with ATF. It is important to note that Agent Snyder's car had no police marking, and the blue lights and siren were concealed from view. Also, Agent Snyder's concealed siren and blue lights were not activated as he drove by Mr. Booker's home. As Agent Snyder testified, even though there was a street light

in the area, it was dark at the time. This fact scenario made it impossible for Mr. Booker to identify Agent Snyder as a law enforcement officer.

Shortly after Mr. Booker entered his home, law enforcement officers arrived and he went outside. Officers arrested him without incident. They found the Taurus handgun fired by Mr. Booker in a trash can near his home. He waived his *Miranda* rights and admitted that he fired shots in Agent Snyder's direction with the Taurus recovered from the trash can.

At trial, Mr. Booker testified that he cooperated with law enforcement because "I had nothing to hide." He testified: "My intention was to defend myself and the others around me because of the situation that had just happened. I didn't want that to happen again. I didn't want to see anyone else get hurt, and I'm thankful that the officer wasn't hurt."

## V. ARGUMENT

### **A. Introduction / review on certiorari should be granted in this case.**

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” In Mr. Booker’s case, the prosecution presented insufficient evidence at trial for reasonable jurors to return guilty verdicts. Based on the facts of the case, Mr. Booker acted in self-defense during the shooting incident. Therefore, we ask this Court to exercise its discretion, and grant certiorari to protect the important Sixth Amendment right to a fair trial raised by this case.

### **B. Applicable law.**

A properly preserved sufficiency of the evidence argument is reviewed *de novo*. *United States v. Moreland*, 665 F.3d 137, 148 (5th Cir. 2011) (citation omitted). In *Moreland*, the Fifth Circuit reversed a criminal conviction finding that the evidence presented at trial court was insufficient to support a finding of guilt. 665 F.3d at 154. Of significance to Mr. Booker’s case, the *Moreland* court set forth a roadmap for analyzing sufficiency of the evidence issues.

The *Moreland* court held, “[i]n deciding whether the evidence was sufficient, we review all evidence in the light most favorable to the verdict to determine whether a rational trier of fact could have found that the evidence established the essential elements of the offense beyond a reasonable doubt.”

*Moreland*, 665 F.3d at 148-49 (citation omitted). “[I]n viewing the evidence in the light most favorable to the prosecution, we ‘consider the countervailing evidence as well as the evidence that supports the verdict in assessing sufficiency of the evidence.’” *Id.* at 149 (citation omitted). “[A] verdict may not rest on mere suspicion, speculation, or conjecture, or on an overly attenuated piling of inference on inference.” *Id.* (citations omitted); *United States v. Davis*, 735 F.3d 194, 198 (5th Cir. 2013)<sup>1</sup> (holding that on appellate review, the Court is required “to consider trial evidence that countervails the jury’s verdict, and allows us to ‘draw upon only reasonable inferences from the evidence to support the verdict.’”)<sup>2</sup> (emphasis added; citation omitted). “We also have held that no reasonable jury could find a defendant guilty of an offense where the ‘evidence gives equal or nearly equal circumstantial support to a theory of guilt, as well as to a theory of innocence.’ Convictions based on such evidence must be reversed.” *Moreland*, 665 F.3d at 149 *Id.* (internal and end citations omitted); *United States v. Clemons*, 700 Fed. App’x 341, 344 (5th Cir. 2017)<sup>2</sup> (citation omitted).

We can reduce the above holdings from *Moreland* into the following concise rules of law:

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<sup>1</sup> In *Davis*, the Fifth Circuit reversed the conviction based on insufficiency of the evidence. 735 F.3d at 202.

<sup>2</sup> In *Clemons*, the Fifth Circuit vacated the conviction based on insufficiency of the evidence. 700 Fed. App’x at 346.

- the evidence must be reviewed in a light favorable to the guilty verdict;
- however, evidence of innocence must be considered as well;
- a guilty verdict based on speculation or piling inference on inference must be reversed; and
- if evidence of guilt and innocence are equal or nearly equal, then a guilty verdict must be reversed.

**C. The evidence admitted at trial was insufficient to prove guilt.**

This Court should grant certiorari and ultimately vacate the convictions against Mr. Booker because the prosecution failed to prove beyond a reasonable doubt that Mr. Booker committed any crime. *See Moreland*, 665 F.3d at 148-49 (citation omitted). Specifically, evidence presented at trial proves that Mr. Booker acted in justifiable self-defense during the shooting incident.<sup>3</sup>

As the court instructed the jury,

the defendant would not be guilty of an assault if the evidence leaves you with a reasonable doubt concerning whether the defendant knew the victim to be a federal officer and only committed such act because of a reasonable, good faith belief that the defendant needed to defend himself against an assault by a private citizen.

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<sup>3</sup> If this Court finds that the verdict for count 1 should be vacated based on insufficient evidence of guilt presented at trial, then the verdict for count 2 must be vacated as well. This is true because as a prerequisite for a guilty verdict on count 2, the jury must have found Mr. Booker guilty of count 1.

Further, the court instructed the jury that “[t]he Government has the burden of proving the defendant’s guilt beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant.”

Mr. Booker does not, and has never disputed that he fired shots in the direction of the unmarked car driven by Agent Snyder. That is not at issue. Instead, the issue on appeal is whether the prosecution failed to meet its burden to prove that Mr. Booker did not act in self-defense. Specifically, as stated in a jury instruction, the prosecution failed to dispel “a reasonable doubt concerning whether the defendant knew the victim to be a federal officer and only committed such act because of a reasonable, good faith belief that the defendant needed to defend himself against an assault by a private citizen.”

Reduced to its essence, the subject jury instruction requires us to focus on two interrelated sets of facts. **First** is whether Mr. Booker knew that Agent Snyder was an ATF agent. **Second**, if he did not know that Agent Snyder was an ATF agent, then we must consider whether the facts support a conclusion that Mr. Booker believed he needed to defend himself against an assault by a private citizen. To a degree, the same facts apply to analyses of both issues. That is, some of the facts support both a conclusion that Mr. Booker did not know that Agent Snyder was a law enforcement officer, and a conclusion that Mr. Booker acted in reasonable self-defense.

The following facts prove that Mr. Booker did not know that Agent Snyder was a law enforcement officer:

- Agent Snyder's car had no markings indicating that it was a law enforcement vehicle.
- The blue lights and siren on Agent Snyder's car were concealed from view.
- Agent Snyder did not activate his blue lights and siren as he drove by Mr. Booker's home.
- Both the drive by shooter's car and Agent Snyder's car were dark colored with tinted windows.
- The way the drive by shooter's car and Agent Snyder's car drove by Mr. Booker's home were similar. That is, both cars drove past Mr. Booker's home, then made a U-turn and drove back by the house.

The following facts prove that Mr. Booker acted in reasonable self-defense:

- Only an hour and a half passed between when the drive-by shooting occurred, and when Agent Snyder slowly drove by Mr. Booker's home in an unmarked car. Only ten minutes passed between when law enforcement officers left Mr. Booker's home after the drive-by shooting, and when Agent Snyder slowly drove by Mr. Booker's home in an unmarked car.
- Both the drive by shooter's car and Agent Snyder's car were dark colored with tinted windows.

- Both the drive-by shooter and Agent Snyder drove past Mr. Booker's home, then made a U-turn and drove back by the house.
- Agent Snyder rolled down his window as he approached Mr. Booker's home.
- Both Mr. Washington and Mr. Gibson were shot during the drive-by shooting, and both were taken to the hospital via ambulance.
- In an unrelated event, a drive-by shooter fired shots at Mr. Booker's neighbor's home.
- The city where Mr. Booker lived, Jackson, Mississippi, had the highest murder rate in the country in years 2021 and 2022. Analysis: For Second Straight Year, Jackson's Homicide Rate Ranks Highest in U.S. Among Major Cities, published Jan. 6, 2023, at

<https://www.wlbt.com/2023/01/07/analysis-second-straight-year-jacksons-homicide-rate-ranks-highest-us-among-major-cities/>.

- Gang violence and shootings are common in Mr. Booker's neighborhood.

#### **D. Sufficiency of the evidence – tying it all together.**

The guilty verdicts against Mr. Booker must be vacated if: (1) he had no reason to believe or know that Agent Snyder was a law enforcement officer; and (2) he acted in self-defense against an assault by a person who he believed was a private citizen.

It is beyond dispute that Agent Snyder's car was unmarked, that the car's blue lights and siren were concealed, and neither the blue lights nor the siren were activated before Mr. Booker fired shots. Under this fact scenario, it is clear that Mr. Booker had no reason to believe or know that Agent Snyder was a law enforcement officer.

Evidence presented at trial also proves that Mr. Booker acted in self-defense against an assault by a person who he believed was a private citizen. Mr. Booker was the target of a drive by shooting only an hour and a half before he fired shots in Agent Snyder's direction. Agent Snyder drove by Mr. Booker's home in the exact same manner as the drive by shooter. Also, Agent Snyder's car and the drive by shooter's car were similar looking – they were both dark colored and both had tinted windows.

Mr. Booker's actions cannot be analyzed in a vacuum. Jackson has the highest murder rate in the country. Analysis: For Second Straight Year, Jackson's Homicide Rate Ranks Highest in U.S. Among Major Cities, published Jan. 6, 2023, at <https://www.wlbt.com/2023/01/07/analysis-second-straight-year-jacksons-homicide-rate-ranks-highest-us-among-major-cities/>. As Mr. Booker stated, gang violence and shootings are common in his neighborhood. This is borne out by the fact that his neighbor's home was the subject of a drive by shooting only a week before the subject incident.

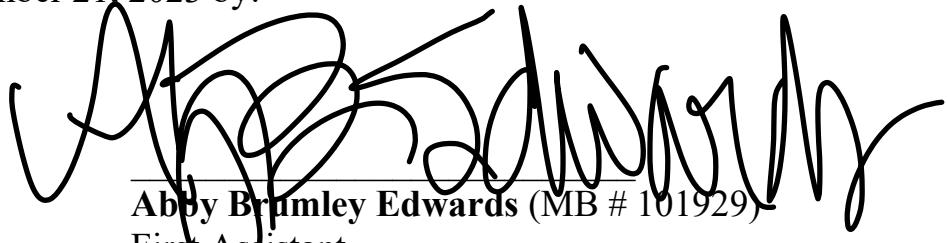
We also must consider the jury's confusion on the self-defense issue. During deliberations, the jury asked questions regarding the definitions of "reasonable" and "assault." It also asked for guidance on the self-defense instruction. The court provided no answers to these questions. Instead, it referred the jury to the previously provided jury instructions, which they apparently did not understand.

Viewing the totality of facts, the weight of the evidence proves that Mr. Booker acted in self-defense against an assault by a person who he believed was a private citizen. Therefore, this Court should grant certiorari and vacate the Judgment of Conviction. This is true because "no reasonable jury could find a defendant guilty of an offense where the 'evidence gives equal or nearly equal circumstantial support to a theory of guilt, as well as to a theory of innocence.' Convictions based on such evidence must be reversed." *Moreland*, 665 F.3d at 149 (internal and end citations omitted); *Clemons*, 700 Fed. App'x at 344 (citation omitted).

## VI. CONCLUSION

Based on the arguments presented above, Mr. Booker asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted December 21, 2023 by:

A handwritten signature in black ink, appearing to read "Abby Brumley Edwards".

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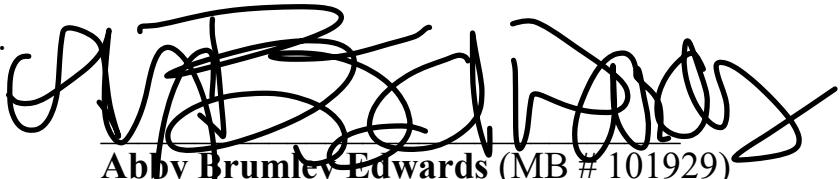
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Fifth Circuit Case No. 23-60076

**CERTIFICATE OF SERVICE**

I, Abby Brumley Edwards, appointed under the Criminal Justice Act, certify  
that today, December 21, 2023, pursuant to Rule 29.5 of the Supreme Court Rules,  
a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma  
Pauperis was served on Counsel for the United States by Federal Express, No.  
774570045614, addressed to:

The Honorable Elizabeth B. Prelogar  
Solicitor General of the United States  
Room 5614, Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.



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