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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2023

JAMAL EBERHARDT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit**

**PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX**

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QUESTION PRESENTED

1. Did the Third Circuit error by not finding Mr. Eberhardt's sentence was harsh and excessive.

PARTIES TO THE PROCEEDING

The petitioner is:

Jamal Eberhardt

The respondent is:

United States of America

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OPINIONS BELOW

The United States Court of Appeals for the Third Circuit affirmed Petitioner Jamal Eberhardt's Judgement of Conviction. App. 1-2.

STATEMENT OF JURISDICTION

Jamal Eberhardt seeks review of the December 5, 2023, Order of the United States Court of Appeals for the Third Circuit. Jurisdiction of this Court to review the judgement of the Third Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution, provides that:

“[t]he right of the people to be secure in their persons, 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 September 9, 2021, a grand jury sitting in the Eastern District of Pennsylvania returned a 4-count indictment charging Defendant Jamal Eberhardt with unlicensed dealing in firearms and aiding and abetting, in violation of 18 U.S.C. § 922 (a)(1)(A) and 924 (a)(1)(D) and 2; Counts 2 and 3, possession of an unregistered firearm, in violation of 26 U.S.C. § 5845 (a)(3), 5861 (d), and 5871; and Count 4, possession of ammunition by a felon, in violation of 18 U.S.C. § 922 (g)(1).

On June 22, 2022, Mr. Eberhardt appeared before the Honorable Gerald A. McHugh and pled guilty to Counts 1, 2, 3 and 4 of the Indictment. Thereafter, on September 23, 2022, the defendant was sentenced to 50 months and a timely Notice of Appeal was filed. App. 1-15.

Statement of Facts

The defendant, Jamal Eberhardt, engaged in the business of dealing in firearms without a license to do so. On November 17, 2020, the ATF used a confidential source (“CS”) to purchase four Privately Made Firearms (PMFs) from co-conspirator, Michael Clark, charged separately. In a conversation about the PMFs, Clark assured the CS that the owner of the firearms, later determined to be Eberhardt, “keep getting em” because “he make them jawns.” (The ATF interpreted Clark’s statement to mean that the gun supply would not run out

because Eberhardt made the firearms.) At that time, the CS agreed to purchase two firearms.

At the direction of the ATF, the CS met Clark on the 4200 block of East Cheltenham Avenue in Philadelphia and purchased two firearms from Clark. The CS paid \$2,800 in government funds for one rifle, one pistol, and ammunition. Once the first sale was complete, investigators directed the CS to attempt to purchase two additional firearms.

The CS told Clark that he/she had the money available and would purchase two additional firearms. Clark stated that he would speak with “him,” referring to Eberhardt, who “made” the two additional firearms, in an effort to arrange the sale.

About fifteen minutes later, the ATF observed Eberhardt arrive on scene in a white Chevrolet cargo van. Clark approached Eberhardt’s vehicle, and they met at the rear of the vehicle. At that time, Eberhardt transferred a large white envelope to Clark. The ATF observed Clark return to the CS’s vehicle while carrying a USPS envelope Clark had received from Eberhardt. Inside of the envelope were two PMFs. Clark gave the two PMFs to the CS, who completed the sale of all four firearms, as well as accompanying ammunition and firearms magazines, for \$5,000 in government funds. Each of the transactions was recorded.

While Clark was in the vehicle with the CS, having just received the second two firearms from Eberhardt, Clark stated to the CS, “He’s gonna build an AR tonight.” The ATF interpreted that statement as Clark referring to Eberhardt building an AR-type PMF.

Following the sale of the second set of firearms, the ATF observed Clark return to Eberhardt and transfer what appeared to be cash to Eberhardt at the rear of Eberhardt’s white van. The CS returned to the ATF and relinquished the purchased contraband. The items obtained during the controlled purchase included the following four PMFs, including one short-barrel, 5.56 caliber, semiautomatic AR-style rifle and three 9mm, semiautomatic pistols in the style of Glocks, one USPS envelope used to transfer the second sale of PMFs, one thirty-round extended magazine containing ten rounds of 9mm ammunition, and a fifty-round box of 9mm ammunition, one thirty-round magazine for the PMF pistols; and one full box of fifty rounds of Aguila brand, 9mm ammunition for the PMF pistols.

At the time of the controlled purchase, Eberhardt’s address of record was 5419 Saul Street, Philadelphia, Pennsylvania. The ATF observed Eberhardt coming and going from this residence on multiple occasions between late November through December 8, 2020. On November 18, 2020, the United States Postal Inspector Service (USPIS) determined a package from “JSD Supply” was

en route to 5419 Saul Street. The USPIS determined JSD Supply to be a business with a website (“<https://jsdsupply.com>”) which sells “80% firearms,” a vernacular term for necessary parts for completing a PMF. The USPIS determined the package was addressed to “John Smith,” an alias used by Eberhardt in an attempt to evade law enforcement detection. A check of City of Philadelphia records and law enforcement databases revealed no record of a “John Smith” residing as 5419 Saul Street.

On November 30, 2020, the USPIS confirmed a package from “DELTAC.NET,” an internet website (<https://deltac.net>) which sells firearms parts, accessories, and gun smithing tools. The website also sells Glock-brand accessories and parts, AR-type “platform” parts, and other items used to construct PMFs or customize existing firearms. The USPIS confirmed a package was delivered to 5419 Saul Street from the company on November 9, 2020. That package was addressed to “Jay Eberhard.”

On December 8, 2020, the ATF established surveillance on 5419 Saul Street. During surveillance the ATF observed Eberhardt exiting 5419 Saul Street while carrying a duffle bag and entering a white Chevrolet work van. As Eberhardt departed the area, the PPD conducted a traffic stop on his vehicle. Thereafter, he was arrested by the ATF based on his involvement in the aforementioned firearms transactions facilitated by Clark.

Thereafter, the ATF executed a federal search warrant at 5419 Saul Street. The following items were recovered from the residence: twenty rounds of 7.62 caliber ammunition manufactured by Tulammo, which is based in Russia (in the front room/vestibule area of the main floor); firearm parts; and firearm manufacturing tools (including the drills and drill bits which were used by Eberhardt to manufacture PMFs). Eberhardt had been residing at 5419 Saul Street for approximately five months, where he occupied the living room area of the main floor.

REASONS FOR GRANTING THE WRIT

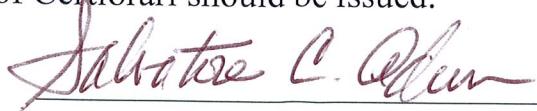
THE THIRD CIRCUIT ERRED BY NOT FINDING THAT THE SENTENCE WAS HARSH AND EXCESSIVE.

The Third Circuit erred in not finding that the 4-level enhancement was incorrect. A 4-level sentencing enhancement is warranted when the Government demonstrated that Mr. Eberhardt knew or had reason to know that he was transferring two or more firearms to an individual who intended to use or dispose of the weapons unlawfully.

The Government failed to demonstrate that the defendant knew or had reason to know that he was transferring two or more firearms to an individual who intended to use or dispose of the weapons unlawfully. There was no evidence that Mr. Eberhardt knew that Mr. Clark was a prohibited person and there is also an issue pertaining to whether Mr. Clark intended to dispose of the firearms unlawfully. See *United States v. Gunter*, 462 F.3d 237, 247 (3rd Cir. 2006); *Rita v. United States*, 551 U.S. 338, 347 (2007).

CONCLUSION

For the reasons cited, a Writ of Certiorari should be issued.



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Dated: December 29, 2023

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2804

UNITED STATES OF AMERICA

v.

JAMAL EBERHARDT,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(No. 2-21-cr-00393-001)
U.S. District Judge: Honorable Gerald A. McHugh

Submitted Under Third Circuit L.A.R. 34.1(a)
December 4, 2023

Before: SHWARTZ, CHUNG, and McKEE, Circuit Judges.

JUDGMENT ORDER

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on December 4, 2023.

The Appellant challenged his sentence on appeal. The Court has determined that the sentence imposed is both procedurally and substantively reasonable. United States v.

App

Tomko, 562 F.3d 558, 566 (3d Cir. 2009) (en banc); see also Rita v. United States, 551 U.S. 338, 347 (2007) (a guideline sentence is presumptively reasonable); United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (elements of procedural reasonableness analysis).

Accordingly, it is hereby ORDERED and ADJUDGED that the judgment of the District Court entered on September 23, 2022 is hereby AFFIRMED.

By the Court,

s/ Patty Shwartz
Circuit Judge

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 5, 2023

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