

20-5279

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUL 24 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

William Dale Wooden — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Dale Wooden

(Your Name)

Forrest City Low - P.O. Box 9000

(Address)

Forrest City, Arkansas 72336

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- I. DID THE WARRANTLESS ENTRY AND SEARCH OF PETITIONER'S HOME VIOLATE HIS FOURTH AMENDMENT RIGHT TO BE FREE FROM ILLEGAL SEARCH AND SEIZURE?
- II. DID THE SIXTH CIRCUIT ERR BY EXPANDING THE SCOPE OF 18 U.S.C. § 924(e)(1) IN THE ABSENCE OF CLEAR STATUTORY DEFINITION WITH REGARD TO THE VAGUE TERM "COMMITTED ON OCCASIONS DIFFERENT FROM ONE ANOTHER" ?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

FOURTH AMENDMENT

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.

FIFTH AMENDMENT

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Statutory Provisions

18 U.S.C. § 924(e)(1)

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such persons with respect to the conviction under section 922(g).

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 19, 2019.

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: Feb. 26, 2020, and a copy of the order denying rehearing appears at Appendix B.

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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF 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 Unknown; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

STATEMENT OF THE CASE

On November 14, 2014, at approximately 1:00 a.m., Conway Mason, a narcotics investigator for the Monroe County, TN Sheriff's Department, along with two uniformed patrolman met at the home of William Wooden, ostensibly to search for a fugitive whose vehicle had been previously observed parked at Wooden's home. One of the uniformed officers took up position at the bottom of the steps of a raised porch out of view through the front door. Unarmed and without a badge identifying him as a law enforcement officer, Mason went up the steps and onto the porch and proceeded to knock on the door. Mr. Wooden answered the front door and encountered Mason dressed in civilian clothes. Mason did not identify himself as a law enforcement officer nor did he indicate that he and the other two officers were looking for a fugitive. Mason asked to speak with Janet, Mr. Wooden's common law wife. Without inviting Mason inside, Mr. Wooden said, "I'll get her," reached behind the door and then made his way toward a back bedroom. Mason crossed the threshold, stepping into the home. As Wooden turned to go down the hallway, Mason noticed Wooden carrying a rifle, apparently retrieved from behind the front door. Mason instructed Wooden to "put the gun down." As Mason entered the home, one of the uniformed patrolman entered right behind him with his service weapon drawn instructing Wooden to put the weapon down. The patrol officer handcuffed Wooden and searched him. This officer removed a revolver, ammunition and prescription pills.

Investigator Mason then spoke to Janet Harris (Wooden's wife) and told her that they were looking for a fugitive and she gave the officers permission to look for him in the house. The officers looked, but did not locate the fugitive they were allegedly looking for. Instead, they did locate a .22 caliber rifle in the bedroom. At this point, even though Mason had not identified himself as a law enforcement officer, he asked Ms. Harris for permission to search the residence. She consented by providing written consent.

Wooden was arrested and charged in State court with being a felon in possession of a firearm. That case was dismissed on November 25, 2014 with the district attorney indicating on the warrant "no probable cause for arrest." On March 3, 2015, Mr. Wooden was charged by federal indictment with being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1) and 924(e).

On July 2, 2015, Wooden filed a Motion to Suppress arguing that the warrantless entry and search of his home violated his Fourth Amendment rights. This Motion to Suppress was ultimately denied. Wooden proceeded to trial and was found guilty on May 30, 2018.

On February 22, 2019, a sentencing hearing was held. Over Wooden's objections, the district court found that he qualified as an Armed Career Criminal under 18 U.S.C. § 924(e) as charged in the indictment and sentenced him to 188 months imprisonment. In support of the ACCA enhancement, the district court relied on a 2005 Georgia burglary of a dwelling and ten (10) separate

burglary convictions for Georgia burglary occurring on the same date, at the same time, and all at the same address, a mini-storage facility. Mr. Wooden filed a timely notice of appeal to the Sixth Circuit Court of Appeals, who affirmed the sentence on December 19, 2019. The mandate was issued on March 5, 2020.

On Appeal, Mr. Wooden argued that it was error for the district court to deny his motion to suppress evidence in light of the warrantless entry and search of Mr. Wooden's home. Wooden also argued that it was error for the district court to count his ten (10) prior Georgia burglaries as distinct and separate crime, thus triggering an ACCA sentencing enhancement under 18 U.S.C. § 924(e)(1). Interestingly, the Sixth Circuit held that § 924(e)(1) did not provide definition of the phrase, "committed on occasions different from one another."

Mr. Wooden believes that it was error for the Sixth Circuit to expand the scope of § 924(e)(1) rather than take a narrow interpretation when the statute is vague. As succinctly stated recently by Justice Gorsuch in Davis, "a vague law is no law at all." Mr. Wooden respectfully asks this Court to once again review a portion of § 924(e) as void-for-vagueness.

REASONS FOR GRANTING THE PETITION

- I. The warrantless entry and search of Petitioner's home violated his Fourth Amendment right to be free from illegal search and seizure.

On November 19, 2014, Mr. Wooden received a knock on his door at 1:00 a.m. Upon answering the door, Mr. Wooden was faced with a man in plain clothes, with no weapon, badge, or indication that he was in-fact associated with law enforcement. He also did not identify himself as such. The visitor asked to speak with Mr. Wooden's commonlaw wife, Janet. Mr. Wooden stated "i'll get her" and then reached behind the front door, retrieved an object, turned, and started for the hallway. As Mr. Wooden walked away, the visitor entered the home, followed by a uniformed patrol officer who had been standing at the foot of the porch stairs beside the home and out of view of Mr. Wooden. It was precisely this intrusion where the rights of Mr. Wooden were violated. Apparently, when Mr. Wooden had retrieved an object from behind the door, that object was a .22 rifle. When the uniformed officer saw the gun, he immediately drew his service weapon and ordered Mr. Wooden to put down the rifle. This officer then handcuffed Mr. Wooden and placed him in a chair.

It was later determined that the plain clothes officer was Narcotics Investigator Conway Mason with the Monroe County, TN Sheriff's Department. Mason testified at a suppression hearing that prior to entering the home, he asked permission to step in as it was cold outside. Mason testified that he did not remember

Wooden's response but that it was either "yes" or "i'll go get her." The uniformed officer standing at the foot of the stairs testified that he did not hear Mason ask permission to enter the home. Further, this officer was clear that no one gave him the permission to enter the home. He was simply there to assist Mason and followed his lead. He did however testify that he drew his service weapon immediately upon entrance of the home and handcuffed Mr. Wooden.

At a hearing on Wooden's Motion to Suppress, the trial court found that Mason had properly asked permission to enter the home and Mr. Wooden responded in the affirmative that he could. Relying on this "consent" to enter, the trial court denied Mr. Wooden's motion to suppress. The problem is that, even assuming that Mr. Wooden gave Mason permission to enter, that permission did not extend to the uniformed officer who Mr. Wooden did not see or have knowledge of his presence, who entered the home right on the heels of Officer Mason. It was this specific intrusion that offends the tenets of the Fourth Amendment.

Mr. Wooden, through counsel, argued on direct appeal to the Sixth Circuit that the illegal entry and search of his home violated his Fourth Amendment rights. He asserted that, (1) he did not consent to the officer's entry into his home, and (2) even if he did consent, that consent was not valid because the officer used deception to attain consent. The Sixth Circuit disagreed finding that Mr. Wooden's affirmative consent to enter when asked by Mason was valid and there was no deception used that would equate to clear error and thus reversal.

The Sixth Circuit clearly erred by imposing this erroneous standard asserting that Wooden's "consent" for Mason to enter the home clears up any Fourth Amendment violation. Years of prior precedent is clear. Even assuming that Wooden gave Mason "consent," that consent did not extend to the uniformed officer hiding at the bottom of the porch stairs next to the house. It was the entry of this uniformed officer without a warrant or probable cause that violated Wooden's Fourth Amendment rights. It was therefore error for the Sixth Circuit to find otherwise.

Mr. Wooden respectfully asks this Court to reverse the decision of the Sixth Circuit finding that his Fourth Amendment rights were violated by the officer's illegal entry and search of his home.

In order for the Court to better understand that circumstances surrounding the illegal entry and search of Mr. Wooden's home, a copy of the transcript from the hearing on the motion to suppress is attached as Appendix C. A careful review will reveal that the officers didn't even have a valid reason to be on Mr. Wooden's property the night in question. The pretext for the visit was that they were looking for a fugitive whose vehicle had allegedly been seen at Wooden's house two (2) days before. This pretext was completely false as the record reveals. If the officer's were truly looking for this fugitive and believed that he was at the house, why not just get a valid warrant to conduct a search? This is because their reasons for being on Wooden's property the night in question were false. Simply, they had no business to be there.

II. The Sixth Circuit erred by expanding the scope of 18 U.S.C. § 924(e)(1) in the absence of clear statutory definition with regard to the phrase "committed on occasions different from one another."

On the night of October 24-25, 1997, Mr. Wooden and three (3) other co-defendants burglarized a mini-storage facility in Whitfield County, Georgia. The defendants burglarized ten (10) storage units at the same address within the same facility.

18 U.S.C. § 924(e)(1) states:

In the case of a person who violates 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant probationary sentence to, such person with respect to the conviction under section 922(g).

18 U.S.C. § 924(e)(1)(emphasis added).

Because of his ten (10) burglary convictions, Mr. Wooden was sentenced as a Armed Career Criminal to 188 months imprisonment. The sentencing court found that even though the burglary crimes were committed contemporaneous to each other, i.e., same time, same place, no intervening arrest, they were still ten separate crimes "committed on occasions different from one another."

On direct appeal. Mr. Wooden, through counsel, argued that his ten prior Georgia Burglary convictions should be treated as one criminal episode, and thus one conviction for ACCA purposes. In affirming this ACCA sentence, the Sixth Circuit expanded the scope of § 924(e)(1) rather than pursue a narrower interpretation. The Sixth Circuit readily admits that § 924(e)(1) with regard to "committed of occasions different from one another" is vague.

But then seeks to save the statute by stating:

"In the absence of additional statutory direction, our prior decisions have helped fill this interpretive gap, albeit with some lack of precision."

This expansionalist view defies logic when viewed through the lens of strict statutory construction. As Justice Gorsuch recently opined in United States v. Davis, et al, 588 U.S. ____ (2019), "In our constitutional order, a vague law is no law at all." He further states, "When Congress passes a vague law, the role of the courts under our constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again."

Rather than treat the statute, § 924(e)(1) as vague, the Sixth Circuit established "at least three indicia that offenses are separate from each other":

- Is it possible to discern the point at which the first offense is completed and the subsequent point at which the second offense begins?
- Would it have been possible for the offender to cease his criminal conduct after the first offense and withdraw without committing the second offense?
- Were the offenses committed in different residences or business locations?

See United States v. Hill, 440 F.3d 292, 297-98 (6th Cir. 2006); See also United States v. Paige, 634 F.3d 871, 873 (6th Cir. 2011).

So rather than treat the law as a nullity and invite Congress to try again, the Sixth Circuit "expanded" the scope of § 924(e)(1) concerning the phrase "...committed on occasions different from one another" and established the above three indicia to determine what the statute means. The explanation is that the Sixth Circuit "sharpened the different occasions inquiry by focusing the court on the kinds of questions that have come up in prior ACCA cases."

Against the backdrop of this expansionalist view, the Petitioner believes that it was error for the Sixth Circuit affirm his ACCA sentence even though the term "...committed on occasions different from one another" is constitutionally vague. Suprisingly, the Sixth Circuit does recognize that the above phrase lacks "statutory direction," but still persisted in reaching to "save" the statute rather than reject it and invite Congress to try again.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Dale Wooden

Date: July 14, 2020