

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

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM 2025

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**RICHARD JOHNSON, Petitioner,**

**v.**

**UNITED STATES OF AMERICA, Respondent**

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

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## **I. QUESTION PRESENTED**

Whether the mere presence of a firearms in a bag on a shelf in a residence is sufficient to presume a defendant's knowledge and constructive possession of the firearms where the defendant is a temporary occupant, sharing the residence with someone else who is subletting it?

## **II. PARTIES TO THE PROCEEDING**

Mr. Richard Johnson is the Petitioner. The United States of America is the Respondent in this matter.

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## V. OPINIONS BELOW

The unpublished opinion by the United States Court of Appeal for the Fourth Circuit in this case, *United States v. Aaric Murray*, No. 23-4328, is attached to this Petition as Appendix A. The judgment of the United States Court of Appeals for the Fourth Circuit is attached as Appendix B. The final judgment order of the United States District Court for the Northern District of West Virginia is unreported and is attached to this Petition as Appendix C.

## **VI. JURISDICTION**

This Petition seeks review of an unpublished opinion of the United States Court of Appeals for the Fourth Circuit, decided on October 22, 2025.

## **VII. CONSTITUTIONAL PROVISION INVOLVED**

This case requires interpretation and application of the Second Amendment to the U.S. Constitution which provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”



## VIII. STATEMENT OF THE CASE

### A. Federal Jurisdiction.

This is a multi-defendant case involving an indictment for drug and firearms offenses. On February 2, 2021, a federal grand jury returned the Superseding Indictment. J.A. 30-39.<sup>1</sup> In Count One, both men were charged with a conspiracy to possess with intent to distribute and to distribute methamphetamine, cocaine base, heroin, and fentanyl, in violation of 21 U.S.C. § 841(b)(1)(C) and § 846. J.A. 30.

In Count Two both were charged with aiding and abetting in the possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2. J.A. 31. Count Three charged both men with aiding and abetting the possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2. J.A. 32. Count Four charged both men with aiding and abetting the possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2. J.A. 33. In Count Five, Murray was charged with possession of a .380 caliber Glock pistol and a Rossi .357 caliber revolver as an unlawful user and addict of controlled substances, in violation of 18 U.S.C. § 922(g)(3) and § 924(a)(2). J.A. 34

In Count Six, both men were charged with aiding and abetting the possession of the Glock pistol and Rossi revolver in furtherance of the drug offense alleged in

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<sup>1</sup> Reference to “J.A.” indicates the joint appendix filed by the parties for the direct appeal to the Fourth Circuit.

Count Two in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and 2. J.A. 35. Count Seven charged Johnson with possession with intent to distribute fentanyl, on September 25, 2020, in violation of 21 U.S.C. § 841(a)(1), and § (b)(1)(C). J.A. 36. Count Eight charged Murray with unlawful possession of a .45 caliber Glock pistol on November 17, 2020, during his arrest, based upon his alleged unlawful use and addiction to a controlled substance, in violation of 18 U.S.C. § 922(g)(3) and § 924(a)(2). J.A. 37. Because the charges contained in Count One and Count Two of the Indictment constitute offenses against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231.

On September 9, 2022, Johnson and Murray proceeded to trial. On September 9, 2022, Johnson was found guilty of the charges contained in Counts One, Four, and Six, of the Superseding Indictment. J.A. 20-21. Johnson was found not guilty beyond a reasonable doubt of Count Two. *Id.* The jury found Murray guilty of Count One, Count Two, Count Four, and Count Six and not guilty of Count Five and Count Eight. *Id.* Count Three was dismissed prior to trial when the Government filed a motion to dismiss.

On May 3, 2023, the District Court sentenced Johnson to a total effective sentence of 147 months in prison, followed by a term of supervised release of three years. J.A. 24, 1191-1198. The same day, the District Court sentenced Murray to a total effective sentence of 170 months in prison, followed by a term of supervised release of three years. J.A. 24, 1183-1190. On May 4-5, 2023, Murray and Johnson filed notices of appeal and both were filed timely. J.A. 24, 1199-1203.

Because the charges constitute offenses against the United States, the district court had jurisdiction pursuant to 18 U.S.C. § 3231. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

### **B. Factual Background.**

This case involved drugs and firearms in Morgantown, Monongalia County, West Virginia. J.A. 30-39. Johnson entered a plea of guilty to one drug offense in Count Seven. J.A. 1077. Prior to trial, the Government moved to dismiss Count Three. At trial, Johnson adamantly denied having knowledge of firearms and his defense team vigorously defended Count Six. J.A. 264-265. Similarly, Murray denied possession of the firearms and encouraged the jury to find him not guilty on Count Six. J.A. 225.

Many of the basic facts of the investigation are not in dispute. On April 16, 2020, deputies with the Monongalia County Sheriff's Office responded to a 911 call regarding an alleged hostage incident at 536 Independence Hills, a mobile home park, in Morgantown, West Virginia. J.A. 40, 1079. The 911 caller, Eddie Emery, stated that "Seven" (an alleged nickname for Murray who stands nearly seven feet) held his wife, Tara Emory, at gunpoint inside 536 Independence Hills. J.A. 170, 1080. The alleged incident began with a dispute over a rented vehicle. J.A. 48.

Deputies arrived at 536 Independence Hills Village and noticed a gray Dodge Charger in the driveway. J.A. 48. Deputies confirmed the vehicle was rented. *Id.* They observed that the windows appeared to be covered making it impossible to see

inside the residence. *Id.* Then, deputies knocked and announced their presence. *Id.* Murray answered the door. *Id.* Immediately, the deputies detained Murray in handcuffs. J.A. 49. Deputies called for a second man, Johnson, to come outside. *Id.* In compliance, Johnson emerged from the left, down a hallway connecting rooms in the back of the home. J.A. 48, 1080.

Deputies explained the reported circumstances. Murray replied that no woman was being held hostage and they could come inside. J.A. 49. Deputies escorted Murray inside, turning slightly to the right and in a room in the front section of the home. J.A. 183. This room appeared to be a kitchen that was converted to a bedroom or living room (the “front room”). J.A. 1080. Deputies placed Murray in a chair in this front room. J.A. 1080. Deputies did not locate a woman, but they observed a black (paddle style) handgun holster, baggies, scales, rubber bands, NARCAN, and drug paraphernalia on a table in the front room. J.A. 172, 1081.

Then, deputies held the scene, applied for, and received a search warrant. J.A. 173. Deputies recovered approximately \$6,415 cash on Murray and \$2,768 on Johnson; approximately 34 grams of methamphetamine from inside large pants found in the front room; 2.20 grams of cocaine base on the floor in the front room; two firearms (.380 Glock pistol and a Rossi .357 revolver) in a green bag in the front room; scales; and an Alcatel flip phone from a laundry room. J.A. 173, 1081.

The green bag containing the firearms did not carry any indication of ownership. J.A. 1082. There was no testimony presented that Johnson was seen

with the Glock pistol or the Rossi revolver. *Id.* There was no testimony about how long the firearms had been in the home, who brought the green bag in the residence, or who put the firearms in the bag. *Id.* There were no fingerprints on the Glock pistol. *Id.* The Rossi revolver had one fingerprint, which did not match Murray or Johnson. Neither firearm was tested for DNA. J.A. 1082.

The Alcatel flip phone contained text messages with apparent customers who purchased narcotics. J.A. 1244. The text messages indicated that the apartment complex formerly known as The District was one of the locations involved in the alleged drug conspiracy. *Id.* In the text communications, it was also indicated that customers were complaining about Seven's attitude and tardiness when he made drug distributions. *Id.* There were no texts about firearms on the Alcatel phone.

A Motorola cell phone was seized from Johnson upon arrest. *Id.* A review of the Motorola cellphone included pictures of Johnson, including him holding unidentified firearms, in unknown places, at unknown times, which the Government did **not** introduce as evidence at trial. *Id.* The Motorola contained a picture of a large sum of money in an unknown location at an unknown time, which the Government did not introduce at trial either. *Id.* Also, the Motorola phone included a text exchange where a user of the phone appeared to recruit another individual to travel to assist with drug distributions. *Id.* In this text exchange, the user of the phone said he/she would earn more than \$3,000 and the user of the phone would pay \$200 to \$250 for the individual to sit with the user of the phone during distributions. *Id.*

Murray made statements about the drug evidence in the home. J.A. 134. Murray claimed the drugs in the home were for personal use. J.A. 134. Deputies noticed marks and drug injection sites on Murray's arms, hands, and feet. J.A. 134. Murray claimed that he did not sell drugs. *Id.*

Murray told police that the residence was his and that Johnson was living with him, but there was no documentation to back that up. J.A. 1082. Deputies did not recover a lease agreement, payment receipt, utility bill, or any other documented connection between Johnson or Murray and the home in Independence Hills. J.A. 1082. At the conclusion of the investigation, deputies arrested Murray for an unrelated warrant for shoplifting, J.A. 173, and Johnson for possessing a small amount of cocaine base in his pocket. J.A. 1255.

### **C. Procedural History.**

A federal Criminal Complaint was filed against Murray on November 12, 2020. J.A. 5. A federal grand jury returned an Indictment against Murray on December 1, 2020, charging unlawful possession of a Glock pistol and Rossi revolver as a user and addict of controlled substances, in violation of 18 U.S.C. § 922(g)(3) and § 924(a)(2). J.A. 6.

On February 2, 2021, a federal grand jury returned the Superseding Indictment. J.A. 30-39. In Count One, both defendants were charged with a conspiracy to possess with intent to distribute and to distribute methamphetamine, cocaine base, heroin, and fentanyl, in violation of 21 U.S.C. § 841(b)(1)(C) and § 846. J.A. 30. In Count Two both defendants were charged with aiding and abetting in the

possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2. J.A. 31. Count Three charged both defendants with aiding and abetting the possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.<sup>2</sup> J.A. 32.

Count Four charged both defendants with aiding and abetting the possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2. J.A. 33. In Count Five, Murray was charged with possession of a .380 Glock pistol and a Rossi .357 revolver as an unlawful user and addict of controlled substances, in violation of 18 U.S.C. § 922(g)(3) and § 924(a)(2). J.A. 34

In Count Six, both men were charged with aiding and abetting the possession of a Glock pistol and Rossi revolver in furtherance of the drug offense alleged in Count Two:

On or about April 16, 2020, in Monongalia County, in the Northern District of West Virginia, defendants AARIC MURRAY and RICHARD KIRKLAND JOHNSON, aided and abetted by each other, did knowingly possess firearms described as a Glock pistol, model 42, .380 caliber, serial number AAYX786, and a Rossi revolver, model 462, .357 magnum caliber, serial number 1W 172153, in furtherance of a drug trafficking crime for which they may be prosecuted in a Court of the United States; to-wit: the offense charged in Count Two of this Superseding Indictment, a felony prosecutable in a Court of the United States under Title 21, United States Code, Section 841(a)(1); in violation of Title 18, United States Code, Sections 924(c)(1)(A)(i) and 2.

J.A. 35.

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<sup>2</sup> Count Three was dismissed prior to trial.

As stated, prior to trial, Johnson entered a plea of guilty to Count Seven, charging possession with intent to distribute fentanyl, on September 25, 2020, at another residence in Westover, West Virginia, in violation of 21 U.S.C. § 841(a)(1), and § (b)(1)(C). J.A. 16, 36. Count Eight charged Murray with unlawful possession of a .45 caliber Glock pistol on November 17, 2020, found during his arrest and based upon his alleged unlawful use and addiction to a controlled substance, in violation of 18 U.S.C. § 922(g)(3) and § 924(a)(2). J.A. 37.

September 9, 2022, Johnson was found guilty of the charges contained in Counts One, Four, and Six, of the Superseding Indictment. J.A. 796-805; 1028. Johnson was found not guilty of Count Two of the Superseding Indictment. *Id.* The jury found Murray guilty of Count One, Count Two, Count Four, and Count Six and not guilty of Count Five and Count Eight. *Id.*

#### **E. The United States Court of Appeals for the Fourth Circuit.**

Johnson contended on appeal that the District Court erred in finding sufficient evidence existed to support convictions for Count Six, in violation Title 18, United States Code, United States Code, Sections 924(c)(1)(A)(i) and 2. The District Court should have granted the motion for judgement of acquittal raised during trial at the end of the Government's case and again in written post-trial motions filed after trial.

The Government failed to adduce sufficient evidence at trial that Johnson had advanced knowledge of the presence of the two firearms identified in Count Six prior to acts of assistance for the methamphetamine offense in Count Two. There



were no actions, words or conduct that suggested that Johnson knew firearms were present. ***Knowledge is an essential element*** of Count Six and ***constructive possession must be intentional***.

Johnson did not own the residence where the firearms were found and he did not sign a lease. The Government's witnesses could not rule out that other people had access to the residence. The Government never tested for DNA and the only fingerprint recovered from one of the firearms did not match the fingerprints for Johnson or Murray. The Government failed to establish any connection between the Johnson and these two firearms.

Johnson was new to the area and had only been in Morgantown for approximately one month. Apparently, Johnson stayed in a back room in the residence. This is ***not*** a plain view case. The firearms were located inside a green bag, on a shelf, in the front room. There is no evidence that Johnson ever entered this front room, much less that Johnson observed the firearms inside the bag there. Moreover, Johnson did not make statements about the two firearms.

The District Court reasoned that the black paddle holster on a table in the front room formed a sufficient basis for the jury's decision to convict because it created some kind of inference supportive of knowledge of the two firearms. Yet, there is ***no evidence*** that Johnson saw the black holster or knew of its existence, there is ***no evidence*** that the front room was used as a "common area," and there is ***no evidence*** Johnson ever entered the front room. The only logical conclusion, even

in the light most favorable to the Government, is that Johnson was merely present in the residence the day deputies discovered the firearms.

The evidence at trial suggested that Murray had some personal items in the front room when officers arrived, indicating Murray had been in that room at some point, but the Government presented ***no witness testimony*** and ***no other evidence*** indicating that Murray owned, used, or knowingly possessed the firearms, which, again, were ***not*** in plain view.

The Government presented no evidence about who put the firearms there or when. The deputies did not collect the green bag and it was not presented as evidence at trial. The Government presented no evidence about the historical ownership of the firearms. Because so little is known about the firearms and how they ended up in the residence, Murray's ***proximity is not a substitute*** for proof beyond a reasonable doubt of advanced knowledge and intent to possess these firearms.

The Government did not present sufficient evidence that either man knew or had reason to know that the two firearms were in the front room, in a green bag, on a shelf, prior to committing acts of assistance relative to Count Two. Even viewing the evidence in the light most favorable to the Government, no reasonable juror could conclude that the evidence was sufficient to show the men had advanced knowledge of the presence of the two firearms.

The Fourth Circuit agreed with the Government. In its unpublished opinion, it held that circumstantial evidence connected Johnson to a room the room where the

guns were located, which it called a “common area” and “once Johnson was connected to the front room, the jury was permitted, although once again not required, to make ... reasonable inferences” that Johnson had advanced knowledge and constructively possessed the firearms. Opinion at 15.

## **IX. REASONS FOR GRANTING THE WRIT**

The Fourth Circuit’s ruling is inconsistent with 18 U.S.C. § 924(c)(1)(A)(i), this Court’s decision in *Rosemond v. United States* 572 U.S. 65, 77-78 (2014). Under *Rosemond*, the Government had to prove Johnson knew of the firearms in the bag in the front room to convict him of aiding and abetting the possession of the firearms in furtherance of the drug offense.

The Government failed to adduce sufficient evidence at trial that Johnson had advanced knowledge of the presence of the two firearms identified in Count Six prior to acts of assistance for the methamphetamine offense in Count Two. There were no actions, words or conduct that suggested that Johnson knew firearms were present. Knowledge is an essential element of Count Six and constructive possession must be intentional.

The Fourth Circuit determined that a jury could have found that Johnson was an occupant and, therefore, it could be “infer[red] that Johnson constructively possessed, and thus knew of, the firearms recovered from the home.” Opinion at 13. Yet, Johnson did not own the residence where the firearms were found and he did not sign a lease. The Government’s witnesses could not rule out that other people had access to the residence. The Government never tested for DNA and the only

fingerprint recovered from one of the firearms did not match the fingerprints for Johnson or Murray. The Government failed to establish any connection between the Johnson and these two firearms.

What's more, Johnson was new to the area and had only been in Morgantown for approximately one month. Apparently, Johnson stayed in a back room in the residence. This is not a plain view case. The firearms were located inside a green bag, on a shelf, in the front room. There is no evidence that Johnson ever entered this front room, much less that Johnson observed the firearms inside the bag there.

The Fourth Circuit reasoned that the black paddle holster on a table in the front room formed a sufficient basis for the jury's decision to convict because it created some kind of inference supportive of knowledge of the two firearms. Opinion at 12. But the Fourth Circuit had to layer on other inferences for the decision to take hold. It determined the jury could have found that the front room was a "common area." Opinion at 14. Therefore, as a resident, the jury was correct to infer that Johnson spent time in that common area, especially since there was a table with drug packaging paraphernalia. *Id.* When Johnson did enter the front room—the argument goes—he would have seen the black paddle holster. Then, because he would have seen the black paddle holster—as a final step in the conceptual framework—the Fourth Circuit presumed Johnson gained knowledge of the two firearms inside a bag on a shelf in that room. Opinion at 14-15.

This is wildly speculative. There is ***no evidence*** that the front room was used as a "common area." It was a common area in name only. In fact, Murray was

found there when the police arrived, he had is personal items in there, and it appeared he had been sleeping on the couch in the front room. In other words, that seemed to be Murray's room and there is ***no evidence*** Johnson ever entered the front room.

Even if Johnson entered the room, at some point, there is ***no evidence*** that Johnson saw the black holster or knew of its existence. The only logical conclusion, even in the light most favorable to the Government, is that Johnson was merely present in the residence the day deputies discovered the firearms.

The Government presented ***no witness testimony*** and ***no other evidence*** indicating anyone used the firearms, which, again, were ***not*** in plain view. The Government presented no evidence about who put the firearms there or when. The deputies did not collect the green bag and it was not presented as evidence at trial. The Government presented no evidence about the historical ownership of the firearms. Because so little is known about the firearms and how they ended up in the residence, ***proximity should not be a substitute*** for proof beyond a reasonable doubt of advanced knowledge and intent to possess these firearms.

The Government did not present sufficient evidence that either man knew or had reason to know that the two firearms where in the front room, in a green bag, on a shelf, prior to committing acts of assistance relative to Count Two. The Fourth Circuit should have reversed Johnson's conviction because even viewing the evidence in the light most favorable to the Government, no reasonable juror could

conclude that the evidence was sufficient to show he had advanced knowledge of the presence of the two firearms.

## **X. CONCLUSION**

For these reasons, Johnson respectfully requests that this Honorable Court grant a writ of certiorari and review the judgment of the Court of Appeals.

Respectfully submitted,

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