

No. _____

In the Supreme Court of the United States

TEVIN ABERCROMBIE, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a miscarriage of justice occurred where Petitioner was convicted of unlawfully possessing a firearm, for which the government only established his mere proximity to the firearm, but did not prove beyond a reasonable doubt any intent to exercise dominion and control over it.

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Petitioner herein respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the First Circuit in this case.

OPINION BELOW

The United States Court of Appeals for the First Circuit entered judgment in this case. The opinion (App. 1A, *infra*) is reported at 162 F.4th 47 (1st Cir. 2025).

JURISDICTION

The initial judgment of the First Circuit Court of Appeals was entered on December 16, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Pursuant to Supreme Court Rules 13.1 and 13.3 and 28 U.S.C. 92101(c), this petition is timely filed if deposited in the United States mail, with first-class postage prepaid, on or before March 16, 2026.

STATEMENT OF THE CASE

Petitioner was charged with Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1), in *United States v. Tevin Abercrombie*, 20-cr-10238-DPW (D.Mass. 2020). For the same incident, Petitioner was also charged in a separate proceeding, *United States v. Abercrombie*, 15-cr-10145-RGS-3 (D.Mass. 2015), for violating the condition of his supervised release prohibiting him from possessing a firearm.

After a jury convicted Petitioner for the substantive offense, the court sentenced him to 78 months. He was then determined to have violated his supervised release, and the court in that case sentenced him to a concurrent 12-month sentence. The First Circuit affirmed the conviction and both sentences.

This petition seeks relief because the result of the trial was a serious miscarriage of justice, which the First Circuit decision affirmed.

DISCUSSION

Boston, Massachusetts police stopped Petitioner on April 16, 2020, on the mistaken suspicion their vehicle had just been involved in a drive-by shooting. An anonymous witness had succinctly described the dark-colored Ford Fusion that Petitioner was riding in after it arrived at an intersection where the shooting had occurred just two minutes earlier. However, surveillance videos from multiple neighborhood pole cameras proved that the shooter was in a gray Honda CR-V sport utility vehicle that had immediately driven away from the area. The witness thought the Fusion was the same vehicle returning to the scene, looking for three

men who had been shot at while walking on the street, but who had escaped injury. With the description of that vehicle in hand, which included the detail that the Fusion was occupied by two or three black males, the police saw the vehicle in a convenience store parking lot a block from the shooting. Video from a camera above the parking lot showed that the Fusion went there immediately after driving through the intersection where the shooting had occurred.

While in the parking lot, Petitioner and the driver were seen conversing with the three shooting victims, who had run to the convenience store after the incident. While Petitioner was inside the vehicle, he could be seen moving his head forward and looking downward, although it was unclear from the video what, if anything, he was doing with his hands. At one point, all five men went briefly into the store.

After approximately ten minutes, Petitioner and the driver got back into the Fusion and drove from the lot. Several police vehicles were now patrolling the neighborhood, and one of those vehicles followed the Fusion almost immediately after it left the parking lot, stopping it two blocks later. One of the officers approached the passenger side and tried engaging Petitioner in conversation, but Petitioner sat silently in his seat and did not respond. Believing they had found the shooters, the officers ordered Petitioner and the driver from the vehicle and searched it, seizing a 9mm firearm they found under the passenger seat where Petitioner had been sitting. Subsequent testing showed that the firearm contained no fingerprints and was incompatible with the shell casings recovered in the intersection.

Because of his proximity to the firearm, coupled with his criminal history, Petitioner was charged in federal court with violating the supervised release conditions imposed in a prior case, and then in a separate proceeding for being a felon in possession of the firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). The driver, who owned the vehicle and was also within the firearm's reach, was not charged.

Petitioner filed numerous challenges to the substantive case, including a motion to suppress the evidence, based on the reasonableness of the vehicle stop and search, and a motion to dismiss based on both the government's insufficient evidence that Petitioner possessed the firearm and the constitutionality of 18 U.S.C. § 922(g)(1). Those motions were denied. Petitioner, who maintained he did not possess the firearm, refused to plead guilty and forced the government to prove the charge at trial.

In a pretrial motion *in limine*, pursuant to Federal Rules of Evidence 404(B) and 609, the government sought permission to identify Petitioner and the men in the parking lot – all African Americans – as members of a local street gang. Despite the denial of that motion, the government claimed at trial that Petitioner intentionally brought the firearm because his friends had just been targeted, implying that Petitioner was angry and looking to get revenge on the shooters. The pole cam video showed one of the victims a minute after the shooting, returning to the corner and speaking on a cell phone. Without evidence, the government claimed he was calling Petitioner for help, and that is why Petitioner arrived less than a

minute later with a firearm. However, the government also claimed Petitioner only found out about the shooting when he met up with the victims in the parking lot.

In presenting the parking lot video to the jury, the government claimed that every time Petitioner moved his head forward, he was checking the firearm beneath the seat. Further, the government asserted that Petitioner was wearing a latex glove on his right hand to prevent fingerprints, even though the offense occurred at the start of the coronavirus pandemic, and one of the officers admitted that the police were taking numerous precautions at that time, including wearing surgical masks and latex gloves, due to COVID-19.

Finally, the government told the jury that Petitioner's silence when the officer approached his window was a sign he was angry because he was about to get caught with a firearm.

After the close of evidence, Petitioner moved for acquittal under Federal Rule of Criminal Procedure 29, arguing that the government had only established his mere proximity to the firearm, and not that the firearm was his and that he intended to exercise dominion and control over it. The trial judge denied the motion. After the jury returned with a guilty verdict, Petitioner renewed the Rule 29 motion, which was again denied, as was a Motion for New Trial.

REASON FOR GRANTING REVIEW

1. The Jury Verdict Was a Miscarriage of Justice, and the Appeals Court Decision Sanctions That Outcome.

This Court has noted it is “a longstanding presumption” that a criminal offense requires scienter, a showing that the defendant violated the applicable statute with “a culpable mental state.” *Ruan v. United States*, 142 S. Ct. 2370, 2377, (2022) (quoting *Rehaif v. United States*, 139 S. Ct. 2191, 2195 (2019)). Even where a statute is silent as to a mens rea requirement, scienter is presumed. See *Rehaif*, 139 S. Ct. at 2197. As possession is an element of 18 U.S.C. § 922(g)(1), and intent is a specific requirement to show constructive possession, the government’s burden was to prove two things for which it had no evidence: that Petitioner knew there was a firearm located under the front passenger seat of a vehicle in which he was a social guest; and, that he had the intent to exercise dominion and control over it. See *Maryland v. Pringle*, 540 U.S. 366, 372 (2003).

This Court should grant certiorari because, without proof of that element, the evidence was insufficient to achieve conviction. As this Court has noted:

Inferences and presumptions are a staple of our adversary system of factfinding...The value of these evidentiary devices, and their validity under the Due Process Clause, vary from case to case, however, depending on the strength of the connection between the particular basic and elemental facts involved and on the degree to which the device curtails the factfinder’s freedom to assess the evidence independently. Nonetheless, in criminal cases, the ultimate test of any device’s constitutional validity in a given case remains constant: the device must not undermine the factfinder’s responsibility at trial, based on

evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.

County Court of Ulster Cty. v. Allen, 442 U.S. 140, 156 (1979), citing *In re Winship*, 397 U.S. 358, 364 (1970); *Mullaney v. Wilbur*, 421 U.S. 684, at 702-703, n. 31 (1975).

The government here presented inferences that undermined the jury's ability to decide Petitioner's case fairly. The speculation that Petitioner was summoned as an avenger for the men who had been attacked in a drive-by shooting played on racial tropes that were not blatant, but inferred nonetheless. See *United States v. Irvin*, 87 F.3d 860, 866 (7th Cir. 1996) (finding "gang-affiliation evidence served as a substitute for [] direct evidence, increasing the chance of guilt purely by association"). Further, his silence during the stop was also presented as evidence he was an angry man. Normally, police consider furtive movements within a vehicle to be evidence of a weapon nearby, but here, the lack of any movement by Petitioner (the passenger) was portrayed as suspicious. Compare *United States v. Jordan*, 100 F.4th 714, 721 (6th Cir. 2024) (finding a passenger's nervousness during a motor vehicle stop significant because "passengers usually don't interact with police at all during a traffic stop").

There was no evidence of constructive possession here. Yet, the government painted every circumstance in this case as a guilt indicator, something of which the First Circuit is normally wary. See *United States v. Valerio*, 48 F.3d 58, 64 (1st Cir. 1995) (reviewing courts should be "loath to stack inference upon inference in order

to uphold the jury’s verdict”). Neither the district court nor the appellate court acted to prevent the miscarriage of justice that occurred here. See *Eberhart v. United States*, 546 U.S. 12, 13 (2005) (courts can “vacate any judgment and grant a new trial if the interest of justice so requires”) (quoting Fed. R. Crim. P. 33(a)).

Finally, whether Petitioner possessed the firearm, by actual or constructive possession, his conviction must be overturned in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111, 2122 (2022), in which this Court declared “that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.”

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Stephen P Super
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MARCH 14, 2026