

No. 17A284

In the
Supreme Court of the United States

—————
STANLEY GONSALVES

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

Was the evidence insufficient to prove a firearm was used in furtherance of a drug trafficking crime, pursuant to 18 U.S.C. § 924(c)(1)(A), when the evidence showed, at most, that the defendant kept a firearm in his home for household protection?

PARTIES TO THE PROCEEDING

Stanley Gonsalves is a resident of Massachusetts. He is currently incarcerated at USP Allenwood, Pennsylvania.

As this is a criminal proceeding, the United States of America was the prosecuting party.

The defendants before the First Circuit Court of Appeals were Stanley Gonsalves and his brother, Joshua Gonsalves.

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PETITION FOR A WRIT OF CERTIORARI

Stanley Gonsalves respectfully petitions this Court for a writ of certiorari to review the decision of the United States Court of Appeals for the First Circuit in this case.

REPORT OF OPINION

The opinion of the First Circuit Court of Appeals (*O. Rogeriee Thompson, J.*) sought to be reviewed is *United States v. Stanley Gonsalves*, 859 F.3d 95 (1st Cir. 2017), which is reprinted in the appendix hereto at 1-13.

JURISDICTION

Following 18 days of trial between September 8 and October 9, 2014, the United States District Court for the District of Massachusetts entered judgment against Stanley Gonsalves on June 22, 2015. Stanley and his brother, co-defendant Joshua Gonsalves, were charged with multiple conspiracies and substantive crimes in a 21-count second superseding indictment, which also sought forfeiture of cash and various properties.

A jury found Stanley Gonsalves guilty of conspiracy to possess with intent to distribute and to distribute oxycodone, contrary to 21 U.S.C. § 846; money laundering conspiracy, contrary to 18 U.S.C. § 1956(h); twelve counts of concealment money laundering, contrary to 18 U.S.C. § 1956(a)(1)(B); six counts of unlawful monetary transaction, contrary to 18 U.S.C. § 1957; and possession of a rifle in furtherance of a drug trafficking conspiracy, contrary to 18 U.S.C. § 924. The jury acquitted Stanley Gonsalves of possession of a handgun in furtherance of drug trafficking.

Stanley Gonsalves was sentenced to twenty-five years – twenty for the drug trafficking conspiracy, money laundering, and unlawful monetary transactions, plus five years for the rifle in furtherance of drug trafficking charge.

The judgment of the court of appeals affirming the convictions and sentence was entered on June 7, 2017. On September 13, 2017, this Court allowed an extension of time in which to file a petition for writ of certiorari, to and including November 4, 2017.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The First Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

Service is being made on the Solicitor General of the United States, in accord with United States Supreme Court Rules 14.1(e) and 29.4.

UNITED STATES CODE 18 U.S.C. 924(c)(1)(A)

“[A]ny person who, during and in relation to any crime of violence or drug trafficking crime ... uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime ... be sentenced to a term of imprisonment of not less than 5 years.”

STATEMENT OF THE CASE

Stanley Gonsalves was convicted of possession of a firearm in furtherance of a drug conspiracy, even though there was no evidence that a firearm was in the vicinity at the time of any drug transaction, no evidence that a firearm was involved in a drug transaction, and no evidence that a firearm was present in the defendant's home in Onset, Massachusetts for anything beyond generic household protection.

Before trial in this case, the government had already prosecuted one John Willis, and other defendants, suppliers of oxycodone pills to the Gonsalves brothers. *See United States v. John Willis, et al.*, No. 13-2102 (1st Cir. Apr. 27, 2015); *United States v. Welty*, No. 11-10212, 2013 WL 690528 (D. Mass. Feb. 26, 2013). The government's attention was drawn to Joshua and Stanley¹ as a result of Stanley's involvement, beginning in late 2009, with Willis's organization. After Willis was arrested in 2011, Joshua and Stanley continued the conspiracy until their arrest in November 2012.

The government's evidence at the trial of co-defendants Joshua and Stanley, summarized below, comprised 34 witnesses. Of these, 13 were alleged co-conspirators who testified in the context of agreements with the government regarding their own prosecutions and convictions, 13 were law enforcement officers who testified about their arrests and seizures of money and pills from Joshua, one was a chemist who analyzed pills seized during an auto stop, two were IRS agents who presented various financial transactions, and several were civilians with knowledge of financial transactions.

Anavey Duffy was a former stripper and adult film actress who worked for Willis, flying from Boston to Fort Lauderdale to meet Willis or his associates, delivering money, and then returning to Boston with oxycodone pills packed in vitamin bottles. *Day 1* at 143-45, 149-50, 155-58. Between August 2010 and March 2011, Duffy guessed she made 20 to 25 round trips for Willis, *Day 1* at 145, 150, 159, estimating she brought an average of 3,000 to 4,000 pills per trip. *Day 2* at 4. Duffy counted pills with others before leaving Florida, and again after arriving in Massachusetts. *Day 2* at 9-11. She placed Stanley and Joshua in the conspiracy, *Day 1* at 145; *Day 2* at 19-20,

¹To ease confusion, and in imitation of the First Circuit, Joshua Gonsalves and Stanley Gonsalves are referred to by their first names; no disrespect is intended.

saying Stanley was the recipient of many of the pills. *Day 2* at 7. Duffy said nothing about guns.

Michael Shaw was also a runner for Willis, and knew of a standing agreement between Willis and Stanley. *Day 3* at 76. He transported oxycodone pills in vitamin bottles from Florida to the Boston area, *Day 3* at 26-30, making pill and cash deliveries between Duffy, Joshua, Stanley, and Willis. *Day 3* at 37-73. He flew one trip in December 2010 or January 2011, and drove eight or ten more. *Day 3* at 26, 33, 36. On one occasion when Shaw and Willis drove from Boston to Florida, they were stopped in South Carolina for an improper lane change, and \$98,000 in cash was seized from the car. *Day 3* at 49-50. Shaw said nothing about guns.

Alexa Doran met Stanley around January 2010, and moved in with him in Quincy, Massachusetts. *Day 8* at 10. They then set up a home together in Onset, Massachusetts, where later Joshua joined them. *Day 8* at 26-27, 91. Most of Doran's testimony was about Stanley buying and reselling oxycodone pills, and her transporting pills from Florida to Boston and Boston to Cape Cod. *Day 8* at 8-90. She also saw Joshua count and bag pills, and at Stanley's direction, carry them to others. *Day 8* at 91-92. Regarding the weapon here at issue, Doran testified that in early 2011, during the time Joshua was living at Onset, for either "a few weeks" or "two weeks," Stanley had a rifle in the home, which he kept in a black case behind the couch. *Day 8* at 97-99, 129. Stanley told Doran he had the rifle because "it was cool." *Day 8* at 97.

Doran's teenage brother, Mathew Hernon, worked for Stanley in a variety of roles: counting oxycodone pills, running cash-counting machines, and driving Stanley to his supply and distribution meetings. He saw thousands of pills, and piles of money. *Day 7* at 94-98, 102-118. He testified about the gun here at issue. By the time of trial, Hernon had become a member of the National Guard and was pursuing a career in law enforcement. Given his post-conspiracy training, he was able to identify in detail the semi-automatic rifle he said Stanley kept behind the couch at the house in Onset. *Day 7* at 120, 128, 156. He testified that Stanley told him he had the rifle because Stanley "thought someone was going to rob him, so he got protection." *Day 7* at 129. Hernon testified that sometime during the Spring of 2011, he was sitting on the couch at the Onset house, playing video games with Stanley, when Stanley picked up the unloaded rifle and pointed it at him. *Day 7* at 121-23, 149-50.

Crystal Flaherty was Joshua's former girlfriend and mother of his child. *Day 9* at 160. She spent several nights a week with him at the Onset home. *Day 11* at 41.

Flaherty testified to the operation of the conspiracy in much the same way Duffy had – Joshua was a runner and driver for Stanley, transporting pills and money. *Day 10* at 11-21, 27-42, 48-53. Flaherty also testified about two guns not at issue here: she said that while living at the house in Onset, Joshua retrieved a rifle from his bedroom and asked another person to get rid of it, *Day 10* at 43-47, and also that Joshua had told her that at the time he and Stanley were victims of a robbery, Joshua had a handgun in his car. *Day 10* at 72-73; *Day 11* at 57-58.

In February 2010, Vincent Alberico started working for Stanley as a distributor, getting 100 to 200 pills per week from Stanley for approximately \$15 each and reselling them to users for \$20. *Day 4* at 18-20, 51, 90. Several times in March 2011, when Stanley was in Florida, Stanley had Alberico pick up quantities of money from the refrigerator at the Onset home and deliver it to Duffy in Rhode Island; take quantities of pills from Duffy to a hotel on Cape Cod, *Day 3* at 175; *Day 4* at 53-57; pick up oxycodone pills in vitamin bottles from Willis at a hotel near the Boston Museum of Science and at a bowling alley in Dorchester, Massachusetts; and exchange pills for money in Braintree, Massachusetts and at a hotel in Hyannis, Massachusetts. *Day 4* at 58-61. Alberico said nothing about guns.

Samantha Poitras was a shopkeeper on Cape Cod, and Alberico's girlfriend who thought he worked at a furniture store. *Day 5* at 29-32, 49, 54. She testified Stanley came to her apartment with a duffel bag which, from the smell, she believed contained marijuana. *Day 5* at 55. Poitras said nothing about guns.

In 2009 Brandon Garner was living with Stanley's sister and their children in West Yarmouth, Massachusetts, and knew all the many members of the Gonsalves family. *Day 5* at 75-77. He knew Stanley kept a backpack full of marijuana in a closet, hid pills in baggies stuffed in Fluffernutter jars in the kitchen, and transacted sales of cocaine and a variety of other drugs from the West Yarmouth house. *Day 5* at 78-79, 84. Later, when Garner and Stanley's sister were driving from Florida to Boston, they were pulled over, and police seized 900 pills and \$25,000 cash concealed in the car. *Day 5* at 123-26. Garner said nothing about guns.

Danielle LeBaron, a 20-year old addict, began working as a driver for Stanley in February 2010 because Stanley did not have a license; she was paid in pills. Accompanying him everywhere and everyday, she saw and met his suppliers and distributors. Driving between Quincy and Cape Cod essentially all the time, she was "living out of a suitcase." In June 2010 Willis asked LeBaron to fly to Florida, and she

became a courier, flying with money and pills between 12 and 20 times. *Day 5* at 148-59; *Day 6* at 26-115. LeBaron said nothing about guns.

Karen Swift was Stanley's high school sweetheart. They had a child together, but at the time of events in this case they hadn't spoken for a decade. She said one day Stanley showed up at her house in Bourne, Massachusetts, bleeding from a head wound, and told her he had been robbed. Stanley hid a duffle bag in her rafters. She peeked and confirmed it was full of \$100 bills sealed in plastic. Two weeks later she became so nervous she drove the cash to Stanley's house and returned it. *Day 8* at 144-57. Swift said nothing about guns.

Michael Fula and Joseph Guarneri testified about participating in a robbery of \$225,000 cash from Joshua and Stanley when they were seeking a new pill supplier. *See United States v. Monteiro*, 871 F.3d 99 (1st Cir. 2017). A handgun was present at the robbery, which formed the basis for indictments against both Gonsalves brothers. The jury returned not-guilty verdicts, however, and that handgun is unrelated to the rifle charge for which Stanley was sentenced. Finally, five witnesses testified regarding various money transactions – a lawyer who had records of a property purchase, a friend who helped Stanley acquire a cashier's check, etc. – and said nothing about guns.

REASONS TO GRANT THIS PETITION

In the First Circuit, Stanley attacked the sufficiency of the evidence for his conviction regarding possession of a firearm in furtherance of a drug trafficking crime. 18 U.S.C. 924(c)(1)(A) & (c)(2). The court ruled that Stanley possessed a rifle in furtherance of the drug conspiracy because Alexa Doran and Mathew Hernon saw Stanley handle it at his Onset home, and it was for protection. *United States v. Gonsalves*, 859 F.3d 95, 111-12 (1st Cir. 2017), *Appendix* at 11.

The court correctly stated that to be guilty, the government must prove the defendant “(1) possessed a firearm (2) in furtherance of (3) a drug-trafficking crime.” *Id.* The court also correctly commented that “a gun kept near a drug distribution point for protection from robbery of drug-sale proceeds may reasonably be considered to be possessed in furtherance of an ongoing drug-trafficking crime.” *Id.* (citing *United States v. Carlos Cruz*, 352 F.3d 499, 509 (1st Cir. 2003) (internal quotations omitted)). But the First Circuit previously acknowledged that “[t]he mere presence of a firearm in an area where a criminal act occurs is not sufficient basis for imposing the mandatory sentence.” *United States v. Robinson*, 473 F.3d 387, 399 (1st Cir. 2007); *see also United States v. Eller*, 670 F.3d 762, 765 (7th Cir. 2011) (“mere presence of a firearm in a home or location where drugs are sold is not itself sufficient to prove the ‘in furtherance of prong of the statute’”); *United States v. Mann*, 389 F.3d 869, 880 (9th Cir. 2004) (“Congress has not made mere possession, when it occurs contemporaneously with drug manufacture, a strict liability crime.”).

As the court noted, the evidence showed Stanley possessed the rifle – for two weeks of the three-year conspiracy. But the court erroneously held that the jury could have lawfully found that possession of the rifle was in furtherance of a drug crime.

The court extrapolated from two cases in which defendants brought weapons to drug transactions. In *Robinson*, 473 F.3d at 387, cited by the court, the defendant hid a weapon in the engine compartment of the car in which he arrived at a parking lot where the participants planned a drug transaction. In *United States v. Carlos Cruz*, 352 F.3d 499 (1st Cir. 2003), also cited by the court, the defendants hid machine guns, wrapped in a pillow case, in a garbage can adjacent to the door of “The Pub,” a location the police identified as a known “drug point” where they had witnessed drug transactions.

In circuit court opinions upholding 18 U.S.C. 924(c)(1)(A) in-furtherance mandatory sentences, the defendant directly involved a firearm in a drug crime, thus easily meeting the in-furtherance requirement:

- Firearm present at drug transaction – *United States v. Robinson*, 473 F.3d 387 (1st Cir. 2007); *United States v. Carlos Cruz*, 352 F.3d 499 (1st Cir. 2003);
- Firearm located in proximity to drugs or drug proceeds – *United States v. Eller*, 670 F.3d 762 (7th Cir. 2011) (firearm found proximate to home-based marijuana grow operation); *United States v. Parish*, 606 F.3d 480 (8th Cir. 2010) (loaded firearm located close to cocaine when defendant arrested); *United States v. Doddles*, 539 F.3d 1291 (10th Cir. 2008) (firearms found close to drugs and drug proceeds); *United States v. Bell*, 477 F.3d 607 (8th Cir. 2007) (officers saw defendant reach for revolver when they entered bedroom, and gun located near stash of drugs); *United States v. Charles*, 469 F.3d 402 (5th Cir. 2006) (firearm located in storage unit near quantity of drugs and currency); *United States v. Rockey*, 449 F.3d 1099 (10th Cir. 2006) (defendant’s luggage contained firearm, drug manufacturing ingredients and equipment); *United States v. Molina*, 443 F.3d 824 (11th Cir. 2006) (firearm found in open drawer of night stand in bedroom where drugs, scales, and trashbag full of cash also found); *United States v. Garner*, 338 F.3d 78 (1st Cir. 2003) (firearm found together with drugs in hole in basement wall); *United States v. Wahl*, 290 F.3d 370 (D.C. Cir. 2002) (loaded weapon found on top of entertainment center directly in front of defendant in possession of 47 bags of cocaine);
- Firearm employed to carry out a drug transaction – *United States v. Gonzalez*, 528 F.3d 1207 (9th Cir. 2008) (defendant, a border patrol agent, while in uniform and carrying service-issued sidearm, stole a distribution quantity of marijuana from stopped vehicle while purporting to assist); *United States v. Sullivan*, 455 F.3d 248 (4th Cir. 2006) (defendant carried firearm while purchasing and selling drugs);
- Firearm and drugs part of same transaction – *United States v. Mahan*, 586 F.3d 1185 (9th Cir. 2009) (receiving guns in exchange for drugs); *United States v. Luke-Sanchez*, 483 F.3d 703 (10th Cir. 2007) (trading methamphetamine for two pistols).

In Stanley's case, the Onset house was his home, which he shared with others. Although there was evidence that pill-counting occurred from time to time at the Onset residence, there is no evidence that the firearm was present at those times, nor that anyone but Stanley's co-conspirator and live-in girlfriend Alexa Doran, and her brother Mathew Hernon, knew it was there. On the occasion when Hernon testified that Stanley pointed the unloaded rifle at him, they were playing video games, not conducting drug crimes. Moreover, Hernon testified that Stanley told him the rifle was for "protection," but there was no evidence its presence went beyond generic protection of Stanley's home, for which a firearm is a constitutional right. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *but see United States v. Bryant*, 711 F.3d 364, 366 (2nd Cir. 2013) (Second Amendment does not safeguard unlawful purpose of possessing firearm in furtherance of drug trafficking). Likewise, no evidence suggested that the firearm was for "protection from robbery of drug-sale proceeds, or to enforce payment for drugs." *Garner*, 338 F.3d at 81.

Having a gun in one's home, even if drug transactions occur there from time to time, is not a crime when there is no evidence that the gun was present at the time transactions occurred, and no evidence that the gun was for the purpose of protecting or enforcing drug transactions. The First Circuit's holding in Mr. Gonsalves's case conflicts with the Ninth Circuit's ruling in *United States v. Monzon*, 429 F.3d 1268 (9th Cir. 2005), where the court held that a handgun hidden under bedcovers was not possessed in furtherance of a drug crime, even though cash was found in a coat in the closet and drugs were found in a baby formula can wrapped in electrical tape on the closet shelf. It likewise conflicts with the Ninth Circuit's ruling in *United States v. Mann*, 389 F.3d 869, 875 (9th Cir. 2004), where the court held that a firearm locked in a safe inside a truck parked at a rural campsite where methamphetamine was manufactured was not possessed in furtherance of drug crime, because the key to the safe was kept in an area of the campsite constituting the defendant's sleeping quarters, and was thus not easily accessible in the area where drugs were manufactured and stored.

The First Circuit's holding in Mr. Gonsalves's case also conflicts with the Fifth Circuit's holding in *United States v. Zavala*, 286 F. App'x 170, 176-77 (5th Cir. 2008) (unpublished) where the court held that a firearm in the defendant's residence was not possessed in furtherance of a drug crime because there was no evidence the gun was present at the time drug transactions occurred, and therefore no evidence that it furthered the drug conspiracy.

This Court should review this case to make clear that otherwise lawful gun possession in one's home is not a crime, when there is no demonstrated connection between the firearm and occasional drug transactions that might occur there.

CONCLUSION

Because Stanley Gonsalves was unlawfully convicted of and sentenced for possession of a firearm in furtherance of a drug crime, this Court should grant this petition for a writ of certiorari, and reverse the decision of the First Circuit Court of Appeals.

Respectfully Submitted,

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