

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Roderick V. Burton — PETITIONER
(Your Name)

vs.

Judge Michael S. Kane RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roderick V. Burton #42973-424
(Your Name)

U.S.P. McCreary P.O. Box 3000
(Address)

Pine Knot, KY 42635
(City, State, Zip Code)

(Phone Number)

Questions Presented

Whether the Court of Appeals erred in its judgment that:

1. Appellant's argument that the government failed to meet its jurisdictional burden of proof is without merit.

2. Appellant's argument that Congress can prohibit robbery only to the extent that doing so is "necessary and proper for carrying into execution" Congress' power to regulate Commerce, Article I, sec. 8, cl. 18, is without merit.

3. Appellant's argument that the U.S. Supreme Court has held that: There are no law or common law offences against the United States is without merit.

4. Appellant's argument that the original court made the judicial determination that cause was under the Constitutional jurisdiction of "law" is without merit.

5) Appellant's argument that the original court lacked a criminal jurisdiction is without merit.

6) Cause's subject-matter jurisdiction comes from 18 U.S.C. 3231.

7) A federal authority was ever proven by the original court or the Court of Appeals.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[4] 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:

Judge Michael S. Kanne

Judge Amy C. Barrett

Judge Michael B. Brennan

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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 _____ 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☒ is unpublished.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 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☐ is unpublished.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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 16, 2018.

☐ 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: Sept. 18, 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

Constitutional And Statutory Provisions Involved

D. Article III, sec. 2, cl. 1: Subjects of jurisdiction

"The judicial Power shall extend to all Cases, in law and Equity, arising under this Constitution... - to all Cases of admiralty and maritime Jurisdiction..."

D. Amendment 6

"... to be informed of the nature and cause of the accusation;"

3. Article IV, sec. 3, cl. 2: Territory or property of the United States.

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States."

D. Article I, sec. 8, cl. 17: Authority over places purchased or ceded.

"To exercise exclusive legislation in all Cases whatsoever over such District (not exceeding 10 miles square) as may, by Congress of particular State, and Acceptance of Congress, become the seat of government of the United States, and

the exercise like Authority over all Places purchased by consent of legislation of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings.

5) Article I, sec. 8, cl. 6: Counterfeiting
To provide for the Punishment of counterfeiting the Securities and current coin of the United States.

6) Article I, sec. 8, cl. 10: Offences
To define and punish Piracies and Felonies committed on the high seas, and Offences against the law of Nations

7) Article III, sec. 3, cl. 2: Punishment of Treason
The Congress shall have the power to declare Punishment of Treason

Statement of The Case

I. Course of proceedings in this writ of Certiorari Now Before This U.S. Supreme Court

On August 29, 2017, in a case then pending in the United States District Court, Northern District of Illinois, Eastern Division, entitled United States v. RODERICK V. BURTON, Case # 15-CR-312, Petitioner was found guilty by jury on an indictment of five counts charging violations of Bank Robbery, 18 U.S.C. 2113 (a), for the year of 2014.

On March 20, 2018, the United States District Court entered judgment, sentencing Petitioner to 120 months imprisonment, ordering restitution of \$6,353. This judgment was Affirmed by the Court of Appeals for the Seventh Circuit, United States v. RODERICK V. BURTON, Case # 18-1590 on August 16, 2018.

II Relevant Facts Concerning The Underlying Conviction for Bank Robbery

The relevant facts are contained in Appellant's Brief (App. D, p. 4-7) and also in Appellant's Affidavit of facts (App. E) filed with and in support of Appellant's Brief.

During pre-trial proceedings of cause, defence filed a Motion challenging the subject-matter jurisdiction of the original court, or dismissing for lack of subject-matter jurisdiction. (App. J)

The government in it's response to defence's challenge of cause's subject-matter jurisdiction, in open court stated cause's jurisdiction is: "federal insurance that provides the jurisdiction in the passage of the law and for this Court's jurisdiction over the matter." see: (App. H, p. 11)

The original Court in it's ruling of defence's motion-denied motion, stating a different basis of jurisdiction than that declared by the government stating: the Court's subject-matter jurisdiction derives from 18 U.S.C. 3231. see (App. K, p. 2-3)

However, in open court on August 23, 2017 (App. G, p. 13-27) the original Court made the

judicial determination that cause was under the Constitutional jurisdiction of "law". Repeatedly. See (App. G, p. 14, 15 and 26) Transcript of Proceedings of August 23, 2017.

Due to this colorable jurisdiction of the original Court, defence moved for an immediate dismissal by rules of Common Law and the Court's want of an injured party and refused to proceed without an injured party on proof of the Court's jurisdiction. See: Transcript of Proceedings (App. K, p. 27)

The original Court used it's power to what can only be described as, half-doored over defendant without declaring a legal jurisdiction, removed defendant, and conducted a legally unauthorized trial that resulted in guilty verdicts on all counts.

III Existence of Jurisdiction

Petitioner was convicted in the United States District Court, Northern District of Illinois, Eastern Division of 5 counts of Bank Robbery

under 18 U.S.C. 2113(a), a timely appeal was made to the Court of Appeals for the Seventh Circuit on March 14, 2018. Final judgment of the Court of Appeals was made on August 16, 2018. Motion for rehearing denied by the Court of Appeals on September 18, 2018.

IV The Court of Appeals has decided federal Questions in a way that Conflicts with Applicable Decisions of the U.S. Supreme Court and Articles of the U.S. Constitution

This is a case of jurisdiction. The Bank Robberies in cause are alleged to have occurred in the city of Chicago, County of Cook (see: App. A.p.D) and was squarely in the territorial jurisdiction of the State of Illinois. There is no extraterritorial jurisdiction applicable in statute 18 U.S.C. 2113(a). There is no alleged violation of interstate or intrastate Commerce in cause. Cause does not fall within the four criminal jurisdictions expressly delegated to Congress' authority. Cause was not alleged to have occurred on or within any federal territory or insular possession.

of the United States, and therefore the federal government had no jurisdiction or subject-matter jurisdiction whatsoever.

"The requirement that jurisdiction be established as a threshold matter is... inflexible and without exception" (quoting *Mansfield C & L.M.R. Co. v. Swan*, 523 U.S. @ 94-95) 111 U.S. 379, 382 (1884); for jurisdiction is the power to declare law," and without jurisdiction the court cannot proceed at any course." (quoting *Ex Parte McCordle*, 74 U.S. 506, 514 (1869))

The U.S. Supreme Court has consistently held: There are no law or common law offences against the United States. *United States v. Britton* (1883) 108 U.S. 199, 27 C. Ed. 698, 2 S. Ct. 531; *Benson v. McMahon* (1888) 127 U.S. 457, 32 C. Ed. 234, 8 S. Ct. 1240; *United States v. Eaton* (1882) 144 U.S. 677, 36 C. Ed. 591, 12 S. Ct. 764. AFTR 2542

Thus in view of said U.S. Supreme Court holdings, the original Court intentionally misrepresented the facts of law when judicially

Determining cause's jurisdiction as "law" on common law, and the Court was without legal authority to proceed to trial under the colorable jurisdiction of "law".

The original Court proved its deceptive intentions in Court Order document #154 (App. I, p. 3) by stating: "Burton... basis his arguments on these points entirely on his own mistaken belief that the trial in this case was held under common law"

A review of transcript of Proceedings for August 23, 2017 reveals the following facts: (App. G, p. 14)

Defendant Burton: what I'm asking the Court is, in accordance with the Constitution, what jurisdiction is this case being tried under?

P. 14

line 15: The Court: law

line 17: The Court: law

line 19: The Court: law, law including--

P. 15, line 16-17 The Court: It says law, law includes common law

P. 20, line 20-21 The Court: ... law is more than just common law

line 24: The Court: law encompasses common law.

A review of the original Court's transcript of proceedings for August 23, 2017, records the Court making the judicial determination of law and common law redundantly over ten times - causing the defense to believe cause was under the Constitutional jurisdiction of law or common law.

The fact that "law" was judicially determined by the original court as cause's jurisdiction was not controverted on appeal by the U.S. government. See: Brief of the United States (App. F, p. 3). The government concedes that the lower Court held that it's jurisdiction derived from both Article III and 18 U.S.C. 3231, and that the lower Court made this determination. Review de novo.

The U.S. government in it's Brief of The United States also failed to rebut or contest the following facts of Appellant's Affidavit of Facts (App. F):

1. That the lower Court intentionally misrepresented the facts of law by determining "law" as cause's jurisdiction (App. E, fact #15)
2. That the government failed to meet it's jurisdictional burden of proof (App. E, fact #14)
3. That the lower Court proceeded to trial without the legal authority (App. E, fact #13)
4. That the lower Court lacked a criminal jurisdiction (App. E, fact #23)

The Court of Appeals affirmed the lower Court's conviction without stating any legal basis for it's judgment of the issues presented besides stating: Burton's "other arguments" were without merit (App. A), and that: all federal prosecutions comes from 18 U.S.C 3231.

We respectfully urge that all aspects of this decision are erroneous and at the variance with this Court's decisions.

Reasons for Granting Petition

1) Petitioner requests a Certiorari Review pursuant to Rule 10(a) and (c). for the Court of Appeals for the Seventh Circuit has sanctioned the lower Court's departure from the accepted and usual course of judicial proceedings by determining important questions of jurisdiction in a way that conflicts with relevant decisions of the U.S. Supreme Court and Articles of the U.S. Constitution, as to call for an exercise of this Court's supervisory power.

2) *McClellan v. Alford* (1898) 168 U.S. 691, 42 C.E. 614, 18 S. Ct. 242, states that the U.S. Supreme Court must look into any questions of jurisdiction whether raised or not, when a whole case is before it upon writ of error or appeal.

3) The Court of Appeals erred in affirming conviction on the basis that; subject-matter jurisdiction in cause comes from 18 U.S.C. 3231 for the following facts:

Neither of the alleged crimes were alleged to have occurred on or within any territory or insular possession of the United States.

Rule 26 Advisory Committee Notes, paragraph 2 states: "all federal crimes are statutory and all criminal prosecutions in the federal courts are based on Acts of Congress.

Rule 54: "Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.

Article IV, sec. 3, cl. 2: Territory or property of the United States:

"The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States.

Article I, sec. 8, cl. 17: Authority over places purchased or ceded: To exercise legislation in all cases whatsoever over such District (not exceeding 10 miles square) as may by cession of particular state, and Acceptance of Congress, become the seat of government of the United States and to exercise like Authority over all places purchased by the consent of legislation of the State in which the same shall

be, for the erection of forts, magazines, arsenals, dockyards, and needful buildings.

All of title B is written to occur within the special maritime and territorial jurisdiction of the United States, as stated in, 18 U.S.C. sec. 7.

The federal government does not assert exclusive jurisdiction over public lands and the state is free to enforce its criminal and civil laws on that land. *Klep v. New Mexico*, 426 U.S. 529, 543 (1976)

No sovereignty can extend its jurisdiction beyond its own territorial limits. *United States v. Wong Kim Ark*, 169 U.S. 690 (1898)

Crimes are thus cognizable "when committed within or on lands reserved or acquired for the exclusive use of the United States. *Bowers v. Johnson*, 306 U.S. 19, 22 (1939)

The U.S. Supreme Court has held: legislation is presumptively territorial and confined to limits over which law making power has jurisdiction.

All legislation is *prima facie* territorial.

New York Central R.R. Co. v. Chisolm, 268 U.S. 29, 31-32 (1925)

It is a long standing principle of American law that legislation of Congress unless a contrary intent appears, is meant only to apply within Territorial jurisdiction of the United States. When a statute gives no clear indication of an extraterritorial application, it has none. *Morrison v. National Australia Bank Ltd.* 177 U.S. 2d 535, 547 (2010)

Therefore, 18 U.S.C. 3731 could not be extended to this case on behalf of federal jurisdiction, for cause was not within the territorial jurisdiction of the United States.

D. The Court of Appeals erred in affirming conviction on the basis that Appellant's "other arguments" has no merit.

The Court of Appeals stated no legal basis for Appellant's "other arguments" being without merit.

1. Appellant argued that, government's response of cause's subject-matter jurisdiction deriving from "federal insurance providing jurisdiction in the passage of the law for this Court's jurisdiction over the matter" failed to divulge any legal jurisdiction enumerated in the U.S.

Constitution. Nor does it accurately describe or explain how laws on jurisdictions are derived. Jurisdictions are enumerated in Article III of the U.S. Constitution. Laws are created by legislation of Congress.

A review of Article III, sec. 2, cl. 1, enumerates jurisdictions of: law and equity, admiralty and maritime jurisdictions. There is no mention of "federal insurance providing jurisdictions".

Unless the Court of Appeals is vested with the power to change or amend the U.S. Constitution it lacks the authority to deem Article III as meritless. See: (App. D, p. 7) see also (App. E, fact # 12)

2. Appellant argued that the first duty of the prosecutor is to make clear the basis of its jurisdiction. And the first duty of the Court is to make sure that jurisdiction exists. If the record fails to disclose a basis for federal jurisdiction, the Court must suspend determination of the merits unless the failure can be cured. *Steele Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998); also discussed

in *Ruhigas A.G. v. Marathon Oil Co.* 526 U.S. 574 (1999) which relies on the Constitutional safeguards to stop the Court from proceeding to the merits of the case. see (App. D, p. 8) see also (App. E, fact # 13)

The government did not rebut this fact, and the Court of Appeals cited no contrary holdings.

3. Appellant argued that, the judicial determination of "law" being the Constitutional legal jurisdiction of the Court, fails to comply with rulings of the U.S. Supreme Court that: There are no law or common law offences against the United States. Appellant cited: *United States v. Britton*, *Benson v. McMahon*, *United States v. Eaton* see (App. D, p. 9) see also (App. E, fact # 15)

The government did not rebut or contest this fact, and the Court of Appeals cited no contrary Supreme Court holdings. Again, the Court of Appeals is not vested with the power to rule holdings of the Supreme Court as meritless.

4. Appellant argued that, defence in cause did not "entirely on his own" mistaken cause was held under the jurisdiction of "law"

Appellant has enumerated from Transcript of Proceedings of August 23, 2017 (App. G.) where the Court made the judicial determination of "law" and "common law" as causes jurisdiction redundantly. see (App. G, p. 13-27) see also (App. E, fact #16)

The government did not rebut or contest said fact, and the Court of Appeals cited no evidence that Court Reporter, Tracy Dana McCulluck committed perjury in her reporting of proceedings. Therefore the Court of Appeals judgment is erroneous that argument lacks merit.

5. Appellant also argued that the original Court lacked a criminal jurisdiction over cause. Arguing that, the federal government possesses limited power to prosecute crimes. *Coker v. Virginia*, 6 Wheat, 264, 428, 5 L. Ed. 252 (1821). The U.S. Constitution expressly delegates to Congress authority over only four specific crimes; Article I, sec. 8, cl. 6: Counterfeiting securities and coin of the United States; Article I, sec. 8, cl. 10: Piracies and felonies committed

on the high seas and offenses against laws of nations; and Article II, sec. 3, cl. 2:

Treason

That Congress has no general right to punish the many crimes that fall outside of Congress' express grant of criminal authority. Fed. at 426, 115 S.Ct. 1624, 131 L.Ed. 2d, 333. Art. I, sec. 8. Amend. 10.

That Congress can only prohibit robbery to the extent that doing so is "necessary and proper for carrying into Execution" Congress' power to regulate Commerce. Article I, sec. 8, cl. 18. see (App. D, p. 17-19) see also (App. E, fact #25)

The government did not rebut or contest this fact, and the Court of Appeals cited no contrary Supreme Court holdings or amendments to the Articles of the U.S. Constitution cited by Appellant as a basis for its judgment of argument being meritless. The Court of Appeals lacks the authority to rule holdings of the U.S. ^{Supreme Court} ~~Constitution~~ and Articles of the U.S. Constitution as meritless.

Petitioner relies on his uncontested and un rebutted Affidavit of facts as prima facie in the foregoing arguments and facts of cause. (App. E)

The U.S. Supreme Court has held that: "facts duly alleged are deemed true unless denied or controverted by evidence". *Kohl v. Leback*, 160 U.S. 293 (1895); "Indeed no more than (affidavits) is necessary to make the prima facie case". *United States v. Kis*, F. 2nd, 526, 536, (7th Cir. 1981) Cert. Denied, 50 U.S.C.W. 219 S.Ct. March 22, 1982.

Conclusion

Being unable to declare a legal authority of cause in response to defendant's challenge of subject-matter jurisdiction due to the facts of: a) offenses of cause were not alleged to have occurred on or within any federal territory or insular possession of the United States; b) cause lacked a federal criminal jurisdiction; c) Title 18 U.S.C. 2113(a) lacks any extraterritorial jurisdiction; and d) cause

lacked any allegation of violating Commerce, so the government and the original Court cited colorable jurisdictions in an effort to deceive defendant and proceed to the merits of the cause without legal authority when defendant refused to proceed without proof of jurisdiction - the Court removed him and conducted an illegal trial.

It was the duty of the government to prove jurisdiction once challenged. The U.S. Supreme Court has held that:

"A man must assign a good reason for coming (into the court). If the fact is denied, upon which he grounds his right to come (into the court), he must prove it. He therefore is the actor in that proof, and, consequently, he has no right, where the point is contested to throw the onus probandi on the defendant."

Maxfield's Lessee v. Levy, 4 U.S. 330 [emphasis added]

In this instance, the government declared a colorable jurisdiction of "federal insurance providing jurisdiction in the passage of law"

It was the job of the Court to make sure said jurisdiction exists or suspend the merits of the case. *Cohens v. Virginia*, 6 Wheat 264, 428, 5 C. ed. 257 (1821)

The original court in cause elected to instead, fraudulently make a judicial determination that; cause was under the Constitutional jurisdiction of law, common law, and statutory law - judicially determining them to be all the same "law", which is federal statute.

The Court removed defendant when he refused to proceed under the Court's colorable judicial determinations and lack of an injured party and conducted a legally unauthorized trial. After trial instructed the jury in accordance to rules of statutory law as opposed to law as judicially determined by the Court. And finally, after receiving guilty verdicts on all counts due to the Court's departure from usual judicial procedures, the original court attempted to conceal it's judicial determinations of "law" by stating in Court Order that defendant mistaked cause's juris-

diction "entirely on his own". see (App. I)

The Court of Appeals erred by sanctioning the original Court's departure from usual judicial proceedings by determining erroneously that Appellant's arguments addressing the colorable jurisdiction determined by the Court as arguments without merit.

The Court of Appeals also erred when stating that: subject-matter jurisdiction of cause comes from 18 U.S.C. 3231 without any evidence of cause having a "federal jurisdiction" whatsoever, which was the subject-matter of the appeal effectively overlooked by the Court of Appeals.

A federal Court has general jurisdiction over the following types of cases: (1) felonies within federal territories, ceded lands, unceded lands pursuant to the Power to "punish" (Article III Courts only) and the high seas; (2) misdemeanors - federal territories, ceded lands pursuant

to delegated powers (Article III Courts only) and the high seas. The U.S. Supreme Court in *New Orleans v. United States* now standing for 177 years and reaffirmed 58 years later, stated that:

Congress cannot by legislation enlarge the federal jurisdiction nor can it be enlarged by the treaty making power.

Federal Courts are statutory Courts and must look to a statutory basis for any jurisdiction they exercise. Federal Courts receive no judicial power from Article III jurisdiction of law and equity. For the original Court to judicially determine cause was under the Constitutional jurisdiction of "law" in any way was a fraudulent judicial determination, and the Court of Appeals erred in affirming a conviction of such colorable jurisdiction.

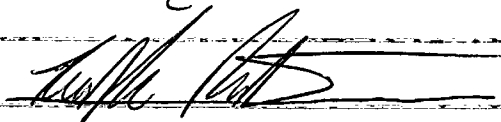
The U.S. Supreme Court explained: with reference to judges of limited and inferior authority it has been held that they were protected only when they acted

within their jurisdiction

A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter, where there is clearly no jurisdiction over the subject-matter any authority exercised is usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. *Bradley v. Fisher*, 80 U.S. 339, 351-352 (1872)

For the foregoing, the Petition for a writ of Certiorari should be granted

Respectfully Submitted



Date: 12-07-18