

No. 19-8387

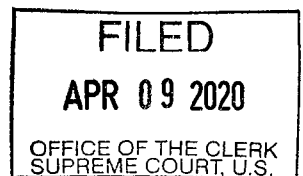
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Robert C. Caldwell — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. District Court for the Western District of Missouri - Kansas City
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert C. Caldwell Reg No. 27526-045
(Your Name)

U.S.P. Lee P.O. Box 305
(Address)

Jonesville VA, 24263
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

① The Government seeks to have defendants sentenced under both the Carjacking statute and the firearm statute. The issue before the Court is whether sentencing defendants under both statutes violates the Double Jeopardy Clause of the Fifth Amendment?

② Congress defined the crime of carjacking and set the penalty in 1992. The Carjacking statute, enacted well after the Amendment of the firearm statute, does not carry an enhanced penalty for the use of a firearm, as the use of a firearm is an element of the offense itself?

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:

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TABLE OF AUTHORITIES CITED

CASES

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United States v. Bass	404 U.S. (1971)...
Rewis v. United States	401 U.S. (1971)...
Smith v. United States	549 U.S. (1993)...
Easley v. United States	549 U.S. (1993).....

STATUTES AND RULES

OTHER

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 N/A to the petition and is

☒ reported at United States v. Caldwell, 726 Fed. (8th 2018), 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[] is unpublished.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 N/A 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**: N/A

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 12-03-2019

☐ 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: 02-07-2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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**: N/A

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

Carjacking - 18 U.S.C. § 2119 (1)

The Carjacking statute Reads, in Relevant part: whoever, possessing a firearm as defined in section 921 of This title, takes a motor vehical that has been Transported, shipped, or Recieved in interstate or foreign Commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so shall --

- ① be fined under this title or imprisoned not more than 15 years, or both.
- ② if serious bodily injury (as defined in section 1365 of this title) results, be fined under this title or imprisoned not more than 25 years, or both and
- ③ if death results, be fined under this title or imprisoned for any number of years up to life, or both 18 U.S.C. section 2119.

18 U.S.C § 924 (c) (1) (A)

Whoever, during and in Relation to any crime of violence or drug Trafficking crime (including a crime of violence or drug Trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug Trafficking, be sentenced to imprisonment for five years ---- Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried. No person sentenced under this Subsection shall be eligible for Parole during the Term of imprisonment imposed herein. For Purposes of this subsection the term "crime of violence" means any offense that is a felony and --

18 U.S.C 924 (c)

- Ⓐ has an element the use, attempted use, or threatened use of physical force against the person or property of another or
- Ⓑ that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense

STATEMENT OF THE CASE

On February 4, 2016, Robert Caldwell pled guilty to Count one Conspiracy to Commit Kidnapping in violations of 18 U.S.C. § 1201 (c); Count two Kidnapping in violation of 18 U.S.C. § 1201 (a)(1); Count three Carjacking in violation of 18 U.S.C. § 2119 (a); Count four use of a firearm during a crime of violence in violation of 18 U.S.C. § 924 (c)(1)(A)(ii); and Count five felon in possession of a firearm in violation of 18 U.S.C. § 922 (g)(1). (DCD 20; DCD 38)

REASONS FOR GRANTING THE PETITION

The Carjacking Statute does not mention cumulative punishments where a firearm is used; on the contrary, the definition of carjacking requires use of a firearm. It would be unusual under the language of the Carjacking Statute to sentence a defendant for Carjacking, then to impose a separate sentence on the defendant for committing an element of that carjacking offense (using a firearm). It is fair to assume that if Congress intended such a result, it would have indicated this intention in the Carjacking Statute.

Moreover, to construe the statutes to impose cumulative punishments would violate the Rule that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." United States v. Bass, 404 U.S. 336, 347, 92 S.Ct. 515, 522, 30 L.Ed. 2d 488 (1971); Rewis v. United States, 401 U.S. 808, 812, 91 S.Ct. 1056, 1059 28 L.Ed. 2d 493 (1971). This canon of statutory construction is based on the two principles: "that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed;" and that "because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not the court should define criminal activity." Bass, 404 U.S. at 347-48, 92 S.Ct. at 522-23, 30 L.Ed.

Though the defendant in this case should be on notice that their conduct is prohibited by the law, this Court (8th cir.) does not find that Caldwell was on notice of the multiple penalties to which they could be exposed by a single act. Moreover, this Court cannot take the extraordinary step of compounding punishments for a single act without clear guidance from the law-making branch of the federal government. Thus, this Court must construe the statutes in favor of lenity and hold that the defendant can not be sentenced under both statutes.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RCaldwell - Robert Caldwell

Date: April 20th, 2020