

05/27/2020

No. 19-8642

RECEIVED
U.S. SUPREME COURT
JUN 8 2020

IN THE
SUPREME COURT OF THE UNITED STATES

Christopher Davis — PETITIONER
(Your Name)

vs.

State of Indiana — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
APR 20 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Davis
(Your Name)

USP Allenwood
(Address)

White Deer, PA 17887
(City, State, Zip Code)

(570) 547-0963 Ext. 6807
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I

- 1) Why was I denied the Right to Subpoena Indianapolis Metro Detectives to trial that falsified my criminal record to the Grand Jury, stating that I had past "Gun & Robbery & Capital Murder" convictions which is false?
- 2) Why was a illegal "GPS Tracker" placed on my Land Rover without probable cause searching for "Darryl Williams" in which he jumped bail in Arkansas, and it was no evidence that he was with me (or) I committed any crime?
- 3) Why on September 14, 2015, I was pulled over by the FBI and Indianapolis Metro Police searching for a "Darryl Williams", and when they searched my Land Rover and found that he wasn't with me, why was I arrested without no "Probable Cause"?
- 4) Why was I not given a "Evidence Hearing" for the charges brought against me?
- 5) Why are all the FALSE story's about me given my co-defendant a gun, when at trial "Jemmy Johnson" testified that "Williams" and "Townsell" stole the guns from his house?
- 6) Why when my lawyer "Laura" in 2016 "Private Investigators" found the (FACT) of my case that the Indianapolis Metro Detectives did falsified my Criminal History & Reports, she filed for a "Suppression Hearing" Motion to bring up "FRUIT'S of a POISONOUS TREE" the Judge "Sarah Barker" denied the Hearing, then I was given a new lawyer, because "Laura" was dismissed?
- 7) Why when my lawyer "Mario Garcia" filed to show my correct "Criminal History" the Court still used a falsified version "Record" making me look like a violent criminal in which I never had any felonies in my life?
- 8) How did the bullet's that my co-defendant had in his backpack at the time of the traffic stop on September 14, 2015, get back in my apartment at the time of the (No Knock Warrant) search?
- 9) Why was I sentenced over my "Guidelines" when I don't have any violence (or) existing "Criminal History" such as felonies?
- 10) Why did the Judge "Sarah Barker" allow at trial the car salesman from "A1 Auto Sales" when I brought the Land Rover to return to trial after falsely saying that I brought the Land Rover with \$5 & \$20, when obviously he didn't know who I was, because when he was asked to point me out at trial, he pointed to my co-defendant, because I never met the guy before?
- 11) Why on June 8, 2015, I was alleged dropping "Olkman" off a works in front of Walmart store on West 10th Street, but there was never any video surveillance showing me in any car (or) in person (or) given a description of the car I was alleged driving at the time of the robbery?
- 12) Why did the Indianapolis Metro Detectives lie and falsify the time & date of purchase of my Land Rover, because my wife "Fontella" at the time purchased the Land Rover in the morning @ approx 11 am. on August 27, 2015, and the robbery was committed on August 28, 2015 at night @ approx 10 pm, so how could I have brought the Land Rover the same day of August 28, 2015 of the robbery?

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:

RELATED CASES

N/A

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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 _____ 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 MARCH 20, 2020.

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: _____, 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. § 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

United States Constitution, Amendment 5 provides, in relevant part :

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

United States Constitution, Amendment 6 provides, in whole part :

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defense.

United States Constitution, Amendment 8 provides, in whole part :

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution, Amendment 14 provides, in relevant part :

No States shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment 4 provides, in whole part :

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On September 15, 2015, a sealed Criminal Complaint was filed in the Southern District of Indiana, the defendant was arrested, and made an initial appearance.

On October 15, 2015, an eight-count Indictment was filed, which alleged I "Christopher Davis" committed interference with interstate commerce by robbery, in violation of 18 U.S.C. § 1951, on June 8, 2015, in Count 1. Count 2 charged "Davis" with use, carry, brandish a firearm during crime of violence, in violation of 18 U.S.C. § 924(c), on June 8, 2015. Count 7 charged I "Davis" with interference with interstate commerce by robbery, in violation of 18 U.S.C. § 924(c), on September 19, 2015. Count 8 charged I "Davis" with use, carry, brandish a firearm during crime of violence, in violation of 18 U.S.C. § 924(c) on September 14, 2015. The Indictment contains a forfeiture allegation pursuant to 18 U.S.C. § 924 and 28 U.S.C. § 2461(c). [Dkt. 33]

On December 8, 2015, a sealed Superseding Indictment was filed to include additional co-defendants. Count 1 charges I "Davis" with interference with interstate commerce by robbery, in violation of 18 U.S.C. § 1951, on June 8, 2015. Count 2 charges I "Davis" with use, carry, brandish a firearm during crime of violence, in violation of 18 U.S.C. § 924(c), on June 8, 2015. Count 9 charges I "Davis" with interference with interstate commerce by robbery, in violation of 18 U.S.C. § 1951, on September 14, 2015. Count 10 charge I "Davis" with use, carry, brandish a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c), on September 14, 2015.

On October 19, 2016, a Second Superseding Indictment as to I "Christopher Davis" (4) counts 1ss, 2ss, 5ss, 6ss, 9ss, 10ss. [Dkt. 168]

On September 7, 2017, a Third Superseding Indictment was returned as to I "Christopher Davis" (4) counts 1ss, 2ss, 5ss, 6ss, 9ss, 10ss, 14ss. [Dkt. 239]

On February 27, 2018, a jury trial began in this case. On March 1, 2018, I was found guilty by jury. I "Christopher Davis" was found guilty on counts (1, 2, 3, 4, 5, 6, and 8). [Dkt. 327]

On March 6, 2018, I "Christopher Davis" filed a motion for Judgment of Acquittal on Counts 1, 2, 3, and 4 of the Third Superseding Indictment. [Dkt. 328] I "Davis" also filed a Supporting brief/memo in Support of his Motion for Judgment of Acquittal on Counts 1, 2, 3, and 4 of the Third Superseding Indictment. [Dkt. 329]

On March 19, 2018, the District Court issued an order denying Federal Criminal Rule 29 Motions as to I "Christopher Davis". The Court finds that sufficient evidence was presented at trial on the essential elements of each of the charged offense of the defendant. [Dkt. 336]

On December 18, 2017, the United States Attorney's office filed Submission of Government's Santiago Proffer. [Dkt. 296]

On February 12, 2018, the United States filed an Information, Applicability of Mandatory Sentencing Provisions of 18 U.S.C. § 3559. [Dkt. 299]

On February 20, 2018, the Government filed a Response to Defendant Objection to Government's Santiago Proffer and Defendant Motion in Limine. [Dkt. 305]

Judgment as to I "Christopher Davis", Defendant was found guilty to counts 1, 2, 3, 4, 5, 6, and 8 after a plea of not guilty. Imprisonment: Counts 1, 3, 5, and 8: 1 day per count, concurrent; Count 2: 84 months; Count 4: 300 months; Count 6: 300 months, consecutive for a total of 684 months and 1 day of imprisonment. [Dkt. 398]

The Seventh Circuit Court of Appeals should have find that the district court erred in denying I "Christopher Davis" motion for judgment of acquittal on Count 1 through 4 of the Third Superseding Indictment, of which I was convicted of a trial. The evidence produced by the Government as to these counts did not suffice, as a matter of law, to permit a reasonable jury to find beyond a reasonable doubt that I "Christopher" committed the unlawful acts of which I was convicted.

I "Christopher" was convicted of Count 4, in violation of 18 U.S.C. § 924(c) at trial. To convict a defendant under 18 U.S.C. § 924(c), the Government needs to prove that the defendant during and in relation to any crime of violence or during drug trafficking crime used, possessed, or carried a firearm. At trial, the jury found I "Christopher" guilty of Count 4 on an aiding and abetting theory.

Given that the evidence is insufficient to sustain a conviction against I "Christopher" on Count 3, I "Christopher" conviction under Count 4 cannot stand because for there to be a conviction under 18 U.S.C. § 924(c) there must be an underlying crime of violence or drug trafficking crime.

At trial, the Government failed to provide sufficient evidence to sustain convictions against I "Christopher" on Counts 1 and 3 of the Indictment. I "Christopher" requested the Court ~~to~~ to find that the District Court erred in denying my Motion for Judgment of Acquittal and vacate my convictions on these counts in favor of judgments of acquittal.

Attachment

Statement of the Case

At trial, I "Christopher" was found guilty of Counts 1 and 3, even though the Government failed to prove the required elements needed for a conviction of Interference with Interstate Commerce by Robbery in violation of 18 U.S.C §1951. For Counts 1 and 3, the Government failed to present sufficient evidence from which a rational jury could find that I "Christopher" was guilty. For Count 1, there was little to no evidence that directly linked I "Christopher" to the robbery that occurred on June 8, 2015. The Government did not present testimony or any other evidence to prove that I "Christopher" was identified as one of the subjects that entered the Walmart to conduct the robbery. As such, the Government failed to present sufficient evidence to prove that I "Christopher" committed the crime of Interference with Interstate Commerce by Robbery, in violation of 18 U.S.C §1951 on June 8, 2015. Because the Government failed to present sufficient evidence to sustain a conviction as to Count 1, I "Christopher" conviction for Count 1 should have been vacated.

REASONS FOR GRANTING THE PETITION

The Seventh Circuit Court of Appeals reviews a district court's denial of a motion for judgment of acquittal *de novo*. *United States v. Jones*, 222 F.3d 349, 351 (7th Cir. 2000). The Seventh Circuit uses a sufficiency of the evidence standard in reviewing a denial of a motion for judgment of acquittal. *United States v. Peters*, 828 F.3d 1113, 1120 (7th Cir. 2016). The Seventh Circuit considers evidence in the light most favorable to the government and a conviction is affirmed if any rational trier of fact could find the defendant guilty beyond a reasonable doubt. On appeal of a district court's denial of a motion for judgment of acquittal, it is the defendant's burden to convince the Court of Appeals that the evidence was insufficient to sustain a conviction. *United States v. Tantchev*, 916 F.3d 645, 650 (7th Cir. 2019).

1. In denying I "Christopher's" Motion for Judgment of Acquittal on Counts 1 and 3, the District Court erred because the Government failed to produce evidence to sustain convictions on these counts.

At trial, I "Christopher Davis" was found guilty by jury of Counts One and Three for Interference with Interstate Commerce by Robbery, in violation of 18 U.S.C. § 1951. Prior to submission of the case to the jury, I "Christopher" sought acquittal on Counts 1 and 3 by submitting a Motion for Judgment of Acquittal to the District Court. Mot. for Judgment of Acquittal, ECF No. 328. The District Court denied I "Christopher's" motion and submitted the case to the jury, even though there was not sufficient evidence to sustain conviction on the charges that I "Christopher" faced. The case was then submitted to the jury, who returned a verdict of guilty as to all counts for I "Christopher". However, the case should never have been given to the jury because the Government failed to produce sufficient evidence to prove the required elements of the crimes that I "Christopher" was charged.

For Counts One and Three, the Government charged I "Christopher" with violating 18 U.S.C. § 1951, which requires that the Government prove beyond a reasonable doubt that I "Christopher" unlawfully and knowingly obstructed, delayed, and affected interstate commerce, and the movement of articles and commodities in such commerce, by robbery. 18 U.S.C. § 1951(a). The term "robbery" is defined under 18 U.S.C. § 1951(b)(3) as "the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining". 18 U.S.C. § 1951(b)(3). The Seventh Circuit noted in *United States v. Mifavor*, 460 F.3d 901, 909 (7th Cir. 2006), that "18 U.S.C. § 1951 does not require that the victims fear be certain, it need only be reasonable".

The Seventh Circuit reviews appeals of a district court's denial of a motion for judgment of acquittal by using a sufficiency of the evidence standard. *United States v. Peterson*, 828 F.3d 1113, 1120 (7th Cir. 2016). The Seventh Circuit considers evidence in the light most favorable to the government and a conviction is affirmed if any rational trier of fact could find the defendant guilty beyond a reasonable doubt.

At trial, the Government failed to provide sufficient evidence to prove the required elements of Count 1 and, therefore, the District Court erred by denying I "Christopher" Motion for Judgment of Acquittal. To establish the elements of 18 U.S.C. § 1951(a) against I "Christopher", the Government had to prove that I "Christopher" unlawfully took personal property from the Walmart located at 5835 West 10th Street in Indianapolis on June 8, 2015. However, the evidence presented by the Government at trial failed to link I "Christopher" to robbery that occurred on June 8, 2015. Aside from some statements that I "Christopher" made against his interest after the robbery had occurred, there is little other evidence that connects I "Christopher" to the Robbery. As a part of its case, the Government did not offer any testimony from any witnesses of the robbery that established I "Christopher" presence at the Walmart on June 8, 2015, and I "Christopher" was never identified as one of the subjects that entered the Walmart and held up the employees in exchange for money.

The evidence produced by the Government at trial was not sufficient to sustain I "Christopher" conviction on Count 1 because the evidence failed to satisfy the elements required to convict a defendant under 18 U.S.C. § 1951(a). The Government failed to produce evidence that I "Christopher" was one of the subjects that entered the 10th Street Walmart on June 8, 2015, that committed the robbery and, further, that I "Christopher" used or threatened force in order to obtain money from the employees of Walmart.

Attachment

Reasons for Granting the Petition

The Government also failed to provide sufficient evidence to prove the required elements for Count 3 against I "Christopher". In Count 3, the Government alleged that I "Christopher" violated 18 U.S.C. § 1951(a) on or about August 28, 2015, when he and his co-defendants conspired to "unlawfully take and obtain personal property, from the person and in the presence of an employee of the Walmart store located at 5835 West 10th Street" in Indianapolis "by means of actual or threatened violence, including, the brandishing of a firearm". However, the evidence produced by the Government at trial did not satisfy the elements needed for a conviction under 18 U.S.C. § 1951(a). Specifically, the Government's evidence did not establish that actual or threatened force was used during the second robbery of the 10th Street Walmart.

The evidence presented at trial showed that Deidre Orkman knew ahead of time that an armed robbery was going to be conducted at the Walmart on August 28, 2015. Evidence shows that Orkman received a phone call from Darryl Williams just prior to the commission of the robbery where Williams told Orkman to "be ready" because he was coming to rob the store. Further, video evidence presented at trial from Walmart security cameras shows that Orkman escorted Williams to the cash office, helped him bundle up the money from the safe, and even suggested or planned to have Williams tie her up so as to make it appear as though she was not in on the planned robbery. Orkman was the only Walmart employee present at the time of the robbery and she knew Darryl Williams through previous dealings, including when she previously aided in the robbery that occurred on June 8, 2015, at the exact same Walmart and in the planning and preparation of the August 28, 2015, robbery.

While the robbery was ongoing, the Government's video evidence showed a rather relaxed Deidre Orkman assisting Williams in gathering cash from the safe and packaging it up so he could take it from the store. Further, the video evidence shows a rather relaxed Darryl Williams set his gun down to assist Orkman in collecting and bundling up the money. While all this is ongoing, Deidre Orkman showed no signs of fear, and she observed Williams set down his gun, which, according to Government witness Detective Jeremy Ingram, is "very rare" during the course of a robbery. Tr. Trans. Vol III-648. The relaxed nature of Orkman and Williams and their behavior during the commission of the robbery suggested that both knew that an armed robbery was planned to take place on August 28, 2015, and that a plan was hatched prior to the robbery of how the robbery would occur.

Attachment

Reasons for Granting the Petition

The Seventh Circuit noted previous that "18 U.S.C § 1951 does not require that the victim's fear be certain, it need only be reasonable". *United States v. Miller*, 460 F.3d 901, 904 (7th Cir. 2006). While *Miller* dealt with the underlying crime of extortion rather than robbery, both robbery and extortion require the use of actual or threatened force, violence or fear in commission of the underlying crime under 18 U.S.C § 1951. Here, the evidence presented by the Government regarding the August 28, 2015, robbery did not suggest that Orkman had any fear of the actions of Williams during the robbery. The Government failed to establish that Orkman suffered from threatened force, violence, or fear of injury during the robbery. Orkman knew that the robbery was going to happen, she assisted with the planning and preparation of the robbery, and she showed no signs of fear during the commission of the robbery. Her co-conspirator, Williams, even set down his gun during the commission of the robbery. Thus, the Government failed to establish an essential element of 18 U.S.C § 1951, and the evidence was not sufficient to sustain a conviction against I "Christopher" as to Count 3 of the Indictment.

For the aforementioned reasons, this Court should have found that the district court erred in denying I "Christopher" Motion for Judgment of Acquittal as to Count 1 and 3. Accordingly, I "Christopher" requested that this Court vacate I "Christopher" convictions under Count 1 and 3 and enter judgments of acquittal as to these counts.

#2. This Court should vacate I "Christopher" conviction under Count 4 for violating 18 U.S.C § 924(c) because the Government failed to provide sufficient evidence to sustain a conviction on Count 3, which is the underlying offense needed for a conviction under 18 U.S.C. § 924(c).

In addition to Counts 1 and 3, I "Christopher" was found guilty by the jury of Count 4 for violating 18 U.S.C § 924(c). Here, Count 3 served as the predicate offense to convict I "Christopher" of Count 4 for violating 18 U.S.C § 924(c). However, if this Court agrees with I "Christopher" in that the evidence provided by the Government at trial was insufficient to sustain a conviction on Count 3 then I "Christopher" conviction under Count 4 should be vacated.

and 05/27/2020 convict a defendant under 18 U.S.C. §924(c), the Government must prove that the defendant "during and ... related to any crime of violence or during drug trafficking crime" used, possessed, or carried a firearm. 18 U.S.C. § 924(c)(1)(A). The Court previously held that Hobbs Act Robbery under 18 U.S.C. §1951 is a crime of violence under 18 U.S.C. §924(c)(3)(A). *United States v. Anglin*, 846 F.3d 954, 965 (7th Cir. 2017); *United States v. Fox*, 878 F.3d 574, 579 (7th Cir. 2017).

This case differs from other Sixth Circuit cases such as *Fox* and *Anglin* because, in this case there was insufficient evidence to sustain a conviction as to Count 3, which is the predicate offense needed to convict I "Christopher" of violating §924(c) in Count 4. While I "Christopher" was convicted at trial of Count 3 for violating 18 U.S.C. §1951, the evidence provided by the Government as to this Count was insufficient to sustain a conviction on this Count because the evidence shows that Deidre Onkman, the Walmart employee who was present for the robbery, was a co-conspirator in the commission of the robbery. Therefore, the August 28 2015 robbery did not involve the actual or threaten use of violence, including; the brandishing of a firearm. Without this actual or threatened use of violence, I "Christopher" cannot be convicted of Count 3 for violating 18 U.S.C. §1951. As such, there insufficient evidence to sustain a conviction to I "Christopher" as to Count 3 and I "Christopher" conviction under Count 3 should be vacated.

Should this Court agree that there is insufficient evidence to sustain I "Christopher" conviction on Count 3, this Court should also vacate I "Christopher" conviction under Count 4. In order to convict a defendant under 18 U.S.C. §924(c), there must be an underlying crime of violence or drug trafficking crime. Given that there is insufficient evidence to sustain a conviction on Count 3, there is no underlying crime of violence or drug trafficking crime to sustain I "Christopher" conviction under Count 4 for violating 18 U.S.C. §924(c). Therefore, I "Christopher" requests that this Court vacate my conviction on Count 4.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher P.

Date: May 10, 2020