

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Shirl A. Stephen — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

D.C. Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shirl A. Stephen

(Your Name)

c/o Jejomar Untalan, Esq.
1010 White Place SW

(Address)

Leesburg, VA 20175-4342

(City, State, Zip Code)

571-439-9632

(Phone Number)

QUESTION(S) PRESENTED

D.C. Code § 14-305 establishes the method upon which a witness may be impeached by a criminal "conviction," which the District's case law defines as a criminal offense for which the defendant has already been sentenced. Here, the government impeached the defendant with five (5) prior convictions without proving that each conviction was premised on an actual sentence. Whether such impeachment in a criminal trial comports with the Due Process Clause of the Fifth Amendment?

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

None.

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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☐ is unpublished.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☐ is unpublished.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 A 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☒ is unpublished.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☐ is unpublished.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 _____.

☐ 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 11/10/2020.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
01/25/2021, and a copy of the order denying rehearing
appears at Appendix B.

☐ 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

Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense 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; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

1. The information charged the defendant of assaulting Stephanie Johnson and attempting to threaten Stephanie Johnson on May 24, 2019, in violation of D.C. Code § 22-404 and § 22-407, respectively. R. at 7. A bench trial ensued on September 16, 2019 and the trial judge convicted the defendant of assault and attempted threats. R. at 35.
2. The defendant and the complainant, Stephanie Johnson (Johnson), share a common grandchild. Tr. 09/16/19 at 13. On May 24, 2019, the defendant and Johnson got into an argument in the area of 2000 14th Street in Washington, D.C. at about noon time. Tr. 09/16/19 at 12.
3. Johnson testified that the defendant walked to Johnson's truck, pulled on the door handle, and threatened to beat Johnson's ass. Tr. 09/16/19 at 13. Johnson's truck window was halfway open, and as she rolled it up, the defendant spit onto Johnson's left, upper lip. Tr. 09/16/19 at 13-17.

4. The police then arrived and separated the parties. Tr. 09/16/19 at 18.
5. The defendant testified and admitted that there was a loud verbal exchange between the defendant and Johnson. Tr. 09/16/19 at 34-35. The defendant denied pulling Johnson's car handles or spitting during the argument. Tr. 09/16/19 at 34-35.
6. The government impeached the defendant with five (5) sets of alleged convictions spanning decades: second degree theft and unlawful entry (2011); attempted theft (2008); attempted second degree theft (2007); robbery (1998); attempted possession with the intent to distribute cocaine (1993). Tr. 09/16/19 at 41-42.
7. The trial court found that Johnson was more credible and convicted the defendant of attempted threats for pulling the car door and stating, "I'll beat your ass." Tr. 09/16/19 at 54. The trial court found the assault to have occurred when the defendant's spit hit Johnson. Tr. 09/16/19 at 54.
8. A notice of appeal was timely filed on September 17, 2019. R. at 37.

9. On September 3, 2020, the appellant filed her brief and the government moved for summary affirmance on October 5, 2020.
10. The D.C. Court of Appeals granted the government's motion for summary affirmance on November 10, 2020. **Appendix A.**
11. On January 25, 2021, the appellate court denied the defendant's petition for rehearing. **Appendix B.**

REASONS FOR GRANTING THE PETITION

i. The Court should grant review because the defendant's impeachment did not meet the requirements established by statute and precedent, effectively denying the defendant due process of law.

A witness may be impeached by a prior conviction if the criminal offense "was punishable by death or imprisonment in excess of one year under the law under which he was convicted," or it "involved dishonesty or false statement (regardless of punishment)." D.C. Code § 14-305 (2020). The government, here, impeached the defendant with the following five (5) sets of alleged convictions spanning decades: second degree theft and unlawful entry (2011); attempted theft (2008); attempted second degree theft (2007); robbery (1998); attempted

possession with the intent to distribute cocaine (1993). Tr. 09/16/19 at 41-42.

The government began its impeachment with the 2011 alleged convictions for second degree theft and unlawful entry, and the defendant now challenges on appeal on the ground that the government failed to establish those convictions for the purpose of cross-examination under Section 14-305.

The government bears the burden to prove the existence of a prior conviction. *See Reed v. United States*, 485 A.2d 613, 619 (D.C.1984). Section 14-305 does not define the term “conviction”, but the District’s case law has specifically defined the term as a criminal offense for which the defendant has already been sentenced by a judge. *See Godfrey v. United States*, 454 A. 2d 293 (D.C. 1982), *Langley v. United States*, 515 A. 2d 729 (D.C. 1986), *Franklin v. United States*, 555 A. 2d 1010 (D.C. 1989).

In *Godfrey v. United States*, 454 A. 2d 293 (D.C. 1982), the trial court correctly prohibited the impeachment of a prosecution witness that had pled guilty to a weapons charge because the sentencing phase

was still pending a social inquiry. *Godfrey* at 305.

In *Langley v. United States*, 515 A. 2d 729 (D.C. 1986), a jury in a previous case had convicted the defendant of rape and sodomy but was pending sentencing from the judge. Another trial court proceeded to try the defendant in a separate criminal matter and that trial court improperly ruled that the defendant may be impeached by the rape and sodomy offenses. *Langley* at 734.

It is very clear from the case law that a witness may not be impeached by a prior conviction unless and until there has been a final, appealable judgment of conviction premised on a sentence. *Langley* at 734. See also *Berman v. United States*, 302 U.S. 211, 212 (1937) (the final judgment in a criminal case is the sentence), *Korematsu v. United States*, 319 U.S. 432 (1943) (probation is final, appealable judgment), *Butler v. United States*, 379 A. 2d 948, 950 (1977) (sentence subject to modification is final, appealable judgment), *McDonald v. United States*, 415 A. 2d 538, 541 (1980) (probation itself is a sentence).

There is no record here, however, that the government properly established the finality of the convictions as required by the case law.

The defendant was cross-examined about her criminal offenses but it was never clarified or proven that she was sentenced by a judge with some type of finality.

The trial evidence here reveals that the 2011 alleged convictions are simply naked assertions of criminality. There is no proffer on the record to show that the defendant was duly sentenced for the alleged 2011 convictions. The record on appeal also lacks any certificate of conviction that may satisfy this threshold requirement of “finality”. See *Godfrey v. United States*, 454 A. 2d 293, 305 (D.C. 1982), *Langley v. United States*, 515 A. 2d 729,734 (D.C. 1986). There is no indication here as to whether the 2011 allegations were guilty pleas as in *Godfrey* or guilty verdicts as in *Langley*, and whether those were accompanied by a final, appealable sentence.

ii. The Court should grant review because Due Process requires the judiciary to apply the law relating to impeachment with prior convictions and to articulate its rationale for allowing such cross-examination.

The Due Process Clause guards against arbitrary judicial action by requiring courts to state its rationale, to apply the plain language of the law and to make appropriate inquiries to inform its decision. See

Bearden v. Georgia, 461 U.S. 660, 672 (1983) (fundamental fairness requires court to inquire upon circumstances of failure to pay fine or restitution before revoking probation).

The record here is devoid of any finding as to the finality of the convictions used to impeach the defendant. The trial court should at the very least state for the record the basis for its rulings. *See Kent v. United States*, 383 U.S. 541 (1966) (fundamental fairness requires the juvenile court to explain how it satisfied the full investigation required by statute before waiving jurisdiction over a youth). In *Kent*, a statute required a “full investigation” to be conducted by the trial court before transferring a juvenile to adult court. In this case, the case law requires some finding that an impeachable conviction was based on a final, appealable sentence. As in *Kent*, there was no such finding, explanation or statement of rationale by the trial court as to whether the impeachable convictions were premised on sentences.

The plain language of D.C. Code § 14-305 squarely places the burden on the government to establish each conviction, and by inference, the respective finality of each sentence. There is nothing in

the impeachment statute or case law that relieves the government of this burden. The government's pretrial notice of its intent to impeach simply signals the potential application of D.C. Code § 14-305. Tr. 09/16/19 at 4. It does not mean that the government is relieved of its burden to actually prove the conviction at trial.

Any such interpretation that obviates the government's burden of persuasion under the statute would be arbitrary and inconsistent with Due Process. *See Bouie v. City of Columbia*, 378 U.S. 347 (1964) (judicial expansion of trespass statute at odds with plain language), *Douglas v. Buder*, 412 U. S. 430, 432 (1973) (per curiam) (due process cannot allow the term arrest to somehow include a traffic citation).

The defendant's trial did not comport with Due Process because five (5) prior convictions, ultimately, were improperly admitted, and the trial judge relied heavily on these convictions in assessing the credibility of witnesses in the bench trial, which was essentially a two-witness truth-telling contest.

The defendant hereby adopts and incorporates her "sentencing argument" in the 2011 alleged offenses to the remaining four (4) sets of

alleged convictions above. In addition, in light of the conviction years alleged in the transcript, the defendant submits that the 1993, 1998, 2007, and 2008 alleged convictions are stale but for the “link” provided by the 2011 alleged conviction. D.C.Code § 14-305(b)(2)(B) (2020), *Glass v. United States*, 395 A.2d 796, 808 (D.C.1978). Therefore, the defendant asserts that the inadmissibility of the 2011 alleged conviction renders the remainder of the alleged convictions inadmissible as well.

CONCLUSION

The petition for a writ of certiorari should be granted.



Jejomar Untalan, 978229

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Shirl A. Stephen — PETITIONER

(Your Name)

VS.

United States — RESPONDENT(S)

PROOF OF SERVICE

I, Jejomar Untalan, do swear or declare that on this date,
April 26, 2021, as required by Supreme Court Rule 29 I have
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding
or that party's counsel, and on every other person required to be served, by depositing
an envelope containing the above documents in the United States mail properly addressed
to each of them and with first-class postage prepaid, or by delivery to a third-party
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Elizabeth Trosman, AUSA

555 4th Street NW

Washington, DC 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 2021



(Signature)

**District of Columbia
Court of Appeals**



No. 19-CM-850

SHIRL A. STEPHEN,
Appellant,

v.

2019 CMD 8277

UNITED STATES,
Appellee.

BEFORE: Thompson and Beckwith, Associate Judges, and Nebeker, Senior Judge.

J U D G M E N T

On consideration of appellee's motion for summary affirmance and the opposition thereto; appellant's brief and appendix; and the record on appeal, it is

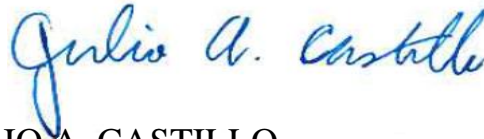
ORDERED that appellee's motion for summary affirmance is granted. *See Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013). Although she did not raise this issue at trial, appellant argues the government improperly impeached her with her prior convictions when it failed to produce certified copies of the convictions during appellant's testimony. Because appellant failed to raise this argument at trial and instead counsel consented to the government's use of the prior convictions, the argument is deemed waived. *See Plummer v. United States*, 43 A.3d 260, 267 (D.C. 2012) ("A party may not allege on appeal as error an action which he had induced the tribunal to take. . . . [A]n otherwise valid waiver of this sort may be overcome only in extreme situations, as where it is against public policy.") (internal quotation marks and citations omitted). Even if we were to review this issue, there is no error because certified copies of prior convictions are required only where a defendant denies the convictions. *See Reed v. United States*, 485 A.2d 613, 618 (D.C. 1984) ("[W]hen a party establishing a conviction by means of cross-examination is met with a denial, the party posing the question must be prepared to prove the conviction."). It is

APPENDIX A

No. 19-CM-850

FURTHER ORDERED and ADJUDGED that the judgment on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:

A handwritten signature in blue ink that reads "Julio A. Castillo". The signature is written in a cursive, flowing style.

JULIO A. CASTILLO
Clerk of the Court

Copies e-served:

Honorable Robert I. Richter

Director, Criminal Division

Jejomar G. Untalan, Esquire

Elizabeth Trosman, Esquire
Assistant United States Attorney

cml

**District of Columbia
Court of Appeals**

No. 19-CM-850

SHIRL A. STEPHEN,

Appellant,

v.

2019 CMD 8277

UNITED STATES,

Appellee.

BEFORE: Thompson and Beckwith, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of appellant's petition for rehearing, it is

ORDERED that appellant's petition for rehearing is denied.

P E R C U R I A M

Copies email to:

Honorable Robert I. Richter

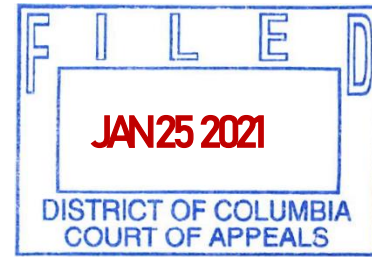
Director, Criminal Division

Copies e-served to:

Jejomar G. Untalan, Esquire

Elizabeth Trosman, Esquire
Assistant United States Attorney

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APPENDIX B