

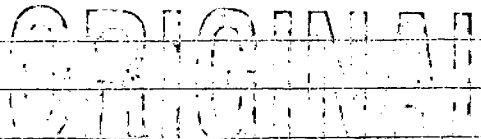
20-8417

IN THE
SUPREME COURT OF THE UNITED STATES

JUNE TERM, 2021

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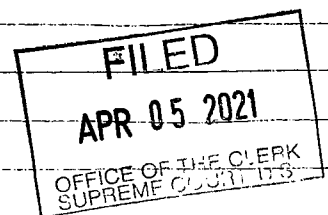
DAVID SUTTON,
Appellant,



VS.

UNITED STATES OF AMERICA,
Appellee.

*



On Petition for writ of Certiorari
The United States Court of Appeals
For the District of Columbia

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PETITION FOR WRIT OF CERTIFICATE

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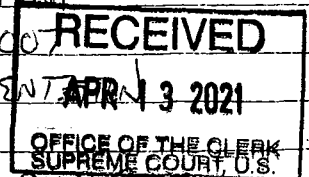
David Joel Sutton

Reg # 54290-00

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QUESTIONS PRESENTED FOR REVIEW

Was the Court of Appeals in error for failing to recognize, further established by caselaw precedent, that the Government never proved the defendant was "armed with" or had "readily available" a firearm during the said aggravated assault, thus to constitute "while armed", in failure of establishing a sufficiency of the evidence from the district court?

Was the Court of Appeals in error for failure to recognize that the jury instruction for aggravated assault while armed as to the vehicle collision was misleading and a violation of due process as guaranteed by the Constitution of the United States of America?

PARTIES TO THE PROCEEDINGS

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Petitioner, David Sutton, prays this Honorable Court will issue a writ of certiorari to review the judgment and opinion of the District of Columbia Court of Appeals, entered in the above proceeding

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I.

CITATIONS OF OPINIONS AND ORDERS IN CASE

The original judgment of conviction of Petitioner in the Superior Court of the District of Columbia was subsequent a trial by jury in case 18-CF-1242.

The original judgment of conviction of Petitioner was appealed to the District of Columbia Court of Appeals, effectively affirming the conviction and sentence, see CF3-14299-16.

A petition for rehearing or rehearing en banc was denied by the District of Columbia Court of Appeals on March 23, 2021.

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II.

JURISDICTIONAL STATEMENT

After a jury trial, the judgment of conviction was then brought lawfully before the District of Columbia Court of Appeals, of which judgment is brought before the Supreme Court of the United States, jurisdiction thereby lawfully being invoked.

III.

STATEMENT OF THE CASE

Mr. Sutton was charged by indictment, along with co-defendant Naquan Gregory, with one count of conspiracy to commit robbery in violation of 22 DC Code Sections 1805a and 2001.

Both were charged with carjacking in violation of 22 DC Code Section 2803(a); first degree theft in violation of 22 DC Code Sections 3211 and 3212(a); and unauthorized use of a vehicle - crime of violence in violation of 22 DC Code Section 3215(d)(2)(A).

As to three separate complainants, Sutton and Gregory were charged with robbery while armed, in violation of 22 DC Code Section 2801, 4502; possession of a firearm during a crime of violence (PFCV) (as to robbery while armed), in violation of 22 DC Code Section 4504(b); assault with a dangerous weapon, in violation of 22 DC Code Section 402; and PFCV (as to assault with a dangerous weapon).

As to complainant Leidy Navarro, both Sutton and Gregory were charged with aggravated assault (create grave risk) while armed, in violation of 22 DC Code Section 404.01 and the PFCV count attached to that aggravated assault charge.

Both were charged with reckless driving in violation of 50 DC Code Section 2201.04. *NOTE: The government dismissed the reckless driving count prior to trial.

Petitioner Sutton was charged with unlawful possession of a firearm (crime of violence) in violation of 22 DC Code Section 4503(a)(1), (b)(1).

The jury acquitted Petitioner Sutton of carjacking and the counts having to do with the complainant, Juan Miranda (i.e. robbery and its related charge of possession of a firearm during a crime of violence - PFCV - assault with a dangerous weapon and the PFCV count related to that). The jury convicted Sutton of all other counts.

Co-defendant Gregory was convicted of the same theft, robbery and conspiracy offenses as was Sutton. Mr. Gregory was not charged with the aggravated assault against Ms. Navarro, and he was convicted additionally of CPWOL, UF and UA.

The trial court sentenced Petitioner Sutton to a total of 18 years, including a five-year mandatory minimum attached to the armed robbery of Mr. Perkins.

Specifically, as to Count 1: conspiracy to commit robbery, 42 months incarceration; Count 3: first degree theft, 18 months incarceration; Count 4: unauthorized use of a vehicle—crime of violence, five years incarceration, execution of sentence suspended as to all but 18 months; Count 9: robbery while armed (firearm), 60 months incarceration; Count 10: possession of a firearm during a crime of violence (PFCV), 60 months incarceration; Count 11: assault with a dangerous weapon (firearm), 60 months incarceration; Count 12: PFCV, 60 months incarceration; Count 13: robbery while armed (firearm), 60 months incarceration; Count 14: PFCV, 60 months incarceration; Count 15: assault with a dangerous weapon (firearm), 60 months incarceration; Count 16: PFCV, 60 months incarceration; Count 17: aggravated assault while armed (firearm), 66 months incarceration; Count 18: PFCV, 60 months incarceration; Count 20: unlawful possession of firearm (prior conviction), 1 year incarceration; all in all, the trial court specified that Count 1 run concurrently to all other counts; counts 3 and 4 run concurrently to each other and consecutive to all counts except Count 1; counts 9 through 12 run concurrently to each other and consecutive to all counts except Count 1; counts 13-16 run concurrently to each other and consecutive to all counts except Count 1; counts 17 and 18 to run concurrently to each other and consecutive to all counts except Count 1; and Count 20 shall run consecutive to all counts except Count 1.

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VI

ARGUMENTS FOR WRIT

I. THE COURT OF APPEALS ERRED IN FAILING TO RECOGNIZE, FURTHER ESTABLISHED BY CASELAW PRECEDENT, THAT THE GOVERNMENT NEVER PROVED THE DEFENDANT WAS "ARMED WITH" OR HAD "READILY AVAILABLE" A FIREARM DURING THE SAID AGGRAVATED ASSAULT, THUS TO CONSTITUTE "WHILE ARMED," IN FAILURE OF ESTABLISHING SUFFICIENCY OF THE EVIDENCE BY THE DISTRICT COURT.

First and foremost, though both Petitioner Sutton and Co-defendant Gregory were both indicted on aggravated assault while armed or having readily available a pistol or other firearm or imitation thereof, and the FECSV charge corresponding to that, ultimately — and as to complete bias the Petitioner — the jury was instructed that only Sutton was charged with those two offenses; and Petitioner Sutton asserts complete bias on the revelation that though co-defendant Gregory was proven to have possession of the said firearm, especially as concerns the collision with Ms. Navarro's vehicle, yet the jury is misled and confused by said instructions; in fact, the evidence at trial clearly supported the notion that the gun belonged to Gregory (a search warrant of his home turned up a magazine compatible with the gun recovered by police and used in the offenses), especially as Gregory was found to be in possession of the gun, when crawling out of the woods, immediately after the crash. And in that the government failed to offer any evidence that the appellant either had possession of the weapon during the offense or ready access, such was a failure to prove beyond a reasonable doubt.

The trial judge instructed the jury as follows:

"If you find defendant Sutton guilty of aggravated assault, you must then decide whether during the commission of the aggravated assault, he was armed

with or had readily available a firearm which the government must prove beyond a reasonable doubt. In deciding whether the defendant was armed with or had readily available a firearm, you may consider all of the circumstances of its possession and use.

Armed with means the actual physical possession of the firearm. The term firearm means a weapon regardless of the operability which will is intended to expel a bullet by the action of [an] explosive.

Readily available means that the firearm was within easy access of the defendant, he knew it was there and he had both the ability and the intent to exercise control over it."

Id (8/7/2013:287).

The government argued in opening and closing arguments that Petitioner Sutton perpetrated assault on Ms. Navarro with a recklessly driven automobile, never once mentioning a proximity to a firearm or suggesting such was the element satisfied of "armed with intent", yet, contrary to the indictment, opening and closing arguments, and to the proof offered at trial, the jury instructions effectively amended the course of proceedings, severely biasing the petitioner.

Certainly, and as petitioner has such conceded, the jury could rationally conclude that, during the course of the robberies, both Petitioner and his co-defendant could have and did have possession of the weapon at some point; however, the question as to whether Petitioner possessed or had readily available to him that very weapon "during the commission" of the asserted aggravated assault - specifically the collision with Ms. Navarro's vehicle - should be in the negative, for in one moment of time, and with Petitioner's co-defendant in possession of the weapon, petitioner could not of had "readily available" possession himself.

In Appeals Court precedent, the Court in United States v. Swinton, 902 A2d 772, 776, n.6 (DC 2006) set the standard for review of sufficiency of the evidence. In particular, the Court noted that "the requirement of proof beyond a reasonable doubt 'means more than that there must be some relevant evidence in the record in support of each essential element of the charged offense [and that] '[s]light evidence is not sufficient evidence; a 'mere modicum' cannot 'rationally support a conviction beyond a reasonable doubt.'" (quoting Jackson v. Virginia, 443 U.S. 307, 320, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

Furthermore, in direct comparison to Clyburn v. United States, 48 A3d 147 (DC 2012), as in Clyburn and the case at bar, the government failed to produce evidence showing beyond a reasonable doubt appellant's close proximity or easy access to the weapon during the collision, for certainly any loose item in a forcefully crashing vehicle would be flying around, neither in close proximity or readily available, and in fact, for the defendant to run from the scene, yet his co-defendant to emerge from the crash with the weapon would suggest that petitioner did not have possession, nor was the weapon "readily available" as to meet the elements of the alleged crime.

Such findings by the Court of Appeals, in support of the district court's denial of acquittal due to lack of sufficiency of the evidence, is contrary to not only the Court of Appeals for the District of Columbia, but this very Supreme Court

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II. THE COURT OF APPEALS ERRED IN FAILING TO RECOGNIZE THAT THE JURY INSTRUCTION FOR AGGRAVATED ASSAULT WHILE ARMED AS TO THE VEHICLE COLLISION WAS MISLEADING AND A VIOLATION OF DUE PROCESS AS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Clearly, the instruction on aggravated assault while armed as to the car crash involving Ms. Navarro, was erroneous. The government's evidence at trial did not agree with the actual instruction given, as the government never argued, let alone proved, that Ms. Navarro's injuries resulted from the use of a weapon or that Petitioner had possession of said weapon at the time of the offense. In the case at bar, the jury was asked to make the inference that the Petitioner was armed with the weapon during the crash, and in total contradiction to the fact that the weapon was recovered from Petitioner's co-defendant, there was absolutely no evidence that the weapon was on the Petitioner, in his possession, or accessible to him, at the time of the crash.

Concerning the issue at hand, the Court in United States v. Alston, 179 U.S. App. D.C. 129, 130, 132-33, 551 F.2d 315, 316, 318-21 (1976) noted:

"An instruction central to the determination of guilt or innocence may be fatally tainted by even a minor variation which tends to create ambiguity."

Such ambiguity was made apparent when the Government tended to set out to prove — by opening argument, trial evidence and testimony, and closing argument — that the petitioner committed aggravated assault while armed with a vehicle; yet, the jury instruction did not maintain that the vehicle was the weapon, but rather, a weapon that was proven not to be in his possession at the time of the crash. If the jury had been properly instructed, there is a "reasonable probability" of a different outcome."

quoting Perry v. United States, 36 A3d 799, 818 (DC 2011).

*

CONCLUSION

Petitioner, David Sutton, has been deprived of fundamental rights guaranteed by the United States of America Constitution, and seeks relief in this Court to remedy and restore those rights. Based on the arguments and authorities presented herein, Petitioner was deprived of a fair and impartial jury and trial, of his due process. Petitioner prays this Court will issue a writ of certiorari and reverse the judgment of the District of Columbia Court of Appeals.

Respectfully submitted on this 1st day of April, 2021.

* David Sutton

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