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No.

ORIGINAL

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOHN M. WASSON

Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

*On petition For A writ Of Certiorari
To The United States Court Of Appeals
For the Ninth Circuit*

PETITION FOR A WRIT OF CERTIORARI

John M. Wasson

pro se

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03/05/2018	16	ORDER - Defendant's Motion to Withdraw as Attorney by Michelle Sweet and Substitute Counsel (ECF 14) is GRANTED. Jesse Merrithew is appointed in place of Michelle Sweet as counsel for Defendant John M. Wasson (1). Ordered by Judge Michael H. Simon. (mja) (Entered: 03/05/2018)
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QUESTIONS PRESENTED

The questions presented are:

1. Did Mr. Wasson have adequate counsel during his trial and appeal?
2. Was Mr. Wasson's accessing his mining claim's campsite in fact lawful?
3. Did the government prove all aspects of the charge against him?
4. Did allowing unrelated court cases into testimony unduly prejudice the jury?
5. Were the jury instructions prejudicial towards the Defendant?

PARTIES TO THE PROCEEDINGS

Petitioner is John M. Wasson

Respondent is the United States of America

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TABLE OF AUTHORITIES STATUTES AND REGULATIONS

1. 18 U.S.C. §1361. Government property or contracts

“Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses, shall be punished as follows: If the damage or attempted damage to such property exceeds the sum of \$1,000, by a fine under this title or imprisonment for not more than ten years, or both; if the damage or attempted damage to such property does not exceed the sum of \$1,000, by a fine under this title or by imprisonment for not more than one year, or both”.

2. Umatilla National Forest Public Use Restrictions effective July 20, 2017, relevant parts:

“...Travelling off developed Forest Roads and Trails is not allowed, except for the purpose of going to and from a campsite located within 300 feet of the open, developed road. All motorized travel on roads not cleared of standing grass or other flammable material, roads closed by gates, barricades, berms, rocks, or logs is prohibited. **No Smoking**, except within an enclosed vehicle or building, developed recreation site or while stopped in an area three feet in diameter that is barren or cleared of all flammable material.”

3. 36 CFR § 228.12 Access.

“An operator is entitled to access in connection with operations, but no road, trail, bridge, landing area for aircraft, or the like, shall be constructed or improved, nor shall any other means of access, including but not limited to off-road vehicles, be used until the operator has received approval of an operating plan in writing from the authorized officer when required by § 228.4(a). Proposals for construction, improvement or use of such access as part of a plan of operations shall include a description of the type and standard

of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used. Approval of the means of such access as part of a plan of operations shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution."

PETITION FOR A WRIT OF CERTIORARI

John M. Wasson respectfully petitions for a writ of certiorari to review the judgment and sentence of the United States Court of Appeals for the Ninth Circuit in this matter.

OPINIONS BELOW

The decision of the court of appeals is at Appendix A

The district court's decision is at Appendix B

JURISDICTION

The Ninth Circuit Court of Appeals issued a memorandum of judgment on January 6, 2021 (entered 01/07/2021). This Court has jurisdiction under 28 U.S.C. § 1254(1)

INTRODUCTION

In October 2017 Mr. Wasson was indicted on one charge of Depredation of US Government property (18 USC §§ 1361 and 1362), a felony. At trial, the government's case was largely based on evidence seized during a search of Mr. Wasson's mining claim site and previous, unrelated court cases.

Mr. Wasson believes that his defense case was prejudiced by ineffective counsel resulting in admission of prejudicial unrelated court proceedings, unchallenged testimony, withheld evidence, and confusing jury instructions. Despite advise of the Court, defense counsel failed to lay a proper foundation to admit important evidence. Counsel also failed to extract testimony as to the lawfulness of Mr. Wasson's actions, ie; driving off road and cutting

vegetation as clearly allowed by Government's Exhibit 131 (text at #2, Table of Authorities).

A simple reading of the text would have been most helpful as it says that diving off road to a campsite within 300 feet of an existing road is permissible and that roads and campsites must be cleared of vegetation.

The government alleged Mr. Wasson contaminated the soil by having leaking barrels of an unknown substance and placing treated lumber on the ground. Mr. Wasson's attorney did not challenge the characterization that the barrels were leaking or that the treated lumber would contaminate the soil, adversely tainting Mr. Wasson's image.. In the first case, the barrels were intact and not leaking and in the second case, treated lumber in safe enough to use for vegetable gardens.

The prosecution characterized and the indictment stated that the site of the alleged depredation as within a "Riparian Habitat Conservation Area." Mr. Wasson's attorney did not challenge this characterization, leaving the impression that the site was somehow special or sensitive. In fact the site is more accurately described as upland grass and scattered forest. The prosecution used a definition supposedly contained in the Columbia Basin Project that designates areas within 300 feet of a waterway as Riparian Habitat Conservation Areas. The Columbia Basin Project encompasses mostly Eastern Washington lands that are largely agricultural high desert irrigated lands. Mr. Wasson's attorney should have challenged the prosecution's efforts to assign a riparian designation upon a non-riparian area. This failure adversely affected the jury's impression of Mr. Wasson and his activities. The prosecutions major premise was that Mr. Wasson was required to file a Notice of Intent to occupy and use his registered mining claim. Although it was not an element for finding

guilt in the case at the bar, the prosecutors effectively made it a pivotal part of their case and it became a major part of the Court's jury instructions regarding "willfulness". The jury instructions read in part:

"In order to prove that the defendant acted willfully, the Government must prove beyond a reasonable doubt that the defendant knew that federal law imposed a duty on him and the defendant intentionally and voluntarily violated that duty. In this case the law imposed a duty on defendant Wasson to submit a Notice of Intent or a Plan of Operations to the United States Forest Service district ranger for any operations that might cause significant disturbance of surface resources.

The Government must prove beyond a reasonable doubt that Defendant Wasson knew that he had a duty to submit a Notice of Intent or a Plan of Operations to the United States Forest Service district ranger for any operations that might cause significant disturbance of surface resources and that Defendant Wasson intentionally and voluntarily violated that duty."

The prosecution made no effort to prove that Mr. Wasson willfully damaged US Government property, relying upon the effectiveness of the Notice of Intent willfulness testimony. There was no testimony that Mr. Wasson's driving off-road to his campsite was unlawful or that his cutting of vegetation was unlawful, only that it happened. The evidence that those activities were in fact lawful was not made clear by Mr. Wasson's defense counsel..

Mr. Wasson's defense counsel did make strong arguments in the brief to the 9th Circuit, but that was a bit late for the jury to consider.

STATEMENT OF THE CASE

The purpose of the case was to determine whether Mr. Wasson in fact caused more than \$1,000 in damages to US Government property, and that he did so intentionally with the knowledge that his actions were unlawful. Mr. Wasson's defense is that his actions that caused the alleged depredation were allowed and or/not unlawful, and/or that the dollar amount of any damages did not exceed \$1,000.

Mr. Wasson's court appointed attorney was not effective in this regard. His attorney did not challenge the lengthy presentation of Mr. Wasson's previous disagreements with the USFS concerning submission of Notices of Intent nor the results of prior court cases. His attorney did not challenge the characterization of items of evidence in terms that were inaccurate, ie; leaking barrels that were not leaking, contaminated soil that was not contaminated, hazardous materials that were not hazardous, and a Riparian Habitat Conservation Zone that was not a riparian area.

Mr. Wasson's attorney didn't clearly establish that the Prosecution's exhibit concerning fire season restrictions also clearly indicated that Mr. Wasson's driving off-road to his campsite was allowed and that the cutting of vegetation along the road and at the campsite was required.

The prosecution's contention that the alleged crime took place in a "Riparian Habitat Conservation Area" went unchallenged by Mr. Wasson's attorney. At the very least he could have challenged the Government's definition as arbitrary and inaccurate.

In essence, Mr. Wasson did not damage US Government property, unlawfully cut vegetation, diminish a Riparian Habitat Conservation Area, or contaminate soil. Any damage was incidental, insignificant, and within normal forest user's activity.

REASONS FOR GRANTING THE PETITION

The USFS has a history of harassing small miners on their claims. Threats of prosecution and the Courts have been used as a cudgel to further this harassment. Mr. Wasson is not anything close to a felon or an environmental threat. He served his country faithfully and has mined

his claim carefully. The USFS has an issue with small miners mining for extended periods of time and tries to bind them to a 14 day stay limit and restrict their access to their claims (see letter from AMRA at Appendix C). This is contrary to statute and regulation but it is nonetheless the position of many USFS line officers. Allowing this misuse of power is an infringement of miners' rights and their individual right to pursue happiness. Mr. Wasson did not cause any significant damage to US Government property. In fact, the creation of a primitive road and campsite would be considered an improvement by most standards, benefiting other forest users with expanded camping and recreational opportunities. The alleged contamination was minimal, totally biodegradable and non-hazardous. Mr. Wasson is not a felon, has been abused by the government and should be granted a new, fair trial.

CONCLUSION

This petition for a writ of certiorari should be granted

Respectfully submitted,



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