

21-7055

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JAN 20 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

EUGENE WILLIS (PRO SE) — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

EUGENE WILLIS (PRO SE)

(Your Name)

FEDERAL CORRECTIONAL COMPLEX USP#1
P.O. BOX 1033

(Address)

COLEMAN, FL 33125

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I.

In compliance with Holloway V. United States, 526 U.S. 1 (1991), is an attorney ineffective for failing to argue before the jury the Government failed to prove "Willis intended to cause death or serious bodily harm under 18 U.S.C. § 2119(a)?"

II.

Is an attorney ineffective for failing to properly argue before the Court that Willis was entitled to a judgment of acquittal on Count Four because the Firearm was not brandished during the carjacking?

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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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 E 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☐ is unpublished.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 D 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 _____.

☒ 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

U.S. Constitution 6th Amendment "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense."

18 U.S.C. § 924(c)

18 U.S.C. 2119(a)

STATEMENT OF COURSE AND PROCEEDING

A Grand Jury indicted Eugene Willis ("Willis") and two others with carjacking two vehicles, brandishing a firearm, and aiding and abetting others in doing so. Specifically, Willis was charged in: Count One with carjacking a 2012 Dodge Charger, Count Two with brandishing a firearm in carjacking the Dodge, Count Three for carjacking a 2013 Kia Optima, and Count Four with brandishing a firearm in carjacking the Kia. Each of these counts include aiding and abetting others in accomplishing the crimes. A jury found Willis guilty of both carjacking charges (Counts One and Three) and the second firearm charge (Count Four).

Willis appealed arguing that the Government had not presented sufficient evidence to support the guilty verdicts. See United States V. Willis, 769 F. App'x 863 (11th Cir. 2019) (unpublished). The 11th Circuit affirmed on April 25, 2019. On April 28, 2020, Willis filed a Motion to Vacate before the District Court raising three claims of ineffective assistance of counsel. In Ground One and Two, Willis argued Counsel was ineffective for failing to argue at trial and appeal that the Government did not prove Willis intended to cause death or serious bodily harm as required by 18 U.S.C. § 2119(a). In

Ground Three, Willis argued that his counsel failed to properly explain to the District Court that there was no evidence that Willis displayed a firearm in order to intimidate the drive of the Kia.

STATEMENT OF FACTS

Eugene Willis is currently serving sentence for a conviction of a crimes, where the evidence showed he should have been acquitted of.

REASON FOR GRANTING PETITION

I.

IN COMPLIANCE WITH HOLLOWAY V. UNITED STATES, 526 U.S. 1 (1991) IS AN ATTORNEY INEFFECTIVE FOR FAILING TO ARGUE BEFORE THE JURY THE GOVERNMENT FAILED TO PROVE "WILLIS INTENDED TO CAUSE DEATH OR SERIOUS BODILY HARM UNDER 18 U.S.C. § 2119(A)?

In reading the evidence, in favor of the Government, Willis avers the Government did not show there was sufficient evidence to show "intent to cause death or serious bodily harm." In this Court standing precedent, it held "the intent element is met where the government proves that at the moment the defendant demanded or took over the driver's automobile the defendant possessed the intent to seriously harm or kill the driver if necessary to steal the car." Holloway V. United States, 526 U.S. 1 (1991). This Court placed the burden on the Government, to prove this essential element at trial.

In reviewing the jury instruction for 18 U.S.C. 2119, it would mandate the government to prove this at trial;

1. The Defendant took a motor vehicle from or in the presence of another;
2. The Defendant did so by force and violence or by intimidation;
3. The motor vehicle had previously been transported, shipped or received in interstate or foreign commerce and;
4. The Defendant intended to cause death or serious bodily harm when the defendant took the motor vehicle.

The testimony the Government presented at trial, does not coincide with their burden. See Appendix C at 5

The men pointed the guns at Casaquit, saying, **Where are the keys at?**" Doc. 178 at 104-05. The keys were in Casaquit's left front pocket, and, as he slowly reached for them, one of the men stepped forward and ripped the eys from Casaquit's keychain. Doc. 178 at 105. The men then demanded Casaquit's wallet, and the same man took that from him too. Doc. 178 at 105. Casaquit's cellphone was attached to one of his belt loops and one of the men grabbed it. Doc. 178 at 105 **The men then told Casaquit to face away from them.** Doc. 178 at 105-06 When he complied, the men got in Casaquit's Dodge Charger and drove away with Hamilton driving and Wllis in the passenger's seat. Doc. 178 at 106; D0c. 179 at 50-51'"

As Willis explained to the District Court, simply saying "Where are the keys at?" and "face away from [us]" does not fall into the realm of "intent to cause death or serious bodily injury." See United States V. Harbin, 715 Fed. Appx. 873 (11th Cir. 2017)(Hardin told the victim to "[g]et the fucking gas pump out of the car before I shoot you in the head"); United States V. Fulford, 267 F.3d 1241 (11th Cir. 2001)(Fulford put a gun to Iglesias's face and told him to **get the fuck out of the car.**")

Knowing the standard of law, Counsel was ineffective for his failure to argue before the jury, the Government failed to prove "Willis intended to cause death or serious bodily harm."

Accordingly, this Court should Grant Writ of Certiorari for the lower courts has side-steps this Court holding in Holloway, and ruled Counsel was no ineffective for failure to argue precedent. This Court should exercise it's judiciary discretion.

II.

IS AN ATTORNEY INEFFECTIVE FOR FAILING TO PROPERLY ARGUE BEFORE THE COURT THAT WILLIS WAS ENTITLED TO A JUDGMENT OF ACQUITTAL ON COUNT FOUR BECAUSE THE FIREARM WAS NOT BRANDISHED DURING THE CARJACKING?

In reviewing the Government's evidence, Willis was entitled to a judgment of acquittal. The Government asserts Willis shall stand convicted for a 924(c) that was not brandished, but simply because "a gun was discovered on the ground near the drive-through lane where Austin was carjacked, and a separate gun was dropped by one of the men immediately after entering the drive-through window. (Doc. 178 at 147; 179 at 8-9)

Willis avers, the Government's argument does not coincide with Eleventh Circuit's precedent on sustaining a conviction on brandishing. See United States V. Nesbitt, 669 Fed. Appx. 534 (11th Cir. 2016), "To brandish a firearm within the meaning of § 924, a person not need to wave, swing, flaunt, or point the firearm, he need only "display all or part of the firearm

or otherwise make the presence of the firearm know to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person."


Prior to filing the Motion to Vacate, the Eleventh Circuit held the same. By a firearm simply laying on the floor near the drive-through lane where the defendants jump into, is not brandishing. Also, the victim testified she "taught" she seen a firearm, not "the firearm was pointed at me!"

Willis avers to the lowers courts, he was prejudice by counsel ineffectiveness. For, Willis was sentence to an excessive consecutive 7 years term of imprisonment. 7 years away from his kids, friends, for a crime that did not occur.

CONCLUSION

The Petitioner for a Writ of Certiorari should be GRANTED.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Eugene Willis", is written over a horizontal line.

Eugene Willis

Date: 1-13-22

Eugene Willis

To Whom they may concern.

I ask the Courts Please take the time to Please read over my case Carefully. Because if you go back and Look at the witness - Candy Austin, statement that she gave to Law enforcement and Her testimony she gave on the witnessstand, not one time she said she seen anybody get into Her car. she also stated she thought she seen A Gun.

also if you Look at the witness Keltie Carroll, Please go back and Look Carefully at Her statement's she gave to Law enforcement. she stated she seen A Black car Crash and 3 Black males Jump out and ran to the McDonald's. she stated she Roll up Her window and Lock Her Door. and she stated 3 males got into Austin car and then got out she also stated one of the Black males ran and open Her Passenger Door and Climb over Her and Jump out the Driver Side window into the Drive thru window. Mrs. Carroll did not Be truthfully on the witnessstand.

Can the Courts Please read the facts of my case I am innocent. not Guilty of a crime or offence that the Government Claim Did.

Respectfully submitted. Eugene Willis JR.