

22-5759

No. 51612677

FILED

JUL 11 2022

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

SJC

Andrew Robertson — PETITIONER
(Your Name)

vs.

Commonwealth MASS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SJC

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

PETITION FOR WRIT OF CERTIORARI

Andrew Robertson
(Your Name)

STBCC P.O. Box 8000 Shirley,
(Address)

MA, 01262
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Why did the Judge Allowed the prosecutor to speak of things not in evidence. And why the Judge Allowed the Prosecutor to point his finger to make an identification of the Defendant when he wasn't a witness.

And why the first trial Judge didn't Allowed the Motion for required finding?

Why did the Judge did a test to see if the first trial Jury could possibly find the Defendant guilty.
Without evidence of his guilt.

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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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[] is unpublished.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[] is unpublished.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[] is unpublished.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[] is unpublished.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 02/28/22.

☐ 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 02/28/22.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: 03/16/22, 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

STATEMENT OF THE CASE

The Defendant had two trials, the evidence at the first trial was constitutionally insufficient and the Double Jeopardy Clause (of the Fifth Amendment) forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.

On the motion for directed verdict, at the first trial the first trial Judge (Sanders, J.) stated: if there is a conviction I can always hear additional arguments about why it should have never gone to the jury. But a jury is here already to decide, I would like to have things submitted to the jury... In April 25, 2017 hearing, Judge Sanders, the first trial Judge, indicated she remembered "the case against Mr. Robertson was substantially weaker than the case against co-Defendants. And indicated she had looked to determine whether the first trial jury could possibly find him guilty.

Judge Sanders acknowledged that "on motions for required finding, I do tend to let cases go to the jury, and that, if I'm in doubt as to the sufficiency of the evidence then the best way to deal with it is after the trial.

The Defendant wasn't identified as a shooter, or, ever seen on, or, around the crime scene. The prosecutor give his improper personal opinions as to the Defendant's identity, that the defendant was wearing a scarf not in evidence.

And that the defendant also was wearing a white wall sneakers not in evidence.

It is a fundamental violation when a prosecutor puts before the jury summation facts, or, objects, that have not been admitted according to the rules of evidence, and thus have not been subject to cross-examination rebutted, and an opportunity to address in argument.

The SJC Rule 3.08, PF 13(b): "It is unprofessional conduct for the prosecutor to express his personal belief or opinion as to the truth or falsity of any testimony or evidence of the guilt of the Defendant.

REASONS FOR GRANTING THE PETITION

(1) I did not have a fair trial, and at the first trial I had no jury's said not guilty, and that my second trial, they used co-defendant's evidence to find me guilty. And the prosecutor improperly gave his personal opinion as to the intensity, and not facts. And the judge refused to give the identification instruction when defense counsel asked for it. (Judges required to instruct jury "clearly and correctly, in a fair and impartial manner, on the substantive elements of the crime him or her charged" Commonwealth v. Anselone, 9 Mass. App Ct. 867 (1980). See Commonwealth v. Biancardi, 421 Mass. 251, 252-253 (1995) error not to instruct jury at defense request, on the consequences of a verdict of not guilty by reason of insanity:

The defendant in a criminal case, is entitled to have the issues of fact clearly presented to the jury, and the law applicable thereto carefully explained.

The only fact in this case was a fingerprint, on a moving object. There wasn't no information as to who the shooter is. There was no motive; This case was all about assumption, and comparison. not facts.

Please I'm asking this court to grant me a fair trial.

Because the instructions to the jury was to judge each defendant separately and independently as he was on trial alone, you may consider only the evidence that applies to that defendant.

But in this case that did not!

Each defendant is entitled to have his case determined solely from the evidence about his own acts and statements if any. Upon the above points and authorities, the defendant urges the court: reverse his convictions and enter judgments of acquittal on his behalf on the basis that the evidence was insufficient to prove guilt beyond a reasonable doubt; or, in the alternative grant him a new trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrew Robertson

Date: 7-11-22