Supreme Court Of The United States

Jah, David Sr., MSW

Petitioner,

No: 22-7333

RE: Petition For Rehearing

vs.

United States of America.

The rehearing in the above-entitled case is being made in pro se by the appellant and would respectfully request liberal construction of his grounds of the forthcoming accordingly. Haines v. Kerner, 404 U.S. 519, 520 (1972).

Grounds For Reconsideration Are The Following

I. A substantial ground not previously presented is the claim of ambiguity. Briefly put the Court is requested to take judicial notice of [Notice of Motion For Request For Leave To File A Rehearing] recieved in this Court 6-16-23. See Exhibit A

The indictment states that the subject property was used in interstate commerce or an activity used in interstate commerce. (See Exhibit B). Yet during the diliberations, the Court responded to the jury's inquiry contrary to the face of the indictment. Taking judicial notice of the 6-16-23 Motion abovementioned the jury instruction advised the jury that they could convict if the property was **only** used for a commercial purpose. This instruction later was found to be in reference to the amendment in 1996 of Title 18 subsection (e).

If the claim that the law actually substituted "interstate or foreign commerce..." then why does 18 U.S.C. 844(i) still contain the language? Note the minimum of 10 years show amendment in the statute to 5 years. The statute does not reflect the amendment nor did the indictment; nor was the appellant notified of such by the court during his Feretta Hearing.

The grand jury did not base its vote upon the amendment of the statute in subsection (e). It was **only** in the last seconds the variation construction happened. Error in due process causing prejudice this ground makes a showing that due process of law rights is controlling with regard to the constitution and Supreme Court rulings see Fifth Amendment and United States v. Miller (1985) 471 US 130, 85 L. Ed 2d 99, 105 S Ct. 1811.

The Variance between indictment and evidence was material and case law controlling recognized that conviction will be setaside when such a variation occurs. See United States v. Hardyman (1839) 38 US 176, 10 L. Ed 481, 15 S. Ct. 394;Berger v. United States (1935) 295 US 78, 79 L.Ed 1314, 55 S. Ct. 629; Stirone v. United States, 361 US 212, 4 L. Ed 2d 252, 80 S. Ct. 270 (variance held material; conviction reversed). It is alleged that the variance caused prejudice. The appellant is requesting that liberal construction of this ground is taken.

The Evidence of the subject property buisness tax records or personal tax records of the subject property owner were not considered by the fact finder's. The request for these records thru subpoena were denied. The denial caused prejudice because it prevented evidence from being considered by the fact-finder's. The evidence was material because it prevented a showing that the property was not **used** for a commercial purpose affecting interstate commerece as the indictment alleged. The exclusion of evidence was held in the Supreme Court to be a violation of the Sixth Amendment. See Supreme Court cases 87 L.Ed 2d 802, also L.Ed Digest Constituional Law § 840.3. The likelihood of the evidence could have affected the judgment of the jury warranting grounds for a Brady Claim.

The appellant was prevented showing infact that the property was not **used** for a commercial purpose which would have established a sufficent showing the essential element was lacking. See Ninth Circuit's ruling in Af-Cap, Inc. v. Chevron Overseas (Congo) Ltd., 475 F. 3d 1080, 1088 (2007). Id at 1089-91. (What matters under the statute is what the property is **'used for'**...as in put in action, put into service, availed or employed for a commercial activity, **not in connection with a commercial activity or in relation to a commercial activity.**

Also see Craft v. United States 7th Cir. (2008), which held that A de minimis connection to interstate commerce is not sufficent to violate 18 U.S.C. § 844. The appellant contends the conclusion of the Supreme Court's ruling in Jones v. United States, 529 U.S. 848, 120 S.Ct. (2000) sheds light on the ground being raised see Honorable Justice Thomas, with the late Honorable Scalia joined concurring ..."I express no view on the question whether the federal arson statute, 18 USC § 844(i) (1994 ed., Supp IV) [18 USCS § 844(i)], as there construed, is constitutional in its application to **all** buildings **used** for commercial activities." This makes a showing that a claim that a private residence owner occupied is **used** for a commercial purpose still must pass muster. Seemingly that there must be supportive evidence of sufficient factual basis for the property to be deemed **used** as the indictment and statute states.

The decision as it stands conflicts with all rulings in both the District and Court of Appeals in the United States on the same important matter of the subject property usage determination and the evidence to support it. The decision answers a federal question in a way that conflicts with other courts departing from the accepted and usal course of judicial proceedings. In all arson cases the prosecution made a showing with tax records or buisness records showing how the property was **used** to satisfy the interstate requirement.

New evidence recieved after trial is a ground for reversal of the conviction not raised by appellant or counsel was a material Brady violation. The court ordered the government to subpoena the records but the prosecutor in charge of the trial delayed the request causing it to arrive after trial. The evidence was material showing proof the alleged "meeting of the mind's" conspiracy plot was recorded and was in the government's posession a year before trial and was not provided to appellant. This recording would have proven appellant did not instruct the co-defendant to commit arson. The lost evidence was noted to the jury by a special jury instruction, albeit this instruction could not cure the prejudice of lost evidence. Judicial notice is requested to be taken of post trial motion DKT. 599 (it is believed)

Vindictive prosecution claim has merits due to the fact the government was aware the subject property was not used for a commercial purpose and the acts alleged were not federal in nature. The government was aware that a Molotov Cocktail was not used to break the outter pane of the double pane window based upon lab tests of the evidence collected at the subject property. Yet during the opening statements the assertion of such fabrication was stated to mislead the jury. The theory also was supported by the government's witnesses in violation of due process due to vindictiveness the perjured testimony on the material facts went uncorrected.

There was no affect on interstate commerece. The occupant in the bedroom where the window had broke was not even awaken and further testimony revealed that the window was not even repaired until weeks later. There was no loss of buisness expense reported nor were any buisness insurance claims made.

The Highest Court in the land is requested to take judicial notice of appellant's filing in the United States Court of Appeal in the Ninth Circuit entitled "Request For Clear Error Review" which will show additional grounds previously not presented in part that this petition will not include since it is to be short and brief.

To the best of my knowledge and belief and belief I certify that the grounds are limited to substantial grounds not previously presented and or intervening circumstances of substantial controlling effect. I also certify that this petition for rehearing is presented in good faith and not for delay. I seek to have grounds construed liberally, yet not to affect any additional litigation oppturnities in the future should they be be necessary.

Dated: 7-3-23

Appellant: David Jah Sr., MSW
In Pro Se

I certify Under The Penalties of Perjury That I servered a true a true copy of the petition for rehearing to the Solicitor General Counsel Of Record Elizabeth B. Prelogar at 950 Pennsylvania Ave N.W. Rm 5616 Washington, D.C. 20530-001 On 7-3-23

The Rehearing Request Was Mailed By Certifed Mail See Certificate Number 7020 2450 0000 6490 4656

EXHIBIT A

SUPREME COURT OF THE UNITED STATES

Jah, David Sr., MSW

Petitioner

vs.

United States of America.

No: 22 - 7333

Notice Of Motion And Motion For Request For Leave To File A Rehearing

Petitioner in pro se seeks that this Court reconsiders its denial of Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Grant petitioners rehearing. The Order to vacate the denial of writ of certiorari is sought based upon that the jury instruction was not according to the statute. See Exhibit A. Amendment of 18 U.S.C. § 844 in 1996 which the answer to the jury instruction was based upon. That amendment considered at the trial for a violation of § 844 (i) (n), pertatined to subsection (e) of the statute thus the petitioner was convicted of a charge he was not indicted for. The record will reflect that an objection was made to the answer of the jurys inquiry that was adopted. See Exhibit B. The answer to the jury[question] is not according to the indictment.

Notwithstanding the aforementioned the use of perjured testimony and fabricating a theory misleading the factfinders, ie, jury which caused prejudice and has been held to be grounds for reversal of convictions. The government was well aware that there was no evidence that the bottle fragments collected at the subject property [determined] that there was any flammable fluids or compounds detected for the government use in its opening statement that a Molotov cocktail was used to brake the window of the subject property outter part of its double pane window. Further the government had a duty to correct the witnesses from commiting perjury based upon the evidence that the government possessed.

The errors committed are not harmless. The conviction is unconstitutional. In conclusion the court was not permitted to amend the indictment by striking out words in the statute and the prosecutorial conduct under Napue v. Illinois, 360 U.S. 264, 79 S.ct 1173, 3 L. Ed. 2d 1217 (1969) all are grounds to vacate the conviction and remand this case to the lower courts for further proceedings. Submitted

Dated: 6/1/23

David Jah, Sr.
MSW

EXHIBIT B

DAVID L. ANDERSON (CABN 149604)
United States Attorney

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAVID JAH, a/k/a David Jah, Sr., a/k/a David Jaa, and DENNIS WILLIAMS, Defendants.	CASE NO. CR 19-0026 WHA VIOLATIONS: 18 U.S.C. § 844(n) – Conspiracy to Commit Arson; 18 U.S.C. §§ 844(i) – Arson; 26 U.S.C. §§ 5861(d), 5841, and 5871 – Possession of an Unregistered Firearm; 18 U.S.C. § 922(g)(1) – Felon in Possession of a Firearm and Ammunition; 18 U.S.C. § 924 *et al.* – Criminal Forfeiture SAN FRANCISCO VENUE

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE: (18 U.S.C. §§ 844(i) and 844(n) – Conspiracy to Commit Arson)

On a date unknown to the Grand Jury, but no later than October 26, 2018, and continuing through on or about November 3, 2018, in the Northern District of California, the defendants,

DAVID JAH, a/k/a David Jah, Sr., a/k/a David Jaa, and
DENNIS WILLIAMS,

ER

did knowingly conspire with each other, and others known and unknown to the Grand Jury, to maliciously damage and destroy, and attempt to do so, by means of fire and explosive, a building and real and personal property used in interstate commerce, and used in activity affecting interstate commerce, namely, the building located at [redacted], Danville, California, in violation of Title 18, United States Code, Section 844(i).

COUNT TWO: (18 U.S.C. §§ 844(i))

On or about November 3, 2018, in the Northern District of California, defendant

DENNIS WILLIAMS

did maliciously damage, and attempt to damage and destroy, by means of fire and explosive, a building and real and personal property used in interstate commerce, and used in activity affecting interstate commerce, namely, the building located at [redacted], Danville, California, in violation of Title 18, United States Code, Sections 844(i).

COUNT THREE: (26 U.S.C. §§ 5861(d), 5841, and 5871 – Possession of an Unregistered Firearm)

On or about November 3, 2018, in the Northern District of California, defendant

DENNIS WILLIAMS

did knowingly possess a firearm, that is, a destructive device commonly known as a Molotov cocktail, not registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Sections 5861(d), 5841, and 5871.

COUNT FOUR: (18 U.S.C. § 922(g)(1) – Prohibited Person in Possession of Firearm or Ammunition)

On or about November 7, 2018, in the Northern District of California, defendant

DAVID JAH, a/k/a David Jah, Sr., a/k/a David Jaa,

knowing he had been previously convicted of a crime punishable by a term of imprisonment exceeding one year, knowingly possessed a firearm and ammunition, namely, one Romarm-Cugir AK47 rifle, model WASR-10 bearing serial number A1-51118-16-RO, and 279 cartridges stamped 7.62x39 16, all in or affecting interstate or foreign commerce and in violation of Title 18, United States Code, Section 922(g)(1).