

23-3881 ORIGINAL
No.

In The Supreme Court of The United States

In Re David Jah Sr.

FILED
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SUPREME COURT, U.S.

On Petition For Writ Of Certiorari

To The United States Court Of Appeals For The Ninth Circuit

Petition Writ Of Mandamus

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Ultimately, the bedrock principle that local governance in the Town of Danville is granted by the constitution of the State of California. The local municipal affairs and having the home rule authority allowing cities to engage in self-governance is pursuant to the California State constitution.

Under the Town of Danville Ordinance in Contra Costa County in which the subject property is located, any individual engaged in business must hold a valid business license pursuant to Town of Danville Ordinance Section 32. It is held that a municipality's local law will be upheld under substantial evidence requirement. (quoting Celluar Tel. Co. v. Town of Oyster Point, 168 F.3d 490 (2nd Cir. 1999)). The Court's may "neither engage in [their] own fact-finding nor supplant the Town Board's determination of their legislation.

The subject property did not meet the Town of Danville Ordinance Section for commercial purpose usage as what the Petitioner's jury found it had been, based upon the Court's instruction and its answer to their question to make a determination if a violation of 18 U.S.C. § 844 (i) was committed.

The Question Presented

1. Can a conviction stand on a jury's determination [a] subject property was used for a commercial purpose albeit according to the local ordinance in the Town the subject property is located the requirement's are not met for the property to be deemed used for a commercial purpose?

[Petitioner recognizes that the phrasing of this question may not presented in a lawful structure and seeks that it be rephrased to include any necessary issues that may support the merit's attempted to be brought forth to obtain the relief being sought that this court remand this matter to the lower Court's to address the legal question deemed appropriate.]

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(b)(i)

The parties to the proceedings are the USA Attorneys on the behalf of The United States

(ii) The proceedings list: United States v. David Jah aka David Jaa

United States District Court For The Northern District San Francisco Division CR-19-00026 WHA

United States Court Of Appeals For The Ninth Circuit 21-10213

United States Court Of Appeals For The Ninth Circuit 23-808

United States Supreme Court 22-7333

State Of California Superior Court For The County Of Contra Costa County v. David Jah

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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 A 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 August 16, 2023.

No petition for rehearing was timely filed in my case.

No Further Filings Were To Be Entertained Closing The 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

Due Process Clause Of The Federal Constitution's Fifth Amendment or Fourteenth.

Town Of Danville California Ordinance Section 32

28 U.S.C. 203 Definitions

29 U.S.C. Chapter 8 Fair Labor Standards

STATEMENT OF THE CASE

The Petitioner David Jah Sr., was indicted in the Northern District Of California in January of 2019 for violating 18 U.S.C. § 844(i) (n), the Federal Arson Statute. The subject property was a private residence in the Town of Danville 126 Rassani Drive. The government's case was based upon the fact the owner of the property a California licensed attorney used a bedroom of his home shared with his wife, child and grandchild. The spare room was designated as an office space thus making his home a law office. Based upon this theory the government convinced the trial court Judge William Alsup that the testimony alone was sufficient that the home was used for a commercial purpose. Having the Court deny the Petitioner's Motion to Dismiss filed in Pro Se, the trial was had and a guilty verdict was reached. The Petitioner was sentenced to 18 years of the 20 year statute maximum albeit no fire occurred and the Petitioner had a Criminal History Category III, four points two due to the instant offense was committed while being on probation.

Prior to trial the Petitioner made an attempt to subpoena the business records of the alleged law office to rebut the claim that the property was being used for a commercial purpose. The Court denied the request for business records as well as the tax records on the premise that the request was intrusive. The Court made its conclusion about the property usage for a commercial purpose not based upon local rules and laws.

A Writ of Mandamus was filed to seek that the unanswered question of the private residence actual usage was in fact for a commercial purpose as a matter of law. The request was denied and no further filings was to be entertained making the Supreme Court the last attempt for a miscarriage of justice to be rectified. The statute in part states that the subject property be used in interstate or foreign commerce or in any activity affecting such. The jury was charged with answering if the subject property was used for a commercial purpose. Thus the question must be answered for the record to reflect was the subject property actually used for a commercial purpose according to law. The law offices of Beles and Beles refused to raise the issue on direct appeal causing prejudice to Petitioner leaving a void in the record causing prejudice.

see Appendix B page 4

The court of appeals found that the response to the jury question by the district court was proper in reference to United States v. Cortes, 299 F.3d 1030, 1034 (9th Cir 2002) (explaining that Jones "interpreted the [interstate commerce] element to encompass only property actively employed for commercial purposes". Having stopped short of the opinion by Honorable Stephens, Jahs' panel composed of Moskowitz District Judge, Circuit Judges S.R. Thomas and Bennett did not include Jones, U.S. at 857 which stated (Rather than expose every "building in the land" to the wrath of the arson statute... the jurisdictional element to encompass only property actively employed for commercial purposes; "[a] passive, passing, or past connection" to interstate commerce was not sufficient. Id. at 855. This is why business records was needed proving active employment and tax records was not in existence showing passive connection to show insufficiency of evidence. Furthermore it is due process that consideration of the such for a lawful determination of a subject property usage for a commercial purpose thus denial was prejudicial.

Cortes, a carjacking case prosecuted under the carjacking statute 18 U.S.C.S. § 2119 supports Jahs' claim that the record in his case does not support sufficient evidence to uphold his conviction constitutionally. In Cortes there was no doubt each of the elements were checked off clearly, a Oldsmobile in California transported, or shipped in interstate commerce, and the intent to take the vehicle from a person with force all were clear thus proving each element.

Aljaban, 626 F.3d 940 (7th Cir 2010) is a case distinguishable as well be it that, the subject property was a Tabacco Shop and had a loading dock area. The sufficiency of the evidence was supported by the active use for commercial use to sell Tabacco products to the public. The space was a rented space from the space's owner. Notwithstanding the subject property was an apartment which falls under the per se rule covering the §844.

The issues are whether the subject property involved in the indictment 1) had a sufficient interstate nexus 2) did its function based on the alleged usage equate to a passive casual connection to commerce if any? When determining the plain meaning of language, the Ninth Circuit may consult dictionary definitions. "Use" has been defined as: to put into service or apply for a purpose; employ. The definition is very similar to the way the Ninth Circuit has defined "use" in applying a different statute, which was: to put into action or service, avail oneself of, employ. The United States Supreme Court, the word "use". in **legislation** as in conversation, ordinarily signifies active employment.

In Af-Cap Inc. v. Chevron Overseas (Congo) Ltd. in 2006, the United States Court of Appeals for Ninth Circuit adopted the test articulated by the U.S. Court of Appeals for the Fifth Circuit to determine whether property was used for a commercial activity in the United States. Property is used for a commercial activity in the U.S. when the property is put into action, not in connection with a commercial activity or in relation to such activity. The determination considering the use of the property in question in a straightforward manner, appreciating the fact that the further removed the property use from commercial in nature the less likely it is that the property was used for a commercial purpose. Attempting to qualify or characterize property use as exceptional or unexceptional, unnecessarily complicates the determination.

The Town of Danville in California requires that any buisness generating revenue within the Town of Danville limits is **required** to obtain a Danville buisness license. This includes a home-based buisness. Any buisness that does not have a commercial storefront, office, commercial or industrial location is considered a home-based buisness even if sales or services are performed outside the residence.

Af-Cap Inc. v. Chevron Overseas (Congo) held a property is used for and in a commercial activity in the United States when the property in question is employed for a commercial activity" Id. at 109. Thus a misinterpretation of law has occurred § 844 (i) should had never been applied. Based upon a determination of Law as to which the reviewing authority of the Court's does come into play, the Order of the conviction cannot stand. See Secv. Chenary Corp., 318 U.S. 80, 94 87 L. Ed 626 63 S.Ct 454 (1943). The Law has been misconceived. In Jones v. U.S., the precedent 844 (i) Arson case, each case cited showed a direct connection to interstate commerce that was supported by evidence of **tax records** or the evidence of products that were sold and or purchased from out of State, to justify a property was for commercial use.

There are several issues that are debatable and not frivolous as required, the burden has been overcome and proven that substantial questions of law and facts are to be addressed by the reviewing Court, and when viewed in the light of the United States Constitution and caselaw a court will render the relief defendant seeks. When a jury is misled, and prevented from making an conclusion about alleged buisness activities without being able to analyze the records (particularly tax records) which a rational jury would base buisness activity upon, notwithstanding, the trial court intervening for the prosecutor and denying the request of the records of the buisness creates a cumlative effect for a miscarriage of justice. See United States v. White, 771 F.3d 225 (4th Cir. 2013) the jury instruction charged the jury to **consider the evidence of how the property was classified for insurance and tax purposes** in deciding whether the property in question was **used** in interstate commerce within the meaning of the statute. The allegation of commercial activity alone does not provide the requisite nexus between the function of the property and interstate commerce. See U.S. v. Ryan, 227 F.3d 1058 (8th Cir. 2000)(explaining a commercial building must still have an active connection to interstate commerce) again the subject property was not classified as a commercial property to be covered by § 844(i).

REASONS FOR GRANTING THE PETITION

The jury not only was charged with an instruction that was different from the actual statute. The jury was prevented from considering material evidence and could not have made a rational determination not having all the evidence to make a factual conclusion. The Court made the decision if the subject property was used for a commercial purpose and did so without taking into consideration of the local laws in which the subject property was located. By the bypassing of the local rules and laws and applying Federal Laws due process was violated? See Appendix D

AFTER REVIEWING THE FACTS HEREIN [P]ETITION FOR A WRIT OF MANDAMUS AND THAT IT STATES AT LEAST ONE FEDERAL CONSTITUTIONAL CLAIM DEBATABLE AMONG JURISTS OF REASON. NAMELY WHETHER THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S PROSECUTION. Or construed liberally as to the actual JURISDICTIONAL ISSUE the Court is requested to grant the Petition in the interest of justice. The essential element of the crime convicted of is the unanswered question presented to this Court to compel to be answered was the subject property used for a commercial purpose, in the City and County it was in, did the lower Court commit a clear error of law by determining the use of a property without considering the local laws first, and not limited did the private residence not considered used for a commercial purpose locally be deemed to arise to a Federal matter?

The pro se filing herein is sought to be construed liberally thus if this request is deemed to be a writ of certiorari it is request that it should be granted as the claims have merit and warrant relief.

The judicial power of the United States in this Court includes the power to resolve the specific type of "Controversy" being raised, "Jurisdiction". The Founder's understanding of the jurisprudence system support's the requested remand. It is required that the question be answered because the answer could shed light on the fact that the remand is warranted for the conviction to be vacated because either the Court lacked jurisdiction or that the government did not prove at trial the subject property was used **for** a commercial purpose, albeit the statute required the property be used **in** interstate commerce.

As a matter of law a "clear error of law and facts" has been applied in the above captioned case. Pursuant to the demonstration necessary to warrant the intervention of this court by means of the extraordinary remedy of mandamus. See Below.

The Honorable Justices are asked to take judicial notice of the Town of Danville in California requirement's for what it takes to be a business within the Danville limits. See Appendix D ["Any business generating revenue within the Town of Danville limits is required to obtain a Danville business license. This includes home-based businesses. [A]ny business that does not have a commercial storefront, office, commercial or industrial location is considered a home- based business even if sales or services are performed outside the [r]esidence. (danville.ca.gov/doingbusiness) (Town Website)

Also see Appendix D which is asked to be taken under judicial notice as well which is from the Town of Danville website see STEP 9 which states in the "Applying for a Business License" section that ["Danville [r]equires persons carrying out any services; trade, or occupation in the Town to obtain a Business license.] In the "Home Occupancy Permit" section it states ["If you wish to operate a [b]usiness out of your home you are required to complete and file a Home Occupation Permit Application to be processed through the Planning Division prior to securing a business license.

In this case the appellant was prevented from obtaining records to show that the proper inquiry applied would have shown the dwelling was not subject to federal prosecution under § 844(i). The prevention of such material evidence is an extraordinary compelling reason to order the lower court's to answer a material question and or to compel the lower court's to use the controlling laws of the City and County of Contra Costa County where the subject property is located. The request from the Petitioner to order the panel of the denial of the Writ of Mandamus to remand the question to be answered by the District Court is vital to relief being sought and be it that the relief sought is an "element" of the charged offense makes the request an "extraordinary remedy" appropriate for the "exceptional circumstances" now before this Court, where a lower court's failure to follow this Court's clear order to assess the local laws first to determine if the property usage as a matter of law will leave Petitioner with "no other adequate means to" to enforce their "clear indisputable" right's. (citation omitted)

Appellant David Jah Sr., asserts that both the District and Circuit Court has misinterpreted the 18 U.S.C. §844 (i) Arson statute and the Jones vs. United States precedent federal arson case. By doing so the rulings need to be reconsidered for constitutionality.

The District Court's response to a jury question asking: " In order to prove the [interstate] element, does the building only need to be used in a commercial use and interstate commerce or does the building only need to be used for a commercial purpose" informing the jury "this would be sufficient to prove the [interstate commerce] element." The Court circled the second part of the question. see Appendix C

A three-judge panel of the circuit Court, concluded that the interstate commerce element can be satisfied with the evidence that a law practice is maintained in a home, by construing Jones v. United States, 529 U.S. 848, 859 (2000)(holding that Section 844 (i) applies to "property currently used in commerce or in an activity affecting commerce"). However the Circuit Court overlooked in Jones, the late Justice Ginsburg also delivered that the proper inquiry into the applicability of § 844 (i) is the requirement of a two-part inquiry which states the Courts must look into the function of the property and then into whether that function affects interstate commerce. "And" means "and" and not or, stop at the first part of the dictation.

The appellant ask that the judgement of conviction be reversed because the Courts overlooked the proper two-part inquiry requirement by doing so, has erroneously caused a Constructive amendment of the indictment as well as made a variance from what the indictment, jury instruction and the statute all were before deliberations began.

As a general rule, courts should enforce a statute according to its terms. See United States v. Ron Pair Enters., Inc., 489 U.S. 235, 245, 109 S. Ct. 1026 103 L. Ed. 2d 290 (1989)(review of congressional intent unnecessary if statutory language clear and without significant conflicting State or Federal interests); Badaracco v. Commissioner, 464 U.S. 386, 398 104 S. Ct. 756, 78 L. Ed. 2d. 290 (1989) (courts are not allowed to rewrite statutes). When construing a statute it is to be presumed Congress intended meaning expressed by clear language of statute is what it means.

In construing this pro se filing liberally, the factual innocence claim being asserted herein is intended to shed light on the fact that the prohibited act required for a violation of 18.U.S.C. § 844 (i) did not occur. See *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010). In light of all the evidence presented, which judicial notice was asked to be taken of which included The Town Of Danville Ordinances and Contra Costa County and California State business and commerce department's all showing that the subject property was not deemed used for a commercial purpose or in a commercial activity. *Stephens v. Herra*, 464 F.3d at 898 (9th Cir. 2006) controlling that a Petitioner must demonstrate that it is more likely than not no reasonable juror would have voted to convict. Here is the case local laws and State laws show that the property was not deemed used for a commercial purpose. Albeit a jury found that the subject property was used for a commercial purpose. This credible allegation is overwhelming undisputable providing merits for relief.

The fact is that pursuant to local laws and the State of California in order for a property to be **used** for a commercial purpose certain requirement's are needed to be satisfied and as a matter of law the subject property did not take those steps for their property to be applicable to the 18 U.S.C. § 844 (i) statute. Thus the Petitioner David Jah is actually innocent of the conviction because the conduct alleged was not prohibited by federal law. See *Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011).

In conclusion the relief sought is that this Court grant this Writ of Mandamus and order the District Court to vacate the conviction or in the alternative order that the Court consider the local and State laws and assess if the property is used for a commercial purpose to suffice the two-part inquiry function requirement for § 844 (i), to be applicable.

9-19-23

Dated


David Jah Sr., In Pro Se
Petitioner