

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 09-3015**

**September Term, 2012**

FILED ON: OCTOBER 26, 2012

UNITED STATES OF AMERICA,  
APPELLEE

v.

EDWARD J. ADAMS, ALSO KNOWN AS EDWARD JAMAL ADAMS,  
APPELLANT

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Appeal from the United States District Court  
for the District of Columbia  
(No. 1:08-cr-0058-1)

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Before: HENDERSON and TATEL, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*

**J U D G M E N T**

Upon consideration of the record from the United States District Court for the District of Columbia and the briefs and arguments of the parties, it is

**ORDERED AND ADJUDGED** that the judgment of the District Court be affirmed.

Appellant challenges the District Court’s denial of his motion to suppress evidence. He argues that, in ruling on the motion, the District Court misallocated the burden of persuasion and made clearly erroneous credibility determinations and factual findings.

Appellant did not object below regarding the burden of persuasion, so we review that claim for plain error. Even if we assume that the District Court supposed that appellant had the burden of persuading the court that the search was illegal, a matter on which the record provides appellant with at best equivocal support, appellant has not shown “a reasonable likelihood” that any such supposition affected the outcome—as he must in order to prevail. See, e.g., *United States v. Gomez*, 431 F.3d 818, 822 (D.C. Cir.

2005). We are confident that the alleged error had no impact on the court's conclusion regarding the validity of the search. "Burden of proof is important when the evidence is in equipoise" and thus "should determine the outcome only when decision is balanced on the razor's edge." *Cates v. Morgan Portable Bldg. Corp.*, 780 F.2d 683, 688 (7th Cir. 1985). In this case, the court's assessment of the evidence makes clear that it found that evidence far from evenly balanced.

We further reject appellant's claim that the District Court's credibility determinations and factual findings were clearly erroneous, insofar as he raises such a claim independently of his argument that the supposed misapprehension of the burden of persuasion affected the court's conclusion. Appellant has not persuaded us that the District Court credited "exceedingly improbable testimony," *United States v. Delaney*, 651 F.3d 15, 16 (D.C. Cir. 2011), nor has he left us "definitely and firmly convinced that a mistake [has] been committed," *United States v. Askew*, 529 F.3d 1119, 1123-24 (D.C. Cir. 2008) (en banc) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)).

Pursuant to Rule 36 of this Court, this disposition will not be published. The clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Jennifer M. Clark  
Deputy Clerk