

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OF America

Rahman Fulton — PETITIONER
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rahman Fulton
(Your Name)

FCI Allenwood, P.O. Box. 2000
(Address)

White Deer, PA. 17887
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Petitioner comes forth with Question base under Graham v. United States, U.S., No. 16-6308, friend of the Court brief filed 10/28/16. To Be Held In Abeyance To Outcome Of Supreme Court Decision. Mr. Rahman brings same conclusion when FBI use mining mobile phone provider records to point him at Bank Robbery base on the phone call to Ms. Karina Echevarria on May 25, 2012 at 4:19pm. Petitioner ask The Supreme Court grant a "GVR"

Petitioner comes forth with Question base under Lynch v. Dimaya, No. 15-1498 To Be Held In Abeyance To Outcome Of Supreme Court Decision. Petitioner ask The Supreme Court grant a "GVR"

- (a) Petitioner states federal bank robbery statue does not require a knowing or intentional "mens rea" in association with the use of force or intimidation. Therefore "force" clause of 18 U.S.C. 924(c)(3)(A) does not apply Mr. Rahman under residual clause 924(c)(3)(B) which identical to 16(b). Count 2 should be dismiss for not being "Crime of Violence"
- (b) Petitioner argues Mathis v. United States, 136 S.Ct. 2243, 195 L.Ed. 2d 604(2016) Mr. Rahman brings argument under lessor included offense of Bank Robbery which can be committed by means of extortion that does not require the use or fear of physical force. Therefore Count 2 should be dismiss for not being "Crime of Violence"

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A On September 19, 2016 the Judgement was affirmed by the court of Appeals For The Third Circuits.(Appendix A)

APPENDIX B On January 28, 2014 Mr. Rahman Fulton was Found guilty In Jury Trial on Count 1 of the Indictment-Guilty, Count 2 of the Indictment -Guilty(Appendix B).

APPENDIX C On February 8, 2017 a timely Filing of Rehearing Motion was Denied.(Appendix C)

APPENDIX D On January 6, 2015, a timely Notice of Appeal was filed(Doc. 81) (Appendix D)

APPENDIX E On September 20, 2013 Mr. Fulton Filed motion for Reconsideration issuance of ex parte court order, Cellco Partnership, DBA-Verizon wireless shall provide all subscriber information as to Rahman Fulton and Sprint/Nextel shall provider.(Appendix E)

APPENDIX F On 12/12/12 (Doc 3) Indictment as to Rahman Fulton (1) counts 1, 2 (mr&d) (Appendix F)

12-12-12

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Graham v United States,	No. 16-6308(2016)
Lynch v Dimaya,	No. 15-1498(2017)
Mathis v. United States,	136 S.Ct. 2243(2016)

STATUTES AND RULES

18 U.S.C 2113(a) and (d)
18 U.S.C. 924(c)

OTHER

TABLE OF AUTHORITIES CITED

Cases:

Graham v United States, US. No. 16-6308(2016)
Griffith v. Kentucky, 4/9 US. 314, 328, 107 S.Ct. 708 93 L.Ed 2d 649(1987)
Lynch v Dimaya, US. No. 15-1498(2017)
United States v. Knight, US. No. 15-004) US Dist. Lexis 5858(2016)
United States v Edmundson, US Dist. Lexis 1/1007(2015)
United States v Melvin, 621 Fed. Appx. 226, 226-27 4th Cir.(2015)
United States v. Pickar, 616 F.3d 821, 825(8th Cir. 2010)
United States v Yockel, 320 F.3d 818-824(8th Cir. 2003))
Leocal v. ashcroft, 543 U.S. 1,9, 125 S.Ct. 377, 160 L.Ed. 2d 271(2004)
Hullaby v. United States, Us Dist. Lexis 15744 D. Ariz.(2017)
Mathis v. United states, 136 S.Ct. 2243, 195 L.Ed. 2d(2016)
united v. Slater US Dist. Lexis 1/1656(2016)
Taylor v. United Staes, 495 U.S. 575, 598-599 110 S.Ct. 2143 109 L.Ed. 2d 607(1990)

Statutes and Rules

18 U.S.C. 2113(a) and (d)
18 U.S.C. 924(c)

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 837 F.3d 281; US. App. Lexis 17050; 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 B to the petition and is

[] reported at January 28, 2014 Jury Trial; 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 September 19, 2016.

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: Febräury 8, 2017, and a copy of the order denying rehearing appears at Appendix C.

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

Amendment 4th

Unreasonable Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

AMENDMENT 6

Right of the accused

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State and district wherein the crime shall have been committed which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation to be confronted with the witnesses against him to have compulsory process for obtaining witnesses in his favor, and have the Assistance of Counsel for his defense.

CONSTITUTIONAL AND STATUTORY PROVISION'S INVOLVES

AMENDMENT 4th

The right of the people to be secure in their persons house, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by oath or Affirmation and particularly describing the place to be searched and persons or things to be seized.

AMENDMENT 6

Right of the accused

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by Law and to be informed of the nature and cause of the accusation to be confronted with the witness against him to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Fulton was charged in a two-count indictment, filed on April 16, 2013 with bank robbery, in violation of 18 U.S.C. 2113(a) and 2(Count one), and use of a firearm in furtherance of a crime of violence, in violation of U.S.C. 924(c)(1)(A)(iii)(Count Two) App. 14; ECF #16, The trial began on January 14, 2014, App. 19; ECF #5 On January 28, 2014, the jury return a guilty verdict. App. 20: ECF #07. On December 22, 2014, Mr. Fulton was sentenced to 141 months imprisonment. App. 21# 78.

IN THE SUPREME COURT OF THE UNITED STATES
SUPPLEMENT OF BRIEF

RAHMAN FULTON

v.

UNITED STATES OF AMERICA

STATEMENT OF CASE

On May 25, 2012 a large man who appeared to be wearing multiple layers of clothing entered the PNC Bank in North Randolph, Pennsylvania carrying a gun.(App. F.) He ordered everyone to the ground and demanded money from the tellers' second drawers. Two PNC employees quickly handed him two stacks of cash, one of which contained a concealed Global Positioning System tracking device. The robber's face was completely covered by a ski mask. The robbers' height was estimated as being anywhere from 6 feet to 6 foot 3 inches. One employee described him as having a "medium build" and being "solid," but admitted she "couldn't really totally tell[if he was] muscular or not because the way [he] was covered." she estimated his weight at 220 or 230 pounds. Another employee described him as "a husky man, built" and "not necessarily fat but, you know, muscular." she said it was hard to tell his build because of his bulky clothing. The robbery occurred at 4:08p.m. and lasted a matter of minutes. Mr. Fulton explain without mobile phone provider records. The phone call to Ms. Karina Echevarria would have been suppressed under Fourth Amendment.

Cannot stand.

The Central dispute at trial was whether the PNC Bank in Randolph, New Jersey, was robbed a little after 4pm. On May 25, 2012. Fulton was charged, but substantial evidence pointed to Ricardo Barnes, another African American man who lived next door to Fulton in a single story, side-by-side duplex separated by a wall down the middle of the building. Fulton lived on one side, at 13 Jefferson Avenue, Barnes in the other, at 17 Jefferson Avenue (together, "13/17 Jefferson"). The duplex is located in Victory Gardens, a town close to the PNC Bank. Twenty-six witness testified at trial, 21 called by the government and five the defense. Witness included bank employees, responding law enforcement officers, several of Fulton's neighbors and housemates, his girlfriend and his girlfriend's sister, experts in cell phone analysis, an expert in GPS technology, Barnes's mother, and Barnes himself.

Generally, the testimony covered the robbery itself the immediate police response, follow-up interviews, and analyses of cell phone records and data produced by GPS tracking device. More specific topics included testimony by Fulton's girlfriend and his girlfriend's sister about conversations they had with Fulton, testimony about the layout 13/17 Jefferson and testimony about the physical resemblance, or lack thereof, among Fulton, Barnes, and the man depicted in the bank surveillance video and still photographs.

SHOULD THE SUPREME COURT GRANT A STAY UNDER RULE 23
Under Graham v. United States, U.S. No. 16-6308,
friend of the Court brief filed 10/28/2016. To
Be Held In Abeyance To Outcome of Supreme Court
Decision. Petitioner ask this Court to "GVR" his
his case back to the 3rd Circuit Court of Appeals
Under Grounds of harmless Error Rule 52(b) See
(Griffith v. Kentucky)

Mr. Fulton argument is base on Goverhment witness Karina Echevarria (J.A 571) that received an in coming call from the defendant on the day of the Bank robbery at 4:19pm demonstrate that the officers used a "Pen Register" technology that only provide information about incoming and outgoing calls. Furthermore Government witness FBI agent James Scarozzi gave a Lay Opinion testimony under Fed. R. Evid. 701 stating that Ricardo Barnes who lived next door to the defendant was excluded as a suspect. Because Barnes received a phone call at the same time of the Bank Robbery at 4:08pm. (J.A. 816) (which went to voice mail)(J.A. 894) Mr. Fulton made a 12-second phone call to his girlteer's friend Karina (J.A. 564) Mr. Fulton occasionally picked Echevarria up from this K-Mart and drove her to school. Because the police were just beginning to arrive in Fultons neighborhood at the time he placed this call, the Government argues that Echevarria's testimony was probative of his guilt. 46, (Appellee's Br. at 31) According to the government Fulton could not have known about the PNC robbery that occurred just 10 minutes prior to his phone conversation unless he was involved in this crime.

Petitioner points to the facts of this case were its more unfactual problems then evidence at hand Mr. Fulton rely's on Graham to be the prevailing law, when there are evidence base on speculation. Now it is a fact Mr. Fulton always call Ms. Echevarria everyday as you see on the prior

calls logs. The problem is how FBI agent use mobile phone location data that tied him to Bank robbery. The government was able to get the information by mining mobile phone providers records. Mr. Fulton argument should have been to suppress the location of data. When the call was outgoing or incoming by Ms. Echevarria. Therefore split into Third Circuit and Fourth Circuit also Sixth Circuit are controlling into Mr. Fulton case were the police must have a search warrant before they compel mobile phone service providers to turn over data that locates suspect's physical movements.

Wherefore Petitioner Mr. Fulton is requesting this Court to "GVR" his case back to the 3rd Circuit Court of Appeals in light of this Courts ruling under US v Graham To Be Held in Abeyance To Outcome of Supreme Court Decision.

SHOULD SUPREME COURT GRANT A STAY UNDER RULE 23 Under Lynch v. Dimaya, No. 15-1498(Jan. 19, 2017 Oral Argument) To Be Held In Abeyance To Outcome Of Supreme Court decision. Petitioner ask this Court to "GVR" his case back to the 3rd Circuit Court of Appeals in light of Griffith v Kentucky.

Mr. Fulton first step is to establish the approach at hand which dealt 2113(a) and (d) See(Us v Dixon, 779 f.3d 758 7th Cir. June 23, 2015) 2113(a)(bank robbery by intimidation) rather than 2113(d)(violation of 2113(a) by using a dangerous weapon or device). In one robbery Dixon waved at teller a bag containing a stiff object and threatened them, saying five seconds I'm gonna shoot. In the other Dixon brandished an object with a long barrel and directed a teller to "give him the money or he would shoot." The object in both robberies was not gun but a

butane lighter with a long barrel. Dixon also pressed the gun against one teller neck when making threat. Government never disputed that this happen on a appeal. See (McLaughlin v. U.S. 106 S.Ct. 1677(1986) gives three reason way an unloaded handgun is a dangerous weapon"under 2113(d) first, every firearm is potentially dangerous, Second, it instill fear in those at which it is pointed, third, it can cause injury when used as a bludgeon.

Mr. Fulton points To Volume 2 Trial The Government first witness Robin Elibeth Hunt (Page(18) V.2,T.P., describing the Bank teller handing over the money to the Bank robber on page (19) G.W. Robin Hunt testified the bank robber took the money from the customer side and that the bank robber left. On page (21) from V.2.T.P. G.W. Robin Hunt testified that she could'nt tell if the Bank Robber was muscular or heavy set because of the sweater the way the person was covered.

The Government second witness Carol Viola page (33) V.2.T.P. Carol Viola testified that the Bank Robber cocked the gun. Page (40) Carol Viola testified that she heard the gun clicked. Page(42) Carol Viola testified that the bank Robber pointed the Gun at the teller line. Page 44. Carol Viola stated the Bank Robbery stayed three minutes. Carol Viola is the PNC president Branch manager on page 37.

(a) Petitioner states Federal Bank Robbery Statute does not require a knowing or intentional "Mens Rea" In association with the use of force or intimidation. Therefore "force" clause of 18 U.S.C. 924(c)(3)(A) does not apply to Mr. Fulton under residual clause 924(C)(3)(B) which identical to 16(b). Count 2 924(c) should be dismiss for not being "Crime of Violence"

Petitioner comes forth with New Jersey Robbery statue See (U.S. v. Knight, 2016 U.S. Dist. Lexis 5858 D.N.J Jan. 19, 2016) Robbery did not have as an

element the use, attempted use, or threatened use of physical force.

This analysis is use in a older case and Mr. Fulton points to See(US v. Edmundson, 2015 U.S. Dist. Lexis 171007 MD SD. Dec. 30, 2015) 18 U.S.C. 924(c)(3)(A) was not met under force clause") and based on Johnson, the residual clause of 18 U.S.C. 924(c)(3)(B) now fall under residual clause") was unconstitutionally vague in violation of the Fifth Amendment Due Process Clause. (US v. Melvin, 621 Fed. Appx. 226, 226-27(4th Cir. 2015) (Vacating the defendant's enhance sentence under the ACC based on the prior North Carolina Conviction for conspiracy to commit robbery with a dangerous weapon because these offense did not qualify as a violent felony under either the ACC force clause. Other Circuits has held the Mens Rea for the federal bank robbery offense, 2113(a) does not attach to the use of violence or intimidation. See(United States v. Pickar, 616 F.3d 821, 825(8th Cir. 2010)(finding that the federal bank robbery statutes does not require a knowing or intentional mens rea in association with the use of force or intimidation); United States v. Yockel, 3209F.3d 818 824(8th Cir. 2003)(“The district court correctly concluded the mens rea element of bank robbery did not apply to the element of intimidation.”) Pursuant to Leocal v. ashcroft, 543 U.S. 1, 9, 125 S.Ct. 377, 160 L.Ed. 2d 271(2004). “the key phrase....the use.....of physical force against the person or property of another' or most naturally suggests a higher degree of intent than negligent or merely accidental conduct.”(quoting 18 U.S.C 16(b))). See(Hullaby v. united states, 2017 U.S. Dist. Lexis 15744 D. Ariz. Feb. 1, 2017)(See(Stay granted under(Lynch v. Dimaya) by Hullaby v. United States, 2017 U.S. Dist. Lexis 22357(D.Ariz. Feb 16, 2017)(Bank Robbery shouldn't qualify as a "Crime of Violence" under Section 924(c))

Wherefore Mr. Fulton Bank Robbery statute does not require a knowing or intentional "Mens Rea" in association with the use of force or Intimidation. Therefore Petitioner 924(c) Count should be dismiss under 16(b) which is identical to 924(c)(3)(B).

(b). Petitioner argues Mathis v. United States, 136 S.Ct. 2243, 195 L.Ed. 2d 604(2016) Mr. Fulton brings argument under lesser included offense of Bank Robbery which can be committed by means of extortion that does not require the use or fear of physical force. Therefore Count 2 should be dismiss for not being "Crime of Violence"

Mr. Fulton cites Supreme Court's decision Mathis which holds that, where a crime has various means of committing a single element that is broader than generic offense, the broader crime cannot serve as a predicate under the armed Career criminal Act. 136 S.Ct. 2243, 2248-49. Mathis also hold that, in considering such a statute with alternative means of satisfying a single element, courts may only consider those elements "to explore the manner in which the defendant committed that offense. Id at 2252. Movants contend that Mathis demands that 2113 be read to include not only those takings perpetrated by "force and violence, or by intimidation", but also those perpetrated by way of "extortion" See (U.S. v. Slater, 2016 U.S. Dist. Lexis 171656 ED. Cal. Dec. 12, 2016) Petitioner also establish a robbery is an enumerated offense, Federal Bank Robbery would still not qualify. Under the categorical approach, the sentencing court looks only to the elements of the prior or current offense and compares them to the "generic" crime Descamps, 133 S.Ct. at 2283(Quoting Taylor, 495 U.S. at 599) "If the Statute sweeps more broadly than the generic crime, a conviction under that law cannot count as a predicate "Crime of Violence," even if the defendant actually

committed the offense in its generic form.

Wherefore Petitioner Mr. Fulton is requesting this Court to "GVR" his case back to 3rd Circuit Court Of appeals in light of his court's ~~this court's~~ ruling Mathis v. United States, 136 S.Ct. 2243, 195 L.Ed. 2d 604(2016) or in the alternative to Held In Abeyance To Outcome of Supreme Court Lynch v. Dimaya, No. 15-1498(2017)

REASONS FOR GRANTING THE PETITION

Petitioner Brings forth clear argument that without Ms. Karina Echevarria statement he would likely be able to be found guilty of 2113(a) and (d) also 924(c) charge with Graham v. United States testimony of this witness would be suppress dued to 4th amendment violation.

Lynch v Dimaya, No. 15-1498 would be good argument under 16(b) were Mens Rea is not met dued to reckless conduct therefore it impossible to found Petitioner guilty of Count 2. Even with that Mathis v. United States lessor include offense will be Extortion.

Wherefore Petitioner should be granted these argument held in abeyance to outcome of Graham v. United States, OR Mathis v. United States Held In abeyance to Lynch v Dimaya is decided. reverse and with Count 2 remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rahman Fode
Date: 5/5/17