No. _____

OCTOBER TERM 2018

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ANTOINE DAVIS

_____ — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA,

_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT.

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

PETITION FOR WRIT OF CERTIORARI

ANTOINE DAVIS #74600-067

(Your Name)
Unit 5841
FEDERAL CORRECTIONAL INSTITUTION

(Address)
P.O. BOX 2000
FORT DIX, N.J., 08640

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Lower Court Misapprehend it's Abuse of discretion when the lower court excluded evidence of the Government witness, which evidence was purported to have been seized in an unrelated case?

2. Whether the error was plain An affected the integrity of the prior proceeding resulting in substantial prejudice to petitioner's Fifth and Sixth Amendment Constitutional Rights?

3. Whether the trial Court erred, and the Appellate court overlook that the "quashing of the Subpoena deprive the petitioner a fair trial?

4. Whether Counsel was ineffective for failing to challenge the Contrary rule of constitutional law?

LIST OF PARTIES

[X] 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 AUTHORITIES CITED

CASES PAGE NUMBER

SEE MEMORANDUM AND BRIEF ATTACHED
WITH SUPPORTING TABLE OF AUTHORITIES:

STATUTES AND RULES

SEE MEMORANDUM AND BRIEF
WITH SUPPORTING STATUTES AND RULES:

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

[X] reported at Third Cir. (No. 17-2483); 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[ ] is unpublished.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

[X] reported at M.D. Penn. (No. 4:16-CR-000006-2; 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[ ] is unpublished.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.

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JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 3/26/18.

[ ] No petition for rehearing was timely filed in my case.

[X] 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

SEE MEMORANDUM AND BRIEF IN SUPPORT

STATEMENT OF THE CASE

On June 16, 2015, Pennsylvania Bolice Troopers arrested Raheem Ruley and Appellant, Antoine Davis, after police executed an anticipatory search warrant which was occupied by the aforementioned named individuals.

The search yielded heroin from a hallway safe belonging to Ruley , other items belonging to the aforementioned named suspect at the time cash was found in the petitioner's safe in what purported to be his bedroom, as well as what was alleged to be some drug related items, throughout the house. There existed evidence that Ruley was using petitioner's (nicknamed), Ruley was cited as making three alleged cocaine sales earlier in the month to an undercover state trooper introduced to Ruley by a cooperating informant.

On or about June 16, 2015 the Commonwealth of Pennsylvania filed charges related to the possession and sale of the drugs seized from the Tinsman Avenue house, against Ruley and the petitioner. The United States took the prosecution over and on January 14, 2016 a grand jury returned a five-count indictment charging petitioner with various controlled substances offenses:

> Petitioner submits and requests a extension of time due to the fact that the Institution in which he is housed is currently repairing the housing unit in which petitioner is housed, and that impediment has delayed petitioner's ability to finish this petition appropriately and request's a additional time in which to submit his " Reason's why this court should Grant this request for the Writ.

Petitioner submits this incomplete application for the Petition for a Writ, in part to meet the filing deadline, but due to petitioner's Pro Se status, request's additional time up until and including October 25, 2018 to present the aforementioned reasons why this court should grant the Writ. Petitioner has designated the (4) questions in which this action

is incumbent, and further submits that this court nor the Solicitor General is not burden nor prejudiced by extending the time up until and including October 25, 2018 to allow the petitioner to submit his Reason for Granting the Writ with an accompanying argument in support.

Dated this 22nd day of September 2018

RESPECTFULLY SUBMITTED,

Antoine Davis

ANTOINE DAVIS
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REASONS FOR GRANTING THE PETITION

QUESTIONS PRESENTED

Whether the presentation of seized evidence in the amount of $1,000 in U.S. Currency were factually and legally insufficient to obtain Petitioner's conviction, where law enforcement involved violated its chain-of-custody under Fed. R. Evid. 901, by failing to preserve the evidence in its original condition at the time, it was seized, and therefore this Court should vacate and remand the case with instructions to dismiss the tainted evidence and order a new trial under Fed. R. Cr. P. 52(b) plain error?

Whether the District Court denied Petitioner of the necessary compulsory process to confront certain key government's witnesses, and the deprivation of such due process rights were not harmless under the Fifth and Sixth Amendments of the Constitution. Whereas, this Court should vacate and remand the case with instructions to subpoena said witnesses, to afford Petitioner a meaningful opportunity to confront his accusers, in a new trial under Rule 52(b) of Fed. R. Cr. P.?

Whether the trial court erred when it in a bias manner allowed the prosecutorial misconduct and the misrepresentation of evidence to go uncorrected.

STATEMENT OF THE CASE

On June 16, 2015, Pennsylvania state police troopers arrested Raheem Ruley and Petitioner, Antoine Davis, after the police executed an anticipatory search warrant at 321 Tinsman Avenue ("Tinsman"), a Williamsport residence they and others occupied. The search yielded heroin from a hallway safe belonging to Ruley, cash in a wallet belonging to Ruley from a kitchen drawer, and cash from a safe in Davis' bedroom, as well as other drug related items throughout the house. Ruley testified at trial that the hallway safe and the heroin and drugs in the safe belonged to him. He also testified that Davis had no access or knowledge of the drugs in the safe. See Exhibit D.

The warrant issued after Ruley, using Davis' nickname "Ant", made three cocaine street sales earlier in the month to an undercover state trooper introduced to him by a cooperating informant. Between June 3 and 16, 2015, Pennsylvania State Police Trooper Ryan Kelly made three separate, informant-initiated, undercover cocaine purchases from Raheem Ruley. Unbeknowst to Davis, Ruley used Davis' nickname, "Ant", during the transactions and at other times when he plied his trade.

Trooper Kelly testified that he knew Ruley as "Ant." Confidential informant Darrell Kirsch, who initiated Trooper Kelly's contact with Ruley, also knew Ruley as "Ant." Trooper

Whipple acknowledged that "Raheem Ruley has used the street name or nickname of 'Ant.'" Beth Glace, a witness who knew both Ruley and Davis, testified that she overheard Ruley introducing himself as "Ant." See Exhibit E.

On June 16, 2015, the Commonwealth of Pennsylvania filed charges related to the possession and sale of the drugs seized from the Tinsman Avenue house, against Ruley and Davis. The United States took the prosecution over and on January 14, 2016, a grand jury returned a five-count Indictment charging: Count 1, Davis and Ruley, Conspiracy to Possess With Intent to Distribute and Distribute 100 Grams and More of Heroin, and Cocaine (21 U.S.C. § 846) from June 2014 to January 14, 2016; Count 2, Ruley, Distribution and Possession With Intent to Distribute Cocaine [21 U.S.C. § 841(a)(1)] on June 3, 2015; Count 3, Ruley, Distribution and Possession With Intent to Distribute Cocaine [21 U.S.C. § 841((a)(1)] on June 10, 2015; Count 4, Ruley, Distribution and Possession With Intent to Distribute Cocaine [21 U.S.C. § 841(a)(1)] on June 16, 2015, and; Count 5, Ruley and Davis, Possession With Intent to Distribute 100 Grams and More of Heroin, and Cocaine on June 16, 2015. [21 U.S.C. § 841(a)(1)].

On March 18, 2016, the government filed an Information pursuant to 21 U.S.C. § 851, notifying Mr. Davis of its intention to seek an enhanced penalty based upon a prior felony drug

offense. On May 3 and May 8, 2016 (respectively), Mr. Davis filed a motion to sever and a motion to suppress evidence. By July 6, 2016 order, the Trial Court denied the motions.

On September 8, 2016, co-defendant Raheem Ruley entered an "open" guilty plea to the Indictment. (U.S. v. Ruley, 4:16-CR-6-1). On September 30, 2016, following Davis' five-day trial, a jury returned guilty verdicts on Counts 1 and 5. The jury determined by interrogatory that the amount of heroin involved exceeded 100 grams.

By judgment and memorandum opinion dated July 7, 2017, the Trial Court sentenced Mr. Davis to 144 months' imprisonment on Counts 1 and 5 to be served concurrently, followed by 8 years of supervised release.

REASONS FOR GRANTING THE PETITION

A claim of insufficiency of evidence places a very heavy burden on a defendant. U.S. v. Gonzalez, 918 F.2d 1129, 1132 (3rd Cir. 1990). The verdict of the jury must be sustained if reviewing the evidence in the light most favorable to the government, a reasonable mind could find the defendant guilty beyond a reasonable doubt of every element of the offense. U.S. v. Jenkins, 90 F.3d 814, 817 (3rd Cir. 1996). Where, as here, the seized evidence in the amount of $1,000 in U.S. Currency were tampered with and/or altered by law enforcement involved, raises serious questions of law with respect to the evidence "chain-of-custody," insofar as its authenticity, and thus renders the evidence insufficient to obtain Petitioner's conviction.

Particularly, the $1,000 in U.S. Currency in question, were seized from an open safe in the master bedroom shared by Petitioner and his girlfriend, at the time the search occurred at 321 Tinsman Avenue, were insufficiently identified and represented as marked-money associated with the undercovered controlled buys of heroin and cocaine in this case. However, the government failed to properly establish the seized $1,000's authentication, as a result of law enforcement's "tampering and altering" of the evidence. Therefore, the evidence was impermissible at trial under Fed. R. Evid. 901 chain-of-custody

provision, because it was factually and legally insufficient to obtain Petitioner's conviction.

To establish the "chain-of-custody," the government need only show that it took "reasonable precautions to preserve the evidence in its original condition, even if all possibilities of tampering are not excluded." U.S. v. Dent, 149 F.3d 180 (3rd Cir. 1983). Precision in developing the chain of custody is not an iron clad requirement, and fact of a missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be and has not been altered in any material aspect. U.S. v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982).

Tangible objects become admissible in evidence [only] when proof of their original acquisition and subsequent custody forges their connection with the accused and the criminal offense. Gass v. U.S., 135 U.S. App. D.C. 11, 416 F.2d 767 (1969). The government must establish that the evidence is in substantially the same condition as it was when it was originally seized. U.S. v. Clark, 425 F.2d 827, 833 (3rd Cir. 1970). The government must eliminate possibilities of misidentification and adulteration, not absolutely but as a matter of reasonable certainty. U.S. v. Robinson, 145 U.S. App. D.C. 46, 477 F.2d 1215, 1220 (1971).

The recorded evidence in this case substantiates that, between June 3 and 16, 2015, Pennsylvania State Police Officer Ryan Kelly made there separate undercovered controlled buys of cocaine from co-defendant, Raheem Ruley after receiving information from confidential informant (CI), Darrel Kirsh, that Ruley was selling drugs. Following the June 16, 2015 controlled purchase, law enforcement executed a search at 321 Tinsman Avenue, in Wiliamsport, Pennsylvania, a resident which rents rooms out to multiple tenants, and shared by Ruley, Petitioner, Hakeem Price, and others.

At the time of the search, police seized, inter alia, $380 from a wallet in the kitchen drawer belonging to Ruley. In the master bedroom, shared between Petitioner and his girlfriend, police seized, inter alia, $1,000 in U.S. Currency from an open safe. Police also seized cash in U.S. Currency from Price's pants pocket, who was present at the time of the search. Law enforcement photographed the cash seized from Price's pants pockets to determine whether any of the bills matches the previously photocopied currency used by Officer Kelly in the three prior undercovered controlled purchases with Ruley.

Basically, law enforcement photocopied the currency to determine whether Price's pocket cash matched the undercovered marked-money involved in Ruley's controlled sales. The government

was unable to present any evidence whatsoever at trial to prove that the Petitioner had in his possession any of the marked-money used by law enforcement to purchase drugs from Ruley, albeit the government represented to the jury that Petitioner had the marked-money in his possession. This is true, because once seized, the agent arbitrarily "[com]bined" the $1,000 in U.S. Currency seized from Petitioner's safe with the $380 they recovered from Ruley's wallet in the kitchen drawer of the house.

In his opening argument, the Assistant United States Attorney told the jury that the $1,000 seized from Davis included Ruley pre-recorded buy money:

> ...a portion of the funds within that thousand dollar chunk came from the buy money that was used by Trooper Kelly to purchase drugs directly from Ruley on June 10th, just six days before the execution of the search warrant. See Exhibit A.

The AUSA emphasized that the recovery of Ruley buy money from Davis' safe demonstrated that Davis conspired with Ruley:

> [P]rerecorded buy money, is a way of identifying where the money ends up. As you've heard in the movies, you need to follow the money in this case, because when you follow the money, the trail leads directly back to Antoine Davis. See Exhibit B.

In contrast to the AUSA's opening argument, the government was unable to present any evidence that Davis' had any of Ruley's buy money because the agents combined the money seized from Davis' safe with the money they recovered from Ruley's wallet. Unlike the photograph they took of Price's wallet cash, the agents did not separately photograph the bills seized from Davis' safe and Ruley's wallet. Instead, Trooper Whipple explained, the currency from Ruley's wallet and Davis' safe money was combined and logged into evidence by denomination, not by location. Trooper Whipple also testified that he did not realize that some of the money was from Ruley's wallet until the day before his testimony. As a result, investigators were unable to determine from which stack the buy money was recovered. See Exhibit C.

"A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth." Napue v. Illinois.

Although the record squarely refuted the AUSA's opening claim that the Ruley buy-money was found in Davis' safe, the government, inexplicably, presented the combined currency in two separate jury exhibits: Exhibit 4.5, representing the $380 seized from Ruley's wallet, and Exhibit 4.12 representing $1,000 seized from Davis' safe. See Exhibit F.

A conviction obtained through the use of false evidence known to be such by representatives of the state, must fall under the due process clause. Napue v. Illinois.

The Assistant United States Attorney is/was fully aware of the fact the U.S. Currency from Petitioner's bedroom and the U.S. Currency from Ruley's wallet was combined, compared and photocopied together and separated only by denomination, as the government's own evidence establishes that fact, according to the government's own document Stamped Government Exhibit 4.45 Photocopy of Seized U.S. Currency totalling the amount of $1,400. Also Government's Case-In-Chief List of Exhibits Exhibit 8.2, identifying the said photocopied U.S. currency as U.S. currency seized from Petitioner's bedroom despite the fact that investigators only seized $1,000 from Petitioner's bedroom. See Exhibit G.

Not only did law enforcement break the "chain-of-custody" link in the seizure of currencies operation, but it deliberately altered the seized evidence, then represented to the jury as if the evidence was one -- held in separate exhibits, despite the fact that the evidence was not in the same condition as it was in, when it was originally seized. It can be said, therefore, that law enforcement did not take the necessary precautions to preserve the evidence in its original conditions, and thus there is/was insufficient proof that the seized $1,000 [was not] what it purported to be, or represented to the jury by the government.

It's axiomatic that, unless there is evidence to the

contrary, the acts of public officers enjoy a presumption of regularity, and the proper discharge of their official duties. See, Gov't. of the V.I. v. Dostalie, 1983 U.S. Dist. LEXIS 20506 (3rd Cir. 1983) (quoting Gallego v. U.S., 276 F.2d 914, 917 (9th Cir. 1960)). This rule applies to the establishment of the "chain-of-custody of evidence." The government must establish that the evidence is in substantially the same condition as when it was originally seized. U.S. v. Jackson, 649 F.2d 967, 973 (3rd Cir. 1987).

Taking together as a whole, the clear proof in the record that law enforcement broke the link in the chain of custody by tampering and altering the seized $1,000 evidence, when it arbitrarily "[com]bined" this currency with Ruley's $380, the Petitioner "rebuts" the presumption of any regularity afforded law enforcement in this case. See, U.S. v. Rawlins, 606 F.3d 73 (3rd Cir. 2010) (absent actual proof of tampering, a trial court may presume regularity in public official handling of contraband).

Furthermore and finally, the aforementioned Fed. R. Evid. 901 violation, as a result of law enforcement's improper handling of the seized $1,000 evidence in this case, in turn, violated procedural due process and are structural errors which are per se reversible. Such that, such structural errors constitute an

automatic reversal or vacateur of Petitioner's convictions under Fed. R. Cr. P. 52(b) plain error and the Fifth Amendment of the Constitution. See, Johnson v. Pinchak, 392 F.3d 551 (3rd Cir. 2004). (Misinformation provided to Johnson constituted a "structural error" requiring an automatic reversal or vacateur, as such errors are not subject to harmless error analysis.)

Petitioner rightfully argues here that, the district court's denial of his motion to subpoena and/or call agent Russell Burcher and CHS Dana Rockwell in support of a compulsory defense, violated the confrontation clause of the Fifth and Sixth Amendments of the Constitution, which guarantees an accused the right to be confronted with the witnesses against him. Id. at U.S. Const. Amend. V and VI. The provision is made applicable to the State through the Fourteenth Amendment. See, Pointer v. Texas, 380 U.S. 400, 403-06, 13 L.Ed.2d 923, 85 S.Ct. 1065 (1965). The "compulsory process clause" provides that the accused has the right "to have compulsory process for obtaining witnesses in his favor." See, Washington v. Texas, 388 U.S. 14, 17-19, 18 L.Ed.2d 1019, 87 S.Ct. 1980 (1967). See Exhibit H.

The Assistant United States Attorney's misrepresentation to the trial court that agent Russell Burcher did not participate in the investigation directly resulted in the denial of Petitioner's motion to subpoena Mr. Burcher. See Exhibit J.

The significance of agent Burcher and CHS Rockwell as a compulsory defense in this particular case, were to refute and undermine the government's proposition that Petitioner was directly or indirectly link[ed] to Eric Harding, aka Cat, a purported known heroin dealer and who he allegedly distributed heroin for, according to CHS Rockwell. In a written statement orchestrated by agent Burcher, CHS Rockwell was supposed to have picked Petitioner out from a photograph or picture array, as one of the heroin dealers who worked for Cat. The written statement from the interview between agent Burcher and CHS Rockwell were entered into evidence unchallenged. There were no other evidence adduced at trial whatsoever, which proved that Petitioner was a heroin dealer.

In addition to CHS Dana Rockwell (whom had absolutely no involvement whatsoever in this case prior to being mysteriously interviewed by agent Burcher only about 8 weeks before trial) Burcher also interviewed at least 2 other government witnesses one of whom changed the details of his statement after being interviewed by agent Burcher, indicating the fact that contrary to the government's claims, agent Burcher did directly participate in the investigation. See Exhibit K.

However, Petitioner was deprived of his due process rights

to challenge the validity of his "out-of-court identification," by being denied the right to subpoena either agent Burcher and/or CHS Rockwell to cross-examine, to determine whether the photo array procedure of him was properly conducted. That is, was he identified in an isolated photo setting or were there multiple photos she reviewed. In addition, was she improperly misled into identifying Petitioner, or did she ever identify him at all. Moreover, a compulsory process of CHS Rockwell would have given her an opportunity before the jury to compare her "in-court-identification" of Petitioner with her allegedly "out-of-court-identification" in the photograph, and with whom the person who she alleged previously sold heroin for Cat.

Without being allowed to cross examine either agent Burcher or CHS Rockwell, Petitioner was denied due process to challenge his "out-of-court-identification" allegedly depicted by CHS Rockwell in the photograph. This procedural due process "error" was not harmless. This "error," in fact, was structural and thus per se reversible because it affected Petitioner's substantial rights. Therefore, pursuant to Rule 52(b) of Fed. R. Cr. P. plain error provision, the case should be vacated and remanded for a new trial based on the deprivation of Petitioner's confrontation and compulsory process clause rights.

The Petitioner also respectfully requests relief pursuant to SRCA S. 1917 Title Sec. 101 (2017) Federal Reporter (2018).

For these reasons, the Petitioner respectfully requests that this Court grant the Writ of Certiorari for immediate release or a new trial.

Respectfully submitted,

Antoine Davis

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Additional material from this filing is available in the Clerk's Office.