

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CORINTHIAN BOSTIC — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

CORINTHIAN BOSTIC

(Your Name)

F.C.I.

(Address)

JESUP, GA 30359

(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. Did the pre-trial judge abuse its discretion by denying Bostic's appointed attorney's motion to withdraw where Bostic and his trial counsel had a conflict of interest?
2. During a pre-trial hearing, did the judge err by not informing the defendant of his right to appeal when the motion to withdraw was denied?
3. Did pre-trial judge violate Bostic's fifth amendment right to due process by denying justice to the poor when he stated "If you were a wealthy man, you could have as many lawyers as you could persuade to come into it. But we have protection for those who are indigent. We choose lawyers for them."
4. Was ineffective assistance rendered when the trial attorney withdrew the motion to suppress rather than comply with the judge's order?
5. Did Bostic's trial counsel provide ineffective assistance by not giving a reason for withdrawing the motion to suppress, and if a reason was provided, was the reason valid?
6. Who has the right to continue with the suppression motion, the attorney or the defendant?
7. Did Bostic's trial attorney provide ineffective assistance by failing to request court records and transcripts pertaining to his case from the lower courts?
8. Did the trial counsel provide ineffective assistance when he did not comply with the defendants request to appeal for a new trial?
9. Was the defendant's fifth amendment right to due process violated when his trial attorney failed to inform him before trial that he would be charged until the Armed Career Criminal Act?
10. Did the appellant attorney err by not filing a reply to the government's brief?

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:

BOSTIC CORINTHIAN, APPELLANT

CHRISTINE, BOBBY L., UNITED STATES ATTORNEY

DURHAM, JAMES D., FORMER ASSISTANT UNITED STATES ATTORNEY

GREENWOOD, NANCY C., ASSISTANT UNITED STATES ATTORNEY

MATEO, MARCELA C., ASSISTANT UNITED STATES ATTORNEY

MOCK, JR., ROBERT M., FORMER ATTORNEY FOR APPELLANT

MOORE, JR., HON. WILLIAM T., UNITED STATES DISTRICT JUDGE

PATRICK, BRADFORD C., ASSISTANT UNITED STATES ATTORNEY

RAFFERTY, BRIAN T., ASSISTANT UNITED STATES ATTORNEY

SMITH, HON. G. R. UNITED STATES MAGISTRATE JUDGE

TANNER, R. BRIAN, ASSISTANT UNITED STATES ATTORNEY

TARVER, EDWARD J., FORMER UNITED STATES ATTORNEY

WINCHESTER, MATTHEW K., ATTORNEY FOR APPELLANT

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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 _____ 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 MAY 31, 2018.

[] 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: _____, 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).

STATEMENT OF THE CASE

This case presents an important question concerning the "good cause" standard that indigent defendants must meet to substitute appointed counsel in a federal criminal case. Because an indigent defendant's disagreement with, and disapproval of, counsel's unilateral decision to withdraw a dispositive motion can, in some instances, create an irreconcilable conflict over the sole available complete defense, Bostic, on these facts, is entitled to a trial.

On February 9, 2016, Sergeant Colon and Officer Daniel Kang with the Chatham County Police Department, Crime Suppression Unit, were patrolling west 34th Street in Savannah, Georgia searching for suspects in a recent homicide. When asked, "So what was the purpose of riding around that neighborhood?" The officers answered, we had a recent homicide a few days prior to that, in that area, so we were basically concentrating on everything in that area."). To search for suspects, the officers used Georgia Traffic Code violations to stop vehicles they encountered during their patrol. As the officers turned east on 34th street, Kang and Colon observed a blue Mercury Grand Marquis with "extremely dark tints" driving west towards them in the opposite direction.

The Grand Marquis belonged to Bostic's wife, but Bostic was driving. The window tint reported "19" after being measured by Officer Kang- a tint illegal in Georgia. O.C.G..A. 40-8-73.1. Kang informed Colon, and Sgt. Colon turned the patrol car behind the Grand Marquis to execute a traffic stop. The Grand Marquis parked on the street behind another parked vehicle; officers activated their lights to initiate a seizure of the Grand Marquis, turned around to get behind the vehicle. As he crossed over Barnard, he pulled into a parking spot behind a parked vehicle, and at that time is when I lit them up and initiated the traffic stop.")

Bostic emerged from the driver's side and began approaching the patrol car. No threats were made towards the officers. The officers told Bostic to remain near the Grand Marquis and keep his hands on the vehicle. Bostic was frisked, and a search of his person revealed no weapons or contraband. Bostic was detained, away from the vehicle. Sgt. Colon noticed a passenger in the Grand Marquis, and Kang observed the passenger, Ebony Butler, was "shifting around." According to the officers, a strong odor of burnt marijuana came from the Grand Marquis. When asked, Kang could not testify to a "specific source," but a video of the stop showed that Kang believed that Butler looked "high as a Georgia pine."

The officers told Bostic that they searched the Grand Marquis because they smelled marijuana, but a comprehensive vehicle search revealed no marijuana. When asked "Did you find any marijuana in the car?" the officer answered "Not to my recollection."). Bostic explained the odor- he admitted that he and Butler "smoked a joint" prior to the stop. Sgt. Colon and

Officer Kang began searching the Grand Marquis cabin from front to back, but nothing was recovered from the cabin.

Bostic objected, and did not consent to the search. Without consent, the officers opened the trunk. Inside the trunk, on the left side, officers located a firearm. The .40 caliber firearm was not registered to Bostic. Bostic, gave custodial statements admitting to purchasing the gun two years ago on the street. Law enforcement located the true owner, but the owner had reported the firearm stolen in August of 2015. No usable fingerprints were found on the firearm." No fingerprints were recovered from the bullets or the magazine.

MEMORANDUM OF LAW AS TO GROUND ONE
FAILURE TO APPOINT SUBSTITUTE COUNSEL

The District Court violated Bostic's Sixth Amendment right to counsel when it refused to substitute new counsel under circumstances that constitute "good cause" for a substitution of appointed counsel.

"A choice-of-counsel violation occurs whenever the defendant's choice is wrongfully denied[;]" such a violation of the right to counsel is a "structural error" not subject to review for harmlessness on appeal. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (III) (126 S. Ct. 2557) (2006). Though the Sixth Amendment provides financially -solvent defendants with a right to terminate retained counsel without cause, *United States v. Jimenez-Antunez*, 820 F.3d 1267, 1271 (111) (11th Cir. 2016), an indigent criminal defendant "does not have a right...to demand a different appointed lawyer except for good cause." *Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985) (emphasis added).

"Good cause, in this context, exists where there is a fundamental problem, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust verdict." *United States v. Garey*, 540 F.3d 1253, 1263 (11th Cir. 2008) en banc) (quoting *United States v. Young*, 482 F.2d 993, 995 (5th Cir. 1973)). Evidence of a severe and pervasive conflict, or minimal communication, is required. *United States v. Lott*, 310 F.3d 1231, 1250 (10th Cir. 2002) (citations omitted). Even if counsel is competent, "a serious breakdown in communications can result in an inadequate defense," but "[a] defendant's general loss of confidence or trust in his counsel, standing alone, is not sufficient." *Wainwright*, 767 F.2d at 742. The good cause exception protects the right to effective assistance of counsel; if good cause exists, a defendant no longer has effective representation. *Jimenez-Antunes*, 820 F.3d at 1271 (111) citing *United States v. Rivera-Corona*, 618 F.3d 979 (9th Cir. 2010)). Under this framework, the District court erred, violating Bostic's right to counsel, when it denied trial counsel's motion to withdraw as counsel, for two reasons. First, the evidence adduced at the inquiry hearing showed both a breakdown in communications and an irreconcilable conflict. Second, the irreconcilable conflict was factually grounded over a legitimate issue central to the defense strategy, to wit: a dispositive motion to suppress a warrantless search.

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MEMORANDUM OF LAW AS TO GROUND ONE
(FAILURE TO APPOINT SUBSTITUTE COUNSEL)

The Sixth Amendment provides indigent defendants with a narrow right to substitute appointed counsel only where “good cause” is shown for substitution. ‘Good cause’ exists, and substitution is required, where a conflict of interest, irreconcilable conflict, or communication breakdown dissolves the relationship.

The District Court erred when it denied the motion to withdraw as counsel. Bostic showed good cause for substitution when trial counsel unilaterally withdrew-without consulting Bostic- a dispositive motion to suppress the warrantless search of Bostic’s vehicle. On these facts, the officers had probable cause to search the vehicle’s passenger cabin based on the odor of burnt marijuana, but that probable cause did not extend to the trunk. The search of the trunk revealed the most damaging evidence against Bostic, to which Bostic otherwise had no available (credible) defenses at jury trial. Based on his review of the discovery trial counsel withdrew the motion with knowledge that the motion was Bostic’s only complete defense to the indicted offense.

Bostic filed a complaint against trial counsel with the State Bar of Georgia. After the bar complaint, communications broke down and counsel proffered that very little, if any, trust remained. Counsel had “serious doubts” about his ability to effectively represent Bostic, those concerns were shared by Bostic, and made known to the Court. Failure to substitute appointed counsel, here, was a structural error.

MEMORANDUM OF LAW AS TO GROUND TWO
INEFFECTIVE ASSISTANCE OF COUNSEL

The defendant's motion to suppress the warrantless search raised a colorable legal issue because law enforcement, relying solely on the order of burnt marijuana, lacked probable cause to search the trunk. See e.g., *United States v. Bradford*, 423 F.3d 1149, 1160 (II) (A) (10th Cir. 2005) ('The order of burnt marijuana in the passenger compartment of vehicle does not, standing alone. establish probable cause to search the trunk of the vehicle.'); see also *United States v. Floyd*, 247 F. App'x 161, 167 (11th Cir. 2007) (per curium) (explaining smell of burnt marijuana coupled with multiple factors that conjunctively-but not in isolation- established the probable cause); but see *Merricks v. Addison*, 785 F.3d 553, 560 (V) n. 3 (11th Cir. 2015) (the smell of burnt marijuana emanating from a vehicle is sufficient probable cause to search the vehicle."). While it is true the burnt marijuana order established probable cause to search the Grand Marquis *passenger cabin*, that probable cause did not extend to the trunk-especially given that law enforcement search of the cabin revealed no corroborating evidence.

On these facts, it is clear both that (1) the marijuana odor detected by police was "burnt" not "raw" and (2) it was therefore unreasonable for police to believe the trunk contained marijuana evidence. First, the government in its response to Bostic's motion cited Bostic's statement to Kang that "he smoked a joint with the passenger earlier." [Doc. 24 at 2] citing Govt's MTS Ex. 1 at 3:38). Kang and Colon search Bostic and Butler but located no marijuana. [Doc. 74 at 8, 30]. A search of the passenger cabin revealed no marijuana or paraphernalia evidence. [Doc. 74 at 30: 23-24].

Second, it was unreasonable for Kang and Colon, without corroboration, to believe the trunk contained marijuana usage evidence because neither officer testified to noticing an odor emanating from the trunk or the back seat of the Grand Marquis- the odor emanated from the cabin (which was searched) and the occupants (who were searched and detained, away from the Grand Marquis). Cf., *United States v. Smith*, 596 F. App'x 804, 807 (III) (11th Cir. 2015) per curium). In Smith, this Court affirmed the denial of a motion to suppress where the officer testified to smelling the odor of raw marijuana coming from the back seat of a vehicle. Prior to making the stop, the officer observed appellant move from the back seat to the trunk of his car, and then roll a marijuana cigar at a nearby picnic table. Id. at 806. Under the circumstances, the

Court noted that the marijuana odor was "raw" and found that, given then officer's observations of the defendants interaction with the trunk, it was entirely possible that the defendant moved the marijuana from the back seat to the trunk before moving to the picnic table to smoke the marijuana cigar. Both material facts are absent in Bostic's case.

The "corroboration-based-approach" is consistent with the views of other Circuits, specifically the tenth. See e.g., *United States v. Nielsen*, 9 F.3d 1487, 1491 (10th Cir. 1993) (holding officer's detection of burnt marijuana odor did not give probable cause to search the trunk after consensual search of the cabin revealed no corroborating evidence). The corroboration requirement stems from precedent holding "the scope of a warrantless search of an automobile is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *United States v. Ross*, 456 U.S. 798, 824 (102 S. Ct. 2157) (1982). As applied to Bostic, the probable cause to arrest after the cabin search was limited to DUI controlled substance, possession of marijuana by consumption, and driving on a suspended license. None of the objectives provided probable cause to search the trunk, because it was not reasonable for law enforcement to believe-without corroborating evidence from the cabin search-that marijuana was used or possessed in the trunk. Bostic multiple times refused consent.

With this factual predicate in the foreground, the cause for substitution of appointed counsel exceeds that presented in cases like *Young* and *Wainwright*. In *Wainwright*, this Court affirmed a refusal to substitute appointed counsel because the defendant, by refusing to cooperate and remain silent during the inquiry hearing, contributed to the communications breakdown, he later sought to benefit from. *Id* 767 F.2d at 741. Bostic's case is materially distinguishable from *Wainwright* because the distrust and lack of cooperation stemmed from trial counsel's refusal to pursue Bostic's only complete defense to the indicted crime. Similarly, in *Young*, the former Fifth Circuit refused to substitute counsel where the defendant purposefully ceased communications and failed to present an irreconcilable conflict to justify the breakdown. Here, by contrast, the defendant's position is that the conflict over a critical defense issue caused the communications breakdown and subsequent distrust.

GROUND TWO
INEFFECTIVE ASSISTANCE OF COUNSEL
SUPPORTING FACTS

Two months after withdrawing the motion and just two weeks before trial, trial counsel, Robert Mock, Jr., filed a motion to withdraw as counsel. [Document]. The motion stated that Bostic's wife had filed a complaint with the State Bar of Georgia against Mock, and that "there is very little, if any, trust remaining between defendant and his [trial] counsel in this case." [Document]. The motion continued that "the defendant is showing very little cooperation, and that counsel has serious concerns as to whether he can adequately represent the defendant. [Document]

**Disagreements over the motion and transcript request to assist in making decisions
regarding defense strategy prompts Bostic to fire Trial Counsel.**

The District court held an attorney hearing on the motion to withdraw. At the inquiry hearing, Bostic confirmed that he instructed his wife to file a bar complaint against Mock, Jr. [Document]. The reason was Mock's unilateral Withdrawal of the motion to suppress, which Bostic perceived as central to the defense strategy. [Document]. Bostic stated to the District Court that Mock previously told Bostic he would file the motion to suppress, and that Mock had failed to comply with Judge's order regarding the motion. [Document]. The District Court denied the motion, stating: "It's just a disagreement about some motion to suppress, that's all I see." [Document] There was no discussion of trial counsel's original basis for the motion, the facts of the warrantless search and seizure, trials counsel's reason for withdrawing it nor was the defendant made aware of his right to appeal the judge's order. [Document]

- A. The evidence and record show both a breakdown in communications and a severe conflict between client and counsel.

The motion to withdraw stated: "Counsel for Defendant shows that there is very little, if any, trust remaining between Defendant and his counsel in this case, that Defendant is showing very little cooperation, and the counsel has serious concerns at this point as to whether he can adequately represent Defendant." [Doc. 35 at 1]. The distrust and communication breakdown stemmed from trial counsel's unilateral decision to withdraw Bostic's motion to suppress the warrantless search of the Grand Marquis-a dispositive issue central to the defense. [Doc. 35 at 1].

- B. Trial counsel never gave a reason for withdrawing the motion, and the district did not ask for one at the inquiry hearing. The District Court did not discuss the facts surrounding the search of the Grand Marquis at the inquiry hearing, so there was no evidence as to trial counsel's basis for filing the motion, or his reason for withdrawing it. The issues surrounding the motion to suppress were important to Bostic so as to prompt the filing of a bar complaint with the State Bar of Georgia. [Doc. 35 at 1]; [Doc. 83 at 5: 14-16]. And, with good reason-the defense in this case rested almost entirely upon suppression of the search because, if meritorious, the firearm, ammunition and Bostic's admission were fruits of the poisonous tree. See *United States v. Timmann*, 741 F.3d 1170, 1182 (III) (C) (11th Cir. 2013). ("Under the so-called fruit of the poisonous tree doctrine, admissions or confessions that the police induce by confronting a suspect with evidence obtained through an illegal search or seizure must be suppressed."); see also *United States v. Chathansouxat*, 342 F.3d 1271 (11th Cir. 2003) (same).
- C. At the attorney inquiry hearing, the district court heard evidence that trial counsel provided Bostic with discovery, but did not explain it, and that trial counsel had not consulted Bostic in his unilateral decision to withdraw the motion to suppress. See [Doc. 83 at 6, 12] Trial counsel only visited him only once to

present the government's plea agreement, which Bostic rejected [Doc. 83 at 11].

D. Trial counsel's unadvised abandonment of defendant's main defense was not a mere disagreement over a trial strategy, as the District Court perceived, but rather a serious impasse over the adequacy of trial counsel's representation. *Contra United States v. Fields*, 625 F. App'x 949, 953 (I)(D) (11th Cir. 2015) (per curiam) (holding defendant's "general assertions about counsel's unwillingness to ask certain questions of witnesses" did not rise to the level of irreconcilable conflict). The totality of the information available to the District Court established that the defendant's defense; the available information created "good cause" for the substitution of counsel.

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STANDARD OF REVIEW

- A. Denial of motion to withdraw as counsel. "We review the denial of a motion as counsel for abuse of discretion." *Brown v. United States*, 720 F.3d 1316, 1325 (11th Cir. 2013). "A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or make findings of fact that are clearly erroneous." *United States v. Toll*, 804 F.3d 1344, 1353 (11th Cir. 2015) (quoting *Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213, 1216-17 (11th Cir. 2009)).
- B. Defendant, respectfully requests this Honorable court to vacate or set aside his conviction and sentence on the grounds that his fourth amendment right under the United States constitution were violated when he was denied substitute counsel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Corinthian Bettie

Date: 1/1/18