No. 18-8667

In the Supreme Court of the United States

Donald James Anson

V.

United States of America

Petition/Request for Rehearing/Reconsideration

The petitioner,Donald James Anson, respectfully asks this Court to:

reconsider it's May 28th 2019, denial for a writ of certioria in the civil case of Donald James Anson V. United States of America District Court docket No. 1:07-cv-00035, in the Western District of New York.

The orriginal petition for certioria had simply requested that the Second Circuit's refusal to allow the petitioner to file an appeal of the District Court's dismissal of a personal injury claim (based solely on a credibility finding). The Second Circuit's refused to allow the appeal saying that any appeal "lacks an arguable basis either in law or fact".

The petitioner arqued that there was/is a well reconized "basis in law", that being the "clear error doctrine" or the "clearly erroneous standard" (ie Anderson V. Bessemer, 470 us 564).

Unfortunately the petitioner (who is a first time Pro-se petitioner) failed to realize that he needed to provide this Court with the evidence he sought to use in his appeal, to support his "clear/plain error" claim.

The petitioner apologizes, and begs this Court to allow him to offer the following evidence and reasoning, which he strongly feels justifies, and warrants, the right to raise the issue of 'clear/plain error' in the Court of Appeals for the Second Circuit.

Lastly, the petitioner would offer that, if a mistake or error was made, it is just that, a mistake. However, refusing to look into whether a mistake was made, in the face of reasonable evidence that one was made, is very different matter entirely.

Therefore, the petitioner prays this Court will allow him to present the following brief, and appendix, for consideration. And that this Court will grant a remand to either the Court of Appeals, or the District Court, to allow for a propper review and resolution of this issue.

Reasons supporting a 'clear/plain error' hearing

In the civil case 1:07-cv-00035, the District Court dismissed the case based solely on the issue of crdibility. The petitioner seeks a clear/plain error hearing on that credibility determination. The case involved a fall while entering a US marshal's Vehicle for transport from the Buffalo Federal Detention Facility (facility) in Batavia, NY to the District Court House (Court) in Rochester NY on 4/13/2005.

The credibility finding at issue

Two different versions of events were presented at the bench trial in this case.

Version 1 (plaintiff's)

That plaintiff was trasnsported at @8:00 am with several other inmates.

Version 2 (defense's)

That due to a papperwork error, plaintiff was transported at @noon and by himself in a second trip.

The District Court's finding

The District Court made the crdibility determination that **Version 2** was the correct one and that the petitioner made-up the other.

Arguement

With regard to the the version the District Court chose to accept (single passenger in second trip @noon) there is <u>nothing</u> what so ever to support this version except the one witnesses (a fomer us marshal involved in the transport) claims.

It should be noted that at <u>no time</u> prior to the 2017 deposition of that ex-marshal was any mention of a second trip, @noon, ever raised or <u>even mentioned</u>. Even in that ex-marshal's prior 'Declaration and Interrogitory responses', or those of two other marahals there never even any mention of any "second" trip.

In every Court paper since the case began in 2007, when ever a time was mentioned it was always @ 8:00am or the more vague "morning". Even the AUSA did this. No-one ever attempted to correct this nor offer another version. **With one exception**. That is when the AUSA made the claim that the transport took

place On 4/14/05, and not 4/13/05, as the complaint stated (see appx. 1). The AUSA even offered an errant 'us marshal transport log' (see appx 1b). This issue of the wrong date was argued and based on the District Court's records, the date on the transcripts, the Court Docket, and facility records the AUSA agreed the 'report' was in error and the transport occured on 4/13 as claimed in the complaint.

Even during these arguements not one mention of a "second" trip ever surfaced. Does seem **logical**?

Oddly, the AUSA entered into evidence another 'log' to support the claim of a "second" trip (appx. 2). **However**, that 'log' not only has the wrong date of 4/14 (see above) but the time it shows (15:30 /3:30pm) does not fit either version of events and contradicts the times on the Docket and the Hearing Transcripts.

The "presumption of regularity"

The sole proponent of **Version2** testified that it is the us marshals that notify the facility of who is to be transported by "e-mail or fax" "the night before" the transport (see appx.3). This is confirmed by the facility and other us marshals.

Now according to Version 2, the whole reason the second trip was needed was that the plaintiff's name was left off of that transfer notification. An irrregularity, or mistake, by the us marshal service. There is no evidence or collaborating testimony to support that claimed irregularity, and how often has the government used the "presumption of regularity" to win its points or cases?

Even stranger is the fact that the facility records from the Pod the petitioner was housed in clearly showes that the petitioner was awoken early, and sent to Receiving and Discharge at "0655, prior to the arrival of the meal cart at "0705". Why would the Pod officer wake the petitioner early and send him to R+D at 0655, or remove him from the 'meal count' if the usmarshals had not notified the facility of the the petitioners morning (0800) transport? Clearly the facility was notified by the marshals of the morning transport.

Again, no-where in the 100's of court documents from 2005 until 2017 was any mention of such an odd and important irregularity ever even mentioned. Doesn't that seem odd or even **unbelievable**.

The "hard evidence"

There is not one peice of evidence to support Version 2. On the other hand there is evidentiary support for version 1.

If there is any thing that the Federal Prisons are fanatical about it is counting their inmates and knowing where they are. Espically when it comes to leaving the facility.

It was actually the defense that offered not just one but three seperate facility logs into evidence (appx. 5-5g) Unfortunately when the prosicution raised these "logs" to refute the time line of Version 2, **the Judge was away from her chair and busy retrieving papers from a copier or fax machine**. (the petitioner did point this out to his court appointed road-block/lawyer, but the lawyer said not to worry the Judge knows. If she

did, why were the "logs" never mentioned anywhere in her decision.)

Appx. 5 and 5A, are copies of the 'Processing Logbook'. They not only show that only inmates (9) to leave for Court with the us marshals did so at 0805 (8:05am), but they show no other inmates left after 0805 on 4/13. Since it is that count that the facility uses to collect its perdiem pay from the Government (tax payers) for housing inmates, if the Court dosen't accept it why should the tax payers? Is an audit of the whole prison system called for? This directly contradicts Version 2 and supports Version 1.

Appx. 5B and 5C, are copies of the "Temporary Out Logbook" kept by the Receiving and Discharge (R=D) officers, which is where the inmates are held until the marshals take custody. They clearly show that the prtitioner was "time out" at 0755, and returned at 1735. This confirms the 'Processing Logbook' and, once again, directly contradicts Version 2 and supports Version 1.

Appx. 5D through 5G, are from the unit or Pob logbook and does three (3) things. First it shows just how detailed the unit tracking of every inmate from the unit is. Second, it shows the petitioner being sent to R+D at "0655" for "temp out for court, which helps confirm both R+D's "Temporary Out Logbook" and Procssing's "Processing Logbook". Third, it shows that the facility was notified by the us marshals of the petitioner's pending early morning transport. Yet again, this directly contradicts Version 2 and supports Version 1.

There was also a copy of a us marshal's inter-departmental memo that the AUSA provided to the Court in a letter dated 3/12/09, (appx. 6) which while it does not mention any time, it does say "we had at least four prisoners on board". This directly contradicts the "single person" transfer of Version 2 and supports the multi-person transport of Version 1.

Why is there so little evidence to support either version

The best possible evidence would have been the video recordings which the marshals and the facility agree would have not ony captured the fall, but would have had a time stamp and show if other inmates were part of the petitioners transport. This would have answered many questions such as whether Version 1 or Version 2 were truthful. unfortunately that video was recorded over by the defendants despite the sworn testimoney of two (2) us marshals that the facility was informed of the incident and the possible need for medical attention. One marshal even testified that not only was the facility informed but also the marshal's supervisor and the supervisor was even warned to "expect a lawsuit coming" (see appx 7).

This seems to be a classic case of "spolation", but since its the Government I guess it is OK. As was selling the vehicle at issue some three years into the suit without providing any notice to the Court or the plaintiff.

The proponent of version also testified that there was a "prisoner receipt" that was a "three page document that's got a peice of carbon, carbon paper in it". He also testified that the marshals got a copy and so did the facility (see appx.8). **However**, not only did the government not provide this in their descovery,

they flat-out claimed there were no such records.

One last seamingly unrelated but important question

Why was the defense allowed to change the trial venue from Buffalo to Rochester at the last minute? When the petitioner first filed this case he asked to file it in Rochester but that request was denied because of where the injury occured.

Both of the 'expert medical witnesses' were from the Buffalo area (and charged travel time to Rochester and back), The defense council was from Buffalo, and the only other witness flew into Buffalo and had to drive to Rochester, the Court appointed road-block/attorney could have been from Buffalo just as easy as Rochester.

One reasonable explanation can be found in one of the Buffalo Court's rulings (please see appx 9).

For these reasons, and to provide at least the appearance of JUSTICE, the petitioner asks this Court to reconsider its denial of the 'writ of certioria' and remand the case back to the Court of Appeals to allow a 'plain/clear error' challange or to remand it back to the District Court to fully resolve this credibility issue or if you find that the arguement provided here is sufficiant overturn the credibility finding and remand it back to the District Court for further proceedings.

Signed Donald J. Thomas **Dated** 6/20/18

Certificate by pro-se Petitioner

No. 18-8667

Donald James Anson (pro-se)

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I, Donald James Anson, certify that the following grounds for Rehearing are limitd to substantial grounds which were not previously presented in this argument, due to my own inexperiance and misunderstanding of the standard of proof required by this Court.

Dated 7/6/18

Signed Donald James Anson

Certificate of good faith by Pro-se petitioner

No. 18-8667

Donald James Anson (pro-se)

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United States

I, Donald James Anson, acting Pro-se certify that this Petition/request for re-hearing/ reconsideration is being made in Good Faith and not with any intention of causing undo delay, and that it is in line with Rule 44 of the United States Supreme Court.

Signed Donald J Anson

Dated 6/20/19

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