No. 19-8172

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ADAM CARSON – PETITIONER

vs.

UNITED STATES OF AMERICA – RESPONDENT

ON PETITION FOR WRIT FOR CERTIORARI TO

UNITED STATES COURT OF APPEALS for the SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Adam Carson 64595-060

AUSP Thomson

US Penitentiary

PO Box 1002

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Questions Presented

1. Can a conviction for witness tampering be upheld when a Defendant did not ask a witness to lie for him? and; can a Court of Appeals change the interpretation of 18 U. S. C. 1512 (6)(1) to allow a conviction to be sufficient based upon a biased witness' impression of a letter, even after that same witness testified to being under the influence of drugs, while perjuring herself in front of a Federal Grand Jury, and also admitting to lying to police officers, federal agents and Government attorneys?
2. Whether Ohio Revised Code 2911.02 (A)(2), second degree robbery, is unconstitutionally vague, similar to the precedent set in the recent Davis decision; and whether the Court, in the interest of fairness and justice, should deploy a case specific approach in determining if an offence is a crime of violence or not?
3. Whether the trial Court should have provided a substitution of counsel when the Defendant made several timely and good faith motions which evidenced his dissatisfaction and communication issues with his appointed counsel?
4. Can a trial Court deny a Defendant their Sixth Amendment right to self- representation, in violation of the Constitution of the United States, without a Faretta hearing, even after he unequivocally asserted his constitutional rights in pro se motion and during hearings.
5. Can the District Court ignore a Defendant's Fifth Amendment due process rights and violate the Federal Rules of Criminal Procedure 43(a)64 denying him the right to be represented at every trial stage as the law requires?
6. Under Federal Rules of Evidence 404(8), can a parole officer testify at trial without poisoning the jury panel and create bias against the Defendant?
7. Under the Fourth Amendment, can government officials go inside a jail cell and seize legal materials, including confidential trial strategy, that was not listed on a protective order?

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 judgement is the subject of this petition is as follows:

RELATED CASES

- United States of America v. Adam Carson, No. 1:17-CR-00008-DCN, U.S. District Court for the Northern District of Ohio Eastern Division Judgement entered September 19, 2018.
- United States of America v. Adam Carson, No. 18-3919 U.S. Court of Appeals for the Sixth Circuit Judgement entered November 26, 2019.

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TABLE OF AUTHORITIES

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 judgement 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,

[X] 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 reported; or,

[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was November 26, 2019.

[ ] 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: January 6, 2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) on Application No. ____A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1)

Constitutions

U.S. Const. amend. IV

U.S. Cont. amend. V

U.S. Const. amend. VI

U.S. Const. amend. XIV

Federal Statutes

18 U.S.C. 1512 (a) (1)

18 U.S.C. 1512 (6)(1)

18 U.S.C. 2113 (a)

18 U.S.C. 3742 (a)

28 U.S.C. 1291

28 U.S.C. 1654

State Statutes

Ohio Revised Code 2911.02

Ohio Revised Code 2911.02 (A)(1)

Ohio Revised Code 2811.02 (A)(2)

1. Ohio Revised Code 2811.02(A)(3)

Other Authorities

Armed Career Criminal Act (ACCA)

Federal Rules of Criminal Procedure 43(a)

Federal Rules of Evidence 404(5)

U.S. Sentencing Guidelines (USSG)

Statement of the Case – pg 1

I. Indictment

On January 5, 2017, a Federal Grand Jury charged Adam Carson with one count of 18 U.S.C. 2113 (a) Bank Robbery accusing him of robbing Chemical Bank (R. 1: Indictment, Page ID #1)

While Carson was awaiting trial he discovered that his ex-girlfriend, Karin Deeb, testified against him to a federal grand jury. (He would later learn Deeb admitted to being under the influence of drugs and lying during her testimony to the federal grand jury.) Carson found out Deeb was in jail for her own bank robbery, and wrote her a letter expressing his love, asking her why she lied about him, and asking her to tell the truth. Deeb gave the letter to Government Agents who in turn turned the letter over to the U.S. Attorney's office.

Based on the letter, the Government sought and obtained a superseding indictment charging Carson with the Chemical Bank robbery and an additional count of 18 U.S.C. 1512(b)(1)witness tampering (R.15: superseding indictment, Page ID#31-32) This is the bases for the Federal jurisdiction in the Court of Frist Instance.

II. Carson moves to replace Counsel

On January 12,2017, the Court approved Donald Butler to represent Carson. While awaiting trial, Carson filed several pro se motions to substitute counsel. The first was five months after he was indicted. (R. 17: Motion, Page ID# 37). Carson explained that Butler was unresponsive and failed to file motions, issue subpoenas, and contact witnesses as requested. (R. 17-1: Affidavit, page ID#38-39) The Court denied his motions without any judicial hearing, stating that if Carson wanted different counsel, he could hire his own (R. 18: Order, page ID#40).

During a December 27, 2017, competency hearing, Carson reiterated his concerns about Butler and requesting another appointed attorney (R. 137: Hearing trans. Page ID#1561-1567) Carson explained, "I'm feeling I'm being persecuted by my counsel because he hasn't done absolutely anything for me." (ID at 1570). Carson went on to explain:

"I've got favorable evidence available that Mr. Butler has refused to get. He's failed to subpoena witnesses at my request that will discredit one of the Government's witnesses. He's failed to request funds for the

experts that will help prove my innocence and for an investigator. He has not provided me with all discovery items and he failed to respond to my letters, causing a total lack of communication." (Id at 1576).

The Court responded to these very serious claims stating that Carson can go ahead and hire whomever he wants. Carson responded that he does not have the funds to retain a lawyer and the Court quickly end the hearing. Carson reiterated his concerns stating he wanted another attorney and would defend himself if he had to (Id at 1574). The Court instructed Carson to file a motion to go pro se stating, "Then you have Mr. Butler or you go on your own." (Id at 1575).

Following the hearing on January 3, 2018, Carson filed another pro se motion to dismiss counsel (R. 33 Motion to Dismiss Counsel, page ID# 93-95). The Court quickly denied Carson's Motion without a judicial hearing into the matter.

Attorney Butler had a cardiac episode two days before Carson's trial was to begin and he was admitted to the hospital for four days. After meeting with Butler and realizing he was in bad shape and couldn't remember facts and details of the case. Carson filed another motion to have Butler removed for medical reasons. (R. 76: Motion page ID# 305-07) The Motion was denied without a hearing or any judicial inquiry.

III. Carson Decides to Represent Himself

Due to the fact that the District Court refused all of Carson's requests to obtain new counsel, he asserted his constitutional right to represent himself. Carson unequivocally requested that he be allowed to proceed pro se at the hearing on December 27, 2017 (R.137: Hearing trans. Page ID#525) The Court told Carson to "file something" and he filed a Motion to Proceed Pro Se on March 22, 2018 (RE. 58: Pro Se page # 169-172).

The Court inquired about Carson's motion during a pretrial hearing on April 3, 2018. During the pretrial, the Court never held a Faretta hearing and didn't conduct the proper hearing as law requires. (R.136: Hearing trans. Page ID#1558-1564)

Carson explained during the hearing that he did not have the resources at the jail to present an adequate defense. He stated he wanted help in regard to the Federal Rules of Evidence (Id at 1560-61). He never once stated that he wanted Butler to continue to represent him. The Court stated this for Carson and quickly ended the hearing. Carson was still trying to object to Butler continuing as counsel as he was being dragged out of the courtroom by the U.S. Marshals (Id at 1564). The transcript he was cut off as he was led out of the courtroom. Carson's fifth amendment right to self-representation was clearly violated.

IV. Seizure of Carson's Legal Documents and Jencks Material

On April 6, 2018, three days before trial was previously scheduled the Government produced Jencks material to Defense Counsel. That same day Attorney Butler gave those documents to Carson to review, when Carson reviewed the material he discovered a FBI 302 report that proved his ex-girlfriend, Karin Deeb, lied to the Federal Grand Jury and was under the influence of drugs during her testimony. The U.S. Attorney's office withheld this information for almost an entire year. Deeb was subsequently charged with providing false declaration to a Federal Grand Jury, however, the indictment against Carson was never dismissed. Carson's constitutional rights were violated, and his claims were ignored by the District Court. Carson also learned from the Jencks material that Deeb provided drugs for another individual which resulted in their overdose and death but was never charged. It also seemed from Deeb's inconsistent statements that the Government suborning perjury from Deeb.

Carson filed a complaint with the Office of Professional Responsibility and sent copies of the incriminating documents to his mother so she could send copies to media organizations, the ACLU, and the NAACP in hopes of getting someone to help him. Carson wanted the organizations to know how the Government was engaging in the practice of selective prosecution because Deeb, who is white, was not charged with murder after providing another female with drugs that resulted in her death. However, Carson was locked up with several African American males who engaged in the same conduct as Deeb, providing drugs to white individuals that resulted in their death and are facing life in prison. Because of Deeb's status as a witness against Carson, she was never charged with the murder she admitted to.

Government officials heard Carson's plea on the phone through intercepted jail telephone calls he made with his mother, and immediately sought a protective order for the return of all Jencks material (RE. 74: Protective Order Providing the Return of all Jencks Material); (re75: Order for the Return of all Jencks Material page ID#302-304)

Jail officials went into Carson's jail cell and confiscated all of his legal material, which included his notes containing confidential trial strategy, and questions to all pretrial witnesses. The Court Order authorizing the confiscation of Jencks material only, not all of Carlson's legal material. All items confiscated were given to the FBI who then turned the items over to the U.S. Attorney's office. The Court Oder also authorizes Carson to be placed on mail restriction and for him to be placed into administrative segregation at the jail. Carson's constitutional rights were clearly violated.

Carson's mother's home was also searched by the FBI so they could obtain copies of the documents that he sent to her.

V. Carson's Trail

The United States District Court for the Northern District of Ohio Eastern Division held a jury trial. The Court began with voir dire midday on June 4, 2018, and a jury of 12 was selected with 4 alternates. Opening statements were presented during the late afternoon on June 4, 2018. The Government's theory of the case was that Carson robbed Chemical Bank and the defense theory was that Karin Deeb robbed the bank.

After opening statements, Court resumed the next day at 8:37 am. Attorney Butler worked to put something on the record without Carson being present in the Courtroom. Attorney Butler explained that the Government indicated to him in April that the bank teller, Melissa Johnson, was now going to be able to identify Carson as the person who robbed her from some type of Facebook identification and Butler was trying to get the identification excluded. (R. 100: Trial Trans. Page ID#519-522) The trial transcript will reflect that Carson was not present until 8:41:50am. Almost 5 minutes after this conversation was placed on the record, which is a direct violation of Federal Rules of Criminal Procedure 43(a) and Carson's Fifth Amendment Civil Rights. (Carson did not find out about Attorney Butler's deceit, dishonesty and lack of

communication regarding this witness until after he received his trial transcript, (id at 1519). Attorney Butler intentionally put this issue on the record without Carson being present because he never told him of the alleged identification. If Carson were present he would have advised the District Court that his attorney had not shared this information with him and a mistrial could have been declared. This evidence was material to guilt and punishment, was withheld from Carson, and because of this he was severely prejudiced.

The Government called the bank teller, Melissa Johnson, as their first witness (Id at 523) She claimed she and another bank teller (named Autumn) learned that Carson was a suspect in the bank robbery "a few weeks after the robbery".(Id at 553 -57). Ms. Johnson claimed that Autumn was trying to "find something" (Id at 555) when Johnson looked over at her coworker's workstation Carson's Facebook page was displayed and that is when she suddenly realized Carson was the person who allegedly robbed her. Carson contended her claim could not be true because his name wasn't ever released to the media until after the U.S. Attorney's office issued a press release announcing Carson's indictment which was 7 weeks after the robbery. All Carson's Facebook page is private and would be impossible for any one of his friends to access.

Johnson also testified that she provided a description of character symbol tattoo on the robber's collarbone, but when shown pictures of Carson without his shirt on she couldn't identify the tattoo she described to law enforcement or Carson. (Id at 600-02)

The Government then called Rahab Ali, another Chemical Bank teller. She provided a description of the robber but did not identify Carson. She also stated that no one from the bank showed her any Facebook photos of the suspected robber. (Id at 624-633)

Other witnesses from the bank were the manager, Ryan Mitchell, (Id at 634) and the Security Officer, Grace Stacchiotti, (Id at 658) Surprisingly absent was the teller who allegedly pulled up Carson's Facebook profile, Autumn.

The Government's next witness was Nathaniel Gonzalez, a Rocky River police officer (Id at 666). He testified about a prior "dealings" with Carson (Id at 670-75) He claimed he identified Carson in an online article and sent the photograph to Detective Garth Selong.

Detective Selong testified as a Rocky River police officer, that he encountered Carson twice (Id at 681-690). He prejudiced Carson to the jury by revealing his past criminal history explaining how he found Carson in possession of two hypodermic needles consistent with drug use (Id at 692-693). He then identified the photo Gonzales sent to him as Carson.

Next the Government called Elizabeth White, an employee at the Days Inn (Id at 702). She testified about Carson's stay at the hotel and provided the folio of his stay. Then Carson's neighbor, Ihsane Tabach, was called (Id at 736). She testified she recognized him from a news article after the robbery and contacted the police.

The Government then called Ronald Warchol, Carson's probate officer (Id at 758-64). Warchol stated he worked as a state employee, made references in his dealings with law enforcement officers, explained how he conducts investigations, and talked about how Carson was required to report to him. Any lay juror could have easily figured out and come to the conclusion that Warchol was a parole officer. His testimony was unfair, unlawful, prejudicial and may have tainted the jury by creating bias.

Then the Government provided testimony from Biran Cray, Michael Perhacs, Sonia McIntosh, Richard Ginley, Alex Bakos, Jacob Kunkle, LaShay Whitfileld, Alexandria Austin, Louis Underwood and Richard Strunk. (R.101:Trans. page ID# 770-991)

Then the Government called Karen Deeb. (R. Trial Trans. page ID# 1007-1152) She testified about her relationship with Carson and the deal she reached with the Government to testify against Carson. She explained how when she went in front of the Grand Jury to testify against Carson she was under the influence of drugs and lied to the Federal Grand Jury. She also told how she lied to police officers, detectives, Federal Agents and Government Attorneys. She admitted to taking part in the bank robbery and identified Carson as her accomplice. She also admitted that she was in jail for a separate bank robbery that she tried to set Carson up by stating Carson had two black men kidnap her and force her to rob a bank so

Carson could get money for a lawyer. She later admitted she lied about Carson's involvement in her robbery.

The Government then had Deeb read a letter Carson sent to her while she was incarcerated. In his letter, Carson describes the love he had for Deeb, asks her why she can lie about him and get him indicted for something he didn't do and asks her to make things right by telling the truth. Deeb stated her "impression" of the letter was that Carson was asking her to lie and she felt threatened. However, on cross examination, when Attorney Butler asked Deeb if Carson ever asked her to lie for him in that letter she responded "no". (Id at 1140-41)

The Government then called Zachary Horning, an Amherst Detective. (Id at 1153) He talked about his investigation of the robbery and Adam Carson. He also reviewed his discussions with Karin Deeb. He did concede there was no DNA evidence or fingerprints linking Carson to the bank and none of the robbery money be found to be in Carson's possession.

The Governments last witness was FBI Agent Kelly Liberti. (Id at 1223) She testified about her investigation and assistance in the robbery case at hand including interaction between Deeb and Carson after the robbery.

Defense Counsel raised a Rule 28 Motion at the conclusion of the Government's case and it was denied. (Id at 1252) The Defense called Darlene Carson Lipscomb, Carson's mother. (Id at 1254) She testified about her son's relationship with Deeb, the police investigation of the robbery and Carson's tattoos. She also testified that Carson worked as a server in downtown Cleveland and did HVAC work and would put the ones and fives he earned as tips in a shoe box to save and explained how he had that money prior to the robbery.

The Defense also called James Schrecengust an associate of Carson. He explained his dealings with Carson and their relationship. He verified Carson had a shoe box of tip money. (Id at 1295) The Defense rested.

The District Court provided jury instructions to the jury for deliberations. The Jury found Carson guilty on both counts, on June 11, 2018. (Id at 1417-1418)

VI. Carson's Sentencing

The Court sentenced Carson on September 17, 2018. Beforehand, a Presentence Investigation Report (PSR) was prepared, designating Carson as a career offender based on his prior robbery conviction. (R.1c4:pSR. Page ID#1429) The qualifying convictions were Carson's 2006 and 2009 convictions for robbery in the second degree, in violation of Ohio revised code 2922.02(A)(2). The PSR assigned Carson an offense level of 32 and a criminal history category of VI, with a sentence guideline range of 210 to 262 months.

At sentencing, Carson objected to the career offender designation. (R.13: Sentence range pg. ID#1508-14) He agreed that his robbery convictions were not crimes of violence in light of the Sixth Circuit's decisions in United States v. Yates and United States v. Gates.. The Court didn't ever acknowledge Carson's objections and sentenced him to 240 months imprisonment for the bank robbery and 240 months imprisonment for witness tampering with the sentences to run concurrent with each other.

VII Carson's Appeal

Carson timely appealed C.R. 108: Notice of Appeal, page ID#1473) and raised several claims of error as well as constitutional violations. Carson raised the following claims:

1. The discrepancy between the indictment and jury instructions created uncertainty on the jury panel.
2. The District Court erred in designating Carson a career offender.
3. Ineffective assistance of counsel.
4. The District Court's denial of Carson's Motions to substitute counsel violated the Sixth Amendment.
5. The District Court's denial of Carson's Decision to self- representation violated the Sixth Amendment.
6. The District Court's denial of Carson's right to represent at material stages of trial violated his Fifth Amendment rights.
7. The District Court failed to address Carson's motions, concerns of presentational misconduct, prejudicial Grand Jury testimony, and illegal seizure of Carson's legal documents violated his Fourth Amendment rights and due process.

8. References to past criminal history were presented during trial, and Carson's parole officer's testimony violated the Federal Rules of Evidence and due process.

9. The improper identification of Carson by a material witness constituted violation of Carson's right to due process.

10. The evidence presentence during trial did not sufficiently support a conviction for witness tampering.

All of Carson's claims were denied and his sentence was affirmed on November 26, 2019. (see: Opinion, USCA Case No 18-3919)

Carson then filed a Pro Se Petition for Rehearing En Bonc on December 11,2019. In his petition Carson still challenges his career offender designation explaining that his robbery convictions should not count as violent felonies because of the Gates v. United States decision and that the new precedent cited in Carson's opening , United States v. Johnson is unclear on what constitutes a violent felony.

Carson brings up several erroneous claims and events, that never happened in regard to his motions to substitute counsel. He offered facts from the transcript on how no judicial inquiry was given to his issue with Attorney Butler. The Court never even acknowledged two of the three motions Carson filed to have Butler removed and his constitutional rights were violated.

In regard to his self-representation issue. Carson refuted the Court's claim that his request to represent himself was not unequivocal. Carson cited the Motion he filed with the Court which stated his claim was unequivocal. Carson also points out the fact his intent was so clear the Assistant District Attorney even responded to his Motion opposing him representing himself. Carson also points out no hearing was held on how his Sixth Amendment rights were violated.

Next, Carson responds to the Court's claim that he had known what was going on even though he wasn't present for the five minutes of his trial when a critical issue was on the record. That wasn't the issue presented on appeal. The issue was Attorney Butler not telling Carson that he learned in April that the bank teller was going to identify him as the robber.

If Carson were in the courtroom for "every trial stage" as Federal Rule of Criminal Procedure 43(a) requires, he would have been able to learn the truth about Butler's dishonesty and could have let the

District Court know his attorney withheld critical information from him and a mistrial could have been declared. The Appeals Court never even addressed the 43(a) issues. You can't change the Federal Rules of Criminal Procedure to fit your own set of facts. Carson was entitled to be present for every minute of his trial.

Carson then challenged the admission of the bank teller's testimony explaining that law enforcement had to suggest Carson's name a "few weeks after the robbery" since he wasn't even charged with the crime then. Carson proved the Court was wrong in their decision denying his Fifth Amendment claim by pointing out a quote from their own opinion. The Court's opinion stated, "to the extent that Carson argues he was deprived of materials taken from his cell that were not Jencks material, the record refutes otherwise." Discussing the material, the Government informed the Court in Carson's presence that "all of the material that was reviewed, if it had nothing to do with Jencks, it was returned to Mr. Carson" (Opinion 18)

The Assistant U.S. Attorney's statement proves that they had possession of all Carson's legal material, reviewed everything, then returned it. Carson's confidential legal documents including his trial strategy was listed on the procedure order and was sized illegally causing Carson to be prejudiced at trial and his Fourth Amendment rights to be violated.

Carson also explained how his parole officer's testimony violated Federal Rule of Evidence (414(b)) He explained prejudicial references made during his testimony and explained how his testimony biased the jury. Carson also pointed out that the Assistant Attorney referred to his parole officer as an officer in her closing argument.

Carson points out that the Court was wrong in upholding his conviction for witness tampering ruled upon a witness impression. Carson explained that Deeb has no creditability based upon her testimony which she admits to lying to police officers, federal agents and government attorneys. Carson also pointed out the fact Deeb admits Carson never asked her to lie for him.

Carson's petition for rehearing En Bonc was denied on January 6, 2020. Carson now files his Petition for a Writ of Certiorari.

Pg. 1 Reasons for Granting Petition

1. **Can a conviction for witness tampering be upheld when a Defendant did not ask a witness to lie for him? and; can a Court of Appeals change the interpretation of 18 U.S.C. 1512 (6)(1) to allow a conviction to be sufficient based upon a biased witnesses impression of a letter, even after that same witness testified to being under the influence of drugs, while perjuring herself in front of a Federal Grand Jury, and also admitting to lying to police officers, federal agents, and government attorneys.**

On appeal Carson explained that the jury lacked sufficient evidence to support a conviction for witness tampering. The conviction stems from a letter Carson sent his ex-girlfriend Karin Deeb. It was the Government's petition that Carson tried to "corruptly persuade" Deeb, even though he never directly or indirectly asked her to lie for him in his letter.

At trial regarding to the letter, when Deeb was asked specifically if Carson ever asked her to lie for him, Deeb replied, "no". (R.102: Trial Trans. Page ID#1140-41) Deeb also testified that she was convicted of providing false testimony to a Federal Grand Jury, admitted to lying to police officers, Federal Agents and Government Attorneys, and also reached a 5K1 Agreement with the Government to testify against Carson.

In Burns, the Defendant encouraged the witness to lie. "Burns attempted to corruptly persuade Walker by urging him to lie about the basis of their relationship, to deny that Walker knew Burns was a drug dealer, and to disclaim that Burns was Walker's source of crack cocaine.

The Court also cites *United States v. Montgomery*, 358 F. Appx 622, 628-30 (6th Cir. 2009) which concluded that the evidence was sufficient to sustain a conviction for corruptly persuading a witness where the Defendant sent letters to another urging him to lie about their relationship, to deny he knew the Defendant was a drug dealer, and to say the Defendant was not the source of his cocaine.

Then the Court finds a case from the Fifth Circuit, *United States v. Bedoy*, 827 F. 3d 488, 510 (5th Cir.2016) which concluded that the evidence sufficient to show corrupt persuasion when the Defendant suggested that the witness misrepresented their relationship to conceal wrong doing.

None of these cases apply to Carson. Burns and Montgomery urged witnesses to lie, and Bedoy urged a witness to misrepresent their relationship. Carson states in his letter to Deeb that "I couldn't believe that someone I treated so good, that I would do anything in the world for, could lie on me and get me indicted

for something I didn't do." (Id at 1099) He never once asked Deeb to lie for him in his letter.

The Court of Appeals admits this in their opinion stating, "Thus, although Carson may not have expressly asked Deeb to lie, she nonetheless understood his letter as such, a request. We do not think 1512 (6)(1) reasons that a Defendant directly state his request a witness lie. There was sufficient evidence here including Deeb's own impression of the letter."

There are several problems here:

A. How can the Court of Appeals use Burns and Montgomery to uphold Carson's conviction when these cases were based on Defendant's urging witnesses to lie for them?

B. How can you justify taking away a person's liberty based upon a biased witness' impression, when that same witness was working with the Government to convict the Defendant?

C. How much weight does a Government witness' impression hold when they testified to being under the influence of drugs while perjuring themselves to a Federal Grand Jury, and also admitted to lying to police officers, federal agents, and government Attorneys and have a 5K1 agreement to testify against the Defendant?

D. Can a Court of Appeals change the meaning of 18 U.S.C. 1512 (6)(1) to uphold a conviction based upon an impression of "corrupt persuasion?"

E. Shouldn't the contents of the letter be the basis for the witness tampering count? The AUSA sought and received an indictment based upon a letter that was sent to Deeb. Shouldn't the letter be taken at face value to support a conviction?

F. Was 18 U.S.C. 1512 (6)(1) the appropriate statute to charge under? Not only is Carson contesting his conviction under 1512(6)(1), but he also feels that he was charged under the wrong statute. Carson received a maximum 20 year sentence for sending a letter to Deeb that expressed his love towards her and for asking her to tell the truth. If the conviction were to stand, the conviction should be considered substantially unreasonable and on a basis of judicial discretion.

The principal debate is over the meaning of the term "corruptly persuades. All Courts considering the issue have found the phrase to be ambiguous.

United States v. Boldridge, 559 F. 3d 1126,1142 (10th Cir 2009) See also: *United States v. Turcks*, 41 F. 3d 893, 901 (3rdCir. 1984). Quoting *Hugley v. United States,* 495 U.S. 411, 422,109 L. Ed. 2d 408, 110 S.Ct. 1979 (1990) *United States v. Pollen,* 978 F.2d 78, 85 (3rd Cir. 1982) The Supreme Court has cautioned that Courts should give meaning to all statutory terms, especially those that "describe one element of a criminal offense." *Ratzlaf v. United States*, 510 U.S. 135,141,126 L. ed. 2d 615, 114 S.Ct. 655 (1994).

Legislative history also does not provide much assistance in defining "corruptly" to determine what Congress intended the "corruptly persuades" clause to prescribe. In a report discussion the amendment, the House Judiciary Committee noted the 1512 (b) did not criminalize "non-coercive" conduct that does not fall within the definition of misleading conduct, and explained that the addition of the "corruptly persuades" clause amended 18 U.S.C. 1512 (b) to proscribe corrupt persuasion. It is intended that culpable conduct that is not coercive or misleading conduct be prosecuted under 18 U.S.C. 1512(b). H.R. Rep. No. 100-169 at 12(1987) no exploration of what is meant by "culpable conduct" is provided. The report does cite, as an example of "culpable corrupt persuasion" that would be punishable under amended 1512 (b), a case involving a defendant who offered to reward financially a co-conspirator's silence and attempted to persuade the co-conspirator to lie to law enforcement officers about the defendant's involvement in the conspiracy. *United States v. King*, 762 F. 2d 232, 236-37(2d Cir 1985).

The example of the witness tampering that the House Judiciary Committee cited in King involved the defendant asking his co-conspirator to lie. It is Congress' position that asking a witness to lie constitutes as corrupt persuasion and is punishable under 1512 (b). Carson's conduct did not rise to the level of corrupt persuasion. The Sixth Circuit admits Carson never asked Deeb to lie in his letter. Congress states that asking a witness to lie is sufficient for a witness tampering conviction. Since Carson never asked Deeb to lie, and the Sixth Circuit acknowledges Carson never asked Deeb to lie, his conviction should be vacated. The Sixth Circuit's decision conflicts with what Congress intended. There are other examples that conflict with the Sixth Circuit's opinion as well.

In *United States v. Thompson*, 76 F. 3d 442, 452 (2nd Cir. 1986), the Second Circuit Stated that "the inclusion of the qualifying term corrupt means that the government must prove that the defendant's

attempts to persuade were motivated by improper purpose." The Eleventh Circuit also agreed with the reasoning in Thompson in *United States v. Shorts*, Ivis F. 3d 1289, 1301 (11th Cir. 1998).

Also, the Third Circuit stated *in United States v. Farrell*, 126 F. 3d 484, 489 (3d Cir. 1997) that more culpability is required for a statutory violation. Farrell involved a defendant discouraging a co-conspirator, who possessed a Fifth Amendment right to remain silent, from revealing information to authorities. The Third Circuit held that this conduct did not violate the statute. Carson, like Farrell explained in his letter to Deeb that she was entitled to invoke her Fifth Amendment right. His conduct did not violate the witness tampering statute.

Because of the conflicting circuit opinion regarding witness tampering and the ambiguous nature of the term "corruptly persuades". Carson is entitled to relief. Carson convicted of witness tampering due to a witness' impression of a letter he wrote. The House Judiciary Committee cited an example of what would be considered corrupt persuasion and described a defendant asking a witness to lie as being such. Carson never asked a witness (Deeb) to lie and the Sixth Circuit's opinion conflicts with Congress on the other Circuit Court's opinions.

To take a relatively young man away from his family and deprive him of his liberty and freedom for 20 years for writing a non-threating letter is a miscarriage of justice. From the onset of this case Carson's constitutional rights have been trampled on and ignored by everyone in the judicial system. Carson prays that this Court intercedes on his behalf and prevents a miscarriage of justice from occurring. This Honorable Court has the power to right the wrongs that have been committed in this case.

The Defendant Appellant respectfully requests that his convictions be vacated and that the case be remanded back to the District Court for further proceedings.

2. Whether Ohio Revised Code 2911.02(A)(2), Second Degree Robbery

1) Unconstitutionally vague, similar to the precedent set in the recent Davis decision, and whether the Court, in the interest of fairness and justice should deploy a case specific approach in determining if an offense is a crime of violence or not?

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The Supreme Court's recent decision *in United States v. Davis*, 139 5 Ct. 2319, 2336 (2019) held that the residual clause in 18 U.S.C. 924(c)(3)(6) unconstitutionally vague.

The Ohio robbery statue of O.R.C. 2911.02 (A)(2) is similar to 924(c)'s residual clause whereas its definition is constitutionally vague. Convictions under the Ohio robbery statutes should not qualify as crimes of violence towards a career offender enhancement because of the definition's vagueness.

The Sixth Circuit recently decided in *Gates v. United States* 2018 U.S. App..Lexis 4075 (6th Cir.2018), that Ohio robbery convictions do not qualify as an enumerated offense.

In Gates, the defendant had been sentenced as a armed career criminal based upon 3 prior convictions for robbery in Ohio, in violation of O.R.C. 2911.02. The Sixth Circuit explained that the force rewarded to often conviction under Ohio's robbery statute is broader than the type of force contemplated by the use of force clause in the U.S. Sentencing Guide (USSG), which is identical to the ACCCA's use-of-force clause. The Sixth Circuit analyzes a crime of violence under the career offender USSG, just as it does a violent felony offender guideline the same way as a "violent felony" under the ACCA, the Gate's defendant's three prior Ohio robbery convictions did not qualify as violent felonies under the ACCA's use-of-force clause. See also: *United States v. Denson*, (728 F. 3d 603, 607 cum cir.2013).

Gates' argument was based on the decision *in United States v. Yates*, 866 F. 723 (6th Cir. 2017) which held that a robbery conviction under a different statutory provision, O.R.C. 2911.02 (A)(3), was not a crime of violence under the guidelines 866 F. 3d at 778-31.

The Court changed their position *in United States v. Johnson*, 933 F. 3d 540, 546 (6th Cir. 2018). In Johnson they declined to extend their holding in Yates, which Gates relied upon, to 2911.02(a)(2). They stated that 2911.02(a)(3) required only that: force: be attempted, threatened or deployed and 2911.02 (A)(2) requires that a person inflict, attempt to inflict or threaten to inflict physical harm. Drawing distinctions between attempting, threatened or deploy force and physical harm, they held that a conviction under 2911.02(A)(2) qualifies as a crime of violence.

Court asserts that the only way you would be able to determine if O.R.C. 2911.02(A)(2) is in fact a crime of violence is if you use a "case specific" approach. The determination defined in the statute is too vague

to make the determination if each robbery committed was a crime of violence. Without thoroughly analyzing the facts and details associated with each specific case, you cannot make the determination of whether the robbery in question qualifies as a crime of violence.

In Ohio, serious violent robberies are charged as Aggravated Robberies under O.R.C. 2911.01(A)(1. Robberies charges under that statute typically involve the brandishing of a weapon, discharge of a firearm or a victim being harmed. Robberies under that statute face the most severe penalties because it is the most serious form of robbery in Ohio. Convictions under this statute would most definitely be qualified as a crime of violence.

In the case at hand, Carson was charged with robbery in 2006 and two more robberies in 2009. In 2006, because of his opiate addiction, Carson gave a note to a bank teller asking for money. He was arrested a week later, pled guilty and because of the non-violent nature of the crime, he received the minimum sentence of 2 years imprisonment.

In 2009, Carson lost his job, started using opiates again and committed two more robberies. In both robberies Carson used a note asking for money, and never committed any violence or brandishing of a weapon. Because of the nonviolent nature of the crimes, Carson was given the lowest possible sentence allowed by law, 2 years.

These crimes are what Carson was given a career offender enhancement for, raising his offense level in the current case by 10 points. If these were truly crimes of violence, Carson would have been charged under the harsher statute and he would have received a more severe sentence. Each and every person's situation is different and needs to be examined on a case specific, individual basis.

Harsh Federal sentences based on erroneous career offender designations are depriving individuals who need help of proper treatment. Instead of having to help offenders with their problems, Federal Judges are sending people away from their families and loved ones for decades.

Carson has been severely prejudged by the Sixth Circuit's decision in his case. He should not have been designated a career offender and is seeking relief from this Court to make a determination on whether O.R.C. 2911.02(A)(2) is unconstitutional, vague, similar to the precedent set in the recent Davis decision,

and, in the interest of fairness and justice, whether this Court should deploy a case specific approach in determining if an offense is a crime of violence or not.

3. **Whether the trial Court should have provided a substitution of counsel when the Defendant made several timely and good faith motions which evidenced his dissatisfaction and communication issues with his appointed counsel?**

The issue presented on appeal was that the District Court's denial of a Motion to Substitute Counsel violated Carson's right to counsel under the Sixth Amendment.

Carson explained how he filed various motions and spoke up at hearings about the lack of communication between himself and Court appointed counsel, Donald Butler and gave specific reasons how he would be severely prejudiced if Butler were to continue to represent him. He also explained how the District Court abused it's judicial discretion by not inquiring into the matter.

Questions solely of law and mixed questions of law and fact are reviewed under de novo standard. *United States v. Layne*, 324 F 3d 464,468(6th Cir. 2003). In reviewing a District Court's denial of a Motion to Substitute Counsel, the Sixth Circuit generally considers: timeliness of a motion; the discretion of the Court's inquiry into the matter; the extent of the conflict between the attorney and client and whether it was so great it resulted in a total lack of communication preventing an adequate defense; and the balance of these factors

in the prompt and efficient administration of justice. *United States v. Mack*, 258 F. 3d 548,556 (6th Cir. 2001).

The Sixth Circuit previously stated, "the need for an inquiry will not be recognized where the Defendant has not evidenced his dissatisfaction or wish to remove his appointed counsel" *United States v. Iles*, 906 F.2d at 1131 (6th Cir. 1990).

The failure of the District Court to make an inquiry as to Carson's dissatisfaction with counsel was an abuse of the Court's discretion resulting in the denial of Appellant's right to counsel.

The Sixth Circuit denied Carson's claims based on erroneous factual findings. Two of his Substitution of Counsel Motions were not even addressed by the Court, the opinion erroneously claims the District Court

said things that were not listed on the transcript, and no judicial inquiry was made on the issues Carson raised.

Carson explained all of the erroneous factual findings in regard to his substitution of counsel issues in his Petition for Rehearing En Bonc. (Copy enclosed)

To briefly summarize Carson's concerns, if you review the four factors.

1) Carson made several timely requests to substitute counsel. Three motions were filed and he spoke out at two hearings. 2) The transcript of the hearings prove no judicial inquiry was ever made in regard to Carson's concerns. Carson, who is indigent, was continually made fun of and mocked by the Judge for not having any money, and told if he is not happy with Butler he can hire whomever he wants even though he was a CSA appointment. 3) Carson listed numerous issues that demonstrate a breakdown in communication. (not visiting Carson in person, not responding to letters or returning phone calls, memory issues). 4) The people would have had efficiency and effectiveness in the justice system if Carson's concerns were addressed when raised.

The District Court affirmed its decision for not providing a substitution of counsel and Carson's Fifth Amendment rights were clearly violated. Carson asks that this Honorable Court vacate his sentence, order new counsel be appointed, and remand the case to the District Court for further proceedings.

4. **Can a trial Court deny a Defendant their Sixth Amendment right to self- representation, in violation of the Constitution of the United States, without a Faretta hearing, even after he unequivocally asserted his Constitutional rights in a Pro Se Motion and during hearings?**

The issues presented on appeal was that the District Court denial of Carson's request for self-representation violated his rights under the Sixth Amendment.

Carson explained how he unequivocally asserted his constitutional right to represent himself in a written Pro Se motion and during hearings. The District Court never conducted a Farretta hearing and Carson's rights under the Sixth Amendment were violated.

Questions solely of law and mixed questions of law and fact are reviewed under a de novo standard. *United States v Layne*, 324 F. 3d 464,468 (6th Cir. 2003)

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In *Faretta v. California*, 422 U.S. 806, 819.95 S.Ct. 2525, 452. Ed. 2d 562 (1971) this Court determined that counsel is there to provide assistance for the defendant, but ultimately the defendant has the right to conduct his own defense before the trial court.

Furthermore 28 U.S.C. 1654 provides that "In all courts of the United States, the parties may plead their own cases personally..."

The Court of Appeal denied Carson's claim stating, "his reason was neither clear nor unequivocal." However, two sentences later, the Court state, "Carson later filed a Motion to Proceed Pro Se, which recited his waiver of counsel was clear, unequivocal, knowing, and voluntary." (Opinion p. 12-13)

How can the Court say Carson was neither clear nor unequivocal when his Motion is contrary to the Court's claim? In his Motion to Proceed Pro Se (RE 53: Motion to Proceed Pro Ce, pg. ID# 165-68.) Carson clearly sets forth reasons why he was asserting his constitutional right to represent himself. Carson's desire to represent himself was made abundantly clear on the Court Docket (RE 53: Motion to Proceed Pro Se, page ID#165-68) It was so clear the Assistant U.S. Attorney even responded to his Motion, opposing Carson represent himself (RE 58: Response by U.S. Atty. to Motion to Proceed Pro Se) The Sixth Circuit claim that Carson's request was neither clear or unequivocal is erroneous.

The Court also erroneously stated in its' Opinion that Carson said it would be better to have Butler (represent him). That is not true. Carson said it would be better to have Butler help him with the Rules of Evidence (R. 136: Trial Trans. Page ID#1558-1564) Carson never stated he wanted Butler to continue to represent him. The Judge stated this to Carson and he was then rushed out of the courtroom by the U.S. Marshals. Carson was still trying to address the Court and he was cut off midsentence (id at 1564) as he was being dragged out of the courtroom and was not able to object to Butler's continued representation.

Lastly, the docket will reflect that a Faretta Hearing was never held. The hearing conducted was just another pretrial. "Before a Defendant can represent himself, the District Court must ask the Defendant a serious of questions drawn from, or substantially similar to, the model inquiry set forth in the Bench Book for United States District Judges". *United States v. McBride*, 362 F. 3d 360,366 (6th Cir. 2002). Carson was clearly entitled to a Faretta hearing and the District Court erred by not conducting the proper inquiry.

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The opinion of the Sixth Circuit in regard to the substitution of counsel issues raised in Carson's Brief is in conflict with the opinion of the other Circuits. In *United States v. Adelzo-Gonzalez*, 268 F. 3d 772, U.S. App LEXIS 20972, (9th Cir. 2001), the defendant's sentence was vacated because the district Court's inquiry was inadequate. The Circuit Court's opinion explained that compelling reasons raised by the defendant were never investigated.

United States v. D'Amore, 56 F. 3d at 1206 stated "A court may not deny a substitution motion simply because it thinks current counsel's representation is adequate.

When Carson filed his first motion to dismiss Attorney Donald Butler, the Court stated in a Marginal Entry that, Attorney Butler is an outstanding attorney with over 40 years of experience, if defendant wishes new counsel he can retain his own." This is the type of behavior from District Court Judges that D'Amore prohibited and conflicts with the reasons given by the Sixth Circuit denying Carson's claims.

Additionally, *United States v. Araiza-Reyes*, 1997 U.S. App. LEXIS 4045 (9th Cir. 1997) vacated a Defendant's sentence when the District Court did not ask either Defense counsel or the defendant why the conflict existed. Another sentence was vacated in *United States v. Mullen*, 32 F. 3d 891 (4th Cir. 1994) because the defendant demonstrated a total breakdown of communication when the district Court abused its' discretion by not appointing a new lawyer.

Carson demonstrated a total breakdown of communication in his motions to the Court, explaining how Attorney Butler would not visit him, return his phone calls, or respond to his letters. The Court never asked Carson or Butler why the conflict existed even after Carson put his concerns on the record at the December 27, 2017 hearing. Carson's issues were ignored, and the Sixth Circuit did not apply the correct precedent in regard to Carson's concerns.

Lastly, *United States v. Musa*, 220 F. 3d 1096, 1102 (9th Cir. 200) explained that even Defense counsel is competent, a serious breakdown in communication can result in an inadequate defense. Carson thoroughly demonstrated the total breakdown in communication between him and Attorney Butler while addressing the court at hearings and in his three written motions requesting substitution of counsel. The District Court abused its' discretion which caused Carson to be severely prejudiced, and the Sixth Circuit Court of

Appeals opinion on the substitution of counsel issue is in conflict with the opinions of the 4th and 9th Circuit.

Because Carson's Sixth Amendment rights were clearly violated. He asks that this Honorable Court vacate his sentence and remand the case back to the District Court for further proceedings.

5. **Can the District Court ignore a Defendant's Fifth Amendment due process rights and violate the Federal Rules of Criminal Procedure (43 ca) by denying him the right be present at every trial stage as the law requires?**

The issue presented on Appeal was that the District Court's denial of Carson's right be present at material stages of trial is a violation of the Fifth Amendment.

Carson explained that when he received his trial transcript he discovered that Attorney Butler withheld crucial information from him which affected his substantial rights. It was discovered that when Court resumed the next day, and the Defendant was not present, Attorney Butler wanted to put an issue on record. He stated the Government indicated to him in April that the bank teller. Melissa Johnson, was now going to be able to identify Carson and wanted to get the identification excluded. (R. 100: Trial tran. Page ID# 519-522). The trial transcript will reflect that Carson was not present for almost five minutes. Carson stated in his Appeal Brief that not only did Attorney Butler withhold the information about the bank teller's identification, he also attempted to cover it up by addressing the Court without him being present.

Pure questions of fact are reviewed for plain error. *United States v. Burke*, 345 F. 3d 416,420 (6th Cir. 2003) one of the most basic rights guaranteed by the confrontation clause is the accused has the right to be present in the courtroom at every stage of his trial." *Illinois v. Allen*, 398 U.S. 337, 339, 90 S.Ct 1057, 25 L.Ed. 2d 353 (1970) See also: *McKaskel v. Wiggins*, 465 U.S. 168, 178, 104 s. Ct. 944, 951, 79L.Ed. 2d 122 (1984). Federal Rules of Criminal Procedure 43 (a) requires that the Defendant be present at or in trial appearances; Every trial stage including jury empanelment and the returning of the verdict and sentencing. The Court of Appeals denied Carson's claim and stated because Carson was present for the arguments or the Motion to Exclude Johnson's identification testimony and cross examination it cannot be true he was unaware of her identification.

That was not the issue presented in Carson's Appeal. The issue was Butler not telling Carson that he learned in April that the bank teller was going to identify him. This evidence is material to guilt and punishment and was never disclosed to Carson.

As a matter of fact, when Carson arrived in the courtroom, he was told by Butler's assistant, Erin Flanogen, that "the Government just ambushed us with this witness." If Carson were in the courtroom for every trial stage as Rule 43 (a) requires, he would have been able to learn the truth and the issue could have been addressed immediately, and a mistrial could have been declared. Carson's judicial rights were violated and he was affected by the outcome of the proceedings. If Carson would have learned of the alleged identification before trial, he could have opted to take a plea deal and received a substantially lesser sentence.

Additionally, the Sixth Circuit didn't even address the 43(a) issue in their opinion. You can't change the Rules of Criminal Procedure to fit your own biased set of facts. A Defendant is entitled to be present for every minute of their trial. Period. The transcript clearly shows Carson was not, which caused his judicial rights to be affected.

A Defendant's constitutional right to be present at every stage of his criminal proceeding is grounded in the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment. *United States v. Gagnon*, 470 U.S. 522, 526, 84 L. ed 2d 486, 105 S. Ct. 1482 (1985). The right is also mandated by Fed. R. Crim. P. 43 (a). "one of the most basic rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial." *Illinois v. Allen*, 397 U.S. 337, 338, 25 L. Ed. 2d 353,30 S. Ct. 1057 (1970).

The Rule 43(a) error in this case implicates constitutional concerns. *United States v. Bertoli*, 40 F. 3d 1384, 1397 (3d Cir. 1994) "The due process clauses of the Fifth Amendment grants criminal defendants the right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings." *Faretta v. California*, 422 U.S. 806, 819 n. 15, 45 L. Ed 2d 562, 95 S. Ct. 2525 (1975)

The Sixth Circuit did not follow the precedents established by the Supreme Court in regards to Carson's right to be present in the courtroom for every trial stage. His constitutional rights were disregarded and he

was severely prejudiced because he was not present to hear Attorney Butler address the court trying to get the bank teller's identification excluded. If Carson were present in the courtroom as the Constitution and Fed. R. Crim. P. 43 (a) required, he would have been able to let the court know that Attorney Butler never disclosed to him that the bank teller was going to be able to identify him as the bank robber. Carson was deprived of the opportunity to explain Attorney Butler's deceit and dishonesty to the court. A mistrial could have been declared. The withheld information about the identification was material to guilt and punishment and Carson would not have proceeded to trail if it were disclosed to him.

Carson has shown this Honorable Court that his judicial rights were violated and that the Federal Rules of Criminal Procedure were blatantly ignored. Carson is entitled to a new trial and asks that this sentence be vacated and that case be remanded back to the District Court.

6. **Under Federal Rules of Evidence 404(b), can a parole officer testify at trial without poisoning the jury panel and create biased against the Defendant?**

On appeal Carson explained references to his past criminal history and the testimony of his parole officer violated his due process rights and the Federal Rules of Evidence.

Carson explained how the District Court violated Federal Rules of Evidence 404(b)67 allowing his parole officer to testify which, by definition, insinuates prior conviction and how that testimony from the parole officer poisoned the jury panel.

The Fifth and Fourteenth Amendment provide the right to due process. Questions solely of law and mixed questions of law and fact are reviewed de novo, while pure questions of fact are reviewed for clear error. *United States v. Layne*, 324 F. 3d464,468 (6th Cir. 2003).

In *Holbrook v. Flynn*, 475 U.S. 560 (1986) this Court established that the right to a fair trial includes having the verdict to be determined by the evidence introduced. Federal Rules of Evidence 403 provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

United States v. Calhoun, 544 F. 2d 291,297 (6th Cir. 1976) decided that putting a parole officer on the stand is prejudicial, creates bias against the Defendant, and is improper. Convictions obtained by a parole

officer's testimony must be vacated.

The Sixth Circuit erroneously stated that Carson's parole officer's testimony did not violate Federal Rules of Evidence 404(b) because he testified he worked for a State Agency and didn't identify himself as such. The trial transcript proves otherwise. (R.100: Trial trans. Page ID#758-764)

Officer Worchol made references with his dealings with law enforcement officers, conducting investigations and Carson having to report every month. Any lay juror could easily figure out that a state employee who deals with law enforcement, conducts investigations and monitors an individual monthly is obviously a parole officer.

If there were any doubts as to Officer Worchol's occupation, AUSA Elzein referenced to him as an officer in her closing argument. (R. 103:Trial trans. Page ID#1355-1356) which prejudiced Carson to the jury. Carson's rights were violated under Federal Rules of Evidence 404(b), his constitutional rights were violated and the Court of Appeals refused to follow their own precedent set in Calhoun. The parole officer's testimony was prejudicial, improper, unethical, created bias, and poisoned the jury panel. Because of the afore mentioned facts, Carson asks that this Honorable Court vacate his sentence, and remand the case back to the District Court for a new trial.

7. **Under the Fourth Amendment, can government officials go inside a jail cell and seize legal materials, including confidential trial strategy, that was not listed on a protective order?**

On appeal Carson explained how his Fourth Amendment rights were violated when governments officers seized all his legal materials which included his notes containing confidential trial strategy and questions to all potential witnesses. The Court Order obtained by the AUSA authorized the confiscation of Jencks materials only.

The Fourth Amendment guarantees individuals the right to be free from "unreasonable searches and seizures" of their persons, houses, papers and effects.

In ruling against Carson's claim, the Sixth Circuit cited *Hudson v. Palmer* 468 U.S. 517, 530 (1984) which stated "prisoners have no legitimate expectations of privacy and the Fourth Amendment prohibition on unreasonable searches does not apply in prison cells." Carson did not take issue with the search of his cell,

his issue was with the illegal seizure of his legal documents. *Hudson v. Palmer* did not authorize government officers to seize prisoners' papers and effects. Carson's property was illegally seized contrary to this Court's decision.

The Sixth Circuit's opinion stated, "to the extent that Carson argues he was deprived of materials taken from his cell that were not Jencks material, the record reflects otherwise." Discussing the seizure material, the Government informed the Court, in Carson's presence, "that all the materials that were reviewed had nothing to do with Jencks and were returned to Mr. Carson." (Opinion page 18)

AUSA's statement about Jencks totally fractures the Sixth Circuit assertion that the record reflected otherwise. The AUSA admitted that the Government had possession of Carson's legal material, reviewed everything, then returned it. Carson's confidential legal documents, including his entire strategy was seized illegally and held hostage for four days before it was returned. There was plenty of time for everything to be read and copied. Carson's constitutional rights were clearly violated. Government officials went beyond the scope of the Court Order and Carson was severely prejudiced at trial.

The Sixth Circuit erroneously stated that Carson presented no evidence that his Fourth Amendment rights were violated. It was proven right in the Court's own opinion that his rights were violated. Carson asks that this Honorable Court reverse the decision of the Court of Appeals. Vacate his sentence and remand the case to the District Court for further proceedings.

Conclusion

Based on the afore mentioned reasons, the Petitioner respectfully requests that this Honorable Court grant this petition for a writ of certiorari. Reverse the Appeal Court Decision and remand this case back to the District Court for a new trial.

Respectfully Submitted,

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