

D.C. DOCKET No. 20-5957
F-16-CA-00355-

MHC-JSA-1

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

October, 2019 Term

DARIUS TAUREAN CALDWELL — PETITIONER
(Your Name)

FILED
SEP 08 2020

vs.
UNITED STATES — RESPONDENT ^{SO}

ON PETITION FOR A WRIT OF CERTIORARI TO

APPEAL FROM THE UNITED STATES DISTRICT COURT (NORTHERN) DISTRICT OF GEORGIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARIUS CANDWELL
(Your Name)

FEDERAL CORRECTIONAL COMPLEX U.S.P.I.
(Address)

COLEMAN, FLORIDA, 33521

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1- WHY WAS THE ACCUSED ARMED ROBBER DESCRIBED WITH TORN PANTS, AND DEFENDANT DID NOT HAVE TEARS AT ALL?
- 2- WHY IS IT THAT EXHIBITS SHOW ARMED ROBBER WITH NO TATTOOS, BUT DEFENDANT HAS MULTIPLE TATTOOS? (EVERYWHERE)
- 3- WHY DID EXPERT PRESENT AN UNRELIABLE SOFTWARE TO ATTEMPT TO VERIFY AND MATCH DNA?
- 4- WHY WAS THE SAME SOFTWARE USED TO MATCH DNA CONFIRMED BY EXPERTS TO BE DISFUNCTIONAL WITH BUGS?
- 5- WHAT DETAILS DID THE VICTIM TELLER GIVE ABOUT WHAT THE ARMED ROBBER LOOKED LIKE?
- 6- HOW VICTIMS BEING BANK TELLER'S NONE IDENTIFY DEFENDANT AS THE PERSON WHO ROBBED THEM AT GUN POINT?
- 7- WHY WAS DEFENDANT PROVEN TO BE GUILTY BEYOND REASONABLE DOUBT?
- 8- HOW LONG DID ARMED ROBBER STAY IN BANK?
- 9- WHY DETAINED OFFICIALS STATED IN BODY CAM FILES AND TRIAL THEY DON'T RECALL WHERE OR HOW THE BAG WAS FOUND?

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:

PLAINTIFF

USA REPRESENTED BY: BRETT HOBSON, SPECIAL FBI AGENT MATTHEW JAMES WILSON OFFICE OF THE
UNITED STATES ATTORNEY ATL 600 NORTHERN DISTRICT OF GEORGIA
600 UNITED STATES COURTHOUSE 75 TED TURNER DR. S.W. ATLANTA, GA
30303-404-581-6181 EMAIL: bret.hobson@usdoj.gov LEAD ATTORNEY TO BE
NOTICED DESIGNATION: RETAINED
- RICHARD MOUTLIAE - 404-581-6000 EMAIL: richard.moutliae@usdoj.gov LEAD
ATTORNEY TO BE NOTICED
- RYAN KARIM BUCHHAN - 404-581-6217 EMAIL: ryan.buchhan@usdoj.gov LEAD
ATTORNEY TO BE NOTICED (ASSISTED FBI AGENT MATTHEW JAMES WILSON & BRETT HOBSON DURING
TRIAL)
- DAHIL DUENO GOSS - 404-581-6084 EMAIL: dahil.goss@usdoj.gov ATTORNEY TO
BE NOTICED
- JENNY M. TURNER - 404-581-6245 EMAIL: jenny.turner@usdoj.gov ATTORNEY TO
BE NOTICED
- JUSTIN S. ANAND, CATHERINE M. SALINAS
- MARK H. COHEN

JUDGE: MAGISTRATE

Trial

DEFENDANT

- DARIUS LAUREAN CALDWELL
- PAUL MONNIER - ALSTON & BIRD, LLP - ATL - 1201 WEST PEACH TREE STREET
ATLANTA, GEORGIA 30309 - 3424 - 404-881-7394 - paul.monnier@alston.com
LEAD ATTORNEY TO BE NOTICED
- ANDREW TOWNSEND SUMNER - 404-881-7000 andy.sm - andy.sumner@alston.com
- LAUREN TAPSON MACON (NOT EMPLOYED) WITH ALSTON & BIRD LLP ANYMORE WAS
WITH ME IN TRIAL HEARING

TABLE OF CONTENTS

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

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
UNITED STATES V. BARSOUM, 763 F.3d 1321, 1341 (11 th CIR. 2014)	
UNITED STATES V. FRAZIER, 287 F.3d 1244, 1262, (11 th CIR. 2004)	
SNOWDEN V. SINGLETARY, 135 F.3d 732, 737 (11 th CIR. 1998)	
Mc DANIEL V. BROWN, 558 U.S. 120, 136 (2010)	
UNITED STATES V. BARTON, 909 F.3d 1323, 1338 (11 th CIR. 2018)	
UNITED STATES V. DIAZ, 248 F.3d 1065, 1102 (11 th CIR. 2001)	
PEOPLE V. WRIGHT, 111 APP (2 ^d) 073106, ¶ 96, 971 N.E.2d 549, 570	
PEOPLE V. WRIGHT, 25 N.Y.3d 769, 784, 37 N.E.3d 1127, 1137 (2015)	
JONES V. KEMP, 794 F.2d 1536, 1539 (11 th CIR. 1986)	
NEIL V. BIGGERS, 409 U.S. 188, 198-200 (1972)	
PERRY V. NEW HAMPSHIRE, 565 U.S. 228, 239 (2012)	
KEY V. Mc NEIL, 2010 WL 5811581 (N.D. FLA. DEC. 27, 2010)	
HUDSON V. BLACKBURN, 601 F.2d 785, 788 (5 th CIR. 1979)	
UNITED STATES V. CUETO, 611 F.2d 1056, 1063 (5 th CIR. 1980)	
UNITED STATES V. MCGINTOSH, NO 1:15-cv-194-ws1, 2016 WL 2984263, ¶ 13 (N.D. G.A. MAY 24, 2016)	
BONNER V. CITY OF PINEHURST, 661 F.2d 1206, 1209 (11 th CIR. 1981)	

STATUTES AND RULES

- 18 U.S.C.
- 18 U.S.C. § 922 (g)
- 18 U.S.C. § 922 (g) (1)
- 18 U.S.C. § 924 (c)
- 18 U.S.C. § 924 (c) (1), (A), (ii)
- 18 U.S.C. § 2113
- 18 U.S.C. § 2113 (a)
- 18 U.S.C. § 3231
- 18 U.S.C. § 3553 (a)
- 28 U.S.C. § 1291

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at APPEAL FROM THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA, or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION; 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 JUNE, 24 2020.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- AMMENDMENT ④ UNREASONABLE SEARCHES AND SEIZURES: THE RIGHT OF PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.
- AMMENDMENT ⑤ CRIMINAL ACTIONS - PROVISIONS CONCERNING DUE PROCESS OF LAW AND JUST COMPENSATION CLAUSES: NO PERSON SHOULD BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB, NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.
- AMMENDMENT ⑥ RIGHTS OF THE ACCUSED: IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.
- AMMENDMENT ⑨ RIGHTS RETAINED BY PEOPLE: THE ENUMERATION IN THE CONSTITUTION, OF CERTAIN RIGHTS, SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE.

STATEMENT OF THE CASE

CASES:

- DEAN V. UNITED STATES, 137 S. CT. 1170, 1173 (2017)
- UNITED STATES V. DARIUS CALDWELL, 18-13426 (11TH CIR. DEC. 13, 2018)

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition Below

Appellant was initially charged by complaint on September 8, 2016 with armed bank robbery. (Doc. 1). A federal public defender was appointed to represent him based on his indigency status. (Doc. 2). Following a probable cause and detention hearing on September 9, 2016, Appellant was remanded to the custody of the U.S. Marshals Service. (Doc. 8).

On October 4, 2016, a grand jury sitting in the Northern District of Georgia charged Appellant by indictment with two counts of armed bank robbery in violation of 18 U.S.C. § 2113, one count of brandishing a firearm in relation to one of the charged bank robberies in violation of 18 U.S.C. § 924(c), and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). (Doc. 10).

Appellant thereafter filed several motions to suppress statements and evidence, (Docs. 19, 20 and 34), including a motion to exclude identification testimony associated with a show-up conducted by law enforcement at the time of his arrest, (Doc. 34). The Magistrate Court conducted an evidentiary hearing related to these motions to suppress over several days in January, February, and March, 2017, (Docs. 35-39, 43-44). Following post-suppression hearing briefing and supplemental briefing as ordered by the Magistrate Court, (Docs. 50, 53-55,

and 58), the Magistrate Court recommended on August 23, 2017 that the District Court deny each of Appellant's pre-trial evidentiary motions, (Doc. 60). The assistant federal defender appointed to Appellant's case filed placeholder objections to the Magistrate Court's R&R at the same time she moved to withdraw her appearance on Appellant's behalf. (Docs. 63 and 64).

The undersigned was appointed to represent Appellant pursuant to the Criminal Justice Act on October 6, 2017. (Doc. 70). Following a continuance to facilitate pre-trial preparation, the undersigned perfected Appellant's objections to the Magistrate Court's R&R on November 2, 2017. (Doc. 78). By written order entered December 11, 2017, the District Court adopted in part and rejected in part the Magistrate Court's R&R. (Doc. 84). In particular, the District Court denied Appellant's motion to suppress unduly suggestive show-up testimony from trial.

Id.

On January 23, 2018, the government obtained a superseding indictment from a grand jury impaneled in the Northern District of Georgia. (Doc. 88). The superseding indictment charged two counts of armed bank robbery in violation of 18 U.S.C. § 2113, two counts of brandishing of a firearm in relation to the charged bank robberies in violation of 18 U.S.C. § 924(c), and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). *Id.*

Appellant proceeded to trial on April 9, 2018. (Doc. 110). The jury trial lasted from April 9-12, 2018. (Docs. 110-113). After the government rested, Appellant orally moved for judgment of acquittal on all counts of the superseding indictment pursuant to Federal Rule of Criminal Procedure 29. (Doc. 112). The District Court denied Appellant's Rule 29 motion. *Id.* Appellant did not offer a case-in-chief, nor did he testify at trial.

On April 12, 2018, the jury convicted Appellant on each count of the superseding indictment, specifically two counts of armed bank robbery in violation of 18 U.S.C. § 2113(a) (Counts One and Three of the superseding indictment), two counts of brandishing a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (Counts Two and Four), and one count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1) (Count Five). (Doc. 115).

A sentencing hearing on these convictions was held on August 2, 2018. (Doc. 136). Appellant submitted a sentencing memorandum prior to sentencing. He cited the Supreme Court's holding in *Dean v. United States*, 137 S. Ct. 1170, 1173 (2017), that a sentencing court may consider the mandatory minimum custodial sentencing associated with section 924(c) of the federal criminal code as fully satisfying the factors informing a reasonable sentence that are set forth in 18 U.S.C. § 3553(a). *Id.* Accordingly, and with the government's agreement, the District Court sentenced Appellant to a single day in custody on Counts One,

Three and Five of the superseding indictment, the two armed bank robbery counts and the felon-in-possession count. (Doc. 138). The District Court further sentenced Appellant to eighty-four months in custody as to Count Two, the first firearm brandishing count, and three hundred months in custody as to Count Four, the second firearm brandishing count, to be served consecutively to Counts One, Three and Five, and consecutively to one another, for a total custodial term of three hundred eighty-four months and one day. *Id.*

Appellant timely filed his Notice of Appeal on August 13, 2018. (Doc. 139). Approximately three months later, the government disclosed to Appellant's defense counsel an internal letter from the Federal Bureau of Investigation regarding the testimony of the FBI's DNA examiner that had been offered at trial. (Doc. 172-1).

Following disclosure of the FBI's letter, Appellant moved for a stay of his direct appeal to facilitate litigation of a motion for new trial before the District Court based on the prejudice associated with the FBI examiner's admittedly erroneous testimony. (Mot. to Stay Appeal, *United States v. Darius Caldwell*, 18-13426 (11th Cir. Dec. 13, 2018)). This Court granted Appellant's stay motion on January 11, 2019. (Order Granting Mot. to Stay Appeal, *United States v. Darius Caldwell*, 18-13426 (11th Cir. Jan. 11, 2019)).

Appellant moved the District Court for a new trial pursuant to Federal Rule of Criminal Procedure 33 on February 28, 2019. (Doc. 172). The District Court ordered the government to respond to Appellant's Rule 33 motion on March 19, 2019. (Doc. 173). The government responded to Appellant's motion for new trial on April 23, 2019, and Appellant replied to the government's response on May 21, 2019. (Docs. 176 and 179). The District Court denied Appellant's Rule 33 motion by written order entered on June 24, 2019. (Doc. 180).

II. Statement of Facts

Counts One and Two of the superseding indictment charged Appellant with having robbed a NOA Bank branch in Doraville, Georgia and with having brandished a firearm in relation to that robbery on August 24, 2016. (Doc. 88). Counts Three, Four, and Five of the superseding indictment further charged Appellant with having robbed a Bank of America ("BOA") branch in Smyrna, Georgia, with having brandished a firearm in relation to that robbery, and with being a felon in possession of a firearm, all on September 7, 2016. *Id.*

Because Appellant was arrested shortly after the second-in-time, BOA robbery, the government offered evidence related to that robbery before offering evidence related to the NOA Bank robbery, for which no one had previously been arrested or charged. Appellant stipulated to being a felon for purposes of Count Five. (Doc. 119-4).

A. Bank of America Robbery

With regard to the BOA robbery, the government offered testimony from the teller who was robbed and a bank customer who was engaged in a transaction with the teller at the time of the robbery. Their testimony, coupled with the introduction of surveillance videos from the bank, established that a black male entered the branch at approximately 10:07 a.m. (Doc. 162 at 64-84, 109-15). He wore a dark-colored, inside-out Steelers t-shirt, a dreadlock wig, and a blue and white bandana covered his face. (Doc. 117-1, Doc. 119-8, Doc. 119-9, Doc. 119-30-35, and Doc. 162 at 69-70, 82-84, 90-91, and 101-02). The robber pointed a silver and black handgun at the teller while ordering her to put money in a black gym bag he had placed on the counter. (Doc. 119-9). The teller placed a GPS tracking device into the robber's bag, along with the stolen money. (Doc. 162 at 71-72).

Although the teller testified that she was focused on the handgun throughout the robbery, (Doc. 162 at 97-98), she described the robber as approximately 5'9" tall, with a slight to medium build. *Id.* at 70, 82. She also said the robber wore a dark, inside out t-shirt that bore a Steelers logo, that his face was covered with a blue bandana worn as a mask, and that she noticed that he had something on his head that appeared unnatural. *Id.* The customer testified that the robber was "not a tall person." *Id.* at 111. The robber was in the bank for approximately one minute and escaped on foot. (Doc. 117-1, Doc. 162 at 70-71, 75-76).

Prior to the robber's entry into the BOA branch, witnesses in a nearby State Farm office had seen him crouching in some bushes and putting on a bandana to conceal his identity. They called 911, and Smyrna, Georgia police officers were dispatched while the robbery was in progress. (Doc. 162 at 119-22, Doc. 163 at 7-14 and 18-21, Doc. 117-2, and Doc. 117-3).

Shortly after the robbery, responding police officers found Appellant crouched next to a chimney on the side of a house in a residential neighborhood approximately a quarter of a mile from the BOA branch. (Doc. 163 at 36-45, Doc. 117-4, Doc. 117-5, and Doc. 117-8). He was wearing what appeared to be the same dark-colored, inside-out Steelers t-shirt that had been worn by the BOA robber. (Doc. 163 at 49-50 and 53-54, Doc. 117-4, Doc. 117-5, Doc. 117-8, Doc. 119-13, Doc. 119-16, and Doc. 119-61-65). The homeowner testified to having found a black gym bag in close proximity to where Appellant had been discovered. (Doc. 163 at 98-99). Police bodycam audio captured the homeowner earlier stating, however, that Appellant was not carrying anything when the homeowner first saw him in his yard. (Doc. 163 at 102-03). Police found a dreadlock wig, a blue and white bandana, a loaded silver and black handgun, currency, and a GPS tracker in the bag. (Doc. 163 at 80 and 122-27, and Doc. 119-22-29).

A Smyrna police detective drove the BOA teller to where Appellant was found. (Doc. 162 at 92-97, 103-06, 107-11, and 113-117). While the teller

remained in the detective's vehicle approximately "two houses," or 65-75 feet away, the police removed Appellant, in handcuffs, from another law enforcement vehicle and faced him toward the teller, whose identity was concealed by a strobe light behind the passenger-side windshield of the detective's car. *Id.* The teller confirmed that Appellant appeared to be the same sex, height, build, and skin tone as the robber, with a similarly colored t-shirt. (Doc. 162 at 93-97, and Doc. 163 at 107-10).

The FBI took custody of Appellant later that same day, along with the bandana, wig, and handgun found in the gym bag. (Doc. 163 at 129, 148-52, 171, 182-83). The FBI case agent forwarded the bandana, wig, and handgun to the FBI Laboratory for forensic testing, including DNA testing facilitated by a buccal swab of known DNA the agent took from Appellant. *Id.* at 148-53. The case agent further testified that, based on Appellant's appearance and the use of a blue-and-white bandana and a silver-and-black handgun in the robbery of the BOA branch, he believed Appellant had committed another armed bank robbery at the NOA Bank branch in Doraville, Georgia approximately two weeks earlier. *Id.* at 141-47, 185-87, 190-91.

B. NOA Bank Robbery

The evidence at trial related to the NOA Bank robbery on August 24, 2016 established that a black male had briefly hesitated outside the bank for a short

period and then entered the branch alone. (Doc. 164 at 138-40, Doc. 117-6, and Doc. 117-7). He was wearing a dark-colored t-shirt, dark pants, and a blue-and-white bandana worn as a mask. (Doc. 117-6, Doc. 117-7, and Doc. 163 at 207-08). He pointed a gray-and-black handgun at the teller and carried a black gym bag, into which the money was placed. (Doc. 117-6, Doc. 117-7, and Doc. 163 at 207-08).

The NOA Bank employee who initially observed the robber testified that she is 5'2", and that the robber was 10 to 15 centimeters taller than her. (Doc. 164 at 141). Another NOA Bank employee testified that the robber's mask was green, khaki and red in color, rather than blue and white. *Id.* at 145-46. The head teller, who put money on top of the teller station that the robber put into his bag, described the robber as "very short," "5'3" or something." *Id.* at 150. He further stated that he is 5'5" and believes the robber to have been shorter. *Id.* at 150-51. At the time of his booking, Appellant was 31 years old, 5'8" tall, and weighed 160 pounds with a slight to medium build. (Doc. 163 at 171-72).

To address the lack of probative identification testimony from eyewitnesses, the government offered a surveillance video that the FBI case agent collected from a computer store located to the rear of the NOA Bank branch in the same shopping center. (Doc. 117-7). When published to the jury, this video showed, from a fixed camera at a distance of approximately 30 feet, a black male wearing a dark shirt,

dark pants and carrying a gym bag who walked across the aperture of the camera for several seconds. (Doc. 163 at 198-99 and 213-14). The video also showed the same individual, but this time wearing a blue-and-white bandana, running in the opposite direction approximately six minutes later. *Id.* at 199-200. The jury also viewed still images from the computer store surveillance video. (Docs. 119-52-54, and Doc. 163 at 202-03). The FBI case agent conceded at trial that the computer store video is the only evidence of the NOA Bank robbery in which the suspected robber is not wearing a mask. *Id.* at 227-28. He also testified to the similarities he perceived between the BOA and NOA Bank robbers, specifically with regard to race, build, height and hairline, as well as the fact that both robbers wore a blue-and-white bandana and brandished a metallic-and-black handgun in the same manner. *Id.* at 207-210.

C. The Government's DNA Evidence

At trial, the government presented expert testimony from Erica Ames, a DNA examiner from the FBI Laboratory, regarding her comparison of Appellant's DNA to mixtures of DNA found on the bandana, wig, and pistol recovered at the time of the BOA robbery. (Doc. 164 at 53-127). She testified specifically that FBI examiners state their conclusions in the form of a "likelihood ratio," that "helps give weight to our conclusions." *Id.* at 73. She further testified that, with respect to the handgun and wig, it was orders of magnitude more likely that Appellant was in

fact a contributor of DNA to the mixtures of DNA collected from these items, rather than, as required by FBI policy, that it was more likely that Appellant had contributed DNA if he were assumed to be one of multiple contributors to a mixed sample of DNA. *Id.* at 73, 125-26.

After Appellant had been convicted and sentenced, the FBI sent a letter to the line prosecutor, which the prosecutor promptly forwarded to the undersigned, disclosing that the DNA examiner's likelihood ratio testimony was in error. (Doc. 172-1). Specifically, the FBI's correspondence stated that Examiner Ames had deviated from recommended language regarding the likelihood, stated as a ratio, that Appellant had contributed DNA to the mixtures of DNA retrieved from the wig and the handgun. *Id.*

REASONS FOR GRANTING THE PETITION

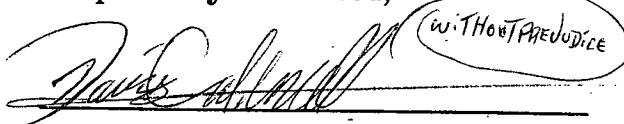
- DETAINING OFFICIALS NEVER QUESTIONED DEFENDANT AND NEVER READ DEFENDANT MIRANDA RIGHTS (MIRANDA VS. ARIZONA), DEFENDANT WOULD NOT HAVE DONE ONE DAY IN JAIL HAD OFFICIALS DONE SO.
- ARMED ROBBER HAS NO TATTOOS, AND DEFENDANT HAS MULTIPLE TATTOOS, IN MOST OF THE GOVERNMENT EXHIBITS ARE STILL SHOT PICTURES AND VIDEO'S OF ARMED ROBBER'S FLESH SHOWING NO TATTOOS AND DEFENDANT'S FLESH SHOWING TATTOOS ALLOWED.
- WOMEN + MEN OFFICIALS WHEN YOU WATCH BODY CAM CASE FILES ARE SAYING "NO DEFENDANT IS NOT THE PERSON WHERE LOOKING FOR", PANTS DON'T MATCH DESCRIPTION, HEIGHT DON'T MATCH DESCRIPTION, AND THE BIGGEST DIFFERENCE IS THE TATTOOS. (AND OFFICIALS STILL BOOKED ME IN JAIL)
- ILLEGAL SEARCH AND SEIZURE FOR BAG DEFENDANT WAS PAWNED DOWN IN A NEIGHBORHOOD NOT A BANK WITH NOTHING AROUND DEFENDANT NOTHING ON DEFENDANT THEN LOCKED IN A POLICE CAR DETAINED FOR INVESTIGATION, LATER OFFICIALS HAVE A BAG THEY STATE THEY DON'T RECALL WHERE OR HOW BAG WAS FOUND.
- VANESSA RAMOS COURTS (MARK H. COHEN) AND D.A. QUALIFIED AN EXPERT IN LATENT FINGER PRINT ANALYSIS WHO STATES MULTIPLE TIMES THIS TYPE OF CASE SHE DIDN'T SEE ANY TYPE OF PRINTS THAT WHERE USEABLE. (SEE TRIAL TRANSCRIPTS WEDNESDAY, APRIL 11, 2018 (P) 4344)
- ERICA AMES COURTS (MARK H. COHEN) AND D.A. QUALIFIED AN EXPERT IN FORENSIC DNA ANALYSIS, AND THE SOFTWARE PROGRAM SHE WAS RELIING ON IS A PROGRAM CALLED STAMIX, PROGRAM WAS DISFUNCTIONAL WITH BUG'S IN SOFTWARE. (SEE TRIAL HEARING TRANSCRIPT (P) 12 WEDNESDAY APRIL 11, 2018)
- YOU CAN NEVER GET A GUILTY VERDICT FROM WHAT YOUR HEARING AND SEEING.
- JUSTIN S. AN AND MAGISTRATE JUDGE KEPT USING THE WORDS UNLAWFUL AND UNCONSTITUTIONAL THE WAY OFFICER CARPER EVEN GOT IN CONTACT WITH DEFENDANT.
- DETAINING OFFICIAL'S SAID IN ALL COURT HEARINGS AND IN TRIAL AFTER SEEING PICTURES AND DISCUSSION CASE "OUR UNCERTAINTY IS CERTAIN IT LOOKS LIKE DEFENDANT IS THE WRONG PERSON IN FEDERAL CUSTODY."

CONCLUSION

DISC, PICTURES, AND ALL COURT HEARINGS SHOW MY CASE IS A CASE WHERE I'M CLEARLY FALSELY ARRESTED AND FALSE IMPRISONMENT, THE D.A. KNOWS IT, ALL JUDGES KNOW IT, AND ALL LAWYERS KNOW IT, EVEN SWAT (POLICE) FORCE KNOW IT. YOU CAN NEVER GET A GUILTY VERDICT FROM WHAT YOU HEARING AND SEEING. (BLESS ARE YOUR EARS FOR THEY HEAR AND EYES FOR THEY SEE!)

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Mark Johnson

(WITHOUT PREDJUDICE)

Date: 9/2/20