20-6487

ORIGINAL

In The Supreme Court of the United States

FILED
NOV 12 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. (Clerk To Supply)

Mr. Andrew James Johnston,

Petitioner,

v.

United States,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Andrew Johnston May 19, 2020

Mr. Andrew James Johnston
Prisoner ID No. 22712424
United States Penitentiary Lee
P.O. Box 305
Jonesville, Virginia 24263

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Questions Presented

1. Does the warrant requirement apply when the Government obtains the modern-day equivalents of an individual's own papers or effects, even when those papers or effects are held by a third party? Will this Court overrule United States v. Miller, 425 U.S. 435 (1976)?

2. Where a district court omits "force and violence" from the element "by force and violence or by intimidation" to remove intimidation from the context of force and violence in the middle of trial, was the overall statutory scheme of 18 U.S.C. § 2113 frustrated against legislative intent?

3. Is 18 U.S.C. § 2113(a)P1's by intimidation element void-for-vagueness, as-applied, to the facts of the case below?

4. Is the context of "or" in the phrase "by force and violence or by intimidation" completely different from the context of "or" as a conjunction between self-contained units?

5. Where a witness testifies that an alleged robber did not state the word "robbery," did not make any threats to the witness or her coworker, did not say that he was going to harm the witness in any way if he did not get what he was asking for, and did not mention or present or imply a weapon or any violence, is that sufficient evidence of an attempted robbery under 18 U.S.C. § 2113(a)P1?

6. Is a pro se defendant entitled to an order from the district court that compels the U.S. Marshal to serve his subpoenas duces tecum and ad testificandum, or an order that compels his standby counsel to give the subpoenas to the U.S. Marshal and compels their service prior to trial where the defendant was held without bail and was in forma pauperis under the Sixth Amendment's Compulsory Process Clause?

7. Where there was no reasonable opportunity of a witness to view a suspect at the time of a crime, does the close proximity of an arrest (about 20 minutes) justify the use of a highly suggestive one to one confrontation line up without violating the Fifth Amendment's Due Process Clause?

8. Where a so-called eyewitness is the sole basis for probable cause to arrest and/or reasonable suspicion to stop a vehicle that isn't committing any traffic violations, and that witness never identified the alleged suspect and getaway vehicle prior to trial, is that witness's identification of a defendant and vehicle for the first time in trial - coupled with a written statement from the Bank that it had no record of any transactions by that witness as a "customer" when he made his purported observations - is that evidence of a fabricated witness to justify an illegal arrest and prejudice the defendant at trial in violation of the false evidence doctrine?

9. Is 18 U.S.C. § 2113(a)P2 a lesser included offense of 18 U.S.C § 2113(a)P1?

10. Will this Court resolve the circuit split in favor of the Ninth and Fifth Circuit Courts of Appeals and hold that Brady v. Maryland, 373 U.S. 83 (1963) applies to pretrial suppression/evidentiary hearings?

11. Does 18 U.S.C. § 2113(a)P1 lack a mens rea element, or does the mens rea element "with the intent to steal" from 18 U.S.C § 2113(a)P2 merge into it and require the Government to prove an intent to steal beyond a reasonable doubt?

12. Were the Brady violations in the district court worthy of a new trial at the very least?

13. Did a constructive amendment of the indictment occur where the district court instructed the jury on 18 U.S.C. § 2 liability without § 2 being charged in the indictment?

14. Does 18 U.S.C. § 3231 provide the Government with an absolute basis for federal jurisdiction superfulous to all jurisdictional elements enumerated in statutes in the federal criminal code? Where a FDIC employee testifies that the FDIC does not insure a bank for robbery or larceny, does the district court have sufficient evidence of federal jurisdiction?

List of Parties

All parties appear in the caption of the case on the cover page.

Related Cases

Brady v. Maryland, 373 U.S. 83, (1963)
Carpenter v. United States, 138 S. Ct. 2206, 2222, 2261-2272 (2018)
Foster v. California, 394 U.S. 440, 443 (1969)
Hamling v. United States, 418 U.S. 87, 117-118 (1974)
In re: Winship, 397 U.S. 358, 364 (1970)
Jackson v. Virginia, 443 U.S. 307, 317-318 (1979)
Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994)
Manson v. Brathwaite, 432 U.S. 98, 114-115 (1977)
Napue v. Illinois, 360 U.S. 264, 269 (1959)
Prince v. United States, 352 U.S. 322, 328 (1957)
Rehaif v. United States, 139 S. Ct. 2191, 2196 (2019)
Steel Co. v. Citizens For A Better Env. 523 U.S. 83, 91-94 (1998)
Stokeling v. United States, 139, S. Ct. 544, 549 (2019)
United States v. Butler, 297 U.S. 1, 62-63 (1936)
United States v. Garcia, 919 F.3d 489, 491 (7th Cir. 2019)
United States v. Lonzello, 660 F.3d 488, 492, 493 (7th Cir. 2010)
United States v. Thomas, 835 F.3d 730, 734-735 (7th Cir. 2016)
United States, v. Thornton, 539 F.3d 741, 747, 749 (7th Cir. 2008)
United States v. Wagstaff, 865 F.2d 626 (4th Cir. 1989)
United States v. Williams, 592 F.2d 1277, 1281-1282 (5th Cir. 1979)

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Table of Authorities Cited

The twenty cases cited in this petition are listed alphabetically in the Related Cases section of this petition on page iii. The statutes are listed in the Constitutional And Statutory Provisions Involved section of this petition on page 1

Rules And Other Principles

Equity delights to do justice, and not by halves.
Federal Rule of Criminal Procedure 29(c)
Federal Rule of Criminal Procedure 33

Opinions Below

The opinion of the U.S. court of appeals appears at Appendix A to the petition and is reported at appeal no. 19-1624, May 11, 2020 order.

The opinion of the U.S. district court appears at Appendix B to the petition and is reported at case no. 1:17-cr-517, Document No. 339.

Jurisdiction

The date on which the U.S. court of appeals decided my case was May 11, 2020.

A timely petition for rehearing was denied by the U.S. court of appeals on the following date:
and a copy of the order denying rehearing appears at Appendix C.

Constitutional And Statutory Provisions Involved

18 U.S.C § 2113(a)P1; 18 U.S.C. § 2113(a)P2; 18 U.S.C § 3231; Fourth Amendment's probable cause clause and papers and effects clause; Fifth Amendment's Grand Jury clause and Due Process Clause; and Sixth Amendment's Compulsory Process clause.

Statement of the Case

On July 26, 2017, petitioner was charged by complaint with bank robbery, in violation of 18 U.S.C. § 2113(a)A1. R. 1. On August 23, 2017, a one-count indictment charged petitioner with the same offense. R. 31. On January 10, 2019, following a jury trial, petitioner was found guilty of "by intimidation" and "attempt[ing] to take" money from a bank. R. 297-298. On April 4, 2019, petitioner was sentenced to 168 months imprisonment, and the district court denied his post trial motions. R. 339. Petitioner handed his notice of appeal to the courtroom clerk on the spot upon the oral pronouncement of the sentence. After correcting petitioner's financial status on or about April 17, 2019, Circuit Judge, Amy C. Barrett, granted petitioner leave to prosecute his appeal pro se on May 3, 2019. From that time until March 9, 2020, petitioner was denied access to his transcripts, and his conditions of confinement were manipulated to hinder his ability to prosecute the appeal. Case No. 7:19-cv-083-JMH, Johnston v. Warden, USP Big Sandy; Case No. 5:19-cv-464-DLB, Johnston v. Director of Bureau of Prisons; and see, Case No. 1:19-cv-3660, Johnston v. Christopher A. Wray, FBI Director, Motion for Immediate Injunctive Relief (filed in May 2020).

Without access to the transcripts, on November 12, 2019 petitioner filed his opening brief in the court of appeals. Petitioner argued, based on the district court record, the following positions on appeal: (a) the district court did not have jurisdiction over the proceedings;

(b) whether the district court erred in denying petitioner's motion to dismiss the indictment where his Fourth Amendment rights were violated by the telecommunications company AT&T;

(c) whether the district court erred in denying petitioner's motion to quash arrest and suppress evidence;

(d) whether the district court erred in denying petitioner's motion to suppress identification;

(e) whether the district court erred in not allowing petitioner to serve subpoenas to secure testimony and material evidence;

(f) whether § 2113 (a)'s "by intimidation" element is unconstitutionally vague;

(g) whether the district court erred in admitting false evidence at trial;

(h) whether the government withheld evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963);

(i) whether the district court erred in denying petitioner's motion for a lesser included offense jury instruction;
(j) whether the trial evidence failed to establish petitioner's guilt beyond a reasonable doubt;
(k) whether the district court erred in failing to recuse itself; and
(l) whether the district court erred in applying the career offender enhancement under the Sentencing Guidelines.

On February 13, 2020, the government responded in opposition to almost all of the above stated claims, except that it was completely silent regarding the vagueness challenge, as-applied. On March 9, 12, and 20, 2020, petitioner was allowed 14.5 hours with his transcripts for the first time during the pendency of his appeal, and on March 20, 2020 he filed his reply brief containing the most pertinent and material citations of the transcripts. Petitioner filed two concise addendums to his reply based on his last 1.5 hours alotted with the transcripts on March 20th, and on May 11, 2020 the court of appeals glossed over his claims and affirmed the district court's judgment.

Reasons For Granting The Writ

Fourth Amendment

On Pages 9-11 of petitioner's opening brief in the appeal below, and on Pages 6-10 of petitioner's reply brief, he argued that the district court should have dismissed the indictment pursuant to AT&T's conversion of his Customer Propriety Network Information ("CPNI") to trawling law enforcement in accordance with Carpenter, 138 S. Ct. 2206, 2222, 2261-2272. The court of appeals did not even address this argument, the government's admissions to that argument in the district court and on appeal, and relied fabricated evidence to affirm the district court's probable cause determination. The court of appeals relies on the arresting officers' noticing clothing in the back of petitioner's car on the dash cam and stretched truths about a hat bearing "SECURITY" on it being discovered in plain view to circumvent the conversion of the CPNI being the reason the arresting officer pulled a U-turn and got behind petitioner in the first place at the direction of the FBI. The court of appeals ignored the Google Maps that show it was impossible for petitioner to have driven from the bank to where he was arrested in under 16 minutes to rely on inaccurate and false observations and "911 audio" instead of holding the district court accountable and directing it to serve petitioner's subpoena to AT&T to discover what law enforcement was actually doing with petitioner's CPNI around the time he was arrested and leaving his job. For the reasons explained in Carpenter, 138 S. Ct. 2222, 2261-2272, this Court should overrule United States v. Miller, 425 U.S. 435 (1976) and its progeny, and hold that when the government obtains the modern day equivalents of an individual's own papers and effects, even when those papers and effects are held by a third party, the warrant requirement applies.

Misconstruction of § 2113

On Pages 34-38, of petitioner's opening brief in the appeal below, and on Pages 35-37 of petitioner's reply brief, he argued that when the district court altered the jury instructions in the middle of trial after the bank tellers were cross-examined on the substantive elements - by removing "force and violence" from the substantive instruction to remove "by intimidation" from the force and violence context for the purposes of expanding the basis for conviction - it frustrated the overall statutory scheme of § 2113 because "by intimidation" has limitless generality.

Specifically, that such construction allowed acts not criminalized by § 2113(a)P1, that fall squarely within the ambits of § 2113(a)P2 and § 2113(b), to be improperly crammed into "by intimidation" making all the statute's lesser elements superfulous. The court of appeals ruled in contravention of its own precedent, United States v. Thornton, 539 F.3d 741 (7th Cir. 2008), and affirmed the district court's misconstruction against legislative intent. This Court should hold that the "or" between "by force and violence or by intimidation" is of completely different context than "or" between self-contained units. Loniello, 610 F.3d 488, 493. It should be clear under Thornton, Loniello, and Wagstaff, 865 F.2d 626, that the court of appeals erroneously affirmed the denial of a new trial on this ground.

§ 2113(a)'s "by intimidation" Element
Is Void-for-Vagueness As-Applied

On Pages 28-33, of petitioner's opening brief in the appeal below, and on Page 12 of petitioner's reply brief, petitioner argued that "by intimidation" is void-for-vagueness and pointed out how the government conceded and/or assented to such petition on appeal.

The court of appeals ignored this argument, and petitioner separation-of-powers argument completely. For the reasons argued in petitioner's briefs above stated and the principles of lenity invoked therein, this court should hold that as-applied to the facts of petitioner's case "by intimidation" did not provide a person of ordinary-intelligence a reasonable opportunity to know what is prohibited and failed to provide explicit standards to prevent arbitrary and discriminatory enforcement; also that the judge-made definition (Gov. Instruction) No. 19 of the jury instructions violated the separation of powers doctrine. This Court should vacate and remand with directions to have the court of appeals rule on the merits or vacate and remand upon the government's silence to this claim on appeal.

Insufficient Evidence of Robbery

On Pages 20-25, of petitioner's reply brief in the appeal below, petitioner quoted and cited the most substantive transcripts in the case that both the Government and court of appeals have omitted any reference to whatsoever. Those parts of the record are as follows:

Nevarez testified that she "blacked out," and she "just remember[s] the person saying that his family was in trouble. They were kidnapped. The brother had a gambling problem, that they needed the money to save his family." R. 329, Page 67, Id. 12-19. "The person was just, like, telling that story, why they needed the money, that they wanted the money. So I don't know... But then my supervisor noticed. So she got interacted in the conversation, like, listening." R. 329, Page 68, Id. 8-14. Neither the government said a single word about the following testimony that should have entitled petitioner to an acquittal over one year ago to date from teller Byrne:

"What did he say initially? My wife and kids have been kidnapped. They are going to rape and kill them. My brother-in-law has a gambling problem. I need money. And he gave an estimated amount of like -- I want to say it was like 28-$3500." R. 330, Page 34, Id. 9-16.

"And did you hear that individual instruct her to come closer? No, I did not." R. 330, Page 34, Id. 23-25. "Did you hear the individual say anything about a robbery? Did you hear the word 'robbery'? No." R. 330, Page 35, Id. 1-4. "How far were you from the robber when you were standing there, about? Three or four feet." R. 330, Page 37, Id. 9-11.

"You stated that you were about three to four feet away from the suspect when he approached the counter. Is that true? Yes. Did you hear the suspect make any threat to you or to Ms. Nevarez? No. Did he say that he was going to harm you or Ms. Nevarez if he did not get what he was asking for? No. Did he mention any form of violence toward you or Ms. Nevarez, as you stood on the other side of that countertop that day? No." R. 330, Page 47, Id. 6-23.

"The suspect, according to your testimony, stated that he had a personal problem. He said something about his family. You testified something about his family being kidnapped or something like that; is that correct? Yes. Did he say anything about your family? No. Did he say anything about Ms. Nevarez's family? No." R. 330, Page 49, Id. 17-25.

"So is it true that you told the police that the suspect did not threaten you, that the suspect did not present a weapon, that the suspect did not imply any form of violence to you or Ms. Nevarez on the other side of that counter? Objection. Asked and answered judge." R. 330, Page 49, Id. 3-7.

As stated above, the court of appeals omitted any reference to the above stated evidence, misapplied Jackson, 443 U.S. 307, 317-318, and In re: Winship, 397 U.S. 358, 364, to affirm the district court's denial of an acquittal as a matter of law under Federal Rule of Criminal Procedure 29(c) in contravention of its own precedent, Garcia, 919 F.3d 489, 491 (7th Cir. 2019). In this light, this Court should hold that the above stated evidence was insufficient as a matter of law and reverse the court of appeals' decision affirming the district court's denial of acquittal.

Compulsory Process

The court of appeals does not even partially recite the record correctly in this regard. The court of appeals incorrectly states petitioner "did not follow through" with moving the district court to enforce the subpoenas, as this court is aware, petitioner went so far as to apply for a stay of proceedings and petition for writ of prohibition to make sure his subpoenas were served. S. Ct. No. 18-7207. Unfortunately, on the court of appeals' watch, the case was forced to trial, petitioner's mail delayed while that petition was pending in this Court.

It's no surprise the court of appeals mishandled petitioner's compulsory process claim as it stood idle, and did not hold the district court accountable under this Court's precedent prior to trial. Chief Judge, Diane P. Wood, one of the affirming judges on the appeal below, denied mandamus relief and pretrial release with no objection from the government prior to trial. See Appeal Nos. 18-3311 and 18-3302. For the reasons argued in petitioner's opening brief on Pages 23-27, and petitioner's reply brief on pages 33-35, especially referencing the November 26, 2018 transcripts, this court should hold that pro-se criminal defendants have a due process right to have the U.S. Marshal serve their material subpoenas duces tecum and ad testificandum under the compulsory process clause and reverse the court of appeals decision affirming the district court in this regard.

Unduly Suggestive And Unnecessary Identification Procedure

On Pages 18-22 of petitioner's opening brief in the appeal below, and on Pages 15-19 of petitioner's reply brief, petitioner argued that the highly suggestive one-to-one confrontation employed by police violated due process.

The court of appeals merely echoed the government's position that because of the closeness in time from when the suspect was in the bank and when petitioner was brought to the show-up that due process was not implicated. The court of appeals did not address the 10 inch difference in height between the suspect and petitioner, and relied on inaccurate testimony that the tellers identified petitioner by his "eyes and voice" despite the bank lobby video showing the suspect wearing dark glasses/sunglasses and no unusual qualities of petitioner's voice being described for them to "recognize." Because the above stated procedured identification by police suggestion factually mirrored the procedured identification in Foster v. California, 394 U.S. 440, 443 (1969), this Court should hold petitioner was mistakenly identified and reverse the court of appeals' rationale below and/or overrule the caselaw that the court of appeals relied upon (United States v. Hawkins, 499 F.3d 703, 707 (7th Cir. 2007)) as it is not in accordance with either Foster, supra, nor Manson, 432 U.S. 98, 114-115 (1977) (requiring reasonable "opportunity of the witness to view the criminal at the time of the crime").

Fabricated Evidence Used To Falsify Probable Cause And Guilt

On Pages 39-40, of petitioner's opening brief in the appeal below, and on Pages 26-32 of petitioner's reply brief, petitioner argued false evidence in violation of Napue v. Illinois, 360 U.S. 264, 269 (1959), but the court of appeals ignored that legal position entirely and affirmed the district court's acceptance of a fabricated witness and corresponding fabricated "911 audio" while the original and certified "911 audio" remained withheld through non-service of petitioner's subpoena to Netcom, Inc. and the government's non-disclosure of that evidence prior to trial. It is petitioner's position that because that witness was never asked to identify petitioner or petitioner's car before trial, being the only purported person able to view the suspect with no coverings, the government's use of that witness and his identification of petitioner and his vehicle for the first time in trial constituted fabrication causing the prejudice of making petitioner look guilty in front of the jury. The witness testified "I don't recall. I don't want to say the wrong color. I don't recall," R. 330, Page 95, Id. 25 - Page 96, Id. 1-2, when asked by the prosecutor if he knew <u>the color</u> of the car.

When petitioner was objecting to the admission of the fabricated 911 audio, he stated "Your Honor, you granted the motion in limine to exclude any uncertified 911 audio that wasn't certified by the communications carrier. And, like I said, I have multiple versions of it." R. 331, Page 4, Id. 1-4.

And, "You never identified me out of this courtroom prior to today? No. I didn't know what you looked like outside of this courtroom until today." R. 331, Page 16, Id. 12-18. For these reasons, petitioner seeks that this Court hold that evidence was fabricated, and used, and reverse the court of appeals decision affirming the district court's denial of a new trial and/or dismissal on this ground.

§ 2113(a)P2 Is A Lesser Included Offense Of § 2113(a)P1 Under Prince

On Pages 42-44, of petitioner's opening brief in the appeal below, and on Page 38 of petitioner's reply brief, also on Page 7 of 11 of petitioner's supplemental brief that § 2113(a)P1 and § 2113(a)P2 merge together with the mens rea element "with the intent to steal" if a robbery is consummated under Prince, 352 U.S. 322, 328. For the reasons argued therein, this court should hold the same and reverse the court of appeals on this issue.

Brady v. Maryland, 373 U.S. 83 (1963)
Should Apply To Pretrial Motions And
Suppression / Evidentiary Hearings

On Pages 14-15, of petitioner's opening brief in the appeal below, and on Page 39 of petitioner's reply brief, petitioner argued that the Seventh Circuit should join the Fifth and Ninth circuits' side of the circuit split identified in United States v. Thomas, 835 F.3d 730, 734-735 (7th Cir. 2016) and hold that **Brady** applies to pretrial suppression/evidentiary hearings. Oddly, the court of appeals was silent, as was the government, to this claim as petitioner pointed out in his reply and petition for rehearing en banc. Because the crux of petitioner's arrest is the withheld Netcom radio chatter, and because the government was allowed to withhold that evidence in light of the above stated "gray area" of the law (and subsequently deny its existence despite its own witness's trial testimony) it is petitioner's position that if this Court adopts the above stated watershed procedural rule that situations like petitioner's will no longer occur. After the district court reversed its November 20, 2017 order to produce the police SUV communications on January 12, 2018 by denying the motion to suppress and motion to compel disclosure or otherwise dismiss, R. 102, the government began saying it was not aware of any Netcom certified radio chatter. On December 18, 2018, the government called petitioner's Netcom request a "phantom request," but never served the subpoena to Netcom to hear what Netcom had to say for itself about its retention of voice-over-internet provider stored data of law enforcement communications. Then in trial, the deputy police chief testified he was listening to Netcom, R. 331, Page 85, Id. 14-15; Page 95, Id. at 15 - Page 97, Id. 1-7. For these reasons, this Court should adopt the Ninth Circuit's holding (in United States v. Barton, 995 F.2d 931, 935 (9th Cir. 1993)) and the Fifth Circuit's holding (in Smith v. Black, 904 F.2d 950, 965-966 (5th Cir. 1990)) and reverse the court of appeals' decision affirming the district court's denial of petitioner's motion for a new trial, R. 303, Pages 5-8, for the cumulative Brady violations argued therein.

Constructive Amendment

On February 26, 2020, the court of appeals entered an instanter order treating petitioner's supplemental brief as a Circuit Rule 28(e) citation to additional authority in support of his opening brief. On Page 9 of 11 of that supplemental brief, and on Page 35 of petitioner's reply brief, he argued that the district court constructively amended the indictment by altering the jury instructions to include a 18 U.S.C. § 2 instruction that impermissibly broadened the basis for conviction to § 2 liability without § 2 being charged in the indictment. The court of appeals did not address this position whatsoever, and concluded there was no error in the jury instructions. Because the above stated plainly violates the Fifth Amendment's Grand Jury Clause, and such a violation constitutes reversible error per se, this Court should hold accordingly, and reverse the court of appeals' decision affirming the district court's judgment.

Jurisdiction

On Pages 1-5, of petitioner's opening brief in the appeal below, and on Pages 1-6 of petitioner's reply brief, he argued that the district court erred by not dismissing the indictment pending production of a real insurance policy/contract before trial and by not interpreting such an insurance policy between the Bank and FDIC as a question of law, also that the testimony at trial of an FDIC employee that the FDIC does not insure the bank for attempted robbery rendered the evidence at trial insufficient to sustain conviction.

When the government claimed on appeal that 18 U.S.C. § 3231 provided an absolute basis for federal jurisdiction, petitioner countered that such contention was clearly erroneous because it would read out all the enumerated jurisdictional elements in federal statutes superfulous and never require the government to have to prove jurisdiction in violation of Kokkonen, 511 U.S. 375, 377 (1994). The court of appeals ignored Kokkonen, and relied on the FDIC evidence that was contradicted by the FDIC witness's testimony on crossexamination, R. 330, Page 75, Id. 10-21, and § 3231 to affirm the district court's jurisdiction. For the reasons above stated and argued below, this Court should hold the district court did not retain jurisdiction in the first instance and that § 3231 is ancillary jurisdiction to the jurisdictional elements enumerated in federal criminal statutes not an independent catchall basis for jurisdiction in violation of the Tenth Amendment and basic principles of federalism applied in Kokkonen, and reverse the court of appeals on this issue.

Conclusion

Petitioner prays that the writ is granted.

Respectfully Submitted,

Executed on: May 19, 2020 Andrew Johnston

Mr. Andrew James Johnston
Prisoner ID No. 22712424
United States Penitentiary Lee
P.O. Box 305
Jonesville, Virginia 24263

County of Lee

ss.

Commonwealth of Virginia

AFFIDAVIT

I, Mr. Andrew James Johnston, declare under the penalty of perjury the following is true and correct:

1. I do not have sufficient funds to prepay the filing fee for the costs of this petition. I have been granted in forma pauperis in Case Nos. 1:19-cv-3660 (D.D.C.); 5:19-cv-464-DLB (E.D. Ky.); 1:17-cv-6183 (N.D. Ill.); and was granted leave to proceed in forma pauperis to proceed pro se on appeal, no. 18-1624.

2. I have had less than $1200.00 deposited on my prisoner trust fund account in the last 6 months, and currently have a balance of $15.14.

3. I cannot serve the solicitor general because I do not have access to a copy machine and cannot afford to have my only copy of this petition lost or mishandled as I am currently housed in the Special Housing Unit.

4. I do not have enough ink in my pen to rewrite a handwritten copy of this petition to serve the solicitor general, and I have been denied access to flex pens/refills by USP Lee since March 2020.

5. I do not have access to my transcripts of district court proceedings, and I do not have the necessary funds to purchase postage sufficient to mail the transcripts appended to this petition. I do not have sufficient postage to mail the court of appeals' written opinion with this petition.

Your Affiant Further
Sayeth Naught,

Executed on: May 19, 2020 Andrew Johnston

Mr. Andrew James Johnston