In the united states supreme court

Case no. 21-5809

In re Dwayne stoutamire,

Appellant

ORIGINAL

[redacted]

[redacted]

Writ of Habeas corpus

Rule 20 Extraordinary Writ

Dwayne Stoutamire# 532-253
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(pro se)

Question presented for review

Does the constitution recognize free-standing claims of Actual innocence?

Does the facts presented meet the standard Articulated in Schlup v. Delo, 513 U.S. 298 (1995) and House v. Bell, 126 S.Ct. 2064 (2006)

case law

parties

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Pro se status

Before I begin I ask this Honorable Court to take notice that I am a inmate that is proceeding without counsel before the court. So I ask that this court liberally construe my motion and arguments in their best light.

Supreme court rule 20

I come stating to the court that I have no other avenue to beable to bring my argument of actual innocence before the court. I have attempted to bring this evidence and argument before the district court for the northern district of ohio **(see Dwayne stoutamire v. Christopher LaRose, case no. 4:10-cv-02567; Doc.# 82; Civil Rule 60(b) and (d) motion)**. The District Court declined to review my evidence and argument on the belief that it has already reviewed this evidence and argument in two prior rulings and that all that I was doing was rehashing the same arguments **(the district courts ruling -Doc.# 88 at page 5).** So I appealed to the United States Court of Appeals for the Sixth Circuit, asking that court for a Certificate of Appealability (COA) **(see Dwayne Stoutamire v. Christopher LaRose, case no.18-3216).** The court of appeals, in its denial of my COA agreed with me that there were atleast 4 documents that were presented before the district court that it should have reviewed to determine if I showed actual innocence. But the court of appeals declined to consider 4 other pieces of evidence under the law of the case doctrine. The court of appeals stated that there was atleast 4 documents that I have already presented before the district court that has already been ruled on so they were declining to consider them with the other evidence **(Stoutamire v. LaRose, case no.18-3216 at pages 3-4; exhibit# at page 3-4)**. I wish the court to keep in mind when

the court of appeals did review these 4 documents it was reviewing it through the COA inquiry, and even then the court of appeals did not properly apply the COA steps, the actual innocence standard, or the law of the case doctrine standard. Looking at the court of appeals decision the law of the case doctrine should not have stopped them from considering the 4 documents that they did review with the 4 documents that they said that were already considered in a prior ruling. And the Schlup's standard requires a court reviewing the actual innocence standard to consider all the evidence old and new.

"in evaluating a claim of actual innocence as a substantial basis for relief, habeas courts do not blind themselves to evidence of actual innocence presented in prior habeas application. When confronted with actual-innocence claims asserted as a procedural gateway to reaching underlying grounds for habeas relief, habeas courts consider all available evidence of innocence." **Reed v. Texas, 140 S.Ct. 686, 689 (2020)**

So I do not have any avenue or forum that I can present the evidence that I now seek to present to the courts so they can determine if a jury hearing this new evidence would still have confidence in the outcome of the trial. The court of appeals are not willing to consider all of my evidence as a whole, they are willing to consider all the evidence showing my guilt but unwilling to consider all the evidence that will show me innocent.

This surely is a important issue that is an exceptional circumstance that warrants exercise of this court's jurisdiction. As I have pointed out to the court earlier this concerns the implications of actual innocence and recognition that this issue needs to be heard so a miscarriage of justice does not transpire. I have multiple constitutional claims that need to be heard but they are

being prevented due to some procedural bar that is being applied due to the incompetence of counsel on appeal or the district court finding a procedural bar to a claim even though I properly presented this claim to the state court. yet when I go to the court of appeals seeking a COA the court of appeals did agree with me, finding that my claim was properly presented before the state courts but my claim was lost due to the court of appeals improper applying the COA statute and not giving consideration to the fact that if my claim would have been properly considered by the district court I would have had the benefit of a evidentiary hearing so the facts would have been better developed for when the court of appeals would have considered my claim it would have been fully developed.

Due the district courts improper finding that it has already considered this evidence before even though the record is clear that he has never seen this evidence and the court of appeals improper application of the COA statute my actual innocence argument has not got proper consideration. I surely have numerous of constitutional violations that transpired at my trial yet I cannot obtain review of them due to the draconic application of procedural defaults found in my case. it seems that the courts are looking to defeat my claims on some type of procedural bar or another so they do not have to consider the more important fact that it must determine if a constitutional violation has occurred. Surely this will assist this court jurisdiction because it will answer a long drawn out issue of if a actual innocence claim can be used as a free standing claim to grant a new trial. Or in the alternative, I ask the court to allow review of the facts of innocence claim so the court can determine if a miscarriage of justice has occurred under Schlup's and if the court would allow my constitutional claims to be heard on the merits.

So I ask this Honorable Court to allow my motion to be heard by the court and be given due consideration.

Memorandum in support

I come asking the court to invoke its original jurisdiction in order to consider my actual innocence so a miscarriage of justice does not occur due to the lower courts failure to consider my argument and evidence, based on a full record. All that I ask is that my constitutional claims be heard on their merits if the court believes that I have presented a truly actual innocence argument under, **Schlup v. Delo, 513 U.S. 298 (1995)**, or in the alternative, to determine if I am truly innocent and if so if a petitioner can present a free standing claim actual innocence before the courts.

I do not have any other avenue to beable to present my actual innocence argument. So I now come before the court pursuant to this court's ruling in, **In re Davis, 557 U.S. 952 (2009)**, where this court invoked its original jurisdiction in order to allow that petitioner a means to argue his innocence. Just like this petitioner no court has conducted a full review of the record with the evidence that I present before the courts.

"no court, state or federal, has ever conducted a hearing to assess the reliability of the score of post-conviction affidavits that, if reliable, would satisfy the threshold showing for a truly persuasive demonstration of actual innocence." **Id. at page 953**

So I ask this Honorable Court to except review of my actual innocence argument. Looking into, In re Davis, supra, it is unclear what standard of review was taken in this case. So I ask the

court to review the facts of my case with that of the standard articulated in, **Schlup v. Delo, supra**, "Gateway claim" or that of **Herrera v. Collins**, supra, "Free-standing claim".

When this court remanded this issue back to the district court, that court found that a free standing actual innocence argument is reviewable in the federal courts. **See In re Davis, 2010 U.S. Dist. Lexis 87340 at [*105-145]**. Since this court has not determined if this issue is something reviewable before the lower courts it still remains a open question before the courts. So I ask the court to consider the facts and evidence I present under both standards.

Free-standing actual innocence

Every since this court has passed its ruling in, **Herrera v. Collins, 506 U.S. 390 (1993)**, the question of if a free standing claim of actual innocence could be grounds for relief in the federal courts has been a open issue for the last 27 years. I ask this Honorable Court how long does the citizens of the United States have to lose their freedom and even more importantly their life before this court atleast answer this important question.

The United States of America has stood on the phrase 'land of the free' for who knows how long. I ask the court, who sees the people of this great country is still being held in incarceration even after evidence and facts come to light showing that they are infact innocent, yet there is no other way for this citizen to petition the courts for their freedom.

I come stating that the constitution does say something about the need for justice and liberty. The court should beable to see that actual innocence walks hand and hand with these two concepts. The constitution is a living document and is designed to allow us as a people to bring about greater liberties for that generation and the ones to come. The constitution has

been drafted broadly in is language and allow the new generations to interpret in order to allow us to evolve into a greater people and nation.

As I have stated this court has said that the United States Constitution is a living document, that is why the amendments were drafted so broadly.

" Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom." **Lawrence v. Texas, 123 S.Ct. 2484 (2003)**

I come before for the court under the 5th, the 8th, and the 14th amendments. But I will start off with the 5th and the 14th amendments and how this court has stated that these two amendments are flexible and that room has been left in its application for such situations. I come invoking the words, life and liberty stated in the constitution.

"due process, as this court often has said, is a flexible concept that varies with the particular situation." **Zinermon v. Burch, 494 U.S.113, 127 (1990)**

"the liberty protected by the due process clause is not creation of the bill of rights. Indeed, our nation has long recognized that the liberty safeguarded by the constitution has far deeper roots...

The most elemental of the liberties protected by the due process clause is the interest in being free from physical detention by one's own government." **DA's office v. Osborne, 129 S.Ct. 2308, 2334 (2009)**(Justice Stevens, with whom Justice Ginsburg and Justice Breyer join, and with whom Justice Souter joins as to Part I, dissenting.)

I am 'invoking its principles' in the pursuit 'for greater freedom'. The 5th and the 14th amendments give the people of this great nation a means to defend life and liberty, but this court has yet to even attempt to see if the constitution extends its power to people claiming that they are innocent.

I also ask the court to look at the language in the 8th amendment, the "cruel" and "unusual punishment". This amendment should be self-explanatory. Should not a court find it cruel to allow a person to stay in jail for a crime that he did not do. Surely it is a unusual punishment to be punished for another's crime. this court has stated that the 8th amendment focuses on societies evolving standards of morality.

"the words of the amendment are not precise, and that their scope is not static. The amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." **Trop v. Dulle, 356 U.S. 86, 100-101 (1958)**

"this is because the standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basis mores of society change." **Graham v. Florida, 130 S.Ct. 2011, 2021 (2010)**

Surely a society of modern times will see that allowing a person who has delivered evidence, casting light on their innocence, should not be held in prison when it has been shown that they are infact innocent of the crimes charged. Surely seeing that a human is sitting in prison for another person is outrageous. Isn't it cruel to have a person who showed the court they are innocent yet are still lanquishing in prison for years and even decades knowing that they are going to either die one way in prison, of old age or due to the death penalty. They are

suffering mentally every day, a fate that is undeserving of any human being who was given the God giving right to be free.

A people who live in a land that states in its constitution that "all men have inalienable rights to be free", yet have people in prison even after they can show that they are not the person to have committed the crime, isn't that something ironic.

"ours is a government of the people, by the people, ***for the people***." **United States Term Limits, inc., v. Thornton, 115 S.Ct. 1842, 1863-1864 (1995)**

I ask how is this the case when a government see when people who can show they are innocent, but that government turns a blind eye to their situation and are unwilling to even give a avenue for them to beable to obtain some type of relief.

I ask the court what is more unfair in the world then seeing people who are incarcerated for another person's crimes. How they are rotting in a cell, losing precious time they can never get back, more importantly, paying the ultimate price with their life. I ask the court to reflect back on its statements of actual innocence and its importance and need in the criminal justice system.

"of greater importance, the individual interests in avoiding injustice is most compelling in the context of actual innocence. The quintessential miscarriage of justice is the execution of a person who is entirely innocence.... Indeed, concern about the injustice that results from the conviction of an innocent person... has long been at the "core" of our criminal justice system. That concern is reflected, for example, in the fundamental value determination of our society that it is far worst to convict an innocent man than let a guilty man go free." **Schlup v. Delo, 115 S.Ct. 851, 866 (1995)**

as this court has stated, concern about the injustice that result from the conviction of an innocent person has long been at the core of our criminal justice system. If that is the case this should be a serious issue before the court and should be given the upmost concern and consideration.

"nothing we do as judges in criminal cases is more important than assuring that the innocent go free." **United States v. De Ortiz, 883 f.2d 515, 524 (7th cir. 1989)**(Easterbrook, circuit judge,concurring)

Some lower courts have recognized the constitutional issue when it comes to the issue of actual innocence.

"several courts have recognized that denying... relief from one who is actual innocent would be constitutional problematic." **Souter v. Jones, 395 f.3d 577, 601 (6th cir. 2005)**, see also **Lee v. Lampert, 653 f.3d 929, 936 (9th cir. 2011)(en banc)**

So I ask this Honorable court to except review of this case because, "this is one of those scenerio's when.... A case arrives in which something transparently has gone wrong, and we must act." **United States v. De Ortiz, 883 f.2d 515, 524**

"it is difficult to imagine a stronger equitable claim for keeping open the courthouse doors than one of actual innocence, the ultimate equity on the prisoners side." **Lee v. Lampert, supra, 653 f.3d at pages 934-935**

"the actual innocence exception itself manifest our recognition that criminal justice system occasionally errs and that, when it does finality must yield to justice." **Sawyer v. Whitley, 505 U.S. 333, 364 (1992)**(Justice Stevens, with whom Justice Backmun and Justice O'Conner, join, concurring in the judgment)

"the miscarriage of justice exception to cause serves as an additional safeguard against compelling an innocent man to suffer an unconstitutional loss of liberty, guaranteeing that the ends of justice will be served in full." **McClesky v. Zant, 499 U.S. 467, 495 (1991)**

So I ask this Honorable Court to except review of this issue because wasn't it this court that said that it is far worst to convict a innocent man then let 99 guilty people go free.

"fundamental value determination of our society that it is far worst to convict an innocent man than let a guilty man go free. ... the maxim of the law is.. that it is better than ninety-nine... offenders should escape, than that one innocent man should be condemned." **Schlup v. Delo, 513 U.S. 298, 325 (1995)**

I find it hard to see how a court say that it is willing to let 99 guilty people go before it allow a innocent person be convicted but when it is shown that a innocent person is seen to have been convicted it is unwilling to lift a finger to help him to be vindicated.

So I ask this Honorable Court to except review of this issue and atleast answer this long standing question: is a free-standing claim of actual innocence reviewable by the courts?"

Miscarriage of Justice "gateway" Claim

In the alternative, I ask the court to review my actual innocence argument under the standard articulated in, Schlup v. Delo, supra,. I have multiple constitutional claims that I wish the federal courts to review but they are being declined for review due to some procedural defaults that were improperly found. They were defaulted by the district court improperly

because I did present my claims before the state courts properly and they were even reviewed by the state court on the merits. Yet the district court still found it was barred for review. Some of my claims were procedurally defaulted due to the incompetence of my appellate counsel. But that is not the issue before the court, I come asking the court to review my claims under the actual innocence gateway so my claims may receive proper review.

So I ask the court to review the facts and evidence under this courts well know standard of review under, **Schlup v. Delo, 115 S.Ct. 851 (1995) and House v. Bell, 126 S.Ct. 2064 (2006)**.

I ask the court if it is going to review the facts and evidence under this standard to please allow me a opportunity to present my constitutional claims in a motion if the court believe that I have presented sufficient facts to warrant review of them.

Facts and evidence of the case

The facts of my case can be found in, **State of Ohio v. Dwayne Stoutamire, 2008-Ohio-2916 at [*P5-16 and *P22-29](11th app. Dist.)**

But I will show where these findings of fact can be found in the record. I would also like to point to the court that this is a circumstantial case that rely on the credibility of the state witnesses. There are no eyewitnesses to this crime, no physical evidence or anything that placed me at the scene of the crime. so the credibility of the state witnesses is true important.

Facts Concerning the January 9th, 2007, shooting of Mr. Antonio Peterman (Antonio).

Joseph Brown: testified that, Myself, Him and another person by the name of Fred Brady (Brady) were over his house, January 8th, 2007, the night before the crime at issue **(Trial Transcript vol.# 1 at page 193).** This night he said that we were sitting around conversating, talking about some ways to make money and that is when Brady started talking about people to rob and then he stated some names he know to have some money, in which Antonio's name was one of the names that he was to have said **(Trial Transcript vol.# 1 at pages 193-194).** He said that I did not participate in this conversation at first, that infact I never mentioned anybody's name, but he did testify that he did not know the exact words that I was to have said that night but it was something that sound like I was willing to hit anybody **(trial transcript vol.# 1 at page 194).**

I would like to first point out that Mr. Brady was the one to bring up the topic of robbing people and even stated the names whom he knew to have money. Mr. Brown testified that I never said I was going to rob Antonio **(trial transcript vol.# 1 at page 197)**. also, I would like to point out that all because I was present when somebody else stated names that he wish to be robbed does not prove that I was the one to have shot Antonio. This conversation that we all were to have had happened the day before the shooting, so his testimony does on place me at the scene of the crime.

Allen Reynolds (Reynolds): testified that Brady and myself came over to his home after 11:00 O'clock , the shooting **(trial transcript vol.# 1 at pages 166-167)**. He said that he was using the restroom when he heard Brady banging on the door like 20 dogs was chasing him, and that once he let us inside of his home Brady was acting all paranoid and was throwing up out of

the window **(trial transcript vol.# 1 at page 167).** He said that he seen some red spots on my pants that looked like blood. That we asked him for a trash bag for our clothes which he gave to us and we put our clothes inside of this bag **(trial transcript vol.#1 at page 166-167).** While I was over his house he said that I told him what was to have happened. That I was to tell him that I got into a confrontation with someone and that I hit this person twice, once in the chest and the leg **(trial transcript vol.# 1 at page 168).** That we were over his house for atleast 15 minutes and that Brady and myself left but he did not see how we were traveling, by car or by foot **(trial transcript vol.# 1 at page 179).**

There are a number of flaws in Mr. Reynolds testimony. Reynolds testified that I came over to his home after 11:00 O'clock **(trial transcript vol.# 1 at page 166).** The state attempted to make his testimony co-exist with their facts, that Mr. Peterman got shot at 11:00 O'Clock at night **(trial transcript vol.# 1 at page 28)** which Ms. Allen testified that she heard gunshots at 11:00 O'clock **(trial transcript vol.# 1 at page 113).** But the jury was not aware of a statement he made to the police some months prior to trial, in which he told the police that I was to have came over his house at about 10:20, no later than 10:45 **(exhibit# A)**(though this statement does not explain if the time was to have been in the morning time or the evening time, we will review this written statement as if it was the night of the shooting). This timeframe that he made in his written statement to the police is a far time from the shooting.

If the jury heard about this written statement that is inconsistent to his trial testimony, they had two other options to consider other than crediting his trial testimony. They could have considered two other means to judge his credibility: 1) they could have discredited his trial testimony because they could believe that he clearly lied about the timeline that I was to have

come over to his home. They could have seen that he said to the police that I was to have came over to his home at 10:20, but when he testified to the jury, now his testimony changed to 11:00 O'clock, which would bring his testimony line with that of the prosecutions. Thus they could have found that he changed his timeline in order to help the state. Or, 2), the jury could have instead credited the written statement over his trial testimony and found that whatever I was to have told him did not concern the shooting of Mr. Peterman. Whatever I was to have told him in light of the written statement could not involve the shooting of Antonio because the conversation that we had happened well before Antonio was to even been shot. Antonio was shot at 11:00 O'clock, but Reynolds and our conversation happened atleast 15 to 40 minutes before Antonio was shot.

Even considering his trial testimony over his written statement, his trial testimony does not place me at the scene of the crime nor does it implicate me in this shooting. Whatever I was to have told him is circumstantial. Looking at his trial testimony, what I was to have told him could have happened right in front of his house or even on the other side of town. Reynolds does not state that I told him that I shot Antonio, infact Reynolds testified that he did not know that Antonio was shot until 3 days later **(trial transcript vol.# 1 at page 175).** Also looking at his testimony there is no facts from it that state that I shot anybody, let alone shot Mr. Peterman. He did testify that I told him that I hit somebody twice when I got into this confrontation with this unidentified person, but at no time does he say that I told him that I shot anybody.

So looking at Reynolds testimony, nowhere at all does it place me that the scene of the crime nor does ne state that I confessed to him that I shot Mr. Peterman at all. So his testimony is weak and circumstantial.

Jessica Gordon (Gordon): testified that on the night of the shooting she received a call from Brady and myself while she was out getting a tattoo done **(trial transcript vol.# 2 at page 10).** That she came to pick us up over at my mother's home, that is when we got into her car but we did not talk about anything because Brady was in the car **(trial transcript vol.# 2 at page 11).** She first took Brady to be dropped off over by a hospital **(trial transcript vol.# 2 at page 12).** When she seen Brady get out of the car she seen him with a bag **(trial transcript vol.# 2 at page 41)**. She then dropped me off afterwards, then she went to go finish getting her tattoo done. When she got done with her tattoo she came back home and that is when she noticed some red spots on my pants **(trial transcript vol.# 2 at page 37)**, then that is when we talked about what was to have happened **(trial transcript vol.# 2 at page 12)**. She told the jury that I told her that I was to have shot somebody in the backseat of a car, that I shot him in the leg and because I thought that he was reaching for something **(trial transcript vol.# 2 at page 13).** That I shot this person while I was attempting to rob him **(trial transcript vol.# 2 at page 14).**

So six weeks later, after a domestic dispute between us (which I was also on trial for), that is when Ms. Gordon came forward to the police about what I was to have told her. The night of the domestic dispute Gordon took the police to her house and gave them a bag, which later was found to contain some five .40 caliber bullets that were to be similar to the bullets that were found at the scene of the crime **(trial transcript vol.# 2 page 15 and 43).** But there is some things about this bag. There is no way that I am connected to this bag that had these bullets in it. She testified that she last seen Brady with this bag **(trial transcript vol.# 2 at page 41)** and that she does not know how this bag arrived at her home **(trial transcript vol.# 2 at pages 17**

and 43). Even the state court recognized this fact **(state v. Stoutamire, 2009-Ohio-6228 at {43})**

I would like to also point out that the state police fabricate evidence of these bullets so they could act like the bullets found at the scene of the crime was similar to the bullets found in the bag given by ms. Gordon.

on the night of the shooting a officer stated that they found a .45 millimeter bullet at the scene of the crime **(exhibit# B at page 4-police dispatch)**. At trial two different officers stated that they were the one to have submitted the same bullets from the scene of the crime to the evidence locker, which they stated was exhibit# 20. This exhibit was .40 caliber bullets that they found at the scene of the crime **(trial transcript vol.# 1 at pages 60, 64 and page 202).** Sergeant Gargas testified that he was the one to have picked up the bullets with some winter gloves and just placed them into his shirt pocket which tampered the evidence and denied me a opportunity to conduct any D.N.A. testing or fingerprint testing **(Trial transcript vol.# 1 at page 64).** So Sergeant Gargas clearly state that he was the one to have submitted the bullets to the evidence locker **(trial transcript vol.# 3 at page 61)**. But Sergeant Merritt testified that ***he*** was the one to have taken these bullets to the evidence locker and log them into evidence **(trial transcript vol.# 1 at page 202)**. My issue is what officer was the one to have truly submitted this evidence to the evidence locker, Sergeant Gargas or Sergeant Merritt because it seems that the evidence was tampered with. When the bullets were submitted to the B.C.I. labatory they submitted .45 caliber bullets for testing. But It seems that after Gordon gave them this bag that had bullets in they changed their tune and said it was .40 caliber bullets they found at the scene of the crime. no point does the state ever mention anything about this .45 millimeter bullet at

trial. The police tampered with evidence by knowing that it was .45 caliber bullets found at the scene of the crime but when Ms. Gordon gave them this bag with .40 caliber bullets they attempted to say that they found .40 caliber bullets at the scene of the crime so it can look like the same bullets found at the scene of the crime were the same ones found at my girlfriend home. The state court relies on these facts to support its ruling, that a .40 caliber weapon was used to conduct this crime **(state v. Stoutamire, 2009-Ohio-6228 at {P43})** but they are not aware that the police infact found .45 caliber bullets at the scene and not .40 caliber bullets. I ask the court what happened too these .45 caliber bullets, they are not nowhere to be found so I may conduct D.N.A. testing on or fingerprint testing on. **(exhibit# C)**

I wish to point out to the court again that the state's case stands on the credibility of these witnesses, without them the state's case crumbles. But Gordon's credibility was never tested at trial, the jury did not know that she has been convict for a crime of theft which came from her being charged with fraud. Though this is a misdemeanor, it is still a crime of dishonesty that stemmed from her writing fraudulent checks **(exhibit# D)**, thus lying to receive money.

"In *State* v.. *Johnson* (1983), 10 Ohio App. 3d 14, the court expressly held that petty theft was a crime of dishonesty within the meaning of Evid. R. 609(A)(2)." **Middleburgh Heights v. Theiss, 28 Ohio app.3d 1, 5 (8th app.dist. 1985)**

" The commission of a theft offense is one involving moral turpitude and is, therefore, a matter bearing directly upon credibility." **State v. Tharp, 49 Ohio app.2d 291, 297 (3rd app. Dist. 1976)**

"In common human experience acts of deceit, fraud, cheating, or stealing, for example, are universally regarded as conduct which reflects adversely on a man's honesty and integrity." **Gordon v. United States, 383 f.2d 936, 940 (Colombia court of appeals 1967)**

The jury was not aware of this crime of dishonesty when it considered her credibility. This court has state the importance of impeaching a witness and its effect it can have on a jury. See **Davis v. Alaska, 415 U.S. 308, 316 (1974)**

Second, the jury was not aware of a statement that was made by Gordon to my trial attorney while she was being interviewed. She told Mr. John Juhasz **(Att. Juhasz)** that I never told her anything about the shooting of Antonio and that all the facts that she knew was from gossip she heard from others out in the streets **(exhibit# E)**.

(J: Attorney John Juhasz G: Jessica Gordon)

(J:) "you were mad at him okay. Really what I'm trying to find out is, these cops as I understand it are going to say that when they were taking you to the station to fill out this report, your going, listen, he was involved in the Antonio Peterman shooting, he told me that. I guess I need to know a couple of things for my own purpose is, first of all did Dwayne ever tell you that?"

(G:) "no, ***I heard it***"

(J:) "you heard it, okay, so Dwayne never told you he was involved in the Antonio Peterman shooting. So if you don't remember one way or the other whether you told the cops that or not that night?"

(G:) " I have, no, no"

(J:) "but if you did—"

(G:) "it's probably because I was mad."

(J:) *"because you were mad and it had to do something somebody else told you, not that Dwayne told you*?"

(G:) "un-hum"

(Exhibit# E at page 8)

She clearly tells my Attorney that I did not tell her anything about shooting Antonio and that all that she knew about the shooting she learnt from other people and gossip in the streets. This is consistent with the fact that it took her 6 weeks to come forward with these facts to the police and after we had our domestic dispute in which she has great incentive to want to hurt me by any means possible. So she had bias to want to testify falsely in my case so she can hurt me getting me locked up for something that I did not do. This court has seen and acknowledged such situations and lave looked apond such testimony harshly and its effects on people's credibility.

"the use of informers, accessories, accomplices, false friends.... Or any other betrayals which are 'dirty business' may raise serious questions of credibility." **Lee v. United States, 343 U.S. 747, 757 (1952)**

Looking at the fact that she had motive to be bias due to the fact that I was being charged in another case for allegedly pulling a gun on her and giving her a busted lip, she may felt justified to try to hurt me by any means necessary. She surely has history of lying to get what

she wants so she would tell the police that I told her the facts that she was hearing from others people through gossip and made it seem like I told her these facts.

Even excepting Gordon's testimony as truthful, her testimony has many holes in it. Her testimony does no place me at the scene of the crime, nor does it show that I shot Mr. Peterman. It does not reflect "when" the incident was to have happened that I was to have told her, if it was earlier in the day or even a few days ago. Her testimony does not implicate me into this crime.

Another fact that should be questioned is the fact that she said that she seen me with blood on my pants the night of the shooting, something like little red flakes **(trial transcript vol.# 2 at page 37)**. But I fail to see how that is possible if Reynolds testified that he seen me with blood on my pants and he gave me and Brady a bag to put our bloody clothes in **(trial transcript vol.# 1 at page 166-167)**. There is no way that I could have done both actions. So their testimony conflict on this point. The state at trial attempted to speculate that I could have had a pair of pants under another pair of pants but there is no evidence in the record to support this fact. The state could have easily asked Mr. Reynolds if I had on another pair of pants when I took off these pants that he seen me have blood on. But the state failed to develop this fact.

As I have pointed out to the court, no one has testified that I told them that I shoot Mr. Peterman nor is there a witness to say that they seen me shoot him. So this court has stated when the identity of the perpetrator is at issue motive is the key.

"from beginning to end the case is about who committed the crime. when identity is in question, ... Motive is key." **House v. Bell, 126 S.Ct. 2064, 2079 (2006)**.

Looking at the record there surely is evidence that another person by the name of David Palm (D. Palm) had motive to want to rob Antonio. These facts will show that there should be sufficient doubt in this case.

Four individuals by the name of David Palm, Sally jo Palm, Jami Palm, and Mike McClane are all alternative suspects. All four of these people testified that they got into a red jeep the night of January 9th, 2007, the night of the shooting. That around 10:30 and 11:00 O'clock they got into this jeep so they could go purchase some crack cocaine from Antonio Peterman, whom they knew as Tone **(trial transcript vol.# 3 at page 86-87).** D. Palm has done business with Tone on a lot of prior occasions in the past **(trial transcript vol.# 3 at page 88)**. After all were loaded into the red jeep they drove to Antonio's home to buy these drugs, as all of them testified too of this being their intention **(trial transcript vol.# 3 at pages 87, 97, and 103).** after arriving at the stonegate apartments, it was snowing down really bad outside, D. Palm seen Antonio's car window down so when he went inside of Antonio's home he told him that his car window was down **(trial transcript vol.# 2 at page 88-90)**.

Mandy Stewart (Stewart) : who Antonio's girlfriend, was present when David arrived. She testified that D. Palm came to buy about $300 dollar's worth of crack cocaine off of Antonio but he did not have change so they spent it all **(trial transcript vol.# 1 at page 84 and vol.# 3 at page 88)**. After they conducted their drug transaction D. Palm told Antonio that his car window was down and that it was snowing really bad outside. After D. Palm leaves the apartment Antonio started to get dressed and proceeded to go out about 5 minutes later **(trial transcript vol.# 1 at page 100)**. After Antonio goes outside to his car Mandy hears gunshots **(trial**

transcript vol.# 1 at page 101). She said that she immediately goes to the window and look outside **(trial transcript vol.# 1 at page 102)**. When she look outside she seen D. Palm getting into his jeep and drive away, even though D. Palm left 5 minutes before Antonio went outside **(trial transcript vol.# 1 at page 106)**.

That same night, based off of Mandy Stewarts identification, Detective Krafchik went and found the Palms that night at approximately 3:15 a.m., and had them meet him at the warren police station for questioning concerning this incident and subjected them to gunshot residue testing (GSR) **(trial transcript vol.# 3 at page 59).** Ms. Donna Rose testified that the test conducted on D. Palms hands came back positive for gunshot residue on his hands, showing that he either fired a weapon that night or atleast handled a gun that was fired **(trial transcript vol.# 3 at page 109).**

David Palm had motive to want to rob Antonio. David is a admitted drug addict who knew Antonio would have drugs on him. He clearly stated that he went to purchase crack cocaine off of Antonio, so he knew that he would have both drugs and money on him. He had opportunity because he went inside telling him that his car window was down, he was seen speeding away after Ms. Stewart testified that she seen him speeding away after hearing gunshots. The police found the Palms the same night of the shooting and subjected them to gunshot residue testing that came positive for David Palm.

David Palm is a convicted felon for Receiving Stolen Property **(exhibit's F)** and breaking and entering **(exhibit# G)**, the jury was denied these facts when David was called to testify that he was not the person to commit this crime. The state presented him to the jury so they

could judge his credibility and exclude him as a suspect but the jury was not aware that he was convicted felon.

"A cocaine addict and convicted felon, Dean was not a highly credible witness; after all, he might well have been the murder." **Stanley v. Brantley, 465 f.3d 810, 811 (7th cir. 2006)**

"had the jury thought young a liar and possibly himself the murder, the jury may have had reasonable doubt as to Higgins guilt." **Higgins v. renico, 470 f.3d 624, 634 (6th cir. 2006)**

Another fact is that a witness by the name of Ronald Jones came to the police and made a written statement saying that David Palm confessed to him that he lured Antonio outside so he could rob him **(exhibit# H).**

Another witness to the shooting by the name of Lonnie Pollard has written a affidavit that he seen the shooting. He said that he seen another person of Caucasian decent who committed the shooting **(Exhibit# ___)**. I am a black man, Lonnie stated that he seen a white man shoot Antonio and jump into a jeep as Ms. Stewart testified too.

I also had a alibi witness by the name of Tara Talbert (Tara) who testified that I was in the same house at the time of the shooting **(trial transcript vol.# 3 at pages -).** Thought this person is a friend of the family should not distract from the fact that she is a witness, I cannot control who is a witness and what relationship they have to me.

I have also presented my own affidavit to the court stating to the court that I am innocent of this crime, that I was in my mother's residence with Tara and her kids, who is a neighbor of

the family **(Exhibit# I).** I state to the court that I was on the computer all day chatting with people on the internet and playing with the kids.

I would like to point to the fact that the jury had its doubts in this case. During deliberation the jury asked a question stating:

"for the count of Aggravated Robbery can Mr. Stoutamire still be found guilt without handling the gun?" **(exhibit# J) (trial transcript vol.# 3 at page 257)**

I fail to see how I can be convicted of this crime if the jury could not place a gun in my hand. How can I Rob Antonio and Shoot him without me using a gun, the same argument that the state argued all through trial. The state argued that I was a lone wolf, that I did this crime alone and that I was the shooter but they could not prove that I had a gun in my hand. Yet I am in prison without even handling a weapon.

I am innocent of this crime, I have presented sufficient evidence showing that another person committed this crime. Tell me what more do I have to prove, what I need a video showing a person doing the crime? Please grant me some measure of relief, I am asking this court to grant me relief off of my innocence alone. This case was a circumstantial case with no eyewitnesses, no D.N.A. that link anybody to this crime, no physical evidence that link me to this crime, it is a 'he say, she say', case. It has been hard trying to discover evidence that the prosecution could not even find with its unlimited resources.

So I ask this honorable court to allow me to obtain the relief that I seek and that I am granted a new trial. I have discovered witnesses who will say that David Palm confessed to them that he committed this crime, that the state witnesses are not credible and outright lied

at my trial, that I have a alibi, and that another person witness a white man shot the victim not myself who is a black man. or in the alternative to allow me to present claims in support of my constitutional claims that will support my Schlups v. Delo, supra, gateway constitutional claim. I have so many claims that I would overwhelm the court. So I wish the court to consider even if my claims could even make it through the actual innocence standards articulated by this court.

"Respectfully submitted,"

Dwayne Stoutamire
Dwayne Stoutamire

I wish to remind the court if the State witnesses are found not to be credible the state has no case against me.