

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

November 16, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-40703 Stepherson v. Lumpkin  
USDC No. 3:19-CV-247

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

  
By: \_\_\_\_\_  
Shawn D. Henderson, Deputy Clerk  
504-310-7668

Ms. Gretchen Berumen Merenda  
Mr. Waymon J. Stepherson

United States Court of Appeals  
for the Fifth Circuit



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No. 20-40703

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A True Copy  
Certified order issued Nov 16, 2021

*Syle W. Cayer*  
Clerk, U.S. Court of Appeals, Fifth Circuit

WAYMON J. STEPHERSON,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

*Respondent—Appellee.*

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Application for Certificate of Appealability from the  
United States District Court for the Southern District of Texas  
USDC No. 3:19-CV-247

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ORDER:

IT IS ORDERED that Appellant's motion for a certificate of appealability is DENIED. Stepherson seeks authorization to appeal the following issues: that comments made by potential jurors during voir dire tainted the panel; that the district court violated his right to a fair trial in erroneously ruling that he would waive his right against self-incrimination by displaying his tattooed arms to the jury; his lawyer provided ineffective assistance in various ways; and the government withheld exculpatory evidence. Having reviewed the district court's thorough opinion addressing all the claims, the court does not see any debatable issue. Although the state

No. 20-40703

trial court likely erred in believing a display of tattoos would waive the right against self-incrimination, the district court explained why any such error was not prejudicial. There was substantial incriminating evidence beyond the eye witness's photo identifications, including video of Stepherson using the stolen credit cards and his car's speeding away from the robbery.

  
\_\_\_\_\_  
GREGG J. COSTA  
*United States Circuit Judge*

United States Court of Appeals  
for the Fifth Circuit

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No. 20-40703

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WAYMON J. STEPHERSON,

- ~~100-1~~ wGCEK

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

/ <GE; <E; wGCEK

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Application for Certificate of Appealability from the  
United States District Court for the Southern District of Texas  
USDC No. 3:19-CV-247

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ON PETITION FOR REHEARING EN BANC

Before SOUTHWICK, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

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January 06, 2022

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LYLE W. CAYCE, Clerk



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