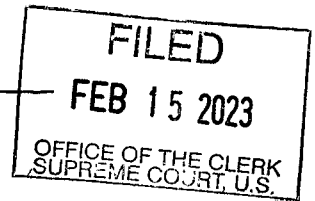


NO. 22-6855 ORIGINAL



IN THE
SUPREME COURT OF UNITED STATES

ALVIN LEE JOHNSON - PETITIONER

VERSUS

STATE OF MISSISSIPPI - RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO
SUPREME COURT STATE OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

Alvin L. Johnson, #140270
SMCI, Area-2, Unit B-1
P.O. Box 1419
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QUESTION(S) PRESENTED

1. WHETHER JOHNSON'S CONVICTION AND SENTENCE DERIVED FROM A DEFECTIVE INDICTMENT-- NOT BEING PRESENTED, RECEIVED AND FILED IN OPEN COURT?
2. WHETHER JOHNSON'S CONVICTION AND SENTENCE DERIVED FROM JUDICIAL MISCONDUCT?
3. WHETHER JOHNSON'S CONVICTION AND SENTENCE DERIVED FROM PROSECUTORIAL MISCONDUCT?
4. WHETHER THE OVERWHELMING WEIGHT OF THE EVIDENCE IS SUFFICIENT TO SUPPORT THE VERDICT?
5. WHETHER CLIFTON GREEN AN ADMITTED PARTICIPANT IN THE CRIME SHOULD HAVE BEEN CHARGED?
6. WHETHER JOHNSON WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

LIST OF PARTIES

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

RELATED CASES

none found.

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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

The opinion of the highest state court to review the merits appears at Appendix-"A" to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided this case was December 14, 2022. A copy of that decision appears at Appendix-"A"

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED:

The Fifth Amendment to the United States Constitution states in pertinent part, as follows:

"The Fifth Amendment requires prosecution by sufficient indictment of felony offenses."

U.S. CONST. AM V.

The Sixth Amendment to the United States Constitution states in pertinent part, as follows:

"That the accused shall have the right to the effective assistance of counsel in all criminal prosecution-- for his defense."

U.S. CONST. VI.

The Fourteenth Amendment to the United States Constitution states in pertinent part as follows:

"No person shall be deprived of life, liberty, or property without due process of law."

U.S. CONST. XIV.

STATEMENT OF THE CASE

Petitioner Johnson was indicted in The Circuit Court of Claiborne County, Mississippi; for the criminal offense of Statutory rape Times Two.

Petitioner Johnson entered a plea of 'not guilty' to such charges, and the case was tried to a jury. Petitioner Johnson was convicted on both counts of the indictment in the Circuit Court of Claiborne County, Mississippi-- and was subsequently sentenced to life imprisonment on Count-one of the indictment and to fifteen (15) years imprisonment on Count-two of the indictment... said sentences to be served concurrent with each and the other in the custody of the Mississippi Department of Corrections.

Petitioner Johnson is presently serving said sentences-- housed at South Mississippi Correctional Institution; Greene County "Leakesville" Mississippi.

REASONS FOR GRANTING THE PETITION

A... JOHNSON'S CONVICTION AND SENTENCE
DERIVED FROM A DEFECTIVE

INDICTMENT--NOT BEING PRESENTED,
RECEIVED, AND FILED IN OPEN COURT:

Petitioner Johnson contends that the indictment resulting in the conviction and sentence was facially and fatally defective. The indictment in question was endorsed as a "True Bill" but only denoted the alleged signature of the Grand Jury Foreperson and The District Attorney... See, Exhibit-A (2-page), attached hereto.

In as much as Petitioner's claims may be viewed as a challenge to the sufficiency of the indictment itself-- such claims are to be reviewed de novo... See, U.S. v. DeZarn, 157 F.3d 1042, 1046 (6th cir. 1998); and U.S. v. Cabrera-Teran, 168 F.3d 141, 144 (5th cir. 1999). Under Rule 12(b)(2), of The Federal Rules of Criminal Procedure. A defendant who contends that the indictment fails to establish jurisdiction-- may be raised (challenge) at any time. See, U.S. v. Hart, 640 F.2d 856 (6th cir. 1981) and U.S. v. Gatewood, 173 F.3d 983, 987 (6th cir. 1999).

Petitioner Johnson is cognizant of the fact that, this particular claim is subject to the procedural bars under The Uniform Post-Conviction Collateral Relief Act (UPCCRA). However, because this claim involves 'lack of the trial court's jurisdiction'

over the persons and the subject matter -- Petitioner is not precluded from litigating this claim forthwith... See, Wilson v. State, 203 So.3d 762, 765 (Miss. 2016) and Hays v. State, 282 So.3d 714, 721 (Miss. 2019).

This was a Trial, Conviction and Sentence of Petitioner Johnson for Two (2) Counts of Statutory rape. The multiple claims--denoting merits of these claims-- may not be examined because of the fundamental defect which is that, There is no recorded evidence that the indictment or charges on which Johnson was tried, was ever presented, received and filed in open court or that, the grand jury so acted on the charge(s) as to give it the character of a True bill of indictment. Thus, in violation of Johnson's substantial rights, and calling into serious question the fairness, integrity or public reputation of judicial proceedings... See, Pond v. State, 49 Miss. 39 (Miss. 1872); U.S. v. Inman, 411 F.3d 591, 595 (5th cir. 2005); U.S. v. Fagans, 406 F.3d 138 (2d cir. 2005); U.S. v. Brown, 450 F.3d 76, 79 (1st cir. 2006); and, U.S. v. Gonzalez-Terrazas, 529 F.3d 293, 296 (5th cir. 2008).

Upon reviewing the indictment (attached as exhibit-A), the court will note that there is no signature of the clerk to the entry, and that, there is nothing to show that there was a grand

jury organized, or that, such jury ever came into open court, and there, presenting a True bill of indictment-- Twelve (12) of the number assenting. The court should not sacrifice a fundamental principle of the Constitution, and a provision of the statute intended to carry out the principle-- to the ignorance of clerks or this neglect of counsel, the indictment should be made null and void, and dismissed with prejudice... see, U.S. v. Webster, 162 F.3d 308, 351 (5th cir. 1998); U.S. v. Paladino, 401 F.3d 471, 481-84 (7th cir. 2005); U.S. v. Johnson, 529 F.3d 493, 502 (2d cir. 2008); and U.S. v. Ozcelik, 527 F.3d 88, 96 (3d cir. 2008).

Absent from the indictment in question-- 'The caption of the minutes showing the organization of the grand jury' and the entry according to Article 257, Code 614, are indispensable facts of every record in a criminal case. There is no statute of jeofails so broad as to cure the want of a finding by the grand jury-- and the record must show it, and the 57th Article has prescribed what that evidence shall be: "The coming into open court of at least Twelve (12) of the grand jurors, and presenting by their foreperson the bill; The receiving by the clerk and, the clerk's signing of the entry." The same is not a part of the record-- in violation of Johnson's

Substantial rights... See, U.S. v. Ameline, 409 F.3d 1073, 1078 (9th cir. 2005); U.S. v. Rodarte-Vasquez, 488 F.3d 316 (5th cir. 2007); U.S. v. Bailey, 488 F.3d 363, 368 (6th cir. 2007); and, U.S. v. Reid, 523 F.3d 310, 315 (4th cir. 2008).

The absence of the prescribed endorsement as follows: "presented in open court by the grand jury and filed this ? day of ?, ?, signed, John/Jane Doe, clerk;" is fatal to the proceedings -- even if it otherwise appeared that the grand jury had in open court presented the bill -- yet, the absence of anything to show that the bill had received the solemn assent of the jury in open court by the presentation -- according to Article 257 -- renders the indictment so much waste paper... See, U.S. v. Vonn, 535 U.S. 55, 59 (2002); U.S. v. Coles, 403 F.3d 764, 769-71 (D.C. cir. 2005); U.S. v. Garrett, 528 F.3d 525, 529-30 (7th cir. 2008); and, U.S. v. Guarino, 517 F.3d 1067 (8th cir. 2008).

The actual presentation of the bill in open court by a grand jury, in the manner prescribed is not merely directory -- it is essential as the return into court of the verdict of the petit jury. For ought that appears, the indictment may have been 'found' literally, or pitched in a window. The state founds a right to punish for crimes upon necessity and, has placed her tribunals under restrictions

and, surrounded The accused by certain safeguards, which must be observed... see, U.S. V. Leahy, 445 F.3d 634, 655 (3d Cir. 2006); U.S. V. Smith, 444 F.3d 996, 997-8 (8th Cir. 2006); U.S. V. Rendon-Duarte, 490 F.3d 1142, 1146 (9th Cir. 2007); and, U.S. V. Williams, 527 F.3d 1235, 1246 (11th Cir. 2008).

The case herein is, Therefore as Though There was never any indictment found -- robbing The Trial Court of any jurisdiction over The persons or The Subject Matter. The resulting conviction and sentence should be vacated and set aside, and the indictment dismissed with prejudice... See, U.S. V. Rohbayan, 406 F.3d 292, 302 (4th Cir. 2005); U.S. V. Blandin, 435 F.3d 1191, 1195 (9th Cir. 2006); U.S. V. Evans, 478 F.3d 1332, 1338 (11th Cir. 2007); U.S. V. Bryant, 523 F.3d 349, 354 (D.C. Cir. 2008).

B...

JOHNSON'S CONVICTION AND SENTENCE DERIVED FROM JUDICIAL MISCONDUCT:

Petitioner Johnson contends That his conviction and sentence derived from judicial misconduct. In regard To errors in The Trial judge's finding of facts and conclusions of law -- it is generally observed That an abuse of discretion (judicial misconduct) will be found -- if after carefully evaluating

all relevant factors, it is concluded that the error was arbitrary or unreasonable... See, Ungar v. Sarafite, 376 U.S. 575, 589 (1964); Armant v. Marquez, 772 F.2d 552, 557 (9th Cir. 1985); and, U.S. v. Flynt, 756 F.2d 1352, 1358 (9th Cir. 1985).

The Trial Court erred in restricting the defense -- as to the introduction of evidence of the alleged victims past sexual activities. The Trial judge ruled that due to the last reported sexual encounter of the victim(s), there would be no DNA evidence recoverable. However, the rule-of-thumb in rape cases is that; "intact sperm could be found as late as seventy-two (72) hours after intercourse (as well as other DNA evidence -- such as potential pubic hair, bed lint, and etc. IT is also evident that non-motile sperm and other DNA evidence could be found up to seventy-two (72) hours as a rough estimate, and could also be found for a longer period -- even up to fourteen (14) days... See, Goodson v. State, 566 So.2d 1142, 1152 (Miss. 1990); Heflin v. State, 643 So.2d 512, 516 (Miss. 1994); Levy v. State, 724 So.2d 405, 409 (Miss. 1999); and, U.S. v. Rubbayan, 406 F.3d 292, 301 (4th Cir. 2005).

The Trial judge erred in excusing potential juror Sharon Richardson for cause upon the request of the Prosecutor and over the Defense objection. The reason being that Ms. Richardson stated

during voir dire that she would hold the State to its burden of proof before rendering a guilty verdict. Not a reason for the Trial judge to excuse for cause... see, Williams v. State, 794 So.2d 181, 187 (Miss. 2001) and, U.S. v. Harlow, 444 F.3d 1235, 1241 (10th Cir. 2006).

The Trial judge erred in allowing the Prosecutor to elicit hearsay testimony. At one stage of the proceedings, the Trial judge injected himself in the Trial as an advocate for the prosecution, which amounted to an abuse of discretion... see, U.S. v. Webster, 162 F.3d 308, 351 (5th Cir. 1998); U.S. v. Milstein, 401 F.3d 53, 65 (3d Cir. 2005); and, Aguilar v. State, 955 So.2d 386, 396 (Miss. 2006).

It is evident that the Trial judge's attention span was elsewhere and not on the proceeding of the Trial. This lapse of attention by the Trial judge was prejudicial to Johnson in multiple ways, to include, but not limited to; the Court missed several objections by the defense, and was loss in thought when called upon to make a material ruling on facts or law... see, U.S. v. Wolfe, 245 F.3d 257, 261 (3d Cir. 2001); U.S. v. Candelario, 240 F.3d 1300, 1309 (11th Cir. 2001); and, U.S. v. Hoover, 467 F.3d 496, 502 (5th Cir. 2006).

On multiple instances, the Trial judge erroneously allowed the Prosecutor to continue to

elicit hearsay Testimonial evidence-- over the objections of The defense. The improper information allowed by The court was extremely prejudicial to Johnson, and was an abuse of discretion... See, Shoemaker v. State, 502 so.2d 1193 (Miss. 1987); U.S. v. Randall, 171 F.3d 195, 203 (4th cir. 1999); McGee v. State, 953 so.2d 211, 215 (Miss. 2007); U.S. v. Bamberg, 478 F.3d 934, 939 (8th cir. 2007); U.S. v. Farr, 536 F.3d 1174, 1184 (10th cir. 2008); and, Smith v. State, 986 so.2d 290, 295 (Miss. 2008).

The Trial judge's prejudicial conduct imposed an apparent belief upon the jury-- that the court, along with the prosecution believed Johnson to be guilty already-- prior to the conclusion of the trial. The trial failed in its entirety to produce trustful result, due to the prejudicial errors of the trial judge amounting to an abuse of discretion... See, U.S. v. McKee, 506 F.3d 225, 229 (3d cir. 2007); U.S. v. Merrill, 513 F.3d 1293, 1307 (11th Cir. 2008); and, Armstead v. State, 196 so.3d 913 (Miss. 2016).

The Defense registered an objection to the Prosecutor asking a state's lay-witness, questions which required the answer of a material expert witness. The trial judge erred in overruling the Defense objection, and allowing Angie Harris (state witness) to give testimony of an expert, not qualified for-- abuse of discretion on the part of the trial judge and prejudicial to the

Tioner... See, Jones v. State, 669 So.2d 1383, 1387 (Miss. 1995); U.S. v. Vonn, 535 U.S. 55, 73 (2002); and, U.S. v. Williams, 527 F.3d 1235 (11th Cir. 2008).

The record is clear that State witness Twelve (12) year old Abnziya Hicks (alleged victim) did not understand the meaning of giving testimony under oath. The Trial judge's allowance of her testimony nevertheless was an abuse of discretion... See, U.S. v. Dominguez-Benitez, 542 U.S. 74, 82 (2004); U.S. v. Brown, 450 F.3d 76, 79 (1st Cir. 2006); and, U.S. v. Lazarenko, 564 F.3d 1026, 1034-37 (9th Cir. 2009).

The Trial judge erred in allowing the Prosecutor for the State's case-in-chief-- by way of asking leading questions. This improper allowed introduction of improper evidence that the Defense was not able to cross-examine nor comment on... See, Davis v. Commissioners, 517 F.2d 1044, 1050-52 (5th Cir. 1975); U.S. v. Murphy, 406 F.3d 857, 860 (7th Cir. 2005); Puckett v. U.S., 556 U.S. 129, 142 (2009); Lafayette v. State, 90 So.3d 1215 (Miss. 2012); and, Rosales-Mireles v. U.S., 138 S.Ct. 1897, 1911 (2018).

Further, based upon the insufficiency of the State's evidence as presented against Johnson herein-- The Trial judge erred in denying motion to dismiss filed by the Defense. Thus, the resulting conviction and sentence should not be allowed to stand-- to affirm same would be to sanction an ongoing mis-

carriage of justice... see, U.S. v. Glover, 531 U.S. 198, 203 (2001); Silber v. U.S., 370 U.S. 717, 718 (1962); U.S. v. Sabillon-Umana, 722 F.3d 1328, 1333 (2014); and, Hicks v. U.S., 137 S.Ct. 2006 (2017).

C...

JOHNSON'S CONVICTION AND SENTENCE DERIVED FROM PROSECUTORIAL MISCONDUCT:

In the case sub judice, The Prosecutor improperly made himself/herself an unsworn witness for the State--giving self-testimonial evidence via leading questions... see, U.S. v. Wihbey, 75 F.3d 761, 763 (1st Cir. 1996); Marshall v. Hendricks, 307 F.3d 34, 63 (3d Cir. 2002); and, U.S. v. Williams, 343 F.3d 423, 427 (5th Cir. 2003).

After The Trial judge sustained several objections by The Defense for The Prosecutor leading--The Prosecutor continued to pose leading questions, breeding inadmissible and prejudicial evidence into the Trial... see, U.S. v. Krauchuk, 335 F.3d 1147, 1153 (10th Cir. 2003); Beardslee v. Woodford, 358 F.3d 560, 563 (9th Cir. 2004); and, U.S. v. Littrell, 439 F.3d 875 (8th Cir. 2006).

During re-direct of State witness Chester Hedrick, The Prosecutor posed improper and prejudicial issues was not mentioned by The Defense during cross-examination... see, U.S. v. Wilson, 149 F.3d 1298, 1301 (11th Cir. 1998); U.S. v. Maybrook, 301 F.3d 503, 509 (7th Cir. 2002);

U.S. v. Beverly, 369 F.3d 516, 543 (6th cir. 2004).

Further, as testified too by both the alleged underage victims, and a third state witness, Prosecutor Shorter tailored each of their trial testimony-- coaching each of them what to say in order to obtain an improper conviction(s) against Johnson... See, Copeland v. Washington, 232 F.3d 969, 975 (8th cir. 2000); U.S. v. Mooney, 315 F.3d 54, 59 (1st cir. 2002); and, U.S. v. Elias, 285 F.3d 183, 190-92 (2d cir. 2002). See also, sworn affidavit of Anginette Truitt (sic), attached hereto.

The prosecutor elicited false testimony from state witnesses. Even though the prosecutor knew the witness's testimony to be false-- the prosecutor failed to correct same-- amounting to prosecutorial misconduct... see, Napue v. Illinois, 360 U.S. 264, 269 (1959); Mastracchio v. Vose, 274 F.3d 590, 602 (1st cir. 2001); and, Shih Wei Su v. Fillion, 335 F.3d 119, 129-30 (2d cir. 2003).

Both before the gist of the trial (opening statement(s)) and during the closing (closing argument(s)), the prosecutor misstated the facts in evidence. This underhanded method of prosecutorial misconduct was extremely prejudicial to Johnson, who was provided no opportunity to refute this prejudicial evidence imparted by the prosecutor... See, U.S. v. Murrah, 888 F.2d 24, 27 (5th cir. 1989); U.S. v.

Udechukwu, 11 F.3d 1101, 1105 (1st cir. 1993); Riddle v. Cockrell, 288 F.3d 713, 721 (5th cir. 2002); and, U.S. v. Higgs, 353 F.3d 281, 330 (4th cir. 2003). See also, U.S. v. Anderson, 450 F.3d 294, 300 (7th cir. 2006).

During closing argument(s), The Prosecutor impermissibly and wrongfully asserted the duties of The Prosecution -- stating that The Prosecution represent the victim. Is it not also true that The Prosecution represent The accused also -- in seeking that justice be done -- guilt or innocence... See, Berger v. U.S., 295 U.S. 78, 88 (1935); Donnelly v. DeChristoforo, 416 U.S. 637, 642 (1974); U.S. v. Young, 470 U.S. 1, 11-12 (1985); and, Darden v. Wainwright, 477 U.S. 168, 181 (1986).

Although The line between proper and improper advocacy is not always clear -- The courts have continuously found certain types of prosecutorial conduct improper... See, Davis v. Zant, 36 F.3d 1538, 1546-51 (11th cir. 1994); U.S. v. Forlorma, 94 F.3d 91, 96 (2d cir. 1996); U.S. v. Beckman, 222 F.3d 512, 526-27 (8th cir. 2000); U.S. v. Flaherty, 295 F.3d 181, 262 (2d cir. 2002); and, U.S. v. Elashby, 554 F.3d 480, 506 (5th cir. 2008).

D...

THE OVERWHELMING WEIGHT OF THE
EVIDENCE DO NOT SUPPORT THE VERDICT:

As To alleged victim Tyese Hicks, The Pro-

sector failed to set forth any evidence of her sexual allegations against Johnson. In fact, not even a rape-kit was performed on Tyese Hicks to determine her chastity -- sexual active or not -- insufficient evidence to support the verdict... See, In Re Winship, 397 U.S. 358, 364 (1970); U.S. v. Young, 470 U.S. 1, 15 (1985); Sullivan v. Louisiana, 508 U.S. 275, 278 (1993); U.S. v. Olano, 507 U.S. 725, 731 (1993); and, Clark v. Arizona, 548 U.S. 735, 766 (2006).

The mother of the alleged victims, Angie Harris, as well as her close kin and/or associates all knew from the outset, that Johnson was not guilty of these charged crimes. So much so as admittedly was discussed amongst them. Hardly to be considered sufficient evidence in this case lacking any other DNA or physical evidence... See, U.S. v. Gaudin, 515 U.S. 506, 522 (1995); U.S. v. Frady, 456 U.S. 152, 163 n. 14 (1982); and, U.S. v. Burns, 526 F.2d 852, 858 (5th Cir. 2008).

There was inconsistent testimony by one Chester Hedrick -- that he had once observed Tyese Hicks and Johnson having sexual intercourse in a vehicle. However, it was later developed in the record on this supposedly account of sexual intercourse between Tyese Hicks and Johnson -- Hedrick never once saw Johnson in or about (near) this vehicle in question -- hardly sufficient evidence to support the

verdict... see, Apprendi v. New Jersey, 530 U.S. 466, 488 (2000); U.S. v. St. Pierre, 488 F.3d 76, 80 n.2 (1st cir. 2007); and, U.S. v. Rodriguez-Duran, 567 F.3d 749, 771 (1st cir. 2007).

Immediately after Johnson was arrested and charged with this crime-- he steadfastly maintained his innocence. Forthwith, Johnson requested that a rape-kit be performed on him. Considering the time limit of remaining semen fluids, and other DNA evidence-- hardly sufficient to support the resulting guilty verdict herein... see, McKenzie v. Smith, 326 F.3d 721, 728 (6th cir. 2003); U.S. v. Acosta, 475 F.3d 677, 681 (5th cir. 2007); and, U.S. v. Hardwick, 523 F.3d 94, 98 (2d cir. 2008).

There was credible evidence that Clifton (Lil Joe) Green, was the perpetrator or at least the potential perpetrator of this crime-- including words from his own mouth. To be weighed in determining the sufficiency of the evidence against Johnson... see, U.S. v. Scofield, 433 F.3d 580, 586 (8th cir. 2006); U.S. v. Lopez-Medina, 461 F.3d 724, 739 (6th cir. 2006); and, U.S. v. Hall, 515 F.3d 186, 194 (8d cir. 2008).

Consider the testimony of the alleged victims-- and at least one other state witness-- that the prosecution tailored their testimony in order to incriminate Johnson. This combined with the fact that the incriminating statement of A. Hicks was not

verbally spoken by her, nor written by her -- again hardly sufficient evidence to support the verdict... see, U.S. v. Rees, 447 F.3d 1128, 1136 (8th cir. 2006); U.S. v. Thornton, 539 F.3d 741, 750 (7th cir. 2008); and, U.S. v. Page, 520 F.3d 545, 547 (6th cir. 2008).

During the course of the Trial, there was material testimony of a middle door separating the two (2) victim's bedroom. That this was the door that Johnson used to travel from room to room. However, there was conclusive evidence that this particular door was permanently sealed (not openable) and could not have been open by Johnson or anyone else -- hardly sufficient evidence to support guilty verdict... See, U.S. v. DeCruz, 82 F.3d 856, 861 (9th cir. 1996); U.S. v. Schalk, 515 F.3d 768, 776 (7th cir. 2008); and, U.S. v. Franklin-El, 555 F.3d 1115, 1124 (10th cir. 2009).

In reviewing the entire record as a whole, to include, but not limited to, full attention on each of the state witnesses trial testimonies, [as opposed to all existing/noted oral and written statements], the inconsistencies are plain and clear from one to the other, to include the alleged victims, and not worthy of belief. To say the least evidence that is insufficient to support the guilty verdict under attack herein... See, U.S. v. Honer, 225 F.3d 549 (5th cir. 2000); U.S. v. Trujillo-Terrazas, 405 F.3d 814, 820 (10th cir. 2005); and, U.S. v.

Cardenas-celestino, 510 F.3d 830, 833 (8th cir. 2008).

In regards To The inconsistent Testimony and/or statement (out-of-court declarants), because this case centers around the alleged victims, the victims' Testimonies and statements should be carefully reviewed and as such the insufficiency of the evidence will be more so revealed... see, U.S. v. Jackson, 339 F.3d 349, 357 (5th cir. 2003); U.S. v. White, 406 F.3d 827, 836 (7th cir. 2005); U.S. v. Medina, 485 F.3d 1291, 1300 (11th cir. 2007); U.S. v. Douglas, 489 F.3d 1117, 1125 (11th cir. 2007); U.S. v. Benton, 523 F.3d 424, 433 (4th cir. 2008); and, U.S. v. Banks, 514 F.3d 959, 974 (9th cir. 2008).

A full investigation into allegations that the mother had pulled this money-making scam on others before was never forthcoming--but surely would have supported this claim of insufficient evidence... see, Cline v. Walmart Stores, Inc., 144 F.3d 294 (4th cir. 1998); U.S. v. Morton, 391 F.3d 274, 277 (D.C. cir. 2004); and, U.S. v. Goode, 483 F.3d 676, 681 (10th cir. 2007).

E...

CLIFTON (LITTLE JOE) GREEN WAS AN
ADMITTED ACCOMPLIANCE TO THE
ALLEGED CRIMES.

In this regard, at the conclusion of the trial, the trial judge should have instructed the

jury on an accomplice testimony as to Clifton Green's Trial testimony -- as oppose to his two (2) different oral statements (which also contradicted each and the other... see, U.S. v. Herrera, 313 F.3d 882, 884 (5th cir. 2002) and U.S. v. Haywood, 303 F.3d 200, 207 (3d cir. 2004). Again, close review of the entire record, will show that Clifton Green was in a position to be the sole perpetrator of this crime... see, U.S. v. Estrada-Fernandez, 150 F.3d 491, 496 (5th cir. 1998) and U.S. v. Henderson, 409 F.3d 1293, 1307 (11th cir. 2005).

It was evident that Clifton Green slept in Alonziya Hick's bedroom, longed before Johnson ever showed up. Remembering that the room had one bed and either one (1) or two (2) couches. It was during this time period in which Alonziya Hicks testified to that she was afraid to sleep in her own bedroom -- that she was even afraid to go into her bedroom. Clifton Green slept in Alonziya's bedroom (before Johnson came into the mix. Thus, an accomplice jury instruction was warranted in this case... see, Jones v. U.S., 527 U.S. 373, 388 (1999); U.S. v. Velarde-Gomez, 224 F.3d 1162, 1169 (9th cir. 2000); U.S. v. Whab, 355 F.3d 155, 158 (2d cir. 2004); and, U.S. v. Vitillo, 490 F.3d 314, 325 (3d cir. 2007).

While giving Trial testimony at one

in the proceeding, Clifton Green-- while on the witness stand-- with no question posed to him, nearly blurted out a full confession of his part in this alleged crime, warranting the accomplice jury instruction-- not given herein... See, Johnson v. U.S., 520 U.S. 461, 465 (1997); U.S. v. Barnett, 398 F.3d 516, 524-27 (6th Cir. 2005); and, U.S. v. Urcivoli, 513 F.3d 290, 299 (1st Cir. 2018).

F...

JOHNSON WAS DENIED THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL:

In the case sub judice, Trial Counsel's acts or omissions represented deficient performance -- that prejudiced Johnson. Trial Counsel--inter alia-- did not conduct independent pretrial investigation; did not interview/subpoena potential defense witnesses; did not object to prejudicial comments by the Prosecutor; and, moreover prejudicial causing injury to Johnson-- was Counsel's failure to challenge the defective indictment from the outset-- such failure resulting in Johnson's conviction, sentence, and incarceration. Thus, meeting the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984); and Yarborough v. Gentry, 540 U.S. 1, 5 (2003). Johnson was denied the effective assistance of Trial Counsel, and prejudiced

as a result, such conviction and sentence should be vacated and set aside, and the indictment dismissed with prejudice... See, McMann v. Richardson, 397 U.S. 759, n. 14 (1970) and Cuyler v. Sullivan, 446 U.S. 335, 344-45 (1980).

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Alvin Johnson
ALVIN JOHNSON

SWORN TO AND SUBSCRIBED BEFORE ME,
this the 15 day of February, 2023.

Laura Tilley
"NOTARY PUBLIC"



MY COMMISSION EXPIRES: _____