

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
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FINAL JUDGMENT

April 28, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1348	UNITED STATES OF AMERICA, Plaintiff - Appellee v. ANDREW J. JOHNSTON, Defendant - Appellant
Originating Case Information:	
District Court No: 1:17-cr-00517-1 Northern District of Illinois, Eastern Division District Judge Rebecca R. Pallmeyer	

The judgment of the District Court is AFFIRMED in accordance with the decision of this court entered on this date.

Clerk of Court

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 27, 2023*
Decided April 28, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1348

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANDREW J. JOHNSTON,
Defendant-Appellant.

} Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.
No. 1:17-cr-00517
Rebecca R. Pallmeyer,
Chief Judge.

ORDER

For the reasons given in its minute order of February 2, 2023, the district court's decision is affirmed.

* This successive appeal has been submitted to the original panel under Operating Procedure 6(b). We have unanimously agreed to decide the case without argument because the briefs and record adequately present the facts and legal arguments, and argument would not significantly aid the court. See Fed. R. App. P. 34(a)(2)(C).

Case: 1:17-cr-00517 Document #: 470 Filed: 02/02/23 Page 1 of 2 PageID #:2869

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF NextGen 1.6.3
Eastern Division**

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No.: 1:17-cr-00517

Honorable Rebecca R. Pallmeyer

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, February 2, 2023:

MINUTE entry before the Honorable Rebecca R. Pallmeyer as to Andrew Johnston: Andrew Johnston was convicted of attempted bank robbery in 2018 and sentenced to 168 months (later reduced, on a Rule 35(b) motion, to 151 months). His conviction and sentence were affirmed on appeal. See *United States v. Johnston*, 814 F. App'x 142, 146 (7th Cir. 2020). Mr. Johnston has since then challenged his conviction and sentence in one proceeding after another. Before the court now is a motion for a new trial. As the court understand his motion, Mr. Johnston refers to what he characterizes as "newly discovered evidence" specifically, testimony that discloses the use of Facebook data by the FBI. Johnston believes "it is more likely than not that the FBI used defendant's Facebook app on his cell phone to illegally track [Johnston's] physical movements... in the hour, and minutes, leading up to the arrest..." Johnston's speculation about the FBI's activities does not constitute "new evidence." As this court and the Court of Appeals has explained more than once, there was ample probable cause for Mr. Johnston's arrest, including a 911 call from a customer who observed Mr. Johnston's encounter with a bank teller and provided a description of his appearance and clothing, as well as the color, make, model and license plate of Johnston's car. Any suggestion that the customer was influenced by the FBI's monitoring of Facebook is frivolous. Mr. Johnson is reminded that the Court of Appeals has sanctioned Johnston for filing a frivolous appeal. *Johnston v. Ward*, No. 21-1221, 2021 WL 4894487 (7th Cir. Oct. 20, 2021); *Johnston v. United States*, No. 21-1746, 2022 WL 1000518 (7th Cir. Apr. 4, 2022). He is currently a restricted filer, and has been warned against further frivolous filings. This motion [469] is denied. The ruling is final and appealable. Mailed notice. (cp,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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ORDER

May 31, 2023

By the Court:

	UNITED STATES OF AMERICA, Plaintiff - Appellee
No. 23-1348	v.
	ANDREW J. JOHNSTON, Defendant - Appellant

Originating Case Information:

District Court No: 1:17-cr-00517-1
Northern District of Illinois, Eastern Division
District Judge Rebecca R. Pallmeyer

Upon consideration of the **AMENDED PETITION FOR REHEARING EN BANC**, received on May 30, 2023, by the pro se appellant,

IT IS ORDERED that the document will be returned unfiled. The Federal Rules of Appellate Procedure do not permit amendments to petitions for rehearing.

**Additional material
from this filing is
available in the
Clerk's Office.**