No. 23 - 7547

IN THE

SUPREME COURT OF THE UNITED STATES

BRANDEN TYLER — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRANDEN TYLER
(Your Name)

FCI BUTNER MEDIUM II, PO BOX 1500
(Address)

BUTNER, NC 27509
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER UNDER THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION CAN A DEFENDANT BE CHARGED WITH AIDING AND ABETTING UNDER 18 U.S.C. § 2 WHEN THE ACTUAL PRINCIPAL WAS NOT ANOTHER ACTUAL PERSON

2. WHETHER AN INTERVENING SUPREME COURT DECISION HAD ABROGATED CONTRARY ELEVENTH CIRCUIT PRECEDENT IN UNITED STATES V. HURTADO, 508 F.3D 603, 607 (11TH CIR. 2007) AND WHETHER THE ELEVENTH CIRCUIT ENTERED A DESICION ON DIRECT APPEAL THAT WAS CONTRARY TO OR AN UNREASONABLE APPLICATION OF FLORES-FIGUEROA, 556 U.S. 646, 129 S. CT. 1886, 173 L. ED. 2D 853 (2009), WHERE THE COURT HELD IN 1028A(a)(1) THE GOVERNMENT IS REQUIRED TO SHOW THAT THE DEFENDANT KNEW THAT THE MEANS OF IDENTIFICATION AT ISSUE BELONGED TO ANOTHER PERSON

3. WHETHER UNDER THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION CAN A DEFENDANT BE CONVICTED AND PUNISHED FOR AN INTERSTATE COMMERCE ELEMENT FOR A DIFFERENT COUNT WHICH SHARED NO COMMON EVIDENCE AND WERE NOT BASED ON THE SAME ACT OR TRANSACTION

4. WHETHER PETITIONER'S FIFTH AMENDMENT RIGHT TO DUE PROCESS OF LAW WERE VIOLATED BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THER JURY'S VERDICT AS REQUIRED BY JACKSON V. VIRGINIA, 443 U.S. 307, 319, 99 S. CT. 2781, 61 L. ED. 2D 560 (1979)

LIST OF PARTIES

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

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

BBT&T/Truist Bank (TFC)

Budhrani, Anshu

Caruso, Michael

Catala, Maria

Citibank (C)

Cohn, Hon. James I.

D.B.

Demanovich, Stephen James

Gonzalez, Juan Antonio

Hashish, Lawrence A.

J.S.

Juman, Robert C.

Matzkin, Daniel

Lapointe, Markenzy

M.Y.

Optum Bank

Reid, Hon. Lisette M.

C.R.

Rivero, Laura Thomas

Rubio, Lisa Tobin

Silverstein, Joan

Smith, Hon. Rodney

W.S.

Strauss, Hon. Jared M.

Tyler, Branden

Valle, Hon. Alicia O.

Weekes, Jr., John A.

M.Y.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[x] reported at 22-12385-HH; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was December 28, 2023.

[x] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

STATEMENT OF THE CASE

On April 6, 2022, a Federal Grand Jury sitting in the Southern District of Florida returned a four-count Second Superseding Indictment charging the Petitioner, Branden Tyler, with the following offenses:

Count I: Use of one or more unauthorized access devices, in violation of 18 U.S.C. § 1029(a)(2) and (2);

Count II: possession of fifteen or more unauthorized access devices, in violation of 18 U.S.C. § 1029(a)(3);

Count III: aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1);

Count IV: possession of access device-making equipment, in violation of 18 U.S.C. § 1029(a)(4). (DE52).

On April 12, 2022, Mr. Tyler proceeded to trial, which lasted three days. (DE59; DE61). In its case-in-chief, the government offered the testimony of nine witnesses and introduced a number of exhibits, including bank statements, photographs, and text messages. Mr. Tyler offered the testimony of one witness of his own. At the close of the government's case, and then again at the close of all the evidence, Mr. Tyler moved under Fed. R. Crim. P. 29 for judgment of acquittal, which the court denied. (DE 113:20-22, 35)

After deliberating, the jury returned a verdict finding Mr. Tyler guilty of all four counts in the second superseding indictment. (DE 64). Thereafter, the court remanded him into custody to await sentencing (DE 113:110).

Prior to the sentencing hearing, a probation officer prepared a Presentence Investigation Report ("PSI"). Mr. Tyler objected to

the loss amount calculations contained in the PSI. (DE 90). At the sentencing hearing, the parties came to an agreement regarding loss amount, which resulted in an advisory guidelines range of 33 to 41 months imprisonment as to Counts 1, 2, and 4, plus a mandatory consecutive 24 months imprisonment as to Count 3. (DE 117:3-4). The court accepted the parties resolution of Mr. Tyler's objection and sentenced Mr. Tyler to a term of imprisonment of 60 months 36 months as to each of Counts 1, 2, and 4 to be served concurrently with each other, and 24 months as to Count 3 to be served consecutively with the terms of imprisonment imposed as to Count 1, 2, and 4 followed by a three-year term of supervised release. (DE 117:13-14).

Mr. Tyler timely filed a notice of appeal. (DE 94).

The Government's Case In Chief

Two visa credit cards were opened with BB&T Bank in the name of Willard Steele---one on May 4, 2020 (account ending in 0460) and the other on May 20, 2020 (account ending in 4177). (Gov't Exs. 1A; 1B; 2A; 2B). Willard Steele did not submit the credit card applications, nor authorize anyone else to do so on his behalf. (DE 113:16) Both credit card applications were completed online from IP addresses located in Tampa and Pompano Beach. (DE 107:203). The credit cards were then used to obtain cash advances from various ATMs and make a number of online purchases, including through Amazon. (DE 107:219-221). Payments were made on both credit cards, but the payments were eventually reversed due to insufficient funds. (DE 107:219).

The address listed on the credit card applications was 8231 Northwest 45th Court in Lauderhill, Florida. (DE 107:196; Gov't Ex

1A). Law enforcement learned that Mr. Tyler had been issued a traffic ticket at 8230 Northwest 45th Court in Lauderhill (DE 112: 118).

Lauderhill Police Department Detective Richard Clarke eventually found his way to a home located at 5105 Northwest 75th Ave in Lauderhill. When he knocked on the door, Mr. Tyler answered the door. Detective Clarke returned to that address two days later (DE 107:242). In the garage, Detective Clarke observed three items "similar in kind" to the items bought using the Willard Steele credit cards. (DE 107:253).

After his search of the garage, Detective Clarke and other officers searched a bedroom in the same home that they believed belonged to Mr. Tyler. (DE 107:261, 263). There, officers saw a number of items, including an Apple laptop with Mr. Tyler's fingerprint on it; mutiple printers; a card reader; 11 Florida driver's licenses in the names of other people; various credit cards and a reencoder and blank plastic cards with magnetic strips. (DE 107: 263-85; DE 112:8-14, 21-22, 35-36, 96). In the room, law enforcement also found items belonging to Mr. Tyler, including letters, receipts, bank statements, and a copy of the traffic ticket, as well as a safe that contained his personal documents and other items. (DE 107:263-85; DE 112:8-14, 21-22, 35-36,96).

Law enforcement also searched some of the electronic devices found in the bedroom. The search of the cellphone yielded a number of text message exchanges between a sender identified as "Andre Johnson" and a receiver identified as an entity identified by a grouping of numbers (DE 112:189; DE 112:196). There were no text messages sent in Mr. Tyler's name.

REASONS FOR GRANTING THE PETITION

Aiding and Abetting

The Eleventh Circuit in making its ruling the court stated: "The evidence showed that Tyler did not commit all the acts himself in making the licenses and credit cards because of the text messages with the unidentified username who helped Tyler with the lookups and personal information."

However this panel of the Eleventh Circuit entirely overlooked Jaynis Tadlock's Direct Examination in which Tadlock states: "It appears to be a -- perhaps a repository, a place where an intelegram -- one could chat with that entity and request TLO services, which is a means of looking up. What I saw is this sending of a name and address information, and then it would return a social security number, birthday, and other personally identifying information." (DE 112:196).

This panel of the Eleventh Circuit's ruling on the issue of aiding and abetting was erroneous and a misapprehension of the law. This decision is in direct contrast with this Court's decision in Rosemond v. United States, 572 U.S. 65, 134 S. Ct. 1240, 188 L. Ed. 2d 248 (2014), In which this Court stated:
"Under § 2 'those who provide knowing aid to persons committing federal crimes, with the intent to facilitate the crime, are themselves committing a crime.'" 572 U.S. at 71.

The rule of law has been a defendant has to aid and abet an actual person not an "entity" see also United States v. Martin, 747 F.2d 1404, 1407 (11th Cir. 1984)(noting that one must "aid or procure someone else to commit a substantive offense"). This deliberate misapprehension has violated Petitioner's Fifth Amendment.

Count III---Aggravated Identity Theft

The Eleventh Circuit in making its ruling the court stated: "And we conclude that the district court did not commit plain error as there was sufficient evidence to show that Willard Steele was a real person."

However this panel of the Eleventh Circuit ruling is in direct contrast with the Supreme Court of the United States decision in Flores-Figueroa v. United States, 556 U.S. 646, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (2009). In Flores-Figueroa, this Court has clarified that Section 1028A(a)(1) "requires the Government to show that the defendant knew that the means of identification at issue belonged to another person." 556 U.S. at 657, Mere proof that the means of identification used by a defendant was assigned to an actual person is in itself no longer sufficient to make out a violation of the statute. This Court further held that the introductory term "knowingly" in Section 1028A(a)(1) applied to each of the subsequent elements of the statute. Id. at 1890-94. As such, this Courts ruling in Flores-Figueroa constituted a narrowing of the statute as previously construed by the Eleventh Circuit's decision in United States v. Hurtado, 508 F.3d 603, 607 (11th Cir. 2007).

The Supreme Court has abrogated the Eleventh Circuit's decision in United States v. Hurtado, 508 F.3d 603 (11th Cir. 2007) which the Eleventh Circuit's panel uses to affirm the Petitioner's conviction for aggravated identity theft.

Count II---Possession of 15 or More Unauthorized Access Devices

The Eleventh Circuit in making its ruling the court stated: "evidence showed that Tyler made purchases from the 4117 account from Amazon, listed Amazon as being located in Washington, a purchase from Tempur Pedic had Kentucky listed as the postal code, and a purchase from Verizon had California listed. Further, the evidence showed that the bank Tyler fraudulently obtained the cards from was based in North Carolina."

However, this panel of the Eleventh Circuit abused its discretion and made a ruling on based off a disingenuous portrayal of facts. This panel has based it ruling on the evidence that is the subject of Count One, the Willard Steele visa card ending in 4177 (DE 107:199-200), (GX2A, GX2B) to satisy the interstate commerce element burden of Count 2. This is plainly insufficient as these charges shared no common evidence and were not based on the same act or transaction and were separate and distinct charges.

Detective Clarke who conducted an investigation into the BB&T fraud case particularly in relationship to cards ending in 0460 and 4177 (DE 107:215-16), testified to the Amazon purchases after reviewing the bank statements for visa cards ending in 0460 and 4177 (DE 107:218-23), (GX2A, GX2B) that is the subject of Count 1

The panel of the Eleventh Circuit cites to no evidence that is the subject of Count 2 when making its ruling and this misapprehension of the evidence has violated Petitioner's Fifth Amendment Constitutional right to due process of law as required by Jackson v. Virginia, 443 U.S. 307, 316, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); see also In Re Winshop, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)(holding that the Due Process Clause

requires proof of a crime's elements beyond a reasonable doubt).

Count IV---Possession of Access Device-Making Equipment

The Eleventh Circuit in making its ruling the court stated: "evidence showed that Tyler made purchases from the 4117 account from Amazon, listed Amazon as being located in Washington, a purchase from Tempur Pedic had Kentucky listed as the postal code, and a purchase from Verizon had California listed. Further, the evidence showed that the bank Tyler fraudulently obtained the cards from was based in North Carolina."

However, this panel of the Eleventh Circuit abused its discrection and made a ruling based off a disingenuous portrayal of facts. This panel has based its ruling on the evidence that is the subject of Count 1, the Willard Steele visa card ending in 4177 (DE 107:199-200), (GX2A, GX2B) to satisfy the interstate commerce element burden of Count 4. This is plainly insufficient as these charges shared no common evidence and were not based on the same act or transaction and were separate and distinct charges.

Detective Clarke who condcuted an investigation into the BB&T fraud case particularly in relationship to cards ending in 0460 and 4177 (DE 107:215-16), testified to the Amazon purchases after reviewing the bank statements for visa cards ending in 0460 and 4177 (DE 107:218-23), (GX2A, GX2B) that is the subject of Count 1.

The panel of the Eleventh Circuit cites to no evidence that is the subject of Count 4 when making its ruling and this misapprehension of the evidence has violated Petitioner's Fifth Amendment Constitutional right to due process of law as required by Jackson v. Virgnia, 443 U.S. 307, 316, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); see also In Re Winshop, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)(holding that the Due Process Clause

requires proof of a crime's elements beyond a reasonable doubt).

Count I---Use of One or More Unauthorized Access Devices

The Eleventh Circuit in making its ruling the court stated:

> "Here, we conclude that the evidence presented at trial was sufficient to find that Tyler used one or more unauthorized devices in violation of § 1029(a)(2). First, based on the evidence, the jury could reasonably conclude that Tyler lived at the 5105 address and had possession over the bedroom where all the evidence was found. See Leonard, 138 F.3d at 909. Indeed, Tyler's identification was found in the bedroom's safe, his fingerprints was found on one of the laptops, his grandmother stated that it was his bedroom, and Tyler confirmed to Clarke that he lived at the 5105 address. Therefore, it was reasonable for the jury to conclude that Tyler at least had dominion or control over the bedroom."

> "There was also sufficient evidence for the jury to reasonably conclude that Tyler committed Count 1. Tyler was seen at the 8231 address on July 1, 2020--the day the Amazon packages purchased from Steele's account were supposed to be delivered. There was also evidence found in Tyler's bedroom of Steele's personal information, as well as the email address of the person who applied for the two credit cards used and text messages found on a cellphone in the room that discussed the same email. Further, there was evidence of Wolf Gourmet items in the 5105 address's garage. And there was also video footage of Tyler at the places the card was used and a witness who stated they saw Tyler at one of those places."

However the panel of the Eleventh Circuit made its ruling based on a misapprehension of the evidence and a disingenuous portrayal of facts. First, the evidence never proved Tyler "knowingly" used one or more unauthorized access devices.

Detective Clarke who conducted an investigation into the BB&T fraud case (DE 107:215-16), never testified Tyler was the individual who used the Willard Steele visa cards ending in 0460 and 4177 the subject of Count 1. Detective Clarke's testimony regarding the BB&T fraud case consisted of (1) He found bank statements for both credit card applications suspicious because the applications were done online, there were multiple purchases and cash advance on them, and there were insufficient funds used to pay off the

payments on the cards (DE 107:219); (2) He also found the bank statement for the 4177 account suspicious because of the cash advances from ATM machines, the card had been used over its limit, and there were Amazon purchases on that card (DE 107:221-22). A strong suspicion that someone is involved in a criminal activity is no substitute of guilt beyond a reasonable doubt. The evidence provided in this case to support a reasonable finding of guilt cannot satisfy the "state of near certitude" required by Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

This panel has made an error of fact in its assessment of the evidence. Tyler was never seen at the 8231 address on July 1, 2020 the day the Amazon packages purchased from Steele's account were supposed to be delivered. At trial the government's witness Officer Murray testified during direct examination as follows:

Q: Now, I want to talk to you about an incident that occured on July 1st, 2020. Do you remember that day?

A: yes

Q: Okay did you respond to a suspicious vehicle report in Lauderhill, Florida?

A: Yes, I did

Q: And do you remember the address you responded to?

A: Yes. It was 8230 Northwest 45th Court.

DE 112:118. Moreover, During trial the government admitted (Exhibit 13b) into evidence. After showing a google maps photo of 8230 NW 45th Court to the jury, the government asked, "And this is the front of the house, the residence you responded to?" The reply from Officer Murray was "8230, yes." (DE 112:119), (GX13B).

The Fifth Circuit, as well as several others, has held that

the mere presence of an individual in the vicinity of stolen goods is not sufficient in itself to support a conviction. United States v. Henderson, 524 F.2d 489, 491 (5th Cir. 1975).

Furthermore in regards to Officer Murray during his encounter with Tyler, Officer Murray issued Tyler a traffic citation (DE 112: 121-22), (GX21), (GX8HH). At the conclusion of issuing Tyler the improper parking citation at approximately 2:20pm at the 8230 address, Officer Murray directed Tyler to leave and he complied (DE 112:122). The Amazon purchases that form the basis of Count 1 were not delivered until 16:26 (4:26pm) (DE 107;229-31), (GX5A). Officer Murray never testified to seeing Tyler at the 8231 NW 45th Court address and never testified Tyler possessed the Amazon packages purchased from Steele's account and any inference drawn here requires the jury to lapse into speculation. See United States v. Jones, 713 F.3d 336, 352 (7th Cir. 2013)(If a necessary inference relies on speculation, it is not reasonable and not permitted).

The panel of the Eleventh Circuit has made another error of fact as the evidence never proved Tyler was in possession of Willard Steele's personal identifying information nor means of identification visa cards numbers ending in 0460 and 4177. This statement in this panels opinion is not supported by the evidence. Stated another way, The access devices that are the subject of Count 1 visa cards ending in 0460 and 4177 does not exist in the record and neither do the card numbers, nor any of Willard Steele's personal indentifying information.

Testimony of the email address came through the government's witness Jaynis Tadlock. During direct examination the government asked, "can you read that email?" and Tadlock responded

WillASteele1950@gmail. (DE 112:192). Tadlock never testified Tyler used the visa cards ending in 0460 and 4177. The government's evidence does not create a reasonable inference or inferential chain that establishes each element of each charged offense beyond a reasonable doubt. The government cannot fill evidentiary gaps with guesswork. See Piaskowski v. Bett, 256 F.3d 687, 693 (7th Cir. 2001) (reversing verdict based on "conjecture camouflaged as evidence")

This panel of the Eleventh Circuit has made another erroneous assessment of the evidence as there is no evidence in the record to support the government's conclusory belief that the items found in the 5105 address's garage are the items from the Willard Steele credit card order and relies on the government's disingenous portrayl of facts to determine the government satisfied its burden of proof. Testimony of the items found in the 5105 address's garage came in through the testimony of Detective Clarke (DE 107:232). During direct examination the government asks Detective Clarke if the items found are the same items from the Willard Steele credit card order and in every instance Clarke merely states the items are just similar kinds of items to the actual order. (DE 107:232,243, 252,254,256-57, 259-60). This is an abuse of discretion in this panel's assessment given the fact Detective Clarke testified to having the ASIN number for the real products ordered which he testified to being a unique number for the products (DE 107:228), (GX4) But was still unable to link the Willard Steele items to the items he found in the garage. The evidence along with Detective Clarke's testimony shows that the items from the 5105 address's garage are not the same items. The government may not prove its case with conjecture camouflaged as evidence. United States v.

Jones, 713 F.3d 336, 340 (7th Cir. 2013)

Further, this panel of the Eleventh Circuit has made another error of fact in its assessment of the evidence and made a ruling based of the government's disingenuous portraval of facts and the government's own conclusorv statements to determine that the government satisfied its burden of proof. Video footage of transactions that occured on the Willard Steele visa cards ending in 0460 and 4177 were never admitted into evidence for the jurv to make an assessment. (DE 112:77). However, During Redirect Examination Detective Clarke testified that from the videos he viewed during his investigation the individual appeared to have been the same person, but cannot sav conclusivelv who the individual was. (DE 112:111). Furthermore, No witness testified and stated that thev seen Tyler at anv location that the cards were used. During Detective Clarke's redirect examination, Detective Clarke attempted to elicit a hearsav response that a witness identified Tyler, but the District Court sustained the defense's hearsav objection. (DE 112: 103).

Given these set of facts the governments assertion that Tyler lived at the 5105 address and had possession over the bedroom where the evidence was found was not even germane to the legal argument Tyler "knowinglv" used visa cards ending in 0460 and 4177. The government must not prove its case with conjecture camouflaged as evidence. United States v. Jones, 713 F.3d 336, 340 (7th Cir. 2013).

The panel of the Eleventh Circuit has made an erroneous assessment and abused its discretion in arriving at the conclusion that Count 1, use of an unauthorized access device should be affirmed based on its misapprehension of United States v. Leonard, 138

F.3d 906, 909 (11th Cir. 1998), The government never proved Tyler used the visa cards subject of Count 1, the government never admitted the visa cards subject of Count 1 into evidence, the government never admitted the items from the visa cards subject of Count 1 into evidence, Nor has the government proved it set of facts through the form of testimony or otherwise. The panel of the Eleventh Circuit's use of Leonard is misplaced as that case deals with constructive possession and Tyler couldn't have constructively possessed anything that did not exist in evidence.

This decision from this panel of the Eleventh Circuit is in direct contrast with the decision of the Supreme Court in Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). In Jackson, this Court explained that "the beyond-a-reasonable-doubt standard" requires a "quantum and quality of proof" that permits a judge to "distinguish between criminal and civil cases for the purpose of ruling on a motion for judgment of acquittal." Id. at 318 Similarly, in one of the iconic cases on summary judgment in civil cases, the Court returned to Jackson's focus on "the actual quantum and quality of proof necessary to support liability," advising that a case should not go to a jury" if the evidence presented...is of insufficient caliber or quantity to allow a rational finder of fact to find" liability under the applicable standard of proof. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 254, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Anderson explained that when a judge considers a motion for summary judgment, a directed verdict under Federal Rule of Civil Procedure 50(a), or a "First Amendment [case that] mandates a 'clear and convincing' standard," it is, in terms of the nature of the inquiry,... no different from the consideration

of a motion for acquittal in a criminal case, where the beyond-a-reasonable-doubt standard applies and where the trial judge asks whether a reasonable jury could find guilt beyond a reasonable doubt." Id. at 250-52, citing Jackson, 443 U.S. at 318-319. In all of these contexts, the judge is still responsible for enforcing outer limits on reasonable inferences, guided by the relevant standard of proof. Anderson, 477 U.S. at 254-55; see also e.g., Matsushita Electic Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 595, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)(affirming summary judgement in civil antitrust suit where "speculative or ambiguous" evidence did not support triable issue under preponderance-of-evidence standard).

A judge facing a Rule 29 motion in a criminal case might benefit from first asking whether, if the evidence had been presented in a civil case, it would be sufficient to send the case to the jury. Here, this panel of the Eleventh Circuit has made an erroneuos assessment of the evidence in every instance and has entirely overlooked Supreme Court precedent and the laws of its own Circuit This panel of the Eleveth Circuit's decision is contrary to the Courts mentioned hereabove and has violated Petitioner's Fifth Amendment right to Due Process under which a defendant can be convicted as required by Jackson v. Virginia, 443 U.S. 307, 316, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); see also United States v. Pauling, 924 F.3d 649, 655 (2d Cir. 2019)("Due process requires that essential elements of a crime be proven beyond a reasonable doubt to ensure that 'no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof'").

CONCLUSION

The Petitioner prays that this Honorable Supreme Court grant Writ Of Certiorari to the Court of Appeals for the Eleventh Circuit based on the foregoing facts mentioned hereabove.

RESPECTFULLY SUBMITTED on this 25 day of March 2024,

Branden Tyler

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