

No.

24-6371

ORIGINAL

Supreme Court of the United States

FILED

NOV 21 2024

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SUPREME COURT, U.S.

Hailey Gist-Holder,
Petitioner,

vs.

United States of America,
Respondent.

On petition for a writ of Certiorari to
the United States Court of Appeals
for the Seventh Circuit

Hailey Gist-Holder
Appearing pro Se
USP Big Sandy
P.O. Box #2068
Inez, Ky 41324

Questions Presented

1(a). Did the Court of Appeals for the Seventh Circuit err when it affirmed Gist-Holder's Conviction despite the undisputed and conceded fact that a reasonable doubt remained at the conclusion of Gist-Holder's trial, which violated Gist-Holder's 5th Amendment Due Process Rights under "Jackson v. Virginia, 443 U.S. 307 (1979) and the United States Constitution which prohibits the conviction of any person except upon proof of guilt beyond a reasonable doubt?"

1(b). Was the Seventh Circuit required to discredit the testimony of cooperating witnesses James King and Keyon Hawkins after it was proven through undisputed and conceded facts that both King and Hawkins were incredible as a matter of law?

2(a). Did the Seventh Circuit err when it allowed the government to raise an argument on appeal that was not raised before the district court? The government argued for the first time on appeal whether or not the warrantless search of the Buchanan St home occurred. Prior to obtaining a search warrant, agents obtained consent and entry into the home from the property manager and employees, and conducted a warrantless search and planted evidence inside of the home. This violated Gist-Holder's 4th Amendment Right under "Chapman v. United States, 365 U.S. 610 (1961).

2(b). Should the second search of the Buchanan St home (after agents obtained a search warrant) have been suppressed as fruits of the prior illegal search under this Court's decision in "Wong Sun v. United States, 371 U.S. 471 (1963)?"

4(6). Did the Seventh Circuit err when it ruled that Gist-Holden's 5th Amendment right to counsel under "Miranda v. Arizona, 384 U.S. 436 (1966)", was not violated because Gist-Holden waived his right to counsel? Supreme Court precedent states that a pre-interrogation request for a lawyer affirmatively secures the right to have one (Miranda, 384 U.S. at 470, 472).

4(7). Did the Seventh Circuit err when it ruled that Gist-Holden's 6th Amendment right to counsel under "Massiah v. United States, 377 U.S. 301 (1964)" was not violated because Gist-Holden, whom had been charged in the State of Indiana for robbery (bank robbery) and murder, had not been brought before a judge? Pursuant to Supreme Court precedent, Gist-Holden's 6th Amendment right to counsel attached after the State of Indiana charged Gist-Holden at 8:37 a.m. on 1/13/64, officially stating the adversarial proceedings prior to agents traveling to Georgia and attempting to deliberately elicit a confession by interrogating Gist-Holden. It is clear under "the Supreme Court's decision in 'Maine v. Moulton, 411 U.S. 159 (1965)' and 'McLeod v. Ohio, 381 U.S. 356 (1965)', that once a defendant is formally charged the government may not deliberately elicit information from him without the presence of counsel.

3. Did the Seventh Circuit err when it concluded that Gist-Holden's 4th Amendment rights were not violated under "Franks v. Delaware, 438 U.S. 154 (1968)" after two affidavits, on separate affidavits, both knowingly and deliberately omitted all information regarding the credibility and reliability of informant James King? Affiant Charowski knowingly and deliberately inserted false information into his affidavit. The Seventh Circuit concluded that the information from King was immaterial to the finding of probable cause despite the fact both affidavits were based entirely from King's interrogations.

if a defendant indicates in any manner and at any stage of the process that he wishes to consult with an attorney, there can be no questioning; and lengthy interrogation or incommunicado incarceration is strong evidence that the accused did not validly waive his rights.

4(C). Did the Seventh Circuit violate Gist-Holder's 5th and 6th Amendment rights by refusing to address and adjudicate Gist-Holder's issue on appeal arguing that the interrogation video was edited and altered, and an agent admitting that the transcripts that were given to the jury were edited and altered, therefore both should have been inadmissible?

5(a). Did the Seventh Circuit err when it ruled that Gist-Holder's 5th Amendment Due Process rights under "Napue v. Illinois, 360 U.S. 264 (1959)" were not violated because James King's (a principle witness for the government) false testimony went only to the credibility of the witness? Supreme Court precedent clearly states that the principle that the government may not knowingly use false evidence, including false testimony to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes to the credibility of the witness (Napue v. Illinois, 360 U.S. at 269).

5(b). Did the Seventh Circuit err when it refused to adjudicate the other portions of false testimony by cooperating witnesses James King and Keyon Hawkins that violated Gist-Holder's 5th Amendment Due Process rights under "Napue v. Illinois, 360 U.S. 264 (1959)" which required Gist-Holder's conviction to be reversed?

5(C). Did the Seventh Circuit err when it refused to adjudicate the

issue on appeal dealing with the fact that the lead prosecutor and agent induced cooperating witness Megan Hawkins to record an audio track that was used to alter a live photo, in which the false evidence and false testimony was presented at Gist-Holden's trial, violating Gist-Holden's 5th Amendment Due Process Rights under "Napue v. Illinois, 360 U.S. 264 (1959)".

5(d). Did the Seventh Circuit err when it refused to adjudicate the issue on appeal regarding the fact that the government presented false evidence and false testimony through examiner Scott Owens and his lab report to obtain a conviction, which violated Gist-Holden's 5th Amendment Rights under "Napue v. Illinois, 360 U.S. 264 (1959)"? The evidence conclusively shows that Owens examined 3 different caliber and brands of shells than those that were alleged to have been found inside of the Buchanan St home therefore Owens could not have found a match and associated the Buchanan St home with the alleged crime or a murder weapon.

5(e). Did the Seventh Circuit err when it refused to adjudicate the issue on appeal regarding the fact that the government presented false evidence and false testimony concerning hotel bills and rent for the Buchanan St home, which required Gist-Holden's conviction to be reversed under "Napue v. Illinois, 360 U.S. 264 (1959)"? The evidence at trial conclusively established that the hotel bills were paid-in-full and extended by Gist-Holden and that the rent for the Buchanan St home was over-paid.

6. Did the Seventh Circuit err when it ruled that Gist-Holden's 4th Amendment Rights under "Carlsenter v. United States, 138 S.Ct. 2206 (2018)" and even if they were, the exigent circumstance exception applies. Justa Padula admitted twice on record that the government obtained Gist-Holden's historical cell-site data

Prior to obtaining a search warrant. Supreme Court precedent requires fact-specific evidence for the exigent circumstance to apply under "Mincey v. Arizona, 437 U.S. 385 (1978)", in which the government failed to do. In fact, agent Gootee instructed law enforcement officers not to arrest Gist-Holden because there was no probable cause for his arrest.

7. Did the Seventh Circuit violate Gist-Holden's 5th Amendment Due Process rights by refusing to adjudicate his issues brought forth on appeal?

List of Parties

United States of America (Appellee)

Phillip A. Simon (District Court Judge)

United States Court of Appeals for the Seventh Circuit

Hailey Gist-Holden (Appellant - pro Se)

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Petition for Writ of Certiorari

Hailey Gist-Holder, currently confined at USP Big Sandy in Inez, Ky., proceeding pro se and in forma pauperis, respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Opinions Below

The decision of the Seventh Circuit denying Mr. Gist-Holder's direct appeal is reported as *United States v. Gist-Holder*, No. 23-1755 (7th Cir. 2024). The Seventh Circuit denied Gist-Holder's petition for rehearing and rehearing en banc on August 6th, 2024.

Jurisdiction

Mr. Gist-Holder's petition for rehearing and rehearing en banc was denied on August 6th, 2024. Mr. Gist-Holder invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within 90 days of the Seventh Circuit's denial of his petition for rehearing and rehearing en banc.

Constitutional Provisions

Amendment #4: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment #5: No person shall be held to answer for a capital, or otherwise

infamous crime, unless on a presentment or indictment of a Grand Jury, except in case arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; Nor shall be compelled in any criminal case to be a witness against himself, Nor be deprived of life, liberty, or property, without due process of law; Nor shall private property be taken for public use, without just compensation.

Amendment #6: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Statement of Case

Introduction

On June 11th 2021, at approx. 1:06 p.m., the first Midwest Bank in Og Indiana was robbed by two individuals dressed in all black, with their faces covered concealing their identity (see bank surveillance exhibits attached). During the robbery, the security guard was shot and killed.

Testimony of First Responding Officers

Officer Devayan testified that he received an urgent alert about the alleged crime at 1:06 p.m. and arrived at the bank 45 seconds later. Devayan with the assistance of other officers formed a perimeter around both suspects 1 and 12 minutes later (trial yr. vol 1 #3, pg #14, lines #17-22, pg #15, lines #4-6, pg #18, lines #4-13). Devayan himself, heard the suspects running through the wooded area and reported it to dispatch (trial yr. vol 1 #2, pg #18, lines #22-25, pg #19, lines #3-7). A white male flagged down Devayan and told him that the two suspects dressed in all black were running past the funeral home near the 4300 block of Grant. While in the area where Devayan heard the suspects running, a female drove by and told Devayan that the two suspects ran into an abandoned home (Bates #205) (trial yr. vol 1 #2, pg #18, lines #27-31, pg #15, lines #13-22).

Officer Jovanovic testified that at all times when the suspects were reported to dispatch, it was always a report of two suspects. Jovanovic testified that he was aware of the suspects being in the area of the 4300 block of Grant and when the suspects ran into the abandoned home (trial yr. vol 1 #3, pg #14, lines #31-35, pg #16, lines #4-9, a1-33). Jovanovic testified that he received information when the suspects were near 45th and Cleveland (trial yr. vol 1 #3, pg #19, lines #2-6). Jovanovic testified that there was no suspicion

or criminal activity reported in relation to a U-Haul Van. Dokemanovic testified that a U-Haul Van was never in question (Trial Tr. Vol #3, pg #21, lines #18-25)

Officer Handle testified that he received information when the two suspects wearing all black were near the 4400 block of Garfield. When asked multiple times on direct, Handle restated the information he received was the location of the two suspects dressed in all black (Trial Tr. Vol #3, pg #72, lines #2-5, pg #73, lines #7-13) (location where King was apprehended).

Admissions by Agent Gootee and AUSA Paduka

Agent Gootee admitted that both robbers were identified by law enforcement officers at 3:58 p.m. and 4:02 p.m. in the woods in Gresham, OR, which included specific descriptions of both robbers clothing (Trial Tr. Vol #7, pg #54, lines #20-22, pg #55, lines #10-12) (time stamped in dispatch audio and police report, See Defense Exhibit W). Agent Gootee admitted that it was "physically impossible" for Gist-Holden to have been one of the robbers (Trial Tr. Vol #7, pg #54, lines #12-25, pg #55, lines #1-4). The police perimeter was broken while King was being apprehended which enabled the other robber to escape (Trial Tr. Vol #7, pg #52, lines #1-3, 19-20, pg #54, lines #3-11, pg #53, lines #10-12). AUSA Paduka admitted prior to trial that both robbers were physically present together when one of the robbers, James King, was apprehended (Dkt #97, para #2, pg #1-2).

James King and Keyon Hawkins Testimony

King falsely testified that Gist-Holden was present with him and committed the alleged crime, and that he ran away from Gist-Holden right before he was arrested (Trial Tr. Vol #3, pg #133, lines #5-9, pg #134, lines #5-7). The

evidence clearly establishes that both robbers were locked inside of the police perimeter "1 and 1/2 minutes" after the alleged crime and were "physically present together when King was apprehended at 4:02 p.m. When law enforcement officers identified both robbers at 3:55 p.m. and 4:02 p.m., Gist-Holden was present at his mother's home. Gist-Holden's GPS data and cell tower data never placed him at the crime scene or where the suspects fled to. In fact, none of Gist-Holden's phones ever connect to the cell tower closest to the bank or where the suspects fled to.

King falsely testified at Gist-Holden's trial that Gist-Holden woke him out of bed, brought him to the Buchanan St home, then a robbery plan occurred and then he texted Moyene about a robbery (Trial Tr. Vol #3, Pg #106, lines #11-14, Pg #108, lines #4-9). The evidence clearly establishes that King's text messages began at "9:43 a.m." with Moyene (Trial Tr. Vol #3, Pg #112, lines #21-25, Pg #113, line #1). Illinois tollway records (in evidence) clearly show that Gist-Holden left from the hotel heading towards the Buchanan St home eastbound on 9/4/80 at "10:12 a.m.", meaning King was nowhere near the Buchanan St home when he began texting Moyene. In fact, King was not woken out of his bed by Gist-Holden, but was present inside of Moyene's hotel room with an unknown number of other individuals (Gist-Holden or White was not present) (Trial Tr. Vol #6, Pg #7, lines #6-15), planning to rob multiple banks (Trial Tr. Vol #3, Pg #298, lines #15-18, Pg #299, lines #1-2).

King falsely testified that Gist-Holden's U-Haul van, a police scanner, a 3-way call and White was part of the alleged crime. King admitted on cross examination that the actual vehicle used in the alleged crime was a dark colored vehicle without tints (Trial Tr. Vol #3, Pg #164, lines #20-25, Pg #165, lines #1-6). King admitted that he never originally mentioned anything about

White, a Police Scanner, a 3way call or a U-Haul van (Trial Tr. Vol #3, Pg #164, lines #20-23, Pg #165, lines #7-9). King admitted that he changed his statement 3-4 Months after the alleged crime and that he read it from a piece of paper that was prepared for him (Trial Tr. Vol #3, Pg #182, lines #18-25, Pg #183, lines #1-3).

Prior to the alleged crime, Gist-Holden was not present with King when he snuck a gun onto the plane when he traveled to Chicago (Trial Tr. Vol #3, Pg #16 lines #20-22); when King showed the gun off to other players (Trial Tr. Vol #3, Pg #16 lines #18-25, Pg #162, lines #1-8); when King and others were planning to rob neighborhood residents who were gambling in front of their home (Trial Tr. Vol #3, Pg #16 lines #13-19). To note, White was not present either during any of these incidents.

Prior to trial, AUSA Padula and agent Chorowski induced Hawkins to record an audio track, that was then used to edit and alter a live photo file taken inside of the Buchanan St home. The government had both King and Hawkins testify falsely about the photo and the existence of the audio recording. AUSA Padula passed the witness (King) (Trial Tr. Vol #3, Pg #143, line #8) but then asked the Court to reopen direct so that King could further testify falsely about the photo (Trial Tr. Vol #3, Pg #145, lines #22-23, Pg #147, lines #14-25). See Hawkins false testimony at "Trial Tr. Vol #6, Pg #37, lines #1-8." At a Court hearing held on 3/9/2023, Standby Counsel Russell Brown admitted that the live photo file that he received from the government did not have any audio recorded conversation on it (Tr. Pg #7, lines #1-7, 3/9/2023). Gist-Holden was not present inside of the home when the photo was taken. The district court admitted that King took a photo of himself (Dkt #118).

Hawkins falsely testified that he was a get-away driver using Gist-Holden's U-haul van; that he picked Gist-Holden up from the wooded area in Gary, In; that he dismantled a firearm with Gist-Holden that was part of the alleged crime; and that White helped facilitate the alleged crime by using a 3-way call and a Police Scanner (Trial Tr. Vol. #6, pg #50, lines #2-23). The evidence conclusively shows that the other robber did not escape the police perimeter until "4:02 p.m.", and that Hawkins himself was not in Gary, In, in fact he was in Illinois. Gist-Holden and his U-Haul van were in Gary, In when the other robber escaped the police perimeter, both were on camera in Illinois. Because Gist-Holden and Hawkins were not in Gary, In when the other robber escaped the police perimeter, neither individual could have obtained a firearm to dismantle that was used in the alleged crime. The government admitted in Gist-Holden's PSA that it was unknown if a lower bottom receiver was actually recovered from Hawkins (Dkt #341-42). Hawkins admitted that: he did not overhear anything that involved a robbery on the phone; he did not hear any screaming (see bank employee Griggs-Fallilove's 911 call Gov. Ex. 10); he did not hear any gun shots; and that he was not paying attention to the call he claimed was on speaker (Trial Tr. Vol. #6, pg #72, lines #14-24). The evidence from the data extractions from to trial completed by agent Kuhn (Bates #15942), conclusively show that a police scanner was never downloaded on White's or any of Gist-Holden's phones. Kuhn testified and never stated a Police Scanner existed.

Lack of Evidence

None of Gist-Holden's DNA or fingerprints were found at the crime scene or where the suspects fled to. Law enforcement officers recovered the clothing from the robbers that they discarded, and none of Gist-Holden's DNA or fingerprints were found on any of the recovered clothing. None of the law enforcement

Officers, bank employees, or eye witnesses identified Gist-Holden as the individual that committed the alleged crime. None of the bank surveillance or photo taken inside of the Buchanan St home identify or exhibit Gist-Holden. The actual robbers were "6'2 and 6'0". Gist-Holden is 5'8". King admitted at trial that he was 6'2 and agent Chonowski admitted that the other robber with the rifle was 6'0 (Trial Tr. Vol #8, Pg #131 lines #22-25). Chonowski made this determination after reviewing the bank surveillance. A potential suspect is excluded after there is a "3 or more inch" height difference. Gist-Holden should have been excluded as a suspect. None of Gist-Holden's text messages ever discussed any plans to commit a robbery. None of Gist-Holden's phone calls were associated with the planning or commission of any crime.

Searches of the Buchanan St Home

Agents conducted multiple searches of the Buchanan St home. In one of the searches, acting without a warrant, agents utilized the property manager and his employees to obtain consent and entry into the home, in which agents conducted an illegal search and planted a bag of gloves inside of the children's bedroom (Bates #915), and a dollar bill inside of a black bag on the back porch (Bates #943). Gist-Holden filed a timely motion to suppress and renewed motion to suppress (Dkt #129). Gist-Holden argued and submitted exhibits that show that prior to the warrantless search, agents broke the back porch light and pulled the wires out, which were used to trip the power inside of the home. The agents after entering the home, went into the basement to the fuse box and tripped off the main circuit breaker to ensure the power was completely off for the entire home so they would not be

recorded. The government never responded or disputed these facts. The district court denied Gist-Holden's Motion (Dkt #135). Gist-Holden appealed this denial to the Seventh Circuit (See Appellant's Opening brief pg #18, 39-40, and Appellant's reply brief pg #22-24). The Seventh Circuit allowed the government (Appellee) to raise arguments that were never presented before the district court, therefore waived, then ruled in opposition of it's own Circuit precedent and Supreme Court precedent.

After agents conducted the illegal warrantless search, agent Crotas reported Gist-Holden's Dodge Charger stolen and inserted a memo into the law enforcement database, instructing law enforcement officers not to arrest Gist-Holden as there was no probable cause to arrest him (Bates #8100-7, 6/14/2021). Agent Andrew Chonowski sought a search warrant for the Buchanan St home (Case No. 2:21 MS 103) on June 15th, 2021. Chonowski's affidavit was based entirely on statements made by informant James King during his interrogation on 6/14/2021. Agent Chonowski also knowingly and deliberately inserted information known to be false to him in his affidavit. Forcing that Jacob Merdams on June 12th, 2021 sought a search warrant for phone #9762 (Case No. 2:21 MS 100), which was also based entirely on statements made by King during his interrogation. Both affidavits omitted off credibility and reliability information about the informant in their affidavits. It was known to both agents that King was not credible and his information was not reliable. Chonowski failed to corroborate any of the information King provided. King never provided agents with the address of the Buchanan St home or phone number ending in #9762 (See Appellant's Opening brief pg #18-21, 40-46 and Appellant's reply brief pg #24-29).

Both affiliates McDonalds and Chonowski knew that informant King was not credible and his information was not reliable when he was interrogated on 6/11/2021. In fact, Chonowski and agent Justin Clark both told King that they knew he was "lying" throughout the interrogation. King told agents that he went to a basketball court with his teammates and got into a fight with them, then he was arrested afterwards. King changed his story then stated that he got picked up from the hotel to get some food, meet some women, and to smoke a little gas. King then changed his story and told agents he left the hotel room to go workout. King told agents that he "would do or say anything to get out of jail." King asked agents if he would be able to get a bond several times. After King admitted he was involved in the alleged crime, he lied and tried to minimize his role. King told agents that Travis Mogene was with him and that he never met the driver before. King before stating Coach Hailey did it asked agent Clark "would he tell on someone he's close with?" King is not close with Gist-Holden. When questioned about Coach Hailey, King provided no information about him, not his phone number, address or full name.

On 6/12/2021, agent Chonowski tried to corroborate King's statement regarding hotel bills being owed. Chonowski was told by hotel owner Thakkar that the hotel rooms were paid in full (bates #15926). Hotel employee Pawjai told Chonowski that the rooms were paid for and extended by Gist-Holden (bates #15914). Chonowski was unable to corroborate any information from King about hotel bills being owed. King told agents during the interrogation that Coach Hailey was "Short, 5'5-5'6", with a short hair cut. Chonowski reviewed the bank surveillance video and confirmed that the other robber carrying the rifle was 6'0. When Chonowski reviewed Gist-Holden's social media accounts he discovered

that Gist-Holden has long hair, dreadlocks and is nowhere near 6'0" in height. Chenowski again unable to corroborate King's information. Chenowski knowingly and deliberately inserted false information regarding past due rent for the Buchanan St home. Chenowski swore under Oath that he reviewed the landlord records and falsely stated in his affidavit that \$6,200 was owed in past due rent. A review of the landlord records that was available to Chenowski conclusively shows that on 6/11/2021, there was no past due rent amount for the home. In fact, on 6/11/2021 the rent for the property was over-paid by \$1,300. Chenowski deceived the issuing judge into believing there was motive to commit the alleged crime.

Gist-Holden presented this argument to the district court in a renewed Motion to Suppress under Franks (DKT #128), which the court denied (DKT #135). The Seventh Circuit refused to adjudicate Gist-Holden's argument on appeal that "Search Warrants for phone #9762 and for the Buchanan St home violated Gist-Holden's 4th Amendment rights under Franks after agents knowingly and deliberately omitted all information regarding the credibility and reliability of the informant King". The Seventh Circuit ruled in opposition of its own Circuit precedent and Supreme Court precedent by finding that both affidavits that were based almost entirely on statements made by King (and Chenowski's false statements), did not have to include any credibility or reliability information and stating that it was not material to the finding of probable cause. The Seventh Circuit also relied on misstatements of facts to support its ruling. None of the bank surveillance video identities or exhibits Gist-Holden (see exhibits), in fact neither of the robbers are able to be identified based on the bank

Surveillance footage. The Seventh Circuit erred by stating that agent Chonowski identified Gist-Holden in a photo. Agent Chonowski stated in his affidavit (Case No. 2:21 MK 103) that based on "King's text messages," led him to believe "that it was likely" Gist-Holden. The Seventh Circuit errors are not minor or harmless, the Circuit deprived Gist-Holden of his 5th Amendment Due Process Rights.

Illegal and Involuntary Interrogation

On the night of June 17th, 2021, Gist-Holden was arrested based on a federal complaint for [Marijuana] and taken to Lowmes County jail. Gist-Holden asked jail staff to use the phone to call a lawyer and family but Gist-Holden's numerous requests were denied. On 6/18/2021 at 2:25 a.m., deputy Nathaniel Law for the Lowmes County Sheriff's office inserted a form into the staff system instructing jail staff to not allow Gist-Holden to use the phone and to not be housed with other detainees. Law specifically checked the box on the form next to "No phone calls" and "No contact with other inmates" (Bates # 7993, See attachment here). Law also checked the box next to "Preliminary investigation". Jail staff prevented Gist-Holden from using the phone to call a lawyer when he made numerous requests to do so prior to being interrogated. Jail staff forced Gist-Holden to strip, naked and pass his clothes thru the food slot of a solitary confinement cell where he was housed. (See Appellant's Opening brief pg# 23-25, 48-52 and Appellant's reply brief pg# 32-37). The Seventh Circuit refused to adjudicate the issue that Gist-Holden's interrogation was involuntarily conducted. The Appellee never disputed, therefore conceding the fact that Gist-Holden requested

a lawyer numerous times before he was interrogated. Gist-Holden asked for a lawyer several times while he was being interrogated. The Appellee argued that Gist-Holden told agent Wagner that "I want a lawyer to assist". The interrogation video is "inaudible" after Gist-Holden invokes his right to Counsel, [again]. Even the transcripts that agents admitted to offering (Trial Tr. Vol #8, pg #23, lines #22-25, pg #29, lines #1-14), states that Wagner's response is [inaudible]. Gist-Holden never stated that "I want a lawyer to assist with some kind of deal". The Seventh Circuit erred by adding it's own language to Gist-Holden's invocation of his right to Counsel.

The Seventh Circuit was required by law to find that Gist-Holden's involuntary interrogation violated his 6th Amendment Right to Counsel. On 6/18/2021 at 8:27 a.m., agent Gooke obtained State of Indiana charges for robbery (bank robbery) and Murder, just hours before traveling to Georgia to interrogate Gist-Holden. Gooke and agents attempt to elicit a confession through interrogation was barred as Gist-Holden's Sixth Amendment Right to Counsel attached after adversary proceedings had begun against Gist-Holden. The Seventh Circuit ruled in opposition of it's own precedent and Supreme Court precedent when it ruled that Gist-Holden's Sixth Amendment Right to Counsel did not attach because he had not been taken before a judge. This is clearly an error. Agents violated Gist-Holden's 5th Amendment Right to Counsel and his 6th Amendment Right to Counsel.

Napue Claims

On appeal Gist-Holden raised several Napue Claims that "required" his conviction to be reversed as a matter of law. Gist-Holden argued that the government violated his 5th Amendment Due Process Rights under Napue after the government knowingly and deliberately presented false testimony and false evidence to obtain a conviction. Gist-Holden on appeal raised the issues that: (1) King and Hawkins provided false testimony; (2) agent Chonowski and AUSA Padula utilized Hawkins to alter/manufacture evidence by recording an audio track and adding it to a live photo file and presenting the false evidence and false testimony to the jury; (3) the government used examiner Scott Owens to present a false lab report and false testimony regarding alleged spent shells after the evidence conclusively shows that Owens examined "3" different brands and caliber shells than the actual brand and caliber the government alleged to have been found inside of the Buchanan St home; and (4) the government knowingly and deliberately presented false testimony regarding hotel bills and past due rent for the Buchanan St home. The Seventh Circuit refused to adjudicate all but one of Gist-Holden's Napue Claims which violated his 5th Amendment Due Process Rights. See Appellant's Opening brief pg # 25-32, 52-59 and Appellant's Reply brief pg # 38-47.

The Seventh Circuit ruled in opposition of its own precedent and Supreme Court precedent when it ruled on just one of Gist-Holden's Napue claims. When King was interrogated on 6/11/2021, he told agents he would do or say anything to get out of jail. At trial, on cross-examination, King falsely testified that he never made

the Statement. Instead of the government Correcting King's false statement as [required] by law, it relied on the false statement during closing arguments. King was a principle witness for the government and the government's case hinged entirely on his and Hawkins false testimony. The Circuit's ruling that King's false statement went only to the Credibility of the witness is clearly an error and in opposition of Supreme Court precedent. All of Gist-Holder's Maple claims should have been addressed and adjudicated, and his conviction should have been reversed.

Also prior to trial, agent Gootee swore under oath on an Indiana State affidavit on 6/17/2021 that "5.56 Fiocchi" brand spent shells" were found inside of the Buchanan St home. The government alleged that spent shells jumped into a "white point blank bag" while White and Gist-Holder were lawfully at a gun range. The government alleged that the spent shells traveled back to the Buchanan St home and was recovered during a search of the home. Instead of submitting the alleged (5) 5.56 Crime Scene shells and the alleged 5.56 shells the government claimed were recovered from the Buchanan St home, agents submitted [(3) 5.56 alleged crime scene shells and (2) PMC REM (223 Remington Caliber) and (1) FC 2315 (Federal) (223 Remington / 5.56 45 mm Caliber)] to a "second" examiner Scott Owens. The evidence conclusively showed that the ammunition used at the gun range was "5.56" not any of the different brands and Caliber. Owens examined. The government claimed again in Gist-Holder's ASA that "5.56" spent shells were found inside of the Buchanan St home (DKT # 341-42, 12/19/2022). Agent Fuller admitted at trial that there was no photographic evidence of any spent shells

found inside of the Buchanan St home (Trial Tr. Vol #4, pg #215, lines #2-5). Agent Kanetje admitted at trial that she would have taken a photo of any spent shells found inside of the Buchanan St home but she did not recall finding any (Trial Tr. Vol #4, pg #189, lines #15-25, pg #190, lines #F-11).

Illegal Search and Seizure of Gist-Holden's Historical Cell-Site Data
The government violated Gist-Holden's 4th Amendment Rights under Carlenter when they obtained his historical cell-site data to Gist-Holden's phones (#9762, #9862 and #1806) prior to obtaining a Search Warrant. The government obtained the data in June of 2021 but did not obtain the Search Warrants until March 3rd, 2022. On 11/05/2021 and 3/4/2022, AUSA Padula admitted that the government obtained the historical cell-site data prior to obtaining a Warrant (Tr. pg #32, lines #16-21, 11/05/2021). There is no "fact-specific" information to Warrant exigent Circumstances. In fact, Agent Gootee instructed the [entire law enforcement data base] through NCC [not to arrest Gist-Holden because [there was no probable cause to arrest him]] (Bates #816-7). Therefore any argument that Gist-Holden was a "fleeing suspect" is unsupported and baseless. Gist-Holden has no way of destroying the cell-site data. Gist-Holden had a residence and businesses in both Atlanta, GA and Miami Beach, FL and traveled back and forth weekly from the Chicago/ind area. The Circuit's ruling is in opposition of Supreme Court precedent. See Appellant's Opening brief pg #22-23, 46-48 and Appellant's reply brief pg #29-32. The Circuit was required by law to reverse Gist-Holden's Conviction.

Trial and Appeal

Gist-Holden proceeded to trial in October of 2022 and at the conclusion of the trial the jury returned a guilty verdict. Gist-Holden filed a timely appeal. The Appellant's and Appellee's briefs on appeal together totaled approx. 160 pages. The Seventh Circuit's opinion and judgement was 9 pages. The Circuit's statement of facts were wrong and unsupported by the record, evidence or testimony elicited at trial. The Circuit refused to adjudicate many of Gist-Holden's issues brought forth on appeal. The Circuit's statement of facts were deliberately wrong that it falsified the arresting information of Keyon Hawkins, which was non-material but deliberately misleading. Hawkins was interrogated by agents on June 29th, 2021 and was released without charges. Hawkins went on to commit more crimes in the state of [Mississippi], where he remained until he was indicted in April of 2022. The circuit to associate Hawkins with Gist-Holden, falsely claimed that Hawkins was arrested in Florida. Almost majority of the Circuit's statement of facts were incorrect and its application of law conflicts with relevant decisions of the Supreme Court. The Seventh Circuit affirmed Gist-Holden's wrongful conviction.

Reasons for Granting the Petition

A. The government failed to prove its case against Gist-Holden beyond a reasonable doubt.

"The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt." (In re Winship, 397 U.S. 358, 25 L.Ed 2d 368, 90 S.Ct. 1068, 51 Ohio Ops 2d 323). On appeal, Gist-Holden raised the issue that his conviction violated his 5th Amendment Due Process Rights under "Jackson v. Virginia, 443 U.S. 307, 61 L.Ed 2d 560, 99 S.Ct. 2781 (1979)" as the government failed to prove beyond a reasonable doubt that he committed the alleged crime of bank robbery and Murder (18 U.S.C. § 2113(a)(d) and (e), 18 U.S.C. § 924(c) & (j)).

Due to the nature of the case the Appellee (in its response) and the Seventh Circuit in its opinion completely ignored critical facts established at trial that conclusively prove that Gist-Holden did not commit the alleged crime. In fact, it is [physically impossible] for Gist-Holden to have been one of the robbers. Law Enforcement officers arrived at the crime scene "45 seconds" after the alleged crime and formed a perimeter around "both suspects" 1 and 1/2 minutes later (Trial Tr. Vol #2, Pg #114, lines #17-22, Pg #115, lines #4-6, Pg #118, lines #4/13). Both robbers remained locked inside of the police perimeter and were identified by both "law enforcement officers and eye witnesses" which each identification was reported to dispatch, time stamped and it was always a report of two robbers (Trial Tr. Vol #3, Pg #14, lines #21-2, Pg #16, lines #4-9, 21-23). Agent Gootee admitted that [both] robbers were identified at 3:58 P.M. and 4:02 P.M. in the woods in Gary, IN,

that included specific descriptions of their clothing, was reported to dispatch, time stamped in the dispatch audio recording and documented in the police report (Trial Tr. Vol # 7, pg #54, lines #20-22, pg #55, lines #2-4, 10-12) (See Defense Exhibit W). This evidence alone creates a reasonable doubt as Gist-Holden could not have been one of the robbers who were locked inside of the police perimeter "1 and 1/2 minutes after the alleged crime and identified by officers at 3:58 p.m. and 4:02 p.m." The Seventh Circuit refused to apply the Supreme Court's Jackson Rule, which requires lower courts to consider "all of the evidence admitted by the trial court" (McDaniel 558 U.S. at 131 quoting Lockhart v. Nelson, 488 U.S. 33, 41, 109 S.Ct. 285, 102 L.Ed. 2d 265 (1988)).

The Supreme Court should grant this petition because the most fundamental and important law of the Criminal Justice System and the United States Constitution is at stake with cases such as this one. The standard of proof beyond a reasonable doubt, said the Court, "plays a vital role in the American scheme of criminal procedure," because it operates to give "concrete substance" to the presumption of innocence, to ensure against unjust convictions, and to reduce the risk of factual error in a criminal proceeding (397 U.S. 363, 25 L.Ed. 2d 368, 90 S.Ct. 1068, 51 Ohio Ops. 2d 323). Gist-Holden's conviction cannot constitutionally stand. In every single criminal trial, the prosecution is required to prove a defendant's guilt beyond a reasonable doubt and failure to do so requires the defendant to be acquitted. A reasonable doubt, at a minimum, is one based on reason (Jackson, 443 U.S. at 314). The jury was required to reach a [state of near certitude to convict Gist-Holden. Gist-Holden was on camera at his mother's home

When the robbers were identified at 3:58 p.m. and 4:02 p.m. Even hours before then an LPA reader captured Gist-Holden on the expressway in traffic at the same time the robbers were identified and reported to dispatch. The [reason] to support the reasonable doubt is clear. Gist-Holden cannot be in two places at one time, therefore the jury could not have arrived at a state of near certainty required by Jackson (Jackson, 443 U.S. at 315).

The lead prosecutor admitted prior to trial that [both] robbers were physically present together, when James King was apprehended (approx. 4:02 p.m. in Gary, IN) (Dkt # 97, Para #2, Pg # 1-2). In all other instances when both robbers were identified by law enforcement officers or eye witnesses, Gist-Holden's documented locations conclusively proves that it is [physically impossible] for Gist-Holden to have been one of the robbers. Gist-Holden testified at trial that at the time of the alleged crime he was at home. Gist-Holden's cell-site data conclusively prove that [none of Gist-Holden's phones connected to any of the towers closest to the bank].

None of Gist-Holden's DNA or fingerprints were found at the crime scene or where the suspects fled to. In fact, the clothing that the robbers discarded was recovered by law enforcement officers and none of Gist-Holden's DNA or fingerprints were recovered from the clothing. The fact that none of the bank employees, law enforcement officers or eye witnesses identified Gist-Holden as the individual who committed the alleged crime raises a reasonable doubt.

The Principle argument here is that [the government did not prove beyond a reasonable doubt that Gist-Holden committed the alleged crime which clearly violated Gist-Holden's 5th Amendment Due Process Rights. This case was not close at all and nothing about the government's presentation of evidence was overwhelming. In fact, it was the government's [own] witnesses (law enforcement officers) that admitted that Gist-Holden could not have been one of the robbers and that his U-Haul Van was not part of the alleged crime. The Seventh Circuit refused to adjudicate this reasonable doubt argument and its decision clearly conflicts with relevant decisions of the Supreme Court. The Supreme Court should grant this petition due to the level of importance it is in the criminal justice system for the government to be required to prove a defendant's guilt beyond a reasonable doubt at a trial.

A(a) James King and Keyon Hawkins Testimony was Incredible as a Matter of Law.

The Supreme Court should grant this petition rule that Cooperating witnesses King and Hawkins testimony was incredible as a matter of law, therefore the Seventh Circuit was required to discredit their testimony. The Seventh Circuit refused to adjudicate this issue and apply its own precedent (United States v. Alcantar, 83 F.3d 185 (7th Cir. 1996)), which held "the appellate court will discredit a jury credibility determination only if the defendant establishes that the testimony was incredible as a matter of law. Testimony is incredible as a matter of law if it would have been physically impossible for the witness to observe what he described, or impossible under the laws of nature for those events to have occurred at all." This is a unique question

of law for the Supreme Court to decide. If the Supreme Court finds that King and Hawkins testimony is incredible as a matter of law, it would require Gist-Holden's conviction to be vacated as King and Hawkins are the only individuals that falsely stated at trial that Gist-Holden committed the alleged crime.

It is physically impossible for King to have observed himself committing the alleged crime with Gist-Holden, being locked inside of a Police Perimeter 1 and 1/2 minutes after the alleged crime (1:06 p.m.) then running away from Gist-Holden right before he was apprehended (4:02 p.m.) in Gary, Va. It is against the laws of nature for Gist-Holden to go from Gary, Va to being near Chase airport at his Mother's home in [Illinois] in a matter of seconds. Gist-Holden could not have been the other robber with King because it would require him to constantly be in 2 places at one time.

It is physically impossible for Hawkins to have observed himself being a get-away driver, picking Gist-Holden up from the woods in Gary, Va, utilizing Gist-Holden's U-Haul van and dismantling a firearm with Gist-Holden alleged to have been used in the alleged crime. When the other robber escaped the Police Perimeter at 4:02 p.m., Gist-Holden and his U-Haul van was on camera in Illinois at his Mother's home. The evidence also conclusively proves that Hawkins himself was [not] in Gary, Va at 4:02 p.m. when the other robber escaped, he was in [Illinois], which proves he was not a get-away driver; he did not use Gist-Holden's U-Haul van; and he, nor Gist-Holden could have obtained an alleged crime weapon to dismantle. See full argument in Appellant's Opening brief Pg #35-37, and Appellant's reply brief Pg #15-17. Noting that officer

Dokomanovic testified that a 16-Haul Van was never in question (Trial Tr. Vol #3, Pg #21, lines #18-25). The government admitted in Gist-Holden's PSA (Ex #341-42) that [it is unknown if a lower bottom receiver was actually recovered from Hawkins].

The Seventh Circuit's ruling must be reversed as it is in conflict with the Supreme Court's decision in Jackson, as the circuit held that Gist-Holden had to "Show that the record is devoid of evidence pointing to guilt" (Pg #9, No. 23-1755, panel's Opinion and judgement). Gist-Holden was not required to prove or show that the record was devoid of evidence pointing to guilt, Only that a [reasonable doubt] remained. Because a reasonable doubt remains, Gist-Holden's conviction cannot Constitutionally stand, therefore the Supreme Court should grant this petition reverse the Seventh Circuit's decision.

B. The Seventh Circuit erred by allowing the government to raise arguments that were waived as the arguments were not presented before the district court.

The Supreme Court should grant this petition to decide whether or not the Seventh Circuit erred by allowing the government to argue for the first time on appeal whether or not the warrantless search of the Buchanan St home occurred. The Seventh Circuit went against its own precedent which clearly holds that failure to respond to an argument results in [concession] and [waiver] (Bonte v. U.S. Bank, N.A., 624 F.3d 461, 466 (7th Cir. 2010)). Ninth Circuit precedent clearly holds that arguments not raised before the district court is [waived] (Greger v. Barnhart, 464 F.3d 968, 973 (9th Cir. 2006)). Gist-Holden filed two timely

motions to suppress and submitted exhibits to the district court arguing the fact that agents illegally searched the Buchanan St home prior to obtaining a warrant and planted evidence inside of the home by utilizing the property manager and employees to obtain consent and entry into the home which violated Gist-Holder's 4th Amendment Rights Pursuant to "Chapman v. United States, 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed. 2d 868 (1961)" and the Seventh Circuit's own precedent case "United States v. Thomas, 65 F.4th 922 (7th Cir. 2023)". The Appellee by law could not challenge on appeal for the first time whether or not the illegal warrantless search occurred because the government already [conceded] that it did by failing to respond in the district court. The Seventh Circuit refused to adjudicate this issue of waivers.

Because the government as a matter of law conceded the fact that agents illegally searched the Buchanan St home prior to obtaining a search warrant, the Seventh Circuit was required to reverse the district court's decision denying Gist-Holder's renewed motion to suppress (DKT #129), and suppress both unlawful searches of the Buchanan St home. The second search should have been suppressed as it is a product of the illegal warrantless search (See *Wong Sun v. United States*, 371 U.S. 471 (1963)).

C. The Seventh Circuit's decision conflicts with the Supreme Court's decision under Franks and its own precedent in "United States v. Glover, 755 F.3d 811 (7th Cir. 2014)".

The Supreme Court in "*Franks v. Delaware*, 438 U.S. 154 (1968)" required that affidavits for search warrants based on an informant's tip [must

recite some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable (Franks, 438 U.S. at 165). Agents Jacob McDaniels affidavit (Case No. 2:21 MS 100) and Andrew Chonowski's affidavit (Case No. 2:21 MS 103) were based entirely on the information provided by informant James King during his interrogation on 6/11/2021, yet both affiants knowingly and deliberately omitted all credibility and reliability information in their affidavits which by law invalidated both Search Warrants. King was not credible and none of his information was reliable as agents failed to corroborate it. Chonowski knowingly and deliberately inserted false information into his affidavit. The Seventh Circuit clearly erred when it ruled that King's information (statements) were not material to probable cause, which completely lacks logical reasoning. Without King's statements during his interrogation on 6/11/2021, neither affiant would have completed Search Warrant affidavits.

King never provided agents with the address to the Buchanan St home or even a phone number for Gist-Holder. King told agents he was with his teammates prior to being arrested. Then King told agents that his friend Travis Mayene was with him. King told agents that he "would do or say anything to get out of jail", exhibiting that he was not speaking against his penal interests. King told agents that the robbery was to pay for past due hotel bills but Chonowski discovered on 6/11/2021 that the hotel bills were paid-in-full and extended by Gist-Holder, which exhibited that King's information was [unreliable] [uncorroborated]. Agents Chonowski and Clark both told King several times on 6/11/2021 during the interrogation that they knew he was "lying", establishing that King is not [credible]. All of these facts are damaging and would have altered the finding of

Probable Cause. Both affiants were required by law to recite this information in their affidavits. The Seventh Circuit was required by law to reverse the district Court's decision denying Gist-Holden's renewed Motion for Franks (Dkt # 135).

The Seventh Circuit erred by refusing to adjudicate and circumventing the issue brought forth on appeal that "both Search Warrants for Phone #9462 and the Buchanan St home were [invalid] as both affiants knowingly and deliberately [omitted all information regarding King's (informant) credibility and reliability information] and Charnowski knowingly and deliberately inserted false information into his affidavit". The Supreme Court should grant this petition and reaffirm the Court's decision in Franks, and reverse the Seventh Circuit's decision. The Supreme Court should enforce lower Courts such as the Seventh Circuit to follow the law prescribed in relevant Supreme Court decisions. The Seventh Circuit clearly violated Gist-Holden's 5th Amendment Due Process Rights by refusing to adjudicate Gist-Holden's issues brought forth on appeal.

D. The Seventh Circuit's ruling that Gist-Holden's 6th Amendment Right to Counsel was not violated is a blatant error.

The Supreme Court should grant this petition and protect all individuals Sixth Amendment Right to Counsel. "The Sixth Amendment guarantees the accused, at least after the initiation of formal charge the right to rely on Counsel as a medium between him and the States" (Maine v. Moulton, 474 U.S. at 180). Agents traveled with their attorney from Indiana to Georgia to attempt to deliberately elicit statements

from Gist-Holden [later] adversary criminal proceedings had begun in the State of Indiana, in which robbery (bank robbery) and murder charges were issued against Gist-Holden on 6/18/60 at 8:27 a.m.

The Seventh Circuit ruled that Gist-Holden's 6th Amendment Right to Counsel had not been violated because he had not been brought before a judge, in which such ruling is a blatant error. In "McLeod v. Ohio, 381 U.S. 356 (1965)", McLeod had not been arraigned and had not requested appointment of Counsel, the Supreme Court reversed the conviction and applied Massiah.

As a matter of well established law (See Massiah v. United States, 377 U.S. 201, 12 L. Ed. 2d 246, 84 S. Ct. 1199 (1964)), Statements obtained after the government initiates adversary judicial proceeding against a defendant prior to the interrogation are barred. The Seventh Circuit was required to reverse Gist-Holden's Conviction and apply Massiah. The Seventh Circuit not only went against the Constitution and relevant Supreme Court decisions, it refused to apply its Own Circuit precedent Case "United States v. Durham, 475 F.2d 208 (7th Cir. 1973)" which held "Massiah bars the admissibility of the Statements obtained where the government initiates adversary proceedings against a defendant prior to the time the Statements were obtained". It wouldn't take for a Seasoned lawyer to look at the facts of this Case and the extremely long list of [Constitutional Violations] to know that Gist-Holden's Conviction is wrong, factually and legally wrong. The Seventh Circuit's blatant errors and outright refusal to apply the law undermines the perception of Constitutional rights. The Supreme Court Should grant this petition and uphold the Constitution and prior

relevant decisions of this Court.

D(2). The Seventh Circuit erred when it found that Gist-Holden waived his 5th Amendment right to Counsel under Miranda and when it refused to adjudicate the fact that the interrogation was involuntarily conducted.

Gist-Holden clearly and specifically argued and evidenced through exhibit (Bates # 7993), that his 5th Amendment right to Counsel was affirmatively secured and no interrogation could [legally] take place without the presence of Counsel after Gist-Holden made several pre-interrogation request for Counsel. "An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one" (Miranda, 384 U.S. at 470). "If an individual indicates that he wishes to have the assistance of Counsel before any interrogation occurs, the authorities cannot rationally deny or ignore his request" (Miranda, 384 U.S. at 472). After Gist-Holden was arrested and taken to Lowmes County Jail, he asked to use the phone to call a lawyer and family. It is an undisputed fact that Gist-Holden asked jail staff to use the phone to call a lawyer prior to being interrogated and jail staff refused all requests. Deputy Law actually inserted an instructional form to staff so that staff would prevent Gist-Holden from using the phone to call a lawyer. The Seventh Circuit erred and violated Gist-Holden's 5th Amendment due process rights by refusing to adjudicate this issue. The Supreme Court should grant this petition and uphold Miranda and reverse Gist-Holden's conviction due to the fact that agents violated Gist-Holden's 5th Amendment right to Counsel after denying Gist-Holden's numerous pre-interrogation requests for a lawyer.

The Seventh Circuit erred by refusing to adjudicate the issue on appeal that Gist-Holden's interrogation was involuntary. Gist-Holden after being arrested on Marijuana charges, was forced into a solitary confinement cell and stripped naked and passed his clothes through a food slot. Gist-Holden was prevented from using the phone and not housed with other detainees. "Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not waive his rights (Miranda, 384 U.S. at 476). The Seventh Circuit did not want to adjudicate this issue because the facts and the Supreme Court decision in Miranda is straightforward, Gist-Holden did not validly waive his rights.

The Seventh Circuit erred by adding its own language to Gist-Holden's invocation to his right to counsel when he told agent Wagner "I want a lawyer to assist". Gist-Holden who clearly did not want to be interrogated, was taken out of the interrogation room by Wagner and Gist-Holden clearly told Wagner that he wanted an attorney. The Supreme Court clearly held in Miranda that "if however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning" (Miranda, 384 U.S. at 444-45) and "if the individual states that he wants an attorney, the interrogation must cease until an attorney is present" (Miranda, 384 U.S. at 474). The district court in its opinion (Dkt #13) stated that Gist-Holden stated "I want a lawyer to assist". The Seventh Circuit however, to circumvent Gist-Holden's 5th Amendment right to counsel being violated added its own language and

changed Gist-Holden's invocation into "I want a lawyer to assist with some kind of deal", another blatant and outright deliberate error. The Supreme Court should grant this petition to correct this clear and obvious gross injustice. The Circuit changed Gist-Holden's invocation statement to justify its [refusal] to apply the law.

The Seventh Circuit erred and violated Gist-Holden's 5th Amendment Due Process Rights when it refused to adjudicate Gist-Holden's issue brought forth on appeal arguing that the interrogation should have been suppressed due to the undisputed fact that the video was edited and altered and agents [admitted] that the transcripts given to the jury were edited and altered (trial in. cor #8, pg #28, lines #22-25, pg #29, lines #1-14). Gist-Holden also submitted exhibits evidencing the date and times the interrogation video was edited and altered. The interrogation should have been inadmissible and the Seventh Circuit was wrong to hold otherwise.

E. The Seventh Circuit erred when it ruled that King's false testimony only went to the credibility of the witness and did not violate Gist-Holden's 5th Amendment Due Process Rights under Napue.

The Supreme Court should grant this petition and uphold its decision in Napue, in which the Seventh Circuit's decision clearly conflicts with.

When James King was interrogated on 6/11/2001, he told agents that he "would do or say anything to get out of jail". At Gist-Holden's

trial, King lied on cross-examination and testified that he never made the statement to agents. Gist-Holder called agent Chronowski to impeach King's false testimony. The government instead of following its duty and correcting the false testimony, relied on King's false testimony in its closing arguments. The Supreme Court should grant this petition and uphold its decision in Napue. The Supreme Court in Napue held that the government violates the Due Process Clause when it obtains a conviction through the use of false evidence, known to be such by representatives of the government. "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false..." (Napue, 360 U.S. at 470).

The Seventh Circuit's ruling that King's false testimony went only to the credibility clearly conflicts with Napue. "The principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness" (Napue, 360 U.S. 569). King is a principle witness for the government and his testimony bore upon the jury's determination of guilt or innocence. The Supreme Court should grant this petition and reverse the Seventh Circuit's decision.

5(a) The Seventh Circuit erred and violated Gist-Holder's 5th Amendment Due Process rights when it refused to adjudicate Gist-Holder's Napue claims concerning the fact that James King and Keyon Hawkins testified falsely at trial.

The government knowingly and deliberately utilized King and Hawkins false testimony to obtain a conviction. The evidence that both witnesses testified falsely, that the false testimony was material, and that the government knew the testimony to be false is both clear and conclusive. Prior to trial MUSA Padula admitted on record that both robbers were physically present together when James King was apprehended in the woods in Cary, IL (approx. 4:02 p.m.) (Dkt #97, Para #2, pg #1-2). King falsely testified that Gist-Holden was the other robber with him, and that he ran away from Gist-Holden right before he was arrested. The evidence conclusively shows that both robbers were locked inside of the police perimeter "1 and 1/2 minutes" after the alleged crime and remained together in which both were identified by law enforcement officers at 3:58 p.m. and 4:02 p.m. When the robbers were identified, Gist-Holden was in Illinois, he could not have been the other robber. Hawkins could not have been a get-away driver using Gist-Holden's U-Haul van, nor could he have obtained a firearm used in the alleged crime to dismantle, as not only was Gist-Holden and his U-Haul van not in Cary, IL when the other robber escaped, Hawkins himself was not in Cary, IL, he was in Illinois. The government's own witness officer Bokorovic testified that a U-Haul van was never in question (Trial Tr. Vol #3, pg #10 lines #18-25).

The Seventh Circuit committed a blatant error in refusing to adjudicate these clear law violations. The Supreme Court should grant this petition and reverse Gist-Holden's conviction by applying law. King testified falsely that he was at the Buchanan St home planning a robbery when he began texting Mogene at 9:43 a.m.. The government's

own evidence (tollboy records) conclusively show that King was not at the Buchanan St home when he texted Mogene. The Seventh Circuit refusal to apply the law to the facts deprived Gist-Holder of his Due Process Rights. Gist-Holder's conviction is an injustice and it is necessary for the Supreme Court to step in and protect the rights afforded to individuals through the Constitution.

E(3). The Seventh Circuit erred and violated Gist-Holder's 5th Amendment Due Process Rights when it refused to adjudicate the fact that the government used false testimony and false evidence by utilizing Keyon Hawkins to alter evidence then testify falsely about the evidence.

The Supreme Court this petition and apply slapue due to the fact that the government knowingly and deliberately use Hawkins to record an audio track that was used to alter a live photo. The evidence is [clear], agent Gootee admitted prior to trial that there was no recorded audio conversation from inside of the Buchanan St home. Standby Counsel Russell Brown admitted that the photo file he received prior to trial from the government had no audio recorded conversation on it. The government had King and Hawkins testify falsely about the photo trial. The Seventh Circuit chose to let clear Constitutional violations go unaddressed and uncorrected. The Seventh Circuit was required by law to reverse Gist-Holder's conviction.

E(4). The Seventh Circuit erred and violated Gist-Holder's 5th Amendment Due Process Rights when it refused to adjudicate the fact that the government used false testimony and false evidence through examiner Scott Owens and his lab report.

The government Violated Gist-Holder's 5th Amendment Due Process Rights under Tapue when it knowingly and deliberately presented false evidence and false testimony through examiner Scott Owens. The Seventh Circuit refused to adjudicate this issue because the evidence conclusively shows that Owens did not find a match between an alleged Crime Scene shells and shells alleged to have been found inside of the Buchanan St home. Owens examined the [Wrong] Caliber and [Wrong] brand of alleged spent shells then the caliber and brand the government actually alleged was found inside of the home. Secondly, agent Tuller admitted that there was no photographic evidence that showed any spent shells being found in the home (Trial Tr. Vol #4, Pg #215, lines #2-5). The government knew the testimony and evidence was false, as agent Gootee swore under oath that "Fiocchi brand 5.56" spent shells were found in the home. The government in Gist-Holder's BSA alleged that [5.56] spent shells were recovered from the home (Dkt #341-42). Owens examined, "PMC H&M (223 Remington caliber) and FC2315 (Federal) (223 Remington / 5.56 45mm caliber) caliber and brand shells which is [Clearly] the wrong caliber and brand. Even if spent shells magically jumped into the white point blank bag at the gun range as the government alleged, the evidence [Conclusively] showed that the ammunition used at the gun range was neither of the caliber or brands that Owens examined.

The government in no way legally obtained a conviction against Gist-Holder and the Supreme Court Should grant this petition to correct an injustice, a wrongful conviction and it's [clear and obvious].

E(5). The Seventh Circuit erred and violated Gist-Holder's 5th Amendment Due Process Rights when it refused to adjudicate the fact that the government knowingly and deliberately used false testimony concerning hotel bills and rent for the Buchanan St home.

The Supreme Court should grant this petition, and apply Flaque as the government knowingly and deliberately used false testimony regarding hotel bills and rent money to obtain a conviction. The government knew on 6/12/2001 that [all] of the hotel rooms were paid-in-full and extended by Gist-Holder when agent Chronowski spoke with the hotel owner and employee. The government knew prior to trial through exhibits from Gist-Holder and the landlord records that on 6/12/2001 the evidence conclusively shows that the rent for the Buchanan St home was "Over-paid" and there was a credit balance on the property. The Seventh Circuit refused to adjudicate this issue because the evidence to support Gist-Holder's claim is conclusive. The Seventh Circuit again refused to apply the law.

F. The Seventh Circuit erred when it ruled that Gist-Holder's 4th Amendment Rights under Carpenter were not violated and even if they were, exigent Circumstance exception applied.

The Supreme Court should grant this petition because the Circuit's decision conflicts with the Supreme Court's decision in Carpenter and the Court's decision in Milcey concerning exigent circumstance. The evidence [conclusively] shows that the government did not have a warrant when it obtained the historical Cell-Site data for Gist-Holder's phones (#9762, #9862, and #1806). In fact, the

warrant was obtained 9 months after the obtainment of the data. The Supreme Court in Mincey specifically stated that there must be "fact-specific" information for exigent circumstances to apply. Once the evidence showed that agent Goozee instructed the entire law enforcement database not to arrest Gist-Holden because there was no probable cause to arrest him, it negated any argument that Gist-Holden was a "fleeing suspect." Once the evidence showed that Gist-Holden had a residence and business in Atlanta, GA and Miami Beach, FL, and travels back and forth weekly, all arguments that Gist-Holden fled or was a fleeing suspect is negated. In every issue brought forth on appeal, the Seventh Circuit ran away from the facts and ran away from the evidence. The Circuit refused to address and adjudicate Gist-Holden's arguments because the [facts, evidence and law] supported them which required relief.

Conclusion

The Defense respectfully request that the Supreme Court examine this Petition, the record, the trial transcripts and the exhibits submitted with thick lens and without a quick judgement. "In cases in which there is a claim of denial of rights under the Federal Constitution, this Court is not bound by the conclusions of lower Courts, but will reexamine the evidentiary basis on which those conclusions are founded (The *Mohr v. U. Maryland*, 340 U.S. 305, 308, 371, 95 L.Ed. 207, 270, 71 S.Ct. 325, 328). One Constitutional violation is enough to overturn a conviction. The long list of constitutional violations in *Gist-Holden's* case is enough to alter the public's perception of fairness in the federal criminal justice system. *Gist-Holden's* case in no real sense he deemed fair or legitimate. The Seventh Circuit went against its own precedent and Supreme Court precedent to deny *Gist-Holden* relief. The Seventh Circuit refused to adjudicate many of *Gist-Holden's* arguments on appeal. If an individual preserves an issue and raises it on appeal but the Circuit refuses to adjudicate the issue what real due process rights are afforded to defendants? The government did not prove beyond a reasonable doubt that *Gist-Holden* committed the alleged offense, *Gist-Holden* should have been acquitted. Majority, if not all evidence presented by the government was constitutionally inadmissible. *Gist-Holden's* conviction cannot constitutionally stand and must be reversed.

The Defense respectfully request that the Supreme Court grants this Petition and reverse *Gist-Holden's* wrongful conviction.

Dated this 27th day of October, 2024.

Respectfully Submitted,



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