

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONTE BOOKER — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DONTE BOOKER
(Your Name)
F.C.I. Elkton (low)

P.O. Box 10
(Address)

Lisbon, Ohio. 44432
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Sixth Circuit Court of Appeals refusal to recognize trial counsel performance deficient and prejudice Petitioner for failure to present exculpatory evidence ("POLICE REPORT") in his possession during trial when Petitioner testified under oath on the stand stating his "RELUCTANCE" hours before arrest?
2. Whether trial counsel prejudice Petitioner for failure to produce exculpatory evidence (POLICE REPORT) at any time during trial to establish entrapment defense?
3. Whether trial counsel performance deficient and prejudice Petitioner for failure to produce exculpatory evidence (POLICE REPORT) to impeach witnesses whom testified that Petitioner never showed any reluctance during investigation?
4. Whether trial counsel performance deficient and prejudice Petitioner for failure to produce exculpatory evidence (PENDING STATE CIVIL SUITS) State Case No. CV-12-797478, Donte Booker v. Patrick Sullivan, et al., & Case No. CV-12-797479, Donte Booker v. Scott Ramsey et al. Cuyahoga County Court of Common Pleas to negate profit in this alleged crime?
5. Whether trial counsel performance was deficient and prejudice Petitioner for failure to produce exculpatory evidence (STATE CIVIL SUITS) at trial when he was aware that both parties were in negotiations to award Petitioner a large settlement of money to avoid trial?
6. Whether trial counsel performance was deficient and prejudice Petitioner for failure to produce exculpatory evidence (STATE CIVIL SUITS) at trial to impeach witnesses whom testified that Petitioner wanted to commit alleged crime to receive money proceeds from selling the drugs?
7. Whether trial counsel performance deficient and prejudice Petitioner for failure to produce exculpatory evidence (STATE CIVIL SUITS) existence during trial to negate profit and establish entrapment defense?
8. Whether trial counsel performance was deficient and prejudice Petitioner when withholding exculpatory evidence (POLICE REPORT) in his possession, which he failed to turn over discovery evidence to Petitioner so that he could adequately prepare for his defense at trial?
9. Whether Petitioner's prior offenses still qualify as predicate offenses when Petitioner has clearly presented and produced evidence of [proof] beyond a reasonable doubt that he is no longer a Career Offender under U.S.S.G. § 4B1.1?
10. Whether trial counsel prejudice Petitioner for failure to introduce (STATE CIVIL SUITS) under Fed.R.Evid. 401, to negate profit, impeach witnesses, support entrapment defense.
11. Whether Sixth Circuit prejudice Petitioner for failure to accept Supplement under Fed.R.Civ.P. 15(a), newly discovered evidence, Rehearing En Banc?
12. Whether Prosecutorial Misconduct remarks violated due process?
13. Whether new interpretation case law determines Petitioner's prior predicate offenses are no longer crimes of violence under U.S.S.G. 4B1.1?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

TABLE OF AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☒ reported at (Exhibit K); 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 B to the petition and is Northern District of Ohio, Eastern Division

☒ reported at (Exhibit L); 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 31, 2017 N.

☐ 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: November 15, 2017, and a copy of the order denying rehearing appears at Appendix C (Exhibit M)

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United State Constitution Amendment V.

No person shall be held to answer for a capital or other wise infamous crime unless on a presentment or indictment by a Grand Jury unless in cases ariseing in the land or navel forces or in the militia when in actual service in a time of war or public danger, nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal cases 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 without just compensation.

United States Constitution Amendment VI.

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 witness against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense.

STATEMENT OF THE CASE

After her release from prison, Daisetta Harris worked as a paid informant for the Cleveland Police Department. (R. 69 Transcript of Jury Trial pg. #625). After she told one of the woman she knew from prison, that she needed money, the woman gave her the phone number of the Petitioner Booker who needed fake ID's. (Id at pg.#672). Harris called Booker to arranged a (unmonitored) and (unrecorded) meeting at a Burger King fast food restaurant in Cleveland. (d). As Harris related that October, 2012, meeting at Booker's trial, Booker could not furnish her with fake ID's, but was under the impression that Harris could supply him with a fake ID. (Id at pg. #630). According to Harris, states that Booker then asked her about any easy targets to rob, which she stated she did. (Id at pg. #636-37). After the meeting with Booker, Harris contacted Det. Todd Clark of the Cleveland Police Department. (Id at pg. #639) Harris has worked as a paid informant of Det. Clark since July of 2012. (Id at Pg. #585). Det. Clark told Harris to se up another meeting with Booker where this conversation could be recorded. At the meeting on October 31, 2012, at the same Burger King, Harris told Booker that she had a girl friend wholalong with her boyfriend moved drugs from various drug stash houses in Cleveland. Booker then Boasts and describe how the robbery should take place. (Id at pg. #547). After Booker left the meeting, Det. Clark, who had been monitoring the meeting followed Booker and copies down the license plate of his car. (Id at Pg. #550). A later search by Det. Clark and verified the vehicle belonged to Booker. Another meeting was held at the same Burger King with Harris, girl friend Det. Gomez, and Gomez boyfriend ATF agent Miller, which Booker again Boasts and describe how the robbery should take place. Agent Miller informed Booker on certain details to commit the robbery and he would contact Booker once he is contacted by his boss. (Id at pg. 718-20). While Booker waited, through numerous text messages and unrecoreded phone calls to Booker cell phone number 216-200-2575, Harris continued to pressure Booker using "LIES" informing him about a critically ill granddaughter in the hospital that needs a "HEART TRANSPLANT" and her needing Booker to help give her money to pay for the operation, and enormous hospital bills. That her granddaughter life was in his hands and if he did not help her, then he will be blamed for her death! (Id at pg. #307-08). Harris also stated on the stand that there was were other (unmonitored) meetings with Booker that she never told her boss Det. Clark. (See attachment)

ATTACHMENT (STATEMENT OF THE CASE)

On January 08, 2013, on the day of arrest and hours before arrest at approximately 1636 hours a (monitored) controlled telephone call was made by Harris and Det. Clark to Booker cell phone number 216-200-2575. During this (monitored) controlled call the Audio Recording Device "MALFUNCTIONED" only recording Harris voice conversation and [not] recording Booker voice conversation when Booker was informing Harris and Det. Clark that he did not want to commit any robberies and for Harris and Det. Clark to find someone else to do it. (See attached Exhibit A). Two hours later at approximately 1722 hours another (monitored) was made again to Booker cell phone number 216-200-2575 by Harris and Det. Clark, Booker again shows "RELUCTANCE" and tells Harris and Det. Clark to take the drug bag themselves, which Harris tells Booker this is "IMPOSSIBLE"! Continuing to put more pressure on Booker. In the police report by Det. Clark to his supervisor Lt. Michael Connelly states that Booker "EVENTUALLY AGREED" to come to the hotel. (Exhibit A). After being pressured by Harris and Det. Clark, and Det. Gomez who previously informed Booker on December 12, 2012, at another monitored meeting with Harris that Det. Gomez wants to rip off her boyfriend and for Booker to give her \$100,000 out of the deal. (Id at Pg. #718-20). Booker eventually agreed to come to the La Quinta Inn, located in Cleveland, where Det. Clark placed ten kilos of "sham cocaine" in a red duffle bag placed in the rear of black Avalanche chevy vehicle parked in the back of the hotel. (Id at Pg. #568-70). Once Booker arrived at the hotel, Harris texted Booker and told him Gomez unlocked the Avalanche doors with her remote and for Booker to grab the kilos of sham cocaine. (Id at Pg. #576). Booker grabbed the ten kilos in the duffle bag out the Avalanche and got in his vehicle and begin driving out the parking lot. Various law enforcement attempts to stop Booker, which Booker lead them in pursuit and eventually crashed into a snow drift. Booker got out and ran, but was apprehended and handcuffed. (Id at Pg. #576-579). Once Booker was arrested and searched, there was no gun, weapons, ski masks, police fake clothes, duct tape, criminal tools, vests, or money found on his person or in his vehicle by law enforcement. Nor did Booker have anyone with him to assist him or conspire in this alleged crime.

Later at trial it was known by Det. Clark that Booker was not under any investigation prior to meeting Harris for drug stash house robberies or drug crimes by law enforcement agencies. Nor was anyone identified to whom Booker conspired with to sell the cocaine to at trial. Booker has no previous history

ATTACHMENT (STATEMENT OF THE CASE)

of drug crimes or stash house robberies. Booker testified on the stand that he only agreed to assist Harris in her scheme after her repeated entreaties through numerous telephone calls and texts. Harris repeatedly telling "LIES" that she needed Booker to commit this alleged crime to get money to pay for her grandchild heart surgery and hospital bills. playing on Booker sympathy. (ID at Pg. #307-08). The evidence of Harris pressure and manipulation of Booker was pointed at enormous phone conversations and texts reflected in Harris phone records that were not recorded by police. (Id at Pg. #304). Booker denied participating in any drug stash house robberies or dealing in drugs. (Id at Pg. #310-312). Booker explained his first intentions of getting involved was for play to test his acting skills from watching his favorite movies and actors and was never serious of committing any robbery or drug crime. (Id at Pg. #304-06).

Booker also testified at trial that when Harris called him hours before arrest on January 08, 2013, that he told Harris that he did not want to proceed further and commit any robbery or drug crimes and to find someone else to do it. (See Exhibit A). When Booker was pressured by Harris and Det. Clark, telling him that it would be "IMPOSSIBLE" for Harris and Gomez to do this alleged crime themselves and take the bag of drugs. Booker testified that the reason why I the Petitioner proceeded to go to the hotel was that I felt obligated thinking about Harris critically ill granddaughter in the hospital. To help give Harris money to save her granddaughter life. (See Case No. 1:13-CR-00050, DN #: 51, at 310; ¶ 22-24);(DN #: 51, at 311, ¶ 14-24);(DN #: 51 at 312, ¶ 1-12);(see also Exhibit B).

REASONS FOR GRANTING THE PETITION

This Petition is filed pro se pursuant Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972).

I. TRIAL COUNSEL FAILED TO INTRODUCE EXCULPATORY EVIDENCE (POLICE REPORT) AT TRIAL

Trial counsels Dominic Coletta and Roger Synenberg performance was deficient and prejudice Petitioner Booker for failure to introduce exculpatory evidence (Police Report) to support entrapment defense that was in their possession during trial. Which deprived and violated Booker's Sixth Amendment right to effective assistance of counsel. (See Strickland v. Washington, 466 U.S. 668, 687-88, 691-92, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

A. POLICE REPORT: "At approximately 1636 hours, CS (Harris) placed a controlled monitored telephone call to 216-200-2575, and told Booker that CS's girlfriend (Det. Gomez), was in town." "CS told Booker that CS would meet with CS's girlfriend and let Booker know where Booker needed to come to get the cocaine." "It should be noted that the (Audio Recording Device Malfunctioned) during this call only recording CS's side of the conversation." (Exhibit A).

B. POLICE REPORT: "At approximately 1722 hours, CS placed a monitored recorded telephone call to 216-200-2575, CS told Booker that CS's girlfriend told CS to come to the La Quinta Hotel." "CS told Booker that the bag (with the drugs) would be inside of Avalanche that CS's girlfriend parked in the rear of the parking lot at the hotel." "CS told Booker that Booker would need to come and get the bag now!" "At that time Booker told CS to leave with CS's girlfriend, take the bag (with the drugs)." "CS told Booker that would be impossible!" "Booker eventually agreed to come to the hotel." (Exhibit A).

II. POLICE REPORT CORROBORATES BOOKER TESTIMONY STATING HIS RELUCTANCE AT TRIAL

BOOKER: "I am at home making my kids something to eat when she (informant Harris) called me." (Case No. 1:13-CR-00050, DN: 51 at 311, ¶ 14-15); (also see Exhibit B). (Trial Transcripts).

BOOKER: " I tell the informant (Harris) I'm cool, I am not doing no home invasions." (DN: 51 at 311, ¶ 14-15).

BOOKER: "She keeps talking not listening to what I am saying, so I st the phone down to feed my kids and she hangs up." (DN: 51 at 311, ¶ 21-22).

BOOKER: "Then she calls back, tells me it's going down, it's at the hotel, hurry up get in your car." (DN: 51, at 311, ¶ 22-24).

TRIAL COUNSEL: "Why didn't you at that point in time just not go? (DN: 51 at 312, ¶ 1-2);

BOOKER: "I was thinking about her ill granddaughter, I felt obligated, make the move for them, gave them whatever to pay for the heart transplant and bills and go back home." (DN: 51 at 312, ¶ 3-12); (Exhibit B).

A. Reasonable jurist could agree trial counsel performance was deficient and prejudice Booker for failure to introduce exculpatory evidence (Police Report) in counsel's possession during trial to support Booker testimony on the stand stating his "RELUCTANCE" and to support entrapment defense.

B. Once existence of police report, reasonable jurist could agree based on Booker's testimony on the stand, Booker could have told CS (Harris) during the malfunctioned audio recording device that failed to capture Booker's voice conversation that he was a unwilling participant in this alleged crime.

C. Once knowing existence of police report, reasonable jurist could agree Booker displayed "RELUCTANCE" when telling Harris and Det. Clark through the monitored controlled call "to take the bag (with the drugs) themselves".

D. Once knowing existence of police report, reasonable jurist could agree that Harris and Det. Clark, continued to "INDUCE" Booker to commit

a crime when telling Booker through monitored controlled call that it is "IMPOSSIBLE" for them to take the bag (with the drugs) themselves. Putting more pressure and forcing Booker to come to the hotel and take the bag himself. (See Harris 9 F. 3d at 497 (quoting Jacobson v. United States, 503 U.S. 540, 548, 112 S. Ct. 1535, 118 L. Ed. 2d 174 (1992))).

E. Reasonable jurist could agree through Det. Clark's testimony on the stand stating Booker was not under investigation prior to meeting CS (Harris), for any stash house robberies or drug crimes, that Booker was not predisposed and lacked predisposition. (See United States v. AL-Cholan, 610 F. 3d 945, 950 (6th Cir. 2010)).

F. Reasonable jurist could agree through Det. Clark testimony stating Booker did not have a criminal history of drug stash house robberies or drug crimes, that government failed to prove predisposition beyond a reasonable doubt. (See Jacobson v. United States, 503 U.S. 540, 548-49, 112 S. Ct. 1535, 118 L. Ed. 2d 174 (1992)); (also see United States v. Wright, 921 F. 2d 42, 44 (3rd Cir. 1990)).

G. Reasonable jurist could agree that CS Harris and Det. Clark used their scheme of [persuasion] and [sympathy] from telling "LIES" about Harris having an critically ill grandchild in the hospital needing a "HEART TRANSPLANT" and needs Booker to steal drugs and sell drugs to help pay for the heart transplant and medical bills to save the grandchild's life. (See Wright, 921 F. 2d at 45 (quoting Fedroft 874 F. 2d at 184)).

H. Reasonable jurist could agree through CS Harris phone records verifying substantial calls to Booker phone number 216-200-2575, and texts messages, and CS Harris testimony stating that there were unmonitored and no recorded meetings with Booker that she did not inform Det. Clark, that a tremendous amount of "INDUCEMENT" was presented to Booker.

I. Reasonable jurist could agree that it's reasonably probable the results would have been different if not for counsel's [errors]. (See Strickland v. Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

J. Reasonable jurist could debate district court's and circuit

court's that this sub-claim does not satisfy either Strickland prong. Reasonable jurist could disagree with district court's and circuit court's rejection of this sub-claim.

III. TRIAL COUNSEL FAILED TO INTRODUCE EXCULPATORY EVIDENCE STATE CIVIL SUITS

Trial counsel's performance was deficient and prejudice Booker for failure to introduce exculpatory evidence (state civil suits) to [negate] "PROFIT" and support entrapment defense that was in counsel's possession during trial. Which deprived and violated Booker's Sixth Amendment right to effective assistance of counsel. (See Strickland v. Washington, 466 U.S. 668, 687-88, 691-92, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

Petitioner Booker, informed trial counsel Roger Synenberg before trial, that he has two pending state civil suits in the Cuyahoga County Court of Common Pleas. That him and his attorney was in negotiations with both parties to agree on a large settlement of money to avoid trial. (See Donte Booker v. Partick Sullivan, Civil No. CV-12-797479 & Donte Booker v. Scott Ramsey, Civil No. CV-12-797478); (Exhibit C).

Trial counsel was aware of both civil suits that were pending before and during trial, which counsel signed a sworn affidavit stating Booker told him about both pending civil suits before trial. (See Exhibit D).

ROGER SYNENBERG: "Mr. Booker informed me of his civil litigation against the city of Beachwood, Ohio., arising out of his wrongful conviction in or about 1988 for crimes that he did not commit during the course of my representation of Mr. Booker." (Exhibit D).

A. Once knowing existence of both civil suits that were pending in state court during trial, reasonable jurist could agree that Booker did not have a motive to commit this alleged crime for "PROFIT" of selling the drugs (cocaine).

B. Once knowing existence of civil suits, reasonable jurist could agree that trial counsel should have introduced civil suits as exculpatory evidence to impeach witnesses and government whom stated and testified Booker personally engaged himself to receive and gain large proceeds from selling

the drugs in this alleged crime.

C. Once knowing existence of civil suits, reasonable jurist could agree that trial counsel should have introduced civil suits to [negate] profit and support entrapment defense.

D. Once knowing existence of civil suits, reasonable jurist could agree that it's reasonably probable the results would have been different if not for counsel's [errors]. (See *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)); (also see *United States v. Cotton*, 535 U.S. 625, 632, 152 L. Ed. 2d 860, 122 S. Ct. 1781 (2002)).

E. Reasonable jurist could debate the district court's and circuit court's conclusion that this sub-claim does not satisfy either *Strickland* prong and rejection of this sub-claim.

IV. BOOKER'S SIGNED SWORN AFFIDAVIT

Petitioner Booker signed a sworn affidavit and submitted this to the court. (Civil No. 17-3357, DN: 20, Filed 9/27/2017), stating after trial Booker and trial counsel Dominic Coletta, attended a Presentence Investigation meeting with probation officer Allen Gold. Once this meeting was completed, trial counsel Dominic Coletta, left the room to go get the officer to escort Booker back to his cell. During that time Booker noticed papers on top of counsel's files on the table. Which Booker got up to look at them and seen the police report that he had never seen and confiscated this. Once arrived back to his cell and read this police report, this is when he was aware of the two monitored controlled calls made by CS Harris and Det. Clark hours before arrest. (See Exhibit I); (also see Exhibit A).

Record will reflect that Booker filed a pro se motion stating ineffective assistance of counsel and requested to dismiss both trial counsels and proceed pro se with standby counsel. (Case No. 1:13-CR-00050, DN: 36, 39). District Court signed an Order granting Booker's motion. (Case No. 1:13-CR-00050, DN: 42).

Booker also, filed a pro se motion under Fed.R.Crim.P. 33(b)(1), Newly Discovered Evidence (Police Report), requesting new trial. This motion is still pending. (Case No. 1:13-CR-00050, DN: 78, Filed: 3/12/2015).

V. TRIAL COUNSEL DOMINIC COLETTA FAILED TO PRESENT AFFIDAVIT

Petitioner Booker, has also, signed a sworn statement under oath pursuant 18 U.S.C. § 1746 penalty of perjury in his 28 U.S.C. § 2255 Petition stating what had occurred at the Presentence Investigation meeting with counsel Dominic Coletta after trial. (Civil No. 1:15-CV-01051, DN: 80, Filed: 05/26/2015)..

Both trial counsels Dominic Coletta and Roger Synenberg, both failed to address or refute Booker's allegations to what actually occurred at the Presentence Investigation meeting. Counsel Dominic Coletta, [refuse] to submit an affidavit to respond to Booker's allegations as untrue.

Reasonable jurist could agree that an evidentiary hearing is warranted to establish the [facts]. (See United States v. Kilpatrick, 798 F. 3d 365, 378 (6th Cir. 2015)(quoting United States v. Miner, 774 F. 3d 336, 348 (6th Cir. 2014)).

Reasonable jurist could debate district court's and circuit court's conclusion that this sub-claim does not satisfy either Strickland prong for failure to disclose discovery evidence material (police report) to Booker. So that he could have adequately prepared for his entrapment defense properly.

Reasonable jurist could debate with district court's and circuit court's rejection of this sub-claim.

Reasonable jurist could agree that it's reasonably probable the results would have been different if not for counsel's [errors]. (See United States v. Jones, 399 F. 3d 640, 648, 483 Fed. Appx. 197 (6th. Cir. 2005); (also see Strickland v. Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

VI. PROSECUTORIAL MISCONDUCT

Prosecutor Edward Feran flagrant remark stating his credibility to the evidence of guilt during closing argument, so infected the trial with unfairness as to make the resulting conviction a denial of due process.

(See Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2664, 91 L. Ed. 2d 144 (1986));(Parker v. Matthews, 132 S. Ct. 2148, 2153, 183 L. Ed. 2d 32 (2012)).

FERAN: "In fact, in my 15 years as a Federal Prosecutor, the evidence couldn't be more simplistic." (Case: 1:13-CR-00050, Doc #: 70, Page ID #: 793) (Exhibit F).

SYNENBERG: "Objection, your Honor." (Case: 1:13-CR-00050, Doc #: 70, Page ID #: 793);(Exhibit F).

COURT: "Sustained." "Disregard that last comment." (Case: 1:13-Cr-00050, Doc #: 70, Page ID #: 793);(Exhibit F).

SYNENBERG: "Judge, I'd like to make a motion for mistrial." "Because of the remarks that the Government made with reference to he's never seen evidence in 15 years like this." (Case: 1:13-CR-00050, Doc #: 70, Page ID #: 798-799);(Ex. F).

COURT: "Okay, I sustained the objection when he said that." "And some ways, it gets into, it's not directly, but kind of goes to your credibility, which you shouldn't have gone into." (Case: 1:13-CR-00050, Doc #: 70, Page ID #: 799);(Ex. F).

The Court states on record that Feran remarks was based on his credibility and agrees that the remark was flagrant, "stating Feran shouldn't have told the jurors this remark."

Feran's remark was:

1. improper;
2. tended to mislead the jury;
3. prejudice;
4. deliberately made;
5. flagrant to warrant reversal.

The preponderance of the evidence was not strong to convict if counsel would have presented exculpatory evidence (Police Report), (Malfunctioned Recordings) that was in his possession during trial. Which, [displays] Booker's "RELUCTANCE" hours before arrest. (See Ex. A). Counsel has a fiduciary duty and ethical obligated duty to present the jury this evidence on the behalf of his client Booker, which reasonable jurist could have inferred [doubt] and found Booker not guilty. Booker presented the

"ENTRAPMENT DEFENSE" and "RELUCTANCE" is the most important [factor] of [innocence] in the entrapment defense.

Counsel Synenberg objected to the improper remark at trial, so therefore this Honorable Court should review this claim of prosecutorial misconduct de novo. (See U.S. v. Kuehne, 547 F. 3d 667, 687 (6th Cir. 2008)).

Feran's conduct and flagrant remarks was improper as to warrant reversal. (See Cristini v. McKee, 526 F. 3d 888, 899 (6th Cir. 2008)).

A flagrant remark such as to Feran's credibility to the guilt of the evidence cannot be reasonably [cured]. Because the jurors are now basing their guilty decision more [strongly] on Feran's credibility.

VII. GATES v. U.S., 2018 U.S. App. LEXIS 4075, Case No. 17-3156
(6th Cir. 2018)

Based on "new interpretation case law" in light of Sixth Circuit Court of Appeals recent decision in Gates v. U.S., 2018 U.S. App. LEXIS 4075, Case No. 17-3156 (6th Cir. 2018), and U.S. v. Yates, 866 F. 3d 723, 724-34 (6th Cir. 2017), Booker's 1986 Case No. CR213404 & 1987 Case No. CR-216213 Ohio Revised Code (O.R.C.) 2911.02(A)(3) (Pre-Senate Bill Two) Robbery offense convictions no longer qualify as "crimes of violence" under U.S.S.G. 4B1.1, 4B1.2(a)(1), 4B1.2(a)(2) Career Offender Guidelines. (See Exhibits G & H).

VIII. U.S. v. PRUITT, 2017 U.S. Dist. LEXIS 10368, Case No. 1:15-CV-02452,
JUDGE JAMES S. GWIN (N.D. OHIO 2017)

Based on "new interpretation case law" in light of United States District for the Northern District of Ohio decision in U.S. v. Pruitt, 2017 U.S. Dist. LEXIS 10368, Judge James S. Gwin (N.D. Ohio 2017), Booker's sentencing Judge James S. Gwin determined that Booker's 2010 Case No. CR-536886 O.R.C. 2905.02 Abduction offense conviction no longer qualify as a "crime of violence" under U.S.S.G. 4B1.1, 4B1.2(a)(1), 4B1.2(a)(2) Career Offender Guidelines. (See also U.S. v. McBee, 2017 U.S. Dist. LEXIS 84047, Case No. 1:07-CR-362, Judge John R. Adams (N.D. Ohio 2017); (Exhibits I & J)).

IX. U.S.S.G. 4A1.2(a)(2), 4B1.2(c)

Booker's 2010 Abduction Case No. CR-536886 & 2010 Attempted Felonious Assault [same] Case No. CR-536886 offenses were committed on the [same] day, [same] time, under the [same] charging instrument, sentences were imposed on the [same] day with no "INTERVENING ARREST". (See Exhibit J).

U.S.S.G. 4A1.2(a)(2) states:

"If there is no intervening arrest, prior sentences are counted separately unless: (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day. Treat any prior sentence covered by (A) or (B) as a single sentence. (See attached Exhibit N);(also see U.S.S.G. 4A1.1(e)).

Commentary Application Notes 2(A) Predicate Offense states:

"No more than "ONE" prior sentence in a given single sentence may be used as a predicate offense." (See Exhibit N).

Based on U.S.S.G. 4A1.2(a)(2), 4B1.2(c), only "ONE" prior predicate offense in a given single sentence without an intervening arrest can be used as a predicate offense. Therefore, this [eliminates] Bookers 2010 Attempted Felonious Assault offense as a "crime of violence" under U.S.S.G. 4B1.1 Career Offender Because both 2010 Abduction & 2010 Attempted Felonious Assault offenses were under the same charging instrument (indictment), both were committed on the same day and time, both sentences were imposed on the same day with no intervening arrest. (See Exhibit J).

X. SENTENCING

At Booker's sentencing held on July 18, 2013, the Presentencing Report (PSR) indicated that Booker has (four) qualifying offenses under U.S.S.G. 4B1.1 Career Offender. Offenses: 1986 Robbery, 1987 Robbery, 2010 Abduction, 2010 Attempted Felonious Assault. (See (PSR)). Booker's factual evidence of [proof] presented has [eliminated] all four qualifying offenses. According to U.S.S.G. 4B1.1, there has to be at least "TWO" qualifying offense convictions to qualify a defendant under U.S.S.G. 4B1.1 Career Offender. (See U.S.S.G. 4B1.1).

XI. FUNDAMENTAL DEFECT, MISCARRIAGE OF JUSTICE, DUE PROCESS

District Court [erred] and [improperly] sentenced Booker under U.S.S.G. 4B1.1 Career Offender, which constitutes a "fundamental defect" in sentencing that inherently results in a "complete miscarriage of justice", and the egregious [error] amounted in violation of Booker's "due process". (See Gall v. U.S., 21 F. 3d 107, 109 (6th Cir. 1994); (Wright v. U.S., 182 F. 3d 458, 463 (6th Cir. 1999) (quoting Hill v. U.S., 368 U.S. 424, 428, 82 S. Ct. 468, 7 L. Ed. 2d 417 (1968))).

Booker had demonstrated that reasonable jurist could agree the results could have been different if not for counsel's [errors]. (See Strickland v. Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 417 (1984)).

Booker has made a substantial showing of a denial of a constitutional right. (See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003)).

Booker demonstrates that reasonable jurist could disagree with District Court's and Circuit Court's rejection of his constitutional claims. (See Miller-El, 537 U.S. at 327).

CONCLUSION/RELIEF

For the foregoing reasons, I Petitioner Donte Booker, pray and respectfully hereby request this Honorable Court to grant Petition for Certiorari in his favor. And review the decisions of the District Court and Sixth Circuit Court in this matter. In the interest of justice, fairness, integrity, of the judicial proceedings.

Also, grant to appoint counsel pursuant 18 U.S.C. 3006A (CJA); (2) remand for new trial; (3) remand for resentencing de novo.

Thank you and God bless the United States of America.

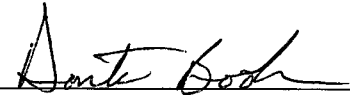
Respectfully submitted,

/s/ Donte Booker
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F.C.I., Elkton (low)
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: April 17, 2018