No. 25-5453

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

GEORGE T. RODGERS - PETITIONER

VS.

STATE OF NEW JERSEY - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPERIOR COURT OF NEW JERSEY APPEALLATE DIVISION
NAME OF THE LAST COURT THAT RULED ON MERITS MOF CASE

PETITION FOR WRIT OF CERTIORARI

GEORGE T. RODGERS
(NAME)

SOUTH WOODS STATE PRISON 215 S BURLINGTON RD.
(ADDRESS)

BRIDGETON NEW JERSEY 08302
(CITY, STATE, ZIP CODE)

QUESTION(S) PRESENTED

1. Detective Josh Pavlov of the Bordentown Township Police Dept. applied for and obtained a search warrant for the home of the defendant's father under false swearing under oath. A motion to suppress evidence was held and denied to which the defense was unaware of crucial perjured evidence. During the trial it was revealed that the detective lied under oath in connection with obtaining the search warrant, would the court consider revisiting the motion to suppress in light of the newly discovered evidence?

2. In Erlinger, the Supreme Court held that when the Gov. Wants an extended term Under 18 U.S.C. 924(e) (1) and the Courts prior decision in Apprendi v. New Jersey, 530 U.S. 466 (2000) require a jury to decide whether the predicate offenses took place on different occasions. In this case before the court a judge- not a jury- decided the predicate offenses were committed at different times. Taking all the factors in this brief inconsideration and pursuant to Erlingler and Apprendi, does the defendants extended term under N.J.S.A 2C: 44-3 become invalidated?

3. Lieutenant Shaune E. Lafferty #6002 and Det. Pavlov #3271 of the Bordentown Police Department executed a search of the defendants (father) home, the defense contends that U.S. currency was stolen and evidence was manufactured during the search.

4. Based upon the foregoing allegation, the defense compelled the prosecution to produce the body worn camera footage utilized in the search of 12 Jarvis Place. Prosecutor Julian Harris put forth a slew of reasons as to why he could not produce the requested BWC (See defendants brief for slew of reasons).

Accordingly, could the court rule on whether the defense was illegally denied the aforementioned exculpatory evidence?

5. Likewise the defense was denied BWC footage of the investigation that took place in the bank wherein the investigating officer (Chief Pesce) remarks to the bank tellers "How great this doesn't even seem like a robbery." Will the court rule as to whether this Body Worn Camera footage qualify as exculpatory evidence that the defense should have been privy of?
6. During the trial, the defendant sought to enter documentations (records) of unemployment benefits in the trial in order to establish that he had an income at the time of the alleged offense. Judge Breland held a mock preliminary hearing to determine if the documents could be used as records and in the interest of the defense. The Judge ultimately ruled that they were inadmissible as business records although the court appointed investigator acquired them form the Executive Director of Legal and Regulatory Services (Mr. David Fish).
   Will the court reexamine this preliminary hearing to ascertain the defendant's denial of exculpatory evidence?
7. During the trial evidence supported that the crime did not rise to the level of robbery, when asked what did the note mean to her when it was passed, the bank teller responded by stating "(just as it said give him the money and that's what she was trained to do)", she also testified that there were no threats in the note, based on this testimony does the guilty verdict merit review?

8. The State relied on a fear theory in support of a robbery indictment, the defense contends that the indictment was manifestly deficient and a subversion of the Grand Jury Process. To return an indictment a grand jury must determine whether the State has established a prima facie case that a crime has been committed and the accused had committed it. Relevant to the present case, the State did not present sufficient evidence to the grand jury to establish the offence of robbery. During the grand jury process one of the jurors specifically ask the prosecutor if the bank teller has to be in any fear of injury in order to meet the requirement of 2nd degree robbery to which the prosecutor simply rereads the definition of the statute, will the court review the grand jury process in this matter?
9. Prior to the trial and during the arrest of the defendant, all of the bank employees were listed as victims to the robbery, during the trial Ms Jennifer Johnson was the only victim listed, it has to be questioned concerning who was presented to the grand jury as the victim being threatened which elevated the theft to robbery?
10. The defense challenged the trial courts failure to charge the jury on the crucial and contested issue of identification to which the Appellate Court ruled that any error or omission shall be disregarded unless it is of such a nature to have been clearly capable of producing an unjust result. The defense request the court review this matter for clearly it was capable and produced an unjust result?

LIST OF PARTIES

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

[X] All parties DO NOT appear in the caption of the case on the cover page. A list of all Parties to the proceeding in the court whose judgment is the subject of this petition is As follows:

RELATED CASES

George T Rodgers v State of New Jersey
Superior Court of New Jersey County of Burlington Docket No. 20-11-00618-I
Judgment entered (June 3 2022) (Guilty Trial)

George T Rodgers v State of New Jersey
Superior Court of New Jersey Appellate Division Docket No. A-3561-21
Judgment entered (Dec. 27, 2023) (Affirmed Conviction)

George T Rodgers v State of New Jersey Supreme Court of New Jersey Docket No. 088996 Judgment entered (May 17, 2024) (Denied Certification)

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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____ 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 United States district court appears at Appendix_____ to the petition and is:

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

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

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

[ ] reported at State v. Rodgers 2023 N.J. Super Lexis 2403,2023 WL 8921426 App Div. Dec 27,2023 or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the New Jersey Supreme Court denied certification appears at Appendix B to the petition and is:

[ ] reported at 2024 N.J. Lexis 458 C-469 Term 2023; 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 _____.

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

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____ (date) in Application No._____A_____.

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

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

The date on which the highest state court decided my case was May 14 2024

A copy of that decision appears at Appendix Attached

[ ] A timely petition for rehearing was denied by the Supreme Court of New Jersey court of Appeals on the following date: May 14, 2024, and a copy of the order denying rehearing appears at Appendix Attached

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____ (date) in Application No._____A_____.

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

STATEMENT OF THE CASE

On January 14th 2020, at about 12:10 p.m., Bordentown City Police Department was dispatched to the Investor's Bank on route 130 for the report of a robbery. The Perpetrator entered the front door of the bank and placed a bicycle near the door. He was dressed in a dark mask, a hooded sweatshirt, sweatpants, and Nike sneakers. The perpetrator then approached the teller and handed her a note reading "give me the money, no dye bags". He placed a purple Crown Royal bag on the counter which the teller put $6,779 cash in. According to reports the perpetrator then left the bank and fled on a bicycle. A search for the suspect was performed in the surrounding area of Route 130 Northbound, police were unable to locate the suspect and know one was apprehended. Security Camera Video footage taken from Chickie's and Pete's located at 183 Route 130 Bordentown N.J. lead investigating officer to believe that the perpetrator rode a bicycle from the bank to an awaiting vehicle in the Stony Brook Sew & Vacuum parking lot. Officers report the vehicle to be a Gray in Color Hyundai Santa Fe (2007-2012) in which Fragmented numbers of a handicap license plate was observed. The officers allege that the perpetrator stashed the bicycle in the rear hatch of the vehicle, Detective Josh Pavlov #3271 of Bordentown Township police department than contact the Motor Vehicle Commission and obtained a list of matching New Jersey handicapped license plates for the same model and color of the suspect vehicle. Shortly after the request the Detective was provided with a list of vehicles matching the description, (54) in total. Out of the 54 vehicles 11 stood out as potential vehicles due to the alpha characters in the beginning of the tag and their close proximity of the location and direction of travel of the

Suspect after the commission of the crime. Supplied with this information the detective respond to 41 Altamawr Avenue in Lawrence Township New Jersey and observe that license plate "HU1681" was no longer on a Hyundai Santa Fe, but was now displayed on a Honda SUV. The Detective than allege to respond to the station and perform a search for license plate "HR9369" in which prior to the apprehension of the defendant the only identifying marker given in connection with the license plate was a handicap marker and the number 8.

Detective Pavlov reviewed the information and located a potential match to the suspect vehicle registered to James Rodgers (92 years of age) of 12 Jarvis Place, Trenton N.J. Detective Pavlov #3271 and Detective Sergeant Joseph Ciabatoni #3256 state that they check the area of Jarvis Place in Trenton New Jersey and observe a Black male later identified as George Rodgers exit the vehicle and approach 12 Jarvis place and walk out of sight of the officers and believed to have entered the residence.

The trial revealed that the Detectives did not observe the defendant exit the vehicle (Pg. 89: 12, 13, 14 and Pg. 107: 12, and 13). Nor did the Detectives observe the defendant enter the residence of 12, Jarvis Place. (Pg. 108:11, 12, 13, 14, 15,16 , 17 , and 18 of Trial Transcript.

The defendant was then observed entering the vehicle and exiting Jarvis Place wherein the Detectives contacted Trenton Police to notify them of the situation and attempt to affect an arrest. At approximately 7: pm Trenton Police Department and Lieutenant Shaun Lafferty # 6002 and Detective Justin Lewandowski # 6032 responded on Rte. 29 in Trenton and affected an arrest. The defendant was than arrested and lodged in the Burlington County Correctional Facility where he remained for approximately 2 ½ years until the commencement of trial and the transfer to State Prison Facility to begin to serve a custodial prison term of 15 years with an 85% disqualifier.

STATEMENT OF THE CASE

The defendant asserts that he was denied a fair trial, the series of events were that on January 15, 2020 detective Josh Pavlov #3271 of the (Bordentown Township Police Department), applied for and obtained a search warrant based on a sworn affidavit under oath, and in violation of **2C:28-2.C** state that as the officers drove up to the suspect vehicle, a male subject later identified as George Rodgers was observed to exit the vehicle, enter the residence of 12 Jarvis Place and walk out of sight of the officers. He stated that the defendant then exits the home, enters the suspect vehicle and leave the area.

The defendant proceed with a jury trial where the defense proffered testimony from Detective Pavlov to the affect that he did not observe the defendant exit the suspect

vehicle as stated, nor did he observe the defendant enter or exit the residence of 12 Jarvis Place. As a result and in spite of the detectives perjury, the defendant was convicted of **N.J.S.A. 2C:15-1(a) (2) Second Degree Robbery** and sentenced to an extended term of fifteen years pursuant to **N.J.S.A. 2C:44-3(a)**, with an 85% under (NERA).

There are multiple violations and a travesty of justice stemming from these perjured statements:

1). On Jan 15, 2020 Det. Josh Pavlov and Justin Lewandowski applied to the Honorable Mark P. Tarantino for a search warrant of the home of the defendants father, which was granted.

The defense contends that if the statements were not perjured or inconsistent with what had occurred, than the search warrant would not have been granted.

The scheme of the fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search and seizure in light of the particular circumstances.

2). In order to establish a contemporary connection between the defendant and the crime which occurred on Jan 14, 2020 Detective Lewandowski and Detective Pavlov state that they observed the defendant exit the vehicle, then enter and exit the residence in violation of **2C:28-2.C False Swearing Under Oath**.

3). the defendant petition the Appellate Court for relief citing the perjured statements by way of transcripts from the trial. The conviction is upheld based on the same perjured statements that were proven to be false. "(Appellate Judge Opinion)" When defendant

went into the house, detectives were able to more closely view the vehicle, which were similar to what had been seen on surveillance video and MVR. Defendant then came out of the house and left in the vehicle. (See pg. 005 Appellate Judge Opinion).

Based on the foregoing reasons, the conviction is confirmed.

It must be noted that prior to the trial, an Illegal Search and Seizure Motion to Suppress Evidence was held before the Hon. Gerard H. Breland, wherein the motion was denied, at this point the defense was not in possession of the perjured testimony.

The Question is, will the defendant be granted a review of the perjured affidavit in contrast to the detective's testimony, and the search warrant must be reviewed since it conflicts with the detective testimony and the Appellate Judge Opinion that conflicts with the officer statement.

On June 3, 2022 a sentencing motion was held at the Burlington County Superior Court before the Honorable Gerard H. Breland J.S.C. The Motion was in consideration of the State's request that the defendant George Rodgers be treated as a persistent offender and therefore be considered to be sentenced within the first-degree range, as well as the second-degree range.

The Prosecutor (Mr. Harris) stated on behalf of the state that the defendant was convicted on March 29th, 2022 after a jury trial; Mr. Rodgers was over the age of 21 at the time of the commission of the crime for which he is being held.

The prosecutor also allege that the defendant has been previously convicted on at least two separate occasions of separate crimes committed at different times when he was 18

years of age or older, the latest of these crimes being within the last ten years of the date for which he is being sentenced now.

Mr. Harris also alluded to a C.D.S. offense for purposes of sentencing citing the indictment occurred in 2012, this is also inaccurate information, the circumstance surrounding the offense is that the incident occurred in 2009, the defendant remained incarcerated for over 2 ½ years waiting for trial. Lastly, Mr. Harris inform the Judge that it was less than a year from being released from prison which he then committed the act of second- degree robbery.

This is also false information, clearly the record will show that the defendant was released from state prison in July of 2018 and arrested on January 14, 2020 (18) MThs.

In conclusion, the Judge in collusion with the prosecutor deemed it appropriate that the defendant be sentenced as a persistent offender to an extended term of 15 years with an 85% parole disqualifier.

In Erlinger, the Supreme court held that, when the government wants an extended term under 18 U.S.C. 924(e)(1) – a federal sentencing enhancement law which requires the defendant to have been convicted of three predicate offenses "committed on occasions different from one another" --, the Fifth and Sixth Amendments and the Court's prior decision in Apprendi v. New Jersey, 530 U.S. 466 (2000) require a *jury* to decide whether the predicate offenses took place on different occasions.

Erlinger directly impacts New Jersey sentencing enhancement laws. Under Erlinger, the Fifth and Sixth Amendments and Apprendi require a *jury* to decide whether the predicate offenses were committed at different times.

In the defendant's case, a judge – not a jury – decided the predicate offenses were committed at different times. Therefore, the defendant's extended term under N.J.S.A. 2C:44-3 should be invalidated by Erlinger.

In Appendi v. New Jersey, 530 U.S. 466, 490 (2000), the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond reasonable doubt." The Court most recently explained the scope and extent of this ruling in Erlinger v. United States, 144 S. Ct. 1840 (2024). The Court reiterated that the Apprendi rule is ground in the Fifth and Sixth Amendments to the United States Constitution, which "sought to ensure that a judge's power to punish would 'deriv[e] wholly' from, and remain always 'control[led]' by, the jury and its verdict." Id. At 1849 (quoting Blakely v. Washington, 542 U.S. 296, 306 (2004)). The Apprendi Court had struck down a sentencing scheme that allowed a judge to impose a longer sentence than otherwise permitted by the jury's verdict if the judge – rather than the jury – found that the defendant's crime was motivated by racial bias. Id. At 1850.

Erlinger concerned a federal sentencing enhancement, 18 U.S.C. 924(e)(1), which increases the penalty for a felon-in-possession conviction from a maximum sentence of 10 years to a mandatory minimum sentence of 15 years if the sentencing judge finds that the defendant was previously convicted of three predicate offenses "committed on occasions different from one another." Id. At 1846. At first blush, it may have seemed like the question of whether a defendant's predicate offenses were committed on separate occasions fell within the one exception to Apprendi, which allows sentencing enhancements based on a judge's finding of a prior conviction. But Erlinger reiterated

that this exception to Apprendi is a "'narrow exception' permitting judges to find only 'the fact of a prior conviction.'" Id. At 1853-54 (quoting Alleyne v. United States, 570 U.S. 99, 111, n.1 (2013)). "Under that exception, a judge may 'do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.'" Id. At 1854 (quoting Mathis v. United States, 579 U.S. 500, 511-512 (2016)). The Court noted that to decide whether defendant Erlinger's prior convictions satisfied the "different occasions" provision of 18 U.S.C. 924(e)(1) required the sentencing court "to do more than identify his previous convictions and the legal elements required to sustain them. It had to find that those offenses occurred on at least three separate occasions." Ibid. The Court held that the factual finding of whether these offenses occurred on separate occasions exceeded the "prior conviction" exception to Apprendi. Ibid.

The Erlinger Court rejected the argument that a sentencing judge should be permitted to determine the date of offense by consulting "Shepard" (Shepard v. United States, 544 U.S. 13 (2005), documents court documents – "judicial records, plea agreements, and colloquies between a judge and the defendant." Ibid. The Court acknowledged that in order to determine the elements of a prior offense, "a court may need to know the jurisdiction in which the defendant's crime occurred and its date," and that a court may consult Shepard documents to make that determination. Ibid. However, the Court was emphatic that a sentencing court may consult Shepard documents only "for the 'limited function' of determining the fact of a prior conviction and the then-existing elements of that offense." Ibid. A sentencing court "may not use information in Shepard documents to decide 'what the defendant ... actually d[id],' or the 'means' or 'manner' in

which he committed his offense;" nor may a sentencing court use Shepard documents to determine whether a defendant's offenses were committed on separate occasions. Id. At 1855 (quoting Mathis, 579 U.S. at 504, 510-11).

In a key passage, the Erlinger Court concluded:

> Often, a defendant's past offenses will be different enough and separated by enough time and space that there is little question he committed them on separate occasions. But none of that means a judge rather than a jury should make the call. There is no efficiency exception to the Fifth and Sixth Amendments. In a free society respectful of the individual, a criminal defendant enjoys the right to hold the government to the burden of proving its case beyond a reasonable doubt to a unanimous jury of his peers "regardless of how overwhelmin[g]" the evidence may seem to a judge.
>
> [Id. At 1856 (quoting Rose v. Clark, 478 U.S. 570, 578 (1986).]

Our Supreme Court anticipated this reasoning in State v. Franklin, 184 N.J. 516, 536 (2005), where the Court "reject[ed] the State's argument that the defendant's trial admissions and his attorney's trial concessions were a sufficient basis for the judge to impose an extended Graves Act sentence." The Court determined that these concessions – unless in the context of a plea – were an insufficient substitute for submission of these questions to a jury. Ibid.

Erlinger applies directly to New Jersey's persistent offender statute, which allows the court to sentence a defendant to an extended term if certain criteria are met. N.J.S.A. 2C:44-3a permits a court to sentence a defendant to an extended term as a "persistent offender" if the court finds that "[t]he defendant has been convicted of a crime of the first, second or third degree[,] . . . who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate

occasions of two crimes, committed at different times, when he was at least 18 years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentenced." Under Erlinger, a sentencing court may still determine whether the defendant was previously convicted of two crimes, but the sentencing court may "'do no more.'" 144 S.Ct. at 1854 (quoting Mathis, 579 U.S. at 511). Thus a court may not determine whether a defendant's prior offenses were "committed at different times" or whether "the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentence.". Because these questions go beyond determining "'what crime, with what elements, the defendant was convicted of,'" they must be submitted to a jury and cannot be decided by a judge. .")) Ibid. (quoting Mathis, 579 U.S. at 511) (Erlinger thus answers the question that this Court previously acknowledged was unanswered. State v. Clarity, 461 N.J. Super. 320, 326 (App. Div. 2019) ("Apprendi does not expressly hold that proof of the 'last release from confinement' also falls within this narrow exception, nor are we aware of any authorities suggesting it does."))

Erlinger directly abrogates State v. Pierce, 188 N.J. 155, 163 (2006), which held that there was "no Sixth Amendment violation in the sentencing court's consideration of objective facts about the defendant's prior convictions, such as the dates of convictions, his age when the offenses were committed, and the elements and degrees of the offenses, in order to determine whether he qualifies as a 'persistent offender.'"

Furthermore, Erlinger requires that the question of whether a defendant's predicate offenses occurred at "different times" and within the required ten-year period be submitted to the grand jury and included in the indictment. "[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." Apprendi, 530 U.S. at 476 (quoting Jones v. United States, 526 U.S. 227 (1999)). Pursuant to the grand jury clause of Article I, paragraph 8 of the New Jersey Constitution, our courts have previously held that all questions which must be determined by a petit jury under Apprendi must also be submitted to the grand jury and included in the indictment. Franklin, 184 N.J. at 534 ("That a defendant possessed a gun during the commission of the crime is a fact that must be presented to a grand jury and found by a petit jury beyond a reasonable doubt if the court intends to rely on it to impose a sentence exceeding the statutory maximum."); State v. Fortin, 178 N.J. 540, 646 (2004) ("We, therefore, hold that our State Constitution requires that aggravating factors be submitted to the grand jury and returned in an indictment."). Thus, the factual findings which must be determined by a petit jury pursuant to Erlinger – whether a defendant's predicate convictions were committed at different times and within the requisite ten-year period – must also be submitted to the grand jury and included in the indictment.

In this case, sentencing defendant to a persistent offender extended term violated the Fifth and Sixth Amendments of the United States Constitution as well as Article I, paragraph 8 of the New Jersey Constitution. The question of whether defendant's predicate convictions were committed at different times and within the requisite ten-year

period was not indicted by the grand jury or found by the petit jury. The "'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict." Blakely, 542 U.S. at 303. The jury found defendant guilty of third-degree aggravated assault. Thus, the maximum sentence that the court could impose consonant with Apprendi is five years. The nine-year sentence violates Apprendi and Erlinger and must therefore be vacated. Likewise in the case before the court the jury found the defendant guilty of a 2nd degree robbery and thus the maximum exposure can be no more than 10 years and therefore the 15 year sentence with an 85% percent disqualifier must be vacated.

Take notice that the state failed to conform to the Attorney General Law Enforcement Directive (No. 2015-1) regarding body worn cameras and stored BWC recording, and in doing so denied the defendant exculpatory evidence.

Pursuant to the Indictment before the court (A-003561-21) On Jan 15, 2020 a search warrant was obtained at the home of James Rodgers (12 Jarvis Place, Trenton, New Jersey).

Lieutenant Shaun E. Lafferty #6002 and Det. Pavlov #3271 executed the warrant, the defendant contends that evidence was either manufactured and/or rearranged from its original location, & currency was stolen from the home. Based upon the foregoing allegation the defense compelled the prosecution to produce all BMC recordings.

During the trial detective Lewandoski was questioned in reference to any law enforcement possessing body camera footage during the search of the home, he replied with an affirmative, stating "(detective Pavlov had a camera)".

Mr. Spero (the defense attorney) informs the court that he was never provided with this portion of discovery, det. Lewandoski testified that Trenton Police Department had a specialized unit where they did not want to be recorded due to the sensitivity of their work, and based on this sensitivity Trenton law enforcement requested that the camera be turned off. (See pg. 146, 147 and 148 of trial transcript).

Take notice that the Trenton Police Department's only function was to secure or clear the home for the search, afterwards exiting the property, pictures of everything in the home was taken and thus video footage should have been preserved.

The directive does not authorize law enforcement to indiscriminately cut off cameras during an active investigation.

Pursuant to the Constitution of the State of New Jersey and the Criminal Justice Act of 1970, N.J.S.A. 52: 17B-97 to 117, hereby direct that all law enforcement agencies and officers shall implement and comply with the following procedures, standards, and practices concerning the use of body worn cameras and recordings.

It is necessary to balance the need to promote police accountability and transparency (1.1 BWC).

In the matter before the courts the defense sought to acquire BWC footage of the actual search of 12 Jarvis Place, and was met with opposition, ultimately being denied BWC footage.

In accordance with the directive, body worn cameras (BWC) shall be activated while in performance of official police duties and for the purpose of recording incidents, investigations, and police civilian encounters involving specified law enforcement

activities or specified in department policy, standard operating procedure, directive, or order promulgated pursuant to the Attorney General Law Enforcement Directive 5.1.

This denial of (BWC) violates RPC 3.8(d) (special responsibilities of the prosecutor) which state that the prosecutor must make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order or tribunal.

The defense was ultimately denied the BWC footage of the search of 12 Jarvis Place.

The defense also tried to introduce body worn camera footage of the investigation that took place in the bank but was denied, a colloquy took place during the trial wherein the defense attorney informed the jury that "they were going to see a body camera footage from an officer who was there who interviews all the tellers (this officer was Chief Pesce) they'll tell their story about what happened and you'll see individuals going about their day in a relaxed manner, speaking calmly, no outburst of emotion, no demonstrable evidence of any kind of frustration or fear".

"The officers will remark at least two times about how calm and composed everybody is."

"How great this doesn't even seem like a robbery."

"You hear those exact words coming out of the officer's mouth". (See Pg. 30 Column 16, 17, 18, 19, 20.21.22, 23, 24 and 25 of the trial transcript).

The inquiry was performed by Bordentown Twp. Police Chief Brian Pesce of whom the defense came to learn that he was engaged in his own malfeasance activity according to an acquired Burlington Times news article (See page C-7 of exhibit).

Pursuant to the 6 Amendment of the United States Constitution: the accused shall have the right to be confronted with witnesses against him and to have compulsory process for obtaining witnesses in his favor.

As previously stated the defense sought to subpoena evidence of the BWC and testimony of the recorder (Chief Brian Pesce), the Prosecutor Julian A. Harris conveniently suppressed evidence that had the propensity to exculpate the defendant.

The defense attorney then informs the court that, "One of the tellers will even brag about, she was here for the last robbery and they have a little bit of a back and forth joking and laughing about it, certainly nothing to prove fear.

Also, you'll have written statements from every one of the individuals, including the video and written statements from the person who dealt directly with the thief who took the money and there's nothing in there about fear, use of force, threat, bodily injury, none of it because it didn't happen.

And it's not memorialized there. (See pg. 31: Column 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of trial transcript, (Defense Attorney Opening Statement)).

Following the defense Attorney's opening statement: Assistant Prosecutor Julian Harris calls a side bar conference and informs the Judge "(In defense counsel's opening, he said that he would be playing a body worn camera that shows victims' reactions and what have you. And I don't have anyone here that's going to authenticate that body worn camera for him so I don't know how he's getting that in and he just promised the jury they were going to see it.

(See pg. 35: Column 19, 20, 21, 22, 23, 24, 25) and (Pg. 36: Column 1, 2, 3 and 4 of Trial Transcript).

The defense attorney adds that Det. Lewandoski is in the video, he can say that chief Pesce was here, he had a body worn camera on that day, he's the lead investigator, and he would be aware of all these facts and their co-workers. (See Pg. 36: Column 5, 6, 7, 8, and 9 of Trial transcript).

Prosecutor Harris adds that "Det. Lewandowski does not have custody of that video," to wit the Judge ask, "Is Det. Lewandowski and Chief Pesce with the same police department? Pg. 36 column 10, 11, 12, 13 of trial transcript Prosecutor Harris respond by stating: "Chief Pesce and Det. Lewandowski are not the same department, one is City, one is Township, and however they did work together on the investigation. Pg. 36 column 19, 20, 21, 22 of trial Transcript.

The defendant contends that the prosecutor put forth a slew of digression in support of preventing the defendant in presenting a defense: Denial of the body worn camera footage which shows the victims reaction during the bank investigation: Refuse to

authenticate the body worn camera footage in order to impede defendant's defense: Refuse to subpoena Chief Pesce in relation to exculpatory information.

Pursuant to R.3:13-3 (a) Discovery and Inspection: The Prosecutor shall, at the time the plea offer is made , provide defense counsel with all available relevant material that would be discoverable at the time of indictment pursuant to paragraph (b) (1) of this rule. This material consist of any exculpatory information or material, books, tangible objects, papers or documents, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonable usable form: 3:13-3 (b) (1) (a).

Judge Gerard Brelands ruling to the defense request to receive body worn camera and discovery material was that "he would have to see how it plays out during the trial", and he would allow defense counsel to cross-examine on that issue, but he can't really make a decision in a vacuum. "Well put it in real time and see what happens." See pg. 36 column 17, 18, & pg. 37 column 1, 2, 3, 4, 14, and 15 of trial transcript.
During the trial, the Hon. Judge Breland accused the defendant of some type of gamesmanship in an attempt to one up the prosecution, based on the defendants refusal to reveal the name of a potential alibi, however the defendant contends that he was one upped through the whole trial process, seeing how the trial plays out, and putting it in real time is an improper remedy for missing witness and exculpatory evidence to the defense and therefore conviction must be remanded.

To further exacerbate the one upping of the defendant, the defense sought to enter documentation records of unemployment benefits in the trial, to establish that he had a prolific income at the time of the alleged offense, and that it would not be farfetched to have the sum of $867.00 dollars on his person as Judge Breland implied by stating on record "(It isn't $5.00 dollars)"

Mr. Ivan Mendez, an Investigator for the Public Defender's Office was given a subpoena to acquire the forementioned records from the Unemployment Office on behalf of the defense.

Mr. Mendez complied with the subpoena by contacting Mr. David Fish (Executive Director of Legal and Regulatory Services) via telephone.

As a result of this Investigation, Mr. Mendez acquired a record of weekly payments paid to the defendant via E-Mail from the Department of Labor.

The Assistant Prosecutor Julian Harris instruct the Court that he would not allow the defense to explain this money away (the money that he is being accused of robbing), and thus a preliminary hearing was held to discuss whether or not the records could be used in the interest of the defense. Here's where a mockery of Justice occur. Mr. Mendez was placed on the stand and asked a barrage of questions by the assistant prosecutor in relation to the functions of the Unemployment Office and Department of Labor.

Mr. Harris first asked the investigator did he work for the Unemployment Office when he was well aware that he was employed by the public defender's office.

He was asked, in the normal course of his job description as an investigator with the PD's office, does he generate documents relating to people's unemployment benefits? To wit he responded with absolutely not.

Harris asked Mr. Mendez did he receive the defendant's application paperwork when he applied for unemployment. Have you ever made entry into an unemployment database?

Mr. Harris says "looking at this document you assume it's from David Fish"?

Mr. Harris says looking at this screen shot as you call it, what does WBR and EBDOC mean (initials and codes on the unemployment documents)"?

Mr. Mendez responds by stating, "That's something you have to take up with David Fish and if we're going to go down that line, I have no idea what none of that initial -- acronyms mean?"

Mr. Harris says, "You don't know what any of that means but you're going to testify to those 273.00 numbers when you're on the stand?"

Mr. Mendez informs the Court that he can only say what he was told, they represent -- they depict a weekly payment.

The debacle continued however, this is the jest of what occurred.

Finally, after Judge Breland enters his dissent against the defense and express that he is unable to discern what the documents entail, rule that, So for now, I don't know that I could allow Investigator Mendez to testify as to their authenticity or trust—trustworthiness, and again, whether these are kept in the normal course of business. They very well may be, but I don't know that Investigator Mendez is a person who can provide that information.

So it's not a—they are forever inadmissible. They're inadmissible as business records in the current information that's before the Court (See pg. 44 trial transcript 1 through 9).

The defendant assert that with Judge Brelands immeasurable knowledge as displayed in his opinion to deny the defendant's motion to dismiss the 2nd degree robbery when he stated: "(Most bank tellers are separated from the general public by a protective shield. A grand jury could draw a rational inference from the passing of the note that the defendant's intention was to cause the teller to be fearful of the consequences if the money were not provided. The defendant would not likely have been able to take any money given the existence of the protective shield and therefore the money was given based on an implicit threat of harmful or consequences if the demand were not honored)" See Letter Opinion of Judge Breland J.S.C. pg. (1-4?) Denial of Motion to Dismiss). What makes his knowledge so immeasurable is the ability to draw a rational inference from the passing of a note that the perpetrators intention was to cause the teller to be fearful, although this passing of a note was absent of any aggression and an occurrence that is implemented on a daily basis with the bank teller.

Yet ironically Judge Breland was unable to ascertain a true legal business record from the Unemployment Office and Department of Labor. The petitioner seeks review of this hearing and assert that the denial to have these records entered as evidence was a calculated stratagem to prevent the defendant from establishing a defense.

The defendant did not acquire or pull these documents out of thin air, they were acquired by a New Jersey State appointed Investigator, and taking in account that the documents were ruled as inadmissible business records acquired by Mr. Mendez, the Court should have afforded the defense the opportunity to subpoena Mr. David Fish (Executive Director of Legal and Regulatory Services) to explain what the acronyms WBR and EBDOC signify.

Consequently the bank was not supplied with a protective shield contrary to Judge Brelands ruling and the basis for The 2nd degree robbery as stated in his opinion "(The defendant would not likely have been able to take any money given the existence of the protective shield and therefore the money was given based on an implicit threat of harmful consequences if the demand was not honored)".

This trial courts incorrect assumption was submitted to the appellate Judge for their analysis, the appellate division Judge completely white-wash the trial courts incorrect decision by stating: "(The fact that there was no protective shield in the bank does not render the Courts decision incorrect; to the contrary, the fact increases an objective fear of harm, since there is nothing protecting the teller from the perpetrator)." (See pg. 13 of Appellate Division Ruling concerning what constitutes fear or harm.

The Appellate Judge may be correct in his assessment that the absence of protective shield, while deflecting from the Judge Brelands Improper application of law. Judge Breland plainly ruled that the defendant would not have been able to take any money given the existence of the protective shield and therefore the money was given based on an implicit threat, yet the appellate court refuse to address that aspect or provide a remedy.

During the trial the prosecutor ask the witness (Ms Johnson) what did the note mean to you when you received it? She responded with, just as it said, give me the money, Mr Harris asked if she complied? She said, Yes, I did, to wit he then asked her why? She responded by stating, that's what I was trained to do. This testimony of that's what she was trained to do if someone enters the bank requesting money is oblivious to all those involved, rather the money was given on an implicit threat.

On page 55 of the trial transcript, the defense attorney (Mr. Eric Spero) ask the bank teller (witness) a series of questions:

- He asked if the perpetrator walked up to where she was located.
- She (Ms. Johnson) responded with Um-hum, indicating yes.
- Did the note say, give me the money, No dye bags?
- She replied, right.
- There were no threats in it explicitly, were there?
- She responded with "No, there wasn't a threat in the note."
- And he didn't say anything to you, did he?
- She replied, No, he didn't.
- He didn't make any gestures as though he was reaching for a weapon?
- No, he didn't.
- He didn't show you a weapon, did he?
- No, he did not (See pg. 55 Column 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, of trial transcript)

Pursuant to the testimony of the witness "(No there wasn't a threat in the note)," it is impossible for this to be a robbery)" Why didn't the Appellate Court rely on the testimony in deciding to affirm the conviction.

The defendant assert's that this robbery offence was solely promoted by the impartiality of the Court and misconduct of the Prosector.

On May 10, 2021 the defense submitted a motion to dismiss the indictment filed against the defendant charging Count 1, robbery and Count 2 Theft and criticizing the grand jury process.

There is no evidence in the record to support a claim that the suspect either did or said anything that amounted to an actual threat. Again there is nothing in the record that indicates that the suspect made any non-verbal gestures or movements that could form the foundation that he intended to convey to the teller or any other employee of immediate bodily injury. Jennifer Johnson the bank teller to who the note was handed provided a statement which gives a description of the perpetrator, what allegedly transpired, and nothing more, (See voluntary statement of Jennifer Johnson).

Another bank employee, Jennifer Dean, observed the interaction between the perpetrator, and Jennifer Johnson opined "something was wrong", but expresses no indication of seeing a threatening gesture, the utterance of threatening words, or observation of a weapon, (See voluntary statement of Jennifer Dean).

Nadia Sharma, Steven Gonzalez, and Krystle Gunning, employees of the bank, both state they observed the incident and provided accounts consistent with the other witnesses but no indication that either saw a weapon, heard a threatening word, or a threatening gesture, (See Nadia Sharma and Steven Gonzalez voluntary statement).

Consequently the State relied on a "fear" theory in support of the indictment however there is nothing to support that theory. Finally in the presentation to the grand jury, despite providing the definition of 2nd Degree Robbery Statute, which specifically noted the requirement of threatening another with or purposely put another in fear of immediate bodily injury, there was no evidence present that anyone in the bank was

either threatened or put in fear of immediate bodily injury by the suspect who committed the offense.

One of the grand jurors specifically inquired if the bank teller has to be in any fear of injury in order to meet the requirement of the 2nd degree robbery to which the Prosecutor rereads the definition of the statute, conspicuously absent any mention of threatening gestures or words, or observation of weapons.

The prosecutor had to avoid inquiring about any of the persons in the bank being threatened by or put in fear of immediate bodily injury because there is very clearly no evidence of this having happened.

As previously stated this is a convoluted case and there were multiple factors overlooked, Prior to the trial, and reported in the discovery to the defense, all of the bank employees mentioned above were listed as victims to the robbery. During the trial Ms. Jennifer Johnson was the only victim whom the State proffered. It has to be questioned concerning who was presented to the grand jury as the victim being threatened which elevated the theft to robbery.

It must be noted that to this date the defendant has never received his grand jury transcript, and the basis of what occurred during the grand jury proceeding derive from the Court appointed attorney's motion.

The purpose of the grand jury" extend beyond bringing the guilty to trial. Equally significant is the responsibility to protest the "innocent from unfounded prosecution." See Hogan 144 N.J. Super at 228.

In State v Gentry 183 N.J. 30; 869 A.2d 880 the Conviction of robbery was reversed because the jury could not agree about which of the two victims had been the recipient of the use of force.

The Courts agree that at the end of a case, it is important that appropriate and proper charges to a jury" are given by the trial judge, the charges should explain all of the essential elements with a plain and clear exposition of the issues.

Clear and correct jury instructions are essential for a fair trial.

Take notice of the Court, reading of the Jury charge "(The defendant is charged with the crime of robbery and the indictment reads in pertinent part as follows)" That's clear (See pg. 52 of jury charge).

In connection to the jury charge of theft the judge states "(Now this next charge, it's called theft of movable property, so for legal reasons that don't concern you, ladies and gentleman, the Court has made a determination that the evidence in the case allows you to consider a charge of theft "The defense contends that this charge is not so clear" (See pg.65 of jury charge.

What is clear is that the Court is instructing the jury on a conviction of robbery/ or more appropriately what is implied.

The appellate attorney challenged the trial courts failure to charge the jury on the crucial and contested issue of identification. During the trial the assistant prosecutor requested the judge read the in-court identification jury charge, the judge noted that there had been

no identification of defendant during the trial - the bank witnesses could not identify defendant as the perpetrator, and law enforcement witnesses only identified defendant as the person they had arrested.

The assistant prosecutor asked defense counsel if he agreed with the court's position, to which counsel replied, "I don't think..." (never finishing his responce), before the judge intervene and rule that the identification charge was not necessary because there was no in-court identification.

The Appellate Judge's ruling is unconscionable, they review the missing instruction on identification for plain error." State V. Sanchez-Medina, 231 N.J. 452, 468 (2018)(Citations Omitted).

They state that any error or omission shall be disregarded ... unless it is of such a nature as to have been clearly capable of producing an unjust result..." R. 2:10-2. The possibility of such an unjust result must be "sufficient to raise a resonable doubt as to whether the error led the jury to a result it otherwise might not have reached." State V. Macon, 57 N.J. 325, 336 (1971). Defendant carries the burden of showing plain error. State V. Morton, 155 N.J. 383, 421 (1998)
We consider "defendant failure to interpose a timely objection to constitute strong evidence that the error belatedly raised here was actually of no moment." State V. Tierney, 356 N.J. Super. 468, 481 (App Div. 2003) (quoting State V. White, 326 N.J. Super. 304, 315 (App. Div. 1999)).
Absent a request to charge or objection, "there is a presumption that the charge ... was unlikely to prejudice the defendant's case." State V. Singleton, 211 N.J. 157, 182 (2012) (Citing Macon, 57 N.J. at 333-34).

The defendant is perplexed as it relates to this ruling, in posing a rhetorical question ! If the witness (bank teller) were asked if she could identify the defendant as the perpetrator who approached her booth, and she responded by stating, I do not recognize the defendant as the individual who approached me in the bank, this testimony wouldn't have the propensity to lead a petit jury to a result it otherwise might not have reached ! It most certainly would.

In relation to the ruling that defendants failure to interpose a timely objection to constitute plain error is of no moment, is totally absurd, In accordance with the 6th Amendment and the right of the accused is to have compulsory process for the assistance of counsel for his defense.
During the trial, the defendant was provided with a State appointed attorney for his representation, the State appointed attorney failed to interpose a timely objection to the jury identification, and due to this failure to object, the defendant, the accused, the layman in law should be obsolved of the right for consideration of a model jury charge !
Either one of two things are required, the case is remanded to the trial Court due to the denial of this fundamental right, or the defense attorney is cited for ineffective assistance of counsel, to which would also require that the case is remanded back to the trial court.

Pursuant to RPC 3.8(f) the prosecutor in a criminal case shall refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and from making statements that the prosecutor would be prohibited from making under RPC 3.6.

Please take notice of the extrajudicial comments that were made by the assistant prosecutor Julian Harris during the trial process:

During the summation of Mr. Harris, he stated "(Over two years have passed since the incident, she got up here and testified. It is clear she hasn't healed from the trauma of this event)."

"(I am not sure she will heal from the trauma of this event)", (See pg. 38 trial summation).

The defense is unaware of Mr. Harris qualification in the field of psycho analysis or any form of medicine to make a determination of someone suffering from trauma, nor was the defense given any discovery alluding to anyone in the bank seeking medical treatment or having suffered trauma.

As previously stated, Mr. Harris and the sitting Judge held a preliminary hearing to ascertain whether or not the court appointed investigator (Mr. Mendez) was qualified to testify to the authenticity of Unemployment Records he acquired from the Director of Legal and Regulatory Service, to wit the Judge ruled that he was not, and then he allows the prosecutor to make inflammatory statements and give medical diagnosis.

This is clearly an inappropriate instruction to the Jury who has the propensity to take for face value the testimony of law enforcement and those in the position of authority.

Also during the prosecutor's summation, he instructs the jury "(A theft doesn't happen in banks because context matters. Thefts happen when no one is watching, when there is no one to confront you, when no one is standing in the way)", (See pg. 46 Column 3,4,5,6 Jury Summation).

N.J.S.A. 2C:15-1(a)(2) Robbery is not entwine with every aspect of a bank offence and therefore thefts do occur in banks.

In State V. Smalls 310 N.J. Super. 285; 708 A 2d 737; The Courts remanded the defendants robbery for an amended the judgement of conviction for theft under N.J.S.A. 2C:20-3 for stealing a womens wallet from her person, the court found that there was no struggle, no pushing, and no wrestling.

The Court also found that there was insufficient evidence to find that defendants placed the victim in fear of immediate bodily injury, even though she had testified that she was somewhat fearful of them.

In this case the victim was confronted with the perpetrator, debunking Prosecutor Harris theatrical statements "(Thefts happen when no one is watching, when there is no one to confront you)".

Lets explore another extrajudicial comment of Mr Harris, he tells the jury without any objection or fact finding "(The events occurred before the Covid-19 pandemic and mask wearing was not common place)." (See pg 42 Trial transcript).

Please take notice of a letter from the defendants attorney Mr. Eric Spero dated April 21, 2020.

The defendant was incarcerated on Jan 14, 2020., the in house letter from the attorney informs the defendant that, because of the Corona-19 Virus the Gov. has ordered that it is unsafe for grand juries to be seated since March 17, 2020.

The whole Country is at a complete shut down as of March 17, 2020 and the prosecutor says that 63 days prior to this, covid-19 had not struck. (See correspondent letter of Mr. Eric Spero).

To complete this analogy of painting a picture of a prohibition of wearing mask in a bank Mr. Harris tells the jury "(And some things that you already know are you don't say bomb on a plane and you don't wear a ski mask in a bank)". (See pg. 50, column 6,7,8 Trial Summation).

The defendant is unaware of any N.J. statue prohibiting mask wearing in a bank.

During the trial, there was a lengthy colloquy to wit the Judge noted the perimeters of the defendant testifying on his own behalf, and in relation to information of being in some other place with some other individual at the time of the alleged incident.

Judge Breland State that pursuant to the rule (Notice of Alibi or Affirmative Defenses) the defendant should inform the prosecution/Courts of the Name, place and address of the individual of whom the defendant was with during the time of the incident.

The defense attorney (Mr. Eric Spero) informs the Judge that he understood the rule to convey that if the individual alibi were to be called as a witness, then the defense would be compelled to disclose the information requested, however we are not calling any witnesses.
In spite of the attorney's assertion of the rule, Judge Breland and Prosecutor Harris push the narrative of a witness testifying for the defense in order to persuade the defendant into divulging information that he did not want to reveal.

The rule is 3:12-2 which state that "If a defendant intends to rely in any way on an alibi, within ten days after a written demand by the prosecutor, the defendant shall furnish a signed alibi, stating the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendants intends to rely to establish such alibi."

The problem lie in that the defendant had not made an affirmative decision to bring forth a witness, and the position of the court was that, if the defendant chose to testify, he would not be able to provide the information as to his where abouts, the testimony of the defendant has nothing to do with R. 3:12-2.
Quoting Judge Breland "(If there is a Name and address of a particular witness, the State certainly should have the opportunity to attempt to contact that person to verify or dispel the defendant's alibi, and if Mr. Rodgers (the defendant) choose to testify, he would not be able to provide that information)".

And than Judge Breland allows the prosecutor to say "(You dont wear a ski mask in a bank)", in the middle of Winter (January), during covid!

REASONS FOR GRANTING THE PETITION

The defendant maintains his innocence and asserts that he was denied a fair trial. Pursuant to the 6 Amendment to the U.S. Constitution, 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 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.

The purpose for the defendant proceeding with a jury trial is to preserve the right to challenge any discriminatory disagreeable motion, verdict, ruling or any issue affirming his conviction in accordance with the rules governing trial procedures.

In every phase of this convoluted case, the petitioner endured a denial of his Judicial and Constitutional rights embedded in the Amendments. On Jan 14, 2020 the defendant was accosted and arrested on Route 29 in Trenton N.J. on the premise that he was the perpetrator who stole money from the Investor's bank located on Route 130 in Bordentown N.J. At the time of the arrest the proposed probable cause set forth by detective Pavlov and detective Lewandoski was that the vehicle that was driven by the defendant at the time of his arrest was similar to what was seen on video footage taken from Chickie's and Pete's located near the bank & the defendant wore sweat pants and Nike sneakers that was alleged to be similar to what was worn by the perpetrator, seen on the video footage.

There was a host of investigatory procedures which occurred the following day such as a search warrant of the home of the defendant's father.

The relevance of this account is to highlight the arrest of the defendant on the evening of Jan 14, 2020 devoid of any probable cause to make an arrest.

In Terry v. Ohio 392 U.S. 1,20 L Ed 2d 889, 88 SCT 1868 Douglas J. expressed the view that the search and seizure by way of stopping and frisking defendant was constitutional only if there was probable cause to believe that a crime had been, or was in the process of being, or was about to be committed.

The Fourth Amendment right against unreasonable searches and seizures belongs as much to the citizen on the streets as to the homeowner closeted in his study to dispose of his secret affairs.

No right is held more sacred, or is more carefully guarded, by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference, unless by clear and unquestionable authority of law.

In this case before the Courts the illegal arrest went unchallenged and sustained and the guarantee against unreasonable searches were reduced to mere tropes and form of words.

To further exacerbate the one upping of defendant the prosecutor submitted a Motion in Limine precluding the defense from entering evidence that implicates a third party guilt doctrine which was granted (See Order granting motion in limine).

The defense is oblivious to any statue which dictate the manner in which the defense should plead his case, no investigation was explored outside the defendant, and this clearly showed that the granting of this motion was a mere rubberstamp.

Please take notice, on page 27, 28, and 29 of this brief, the defendant detailed the occurrence of the preliminary hearing held on August 2022 in order to ascertain whether or not the defense would be permitted to enter unemployment records in the trial and noting the grueling examination of the state appointed investigator (Mr. Mendez), perpetrated by the Assistant Prosecutor Mr. Harris.

(See enclosed exhibit Pg. 12, 13,14,18,19,20,23,24 and 29).

Also enclosed in the exhibit is the order of the Appellate Division affirming the conviction and the petition for certification of judgment denied by the New Jersey Supreme Court.

Please be advised that the event of this brief are true and meritorious to the best of my knowledge and I am aware that I am bound by perjury of law.

Thank you for your time and consideration in this matter.

Signed George J Rodgers

Date: January 9, 2025