

JEFFREY D. GIBSON,

Petitioner,

-vs-

THOMAS LAVALLEY, Supt. Clinton
Correctional Facility,

Respondent.

DECISION AND ORDER
No. 12-CV-6031 (MAT)

I. Introduction

Pro se petitioner Jeffrey D. Gibson ("Gibson" or "Petitioner") has filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Gibson is incarcerated pursuant to a judgment entered against him on March 19, 2008, following a jury verdict in Erie County Court (Michalski, J.) of New York State convicting him of Robbery in the First Degree (N.Y. Penal Law § 160.15(4)).

II. Factual Background and Procedural History

Stacey Koehler ("Koehler") was working at the Noco store and gas station on South Park Street in the City of Lackawanna on July 10, 2005. At about 5:30 a.m., near the end of her shift, Koehler wanted to step outside to have a cigarette. She called to her eleven-year-old daughter, who was helping her by stocking soda in the back cooler. As Koehler and her daughter approached the door, a black male walked inside. He pointed a gun, partially covered by a paper bag, about two inches from Koehler's face. Koehler noted that the robber's face was covered with something

dark that looked like a bandana, but she could see his eyes. She described him as wearing a "tannish-colored baseball cap" and "tannish, brownish" clothing that were "pretty baggy". T.287.¹ His voice was that of an adult, rather than an adolescent. Koehler, who was 4'1", estimated the robber to be about 5'3- or 5'5"-tall. She explained that he was "taller than [her] and . . . shorter than what [she] would consider the average man." T.318.

The robber announced, "I want the money, bitch" and said she had until the count of ten to give him the money. Koehler, fearing for her and her daughter's life, removed the cash drawer and placed it on the counter. The robber then demanded the money from the safe, and Koehler explained that she did not have the combination. The robber grabbed the money from the drawer and fled.

Kevin Kalinowski ("Kalinowski"), who lived at 97 Victory Avenue, had just gotten home from his job as a musician at about 5:30 a.m. and was sitting on his porch having a cigarette. Hearing footsteps, he looked up and saw someone dressed in "dark" clothing run past his porch very quickly. It appeared to Kalinowski that the person was wearing a "glittery shiny, like gold or silver" type of headgear, like "some kind of helmet . . . or something." T.335. Whatever it was, Kalinowski stated, it was reflected off the streetlight. The man turned left on Leo Street. The police arrived

¹
Numerals preceded by "T." refer to pages from the trial transcript.

soon after and asked if he had seen anybody running or anyone with a gun, and Kalinowski informed them what he had observed.

Police officers Bryan Girdlestone ("Officer Girdlestone") and Joseph Milkowski received a radio call of a robbery in progress at the Noco store at approximately 5:30 a.m., perpetrated by a black male about 5'6"-tall. Upon arrival, Officer Girdlestone learned from another officer the direction the robber had taken, and he and his partner began canvassing the neighborhood on foot.

When Officer Christopher Caber ("Officer Caber") responded to the Noco robbery, he saw a black female (later determined to be Takeisha Matthews ("Matthews"), Petitioner's girlfriend) standing in the middle of the parking lot next to the gas pumps. According to Officer Caber, he thought it was odd she was standing there because no cars were in the parking lot. In addition, the woman "never took her eyes off" him as he walked from his patrol car into the store. T.410. He later saw her walking about a half-mile away down Ridge Road with Petitioner. Both denied being aware of the Noco robbery. She stated that she had walked to the Noco to get something to eat but found that the doors were locked. T.429. Officer Caber recalled that Matthews stated they were on their way to visit someone's grandfather.

In the backyard of 80 Colton Street, a residence approximately two hundred yards from the crime scene, Officer Girdlestone found a sweatshirt and a pair of sweatpants, both turned inside out. He

also found a tan-colored Boston Celtics baseball cap, a black do-rag, and a knit cap in a garbage can in the driveway. T.381-83. All of these articles were documented, collected, and brought to Lieutenant Joseph Leo at the Noco store, who in turn showed them to Koehler. Koehler identified the Celtics baseball hat, the sweatpants, and sweatshirt as having been worn by the robber. See T.296-98. She did not identify the knit hat, however.

All the items were transferred to the Central Police Services laboratory for analysis. Forensic biologist Jodi Luedemann swabbed the seized articles of clothing, and senior forensic serologist Paul Mazur extracted DNA from the swabbing for analysis. The results from the swabs were compared to the butt of a cigarette that Gibson had smoked during a meeting with Detective Daniel Cardi ("Detective Cardi") after he was arrested on an unrelated matter. Forensic comparison demonstrated that Gibson could not be excluded as a contributor to the major portion of the genetic material on the baseball cap and to the minor portion of the genetic material on the sweat pants. The knit hat contained a mixture of DNA from at least two individuals, one being a female. The major portion of the other DNA profile from the knit hat was identical to the DNA profile from the cigarette butt. In other words, the DNA from the cigarette butt matched the DNA of the knit hat found along with the do-rag and baseball hat in the garbage can at 80 Colton Street.

The defense called Peter McQuillor ("McQuillor"), Petitioner's grandfather in an attempt to cast doubt on who might have worn the clothing found at 80 Colton Street and to suggest a reason as to why Petitioner and his girlfriend had been seen walking on Ridge Road on the morning of the robbery. McQuillor testified that his grandson lived with him, along with his other grandchildren, off and on and for various lengths of time. It was common practice for the grandchildren to borrow clothes belonging to each other. T.662-64. McQuillor testified that about five days a week, Petitioner and his girlfriend would make breakfast for him. T.665.

The defense also called Dr. Michael Garrick ("Dr. Garrick"), a professor of biochemistry with expert knowledge in the field of genetics and molecular biology. Dr. Garrick testified that based upon the amounts of genetic material found on the clothing items excluding the knit hat, it was "difficult to associate them" with Petitioner. T.674. He did not question the results of the genetic testing performed on the knit hat. Dr. Garrick also indicated that other members of Petitioner's family could have contributed some DNA to the samples taken from the clothing items, and to exclude those family members would require further information and analysis.

The jury returned a verdict convicting Gibson as charged in the indictment. After a hearing, Gibson was adjudicated as a

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