

Supreme Court of the State of New York  
Bronx County: PART 15

The People of the State of New York,

— against —

John A. Smith,  
Defendant-Petitioner.

Ind. No. 9999-2021

Affirmation in Support of  
Motion

1. I, GERRY PRIOR, ESQ., make this affirmation in connection with John A. Smith's motion, pursuant to CPL 440.10, to vacate his conviction. I represented Mr. Smith in pre-trial, trial, and sentencing proceedings under indictment number 9999-2021.

2. This affirmation is made upon information and belief, the sources of which are my review of the record in this case, as well as my memory of my representation of Mr. Smith and conversations with appellate counsel.

3. During the course of my representation of Mr. Smith, I did not seek out or interview Carla Williams, the owner of the bodega located next door to Casa Juancho. I did not believe that a conversation with Ms. Williams about whether Mr. Smith appeared to be a regular in her store would be helpful to the case. Even if Ms. Williams had confirmed that she did not recognize Mr. Smith, this would not be dispositive that Mr. Smith had not been in her store enough for the eyewitness to have recognized him. I think this type of testimony is distracting to the jury. I did not think that this would be a good use of my time as I prepared for the trial. I felt that my time was better used by thoroughly preparing to cross-examine the eyewitness on

the adverse viewing conditions at the time of the shooting. To accomplish this objective, I spent many hours poring through social science studies about mistaken eyewitness identifications.

4. I did not object to the prosecutor's testimony about the DNA evidence during summations because I have seen cases where, during closing arguments, continuous objections are distracting and upset the jury. I also did not think that the prosecutor's testimony that the likelihood ratio "corroborated that Mr. Smith shot the gun" and proved that "his DNA is all over that gun" was misleading based on the DNA evidence.

5. I did not request a cross-racial identification charge because, in my experience, Bronx juries are very diverse and understand cross-racial IDs. I did not want to upset or annoy the jury by forcing upon them information that they already knew.

I affirm this 6th day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

*Gerry Prior*  
Gerry Prior, Esq.