No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Curtis Lee Dale _____ — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Curtis Lee Dale #11165-026
(Your Name)

P.O. 1000
(Address)

Oxford, WI. 53952
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Question #1 (Page 10)

Did the U.S. Court of Appeals For The Eighth Circuit err when it increased the Defendant's mandatory minimum sentence on the basis of a drug quantity that was rejected by the jury? In light of **Alleyne v. United States**, 133 S. Ct. 2151 (2013).

Question #2 (Page 14)

Did the sole-occupant of a storage unit have an expectation of privacy, despite his name not being listed on the rental agreement? In light of **Byrd v. United States**, 138 S. Ct. 54 (2018).

Question #3 (Page 17)

Was Law Enforcement's use of trained drug-sniffing Police Dog to sniff the door of a secured storage unit a search under the Fourth Amendment requiring a search warrant? In light of **Florida v. Jardines**, 133 S. Ct. 1409 (2013).

LIST OF PARTIES

[X] 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:

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TABLE OF AUTHORITIES CITED

Petitioner also cites **Haines v. Kerner**, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652; and request the Court to judge the Writ to a less stringent standard than it would a pleadings drafted by lawyers.

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

[X] For cases from **federal courts**:

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

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[ ] is unpublished.

The opinion of the United States district court appears at Appendix N/A 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[ ] is unpublished.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 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was ~~April 5~~, 2018 MARCH 19TH.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 14, 2018, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] 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

Fourth Amendment, U.S. Constitution

Fifth Amendment, U.S. Constitution

Sixth Amendment, U.S. Constitution

21 U.S.C. section 846 and 841(a)(1)

21 U.S.C. section 851

21 U.S.C. section 841(b)(1)(B)

STATEMENT OF THE CASE

Procedural History

On June 22, 2016; a federal grand jury in the Southern District of Iowa charged Curtis Lee Dale with conspiracy to distribute 280 grams or more of cocaine base, 500 grams or more of cocaine, and 100 grams or more of heroin, in violation of 21 U.S.C. section 846 and 841(a)(1); possession with intent to distribute 28 grams or more of cocaine base, 500 grams and more of cocaine, and 100 grams or more of heroin, in violation of 21 U.S.C. section 841(a)(1); and felon in possession of a firearm, in violation of 18 U.S.C. section 922(g)(1).

The arraignment was held on June 28, 2016; and a scheduling order was entered on that date setting a motions deadline of July 12, 2016; on July 12, 2016; this deadline was extended to September 6, 2016. On August 18, 2016; Dale decided to proceed as his own lawyer, and filed a "pro se" motion to suppress evidence. A "revised motion" to suppress tangible evidence and statements was filed on September 23, 2016. The district court denied the two motions prior to trial.

On the morning of the trial, just before jury selection Dale cited new grounds for suppression: the grounds were that the agents entered the storage units prior to obtaining search warrants, when they conducted open-air sniff around

the door of the Storage Unit with a trained drug-sniffing canine. But because the court had already previously concluded that Dale had no expectation of privacy of the Storage Unit because his name wasn't on the lease. The disrict court just said that the new grounds would be addressed before the conclusion of the trial.

A jury trial commenced on October 3, 2016. The jury subsequently found Dale guilty of all counts except with respect to the drug quantity alleged in the conspiracy as the jury found the conspiracy involved more than 28 grams of cocaine base. Dale was sentenced to 300 months imprisonment on the first two counts and 120 months on the third count to run concurrently with each other. Dale filed a timely notice of appeal. On March 19, 2018; the Eighth Circuit Court of Appeals affirmed the judgement of the Southern District of Iowa-Davenport.

Relevant Facts

Drug Enforcement Agent (DEA) Jay Bump (Bump or Special Agent Bump) received information that Curtis Dale, a known drug trafficker on supervised release, had resumed drug trafficking. During surveillance Special Agent Bump followed Dale to Davenport Public Storage, a self-storage business on Tremount Avenue in Davenport, Iowa on at least four occasions. On May 27, 2016; Bump served an administrative subpoena on the manager of the storage business, Sue Kramer, and she provided him a list of every tenant. The list didn't include Dale name for any unit. Although two known associates

of Dale were listed and their Units (G-15 and A-40) was one of the Units Agent Bump seen Dale accessing. Later that day, Agent Bump obtained a search warrant to attach a GPS tracking device on the Chevy Tahoe that Dale had been driving. On May 30, 2016; the GPS was installed on the vehicle. On May 31, 2016; the GPS revealed Dale's vehicle had returned to the area of the storage unit.

On June 1, 2016; at approximately 10:00 a.m., the GPS showed the vehicle leave the Davenport area and head east on Interstate-80 towards Chicago. The vehicle proceeded to a residential area in Woodridge, Illinois (a Chicago Suburb) where it remained for approximately twenty minutes. Then turned around and headed back to the Quad City area. While the vehicle was in Illinois, at Special Agent Bump's request, Rock Island Police Officer Ryan Derudder's canine partner conducted an open-air sniff around the door of Unit G-15. The canine alerted to the unit indicating the presence of drugs.

At 3:06 p.m., Dale returned to the Quad Cities in the Tahoe and proceeded directly to Davenport Public Storage. Special Agent Bump ovserved Dale pull up to Unit G-15, unlock the unit and open the rear hatch of his vehicle, and enter the unit. The agent did not see everything Dale was doing there because he was trying to avoid being spotted. After approximately five minutes, Dale left the area and was followed by investigators back to his residence in Davenport, Iowa.

On June 2, 2016; at 11:35 a.m., Agent Bump applied to U.S. Magistrate Judge Stephen B. Jackson, Jr. for federal search warrants for four locations including Storage Unit G-15 at Davenport Public Storage, Dale's residence on May Lane in Davenport, and the Chevy Tahoe driven by Dale. Subsequently the magistrate judge issued the four search warrants. When the papers were filed, the deputy clerk of court renumbered three of the search warrants by hand because all four warrants had the same number and they could not be filed that way.

That afternoon, a search of Unit G-15 revealed the illegal drugs- a kilogram of cocaine in a marked wrapper and additional cocaine in plastic bags, five plastic baggies each containing approximately one ounce of cocaine base, and more than 100 grams of heroin. Also, agents discovered a table cutting agents, and packaging material for the manufacture and distribution of controlled substances. In a duffel bag on the floor of the unit, there was a gun case with a loaded Ruger 9mm pistol. In the bag with the gun there were empty plastic kilogram-sized wrappings as well as discarded packaging material, plastic gloves and plastic bags. On the floor, there was a bag that contained Inositol powder, a Pyrex cup, baking soda, and other items used for the conversion of powder cocaine into crack cocaine.

After discovering the drugs in Unit G-15 including a document with Dale's name on it, Agent Bump, Task Force

Officer Paul Girskis, Rock Island Narcotics Sergeant Larry Hufford, and other officers attempted to locate Dale. They found him at a sandwich shop in Davenport. Agent Bump, who already knew Dale from an earlier investigation, approached Dale in the restaurant and greeted him.

Bump then informed Dale that investigators had found heroin, cocaine, and crack cocaine, as well as a gun, in the storage unit he was using. Bump told Dale he had obtained search warrants for Dale's residence and his vehicle and that Dale would have to come with him. Special Agent Bump checked to make sure Dale was not armed and then handcuffed him. Dale was taken into custody without incident and was escorted to the Agent's truck. Before being placed in the truck, Dale was patted down which revealed seven separate packages of heroin in Dale's pocket.

Dale endeavored to suppress the evidence obtained from the Storage Unit, but the lower court's have concluded that he had no expectation of privacy in regards to the Storage Unit because his name wasn't on the lease.

At sentencing Dale objected to the drug quantity calculation specifically, the amount of cocaine base attributed to him. Because the jury found him guilty of more 28 grams but less than 280 grams of cocaine base. The Presentence Report attributed 1,140.57 grams of cocaine base to Dale. After hearing arguments of counsel, and considering the trial evidence, the district court accepted the drug quantity calculation of Presentence report.

Dale now Petition's For A Writ Of Certiorari for The United States Court of Appeals For the Eighth Circuit's judgemnet affirming the U.S. District Court for the Southern District of Iowa-Davenport denial of his Motions to Supress, the Court's refusal to grant him evidentiary hearing on his Motions to Suppress, and the sentence imposed by the Court.

REASONS FOR GRANTING THE PETITION

Question #1:

There is no question that an error occurred in the U.S. Court of Appeals for the Eighth Circuit when elected to increase the Petitioner's mandatory minimum sentence on the basis of a drug quantity that was rejected by the Jury's verdict. This Court has already dealt with the exact issue in **O'Neil v. United States**, 134 S. Ct. 223; 187 L. Ed. 2d 3 (2013) This Court granted the petition for writ of certiorari, vacated the judgment and remanded the case back to the United States Court of Appeals for the Eighth Circuit for further consideration in light of **Alleyne v. United States**, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013) In **Alleyne**, this Court held that the Sixth Amendment of the U.S. Constitution requires a jury to find beyond a reasonable doubt any fact which increases a mandatory minimum sentence. Id at 2155. Subsequent while on remand from the U.S. Supreme Court the Eighth Circuit Court of Appeals remanded **O'Neil** back to the district court so he could be resentence in accordance with **Alleyne**. **O'Neil**, 549 Fed. Appx. 595 (2014)

In the Petitioner's case the drug quantity necessary to ground the twenty year mandatory minimum was rejected by the jury. For the purposes of setting the applicable mandatory minimum sentence under 21 U.S.C. sections 841(b)(1)(B) and 851, the prosecutor asked the judge at sentencing to

find the Petitioner responsible for 280 grams or more of cocaine base, not just the 28 to 280 grams that was based on the jury's verdict. The District Court granted that request, basing it's decision on evidence that was rejected by the jury. Basically the District Court determined that the multiple layer on the wrapping of one kilogram accounted for three separate kilograms. Situations like this makes it even more important the reasoning of **Alleyne**.

At **O'Neil's** trial the jury also only found him responsible for 28 grams but less than 280 grams of cocaine base, in violation of 21 U.S.C. section 841(b)(1)(B), which carries the lesser penalty of five to forty years imprisonment. However the District Court in Davenport, Iowa (the same District Court as the Petitioner) found at sentencing O'Neil had conspired to distribute over 280 grams of cocaine base, specifically 2.5 kilograms of cocaine base. Based on this findings and O'Neil's two prior drug convictions, the court concluded 21 U.S.C. section 841(b)(1)(A) required a sentence of mandatory life imprisonment. This Court vacated the judgment and remanded back to the Appeals Court for further consideration in light of **Alleyne**.

In **Alleyne**, this Court held, that "facts that increase the mandatory minimum sentence" to which a criminal statute exposes a defendant, are elements that must be submitted to the jury and found beyond a reasonable doubt." 133 S. Ct. at 2158 This holding was merely an extension of this Court's prior decision in **Apprendi v. New Jersey**, 530 U.S.

466, 120 S. ct. 2348, 147 L. Ed. 2d 435 (2000). The drug quantity that the District Court determined in this Petitioner's case was specifically rejected by the jury. What was the point of even presented it to the jury at all if the Court wasn't going to honor it's verdict. Where is the protections of the Sixth Amendment.

This Supreme Court has already addressed the historical imperative of the indictment including that jury must be presented with facts which increase the amount of punishment. "From these widely recognized principles followed a well-established practice of including in the indictment, and submitting to the jury, every fact that was a basis for imposing or increasing punishment." **Alleyne**, at 2158. In Petitioner's case, the prosecution indeed saw fit to place the fact of quantity in the indictment and the Court saw fit to place it in the instructions. The jury after a full trial on the matter outright rejected the government's contention for a higher quantity. It's absolutely inappropriate for a Sentencing Court to overrule a jury without ample evidence in the record which contradicts the jury verdict on quantity.

The implications of both the Fifth and Sixth Amendments were ignored when the Sentencing Court elected to reject the jury finding without presentation of any additional evidence. Moreover even if the Sentencing Court had additional evidence, rejecting the jury's verdict caused Petitioner's

punishment to raise from a ten year mandatory minimum following the jury's verdict to a twenty year mandatory minimum following the District Court's findings.

Dale's sentence should be vacated and remanded back to the Eighth Circuit Court of Appeals in accordance with **Alleyne** and **O'Neil**. Because as stated in the Appellant Brief the jury was presented with the same evidence the Sentencing Court relied on at sentencing, and specifically rejected it. The jury did not find the Petitioner guilty of distributing 280 grams or more of crack as requested by the government in the jury instructions. There were reasons why the jury did not elect to find the Petitioner guilty of distributing 280 grams or more of cocaine base.

Therefore since the Sentencing Court's deviating from the jury's verdict caused it to view the Petitioner's sentence under a entirely different lense with a sentencing range of 262-327 months of imprisonment, including the twenty year mandatory minimum; as opposed to the jury verdict sentencing range of 168-210 months of imprisonment with only a ten year mandatory minimum. His case should be remanded back to the lower court in light of **Alleyne v. United States**, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013)

Question #2:

In **Byrd v. United States**, 138 S. Ct. 54, 198 L. Ed. 2d 780 (May 14, 2018); the Court held that a driver not listed on the rental agreement may still have a reasonable expectation of privacy in the vehicle. The justices unanimously rejected the argument that Terrence Byrd couldn't challenge the search of a rental car he was driving simply because he wasn't an authorized driver, subsequently taking "expansive reading of the Fourth Amendment, with the conclusion being that the Constitution trumps contractual terms".

This Court took what it called a "property-based" look at the Fourth Amendment. In "the main, 'one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of the right to exclude,'" Justice Kennedy wrote for the court. He further stated, "there's no reason why the expectation of privacy that comes from lawful possession and control" would "differ depending on whether the car in question is rented" by "someone other than the person in current possession of it".

In this case Law Enforcement Officer Agent Bump surveilled Dale as he visited Davenport Public Storage throughout the month of May, 2016. He was the sole-occupant of unit G-15 although the lease agreement was in his associates name (Mike Wills).

On May 27, 2016; Agent Bump applied for and obtained a tracking device warrant to use to track a Chevrolet Tahoe, registered to the Petitioner's girlfriend Constance Carr. That he had observed the Petitioner driving. A few days later (May 31) the Agent observed the Petitioner access the Storage Unit. At this time the Agent didn't see the Petitioner bring anything into or take anything out of the unit, or conduct any illegal activity. On June 1, 2016; Agent Bump utilized a contraband-sniffing dog to conduct a "free air sniff" of the door of storage unit G-15 the door he observed the Petitioner access, the door was secured with a padlock. The Agent stated that the dog alerted to the presence of drugs in the unit. Subsequently the Agent applied and obtained a search warrant for the Storage Unit, the Defendant's home, and the Tahoe. The search of the Storage Unit, resulted in one kilogram of cocaine, a 9mm pistol, and other items categorized by law enforcement as paraphernalia related to the manufacture or distribution of drugs.

The Petitioner contends that lower court has erred in failing to offer him an evidentiary hearing regarding his Fourth Amendment claims. The lower court did not enable a full and fair opprotunity to assert his entire argument. And it is obvious that the lower court negligence in this regard was due to their belief that the hearing would be unnecessary because Petitioner had no expectation of privacy

in the Storage Unit because he was not on the lease agreement. Citing, **United States v. McIntyre**, 646 F.3d 1107 (8th Cir. 2001)(finding no reasonable expectation of privacy in electricity usage records); and **United States v. Ruiz-Zarate**, 678 F.3d 683 (8th Cir. 2012)(finding no reasonable expectation of privacy in an associate's vehicle that defendant "neither owned nor was near at the time of the traffic stop.") as their (lower court) authority.

In **Byrd** it seems that the Court's core reasoning was the ability to challenge a search of "property comes from it being treated as your stuff, and whether your name is on the contract doesn't seem that important to whether it's treated as your stuff.

The Petitioner had complete control over the Storage Unit-- he possessed the key to lock and unlock the unit, documentation with Petitioner name was found in the unit. The lower court has already treated the contents in the unit as the Petitioner's stuff. Therefore the Petitioner should have been afforded an expectation of privacy for the storage unit he was the sole-occupant of.

Therefore since the lower court declared that Dale didn't enjoy an expectation of privacy in the Storage Unit because his name wasn't listed on the rental agreement. His case should be remanded back to the Eighth Circuit Court of Appeals in light of **Byrd v. United States**, 138 S. Ct. 54, 198 L. Ed. 2d 780 (2018)

Question #3

The Petitioner contends that the lower court has erred in holding that he had no expectation of privacy in the Storage Unit's door and surrounding area. When law enforcement brought a trained police dog to sniff the door of the storage unit it was a search under the Fourth Amendment.

In **Florida v. Jardines**, 133 S. Ct.. 1409, 1417-18, 185 L. Ed. 2d 495 (2013), this Supreme Court held that the government's use of a trained police dog to investigate a home and its immediate surroundings was a search under the Fourth Amendment. The Court said the defendant had an expectation of privacy in his porch, which is part of the home's curtilage and "enjoys protection as part of the home itself." Id. at 1414. This is because the curtilage "is 'intimately linked to the home, both physically and psychologically,' and is where 'privacy expectations are most heightened.'" Id. at 1415 (quoting **California v. Ciraolo**, 476 U.S. 207, 213, 106 S. Ct. 1809, 90 L. Ed. 2d 210) The Court was clear that its holding was based on the trespass to the defendant's curtilage, not a violation of the defendant's privacy interest. Id. at 1417-20. Therefore, when the police physically intruded onto the defendant's property to gather evidence without a warrant or consent, they had conducted a search without a license to do so, in violation of the Fourth Amendment. Id. at 1417.

The Petitioner argues that **Jardines** should be extended to the outside door of the storage unit, because the law enforcement took the dog to the door for the purpose of gathering incriminating forensic evidence. Agent Bump didn't even acquire consent from the property manager to endeavor to make the search reasonable. Although the Petitioner indeed recognizes that **Jardines** was premised on trespass to property, he also argues that this use of a drug-detection dog violated his privacy interests under **Kyllo v. United States**, 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001), and **Katz v. United States**, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

The use of a drug-sniffing dog here clearly invaded reasonable privacy expectations. Agent Bump was not entitled to bring a "super-sensitive instrument" to detect objects and activities that he could not perceive without its help. **Jardines**, 133 S. Ct. at 1418. Agent Bump could not pierce a hole in the door to look inside the unit. Similarly, he could not bring the super-sensitive dog to detect objects inside the unit. In **Jardines** Justice Kagan explained, "viewed through a privacy lens, **Jardines** was controlled by **Kyllo,** which held that police officers conducted a search by using a thermal-imaging device to detect heat emanating from within the home, even without trespassing on the property. 133 S. Ct. at 1419

Kyllo held that where "the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." 533 U.S. at 40. That rule reflects a concern with leaving "the home owner at the mercy of... technology that could discern all human activity in the home." Id. at 35-36. A dog search conducted from the outside of an locked storage unit comes within this rule's ambit. A trained drug-sniffing dog is a sophisticated sensing device not available to the general public. The dog here in the Petitioner's case detected something (the presence of drugs) that otherwise would have been unknowable without entering the storage unit.

The Petitioner had a reasonable expectation of privacy against persons snooping into what was stored in the storage unit, by using sensitive devices not available to the general public. This case is completely different from dog sniffs in public places as in **United States v. Place**, 462 U.S. 696, 698, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983)(luggage at airport), and **Illinois v. Caballes**, 543 U.S. 405, 406, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)(traffic stop). Neither case implicated the Fourth Amendment's core concern of protecting the interest of privacy. When a person rents a storage unit he or she is expecting privacy. That's why the facility enables you to lock and secure the unit.

Special Agent Bump engaged in a warrantless search within the meaning of the Fourth Amendment when he had a drug-sniffing dog come to the door of the storage unit and search for the scent of illegal drugs. However this issue was never reached by the lower court because it had pre-determined that the Petitioner had no expectation of privacy in the storage unit, because his name wasn't listed on the rental agreement.

Therefore this case should be remanded back to the Eighth Circuit Court of Appeals in light of **Byrd v. United States**, 138 S. Ct. 54, 198 L. Ed. 2d 780 (May 14, 2018) and **Florida v. Jardines**, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: July 11th 2018