

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERRANCE D. JOHNSON, #156066 — PETITIONER
(Your Name)

vs.

WARDEN RANDALL Williams — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TERRANCE D. JOHNSON #156066
(Your Name)

LIBER CORR. INST. STONO B-49
(Address)

P.O. BOX 205 RIDGEVILLE, SC
(City, State, Zip Code) 29472-0205

NOT APPLICABLE
(Phone Number)

QUESTION(S) PRESENTED

Whether the Fourth Amendment forbids a pretextual seizure of a motorist based solely on probable cause due to an alleged obstructed tag?

Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after he is told he could leave but the officers continue to walk around the vehicle and looking through the windows?

LIST OF PARTIES

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

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The State of South Carolina
Warden Randall Williams substituted for Warden
Joseph McFadden

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Petitioner's Exhibit 1

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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

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

The date on which the United States Court of Appeals decided my case was March 30, 2018.

[] 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: June 27, 2018, and a copy of the order denying rehearing appears at Appendix 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

The Fourth Amendment to the United States Constitution provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly, describing the place to be searched, and the persons or things to be seized."

U.S. Const. amend. IV

The Sixth Amendment to the United States Constitution provides in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense."

U.S. Const. amend. VI

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

"... Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor ~~deprive~~ deny to any person within its jurisdiction the equal protection of the laws."

U.S. Const. amend. XIV

STATEMENT OF THE CASE

On January 28, 2004, Terrance D. Johnson, Petitioner, a black man, was driving on Rivers Avenue, in Charleston County, going towards the City of Charleston, in a Jaguar, with factory tinted windows.

While stopped at a stop light, a North Charleston Police Department K-9 Division Officer pulled up alongside Petitioner. When the light turned green Petitioner and the K-9 Unit continued down Rivers Avenue side by side. As Petitioner neared his designation-the flower shop-he turned his turn signal and made a left turn and pulled up in the front of the flower shop. Petitioner got out and walked around to the passenger side where his nine year old son was sitting.

At that time, a North Charleston Police officer pulled halfway in the lot and activated his blue lights. The officer, later identified as Officer Troy Butler ("Officer Butler") who was a K-9 Unit patrol officer with the North Charleston Police Department. Officer Butler testified that he initially stopped the Petitioner's

Jaguar for what he alleged was "an equipment violation," being a "license tag obstruction" on Petitioner's vehicle.

Officer Butler approached Petitioner, asked for Petitioner's license and registration card and patted him down for contraband. Then told Petitioner to sit in his car. Officer Butler asked for consent to search Petitioner's vehicle. Petitioner refused to give consent. Officer Butler had called for backup.

Officer Butler then got his drug dog out of his patrol car. By this time, Officer Butler's backup had arrived. Corporal Tony Middleton, of the North Charleston Police Department had arrived. Officer Butler walked his drug dog around Petitioner's vehicle.

Officer Butler testified that the drug dog did not give "a hundred percent indication" that there were drugs in the automobile and that because of past complaints about his dog "scratching up their cars"... "I took the canine away from the car..." "I issued the defendant a verbal warning for just the license tag obstruction.

I didn't feel that there was any need for a citation of any sort or any kind, and basically he was set free to go."

Officer Butler said after his verbal warning Petitioner and his son went into the Florist shop. Officer Butler claimed that while Petitioner was in the shop his "back up," Corporal Middleton, saw a gun "in plain view" under the driver's seat. Officer Butler testified when Petitioner and his son came outside the Florist shop Petitioner was arrested for having a firearm under the seat. Officer Butler testified the gun was in "plain view" even though he admitted that the windows to the Jaguar were tinted. Officer Butler denied that the officers had to go to great lengths to spot the gun under the seat. Officer Butler said during his "inventory" search of the Jaguar he found seventy to seventy-five grams of cocaine in the console.

Officer Butler testified that he had stopped a white man a couple of weeks earlier in this location on Rivers Avenue and that the white man also had drugs. He also testified that

that he asked Petitioner if he had any contraband or drugs in the car. Butler said "that's a standard question, be it an 80-year lady or a twenty-year-old male, that I ask everybody pretty much that."

Corporal Troy Middleton, the backup officer, testified somewhat contrary to Officer Butler's version of the facts. Corporal Middleton testified that the windows of Petitioner's rented Jaguar were not tainted. Middleton testified that when he arrived he saw Petitioner inside the vehicle. Middleton testified:

At that time Officer Butler asked him to exit the vehicle. He talked with him and asked him if he had anything illegal in the vehicle. He asked for consent to search. The Petitioner declined. He said no.

At that time he with his canine walked around the vehicle. It looked like the dog had a hit on the passenger side door and then he kept walking. At that time Officer Butler said: Well, since the canine had made a hit on the car, he told defendant he had — he had a plate, like a cover type thing on his license plate that was covering the year and month, and that was the reason why he stopped him. And he had given him a verbal warning on that and told him he was free to go.

Officer Middleton testified that when Petitioner "exited the vehicle he saw a shiny object on the floor board by the driver's seat, and looked. That he told Officer Butler: that's a gun down there. He was surprised, you know. He walked over and said: it sure is. Officer Middleton testified they both grabbed Petitioner when he came out of the Florist shop and arrested him.

On cross-examination Officer Middleton testified when he arrived at the Florist shop he asked Officer Butler why he had requested a back-up unit. He testified that Butler asked Petitioner to get out the automobile and "he asked him for consent to search. The Petitioner said. He refused. That's when he [Officer Butler] said he was going to run the dog around the vehicle. Officer Butler testified that he then positioned himself on the passenger side of the vehicle." Petitioner was arrested and transported to the Charleston County Detention Center.

Petitioner was indicted by the Charleston County Grand Jury in June 2004, for trafficking cocaine, and possession of a weapon during the commission of a violent crime, and possession of a stolen

pistol.

Petitioner proceeded to trial before the Honorable Deadra Jefferson, on March 9-10, 2006. Petitioner was represented by Melissa Gay, Esquire. The jury found Petitioner guilty of trafficking cocaine and possession of a weapon during the commission of a violent crime. The jury found Petitioner not guilty of possession of a stolen pistol.

Petitioner timely appealed his conviction and sentence. Represented by Chief Appellate Defender Robert M. Dudek, of the South Carolina Office of Appellate Defense, Petitioner presented the following issue on appeal:

"Whether the court erred by refusing to suppress the drug evidence since there was no legal basis of stopping appellant's vehicle and then detaining him since the evidence clearly shows the officer thought appellant was a drug courier, he asked consent to search and utilized his drug dog when appellant refused since suppression was mandated under these circumstances? The discovery of the gun and drugs were part and parcel of the same stop and detention.

The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence in an unpublished Opinion No. 2011-UP-411, filed on August 29, 2011. Remittitur issued on September 14, 2011.

On September 15, 2011, Petitioner filed a pro se petition for rehearing with the Court of Appeals. By letter issued September 16, 2011, the Court of Appeals returned that pro se document, informing the Petitioner that they no longer had jurisdiction over the case, that the remittitur had been sent to the Charleston County Clerk's Office prior to receipt of Petitioner's submission.

Petitioner filed a pro se application for post-conviction relief (PCR) in Charleston County, case number 2011-CP-10-09193. Petitioner alleged that he was being held in custody unlawfully due to ineffective assistance of counsel for trial counsel failing to challenge the stop, and numerous other ineffective assistance of counsel claims. Petitioner also alleged due process violations to include Fourth, Fifth, Sixth and Fourteenth Amendments.

Petitioner's PCR evidentiary hearing was held

on November 21, 2013, before the Honorable Stephanie P. McDonald. Christopher Murphy, Esquire, represented Petitioner at the hearing. Petitioner and his trial counsel testified. Petitioner presented a handwritten statement of a witness, a Ms. Fountains Judon, who witnessed the Petitioner's Jaguar and a police officer driving side-by-side down Rivers Avenue. Ms. Judon observed the Petitioner turn in to the Florist shop next door to her family business - Judon's Sewing & Alterations. Observed Petitioner get out of his vehicle, walk around the car to the passenger side and attempting to get his nine year old year out of the vehicle, saw the police cruiser make a U-turn and pull into - halfway into the parking lot and turn his blue lights on. PCR counsel did not subpoena Ms. Judon for the PCR evidentiary hearing, just as trial counsel never subpoenaed Ms. Judon to Petitioner's trial. Judge McDonald took the matter under advisement on a limited issue regarding the trial court's handling of a jury question, and denied the remainder of Petitioner's

ineffective assistance of counsel claims from the bench. On December 1, 2014, Judge McDonald denied and dismissed Petitioner's application in its entirety by formal Order of Dismissal.

A timely notice of appeal was filed. Tiffany Butler, Appellate Defender with the South Carolina Commission on Indigent Defense, represented Petitioner and presented the following issues in a Johnson Petition¹ for Writ of Certiorari: Did the trial judge err by finding trial counsel provided effective representation where counsel failed to object and move for a mistrial when the trial judge improperly entered the jury room during trial to release the jury for lunch?

Petitioner filed a pro se response to his counsel's Johnson Petition raising several issues of ineffective assistance of counsel claims.

¹ The Supreme Court of South Carolina "has approved the withdrawal of counsel in meritless post-conviction appeals, provided the procedures outlined in Anders v. California, 386 U.S. 738 (1967) were followed." Johnson v. State, 364 S.E.2d 201, 201 (S.C. 1988).

The Petitioner presented the following issues in his pro se response to appellate counsel's Johnson Petition:

- (1) Counsel was ineffective for failing to argue that Petitioner's stop violated his 4th Amendment rights thus resulting in a denial of Equal Protection.
- (2) Counsel was ineffective for failing to file a motion to exclude all evidence discovered pursuant to the illegal traffic stop, thus resulting in a denial of Equal Protection.
- (3) Counsel was ineffective for failing to argue the stop of Petitioner's vehicle was pretextual, thus resulting in a denial of Equal Protection.
- (4) Counsel was ineffective for failing to call witnesses to trial who would have substantiated that the stop was pretextual thus denying Petitioner's 5th and 6th Amendment rights.

Petitioner also presented the following questions:

- (5) whether trial court abused its discretion by refusing to answer the jury's specific question upon their request?
- (6) whether trial court abused its discretion by refusing to grant the appellant's motion for a mistrial?

The South Carolina Supreme Court denied the

The South Carolina Supreme Court denied the petition for writ of certiorari on June 16, 2016. Remittitur was issued on July 5, 2016 and filed by the Charleston County Clerk's Office on July 7, 2016.

On November 3, 2016, Petitioner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On June 29, 2017, United States Magistrate Judge Jacquelyn D. Austin issued a Report and Recommendation recommending that that the court deny Petitioner's habeas corpus petition and grant the Respondent's motion for summary judgment.

Petitioner raised several grounds in the petition. The pertinent grounds to the present petition are:

(1) Fourth Amendment Violation

This is a case where petitioner's 4th Amendment has been clearly violated. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(2) 5th Amendment Violation - Due Process:

The refusal to suppress the drug evidence since there was no legal basis of stopping appellant's vehicle and then detaining him since the evidence clearly shows the officer thought appellant was a drug courier, he asked for consent to search and employed his drug dog when the petitioner refused since suppression was mandated under these circumstances.

(3) Ineffective Assistance - Sixth Amendment violation:

Counsel was ineffective for failing to challenge the traffic stop. Counsel failed to call Ms. Fountain Judon as a witness at applicant's suppression hearing, that would have showed that the officer (Troy Butler) was never behind the applicant.

(4) Counsel was ineffective for failing to argue the fact the stop was pretextual, officer (Troy Butler) had no legal basis for the stop. The stop was an unconstitutional traffic stop.

(5) The unconstitutional stop and the detention in this case could not be separated from the viewing of the gun and the arrest.

(6) Due Process - The start of the trial without ruling on the motion to suppress is clearly in violation of petitioner's constitutional right.

On August 2, 2017, United States District Judge J. Michelle Childs accepted the Report and

Recommendation of the Magistrate Judge and ordered that Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 be denied and Respondent's Motion for Summary Judgment granted. Certificate of Appealability was denied.

Petitioner timely filed an appeal of the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 petition to the United States Court of Appeals for the the Fourth Circuit. The Fourth Circuit denied the appeal on March 30, 2018.

Petitioner timely filed a petition for rehearing. On June 19, 2018, the court, Circuit Judges AGEE, WYNN, and DIAZ, denied the petition for rehearing.

REASONS FOR GRANTING THE PETITION

The Fourth Amendment permits a pretextual stop of a motorist based on probable cause of a moving violation. Whren, 517 U.S. at 810, but the Court has never extended that precedent to a non-mechanical "equipment violation" — and with good reason. Moving violations have caused hundreds of thousands of deaths, but non-mechanical "equipment violations" are generally no threat to the public safety.

If there is any limitation on the triviality of the government interest that can justify a pretextual seizure, that limitation must apply in this case. The pretext here was the most trifling of violations; a non-mechanical "equipment violation," an obstructed tag. After Petitioner had arrived at intended destination — a Florist shop — to purchase flowers for his mother, a police officer who had been traveling side-by-side with the police officer down the street, suddenly made a U-turn and pulled in behind — actually to the side of Petitioner's parked vehicle and turned his blue lights on. All the while, Petitioner had already exited his Jaguar and walked around to get his nine year old son out of the

vehicle.

If triviality imposes no constraint whatsoever on the government's authority to make a pretextual search in a case like this, then the Fourth Amendment provides little protection against police searches and seizures. For an officer to seize an individual and search for evidence, any miniscule infraction will do. The proliferation of laws regulating the minutiae of human affairs make excuses easy to find. Freed from constitutional restraint, seizures will land the hardest on minorities, as in this case, where police stopped a black man driving a Jaguar, and could not even quote traffic code violated.

I. The Court should grant review to decide whether non-mechanical "equipment violations" justify pretextual seizures.

This Court's precedent leaves open whether mere non-mechanical "equipment violations" justify pretextual seizures, and that question divides lower courts just like parking violations. The Court should grant certiorari because the government interest in investigating a mere "obstructed tag" infraction is too trifling to justify the sort of seizure that occur-

red.

- A. The Court has not considered whether probable cause to suspect a mere obstructed tag justifies a pretextual seizure.

In Whren, the Court held that the Fourth Amendment allows police to make a pretextual seizure of a vehicle and its occupants so long as there is probable cause to believe that the driver has committed a moving violation, 517 U.S. at 808. The Court has never extended that rule to an obstructed tag, or the type of seizure that occurred here.

1. The Court's prior decisions involving seizures of motorists for minor infractions do not encompass obstructed tags. In Whren, the Court granted certiorari to decide whether the police may execute a pretextual seizure of a motorist "who the police have probable cause to believe has committed a civil traffic violation." *Id.* at 808. In contrast to this case, Whren, involved multiple moving violations (speeding and failure to signal), not a mere obstructed tag. 517 U.S. at 808. While the Whren Court refused to consider which state statutes

"are sufficiently important to merit enforcement," it was not faced with anything so trivial as an obstructed tag. 517 U.S. at 818-19.

Like Whren, this Court's subsequent decisions in Atwater v. County of Lago Vista, 532 U.S. 318, 323-24 (2001) and Virginia v. Moore, 553 U.S. 164, 166-67 (2008), involved moving violations that created potential dangers. See Atwater, 532 U.S. at 323-24 (five-year-old and three-year-old children did not have seatbelts); Moore, 553 U.S. at 166-67 (driving with a suspended license); see also Arkansas v. Sullivan, 532 U.S. 769, 769 (2001) (speeding and improperly tinted windshield); United States v. Robinson, 414 U.S. 218, 220 (1973) (driving with a suspended permit). This case, however, is about an obstructed tag.

By its own terms, Whren governs a "run-of-the-mine" case, Whren, 517 U.S. at 819, leaving open the possibility that its general rule may not extend to extreme circumstances. Under the Fourth Amendment, investigatory seizures must reflect a "balancing" of the "need" for a seizure against the "invasion it entails." Terry v. Ohio, 392 U.S. 1, 21 (1968)

(quoting Camara v. Municipal Court, 387 U.S. 523, 534-35 (1967)). The balance in this case is one-sided. Both the trivial justification and the nature of the seizure are "extraordinary", a far cry from the "run-of-the-mine" scenario contemplated in Whren, 517 U.S. at 819.

In addition to the minimal governmental interest at stake, the police tactics used to seize Petitioner were pretextual and improper. To investigate a mere obstructed tag to do drug dog sniff, ~~He~~ Petitioner he was free to go, only giving a verbal warning but keep walking around the vehicle leaning over to look down into the vehicle. Compared to Whren, the justification far less substantial.

Over the course of a normal, law-abiding life, most drivers expect to be pulled over at some point in the type of "normal traffic stop" that Whren authorizes. 517 U.S. at 809. Being stopped for an obstructed tag when photo of tag, the state can be seen as well as the year and month stickers can be seen then doing a dog sniff is a completely different experience than being pulled

for speeding.

This case clearly presents the question whether probable cause to suspect tag was obstructed when police officer was never behind the Petitioner but beside him driving down the street.

The Maryland Court of Special Appeals held that even when an officer has probable cause to believe that a person is committing a citable civil offense, "a confrontation between the officer and the offender should generally be avoided. In re Calvin S., 175 Md. App. 516, 531 (2007). Such an encounter does not meet the standard for a Terry stop absent some other basis to suspect that criminal activity is afoot." Id.

Seizures for trifling violations are an issue of national importance. The decision below licenses the police to conduct frightening seizures on trivial infractions.

In this case, the stop was pretextual stop well become the officers noticed a shiny object. The 10th Circuit Court of Appeals found a stop to be pretextual where "no objective circumstances suggested [defendants] had committed

any crime more serious than failure to wear their seat belts. See U.S. v. Guzman, 864 F.2d 1512, 1515 (10th Cir. 1988). See also U.S. v. Smith, 799 F.2d 704 (707-708) (11th Cir. 1986) (finding pretextual stop where police officers stopped car weaving in its lane based on a "hunch" that vehicle was carrying drugs).

II. The Fourth Amendment Only Permits Warrantless searches incident to arrests where specific Exigent Circumstances Exist.

This Court has held that vehicle searches entail a "substantial invasion of privacy" United States v. Ortiz, 422 U.S. 891 (1975) and has repeatedly noted that the inference with one's privacy and freedom of movement attendant to arrest does not justify further intrusions, see, e.g., Chimel, 395 U.S. 766 n.12.

This Court has repeatedly reaffirmed that warrantless searches incident to arrest are justified by two - and only two - exigencies: (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence

for later use at trial. Knowles v. Iowa, 525 U.S. 113, 116 (1998) (citing cases going back to Weeks v. United States, 232 U.S. 383, 392 (1914)); accord Thornton, 541 U.S. at 620 (identifying exigencies as "the need to remove any weapon or ~~the~~ arrestee might seek to use to resist arrest or to escape, and the need to prevent the concealment or destruction of evidence"); Chimel, 395 U.S. at 764 (identifying exigencies as (1) "the need to seize weapons and other things which might be used to assault an officer or effect an escape" and (2) "the need to prevent the destruction of evidence of the crime-things"). And it likewise has consistently held and defined the scope of such searches consonant with these two exigency rationales: A search incident to arrest "must be limited to the area 'into which an arrestee might reach.'" Cupp v. Murphy, 412 U.S. 291, 295 (1973) (quoting Chimel, 395 U.S. at 763); Thornton, 541 U.S. at 620 (Authorities may search only "the person of the arrestee and the area immediately surrounding him."); Coolidge v. New Hampshire, 403 U.S. 443, 457 n. 11 (1971) (Police's

authority to search incident to arrest is limited to "only... 'arrestee's person and the area "within his immediate control,""). Petitioner asserts that his search was illegal and pretextual. His vehicle was locked and twenty-five-thirty ft. away.

This Court laid down the "proper extent" of a search incident to lawful, custodial arrest in California v. Chimel, where it invalidated the search following Respondent's arrest of his "entire three-bedroom house, including the attic, the garage, and a small workshop." 395 U.S. at 754, 762.

The search in this case was pretextual, in that the officers testimony was inconsistent and conflicting and Petitioner's Exhibit 1 reflects that the license tag could be read as well as see the year and month stickers on the tag. The officers could not give a valid reason for the stop. Major notes missing out of the incident report. This Court held in Delaware v. Prouse, 99 S.Ct. 1391 held that the stop was purely pretextual where officer could not give a valid

old son out of the Jaguar when the officer pulled into parking area.

And, second, trial counsel's failure to interview and call Ms. Jacquelin Gaillard to verify that after he went into the Florist shop the officers never left his vehicle.

Just as the accused has a right to confront the State's witnesses for the purpose of challenging their testimony, Petitioner had the right to present witnesses on his own behalf to establish his defense. Petitioner was denied due process of law. Washington v. Texas, 388 U.S. 14 (1967). Few rights are more fundamental than the right to present witness on his behalf. Chambers v. Mississippi, 410 U.S. 123 (1967).

Trial counsel was ineffective for failing to subpoena Ms. Judon and Ms. Gaillard. Petitioner was prejudiced in that he could not present eyewitnesses to the pretextual stop and what occurred, during the traffic stop and arrest.

Petitioner met his burden under Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Petitioner requests that his conviction and sentence be reversed and remanded to the State Courts for a new trial.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Leciano Pherson

Date: August 28, 2018

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