

Questions presented



- (1) HAVE petitioner BEEN ARRESTED without probable cause?
- (2) Whether movant's ARREST WARRANT VIOLATE the second clause of The Fourth Amendment?
- (3) IS this A CASE OF FALSE Imprisonment?
- (4) Does movant's sentence RUNS afool OF UNITED STATES V BOOKER (2005)?
- (5) After Jury Trial does Judicial Fact Finding VIOLATES the sixth Amendment Right to Jury Trial?
- (6) without proving AN "Intent" to Kill CAN petitioner's Time Be Calculated For Attempted Murder?

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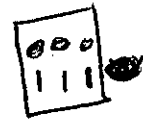


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Lawyers Reports Annotated, vol 51, p. 197
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HAINES v. KERNER 404 U.S. 519, 520-21 (1972)

Petition For writ of certiorARI

JABril Jones, proceeding Proise Respectfully
Petitions For A writ of certiorARI;
To REVIEW the Judgment of the
United STATES Court of APPEALS For the
Sixth Circuit.

OPINIONS Below

The PANEL opinion of the court
of Appeals For the Sixth circuit is
Found At CASE No^o 17-6381. APPENDIX
At 3-6 The opinions of the United
STATES District court For the western
District of Tennessee (Memphis) is Found
At CASE No^o 2:09-CR-20389-SHM AND
2:16-CV-02753 APPENDIX At 1-2

JURISdiction

The Judgement of the court of Appeals was
Entered ON MAY, 16, 2018. The order denying
The petition For Rehearing AND suggestion
For Rehearing en banc was Entered on
September 05, 2018 APPENDIX At APP. 6, The
Jurisdiction of this court is involked
Pursuant to 28 USC § 1254 (1)

The Supreme Court of The
UNITED STATES

JABRIEL JONES

(petitioner)

V

UNITED STATES of America

(Respondant)

>

> PETITION FOR WRIT

> OF HABEAS CORPUS

> CASE NO. 09-20389

> CIVIL NO. 16-02753

17-6381

>

>

>

STATEMENT OF CASE

ON July 3, 2009 John Novotny was walking Eastbound
on Brooklyn street in Memphis TN when a male
armed with a chrome revolver came up from behind
him and stated "drop it off" Novotny turned around
and observed he was being threaten At Gun point.
Novotny stated he did not have any money and
the male threaten to shoot him. Novotny tried to run
and threw two liquor bottles at the male suspect
who then shot Novotny in the back and fled the scene.
Novotny was transported to the MED in critical
condition. Upon further investigation JABRIEL SIDNEY
JONES was developed as a suspect.

1227 GARFIELD AND MADE CONTACT WITH Geneva SMITH
WHO WAS JONES GirlFriend. Smith ADVISED that
JONES WAS hiding in the Rear of the house, but
UPON searching, officers were UNable to locate
JONES who had Fled out the back door, upon
questioning, Geneva Smith Reported that JONES
CAME home AND stated "I Fucked up, I Fucked up"
JONES told her that he tried to Rob A man AND
ended up shooting him because he had a bottle
AND attempted to Throw it at him, Smith indicated
That she Knew JONES to HAVE A 40 caliber AND
A Revolver. she Reported that JONES indicated
he WAS going to Attempt to Retrive or destroy
The video From the convenience store where
he First observed the Victim with Money

ON Saturday, July 4, 2009 John Novotny positively
Identified JABRI Sidney JONES From A photo lineup
As the person Responsible For the shooting. police
officer Returned to 1227 GARFIELD to locate
JONES. officers MADE CONTACT with Geneva Smith,
AND discovered that JONES WAS hiding in the
Attic. After several minutes OF talking with JONES,
officers Finally convinced him to come down
From the Attic AND searched the Residence AND
Found A silver/chrome Smith AND wesson, 38
caliber Revolver AND 27, 38 caliber Rounds
OF Ammunition hidden in the lining of the
Couch. Geneva Smith told officers that the .38

Caliber Revolver Belonged to Jones who had Put it in the couch.

On July 4, 2009 JABRIL Sidney Jones was charged with criminal Attempt especially Aggravated Robbery in shelby county criminal Court of Memphis, TN # 09125058 which was latter Dismissed by the GRAND Jury on February 11, 2010 DUE to the victim's inability to identify petitioner AND witness Failure to show up AND identify Petitioner AND place JABril Sidney Jones on The scene of the Alledged crime.

On September 29, 2009, A Federal Grand Jury sitting in the Western District of Tennessee (Memphis) Returned A one count Indictment Against JABril Jones. Count 1: Charges JABril Jones with being A Felon in possession of A Firearm (Smith AND Wesson, 38 Caliber Revolver) Between on or About July 3, 2009 AND on or about July 4, 2009 in violation of 18 U.S.C § 922(g)

On September 13, 2010, the case proceeded to Trial before the honorable SAMUEL H MAYS, JR on September 15, 2010, the defendant was Found guilty of Count one.

Sentencing in this case is set for December 17, 2010
At 9:00

Movant sentence was calculated under the United States Sentencing Guidelines 2K2.1(c)(1) which provides: IF the defendant's USED or possessed the Firearm IN connection with another offense, subsection (c)(1) Provides a cross reference to the other offense Guideline Applicable to the other offense, if it Results in a higher offense level

Movant was cross reference to Attempted murder USING the United States Sentencing Guidelines 2K2.1(c)(1) AND 2X1.1 2A2.1(a)(2) For Assault with intent to commit murder Base offense level #27 Movant Also received a +4 level increase Because the victim sustained life threatening Bodily injury pursuant to 2A2.1(b)(1)(A)

Petitioner's Guideline Range From Sentencing Table pursuant to Chapter Five, part A AND a Criminal History Category IV Applicable guideline was 155 to 188 months

Movant's presentence Report Recommended NO MORE than 120 months statutory MAXIMUM For petitioner's 18 U.S.C § 922(g) conviction

MOVANT Received A statutory MAXIMUM OF A 120 MONTH sentence.

REASONS FOR GRANTING the writ

The sixth circuit's decision directly conflicts with the second clause of the Fourth Amendment which declares, "NO WARRANT shall ISSUE but upon Probable cause supported by oath or Affirmation, Because petitioner's Arrest WARRANT is unsupported By probable cause, Oath or Affirmation....."

A compliant was Filed Against praise petitioner July 3, 2009 Following AN Arrest warrant ISSUED by Memphis Police department. petitioner was Arrested Saturday July 4, 2009 AND charged with criminal Attempt especially Aggravated Robbery IN shelby county criminal court # 09125058, subsequently on September 29, 2009 A Federal Grand Jury sitting in the Western district of Tennessee Returned A one count Indictment Against praise petitioner Jabril Jones charging JABril Jones with being A Felon IN possession of A Firearm (Smith AND Wesson .38 caliber Revolver Between on or about July 3, 2009 AND on or about July 4, 2009 in violation of 18 U.S.C § 922(g)

On Feburary 11, 2010. The Grand Jury in shelby county of Memphis Tennessee criminal court # 09125058 Dismissed criminal Attempt especially Aggravated Robbery AS not A True Bill.

MOVANT ARGUES pursuant to Veto-Ciordanello
V. United States 357 US 488, Federal officers
Turns to the law of the state where an
arrest is made as the source of their Authority
To ARREST without WARRANT Cf. United States
V. Di RE, 332 US 581, 589, 92 LEd 210, 217 68
5 Ct 222; Johnson v United States, SUPRA
(333 US At 15)

(1)
MOVANT Attest to the Fact the Federal Government
IN CASE No. 2:09-cr-20389-stm-1 on
November 2, 2009, see exhibit # 1 (ARREST WARRANT)
ARRESTED the pro, se petitioner without probable
CAUSE For his ARREST violating due process
OF law.

(2)
MOVANT Also Attest that the GRAND JURY OF
Shelby county of Memphis TN Dismissed
The probable cause For his ARREST AS
Not A TRUE Bill on February 11, 2010
09125058

See, Malley v Briggs 475 US 335, 89 LEd 2d
271, 106 S Ct 1092; CASE INVOLVING A couple
who had been Arrested For a possession
OF NARCOTICS, but were not Indicted,
Filed suit in the United States District

For the District of Rhode Island Against
The State police officer who had obtained
arrest WARRANTS claiming that the officer had
Violated Their Rights under the Fourth and
Fourteenth Amendments by Applying ^{FOR} WARRANTS
ON the basis of A compliant AND Affidavit
Which Allegedly Failed to establish probable
Cause, Because the GRAND JURY DID NOT RETURN
AN INDICTMENT.

(3)
MOVANT Attest prior to the date OF his ARREST
By the Federal Authorities November 2, 2009
See, (ARREST WARRANT) (exhibit # 1) he had
NOT committed A Felony offense To establish
Probable Cause For his ARREST WARRANT.

(4)
Petitioner declare (1) he never directly violated
A Federal law (2) never committed A Felony
OFFENSE or breach of the peace in the presence
OF AN ARRESTING officer To establish A
WARRANTLESS ARREST AND (3) petitioner WAS
NEVER INDICTED For A Felony offense IN
Shelby County of Memphis TN, For the charged
Allegation of Criminal Attempt especially
Aggravated Robbery Booking # 09125058,

(5)

MOVANT ARGUES the GRAND JURY of Shelby County
OF Memphis TN (1) dismissed the complaint

(2) Failed to Establish probable cause AND

(3) Declared the Bill of Indictment AS Not A
TRUE Bill on February 11, 2010, see, ANNE
Johnson v United States 333 US 10-17,

IN the Absence of A Applicable Federal Statute,
The law of the state in which AN arrest
Without WARRANT For A Federal Crime takes
Place determines Its validity, the ~~Alleged~~ Alleged
Ground of validity Requires examination of the
Facts to determine whether the arrest itself
was lawful, since it was without WARRANT. It
could be valid only if For A Crime committed
IN the presence of the ARRESTING officer or
For A Felony of which he had Reasonable
CAUSE to believe defendant guilty; see, Also
United States v Watson 423 US 411, 46 L Ed
2d 589, 96 S Ct 820 (1976)

The usual Rule
Is that A police officer may arrest without
A WARRANT one believe by the officer upon
Reasonable cause to have Been Guilty
of A Felony; the lawfulness of AN ARREST
Without WARRANT must be based on probable
cause, under the common law, A peace
officer was permitted To ARREST without
A WARRANT For A misdemeanor or Felony,
(9)

Committed in his presence, AS well AS For A Felony Not committed in his presence if there WAS Reasonable grounds For MAKEing the ARREST. The crucial question IN DRAPER V. United states, 358 US 307, 3 LEd 2d 327.

79 Sct 329 (1959) was whether there was Probable cause For the WARRANTLESS ARREST IF there was, the court said "the arrest Though without A WARRANT, WAS lawFul"... Id At 310, 3 LEd 2d 327, 79 Sct 329 Ker V. California 374 US 23, 34-35 10 LEd 2d 726, 83 Sct 1623, 24 Ohio ops 2d 201 (1963) (Opinion OF CLARK) Reiterated the RULE that the lawfulness of the ARREST without WARRANT in Turn must be Based ON probable cause.

See, Veto. Giordenello V. United States 357 US 488, Federal officers turn to the law of the State where AN ARREST is made AS the source OF their Authority To ARREST without A WARRANT, CF, United States V DIRE 332 US 581

The Validity of AN ARREST is Governed by Reference to state law; Johnson V. United States, SUPRA (333 US At 15)

(6)

MOVANT Declares, if the court reference To state law From CASE No: 2:09-CR-20389 to Booking No: 09125058 IN shelby county of Memphis, TN The validity of MOVANTS ARREST has been invalidated by the GRAND JURY of shelby county of Memphis TN on Feburary 11, 2010.

(7)

MOVANT declares he have AN INVALID AND UNLAWFUL WARRANT ISSUED For his ARREST, see, Morrow v. State 140 NEb 592, 300 N.W 843, 845 (1941). The common law Requires that AN arrest be made on a WARRANT ISSUED only after A Formal Charge is made under OATH Lawyers Reports Annotated, Vol 51, p. 197 citing Ford-Forbes v. Hicks, 27 NEb 111, 42 N W 898 (1989) The WARRANT For the ARREST of AN ~~alleged~~ Alleged Fugitive was void because The complainant did not state That the original charge has been made upon OATH, OR made to A court AND it Afforded NO Protection to the constable.

See, Wharton's criminal law AND procedure, 12 Ed., Vol. 1 sect. 54, p. 182 (1974) citing: Go-BART Importing Co v. United States 282 US 344 (1930); Ex parte Burford 7 U.S 488, 451 (1806); Smith v Clark, 37 UTAH 116, 106 PAC 653, (1910) A WARRANT is considered INSUFFICIENT AND Thus void if, on its Face, it Fails to state Facts sufficient to constitute a Crime.

3) MOVANT Declares that his ARREST WARRANT is INSUFFICIENT AND void BECAUSE (1) it Fails to state Facts sufficient to constitute A crime (2) There IS NO SWORN COMPLAINT OR Affidavit Filed with The WARRANT to Establish probable Cause violating RULE #3 AND RULE #4 of The Federal RULES OF Criminal Procedures, see Veto GIORDENELLO V. United States 357 US 485-487; RULES # 3 AND #4 of the Federal ~~procedures~~ RULES of CRIMINAL Procedures, which provide that AN ARREST WARRANT shall be ISSUED only upon A written AND SWORN Complaint which sets Forth the essential Facts constituting the offense. Charged AND shows that there is probable Cause To Believe that such AN offense has been Committed AND that the defendant has committed It, must be Read in light of the constitutional Requirements they Implement, The language of The Fourth Amendment, that "NO WARRANT shall ISSUE, but upon probable cause supported By Oath or Affirmation AND particularly describing.... the person or things to be seized" Applies To ARREST AS well AS search WARRANTS. The protections AFFORDED by RULES 3 AND 4 OF the Federal RULES OF Criminal procedures, which provide that AN ARREST WARRANT shall Be ISSUED only upon A written AND SWORN COMPLAINT which sets Forth the essential Facts constituting The offense Charged. AND shows that there is probable cause.

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Believe that such AN offense has been committed
AND that the defendant committed it, is that the
Inferences From the Facts which lead to the
Compliant be drawn by A neutral AND detached
MAGistrate INSTEAD OF being Judged by the
Officer engaged in the often competitive
enterprise of Ferreting out crime, Under
RULES 3 AND 4 of the Federal RULES OF
Criminal procedures, Relating to COMPLAINTS Upon
which WARRANTS ARE to be ISSUED, the purpose
OF the Compliant is to enable the Appropriate
MAGistrate to determine whether the probable
Cause Required to support A WARRANT exist, AND
The MAGistrate must Judge For himself the
Persuasiveness of the Facts Relied Upon by
A complaining officer to show probable cause,
AND should not except without question
The complainant's mere conclusion that the
Person who Arrest is sought has committed
A crime; see, Also ANNE Johnson v United
States 333 US. 17 Any other RULE would
Undermine "The Right of the people to be
Secure in their persons, houses, papers AND
effects," AND would obliterate one of the
Most ~~Few~~ Fundamental distinctions between
Our Form of Government (Federal) where officers
ARE under the law, AND the police-State
where they ARE The law.

(9)

MOVANT DECLARE under the penalty of perjury
That (1) he have been ARRESTED without probable
CAUSE (2) he is held in violation of the DUE
Process Clause of the Fourteenth Amendment
AND Fifth Amendment to the United
States Constitution which provides that NO
Person shall be deprived of life, liberty, or
Property without due process of law

(10)

MOVANT Attest under the penalty of perjury
That his ARREST WARRANT is invalid because
The Fourth Amendment to the United States
Constitution provides "NO WARRANT shall ISSUE
but upon probable cause supported by oath
or Affirmation AND particularly describing the
Place to ~~search~~ Be searched, AND the person
or things to be seized

(11)

MOVANT Attest that his ARREST WARRANT does
Not comply with the criteria of the Fourth
Amendment, because it is not ISSUED upon
Probable Cause supported by oath or Affirmation
And does not particularly describe any place
To Be searched AND person or things to be
Seized. Rendering MOVANT'S ARREST WARRANT
Invalid on its Face!

(12)

MOVANT Attest this court (Supreme court) has said,
IN similar circumstance OF AN ARREST For violation
OF Federal law by State peace officers, that the
lawfulness OF AN Arrest without WARRANT is to
Be determined by Reference to State law; see,
United States V DI RE 332 US 581, 589 92
LED 210, 217 68 S Ct 222 Johnson V United
States 333 US 10, 15, 92 LED 436, 441, 68 S Ct
367, see ALSO Fisher V United States 328 US
463, 476, 90 LED. 1382, 1391, 66 S Ct 1318. in making
Reference to that law we are MINDFUL OF our
~~Policy~~ policy OF Not interfering with local RULES
OF law Fashioned by the courts of the District
OF Columbia, see, GO BART Importing company
V. United States 282 US 356. when the Application
was made no information or Indictment had
Been Found or returned against Gowen or Bartels
There was Nothing to show that Any criminal
Proceedings would ever be instituted ~~against~~ in
That court Against them.

(13)

MOVANT Attest the First clause OF the Fourth
Amendment declares: the Right OF the people to
Be secure in their persons, houses, papers AND
effects, Against unreasonable searches AND seizures
shall not be violated" it is general AND Forbids
every Search that is unreasonable, it protects all
those ~~who~~ suspected or known to be offenders
As well as The Innocent, AND unquestionably
extends to The premises where the Search was
made AND the papers taken. Could V United States
255 US 298, 307, The second clause declares.

"AND NO WARRANT shall ISSUE, but upon probable
cause supported by Oath or Affirmation AND
Particularly describing the place to be searched
AND the person or things to be seized." This
Prevents the Issue of WARRANTS on loose Vague
or doubtful bases of Fact. It emphasizes the
Purpose to protect Against all General searches.
Since before the creation of our government,
Such searches have been deemed obnoxious to
Fundamental principles of liberty. They are
denounced in the Constitution or statutes of
every State in the Union. Agnello v United States,
269 US 20, 33, 70 L Ed 145, 149, 51 A L R 409, 46
S. Ct. 4. The need of protection Against them
Is attested alike by history AND present conditions.
The Amendment Is to be liberally construed AND
All owe the duty of vigilance For its effective
enforcement lest there shall be Impairment
of the Rights For the protection of which it
was Adopted.

(14)

MOVANT ARGUES the Government in CASE No. 08
2:09-cr-20389-SHM-1 ARRESTED him using
A loose Vague AND doubtful ARREST WARRANT
with NO BASIS OF Fact, Violating due process
OF law, Furthermore Shelby County of Memphis
TN Criminal court # 09125058 Refused
To Return A TRUE Bill charging the crime
Criminal Attempt especially aggravated Robbery,
Invalidating MOVANT'S ARREST WARRANT
February 11, 2010.

, see, United States v TarlowSKI, 305 F Supp 112
(EDNY 1969); No Right is held more sacred, or is
more carefully guarded, by the common law, Then
The Right of Every Individual to the possession
And control of his own person; ~~Free~~ Free From
All Restraint or Interference of others, unless
By clear and unquestionable Authority depends
largely upon the statute or common law of
The state. Miller v United States 357 US 301
(1958) United States v DIRE 332 US 581 (1978)

Petitioner Declares whether an officer is
Authorized to make an Arrest ordinarily depends
IN the First instance on state law, Ker
v California, 374 US 23, 37, 10 LEd 2d 726,
83 S Ct 1623, 24 Ohio ops 2d 201 (1963)
Johnson v United States 333 US 10, 15
And N 5, 92 LEd 436, 68 S Ct 367 (1948)

REASON FOR GRANTING MOVANT'S
Writ OF CERTIORARI Ground Two

MOVANT ARGUES that his Initial Response to the Government
IN CASE NO08 2:09-CR-20389-SHM AND Application For
Certificate of Appealability IN CASE NO08 ~~20~~ 17-6381, petitioner
Raised claims of A Constitutional magnitude AND a denial
of due process Rights secured by the Constitution of the
United States Fifth AND Sixth Amendment; see, United
States v Booker 543 US 220 (2005); Apprendi v. New
Jersey 530 US 466 (2000); AND Blakely v Washington
542 US 296, (2004); see, Also Braxton v United States
500 US 344

Pursuant to Apprendi v New Jersey 530 US 466, 490
(2000) The Court held that Other than the Fact of A
Prior conviction Any Fact that Increase the penalty For
A crime beyond The prescribed statutory maximum
must be submitted to A Jury, AND proved beyond a
Reasonable doubt" Id. The court latter clarified
That the statutory maximum under Apprendi is
The maximum sentence that A Judge CAN ISSUE
BASED on the Facts Found By the Jury in the
Particular case, it is Not

The Absolute maximum sentence that could be imposed For the BASE crime AND any conceivable set of aggravating Factors, see, *BLAKEY v WASHINGTON* 542 US 296, 303-04 (2004) (remanding For resentencing when Trial Judge Imposed 96-month sentence For kidnapping because, Although maximum conceivable sentence For kidnapping Is 10 years, Jury did not Find Facts required to exceed 53 month sentence)

(1) MOVANT ARGUES that his sentence violates Both *Apprendi v. New Jersey* (2000) AND *BLAKEY v WASHINGTON* (2004) Because the enhancement For Attempted murder pursuant to U.S.S.G 2K2.1(c)(1), 2X1.1 AND 2A2.1(A)(2) WAS Neither Admitted by MOVANT Or proved to the Jury beyond A Reasonable doubt

(2) MOVANT ARGUES that the Attempted murder enhancement (cross reference) increased his prescribed statutory maximum OF 10 years; see, 18 U.S.C § 922(g) For Felon in possession OF A Firearm to A Guideline sentence OF 151 to 188 month sentence which Aggravated MOVANT'S Actual sentence OF Conviction

(3)
MOVANT ARGUES that the Jury verdict convicted MOVANT of Being A Felon in possession of A Firearm, in violation of 18 U.S.C § 922(g) AND made No Additional Findings of Attempted murder.

(4)
MOVANT declare that his sentence violates Blakely v. Washington 542 US 296, 303-04 Because Although The MAXIMUM sentence For Felon in possession of A Firearm is 10 years, The Jury did not Find Facts To Exceed 27 to 33 month, see, U.S.S.G 2K2.1 (A)(6) BASE offense level (14) coupled with MOVANT'S criminal history category IV yeilding A sentence of 27 to 33 month which is Far Below the Actual sentence MOVANT Received (120 month statutory maximum)

(6)
MOVANT ARGUES his Sixth Amendment Right To A Jury Trial was violated because The Sixth Amendment Requires A Jury to make all Findings of Fact; see, Apprendi v. New Jersey 530 US 466, 490 (2000) AND BLAKELY v. WASHINGTON 542 US 296, 303-04 (2004)

(7)

MOVANT ARGUES the Jury did not Find AS A "FACT"
The ~~cross reference~~ cross reference to "Attempted
Murder" which violates movant's Sixth Amendment
Right to A Jury Trial which Also deprives petitioner
of his life, liberty, and property by violating movant's
Fifth Amendment DUE process which states:
No person shall be deprived of life, liberty or
Property, without due process of law,

(8)

MOVANT ARGUES that his sentence AND conviction
RUNS A FOUL OF "Booker," Because Booker limits
A Courts discretion to enhance A defendant's
Sentence, see U.S. V Booker 543 US 220, 245-46
(2005) A Judge may consider Facts that ARE (1)
Reflected in the Jury verdict (2) ARE Admitted
by the defendant (3) ARE contained in the
defendants guilty plea, OR (4) pertains to a
Prior conviction see Id. otherwise A Jury must
Find the Facts Necessary for the enhancement
To be TRUE beyond A Reasonable doubt...

(9)

MOVANT DECLARE that (1) the enhancement of
Attempted murder WAS NOT Reflected in the
JURY verdict (2) NOR WAS the Attempted murder
Admitted by the defendant (3) NOR WAS

There ever a plea Agreement, because MOVANT WAS Found Guilty At Trial (4) nor did the enhancement of Attempted murder pertain To A prior conviction, Because MOVANT prior offense was dismissed by the GRAND Jury OF Shelby county of Memphis TN.

SEE, U.S. v Booker 543 U.S. 220 (2005) constitutional Booker errors occur when Sentencing enhancement ARE Imposed on the Basis of Judge Found Facts, under the Sixth Amendment, Any Fact Other than A prior conviction which is necessary to support A sentence exceeding the maximum authorized By the Facts Established by a plea of guilty or a jury verdict must be Admitted by the defendant or proved to A Jury beyond reasonable doubt" Id. At 244

(10) MOVANT ARGUES that he have a Booker error Because his sentence is BASED on Judge Found Facts, see, district courts denial of petitioner's 28 U.S.C § 2255 in CASE No 2:16-CV-02753 BASED on Judicial Fact Finding when in Fact MOVANT exercised his Sixth Amendment Right to Jury Trial, by Going to Trial. which deprive MOVANT

(21)

OF Both Right to Jury Trial under the Sixth Amendment, AND Notice of the Grand Jury Trial Rights of the Fifth Amendment, Because INCUBANT WAS NOT put ON Notice of the crime IN Which petitioner was punished; see, Sessions v. Dimaya (2018); 18 U.S.C §16(b) definition of A crime of violence is UNCONSTITUTIONALLY Vague, Pursuant to Taylor v. United States, 495 U.S. 575, The court must USE the categorical Approach when deciding whether AN offense is A "Violent Felony"

Looking only to the Fact that the defendant has been convicted of crimes Falling within certain categories, AND NOT the Facts underlying the Prior conviction, petitioner declares that Section 922(g) does NOT qualify As A crime of violence when USING the categorical Approach; see, King v. Morrison 231 F.3d 1094 (9th Cir 2000): NO Section of the United States code defines crimes of violence to include 18 U.S.C Sec 922(g) As A "violent crime" several Sections of the Criminal code define crime of violence

But none mentions mere possessory offenses
as falling within its purview with no note
worthy ~~examples~~ exceptions.

(1)

Movant argues that 18 U.S.C. Sec 922(g) does
not qualify as a "crime of violence" or "violent
felony" because section 922(g) does not pursuant
to 18 U.S.C. Sec 16(A) has as an element the
use, attempted use, or threaten use of physical
force against the person of another, and pursuant
to 18 U.S.C. § 16(b) in light of Sessions v. Dimaya
(2018) is unconstitutionally vague for failure
to notify defendants of the crime or conduct
it punishes; see, Alphasus 705 F.3d 111.
which held pursuant to the Fifth Amendment
of the United States Constitution, no person
shall be deprived of life liberty or property
without due process of law. The void for
vagueness doctrine requires that a statute
defines the criminal offense with sufficient
definiteness that ordinary people can understand
what conduct is prohibited and in a manner
that does not encourage arbitrariness.

And discriminatory enforcement Id

Pursuant to BRAXTON V UNITED STATES (Although
A MURDER MAY BE COMMITTED WITHOUT AN
INTENT TO KILL, AN ~~INTENT TO ATTEMPT~~ ATTEMPT
TO COMMIT MURDER REQUIRES A SPECIFIC
"INTENT")

(12)

MOVANT ARGUES THAT BECAUSE THE PROSECUTOR
NEVER MENTIONED ATTEMPTED MURDER TO THE
JURY OR PROVED AN "INTENT" TO KILL WHICH
IS THE REQUIRED "MENS REA" OF "ATTEMPTED
MURDER" IN NOT DOING SO THE PROSECUTOR
NEVER PROVIDED THE COURT OR THE JURY
WITH THE REQUIRED NEXUS NEEDED TO CONVICT
MOVANT OF BEING A FELON IN POSSESSION
OF A FIREARM

(13)

MOVANT ARGUES FOR THE REASONS STATED
HEREIN THAT HE IS ACTUALLY INNOCENT OF
TITLE 18 U.S.C § 922(g) AND UNITED STATES
SENTENCING GUIDELINES 2K2.1(c)(1), 2X1.1
AND 2A2.1(A)(2)

(14) MOVANT ARGUES that during Trial the prosecutor proved through witness testimony that movant ~~had~~ ^{had} an intent to "Rob", (Not) an "Intent" To Kill or commit murder, see, Both Victim and witness Testimony in trial Transcript, Also see (PSR) offense conduct.

According to the presentence Report MOVANT Attempted to Rob John Novotny while Armed with a Revolver when Novotny threw two liquor bottles At ~~the~~ MOVANT AND RAN Away, petitioner shot him in the Back, Novotny was then transported to the hospital in critical condition, and officers identified Jones as a suspect, MOVANT's ~~girl~~ girlfriend Reported to the police that MOVANT had Told her that he had shot a man he had "Attempted" to "Rob"

(15) MOVANT ARGUES that it never was a mental state to commit an attempted murder From The offense conduct as show in petitioner's (PSR) ~~or~~ an "Intent" to commit murder proved to the jury which is the Required Mens Rea for attempted murder.

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AND The Required Nexus needed to put
Petitioner in possession of A Firearm . . .

(16)
MOVANT ARGUES THAT THE FOURTH AMENDMENT PROVIDES THAT "NO WARRANT SHALL ISSUE BUT UPON PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRMATION, AND MOVANT ARGUES THAT HIS ARREST WARRANT IS ISSUED "WITHOUT PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRMATION" WHICH COMPLETELY VIOLATES THE FOURTH AMENDMENT."

(17)
MOVANT ALSO ATTEST AND CLAIM THAT THE FEDERAL GOVERNMENT ALONG WITH THE DISTRICT ATTORNEY ARRESTED PETITIONER WITHOUT PROBABLE CAUSE VIOLATING DUE PROCESS OF LAW OF THE FIFTH AMENDMENT AND FOURTEENTH AMENDMENT, WHICH PROVIDES NO PERSON SHALL BE DEPRIVED OF LIFE LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW.

FUTHERMORE, SEE, STRICKLAND V WASHINGTON 466 US 668, 687 (1984) CLAIM FOR INEFFECTIVE ASSISTANCE OF COUNSEL MUST SHOW THAT THE COUNSEL'S PERFORMANCE WAS DEFICIENT AND ~~errors~~ errors prejudiced defense to evi .

That petitioner was deprived of A Fair Trial.

(18) MOVANT ARGUES that his counsel performance Fail Below standards by violating movant's Sixth Amendment Right to Jury Trial By Failing to object to the prosecutor's misconduct, Because the prosecutor Failed to prove the "Burden of proof Required which is the "Mens Rea" element of Attempted murder "which is the "intent" Required to proved "Attempted murder" AND Required "Nexus" To put petitioner IN possession of a Firearm

(19) MOVANT ARGUES had his counsel Been effective petitioner would not have Received a statutory maximum of 120 month sentence, movant ARGUES instead he should have Been Acquitted through Actual Innocence of the cross reference of Assault with "intent" to commit murder; see, 2K2.1(c)(1), 2X1.1 AND 2A2.1(A)(2) AND 18 U.S.C § 922(g) charge AND conviction.

(20)
MOVANT ALSO ARGUES PROSECUTORIAL MISCONDUCT
AND DUE PROCESS VIOLATION BECAUSE PURSUANT
TO THE UNITED STATES SENTENCING GUIDELINES
2K2.1 (C)(1) WHICH PROVIDES: IF THE
DEFENDANT USED OR POSSESSED A FIREARM
IN COMMISSION OF A CRIME OF VIOLENCE
THE DEFENDANT SHOULD BE CROSS REFERENCED
TO THAT OFFENSE...

(21)
MOVANT ARGUES THAT THE PROSECUTOR NEVER PROVED
DURING TRIAL THAT PETITIONER USED OR POSSESSED
A FIREARM DURING THE CROSS REFERENCE TO ASSAULT
WITH INTENT TO COMMIT MURDER THEREBY MAKING
PETITIONER ACTUALLY INNOCENT OF UNITED STATES
SENTENCING GUIDELINES 2K2.1 (C)(1), 2X1.1
AND 2A2.1 (A)(2)

MOVANT ARGUES THAT THIS COURT SHOULD CONSTRUCT
THIS HONORABLE WRIT OF HABEAS CORPUS PURSUANT
TO HAINES V KERNER 404 US 519, 520-521 (1972),
PREPARE LITIGANTS PLEADINGS ARE TO BE CONSTRUED
LIBERALLY AND HELD TO A LESS STRINGENT ^{STANDARD} THAN
FORMAL PLEADINGS DRAFTED BY LAWYERS....
MOVANT MOTIONS THE COURT TO HOLD THIS
PREPARE PLEADINGS TO SUCH STANDARD OF
HAINES V KERNER 404 US 519, 520-521 (1972)

(22)
MOVANT ALSO ARGUES IN LIGHT OF SESSIONS V DIMAYAN
(2018) TITLE 18 U.S.C § 16(b) IS UNCONSTITUTIONALLY
VAGUE, THEREFORE MAKING IT UNCONSTITUTIONAL
TO AGGRAVATE MOVANTS NON VIOLENT OFFENSE
; SEE, 18 U.S.C § 922(c) WITH A ~~NON~~ VIOLENT
OFFENSE; SEE, ATTEMPTED MURDER CROSS-REFERENCE,
2K2.1(c)(1), 2X1.1 AND 2A2.1(A)(2)

CONCLUSION

RELIEF SOUGHT : (1) Affirmative Relief
(2) Immediate Release
(3) Judgement in Trespass

Entered in FAVOR OF PLAINTIFF
IN CASE NO^o 18-CV-2558-SHM

(4) Petitioner Respectfully ASK
This court to ISSUE A certificate
OF ACTUAL INNOCENCE.

x *[Signature]*
signed under penalty of
PERJURY

DATED : 10-8-18