

18-7151 ORIGINAL
No. _____

Supreme Court, U.S.
FILED
JUL 29 2018
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Curtis Mulhern — PETITIONER
(Your Name)

vs.

The Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Pennsylvania Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Curtis Mulhern
(Your Name)

SCI Waymart Carbondale rd. P.O. Box 256
(Address)

Waymart, PA. 18472
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

Did law enforcement conduct become constitutionally unacceptable where government agents and their confidential informant essentially engineered and directed the criminal enterprise from start to finish of carrying a firearm without a license . Generation of new crimes merely for the sake of pressing criminal charges against the defendant also constitutes outrageous government conduct, at least where the government essentially manufactured the crime from start to finish. Especially where reverse sting operation for carrying a firearm for purposes of sale is dependent upon a standard of probable cause with a totality of circumstances scenario, not so far reaching into violation of second amendment latitude that afford lawful conduct and lawful travel based upon specifically the circumstances surrounding petitioners case and the circumstances involved that the artful and designing minds at the Lackawanna County Courthouse damage controlled so much of the truth determining process from start to finish that a gross miscarriage of justice stopped the petitioner from asserting constitutional errors and violations at trial and warrant new trial or sentence vacated and set aside for purposes of the ends of justice.

Should indictment against petitioner be dismissed due to outrageous government conduct and due process violation's involved in petitioner's case rise to this defense rather than the defense of entrapment which does not present to the jury the known characteristics of the defendant, the individualized suspicion of the defendant and the government's role in creating the crime of conviction and the governments on going encouragement of defendant through derivative entrapment via the confidential informant to commit the offense conduct and the nature of the government's participation in the offense conduct and finally the nature of the crime being pursued and necessity for the actions taken in light of the nature of the criminal enterprise at issue, in which in this instant case, law enforcement were acting on a hunch and trolling for anything the confidential informant could dig up and concoct together.

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:

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Statement of the case

The Thames Arms revolver is an Antique Firearm Pursuant to Pennsylvania statute, 18 Pa C.S.A. 6118 and 18 U.S.C.S. § 921 (a) (3), (a) (16) . Petitioner was arrested and in possession of Serial no."8904" . Such said Antique firearm is not a .32 caliber it is in fact a .32 special. A .32 special will not with success fire through a .32 special. A .32 special is somewhere between a .25 cal. and .32 cal. In other words ;

.32 special < .32cal.



Thereby making an obsolete ammunition known as "Kurz" style the only special type of ammunition for petitioners firearm. Petitioner was arrested with such said type of ammunition satisfying the legal requirements in 18 Pa C.S.A. 6118 and 18 U.S.C.S. § 921 (a) (3), (a) (16). A regular .32 cal. bullet may or may not in the first round fired, lodge a blow apart the barrel, but by the 100th round fired will blow apart the barrel. Petitioner was denied defense firearm's expert witness to provide an affirmative defense for the jury to hear of these constitutional guarantee's affirming our second amendment we enjoy in our United States Constitution. Such was trial counsels ineffectiveness, and his reliance that since he was in cahoots with the prosecution he could cow the petitioner into not taking the stand and asserting this thereby waiving the fact that the firearm was not a firearm for the purposes of the prosecution he was found guilty of. The jury had not this crucial information in front of them whereby rendering prosecutorial misconduct apparent when such evidence of fact was swept under the rug due to petitioner being incarcerated since August 31st , 2015 and excessively high bail stopped him from getting a hold of the incontrovertible evidence he speaks of here and offering it to the magistrate, he had to rely on ineffective counsel Joseph P. Kalinowski esquire.

The Thames Arms company has a website which petitioner would have loved to be able to furnish at preliminary hearing along with case;

Norman Cyprus vs. Richard Diskin, 936 F. Supp. 259;

civil action no: 95-1573 .

18 Pa.C.S.A. 6111, was the predicate based offense of investigation against petitioner involving suspected criminal activity which was the totality of circumstances which are the probable cause standards which were not detailed by oath or affirmation in the satisfying the (4) four corners of the affidavit laying out veracity and reliability in the magistrates decisions. They tried like hell to get me to waive my preliminary hearing and take a plea deal, for reasons which will soon be outlined within this petition.

The officer memorandum for wire communication interception plays a central role in proving that law enforcement sent out an untrained C.I. and had him troll the streets roving around looking to create and manufacture crime for the sake of pursuing convictions.

Attorney Kalinowski did not bring to objection , the reality lack of , or non-existent " memorandum of approval " for wire communication interception. It does nevertheless actually play a central role in arguing that the Commonwealth has not fulfilled their own burden of proof, by not satisfying the four corner's of the affidavit and their own legal requirements in the wiretap act. However, furthering the unfulfilled burden, the Commonwealth failed to prove every element of 18 Pa. C.S.A 6111 (g) , by failing to prove petitioner violated 18 Pa.C.S.A 6111 (e) , which is the central point of contention – 18 Pa. C.S.A. 6111 (e) non applicability of section essentially is an annotated version of 18 Pa. C.S.A. 6118 Antique firearms and 18 U.S.C.S. § 921 (a) (3), (a) (16), and such can be illustrated in the memorandum of approval that is non-existent and also the officer memorandum which was performed 2 days after the arrest of the petitioner, in direct violation of the laws of the Commonwealth and of the United States of America.

Petitioner was arrested August 31st, 2015 at 01:00 A one (1) party consent phone call was testified to as being utilized , however no such proof of such exist other than the subornation of perjury committed by the C.I. and the District Attorney whom the burden falls upon to make a showing that all proper procedure was followed, which it was not and bourne out about the subornation of perjury of the C.I. by the District Attorney as follows:

- 1: officer memorandum
- 2: memorandum of consent
- 3: memorandum of approval
- 4: memorandum of intercept

All of the above are in chronological order of appearance or order of issuance required by the chapter 57 THE WIRETAP ACT. However , memorandum of approval was never issued and the logic of exhibit titled “ writ of mandamus” will suffice to show this could have never ever taken place nor was the operations in the fruit of the poisonous tree evidence gathering process concerning the carrying of a firearms without a license by the petitioner was illegal by the police and the suppression by the district attorney’s office. Such is a Brady violation. There are these 4 (four) separate documents which must be executed with due diligence, number 3 could have never been issued because number 1 was dated at 09/02/2015 which is the officer memorandum thereafter the next logical step is to have the C.I. sign the consent paper, which is number 2 . Then therefore the district attorney must state within number 3 the voluntariness of the C.I. to have a consensual phone call made and then date such. Petitioner was arrested August 31st, 2015 not September 02nd , 2015 so the district attorney’s memorandum of approval must reflect the August 31st , 2015 date if he was arrested on that date, however in petitioners case the error is fatal flaw and fruit of the poisonous tree, unless the district attorney has a time machine in Lackawanna County.

An operative fact is that no magistrate would touch the jurat or affix his seal thereupon an order for wiretap in the circumstances surrounding the petitioners case. Reason being , no investigative officer before 12:25

p.m. nor a district attorney or appointed designee of the district attorney could demonstrate sufficient probable cause that a reasonable suspicion manifested itself so much so as to rise to the level of criminal activity because petitioner was at his home with the firearm and not to the level of criminal activity being afoot or in the future but for the creative artful deception that the police foisted upon the petitioner. If all the had to base this was the confidential informant, who in reality is nothing more than either a talking head or straw-man with reliability and veracity equivalent to that of an anonymous tip or mere prank. Independent corroboration of future criminal acts were not satisfied by officers hunch or mere suspicion for a Terry stop and frisk based off informants tip or documented previous criminal conduct of the same type, or any for that matter, criminality of any sort since for all they testified to knowing is that petitioner was and had remained at his home at all times. The C.I. had no veracity and reliability outlined in the affidavit detailing previous dependable information provided in which successful subsequent arrests based the informants tips had deterred past criminal investigations, especially since no corroborative evidence existed concerning the fact that the body wire was also Brady material calling for a new trial because it as such was requested as either exculpatory or inculpatory .

The legislative intent behind , 18 Pa. C.S.A. 5704 (2) (ii), is that rather than have investigative officers and district attorneys knocking down the judges door looking to obtain search warrants. It's easier to leave certain crimes involving investigation into threats to life ,liberty, and property as well as certain enumerated crimes to the district attorneys discretion to authorize wiretaps as long as they are in accord with the constitution and federal wiretap act to have either equal or less restrictive than the federal, to go ahead and conduct them. Carrying a firearm without a license and sale of a firearm (by someone who is not a convicted felon and has no federal firearm disabilities under 18 U.S.C.S. § 922(g) or the Pennsylvania equivalent 18 Pa. C.S.A. 6105) is not one of these enumerated or potential threats.

19 050

Furthermore the antique exception clearly show's it's a high threshold to pass when 18 Pa. C.S.A. 6111 , 18 Pa. C.S.A. 901 , when the crime is incomplete. Other than selling to 18 U.S.C.S. § 922 (g ,) or, 18 Pa. C.S.A. 6105 persons with such firearms disabilities , for all practical purposes sale of antique firearms is lawful to do wherever whenever.

Finally, petitioner was not accorded the same overt constitutional guarantee of having the magistrate drop the charges for lack of probable cause, as, Magistrate Catherine Hummel did for *Norman Cyprus*, based solely on the antique status of the firearm alone ,{ 936 F. sup. 261}. However the magistrate tried like hell to make me waive the preliminary because of all the fatal flaws in the affidavit and supporting papers which had no signatures , times , dates signatures for the jurat's nor seals in the appropriate time . There was no swearing or comparable method to check the validity of such by the officers upon issuance of the arresting criminal complaint and the statutes and rules therefrom were defect by fatal flaw and should be granted FRANKS hearing, or case dismissed , remanded for retrial , or absolved and the following are the rules of which are, Pa. R.C.P., 103, 504, 507, 508, 560, (B).

Therefor reading (appendix A), (writ of mandamus to PA. Supreme Court), you will see why the lack of signatures and railroading occurred. So much so in taking guidance from the *CYPRUS* case , it is clear, that by U.S.C.§ 921 (a) (3) (20) (16) petitioners gun is not this, and U.S.C.§ 923 (d),(1), (B), the firearm petitioner was found with, matches this exception. The conduct in which the government invented, was actually within legal conduct according to, statute 27 CFR § 478.11, 478.50, 478.93, but not 478.100, that is the clear cut crime of solicitation by evidenced from the recorded phone call and trial that petitioner can illustrate the Lackawanna county district attorney's office violated by soliciting the petitioner.

Whereby the Petitioner is Curtis Mulhern. By Criminal Complaint, the Petitioner was charged, on or about August 31st, 2015, with violating the following provision of the Crimes Code : sale and transfer of firearms (18 Pa. C.S.A. § 6111 (g) (1)) ; firearms not to be carried without a license (18 Pa. C.S.A. § 6106 (a) (1)); criminal use of a communication facility (18 Pa. C.S.A. § 7512 (a)); and possession of a controlled substance with intent to deliver (35 Pa. C.S.A. § 780-113 (a) (30)). Following a preliminary hearing, on November 19, 2015, all charges were bound over for court.

The Commonwealth, on December 23, 2015, filed a Criminal information comprising the above mentioned crimes. In addition 18 Pa. C.S.A. § 901 criminal attempt to commit illegal sale or transfer of firearms (18 Pa. C.S.A. § 901 and 18 Pa. C.S.A. § 6111 (g) (1)).

Again on April 11, 2016, the Commonwealth filed an amended Criminal Information. The charges in this Information included firearms not to be carried without a license (18 Pa. C.S.A. § 6106 (a) (1)) and criminal attempt to commit

illegal sale or transfer of firearms (18 Pa. C.S.A. § 901 and 18 Pa. C.S.A. § 6111 (g) (1)).

On April 13, 2016, the Petitioner proceeded to trial on these two counts. The Petitioner was convicted of both counts. The Petitioner was then sentenced, on September 1, 2016 to a term of incarceration of 20 – 40 months on Count 1 and on Count 2 he received 1 year special probation, consecutive to Count 1.

At all times relevant hereto, the Petitioner remained incarcerated either at a county facility or a state facility. Consequently, he could not personally deliver his filings to the Clerk of Judicial Records or to the trial court but, rather had to mail the documents. Therefore, the prisoner mailbox rule applied.

Though the Petitioner was represented by the Public Defender's Office of Lackawanna County, on September 16, 2016 he filed a pro-se Notice of Appeal. This Notice of Appeal was docketed before the Superior Court at 1546 MDA 2016.

Thereafter, the court remanded the matter back to the trial court for a *Grazier* hearing. At that point Attorney Robert M. Buttner , Esquire I.D. 63368 was appointed counsel on November 4, 2016.

On October 18, 2017, a panel of the Superior Court affirmed the Defendant's judgement of sentence, finding that the trial court had not erred.

Whereupon on November 11, 2017 Petitioner filed for a Petition for Allowance of Appeal. The Petition was summarily dismissed on April 30, 2018 by the Pennsylvania Supreme Court.

90 days for which to file for a writ of certiorari ends on July 29, 2018. However a petition for extention was filed on June 30, 2018 but not responded to, because in appendix 3 this such petition was requested by petitioner and received October 26th,2017 by Petitioner with the address from the United States Supreme Court as follows :

Supreme Court of the United States

Washington, D.C. 20543-0001

not using the address first used because of a formality, ostensibly, in favor of preference by the Court , incorrectly judged by Petitioner to be so , correct address is as follows ;

Supreme Court of the United States

1 1st street

Washington, D.C. 20543-0001

wherefore within the scope of due diligence such request be granted nunc pro tunc, for the purposes outlined in the petition for an extension of time . Also relevant is the Petition 18 U.S.C.S. Habeas Corpus in the Middle District of Pennsylvania Federal Court, pending matter which petitioner is seeking tolling for , pursuant to the federal rules of procedure.

Reasons For Granting the Case

Summary of the Facts

Vincent Hutchinson, a heroin addict for over 17 years, was arrested in 2008 for receiving stolen property and many times thereafter including crimes involving his daughter as decoy and artifice and stratagem , but not limited to, subsequently , possession of drug paraphernalia in 2013. (NT, 4/13/16, p.32). Sometime in 2014 he befriended Detectives Conrad and Zech, who helped him onto the road to sobriety. (NT, 4/13/16 p. 34). From Mr. Hutchinsons perspective, the detectives not only saved his life, but, also became his friends . (NT, 4/13/16 p. 47). About the same time, Mr. Hutchinson began working as a confidential informant for the detectives, in exchange for having any charges that he may face reduced and, if no charges were to be reduced, in exchange for money. (NT, 4/13/16 p. 33).

Mr. Hutchinson, who was paid for all of his informant work, became acquainted with the Petitioner in 2014, when the petitioner moved into a the home right next door. (NT, 4/13/16 p. 35-36). Through this acquaintanceship, Mr. Hutchinson became aware that the petitioner was also an addict. (NT, 4/13/16 p. 35-36,58) Mr. Hutchinson also knew that the petitioner was the legal owner of a

firearm. (Id). Knowing that the petitioner was an addict and owned a firearm , Mr. Hutchinson who claimed that the petitioner had attempted to purchase heroin from him, but not trade a firearm, saw an opportunity and went to his friends, the Detectives, because the Petitioner was looking for heroin. (NT, 4/13/16 p.59).

On August 29, 2015 Mr. Hutchinson made his first attempt to contact the detectives, who did not return contact with him until August 31, 2015 (NT, 4/13/16 p. 59). Although the detectives did not immediately get in contact with Mr. Hutchinson, he made it a point not to allow the petitioner to fall out of contact , but made sure to remain in the good graces of petitioner and petitioner's wife, so that he could effectuate that the petitioner attempted to sell the firearm according to the detectives script. From Saturday, August 29, 2015 through the date of arrest, August 31, 2015, Mr. Hutchinson made sure that he was hanging out with the Petitioner and told him that he knew of a person to whom the petitioner could sell his firearm to whom had a museum and business in dealing antique firearms and curio and relic firearms . (NT, 4/13/16 p. 35, 58,114). Petitioner believed that he would be legally selling the firearm to an individual who was a collector of firearms, but, also dealt heroin. (NT, 4/13/16 p.114).

On Monday morning, August 31, 2015, again Mr Hutchinson made sure that he was in the presence of the petitioner at his home, after he told the petitioner that he would bring the dealer to him, Hutchinson was finally contacted in the afternoon, by his friends Conrad and Zech. (NT, 4/13/16 p.39-42). This call was recorded. (Id)

Following the instruction given to him by the detectives, Mr. Hutchinson directed the petitioner to put the firearm in a backpack and informed him that they would meet and then walk several blocks together from the area where the petitioner lived. (NT, 4/13/16 p. 44). Hutchinson then instructed the petitioner that, when they reached the meeting place, he would go to the other individual's vehicle for the purposes of a pre-informed judgment in mens-rea that would result in the legal trade and transfer of the antique firearm in exchange for heroin then leave the area. (NT, 4/13/16 p. 44, Commonwealth exhibit #3). According to Mr. Hutchinson, he had to convince the Petitioner to put the gun in a backpack because the petitioner did not want to walk down the street with it and ostensibly wanted to put it in his waistband. However, review of the testimony and the telephone call is devoid of the petitioner's insistence and instead, reflects that Mr. Hutchinson simply instructed the petitioner to put a firearm in a back pack, which the petitioner did not challenge (Commonwealth Exhibit #3).

However during the second set of instructions which changes the circumstances surrounding the operative facts relating to the theory that petitioner asserts in that, he was led by a carrot at the end of a stick essentially, one need only look at the disparity between the official trial court record and the actual- real time recording in the courtroom, and it becomes clear as day, that the district attorney did in fact commit prosecutorial misconduct. He did this by not letting the full uninterrupted phone call play through for the jury to hear, he picked and chose what portions he wanted heard, in particular when during the second set of instructions, petitioner can be heard stating " I won't do that for you", this is a fact, however, during this portion while the commonwealth played it for the jury the district attorney did obfuscate, stop, speak over, the small portion of the tape when petitioner did utter this indecision which would have changed the outcome of the trial by putting reasonable doubt into the jury's mind

After this call was made, the petitioner did not leave his home to meet Mr. Hutchinson ; rather Mr. Hutchinson was transported by the detectives to a nearby vicinity, where he walked to the petitioners home to meet him. Although the detectives gave Mr. Hutchinson a recording device , that recording device malfunctioned and, therefore, there was no recording made of that interaction between petitioner and Mr. Hutchinson following this point (NT , 4/13/16 p.86-87).

Subsequent to meeting the petitioner, the two began walking down Sanderson Avenue, to the spot arranged for the meeting by Mr. Hutchinson, the petitioner did not feel right about the transaction and began doubting the representations made by Mr. Hutchinson. As a result , he changed his mind, stepped into a parking lot of a local business and began walking in the opposite direction of the designated meeting point.

(NT, 4/13/16, p. 119 and 122). The petitioner's original decision to sell the firearm was based upon Mr.Hutchin's representation that the individual with whom the would be

meeting was an actual collector of firearms with the appropriate license. (NT, 4/13/16, p.122).

When the petitioner decided not to go through with the sale, and began walking in the opposite direction, he was advised by Mr. Hutchinson that if he did not go through with the transaction, the buyer of the firearm would hurt or harm Mr. Hutchinson's daughter. (NT, 4/13/16, p.122). Based upon this representation and believing it to be actual, the petitioner choosing between two evils, went along with Hutchinson so that the sale could go through and Mr.Hutchinson's daughter would not be harmed. (NT, 4/13/16, p. 122-123).

When they reached the designated point, the petitioner was stopped and hand cuffed by the Dunmore Police. (NT, 4/13/16, p. 77). The detectives searched the petitioner and the backpack and recovered a THAMES ARMS revolver , which was unloaded and in a sock. (NT, 4/13/16, p.77). The detectives also recovered five rounds from a different compartment of the backpack. (NT, 4/13/16, p. 77).

Though Mr. Hutchinson was also handcuffed and taken into custody, he was immediately released and, then paid \$50.00 for his facilitation of luring the petitioner to sell his firearm.

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 _____ 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 _____ 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 1 to the petition and is

- reported at 783 MAL 2017; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Pennsylvania Superior Court court appears at Appendix 2 to the petition and is

- reported at See Superior Court I.O.P. 65.37; 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 _____.

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: _____, 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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was P.A. Supreme.
A copy of that decision appears at Appendix 1.

A timely petition for rehearing was thereafter denied on the following date: None, 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).

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DEFENDANT, Appellant

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19 U.S.C. § 922 (g) *p. 10,* *p. 10,*

19 U.S.C. § 923 (d) (1) (B) *p. 10,*

27 CFR § 478.11, 478.50, 478.93, 478.100

27 U.S.C.A § 27.01, 27.02, 27.03, 27.04, 27.05

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STATUTES AND RULES

18 Pa. C.S.A. § 901 (a) , (c)(1)

18 Pa. C.S.A. § 6106 (a)(2) , (b)(8)

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18 Pa. C.S.A. § 5713 (a),(b)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. Amendment I

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 of affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Amendment IV.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Amendment VIII.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. Amendment IX.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Amendment XIV , section 1.

Conclusion

In conclusion this petitioner prays the Honorable Supreme Court Justices see this writ of certiorari with "both eyes open", one eye focusing on the scope of *ILLINOIS v. GATES*, 462 US 213, 76 L ED 2D 537, and the other on subject matter jurisdiction requiring reversal or dismissal or new trial, parsimoniously challenging the trial court errors with cases such as ones dealing with due process violations amounting to the equivalent of the entrapment defense, *UNITED STATES v. BLACK*, 733 F.3d 294, upholding the judgment of the district court. However, due to the Brady violations amounting to warrant of review in cases like *UNITED STATES v. CHARLES LATHAM, JR.*, 874F.2D 852; they remanded for a new trial, because the lack of recording, specifically the body wire or body recorder which in the case of *BLACK* operated at all times and was the basis of the concurring opinions of that panel. Lest we not forget Judge NOONAN and his opening prayer upon the court in his dissent, quote; "Lead us not into temptation", like in Petitioner's case is the overall arch, whereby relating the *LATHAM* case with Petitioner's case in the demand for a new trial for if the recording devices in *BLACK* had malfunctioned then the 9th circuit would have all agreed with Justice

NOONAN, but in *LATHAM* he was essentially caught in flagrante delicto and had his case remanded for new trial on the missing recordings alone, which like petitioners, was requested, and withheld from defense, or not supplied and the trial court erred, amounting to Brady violations like in *BRADY v. MARYLAND*, 373 US 83, 10 L ED 2 d 215, 83 Ct 1194, (see appendix # B). Which is, what is the case by case circumstance in petitioners instant writ for certiorari on Brady violations pertaining to the other cases which apply to this case prosecuted upon petitioner in railroaded fashion because they had to skirt constitutional requirements in order to get that consensual phone call for prosecuting a case which by sheer virtue of understanding *NORMAN CYPRUS v. RICHARD DISKIN*, 936 F. Supp. 259; 1996 Dist. LEXIS 9212, Civil Action No. 95 1573, is not even a crime due to the antique status of the firearm alone and needs such discretionary review as was done in *CYPRUS'* case, because the police for lack of a better term and no pun intended "jumped the gun", on violating his rights and arresting him which could be seen again in petitioners instant case and in relation to the *GATES* case as "lawful conduct" or "innocent behavior". Petitioner had the antique firearm unloaded and in a secure wrapper as is required by 18 Pa. C.S.A 6106, (b) (8) as at least following the statutory command as is required for sales of purpose if one is not a licensed carrier as was petitioner and is required in further a

defense in the statutory language of 18 Pa. C.S.A. 6111 (d). Then in 18 Pa. C.S.A. 6111 (e) non applicability of section, essentially a reiteration which applies to petitioner's antique firearm in 18 Pa. C.S.A. 6118 as well, is essentially a loophole in which petitioner was precluded from having put into the jury's province, by ineffective counsel and prosecutorial misconduct and judicial misconduct, because when petitioner tried to cite as cumulative evidence defense, the starting point of 18 Pa. C.S.A. 6106 (b) (8) (NT, 4/13/16 p. 126-127), (contrary to what the official court reporter who also was co-opted says in her transcripts, again the real-time recordings of the actual events in the courtroom that took place that trial day differ from one another and are playing a trick on you). It was in fact Michael Ossont the District Attorney who answered for the court and it was Judge Margaret Bisignani Moyle who had her words redacted from the transcripts when she stated, quote; " Not now sir, not now later, later". After Ossont took it upon himself to do the Courts work, then later to lie about it, and pretend it never took place in her 1925 (b) court opinion as found cumulatively in (appendix #C). All was to fool you. Black Magick. Go ahead listen for yourself. Judicial misconduct.

Another point on the prosecutorial misconduct is the blatant perjury the Officer Conrad committed or was suborned into committing by the prosecutor, either way the Commonwealth is to be held responsible. Look at (NT, 4/13/16 p. 84-86) and also (Notes from preliminary hearing, 11/19/2015 p. 08, they clearly are contradictory and used later at trial to the negate the entrapment defense that petitioner asserted at trial because had the jury had the information that the detectives ran his name beforehand like stated in the preliminary transcripts than a different outcome would have resulted at trial, such has documentary incontrovertible evidence available, in (appendix ^G). It can be illustrated that the Lackawanna Central Processing Booking report came out of the calibrated and itemized at central repository real-time printer, in Harrisburg, state police building on, August 29th, 2015 not the date of arrest, also the JNET request which is also itemized and accounted for shows that the database in which has licensing photos and status was run before 01:00 p.m., again in (appendix ^G).

Therefore JAY C. SMITH v. JOHN J. HOLTZ, 30 F. Supp. 2d 468, 1998 U.S. Dist.

LEXIS 19717, states ;

“The exculpatory nature of evidence is not difficult to discern. the evidence favors the defendant in criminal proceedings, as by directly supporting the defendant’s non-involvement or by supporting a theory of the case inconsistent with the prosecution’s, it is exculpatory”.

The petitioner took the stand in his own defense purporting a theory different than the prosecutions , and with the body recorder missing but which was stated in the affidavit of probable cause as being existing and in the preliminary hearing. (Notes from preliminary hearing, 11/19/15, p.11), and (appendix C). When you look at (pre- trial conference notes, 04/01/16, p. 02) such Brady material was requested , albeit not for lack of surprise the transcript uses the term “body recorded “ however the tape recorder will reflect the term “ body recorder”, that is what was said in court, *UNITED STATES OF AMERICA v. MUZUMAL CHAUDHRY, 850 F. 2D 851; US. App. LEXIS 9354; 26 Fed. r. Evid. Serv.. (Callaghan) 547*, spells out how petitioner in the instant case has been having the trial court pull the wool over the high appellate court’s eyes, by making slight changes to the recordings transcript’s, giving them room for plausible deniability defenses if they were to review the case de-novo ,however the facts are the facts, and what

petitioner states by penalty of perjury that all contained herein this writ of certiorari is in fact , a fact.

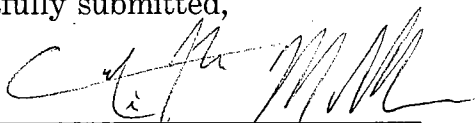
As in , *UNITED STATES v. DAVIS*, 2014 U.S. Dist. LEXIS 83177, CASE NO. 8:13-cr- 18 - T - 23TBM, had defendant there not been 19 U.S.C. § 922 (g) , unlike petitioner in this instant case, then a conviction could not have been had in that case for a mens-rea guilty mind defense been asserted, unlike with petitioners. *DAVIS* is a close second and petitioners case makes the mark desired in *DAVIS*.

UNITED STATES v. TWIGG, 588 F.2d 373 (3d Cir. 1978), is example of most quoted case law when it comes to government supplying the idea and the needed know how to commit the crime in which they were entrapped to commit in due process violation, the parallel in that case with petitioners and quoting *SHERMAN v. UNITED STATES*, 356 US 369, 2 L ED 2d 848, 78 S Ct 819, " human nature is weak enough and sufficiently beset by temptations without government adding to them and generating crime." Here petitioner was not predisposed to commit the crimes as charged and petitioner was never ,has never shown any indica or predisposition of illegal sale of firearms , or illegal carrying of such.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 28th, 2018