

UNITED STATES OF THE SUPREME COURT  
PETITION FOR WRIT OF CERTIORARI

Tavis Houpe

v.

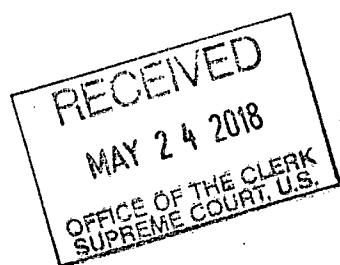
United States of America

No. 17-6965

Last Ruled In The United States Court of Appeal  
For The Fourth (4th) Circuit

Tavis Houpe

Federal Prison Camp  
P.O. Box, 725  
Edgefield, SC 29824



UNITED STATES OF THE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Question Presented

Was the petitioner Fourth(4th) Amendment rights violated due to a search and seizures?

Was the petitioner Fourteenth(14th) Amendment rights violated due to newly discovered evidence?

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**LIST OF PARTIES**

United States District Court For The Middle District of North Carolina

Catherine C. Eagle	District Judge
Micheal Francis Joseph	Assistant U.S. Attorney
Terry Micheal Meinecke	Assistant U.S. Attorney
Angela Hewlett Miller	Assistant U.S. Attorney
John Carlyle Sherrill III	Defendant Attorney
Tavis Houpe	Defendant

United States Court of Appeal For The Fourth(4th) Circuit

Wynn	Circuit Judge
Thacker	Circuit Judge
Hamilton	Senior Circuit Judge

UNITED STATES OF THE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Opinion

For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district Court appears at Appendix B to the petition and is unpublished.

Jurisdiction

For cases from federal courts:

The date on which the United States Court of Appeals decided my cases was November 28, 2017.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 19, 2018, and a copy of the order denying rehearing appears at Appendix C.

UNITED STATES OF THE SUPREME COURT

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MISCELLANEOUS MATERIAL

For cases from federal courts:

The dates of which the lab report was produce: March 31, 2016, and consist of item 1 at Appendix D.

The date of which the lab report was produce: April 06, 2016, and consist of item 1,2,3 at Appendix E.

The report and recommendation of the magistrate Appendix F.

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IV Jurisdiction

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Appendix A Opinion Of The United States Court Of Appeals

Appendix B Opinion Of The United States District Court

Appendix C Jurisdiction( Court of Appeals)

Appendix D Laboratory Report March 31, 2016

Appendix E Laboratory Report April 06, 2016

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TABLE OF CITED:

4                   Brady v. Maryland 373 U.S. 83, 10 L.ed2d 215, 83 S. Ct. 1194

3                   Class v. United States No. 16-424

2                   Elkins v. United States 364 U.S. 206, 4 L.ed2d 1669, 80 S. Ct. 1437

4                   Kyles v. Whitley 514 U.S. 419, 131 L.ed2d 490, 115 S. Ct. 1555

2                   Mapp v. Ohio 367 U.S. 643, 6 L.ed2d 1081, 81 S. Ct. 1684

4                   Strickler v. Greene 527 U.S. 263, 144 L.ed2d 286, 119 S. Ct. 1936

2                   Week v. United States 232 U.S. 383, 58 L.ed 652, 34 S. Ct. 314

UNITED STATES OF THE SUPREME COURT  
PETITION FOR WRIT OF CERTIORARI

**Briefing**

Statement of case

Tavis Labron Houpe, petitioner, was sentenced to possession with the intent to distribute cocaine base, on October 1, 2015 841 (a)(1) and (b)(1) (c). He was sentenced to 56 months and 3 years of supervise release. The defendant was successful at getting the District Court to dismiss a two(2)-level enhancement. The defendant filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. 2255, on August 29, 2016.

Reason for Granting Writ

Was The Petitioner Fourth(4th) Amendment Rights Violated Due To A Search and Seizure?

On April 22, 2015, the Rowan County Sheriff Department and a federal agent arrested Tavis Labron Houpe for possession of drugs. After the arrest was made, the defendant was taken to his residence for a search and seizure. The search & seizure was performed by the Rowan County Sheriff Department and federal agent. At the time of the arrest, the defendant was interrogated by the federal agent in the front seat of the federal agent vehicle. During the interrogation, the federal agent ask the defendant (Mr. Houpe) "Do you have any drugs at your residence" ? "The defendant said no". The agent responded by saying "Well, if there

is any drugs at the residence, I am going to the house and if I find any drugs, I am going to charge you". The defendant never gave any consent to search the residence. The federal agent told the defendant what he was going to do. As the agent continue to drive to the defendant residence, he continue to interrogate the defendant and apply pressure until the defendant felt as if he was being forced to involuntary cooperate. Once they got to the residence. The federal agent instructed the Rowan County Sheriff Officer on what he wanted searched, and the federal agent got hand on paticipated in the search. The federal Rules of Criminal Procedure 4 states that a state warrants and the excution of them need not satisfy Rule 4 requirements. However, if a federal agent is involved, who plays a significant role in the arrest, interrogation, and search with a state warrant Rule 4 requirements must be met. (See Elkins v. United States 364 U.S. 206, 4 L.ed2d 1669, 80 S. Ct. 1437 This case was received from Matthew Bender & Company Inc. a member of the LexisNexis Group quoted by Stewart J: In an opinion by Stewart J., expressing the views of five members of the court, it was held that evidence obtained by state officers during a search which, if conducted by federal officers, would have violated a defendant's immunity from unreasonable search and seizure under the Fourth(4th) Amendment is inadmissible over the defendant timely objection in a federal criminal trial). No time during, before, or after was a search warrant issue to the defendant. There is no search warrant recorded on the docket sheet. The government never establish probable cause. This makes the evidence unlawful, inadmissible in a court of law. (Weeks v. United States 232 U.S. 383, 58 L.ed 652, 34 S. Ct. 314 (1914) Weeks established the exclusionary rule, which states person whose Fourth(4th) Amendment protection against unreasonable search and seizure have been violated has right to exclude any evidence so obtained from use in court of law) (Also see Mapp v. Ohio 367 U.S 643, 6 L.ed2d 1081, 81 S. Ct. 1684).

In The United States District Court For The Middle District of North Carolina, ruled a denial of a constitutional right affecting the conviction, nor a debatable procedural ruling stating the defendant waived their constitutional challenges by pleading guilty. In the order and judgment by The United States District Court, refers to a waiver of constitutional challenges by pleading guilty (Appendix B). But, the defendant is referring The Federal Rules of Criminal Procedure 4 alleging errors in the indictment or in proceedings before the sentencing. Mr. Houpe has the right to ask an appellate court to review the plea The Federal Rules of Criminal Procedure 11 to see what contents are in it (see Class v. United States No. 16-424 (2018)). I ask the United States of the Supreme Court to review the plea.

The defendant Mr. Houpe is asking United States of the Supreme Court to vacate all evidence from 16565 Dooley Road Cleveland, NC 27013. Because, there are allegations in the indictment, lack subject matter jurisdiction, and a violation of the Fourth(4th) Amendment.

#### Reason For Granting Writ

#### Was The Petitioner Fourteenth(14th) Amendment Rights Violated Due To Newly Discovered Evidence?

On March 20, 2015 and April 22, 2015 Tavis Labron Houpe was charged with possession with intent to distribute cocaine base 841 (a) (1) and (b) (1) (c). On May 05, 2015, the defendant was indicted by United States of America. October 1, 2015 was the date the defendant was sentenced. On sentencing date, the defendant lawyer argue to the District Court that the laboratory reports were not back. The defendant counsel stated to the District Court "He went by the Rowan County Sher-

iff Department to receive a copy of the laboratory report, but it was not back. The Federal Rules of Criminal Procedure 16 discovery and inspection due process requires disclosure of any evidence favorable to the party, who is being accused. The possession by the prosecution is material to either guilt or punishment should be given in good faith (see Kyles v. Whitley 514 U.S. 419, 131 L.ed2d 490, 115 S. Ct. 1555 The accused who was convicted of murder and punished to death in Louisiana trial held entitled to new trial because the prosecution failed to disclose evidence favorable to the accused). The government and Rowan County sheriff Department had evidence that was favorable to the petitioner and did not release until six(6) month after the defendant conviction (see Appendix D & E).

There was some deficiency from counsel who represent the defendant. The counsel never filed a motion before pleading or prior to sentencing for discovering of possible exculpatory evidence. The petitioner filed for a copy of the discovery and was denied (check docket sheet date & number 10/26/2016 & 27). The prosecuting attorney ran an open file policy which gave access to all of the evidence in the prosecuting attorney files, but this failed at disclosing exculpatory information which was held in the Rowan County sheriff Department files. Under the open files policy, defense counsel is permitted at looking at states files. The files did not contain the laboratory reports, which proven the defendant Mr. Houpe did not possess the quantities drugs he was sentenced to. The United States Supreme Court ruled that open files is not fulfilling prosecutor obligation (see Strickler v. Greene, 527 U.S. 263, 283, 119 S. Ct. 1936, 1949 (1999) the U.S. Supreme Court held that a prosecutor open files discovery policy does not substitutes for the state's obligation to turn over all exculpatory evidence) (Also see Brady v. Maryland 373 U.S. 83, 10 L.ed2d 215, 83 S. Ct. 1194 Brady established the Fourteenth(14th) Amendment applies to due process clause, which every defendant has the right to material, relevant to guilt or punishment,

favorable to the accused and within the actual or constructive knowledge or possession of anyone acting on behalf of the government and/or state).

In the United States District Court For The Middle District of North Carolina, ruled a denial of a constitutional right affecting the conviction, nor a debatable procedural ruling stating the defendant waived their constitutional challenges by pleading guilty and only such claims can be raised on collateral review (see Appendix B). The defendant properly raised to vacate, set aside or correct sentence pursuant to 28 U.S.C. 2255 grounds raised the amount and types of drugs are incorrect based off newly discovered evidence (laboratory report), and the district court did not rule or comment on the evidence. Under the Fourteenth(14th) Amendment, no citizen of the United States of America should be deprived due process. I ask the Supreme Court to correct the four(4) amounts the petitioner was held accountable in the presentencing report. If there is any amount of time servied over Mr. Houpe 85% sentence, the petitioner ask the courts to reduce it off the two(2) supervise release imposed running concurrent 18 U.S.C 3624(e).

#### Conclusion

Tavis Labron Houpe ,petitioner, has presented two questions (1) fourth(4th) Amendment rights challenging search and seizure, (2) fourteenth(14th) Amendment challenging newly discovered evidence. Question presented 1 challenging fourth (4th) Amendment rights search and seizure are unconstitutional, when a state search and seizure with a federal agent involved in the investigation does not issue a search warrant. It is a violation of the Fourth(4th) Amendment were there is no proable cause establish. The petitioner realize he signed a plea agreement. Mr. Houpe believes. He did not waive his rights to challenge allege

errors in the indictment. The error was unreasonable search and seizure Federal Rules of Criminal Procedure 4. Mr. Houpe ask the Supreme Court to vacate all evidence obtained from the residence 16565 Dooley Road, under the exclusionary rule.

Question presented 2 challenging Fourteenth(14th) Amendment newly discovered evidence a citizen of the United States shall not be deprive life, liberty, property without due process of law, nor deny within its jurisdiction the equal protection of the laws. The laboratory report, which was discovered six(6) months after the petitioner conviction date, is Brady material. The Rowan County Sheriff Department made no attempt to have a laboratory report prepared for the defendant to prove what he actually possess to the district court. The U.S. prosecutor cannot hide behind the fact that the sheriff department withheld evidence favorable to the accused. Mr. Houpe asks the Supreme Court to accept the newly discovered evidence (see Appendix D & E) correct the four(4) amount in the presentence report(PSR) based off the evidence.