18-8518

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN MOSES BURTON IV — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOHN MOSES BURTON IV #90387-083
(Your Name)

FEDERAL SATELLITE LOW ELKTON
8730 Scroggs Road
(Address) Post Office Box 10

LISBON, OH 44432-0010
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(s) PRESENTED to the SUPREME COURT

Explaination: Events in [Riley] happened in 2007, events in current case happened in 2011, but the [Riley] decision was not handed down until 2014. The indictment/arrest and hearings conducted with the current defendant did not happen until 2016.
QUESTION (1): When and how should the courts be bound to the presedent set by the high Court's opinion?

Explaination: When two seperate cases have events that are essentially identicle, a prosecutor may argue 'Good-Faith' while another may not. So the outcomes are vastly different.
QUESTION (2): Is it time to re-evaluate the loopholes that are permitted by the government to excuse illegal searches?

QUESTION (3): When a Search Warrant stipulates the exact same language from the Search Affidavit presented by the requesting law enforcement officer, how is the a law enforcement officer able to interpret a Search Warrant as being defective when it is precisely what they requested?

Explaination: Conspiracy is involved when two or more parties engage in an illegal act and each party is culpible for the totality of that single illegal activity.
QUESTION (4): How is a Judge and/or a Magistrate held to the same legal standards of responsibility in interpreting a Search Warrant as Law Enforcement?

QUESTION (5): If ignorance of the law not an excuse when an individual breaks the law, why is the Government allowed to utilize ignorance as an excuse when ignoring the Constitution?

Explaination: The Virginia Constitution has provisions that protect an individual for Illegal Searches and Seizures and General Warrants.

QUESTION (6): Why are the State Constitutional Protections also available to defendants against Unconstitutional General Warants (especially from State and Local Law Enforcement Agents)?

Explaination: In Virginia, when a Magistrate denies a Search Affidavit/Application, there is no protocol to document such an event. The Magistrate's record only shows every Warrant as approved.

QUESTION (7): How may a person protect themselves from a Magistrate acting as a 'Rubber Stamp' for law enforcement when there is limited to no records when a Magistrate has denied any previous applications?

Explaination: With today's Digital Age, recovery of data from electronic devices has become commonplace.

QUESTION (8): May we please articulate what constitutes 'Exigent Circumstances' now in the Digital Age of computers and cell phones?

Explaination: In Virginia, the Magistrates that signed the Search Warrant both has never held an association with the Virgina State Bar.

QUESTION (9): What qualifications should a Magistrate hold in being able to interpret what is Constitutional when evaluating a Search Affidavit before granting a Search Warrant?

Explaination: If we look at both the Words of the Fourth Amendment and the intention that inspired those words to protect Americans from the Government overreach. If 'Good-Faith' was applied historically throughout our past, the Government could have used it to abuse its power long ago.

QUESTION (10): Is it time to re-evaluate and overrule the 1984 split decision of [Leon]?

Explaination: The principle of ignorance of the law is not an excuse

QUESTION (11): Why has the Government **been** giving the ability to utilize the excuse of ignorance when it conducts itself illegally/unconstitutionally?

Explaination: Government officials (Judges, Magistrates, and Law Enforcement) all take Oaths to uphold and protect the U.S. Constitution. These Amendments took a high threshold to be ratified (3/4th of the states).

QUESTION (12): What are the consequences for the Government that ignore and/or break the Supreme Law of the land, the Constitution?

LIST OF PARTIES

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

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

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished. No. 17-4524

The opinion of the United States district court appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished. E.D. of VA 4:16-cr-00071

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

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was December 18, 2018.

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

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 29, 2019, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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).

CITATIONS OF THE OFFICIAL ORDERS ENTERED IN THIS CASE
(from the most recent to the oldest)

February 6, 2019: MANDATE - from the Fourth Circuit of Appeals stipulating that their judgment is final on this date. (see Exhibit A).

January 29, 2019: ORDER - from the Fourth Circuit of Appeals stipulating that no judge would want to take a rehearing of the facts in this case and that the petition for rehearing en banc is denied. (see Exhibit B).

December 19, 2018: JUDGMENT - from the Fourth Circuit of Appeals issuing an affirm decision of the judgment issued from the Eastern District of Virginia's Court. (see Exhibit C).

December 19, 2018: OPINION - from the Fourth Circuit of Appeals from the Circuit Judges WILKINSON, DUNCAN, and KEENAN regarding case no. 17-4524. (see Exhibit D).

April 7, 2017: ORDER - from the Eastern District of Virginia District Court dening the Motion to Suppress by the Honorable Judge Arenda L. Wright Allen regarding case no. 4:16-cr-00071. (see Exhibit E).

January 2, 2019: STAY OF MANDATE UNDER FED. R. APP. P. 41(d)(1) from the Fourth Circuit of Appeals (see Exhibit I).

AUTHORITY FOR GRANTING WRIT OF CERTIORARI

Before you is a direct appeal from the Eastern District of Virginia about the Fourth Amendment protections and a Motion to Suppress evidence. This Motion was denied by the district court. It was litigated and heard oral aurguments in the appellate court for the Fourth Circuit.

The fact that the Fourth Circuit granted oral arguments shows the importance and merit that this case illustrates when it comes to the Fourth Amendment protections.

The high Court has an obligation to settle discrepancies between the different jurisdictions across this country. There have been different applications and opinions on the prosecution and judgments throught this nation. These different courts in the State areana, the different Circuit Courts and even differences between districts within a single circuit shows that the split should be addressed and reviewed for possible overruling of the [Leon] United States v Leon, 468 US 897, 87 L Ed 2d 277 (1984), case.

Overruling a case is not taken light heartly. Examples when prior cases have overruled previous precedence includes: Plessy v Ferguson, 163 US 537, 41 LED 2561, 16 S. Ct. 1138 (1896) with Brown v Board of Education, 327 US 483, 74 S. Ct. 686 (1954); Bowers v Hardwick, 478 US 186, 92 L Ed 2d 140, 106 S. Ct. 2841 (1986) with Lawrence v Texas, 539 US 558 (2003); Fourth Amendment cases that overruled previous doctrines, Wolf V Colorado, 338 US 25, 27-28, 93 LED 1782 (1949) with Mapp v Ohio, 367 US 643, 6 L Ed 2d 1081, 81 S. Ct. 1684 (1961); and Elkins v United States, 364 US 206, 223 (1960) overrules the 'Silver Platter'

Doctrine. This case addresses the Fourth Amendment violations of evidence obtained by state officers in violation of the Fourth Amendment cannot be used against defendants in federal court.

Even if overruling prior precedence is a rare occurance, these cases show it does happen and there is precedence in changing prior precedence. Even Justice Blackmun wrote in his concurrence opinion of [Leon],

> "If it should emerge from experience that contrary to our expectations, the good faith exception to the exclusionaryrule results ina material change in police compliance with the Fourth Amendment of the constitution, we shall have to reconsider what we have undertaken here. The logic of a decision that rests on untested predictions about police conduct demands no less."

In today's climate of media coverage, there are many examples of police misconduct that show how the use of 'Good-Faith' can and does get used to trample therights of the American citizen. This gives you the authority to review this case.

This direct Appeal streams from the direct MANDATE, ORDER, JUDGMENT, and OPINION from the Fourth Circuit of Appeals that was made final on the 6th day of February, 2019. This allows the Peitioner 90-days from this MANDATE to petition this Honorable Court Court for this Writ of Certiorari. The Petitioner has complied withthe time restraint by meeting the deadline of 7th day of May, 2019.

These stipulations, the Petitioner believes that this Court should honor its authorityto enact its discretion to accept this case to settle not an error of a single individual's case but rather review the controversial 6-3 split of the [Leon] decision that effects many defendants. Please take this one step closer in fixing the system by Granting this Writ of Ceriorari motion.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment and Motion to Suppress with the Leon Good-Faith Exemption. United States v Leon, 468 US 897, 87 L Ed 2d 277 (1984)

Fourth Amendment to the United States Constitution:

> 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.

Virginia's Constitution, Article 1, Bill of Rights, Section 10:

> General Warrants of Search or Seizure Prohibited. That General Warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

FACTS OF THE CASE

The circumstances of the case is unique. The defendant was accused of taking an upskirt phtograph of a woman at a local grocery store on July 21, 2011. The incident in question was outside as the Defendant was leaving the store on his way home from working as an IT technician reparing equipment at the location.

The woman reported the incident and the local police quickly was able to identify the defendant as the person who was at the store reparing their equipment. The officer on the scene called the defendant asking for his return but defendant declined as he was already en route to take care of family obligations.

The district manager of NCR (not the immediate manager) had contacted the defendant over the weekend and insisted the defendant make a statement to the police.

Under diress of losing his job, the defendant did schedual a time time to speak with the assigned detective that coming Tuesday. Unable to afford an attorney but concerned with not complying with the District Manager, the defendant was between a rock and a hard place.

The Monday before the interview with the defendant, the Detective Myrick had a conversation with the female accusor. She admitted that she only had a 'hunch' and was not positive that any actual photograph was taken of her. She only had an uneasy feeling about it.

In that conversation, Detective Myrick expressed his assurance and intentions to seize the phones before the inter-

view with the defendant.

The interview with the Detective Myrick and Mr Burton commensed that following day on Tuesday. The defendant denied any wrong doing throughout the interview. I explain that frequent use of the phones are a requirement after the completion of every job for NCR and that was how we retreived our call assignments and closed them out.

At the conclusion of our interview, The detective seized both cellular phones that were in the possession of the defendant without any warrant. The defendant felt compelled to comply out of fear of what may or may not happen if he refused.

The defendant knew there were no illegal images on the two phones of any unexpected citizens. He was concerned that private images of consenting adults were located on the phone of the defendant's different 'girlfriend(s)' that were taken with permission to keep.

A second interview was requested by the detective. The Defendant agreed but was subsequently fired from his job at NCR. The second interview proceeded anyway except it was rescheduled at the defendant's home.

The detective could see inside of the defendant's home that he possessed numerious computers within eyesight. It should not be difficult to see down the hallway of a rack mount server rack that was in a bedroom that was given to the defendant on the death of his older brother. The defendant had many computers and parts from otehr individuals throughout his house and

detached garage.

During this interview included the question how the defendant would feel if photos of his then eleven year old daughter. I was defensive because of the way he was asking, it felt, rightfully so, that this was going to be a 'witch hunt' and it would not have mattered on how I could have answered his questions.

The Detective returned on August 18, 2011 with a search warrant that was overly broad and an arrest warrant for Mr Burton. The warrant in question did not have any discression of what or where to seek at the property of Mr Burton. They seized all of the computer equipment including PCs, thin clients, switches/ hubs, hard drives that were not inside of any computer, gaming systems (Playstation 3 and Wii), motherboards, cd roms, cd rom drives, phtographs, negatives, vhs tapes. and any other media they ransacked the house to confestate.

The warrant application seeking these items neglected to say the witness was unsure if any illegal activity actually took place. And after the seizure, the detective escorted the daughter to police headquarters of Newport News Virginia to conduct an interview with the daughter without any legal representation for the best interest of the daughter or allowing the mother to be present during this invasion of Due Process and rights of the child.

The defense councel obtained a plea agreement with the Commonwealth of Virginia to finalize the state case against the defendant. Counsel told the defendant that the interview stipulating that he had interest "thought about" what an image

might have looked like is why he recommended me to not fight the case.

Not all of the computer equipment seized belonged to the defendant. Some of the items were hard drives from neighbors who asked the defendant to attempt to conduct data recovery from old, faulty equipment. My residence also contained equipment obtained from his late brother's residence after his passing. I collected computers from almost anybody who was throwing items out or not needed anymore to repurpose them if possible.

The forensics report never found any images of the 'accusor' on any of the cellphones or computers found inside the residence of the defendant. The police's hunch was incorrect.

After pleading guilty to the upskirt photographs and having received a suspended sentence and six months to a year of supervised release, the defendant thought everything was final with the case.

The defendant contacted the Suffolk Police Department evidence personal to attempt to retreive his seized computer equipment back from the local police department. After a few days of conversations, it was relayed that the computers were transferred to the FBI.

Soon afterwards, in the July 2012 timeframe, two FBI agents appeared at the defendant's backdoor asking simple questions. They asked if the defendant had any child pornography which was quickly denied. They attempted to ask other questions about a photograph that they had with them of a neighborhood friend of my daughter asking if any illicit photos were in the

possession of the computers seized. I again said that I do not think so and that there shouldn't be. I could not be 100% sure because one of the hard drives seized were the neighbor's in question because I was attempting to resurrect their failing drive in my spare time.

The questions went to my daughter. I explained the only image I knew about were embarrassing photo that most parents had of their children or of themselves. Mine in question was of my daughter looking over the side of the bathtub playing in the suddzy water where none of her nude body could be seen. I said that was 'the closest I had to having child pronography'.

I stopped contacting Suffolk about any of the computers and was concerned items that I did not know about could be on the computer(s).

About a year later, in 2013, the FBI called my home number asking if I would meet them at their office to pickup my computer equipment. I scheduled a time that would be accomidating. This was the first time I got an itemized inventory list of the items that were seized from my residence. The inventory sheet had approximately 86 items they were giving back to me (unlike the original list that only contained 24 items).

The FBI agent informed me that they found child pornography one some of the equipment and those items would not be returned and that they were planning on arresting me within three months and to be expected to be arrested by Thanksgiving (2013).

I made a decision to fly my now 12 year old daughter to Iowa to be with her mother in fear of her reliving another raid and

arrest of her father.

It took the FBI to process my arrest another three years from that final interaction. That was a total of 5 years and 1 month from the time they seized all of my computer equipment until they asked for an indictment and arrested the defendant. This exceeds the normal expectation of a 18 U.S.C. § 3282 Statute of Limitations in a non capital case.

I was arrested on September 26, 2016, and arraigned a few days later without being granted bond. This also deprived me of allowing the dfendant to assist in gathering the needed evidence to prepare for his own defense. I blame the Judical branch for these grave malfeessance of my rights.

My defense lawyer considered a Statute of Limitations defense but later advised against it based on the Public Defender's Office's interpretation of the statutes and not by any Supreme Court or Fourth Circuit decision. So there was no binding presedent to ask for a hearing of this affirmable defense.

My assigned counsel did its due dilligence to present this Fourth Amendment violation claim that is obious and clear. The Government justifies too many cases with the Good-Faith exception that we get to this point.

The District Judge ruled that the Riley v California, 134 S. Ct. 2473 (2014), was not beneficial to my case because my search warrant was conducted in 2011 (3 years prior to the Riley case that ruled that the 2007 seizure of Mr. Wurie's phone was unreasonable).

The United States Magistrate Judge proceeded over the Guilty Plea and attempted to add his own stipulations to the agreement

between the United States Assistant Attorney and the Federal Public Defender's Office. This agreement, the defendant did not see until approximately an hour prior to the actual proceedings the he swore upon the facts in the case. This is not enough time to truly process and digest what items you are agreeing and what waivers you are consenting.

The fact that the multiplicity of having nine counts should make this agreement null and void because the Government should have been able to charge the defendant with only one count. The fact that the defendant did accept the plea agreement that dropped the other eight counts does not moot this argument.

The decision on the Good-Faith was appealed to the Fourth Circuit of Appeals. The Court read the briefs and asked for Oral Aurguments even though the district cout never published her opinion. The three justices heard the case, which is a rarity but came back with a unaniomious decision that the law was followed by interpreting Kentucky v King, 563 U.S. 452 (2011) was applicable in my case of exigent circumstances existed.

I disagree. So now before this Court is my case representing many in America that have been thrown down the 'Conveyorbelt of Justice' of wreckless police actions, faulty warrants, under qualified Magistrate Judges and Justices that creates an excuse for all of the abuses in a single case because of the fear and misinformation supplied by a law that was errected for a scary and henious crime for people who were directly involved in harming a youth but has evolved into punishment to someone now that clicked a mouse button once too often. Please consider the following aurguments on why you should Grant Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Now Comes the Petitioner, John Moses Burton IV, petitioning this Honorable Court to Grant Writ of Certiorari. This petition will illustrate a systemwide abuse of violating the Fourth Amendment by law enforcement and prosecutors throughout this country.

The unpublished case in front of you today is only an example of the mistakes that a single judgment was decided. I believe the Opinions in my particular case stems from the fact that the court knew it was apply bad law to the case and was attempting to bury their decision based not on the facts of the violation but rather the idea there are nothing other than this evidence that would convict the defendant.

I believe this bias in law enforcement, prosecutors and unfortuantely judges happens too often. We are all human.

I am not seeking special treatment to fix only my case. There are quite a few people in the facility I am housed in that have been convicted with faulty warrants but remain convicted because of abusive descretion of this 'Good-Faith'.

I hope each of my arguments are articulate enough to explain each element of the law that applies to the situation that has effected my particular case. A case that I hope illustrates the many other people's issues when it comes to the over zealous prosecutors and law enforcement.

ARGUMENTS BEFORE THE COURT

ARGUMENT 1 - DELETION and EXIGENT CIRCUMSTANCES

What are exigent circumstances now in the Digital Age? Law enforcement has ran to the courts proclaiming that evidence can and will be deleted and destroyed unless they hurry with getting a warrant withexigent circumstances.

I will attempt to cite many cases that illustrates how files and directories from electronic devices are quite recoverable from a law enforcement and legal standpoint to declare cases as Kentucky v King, 563 U.S. 452 (2011) as a moot concept in today's age of computer data.

Time and time again, cases across the country has illustrated the difficulty in deleting any files. These cases uses words as 'unallocated space' to show that any deleted file is never truly deleted but merely hidden from the novice computer user.

The defendant had the ability to recover data from this unallocated space. He helped friends and family who needed computer services completed. He also knew that if he possessed this knowledge and ability, that any computer forensics from a law enforcement agency should have the same capability. United States v McArthur, 573 F.3d 608 (8th, 2009); United States v Bass, 411 F.3d 1198 (10th, 2005); United States v Jackson, 344 Fed Appx 390 (9th, 2009); United States v Russo, 408 Fed Appx 753 (4th, 2010); United States v Flyer, 633 F.3d 911 (9th, 2010); United States v Cotterman, 637 F.3d 1068 (9th, 2010); United States v Kennedy, 643 F.3d 1251 (9th, 2011); United States v Ramos, 685 F.3d 120 (2nd, 2012); United States v Heiser, 473 Fed Appx 161 (3rd, 2012);

United States v Haymond, 672 F.3d 948 (10th, 2012); United States v Sturm, 672 F.3d 891 (10th, 2012); United States v Glassgow, 682 F.3d 1107 (8th, 2012); United States v Rogers, 714 F.3d 82 (1st, 2013); United States v Annoreno, 713 F.3d 352 (7th, 2013); United States v Myers, 560 Fed Appx 184 (4th, 2014); United States v Partin, 565 Fed Appx 626 (9th, 2014).

These cases are just a handful of the available cases that illustrated that this ability was available to law enforcement across the country prior to the seizure on the defendant's electronics and continues to this day.

Law Enforcement had this ability. Any person with any common knowledge and savvy computer person also possessed this ability with the right tools. So the mere thought that there were any exigent circumstances with any computer data is a farse. When it comes to recently deleted files, as the Government claims could have been the issue of rationality, this should show their claims are false.

Attempting to articulate this easier, files that are deleted within a few days, weeks or possibly within the month or so are easily recoverable. That even includes if you have emptied the 'recycle bin' of your computer. Items that may have been deleted further than that, I would say possibly 6 months to a year longer would make any data recovery more difficult.

So, the assurtion by the Government that a 'hunch' that the defendant could possibly truly delete evidence in this Digital Age is plain wrong. Destruction is hardly possible, so there should not allow any ruling of 'exigent circumstances'.

ARGUMENT 2 - SPACE AND TIME OF WHERE TO SEARCH

Search Warrants are suppose to include what items are to be seized and where an item is to be seized. When it comes to data and electronics in today's Digital Age. These requirements should also include 'time'.

Similar on how Einstein has concluded that Space and Time are intertwined with one another. In the Ditigal Age, everything is 'timestamped'. The metadata for every 'filename' and/or 'directory' would include when the file was created, modified and last accessed. This information should be a new requirement in affidavits and search warrants when seeking data from a defendants eletronic device.

In cases similar to the petition, when the overbroad warrant is issued. It would have been only reasonable to limit any scope of digital data to only those that were known to law enforcement to have been applicable to the crime they were investigating.

In the Defendant's case, this known time could have only been sometime in July 2011 (the time of the known incident that was reported) and until the actual se seizure of the phones and also the home equipment, which in this case would have been August 2011. This month span should have been sufficient for the requirements of the investigation that the local law enforcement were conducting. Anything beyond this timestamp search violates a person's privacy interests and well beyond the scope of a narrow and tailored search warrant. It is beyond overbroad, It is Bad-Faith and unconstitutional.

ARGUMENT 3 - 'END JUSTIFY THE MEANS'

Should the government be allowed to continue with its wreckless policies and behavior in the overbroad and illegal searches that have been allowed by this Honorable Court. It seems like law enforcement will justify their actions with the famous term, the 'end justify the means'. Olmstead v United States, 72 LED 944, 277 Us 438, (1928, decent).

This principle has been used time and time again in cases. It seems like the American people should retain their rights from the actions of this 'Bad-Faith' behavior. A recent newsletter indicates that the U.S. Marshals have a culture of mismanagement with serving approximately 800 fraudulent subpoenas on telephone companies over a span of 10 years ending in 2005.

The curruption of government has precipitated through the system for way too long.

> Colorado Interstate Gas Co. V Federal P Com, 89 LED 1206, 324 US 581, 609 (1945) "This case introduced into judicial review of adminstrative action the philosphy that the ends justify the means. I have been taught to regard that as a questionable philosophy, so I dessented and still adhere to the dissent."

> Cupp v Murphy (412 US 291, 36 L Ed 2d 900, 93 S. Ct. 2000 (1973) "the issue of probable cause should be considered by the court of appeals, on the record before us and the arguments based on it I cannot say there was 'probable cause' for an arrest and for a search, since the arrest came after a month's delay, the only weight we can put in the scales to turn suspicion into probable cause is Murphy's conviction by a jury based on the illegally obtained evidence. That is but a simple way of making the end justify the means-a principle wholly at war with our constitutionally enshrined adversary system"

I agree. This pricible for allow a Good-Faith exception is slap in the face to those who faught for our freedoms. We should expand the people's rights, not relinquish them. Again, please vote to have further review of this enshrined principle.

ARGUMENT 4 - ADDITIONAL PROTECTIONS FROM SEIZURES

Please let me remind you that all of the law enforcement involved in the seizure and search of this case were conducted strickly by local police officers. There were no federal agents involved in the the affidavit, the warrant or any other aspect that I am arguing.

The evidence in hand should not be handed over to the federal courts on a 'silver platter'. Elkins v United States, 364 US 206, 223 (1960) tells us that evidence obtained by state offiers in violation of the FourthAmendment cannot be used against defendants in federal court. All of the agents in this defendant's case were that of local law enforcement, no federal agents.

In conjunction with this previous precedence, Virginia also had enacted its own constitutional protections against General Warrants of Search or Seizures. These actions are prohibited.

I simply would like to know how and why this additional protection may be ignored by the federal court system. It is expressly enumerated in the Virginia Constition in Article 1, Bill of rights, Section 10.

These cases in federal court should also be obligated to ensure the rights of a state's citizen is protected not only by the National Constitution but also to ensure the protections of their own State's Constitution too.

ARGUMENT 5 - WORDS HAVE MEANING

The specific wording that enumerates the Constitution have been chosen with care and intent to allow the Common Man to understand the protections afforded to him in clear and plain English.

The intent was clear from the oppression from our predecessors of England to now. The Founding Fathers did not want to allow the Government to be able to rummagethrough a person's belongings without due cause.

The construction was delibrate and important. As the precedent stipulates, words are important. Atlantic Cleaners & Dryers v United States, 76 LED 1204, 286 US 427 (1932) says it is important to know the meaning behind the words. "and particularly describing the place to be searched, and the persons or things tobe seized."

It is important to remember the meaning behind these enumerated words. The Fourth Amendment protections for the people (the defendants) from an over reachingand burdensome government (law enforcement).

Please consider these words and grant this Motion for Writ of Certiorari.

ARGUMENT 6 - SPLIT ACROSS THE NATION

The courts have wrestled with the course of United States v Leon, 468 US 897, 87 L Ed 2d 277 (1984) with its controversial 6-3 split decision. This case was not an unanimous decision which shows

the concern of allowing the Government too much authority and the trampling of the rights of the people.

Cases across the country have shown that these questions have not been answered in state courts, State v McKee, 2018 WL 1465523, Wash Ct App (2018); State v Cagle, 2018 WL 2090526 (Minn Ct App, 2018); Commonwealth v Fulton, 179 A.2d 475 (488-89) (Penn, 2018); Pohland v State, 2018 WL 6133549, at *7-*8 (Alaska Ct. App, Nov 2018).

There were splits from the different Circuits. They include: United States v Weaver, 99 F.3d 1372, 6th Cir., 1996); United States v Lopez, 443 F.3d 1280 (10th Cir., 2006); United States v Williamson, 1 F.3d 1134 (10th Cir., 1993); United States v Underwood, 725 F.3d 1076 (9th Cir., 2012).

There have been split decisions (dissents) in appelatte cases that include Circuit Judge Clay's dessent in United States v Allen, 211 F.3d 970 (6th Cir., 1999), with the statement that "There are persuavie arguments against according [the elements of the 'two-pronged test'...".

There have been District Courts whom have stipulated that these deficiant warrants were unconstitutional. (United States v Higgins, 733 F.Supp 445 (Dist of DC, 1990). This also includes cases within the same circuit of the defendant before you, United States v Lyles, 2018 WL 6581369 (4th Cir, 2018) was decided in the Fourth Circuit the same week as the defendant standing before you.

This Court could have rejected the Riley v California; United States v Wurie, 134 S. Ct. at 2489 (2014) with 'Good-Faith' but it chose the path that gets us to this point.

These are just the start of the many cases that deals with Affidavits and Search Warrants that shall pursuade this court

to address the issue in front of you. Illinois v Gates, 462 US 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983) 'probable cause "does not lend itself to a prescribed set of rules" each case must be judged on its own facts. Alabama v White, 496 US 325, 330, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990), where the Court articulated the standard for 'reasonable suspicion.' Specifically, the Court found that although 'reasonable suspicion is less demanding standard than probable cause[,]... like probable cause, [reasonable suspicion] is dependent upon both the content of information possessed by police and its degree of reliability. Both factors - quantify and quality - are considered in the 'totality of the circumstances - the whole picture.'

United States v Khounsavanh, 113 F.3d 279, 285 (1st Cir, 1997) the purchase of controlled substance observed by officer does not provide per se probable cause because each case must be evaluated on its own facts and circumstances. United States v Siciliano, 578 F.3d 61, 70-72 (1st Cir, 2009) second search invalid because government would nothave sought warrant absent knowledge obtained from prior illegal protective sweep that gel capsules and powder were in the partment. United States v Reilly, 76 F.3d 1271, 1280 (2nd Cir, 1996), second search invalid because issuance of warrant premised on material obtained in prior illegal search and remaining portion of affidavit offered only "bare-bones" description of defendant's land. United States v Mowatt, 513 F.3d 395, 404 (4th Cir., 2008) warrant for subsequent search invalid because no assertion officers would have sought warrant without information from previous illegal, warrantless search abrogated by Kentucky v King, 563 US 452 (2011).

United States v Zavala, 541 F.3d 562, 577-79 (5th Cir, 2008) search invalid because no independant source established that defendant was carrying cell phone from which the evidence was obtained information, affidavit did not support probable cause finding. United States v McGough, 412 F.3d 1232, 1240 (11th Cir, 2005) second search invalid because warrant based on evidence obtained from previous illegal entry. United States v Dawkins, 17 F.3d 299, 407-08 (DC Cir) warrant for subsequent search invalid because issuance of warrant based on observation of guns during initial invalid search, record did not show defendant would be in home, government waived inevitable discovery and independent source exceptions (amended by 327 F.3d 1198 (DC Cir., 1994). Groh v Ramirez, 540 US 551, 558-63 (2004) affidavit did not cure overbroad warrant because warrant did not "describe the items to be seized at all" and warrant neither incorporated affidavit nor was affidavit present at search. Under the Federal Rules of Criminal Procedure, a complaint requesting an arrest warrant must contain "essential facts constituting the offense charged," Fed R. Crim. P. 3. Information supportin probable cause believed or appropriately accepted by the affidavit as true." Franks v Deleware, 438 US 154, 165 (1978). Statements that are knowingly false or exhibit a reckless disregard for the truth must not be used by the magistrate to determine probable cause. see Id. at 171-72. United States v Shugart, 117 F.3d 838, 845 (5th Cir, 1997) affidavit describing drug manufacturing did not cure overbroad warrant designed for drug possession because it was neither attached nor referenced. United States v Stefonek, 179 F.3d 1030, 1032-33 (7th Cir, 1999) affidavit did not cure overbroad warrant authorizing search for

"evidence of a crime" because warrant did not incorporate by reference affidavit that accompanied warrant application. United States v Thomas, 263 F.3d 805, 808 (8th Cir, 2001) affidavit with correct address and description of premises did not cure overbroad warrant because affidavit was not incorporated into warrant with "suitable words of reference". Cassady v Goering, 567 F.3d 628, 635-36 (10th Cir., 2009) attached affidavit, incorporated by reference to warrant, did not cure overbroad warrant because it did not provide probable cause to search for evidence beyond evidence of marijuana cultivation. United States v Carey, 172 F.3d 1268, 1273 (10th Cir., 1999) evidence suppressed because officer exceeded scope of warrant authorizing search for evidence of drug distribution by searching image files for child pornography.

These above referenced cases may have not argued or utilized the phrase Good-Faith but thecircumstances and elements of all of these cases are similar to many defendant's cases that have expressly been denied their Constitutional Rights of unlawful Searches and Seizures.

At the same time, some courts decline to decide whether the affidavit must be explicitly referenced in the warrant and accompany the warrant. see eg United States v Hamilton, 591 F.3d 1017, 1027 (8th Cir, 2010).

> ("[g]iven the questionable state of the law ... about whether an incorporated affidavit must accompany a search warrant to the search for purposes of the warrant as to whether the reference to the attached affidavit was intended to refer to the items to be seized or merely the existence of probable cause." The Court declined to decide issue.

An accompanying affidavit serves the dual purpose of limiting the office's discretion and informing the person subject to the search which items the officer may seize. see eg United States v Hayes,

794 F. 2d 1348, 1355 (9th Cir., 1986).

Crocker v Beatty, 2018 WL 1573350 (11th Cir., 2018); United States v Terry, No 18-1305 (7th Cir, 2019); United States v Cruz, 2019 WL 517165 (9th Cir., 2019); United States v Pratt, 2019 WL 489053 (4th Cir., 2019); United States v Richmond, 2019 WL 491779 (5th Cir., 2019) are cases that show additional splits across the circuits.

I have been unable to verify all of these recent cases with the Lexis Nexis system within the BOP Electronic Law Library. There has recently been some technical difficulties (see Exhibit F).

These cases should show how there is a split across the country on the interpretation of 'Good-Faith' or at the very least the circumstances that are brought up in 'Good Faith' cases that have been seen in most Fourth Amendment challenges.

The Fourth Circuit also decided United States v Lyles, 2018 WL 6581369 (4th Cir., 2018) the same week as the Defendant that is before you. If these decisions are needing guidence from this Honorable Court to redefine the caselaw surrounding overbroad search warrants and possibly eliminate the Law Enforcement's excuse of 'Good Faith' when they delibrately seek and receive overbroad search warrants.

ARGUMENT 7 - WHEN TO BIND OR WHEN NOT TO BIND

A question is when may the courts ignore a binding caselaw from the Court. Riley v California, 134 S. Ct. 2473 (2014) was decided prior to the Defendant's indictment and arrest. However, the Seizure and Search Warrant for the Defendant did occur prior to the [Riley] decision.

If we look at the details of the [Riley] case, we would see that Mr. Wurie had his illegal search conducted in 2007. This is approximately four years prior to the overborad seizure of Mr. Burton's cellular phone and subsequent search and seizure at his residence. The decision was made that the police should have known better in 2007 with Mr Wurie search. They should have known their conduct was illegally obtained his equipment. The district court rejected [Riley] because the high Court's ruling was not handed down until 2014. This would be nearly three years after the illegal search of Mr. Burton's property.

This in-between timeframe is confusing. How can officers with Mr. Wurie and Mr. Riley know in 2007 that they should have been aware of the improper procedure of an illegal seizure but in 2011, the Virginia Law Enforcement officers has been obstained from accountability of their ignorance of the changing digital atmosphere.

When is ignorance of the Law ever an excuse to break the law. This same principle applied to civilians would be ignored but it has been used time and time again to justify the illegal tactics of the government against defendants.

I plainly like to ask the question: When is an opinion of this Court become a Binding Precedent? Should the[Riley] case be retroactively applied to similar cases of the Defendant before you?

Shouldn't it be allowed to be applied as early as 2007 defendants, like the defendant Mr. Wurie in the [Riley] case, or the very least, shouldn't the case be applied in any case

brought before the courts after 2014 (when the [Riley] case was decided?

The Defendant before you case was not heard until 2016. A common man would understand that any case prior to 2016 should be binding to the court before him.

Without answering these simple questions, this would allow even more people to be thrown down the 'Conveyor belt of [In]Justice' that has bent the rules to meet their own bias thoughts. The systemwide non-quota quotas that all departments of justice face help purpetuate this injustice before you. With the highest per capita incarceration rate in the world is a scary statistic and the fact the Department of Justice has a 97% conviction success rate also illustrate that the system has been stacked too harshly against the people.

I will ask you again, please Vote to hear this case go further to clarify the rights of the American people. Not just the rights of the Government.

ARGUMENT 8 - CIVICS AND CONSPIRACY

Quickly, we have three branches of government. Legislators who create the laws, the Executive that enforces the laws and the Judicial that interprets the laws.

This commonsense fifth grade civics statement that begs the question, how has it been transformed to require a law officer (a member of the executive branch) to be responsible to interpret a warrant for its validity or not?

This by commonsense again should be done by a judge or a magistrate. It also begs the question if you receive the exact same thing that you have asked, how can you distiguish a faulty warrant from a non-faulty warrant if you got exactly what you were seeking?

This would be like asking for asking for a signature on a baseball and receiving a signed ball back, where neither party realized there were not enough stitching to make the baseball a regulation ball. It should have been the job of a Judge or Magistrate to make that determination, not the officer. This is the same with these warrants.

The magistrate(s) in this particular case have never been apart of the Virginia State Bar in the Commonwealth of Virginia (see Exhibit G). This is distrubing to think that the Magistrate in many cases may not be qualified to recognize if an affidavit is deficient or not. How can we expect a magistrate to be anything other than a 'Rubber Stamp' to law enforcement if they do not hold the proper qualifications (such as being admitted into the Bar Association of their respective states)?

The Virginia Judicial Inquiry and Review Commission, the agency stipulated in the Virginia's Constitution to oversee the Judicial Branch within Virginia has explained they have no oversight or authority when it comes to any magistrates serving in the Common-Wealth of Virginia (see Exhibit H).

It should be said that it takes both a member of the Judicial Branch (Magistrate) and the Executive Branch (Law Enforcement) to request, authorize and execute a Search Warrant. The act of having

multiple parties involved in a crime be any different than a conpiracy? Barron's Law Dictionary, Sixth Edition (2010) defines a conspiracy as 'a combination of two or more persons to commit a criminal or unlawful act, or to commit a lawful act by criminal or unlawful means'. This would be considered that both parties here would be culpable for the combined actions of both (Law Enforcement and Magistrate) actions. This Mens Rea would be prosecuted in the courts if it were applied to defendants accused of a single crime, where elements of two or more persons were combined to cause one illegal act.

I ask how may the Judicial Branch get a 'free pass' on authorizing a deficient warrant in the perpetual tyranny of the Government's actions against the citizen's Fourth Amendment Rights?

These actions in itself should cause alarms for this high Court to reconsider the prior presedent and realize the rights are being slowly erroaded away from the people. This is why I implore you to see fit to vote in approval to Grant this Motion for Writ of Certiorari.

ARGUMENT 9 - THE OVERLY RESTRICTIVE GOVERNMENTAL POLICIES

We have a government now that is attempting to remove the Fourth Amendment Rights of its citizens. These rights have been expressly enumerated and have not caused any direct harm to any other human being. The actions the accused has been held accountable for has been his abilityon using a mouse button. No direct harm against any other individual. No request of harm, none.

The Government has been eroding the rights of certain people but has extended the rights of others. The controversy of gun ownership and the Second Amendment with the NRA seems to have expanded the rights of individuals and restricted the ability of the ATF from being able to require a 'registry' of all firearm serial numbers. But we have before you is the Government's allowance to make excuses in removing the Fourth Amendment protections from all citizens by allowing the ignorance of the law by calling it 'Good-Faith' to harm the People.

It is troublesome that the courts have been arasing away the protections of the Fourth Amendment enumerated rights when those enumerated in the Second Amendment were only expressed towards a well formed 'militia' and not for an indvidual. The continuation of allowing the Government argument is a vail excuse to circumvent the protections set forth in the Fourth Amendment and the Constitution that they swoar an Oath to uphold.

McCarthysm was suppose to be erradicated with the decision of Healy v James, 408 US 169, 33 L Ed 2d 266, 92 S. Ct. 2338 (1972). The fact that the police in this case was on a whild goose chase that has never found any evidence of the crime they were initially saught. It shows that this is another illustration of government officials seeking to destroy an individual at all costs.

This sentiment was spoken by thelate William J. Brennan Jr in a speech where he stated "There are some practices in the contemporary American scene which are reminescent of Salem witch hunts."

In Lee v United States, 96 L Ed 1270, 343 US 747 (1952), Justice

Frankfurter came out against government wiretapping of criminal suspects, calling it a "dirty business" that "makes for lazy, and not alert law enforcement." 343 US at 761. Allowing this [Leon] excuse to circumvent the Fourth Amendment is also allowing for a dirty business and lazy and not alert law enforcement.

Florida v Wells, 109 L Ed 2d 1, 495 US 1, 4, 110 S. Ct. 1632 (1990), the Fourth Amendment held violated where, in abscence of any departmental policy to opening of closed containers found during inventory searches. "[A]n inventory search must not be a **ruse** for a general rummaging in order to discover incriminating evidence."

It has been reported in teh news about how government has acted beyond the law should have allowed. It is recently been revealed that Secretary Alex Acosta had authorized an illegal plea agreement with the Defendant Jefrey Epstein when he was a prosecutor.

The plea agreement that defendant Congressman Anthony Weiner had received is beyond exceptional and would be too good to be true for average defendants. This favortism may not be illegal or unconstitutional, but it sure in the hell is unethical and a very wrong practice.

Having warrants that expand beyond its jurisdiction is just plain unconstitutional too. United States v Microsoft Corp, 138 S. Ct. 1186, 200 L Ed 2d 610 (2018) shows the Court was willing to hear the challenges involved in the case. It would have illustrated how ruthless and inappropriate the Government actions are in ignoring the Rights of the American People. Unfortunately, the case was mooted by a Congressional act that could have help set a much needed precedent to re-enforce the Fourth Amendment protections.

In the recent past, Apple Corp was requested by the FBI to ensure a backdoor was left open so the Government agencies could continue their ability to have unconstitutional access to any intrutional probes that the Government would want to conduct. The San Barnardino terrorist is prime example on how the FBI will do just about anything to seize the information by any means neccessary. (I believe) Mr. Rodarte's phone was seized by the FBI and asked Apple to bypass the security. A private firm 'hacked' the contents of the phone that was seized. This shows that even a deceased individual that can not be prosecuted can not be immune from the overly zealous tactics the Government utilizes to invade the private information of people.

We should combat terrorists, but it should not be by any means neccessary to conduct a witch hunt. These sweeps are conducted illegally as 'hunches' against terrorists, child pornography, drug dealers and money laundrying, and the tactics are blatantly clear as being unconstitutional. Law Enforcement and Prosecutors alike justify their illegal actions with the term 'Good-Faith' to justify these federal and local seizures to the courts. These actions should be address.

Ann Rand's 'Atlas Shrugged' demostrates this 1984 world we are producting with a very powerful quote:

> ... We're after power and we mean it. You fellows were pikers, but we know the real trick, and you'd better get wise to it. There's no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws. Who wants a nation of law-abiding citizens? What's there in that for anyone? But just pass the kind of laws that can neither be observed nor enforced nor objectively interpreted--and you create a nation of law-breakers--and then you cash in on guilt. ...

This novel may be a work of fiction, but it illustrates how life immitates art. The Government has created a cash cow that it forces the taxpayer to fit the bill for their pet projects. The Prosecutors and Law Enforcement has an incentive to continue these unethical practices to guarantee employment for themselves and to bloat the budgets of any new programs they create.

We hear stories of kickbacks to politicians and correctional institutions from the contractual awards that reaps in the money for private institutions or contracts that may indirectly assist the incarceration and warehousing of the societies undesirables. This mass incarceration is a real threat and problem that this nation is facing. The 97% successful conviction rate of the Federal Government and the nation has the largest incarceration rate of any other country in the world per capita at nearly 25% of the global incarcerated population. These numbers illustrate there is a radical problem with our Criminal Justice System in this country. I hope you decide not to just ignore the problem or place a bandaide on the issue but tackle not just the symptom but one of the causes of how the system is broken. I hope you decide to Vote for a hearing to Grant the Motion for Writ of Certiorari.

CONCLUSION

For the foregoing reasons that I have presented, I hope that the case has been represented enough to illustrate that the "Good-Faith" has been over used and should be addressed by this

Honorable Court. There are splits across the different jurisdictions of this nation. The explaination on how exigent circumstances are not as relivent in today's Digital Age. The Syntax and wording of the enumerated words of our Constitution were explicit in expressing the intention of protecting the People's basic privacy rights from intrution from the Government's wild goose chases. Also represented is the question on how and when should a binding precedent be objectively applied to the current caseload before the Judge.

President Andrew Jackson stipulated, "to this conclusion I can not assent, mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power ..."

Byars v United States, 273 US 28, 71 L Ed 520, 47 S. Ct 248 (1927) the success of search in revealing evidence of violation of law is immaterial so far as validity of search is concerned.

The words of a lot of great Americans have gone into drafting the U.S. Constitution. Public policy and advancements in technologies require us to re-evaluate how these basic princibles should be applied. I hope youalso consider the words of our first Chief Justice John Jay in the case Georgia v Brailsford, 1 L Ed 483, 3 Dall 1 (circa 1789):

> It may not be amiss, here, gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the providince of the court, to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourself to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to

> the opinion of the court. For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still both objects are lawfully within your power of decision.

These important words were repeated in the cases of: New Hampshire v Louisiana & New York v Louisiana, 108 U.S. 76, 27 L Ed 656, 2 S. Ct. 176 (1883); and Sparf v United States, 39 L Ed 343, 156 U.S. 51 (1895). This illustrates the importance that the descrecion that the Judicial Branch holds in being able to determine their own best judgment. You have the right to exercise your Superviosory Powers to review any standing precedent and challenge its authority.

I know the importance of upholding the freedoms that our fore fathers have faught to protect. My father served this great country in the U.S. Navy during the Cold War. My wife served our country during the terrible events of 9/11 and the Iraqi/ Afghanastan Wars. My teenage aughter just enlisted in the U.S. Marines to continue the tradition of protecting the freedoms that we hold so dear.

I hope you, with your power and ability, fulfill your Oath to Defend and Protect the values of the United States Constitution.

I do not want to be a resident of the 'Deep State.' We are not called the Police States of America. I rather live in a free land called the United States of America.

I implore you to Grant the petition for a Writ of Certiorari.

Respectfully Submitted,

Date: 3/07/2019

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