ORIGINAL

No. 18-9737

IN THE

SUPREME COURT OF THE UNITED STATES

LAQUAN L. KELLAM, — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA, RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LAQUAN L. KELLAM
(Your Name)

F.C.I. FORT DIX, P.O. BOX 2000
(Address)

JOINT BASE MDL, N.J. 08640-5433
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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:

QUESTION(S) PRESENTED

1. DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ABUSE ITS DISCRETIONARY, BROADLY-BASED AUTHORITY OF INTERPRETATION, THUS, VIOLATING PETITIONER'S FOURTH, FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHT(S), BY INCORRECTLY MIS-INTERPRETING UNITED STATES V. WATSON, 423 U.S. 411 (1976 - CONTRARY TO U.S. SUPREME COURT INTENTION?

2. DID THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA ERR IN DENYING THE MOTION TO SUPRESS EVIDENCE WHERE THE SHERIFF'S WARRANTLESS ARREST VIOLATED PETITIONER'S FOURTH AMENDMENT RIGHT(S)?

3. DID THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA'S DENIAL OF SUPPRESSION OF THE SEARCH OF THE GREEN STREET RESIDENCE IN ERROR BECAUSE NO VALID CONSENT WAS PROVIDED BY EITHER PETITIONER, OR THE RESIDENT'S OWNER, MS. ASHLEY SMITH, THUS GROSSLY VIOLATING PETITIONER'S FOURTH AMENDMENT RIGHT(S)?

4. DID THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA IMPERMISSIBLY ALLOW DETECTIVE DAVID LAU TO TESTIFY AS BOTH A FACT WITNESS, AND EXPERT WITNESS, AND WITHOUT PROVIDING ANY APPROPRIATE, CAUTIONARY INSTRUCTIONS TO THE JURY?

5. DID THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA ERR IN INCORRECTLY APPLYING THE TWO (2) LEVEL OBSTRUCTION ENHANCEMENT?

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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

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

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 _____ 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 SEPTEMBER 14, 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: MARCH 14, 2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

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

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner rests on the Fourth, Sixth, Eighth, and Fourteenth Amendment(s) in the claims, and arguments, as are set forth, and offered, in APPENDIX "B", APPENDIX "C", as well as the provisions, treaties, treatises, statutes, ordinances, regulations, and citations, in the instant PETITION FOR A WRIT OF CERTIORARI, violating Petitioner's right against illegal search, and seizure.

STATEMENT OF THE CASE

NOW COMES, LAQUAN L. KELLAM, Petitioner, pro se, and respectfully moves this AUGUST Court, in the instant PETITION FOR WRIT OF CERTIORARI, upon the judgment, entered on June 12, 2017, by the United States District Court for the Middle District of Pennsylvania, Philadelphia Division, denying Petitioner RELIEF from his conviction, and sentence; AS WELL AS the final OPINION, entered on September 14, 2018, by the United States Court of Appeals for the Third Circuit, ALSO, denying Petitioner RELIEF from same said conviction, and sentence. These Court decisions CONFLICTS with the decision of the United States Supreme Court in MANUEL V. CITY OF JOLIET, 580 U.S. ___ (2017). The Third Circuit's decision in UNITED STATES V. VASQUEZ-ALGARIN, 821 F.3d 467 (2016), and consideration by this Court, is, THEREFORE, necessary to secure, and maintain, uniformity of any Court decision(s).

In support of the instant PETITION, Petitioner respectfully offers, unto the Court, the following STATEMENTS OF FACT:

1. The instant case, and matter, at hand originated as a State Court drug prosecution, from Dauphin County, PA. On three (3) separate occasions, June 20, 25, and 27, 2014, controlled purchases of crack cocaine were, ALLEGEDLY, made, from Petitioner, to a Confidential Informant (C.I.), at various street locations, in Dauphin County. Detective David Lau, of the Harrisburg Police Department, orchestrated said controlled buys. Det. Lau began using said C.I., after previous contacts with him, for his own narcotics dealing(s). Neither Det. Lau, nor any other law enforcement officer, observed any transaction(s) between said C.I., and Petitioner. During the course of the investigation, said C.I. NEVER IDENTIFIED Petitioner by name; ONLY, "LOS". HE NEVER PROVIDED Det. Lau with information, regarding where Petitioner lived. None of the alleged drug transaction(s), with said C.I., occurred at any residence; let alone, Petitioner's residence.

2. Approximately, three (3) weeks later, on July 18, 2014, Det. Lau directed two (2) Dauphin County Deputy Sheriffs to conduct a WARRANTLESS arrest of Petitioner, after he was seen exiting a residence on Green Street, and drive

away, on a scooter. Said arrest was based, SOLELY, on the alleged three (3) prior drug transactions; three (3) weeks earlier. Petitioner was, immediately, placed into handcuffs, by the Sheriffs, and, subsequently, searched him; which revealed crack cocaine, and $500.00 in cash, on his person. Law enforcement requested consent to search the Green Street residence from Petitioner, and the ignition key was taken off of the scooter; BOTH WITHOUT Petitioner's CONSENT. Law Enforcement proceeded to, SIMPLY, open the door, WITHOUT CONSENT, and walked into the kitchen. The sight of the three (3) ARMED officers, hers, and Petitioner's, children in the kitchen, and Petitioner, himself, handcuffed, "upended", and startled, Ms. Smith; in, what she thought was, the privacy of her kitchen. Law enforcement, THEN, proceeded to search said residence, WITHOUT Ms. Smith's CONSENT, where they discovered, and seized, additional crack cocaine, money, and a 9mm firearm.

3. After Petitioner refused to cooperate with the authorities, the case was referred for federal prosecution, and Petitioner was, subsequently, indicted, by a federal Grand Jury, in the Middle District of Pennsylvania, Philadelphia Division, on December 18, 2014; charging him with four (4) Counts of distributtion of cocaine hydro chloride (crack cocaine); in violation of 21 U.S.C. § 841(a)(1). On September 10, 2015, a MOTION to suppress physical evidence, and statements, was filed, in federal District Court. A hearing on said MOTION was held on October 6, 2015. At the conclusion of said hearing, District Court stated that it was "...very concerned..." about the "WARRANTLESS" arrest; with no further comment(s).

4. Each of the following errors individually require, and mandate, that REVERSAL of Petitioner's conviction be had, and be REMANDED back to District Court, with instructions to VACATE the convicttion, without prejudice, because of Defendant's claims of "actual innocence", in light of VASQUEZ-ALGARING (Supra). The Third Circuit jojned "sister" Circuits in holding that probable cause WAS REQUIRED to satisfy PAyton's "reason to believe" language, such that officers, with an arrest warrant for a suspect, had to show "probable cause" that the suspect resided at, or was present, at a particular, private address that WAS NOT the suspect's home, before forcing entry. This DID NOT OCCUR in the instant case, and matter, at hand.

5. Firstly, the instant case SHOULD BE REVERSED, VACATED, and REMANDED, back to the Third Circuit Court of Appeals, because Petitioner's Fourth Amendment rights were GROSSLY VIOLATED when he was arrested, WITHOUT A WARRANT, by the Sheriffs. The Sheriffs WERE WITHOUT LEGAL AUTHORITY to legally arrest Petitioner.

6. Secondly, District Court committed REVERSIBLE ERROR, where the ALLEGED

consent to search the Green Street residence, under the totality of the known circumstances, WAS NOT VOLUNTARY.

7. Thirdly, WITHOUT ANY OBJECTION(S) by defense counsel, District Court permitted the investigating officer, and orchestrator of the alleged controlled buys, Det. Lau, to testify in dual roles, as a "fact witness", and "expert witness". Det. Lau WAS NEVER QUALIFIED as an "expert witness", and District Court DID NOT PROVIDE any cautionary instruction, to the jury, regarding his testimony, as to what constituted "lay" testimony, and "expert" testimony.

8. The Fourth Amendment to the United States Constitution guarantees that:

> "...[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..."

9. In VASQUEZ-ALGARIN (Supra), the Third Circuit, as well as its "sister" Circuits, held that "probable cause" was required to satisfy "reason to believe" language, such that officers, with an arrest warrant for a suspect, had to show "probable cause" that the suspect resided at, or was present, at a particular private address that was not the suspect's home, before forcing entry. The Third Circuit went on to hold that law enforcement officers need both an arrest warrant, and a search warrant, to apprehend a suspect at, what they know to be, a third party's home.

10. As is in Petitioner's instant case, and matter, at hand, NEITHER an arrest warrant, NOR a search warrant, was obtained to arrest Petitioner, or search Ashley Smith's Green Street residence. As the record, CLEARLY, reflects, officers MAY NOT ENTER a third party's residence to execute an arresst warrant without, FIRST, obtaining a search warrant, based upon the belief that the suspect might be a guest there, unless the search is consensual, or justified, by exigent circumstances. In this case, THERE WERE NO exigent circumstances. The inconvenience incurred by the police is, simply, not that significant, and, in any event, CANNOT OUTWEIGH the constitutional interests at stake. Looking at the entire legal landscape, at the time of the arrest in question, any reasonable officer COULD NOT HAVE INTERPRETED the law as permitting the arrest here. The unlawfulness of their conduct was, CLEARLY, established in the U.S. Constitution, at the time. REICHE V. HOWARD, 566 U.S. 658 (2012).

11. The Fourth Amendment establishes the standards, and procedures, governing pre-trial detention, and those constitutional protections apply, even after the

start of legal process in a criminal case. Therefore, the Third Circuit's INCORRECT ruling was, none other than, arbitrary to that of MANUEL (Supra), VASQUEZ-ALGARIN (Supra), and UNITED STATES V. YRVEN BAIN, 155 F. Supp. 3rd 107 (2015). It was the fact that Petitioner was a guest at the Green Street residence, and had no legitimate expectation of privacy in the house of someone else. Finally, the cause for Petitioner not raising the issue, or issue(s), in District Court was, solely, due to the ineffectiveness of defense counsel GROSSLY failing to advocate the lawful objections on behalf of Petitioner, and, thus, force the government to uphold its burden of proof, beyond a reasonable doubt. Had this been, the outcome of proceedings would have been quite different. STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984).

12. Apparently, for several months, a dispute between Petitioner, and trial counsel, Shawn M. Dorwood, Esq., followed, where allegations of ineffective assistance of counsel surfaced, culminating in the filing of a MOTION TO WITHDRAW, by counsel, on March 15, 2017. District Court granted that MOTION, on March 17, 2017, and, subsequently, appointed the Federal Public Defendant's Office, assigning Edward J. Rymsza, Esq.

STATEMENTS OF THE FACTS, STATEMENTS OF THE CASE AND SUMMARY OF ARGUMENT(S)

I. DISTRICT COURT ERRED IN DENTING THE MOTION TO SUPPRESS EVIDENCE WHERE THE SHERIFF'S WARRANTLESS ARREST VILATED PETITIONER'S FOURTH AMENDMENT RIGHT(S)

The Fourth Amendment to the United States Constitution guarantees the "...[t]he right of the people to be secure in their persons, houses, papers, and effects, against reasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause..." "...This power to arrest is an awesome one and is subject to abuse..." UNITED STATES V. SANTANA, 427 U.S. 411, 48 (Marshall J., dissenting). The existance of probable cause is a necessary condition for a valid arrest. DUNAWAY V. NEW YORK, 442 U.S. 200, 213-14 (1979). The law permits a warrantless arrest upon probable cause, provided that the strict statutory requirements, to make such an arrest, are satisfies. UNITED STATES V. WATSON, 423 U.S. 411, 423-24 (1976). Applying this well-enshrined authority, the warrantless arrest of Petitioner, in the instant case, and matter,

at hand, WAS INVALID.

District Court, and the Court of Appeals, based its decisions to deny suppression motions solely upon a U.S. Supreme Court case, WATSON (Supra), that was erroneously believed to be controlling. IT WAS NOT controlling for multiple reasons.

First, notably, these Courts incorrectly based its decisions on the erroneous assumptions, and record evidence, that Det. Lau,as is mentioned in the above, was the individual who made the arrest of Petitioner. HE WAS NOT. Rather, it was not a police officer, but, instead, two (2) Dauphin County deputy sherriffs who conducted the illegal arrest of Petitioner. Det. Lau WAS NOT PRESENT for said arrest. This crucial distinction is fatal.

The validity of an arrest is controlled by the law of the State where the arrest occurred. UNITED STATES V. MYERS, 308 F.3d 251 (3rd Cir., 2002). By statute, sherriffs, and deputy sheriffs, in Pennsylvania, HAVE NARROW AUTHORITY that permits them to "...[s]erve process and execute orders directed to him pursuant to law..." 42 PA. C.S.A. § 2921. In this Commonwealth, the Pennsylvania Supreme Court has made it abundantly clear that a sheriff, and deputy sheriff, have limited arrest powers. Indeed, they may, ONLY, make a warrantless arrest for felonies, and breaches of the police, COMMITTED IN THEIR PRESENCE. COMMONWEALTH V. LEET, 641 A.2d 299 (PA., 1994) (Sheriffs have the authority to arrest for breaches of the peace and for felonies committed in their presence). Also, COMMONWEALTH V. DOBBINS, 934 A.2d 1170 (PA., 2007) (Because of a lack of statutory authority, sheriffs lack the power to conduct independant investigation under the controlled substance act including the seeking of warrants where no felony has occurred in their presence).KOPKO V. MILLER, 892 A.2d 766 (PA., 2006) (Sheriffs are not investigative or law inforcement officers under the wiretap act).

Here, no crime, let alone a felony, was committed in the presence of the sheriffs. The sheriffs WERE NOT PART of the law enforcement team involved in the prior three (3) controlled buys. They DID NOT TESTIFY at the Suppression Hearing, and THERE WAS NO EVIDENCE elicited that they had any knowledge of said prior

controlled buys. THEREFORE, without a warrant, they lacked the authority to arrest Petitioner.

Second, both Court's dispositive application of WATSON (Supra) ignores the critical distinctions from the facts of this case. In WATSON (Supra), unlike here, there was no explicit statute that authorized Postal inspector officers to make warrantless arrests for felonies if certain conditions were present. WATSON (Supra) at 415. As such, in that case, the statutory authority was present, and the inquiry could end there. By contrast, THERE IS NO Pennsylvania statute that authorizes sheriffs to conduct warrantless felony arrests. Indeed, as the cases above dramatically illustrate, in Pennsylvania sheriffs have limited authority, and even more limited warrantless arrest powers.

Finally, warrantless searches, and arrests, by unauthorized personnal, like the sheriffs here, are, per se, unreasonable, and demands SUPPRESSION. UNITED STATES V. WHITING, 781 f.2d 692 (9th Cir., 1986) (Export enforcement agent of Commerce Dept. was not "law enforcement agent" authorized to obtain search waarant or conduct warrantless search and evidence suppressed); UNITED STATES V. SOTO-SOTO, 598 F.2d 545 (9th Cir., 1979) (Evidence suppressed where warrantless search was conducted by FBI agent who was not authorized by statute to conduct warrantless border search); ALEXANDER V. UNITED STATES, 390 f.2d 101 (5th Cir., 1968) (Postal inspectors not authorized to conduct warrantless arrest under statute); UNITED STATES V. VIALE, 312 F.2d 595 (2nd Cir., 1963), Cert. denied, 373 U.S. 903 (1963) (I.R.S. agents lacked authority to arrest defendant without a warrant absent reasonable cause that he was committing misdemeanor in their presence).

In their opinions, both Courts expressed "concerns", but felt constrained to rule in the government's favor solely upon WATSON (Supra). In the absence of that case being controlling authority, the arrest WOULD NOT HAVE BEEN UPHELD. Both Courts ERRONEOUSLY believed that this Supreme Court precedent bound it to disregard the Court's concerns, and rule otherwise. The simple fact remains that, under the circumstances, in this case, WATSON (Supra) was not controlling. Both Court's "concerns" were entirly valid. The arrest was not authorized, and the Courts SHOULD HAVE VACATED, and REMANDED, for a new trial.

II. DISTRICT COURT AND THE COURT OF APPEALS' DENIAL SUPPRESSION OF THE SEARCH OF THE GREEN STREET RESIDENCE WAS IN ERROR BECAUSE NO VALID CONSENT WAS PROVIDED BY EITHER PETITIONER OR MS. SMITH

Given the sanctity of the home, "...searches and seizures inside a home without a warrant are presumptively unreasonable..." PAYTON V. NEW YORK, 445 U.S. 573, 586 (1980). Every warrantless search of private premises is, per se, unreasonable, and presumptively invalid, under the Fourth Amendment. KATZ V. UNITED STATES, 389 U.S. 347 (1967). Moreover, all warrantless searches must fall under one of the "...few specially established and well-delineated exceptions..." to the warrant requirement. Id. at 357. One of those established exceptions is a search conducted pursuant to lawful consent. SCHNECKLOTH V. BUSTAMONTE, 412 U.S. 218 (1973). In the absence of a search warrant, issued by a neutral, and detached, magistrate, the government has the burden of proving that the warrantless search is consensual, and that such consent was freely, and voluntarily, given. BUMPER V. NORTH CAROLINA, 391 U.S. 543 (1968). Courts must use "...the most careful scrutiny..." when reviewing claims by the government that a defendant consented to a search. SCHNECKLOTH (Supra) at 229. whether consent is voluntary is determined based upon a totality of the circumstances. Id. at 227. The government's burden "...is not satisfied by showing a mere submission to a claim of lawful authority..." FLORIDA V. BOYER, 460 U.S. 491, 497 (1983). Being in custody makes the prosecution's burden, to prove consent, particularly heavy. UNITED STATES V. HALL, 565 F.2nd 917, 920 (5th Cir., 1978). Courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights. JOHNSON V. ZERBST, 304 U.S. 458, 464 (1938).

Both District Court, and the Court of Appeals, has focused on several factors in determining whether a consent was voluntary, including the age, education, and intelligence, of the defendant; whether the defendant was advised of his, or her, constitutional rights, the length of the encounter, use of physical constraint, and the setting in which the consent was obtained. UNITED STATES V. PRICE, 558 F.3d 270, 278 (3rd Cir., 2009).

Applying these important standards, the government DID NOT ESTABLISH that the consent to search the Green Street property was voluntary. A combination of a

variety of coercive elements, that were presented here, and overlooked by District Court, was enough to invalidate any consent.

First, the uncontradicted testimony, at the Suppression Hearing, established that Petitioner had only a ninth (9th) grade education, was without a high school diploma, or G.E.D., was illiterate, and suffered from a learning disability.

Second, at the time of his unsubstantiated, purported consent, Petitioner was UNDENIABLY under arrest, and WAS IN CUSTODY. THEREFORE, his custodial status WAS NOT VOLUNTARY, and made the subsequent consent to search dubious, from the start. JUDD V. UNITED STATES, 190 F.2d 649 (D.C. Cir., 1951) (Consent to search home involuntary where defendant gave the consent while in police custody).

Third, Petitioner was, immediately, subjected to a coercive atmosphere, at the time of his arrest. In the process of innocuously operating a motor scooter, Petitioner was startlingly stopped, in broad daylight, by a marked sheriff's car, where he was confronted by two (2) uniformed, and armed, sheriff deputies. After this immediate, and unmistakable, show of force, he was, immediately, placed under arrest, and handcuffed. Only after this arrest, was the unsubstantiated, purported consent obtained making its validity immensely dubious, from the start. Within minutes, a third officer, Det. Lau, arrived at the scene, and placed his car in a manner where Petitioner was boxed-in. During this arrest, Petitioner was described as being "...very submissive..." to the officers. While he remained in handcuffs, and after he was searched, he was, ALSO, purported to have been asked to give consent to search the Green Street residence, while flanked by three (3) armed officers. NO WRITTEN CONSENT was ever obtained to search the residence in question by Petitioner, or by Ms. Smith. The three officers, working in tandem together in the manner in which they did, and their subsequent request for consent to search the residence, provides indicia of the coercive environment, invalidating any lawful consent. UNITED STATES V. BEAUCHAMP, 659 F.3d 560 (6th Cir., 2011) (Consent to search not voluntary where two uniformed officers at scene placed his hands on defendant's body to conduct search).

Fourth, Det. Lau ACKNOWLEDGED that he could have obtained a search warrant, but failed to do so.

Finally, the police escorted Petitioner back to the Green Street residence, obtained his key from him to open the door to the residence, and were, immediately, met by Ms. Smith. When the door was opened, Ms. Smith observed her boyfriend, Petitioner, handcuffed in front of her, flanked by three, armed police officers, and advised her that he was being arrested for three separate drug transactions. Based upon this ominous "picture", the police requested her consent to search the residence. They, further, advised her that if she did not consent, they would get a search warrant.

Under the totality of the circumstances, the consent to search the Green Street residence was involuntary, and it was error for District, and Appellate, Court(s), to conclude otherwise.

III. THE COURT INPERMISSIBLY ALLOWED DETECTIVE LAU TO TESTIFY AS BOTH A LAY WITNESS AND EXPERT WITNESS WITHOUT PROVIDING ANY APPROPRIATE CAUTIONARY INSTRUCTION

Federal Rules of Criminal Procedure 16(a)(1)(G) requires the government to disclose a written summary of expert testimony it intends to use, under Federal Rules of Evidence 702-05. Any expert witness, under Rule 702, requires the witness to be qualified to testify as an expert. In Re RAOLI R.R. YARD PCB LITIGATION, 35 F.3d 717 (3rd Cir., 1994).

The dual testimony of a law enforcement fact witness who, also, testifies as an expert, is problematic, and can be prejudicial to a defendant. UNITED STATES V. CRUZ, 363 F.3d 187, 194 (2nd Cir., 2004) ("...the testimony of any law enforcement agent who functions as both a fact and an expert witness is susceptible to the risks posed by such dual testimony...") Where such dual testimony is presented, District Court should give a clear, cautionary instruction, to the jury, regarding what testimony is lay witness testimony, and what is being offered as expert testimony. UNITED STATES V. WILSON, 484 f.3d 267 (4th Cir., 2007) (Court took adequate steps which included a cautionary instruction to the jury regarding the dual testimony as fact and expert witness to make certain that the dual role did not prejudice or confuse the jury). The failure to provide appropriate, cautionary instruction to the jury, regarding the dual role of the law enforcement witness, can amount to REVERSIBLE PLAIN ERROR.

UNITED STATES V. LOPEZ-MEDINA, 461 F.3d 724, 745 (6th Cir., 2006) (District Court committed "plain error" when it failed to provide cautionary instruction regarding the agent's dual witness roles nor a clear demarcation between the witness' fact and espert testimony).

Here, Det. Lau testified, at trial, as both a fact witness, and an expert witness. Det. Lau was the officer in charge of the three (3) controlled buys. He offered testimony at trial regarding all of the details of those transactions, and the events surrounding Petitioner's arrest. However, without any notice, without any expert report, and without even being qualified as an expert, Det. Lau offered expert testimony. Throughout his trial testimony, Det. Lau offered a wide assortment of unlettered expert testimony. He offered his opinion as to the street value of an "eight ball" of crack cocaine, in June-July, 2014. He offered testimony on how drugs are packaged, and sold, on the street. He offered expert testimony on the street value of someone who was breaking-down "eight balls", and selling them for $10.00 per tenth of a gram, opining that its value would be over $20,000.00. He testified that a crack cocaine user would never carry an ":eight ball". He, further, opired that drug dealers carry guns for protection. He described, for the jury, "front amounts". He explained drug jargon. Finally, he even offered testimony that, based upon his training, and experience, Petitioner possessed a gun, in furtherance of drug activities. Arguably, this testimony VIOLATED Federal Rules of Evidence 704(b). UNITED STATES V. WATSON, 260 F.rd 301 (3rd Cir., 2001) (Conviction reversed where government violated Rule 704(b)).

The danger in permitting the dual testimony, in this case, is, of course, self-evident. Without any challenge, whatsoever, Det. Lau was permitted to give expert testimony, regarding his own investigation, and on the evidence he recovered. Moreover, his dual testimony, as both a lay witness, and expert witness, unreasonably provided a FALSE aura of reliability to his testimony. Det. Lau's credibility, as a lay witness, was impermissibly bolstered by his testimony as an expert witness, and likely provided more "weight" to the jury than it deserved. Finally, District, and Appellate, Courts DID NOTHING to minimize the prejudice. There was no delineation between fact, and expert, witness, and these Courts provided no cautionary instruction to the jury. THUS, under the circumstances, PLAIN ERROR occurredd. LOPEZ-MEDINA (Supra) at 724.

IV. DISTRICT COURT ERRED IN APPLYING THE TWO-LEVEL OBSTRUCTION ENHANCEMENT PURSUANT TO U.S.S.G. § 3C1.1

The U.S. Sentencing Guidelines permits a two (2) level sentencing enhancement where "...the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction..." U.S.S.G. § 3C1.1. Obstructive conduct must be "material", and, thus, must have had some impact on the investigation, or prosecution. UNITED STATES V. JENKINS, 275 F.3d 283 (3rd Cir., 2001) (Finding no evidence that the federal proceedings were impeded by defendant's failure to appear in State Court). Where a defendant's conduct does not significantly impede the investigation, the enhancement is improper. UNITED STATES V. MORALES-SANCHEZ, 609 F.3d 637 (5th Cir., 2010) (Reversing obstruction increase for lack of showing that defendant's phone call from police car hindered the investigation). The government bears the burden of establishing, by a preponderance of the evidence, that the defendant obstructed, or impeded, the administration of justice. UNITED STATES V. BRENNAN, 326 F.3d 176 (3rd Cir., 2003).

Here, the P.S.I. provided two (2) reasons for the application of the obstruction enhancement: (A) Petitioner purportedly lied under oath, at the Suppression Hearing, by stating he never drove a particular car, and denied selling drugs; and (B) Petitioner met with the "informant", and received a recorded statement from him, in which he stated that the drug deals never occurred. (P.S.I. ¶¶ 13-14 "UNDER SEAL"). NO ADDITIONAL EVIDENCE to support the enhancement was elicited at sentencing.

First, with regard to the recorded statement from the confidential "Informant", the government did not know anything about the recording until the eve of the trial, and was only provided to the government on the morning of the trial (P.S.I. 14). Nevertheless, that RECORDING WAS NEVER USED by the defense at trial. Thus, given the timing of the disclosure on the morning of trial, and its non-usage, it is hard to fathom how the recording was material, or how it could have impeded the investigation. As such, application of the enhancement, on this basis, was without merit. JENKINS (Supra) at 283; UNITED STATES V. SCOTT, 405 F.3d 615 (7th Cir., 2005) (Defendant's conduct during pre-trial release did not

complicate prosecution of fraud charges); UNITED STATES V. JONES, 159 F.3d 969 (6th Cir., 1998) (Reversing increase where defendant's false testimony about racial slurs was not relevant to sentencing). Likewise, there was no evidence that the "Informant" was threatened, or intimidated, into giving the statement. UNITED STATES V. MCLAUGHLIN, 126 F.3d 130 (3rd Cir., 1997)((Reversing enhancement even though defendant sent investigators to secretly tape recorded statement from witnesses, because there was no claim that the secret tape recording intimidated or lawfully influenced any witness).

Second, petitioner's testimony, at his own Suppression Hearing, which may have been later been contradicted by the trial testimony, DID NOT REFLECT a willful attempt to obstruct justice. UNITED STATES V. CANOVE, 412 F.3d 331 (2nd Cir., 2005) (Affirmed District Court's conclusion that obstructive intent was not shown by preponderance); UNITED STATES V. AGOSTINO, 332 F.3d 1183 (7th Cir., 1997) (Upholding refusal to increase even though defendant's Grand Jury testimony was contradicted by other witnesses); UNITED STATES V. SANDERS, 341 F.3d 809 (8th Cir., 2003) (Court's rejection of defendant's version did not require obstruction increase). Consequently, the evidence was insufficient to support the two (2) level obstruction enhancement in the instant case, and matter, at hand.

REASONS FOR GRANTING THE PETITION

The compelling reason(s) that exist for the exercise of this Court's discretionary jurisdiction is to try to show that, not only was that both District Court's, and the Third Circuit Court of Appeals', decision(s) were, INDEED, erroneous, but that the national importance of having the United States Supreme Court decide the question(s) involved in the instant WRIT OF CERTIORARI presented, herein.

It is crucially important to show that said decision(s) of these two (2) lower Courts, that decided Petitioner's case, at hand, in in dire conflict with the decisions of the plurality of other sister Appellate Courts. The importance of the case, and matter, at hand is not only important to petitioner, but to so many others similarly situated.

The ways that the decisions of the two (2) lower Courts, involved in the instant case, and matter, at hand was, INDEED, erroneous.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Laquan Kellam

LAQUAN L. KELLAM, PETITIONER

Date: 6-10-191 /2019