

19-7282  
No. Record No. 181381

Court of Appeals No. 1410-19-1

IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

John Anthony Arnold 1108658 — PETITIONER  
(Your Name)



vs.  
Commonwealth of Virginia RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Virginia  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Anthony Arnold 1108658  
(Your Name)

4150 Hayes Mill Rd  
(Address)

Baskerville, VA 23915  
(City, State, Zip Code)

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(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- ① Did the Virginia Supreme Court err by denying Petitioners Motion to Suppress By finding Sufficient Probable Cause to support Petitioners Warrantless arrest?
- ② Did the Virginia Supreme Court err by denying Petitioners motion to Suppress by finding exigent circumstances supporting a protective sweep, pending the execution of a search warrant?

## **LIST OF PARTIES**

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

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

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

For cases from **federal courts**:

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

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

reported at Record 181381 Court of Appeals NO 140-17-1; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Virginia Supreme court appears at Appendix A to the petition and is

reported at Record NO 181381 Court of Appeals NO 140-17-1; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## **JURISDICTION**

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_

No petition for rehearing was timely filed in my case.

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

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

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

For cases from **state courts**:

The date on which the highest state court decided my case was 6/20/14. A copy of that decision appears at Appendix A.

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).

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II. THE TRIAL COURT ERRED IN DENYING  
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## **STATEMENT OF FACTS**

Investigator Andrew Mondie, of the Norfolk Police Department, of the Third Patrol Division, was on April 28, 2016, working as a narcotics investigator on a controlled purchase of some unknown individual, identified as CI<sup>1</sup>. <sup>1</sup> As part of Inv. Mondie's controlled purchase with CI<sup>1</sup>, he arrests an individual who later agrees to assist police and is known as CI<sup>2</sup>. <sup>2</sup> CI<sup>2</sup>, when questioned, agrees to give police his supplier's name, "John." <sup>3</sup> Inv. Mondie testifies that CI<sup>2</sup> said he purchased cocaine from "John" and gave a description of his supplier as "black male, late 30's, five-ten, larger stocky build, although not heavy set, and walked with a limp." <sup>4</sup> CI<sup>2</sup> supplied a contact number for "John" and Inv. Mondie ran that phone number through Norfolk Police records. <sup>5</sup> Per Inv. Mondie, CI<sup>2</sup> stated he had purchased drugs from Appellant in the past. <sup>6</sup> Inv. Mondie said he ran the phone number CI<sup>2</sup>

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<sup>1</sup> Suppression Transcript, November 15, 2016, at p.7. (Hereinafter Tr. 11/15/16).

<sup>2</sup> Id. at pp. 9-10.

<sup>3</sup> Id. at p. 11.

<sup>4</sup> Id. at p.11.

<sup>5</sup> Id. at pp. 10-11.

<sup>6</sup> Id. at p. 11.

had for "John" and it came back to Appellant and Inv. Mondie was able to show CI<sup>2</sup> a picture.<sup>7</sup> CI<sup>2</sup> identified Appellant's apartment's location and that it was "upstairs" on "left" but did not identify apartment letter or number.<sup>8</sup> CI<sup>2</sup> stated Appellant would deliver drugs to his apartment and that he would buy drugs at his apartment.<sup>9</sup> CI<sup>2</sup> stated to Inv. Mondie Appellant drove a 4-door dark colored sedan.<sup>10</sup> Inv. Mondie stated the police set up surveillance that day on Appellant and saw him drive in a dark colored sedan and the plate came back to Brandi Perry.<sup>11</sup> Inv. Mondie had CI<sup>2</sup> call "John" on speaker phone and CI<sup>2</sup> placed order for \$100.00 soft and \$100.00 hard and agreed to have drugs delivered at CI<sup>2</sup>'s residence.<sup>12</sup> Inv. Mondie at that point set up surveillance outside Appellant's apartment and as soon as Appellant walked out of the common door of the apartment he was arrested.<sup>13</sup> Investigator Ruiz recovered

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<sup>7</sup> Id. at pp. 11-12.

<sup>8</sup> Id. at pp. 12, 15.

<sup>9</sup> Id. At p. 15.

<sup>10</sup> Id.

<sup>11</sup> Id. At 15-16.

<sup>12</sup> Id. At pp. 18-19.

<sup>13</sup> Id. At 20.

2.45 grams (later weighed at 2.7 grams) from Appellant's person upon his arrest and no smoking devices or straws were recovered.<sup>14</sup> Inv. Mondie said apartment "D" was on the left.<sup>15</sup> Inv. Mondie agrees CI<sup>2</sup> was helping police to help himself.<sup>16</sup> Inv. Mondie testified no drug transactions occurred that day involving Appellant nor was any money ever exchanged.<sup>17</sup> Inv. Mondie did not use any of CI<sup>2</sup>'s statements or information regarding drugs being inside the apartment when swearing out the affidavit for the warrant and the sole basis for the search warrant was Appellant's arrest and amount of drugs recovered on his person.<sup>18</sup> Inv. Mondie agrees he previously testified at the preliminary hearing that the amount of narcotics found of Appellant could be for personal use.<sup>19</sup> Inv. Mondie was not present when Inv. Ruiz first entered apartment.<sup>20</sup> Inv. Mondie testified CI<sup>2</sup> knew apartment location but not number or

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<sup>14</sup> Id. At 22, 30-31

<sup>15</sup> Id. At 32.

<sup>16</sup> Id. At 33.

<sup>17</sup> Id. At 39-40.

<sup>18</sup> Id. 41-42.

<sup>19</sup> Id. At 44.

<sup>20</sup> Id. At 46.

letter of apartment.<sup>21</sup> When Inv. Mondie arrived back at the apartment with the search warrant, officers were already inside and he previously let them know the search warrant was signed by the magistrate.<sup>22</sup> Appellant and girlfriend were in hand cuffs when Inv. Mondie went to get the search warrant for the apartment and they did not attempt to flee or resist.<sup>23</sup>

Inv. Ruiz performed a protective sweep of the apartment before the search warrant was on-scene.<sup>24</sup> Perry handed Inv. Ruiz her keys but never consented to search apartment.<sup>25</sup> Drugs were seen in plain view.<sup>26</sup> Inv. Ruiz did not knock before entry, hear any one inside, was not aware of anyone to be inside, did not smell drugs emanating from apartment, did not see anyone come or go, and did not see any weapons before he entered the apartment.<sup>27</sup> When Inv. Mondie arrived on scene with the search warrant Inv. Ruiz

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<sup>21</sup> Id. At p. 46.

<sup>22</sup> Id. At 48.

<sup>23</sup> Id. At 51.

<sup>24</sup> Id. At 55.

<sup>25</sup> Id. At 56, 59-60.

<sup>26</sup> Id. At 58.

<sup>27</sup> Id. At 58-59.

testified he was outside the apartment.<sup>28</sup> Inv. Ruiz, on redirect, then testified that he went inside after receiving a call from Inv. Mondie that the search warrant was signed.<sup>29</sup> Inv. Ruiz testified CI<sup>2</sup> never said he was inside the apartment.<sup>30</sup>

## **ARGUMENT**

I. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO SUPPRESS AND FINDING THERE WAS ENOUGH PROBABLE CAUSE FOR THE APPELLANT'S WARRANTLESS ARREST. (Preserved at Transcript 11/15/2016 at pp. 72-75, 81-82, 95 and Suppression Brief 10/16/2016.)

### **A. STANDARD OF REVIEW**

On appeal, the Court of Appeals, when reviewing a trial court judge's denial of a motion to suppress, "we view the evidence in the light most favorable

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<sup>28</sup> Id. At 61.

<sup>29</sup> Id. At 62.

<sup>30</sup> Id. At 68.

to the [Commonwealth], the prevailing party below, and we grant all reasonable inferences fairly deducible from that evidence.”<sup>31</sup> The Court of Appeals in their review, “are bound by the trial court’s findings of historical fact unless plainly wrong or without evidence to support them.”<sup>32</sup> On appeal, this Court “considers *de novo* whether those facts implicate the Fourth Amendment and, if so, whether the officer unlawfully infringed upon an area protected by the Fourth Amendment.”<sup>33</sup> “The burden is on Appellant to show the trial court’s decision constituted reversible error.”<sup>34</sup>

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<sup>31</sup> Commonwealth v. Grimstead, 12 Va. App. 1066, 1067, 407 S.E.2d 47, 48 (1991).

<sup>32</sup> McGee V. Commonwealth, 25 Va. App. 193, 198, 487 S.E.2d 259, 261 (1997) (enbanc) (citing Ornelas v. United States, 517 U.S. 690, 699, 134 L. Ed. 2d 911, 116 S.Ct. 1657 (1996)).

<sup>33</sup> Id. And U.S. Constitution, Amendment IV

<sup>34</sup> Harris V. Commonwealth, 27 Va. App. 554, 561, 500 S.E.2d 257, 260 (1998) (citing Stanley V. Commonwealth, 16 Va. App. 873, 874, 433 S.E.2d 512, 513 (1993)).

## B. ARGUMENT

The trial court was plainly wrong and without sufficient evidence when they found Law enforcement had sufficient probable cause to arrest Appellant without a warrant, because the arrest was based on the unreliable statements of a confidential informant without corroborating evidence. "The Fourth Amendment protects individuals against unreasonable searches and seizures."<sup>35</sup> "Whether a warrantless arrest is constitutionally valid depends...upon whether, at the moment the arrest was made, the officers had probable cause to make it..."<sup>36</sup> "When the government relies on the information of a confidential informant to effectuate and arrest or search, a totality of the circumstances analysis will be applied."<sup>37</sup> "Generally, the two elements of particular significance in cases involving

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<sup>35</sup> U.S. Const. amend. IV., Va. Const., Art. I, Sec. 10.

<sup>36</sup> Beck V. Ohio, 379 U.S. 89, 91, 13 L. Ed. 2d 142, 85 S. Ct. 223 (1964).

<sup>37</sup> Illinois v. Gates, 462 U.S. 213, 233.

informant information are: (1) the reliability of the informant and (2) the inherent reliability of the informant's information as determined by the nature and detail of the circumstances described and any independent corroboration of those circumstances." <sup>38</sup>

"Also, if the informer is a disinterested citizen who is either a victim of or eyewitness to, a crime, police properly may give more weight to the informer's information than they would to information from a criminal informer, whose motives are less likely to be pure." <sup>39</sup> An informant under arrest cannot be seen as reliable as a "citizen" because he could expect a "gain or concession" from law enforcement for his exchange of information and therefore some indicia of informant's reliability is required for law enforcement to base probable cause for arrest on his

 <sup>38</sup> McGuire v. Commonwealth, 31 Va. App. 584, 595, 525 S.E.2d 43, 49 (2000).

 <sup>39</sup> Russel v. Commonwealth, 33 Va. App. 604, 613-14, 535 S.E.2d 699, 704 (2000).

statements alone.<sup>40</sup>

In Appellant's case, law enforcement relied on the information of an individual (CI<sup>2</sup>) who was placed under arrest for selling narcotics the same day he became an informant against Appellant.<sup>41</sup> The Commonwealth did not provide information that the informant was reliable because he was already working with police or had and was found to be reliable in the past. In fact, CI<sup>2</sup>, who had then been taken to the police station made statements in addition that "would affect his exposure to the laws."

<sup>42</sup> CI<sup>2</sup> then agreed to give up his supplier.<sup>43</sup> By all accounts, CI<sup>2</sup> was in a desperate situation and needed to come up with a name for the police to save himself. Like Russell and Polston, the position CI<sup>2</sup> was in, created conditions to consider any

<sup>40</sup> Polston v. Commonwealth, 24 Va. App. 738, 745, 485 S.E.2d 632, 635 (1997).

<sup>41</sup> Tr. 11/15/16 at p. 9.

<sup>42</sup> Tr. 11/15/16 at p.11.

<sup>43</sup> Tr. 11/15/16 at p.11.

information he provided less reliable unless corroborated. Inv. Mondie testified CI<sup>2</sup> provided a first name, description of what Appellant looked like, color car he believed Appellant drove, apartment location, to police.<sup>44</sup> Inv. Mondie testified CI<sup>2</sup> told police Appellant delivered narcotics to his door and that he (CI<sup>2</sup>) purchased narcotics at Appellant's residence and that CI<sup>2</sup> had been "inside the apartment to purchase."<sup>45</sup> Then Inv. Mondie testified, when asked on cross examination if CI<sup>2</sup> was ever "inside the apartment", Inv. Mondie testified "I testified that he had been to the apartment and purchased narcotics before."<sup>46</sup> Inv. Ruiz testified CI<sup>2</sup> never said he was inside Appellant's apartment.<sup>47</sup> Inv. Mondie testified that police observed no narcotics transactions and prior to CI<sup>2</sup>'s arrest had no information that Appellant or his apartment were

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<sup>44</sup> Id.

<sup>45</sup> Tr. 11/15/16 p.15.

<sup>46</sup> Tr. 11/15/16 at p. 50.

<sup>47</sup> Tr. 11/15/16 at p. 68.

involved in narcotics possession or sales.<sup>48</sup> Inv.

Mondie has CI<sup>2</sup> make a phone call to allegedly Appellant and set up a narcotics buy of \$100 "soft" and \$100 "hard" to be completed at CI<sup>2</sup>'s residence as they sat outside of Appellant's apartment.<sup>49</sup>

Appellant, when arrested, simply came out of the common door of the apartment and was taken down and placed under arrest with the above information from CI<sup>2</sup>.<sup>50</sup> Appellant was not at the location CI<sup>2</sup> requested the narcotics be delivered, he was not seen coming out of a specific apartment door, was not seen making any narcotic transactions, and did not get in the alleged known car. CI<sup>2</sup>'s information went uncorroborated by police. The only corroborating evidence collected by law enforcement was the phone number CI<sup>2</sup> allegedly of the Appellant, was matched through a large data base that could or

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<sup>48</sup> Tr. 11/15/16 at pp. 34, 39-40, 42, 50

<sup>49</sup> Tr. 11/15/16 at pp. 16, 18, 19, 20

<sup>50</sup> Tr. 11/15/16 at p. 20

not mean it definitely belongs to any one individual.

<sup>51</sup> The information given by CI<sup>2</sup> is nothing more than a desperate individual, trying to avoid arrest and conviction, giving information about an individual that only he says sells drugs and without any further corroboration. Under a totality of the circumstances, when balancing the reliable and unreliable and uncorroborated information, and standing in the shoes of an "objectively reasonable police officer", the inherent deficiencies in the informant's information without further corroboration by police fail to meet the requisite probable cause for a warrantless arrest and the subsequent recovery of narcotics from Appellant's person incident to arrest should have been suppressed. In addition, the search warrant subsequently obtained was based solely on Appellant being charged with distribution of cocaine, and if the arrest fails for lack of probable

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<sup>51</sup> Tr. 11/15/16 at p. 34-36.

cause, then the probable cause for the search warrant fails as well. Absent a valid search warrant or exigent circumstances, the threshold of the residence cannot be crossed. Because the entry was illegal, "the evidence seized "was 'the fruit of the poisonous tree and should have been suppressed."<sup>52</sup>

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS BY FINDING THERE WAS EXIGENT CIRCUMSTANCES TO ENTER THE APARTMENT AND PERFORM A PROTECTIVE SWEEP.

(Preserved at Tr. 11/15/16 at pp. 72, 76-77, 79-82, 95 and Suppression Brief 10/16/2016).

A. THE STANDARD OF REVIEW

On appeal, the Court of Appeals, when reviewing a trial court judge's denial of a motion to suppress, "we view

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<sup>52</sup> Gladden v. Commonwealth, 11 Va. App. at 600, 400 S.E.2d at 794.

the evidence in the light most favorable to the [Commonwealth], the prevailing party below, and we grant all reasonable inferences fairly deducible from that evidence.”<sup>53</sup> The Court of Appeals in their review, “are bound by the trial court’s findings of historical fact unless plainly wrong or without evidence to support them.”<sup>54</sup> On appeal, this Court “considers *de novo* whether those facts implicate the Fourth Amendment and, if so, whether the officer unlawfully infringed upon an area protected by the Fourth Amendment.”<sup>55</sup> “The burden is on Appellant to show the trial court’s decision constituted reversible error.”<sup>56</sup>

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<sup>53</sup> Commonwealth v. Grimstead, 12 Va. App. 1066, 1067, 407 S.E.2d 47, 48 (1991).

<sup>54</sup> McGee V. Commonwealth, 25 Va. App. 193, 198, 487 S.E.2d 259, 261 (1997) (enbanc) (citing Ornelas v. United States, 517 U.S. 690, 699, 134 L. Ed. 2d 911, 116 S.Ct. 1657 (1996)).

<sup>55</sup> Id. And U.S. Constitution, Amendment IV

<sup>56</sup> Harris V. Commonwealth, 27 Va. App. 554, 561, 500 S.E.2d 257, 260 (1998) (citing Stanley V. Commonwealth, 16 Va. App. 873, 874, 433 S.E.2d 512, 513 (1993)).

## B. ARGUMENT

The trial Court was plainly wrong and without evidence when they found that law enforcement was justified in entering the apartment to perform a protective sweep despite there was no evidence presented by the Commonwealth of any danger to officers, destruction of evidence, or threat of other perpetrators on the premises.

If Appellant's arrest, and subsequent search warrant based on the arrest, are without probable cause and invalid, the Commonwealth cannot rely on exigent circumstances to secure the contents of the apartment. "Warrantless entries into a residence are presumptively unreasonable."<sup>57</sup> An exception to the warrant requirement is when exigent circumstances exist. Exigent circumstances exist "where police officers (1) have probable cause to believe that evidence of illegal activity is present and (2) reasonable believe that evidence may be destroyed or removed before

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<sup>57</sup> Payton v. New York, 445 U.S. 573, 586, 63 L.Ed. 2d 639, 100 S. Ct. 1371 (1980).

they could obtain a warrant." <sup>58</sup> "Other relevant circumstances which might justify a warrantless entry include, but are not limited to: (1) the degree of urgency involved and the time required to get a warrant; (2) the officer's reasonable belief that contraband is about to be removed or destroyed; (3) the possibility of dangers to others, including police officers left to guard the site; (4) information that the possessors of the contraband are aware that the police may be on their trail; (5) whether the offense is serious, or involves violence; (6) whether officers reasonably believe the suspects are armed; (7) whether there is, at the time of entry, a clear showing of probable cause; (8) whether the officers have strong reason to believe the suspects are actually present in the premises; (9) the likelihood of escape if the suspects are not swiftly apprehended; and (10) the suspects recent entry onto the premises after hot pursuit." <sup>59</sup>

Law enforcement did not meet the standard of exigency

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<sup>58</sup> United States v. Turner, 650 F.2d 526, 528 (4<sup>th</sup> cir. 1981).

<sup>59</sup> Verez v. Commonwealth, 230 Va. 405, 411, 337 S.E.2d 749, 753 (1985).

when they entered the apartment. After officers arrested Appellant and his girlfriend, each was secured in hand-cuffs outside of the apartment.<sup>60</sup> Prior to Appellant's arrest, police had no information that other individuals were in the apartment.<sup>61</sup> In fact, officers had information from CI<sup>2</sup> that Appellant and his girlfriend were the only ones living in the apartment.<sup>62</sup> Inv. Mondie and Inv. Ruiz testified that they did not hear any noise coming from the apartment, saw no other individuals coming or going from the apartment, retrieved no weapon from Appellant or his girlfriend, had no information weapons were involved, did not smell drugs emanating from the apartment, Appellant and girlfriend did not resist or try to escape, and did not testify that Appellant was in custody for a crime of violence or that officers were in any danger.<sup>63</sup> In addition, Inv. Ruiz entered the apartment without knocking, evidencing his entry to be one under the exigent circumstance

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<sup>60</sup> Tr. 11/15/16 at p. 50.

<sup>61</sup> Id. At p. 59.

<sup>62</sup> Id. At p.14.

<sup>63</sup> Id. At pp. 47-48, 50, 58-60, 66.

exception.<sup>64</sup> Without evidence justifying an entry under exigency, and presuming the search warrant fails if Appellant is illegally arrested, any evidence collected under an entry due to exigent circumstances fails and should have been suppressed under Appellant's motion.

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<sup>64</sup> *Id.* At p. 58.

REASONS FOR GRANTING THE PETITION

The United States Supreme Court States in *Maryland V Buie* 494, U.S. 325, 110 S.Ct. 1093, 104 S., 108 L.Ed. 2d 276 (1990)

That a "protective sweep" is a quick and limited search of premises incident to an arrest, and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. The Fourth Amendment would permit the protective sweep undertaken here if the searching officer possessed a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted the officer in believing that the area swept harbored an individual posing a danger to officers or others."

All districts tend to agree with the Buie doctrine when when the search is conducted incident to a lawful arrest, and inside the home. However, districts feel quite different when the arrest is taken place outside the home and is not incident to an arrest as explained in *Vale V Louisiana* 399, U.S. 30, 26, L.Ed. 2d. 409, 90, S.Ct, 1969 (1970), Which Stated that "a search may be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." The court in Vale V Louisiana, held that "a search of an accused house after he had been arrested outside his house could not be sustained as a valid search incident to arrest." ②1

"The arrest of defendant took place pursuant to an arrest warrant, immediately following observation by police of what they believed to be a sale of narcotics by the accused on the street in front of his house. The police arrested the accused as he reached the front steps of his house and informed him that they were going to search the house. A search of the rear bedroom revealed a quantity of narcotics. In holding that the admission of the narcotics at the accused trial was error, the Supreme Court stated that if a search of a house is to be upheld as a search incident to an arrest, that arrest must take place inside the house, not somewhere outside."

Also the use of exigent circumstances has been used as an exception to the warrant requirement. The Supreme Court of Virginia, In Robertson V Commonwealth, 275 Va. 559 (Jan 12, 2009) has recognized factors that are relevant in determining if this exception is applicable "(1) The degree of urgency involved and the time required to get a warrant (2) The officers reasonable belief that contraband is about to be removed or destroyed. (3) The possibility of danger to others, including police officers left to guard the site. (4) Information that the possessors of the contraband are aware that the police are on their trail. (5) Whether the offence is serious, or involves violence. (6) Whether officers reasonably believe suspects are armed. (7) Whether there is at the time of entry, a clear showing of Probable Cause. (8) Whether the officers have a strong reason to believe the suspects are actually present in the premises. (9) The likelihood of escape if the suspects are not swiftly apprehended and, (10) The suspects recent entry into the premises after hot pursuit." Robinson, 273, Va, at 41-42, 639 S.E.2d at 226.

Here, the officers entered Robinsons home after Robertson had been apprehended. Robertson and Cobbs had informed the police officers that there was no one else in the home, and perhaps more importantly, the officers observation during their extensive surveillance of the premises for an extended period of time, indicated that there was no one present in the home after Robertson's arrest. Further, there was no reason to believe that contraband was about to be removed, or destroyed, little danger to anyone left to guard the site, no likelihood of any suspect escaping and no hot pursuit. Thus there is no evidence of an exigency that justifies the officer's breaking through the barricaded door of Robertson's home without first obtaining a warrant. The Court of Appeals therefore did not err in holding the exigent circumstances exception to the Fourth Amendment warrant requirement inapplicable. The officers search of Robinsons home was in violation of Robertson's rights under the Fourth Amendment."

Other Districts tend to agree when defendants are arrested outside of the home as in *United States V Owens* 782.F.2d 146, 151 (10th Cir 1986) stating that, "once police arrest person in hallway outside his hotel room and retreated to safe area justification for protective sweep evaporates. Certainly at this point officers had time and opportunity to obtain a warrant to search the room."

Similarly in *United States V Rios-Ramirez*, Lexis 26573 (first Cir 2004) "In this case agents arrested the defendant on the side walk. Immediately after arresting the defendant without permission from anyone, the agents went inside his residence with absolutely no articulable facts in mind to perform a protective sweep, and to question his wife about

his illegal activities. Protective sweeps can only be conducted when the arrest is performed inside the residence, not somewhere outside—whether two blocks away, twenty feet away, or on the sidewalk near the front steps." Vale V Louisiana, 399 U.S. at 33-34, consequently the initial entrance into defendants home was ~~fairly~~ fatally tainted and illegal.

Furthermore in United States V Barone, 721 F. Supp. 2d, 261 (2nd Cir) (June 25, 2010) the Courts ruled that "any potential threat posed by Barone now handcuffed, had been neutralized, if not immediately when he was arrested, and handcuffed in the driveway, then surely by the time he was brought to the foyer where he spoke with agent Gaeta." "Under these circumstances the agents were not permitted to conduct the sort of precautionary "grab area" sweep announced in Blue."

Lastly in a case similar to my own, the Courts in the Sixth Circuit in United States V Colbert 76 F.3d, 773 (6th Cir) (Feb 26, 1996), "Here Colbert was already in custody and outside the house. Not only did he pose little or no threat to the arresting officers at the time, but as we have already explained, Colbert's dangerousness is not germane to the inquiry into whether the police may conduct a protective sweep in response to a reasonable suspicion of a threat from some other person inside the home."

In the case before this Court today, none of the factors that are relevant in determining whether the exceptions to the warrant requirement existed, when officers

decided to take my key from the property they confiscated after my arrest, and made their warrantless entry into my locked apartment, which according to transcript testimony by officers they had no true knowledge of which apartment it actually was before trying my key in the lock.

The police has testified per transcripts that their informant had only mentioned a "John", and his girlfriend "Brandi" to his knowledge lived at the apartment, and perhaps more importantly, the officers observation during their extensive surveillance of the premises for an extended period of time, indicated that there was no one present in the home after myself and my Co-defendant Brandi was arrested, handcuffed and placed under guard outside where we were originally arrested. Furthermore, there was no reason to believe that contraband was about to be removed or destroyed, little danger to anyone left to guard the site. No likelihood of any suspect escaping and no hot pursuit. Thus there is no evidence of an exigency that justifies the officers taking a key from my person and unlocking a door, and entering my dwelling to perform a warrantless protective sweep.

For these reasons I ask that the Supreme Court of The United States grant my writ of Certiorari in holding that <sup>the</sup> exigent circumstances exception to the Fourth Amendment warrant requirement inapplicable. The officers search of my home was in violation of my rights under the Fourth Amendment.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John A. / 1108658  
Date: 11/2/19