No. _____

IN THE

Supreme Court of the United States

RONALD PITTS,

Petitioner,

v.

STATE OF OHIO,

Respondent.

On Petition for Writ of Certiorari to the Ohio Court of the Sixth Judicial Appeals District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a Search Warrant Affidavit that failed to set forth probable cause can survive meaningful scrutiny where, as here, the Affiant failed to: vouch for the credibility and reliability of her undisclosed sources; reveal, therein, that these people were strangers; document her contacts with these people; and disclose such failures in the Search Warrant Affidavit.

2. Given ***Franks v. Delaware,*** makes it clear that if the trial Court is persuaded that an Affiant's sources should not be revealed, and where the contention is made that they were non-existent, should the prosecution have been ordered to produce these people – at least, **in camera**? This is especially so when the request is actually made that this be done.

3. Given the Court of Appeals actually determined petitioner "**was charged** with trafficking based [solely] upon the quantity of drugs . . . found in the various residences. [Indeed he] was **not charged** with trafficking for any of the individual transactions supposedly observed": can the prosecutor nonetheless state in his summation, and otherwise inform the Jury, that events supposedly observed by her (Detective Janowiecki), indeed "in advance of the dates when the searches were made, be regarded as 'drug trafficking'." (**Tr., 1078.**)

4. Given the fact that the accused was convicted as charged in the Indictment, solely for being in possession of the contraband found inside his home, indeed on the precise dates: can the prosecution nonetheless argue (with impunity) that events

that occurred even before those dates, and even elsewhere, involving undisclosed people be regarded as proof of the charged possession offenses.

5. Were the charges as structured in the Indictment constructively amended when the prosecutor, in his summation, indeed totally outside the ambit of the precise scope of the "possession" charges (as they were structured in the Indictment), modified the elements of the charges?

STATEMENT OF RELATED PROCEEDINGS

There are, simply put, no related cases or proceedings. This case involves isolated, all of which occurred in events and resolutions made by various events that were resolved in the Opinion rendered by the Ohio Court of Appeals (for the Sixth Appellate Jurisdiction of Ohio --- based in Toledo, Ohio).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

To the Honorable, the Chief Justice and Associate Justices of The Supreme Court of the United States:

The Petitioner, Ronald Pitts, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Ohio Court of Appeals, originally filed in this case on April 24, 2020. It became final when on September 1, 2020 the Ohio Supreme Court denied further appellate review. See **Appendix "A."**

OPINIONS BELOW

The opinion of the Ohio Supreme Court, denying further Appellate Review rendered on September 1, 2020, is labelled herein as Appendix "A". See **159 Ohio St.3d 1488**. The opinion, which is assailed herein is labelled Appendix "B". It is styled **State v. Ronald Pitts, 2020 Ohio 2655**. Also see **2020 WL 2026095**.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the Ohio Court of Appeals was rendered on **September 1, 2020**. This Petition is being seasonably filed under favor of **28 U.S.C. § 1254(1)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principle provisions of the United States Constitution involved in this case are the search and seizure clause of the Fourth Amendment and the self-incriminating clause of the Fifth Amendment. Likewise relevant here are the due process clauses of the Sixth and Fourteenth Amendments. The pertinent text of these reads as follows:

AMENDMENT IV:

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.

AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT XIV:

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

STATEMENT OF THE CASE

Ronald Pitts, the petitioner herein, was indicted herein with two (2) others. He was, and they were, convicted of charges that centralized a number of *major drug offender* specifications (**R.C., § 2925.03**) and various related charges. He is currently under sentence.

Indeed the facts here show, that the Counsel, in connection with our various issues argued that:

> . . . [Granted] **we've got Detective Janowiecki's [naked and unclad] observation[s].**
>
> **She observed heavy foot traffic at Airport Highway, apartment M, people coming and going only a short period of time indicative of drug activity**... Think about how frequently you have guests, and you will know *what Brooke Janowiecki observed was indicative of drug trafficking*[1]…
>
> So when we come back to our elements, and ***we ask ourselves was that cocaine being trafficked?*** Sure. There is no reasonable doubt that. So those two elements, *the trafficking ones*, that the *cocaine is being prepared for transported between 1828 Dunham and Airport Highway, apartment M,* that its either intended for sale by the defendant, Ronald Pitts, or resale by a later person who comes in contact with it, yeah, check those off.

Id., p. 977. (*Emphasis supplied*.)

> Here we are today, ladies and gentlemen, and this is what you are left with. All that narcotics, all those drugs, acknowledged to be Mr. Pitts', by counsel. Baggies, guns, $40,000, that's drug trafficking, ladies and

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[1] Given the adulation and the indisputable fact of the stock placed in these alleged people (who were undocumented, and who were strangers) no Judge (but this one) could have overlooked the fact the Court that issued this Warrant was forced to rely on the Affiant's naked and unclad word and assurances.

> gentleman. Conduct in advance of these search warrants, that's consistent with drug activity, that's drug trafficking.

Id., p. 1073.

Here it should be noted as the Court of Appeals put (it in ¶ 33 of its Opinion):

> **Appellant was charged with trafficking based upon the quantity of drugs and other drug related items found in the various residences.** Appellant was not charged with trafficking for any of the individual transactions observed by Janowiecki. Indeed, the controlled buys were not even testified to at trial. Further, while Janowiecki did testify to individuals who were stopped and who provided her with drugs, and while the identity of those individuals would be helpful to Appellant to examine **whether those transactions did in fact occur, and thus support or rebut the inference that Appellant was engaged in drug trafficking.**

See State v. Pitts, 2020 WL 2026095. See Appendix "B" ¶ 33. Also see Tr., p. 60.

Given the above concessions: can there be any doubt when these indisputably culpable prosecutors made the above arguments, which gregariously violated their specific **duty** not to mislead the jury, we moved for a Mistrial. This **duty** arises from prosecutor's dual responsibility not merely to win a case, but to ensure that justice is done. In any event, let's be very clear here. Early-on in this trial we objected to any and all testimony related to the so-called surveillances and sightings, in which the officers testified there were drug sales made by Ronald Pitts and drugs were confiscated. And no requests were made or no record of the asserted events said to have occurred. **Tr., p. 340, et al**. (Our remarks on that subject are recorded on **Tr., pp. 351-353 & 373–375**.) These remarks amplify our belief, argued

elsewhere that these officers, by actions committed, a federal crime. See **18 U.S.C. § 4**.

The geniuses who made these arguments, the Courts that not only lauded, endorsed and approved the above nonsense, for sure failed to recognize it was truly out of line. This because, clearly they persuaded the jury to believe and regard this described activity - - that was said to be "indicative of drug trafficking" to establish (if they believed it happened) the accused was guilty as charged.[2] These specific remarks (here made) painstakingly described conduct that supposedly had occurred. Here reference is to the controlled buys and the surveillances (none of which we learned first-hand had not been documented, that supposedly had even occurred

STATEMENT OF THE FACTS

Here, we are faced with four (4) searches conducted at three (3) premises. Other than being generically categorized as contraband, none of the seizures were of items that were particularly described. Granted, some of the items seized were "contraband *per se*." In our view, the denial of the Motion also represents a finding that was flawed. As to Motions to Suppress (and related Motions) were filed - - all were denied. Indeed, numerous exceptions were also taken to all of the rulings made by the Court. Chief among the contentions made in our all-out assailments of

[2] This reality is magnified by the fact that even the Court of Appeals fully recognized what shows the jury obviously did not recognize these charges were based solely on naked possession. See Opinion, rendered by the Court of Appeals, at ¶ 43, ante p _. Also, the argument made by these prosecutors violates the ABA Standards on several grounds. It "misleads the jury," 3-5.8(a), it expresses an improper "personal belief or opinion," 3-5.8(b), it constitutes an "argument calculated to inflame the passions or prejudices of the jury," 3-5.8(c), and it "diverts the jury" by "injecting issues broader than the guilt or innocence of the accused." 3-5.8(d).

the Affidavits and warrants as written, was the florescent showing that the searches authorized were based on flawed and indefensible Affidavits and warrants. Distilled, our proof showed there was no basis of any belief those items would be on the premises.

But even that is not all, we also raised several issues based on the Opinion rendered in ***Franks v. Delaware*, 438 U.S. 154 (1978)**. Here, again, counsel-opposite simply missed the boat - - as did the trial Court. This follows because given we only have naked and unclad assertions that a controlled buy was made **from** Ronald Pitts inside this home. We only have the affiant's word this person even exists. Also, it was said (in the Affidavit) that incriminating surveillances and sightings, of open air drug transactions, seen as they were occurring. **This likewise Pitts swore was a lie**. All this was done in a *sworn* Affidavit, in which Ronald Pitts adamantly denied that any of these alleged events ever occurred. Also, we continue to maintain there were no people going and coming from these premises in a manner that indicated drug activity was afoot.

What is really sad here is counsel-opposite, in his outright gall ridden responses, actually saw critical omissions from the Affidavits, and others as not even being ***Brady*** material that had been suppressed **by him**. Likewise, he is yet to appreciate the significance of the fact that it was against the law for him to remain silent knowing, as he should have, that his knowledge that the law has been violated is a circumstance he should have dealt with. See **18 U.S.C. § 4**. For sure we, and the Court that issued these warrants, in reality, only had the affiant's word

these things happened. Clearly then it cannot be said with impunity that Ronald Pitts failed to make the substantial showing required to be made by the Supreme Court of the United States in ***Franks*, 438 U.S. 154, at 160 (1978)**.

Particularly relevant to our analysis (of ***Franks***) as observed in a footnote an officer should not be permitted to "insulate" a deliberate misstatement "merely by relaying it through an officer-affiant personally ignorant of its falsity." **Id., at n. 6**. Here, the affiant was able to get away with saying she stopped various people during these surveillances that were known to her. And, she learned from them they had purchased drugs from Ronald Pitts - - if you can believe it. This fact alone insures these convictions will be reversed, this follows because while she says these unnamed people had purchased from Ronald Pitts, she could not supply any dates and times. Yet, these answers sufficed for the Court, despite Pitts Affidavit (**Tr., pp. 63 & 79-80**), that nothing like that ever occurred.

So postured, significant here, Ronald Pitts categorically denied he sold drugs to anyone; including on the undisclosed dates, or during the undocumented and the ill-defined events referred to in the Affidavit.[3] (**See Supp. Tr., p. 63).**

[3] To be sure, the law is clear. These Courts have ignored those tenets which hold that a defendant need not overcome speculations regarding explanations for falsities or omissions from the Affidavit. This follows because, if the Defendant's showing in quest of a ***Franks*** hearing is deficient, the Court's discretion clearly would to allow it to offer its own explanations in favor of the prosecution.

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

The effect of the State's hollow and misguided arguments made by the State to the Courts below are clear enough. What inexorably follows here is likewise simply put. All of these various falsities we sought to expose. So postured, the possibility looms out there that counsel-opposite, who did this, as his remakes show (**Tr., pp. 79-80**), had to have confidence their misconduct could forever be concealed. This as a result of our inability to establish any consequential facts. Surely they cannot be right about that. If it were otherwise, her response to our "Motion for a Mistrial" (**Id., p. 1075**), would have been appropriately reckoned with - - in more meaningful ways. For it has to be obvious, from what the Court had said earlier, she had already imperviously factored these unrecorded surveillances into her ratiocinations as we said the issuing Court did before these warrants were even issued. See **Tr., p. 63**. Of course, counsel-opposite will surely respond to this discussion.

If nothing else, the knowledge of whether or not these people existed and also there would have been proof the events and actions attributed to the Defendant actually occurred. For our part, something is wrong with this picture, actually painted. This because it shows not merely that the Court that issued the warrant simply gospelized actions attributed to people who may not exist, as did the trial Court. And, this is simply wrong.

Here it is worth noting Justice Felix Frankfurter, a sage from a bygone but enlightened era, who once wrote, indeed in ***Brown v. Allen*, 344 U.S. 443 (1953)**, that:

> State Courts cannot have the last word when, through [what it regards as] fair consideration and what procedurally may be deemed fairness [by the State Court], it may have misconceived a federal constitutional right.

Id., at 508. The significance of this reality was magnified even before this trial, when the prosecutor (in responding to one of the Court's inquiries) sheepishly revealed he had concealed the fact that none of the surveillances recited by this affiant had been written about in any police reports. **Tr., pp. 79-80**. The willful concealment of this fact (- - this suppressed revelation) to be sure, egregiously offended concepts that distill from ***Brady v. Maryland*, 373 U.S. 83 (1963)**. Hence, it could not be any clearer, these efforts were unforgiveable. This follows, indeed all the more so, because we had avidly sought the identity of these unknown, vouched for, people who supposedly had been surveilled, and labelled as drug offenders in the search warrant Affidavits. Cf., **Tr., p. 63**. Here, reference is to our Suppression Motion, which was denied in the wake of the State's nonsensical arguments. Given these prosecutors had busied themselves with convincing the Court that because **the Indictment did not make a transaction charge and the disclosure of the identity of any of these alleged people was not required** - - which is lunacy. As to this fact, it is worth repeating our belief is that

none of these people even exist - - all were phantoms or fictitious. And, nothing in this record disproves our thesis.

The bottom line here for those who have read the Trial Record and, of course, for those that helped create the Record, surely they will recognize reality when they see it. Thus they will understand the full breath of our contentions here. Here too the facts will show that nowhere in the record can anyone find where it was stated any illegal activity ever occurred inside Pitts' homes that were searched. And, there was no proof that revealed any drug activity occurred on the premises.

With that being so, the Search Warrants' reliance upon anything that supplied a belief that drug related materials would be found on these premises, indeed any one of them, in a search literally condemns, any *probable cause* findings made here. For these warrants issued herein, and for sure all those involved in issuance, were compliant in the cover up. Indeed, and for sure we make the charge that the prosecutors' role in all this was calculatingly flawed and egregious.

I. SUPPRESSION OF EVIDENCE SEIZED IN THE WAKE OF AN AFFIDAVIT THAT FAILS TO SET FORTH PROBABLE CAUSE AS REQUIRED.

First off, as to this Assignment, let's be clear, it is backgrounded by the fact that we are also contending the affiant, and the State for sure, violated ***Brady*** obligations by failing to provide us, especially since it was made clear, that what was suppressed was highly relevant to any due process concerns related to the State's various searches, all of which were under challenge here. With that aside, the following contentions are here also being made:

A. The search warrants and the Affidavits, both, failed to describe *any* of the items sought with the requisite particularity required by the Constitution.

No one, not even counsel-opposite would dare argue that there was probable cause to believe each of the items denominated in the following writing extracted from the Affidavit and the warrant satisfied the "particularity" component of the Fourth Amendment. The significance of these failures, is there are those of us dealing with this case who fully understand that if the first search warrant and the Affidavit here were flawed, the subsequent ones, under ***Wong Sun v. U.S.*, 371 U.S. 431 (1963)**, would perforce be deemed fruits of the poisonous tree. It really is that simple.

Given the present appeal challenges the constitutionality of the various searches and seizures conducted herein that resulted in the convictions Ronald Pitts (and the others). Given the Fifth Amendment's "taking clause" and given the due process clause acts as a restraint (along with the due process clauses of the Fourth and Fourteenth Amendment), it follows, as this Court has fully recognized that even in Ohio the law is most clear. Indeed, as our Court put it, in a case where "a named informant had purchased" drugs on the premises searched and "turned them over to the police" and it was also said (**in the Affidavit**), "the affiant had personal knowledge . . . that the targeted person had been involved in narcotics violations," that was not enough.

B. To the extent the search warrants here may have otherwise set forth probable cause, the fact that it did not seek to locate any of the "buy money" makes for a consideration here that must be reckoned with on the seizure issue, if not the search.

Here, the law is clear. No matter how it is put, ***Franks*** makes it known that Affidavits may be challenged if, as we say was the case here (1) they contain intentionally made false statements; (2) the statements made or omitted therefrom, were material in the sense they were necessary to the findings of the required probable cause - - the case here. To be sure then, it also means that to do so, the accused must do what was done here, *i.e.*, make a "substantial preliminary showing, of the falsehood [here multiple falsehoods, indeed outright lies] to be entitled to a hearing" (**438 U.S. 154, at 171-712**). Indeed, and again, such a showing was made here. For sure, as well, **the Appellant's proof here, his oath** in which he swore the events described by the affiant related to controlled buys and surveillances that assertedly produced proof of drug activity, did not happen. In other words, these affiants lied. Do not misunderstand what we are saying. These affiants have been accused of actually lying in their Affidavit. It really is that simple. Pitts is saying the described events did not happen. The heroin and fentanyl really makes our point, and the Court's as well - - when she approved this warrant. For sure these were "more than conclusory [denials, they were] supported by more than a mere desire to cross-examine." **Id., p. 171**. Here, the alleged people referred to do not exist. See ***U.S. v. Cortina*, 630 F.2d. 1207 (7th Cir. 1980)** and ***Commonwealth v. Lewin*, 405 Mass. 566 (Mass. 1989)**. So postured, in our view, it seems clearly

to be that far too many of Counsel- Opposite's views, with which we were bombarded, were rotely accepted endorsed by these Courts.

C. Given it is beyond dispute (a) the affiant on the first two (2) search warrant Affidavits (and the prosecutor who prepared it) willfully concealed (from the court that issued those warrants), that (b) the affiant had deliberately failed to document any of the critical observations and sightings (said therein to have been made by her in affidavits), which averments, even if true, were nonetheless intentionally and willfully relied on by the Court that issued these warrants. And, ultimately, as well, with full knowledge of our accusations, the State, and the Court, failed to even seek any verifications - - as they should have.

For our part, one thing is very clear here. It had to take a lot of gall and unfounded confidence for any prosecutor, with a full awareness that an affiant had actually concealed certain relevant facts from the Court being asked to issue a search warrant. This is especially so since he would have been obligated to have regarded any omissions of consequence as being significant. Yet, this Record shows, when asked about it (by the Court), our prosecutor sheepishly admitted he was fully aware, and inferentially had been for some time, that none of the surveillances the affiant has sworn to in her Affidavits had been recorded or otherwise documented by her anywhere. In our view, given the State's full awareness this was so, because a criminal act when joined in the conspiracy to further conceal a violation of **18 U.S.C. § 4**. Given he was made aware the issuing Court had been deceived, he had to know the affiant's mendacity, qualified as being labeled ***Brady*** material. Because this is so, both, the affiant and these prosecutors should be required to deal with our accusations - - indeed in the light of fundamental criteria. This follows

because the omissions referred to, which were deliberate, evidences conduct that was calculated. Given recklessness would have sufficed, how is it even possible that counsel-opposite can defend any aspect of the deceit employed to manipulate these Judges into issuing these warrants on the basis of the naked and unclad assertions they were supplied with.

D. Given the reliability of any informant, and the basis of their knowledge are essential components in any probable cause analysis, the absence of any basis for the trial Court to reckon with the various omissions from the Affidavit is and was unforgiveable. Thus, it inexorably follows that probable cause, could not be said to exist, and did not exist for these searches.

In this case, let's be clear with reference to the alleged most critical source here, we were only told "during the month of February 2017, this affiant received information from a reliable confidential source that a large amount of cocaine/heroin/fentanyl/marijuana was being processed and sold during all hours at a location of 2860 Airport Hwy Apr. M." Here, the fact that nothing was said about the basis of so-called source's knowledge is significant here. But even that reality was not addressed by the Courts below or these prosecutors.

Do understand nothing whatsoever was said in the Affidavit that shows, any of the sources the affiant talked about truly qualified to be deemed reliable and credible in accordance with fundamental criteria. Granted, we had the rookie officer's word all this was so, which was hardly enough, particularly so since the very existence of the people and the occurrence of these events, have been challenged. Also, nothing she said was verifiable. Also, the fact this was so was

because the prosecutor was privileged to her efforts and her lack of any documentation. This would have succeeded had it not been ferreted out by the Court. **Supp. Tr., p. 63**.

E. Once an accused denies, here under oath, and otherwise challenges not only the very existence of the alleged and putative sources of the information, that was expressly relied on by a police officer actually existed, given it is conceded the officer made no police reports related thereto, the Court based on these naked and unclad representations of counsel, violated due process in refusing to even satisfy herself the alleged source even existed.

Indeed, given Courts have always been in the business of determining the relevancy of supposed evidence, or even said to be evidence, in the course of a trial (or any type of hearing being, or required to be, conducted). Thus, it only makes sense that on the existence issue here, an "*in camera*" Hearing was appropriate. Actually, it still is not too late. This is especially so since not only present here are, in addition to ethical, possible perjury issues, we also have confrontation and ***Brady*** issues that must be resolved.

F. The Appellate Court was "legally mistaken" and dead wrong, when it rejected our Fourth Amendment contentions. Indeed, this was assuredly done in spite of being shown the affiant (who supposedly had made the various surveillances and sightings, referred to in her Affidavit), had failed to document *any* of these alleged events. This failure was intentionally concealed from the issuing Court. (Interestingly this *faux pas* was indorsed by these prosecutors – indeed in spite of the fact for sure it was, without a doubt *Brady* material – in our judgement.)

The fact that she had not documented any of these alleged happenings is both startling and amazing. Simply put, it has to be that the prosecutor's stale revelation

that Det. Janowiecki's confessed that she had violated her ***Brady*** obligations in this matter is likewise significant. For it was here, these prosecutors (whose actions were unethical) really punctuate the occurrence of their failure to understand what they did wrong in failing to investigate her conduct and credibility. Indeed, all the more so, given their egregious arguments, which resulted in our *mistrial* Motion that really should have been granted. For in the arguments made in their summations relative to the trafficking charges, all of which were said in an Indictment based solely on the naked contraband that was seized. See, **¶43 of The Opinion, in Appendix "B"**.

G. Where (as here) the facts show the court that issued the warrant relied solely on Affidavits that omitted facts material to any probable cause determination, and given these omissions were sufficient to trigger a *Franks* Hearing that was sought here, the failure to conduct an appropriate hearing simply cannot be defended - - in law, logic or commonsense.

As shown elsewhere in this Brief, it happened here that the Court, undoubtedly after the extreme laudatory endorsements, of Det. Janowiecki, by the lead prosecutor here, the Court showed (after belittling our efforts) that our quest for a ***Franks*** Hearing was overwhelmed by the State's sterling qualified witness. A witness, the affiant, who supposedly had made these surveillances and sightings of Pitts and some of the actual drug deals he had made, with people (some of whom) she knew and talked to before and after her deals. At least, this is what she said, and what counsel told the jury. See ***ante*****, at p. 3.** Given, as shown elsewhere herein, we now know because the prosecutor himself later "confessed" to the Court

that he knew all along once he got involved in this case, that the affiant had not documented any of these alleged events in any writing. See **Tr., pp. 79-81**. Understand, we learned about this misconduct after the Court had denied the Motion to Suppress and our quest for the "*in camera*" hearing. Cf., ***United States v. Giacalone*, 853 F.2d 480, at 475 (6th Cir. 1988)**. It holds a Hearing was required here -- as well.

Also, we know, that although he never investigated any of these alleged events, surely he was aware the issuing Court had been deceived by the omissions. We deem these failures of the affiant (who crafted the omissions) and the Detective who failed to recognize, not only that the affiant committed a crime when she released people after they told her the drugs they had were purchased from Ronald Pitts. All this is significant because his crime in all this is called **misprision of a felony** (**18 U.S.C. § 4**). The other misstep was he did not regard her acts in failing to arrest these people (if they existed) as ***Brady*** material.

II. GIVEN *FRANKS V. DELAWARE*, REQUIRES THAT AN EVIDENTIARY HEARING WHERE THE DEFENDANT (IF HE CAN) MAKES A SUFFICIENT SHOWING THAT "DELIBERATE FALSEHOOD[S]" WERE WILLFULLY INCLUDED IN THE AFFIDAVITS, OR THERE WERE WILLFUL OMISSIONS. IF SO, IT INEXORABLY FOLLOWS: THE COURT ERRED, AND DUE PROCESS, WAS MANIFESTLY AND INDISPUTABLY DENIED, WHEN THE COURT FAILED TO CONDUCT AN APPROPRIATE *FRANKS* HEARING.

The law here is so very clear. It provides the officers who issue these warrants to officers (authorized to search our homes), in an effort to insure that

they do not become, or even act (as most do), as rubber stamps for these officers who seek search warrants for them.

For this counsel something is wrong with the picture here. Indeed, all the more so since some of us really know (as distinguished from these so-called knowledgeable law enforcement officers), who truly believe the end is justified by the means. In any event, given search warrants can be properly based on hearsay, even fleeting observations, tips (and the like) based solely on naked and unclad asserted assertions supplied the Court issuing the warrant provides the last bulwark preventing any particular invasion before it happens. (**Id., at. 167**.) Given "the accuracy of an affidavit in large part is beyond the control [even] of the affiant" (**ibid**), makes the cogency of our assailments here so compelling, indeed along with counsel-opposite's responses, by unnamed and unknown people, and others whose identity is well protected from revelation by the Courts (even when they actually do not exist - - being only fragments of the affiant's imagination, which actually places "the accuracy of an affidavit in large part . . . beyond [even] the control of the affiant." ***Franks*, at 167**. It is this reality, as the Supreme Court put it, the Court should realize the "police acting on their own cannot be trusted." ***McDonald v. United States*, 335 U.S. 451 (1948)**.

In delving further into our ***Franks*** issues, all of which seem clearly to have been summarily rejected by the Court, let's also be very clear here. In filing the

various ***Franks*** related Motions, and there were several,[4] be aware (unlike those very few who could be impressed by counsel-opposite's sophomoric responses), this counsel has always understood the law here to be quite simple. Indeed, before ***Franks*** was decided, and we only had ***Rovario*** and ***U.S. v. Rugendorf*, 376 U.S. 535 (1964)**, to base our arguments on. Thus, for us what ***Franks*** was all about is a clear enough God send. Indeed, when our Motions were filed here, we fully understood what it held. We also understood what effect it had on ***McCray v. Illinois*, 326 U.S. 308 (1967)**. Still, as to ***McCray***, it is being not only misread and misunderstood by counsel-opposite, as his outlandish ruminations show. The fact this nonsense still satisfied the trial Court is amazing. Here, the Court was convinced by it to disallow us to learn whether these sources even exist.

Here, the Record shows counsel for the State, upon being asked by the Court whether ". . . there are any additional police reports written by these investigative detectives that correspond to traffic stops that could have been made or [the] routine stops [of people] coming and out of the apartment." **Tr., p. 79**. As was stated to be a fact in the Affidavit. Counsel's response was "it was his understanding the affiant did not create "any police reports on those subjects or any of her observations." **Ibid**. Of course, this could only mean these omissions from the Affidavits were grossly manufactured to deceive the Court. The fact this was so

[4] Where the very existence of the alleged source as a person is challenged more than naked and unclad assurances are required.

not only satisfies the omission segment of ***Franks***, we believe this conduct violated ***Brady*** and ***Giglio***. Of course, counsel will tell us why that is not so.

Stated another way, we have challenged the very existence of all of the alleged sources referred to by this affiant. For our part, our belief is how can any Court simply ignore the plethora of cases that can be cited which show more than the fact that **testifying** by law enforcement officers is rampant in our Courts. Here, let's recall what the Supreme Court has said that the police "acting on their own cannot be trusted." Surely then, the public interest in police conduct actually requires our Judges to exercise their discretion in these situations to at least conduct an "*in camera*" investigation, where, as here, it was asserted (under oath) the officer is **lying** - - the case here.

Here, again, reference is to the following express holding by the Court. In this, she seems clearly to have forgotten the **omission** thesis we extracted from ***Franks***. There the Court declared:

> **I don't have reliable statements [from the defense]**[5] . . . to go further into delving into the confidential informant necessity. Even if we were to remove the statement from the affidavits with regard to a confidential informant, **I think the affiant goes on to further say that there was additional surveillance done on the property watching for foot traffic going back and forth, so there was additional, outside of the confidential informant, language that**

[5] This statement cannot be defended in law, logic or commonsense. Granted, the Court's prerogatives allow Judges to make factual findings on disputed issues (*e.g.*, whether a testimonial assertion is reliable). Of course, any determination as to whether a sworn statement is "reliable," in the context of the way the issue was structured here, at the very least the Court was required to satisfy herself as to who was lying. The Defendant swore the affiant was lying. And, counsel made the charge that none of these alleged sources even existed. Here yet, our own Affidavit was rotely deemed unreliable.

> **was put in. There was additional surveillance supporting that the officer did go into additional levels.**

Tr., p. 63.

As to this issue, we believe, as did the Supreme Court in a comparable situation:

> . . . **that once the question [of this ilk] has been raised by defense counsel the Court** should dispose of it on its own responsibility based upon what it ascertains in a hearing. **The Court should not make a final disposition upon the representations of . . . counsel [opposite]. It cannot escape its duty to learn the truth first hand.**

***Killian v. U.S.*, 368 U.S. 231, at 243 (1961)**. (*Emphasis supplied.*)

III. GIVEN THE VERY SPECIFIC TRAFFICKING CHARGES (MADE IN THE INDICTMENT), THE ARGUMENT THAT (TRAFFICKING) COULD BE PROVEN BY EVIDENCE THAT SHOWED UNDOCUMENTED SIGHTINGS OF WHAT WAS SAID TO BE A PATTERN THAT WAS INDICATIVE OF DRUG TRANSACTIONS AS WAS ARGUED BY COUNSEL FOR THE STATE CAN NOT DEFENDED IN LAW, LOGIC, OR COMMONSENSE. THUS IT FOLLOWS THESE CONVICTION CAN NOT SURVIVE MEANINGFUL SCRUTINY.

Despite the fact the indictment only charged (with reference to the drugs found on the Defendant's premises) precise crimes (that centralized his possession thereof). To the extent that is so, a fatal variance arose when counsel-opposite argued that proof of extensive "foot traffic" (to and from the Defendant's homes) as was shown (if it did) established he was engaged in the drug business; hence he was guilty as charged of trafficking.

This argument is backgrounded further by the fact that counsel not only showed he did not personally verify that any of the alleged surveillances

and sightings had occurred, which was at the very least ***Brady*** material, had opposed our various quests that the Court satisfy (for us) that these alleged people who made up this "foot traffic" existed (this for reason that cannot be defended) the absolutely fact is there is simply no way the State can overcome that *faux paus*, which as we see it was a major blunder. ***United States v. Townsend*, 924 U.S. 1385 (7th Cir. 1991)**.

First off, the Ohio Court of Appeals fully recognized (and then ignored the fact) that we were contending that the affiant on the critical search warrants had "lied in her submitted Affidavit" in support of her original search warrant (**Opinion, p. 6**). For in it, she referred therein, not only, to the controlled buys and the alleged surveillances centralized therein. (**ibid**). The fact is that when the Court denied our Motions to Suppress, and for disclosure of the identity of the alleged sources (even those talked about as having been the people going and coming from the Petitioner's home), the Court knew those alleged events were undocumented. Also, it knew our efforts to have the Court conduct an "*in camera*" Hearing with the alleged to be sources had been abruptly denied. This was the picture the case was in, when the Court denied the Motions to Suppress lodged by those on trial.

Here, of course, what is most significant, while we had not been told that the affiant had not kept any notes, and had not documented any of these alleged events, the facts revealed that it was only after the Court had denied our ***Franks*** Motion, which included the revelation that these prosecutors were also aware that the affiant had not documented the alleged "buys" or her surveillances. In dealing

with the Appellate Court's pathetic response to all this, lets be clear: here is what was said:

> Notably, Janowiecki did not document her surveillance, and reports relating to the controlled . . . **Appellant argued that Janowiecki created the story out of whole cloth, that there was no foot traffic, that appellant never sold drugs, and that there was no confidential informant**. In support, appellant submitted his sworn affidavit categorically denying that any of described conduct occurred, and outright accusing Janowiecki of lying. **The net effect of this showing is we only had the Defendant's word these things occurred.**
>
> Following the hearing, the trial court entered its written judgments on June 22, 2018, denying appellant's motions. **The trial court found that appellant had failed to make a substantial preliminary showing** that a false statement was included in the warrant affidavit knowingly, intentionally, or with reckless disregard of the truth. Further, the court found that **any information from the confidential informant would be irrelevant because appellant was not charged for any of the conduct[6] he was alleged to have committed during the controlled buys.** Finally, the court found that Janowiecki's affidavits provided sufficient probable cause to support the search warrants.

See **Appendix "B," ¶¶ 6&7**. (*Emphasis supplied*.)

In other words, it seems the Court is holding the fact that these prosecutors, who were cognizant of the fact that the affiant had failed to advise the Court (that issued the warrant) that she had intentionally not documented the alleged buys and the surveillances reported in her Affidavits. Given this was deliberate, clearly was

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[6] Given, as the Court of Appeals says it understood: "Appellant was not charged for any **...** [actual criminal] conduct **...** committed **...**" whatsoever. Why then did these prosecutors find it necessary to emphasize this supposed surveillance activity and declare that's "drug trafficking." (**Ibid**). Clearly this argument conflicts with the precise holding made by the Court of Appeals which categorically stated: "Appellant was not charged with trafficking for any of the individual transactions observed by Janowiecki. Indeed, the controlled buys were not even testified to at trial. (ante p____.)

not insignificant. Let's be very clear we only have the affiant's word these things happened. To the contrary, we had the sworn Affidavits of three (3) defendants that none of the things said in the Affidavit about them was true. Thus, this proof was outweighed by this policeman's naked and unclad word. And, this was so for reasons that could not be any clearly here. This fact she made clear. See ***ante*, p. 20.**

Here, of course, while the Court's Opinion Appendix "B", especially in ¶¶38, 39 & 40. Here the Court mentions almost in passing, so far as we are concerned, the most critical aspect of the statements themselves. Still there is no way to get away from the fact that the Affidavits failed to show that the critical statements therein that there were (outside the Affiant's assurances) there were any controlled buys, and that these numerous surveillances were actually made, in which there were stops. And the verifications (that these people had drugs that were tested - - there on the street. Again, it should be noted the Courts that issued these warrants were not told about all this, and these prosecutors were complicit in concealing all of this the defense.

How then can it be that the revelation of these facts warranted the trial Court fully validating the chicanery involved by those facts - - especially the prosecutors' complicity which was punctuated by their misconduct - - given concealment of ***Brady*** material is a form of misconduct - - at least elsewhere. Also, the emphasize the appellate Court artificially put on the false idea our prime point was put on learning the identity of the alleged people so they could be injured is a red herring. For sure we do not believe they exist. Our quest was to have these

prosecutors, who were guilty of misconduct when they become complicit in the concealment of the fact the affiant had no Record and did not step up to the plate. So please do not overlook we asked for the Court to satisfy herself these people existed or at least one of them. Recall we were not given a single name or time or license plate. Yet, we were penalized because we did not prove undocumented events did not occur.

Granted the arguments we are making here are sophisticated, perhaps too much so for these officers who thrive in an arena where it is simply assumed that they are the only good guys in the room. This is because they represent the people. In so thinking, clearly they do not understand, that the rights of the very best against us are only as secure as the vilest must reprehensible are protected. As to this argument we are already know it will be ignored by the State. And we know why. As well does the Court. This follows because it is unassailable. And they have no answer. This follows because counsel-opposite's impervious commitment and outright endorsement of her credibility was amazing for this counsel to behold, and cannot square the following committed made to the testimony made by Det. Janowiecki about the drugs sales she witnessed (**tr., p. 505**), the arguments made by the prosecutors to the Jury (centralized in the Motion for a Mistrial [**Tr., p. 1075**]).

IV. GIVEN A PROSECUTOR IS ETHICALLY BARRED FROM MISLEADING THE JURY IN HIS SUMMATION, IT FOLLOWS SUCH OCCURS WHEN AND WHERE (AS HERE) HE DELIBERATELY AND FALSELY INSINUATES IN ANY WAY THAT MISLEADS THE JURY BY MISDESCRIBING THE OFFENSE AS IT WAS DESCRIBED TO THEM IN THE INDICTMENT.

There is no doubt here, at least for those of us who realize from our understanding of the law is that the indictment here did, what indictments are supposed to do, it charged the Defendant in very precise verbiage with a specific crime in each of the trafficking charges. There it was said the charged offenses occurred on or about March 28, 2018 and September 29, 2017. It did not charge offenses that were occurring over a period of days. And, the contraband it referred to (in the indictment) as having been prepared for shipment (and the like) was a reference to that which was seized on or about the isolated dates reported in the indictments. These were the only dates the Court isolated for the jury in its Instructions.[7] Indeed, the two (2) separate dates given, for the alleged trafficking charges were alleged to have occurred, were the same dates the possessions allegedly were said to have occurred. The identicality of these dates is quite telling. Here, reference is to statements made by the prosecutors. See ***ante*, pp. 2-3**. Again, it was then counsel made his quest for a "Mistrial," based on the misconduct of counsel. **Tr., p. 977**. As the Court saw it, and said so (in so many words), despite the fact that her charge to the jury stated that the trafficking charges related to events that were said to have occurred on or about the two (2) dates specified in the

[7] Any failure of the State to comment on this all out accusation of misconduct will be instructive - - don't you think?

Indictment. There it was said: the "preparing for shipment . . .," as the Court put it, related to the contraband found on the premises. Clearly, this was the contraband that was seized on or about those dates (indicated in the Indictment) that it was "prepared for shipment . . .," and they were the same items that were being illegally possessed - - as charged in the Indictment. Clearly then, if that is so, the jury was misled - - don't you think.

The only logical assumption that can be made for the State's deliberate mischaracterization of the trafficking charges made anywhere in the Indictment, cannot be based on language of the statute relied on for the trafficking charge itself. As stated in the Indictment, and as it was postured for the jury in the Court's charge (**tr., p. 1095**), for the prosecutor to make the argument being assailed, it has to be his reasons were ulterior. This follows because one thing is clear here, and this is absolutely so, this counsel had to know his obligation, owed, not merely to those accused, but to his profession was to construct his arguments to the jury on the basis of rationally construed premises. Indeed, only those that were based on the facts relevant to the charge is allowed. So let's be clear here, as well, the egregiousness of his misconduct in this regard is magnified by the fact that even they had to know, not only, that there was literally no way we could defend against the accusations that a police officer says she witnessed on numerous occasions (perhaps as many as twelve [12]) (**tr., p. 505**), when people would come and go from one's home and engaged in exchanges involving drugs, and that on these various occasions (none of which could be dated), she saw drug transactions take place.

Further that while the people were stopped and surrendered to the officer the drugs they had purchased, according to them, from Pitts, which drugs were examined. Yet, not of these people were arrested and no log of these events showing time and places and what happened to the drugs was kept.

V. WHERE, AS HERE, AN INDICTMENT IS CONSTRUCTIVELY AMENDED IN THE WAKE OF THE PROSECUTION'S SURMATION THAT WAS OUTSIDE THE PRECISE SCOPE OF THE INDICTMENT (AND THE CHARGES MADE THEREIN); AND THE PROSECUTORS ARGUED SUCH EVIDENCE WOULD SUFFICE FOR A CONVICTION, AS CHARGED FOR DRUG TRAFFICKING.

With reference to this *mistrial* Motion, in our view, its resolution is quite simple. If it happened, as we contend, that the prosecutors here engaged in conduct that violated the due process rights of the Appellant. This in the wake of their assailed arguments (isolated above). For sure, this Court cannot let these convictions stand. This it cannot do unless it can say (indeed with impunity) that the improper argument and comments were harmless beyond a reasonable doubt. This follows because clearly they cannot be defended.

What magnifies, even more so, the intensity and the adamancy of our condemnation of these verdicts is that when the Court let the prosecutor get away with having made the assailed argument, he for all intents and purposes, they amended the Indictment. And the Court approved them doing so. This could not be any clearer. Indeed, because the Court's questions her questions directed to counsel make it clear they understood the fact that none of the detective's surveillances and sightings could be verified (since drugs were supposedly taken from these

purchasers and no documentation existed), even the making of the assailed accusation took a lot of gall - - don't you think? Indeed, all the more so, since this counsel argued to the jury, and properly so, that the drugs, the only drugs Pitts was charged with having possessed and/or trafficking in, were those found in his possession.

According to the State's argument, and contrary to the Court's showing, and the prosecutors telling the jury they should look to the Indictment and to her instructions for any explanation needed as to precisely what the accused was charged with. Can we ignore the possibility that these jurors ignored the Prosecutor's arguments in this regard? For sure there is no way it can be said they did not believe the Prosecutors did not have a better idea. Indeed, when they made the various arguments that were the subject of our Motion for a mistrial. (**Tr. pp 1073-1075.**)

Let's be very clear here, counsel for Pitts went to great lengths in trying, as best he could, to show the jury that the drugs Ronald Pitts was **only** charged with trafficking in were the drugs he was found to be in possession of - - not any other drugs. And, the drugs involved in the possession charges related to the drugs found in, and on his premises. **Tr., pp. 1040-1045**. In our view, the assailed summations made by the State literally invited the jury to judge, and resolve, this case on the basis of considerations other than the actual charges. Given the trafficking instruction given by the Court, with reference to the charges, as structured in the Court's jury charge, the argument here referred to altered the Court's Instructions.

Indeed, given counsel's position that the trafficking **only** involved the various drugs that were seized from Pitts' residences, indeed from him (**Tr., pp. 1040-1045**). Clearly the prosecutor's arguments literally altered and expanded the charges to include the asserted sales and activities Det. Janowiecki described (as a matter of fact over our futile objections), they told the jury about the "foot traffic" and people coming to the residences and purchasing drugs, which were taken from them and examined, was translated into drug trafficking. **Id., p. 505**. Given the prosecutors argued irrelevant evidence was proof of drug trafficking. It inexorably follows the jury was willfully and intentionally misinformed.

Then the defense's interpretation of the drug charges and the Court's charge, which were clear enough, one thing that surely emerges from the State's argument. The segments here being assailed show there is no way it can even possibly be said the prosecutor's argument did not give the jury a skewed impression of the charges. This is all the more so a fact when it is considered in the light of the Court's instructions on Trafficking. Our thesis here is augmented by the fact that the Court actually bought into the State's theory as to why they did not have to give us the names of these people she got drugs from.

It is a given that prosecutors, even those in this case, are prohibited from making impermissible arguments, or even making impermissible comments in their summations. And for sure they should not misrepresent the significance of certain evidence - - indeed all the more so if it admission was challenged – clearly the case here. See **ABA Standards, 3-5.6(a)**.

The reason this is so, and why they should be especially so, is obvious to most of us. It is because being public officials, jurors are most likely repose greater trust in their arguments than in those of defense Counsel. With that truth, we truly believe misconduct occurred when Counsel made the following arguments to the jury. Indeed, this was his final salvo. It was clearly calculated to have a lasting impact, since they retired to deliberate, shortly thereafter.

Here, the argument that concerns us and which prompted Counsel to move for a Mistrial - - indeed, for legitimate reasons, in our judgement. Indeed, because this is what he said:

> Here we are today, ladies and gentlemen, and this is what you are left with. All that narcotics, all those drugs, acknowledged to be Mr. Pitts', by counsel. Baggies, guns, $40,000; **that's drug trafficking,** ladies and gentlemen. Conduct in advance of these search warrants, that's consistent with drug activity, **that's drug trafficking.**

Tr., p. 1073. (*Emphasis supplied*.) Our condemnation of that segment of the State's argument as the record will show Counsel seasonably made the following argument to the Court. Specifically, he said these things in quest of a "Motion for Mistrial", which the Court's remarks show it was not taken seriously. In any event, here is what the record shows:

> MR. WILLIS: I want to make a **motion for a mistrial** based on his statement that having this money and all of that that was evidence of drug trafficking in the context of these accusation. So, I feel, I didn't want to interrupt him, but I do, I am making a motion for a mistrial, because that's not evidence of drug trafficking. **Drug trafficking, in this indictment, is based on preparation, et cetera, not money.**

Id., p. 1075. (*Emphasis supplied*.)

Granted, it must be so because there so very few cases in the State where mistrials are granted based on the inappropriate arguments of counsel's that we could not find any. However, at the very least the Court's failure to grant a Mistrial was at least as abuse of discretion. See ***United States v. Gambino*, 926 F 2d. 1355, 1356 (3d Cir. 1990)**. Here, we are contending what happened was of constitutional proportions. Also, see ***State v. Haynes*, 25 Ohio St. 264 (1971),** which tells the Court to apply constitutional standards to the issue of this ilk as well. **Id., p. 265**.

The bottom line thus here seems clearly to be that given the assurances referred to herein, and given the context of several of the Assignments of Error, here relied on, the facts show indisputable violations of counsel's ***Brady*** violations, and his possible culpability with reference to **18 U.S.C. § 4**, this Court should not hesitate to vacate these convictions - - if only for the summations isolated and assailed above. For surely these comments stained these convictions. So postured, the Court surely has a duty here when viewing all the condemnations of the actions of these prosecutors, even apart from the other proven flaws, that blemished these verdicts to actually isolate, and make the determination that their unpardonable summation alone permanently disclosed the integrity of these verdicts.

So postured, who can deny these summations falsely insinuates in a way that is calculated to mislead the jury into basing its verdict on a different theory. Let's be very clear here the Court properly charged the jury that Pitts could, and should, be convicted if, with reference to the actual drugs (in evidence) they found he had

prepared them, which was the charge made in the Indictment, the prosecutor argued copied. Well, this was not the charge made in the Indictment. For sure, because the argument made by this prosecutor cannot be defended, indeed all the more so because even this prosecutor had to know the events he was relating to the jury occurred over a period of time, during and on the days when the various asserted to have happened, occurred. The Indictment herein charged the trafficking (referred to in this Indictment) all of which occurred on the dates specified.

CONCLUSION

Given the obvious adulation of the affiant and her apparent willingness to place amplified stock in her various sources, who were not only undocumented. Indeed they were, and are still strangers. For sure then, no Judge, but this one, could have overlooked the fact that the Court that issued this Warrant was forced to rely on the belief that after all he had the Affiant's naked and unclad word for these things. That simply shows us how gullible he was.

This follows because clearly, given the gross omissions from the Affidavit for the search warrant, there was no reference to the fact the prime sources of the information relied on for these warrants were undocumented, and we only had the affiant's word they even existed. Likewise, the Court, based on the prosecutor's argument made in the wake of their confession that they were complicit in concealment of facts relative to any finding of probable cause, their summations were gross.

Respectfully submitted,

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