No. _____

In the Supreme Court of the United States

Asa Lea,

Petitioner

v.

United States of America,

Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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Petition for Writ of Certiorari

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Questions Presented

1. Whether the District Court erred by denying Mr. Lea's Motion to Suppress Illegal Tangible Evidence?

2. Whether the District Court erred by denying Mr. Lea's Motion to Suppress Illegal Statements?

3. Whether the District Court erred by denying Mr. Lea's Motion for Judgment of Acquittal?

4. Whether the District Court erred by denying Mr. Lea's Motion for New Trial?

Parties and Related Cases

The names of all parties appear in the caption of the case on the cover page.

There are no related proceedings.

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Petition for Writ of Certiorari

Petitioner Asa Lea prays for the issuance of a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the District of Columbia Circuit.

Opinions Below

The Opinion of the United States Court of Appeals for the District of Columbia Circuit appears at *Appendix A*. It is unpublished. The District Court's Opinions appear at *Appendix B*. They are also unpublished.

Jurisdiction

On November 25, 2020, the United States Court of Appeals for the District of Columbia Circuit issued its Judgment and Opinion. Petitions for Rehearing and

Rehearing *en Banc* were denied on January 13, 2021. The Orders denying rehearing appear at *Appendix C*.

Jurisdiction of the Supreme Court arises pursuant to Title 28 United States Code, section 1254(1). Jurisdiction in the District of Columbia Circuit was based upon Title 28 United States Code, section 1291, the final judgment in a criminal case, entered against Petitioner on February 24, 2020 in the United States District Court for the District of Columbia. The District Court's Judgment appears at *Appendix D* to this Petition. Jurisdiction in the District Court was based upon Title 18 United States Code, section 3231, because the United States prosecuted Petitioner for violation of the United States Code.

Constitutional Provisions Involved

The Fourth Amendment to the United States Constitution provides:

> 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.

The Fifth Amendment to the United States Constitution provides:

> 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 offence 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

The Sixth Amendment to the United States Constitution provides:

> 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.

Statement of the Case

Petitioner seeks review of his conviction. By Complaint filed on March 6, 2019 Officer Lemuel Woods charged Mr. Lea with unlawful possession of a firearm and ammunition after being convicted of a crime punishable by imprisonment for more than a year (18 U.S.C. § 922(g)(1)). App'x to Opening Br. at 14 – 15.

By Indictment filed on March 8, 2019 the Grand Jury charged Mr. Lea with: i) unlawful possession of a firearm and ammunition after being convicted of a crime punishable by imprisonment for more than a year (18 U.S.C. § 922(g)(1)); ii) unlawful possession with intent to distribute marijuana (21 U.S.C. § 841(a)(1) and 841(b)(1)(D)); and iii) using, carrying, and possessing a firearm during a drug trafficking offense (18 U.S.C. § 924(c)(1)). App'x to Opening Br. at 16 – 18.

On March 11, 2019, five days after Mr. Lea was arrested, he was brought to the District Court for an initial appearance. Id. at 3. He pled not guilty and asked

to be released. Ibid. Two days after that, at a hearing on March 13, 2019 the District Court ordered pretrial detention. Ibid.

Mr. Lea filed Pretrial Motions on July 1, 2019, challenging the government's claims about its seizure of things and statements that the government would offer in evidence at trial. Id. at 20 – 36.

The government moved to dismiss Counts Two and Three of the Indictment, unlawful possession with intent to distribute marijuana (21 U.S.C. § 841(a)(1) and 841(b)(1)(D)) and using, carrying, and possessing a firearm during a drug trafficking offense (18 U.S.C. § 924(c)(1)), which the District Court granted. Id. at 5 – 6.

At a hearing on August 12, 2019, the District Court denied Mr. Lea's Motions to Suppress Illegal Tangible Evidence and Statements. Id. at 99:16 – 100:20.

At a pretrial conference on September 5, 2019, Mr. Lea objected to the government's proposed Exhibits 6 – 18, which included pictures of things that the government had seized or the things themselves, all which Mr. Lea had previously moved to suppress. App'x to Opening Br. at 7. The District Court overruled Mr. Lea's objection. Ibid.

By Superseding Indictment filed on September 5, 2019, the Grand Jury charged Mr. Lea with knowing and unlawful possession of a firearm and ammunition after being convicted of a crime punishable by imprisonment for more than a year. 18 U.S.C. § 922(g)(1); App'x to Opening Br. at 107 – 108.

On September 9 – 11, 2019, Mr. Lea was brought to the District Court for a jury trial. Id. at 7 – 8. After the Jury was unable to reach a unanimous verdict, the Court declared a mistrial and discharged the Jury from any further consideration of the case on September 11, 2019. Id. at 7.

On November 19 – 21, 2019, Mr. Lea was again brought to the District Court for a jury trial and was found guilty. Id. at 9 – 10.

Mr. Lea filed Motions for Judgment of Acquittal and for a New Trial on December 3, 2019, because the evidence was insufficient. Id. at 673 – 714.

Without a hearing, on January 15, 2020[1] the District Court denied Mr. Lea's Motions for Judgment of Acquittal and for a New Trial. Id. at 722 – 725.

On February 21, 2020, the District Court sentenced Mr. Lea to incarceration for a term of 33 months (2 years and 9 months) with credit for time served, a 24 month (2 year) term of supervised release, and a $100 special assessment. Id. at 13.

Mr. Lea filed a Notice of Appeal on March 4, 2020. Id. at 778.

Reasons for Granting the Petition

Asa has never met his father, and in fact, Asa does not even know who his father is. Id. at 800, 819 – 820, 848 – 849. Asa was raised by his mother Yolanda Lean and his grandmother Virginia B. "Nana" Campbell. Ibid. Unfortunately, Nana passed away about five years ago. Ibid. They lived in Southeast Washington, until the house went into foreclosure. Ibid.

[1] Although the District Court's Order and Memorandum Opinion are both dated January 15, 2019, that is incorrect. However, both reflect time stamps on January 15, 2020, which is correct.

About seven years ago on October 5, 2014, a day that Asa will never forget, he was shot four times right in front of his home, where he had lived with his mom and Nana for fifteen years. Id. at 801, 820, 849. He has two scars on his stomach, another on his left side, and one on his finger from the gunshot wounds. Ibid.

Asa is a lifelong resident of Washington. Ibid. He graduated from Ballou Senior High School in 2010. Id. at 802, 821, 850. Then, he went to work. Ibid. Over the years, he has worked at McDonald's and CVS full-time as a cashier. Ibid.

For almost six years, Asa worked full-time as a greeter and security at the Family Dollar Store. Ibid. Unfortunately, his job ended due to budget cuts. Id. at 802, 821, 851. After that, Asa found full time work as a landscaper, and the pay was even better, but that job was seasonal. Ibid.

Just four months before he was arrested, Asa found full time work as an overnight stocker at a Walmart Supercenter. Ibid. Unfortunately, he lost that job, because he was detained after his arrest on March 5, 2019. Id. at 793, 802, 812, 821, 850.

A warrantless seizure without probable cause (U.S. Const. amend IV; *see California v. Hodari D.*, 111 S.Ct. 1547, 1549 (1991)); immediately followed by questioning without any warning are illegal (U.S. Const. amend V; *see Miranda v. Arizona*, 384 U.S. 436 (1966)).

Likewise, a warrantless search without probable cause is also illegal. *Hayes v. Florida*, 470 U.S. 811 (1985); *Florida v. Royer*, 460 U.S. 491, 500 (1983); *United States v. Allen*, 629 F.2d 51, 55 (D.C. Cir. 1980); *Chimel v. California*, 395 U.S. 752,

762 (1969); *see also Katz v. United States*, 389 U.S. 347 (1967); *Henry v. United States*, 361 U.S. 98 (1958).

The appropriate remedy is exclusion of any statements and tangible evidence that result from government agents' illegal seizure, interrogation, and searches. *Brown v. Illinois,* 422 U.S. 590, 603, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); *Wong Sun v. United States,* 371 U.S. 471, 484–86, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *see also Kaupp v. Texas,* 538 U.S. 626, 632–33, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003) (*per curiam*) (vacating conviction on basis of admission of confession obtained as result of unlawful arrest). Accordingly, the District Court should have granted suppression.

Witnesses made allegations, which seem highly questionable in light of common experience and knowledge. *(Dion M.) Slater-El v. United States*, 142 A.3d 530 (2016); *In re A.H.B.,* 491 A.2d 490, 496 n. 8 (D.C., 1985); *Jackson v. United States,* 353 F.2d 862, 867 (D.C. Cir. 1965); *See also Coleman v. United States,* 515 A.2d 439, 444 (D.C., 1986). Considering their testimony was the only evidence about petitioner breaking the law, it should have been given no deference. Id.

I. A United States Court of Appeals Has Sanctioned a District Court's Departure from the Accepted and Usual Course of Judicial Proceedings, which Calls for the Exercise of this Court's Supervisory Power.

A. Standard of Review.

When the Supreme Court reviews preserved constitutional trial error, the government must prove that the error was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24 (1967).

B. Analysis: The Trial Court Should Have Reconsidered Its Suppression Ruling and Granted Judgment of Acquittal After the Suppression Witness Testified at Trial that He Had Previously Sworn to Things that Were Not True, and Another Witness Testified Incredibly about Missing Evidence that Was Supposed to Be the Nexus.

Government agents arrested and searched Mr. Lea without a warrant to do so. App'x to Opening Br. at 37 – 45.

1. Suppression Hearing Testimony.

At the suppression hearing, Officer Lemuel Woods testified that he and Officer Karroll Wooley were in plain clothes, carrying concealed weapons, "OC" spray, batons, badges, and credentials, but not body cameras. Id. at 63:14 – 66:5.

While waiting for the next bus and with other people around, Officer Lemuel Woods saw Mr. Lea walk up to the bus shelter across the street and have a seat in it. Id. at 68:13 – 68:16. Officer Woods said that he smelled what he believed to be marijuana in the air. Id. at 70:12 – 70:14. He saw Mr. Lea, sitting alone in the other bus shelter, said something to Officer Wooley, and then they decided to walk over and investigate the smell. Id. at 70:13 – 70:16.

Officer Woods claimed that Mr. Lea appeared to be smoking a hand-rolled cigarette. Id. at 71:3 – 71:4. Officer Woods claimed that he could smell the odor of marijuana, emitting from him, getting stronger as they got closer to him. Id. at 71:19 – 71:21.

When Officers Woods and Wooley approached Mr. Lea, he was sitting in the bus shelter that was enclosed on three sides. Id. at 80:2 – 80:12; 85:16 – 85:18. Officers Woods was standing to Mr. Lea's right, and Officer Wooley was standing to

Mr. Lea's left, inside the shelter. Ibid. Officers Woods and Wooley made the constraint, so that when Mr. Lea did try to leave, Officer Woods said that he got about two steps before they held onto him, took him to the ground, got him in handcuffs, and patted him down. Id. at 75:13 – 76:11.

Whether the police surround a person or otherwise restrict his ability to leave is a significant factor in the seizure inquiry. *United States v. Lewis*, 921 F.2d 1294, 1299 (D.C. Cir. 1990); *see Michigan v. Chesternut,* 486 U.S. 567, 575, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988); *United States v. Bowles,* 625 F.2d 526, 532 (5th Cir.1980).

Officers Woods and Wooley did not ask for permission. *Lewis* at 1297 – 98; *United States v. Morgan*, 914 F.2d 272, 274 (D.C. Cir. 1990) (per curiam); *see also United States v. Smith*, 901 F.2d 1116, 1117 – 18 (D.C. Cir.) (citing additional cases), *cert. denied*, ___ U.S. ___, 111 S.Ct. 172, 112 L.Ed.2d 136 (1990).

Nor did they begin by asking a few questions. *United States v. Gross*, 784 F.3d 784, 787 (D.C. Cir. 2015); *Florida v. Bostick,* 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991).

Instead, the first thing that Officers Woods and Wooley did while standing over Mr. Lea, as he was sitting in the bus shelter that was enclosed on three sides (Id. at 80:2 – 80:12; 85:16 – 85:18) was take out their badges, and Officer Woods said, "in a clear, loud voice … I'm Officer Woods with the Transit Police." Id. at 72:1 – 72:3, 80:21 – 81:1. Officer Wooley did the same and asked Mr. Lea what he was smoking. Id. at 72:3 – 72:4.

They had already seized Mr. Lea when Officer Wooley asked without *Miranda* warnings what he was smoking. *See Miranda, supra.* Seizure occurs "when physical force is used to restrain movement or when a person submits to an officer's 'show of authority.'" *United States v. Brodie*, 742 F.3d 1058, 1061 (D.C. Cir. 2014) *quoting California v. Hodari D.*, 499 U.S. 621 (1991); *see also (Kelby R.) Gordon v. United States*, 120 A.3d 73 (2015) (Seizure occurred when police asked man about his identity for 10 minutes; suspicion that he lied about his name did not justify the stop).

A reasonable person, sitting in a bus shelter, approached by officers, who identified themselves by displaying their police badges and by stating "police" in a loud clear voice, would believe that he or she was not free to leave. *United States v. Goddard*, 491 F.3d 457 (D.C. Cir. 2007); *United States v. Wood*, 981 F.2d 536, 539 (D.C. Cir. 1992); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

Officers, who identified themselves by displaying their police badges and by stating "police" in a loud clear voice, showed their authority. *Brodie* at 1061; *Hodari D.*, *supra.*

Even a brief detention, short of traditional arrest, must be based on reasonable, objective justification. *Gross* at 786; *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975).

When asked what, if anything, Mr. Lea said in response, Officer Woods claimed that he said, "Some weed." App'x to Opening Br. at 72:5 – 72:6. Officer Woods also claimed that they discussed the new laws for consuming marijuana, told

Mr. Lea that they were going to write a citation, and asked him for identification. Id. at 72:7 – 72:17. When asked what Mr. Lea said when asked for identification, Officer Woods claimed that he said, "he didn't have any ID on him." Id. at 72:5 – 72:6.

Officer Woods believed that when he asked Mr. Lea for his name and date of birth, and he said Tyrone Kelly and January 3, '91. Id. at 73:6 – 73:8. Officer Woods said that he did not find anything, when he searched a law enforcement database. Officer Woods claimed that when he asked Mr. Lea if he had been arrested before in order to find out if he was truthful, he said that he had. Id. at 73:9 – 73:21. Officer Woods claimed that when he asked Mr. Lea if he was being truthful, and he said he was. Id. at 74:9 – 74:10.

Officer Woods did not believe that he was being truthful, because Officer Woods claimed there was a delay, when they asked him his name, and date of birth, and he appeared "possibly high. Slightly off." Id. at 74:10 – 74:19.

Refusing to provide identification is neither a crime, nor in most circumstances even grounds for suspecting criminal activity. *United States v. Wylie*, 569 F.2d 62, 69 (D.C. Cir. 1977). It is simply "too bland a circumstance to connote criminality objectively." *Id.* at 85 (Robinson, J., dissenting); *see also Powell v. United States*, 649 A.2d 1082, 1087 (D.C. 1994) (driver stopped for traffic violation who asked officer why he was being stopped and nervously hesitated before providing driver's license and car registration, did not provide basis for frisk).

Officer Woods claimed that when he told Mr. Lea that he was not telling the truth, and that he was under arrest, he said, "I'm not going with you all." App'x to Opening Br. at 74:25 – 75:3.

Instead of granting the motions to suppress, the District Court denied them, finding the suppression witness to be credible. App'x B. Although the Court referenced "*U.S. v. Lewis*, D.C. Circuit 1990, *U.S. v. Gross*, D.C. Circuit 2015 *citing Florida v. Bostick*, Supreme Court 1991;" the Court did not address: i) that Officers Woods and Wooley did not ask for permission; ii) that they did not begin by asking a few questions; and iii) that when Mr. Lea did try to leave, he got about two steps before they held onto him, took him to the ground, got him in handcuffs, and patted him down. Id. at 75:13 – 76:11; 99:16 – 100:20.

2. Trial Testimony.

Only the testimony of Officers Woods and Wooley tended to show possession. App'x to Opening Br. at 63 – 91; 162 – 261; 497 – 621. There was no video, fingerprints, or DNA evidence providing a nexus. Ibid.

While Officer Woods testified at trial that they saw Mr. Lea smoking a brown, hand rolled cigarette that emitted the smell of marijuana (Id. at 172:13 – 172:16; 177:11 – 177:16); later, he changed that to he believed he smelled marijuana in the air, and Mr. Lea appeared to be smoking. Id. at 505:21 – 506:1.

Previously, Officer Woods had testified at the motions hearing that in fact he had seen Mr. Lea smoking a hand rolled cigarette that emitted the smell of marijuana. Id. at 71:16 – 71:21.

The Court had relied on Officer Woods' testimony to deny Mr. Lea's Motion to Suppress. Id. at 98:8 – 98:13; 100:14 – 100:20.

Yet, they did not recover a hand rolled cigarette among all of the other things that they seized. Id. at 76:24 – 79:15; 182:22 – 190:9; 513:17 – 523:9. Officer Woods claimed: "it must have blown away, or -- we couldn't find it … It was not in the area. We couldn't see anything." Id. at 525:18 – 526:1. Officer Wooley claimed: "It was placed on a bench initially. After that, I don't recall." Id. at 567:5 – 567:14. They looked, but were unable to find it. Ibid.

In fact, chemist Marisol Rozo confirmed that no marijuana was recovered at all. Id. at 255 – 261; 610 – 617.

Officer Woods got a Warrant for Mr. Lea's DNA, by swearing under oath to Magistrate Merriweather i) that the firearm was swabbed for DNA, ii) that the government planned to test the evidence upon receipt of the defendant's DNA, and iii) a match between the defendant's DNA and the DNA on the firearm would make a fact of consequence in this case, the defendant's unlawful possession of a firearm, more or less probable. Id. at 191:25 – 195:4; 528:18 – 529:24.

Yet, that was not so. Officer Woods did not ask for any further investigation. Id. at 196:14 – 196:22; 524:6 – 525:17.

Agent Justin Guida testified that he seized a DNA sample from Mr. Lea. Id. at 618 – 621.

Agent Gregory Channon even testified that he asked whether the government wanted the ammunition that was seized submitted to the Department

of Forensic Services for DNA testing, but the government did not respond. Id. at 603:8 – 603:14.

It is inherently incredible that the brown, hand rolled cigarette that emitted the smell of marijuana, which was so big that agents claimed to have seen it from across the street, had become so small that they could not see it when they seized everything else from Mr. Lea. *Jackson v. United States,* 353 F.2d 862, 867 (D.C. Cir. 1965).

Instead of granting the motions for acquittal and for new trial, the District Court denied them. App'x to Opening Br. at 722 – 725. Although the Court cited *United States v. Rogers*, 918 F.2d 207, 213 (D.C. Cir. 1990) and *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), the Court did not address: i) that the witnesses testimony made allegations, which seem highly questionable in light of common experience and knowledge, ii) that a witness swore to things that he later testified were not true, iii) that he testified that evidence "must have blown away, or -- we couldn't find it … It was not in the area. We couldn't see anything[;]" iv) that another witness testified that the same evidence "was placed on a bench initially. After that, I don't recall[,]" v) that their testimony about petitioner breaking the law should have been given no deference, and vi) reconsideration of the prior suppression ruling. App'x to Opening Br. at 722 – 725.

Ultimately, agents' testimony that the brown, hand rolled marijuana cigarette, which they claimed to have smelled and seen from across the street, just somehow disappeared, is inherently incredible. Trial also made apparent that

agents did not seize marijuana in bags, like they had claimed, and that they did not test for DNA as they promised the Court in a sworn Affidavit they would do. The District Court should have reconsidered its suppression ruling, because by the time Mr. Lea moved for judgment of acquittal the District Court knew the inherently incredibility of the agents' testimony. Likewise, the District Court knew this when Mr. Lea moved for a new trial. Instead, the District Court just ignored it.

II. Importance of the Case.

Several Circuits have considered trial evidence when they reviewed suppression motions. *See e.g. United States v. Han,* 74 F.3d 537, 539 (4th Cir. 1996); *United States v. Perkins,* 994 F.2d 1184, 1188 (6th Cir. 1993) (collecting cases from the Second, Sixth, Seventh, and Tenth Circuits supporting this principle).

While appellate courts have been reluctant to consider trial evidence when the district court did not have an opportunity to correct the error (*United States v. Thomas,* 875 F.2d 559, 562 (6th Cir. 1989); *United States v. Longmire,* 761 F .2d 411, 420 – 21 (7th Cir. 1985)), the Seventh Circuit concluded that an appellate court is *required* to consider the evidence when the defendant raised the issue again. *See Longmire,* 761 F.2d at 420 ("An appellate court *must* review evidence presented at trial that casts doubt on the correctness of the pretrial suppression ruling where the defendant has moved for reconsideration of the ruling in light of that evidence and the trial court has, in the exercise of its discretion, reconsidered.") (*citing United States v. Raddatz,* 447 U.S. 667, 678 n.6 (1980)).

Conclusion

The Court should grant a writ of certiorari.

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