ORIGINAL

NO. 21-5124

IN THE

SUPREME COURT OF THE UNITED STATES

DERRICK WILSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Did the Court of Appeals err in concluding that Petitioner's Certificate of Appealability had not "made a substantial showing of the denial of a constitutional right" under *Miller-El v. Cockrell, 537 U.S. 322 (2003)*; when Outrageous Government Conduct -fabrication of evidence by government officials-that shocks the conscience violates the Due Process Clause of the United States Fifth Amendment?

LIST OF PARTIES

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

Related Cases

United States v. Wilson, 5:14-cr-273 (NDNY)

United States v Wilson, 16-cr-3701 (2d Cir.)

Wilson v United States, 18-6417 (United States Supreme Court)

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The opinion below of the United States Court of Appeals for the Second Circuit in this case is unpublished. This opinion is reproduced in Appendix A.

The opinion of the United States District Court for the Northern District of New York, the Hon. Judge, Glenn T. Suddaby, is unpublished. The opinion is reproduced in Appendix B.

STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Second Circuit affirming the district court's judgment was entered on April 14, 2021.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment of the United States Constitution is reproduced in Appendix C.

STATEMENT OF CASE

I. Outrageous Government Conduct

Joint Task Force Illegally Planted Drug Evidence in Three (3) Controlled Purchases of Narcotics and Federal Prosecutor Colluded with Two (2) Verizon Employees by Fabricating Verizon Phone Records in Order to Cover Up Law Enforcement's Misconduct

In April of 2013, a New York State ("NYS")/Federal Joint Task Force began investigating Wilson as being the leader of the Derrick Wilson Drug Trafficking Organization in Syracuse, New York. Pursuant to their investigation, the government asserted, inter alia, the following three (3) control purchases of narcotics were ***initiated*** by calling co-conspirator Willie Strong's cellular number (315) 317-3638:

May 28, 2013, Controlled Purchases of Narcotics

In DEA-6 report authorized by Drug Enforcement Administration (DEA) SA Anthony Hart, agents aver that on May 28, 2013, their Joint Task Force utilized an Onondaga County Sheriff's Office (OCSO) confidential source to conduct a controlled purchase of crack cocaine from alleged coconspirator Willie Strong Jr. (See, Appendix D)

As detailed in SA Hart's DEA-6 report, this successful controlled purchase of narcotics from Strong was ***initiated*** by the confidential source calling Strong's cellular phone in the presence of SA Hart. (See, Appendix D, para 2)

June 6, 2013, Controlled Purchase of Narcotics

In a DEA-6 report authorized by Task Force Officer (TFO) Robert E. Hayhurst, agents aver that on June 6, 2013, their Joint Task Force utilized OCSO confidential source to conduct another controlled purchase of crack cocaine from Strong. (See, Appendix E)

As detailed in TFO Hayhurst's DEA-6report, this successful controlled purchase of narcotics from Strong was ***initiated*** by the confidential source calling Strong's cellular phone in the presence of TFO Passino. (See, Appendix E, para 1)

June 20, 2013, Controlled Purchases of Narcotics

In a DEA-6 report authorized by SA Hart, agents aver that on June 20, 2013, their Joint Task Force utilized OCSO confidential source to conduct another controlled purchase of crack cocaine from Strong (See, Appendix F)

As detailed in SA Hart's DEA-6 report, "At approximately 4:36 pm, the CS placed an outgoing call to Strong at (315) 317-3638. This call was made in the presence of SA Hart. Several attempts were made by the CS to contact Strong, however they all went to voicemail" (See, Appendix F, para.2) Nevertheless, "Agents decided at that point to send the CS over to Strong's business ... in order to attempt a controlled purchase of crack cocaine" (See, Appendix F, para.2) which allegedly resulted in crack cocaine being seized and processed into evidence. (See, Appendix F, para.4)

Pen Register Application for Verizon Phone Records Relating to Willie Strong, Jr.'s Cellular Phone (315) 317-3638

To establish reasonable grounds for granting his application, then AUSA Katko (now U.S. Congressman) chronicled the aforementioned three (3) controlled purchases of narcotics from Strong, and averred, "**On each instance: 1) he [Strong] used the target telephone to facilitate the deals and 2) the substance the CS purchased from Strong, field tested positive for the presence of cocaine.**" (See, Appendix G, para.17) Allegedly, based on this information, U.S. Magistrate Andrew Baxter granted the Pen Register Application on July 11, 2013. (See, Appendix H)

On June 18, 2014, Wilson was arrested with twelve (12) others for federal drug conspiracy. 21 U.S.C. §§ 841(a), 846

Three (3) Contradictory Verizon Phone Records; Two (2) Certifying (315) 317-3638 Was Not Active During the Time Frame in Question and One (1) Certifying that it Was Active.

First Verizon Response

On January 6, 2016, five (5) days prior to the January 11, 2016, commencement of trial, then counsel Kenneth Moynihan, submitted a defense subpoena to Verizon Wireless signed by U.S. District Court Judge Glenn T. Suddaby, requesting, "Phone records,

incoming and outgoing, for the number (315) 317-3638, for the time period of April 1, 2013, through August 31, 2013."[1] (See, Appendix I(i))

The first defense subpoena from Verizon was received on January 7, 2016, via fax, from Custodian of Records, Cristina Careri, certifying, "**that the number was 'no active' during the time frame requested.**" (See, Appendix I(ii))

Pursuant to a request made by Moynihan for a more formal response, beyond a fax, Cristina Careri furnished the defense with a "**Certification of No Records**" on January 8, 2016. (See, Appendix I(iii))

Also transpiring on January 8, 2016, was the government's first-time disclosure to the defense: Verizon phone records, i.e., toll information and pen register information. [See, *United States v. Wilson*, 5:14-cr-273, Dkt. No. 506 -Appendix A][2] The Government's production of these phone records contradicted Verizon's response to the defense subpoena.

On January 11, 2016, Moynihan brought this discrepancy in evidence to the District Court's attention. (See Trial Transcript [TT] 9-10) The first explanation proffered

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[1] This time period encompasses the time frame in which the government avers it called Strong's cellular phone to initiate the three (3) aforementioned controlled purchases of narcotics.

[2] Wilson contends now, as well as below, that the eleventh-hour production of these phone records was a fabrication of evidence. Moreover, this discrepancy in Verizon's phone records constitutes a factual dispute underlying a due process claim; thus, warranting an evidentiary hearing. *Machibroda v. United States*, 386 U.S. 487 (1962)

by the government as to why the defense received a "No Records" response from Verizon, was that the defense sent the subpoena to the wrong agency and the District Court agreed, over Moynihan's objections. (See TT. 27)

On January 12, 2016, the second day of trial, Wilson began his Pro Se representation. During cross examination, Agent Hart testified that Willie Strong's number (315) 317-3638 *was active* through Verizon and agents ***initiated*** the May 28, 2013, June 6, 2013, and June 20, 2013, controlled purchases of crack cocaine from Strong by calling his cellular number. (See TT. 502-511)[3]

When Wilson requested to introduce the Verizon phone records into evidence for impeachment purposes, the District Court denied Wilson's request. (See TT. 510)

The District Court also held,

> "...until there's some records from a phone company that says that the phone wasn't in use or wasn't live at that time, that the issue is, you know, far from ... " (See TT. 552)

Moments later Moynihan informed the District Court that this type of evidence does exist:

> I did provide the court with the, or the ...I don't recall if I provided to the Court, I think I did, but I certainly provided to the government with response to our subpoena about the Verizon records. **And Verizon says**

[3] SA Hart's testimony amounts to the government's knowing subornation of perjury.

that the phone was not active at the time the pen register was up. I don't...I don't know the answer to why that is. He does have a good faith basis to ask those questions **because the Verizon subpoena said that the phone was not active.** (See TT. 555) (See also, Appendix I (i)(ii)(iii))

Second Verizon Response

On January 13, 2016, the third day of trial, AUSA Freedman stated she had her, "paralegal send a subpoena to Verizon requesting the same information and we received a response ... Verizon sent the following, it states:

> 'A previous no records response was sent responsive to a defense subpoena in this case. That response was inaccurate. A corrected response has been sent to that subpoena. Subject phone (315) 317-3638 was with reseller Start Wireless during the requested date range. Reseller records are typically not maintained and this particular number was archived. However, we were able to locate documents to part of this request. No records beyond June 3 of 2013 are currently available. No text message detail records for the requested date range are currently available.
> They did provide to both myself and Mr. Moynihan approximately 200 pages of toll records.'" (See TT. 564-565] [See also, Appendix J)

The District Court Denied Wilson's Request for a Factual Hearing.

Based upon this discrepancy in Verizon phone records, Wilson requested an evidentiary hearing to resolve this factual dispute:

> *The Defendant:* ... I have a certified response from Verizon saying that these phone calls were not made during this time period.

The Court: And there's a following certified response saying that the initial response was in error:

The Defendant: That is not from the person.

The Court: Doesn't matter. Does not matter. Does not.

The Defendant: **So we need a factual hearing.**

The Court: **Does not matter. Thank you.** (See TT. 584)

On October 12, 2016, Wilson was sentenced to two concurrent terms of 336 months for counts 1 and 2 in superseding indictment.

Third Verizon Response

On January 12, 2016, Moynihan sent a second defense subpoena to Verizon Wireless. This second defense subpoena was signed by the District Court Judge on January 11, 2016. (See, Appendix K(i)) This second defense subpoena was identical to the first defense subpoena, with the exception of Moynihan *adding only the Electronic Serial Number (ESN)* to the second defense subpoena. (e.g., compare Appendix I(i), K(i))

Daily and continuously, from January 12, 2016, through February 2, 2016, Wilson asked Moynihan if he ever received a response from Verizon regarding this second defense subpoena, and Moynihan repeatedly replied, "No." (See, Appendix L)

On September 6, 2017, Wilson received correspondence from appellate counsel, Mr. Matthew Brissenden, dated September 1, 2017, containing a report from Verizon relative to Moynihan's second defense subpoena certifying:

> At this point in time Verizon does not have any records (current or archived) that would show what the device ID or Electrical Serial Number (ESN) for the device assigned to phone number (315) 317-3638 between April 1, 2013, and August 31, 2013. If the available call detail records of (315) 317-3638 are still required, please advise our office. (See, Appendix K(ii))

In the header of Verizon's response to the second defense subpoena is an electronic transmission date that states, "**2016-01-2018:46:22 (EMT)**" (See, Appendix K(i)), which clearly shows that the transmission of this subpoena response ***postdates*** the government's January 12, 2016, inaccurate response (compare, Appendix J, K(i)).

Upon receiving this new evidence, Wilson acted promptly to supplement the appellate record with this documentary evidence by filing a F.R.A.P. 10(e) motion in the Second Circuit. (See *United States v. Wilson*, 16-3701, Dkt. No. 96)

The Second Circuit denied Wilson's request to make this new evidence a part of the record. (Id., Dkt. No. 115)

Incomplete Start Wireless/TracFone Wireless Subpoena Response

On January 11, 2016, the District Court granted Moynihan's subpoena to Start Wireless regarding cellular number (315) 317-3638 for the time period encompassing the three (3) alleged controlled purchases of narcotics, and pen register records. (See, Appendix M)

There is no record of a response from Start Wireless in Wilson's case file. On January 12, 2016, Moynihan sent the same Start Wireless addressed subpoena to TracFone

Wireless. TracFone Wireless responded via email instructing Moynihan to "Please address the attached subpoena to TracFone Wireless Inc. and send it back to our office." (See, Appendix M)

There is no evidence in Wilson's case file showing any other communication or response from TracFone Wireless. Moynihan never informed Wilson that he had sent a subpoena to these two companies, nor did he notify Wilson of any response. (See, Appendix L)

It was not until May of 2019, that Wilson was made aware of the existence of these subpoenas when he received and examined the entirety of his case files, previously held by Mr. Brissenden. (See, Appendix L) The responses relative to these two subpoenas appear to be incomplete.

On December 9, 2019, Wilson filed a motion pursuant to 28 U.S.C. §2255 in the Northern District of New York (*United States v. Wilson*, 5:14-cr-273, Dkt. No. 506) In Wilson's §2255 motion he claimed, inter alia, that the government engaged in "Outrageous" conduct by fabricating evidence throughout the prosecution (investigatory stage, i.e., illegally planting drug evidence; discovery stage, i.e., Verizon phone records).

The government responded by arguing, inter alia, that Wilson's claims were baseless and without merit. (Id. Dkt. No. 511)

On July 27, 2020, the District Court denied Wilson's §2255 motion. (See, Appendix B)

MANNER IN WHICH THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The question of whether Wilson's Fifth Amendment right to Due Process was violated by Outrageous Government Conduct, i.e., fabrication of evidence by government officials, was presented to the Second Circuit Court of Appeals. The Second Circuit rejected Wilson's Certificate of Appealability, concluding, Wilson had not "made a substantial showing of the denial of a constitutional right." Thus, the claim was properly presented and reviewed below and is appropriate for this Court's consideration.

REASONS WHY THIS WRIT SHOULD ISSUE

It has been nearly a half century since the synergy of *United States v. Russell*, 411 U.S. 425 (1973) and *Hampton v. United States*, 425 U.S. 493 (1975) gave birth to the Outrageous Government Conduct doctrine. Unfortunately, during this interim the Supreme Court has not had occasion to firmly establish *what government conduct is* "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." *Russell*, supra, at 431-432. The Supreme Court's reticence regarding this doctrine has created discord and incredulity amongst the lower courts.

For example, while most Circuits acknowledge the viability of the Outrageous Government Conduct doctrine (see, *United States v. Mosley*, 965 F.2d 906, 909 (10th Cir. 1992)(collecting cases from eleven circuits)), they are also incredulous to its application (see, *United States v. Harney*, 934 F.3d 502, 507 (6th Cir. 2019) (outrageous government conduct defense is a "'docile and useful monster' 'worth keeping around' because 'it is easy to kill' again and again")), or just refuse to recognize the doctrine all together (see, *United States v. Stallworth*, 656 F.3d 721, 730 (7th Cir. 2011) ("Outrageous government conduct is not a defense in this circuit.")).

The Second Circuit erroneously concluded that Wilson had not "made a substantial showing of the denial of a constitutional right" when claiming that

government officials engaged in Outrageous Government Conduct by fabrication of evidence during the investigative and pretrial stages of the criminal process.

Due to the lack of a clear holding with respect to this due process doctrine, discord and cynicism amongst the lower courts, and society's protestations to rectify all forms of abuse of governmental power, this Supreme Court should grant Writ.

POINT I.

Did The Court of Appeals Err in Concluding That Petitioner's Certificate of Appealability Had Not "Made A Substantial Showing of The Denial of A Constitutional Right" Under *Miller-El V. Cockrell*, 537 U.S. 322 (2003); When Outrageous Government Conduct-Fabrication of Evidence By Government Officials-That Shocks The Conscience Violates The Due Process Clause of The United States Constitution, Fifth Amendment

The Second Circuit Court of Appeals determined that Wilson had not "made a substantial showing of the denial of a constitutional right" when filing his Certificate of Appealability, relating to the denial of a 28 U.S.C. §§ 2255 motion. Wilson argued that a NYS/Federal Joint Task Force illegally planted drug evidence in three (3) different controlled purchases of narcotics, and the federal prosecutor-in collusion with two Verizon employees-fabricated phone records to cover up the Joint Task Force initial fabrication of evidence.

The question brought to this Court is, does fabrication of evidence by government officials during the investigative and pretrial stages of the proceeding, constitute Outrageous Government Conduct that shocks the conscience, and violates the common

notions of fairness and decency guaranteed by the Due Process Clause of the United States Constitution Fifth Amendment.

The Fifth Amendment of the United States Constitution provides in part that "No person shall...be deprived of life, liberty, or property, without due process of law." U.S. Const. 5th Amend.

As a threshold matter, this Court's earliest explanations of due process imparts the core of the concept to be protection against arbitrary action. Pointedly, "the principle and true meaning of the phrase has never been more tersely and accurately stated then by Mr. Justice Johnson in *Bank of Columbia v. Okely*, 4 Wheat 235, 244 [4 L. Ed. 559 (1819)] As to the words from Magna Charta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view of their exposition, the good sense of mankind has at last settled down to this: **that they were intended to secure the individual from the arbitrary exercise of the powers of government**." *Hurtado v. California*, 110 U.S. 516, 527 (1884)

Over a century after Mr. Justice Johnson's promulgation, this Court reaffirmed this founding principle in *Wolf v. McDonnell*, 418 U.S. 539, 558 (1974), "**the touchstone of due process is protection of the individual against arbitrary action of government**"; "[w]hether the fault lies in a denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972)(the procedural due process guarantee protects against 'arbitrary taking'), or, in **the exercise of power without any reasonable justification in**

the service of a legitimate governmental objective, see, e.g., *Daniel v. Williams*, 474 U.S. 327, 331 (1986) (the substantive due process guarantee protects against government power arbitrarily and oppressively exercised)". *County of Sacramento v. Lewis*, 532 U.S. 833, 845-846 (1998)

Historically, the substantive due process guarantee has been applied to the deliberate decision of government officials to deprive a person of life, liberty, or property. For example, *Davidson v. New Orleans*, 96 U.S. 97 (1878)(assessment of real estate); *Watts v. Indiana*, 338 U.S. 49 (1949)six days of intense interrogation of accused); *Rochin v. California*, 342 U.S. 165 (1952)(forcible extraction of accused's stomach contents); *Bell v. Burson*, 402 U.S. 535 (1971) (suspension of driver's license); *Ingram v. Wright*, 430 U.S. 651 (1977)(paddling student); *Hudson v. Palmer*, 478 U.S. 517 (1984)(intentional destruction of inmate's property).

Despite its ancient roots, founding principles, and centuries of due process dicta, this Court has yet to decree *what government conduct is* "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." *United States v. Russell*, 411 U.S. 425, 431-432 (1973) For instance, in *Russell*, supra, this Court held "this case is not of that breed." In *Hampton v. United States*, 425 U.S. 484, 493 (1975), Mr. Justice Powell opined, "Disposition of these claims [*Russell* and earlier cases] did not require the Court to consider whether overinvolvement of

Government agents in contraband offenses could ever reach such proportions as to bar conviction of a predisposed defendant as a matter of due process."

Arising from the ashes of *Russell* and *Hampton* was the Outrageous Government Conduct doctrine. This synergy reinforced the "shock the conscience" standard enunciated in *Rochin,* supra, 172. See also, *Briethaupt v. Abram,* 352 U.S. 432, 435 (1957)(reiterating that conduct that "'shocked the conscience' and was so 'brutal' and 'offensive' that it did not comport with traditional ideas of fair play and decency would violate substantive due process); *Whitley v. Albers,* 475 U.S. 312, 327 (1986)(same); *United States v. Salerno,* 481 U.S. 739, 746 (1987)("so-called 'substantive due process' prevents the government from engaging in conduct that 'shocks the conscience'...or interfere with the rights implicit in the concept of ordered liberty'").

"While the measure of what is conscience shocking is no calibrated yardstick, it does, as Judge Friendly put it, 'poin[t] the way." *Lewis,* supra, at 847. Furthermore, "due process of law requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims."[4] *Rochin,* supra, at 172.

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[4] Emphatically, the lower courts abandonment of this prudence engenders a coextensive procedural due process infringement. See, e.g., *Machibroda v. United States,* 386 U.S. 487, 495-496 (1962) (where Petitioner makes "specific and detailed factual assertions", an evidentiary hearing must be held); see also, *Walker v. Johnston,* 312 U.S. 275, 287 (1941)("Not by the pleadings and affidavits but by the whole of the testimony must it be determined whether the petitioner has carried his burden of proof and shown his right to a discharge. The Government's contention that his allegations are improbable and

Applying these general principles Wilson contends that fabrication of evidence by government officials, i.e., federal agents illegally planting drug evidence during their investigation and fabrication of Verizon phone records by the federal prosecutor-in collusion with two Verizon employees-during the pretrial stages of the criminal proceeding, constitutes Outrageous Government Conduct that "shocks the conscience" and is "so outrageous that due process principles would absolutely bar the Government from invoking judicial processes to obtain a conviction." *Russell,* supra, at 431-432. See, *United States v. Zahrey,* 221 F.3d 342, 355 (2d Cir. 2000)("It is firmly established that a constitutional right exist not to be deprived of liberty on the basis of false evidence fabricated by a government officer"); see also, *United States v. McDuffie,* 2012 U.S. Dist. LEXIS 51003 (E.D. Wash)("Tampering with and planting evidence are types of shocking and outrageous conduct that would warrant dismissal.")

Last but not least, it is clear from the history of due process jurisprudence that jurist of reason would find it debatable whether the District Court [and Second Circuit] was correct in its constitutional ruling, see, e.g., *Miller-El v. Cockrell,* 537 U.S. 322, 348 ("The COA inquiry asks only if the District Court's decision was debatable."). Therefore, the Second Circuit's denial of Wilson's Certificate of Appealability contravenes *Russell, Hampton* and *Miller-El*

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unbelievable cannot serve to deny him an opportunity to support them by evidence. On this record it is his right to be heard."}

STANDING

It is well established that for Wilson to seek relief based upon a due process infringement, i.e., Outrageous Government Conduct he must be an aggrieved party. See, e.g., *United States v. Payner*, 447 U.S. 727, 735-737 n.9 (1980), "[t]he limitations of the due process clause come into play when the Government activity in question violates some protected right of the defendant."

In the instant matter, the **theory of the government's case** from inception to sentencing, was that all drugs sold and seized pursuant to this investigation, including those allegedly sold by co-conspirators to confidential informants, came from and belong to Wilson See, e.g.:

> "Beginning in or about April 2013 ... law enforcement agencies initiated a drug investigation targeting the Derrick Wilson Drug Trafficking Organization." (See, *United States v. Wilson*, 5:14-cr-273, Dkt. No.1, para (4); " ... **investigators have been able to identify Wilson as the leader and organizer overseeing lower-level distributors and couriers.**" (Id. at para. 7)

See Agent Hart's July 2, 2014, Grand Jury testimony, where Hart testified, "During the course of your drug investigation, by the way, drugs Jeffrey Dowdell was buying for the most part, whether it be crack cocaine or heroin, **was his source Derrick Wilson?" - - "Yes**". (Id., Dkt. No. 506 - Exhibit CC at pg. 23); when asked where did Strong get the drugs he sold to the informant in the controlled purchases conducted from Strong, Hart

testified, "**We believe it was Jeffrey Dowdell he was getting his drugs from.**" (Id., Dkt. No.506 - Exhibit CC at pg. 26-27)

During AUSA Freedman's opening trial statement she continued to pursue this same theory, see e.g., she argued," you're going to learn that in Spring 2013 ... the DEA was asked to join with the task force ... that was already investigating a drug trafficking organization ... **this organization was led by Derrick Wilson**" (See TT. 268); AUSA Freedman honed in, "you'll hear from *Jeffrey Dowdell, Tashawn Albert, Zephaneea Dowdell. .. Jamal Harris* ... all of whom will tell you, yes, we were involved in drug trafficking with **this defendant he supplied us**" (See TT. 277-278)

When AUSA Freedman examined Jeffrey Dowdell regarding the roles and involvement of the people in the conspiracy, Jeffrey Dowdell testified, that the crack cocaine and heroin he and his fellow indicted co-conspirators sold, during the time frame of this conspiracy, **were supplied by Wilson** (See TT. 729); ***Dowdell further testified that the crack cocaine and heroin he sold Willie Strong, came from Wilson.*** (See TT. 733-734) Zephaneea Dowdell testified that she was a member of this conspiracy, she was involved in controlled buys, selling crack cocaine and heroin to an informant, **and the drugs she sold the informant-- she got from Jeffrey Dowdell and Derrick Wilson.** (See TT. 986-987)

In the Government's Sentencing Memorandum, AUSA Freedman stated, "The evidence at trial proved that during the time frame of the charged conspiracy (May 2013

through June 18, 2014) **the defendant ...[was] ... the leader of a drug organization, the defendant then distributed the crack cocaine and heroin to his co-defendants for them to distribute to others**". (Id., Dkt. No. 397, pg. 4-5)

As illustrated from the delineation of the theory of the government's case outlined above, it is clear the government's narrative throughout the prosecution has been: **All Narcotics Sold to Informants by Co-conspirators in Controlled Purchases-Including Those Allegedly Sold by Willie Strong Jr., were Originally Obtained from and/or belonged to Wilson.**

Accordingly, when the government illegally planted drug evidence in the May 28, 2013, June 6, 2013, and June 20, 2013, controlled purchases from Willie Strong Jr., ***the government also fabricated criminal activity and drug evidence against Wilson***; thus, making Wilson an aggrieved party of the government's 5th Amendment Due Process infringement.

CONCLUSION

Wherefore, it is respectfully requested that this Honorable Court grant this Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

I declare under **penalty of perjury** under the laws of the United States of America that the foregoing is true and correct.

Executed on July 11th, 2021.

With Fortitude,
/s/Derrick Wilson, Pro Se