

21-5364 ORIGINAL

No.

---

**Supreme Court of the United States**

---

Supreme Court, U.S.  
FILED

AUG 03 2021

OFFICE OF THE CLERK

**TYRONE CAMMON,**

*Petitioner,*

vs.

**UNITED STATES OF AMERICA,**

*Respondent.*

---

**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

---

**PETITION FOR WRIT OF CERTIORARI**

---

Tyrone Cammon  
Petitioner  
65353-060  
P.O. Box 2000  
Bruceton Mills, WV 26525

RECEIVED

AUG 11 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## QUESTIONS PRESENTED

Petitioner Tyrone Cammon had a failure to appear warrant pending. Police received a tip that he was staying at his sister's residence so they staked it out. At one point, police observed and identified Petitioner coming out of the residence, going to a car and retrieving something. Police could have but did not arrest him at that point. Instead, they waited until he went back into his sister's residence and then entered the residence without a search warrant, arrested Petitioner and seized drug and gun evidence in a purported "protective sweep". Counsel filed a motion to suppress arguing, *inter alia*, that *Steagald v. United States*, 451 U.S. 204 (1981) required that the evidence seized in the protective sweep be suppressed. The lower courts rejected this argument and held that *Steagald* only protected Petitioner's sister whose residence the police had entered. The courts held that case was controlled instead by *Payton v. New York*, 445 U.S. 573 (1980) which allows police to enter an arrestee's residence armed only with an arrest warrant. The question whether *Steagald* protects an arrestee in a third party's residence was specifically left open in *Steagald* and has never been decided by this Court.

1.) Whether, in light of *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990)., the lower courts erred in holding that *Payton v. New York*, 445 U.S. 573 (1980) controlled the lawfulness of the warrantless search of the third party residence for Petitioner-Arrestee instead of *Steagald v. United States*, 451 U.S. 204 (1981)?

2.) Where multiple additional errors affected petitioner's conviction and/or sentence in the courts below, should this Court exercise its supervisory power to vacate his conviction and sentence?

**PARTIES TO THE PROCEEDINGS**

**IN THE COURT BELOW**

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Sixth Circuit.

More specifically, the Petitioner Tyrone Cammon and the Respondent United States of America are the only parties. Neither party is a company, corporation, or subsidiary of any company or corporation.

## TABLE OF CONTENTS

|  | <u>Page:</u> |
|--|--------------|
| Questions Presented .....  | i            |
| List of Parties to the Proceedings<br>in the Courts Below .....  | ii           |
| Table of Contents .....  | iii          |
| Table of Authorities .....   | v            |
| Petition for a Writ of Certiorari .....  | 1            |
| Opinions Below .....   | 1            |
| Statement of Jurisdiction .....  | 2            |
| Constitutional Provisions,<br>Treaties, Statutes, Rules,<br>and Regulations Involved .....   | 3            |
| Statement of the Case .....  | 14           |
| Reasons for Granting the Writ .....  | 18           |
| 1.) THIS COURT SHOULD GRANT MR. CAMMON'S PETITION<br>FOR WRIT OF CERTIORARI TO RESOLVE A CONFLICT<br>BETWEEN <i>PAYTON v. NEW YORK</i> AND <i>STEAGALD v. UNITED</i><br><i>STATES</i> IN LIGHT OF <i>MINNESOTA v. OLSON</i> .....  | 18           |
| 1A.) While <i>Payton v. New York</i> Allows Warrantless Entry To An Arrestee's<br>Residence To Execute The Warrant And <i>Steagald v. United States</i><br>Protects A Third Party's Fourth Amendment Right To A Search<br>Warrant Before Police Can Enter To Arrest Someone Else Present In<br>The Residence, And <i>Minnesota v. Olson</i> Protects Overnight Guests In<br>A Residence, The Court Has Never Decided Whether <i>Steagald</i><br>Protects Overnight Guests Creating Confusion In The Lower Courts ..... | 18           |
| 1B.) In Light Of <i>Minnesota v. Olson</i> , 495 U.S. 91, 96-97 (1990)., The Lower<br>Courts Erred In Holding That <i>Payton v. New York</i> , 445 U.S. 573 (1980)<br>Controlled The Lawfulness Of The Warrantless Search Of The Third<br>Party Residence For Petitioner-Arrestee Instead Of <i>Steagald v. United</i><br><i>States</i> , 451 U.S. 204 (1981) .....  | 20           |

|      |  |           |
|------|--|-----------|
| 2.)  | <b>THIS COURT SHOULD GRANT MR. CAMMON'S PETITION FOR WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.....</b> | <b>21</b> |
| 2A.) | <b>Multiple Errors In The Courts Below Mandate That Mr. Cammon's Conviction And/Or Sentence Be Vacated .....</b>   | <b>21</b> |
|      | Conclusion.....  | 25        |
|      | Appendix .....   | 26        |
|      | USCA Opinion Dated 3-9-21 .....  | A         |
|      | USDC Judgment & Commitment Order Entered 12-13-19.....   | B         |
|      | USDC Order Denying Motion To Suppress Entered 2-13-19.....   | C         |

## TABLE OF AUTHORITIES

| <b>Cases</b>   | <b><u>Page:</u></b> |
|--|---------------------|
| <i>Benanti v. United States,</i>                             |                     |
| 355 U.S. 96 (1957) .....                                     | 21, 24              |
| <i>Borden v. United States,</i>                              |                     |
| No. 19-5410,   |                     |
| 2021 U.S. LEXIS 2990, at *1-4 (6-10-21) .....                | 21                  |
| <i>Bradley v. School Board of City of Richmond,</i>          |                     |
| 416 U.S. 696, 710-11 (1974) .....                            | 23                  |
| <i>Bradley v. United States,</i>                             |                     |
| 410 U.S. 605, 607-08 (1973) .....                            | 23                  |
| <i>Dyer v. Calderon,</i>                                     |                     |
| 151 F.3d 970;  |                     |
| 1998 U.S. App. LEXIS 18171 (9 <sup>th</sup> Cir. 1998) ..... | 22                  |
| <i>Elkins v. United States,</i>                              |                     |
| 364 U.S. 206 (1960) .....                                    | 21, 24              |
| <i>GACA v. United States,</i>                                |                     |
| 411 U.S. 618 (1973) .....                                    | 21, 24              |
| <i>Kaiser Aluminum &amp; Chemical Corp. v. Bonjorno,</i>     |                     |
| 494 U.S. 827, 841 & n.1 (1990)                               |                     |
| (Scalia, J., concurring) .....                               | 23                  |

|   |               |
|---|---------------|
| <i>Lawrence v. Chater,</i>  |               |
| 516 U.S. 163, 167-68, 133 L. Ed. 2d 545,                                |               |
| 116 S. Ct. 604 (1996) .....   | 25            |
| <i>McDonald v. United States,</i>                                       |               |
| 335 U.S. 451, 93 L. Ed. 153,  |               |
| 69 S. Ct. 191 (1948) .....  | 22            |
| <i>McNabb v. United States,</i>   |               |
| 318 U.S. 332 (1943) .....   | 21, 24        |
| <i>Minnesota v. Carter,</i>   |               |
| 525 U.S. 83 (1999) .....  | 19, 20        |
| <i>Minnesota v. Olson,</i>  |               |
| 495 U.S. 91, 96-97 (1990) .....   | <i>passim</i> |
| <i>Payton v. New York,</i>  |               |
| 445 U.S. 573 (1980) .....   | <i>passim</i> |
| <i>Rea v. United States,</i>  |               |
| 350 U.S. 214 (1956) .....   | 21, 24        |
| <i>Renigar v. United States,</i>  |               |
| 172 F. 646; 1909 U.S. App. LEXIS 5021 (4 <sup>th</sup> Cir. 1909) ..... | 21            |
| <i>Steagald v. United States,</i>                                       |               |
| 451 U.S. 204 (1981) .....   | 18, 19, 25    |
| <i>United States v. Agnew,</i>  |               |
| 407 F.3d 193, 197 (3d Cir. 2005) .....                                  | 19            |

|  |        |
|--|--------|
| <i>United States v. Behrens,</i>                                   |        |
| 375 U.S. 162 (1963).....   | 21, 24 |
| <i>United States v. Bohannon,</i>                                  |        |
| 824 F.3d 242, 249-50 (2d Cir. 2016).....                           | 19, 20 |
| <i>United States v. Cammon,</i>                                    |        |
| 2021 U.S. App. LEXIS 7094 **5-6;                                   |        |
| 849 Fed. Appx. 541; 2021 FED App. 0122N                            |        |
| (6 <sup>th</sup> Cir. 3-9-21).....                                 | 17, 19 |
| <i>United States v. Granderson,</i>                                |        |
| 511 U.S. 39, 54 (1994) .....                                       | 23     |
| <i>United States v. Hollis,</i>                                    |        |
| 780 F.3d 1064, 1068-69 (11 <sup>th</sup> Cir. 2015).....           | 19     |
| <i>United States v. Jackson,</i>                                   |        |
| 576 F.3d 465, 468 (7 <sup>th</sup> Cir. 2009).....                 | 19     |
| <i>United States v. Jacobs,</i>                                    |        |
| 429 U.S. 909 (1976).....   | 21, 24 |
| <i>United States v. Kaylor,</i>                                    |        |
| 877 F.2d 658, 663 & n.5 (8 <sup>th</sup> Cir. 1989).....           | 19     |
| <i>United States v. Kern,</i>                                      |        |
| 336 F. App'x 296, 297-98 (4 <sup>th</sup> Cir. 2009) .....         | 19     |
| <i>United States v. McCarson,</i>                                  |        |
| 527 F.3d 170, 172-73, 381 U.S. App. D.C. 219 (D.C. Cir. 2008)..... | 19     |



|  |            |
|--|------------|
| <i>United States v. Pruitt,</i>  |            |
| 458 F.3d 477, 482 (6 <sup>th</sup> Cir. 2006).....                     | 19         |
| <i>United States v. Santos,</i>  |            |
| 553 U.S. 507, 514 (2008) .....   | 23         |
| <i>United States v. Schooner Peggy,</i>                                |            |
| 1 Cranch 103 (1801).....   | 23         |
| <i>United States v. Underwood,</i>                                     |            |
| 717 F.2d 482, 484 (9 <sup>th</sup> Cir. 1983) ( <i>en banc</i> ) ..... | 19         |
| <i>Yeaton v. United States,</i>  |            |
| 5 Cranch 281, 283 (1809) .....   | 23         |
| <b>Statutes</b>  |            |
| 18 U.S.C. § 922(g)(1).....   | 14, 15, 16 |
| 18 U.S.C. § 924(c) .....   | 12         |
| 18 U.S.C. § 924(c)(1)(A) .....   | 15, 16     |
| 18 U.S.C. § 924(c)(1)(A)(i) .....                                      | 14, 15, 16 |
| 21 U.S.C. § 841.....   | 3, 12      |
| 21 U.S.C. § 841(a)(1).....   | 14, 15, 16 |
| 21 U.S.C. § 841(b)(1)(B).....  | 14, 15, 16 |
| 21 U.S.C. § 841(b)(1)(C).....  | 14, 15, 16 |
| 21 U.S.C. § 846.....   | 12         |
| 28 U.S.C. § 1254(1) .....  | 2          |
| <i>First Step Act,</i>   |            |
| 115 P.L. 391; 132 Stat. 5194;  |            |

|  |               |
|--|---------------|
| <i>2018 Enacted S. 756;</i>                  |               |
| <i>115 Enacted S. 756 (12-21-2018)</i> ..... | 22            |
| <b>Other Authorities</b>                     |               |
| <i>U.S.C.A. Fifth Amendment</i> .....        | 21            |
| <i>U.S.C.A. Fourth Amendment</i> .....       | <i>passim</i> |
| <i>U.S.C.A. Sixth Amendment</i> .....        | 22            |
| <b>Rules</b>                                 |               |
| <i>Fed. R. Crim. P. 52</i> .....             | 13            |
| <i>Supreme Court Rule 10</i> .....           | 18            |

## **PETITION FOR A WRIT OF CERTIORARI**

Tyrone Cammon, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on 3-9-21.

### **OPINIONS BELOW**

The 3-9-21 opinion of the Court of Appeals for the Sixth Circuit, whose judgment is herein sought to be reviewed, is an unpublished decision reported at 2021 U.S. App. LEXIS 7094 \*; 849 Fed. Appx. 541; 2021 FED App. 0122N (6th Cir.) and is reprinted in the separate Appendix A to this Petition.

The prior opinion and judgment (Judgment & Commitment Order) of the United States District Court for the Northern District of Ohio, was entered on 12-13-19, is an unpublished decision, and is reprinted in the separate Appendix B to this Petition.

The prior opinion and judgment of the United States District Court for the Northern District of Ohio denying Mr. Cammon's motion to suppress was handed down from the bench on 2-13-19 and entered in the docket 2-14-19. It is an unpublished decision, and is reprinted in the separate Appendix C to this Petition.

**STATEMENT OF JURISDICTION**

The judgment of the Court of Appeals was entered on 3-9-21. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES,  
RULES AND REGULATIONS INVOLVED**

The Fourth Amendment to the Constitution of the United States provides as follows:

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. *Id.*

21 U.S.C. § 841 provides in relevant part:

(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties. Except as otherwise provided in section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861], any person who violates subsection (a) of this section shall be sentenced as follows:

(1) (A) In the case of a violation of subsection (a) of this section involving--

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidiny] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidiny] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 10,000,000 if the defendant is an individual or \$ 50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 20,000,000 if the defendant is an individual or \$ 75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861] after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving--

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 5,000,000 if the defendant is an individual or \$ 25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 8,000,000 if the defendant is an individual or \$ 50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for

purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999 [21 USCS § 812 note]), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 1,000,000 if the defendant is an individual or \$ 5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 2,000,000 if the defendant is an individual or \$ 10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 250,000 if the defendant is an individual or \$ 1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 500,000 if the defendant is an individual or \$ 2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(E) (i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term



of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 500,000 if the defendant is an individual or \$ 2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 1,000,000 if the defendant is an individual or \$ 5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 250,000 if the defendant is an individual or \$ 1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 500,000 if the defendant is an individual or \$ 2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 100,000 if the defendant is an individual or \$ 250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 200,000 if the defendant is an individual or \$ 500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was

a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 404 [21 USCS § 844] and section 3607 of title 18, United States Code.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed--

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18, United States Code;

(C) \$ 500,000 if the defendant is an individual; or

(D) \$ 1,000,000 if the defendant is other than an individual; or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use--

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) Penalties for distribution.

(A) In general. Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18, United States Code (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

(B) Definition. For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals. Any person who knowingly or intentionally--

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 310 [21 USCS § 830], or the regulations issued under that section, receives or distributes a reportable amount of any listed

chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined.

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, United States Code, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, United States Code, or both.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty. In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals.

(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310 [21 USCS § 830]) shall, except to the extent that paragraph (12), (13), or (14) of section 402(a) [21 USCS § 842(a)] applies, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 [21 USCS § 830] have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs.

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that--

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;  
shall be fined under this title or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term "date rape drug" means--

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, United States Code [5 USCS § 553], to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term "authorized purchaser" means any of the following persons, provided such person has acquired the controlled substance in accordance with this Act:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A "qualifying medical relationship" means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health [health] professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this Act.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this Act.

(h) Offenses involving dispensing of controlled substances by means of the Internet.

(1) In general. It shall be unlawful for any person to knowingly or intentionally--

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this title; or

(B) aid or abet (as such terms are used in section 2 of title 18, United States Code) any activity described in subparagraph (A) that is not authorized by this title.

(2) Examples. Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally--

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 303(f) [21 USCS § 823(f)] (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 309(e) [21 USCS § 829(e)];

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections [section] 303(f) or 309(e) [21 USCS § 823(f) or 829(e)];

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 311 [21 USCS § 831].

(3) Inapplicability.

(A) This subsection does not apply to--

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this title;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to--

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 [47 USCS § 231]); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 [47 USCS § 230(c)] shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation. Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

(21 U.S.C. § 841 (As amended Aug. 3, 2010, P.L. 111-220, §§ 2(a), 4(a), 124 Stat. 2372.))

21 U.S.C. § 846 provides:

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy. *Id.* 21 U.S.C. § 846

18 U.S.C. § 924(c) provides:

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection--

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall--

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law--

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and--

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person. *Id.*

Fed. R. Crim. P. 52 provides:

**Rule 52. Harmless Error and Plain Error.**

(a) Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. *Id.* (As amended Dec. 26, 1944, eff. March 21, 1946.)

### STATEMENT OF THE CASE

On or about 2-6-18 Tyrone Cammon was charged with violation of 18 U.S.C. § 922(g)(1) (possession of a firearm and ammunition by a convicted felon) (Counts 1, 2, 5); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C) (possession with intent to distribute fentanyl) (Count 3); 18 U.S.C. § 924(c)(1)(A)(i) (possession of a firearm in furtherance of a drug trafficking crime ) (Count 4); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C) (possession with intent to distribute heroin) (Count 6); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B) (possession with intent to distribute Methoxyacetylfentanyl, Carfentanil and Fentanyl Pharmacophore) (Count 7).

These charges arose from evidence seized from the residence of a third party where petitioner was staying as an overnight guest. Police possessed an arrest warrant for petitioner but no search warrant. While police could have arrested petitioner outside the residence, they waiting until he entered the residence to go into the residence and arrest him. Evidence was seized during an ostensible "exigent circumstances" at the time of the arrest was material to his charges and conviction.

He was arraigned on or about 2-23-18 at which time he pleaded not guilty to the charged violations.

On 1-6-19, counsel filed a motion to suppress. In this motion, counsel argued, *inter alia*, that the Fourth Amendment was violated by police when they entered the residence of Mr. Cammon's sister to arrest him without a search warrant. (Case 1:18-cr-58-DCN-1, Entry # 35)

On 2-14-19, a hearing was held on the motion to suppress. At the hearing the arresting officers testified that they 'didn't have time' to arrest Mr. Cammon when he was outside the



residence so that's why they entered without a search warrant. (Case 1:18-cr-58-DCN-1, Entry # 43)

On 2-14-19, the District Court denied the motion to suppress by an order handed down from the bench. In denying the motion to suppress, the District Court held, *inter alia*, that,

“...Patton (sic) versus New York says when you have a valid warrant, you can go in and effect an arrest...”

(Appendix C)

On or about 8-19-19 Mr. Cammon proceeded to trial. (Appendix B) At trial, the evidence seized from the warrantless search of the residence of Mr. Cammon's sister was material to his conviction.

On 8-22-19, Mr. Cammon was found guilty by the jury as to violation of 18 U.S.C. § 922(g)(1) (possession of a firearm and ammunition by a convicted felon) (Counts 2, 5); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C) (possession with intent to distribute fentanyl) (Count 3); 18 U.S.C. § 924(c)(1)(A)(i) (possession of a firearm in furtherance of a drug trafficking crime ) (Count 4); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C) (possession with intent to distribute heroin) (Count 6); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B) (possession with intent to distribute Methoxyacetylfentanyl, Carfentanil and Fentanyl Pharmacophore) (Count 7). (Appendix B)

When the Presentence Report was prepared, the Probation Officer recommended finding an Adjusted Offense Level of 28 which was increased to a Total Offense Level of 37 under the Career Offender guideline and a Criminal History of “V” which resulted in a guideline sentencing range 420 (360+60) months with a statutory mandatory minimum of 10 years on the drug charges and 5 years consecutive on the 18 U.S.C. § 924(c)(1)(A). (Presentence Report, ¶¶42, 45, 85-87).

On 12-12-19, Mr. Cammon appeared for sentencing. At sentencing, Mr. Cammon personally objected that he'd never been provided a personal copy of the Presentence Report to possess. Neither the government nor defense counsel had any other objections.

On 12-12-19, Mr. Cammon was sentenced to 360 (300+60) months incarceration for violations of 18 U.S.C. § 922(g)(1) (possession of a firearm and ammunition by a convicted felon) (Counts 2, 5); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C) (possession with intent to distribute fentanyl) (Count 3); 18 U.S.C. § 924(c)(1)(A)(i) (possession of a firearm in furtherance of a drug trafficking crime ) (Count 4); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C) (possession with intent to distribute heroin) (Count 6); 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B) (possession with intent to distribute Methoxyacetylfentanyl, Carfentanil and Fentanyl Pharmacophore) (Count 7). This sentence represented an Adjusted Offense Level of 28 which was increased to a Total Offense Level of 37 under the Career Offender guideline and a Criminal History of "V" which resulted in a guideline sentencing range 420 (360+60) months with a statutory mandatory minimum of 10 years on the drug charges and 5 years consecutive on the 18 U.S.C. § 924(c)(1)(A). (Appendix B)

The judgment was entered on 12-13-19.

On 12-17-19, a Notice of Appeal was filed. On direct appeal, counsel argued, *inter alia*, that the evidence seized in the warrantless search of Mr. Cammon's sister's residence should have been suppressed under the Fourth Amendment as construed in *Steagald v. United States*, 451 U.S. 204 (1981) in light of *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990).

On 3-9-21, the Court of Appeals denied Mr. Cammon's appeal. In denying the appeal, the Court of Appeals held, *inter alia*, that *Payton v. New York*, 445 U.S. 573 (1980) controlled stating,

“... It is generally understood that *Payton*’s reach extends beyond “a dwelling in which the suspect lives” to the dwellings of relevant third parties, so long as officers have a warrant for a suspect’s arrest and a reason to believe the suspect is inside.”

*United States v. Cammon*, 2021 U.S. App. LEXIS 7094 \*\*5-6; 849 Fed. Appx. 541; 2021 FED App. 0122N (6<sup>th</sup> Cir. 3-9-21).

Mr. Cammon demonstrates within that (A) this Court should grant his Petition For Writ Of Certiorari to resolve a conflict between *Payton v. New York* and *Steagald v. United States* in light of *Minnesota v. Olson*; and (B) this Court should grant his Petition For Writ Of Certiorari because the court of appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court’s power of supervision.

## **REASONS FOR GRANTING THE WRIT**

- 1.) **THIS COURT SHOULD GRANT MR. CAMMON'S PETITION FOR WRIT OF CERTIORARI TO RESOLVE A CONFLICT BETWEEN *PAYTON v. NEW YORK* AND *STEAGALD v. UNITED STATES* IN LIGHT OF *MINNESOTA v. OLSON*.**

Supreme Court Rule 10 provides in relevant part as follows:

### **Rule 10. CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI**

A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

- (a) a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision...*Id.*

Supreme Court Rule 10(a).

- 1A.) **While *Payton v. New York* Allows Warrantless Entry To An Arrestee's Residence To Execute The Warrant And *Steagald v. United States* Protects A Third Party's Fourth Amendment Right To A Search Warrant Before Police Can Enter To Arrest Someone Else Present In The Residence, And *Minnesota v. Olson* Protects Overnight Guests In A Residence, The Court Has Never Decided Whether *Steagald* Protects Overnight Guests Creating Confusion In The Lower Courts**

In *Payton v. New York*, 445 U.S. 573 (1980), this Court held that an arrest warrant carries with it limited authority to enter a subject's dwelling when there is "reason to believe" he is within. *Id.* 445 U.S. at 603.

In *Steagald v. United States*, 451 U.S. 204 (1981), this Court held that a search of a defendant's home by government agents, pursuant to arrest warrant for another individual, was

violative of defendant's Fourth Amendment right to privacy, absent search warrant. *Id.* 451 U.S. at 223.

In *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990), this Court held that a warrantless, nonconsensual entry into house where suspect was overnight guest violated the suspect's rights under the Fourth Amendment. *Id.* See also *Minnesota v. Carter*, 525 U.S. 83 (1999) (same).

As time has progressed, the lower courts, as did the court below, have simply ignored *Steagald v. United States*, 451 U.S. 204 (1981) and, held instead that,

“... It is generally understood that *Payton*'s reach extends beyond “a dwelling in which the suspect lives” to the dwellings of relevant third parties, so long as officers have a warrant for a suspect's arrest and a reason to believe the suspect is inside.”

*United States v. Cammon*, 2021 U.S. App. LEXIS 7094 \*\*5-6; 849 Fed. Appx. 541; 2021 FED App. 0122N (6<sup>th</sup> Cir. 3-9-21). See *United States v. Bohannon*, 824 F.3d 242, 249-50 (2d Cir. 2016) (collecting cases)<sup>1</sup>

The question of whether the subject of an arrest warrant can object to the absence of a search warrant when he is apprehended in another person's home remains unanswered by the this Court to this day, *United States v. Bohannon*, 824 F.3d 242, 249-50 (2d Cir. 2016). In light of this Court's decisions in *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990) and *Minnesota v. Carter*, 525 U.S. 83 (1999), the question should be answered to resolve uncertainty in the courts below and to guide the application of *Steagald v. United States*, 451 U.S. 204 (1981).

---

<sup>1</sup> *United States v. Hollis*, 780 F.3d 1064, 1068-69 (11<sup>th</sup> Cir. 2015); *United States v. Jackson*, 576 F.3d 465, 468 (7<sup>th</sup> Cir. 2009); *United States v. Kern*, 336 F. App'x 296, 297-98 (4<sup>th</sup> Cir. 2009); *United States v. McCarson*, 527 F.3d 170, 172-73, 381 U.S. App. D.C. 219 (D.C. Cir. 2008); *United States v. Pruitt*, 458 F.3d 477, 482 (6<sup>th</sup> Cir. 2006); *United States v. Agnew*, 407 F.3d 193, 197 (3d Cir. 2005); *United States v. Kaylor*, 877 F.2d 658, 663 & n.5 (8<sup>th</sup> Cir. 1989); *United States v. Underwood*, 717 F.2d 482, 484 (9<sup>th</sup> Cir. 1983) (en banc)

**1B.) In Light Of *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990)„ The Lower Courts Erred In Holding That *Payton v. New York*, 445 U.S. 573 (1980) Controlled The Lawfulness Of The Warrantless Search Of The Third Party Residence For Petitioner-Arrestee Instead Of *Steagald v. United States*, 451 U.S. 204 (1981).**

As set forth in the Statement of the Case, *supra*, the Court of Appeals for the Sixth Circuit squarely held that *Payton v. New York*, 445 U.S. 573 (1980) controlled whether the evidence seized in the warrantless search of petitioner's sister's apartment based on the arrest warrant for petitioner complied with the Fourth Amendment even though he was an overnight guest. (Statement of the Case) (See Appendix A)

This decision by the Sixth Circuit directly conflicts with the decisions of this Court in *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990), this Court held that a warrantless, nonconsensual entry into house where suspect was overnight guest violated the suspect's rights under the Fourth Amendment. *Id.* See also *Minnesota v. Carter*, 525 U.S. 83 (1999) (same).

Had the lower court followed *Olson* and *Carter*, the evidence seized in petitioner's sister's residence would have been suppressed resulting in, at most, a dramatically reduced sentence.

The question of whether the subject of an arrest warrant can object to the absence of a search warrant when he is apprehended in another person's home remains unanswered by the Supreme Court to this day, *United States v. Bohannon*, 824 F.3d 242, 249-50 (2d Cir. 2016). In light of this Court's decisions in *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990) and *Minnesota v. Carter*, 525 U.S. 83 (1999), the question should be answered to resolve uncertainty in the courts below.

**2.) THIS COURT SHOULD GRANT MR. CAMMON'S PETITION FOR WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION**

This Court has never hesitated to exercise it's power of supervision where the lower courts have substantially departed from the accepted and usual course of judicial proceedings with resulting injustice to one of the parties. *McNabb v. United States*, 318 U.S. 332 (1943).<sup>2</sup> As the Court stated in *McNabb*:

... the scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.

*McNabb*, 318 U.S. at 340.

**2A.) Multiple Errors In The Courts Below Mandate That Mr. Cammon's Conviction And/Or Sentence Be Vacated.**

There is no indication that Mr. Cammon's indictment was returned in open court. He was therefore denied his Fifth Amendment constitutional rights. . *Renigar v. United States*, 172 F. 646; 1909 U.S. App. LEXIS 5021 (4<sup>th</sup> Cir. 1909).

The government unlawfully used Mr. Cammon's prior convictions as predicates for the Career Offender enhancement. The priors used only required a negligent mens rea and were, therefore, violative of this Court's decision in *Borden v. United States*, No. 19-5410, 2021 U.S. LEXIS 2990, at \*1-4 (6-10-21).

---

<sup>2</sup> See also *GACA v. United States*, 411 U.S. 618 (1973); *United States v. Jacobs*, 429 U.S. 909 (1976); *Rea v. United States*, 350 U.S. 214 (1956); *Benanti v. United States*, 355 U.S. 96 (1957); *United States v. Behrens*, 375 U.S. 162 (1963); *Elkins v. United States*, 364 U.S. 206 (1960)..

The exigent circumstances search in this case was violative of the Fourth Amendment because the exigent circumstances were deliberately created by the police. *McDonald v. United States*, 335 U.S. 451, 93 L. Ed. 153, 69 S. Ct. 191 (1948).

The district court unlawfully failed to properly inquire when the jurors reported a biased juror. (Trial Transcript page 444) This denied Mr. Cammon his Sixth Amendment right to trial by an unbiased jury. *Dyer v. Calderon*, 151 F.3d 970; 1998 U.S. App. LEXIS 18171 (9<sup>th</sup> Cir. 1998).

#### **Further Grounds**

Mr. Cammon's conviction and sentence are violative of the First, Second, Fourth, Fifth, Sixth, And Eighth Amendments to the constitution. More specifically, Mr. Cammon's conviction and sentence are violative of his right to freedom of speech and to petition and his right to keep and bear arms and his right to be free of unreasonable search and seizure, his right to due process of law, his rights to counsel, to jury trial, to confrontation of witnesses, to present a defense, and to compulsory process, and his right to be free of cruel and unusual punishment under the constitution.

The evidence was insufficient. The government falsified and withheld material evidence. The District Court unlawfully determined Mr. Cammon's sentence.

#### **First Step Act**

Mr. Cammon is entitled to retroactive application of the First Step Act, 115 P.L. 391; 132 Stat. 5194; 2018 Enacted S. 756; 115 Enacted S. 756 (12-21-2018) as hereinafter more fully appears.

Applying the First Step Act to non-final criminal cases pending on direct review at the time of enactment is consistent with (1) longstanding authority applying favorable changes to penal laws retroactively to cases pending on appeal when the law changes and (2) the text and



remedial purpose of the Act. To the extent the Act is ambiguous, the rule of lenity requires the ambiguity be resolved in the defendant's favor. *United States v. Santos*, 553 U.S. 507, 514 (2008); *United States v. Granderson*, 511 U.S. 39, 54 (1994).

Preliminarily, "a presumption of retroactivity" "is applied to the repeal of punishments." *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 841 & n.1 (1990) (Scalia, J., concurring). "[I]t has been long settled, on general principles, that after the expiration or repeal of a law, no penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force, unless some special provision be made for that purpose by statute." *Id.* (quoting *Yeaton v. United States*, 5 Cranch 281, 283 (1809)). The common law principle that repeal of a criminal statute abates all prosecutions that have not reached final disposition on appeal applies equally to a statute's repeal and re-enactment with different penalties and "even when the penalty [is] reduced." *Bradley v. United States*, 410 U.S. 605, 607-08 (1973).

This Court has long recognized that a petitioner is entitled to application of a positive change in the law that takes place while a case is on direct appeal (as opposed to a change that takes place while a case is on collateral review). *Bradley v. School Board of City of Richmond*, 416 U.S. 696, 710-11 (1974). The Court expressly anchored its holding in *Bradley* on the principle that an appellate court "is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice" or there is "clear legislative direction to the contrary." *Id.*, 711, 715. It explained that this principle originated with Chief Justice Marshall in *United States v. Schooner Peggy*, 1 Cranch 103 (1801): "[I]f subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed." *Id.*, 712 (quoting *Schooner Peggy*, 1 Cranch at 110).

Moreover, a change in the law occurring while a case is pending on appeal is to be given effect "even where the intervening law does not explicitly recite that it is to be applied to pending cases...." *Bradley*, 416 U.S. at 715.

Since Mr. Cammon's judgment was not yet "final" on 12-21-18 when the First Step Act was enacted, he is entitled to retroactive application of all relevant portions of the Act. *Id.*

These claims in Argument 2A are submitted to preserve Mr. Cammon's right to raise them in a motion pursuant to 28 U.S.C. § 2255 if this Court declines to reach their merits.

Based on the foregoing, the decision by the Court of Appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. *Id.* *McNabb v. United States*, 318 U.S. 332 (1943); *GACA v. United States*, 411 U.S. 618 (1973); *United States v. Jacobs*, 429 U.S. 909 (1976); *Rea v. United States*, 350 U.S. 214 (1956); *Benanti v. United States*, 355 U.S. 96 (1957); *United States v. Behrens*, 375 U.S. 162 (1963); *Elkins v. United States*, 364 U.S. 206 (1960).

Based on all of the foregoing, this Court should grant certiorari and review the judgment of the Court of Appeals for the Sixth Circuit in Mr. Cammon's case.

### CONCLUSION

For all of the foregoing reasons, Petitioner Tyrone Cammon respectfully prays that his Petition for Writ of Certiorari be **GRANTED** and the case set for argument on the merits.

Alternatively, Petitioner respectfully prays that this Court **GRANT** certiorari, **VACATE** the order affirming his direct appeal and **REMAND**<sup>3</sup> to the court of appeals for reconsideration in light of *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990) and *Steagald v. United States*, 451 U.S. 204 (1981).

---

**Tyrone Cammon**  
**Petitioner**  
**65353-060**  
**P.O. Box 2000**  
**Bruceton Mills, WV 26525**

Date: \_\_\_\_\_

---

<sup>3</sup> For authority on "GVR" orders, see *Lawrence v. Chater*, 516 U.S. 163, 167-68, 133 L. Ed. 2d 545, 116 S. Ct. 604 (1996).

No.

---

**Supreme Court of the United States**

---

**TYRONE CAMMON,**

*Petitioner,*

**vs.**

**UNITED STATES OF AMERICA,**

*Respondent.*

---

**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

---

**APPENDIX**

---

**COMES NOW PETITIONER Tyrone Cammon** and submits the attached appendix pursuant to Supreme Court Rules.

---

**Tyrone Cammon**  
**Petitioner**  
65353-060  
P.O. Box 2000  
Bruceton Mills, WV 26525

Date: \_\_\_\_\_

**APPENDIX A**  
**ORDER & JUDGMENT OF THE COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**  
**DATED 3-9-21**