No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Qian Williams _____ — PETITIONER
(Your Name)

VS.

United States of America _____ — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☑ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S. Court of Appeals for the Sixth Circuit; U.S. District Court for the Southern District of Ohio, Eastern Division

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☑ The appointment was made under the following provision of law: 18 U.S.C. § 3006A, or

☐ a copy of the order of appointment is appended.

_____
(Signature)

No. _____

IN THE

Supreme Court of the United States

QIAN WILLILAMS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This case presents three issues: Did the court of appeals properly affirm the trial court and hold that the trial court was free to disregard a factual finding by another district court as to when and where the firearms had supposedly been found in the petitioner's residence, did it correctly decide that a search warrant in a federal case should be sought from a state court judge without demonstrating unavailability of a federal judge or magistrate-judge, and should the Speedy Trial Act deadlines be extended by an assertion that witnesses who were in federal custody would not be available for 90 days?

This Court's resolution of these issues would provide much-needed guidance on how to determine these issues.

LIST OF PARTIES

Petitioner, Qian Williams, was the defendant in the district court and the appellant in the court of appeals. Respondent, the United States of America, was the plaintiff in the district court and the appellee in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

Qian Williams respectfully timely petitions this Court for a writ of certiorari to review the Sixth Circuit Court of Appeals' order affirming his conviction on July 21, 2021, and denial of rehearing and rehearing en banc decided August 19, 2021. This case raises issues of the power of one federal district court to ignore factual findings made by another federal district court as to when and where the evidence on which the conviction was based was purportedly found.

OPINION AND ORDER BELOW

The Sixth Circuit's affirmation of the trial court's judgment is included in the Appendix at A, and its denial of reconsideration is included at Appendix B.

STATEMENT OF JURISDICTION

The United States District Court for the Southern District of Ohio had original jurisdiction over Mr. Williams' criminal case, which asserted criminal violations pursuant to 18 U.S.C. § 3231 as the offenses charged against Williams were offenses against the laws of the United States. He was charged and convicted of drug violations under 21 U.S.C. §2, 21 U.S.C. §841(a)(1), (b)(1)(a), and (b)(1)(C), and (g)(1),924(a)(2), and (c)(1)(A).

The court of appeals had jurisdiction over Mr. Williams' direct appeal pursuant to 28 U.S.C. § 1291 for the appeal of the final order of the district court. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. This petition is timely pursuant to Supreme Court Rule 13.1.

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 3161, Speedy Trial Act

STATEMENT OF THE CASE

This case presents the situation of a federal trial court judge disregarding findings of fact made by a federal grand jury and trial court judge in another district, and the Sixth Circuit Court of Appeals explicitly approving of that conduct. Judge Bunning of the United States District Court for the Eastern District of Kentucky had ordered the forfeiture of the guns listed on the superseding indictment against Kenneth Eva, incorporating the grand jury indictment which alleged that the guns were found in Kentucky on July 13, 2017. His ruling was final and not appealed, nor was it ever set aside. Judge Barrett of the United States District Court for the Southern District of Ohio and jury in Petitioner's case here later convicted Williams of possessing these same firearms in his residence in Ohio on a subsequent date.

A DEA Agent witness testified that there was a paperwork mix-up, and that sufficed for the trial court and Sixth Circuit Court of Appeals. If it were in fact a paperwork mix-up it should have been fixed, not ignored. But is appears more likely to have demonstrated perjury by the DEA Agent, who was about to retire when the events at issue in this case occurred, than it is to reflect a paperwork mix-up, as no attempt was made to reconcile the matter with Judge Bunning in Kentucky.

It also presents the question of federal agents improperly securing a

county search warrant without showing that a federal judge or magistrate-judge was not available and a Speedy Trial Act violation, both properly preserved below but as to which the trial court and the court of appeals improperly denied for lack of showing of prejudice.

Mr. Williams was arraigned on October 6, 2017, and pleaded not guilty to all charges. Pretrial motions were filed by all three of Mr. Williams' successive counsel. These motions extended the Speedy Trial deadlines, but as discussed below the deadline for the trial had passed long before trial was begun in this matter. From the Order of Temporary Detention on October 6, 2017, until his indictment on October 18, 2017, was twelve days.

Mr. Williams was initially represented by Attorney Clyde Bennett, who filed motions to suppress and for discovery on October 31, 2017. Thus, another twelve days had run from the date of Williams' indictment until the motions filed by Mr. Bennett on October 31, 2017.

Mr. Bennett on behalf of Mr. Williams moved to suppress oral statements allegedly given while in police custody, asserting that the purported waiver of his Miranda rights and confession of being a drug dealer were forged by the DEA Agent who also served as case agent, sitting at the prosecution table throughout the trial. The basis for the motion to suppress the evidence and statements gathered at a traffic stop was that they were conducted without a

search or arrest warrant.

Mr. Bennett was replaced as counsel by appointed counsel, Mr. Gallagher. He moved to suppress the evidence obtained through the search of Williams' home on August 17, 2017, on the basis, *inter alia*, that "Federal agents have no authority to execute a warrant issued by a Hamilton County judge." The United States opposed the suppression motions, admitting that 1416 Randomhill Road had been the target of the search on August 17, 2017. The prosecution asserted that, "On August 17, 2017, Drug Enforcement Administration (DEA) Task Force Agent (TFA) Kenneth Baker appeared before a Judge of the Hamilton County Municipal Court and provided a sworn affidavit setting forth facts which satisfied that Judge of the existence of probable cause that contraband and/or evidence of criminal activity was likely to be present at 1416 Randomhill Road, Springfield Township, Hamilton County, Ohio." The argument as to this issue by the United States was that:

> XI. FEDERAL AGENTS HAD AUTHORITY TO EXECUTE A WARRANT ISSUED BY A HAMILTON COUNTY JUDGE.
>
> The warrant was executed by members of a task force comprised of federal, state, and local law enforcement officials. There is no requirement under federal law or the Rules of Criminal Procedure which states that only county officials may execute county-issued search warrants.

The trial court heard those motions on August 27, 2018, at which DEA Agent Taylor, Special Agent Zummach, Agent Vanover, and Agent Baker

testified for the prosecution, and Mr. Williams and handwriting expert Curtis Baggett testified for the defense. DEA Agent Taylor testified that after Mr. Williams had been detained in the traffic stop search warrants were obtained from the "Hamilton County Court." According to DEA Agent Taylor, when asked for his consent to the search Mr. Williams stated, "Yes, that is not a problem.' No document appears to reflect that supposed consent, and the trial court did not address the issue of a possible consent basis for the search in its decision. The purported statement of Mr. Williams taken after the search as to him being a drug dealer, as testified by DEA Agent Taylor, similarly did not address the subject of consent for the search of the real property. No recording was made of Mr. Williams' alleged statements on that date.

DEA Agent Baker had been the officer who secured the search warrants from the Hamilton County Municipal Court. He was asked about that in the hearing on August 27, 2018, and testified that he had executed state search warrants in the course of cases that end up being prosecuted in federal court and federal search warrants in cases that end up being prosecuted in state court. No testimony was given that no federal judge or magistrate-judge was available.

Judge Barrett overruled Mr. Williams' motion to suppress on October 5, 2018. From October 5, 2018, nineteen days applicable to the Speedy Trial Act ran after the district court ruled on Mr. Williams' motions and before he

requested new counsel at the next court hearing on October 24, 2018. After the request for new counsel, the court appointed the federal public defender's office.

Mr. Monahan was Mr. Williams' third counsel. He filed a motion to suppress, a motion for reconsideration of the prior motion to suppress, and a discovery motion on December 19, 2018. The United States responded on December 26, 2018. A hearing was conducted on March 11, 2019. Post-hearing briefs were filed by both sides. Mr. Williams filed a motion to dismiss on March 29, 2019.

These motions were ripe for decision on April 29, 2019, and fifty-seven days ran between April 29, 2019, and the date of the hearing on June 24, 2019 (calculated by taking the date that the motions were ripe for decision, March 29, 2019, and adding 30 days as permitted under the Speedy Trial Act for the district court to issue its ruling). On June 6, 2019, the trial court denied the motion to suppress.

Adding these time periods together, eighty-seven days had already expired as of the date of the hearing when the trial court granted a two-month continuance of the trial date to secure the testimony of witnesses who were then in the custody of the United States, having themselves been convicted of federal felonies. The trial court ruled that the time to secure these witnesses tolled the

Speedy Trial Act, citing "United States v. Patterson, 277 F.3d 709, 710-12 (4th Cir. 2002) (essential government witness in custody 'unavailable' until U.S. Marshals Service could secure his presence using ordinary procedures for transporting prisoners."

Testimony began at 1418 hours on September 11, 2020. The trial ran five days, with an additional day delayed due to Mr. Williams' illness. On the first day of trial, after consideration of a motion in limine by Mr. Williams, trial began, voir dire was conducted, and the jury seated. A motion for exclusion of the government's second case agent had been made before voir dire and revisited afterwards; it was denied, and DEA Agent Taylor was permitted to sit at the prosecution's table throughout the trial except when Off. Baker testified.

DEA Agent Dale Shannon Taylor was a Boone County Deputy who was a Task Force Agent assigned to the Cincinnati Resident Office of the Drug Enforcement Administration. DEA Agent Taylor had worked for over five years with the Northern Kentucky Drug Strike Force and three years with the DEA out of the Cincinnati Resident Office. DEA Agent Taylor had been the lead investigator who turned his informant, the now-deceased Ronald Dungan, against suspect Ronald Crittenden, and identified Crittenden as a supplier of drugs being imported into Northern Kentucky. He then identified Crittenden's source as Mr. Williams.

DEA Agent Taylor and his team started by instructing Mr. Dungan to order drugs from Mr. Williams. They did a financial background report on Williams, bracketed him, and concluded that he was a drug dealer. DEA Agent Taylor caused phone calls to be recorded, and ultimately testified to the veracity of the recordings and transcripts. He further testified to his familiarity with Mr. Williams voice over the years of the investigation and rendered an opinion that the voice on the recordings was that of Mr. Williams. DEA Agent Taylor expressed many opinions at trial as to language and behavior of drug traffickers.

DEA Agent Taylor also testified to the alleged controlled purchase of drugs on August 2, 2017, from Mr. Williams by his informant for $2,000. DEA Agent Taylor had the informant call Mr. Williams and ask to buy drugs – a recording was made and played to the jury. The informant was given $2000 in marked money and sent out to meet with Mr. Williams. Quite a few recordings of conversations were played to the jury, but the informant did not testify because he had died from a drug overdose. DEA Agent Taylor testified to the marking of $2,000 intended to be given to Williams. Although the marked money was never recovered, DEA Agent Taylor testified that the informant came away from meeting Mr. Williams with narcotics.

DEA Agent Taylor was convinced that Mr. Williams was a drug dealer and set up another drug purchase for August 17, 2017. Recorded phone calls

were made in which the informant sought to buy another $2,000 in narcotics. DEA Agent Taylor testified that the deceased informant came away from meeting Mr. Williams with heroin.

After the purported transaction with the informant on August 17, 2017, Mr. Williams was stopped by the Ohio State Highway Patrol for the sale of the narcotics. DEA Agent Taylor testified that in addition to the Ohio State Highway Patrol other agents were present at the traffic stop of Mr. Williams and that Mr. Williams waived his rights and gave an incriminating statement after being advised of his rights against self-incrimination. As a result of that stop Off. Baker secured a search warrant for Mr. Williams' residence from the Hamilton County Municipal Court.

DEA Agent Taylor testified that Mr. Williams said, "Sure" when Agent Taylor asked him to consent to a search of his residence. The money allegedly used to purchase the narcotics on August 17, 2017, was not found. Although DEA Agent Taylor testified that it was ultimately found by other agents in a later search, "shoved down underneath the steering wheel into the dash," there does not appear to be any identification during the trial of the marked proceeds of the alleged narcotics purchase.

Mr. Williams purportedly signed a waiver of his right against self-incrimination on August 17, 2017, witnessed by Off. Baker, and purportedly

made a written confession to DEA Agent Taylor on the same day, but Williams contests the truth of those allegations, as discussed *infra*. Neither document contains a consent to the search of Mr. Williams' residence at 1416 Randomhill, and the search of 1412 Randomhill appears not to have been discussed at trial, although DEA Agent Taylor did testify that 1412 Randomhill was Williams' mother's residence. As discussed below, Mr. Williams' motion to suppress the evidence seized in the search of 1416 Randomhill was denied. Off. Baker testified on cross-examination that the search warrants were signed by Hamilton County Municipal Court Judge Curt Kissinger.

The prosecution rested on the fifth day of trial, and Mr. Williams' counsel made a general motion to acquit pursuant to Crim.R. 29, which the trial court denied. Mr. Williams insisted that he be heard and made what the trial court held constituted a supplemental Rule 29 motion as to jurisdiction, which the court overruled.

The defense called its investigator who testified that the informant Ronald Dungan was a fugitive and under a capias order from the Hamilton County Municipal Court and had been arrested on that capias order on the date he supposedly called Mr. Williams. The investigator also contradicted DEA Agent Taylor's statements about the ownership of the houses on Randomhill Road, asserting that Agent Taylor's testimony about Williams having lied about

where he lived were contradicted by the public record. The defense also called the handwriting expert who testified that the initials and signature on the Miranda waiver and confession by Mr. Williams were not consistent with samples of his handwriting.

The defense rested, and the jury was instructed. The defense renewed its Rule 29 motion, which was denied. The jury deliberated and on the following day asked for clarification as to the meaning of distribution – whether the prosecution had to prove that Mr. Williams had handed the drugs to the buyer. The court referred the jurors to the instruction as to Count One. Later that day the jury returned verdicts finding Mr. Williams guilty on all eight counts, including the two counts of possession of the firearms which had previously been seized in the Kentucky case from Mr. Crittenden. In chambers the defense again renewed its motion to acquit pursuant to Crim.R. 29.

Mr. Williams moved to reconsider the pretrial and trial rulings, and to replace Mr. Monahan. The trial court considered those motions and denied both, though ruling that Mr. Williams would be allowed to file motions directly.

The Presentence Report was circulated. Mr. Williams' counsel submitted a sentencing memorandum attaching the indictment and forfeiture in the Eastern District of Kentucky before Judge Bunning of the firearms allegedly seized at Mr. Williams' residence on August 17, 2017, showing that on April

18, 2017, Kenneth Eva had possessed the same firearms allegedly found in Mr. Williams residence and that they had been seized that day in April. In case 2:17-cr-41, USA v. Ronald Crittenden, Kenneth Eva, Tiffany Glass, and Susan Page had been indicted on charges of trafficking in heroin and crack cocaine, and that Kenneth Eva had possessed these firearms. Judge Bunning in that case had authorized the forfeiture of the firearms, holding that they were seized on April 18, 2017, in Kentucky, four months before allegedly having been found in Mr. Williams' residence by DEA Agent Taylor and his team in Ohio.

Sentencing was conducted March 9, 2020. The trial court initially considered pro se requests from Mr. Williams to remove counsel, for a new trial, and to continue sentencing. All were denied. Mr. Williams announced that sentencing could not proceed because he had retained counsel. The court called that attorney, who asserted that he had not been retained in connection with the criminal case. The trial court allowed Mr. Williams to speak to the motions, despite having denied already them, and again denied the motions.

Moving into sentencing, the trial court advised Mr. Williams of the counts of conviction and the sentencing ranges. The defense asserted its objections to the factual findings, noting that its objections were preserved, and submitted that if the conviction were proper on other grounds the appropriate offense level would be 32, Criminal History Category III, with an appropriate

sentencing range of 151-188 months. As to the weight of drugs attributable to Mr. Williams, the defense objected to attributing 38.1 additional kilograms of heroin and 10.9 kilograms of cocaine based on the testimony of Susan Page, who was incredible and provided contradictory statements. This objection was overruled.

The defense objected to double-counting by adding three kilograms of heroin based on "empty kilogram wrappers" found in the residence, a kilogram of heroin for cash found in the residence, and 140 grams of heroin for jewelry found in the residence. That objection was overruled.

As to the two-level enhancement for maintaining a drug premises, the defense had no argument, and its objection was overruled. The trial court agreed that adding two levels for providing false information would be improper.

The outcome was that Mr. Williams was subject to an adjusted offense level of 38, Criminal History Category III, and a sentencing range of 324-405 months. The prosecution objected to the removal of the proposed two-level sentencing enhancement but did not cross-appeal.

The defense pointed out that the proper sentencing range for offense level of 38, Criminal History Category III, was 292-365 months. Finally, the defense raised the question of the firearms which had previously been seized in the

Kentucky federal criminal case, which the trial court overruled. The trial court adopted the finding of fact in the presentence investigation report otherwise and noted that the firearms were subject to an administrative forfeiture but would be held forfeited in this case as well. The defense argued that the trial court should depart or vary from the guidelines, asking for at most a 15-year prison sentence, and Mr. Williams addressed the court on that issue. The prosecutor argued otherwise, to which the defense provided rebuttal.

The trial court announced the sentence of Mr. Williams to 240 months on counts two, four, and five, 120 months concurrent on count seven, and concurrently 360 months on counts three and six, and a consecutive 60 months on count eight. The total was 420 months with credit for time served, and supervised release of three years on counts one through eight and five years on counts three and six. The court imposed the $800 special assessment, waived any fine, and ordered forfeiture of the contraband though permitting a briefing on that subject.

The court accepted that Mr. Williams appealed and appointed the federal public defender to do so. The prosecution notified the trial court that forfeiture had been completed administratively, and the court denied Mr. Williams' motion for return of the property.

Final judgment was entered March 17, 2020 (Appendix C). Mr.

Williams timely appealed. The Court of Appeals for the Sixth Circuit affirmed his conviction (Appendix A). The Court of Appeals for the Sixth Circuit denied rehearing and rehearing en banc (Appendix B).

The Sixth Circuit panel held that the fact that multiple officers testified to finding the guns in Williams' house and that Williams had admitted that they were his that the jury must have believed the DEA agent's testimony that, "those guns must have been listed in Crittenden's forfeiture indictment by mistake" and that this was thus a question of credibility, citing United States v. Cordero, 973 F.3d 603, 614 (6th Cir. 2020) (Appendix A at p. __).

REASONS FOR GRANTING THE WRIT

A. THE TRIAL COURT ABUSED ITS DISCRETION AND THE SIXTH CIRCUIT ERRED IN DENYING THE DEFENSE MOTION TO DISMISS BASED ON THE SEARCH WARRANT BEING INVALID AS HAVING BEEN SIGNED BY A STATE COURT JUDGE.

Mr. Williams filed multiple motions to suppress. Mr. Bennett filed two: a general argument that statements made by Mr. Williams while in custody should not be admissible, and that evidence secured because of the seizure and arrest of Mr. Williams, statements made by him, and evidence seized from him should be suppressed. Mr. Williams made a pro se motion to suppress.

Of relevance here is that after his appearance Mr. Gallagher moved to suppress and dismiss based upon the search warrants not having been authorized by a federal judge or magistrate. The prosecution responded to all of Mr. Williams' arguments by asserting that Mr. Williams' statements were voluntary, that the searches were proper, that the informant was credible, that the officers involved were not required to have personal knowledge of the drug dealing, that the evidence was not stale, that there was sufficient nexus between the places searched and criminal activity, that the warrants did not constitute an improper daytime search, that the affidavits established probable cause, that the affidavits did not require a seal, that they were not bare-bones affidavits, nor

were they general warrants, that the federal officers could use a Hamilton County Municipal Court judge's warrant, that the warrants need not have been returned to the signing judge, that the contents of the affidavits were truthful, direct, and based on fact, that Mr. Williams waived his right to remain silent and was not illegally detained, that the arrest warrant was not fake, again that the warrant did not have to be returned to the same judge and that even if no return was made that would not make the arrest void, that venue and jurisdiction were proper, that the grand jury was properly constituted, that the foreperson did sign the indictment, that the grand jury was proper, and that prosecution was proper and not vindictive.

Out of the laundry list of issues, one appears relevant and dispositive: the validity of a state-judge issued search warrant in a federal case. A hearing was conducted on August 27, 2018, with multiple witnesses on both sides. Those motions were all denied by the trial court.

After Mr. Gallagher moved to withdraw the federal public defender was appointed; it moved to reconsider the denial of the motion to suppress, arguing that there was insufficient nexus between Mr. Williams' residence and the allegation of drug trafficking and that Crim.R. 41 "prohibited the issuance of a state court warrant for a federal investigation by the DEA." The United States

argued in response in pertinent part that:

> … the United States will frequently "adopt" cases that are commenced at the local level, at a point subsequent to search, arrest, complaint, and even indictment. In this case, all federal processes – whether constitutionally-derived, rule-based, or statute-centric – were honored. There were no violations, either in letter or spirit. This was not a federal case at the time, so actions taken based on Ohio law were entirely appropriate.

A hearing on Mr. Williams' motion was conducted March 11, 2019. Mr. Williams' counsel argued that the trial court should reconsider its decision on the validity of the state-court issued warrants that such would be proper only where no federal magistrate judge is reasonably available. The government argued that Fed.R.Crim.P. 41 provides authority for state court judges to issue search warrants. The trial court allowed the parties to supplement with briefs.

The defense in its subsequent brief argued that Fed. R. Crim. P. 41 requires federal law enforcement officers to obtain a search warrant from a federal magistrate judge. If no federal magistrate judge is "reasonably available," the officers may then obtain the warrant from a judge of a state court of record. It argued that the determination of whether the investigation is considered to be "federal" and subject to Rule 41's requirements is based on the "participation doctrine." Under this doctrine, agents must comply with Rule 41 "when a federal officer has participated in a search in an official capacity." *United States v. Bennett*, 170 F.3d 632, 636 (6th Cir. 1999). This rule was

developed "to discourage attempts to evade the Fourth Amendment, by establishing that if federal officers participated in the search, the search was to conform with federal procedures." *Id*. Where agents are required to comply with Rule 41, and the warrant is signed by someone who lacks the legal authority, the search warrant is *void ab initio*. *United States v. Scott*, 260 F.3d 512, 515 (6th Cir. 2001).

The record appears to be clear that this was a DEA investigation from the beginning. Agent Taylor was the case agent assigned to the investigation in Ohio and was an officer with the Boone County Kentucky Sheriff's Office appointed as a task force officer with the DEA. As such, he had no law enforcement authority in Ohio other than through his assignment with the DEA task force. In investigating the case, Agent Taylor worked with at least eight DEA special agents from the Cincinnati DEA Resident Office – Special Agents Pearson, Modesitt-Schmidt, Zevcheck, Stine, Zummach, Jauregui, Wilson, and McKinley.

DEA Official Advanced Funds (OAF) were used for the two controlled buys and the drugs seized in the controlled buys and from the search warrants were sent to the DEA lab in Chicago. DEA Special Agent Pearson provided an affidavit to that effect, noting that the first controlled buy had been tested by the DEA North Central Lab, which determined it to be 46% heroin. Agent Pearson

made the complaint based in part on the fact that the agents secured the state search warrants and recovered what appeared to be drugs, money, and paraphernalia in Mr. Williams' residence along with, "two pistols and four rifles, one of which had been reported stolen." After his arrest, Mr. Williams was taken to the Cincinnati DEA Resident Office (Cincinnati RO) for questioning.

At the hearing on the motion, Mr. Williams' counsel introduced evidence that the forms used were all federal forms, the Miranda and Consent forms used were standard DEA Forms. Mr. Williams was required to sign a waiver of federal court appearance to be released (Exhibit 5). The firearms seized in the search warrant execution were sent to the ATF (Exhibit 3), and the property seized was stored in the DEA High Value Evidence Vault (Exhibit 4); the currency seized was stored in the U.S. Marshals Bank Account. (Exhibit 4). Finally, he noted that no state offense was charged at any point and the federal criminal complaint was filed by DEA Special Agent Pearson before the October 3 search warrant was issued.

The Sixth Circuit has held that where a warrant is signed by someone who lacks the legal authority, the search warrant is *void ab initio*. *United States v. Scott*, 260 F.3d 512, 515 (6th Cir. 2001). Its decision in *United States v. Duval*, 742 F.3d 246 (6th Cir. 2014) does not alter this conclusion. In *Duval*, a

Michigan State Deputy Sheriff was investigating the defendant for violating Michigan's Medical Marijuana Act (MMMA) because the defendant was allegedly a "patient" under the Act who was cultivating more marijuana than permissible. Id. at 248. The Deputy also was a member of a DEA task force. The Deputy conducted surveillance and investigated the defendant, which led to him seeking a search warrant (himself as the affiant) from a state judge based on the defendant's potential violation of the MMMA. Later in the investigation, the DEA began participating and, when a second search warrant was obtained for the defendant, the agents properly sought the warrant from a federal judge. Id. at 250. The defendant in that case challenged the first search warrant that was obtained by the Deputy Sheriff from the state judge.

On appeal, the Sixth Circuit held that the deputy was working on issues of "mutual concern" at the time he obtained the first warrant. Id. at 254. As such, this Court found that the deputy could properly seek a state warrant at that time. This Court emphasized that the Deputy Sheriff's initial investigation involved determining that the defendant "was growing an amount of marijuana far in excess of that Michigan law [the MMMA] permitted him to grow alone." Thus, the deputy was properly investigating a state crime at the time. Id. at 254-255.

The present case is significantly different because the DEA controlled the

case from the beginning. Agent Taylor's investigation of Mr. Williams in Ohio could not be of "mutual concern" with his Kentucky office because a Kentucky officer has no jurisdiction to act in Ohio and in his capacity as a state deputy he would have no authority to go to a state judge in Ohio to obtain a warrant. Agent Taylor's only jurisdiction to act in Ohio was through his appointment to the DEA. Finally, Agent Taylor's use of the Cincinnati Task Force Officer to obtain the state warrant did not transform this federal investigation into a state investigation such that it would fall under *Duval*, which involved investigations that were wholly conducted by state task force officers without significant DEA participation at the time the state search warrants were issued. Such was patently not the case in Mr. Williams' investigation and accordingly all the search warrants in this case violated Rule 41.

As a final consideration, the federal criminal complaint in this case was filed on September 28, 2017. It was not until a week later that Officer Taylor had the Cincinnati Task Force Officer (Ken Baker) obtain another state search warrant on October 5, 2017. The government cannot demonstrate good faith in obtaining state warrants in this case where a state search warrant was obtained after federal charges had been initiated in the District Court. Not only had the case been a DEA investigation from the onset, but the government continued the improper use of a state judge for search warrants even after Mr. Williams

was federally charged. If the case was not "federal" at the point that federal charges were filed, then Rule 41would be meaningless. Failure to seek the approval from a federal magistrate for the search warrant under these circumstances is clearly beyond the confines of Rule 41 and any lawful practice.

Accordingly, the evidence found in the searches conducted August 17, 2017, and October 5, 2017, warrants should have been suppressed. The trial court's failure to order the suppression was erroneous; the fruits of those searches should have been suppressed. Without the evidence secured in those searches the evidence at trial would have been significantly different and Mr. Williams might well have been acquitted.

The Court of Appeals held on this issue that "In a task-force investigation by state and federal authorities, the officers have the flexibility to seek a warrant from the state court based on state law violations, and the Federal Rules of Criminal Procedure do not apply" (Opinion, p. 3, citing *United States v. Duval*, 742 F.3d 246, 254 (6th Cir. 2014)). The problem is that in the *Duval* case the investigating officer was acting as a state officer and no decision had been made as to seeking federal rather than state charges (742 F.3d at 254). This Court should clarify that an end run around the federal rules subverts Our Federalism and violates the Due Process and Equal Protection clauses of the

U.S. Constitution. This Court held in *Byars v. United States*, 273 U.S. 28, 47 S. Ct. 248, 71 L. Ed. 520 (1927), that federal officials cannot do what the officers here did – utilizing state court search warrant procedures in a federal prosecution. While the "silver-platter" facts underlying the application of the exclusionary rule has become superseded by application of the Fourth Amendment to state prosecutions, as discussed in *Elkins v. United States*, 364 U.S. 206, 80 S. Ct. 1437, 4 L. Ed. 2d 1669 (1960), the doctrine that federal agents cannot use state officials and procedures in a federal investigation remain valid.

B. THE TRIAL COURT AND SIXTH CIRCUIT ERRED IN DENYING MR. WILLIAMS' MOTION TO DISMISS FOR VIOLATION OF THE SPEEDY TRIAL ACT AND THEN PERMITTING EIGHT (OBJECTED TO) WEEKS TO PASS BETWEEN THE HEARING AND THE TRIAL BASED ON THE STATEMENT OF THE PROSECUTOR THAT THE MARSHAL'S OFFICE NEEDED THAT LONG TO ENSURE THE APPEARANCE OF TWO WITNESSES IN FEDERAL CUSTODY WITHOUT EVIDENCE OR TESTIMONY AS TO THAT ASSERTION.

The Speedy Trial Act, 18 U.S.C. § 3161, Time Limits and Exclusions, provides that the trial court shall set trial for the earliest practicable time within seventy days of the indictment. Failure to do so implicates Sanctions, 18 U.S.C. § 3162, which provides that an indictment shall be dismissed on motion of the defendant if trial is not held within 70 days subject to delays caused by an

enumerated motion. When the district court here ruled on June 28, 2019, that the ends of justice required a trial on September 9, 2019, eighty-seven days had already expired.

The period from the date the trial court denied all other defense motions on June 28, 2019 (Minute Entry, RE 90, Page ID# 393), until the trial start date on September 11, 2019 (Minute Entry, RE 104, Page ID# 531), was seventy-five days. The delay was not caused by the defense; although defense counsel sought to have the drugs tested by an independent laboratory, that request was explicitly not a waiver of the Speedy Trial Act time, and the court explicitly overruled the motion to retest but ordered that the defense was allowed to conduct its own test before trial.

The government proposed the delay in setting the trial to September 9, 2019, that it was in the interests of justice to have that delay because:

> We have witnesses who -- we have two witnesses who would have to be writted in from the Bureau of Prisons at this point. They were here originally but then, in considering the motions, they've been shipped off to the Bureau of Prisons. So I have to get them in. The marshals say, in an abundance of caution, that will take eight weeks.

The defendant objected to that delay. Adding these time periods together, for Speedy Trial Act purposes one hundred thirty-seven days passed (thirteen days from indictment to motions, nineteen days from last ruling to request for new counsel, thirty days after the motion to dismiss was ripe, and seventy-five days

from denial of defense motions to the start of the trial).

Applying the four-part test of *Barker v. Wingo*, 407 U.S. 514, 528-530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), considering: (1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant, it is clear that the trial court erred. The length of the delay was presumptively prejudicial where, disregarding delay caused by Mr. Williams, a period far more than the speedy trial deadlines occurred. Mr. Williams constantly and continually asserted his rights, both through counsel and in person, to a speedy trial.

In *Henderson v. United States*, 476 U.S. 321, 106 S. Ct. 1871, 90 L. Ed. 2d 299 (1986), this Court held that the Speedy Trial Act time excludes delays caused by a defendant automatically and even if they are unreasonable. Interpreting that case, in *United States v. Tinklenberg*, 563 U.S. 647, 131 S. Ct. 2007, 179 L. Ed. 2d 1080 (2011), Justice Breyer wrote, with the concurrence in the result of all the justices who participated, that a motion filed by the defendant automatically stops the Speedy Trial clock regardless of whether that has any effect on the start of the trial (563 U.S. at 652).

The instant case presents the question of whether the delay based on the prosecution's statement that the marshals had advised that it might take as much as eight weeks to secure the attendance of prisoners in federal custody

constitute a proper delay to which the Speedy Trial Act did not apply.

This Court does not appear to have addressed the question of the unavailability of a witness as a basis to extend the Speedy Trial Act. In *United States v. Patterson*, 277 F.3d 709 (4th Cir 2002), cited by the district court here, the opinion addresses a delay caused by the unavailability of an essential witness. Judge Wilkins in that case mentions in passing that there was "undisputed evidence" that the government had properly subpoenaed a witness to appear to testify at trial, but that the witness was arrested "shortly before the trial was scheduled to begin" on charges of homicide and assault, and that there was testimony that transporting him to the trial on time would have required chartering an airplane or someone driving out of state, which would cause a hardship on the Marshals Service (277 F.3d 709, at 711).

Interpreting the *Patterson* case, the trial court here ruled that it meant that "essential government witness in custody 'unavailable' until U.S. Marshals Service could secure his presence using ordinary procedures for transporting prisoners." But the record shows that Judge Barrett here had no factual basis for that decision; there does not appear to be any evidence adduced that any witness was essential or unavailable. Only one of the two witnesses was called to testify, and her evidence was minimal: Susan Page had been a co-defendant of Ronald Crittenden, from whom the guns which were found in Williams' house

had previously been seized, and her direct examination testimony required only six pages of transcribed evidence. She testified that Mr. Williams sold drugs to Ronald Crittenden in Kentucky. On cross-examination she testified that she had handed Crittenden an unspecified firearm for him to sell, that she engaged in prostitution and arranged for other females to do so, was a heroin addict, received a substantial decrease in her prison sentence for testifying against Crittenden, when initially interviewed had denied knowing Williams, and had a prior conviction for obstructing justice by giving false information twice or three times.

Whether Mr. Williams had sold drugs to Ronald Crittenden in Kentucky was not relevant to the charges against him in this matter; he was not charged with any misconduct in Kentucky. Ms. Page's testimony was certainly not essential to the charges against Mr. Williams, as it constitutes evidence of other crimes to prove those for which he was charged in violation of Evid.R. 404(b)(1). Defense counsel did not object to Ms. Page's testimony, however, and it is unknown whether a Rule 404(b) notice was given to any of Mr. Williams' attorneys. Considering merely the essential nature of Ms. Page's testimony it appears entirely collateral to the question presented to the jury in this case of whether Mr. Williams sold drugs in Ohio.

C. IT IS NEVER APPROPRIATE FOR A FEDERAL COURT TO DISREGARD THE FACTUAL FINDINGS SET OUT IN A DIFFERENT FEDERAL COURT'S GRAND JURY INDICTMENT AND FINAL ORDER.

With all due respect to the opinions of the Sixth Circuit Court of Appeals and the U.S. District Court for the Southern District of Ohio, one federal court should never be allowed to explain away an inconsistent factual finding by another federal court. There is no explanation by a law enforcement officer which can overcome the discrepancy between the Order by Judge Bunning of the Eastern District of Kentucky and the Order by Judge Bartlett of the Southern District of Ohio. The two orders are facially inconsistent – either the guns were found in Kentucky in April in possession of a third party, or they were found in Ohio in August in Qian Willams' possession. The only explanation which can reconcile those disparate facts would be that these guns were planted in Ohio in Williams' residence after being previously seized in Kentucky in the possession of another person.

Judge Bunning's Preliminary Order of Forfeiture in case 2:17-cr-41 *United States of America v. Ronald Crittenden, Kenneth Eva, Tiffany Glass, and Susan Page*, in the Eastern District of Kentucky, explicitly identifies the firearms supposedly found in Mr. Williams' residence as having been seized on July 13, 2017, in Kentucky. This not only demonstrates the forgery of the supposed confession as asserted by Mr. Williams and his expert at trial, but also

constitutes a predication of perjury by the two law enforcement officers. The jury can certainly be excused for believing two officers who testified that Mr. Williams signed a confession and disbelieving Williams' handwriting expert – no one wants to believe that our law enforcement officers plant evidence and lie to secure convictions. But the facts here appear to demonstrate that this is what occurred.

Judge Binning found the firearms to have been properly seized in Kentucky on July 13, 2017. Accepting Judge Bunning's ruling as true means that someone who has access to seized firearms planted the evidence in Williams' residence on or before August 17, 2017, forged the supposed confession by Williams, and lied at trial. This is not a false dilemma; there appears to be no third viable alternative.

It may be that the DEA agent here was correct when he explained to the jury that there was a paperwork mix-up and that the guns were not seized in Kentucky four months before being found in this defendant's possession in Ohio. But disregarding one district court judge's order should never be permissible – the contradictory facts must be reconciled rather than ignored.

This Court held in a civil case that where a judge has jurisdiction over a matter, "as the subject generally belonged to him; as the parties were before him, and as he had to decide, in the first instance, the question of his own

jurisdiction, his acts were binding till reversed or set aside" (*Holdane v. Sumner*, 82 U.S. 600, 21 L. Ed. 254, 15 Wall. 600 (1872, syllabus by the Court). No decision by this Court, and no relevant decision by any other federal court appears ever to have deviated from that rule.

Complying with that rule, the Sixth Circuit has held that, "Only formal legal action by the sentencing judge, or by an appellate court with appropriate jurisdiction, had the power to rescind the legally binding order …." *United States v. Starnes*, 501 Fed. Appx. 379, 386 (6th Cir. Sep. 26, 2012). That case involved the Ohio Adult Parole Authority (APA) disregarding of an order by an Ohio trial court; a subsequent trial court decision which acquiesced in the APA decision to ignore a judge's decision was improper.

Reviewing an Ohio case in which a state court judge similarly disregarded another state court judge's ruling, the Sixth Circuit in *McGirr v. Rehme*, 891 F.3d 603 (6th Cir. 2018), expressed some disbelief that state trial court judge in Cincinnati would have disregarded the final order of a state trial court judge in Kentucky involving the assets of former attorney Stan Chesley. The panel there noted that the Ohio judge had acquiesced in issuing a temporary restraining order preventing enforcement of the Kentucky judge's order as to money which the Kentucky judge had ruled belonged to the clients of the attorney who made off with them.

The Sixth Circuit here seems to be unhappy with undersigned counsel for contesting the validity of the trial court here doing the same thing as the Ohio state court judges did in the Ohio APA and Chesley cases. Counsel has been unable to find a case in which what happened in this case has ever happened before except for the cases cited herein, rendering it worthy of this Court's determination.

It may be true, as DEA Agent Taylor asserted, that the federal judge in Kentucky was mixed up when he held that the firearms at issue in the present case were seized in Kentucky four months before allegedly having been found in Mr. Williams' residence in Ohio by Agent Taylor and his team. Mr. Williams' counsel presented the discrepancy to the trial court, which allowed cross-examination but otherwise did nothing to reconcile the conflicting facts. In case 2:17-cr-41, Judge Bunning had authorized the forfeiture of the firearms, noting that they were seized on April 18, 2017, four months before allegedly having been found in Mr. Williams' residence by Agent Taylor and his team.

The panel's opinion here cites *United States v. Cordero*, 973 F.3d 603, 614 (6th Cir. 2020), for the proposition that the jury was free to draw its own conclusions based on the evidence. In that case, the defense had argued that taped statements by a defendant did not mean what they appeared. This court held that "the jury could have reasonably thought otherwise" (Id.). The

Cordero case does not support the outcome in the present situation; an assertion by defense counsel is in no way comparable to a federal trial court's order. Simply ignoring a contrary factual finding by a co-equal court should never be an option; the trial court here had a duty to investigate and act, and it failed in that duty.

The Fifth Amendment protects against deprivation of liberty without due process of law. The discrepancy in this case between the two federal court orders implicates every doctrine underlying the American judicial system and the due process of law. It cannot be allowed to stand. This Court should exercise their supervisory power to correct prosecutorial misconduct when its use would remedy a violation of a defendant's recognized rights, preserve judicial integrity, or deter illegal or improper conduct pursuant to *United States v. Hasting*, 461 U.S. 499, 505, 103 S. Ct. 1974, 76 L. Ed. 2d 96 (1983). It would seem to be appropriate to reopen every case in which either Agent Taylor or Off. Baker testified – if they lied to Judge Barrett about what happened in a case before Judge Bunning, that would seem to bring into question their veracity in every case in which they were involved.

No reasonable factfinder, jury, judge, or panel, should overlook the simple fact that the firearms allegedly possessed by Mr. Williams in Ohio on August 17, 2017, had previously been held by another federal judge by a valid

order as having been seized by the government in Kentucky on April 18, 2017. This information was conveyed to the trial court, both during trial and before sentencing; it did nothing.

If the federal judge in Kentucky is correct, then the firearms had to have been placed in Mr. Williams' residence by someone in possession of them after they were seized in Kentucky for them to have been found by Agent Taylor's team. If the federal judge in Kentucky is incorrect, then the firearms could properly have been found in the execution of the search warrant. Ignoring the discrepancy does not make it go away; what it does is make Mr. Williams' conviction appear to be tainted by a conspiracy of the system against the defendant.

CONCLUSION

Counsel respectfully submits that this Honorable Court should accept jurisdiction and hold that Mr. Williams' rights to a fair and honest trial have been violated.

Respectfully submitted,

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