

21-7639

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
APR 12 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ELIZABETH CARLEY — PETITIONER
(Your Name)

vs.

DWIGHT NEVEN, ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES DISTRICT COURT OF NEVADA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ELIZABETH CARLEY #1095997
(Your Name)

4370 SMILEY RD
(Address)

LAS VEGAS, NV 89115
(City, State, Zip Code)

(Phone Number)

QUESTIONS(S) PRESENTED

Whether the

- 1) Fourth Amendment search and seizure issues, AND
- 2) Sixth Amendment effective assistance of counsel issues

Herein were correctly interpreted, OR contrary to well established Federal and U.S. Supreme Court Law.

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

1. Dwight Neven, Warden
2. Aaron Fort, Nevada Attorney General

RELATED CASES

- **Carley V State, NO C-12-285105-2, District Court, Clark County, Nevada, Judgement entered July 27, 2019.**
- **Carley V State, No. 68503, Nevada Court of Appeals. Judgement entered December 18, 2015.**
- **Carley V Neven, et al. No. 2316-CV-02227-JAD-BNW, United States District Court of Nevada, Judgement entered March 17, 2021.**
- **Carley V Neven, et al, No. 21-15637, U.S. Court of Appeals for the Ninth Circuit, Judgement entered December 13, 2021.**

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DECEMBER 13, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JANUARY 14, 2022, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Fourth Amendment: 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.

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

Federal Rules of Criminal Procedure

Rule 41 Search and seizure – See Appendix G

Nevada Revised Statutes

NRS 205.060 – Burglary

NRS 204.110 – Forgery

NRS 205.463

NRS 205.46513 – Establish or possess financial forgery laboratory – page 9

STATEMENT OF THE CASE

This case is originally based on an investigation of the Fraudulent purchase of 2010 Dodge Charger at a local CarMax dealership by a man and a woman using Ashley Ilyins ID, forging her name to loan documents. An incident of a man fraudulently renting an apartment using Eric Burch's ID, forging his name to the rental agreement became a part of the investigation as detectives began to suspect myself (Elizabeth Carley) and James Stojic.

A search warrant issued for 1500 Karen Ave, apt. 25 on 09/0702912 was specifically for those crimes. It stated, "burglary, forgery, and obtain/use information of another." APPENDIX H

The incorporated underlying probable cause affidavit describes the two incidents, as well as alleged 'admission' and a jail-house phone call made afterwards. The only crimes discussed are the purchase of the vehicle and the Ilyin and Burch ID's. No allegation of inference is made toward manufacturing documents, money, identifications, or credit cards. APPENDIX H

The alleged 'admission' is not signed, is written and edited by detectives own hand, and is uncorroborated. Phone call is misrepresented by detectives because I (Elizabeth Carley) am merely repeating what detectives told me.

Nonetheless, detectives give no explanation for the leap from burglary, forgery, and use of another ID to seeking to seize all components of a full-blown forgery lab.

"The property referred to and sought to be seized consists of the following"

- A. Identity documents such as social security cards, driver licenses, identification cards, and other forms of personal and/or business identifying information;
- B. Credit cards, debit cards, store charge cards, load cards, or account or card numbers associated with these types of accounts or any access device capable of storing said information;
- C. Backdrops, photo paper, digital memory chips, CDs, DVDs, or other electronic media that may be a means of storing images from a digital camera;
- D. Government seals, genuine or fraudulent, used to mimic real issued identifications or documents;
- E. Photographs, film, photographic equipment (digital or analog) that can be used to obtain likeness of individuals to make identification cards;
- F. Laminators, cutters, shredders, marking pens, plastic blanks, card stock, ink, (to include magnetic ink), check stock, templates, and other office supply materials (precursors) that might be used in the manufacturing of counterfeit items or to alter documents;

- G. Laptop and desktop computers;
- H. United States Federal Reserve Notes, Foreign currency, money orders, or other negotiables that can be determined to be fraudulent or obtained fraudulently;
- I. Digital storage devices which consist of electronic storage devices and digital storage media (to include associated digital storage device hardware, software, related documentation, passwords, and data security devices);
- J. Credit/Debit card manufacturing equipment, which includes manual and automatic embossers, tippers, credit/debit card stock and credit/debit card logos;
- K. Vehicle keys to a Dodge Charger and Chevrolet Camero;
- L. Articles of personal property which would tend to establish the identity of persons in control of said premises, which items of property would consist in part of and include, but not limited to papers, documents and effects which tend to show possession, dominion, and control over said premises, including but not limited to keys, canceled mail envelopes, rental agreements and receipts, utility and telephone bills, prescriptions bottles, vehicle registration, vehicle repairs and gas receipts. Items which tend to show evidence of motive and/or the identity of the perpetrator such as photographs and undeveloped film, insurance policies, whether such items are written, typed, or stored on a computer disc. Objects which bear a person's name, phone number or address.

The property hereinbefore described constitutes evidence which tends to demonstrate that the criminal offense of "**Burglary, Forgery, and obtain personal ID information of another**" has been committed" APPENDIX H

The warrants seizure list described are unrelated to the probable cause (except the Dodge Charger keys); an insufficient nexus to the criminal activity in the affidavit allows police to conduct a general rummage; evidence seizure drastically veers outside the scope of the warrant's limitations of time, location, and crime; and the alleged 'admission' and phone call are used to validate an otherwise unlawful search and seizure.

Several issues could have been addressed pretrial. 1) illegal execution of and/or warrant itself via motion to suppress; 2) alleged 'admission' and phone call based on reckless disregard for the truth; 3) that I was not told by counsel I was not eligible for multiple habitual enhancements at sentencing.

However, counsel filed only four pretrial motions, none challenging any issue stated above, or to eliminate evidence against me. Counsel advised me the warrant was valid, despite an earlier three count deal which counsel advised me not to sign because it was 'terrible', she advised me to sign a worse four count deal. I was under duress when signing.

Had I known the fourth amendment issue, or that I could be sentenced to multiple habitual enhancements, I would have insisted on going to trial and would have pled guilty. All the evidence against me has the likelihood it would have been eliminated due to constitutional violations, had I had a competent attorney advocating on my behalf.

I immediately, the same day, requested to withdraw my plea because counsel; advised me I O was not eligible at all for habitual enhancement. I learned that was untrue and a ruse to get me to sign the plea. I learned at sentencing I could be sentenced to multiple enhancements, not from counsel. APPENDIX F

My motion to withdraw my guilty plea was denied by each of the lower courts. In pertinent part, ruling the affidavit 'contained probable cause for manufacturing documents relying heavily on my alleged 'admission' and phone call.

The lower courts have accepted detectives leap from burglary, signature forgery, and use of another individual's ID to manufacturing documents without the required probable cause within the affidavit. The lower courts have also accepted counsel's decision not to advocate for me regarding blatant constitutional violations at fundamental and basic levels. APPNDIX A, B, C, D, &E

The lower court's ruling is contrary to well established federal and US Supreme Court law and or not addressed at all.

REASONS FOR GRANTING THE PETITION

I petitioner Elizabeth Carley, comes now, in proper person, respectfully request this honorable court grant this petition for certiorari based upon Supreme Court rule 10 ©

“A state court or the United States Court of Appeals has decided an important question of Federal Law that has not been, but should be settled by this court, or has decided an important Federal question in a way that conflicts with relevant decisions of this court.” USSC Rule 10 ©

FOURTH AMENDMENT VIOLATIONS

It is essential to review the legality of the warrant execution to then determine if counsel's tactical determination was appropriate. The lower courts determined “The breadth of the search warrant was supported by probable cause,” therefore, “the police executed a valid search.” APPENDIX B – This is contrary to US Supreme Court Law.

Looking to the totality of the circumstances, the outcome of this case turns on whether the warrant is legally executed because 1) had no lower courts ruled according to the US Supreme Court Law regarding illegal warrant execution, 2) Counsel would be found ineffective for failing to challenge fruits of an illegal search.

- A) Descriptions in the warrant are unrelated to the probable cause affidavit with insufficient nexus to criminal activity allowing police an exploratory search.

The search warrant begins by limiting the crimes investigated to “burglary, forgery, obtain/use ID - “APPENDIX H”- based on incidents described in the probable cause affidavit of a fraudulent vehicle purchase using Ashley Ilyins ID by forging her name to loan documents and renting an apartment fraudulently by using Eric Burch’s ID, forging his name to the rental agreement. The warrant makes an unsubstantiated leap to manufacturing documents, counterfeiting currency, making ID’s and credit cards by seeking to seize all components of a financial forgery laboratory (“FF LAB”) according to NRS 205.456.13(4)(b)(1 and (2).

(b) “Financial forgery” means any computer, system, program, or other electronic or mechanical device, or any combination thereof, that is specifically configured for the purpose of

unlawfully (1) Obtaining personal identifying information of another person to commit an unlawful act, or

(2) Manufacturing any forged or fraudulent financial instrument, document, or item, including without limitation any negotiable instrument, check, draft, bond, credit card, debit card, stock certificate, annuity, bank bill or note, draft, bill of exchange, contract, promissory note, travelers check, or money order. APPENDIX G,H

Lower courts ruled "the warrant plainly authorized the searchers to collect evidence that could be used in making fraudulent documents" APPENDIX B,D, contrary to this courts decision in Garrison and Horton, "by limiting the authorization to search specific areas and things for which there is probably cause to search, the requirement ensures that the search, will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the framers intended to prohibit."

The warrant contains boilerplate language allowing for exploratory search, as seen in four separate warrants, submitted for comparison purposes with their incorporated affidavits:

- a) 1500 Karen Ave, Apt 25
 - "Burglary, forgery, obtain/use personal ID information of another"
 - Section "K"; "Dodge Charger keys" only specific item to affidavit
 - Parts of sections "A"; "drivers licenses" and "C", "Credit Cards" unspecific to particular crimes in affidavit
 - Remaining items of "A, C, K" not mentioned in affidavit
 - Sections "C, D, E, F, G, H, I, J" not mentioned in affidavit;
- b) Extra Space Storage
 - "FF lab"
 - All sections exactly the same as 1500 Karen Ave. warrant
 - Except section "K" eliminated;
- c) Capri Motel (telephonic)
 - "FF lab"
 - Exact language, different order, as Extra Space Storage warrant
 - Add sections "H,I"
 - Add handwritten "printers"
 - Sections "L,M" hand eliminated;
- d) Room 1463/2015 Mustang
 - "Possess credit card w/out consent, ID theft"
 - Exact language as Capri Motel warrant
 - Add "tablet devices, cell phones, printers" to Section "A"
 - Add handwritten "white powdery substance"
 - Hand eliminate sections "L,M" APPENDIX H, I, J, K

All four warrants exhibit nearly identical language, a standardized “one size fits all” seizure list not specific to each affidavit’s criminal activity. Only Extra Space Storage and Capri Motel affidavits display probable cause for and investigation of “FF lab.” A pattern of using boilerplate language is evident as two of the four warrants do not rely on the probable cause of the underlying affidavit “all data necessary to show probable cause of underlying affidavit “all data necessary to show probable cause for the issuance pf a search warrant must be contained within the four corners of the affidavit “Gourde, Falso, see also Gates (probable cause assessments are to be made from “all the circumstances set forth in the affidavit.”)

Lower courts ruled, “the court of appeals reasonable found that the search warrant described the items to be seized with sufficient particularity. It directed the police to seize evidence of specific crimes related to creating fraudulent documents “APPENDIX B, is in direct conflict with Gates and Chimel. “The scope of the search must be strictly tied to, and justified by, the circumstances which rendered its initiation permissible.”

Generic categories in the warrant have no connection to the criminal activity in the affidavit. All items except “Dodge Charger keys” appear nowhere in the affidavit for probable cause. Thus, no probable cause exists for those items according to Chimel and Gates. Had the warrant described items particularly according to the underlying probable cause, such as “Ashley Ilyin and/or Eric Burch IDs and or credit card, Carmax loan or purchase documents, rental agreement documents,” constitutionality would not be in question, Spilotro . Here, it is however, not the particularity of items such as US currency, are particularly described in that the searching officer knows should he happen upon a “\$1 Bill” or a “Penny” he would know to seithe ze it.

APPENDIX H,L.

It is the lack of nexus to the criminal activity in the affidavit, the aspect of particularity discussed in Garrison and Horton, that is in question. The affidavit gives no explanation of how US currency (and most other items listed) is used in the described “burglary, forgery (signature), obtain/use ID” crimes discussed. The warrant is particular to a “FF lab”, not to “burglary, forgery, obtain/use ID.” APPENDIX H

KOW and SDI set standards in evaluation warrants and probable cause affidavits as a whole: “particularity and overbreadth.” In KOW the court addressed another aspect of particularity, “warrant(s) contained no limitations on which [items] within each category could be seized or suggested how they relate to criminal activity. By failing to describe with any particularity the items to be seized, the warrant is indistinguishable from the general warrants repeatedly held by this court as unconstitutional.” KOW, CTR Art, Stubbs. “General classifications in a warrant are acceptable only when a precise description is not possible.” KOW, SDI, Spilotro; see also CTR Art. (holding that, where investigators believed that an art gallery was selling forged Dali artwork, the warrant should have limited the search “to items pertaining to the sale of Dali artwork.”)

As discussed previously, more precise descriptions were indeed available, not used (except Dodge Charge keys) amounting to a general search as detectives seized all technology, all paperwork, and all office supplies. In KOW, the court makes specific connection to warrant descriptions relating to the affidavit, “the government did not contain the scope of the warrant by reference to limiting descriptions in the affidavit.” KOW

Similarly in SDI, lower courts found, “although the warrant in this case authorized wholesale seizure, the supporting affidavit did not explain why such seizure was necessary.” SDI “We therefore conclude that categories 9. 10. 11. 12, and 24 were overbroad because probable cause did not exist to seize all items of these particular types.” SDI, Adjani – “under the Fourth Amendment, ‘there must be probable cause to seize the particular things named in the warrant.’” SDI, see also Hayes (justified if material is within the scope of the probable cause underlying warrant). KOW and SDI make direct correlation between the probable cause affidavit and descriptions of the warrant, thus the lower court’s ruling in this case is contrary thereto. As in KOW, here there is no justification for the widespread seizure of items based on the incorporated probable cause affidavit underlying the warrant. “Much of the alleged acts....which crimes have no apparent connection to the [items] sought in the warrant.” KOW

Furthermore, the warrant here lists legal items such as “marking pens” and “other office supplies,” but gives no guidance as to those used legally or those used for criminal activity suspected. Spilotro

Relevant for two reasons; 1) probable cause in the affidavit is void of any computer or manufacturing equipment necessary for making IDs or credit cards, and 2) one does not violate NRS 205.46513 simply by possessing an ID or credit card and a computer, the crime is complete upon attempt of making the item, an allegation void in the probable cause affidavit. APPENDIX G

In KOW, the court held that “value references” to “fraudulent transactions”....failed to give any indication of the alleged crime to which seized documents pertained....criticizing repeatedly the failure to describe in a warrant the specific criminal activity suspected.” KOW, CTR Art, Stubbs.

Generic language here in ten of twelve categories make no reference to ways sought items would be used in fraudulent vehicle purchase or fraudulent apartment rental. Vague reference, such as “manufacturing counterfeit items or alter documents,” “other negotiable that can be determined to be fraudulent,” “used to mimic real issued IDs and documents” “device capable of storing said information” “digital storage devices” “credit card manufacturing equipment” “laptop and desktop computers” may sufficiently describe items seized regarding an investigation of a “FF lab,” but that is not what detectives claim to be investigating. Thus, the generic descriptions have no connection to the underlying probable cause and according to KOW and SDI, are overbroad. APPENDIX H.

Evidence of the overbreadth of the warrant is seen in the inventory reports of items seized, used illegally with no explanation of how they were used in criminal activity:

6. misc. paperwork, 15. CDs, 53. Toshiba disc drives, 59. Cameras, 60. misc jump drives, 61 CDs, 67. Marker, 68. Sim cards, 69. USB drives, 70. Logitech wireless touchpad, 73. Clear USB, 74. Linksys air card, 78. Razor blades, 87. Misc cards, 96. CD, 97. Wireless mouse, 101. Writing instruments, 110. Keyboards, 113. Card bus adapter, 114. Card stock, 117. \$1 bill, 118. Penny, 6. 16 piece knife set, 8. Photo paper, 9. Hard drive, 14. Dell computer tower (w/out monitor), 17. Markers, 18. Surge protectors, 44. Vanilla gift card, 76. misc paperwork, 77. Card stock, 79. Seagate hard drive, 87. Western Union money orders, 88. Western Digital hard drive, 107. Scissors, 108. Swingline stapler, 110. Exacto paper cutter, 126. Tool bag w/ misc paperwork, 127. Backpack w/ misc paperwork, 128. Green file folder containing misc. paperwork, 134. , misc paperwork APPENDIX L,M

Following the logic of the warrant seizure list, I could be charged with "FF lab" for possessing a computer, a credit card, and a \$1 bill, with no probable cause in the affidavit to explain why they were looking for those items. No mention the apartment "was permeated with fraud." SDI, to support the wide-ranging seizure of items not mentioned, or criminal activity alleged, within the probable cause affidavit as a cure for defects in the warrant. Detectives cannot make the proper showing legal items could be segregated from illegally used items. KOW, CTR Art ("permeated with fraud" doctrine held not to apply where the supporting affidavit did not....of the alleged fraud was inseparable from other business documents or that the business was permeated with fraud.") KOW "An individual's Fourth Amendment right cannot be violated based on fallacious inferences drawn from facts not supported by the affidavit." False

Even considering alleged 'admission' and jailhouse phone call relied on in the probable cause affidavit, the criminal activity does no go beyond fraudulent purchase of a vehicle and possession of Ilyin and Burch IDs. The affidavit does not support probable cause for manufacturing documents even with 'admission' and phone call factored in to the totality of the circumstances in the affidavit, both a far cry from making IDs and credit cards. APPENDIX H

If this court disagrees, that there is probable cause to seize all components of a "FF lab," I submit that the warrant is still general according to SDI because it did not limit the search to only items used fraudulently, such as flash drives and memory chips containing data fraudulently used," or "electronic media used for storing fraudulent data." Rather, the warrant allowed for the wholesale seizure of every piece of technology (except printers and cell phones), all paperwork , and all office supplies. SDI KOW define this type of warrant as general and unconstitutional. "If no particular portion of the warrant is sufficiently particularized to pass constitutional muster, then total suppression is required, otherwise the abuses of a general search would not be prevented." KOW

The officer's failure to particularize the warrant specifically relying on the probable cause affidavit according the Chimel and Garrison was not addressed by the lower courts. Thus, the ruling that "the breadth of the search warrant was supported by probable cause "is in direct

conflict with this court's ruling, as well as lower court's ruling in KOW, SDI, Stubbs, DTR Art, and Gourde.

B) Evidence seized was, in large part, outside the scope of the warrant's limitations of time, location, and crime.

Regardless of magistrate's approval of the warrant, according to KOW and SDI, "it is" the governments burden to show [that] officers who executed the warrant, although instructed to read the affidavit, actually relied on the information in the affidavit to limit the warrant's overbreadth." SDI Evidence here suggests officers did not rely on the affidavit, further expanding the search, outside the location authorized, and evidence not authorized by the warrant at all.

KOW points to "a warrant [] limited with respect to time, location, particular criminal activities [] was not 'so overbroad as to be facially deficient.'" The court went on to contrast, "the warrant in this case listed entire categories of [items] to be seized, encompassing essentially all items on the premises [the court] considered as evidence of the officers' good faith reliance on an affidavit where the affiant was present and supervising the search." KOW

Here, detective Fairweather authorized the affidavit, warrant, warrant return, police report, and inventory reports. APPENDIX H,L,M,N,O. When compared top the warrant return receipt, (APPENDIX H) and each other, it is evident neither the warrant, nor affidavit was relied upon in respect to the time of issuance, location authorized, or criminal activity of the warrant itself by: a) seizure of property before the warrant issued hundreds of yards away from authorized search location, and b) seizure of items not authorized by the warrant at all, amounting to wide-ranging seizure forbidden by the Fourth Amendment. APENDIX H,L,M,O.

Standing to challenge all property seized before the warrant issued arises where it is outside the scope of the warrant, yet included unlawfully as seized pursuant to, not addressed by the lower courts. Including unlawfully seized evidence as if admissible is contrary to Mapp, Feor, Crim P 41, Fourth Amendment, and should have been excluded according to Leon (discussed later). This challenge is to protect my Fourth Amendment rights, the courts duty under Mapp, "to be watchful for the constitutional rights of the citizen, and stealthy encroachment there on." Mapp The warrant, nor affidavit, authorizes seizure of property recovered prior to the warrant's issuance. Fourth Amendment

The police report describes property seized some distance from authorized location in question, "THEN detectives obtained a warrant for 1500 Karen Ave, apt 25." There can be no question the time limitation of the warrant WAS VIOLATED, moreover, the police report states recovered "at this time." "1. ID with Eric Burch info and picture of Stojic, 11. Two laptop computers, 13. ID printer (Zebra)"

APPENDIX O

The detectives then prepare two separate reports: "09/07/12" at "1930; and 09/10/12" at "745" crossed out, hand written "09/07/12" at "1930," indicating one was prepared three days prior to the other. Both state incident "search warrant;" reporting "M Fairweather"; persons property seized "Stojic," "Carley," "Barrara" at 1500 E. Karen #25;" charge "possess of financial forgery laboratory." APPENDIX L,M and "recovered by reporting officer." APPENDIX L,M

The police report, authorized by Fairweather specifically states a portion of the property was not seized at the location and was seized prior to the warrant's authorization. According to the Fourth Amendment, that property must not be included as seized pursuant to the warrant. APPENDIX O

In violation of Federal Rules of Criminal Procedure 41, items seized prior to the warrant issuance are included in the return receipt as recovered from apartment: "cards for Eric Burch" – "ID printer (Zebra)." APPENDIX H

No explanation is given of how property in a closed container, not in "plain view." Recovered via separate search incident to arrest, is then authorized for seizure under a warrant issued at a later time for a separate location per police report. APPENDIX O Wong, Sun, Horton, Chadwier, Coolidge.

Property recovered in question is then comingled with apartment location, impossible to determine what was removed where and when it was recovered, violating time and location limitations of the warrant once again.

Of the two inventory reports, the first "09/07/12" identifies all property said to be recovered before warrant issued by police report relevant because it includes additional items listed in warrant return receipt.:

<u>Warrant Return Receipt</u>	<u>09/07/12 Inventory report</u>
ID printer (Zebra)	#115 Zebra ID maker
Sim cards	#68 sim cards
Pipe	#119 pipe w/residue
Gaming cards/gift cards	#gaming cards and gift cards
Cards for Eric Burch	#fruadulent Kentucky DL with James
Stojic photo	

(ID printer and Eric Burch cards same as police report recovered prior to warrants authorization). APPENDIX L, M, O

The location of the ID printer and computers are important because without those essential components a "FF lab" cannot exist according to NRS 205.45613. Both items seized before warrant was authorized, due to the nature of most other contraband and flagrant Fourth Amendment violations. It cannot be said all property was not recovered prior to warrant authorization* within the closed container the ID printer, two laptops, and Eric Burch's ID were recovered, as the contraband is paperwork, IDs, credit cards, and checks. APPENDIX O

The police report lists most items found in apartment, associating them with "09/10/12" inventory report, however, listing some items recovered prior to

warrants authorization in" 09/07/12 inventory report. Dates of both inventory reports are not an indication of date the seizure took place, but possible of where items are recovered, if not all recovered prior to warrant authorization.

Police Report (Apartment)

44. Account now Visa Gold Eric Burch 5451
5451
59. NV DL Jerry Joe Fields
Joe
60.79. Photocopies of misc NV DLs
80. Experian paperwork Tara Phelps

Inventory (Before Warrant)

#20 Account Now debit card
#34 NV DL ind Fields, Jerry
#16 photocopies misc NV DLs
#27 profile ind Tara Phillips

APPENDIX D

APPENDIX L

Furthermore, I submit property in both inventory reports not authorized by warrant, yet seized pursuant to, not addressed by the lower courts in violation of Fourth Amendment and Federal Criminal P 41

21. Sterlite file folder, 22. Ceasars Palace menu, 44. Rolling suite case, 45. Rolling suitcase, 46. Web cam, ratchet set, 48. Cell phones, 51. Misc clothing, 52. Toiletry bag, 56. Flash lights, 57. Pad locks, 62. AAZ batteries, 75. Bag, 79. Costume jewelry, 84. Jansport backpack, 90. Dremel, 91. Stereo faceplate, 92. Swiss sunglasses, 93. Sunglasses, 94. Pocket knife, 95. Cable, 98. Newbie nipple cover, 99. Lotion, 100. Scooby Doo toothbrush, 102. Magnets, 103. Lotion, 104. stamps, 105. Cell phone battery, 106. Blue tooth, 107. Eyeglasses screwdriver, 108. Plastic comb, 109. Black light, 116. Metal flask, 119. Pipe with residue

2. Brother PT-1290 label maker, 3. Lexmark photo printer, 7. Hackling book, 14. Color Laserjet CPI215 printer, 17. Crayons, 18. Surge protectors, 78. Home Depot tin, 80. Craftsman tool bag, 97. Keyboard cleaning kit, 103. Small purse, 111. Misc bags, 143. Rolling suitcase, 158. Business card holder, 159. Misc cards APPENDIX H,L,M

"print sets" and "pills" listed in warrant return receipt not accounted for at all in any report.

APPENDIX H

"the reasonableness of a search or seizure depends not only on WHEN it is made, but on HOW it is carried out." Adjani

At least one half of property seized was before the warrant was authorized and outside the location, not authorized by the warrant, legal items with no explanation of or connection to the affidavit's criminal activity. The same items recovered from multiple different locations apparently at multiple searches, or not accounted for at all. Out of more than 300 items seized, only 33 appear on the warrant return receipt, six of which match described criminal activity in the probable cause affidavit. APPENDIX H None of these issues are addressed by the lower courts. Fourth Amendment and Federal Criminal P 41, SDI KOW,

Spilotro.

Detectives did not rely on the limitations of the warrant in respect to time, location, and crime, “in an objectively reasonable manner.” SDI In this case, there is “no evidence that the agents in fact relied on the affidavit to restrict their search.” SDI “amounting to an exploratory search forbidden by the Fourth Amendment.” SDI, KOW, Fourth Amendment.

C) Use of an uncorroborated alleged ‘admission’ and misrepresented phone call to validate an otherwise unlawful search and seizure

The lower courts rely heavily on the alleged ‘admission’ and jailhouse phone call, flawed due to detective’s reckless disregard for the truth. APPENDIX H The alleged admission is unsigned, written and edited in detectives’ own hand, uncorroborated as false as follows:

- I “was the one who purchased the vehicle” – Carmax sales associate could not identify me as the purchaser.
- I “was living at the address on vehicle loan documents paperwork” – I had been evicted from that address months previous and was not associated with the address at the time of the purchase.
- The vehicle purchase ‘took 45 minutes’ – In fact, Carmax quotes a vehicle purchase minimum of 90 minutes, twice as long or longer.
- I “shredded Ilyins’ ID – In fact, officers recovered the ID in tact from the property seized before the warrant was authorized. APPENDIX H

Lower courts ruling is contrary to Wong, Sun, in that , “criminal confessions of guilt require extrinsic corroboration, and conviction must rest upon firmer ground than uncorroborated admission or confession of accused.” As discussed above, all if not most, of the evidence against me was obtained illegally, leaving only the alleged ‘admission.’ I have never adopted the substance of alleged ‘admission’ required by Wong Sun as a factor for admissibility. In fact, statements are provably false requiring a hearing according to Franks. “Where a defendant in a criminal proceeding, subsequent to the ex parte issuance of a search warrant, makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by affiant in his affidavit for the search warrant, and if that allegedly false statement is necessary to the finding of probable cause for issuance of the warrant, the Fourth Amendment requires a hearing be held at the defendants’ request so that he may challenge the truthfulness of factual statements made in the affidavit.” Franks

A Franks hearing would reveal all above listed statement, used for probable cause in the affidavit, to be false. The result is a determination that my alleged ‘admission’ “did not result from an ‘intervening independent act of free will’” Wong Sun, Brown “The question of whether a confession is the product of free will under Wong Sun must be answered on the facts of each

case." Brown. The facts of this case do not stand up to constitutional muster as far as search and seizure or admission are concerned regarding inadmissibility at trial.

"Miranda warnings are not the only factor to be considered, temporal proximity of the arrest and the confession, the presence of intervening circumstances, and particularly the flagrancy of official misconduct." Brown

Here, I reject the notion I was given Miranda warnings, only a handwritten notation by detectives. I had an attorney for the probation violation I had been arrested on days prior which I requested. I did not agree to speak to detectives. Detectives spoke and used every movement of my body language as affirmation or denial, writing the 'admission' in their own hand. The above listed 'statements,' in particular, provably false, used as probable cause to conduct what would become an illegal search and seizure.

The phone call is misrepresented to the authorizing magistrate as I was repeating what detectives had told me immediately previously, although emotionally. Detectives reckless disregard for the truth is apparent when listening to the phone call as I say "this is what detectives told me, Ilyin and Burch's IDs are hot." really hot." I did not say to dispose of them because I did not possess them. This changes the entire context of the probable cause affidavit. APPENDIX H

The truthfulness of detectives' version of a handwritten, unsigned 'admission' is addressed by the lower courts. The automatic assumption that it is truthful is contrary to Wong Sun, Brown, and Franks, based on the determination alone of Miranda warnings allegedly given. Even if this court believes Miranda to have been issued, statements listed above are still false and phone call is still misrepresented, provable at a Franks hearing, changing outcome of probable cause determination.

As discussed above in detail, constitutional issues warranting total suppression were indeed present, if this court is not convinced, I point to Horton regarding 'plain view' and Leon, regarding exclusionary rule to show counsel would have had legal standing to take such measures in my favor, and did not. Horton justifies a warrantless seizure of incriminating evidence under the plain view doctrine. Not only the item be in plain view, but its incriminating character must be immediately apparent. The officer must also be lawfully located in a place where the item can be plainly seen, and must have a legal right to access the item itself. Horton, Chadwick, Coolidge. Here, a large portion, if not all, incriminating evidence was not in 'plain view,' but in a closed container. Detectives did not execute a search warrant on that container. Container, nor container's location is authorized by the 1500 Karen Avenue warrant. According to Chadwick and Coolidge, detectives are required to obtain a second warrant for that container because it was searched at 'a remote time and place' from a lawful search incident or arrest. Chadwick. APPENDIX O

"If the police stray outside the permissible scope of the search, they are in violation of the Fourth Amendment, and all evidence so seized will be excluded." Horton

- Failure to advise me I could be sentenced to multiple enhancements

Fundamental and basic Fourth Amendment issues, in part, include the failure to locate and motion to suppress evidence seized outside the warrants authorized time and location, or not authorized by the warrant at all. Said evidence amounted to more than half the total recovered, if not all, a significant amount. Suppression would have changed the outcome of proceedings even if the warrant was found constitutional, which it is not.

The standard set forth in Chronic to determine if counsel provided effective assistance according to the Sixth Amendment is in counsel's performance as a whole, "a "reasonably competent attorney" whose advice is "within the range of competence demanded of attorneys in criminal cases [] acting in the role of advocate." Chronic

Here, counsel filed only four partial motions in one and one-half years before the guilty plea. Not one of the motions was to challenge any evidence against me in order to eliminate any count against me. The most meaningful motion ferreted out no recordings of alleged 'admission' exist, that 'statements' were detectives' version of alleged 'admission' written in their own hand, not signed by myself, and including multiple false statements previously described. The information revealed via that motion may have been meaningful, but counsel then did nothing with it, stopping short of meaningful advocacy. Competent counsel would have then requested a Franks hearing based on provable reckless disregard for the truth used in probable cause affidavit underlying the warrant. The result would have been invalidation of the warrant and exclusion of all evidence and statements at trial.

It is a basic and elementary concept any reasonable attorney should know that the best way to eliminate counts, especially in a 63-count indictment, is to challenge the legality of the evidence in which these counts are based. Logically, that would lead to a challenge based on illegal search and seizure and truthfulness of the probable cause statements of the warrant affidavit. Counsel did neither.

The lower courts ruling, that "I failed to demonstrate that, had counsel moved to suppress the evidence seized as a result of the search warrant, the motion would have been successful or [I] would have pled differently and insisted on going to trial," APPENDIX B, is contrary to Chronic, Mapp, Leon, Fourth Amendment. Counsel refused not only to file the motion, but told me the warrant (and all evidence seized) was valid. Clearly established US Supreme Court declares otherwise making total suppression not only likely, but constitutionally appropriate. The lower courts determination that I "cannot demonstrate that, but for counsels' failure to move to suppress [my] statements to law enforcement, that [I] would have rejected the plea offer and proceeded to trial." APPENDIX B, is contrary to Brown, Wong Sun, Leon, Fourth Amendment.

Due to reckless disregard for the truth in provably false statements used for the warrants probable cause determination, a Franks hearing would have been appropriate. The Franks

hearing would have likely resulted in nullification of the warrant, eliminating all evidence and statements at trial. It is a logical step for competent and reasonable counsel to take, yet counsel did not.

Both are likely outcomes as evidentiary support is written by detectives under oath in their own reports. Not my opinion, but based on legal authority and what detectives swore under oath. Only a decision contrary to US Supreme Court Law and Constitutional Law would have a different outcome than total suppression. Leon, Fourth Amendment. The process of the proceedings here did not resemble the character of a "confrontation between adversaries, [thus] Constitutional Guarantee is violated." Chronic. The facts determined by the government must be tested and disputed by counsel in adversarial confrontation. That did not occur here, thus my Constitutional Guarantee to effective assistance of counsel was violated.

During plea negotiations, following counsels' derelict advice that no Fourth Amendment issues occurred and I could sign a worse four-count plea agreement when the previous three-count agreement was deemed 'a terrible deal' counsel failed to advise me I could be sentenced to multiple habitual enhancements. Relevant because the plea agreement states I am only eligible for the small habitual, A 5-20 year term, not the large habitual, A 10-25 without parole term.

I was sentenced to multiple small habituates equal to one large habitual term of 10-38 years. APPENDIX F. Had I known this was a possibility, I would not have pled guilty and would have insisted on going to trial. I did not benefit from the guilty plea because I received the same amount of time as a large habitual. Counsel's failure to advise me of the possibility of multiple habitual enhancements at sentencing is ineffective assistance. I did not know this was a possibility until I was sentenced, therefore the withdraw of my guilty plea hearing and plea canvas are not relevant as they both occurred before sentencing.

The lower court ruling that I 'failed to demonstrate a reasonable probability that but for counsel's alleged failure to advise [me] that I was eligible for habitual criminal sentencing, [I] would have insisted on going to trial. " APPENDIX B, is contrary to Stickland, Hill.

"An attorney's ignorance of a point of law that is fundamental to his case....is a quintessential example of unreasonable performance under Strickland." Hinton.

The court should address constitutional issues herein lest the Fourth Amendment constitutional right be diminished via counsels' failure as advocate to litigate, the state or the judicial system us untrustworthy due to situations such as mine where counsel fails to litigate on my behalf, even the most blatant violation. A granting of this writ would help regain public trust in the justice system as a whole and to secure Fourth Amendment and Sixth Amendment rights for our nation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

April 12, 2022

Date: Elizabeth Carley