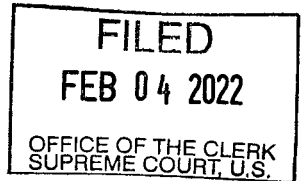


21-7826

No.



IN THE

SUPREME COURT OF THE UNITED STATES

DEXTER D. COOPER — PETITIONER
(Your Name)

vs. CASE #21-5533
PENDING SINCE 5-27-21
U.S.C.A. 6th CIR. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

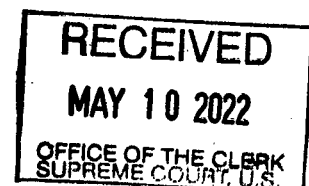
PETITION FOR WRIT OF CERTIORARI

DEXTER D. COOPER
(Your Name)

F.C.I. MANCHESTER
P.O. Box 4000
(Address)

MANCHESTER, KY. 40962-4000
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

- 1) Whether or not the United States Dist. Court made error of Constitutional Magnitude by Not Considering petitioner Body Cam evidence which undermine the case against petitioner, and answers petitioners sole reserved appeal issue; "Whether or not ofc's had Reasonable suspicion to detain petitioner to further investigate".
- 2) Whether or not the United States Court of Appeals for the Sixth Circuit made error of Constitutional Magnitude by sic "Possible Rule 34 Submission of petitioner's Bail motion Judgment".
- 3) Whether or not the United States Court of Appeals would be in error of Constitutional Magnitude by not Ordering Remand to United States District Court Now that petitioner has **presented** 2255(b) Evidence that is of Record in United States District Court, though the Court found assertions - were unsupported by the record".
- 4) Whether or not petitioner's Bail pending Appeal in the Sixth Circuit meets the standard of LEE V Jabe 989 F.2d 869, 871 (6th Cir. 1993).
- 5) Whether or not petitioner has met the Standards of Pending fully briefed application for a certificate of appealability; Bail pending appeal or evidentiary hearing; All Currently Pending in USCA 6 No# 21-5533

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 judgment is the subject of this petition is as follows:

RELATED CASES

1) United States of America V. DEXTER DURRELL COOPER, 2020 U.S. Dist. LEXIS 253336
Criminal Action No[#] 5:17-CR-35-KKC Aug. 31, 2020 Decided & Filed.

2) United States of America V. DEXTER Durrell Cooper; United States Court of Appeals
For The SIXTH CIRCUIT; 2020 U.S. App. LEXIS 31882 NO[#] 20-5588; Oct. 7, 2020 Filed

3) United States of America V. Dexter Durrell Cooper; United States Court of Appeals
For The Sixth Circuit

TABLE OF AUTHORITIES CITED

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Brady v. Maryland, 373 U.S. 83	15
Strickler v. Greene, 527 U.S. 263	17
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APPENDIX B	UNITED STATES OF AMERICA V. DEXTER DURRELL COOPER; 2020 U.S. Dist. LEXIS 253336; CRIMINAL Action No. 5:17-CR-35-JKC
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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 No. 20-5586
[] reported at 2020 U.S. App. LEXIS 31882; 2019 US App LEXIS 29717; or, No 21-5533 is UNpublished
[] 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 No. 5:17-cr-35-KKC
☒ reported at 2020 U.S. Dist LEXIS 253336; 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 01-21-2022.

☐ 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: _____, 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 ____.

United States Supreme Court Rule 11

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

Petitioner Cooper has pending Second Bail Motion in 6th Cir. & App. Certificate of Appealability & Motion For Factual Dispute Evidentiary hearing. Case(s) Pending in U.S.C.A.6 No # 21-5533

☐ 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

AMENDMENT IV [1791]

AMENDMENT V [1791]

AMENDMENT XIV [1868]

SILVER PLATTER DOCTRINE [1960]

STATEMENT OF THE CASE

PER R# 318 I.D# 2986-2988

"Cooper's charges stem from an encounter with law enforcement that occurred in the early morning hours of September 22, 2016. At Approx. 12:37 am on the Morning of September 22, 2016 SGT. Jesse Palmer heard gunshots nears his location on OAKHILL DRIVE.

SGT. PALMER radioed dispatch to report the shots fired & drove his vehicle closer to the area; there he encountered COOPER in a Chevrolet Impala. AS he got closer, SGT. Palmer observed Cooper make an abrupt turn down Carlisle Dr. turn into a residential driveway, and exit his vehicle.

Subsequently SGT. Palmer approached Cooper and informed him that he was investigating an incident of shots fired in the area.

Cooper stated that he was at the residence to visit a friend named "Robert". SGT. Palmer conducted a hasty frisk, which did not reveal any weapon and asked Cooper for permission to search his vehicle. Cooper refused consent to the search.

Other ofc's soon arrived on the scene; one ofc. shone a flashlight into the vehicle and observed, in plain view, spent shell casings on the back seat.

Another ofc. made contact with a female living in the residence who denied being acquainted with Cooper and stated that no one named "Robert" lived there.

The ofc's believing that there was a firearm in the vehicle or nearby, decided to place Cooper in handcuffs, frisked him a 2nd time, and read Cooper his Miranda rights.

STATEMENT OF THE CASE

Shortly thereafter, the ofc's. were informed that someone had made a report of shots being fired into a residence within one quarter mile of the area, where SGT. Palmer encountered Cooper.

Ofc's. suspected that Cooper was involved in the shooting and that there was likely a firearm in the vehicle, but were unsure about how to proceed in the investigation.

They discovered that the car was a rental vehicle owned by Enterprise Rent-a-car and contacted a representative from the agency, but were told it would take as long as one-half hour for the rental agent to arrive.

Ultimately they decided to seize the vehicle, obtain a search warrant, and release Cooper. Before doing so, they frisked Cooper for weapons a third time. ~~Drugs~~ were discovered in his front pocket. They then decided to formally arrest Cooper and impound the vehicle until they could obtain a search warrant. The encounter ended at approximately 2:20 AM.

IN SUMMARY: April 30, 2018 Cooper entered a conditional guilty plea for poss. of heroin, with intent to distribute 84(a)(1) and poss. of a firearm in furtherance of drug trafficking offenses 924(c)(1)(A). Cooper was sentenced Aug. 20, 2018, to 120 Months. (D.E. 192). He timely appealed, arguing "that the police detained him unlawfully, and that the Court should have suppressed evidence... obtained as a result of that detention" (D.E. 206 at 1; D.E. 207 (Mandate)). The Sixth Cir. rejected those arguments

STATEMENT OF THE CASE

and affirmed his conviction. Consistent with local practice, Cooper's § 2255 Motion was referred to a United States Magistrate Judge for review & issuance of a report pursuant to 28 U.S.C. § 636(b)(1)(B). Magis. Judge Edward Atkins reviewed the Motion & issued a Report & Recommendation. Judge Atkins addressed Cooper's claims in four categorical groups: (1) Cooper's challenge to the plea agreement as invalid based on the government's failure to disclose Brady evidence during the plea negotiations, (2) a violation of his constitutional rights when the Dist Court did not hold a FRANK'S hearing concerning the traffic stop and the police dispatch logs, (3) a constitutional violation under the "Silver platter doctrine", and (4) Six claims of ineffective assistance of counsel. (D.E. 227 at p. 4-35 (Memorandum)) Judge Atkins recommended that Cooper's petition be denied on all grounds & that the Court deny the issuance of a Certificate of Appealability. Hon. Dist Court adopted Sixth Circuit

05/21/2021 R#1 Prisoner (Cooper's) Case Docketed with Certificate of appealability denied. Notice filed by Appellant Dexter Durrell Cooper

06/01/2021 R#5 Appearance filed by U.S.A. Charles P. Wisdom JR & U.S.A. LAUREN TANNER Bradley.

06/28/2021 R#10 Appellant Motion for Release pending appeal.

07/15/2021 R#17 (Document LOCKED) Appellee's Motion to extend time to respond to Motion for Certificate of appealability. 8/05/2021 R#22 Response

08/23/2021 R#23 REPLY Filed by Dexter Durrell Cooper

STATEMENT OF THE CASE

12/20/2021 R#~~29~~²⁹ Petitioner Motion Filed to expedite decision on pending motion(s)

01/21/2022 R#33 ORDER filed: The Motion for Release pending appeal [10] DENIED, and the Motion to expedite [29] is DENIED AS MOOT. RONALD LEE, RAYMOND M. KETHLEDGE and ERIC E. MURPHY Cir Judges.

01/21/2022 R#34 CASE referred for possible Rule 34 submission

REASONS FOR GRANTING THE PETITION

- (A) Compelling Reasons: Dist. Court @ R# 318 ID# 2994-2995 last par @ "The Magis. Judge found that Cooper's 1st four allegations - "that there were two ofc's. Responding from the police station, who - - - passed directly by the [streets] outlined in the search warrant affidavit - were UNSUPPORTED by the Record".
- (A) Hon. United States Supreme Court the above is Dist. Court's findings to petitioner Cooper's 2255 Claim #3 which is Ineffective Assistance of counsel 1-6 claims. Cooper cited & directed the Dist. Court to actual Body Cam footage & cited United States Supreme Court Case Scott v Harris 550 U.S. 372 due to the Fact Video tape of Body Cam capturing the events in question quite clearly contradicted the version of the story told by Gov. witnesses. It's quite clear that the video evidence petitioner Cooper cited in R# 36 was Never considered § 2255 & C.O.A. were denied. Since that time petitioner Cooper has filed a few Bail motions pending Appeal. The current pending Bail Motion Petitioner Cooper filed with reply to AUSA Bradley's opposition Response actual Video photo's, that clearly depict the footage that petitioner directed & cited for Dist. to consider, which Dist actually Ruled - "were unsupported by the record" see: attached Exh# 1 Cover pg of Reply Bail motion.
- (B) The Actual video photo's are compelling due to the Fact petitioner Cooper 9-22-16 encountered with Gov. witness police ofc's was called a Terry encounter where the Gov. witness claimed to actually heard Shots fired @ 12:37:15; then observed petition Cooper @ 12:38 driving away from area of the shots. However petitioner Cooper's video photo's now filed in 6th Cir Bail motion quite clearly contradicts what specific location All Dispatched ofc's responded to which was not Cooper's encounter but the Gov. witnesses 1st Terry encounter claiming on actual video on that scene to have "Just heard shots fired". All ofc's on the 1st Stop Faces are withheld & shows depictions from chest down. This was actually not their 1st investigation of these same shots fired that Gov. witness claimed on video to have just heard fired. The Original investigation took place at 601 Logan Pl. where a residence owner called E-911. The Responding ofc that made the report after his report made @ 601 Logan Pl. & After he claimed to have heard these shots fired on the scene of 1st Terry Encounter with handcapped BLK male, on Bryan & Glen which the video photo's confirms All Back^{up} responded, AFTER initial Dispatch went out from Palmer. Palmer withheld his face @ the Bryan & Glen location & claimed, while the Bryan & Glen Terry encounter was ongoing, Palmer was making initial contact @ 443 Carlisle with Cooper. In truth Palmer dispatched & Gov. witness depicted on video photo's arr. to back Palmer @ Bryan & Glen, not 443 Carlisle where Cooper's encounter took place & Gov. witness passed to reach Palmer @ Bryan & Glen. I have more compelling R# 289 objections Cooper filed Actual Police Attendance Roster listing PALMER as TWO different UNIT

#5 9-22-2016 220D SGT. PALMER & 224A P. PALMER. UNIT 224A was testified to being Ofc. MASCOE who all Gov. witnesses said under oath actually made the Bryan & Glenn Stop same time as Palmer claimed to make initial contact with petitioner Cooper at 443 Carlisle. Also Palmer testified @ R#202 ID# 1479 at line 13-25. that Palmer was aware there was another officer that made a stop. Compelling Reason to please exercise judicial discretion Pertinent Circumstances include Dispatch Information; the Dispatch Info in this case has Palmer listed as the 1st officer to arr @ Both Terry Encounters. Pertinent Circumstance also include direct observation which the video photo's depict Affiant Brill responded to & observed to the events that took place @ the Bryan & Glenn Stop which the Dist. Court considered the 2nd Stop, the further away stop ie (from where Palmer detained Cooper; 443 Carlisle) & was independently made by 224A Mascoe ie. (Not knowing Palmer took daily attendance Roll call as 220D SGT. & 224A Patrol officer Palmer(s) & that Palmer actually made the Bryan & Glenn Stop & that is the Reason video photo's depicts Affiant Brill leave the Police station when he received 'Initial Disp from Palmer & travel E. Loudon & passed Oakhill where Palmer testified he was parked when he heard Shots personal @ 12:37:15 & @ 12:38 claim to observe Cooper at intersection.

Considering Pertinent Circumstances of Dispatch attached 220D & 224A reads as follows:
220D: BIK PC IN AREA CARLISLE TOWNS LIMESTONE 0:38:19 eg. (12:38 & 19 secs)
224A: VISUAL 0:38:30 eg. (12:38 & 30 secs)

The Record that was not consider supports 220D & 224A actually observed the same thing at the same time with a mere 11 seconds apart. Dist. didn't consider this & denied & Sixth Cir Affirmed. DC's Never had Terry Reasonable Suspicion For petitioner Cooper.

2) Compelling Reasons: To please exercise judicial discretion. The Sixth Cir after Denying previous 3rd motion pending appeal Filed @ 6th Cir R#33 01/21/2022 "Possible Rule 34 Submission" Petitioner has Never heard of a Federal Court Making a "Possible Rule 34 Submission" could not find this in NO CASE Law Nor Rule "Possible". Between Dist. claiming Record evidence does not exist to support what petitioner Cooper claimed in ineff. assist. Counsel specifically #6 & Sixth Cir hindering this prompt proceeding far pass 120 days AFTER AUSA Rely & MAKING up Possible judgments This Hon. Court Judicial discretion is Greatly Needed. At Bare Minimum there has been Several Factual Dispute & Video photo's depict the Reserved issue to answer NO, Terry Reasonable Suspicion due to Scott V. Harris Video Evidence of Body cam. 9

3) Compelling Reasons: This Hon. Court Judicial discretion is needed to ENforce the accepted way of 2255(b) The Record of the Video photo's correctly actually considered does not Conclusively show that petitioner Cooper is entitled to NO Relief; At Dist Court R#318 ID# 2994-2995 The Magis Judge Found that petitioner Cooper Ineffective assist. Claim of Responding From Police Station were two off's that passed by where Palmer claimed to be when hearing shots fired & less than 30secs later observe petitioner Cooper, is a TOWNSEND V. SAIN 372 U.S. 293 Habeas Corpus Factual dispute. This Hon. Court held there "A Federal Dist. Court must grant an evidentiary hearing where the state court has not actually reached & decided the issues of fact tendered by the applicant; Habeas Corpus necessity of hearing 1-5 Specifically #3-6 ; #3) the factfinding procedure employed by the State court was not adequate to afford a full & fair hearing; The Record of Vide evidence was not presented during petitioner Cooper's evidentiary hearing that Shows & depicts Gov. witness Respond to the Further away Terry Encounter which was in fact made 1st Body cam supports this observation by Affiant of Search Warrant Brill. #4) there is a substantial allegation of Newly discovered evidence; Petitioner Cooper has recently found out that @ the time of Booking For the arrest of drugs found on his person Arrest Info from Fayette County Detention Center list 7 charges for petitioner Cooper between the hrs. of 2AM 9/22/16 - 3:58AM 9/22/16; the alleged search warrant was alleged to be approved 3:43AM 9/22/16. The 1st listed directly under "Current Charges" is the 60 MONTH Federal Gun Charge that is the basis of petitioner Cooper's Federal Conviction(s) which New Evidence from the F.C.D.C. Records Support were Current Charges well before Any Search warrant of Cooper's impounded vehicle. Noteworthy also during Evidentiary hearing Affiant Brill admitted that he did NOT follow, use or adhere to Lexington Police Dept. Inventory Search policy & procedure. This Hon. Court held in Florida V. Wells that this Conduct violates the 4th due to the fact it leaves the off. With broad discretion & therefore the 4th has not been regulated. There also is RAW Data that was Never Considered that supports that petitioner Cooper's arrest took place @ 12:37 @ 601 Logan Pl. This RAW Data is E-911 Digital Record Info. Though this arrest is listed in small print in Cooper's Case Report there is no mention of No other arrest besides Cooper's. The Dist. Court Refused to provide this E-911 RAW Data Digital Record Info despite it actually being dispatch info that is Pertinent Circumstances for consideration of the totality of Circumstances known to Palmer & Gov. witnesses @ that time United States V. ARVIZO 534 U.S. 266 & Sixth Cir has yet to make a Ruling on Anything other than Bail pending Appeal motions Certificate of Appeal has pended far beyond 28 U.S.C. § 2066 Limitations A.U.S.A. Response was approx 8-9 months ago R#22.

Also New evidence places #46616 eg Palmer as the ofc. who made desposition Report @ 601 Logan Pl @ 12:37:15; Lexington Police Dept. provided two Spread Sheets that Confirms Palmer is the listed ofc that requested a tow from the 601 Logan Pl address @ 12:37:15 again All this is E-911 Dispatch (C.A.D.) eg. Computer Aided Dispatch that L.P.D. OPEN Records informs is Recorded in Real Time. To ~~petitioner~~ Cooper's defense of now actual INNOCENCE Palmer CAN NOT be All these ~~Locations~~ IN Real Time. Necessity of hearing is Met by the Townsend V. SHIN Standards by Newly discovered evidence.

4) Compelling Reasons The Standards of Sixth Cir Lee v. Tabe 989 F.2d 869, 871 (6th Cir 1993) (Since a habeas petitioner is appealing a presumptively valid State conviction, both Principles of Comity & Common Sense dictate that it will indeed be the very unusual case where a habeas petitioner is admitted to bail prior to a decision on the merits in a Habeas case).

A) Offender Index that listed 7 charges @ 2AM 9/22/2016 - 3:58 9-22-2016 was listed ON State Court Docket just below the Judge's only Scheduled event this day. The Judge is alleged to have issued a Search Warrant to Seize Evidence that this Judge clearly WAS aware or should have been aware was Seized prior to the alleged Search Warrant therefore there was NO existing Nexus between the place to be searched & evidence to be found considering Fayette County Detention Center Records support petitioner Cooper was ARRESTED & Booked between 2AM - 3:58AM 9-22-16 which is the Same Offender Index INFO listed on State Docket Sheet @ R# 289

B) Elkins V. United States 364 U.S. 206 (1960) the Supreme Court considered the validity of the "Silver Platter doctrine" which allowed evidence that had been illegally seized by state authorities in violation of the Fourth Amendment nevertheless to be admitted in federal Criminal trials. The Supreme Court rejected this doctrine, concluded that "[I]n determining whether there has been an UNREASONABLE Search and Seizure by state ofc's a Federal Court must make an independent inquiry, whether or not there has been such an inquiry by a State Court & irrespective of how any such inquiry may have turned out." UNUSUAL

C) ~~UNUSUAL~~ That the Dist. nor the Sixth Cir made this required inquiry before denying 2255; Bail pending Appeal & Certificate of Appealability as this Supreme Court made prerequisite in 1960 eg "Independent Inquiry" Not Made in this case & No Court will mention OFFENDER INDEX let alone

make the Independent Inquiry into this Factual Const. Violation of Silver Platter Doctrine still today being used. Not only petitioner Cooper would benefit from this Hon. Court's judicial discretion; the importance of the case not only to you but to others similarly situated. This stands not only for petitioner Coopers Silver Platter Doctrine 2255 claim but also the way the Gov. witnesses went about supporting their Terry Encounter one ofc listing two unit #'s as two different ofc's though Attendance Roster support it was one ofc that took Roll call & made attendance 9-22-16 as both 220D SGT. Palmer & 224A P. Palmer

1) Raw Data that supports there was an Arrest made @ 601 Logan Pl that wasn't Cooper in reality, though Raw Data shown at AVSA's filed R#144-1 ID#1134-1135 lists Cooper's info & specific type of firmarm that was inside Coopers locked impounded rental vehicle Lexington Police Dept. OPEN Records Respond provided in that disputes that ofc: 52641-Woodward made this Arrest @ 601 Logan Pl eg #Arsts-001 & provided 1 of 2 Spread Sheet Specifically that AFFINNT Brill made the 12:37 Arrest & the 2AM Arrest. This was never known prior to Aug. 2020 & Cooper filed the evidence in R#289 Objections to Magis. RJD that Dist. Court adopted. It's petitioner Cooper belief that standards in Leev. Jabe 989 F.2d 869, 871 (6th Cir 1993) are met.

5) Compelling Reasons It is Cooper's belief that pending fully briefed application for a Certificate of Appealability has been met by the Offender Index that was filed & before the Dist Court @ R#289 which proves the Search & Seizure was/is UNREASONABLE & IN CONDUCTED IN VIOLATION to the Const. therefore meeting the standards held in 2253(c)(2); Slack v. McDaniel, 529 U.S. 413. The Offender Index is suffice for Bail pending Appeal & also evidentiary hearing considering Cooper was solely taking Plea agreement b/c Plea agreement Factor Basis @ (b) Ofc's Applied for a Search warrant for Cooper's car. Offender Index supports that Cooper was Arrested on the plea agreement counts prior to search warrant making plea INVALID & Cooper actually innocent as this Hon. Court held in Bousley v. United States, 523 U.S. 613. Compelling Reason(s) 1-5 Specifically are derived from questions presented

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dexter D. Coape

Date: 4-17-2022