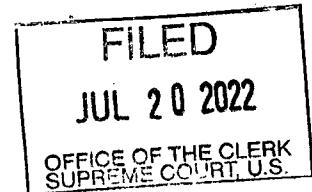


22-6527

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM LANGLEY, JR.

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

William Langley, Jr. 78769-083

(Your Name)

Post Office Box 24550

(Address)

Tucson, AZ 85734

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

SHOULD THE COURT FIND PETITIONER'S CONVICTION
FOR 924(c) et al. UNCONSTITUTIONAL

a. The court can find the two prongs "use" and "carry" of 924(c)
a due process violation that warrants a reversal of those convictions

SHOULD THIS COURT DIRECT THE LOWER COURT TO VACATE THE GUILTY
PLEADS DUE TO LACK OF FACTUAL BASIS

b. The Court should issue such directive so the Plea Agreement and
Statement of Facts can be examined

SHOULD A DEFENDANT BE CONVICTED FOR "USE" AND "CARRY" OF A
FIREARM WHEN THE FACTS DO NOT SUPPORT THE CRIME

c. This question should be answered in Bailey v. United States,
516 U.S. 137 (1995); Muscarello v. United States, 524 U.S. 125
(1998), and in Johnson v. United States, 135 S.Ct 2551 (2015).
Petitioner "use" and "carry" claim supports an actually and
factually innocent as held in Bousley v. United States, 523 U.S.
614 (1998).

WAS THE TRIAL COURT REQUIRED TO EXPLAIN THE ELEMENTS OF THE CHARGES
BEFORE ACCEPTING A GUILTY PLEA

d. The court can find error in the court's failure to address the
elements on the charge or charges

For a guilty plea to be accepted by the court, it must be
satisfied that the defendant is aware of all rights that are being
waived.

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

United States v. Langley, 853 Fed. Appx 900 (th Cir 2021)

United States v. Langley, 2019 U.S. Dist LEXIS 164538 (4th Cir)

United States v. Langley, 2012 U.S. Dist LEXIS 37014 (4th Cir)

United States v. Langley, 2012 U.S. Dist LEXIS 37039 (4th Cir)

United States v. Langley, 2019 U.S. Dist LEXIS 205883 (4th Cir)

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Title 18 U.S.C. 924(c)(1) & (3)(A)(B)
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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 Please see "Related Cases"; 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 Memorandum & Opinion; 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 7/26/2021 & 4/12/22.

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: n/a, and a copy of the order denying rehearing appears at Appendix n/a.

An extension of time to file the petition for a writ of certiorari was granted to and including n/a (date) on n/a (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).

2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury....nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law....

AMENDMENT VI

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 etc.

STATEMENT OF THE CASE

Petitioner was charged for, namely 18 U.S.C. 924(c)(1)(A); (j)(1) and 2. Petitioner and two co-defendants, White and A.J. White drove the car to a business, Uppy's Exxon service station. At all times petitioner was in the back seat of the car high off drugs, and could not comprehend why White and A.J. stopped at the service station. Both co-defendants existed the car, thus, petitioner did not see a gun and did not have knowledge that White would have a gun, he must had it conceal. As they made their way to the service station, then moments later petitioner saw both of them making their way back to the car. It was at this point when petitioner learn of the matters, A.J. told petitioner that he had just robbed the service station, and that White had shot the clerk in the service station, he died from the gun shot.

On February 24, 2012, petitioner and counsel, and the government signed a plea agreement, to plea guilty namely to 924(c)(1)(A). Then on March 2, 2012, the day of the plea hearing, petitioner and counsel and government signed a statement of facts. The court then accepted the guilty plea. On June 28, 2012, petitioner was sentenced to Life for the crime, 18 U.S.C. 924(c)(1)(A).

On September 23, 2016, the district court granted petitioner on his 2255 motion basis on this Court's decision in Johnson v. United States, 135 S.Ct. 2551 (2015) (2015). After all briefs were filed by all parties. The court then on September 23, 2016, the

court reversed the relief that was provided under Johnson, *supra*.

Petitioner argued that this was a wrong decision by the court.

On January 24, 2020, a timely Notice of Appeal was filed. The Court of Appeals dismissed the case on July 26, 2021. Thus, petitioner filed a motion to the Court of Appeals to reopen the case, it was filed on Jan. 20, 2022, the reason for the filing of the motion was because counsel failed to assist petitioner to file a writ to this court. see United States v. Joseph, 359 Fed. Appx 814 (4th Cir 2009) and by the decision by this Court in Wilkins v. United States, 441 U.S. 468 (1979). On April 12, 2002, the Court of Appeals granted the motion to recall its mandate.

Now the case is before this Court to decide the issues herein.

REASONS FOR GRANTING THE PETITION

Should The Court Find Petitioner's
Conviction For 924 (a) (2) Constitutional

a. The court can find the two words "use" and "carry" of 924(c) a due process violation.

1. Petitioner along with two co-defendants drove to a Kapp's Exxon service station located at 5024 Brook Rd. Richmond, Va. At all times petitioner was in the back seat of the car high off of drugs and was unable to comprehend what was going on around him. Thus, co-defendants White and A.J. exited the car, at this point, petitioner did not see anyone with a gun. White and A.J. was making their way to the business, moments later, White and A.J. was making their way back to the car, it was at this moment that petitioner was told that they robbed the

business, and that White shot the victim, who died from the gun shot. Petition did not make any plans to rob the business or to shoot anyone. Similar to this case is Books v. United States, 16 Fed Appx. 244 (4th Cir 2001) ("Nex Jackson testified that he was the driver of the getaway car. . . . He was with Books, Williams, and Spencer in Williams' apartment. The three discussed robbing Ford for drugs and money. When they arrived at the motel, Jackson remained in the car while Books, Williams, and Spencer headed to Ford's room. A few moments later Jackson saw them run from the direction of the room and got in the car. As Jackson was driving away, the three told him that Spencer had shot Ford, the victim died, and Jackson was not charged or convicted for the murder, nor was Jackson charged for aiding and abetting in the robbery and murder.");

Wender v. Alcant, 2018 U.S. Dist. LEXIS 217646 (9th Cir.) ("Petitioner knew that Cisner was armed before the two entered the Cash 'n Go. Second, petitioner was physically present at every point of the robbery, including when the victim was shot."); United States v. Evans, 1997 U.S. App. LEXIS 121 (4th Cir.) ("Although he was aware that his co-defendant intended to commit a robbery... The store clerk was shot and killed."); Kundenbrock v. Snagg, 919 F.2d 1091 (6th Cir. 1990) ("Both defendants [was] in the store, petitioner shot and killed the owner."); and see United States v. Coulter, 2020 U.S. Dist. LEXIS 148499 (4th Cir.) ("defendant's conduct was not attempt, and he did not aid and abet as a principal, he was integrally and crucially involved in the robbery and shot the victim at least once... the government was giving the factual basis for the guilty plea, it noted a co-defendant,

91 (a. Johnson told law enforcement that defendant and a co-defendant got out of the car, went into the victim's residence with a firearm. . .)

see also *Williams v. French*, 146 F.3d 203 (4th Cir 1998) ("The evidence in this case satisfied the *Evans v. Florida*, 453 U.S. 782 (1982) standard because Williams was a major participant in the murder itself. Williams got out of the car carrying his loaded shotgun, went inside the Service Distributors station, stood behind or over Joines, and shot Joines in the back of his head after the robbery had been accomplished. . .") 146 F.3d at 215

2. Petition's case is very much distinguishable from all of the above cases, but if you leave it up to the district court judge in the 7th memorandum and Opinion at 7, Appendix "B", that petitioners carried and used a firearm to rob and then shot and killed the victim.

Mattern can be further from the truth, petition never got out of the car, to use and carry a firearm to act and murder a person, the record is clear on this point, and the government did not put up any evidence to dispute this fact, and the judge never questioned petition as the guilty plea hearing about it. It was the two co-defendants Pinto and X.J. who was caught on video entering and exiting the business, and if petition was with them he too would have been on the video tape. see United States v. Crawford, 626 Fed Appx 405, 408 (4th Cir 2015). He, Williamson testified that video from both bank and the convenience store were of him and Crawford during the robbery and subsequent disposed of their clothing. see also Robb v. Amstel, 2022 U.S. Dist. LEXIS 12241 (4th Cir); Woodson v. Clarke, 2021 U.S. Dist. LEXIS 28284 (4th Cir) and United States v. Howard, 785 Fed App. 93 (4th Cir 2019).

3.7 When petition filed a 2255 motion in light of Johnson v. United States 135 S.Ct. 2551 (2015), the court granted petitioners petition relief. In a 72 memorandum and Opinion, the court reversed itself and denied relief on November 26, 2019. Appendix "D" at 7, the court stated:

" . . . The specific robbery was of an Ully's Exxon on 91 (ex 4, 2005) and during that robbery Lingley "used" and "carried" a firearm that resulted in a murder . . . "

Let's examine Bailey v. United States, 516 U.S. 137 (1995), the court ruled that "1(e)" 924(c) Requires evidence of sufficient to show an active employment of the firearm an operative factor in relation to

the predicate offence. This court further explained that the active employment understanding of "use" certainly includes brandishing, bating, striking with and most obviously, firing or attempting to fire a firearm.

Let's examine this court's decision in *Uuccello v. United States*, 524 U.S. 125 (1998), the court defined the parameters of the "carry" prong under 924(c). The court held that carries a firearm is not limited to carrying a firearm on the person, rather it also applies to a person who knowingly possesses and conveys a firearm in a vehicle in the lock glove compartment. In addition, "the word "carry" in the ordinary sense includes carrying in a car, even if it is not directly on the person."

4. The Fourth Circuit in *911 fitchell v. United States*, 104 F.3d 699 (4th Cir 1997) ("") opined that 911 fitchell did not "use" the firearm within the meaning of 924(c)(1). However, it determined, the evidence indicated that 911 fitchell transported the loaded firearm in the passenger floor compartment of his automobile to the drug exchange. id. at 654. At no time petitioner had a gun, did not get out of the car to "use" or "carry" a gun, did not side and abet someone with a gun to rob and murder someone. The evidence points to the two co-defendants, C. White and R. J. who had a firearm that was used to rob a business and to murder the clerk. Also, both co-defendants was caught entering and exiting the business. *United States v. Friends*, 80 F.3d 667 (2d Cir 1996) ("where firearm was only within reach of the front-seat passenger, front-seat passenger, will stand. While back seat passenger cannot")

be convicted under the "carry" prong"); *Cartagena v. United States*, 937 F. Supp. 36 (4th Cir 1997) ("petitioner's conduct did not violate the "use" prong of 18 U.S.C. 924(c)(1). The government failed to meet its burden of proof that defendant "carried" a weapon. The court vacated the firearm conviction"). Just like in *Hieald*, petitioner was in the back seat of the car, but did not know where a firearm may have been with the front seat passenger and the driver, thus petitioner could not reach for the firearm from one of the co-defendants, thus, petitioner could not be convicted under the "carry" prong, and because petitioner could not reach the firearm, he could not be convicted under the "use" prong, under 924(c)(1).

5. The Fourth Circuit held in *United States v. Hawthorne*, 94 F.3d 118 (4th Cir 1996),

(c. while his petition was pending, the Supreme Court rendered its decision in Bailey v. United States, 516 U.S. 137 (1995), that narrowed the expansion meaning accordly by the Court of Appeals in that case to the word "use" 934(c)(1). The Supreme Court subsequently granted the appellant's petition for writ of certiorari, vacated our judgment and remanded the case to us for further consideration in light of Bailey, supra. We conclude that those convictions must be vacated.)

at 120

(e. Petitioner was also charged with aider and abettor [18 U.S.C. 2] under 18 U.S.C. 934(c). In Rosemond v. United States, 572 U.S. 1151 (2015) ("the court held... Conviction as aider and abettor... which prohibited "using" and "carrying" a firearm and in relation to racketeering or drug trafficking crime held to require proof

of participation in crime with advance knowledge that co-defendant would use a carry a gun...". There was no evidence by the government that petitioners got out of the car Williams v. French, 146 F.3d 203 (4th Cir 1998) and "use" and "carry" a firearm to rob a business and shoot the clerk whom died. As claim by the district court judge. Appendix "B" of Leg. Books v. United States, 16 Fed Appx 244 (4th Cir 2001)

7. Common People v. Banks, 351 F.3d 331 (9th Cir 2005) ("defendant who help plan robbery during which murder occurred, but acted only as neither major participant in robbery nor recklessly to human life."), but see Bouiey v. United States, 533 U.S. 614 (1998)... the Supreme Court remanded the appeal to the district court to afford the defendant the opportunity to show that he was

actually innocent of using a firearm in violation of 924(c).". Petitioner is asking the court for similar, if not the same relief. Petitioner is not only actually innocent but factually innocent of "using" and "carrying" a firearm and in doing certain acts of violence, in this case, robbing and murder, which the district court "disagrees in its" memorandum; Opinion at 7, Appendix "B"

8. In this case before the court, petitioner's co-defendant White was the person using and carrying a firearm, and robbed the business, then shot the victim who died thereafter. The court used this false claim, blaming petitioner for the murder, only to deny petitioner relief by this court's decision in *Johnson v. United States*, 135 S. Ct. 2557 (2015). This Court must step in and stop this miscarriage of justice that most likely spanned across the United States.

Should This Court Direct The Lower
Court To Vacate The Guilty Plea & Deny
To Decl Of Factual Basis

1. The Court should issue such direction as
the Plea Agreement and Statement of Facts
can be reviewed by the court.

2. Petitioner plead guilty to 924(c)(1) M.A.
when petitioner did not "use" and "carry" a
firearm to commit a crime. *United States v.*
Death, 186 F.3d 99 (3d Cir 1999). Defendant's
second supported claim of actual innocence for
purposes of allowing appeal of his 18 U.S.C.S.
924 (C) guilty plea, where there was no evidence
he used and carried firearm or that he had
power and intent to exercise dominion and
control necessary to establish constructive
possession, and insufficient evidence he aided
and abetted another's use or carrying a firearm. . .).

10. It is now here is the Plea Agreement, Appendix "C" and the Statement of Facts, Appendix "D", in part, the plea agreement states:

3. Factual Basis for the Plea

"The defendant admits the facts set forth in the statement of facts."

This is a false claim by the government. Given the government made this claim, it had to be on or before February 29, 2012, because the Statement of Facts was not completed until March 2, 2012, the day of the plea hearing.

Appendix "E" The government want the court to believe that petitioner made this statement on the day of the plea hearing which is not true. Thus, petitioner would not admit to anything that is not

in existence. see e.g. United States v. Simmons, 2021 U.S. dist. lex. 20-15596614 (4th Cir.) ("Defendant's agreement and statement of facts were filed the same day.") also see United States v. Jamison, 2021 U.S. dist. lex. 20-15596618 (4th Cir.)

11. The next claim by the government is the plea agreement, is;

3. Factual Basis for the Plea

" and agrees that these facts established guilt of the offense charged beyond a reasonable doubt."

Appendix "C" A 2

The government is talking about the Statement of

Facts Appendix "D", again, this cannot be true, as already mentioned, ~~just this cannot agree~~ to something that's non-evidency, such as the Statement of Facts that was signed on 21 March 2, 2012 the day of the plea hearing, if anything was agreed to, it would have been on 21 March 2, 2012. The government and court violated all rules regarding Rule 11(f). in United States v. Frege, 60 Fed App 433 (1st Cir 2013) (citing United States v. 41 pc Carty, 394 U.S. 459, 467 (1969)).

12. The next claim by the government in the plea agreement, is

3. Factual Basis for the Plea

" . . . The statement of facts, which is hereby incorporated into the plea agreement . . . "

The question should be, how can the statement of facts could have been incorporated into the agreement when the plea agreement was signed too on February 28, 2012? Appendix "C", and the Statement of Facts was signed on 9th March 2, 2012? Appendix "D" The government may have known what he would write in the Statement of Facts, but petitioner did not know until 9th March 2, 2012

The Statement of Facts, Appendix "D", on page one, again, the court and the government claim that petitioner:

"Knowingly and unlawfully "use" and "carry" a firearm during and in relation to a crime of violence."