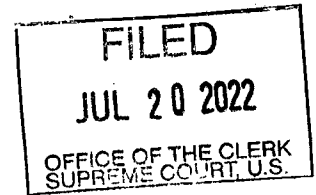


22-6527

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 examine

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)
Title 28 U.S.C. 2255
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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).

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 exited the car, thus, petitioner did not see a gun and did not have knowledge that White would have a gun, he must have had it concealed. 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 learned 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 is un-Constitutional

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

1. Petitioner along with two co-defendants drove
to a Vpp's Exxon service station located at
5024 Broad Rd. Richmond, Va. At all times
petitioner was in the back seat of the car pick up
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. Pettinier 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) ("Alex 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 victims died, and Jackson was not charged or convicted for the murder, nor was Jackson charged for aided and abetted in the robbery and murder.");

Mendez v. Nuerc, 2018 U.S. Dist LEXIS
 217646 (9th Cir) ("Petitioner knew that Cisner
 was armed before the two entered the Cash'n
 Ap. 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."); Kordenbrock v. Drozz, 919 F.2d
 1091 (6th Cir 1990) ("Both defendants [were] 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,

917a 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 Fed 203 (4th Cir 1948) ("The evidence in this case satisfied the *J. Enmund v. Florida*, 458 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 Jones, and shot Jones in the back of his head after the robbery had been accomplished. ") 146 Fed at 215

2. Petitioner's case is very much distinguish from all of the above cases, but if you leave it up to the district court judge in the 71 memorandum and Opinion at 7, Appendix "B", that petitioner carried and used a firearm to rob and then shot and killed the clerk.

Nothing can be further from the truth, petitioner
 never got out of the car, to use and carry a
 firearm to rob 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 petitioner or the guilty plea
 hearing about it. It was the two co-defendants
 White and X.J. who was caught on video entering and
 exiting the business, and if petitioner 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, 'William' testified that
 video from both bank and the convenience store
 were of him and Crawford during the robbery and
 subsequent disposal of their clothing. ...") see also
Bobb v. Armistead, 2022 U.S. Dist. LEXIS 12241
 (4th Cir); *Woodson v. Clarke*, 2021 U.S. Dist. LEXIS
 218284 (4th Cir) and *United States v. Howard*, 785
 Fed App. 93 (4th Cir 2019).

3. When petitioner filed a 2255 motion in light of *Johnson v. United States* 135 S. Ct. 2551 (2015), the court granted petitioner's relief. In a 72 memorandum and Opinion, the court reversed itself and denied relief on 11 November 26, 2019. Appendix "B" at 7, the court stated:

"... The specific robbery was of an Exxon's Exxon on 9/11/2005 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 "11 (a) 924 (c) Requires evidence of sufficient to show an active employment of the firearm as operative factor in relation to

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

Let's examine this court's decision in *McCabe 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 conceals 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 *91 Fitchell v. United States*, 104 F.3d 689 (4th Cir 1997) ("") agreed that 91 Fitchell did not "use" the firearm within the meaning of 924(c)(1). However, it determined the evidence indicated that 91 Fitchell transported the loaded firearm in the passenger glove compartment of his automobile to the drug exchange. id. at 694. At no time petitioner had a gun, did not get out of the car to "use" or "carry" a gun, did not aid and abet someone with a gun to rob and murder someone. The evidence points to the two co-defendants, White and A.G. who had a firearm that was use to rob a business and to murder the clerk. Also, both co-defendants was caught entering and exiting the business. *United States v. Simula*, 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"; *Castro v. United States*, 957 F. Supp. 86 (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 *Sizalds*, 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 any 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),

(" 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 accorded by the Court of Appeals in that case to the word "use" 924(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

(c. Petitioner was also charged with aided and abettor [18 U.S.C. 2] under 18 U.S.C. 924(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 violence or drug trafficking crime held to require proof

of participation in crime with advance knowledge that co-federates would use or carry a gun..." There was no evidence by the government that petitioner 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 7 e.g. *Banks v. United States*, 14 Fed Appx 244 (4th Cir 2001)

7. Compare *People v. Banks*, 351 P.3d 331 (9th Cir 2015) ("... 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 *Bowley 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 relation of violence, in this case, robbing and murder, which the district court disagrees in its 7th 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 victims 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 *Johanson v. United States*, 135 S.Ct. 2551 (2015). This Court must step in and stop this miscarriage of justice that most likely spread across the United States.

Should This Court Direct The Lower Court To Vacate The Guilty Pleas & Our To Jack O'F Actual Basis

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

9. Petitioner plead guilty to 924(C)(1) & al. when petitioner did not "use" and "carry" a firearm to commit a crime. see *United States v. Duth, 188 F3d 99 (3d Cir 1999)*. "Dependent's record supported claim of actual innocence for purposes of allowing appeal of his 18 U.S.C. 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. At issue 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. When the government made this claim, it had to be on or before February 24, 2012, because the Statement of Facts was not completed until 9:15 a.m. on March 2, 2012, the day of the plea hearing.

Appendix "E" The government wants 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. LEXIS 96614 (4th Cir.). "Plea agreement and statement of facts were filed the same day." also see *United States v. Jaramilla*, 2021 U.S. dist. LEXIS 29018 (4th Cir.)

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

3. Factual Basis for the Plea

"... and agree that those facts established guilt of the offense charged beyond a reasonable doubt."

Appendix "C" at 2

The government is telling about the statement of

Facts Appendix "I", again, this cannot be true, as already mentioned, parties cannot agree to something that's non-existence, 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). see *United States v. Frege*, 60 Fed App. 433 (4th Cir 2013) (citing *United States v. Mc Carthy*, 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 plea agreement when the plea agreement was signed for on February 24, 2012? Appendix "C," and the Statement of Facts was signed on 21 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 21 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."