

22-7370

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
APR 20 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Donte Lamont Dingle

— PETITIONER

(Your Name)

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Court of Appeals for the Fourth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Donte Lamont Dingle

(Your Name)

Federal Correctional Institution-Manchester
P.O. Box 4000
Manchester, Kentucky 40962-4000

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

(1) In the case below, the Fourth Circuit found, without any discussion, that the record of the District Court was carefully reviewed and identified no reversible error in relation to Petitioner's claims that (1) the District Court erred when it denied Petitioner's motion to suppress evidence recovered during a search of a residence located in Baltimore City, Maryland due to the warrant lacking probable cause; (2) that the District Court erred when it determined there was no Franks violation as governed by *Franks v. Delaware*, 438 U.S. 154 (1978); (3) that the District Court erred when it neglected to find that the government violated Discovery Rule 16 and Fed. Rule Crim. Proc. 3500 (Jencks material) in relation to a witness testimony; (4) that the District Court erred and further abused its discretion when it limited the Petitioner's cross-examination of a DNA expert; and (5) that, under the plain error doctrine, the issuing judge acted as a " Rubber Stamp" by granting a search warrant that lacked any indicia of probable cause, and that exceeded both the affiant's and the issuing judge's jurisdiction. The first question is:

Whether the Fourth Circuit's decision conflicts with prior decisions of this Court and another United States Court of Appeals, including its own, on the same important matter therefore calling for a review by this Court on a Writ of Certiorari;

The second question is:

Whether the Fourth Circuit overlooked and therefore failed to conduct a complete review under the De Novo standard of review thereby necessitating a review by this Court on a Writ of Certiorari; and

The third question is:

Whether the Fourth Circuit's review of the Petitioner's issues on direct appeal has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

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:

TABLE OF CONTENTS

Questions presented.....	i
Table of Contents.....	ii, iii
Table of Authorities.....	iv, v
Orders and Opinions below.....	vi
Jurisdictional Statement.....	vii
Constitutional Provisions Involved.....	viii
Statement of the Case.....	1
Reasons for granting Certiorari.....	3
Conclusion.....	14

(1) This Court should grant certiorari to address Petitioner's claims that the District Court erred when it denied the motion to suppress due to the warrant lacking probable cause and due to multiple Franks violations as governed by *Franks v. Delaware*, 438 U.S. 154 (1978), and whether such violations were material;.....

(2) This Court should grant certiorari to address whether the District Court erred and abused its discretion when it neglected to find that the government violated Discovery Rule 16 and Jencks obligations as governed by Fed. Crim Proc. Rule 3500 in relation to a witness' testimony and when it further limited the Petitioner's cross-examination of a DNA expert;.....

(3) This court should grant certiorari to address whether, under the plain error analysis of *United States V. Olano*, 507 U.S. 725 (1993) and subsequent precedent, that the Petitioner has shown that the issuing judge acted as a "Rubber Stamp" by granting a search warrant that lacked any indicia of probable cause, and that exceeded both the affiant's and the issuing judge's jurisdiction;.....

(4) This Court should grant certiorari due to the Fourth Circuit's failure to address any of the Petitioner's claims on direct appeal, and further on Rehearing for En Banc, and conduct a complete review of those claims as to not show that the panel's decision has so far departed from the accepted and usual course of judicial proceedings;.....

Conclusion.....

Appendix.....

Opinion.....

U.S. Court of Appeals for the Fourth Circuit
filed 1-27-23.....Appendix A

En banc Order

U.S. Court of Appeals for the Fourth Circuit
filed 2-24-23.....Appendix B

Mandate.....

U.S. Court of Appeals for the Fourth Circuit
filed 3-6-23.....Appendix C

Supporting exhibits attached as other material the Petitioner believes is essential to understanding this petition as governed by Rule 14 of this Court.

CAST Surveillance Report (Exhibit 1)

Search Warrant for 5229 St. Charles Avenue (Exhibit 2)

Order for Search Warrant (Exhibit 3)

Search Warrant for Donte Dingle: DNA sample and search of cellular phones (Exhibit 4)

Appellant's Initial Brief (Exhibit 5)

Government's Rebuttal Brief (Exhibit 6)

Appellant's Reply Brief (Exhibit 7)

Opinion from the Fourth Circuit (Exhibit 8)

Petition for Rehearing En Banc (Exhibit 9)

En banc Order (Exhibit 10)

Motion to Withdraw (Exhibit 11)

Supplemental Motion to Withdraw (12)

Motion to Appoint Counsel (Exhibit 13)

Mandate (Exhibit 14)

Order for Withdrawal (Exhibit 15)

Order for Appointment of Counsel (16)

Excerpt of Sentencing Hearing (17)

TABLE OF AUTHORITIES CITED

United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988).....	5
United States v. Benkahla, 530 F.3d 300 (4th Cir. 2011).....	9
United States v. Brown, 631 F.3d 638 642 (3rd Cir. 2011).....	1, 10
Cambpell v. United States, 365 U.S. 85, 81 S. Ct. 421 L.ed 2D428 (1961).....	8
United States v. Colkley, 899 F.2d 297, 300 (4th Cir. 1990).....	2, 10
United States v. Corral, 899 F.2d 927 (10th Cir. 1990).....	1
United States v. Curry, 993 F.2d 43, 45 (4th Cir. 1993).....	9
United States v. Doyle, 650 F.2d 460 (4th Cir. 2011).....	1, 5
United States v. Glover, 755 F.3d 811 (7th Cir. 2014).....	6, 10
United States v. Grossman, 400 F.3d 212 (4th Cir. 2005).....	1
Franks v. Delaware, 438 U.S. 154 (1978).....	i, ii, 1, 4, 6
Illinois V. Gates, 462 U.S. 213, 238 (1983)	5
United States v. Jackson, 819 F.2d 345 (5th Cir. 1987).....	10
United States v. Jacobs, 986 F.2d 1231 (8th Cir. 1993).....	6, 10
United States v. Leake, 998 F.2d 1354 (6th Cir. 1993).....	10
United States V. Leon, 468 U.S. 897 (1984).....	1, 9
United States v. Lull, 824 F.3d 109 (4th Cir. 2016).....	10
United States V. Lalor, 996 F. 3d 1578 (4th Cir. 1993).....	1
United States v. Martin, 839 Fed. Appx. 789 (4th Cir. 2021).....	8
United States V. Miller, 925 F.2d 695, 698 (4th Cir. 1991).....	1
Miller v. Prince George's Co. Md. 475 F.3d 621, 628 (4th Cir. 2007).....	6
United States v. Moody, 931 F.3d 366, 371 (4th Cir. 2019).....	6
United States v. McNeal, 818 F.3d 141 (4th Cir. 2016).....	1
Malley v. Briggs, 475 U.S. 335 (1986).....	6
Olden v. Kentucky, 488 U.S. 227, 231 (1988).....	9
Ornelas v. United States, v. 517 U.S. 690 116 S. Ct. 1657 (1996).....	5
United States v. Olano, 507 U.S. 725 (1993).....	2, 9
United States v. Perez, 393 F.3d 457 (4th Cir. 2004).....	2, 9
United States v. Petersen, 210 F.3d 363 (4th Cir. 2000).....	1
United States v. Pulley, 987 F.3d370, 377 (4th Cir. 2021).....	1
United States v. Rice, 825 Fed. Appx. 74 (3rd Cir. 2020).....	11
United States v. Suarez, 906 F.2d 977, 934 (4th Cir. 1990).....	5
United States v. Tagg, 886 F.3d 579, 590 (6th Cir. 2018).....	6
United States v. Tate, 524 F.3d 449 (4th Cir. 2003).....	10
United States v. Wharton, 840 F.3d 163, 169 (4th Cir. 2016).....	2, 6
United States v. Weaver, 99 F.3d 1372 (6th Cir. 1996).....	10
United States v. Wilhelm, 80 F.3d 116, 118 (4th Cir. 1996).....	1, 10
United States v. Wooden, 693 F.3d 440 (4th Cir. 2012).....	6, 11
United States v. Yarber, 915 F.3d 1103 (7th Cir. 2019).....	6
Zurcher v. Stanford Daily, 436 U.S. 547, 98 S.Ct. 1970, L.Ed 2d. 525 (1978).....	1

Constitutional Provisions:

U.S. Const. Amend. 4.....	2, 10
U.S. Const. Amend. 6.....	2, 9, 10
U.S. Const. Amend. 14.....	9

Statutes:

18 U.S.C. 922 (g) (1).....	1
18 U.S.C. 924 (c).....	1
18 U.S.C. 1951 (a).....	1
28 U.S.C. 1254.....	vi
28 U.S.C. 2101.....	vii

Rules:

Fed. R. Crim. P. 16.....	i, ii, 2, 7, 8, 9
Fed. R. Crim. P. 35 (b).....	2
Fed. R. Crim. P. 3500 (Jencks Material).....	i, ii, 2, 7, 8, 9
FRAP 41, Loc. R. 41.....	11

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 _____ 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 JANUARY 27, 2023.

[] 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: FEBRUARY 24, 2023, and a copy of the order denying rehearing appears at Appendix B.

[] 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

Amendment 4 Unreasonable searches and seizures.

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.

Amendment 6 Rights of the accused.

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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 20, 2018, the Petitioner (Donte Lamont Dingle herein) was arrested by Baltimore County detectives in Baltimore City in relation to a series of robberies that occurred in the local jurisdiction of Baltimore County, Maryland. (See Exhibits 1 and 2, and 3)

Subsequently, after being arrested, the Petitioner was charged with more robberies that occurred in Anne Arundel County, Maryland. On January 15, 2019, Baltimore City Detective Mohammed Ali, who was also acting as a United States Marshall assigned to a joint task force, submitted an affidavit to conduct a search of Dingle's cellular phones and to obtain a DNA sample. (See Exhibit 4) On April 23, 2019, Petitioner was indicted federally, and the following day, the state charges were Nolle Prosequi by the State.

The Petitioner was then charged in an eight count indictment with Count one, Hobbs Act Robbery Conspiracy, in violation of 18 U.S.C. 1951 (a); Counts two, four, and six, Hobbs Act Robbery, in violation of 18 U.S.C. 1951 (a); Counts three, five, and seven, Using, Carrying, and Brandishing a firearm during and in relation to a Crime Of Violence in violation of 18 U.S.C. 924 (c); and Count eight, felon in possession of a firearm and ammunition, in violation of 18 U.S.C. 922 (g) (1).

On February 20, 2020, Petitioner (Mr. Dingle herein) was charged in a superseding indictment with an additional robbery in violation of 18 U.S.C. 1951 (a) and related counts. No codefendants were charged in either indictment. On September 21, 2020, a Motions hearing/Franks hearing was held before the Honorable Deborah K. Chasanow, Senior United States District Court judge. The issues relevant to the hearing were:

(1) Whether the search warrant affidavit prepared by a Detective Jason Blevins of the Baltimore County Police Department supported probable cause to search 5229 St. Charles Avenue;

(2) Whether Detective Blevins was dishonest and/or reckless in preparation of the search warrant in violation of Franks v. Delaware, 438 U.S. 154 (1978), and further were those Franks violations material; (See Exhibit 2 pg. 8-10)

and (3) Whether Detective Ali was subsequently dishonest and/or reckless in preparation of his search warrant affidavit in violation of Franks v. Delaware, 438 U.S. (1978) as well... (See Exhibit 4 pg.8)

After a full hearing, the motion to suppress was denied, except no finding was made by the District Court as to Detective Ali's affidavit that placed the instant case in federal court to begin with.

Beginning on October 13, 2020, Petitioner was tried in the United States District Court in Greenbelt, Maryland, before the Honorable Deborah K. Chasanow, and subsequently found guilty on all ten counts of the Superseding indictment on October 20, 2020.

Sentencing subsequently occurred on June 23, 2021, in which Petitioner (Mr. Dingle herein) was sentenced to a total term of 30 years.

A timely appeal was filed on the same date to the United States Court of Appeals for the Fourth Circuit.

On direct appeal, the Petitioner, through former counsel Mary E. Davis, argued that the District Court erred when it denied the motion to suppress evidence recovered during the search of 5229 St. Charles Avenue located in Baltimore City, Maryland due to the warrant lacking probable cause. (See Exhibits 5 and 7)

"In determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched." (See United States v. Lalor, 906 F.2d at 582, quoting, Zurcher v. Stanford Daily, 436 U.S. 547, 556 & n. 6, 98 S. Ct. 1970, 1976 & n. 6, 56 L. Ed. 2d 525 (1978) and United States v. McNeal, 818 F.3d 141 (4th Cir. 2016)). Further a "nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence. Courts often rely on police officers as to where contraband may be kept..." See United States v. Grossman, 400 F.3d 212 (4th Cir. 2005), United States v. Corral, 899 F.2d 927 (10th Cir. 1990), and see also United States v. Peterson, 210 F.3d 363 (4th Cir. 2000) (same). That did not happen in this case nor was the error reviewed under the De Novo standard of review on direct appeal or subsequently En banc review. (See United States v. Wilhelm, 80 F.3d 116, 118 (4th Cir. 1996), citing United States v. Miller, 925 F.2d 695, 698 (4th Cir. 1991). "When reviewing the probable cause supporting a warrant, a reviewing court must consider only the information presented to the magistrate who issued the warrant..." United States v. Wilhelm, 80 F.3d at 118. The Petitioner submits that the District Court's finding of probable cause to search 5229 St. Charles Avenue located in Baltimore City, Maryland, in the instant case is subject to De Novo review by this Court. Moreover, the District Court's factual findings were clearly erroneous and were at no time reviewed by the United States Court of Appeals for the Fourth Circuit on direct appeal or En banc review.

The second issue raised on appeal was that the District Court erred when it determined there was no Franks violation as governed by Franks v. Delaware, 438 U.S. 154 (1978). "A District Court's resolution of whether a false statement in a warrant affidavit was made with reckless disregard is subject to reversal only upon a finding of clear error"...(See United States v. Pulley, 987 F.3d 370, 377 (4th Cir. 2021), citing United States v. Brown, 631 F.2d 638, 642 (3rd Cir. 2011). It was established at the hearing that Detective Blevins, the affiant who swore out the affidavit to search the premises of 5229 St. Charles Avenue in Baltimore City, Maryland had:

(1) Mischaracterized information given to him by surveillance officers in relation to Dingle and the residence of 5229 St. Charles Avenue; and

(2) Omitted material information from the issuing judge that all data bases that he reviewed prior to drafting his affidavit to gain entry into 5229 St. Charles Avenue showed that Petitioner resided at 3915 Callaway Avenue, Apartment 102, Baltimore City, Maryland, and not at the address sought to be searched.

It was further developed that Detective Ali had also provided false information within his affidavit as well in relation to Dingle (the Petitioner herein) and the residence of 5229 St. Charles Avenue. Despite substantial evidence to the contrary, the District Court held there was no Franks violation committed by Detective Blevins and subsequently did not make a proper finding as to Detective Ali's misconduct even though Ali's affidavit was properly admitted into evidence at the Suppression hearing.

If, following a Franks hearing, "an affiant's material perjury or recklessness is established by a preponderance of the evidence, the warrant must be voided and evidence or testimony gathered pursuant to it must be excluded. A warrant that violates Franks is not subject to the Good Faith exception to the exclusionary rule." *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990). When facts have been recklessly or intentionally omitted the Court, in assessing materiality, should insert the facts recklessly or intentionally omitted, and then determine whether or not the corrected warrant affidavit would establish probable cause. If the correct warrant affidavit establishes probable cause, there is no Franks violation." (*United States v. Wharton*, 840 F.3d 163, 169 (4th Cir. 2016)). The Petitioner submits that both Detectives Blevins and Ali committed substantial Franks violations and that they were indeed material, and that the District Court's finding to the contrary was clearly erroneous. (See Exhibits 5 and 7)

Third, the Petitioner argued on appeal, through previously mentioned appellate counsel, that the District Court erred when it neglected to find that the government violated Discovery Rule 16 and Jencks obligations as governed by Rule 3500 when it failed to strike a witness' testimony identifying an item of clothing as the clothing allegedly worn by the perpetrator during a robbery.

The Petitioner argued that the government wrongfully elicited identification testimony from a witness in relation to clothing items and a cellular phone as being the same items that he saw two weeks prior to his business being robbed without first disclosing to the defense that the witness had done so prior to trial. Also, the Petitioner argued that the failure of the District Court to strike the witness' identification testimony was not harmless, and was wrongfully admitted such that the District Court did not even make a ruling on the motion to strike the testimony concerning the shirt. (See Exhibits 5 and 7)

Fourth, Petitioner argued that the District Court erred when it limited the defense's cross examination of a DNA expert violating Petitioner's right to confront witnesses under the Sixth Amendment to the United States Constitution. The DNA expert was the government's most critical witness. None of the victims of the robberies could identify the assailant nor were they ever given an opportunity to do so by law enforcement. The only evidence linking Dingle, the Petitioner herein, to the robberies was the DNA expert's questionable testimony that DNA recovered from the items seized at the St. Charles premises belonged to Dingle. (See Exhibits 5 and 6)

The DNA expert's testimony was questionable due to multiple of her findings either being inconclusive or belonging to several unidentified male and female persons other than Dingle. Without the ability to effectively cross examine this witness on this significant issue, due to the District Court's abuse of discretion, went on to violate the Petitioner's constitutional right to cross examine the DNA expert witness as governed by the Sixth Amendment.

Finally, and last but not least, the Petitioner argued on appeal that the issuing judge acted as a "Rubber Stamp" by approving a search warrant that lacked any indicia of probable cause as governed by *United States v. Leon*, 468 U.S. 897 (1984), and that the warrant exceeded both the affiant's and the issuing judge's jurisdiction. This issue was raised under the plain error standard of review and was, at no time, challenged as being waived by the government on direct appeal. (See Exhibit 6) and (See *United States v. Olano*, 507 U.S. 725 (1993)). Dingle, the Petitioner herein, argued that the issuing judge was not in possession of a substantial basis to conclude that any evidence of the robberies would be present at the time and location of the search. (See *United States v. Doyle*, 650 F.3d 460 (4th Cir. 2011)). The Petitioner also argued that the issuing judge did not act as a neutral and detached magistrate by granting the warrant under those circumstances due to the search warrant being a "Bare Bones" affidavit without any indicia of probable cause as to render official belief in its existence entirely unreasonable. See *United States v. Perez*, 393 F.3d 457 (4th Cir. 2004). In addition, the Petitioner argued both Detective Blevins and the issuing judge's actions in relation to the issuance of the search warrant for the St. Charles premises were in violation of the Fourth Amendment to the United States Constitution. (See Exhibits 5, 6, and 7)

On January 27, 2023, the Fourth Circuit, without any discussion whatsoever as to any of the Petitioner's claims, issued a per curiam opinion and judgement affirming the District Court. (See Exhibit 8)

On January 30, 2023, Petitioner, through former appellate counsel previously mentioned, filed a Petition for Rehearing En banc or for a Panel rehearing (Fed. R. Crim. P. 35 (b)) staying the mandate for the following reasons:

(1) The Panel's decision conflicted with a prior decision of its own Court thereby calling for En banc review; and

(2) The Panel's decision overlooked and failed to apply De Novo review thereby necessitating a panel rehearing. (See Exhibit 9)

On February 24, 2023, again without any discussion, the Fourth Circuit issued an order denying the petition.

On February 27, 2023, Petitioner's former counsel filed a Motion to withdraw on March 1, 2023, and the Petitioner subsequently filed a Motion to Appoint Counsel in which the Motion to withdraw was granted on March 17, 2023, and the Motion to appoint Counsel was denied on the the same day. (See Exhibits 11, 12, 13, 15, and 16) On March 6, 2023, the Fourth Circuit filed the final judgement with its mandate. (See Exhibit 14)

This timely petition follows:

REASONS FOR GRANTING THE PETITION

(1) This Court should grant certiorari to properly address Petitioner's claims that the District Court erred when it denied the Motion to Suppress due to the warrant lacking probable cause, and due to the affiant committing multiple Franks violations as governed by *Franks v. Delaware*, 438 U.S. 154 (1978), and whether such violations were material to the probable cause determination.

The Petitioner, (Dingle herein), contends that the District Court erred by not granting the motion to suppress evidence seized at the St. Charles premises. Reason Being, the Court had before it sufficient evidence that there existed no probable cause, -let alone Good Faith-, to execute a search at that location looking for items related to robbery. It also had before it a substantial showing of Franks violations that it chose to ignore.

At the suppression hearing, Detective Blevins acknowledged during his testimony that " he only believed that the surveillance team had identified Dingle's residence just because they were able to follow him back to St. Charles Avenue from a court appearance" ... (See Exhibits 5 pgs. 7-8, 9-19 and Exhibit 7 pgs. 1-4, 4-10, 18-21 and JA 163) Nothing else. He also testified that "he was aware, after looking up all of Dingle's identifying information, that Dingle resided not at 5229 St. Charles, but at 3915 Callaway Avenue based on all of the data bases that he reviewed prior to submitting his affidavit." (See Exhibits 5 pgs. 9-13 and Exhibit 7 pgs. 1-4 and JA 188-192) He further testified that " he did not make the issuing judge aware of this significant information or include it within his affidavit..." (See Exhibits 5 and 7 and JA 157, 162, 171, 191) He also testified that " he wrote in his affidavit that 'Investigators observed Dingle exit and return to 5229 St. Charles Avenue...on a regular basis', (See Exhibits 2 pg. 10, Exhibit 5 pgs. 7-8, 9-13 and Exhibit 7 pgs. 1-4, 4-10 and JA 94) and then testified that "his reasons for doing so was because the two times that the CAST team saw Dingle he was either going to or coming from that address" (See Exhibit 5 and JA 169-170) Then, on cross examination, he testified that "It was relayed to him from the CAST team that Dingle was at no time seen approaching 5229 St. Charles Avenue but one of three locations, and due to homes being there, they could not see which one of the three..." (See Exhibits 5, 6, and 7 and JA 192-194) which completely contradicted not only what he documented in his affidavit, but also to what he testified to during direct examination. He further admitted on cross that " he had possession of the CAST team's surveillance report during the course of the investigation, and that the report does not have Dingle at any time entering 5229 St. Charles let alone a home within any three house radius." (See Exhibits 5 and 7 and JA 184-194) That report specifically reads that "Dingle parked the car on the 5200 block of St. Charles, and entered an unknown residence." (See Exhibit 1)

It was also established at the hearing that Blevins, at no time, asserted why he believed that evidence of the robberies would be found at 5229 St. Charles Avenue. Therefore, there was nothing to establish a nexus between Dingle's suspected criminal activity and the St. Charles residence. Herein, the affidavit lacked any sufficient nexus, and was therefore made part of the record. (See Exhibits 2, 5, and 7 and JA 258, 275-276)

Plainly speaking, the District Court had substantial evidence before it to grant the motion to suppress, yet the District Court went on to do the contrary. It went on to make factual findings that were not supported by the record stating "that even if the warrant was not sufficient on its face, the issuing judge had sufficient information from which to make that conclusion" ... (See Exhibit 5 and JA 250) But the issuing judge had no more information beyond that contained in the affidavit drafted by Blevins. Therefore, the District Court's ruling was clearly erroneous since it made factual findings not supported by the record.

It was found that both Detective Blevins and the CAST team were aware that the Petitioner resided at 3915 Callaway Avenue, and despite finding that the investigators were aware of this material fact, and further did not inform the issuing judge of this significant information, the District Court still found no Franks violation. (See Exhibit 5 and JA 251-252) This ruling was also clearly erroneous.

Also, the District Court found that Detective Blevins was aware that, at no time, was the Petitioner ever seen entering 5229 St. Charles Avenue as what he declared in his affidavit. It went on record to state that "the notion that he (Mr. Dingle) was regularly seen may be a bit of an overstatement. What Detective Blevins said was that he believed he was seen entering on the 17th and exiting on the 19th, but we know he had been elsewhere in between the car was moved. So it's an overstatement to say on a regular but, again, we're not dealing with months; we're dealing with a period of days..." (See Exhibit 5 and JA 251-252)

First, and foremost, Blevins, at no time, testified that he believed that Dingle was seen entering the St. Charles residence on the 17th of July 2018. What he stated was that "the CAST team relayed to him that Dingle was seen approaching one of three locations but, due to homes being there, they couldn't see which one of the three, and that he believed that to be accurate to what he went on to document within his affidavit..." (See Exhibits 5 pgs. 24-27, 29-33 and Exhibit 7 pgs. 4-10 and JA 194-195)

He also stated that "the surveillance team's report does not indicate nor assert that Dingle ever entered that address." He further testified that "a member of the surveillance team advised him that Dingle stayed the evening at that address but he could not recall who informed him of this," (See Exhibit 5 and JA 186) but admitted there was nothing indicating such activity within the surveillance report nor did he go on to question any member of the team about such occurrences. He then went on to contradict that testimony by stating "that Dingle was at no time observed entering that address but just told that Dingle stayed

the night at 5229 St. Charles due to the vehicle being found in the area that early in the morning, and with the team never seeing Dingle enter that location-while they were conducting surveillance-that Dingle spent the night there", (See JA 170, 184-187, 210, 445-446) establishing as well that he knew well beforehand that the CAST team had been absent from the entire area for over an hour and were not always conducting surveillance to be able to state where the Petitioner was located.

The District Court admitted, on the record, not once but twice, that what Blevins documented in his affidavit was not the actual specifics of what actually occurred in relation to the Petitioner and the St. Charles location. (JA 250, 253, 277), but still found no Franks violation. This was clearly erroneous as well.

Finally, the Petitioner presented evidence that Detective Ali also subsequently committed Franks violations within his affidavit by falsely stating that "Investigators observed Dingle enter the address on the evening of July 18, 2018, and that it was believed that Dingle spent the night." (See Exhibit 4 pg.8 and JA 213-214, 243-244, 256-257) Ali's affidavit was admitted into evidence, without any objection from the government, (See JA 213-214), and the government, in its rebuttal on direct appeal, conceded that this statement was indeed false, but immaterial to the probable cause determination. (See Exhibit 6, pg.2, footnote) This Franks violation was, at no time, ruled on by the District Court.

On direct appeal to the Fourth Circuit, the panel affirmed the Petitioner's convictions without any discussion whatsoever in relation to any of Dingle's claims of error and whether those errors and violations were indeed material to the Probable cause determination.

Then to make matters even more complicated, the panel did not conduct a complete review of the probable cause determination under De Novo standard of review of Petitioner's claims, and did not further grant Petitioner's Petition for Rehearing En banc as governed by Fed. R. Crim. R. 35 (b) without any discussion whatsoever as well. Nor did it go on to acknowledge that its decisions to uphold the Petitioner's convictions were in conflict with prior decisions held by, not only its own Court, but of this honorable Court as well.

" An assessment of the presence of probable cause must be based on the totality of the relevant circumstances, rather than on the technical or rigid demands of a formulaic test...In making a probable cause assessment, a judicial officer must simply make a practical, common sense decision whether given all the circumstances set forth in the affidavit...there is a fair probability that contraband or evidence of a crime will be found in a particular place"..."(See Illinois v. Gates, 462 U.S. 213, 230-31, 103 S. Ct. 2317 (1993), Ornelas v. United States, 519 U.S. 690, 116 S. Ct. 1657 (1996) and United States v. Suarez, 906 F.2d 977, 984 (4th Cir. 1990)-" Probable cause to search exists when...the totality of the circumstances are sufficient to lead a prudent person to believe that the items sought ...will be present at the time and place of the search."

Detective Blevins, at no time, gave any reasons of why he believed that 5229 St. Charles Avenue would contain any evidence of the robberies. Prior to drafting his affidavit, he was never relayed any information from the CAST team that the Petitioner was living or staying at that address or that Dingle was likely keeping items related to robbery at that location. In fact, he was never advised that Dingle ever entered that address at any time based on his testimony at the suppression hearing and from what was presented to him within the surveillance report. (See Exhibit 1 and JA 194) The information within the affidavit in relation to the surveillance team's observations of Dingle was the only thing presented to the issuing judge who issued the warrant. And, at no time, was a nexus established between the St. Charles premises and Dingle's suspected criminal activity.

"The nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence..." (See United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988)) The affidavit makes no assertion that the St. Charles residence was the Petitioner's home or residence nor did Blevins explain how his training and experience supported probable cause that items related to robbery would be located in a residence that Dingle was seen exiting one time. (See Exhibit 1)

In fact, Blevins was well aware when he prepared his affidavit that Dingle resided at 3915 Callaway Avenue, and did not put this material information within his affidavit to the issuing judge or make him aware of it. He also did not state why he believed that the Petitioner lived or stayed at 5229 St. Charles, and not at 3915 Callaway Avenue. In fact, he never mentioned that Dingle lived or stayed at the address sought to be searched nor did he mention the Callaway address. Plainly speaking, he did not give any reasons whatsoever of why he believed the St. Charles residence would contain evidence of a crime, therefore not establishing any nexus. And the Fourth Circuit's ruling overlooked and failed to apply De Novo review to address the issue of whether a search warrant establishes probable cause when there were no facts cited in the application to establish a nexus between the crime and the place to be searched.

Further, the Fourth Circuit's decision conflicts with prior decisions of, not only this Court, but of its own Court as well. In United States v. Doyle, 650 f.3d 460 (4th Cir. 2011), it was held by the Fourth Circuit that "the critical element in reasonable search is not that the owner of the property is suspected of crime, but that there is a reasonable cause to believe that the specific things to be searched for and seized are located on the property to which entry is sought...Accordingly, residential searches have been upheld only where some information links the criminal activity to the defendant's residence..." and See United States v. Martin, 839 Fed. Appx. 789 (4th Cir. 2021)-" A sufficient nexus between a defendant's criminal conduct and his residence can exist even when the affidavit supporting the warrant contains no factual assertions directly linking the items sought to the defendant's residence. Courts may rely on officer's assertions of training-and experience-based knowledge to support the nexus between criminal activity and a defendant's residence..."

Again, Detective Blevins never asserted nor indicated that the St. Charles residence was Dingle's home or residence, and neither did he further assert any training-and experience-based knowledge to support any nexus. This Court should grant certiorari in order to address whether such an affidavit such as the one involved here established probable cause to search-a residence that the Petitioner was only seen exiting once.

Further, other circuits are in conflict with the decision of the Fourth Circuit. (See United States v. Yarber, 915 F.2d 1103, 1106 (7th Cir. 2019) and United States v. Tagg, 886 F.2d 579, 590 (6th Cir. 2018) in which both circuits have found probable cause based on evidence that consisted of more than simply exiting a premises. A finding that the Fourth Circuit did not make. (See Exhibit 8 pg. 2-3 and Exhibit 10)

Most importantly, this Court should grant certiorari to address the multiple Franks violations, and to determine whether such violations were material to the probable cause determination.

Detective Blevins knew all along that the surveillance team, at no time, observed Dingle enter 5229 St. Charles Avenue. (See Exhibits 1, 5, 6, and 7 and JA 186-187, 194, 220, 227) He had possession of the surveillance report prior to drafting his affidavit. (See JA 186-187) He was informed verbally, according to his testimony at the Franks/Motions hearing, that the CAST team could not tell which of the three addresses that the Petitioner entered. (See JA 194) He was well aware that the CAST team never saw Dingle's vehicle parked in front of 5229 St. Charles on July 17, 2018, and rather found the vehicle unoccupied on Linden Heights Avenue (a block over) at 4:30 a.m. on July 19, 2018. (See Exhibit 1) He was also aware that the CAST Team had left the area, and were absent for over an hour before returning. (See Exhibits 1, 5, 7 and JA 235-236, 445-446)

Blevins was informed that Dingle was only seen exiting the address on one occasion, and, at no time returning to it. (See Exhibit 1, and JA 225-227, 447) And after being in possession of these material things, he still went on to document that "Investigators observed Dingle exit and return to 5229 St. Charles Avenue...On a regular basis." (See Exhibit 2)

In addition, he documented that the Petitioner "spent the night" at that address already aware that no one ever saw Dingle enter that address at any time, along with the significant fact that there was no surveillance conducted on Dingle on July 18, 2018, to state otherwise. (See JA 223, 227-228) The surveillance was only conducted on two days: July 17th and July 19th. And, at no time, was Dingle seen staying overnight at 5229 St. Charles.

Next, and most significantly, Blevins was well aware that all the data bases that were reviewed prior to him drafting his affidavit to the issuing judge, showed that Dingle resided at 3915 Callaway Avenue, and that nothing indicated nor asserted that Dingle resided at 5229 St. Charles. Instead of informing the issuing judge of this material information, Blevins went on to conceal this information. Just as he concealed the material fact that Dingle was never seen entering 5229 St. Charles.

"Reckless disregard can be established by evidence that an officer acted with a high degree of awareness of a statement's probable falsity, that is, when viewing all the evidence, the affiant must have entertained serious doubts as to the truths of his statements or obvious reasons to doubt the accuracy of the he reported..." (See Miller v. Prince George's Co. Md, 475 f.3d 627, 6258 (4th Cir. 2007)

"With respect to the second-that is materiality-the defendant must show that the false statements were necessary to the finding of probable cause"...(See United States v. Moody, 931 F.3d 366, 371 (4th Cir. 2019), quoting Franks, 438 U.S. at 156.)

"When facts have been recklessly or intentionally omitted the Court, in assessing materiality, should insert the facts recklessly or intentionally omitted, and then determine whether or not the corrected warrant affidavit would establish probable cause. If the corrected warrant affidavit establishes probable cause, there is no Franks violation..." (See United States v. Wharton, 840 F.3d 163, 169 (4th Cir. 2016))

There is no doubt that Detective Blevins misrepresented the surveillance team's observations in relation to Dingle and the St. Charles premises. (See Exhibit 1 and JA 194) He went on to conceal what actually occurred from the issuing judge as he did with the significant fact that all data bases reviewed showed that the Petitioner resided at 3915 Callaway Avenue.

And both were material to the probable cause determination. Other circuits, including this Court, have agreed that "when an affiant intentionally or recklessly put lies before a magistrate, or hides facts from him' violates the Constitution unless the untainted facts themselves provide probable cause..." Here they did not. (See Malley v. Briggs, 475 U.S. 335 (1986) and see United States v. Glover 755 F.3d 811 (7th Cir. 2014)-" A material...omission is one that would alter the probable cause determination"...and see United States v. Jacobs, 986 F.2d 1231 (8th Cir. 1993)-"The omission occurred at least with reckless disregard of its effect upon the affidavit....Any reasonable person would have known that this was the kind of thing that the judge would wish to know..."

And the District Court was presented with substantial evidence of Detective Blevins' intentionality and/or recklessness, but still ruled otherwise without properly taking into account substantial evidence to the contrary...(See United States v. Wooden, 693 F.3d 440 (4th Cir. 2012)-"A court commits clear error when it makes findings without properly taking into account substantial evidence to the contrary..."

Further, the District Court did not make a proper finding on the actions of Detective Ali's properly admitted affidavit in which he stated, under oath, that "Investigators observed Dingle enter the St. Charles address on the evening of July 18, 2018, and it

was believed Dingle stayed the night." (Exhibit 4 pg. 8 and JA 213-214) This was also, without any doubt, false as the District Court was presented with substantial evidence in the form of testimony from one of the surveillance officers (Detective Gregory Depew) who saw Dingle; along with his properly admitted report in which contradicted both Ali's and Blevins' affidavits. Yet, that Court still did not make a proper finding in relation to this Franks violation. (See Exhibit 5 pgs. 24-27, and JA 242, 256-257)

Also, the Fourth Circuit failed to do so even more. Without any discussion whatsoever, that Court just went on to affirm the Petitioner's convictions. This Court should grant certiorari to proper address the Petitioner's claims, and determine whether such claims are indeed meritorious, and indeed, material to the probable cause determination.

(2) This Court should grant certiorari to address whether the District Court erred and abused its discretion when it first neglected to find that the government violated Discovery Rule 16 and Fed. Crim. P. Rule 3500 (Jencks Material) in relation to a witness' identification testimony, and when it further limited the Petitioner's cross-examination of DNA expert witness.

The Petitioner (Donte Lamont Dingle herein) contends that the District Court erred by neglecting to find that the government was obligated to disclose relevant and material information pursuant to Discovery Rule 16 and Fed. Crim. P. Rule 3500 (Jencks Material) that a government that a government witness had previously identified items shown to him prior to trial that matched items later seized by police from Petitioner's alleged bedroom.

Andre Abbott testified concerning the final robbery that occurred on July 12, 2018. The following occurred during this exchange on direct examination on October 15, 2020:

Q-"I would like to show you a different exhibit. Mr. Abbott, if you can look at the photo and look at government's exhibit 39b."

A-"Uh-Huh."

Q-"Do you recognize this shirt?"

A-"Yes."

Q-"And I'm showing the physical exhibit, government's exhibit 39 and 39a. Do you recognize this item?"

A-"Yes."

Q-"How is it that you recognize governments' exhibit 39 and 39a?"

A-"Well, probably two weeks before the robbery I was in the store and just chilling, and I look outside and there was this guy kind of with his head down looking, walking back and forth, just looking around. And I thought to myself, that dude is a little weird. He's wearing a security guard uniform with his pants sagging and regulars shoes. Something's not right. So I thought something was not right."

Q-"And what was the man doing?"

A-"Well, he had a phone that was bedazzled out."

xxx

Q_"I would like to show government's exhibit 40b. Do you recognize this item?"

A-"Uh-Huh."

Q-"How do you recognize this item?"

A-"Because this is what I saw two weeks or so before the robbery."

Q-"Does this phone look similar to the phone that the man who wore that shirt was wearing?"

A-"Yes."

Q-"I'm showing you government's exhibit 40. Do you recognize this item?"

A-'Yes."

Q-"Does this appear to be the phone that you saw the man carrying?"

A.-Yes."

The defense argued that Abbott's testimony had only not been disclosed, but was not unreliable. Although he spoke to detectives several times after the robbery, the government, at no time, disclosed to the defense that it initiated every meeting with Abbott, and further presented to him, both in photographs and of the actual items themselves, the shirt and the phone in question, and never revealed that they'd done so prior to trial. (See Exhibits 5, 7, and JA 408-409, 419-421)

During further argument on the defense's motion to, in the alternative, strike Abbott's identification testimony, the District Court went on to state:

"My concern is with some of the wording of some of the questions that implied that the witness could identify the shirt and the phone as items he saw, as opposed to consistent with what he remembers seeing, similar, that nature of it, you see..." (See Exhibit 5 and JA 415)

Although the defense requested that the testimony about the shirt also be stricken, the District Court did not rule on that request. (See Exhibits 5, 7, and JA 417) In the end, the court instructed the jury to disregard the testimony regarding the phone, but not the shirt. (JA 418) In fact, the District Court did not even rule on the defense's motion to strike the testimony in relation to the shirt. The Petitioner contends that the District Court should have instructed the jury to disregard the testimony the shirt and failure to do so was an abuse of discretion.

Discovery Rule 16 (b) specifically states: "Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial, or
- (iii) the item was obtained from or belongs to the defendant.

Fed. Crim. P. Rule 3500 states, "Jencks material is governed by Rule 3500 and demands for production of statements and reports of witnesses (See Campbell v. United States, 365 U.S. 85, 81 S.Ct. 421 5 L.Ed 2d 428 (1961)-" Requirement of Jencks act (18 U.S.C. 3500) that trial judge shall, on motion of defendant in criminal case, after witness called by United States has testified on direct examination, order United States, for impeachment purposes, to produce any statements, as defined in act, which relate to subject matter as to which witness has testified, is designed to further fair and just administration of criminal justice, goal of which judiciary are special guardians..."

The government responded to the defense's argument with" all Jencks material pertaining to Mr. Abbott had been produced and that everything pertaining to this topic was an oral conversation that they had when it sat down with the witness at the store and interviewed him, and there were no police reports that he's adopted, he wasn't put in grand jury, that the materials that the defense is claiming he should receive they don't exist, and there were oral conversations, like I said, but that doesn't fall within Jencks, and there's nothing exculpatory that would be covered by Brady, there's nothing within Rule 16 that wasn't produced by the government..." (See JA 398-399)

The government, as well as the District Court, failed to see that these non-disclosed meetings with this witness--whether written or oral--were relevant and material information relating to the Petitioner's line of defense as governed by Discovery Rule 16, and further were supposed to had been produced as Jencks material governed by Rule 3500. The government was obligated to disclose this kind of information to Dingle's defense counsel so that he could properly prepare Dingle's defense. The District Court's refusal, or as in this case, negligence to even make a ruling in relation to the non-disclosure of the initiated pre-trial meetings conducted by the government in which it subsequently elicited the identification testimony now at issue was irrational and further an abuse of discretion. (See United States v. Benkahla, 530 F.3d 300, 309 (4th Cir. 2008)-"In a criminal appeal, {this Court} will not vacate a conviction unless it finds that the District Court acted arbitrarily or irrationally in admitting evidence..." and United States v. Curry, 993 F.2d 43, 45 (4th Cir. 1993) (Striking of testimony))

Dingle presented this issue to the Fourth Circuit and, once again, with no discussion whatsoever, that Court just affirmed the Petitioner's convictions. This Court should grant certiorari to properly address the issue of whether the District Court erred by not striking Abbott's identification testimony in relation to the items shown to him by the government, and whether such error was an abuse of discretion.

Most significantly, this Court should do so due to the District Court's limitation of Petitioner's cross-examination of the government's DNA expert witness which also amounted to an abuse of discretion.

There is no question that the DNA expert was the government's most critical witness. None of the victims could identify the suspect, and while there was testimony regarding the fingerprint left on the Doritos bag (one of six unidentified prints to be exact) the latent print examiner could not say when the print was left there. (See Exhibit 5 pgs. 40-43, Exhibit 6 15-17, 45-51 and JA 438) The only evidence linking Dingle to the robberies was the DNA expert's testimony that DNA recovered from the items seized at the St. Charles location belonged to Dingle.

As stated previously, the DNA expert's findings were not only questionable but conflicting due to her findings either being inconclusive or found to include several unidentified male and female persons other than Dingle. Without the ability to properly cross-examine on this issue, the jury was left with the incorrect impression that FBI forensic tests are infallible--which they are not. (See Exhibit 5 pgs.40-43 and JA 524, 572-573) See Olden v. Kentucky, 488 U.S. 227, 231 (1998)-"Circumscribing a defendant's cross examination of government witness implicates the Confrontation Clause of the Sixth Amendment..." And, more importantly, violates due process under the Fourteenth Amendment. The Petitioner raised this issue to the Fourth Circuit, and yet again, without any discussion, that Court just went on to affirm Dingle's convictions.

This Court should grant certiorari to properly address whether the District Court abused its discretion by limiting Petitioner's ability to properly cross examine the government's most critical witness, and whether such error was prejudicial to his defense.

(3) This Court should grant certiorari to address whether, under the plain error analysis of *United States v. Olano*, 507 U.S. 725 (1993) and subsequent precedent, that the Petitioner has shown that the issuing judge acted as "Rubber Stamp" by granting a search warrant that lacked any indicia of probable cause, and that exceeded both the affiant's and issuing judge's jurisdiction.

Dingle, (the Petitioner herein), still contends that the issuing judge acted as a "Rubber Stamp" by approving the search warrant drafted by Detective Blevins that was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

Blevins testified that he only believed that "the CAST team had identified Dingle's residence just because they were able to follow him back from a court appearance back to the 5229 block of St. Charles on July 17, 2018." (See Exhibits 5, 6, 7, and JA 163) Nothing else. He admitted finally at the suppression hearing that "no one relayed to him that Dingle was ever seen entering 5229 St. Charles Avenue, and that the reports that he received does not state nor indicate that Dingle was observed entering that address on July 18, 2018, or "spending the night" there.." (See Exhibits 5, 7, and JA 186-187, 194, 201) He also testified that "he was well aware that all of Dingle's identifying information established that Dingle's address was 3915 Callaway Avenue," and he gave no logical reason to believe that that address was not Dingle's residence. (See Exhibits 5, 7, and JA 188, 190, 209)

At no time did he disclose within his affidavit that Dingle's residence was completely different from the St. Charles address. He also did not establish any nexus within his affidavit between that address and the Petitioner's suspected criminal activity. He provided the issuing judge with no information as to whom the property belonged to nor did he ever assert that Dingle lived at or stayed at 5229 St. Charles. Simply speaking, Blevins provide nothing more than a "take-my-word-for-it" affidavit to the issuing judge without providing any reasons of why he believed that Dingle was likely keeping items related to robbery at a location that Dingle was observed exiting only once.

This Court has held that the Good Faith exception does not apply in the case of a "Bare-Bones affidavit"...(See *United States v. Leon*, 468 U.S. 897 (1984)) More importantly, the Fourth Circuit has concluded the same in previous cases that it now conflicts with. (See *United States v. Perez*, 393 F.3d 457 (4th Cir. 2004)) "A bare-bones affidavit is similar, if not the same as, a

conclusory affidavit in that it states only the affiant's belief that probable cause exists. The United States Court of Appeals for the Fourth Circuit has concluded that a magistrate, in concluding that a "take-my-word-for-it" affidavit establishes probable cause, essentially shrinks his duty to act independent of law enforcement and acts as a rubber stamp..." and see *United States v. Wilhelm*, 80 F.3d 116 (4th Cir. 1996) (same)

The Fourth Circuit has also conflicted with other cases in sister circuits as well on this same important matter. See *United States v. Weaver*, 99 F. 3d 1372 (6th Cir. 1996)-"An affidavit that states sessions, beliefs, or conclusions, without providing some underlying factual circumstances regarding veracity, reliability, and basis of knowledge, is a 'bare bones affidavit'..." and see *United States v. Leake*, 998 F.2d 1359 (6th Cir. 1993) (same) and *United States v. Jackson*, 818 F.2d 345 (5th Cir. 1987) (same)

Factually, there was nothing provided, other than what was presented within the affidavit, to cause a person of reasonable prudence to objectively believe that, due to the surveillance activity described, that Dingle had possession of items related to robbery stored in that particular location as opposed to any other place. And, more importantly, the surveillance activity presented to Blevins was not what he went on to present to the issuing judge. Therefore, either way, the Good Faith exception does not apply.

This Court has held that the Good Faith exception can not be saved when an affiant commits Franks violations. More significantly, the Fourth Circuit has also concluded the same but now conflicts with such previous holdings. (See *United States v. Colkley*, 899 F.2d 297, 301 (4th Cir. 1990)-" An omission is material if it is necessary to the disinterested magistrate's finding of probable cause..." and *United States v. Tate*, 524 F.3d 449 (4th Cir. 2008)-" To satisfy the Franks intentional or reckless falsity requirement for an omission, the defendant must show that the facts were omitted with the intent to make, or in reckless disregard of whether they thereby made, the affidavit misleading..." and *United States v. Lull*, 824 F.3d 109 (4th Cir. 2016)-" One way of establishing disregard is by proffering evidence that a police officer failed to inform the judicial officer of facts that he knew would negate probable cause..."

Other circuits have held the same. See *United States v. Jacobs*, 986 F.2d 1231 (8th Cir. 1993)-" The omission occurred at least with reckless disregard of its effect upon the affidavit...Any reasonable person would have known that this was the kind of thing that the judge would wish to know..." and *United States v. Glover*, 755 F.3d 811 (7th Cir. 2014)-" A...Material omission is one that would alter the probable cause determination..." and *United States v. Brown*, 631 F.3d 638 (3d Cir. 2011)-" Affiant made materially false statements in reckless disregard of the truth requiring suppression of false portion of warrant application..."

In the instant case, the issuing judge was not in possession of a substantial basis to conclude that any evidence of the crimes would be present at the time and location of the search. The information provided to him by Blevins was, not only lacking in indicia of probable cause, but not true at all. And, most significantly, the issuing judge was never informed of the material fact that all data bases reviewed, established that Dingle lived at 3915 Callaway Avenue, and not at 5229 St. Charles. A fact that was concealed by Blevins. (See Exhibits 5, 7, 17 and JA 252, 285, 277)

Finally, both Blevins' and the issuing judge's actions were in violation of the Fourth amendment due to the warrant being granted despite jurisdictional limitations. The St. Charles residence was located in Baltimore City, Maryland, while both the issuing judge and Detective Blevins were, at the time, employed as a Baltimore County Circuit Court Judge and a Baltimore County Detective. (See Exhibit 3) Neither had authorization to either order any police officer from either Baltimore County or Baltimore City to search 5229 St. Charles or conduct the search themselves. The issuing judge and Blevins were both in possession of this knowledge that this matter was beyond their jurisdictional authority and control. And yet the issuing judge still signed the warrant to search the St. Charles premises and Blevins, understanding his jurisdictional boundaries, went on to execute the search. (See JA 134-136)

The Petitioner presented these same issues to the Fourth Circuit, and again without any discussion, that Court went on to affirm Dingle's convictions. This Court should exercise its supervisory power and grant certiorari to properly address whether, under the plain error analysis, and subsequent precedent, that the Petitioner has shown that the issuing judge acted as a "Rubber stamp" by approving a search warrant that lacked any indicia of probable cause, and that exceeded both the affiant's and issuing judge's jurisdiction, therefore establishing that the Good faith exception does not apply.

(4) This Court should grant certiorari due to the Fourth Circuit's failure to address any of Petitioner's claims on direct appeal, and further conduct a complete review on Rehearing for En banc, as to not show that the panel's review has so far departed from the accepted and usual course of judicial proceedings.

The Petitioner has previously presented all of the above-mentioned issues with accuracy, brevity, and clarity to the best of his ability to the Court of Appeals for the Fourth Circuit. These issues were supported with exhibits, the Joint Appendix of both the trial record and motions hearing. Also, the factual basis of these issues were presented with accuracy and truth, along with legal citation to support those facts. And yet the Fourth Circuit, without any discussion whatsoever as to whether or not those issues were meritorious or not, went on to affirm the Petitioner's convictions.

In its opinion, the Fourth Circuit stated that "Before the District Court, Dingle objected to the veracity of the warrant and whether the warrant was supported by probable cause..." (See Exhibit 8, pg. 2-3) without going into detail as to what the misstatements of facts and omissions actually were, and whether they were material to the probable cause determination.

It also followed suit with the rest of Dingle's issues without revealing what those facts were by disclosing the relevant testimony and discussing whether or not the facts were not or were indeed stated as Dingle asserted that they were, and whether the legal authority cited supported those facts.

It is clear from the Fourth Circuit's opinion, that it did not give proper consideration to Dingle's claims. See United States v. Rice, 825 Fed. Appx. 74 (3rd Cir. 2020)-" The appellate court reviews the factual findings underlying the District Court's ruling on a motion to suppress for clear error and its legal determinations de novo...A determination of reckless error or omission in a warrant affidavit is reviewed for clear error..." and United States v. Wooden, 693 F.3d 440 (4th Cir. 2012)-" A court commits clear error when it makes findings without properly taking into account substantial evidence to the contrary..."

Frankly, there is no question that the District Court erred by denying Dingle's motion to suppress. It made erroneous factual findings not supported by the record. (See Exhibit 5 and JA 250) It agreed that Detective Blevins misrepresented the surveillance detail's observations in relation to Dingle and the St. Charles location by overstating (exaggerating) the observations of what the officers actually saw, but still found no Franks violation. (See Exhibits 5, 7, 17 and JA 251-252)

It also determined that "the investigators were well aware that Dingle resided at 3915 Callaway Avenue, and not at 5229 St. Charles, based on all of the data bases reviewed prior and during submission of the affidavit, but still found no Franks violation. (See Exhibit 5 pgs. 29-33, 34-37, Exhibit 7 and JA 251-252) It further expressed unsurety, not once but twice, as to if there existed a sufficient nexus between Dingle and the St. Charles residence to support probable cause" (See JA 243-245, 250, 258) which, according to both the warrant affidavit and the evidence abduced at the suppression hearing, it did not.

The District Court also did not make a proper finding on the subsequent Franks violations committed by Detective Ali even though his affidavit was properly admitted into evidence without any objection from the government. (See Exhibit 5 pgs. 24-27) It was clear that what Ali stated within his affidavit in relation to Dingle and the St. Charles address was false and material, but yet the District Court made no finding as to this falsity. (See Exhibit 17)

It further acted irrational and arbitrary in not only admitting the fruits of the search from the St. Charles premises, but when it allowed the government to elicit identification testimony from Andre Abbott in relation to items seized from that location. (See JA 383-385) Along with the critical fact that it refused to strike those identifications when it was clear that the government had not disclosed such relevant and material information to the defense that its witness could do so.

The District Court continued to pursue this same path of irrationality and arbitrariness when it consistently limited Dingle's ability to effectively cross-examine the government's most crucial witness: The DNA expert. (See JA 572-574) thus infringing the Petitioner's Sixth Amendment rights. These errors were properly presented to the Fourth circuit, along with the factual and legal support, and yet that Court still refused to acknowledge them without any discussion.

Then, significantly, Dingle presented, under the plain error analysis, that there existed no indicia of probable cause to search the St. Charles premises and that the issuing judge's authorization to do so exceeded both his and Blevins' jurisdiction, thus affecting the Petitioner's substantial rights. The Fourth Circuit, at no time, gave any consideration to this issue, and with no discussion, found no error.

And last, and most significantly, that Court did not conduct a complete review of Dingle's direct appeal by overlooking and failing to apply De Novo review thereby necessitating a Panel rehearing for En banc in which it refused to do so without any discussion after staying the mandate. (See Exhibit 9 pgs. 1-7) (A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay... (See FRAP 41. Loc. R. 41)

The motion was not denied until almost 30 days later. (See Exhibit 10)

It also went on to make a decision, again without any discussion, that conflicts with previous decisions of not only its own court, but of this Court as well, along with sister circuits on the same important matter.

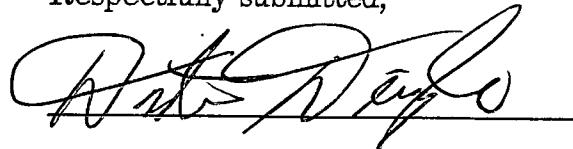
There is no doubt that the Fourth Circuit's handling of Dingle's issues on both direct appeal, and further En banc review, has so far departed from the accepted and usual course of judicial proceedings.

This Court should grant certiorari to properly address these important constitutional claims presented by the Petitioner, as to continue the accepted and usual course of judicial proceedings which has been adopted by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rita Dye". The signature is fluid and cursive, with "Rita" on top and "Dye" below it, both underlined.

Date: April 20, 2023

Date: April 20, 2023

Petitioner's Affidavit/Declaration Statement

I hereby declare that, under the penalty of perjury, that I have personally prepared the foregoing Petition for a Writ of Certiorari by my own hand, "pro se", and that the contained information within is true to the best of my knowledge and belief, along with the attached supporting exhibits and documents.

Respectfully submitted,

Mr. Donald L. Dingle
I.D. # 64766037

P.O.I. Manchester

P.O. Box 4000

Manchester, KY 40962