NO. _____

_____

OCTOBER TERM, 2024

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IN THE SUPREME COURT OF THE UNITED STATES

_____

MONTEL WESTLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED FOR REVIEW

1. **GIVEN THE AFFIDAVIT FOR THE ORIGINAL SEARCH WARRANT FILED HEREIN ADMITTEDLY CONTAINED OUTRIGHT LIES REGARDING THE SOLE EVIDENCE THAT *NEXUSED* MONTEL WESTLEY TO THE RESIDENCE SEARCHED (*I.E.*, CERTAIN HOSPITAL DOCUMENTS THAT SUPPOSEDLY HAD BEEN MAILED TO HIM AT THAT ADDRESS), SO POSTURED COULD THE COURTS (BELOW WITH IMPUNITY), REFUSE TO RECKON WITH THE FACT OF THE ADMITTED PERJURY (INVOLVED AND SO) DESPITE THE FACT IT ALONE NEXUSED THE ACCUSED TO THE HOME AND DO THIS WITH IMPUNITY.**

2. **GIVEN THE FACT THAT OUR PETITIONER HERE WAS ARRESTED IN THE HALLWAY OF HIS HOTEL, INDEED AFTER HE HAD EXITED THE ROOM (TO SURRENDER), WHICH OCCURRED AFTER HIS BEING TOLD THEY HAD A WARRANT FOR HIS ARREST: CAN THE OFFICERS NONETHELESS THEN CONDUCT A PROTECTIVE SWEEP WITH IMPUNITY UNDER THESE CIRCUMSTANCES.**

3. **GIVEN THE AFFIDAVIT FOR THE SEARCH WARRANT (FOR THE RESIDENCE SEARCHED), WHICH CENTRALIZES CERTAIN DOCUMENTS SUPPOSEDLY MAILED TO OUR PETITIONER AT THAT, WHICH DOCUMENTS ALONE NEXUSED, OR CONNECTED, THE ACCUSED TO THE PREMISES AND DO THIS WITH IMPUNITY.**

4. **GIVEN THE FURTHER FACT THAT THE ACCUSED HAD ONCE-UPON-A-TIME ONLY BEEN SEEN IN THE VICINITY OF A PARTICULAR HOME AND, AFTERWARDS BE SEEN ENGAGING IN A SINGLE (INDEED ONE AND ONLY) SALE OF A VERY MINOR DRUG SALE: CAN THAT ACCUSED'S CHALLENGE TO BOTH THE ENTRY AND THE SEARCH (AS HAVING BEEN CONDUCTED IN AN UNCONNECTED MATTER), BE SUMMARILY REJECTED, AS IT WAS HERE, DESPITE THE AFFIANT'S ADMISSION HE LIED IN THE AFFIDAVIT?**

5. **WHERE, THE COURT, IN REVIEWING THE ISSUANCE OF A SEARCH WARRANT, PROPERLY EXCISES THE SINGLE MOST CRITICAL AVERMENT THEREIN, WHICH WAS ADMITTEDLY A FALSE (IN FACT, AN OUTRIGHT LIE): CAN THE COURT DO THIS WITH IMPUNITY - - AS WAS DONE HERE?**

6. **IF, AS WAS DONE HERE, A DIFFERENT AFFIANT, INDEED ON THE ARREST WARRANT, WHICH INCLUDED IN ITS AFFIDAVIT STATEMENTS THAT WERE OUTRIGHT LIES: CAN THE REVIEWING COURT SIMPLY EXCISE THE OFFENDING ALLEGATIONS AND PRESUME THE ISSUING COURT WOULD HAVE NONETHELESS ISSUED THE SEARCH WARRANT ANYWAY AS WAS EXPRESSLY DONE BY THIS COURT?**

7. **WHERE, IN DEFENDING A FEDERAL ARREST WARRANT AND A FEDERAL SEARCH WARRANT, THE GOVERNMENT WAS COMPELLED TO ADMIT THE CENTRAL AVERMENTS IN THOSE WARRANTS WERE OUTRIGHT LIES TOLD TO THE AFFIANT BY A LOCAL DUTY SHERIFF: VAN THE DISTRICT COURT IGNORE THOSE LIES WITH IMPUNITY - -AS WAS DONE HERE?**

8. **GIVEN THE VARIOUS RESPONSES RENDERED BY THE GOVERNMENT TO OUR VARIOUS ASSAILMENTS PRETRIAL OF THE GOVERNMENTS VERSIONS OF THE CRITICAL FACTS, WHICH WAS PUNCTUATED AS IT WAS BY THE GOVERNMENTS TRIAL BRIEF (DOC # 48, P.303), AND GIVEN THE CONTENT OF THE AFFIDAVIT FOR THE SEARCH WARRANT, ON THE BASIS OF WHICH THE HOTEL WAS SEARCHED, COUNSEL NONETHELESS BE FAULTED FOR FAILING TO FILE ANOTHER MOTION TO SUPPRESS ONCE IT WAS REVEALED BY THE AFFIANT HE HAD OUTRIGHT LIED IN HIS ORIGINAL SEARCH WARRANT AFFIDAVIT, WHICH WARRANT PRECIPITATED, AND INDEED RESULTED IN THE ISSUANCE OF THE CRITICAL ARREST WARRANT (IN THIS CASE).**

9. **GIVEN NO MENTION WAS MADE IN THE GOVERNMENT'S TRIAL BRIEF, INDEED NONE AT ALL OF ANY CONTENTION THAT "A PROTECTIVE SWEEP" HAD BEEN PERFORMED, OR HAD EVEN OCCURRED AND THAT IN ITS WAKE ITEMS WERE SEEN THAT JUSTIFIED THE ISSUANCE OF A SEARCH WARRANT.**

10. **GIVEN THE FACT THAT IT WAS FIRST CONTENDED DURING THE TRIAL THAT ITEMS WAS CONVICTED OF POSSESSING WERE THE PRODUCT OF A PROTECTIVE SWEEP, BECAUSE OF THE ACCUSED FAILURE TO SEEK SUPPORT FOR THAT REASON.**

11. **CAN THE COURT SUMMARILY DENY A MOTION FOR A NEW TRIAL (RULE 29) AND FOR A JUDGEMENT OF ACQUITTAL, (RULE 29) AND DO SO WITHOUT STATING THE BASIS FOR ITS RULINGS.**

12. **CAN THE COURT DESPITE THE CONTRARY INDICATION IN ITS "TRIAL BRIEF" ARGUE (AND IN DOING SO) ARTICULATE A CONCEPT THAT SEEMS CLEARLY TO HAVE BEEN MADE OUT OF WHOLE CLOTH.**

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CONSTITUTIONAL PROVISIONS

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Montel Westley, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, originally journalized in this case on April 19, 2022, and made final by order of the United States Court of Appeals for the Sixth Circuit on November 08, 2023, when that Court denied petition for en banc rehearing.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit, denying the Appeal is **Appendix "A"**. The Opinion itself, denying the Rehearing is designated as **Appendix "B"**. It was seasonably lodged before it was denied.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the United States Court of Appeals was finalized when the Sixth Circuit denied Re-Hearing. Jurisdiction here is being seasonably invoked.

Of course, it will be understood all of the charges based on the home finds resulted in acquittal. Yet, the Appellate court inexplicably simply refused to credit the fact, and it is a fact, that: it cannot invent, or otherwise conjure up, facts to validate the antic employed here that got Montel Westley despite facts that show the antics employed against him – indeed by the Government. This follows because Montel Westley did not get a fair trial.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principal provisions of the Constitution involved are:

> **Amendment IV: "**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 V: "**No person… shall be compelled in any criminal case to be a witness against himself…"
>
> **Amendment VI:**" [i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State in the district wherein the crime shall have been committed which district shall have been committed which district shall have been previously ascertained by law…"

STATEMENT OF THE CASE

In evaluating the various averments in the Search Warrant Affidavits (**and** the Warrants) issued for the Residence, the Hotel and for Montel Westley, our belief is as was said, for us (indeed as was said in ***Zurcher v. Stanford Daily*, 436 U.S. 547, 557 [1978]**:

> The critical element in a reasonable search is not that the owner of the property is suspected of crime, but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property for which entry is sought.

Id., at 557. Thus, with that being so, it only makes sense for this Court to also believe (as we do), *two* factual showings were necessary. *First*, that the particular crime (or crimes that had been enumerated) were committed, and *second*, that there was probable cause to believe that evidence of such crime (or crimes) could be located, and the Warrants (related thereto) could be and were appropriately executed.

Do understand here, it is also a fact that here the Government repeatedly, and laudatorily, referred to the worth the "trash pull," and its contents. For sure, it was said the contents included certain Hospital Documents said to have been mailed to Montel Westley at that address. This, of course, was conceded by the Affiant to be untrue.

Also, contrary to the Affiant's **other lie** in the Affidavit, let's be clear, the mother testified at the trial that Westley's two (2) other brothers, a sister and an uncle occupied the other spaces in the home. (Also see **Re 40, at Page ID #235)**.

While the Government (and the District Court have brazenly said: these recantations were merely meant to set the Record straight: we would say they also failed to diffuse, even slightly, their deleterious effect. Indeed, what truly magnifies the reality in these failures condemn **the lies** told as being unpardonable is what is noticeable. They believe that all is fair in love and war. Thus lying, indeed creating facts is only condemned when they are exposed. Well, this occurred here. Indeed, while they were supposedly looking for Westley's shoes. To be sure, it took nerve for the AUSA not to recall what he wrote in his various responses (to our contentions) failed to include that version. It also took (in our judgement) a lot of gall for Counsel to ignore what Counsel said in his Trial Brief. Indeed, there was nothing said therein about any "security sweep". So, what about that reality.

As to this, consider then what is also significant about the "trash pull". We are only being told it was Westley's home and the positive "trash pull" yielded the "residue" found in one of the plastic bags that later tested positive for the presence of an immeasurable quantity of cocaine, and where the Hospital papers were found (**Tr., p. 375**.) Granted this leaves open the reality that given there were all these adults, all Westley's relatives who, not only, lived on the premises but were there when the police were. This gives rise to the fact that the residue found on the premises was created by someone, or another, created it.

Also, given the fact the Affiant on the Arrest Warrant and the Warrant to search the Hotel testified. His unassailable testimony shows sayings as he did:

> A. *I was told about the trash pull, and I read about it in one of the reports.*
>
> Q. Right. And were you told that there were some documents – a document in there that had been addressed to Montel Westley and that the document showed that somebody had been shot and had gone to the hospital?

A. Yes, sir. **I was told verbally, and I read in a report, that gunshot discharge papers belonging to Mr. Westley were found during the trash pull, and I found out recently that was not true.**

Q. And you put that statement in your affidavit in order to get the arrest warrant: correct?

A. No, sir. **I was giving background investigation to the prosecutor and the judge**. The real evidence —

***

Q. *You 're not suggesting, are you, that that statement is not in [your] affidavit?*

MR. CORTS: I'm objecting to the line of questioning, Your Honor.

THE COURT: *I'll sustain the objection.*[1]

MR. CORTS: *Not relevant.* **(tr., p. 286).**

Given, our prosecutor could not have even possibly read, or even heard what at best was a factional event, which the witness credited to cover a hole in his testimony, and spelled possible doom, for his case he invented facts that fit his version of reality. In its wake he then created **this shoe fable**. Of course, not even this realized, his favorite refrain "not relevant" (**tr., 246**), he adopted "the protective sweep" thesis. Surely this Court views their nonsense as a ploy.

Of course, nothing was ever written, so far as we know about Westley not having on any shoes, except the prosecutor (in summation) we all of it. Of course, the AUSA would use his favorite theme, as a response he stated, "not relevant" (**tr., 246**). What was all that about.

Clearly, when the AUSA said, in the wake of the Court's flawed Rules the fact these lies had been told was not relevant – all would agree that's not so. If you can believe it, obviously the Trial Court did. And, arguably so did the Circuit. They believed that the Federal Warrants can be

[1] Of course, no one on Earth can explain why that question was objectionable. Also, the objection was to the entire line of questions. Of course, we are contending the objection cut off a critical line of questions.

viewed as being super numerous here, because these items were located during a security sweep. Of course, the Court's Ruling, and the Government's new thesis, raised in the midst of the Trial was not tardy.

So postured, in the wake of the above showings, it makes sense this type of possible perjury, cannot continue to be ignored with impunity. Also, we believe the truth was concealed from the grand jury. In addition, we know the truth was concealed from the Court that issued all of these Warrants and from the Courts thereafter. So, there is no reason our jury was not also lied to about whether these officers re-enter these premises because Montel Westley, did the time it took for him to open the door and exit, he had forgot to put his shoes on.

To be sure, as we are accusing people of false swearing, indeed for stating they re-entered this room to get Westley's shoes. And, it was then they conducted a "protective sweep" and made the critical observation, which precipitated the search. We say that is a lie. So postured, the statement the entry was made resulted in a "protective sweep," in the midst of which contraband was seen. We contend that was a lie. For sure, given nothing before had been said about any sweep it inexorably follows something is wrong with that picture.

This critical flaw magnifies the fact that given that nowhere prior to the testimony rendered by any of the witnesses were the words protective sweep, or nay type of "sweep," that brought in to play **Maryland v. Buie, 494 U.S. 325 (1990)**, used. Well, given there has to be a reason why the words "protective sweep" not used in the "Trial Brief". One has to wonder why that is so. Did we bring it into play, in the wake of Counsel's question, which only asked: why given Westley was outside the room which they knew had only been occupied by him, and given he had been in handcuffs and was good to go: he was taken out of the building.

Our point, being since the issues that brought into play an immediate issue, the response to that question had to be immediate – and it was. The Agents experience impelled the answer given. For sure, that's how we see it.

STATEMENT OF THE FACTS AND EVIDENCE

This case entails an evaluation of various Warrant Affidavits, one issued herein to a local officer for a Residence. And two later Warrants. One of these for the accused, and the other for a Hotel room, which led to him being arrested by Federal Officers. The crucial question here asks: can the District Court simply remove, or otherwise excise, and ignore outright lies stated therein. And do so with impunity – as was done here. This we contend was done here despite the fact none of these things that were done can be validated. Again, we cite: ***Zurcher v. Stanford Daily*****, 436 U.S. 547, 557 (1978)**, for its prime thesis here is despite these indisputable factual showings that happened here.

Do understand here, as well, in its ***Brady*** responses, the Government repeatedly referred to the worth of the "trash pull," and its contents. In doing so, it magnified certain Hospital documents (said to have been mailed to Montel Westley at that address). When, in actuality they were mailed to Westley's brother. These flawed, and dishonest declarations were emphasized in all of the AUSA pretrial responses to our assailments. Supposedly they had been addressed to Montel Westley, our Petitioner, at that address. Later, this outright lie was indeed admitted to as being false. Indeed, not only by the original Affiant, but also by the Affiant on the Federal Warrants – indeed both of them. Also, contrary to the affiant's other lie, the mother testified at the trial that the affiant also lied about one of the bedrooms being Montel Westley's. This because it was her bedroom and he did not live there - - and none of his clothes were there.

Again, the affiant (on the federal warrants), who conceded he had been duped identified the liar as Scott Vargo. Again, he was the original affiant (on the State warrant), the first warrant in this case. His testimony shows he admits he had been lied to. Doubtlessly this had to have been done with "tongue in cheek," since the Government dare not assail our characterization of what we now call the "big lie." For sure, the Government's stance here is really indefensible. (See **Re 40, at Page ID #235**). As to the gall manifested therein, this Court cannot, in our judgement, even possibly look the other way, as did the District Court.

As to all this, consider then what is significant about the "trash pull." We were told it was Westley's home and the "trash pull" yielded the "residue" found in one of the plastic bags that later tested positive for the presence of an immeasurable quantity of cocaine, and some hospital papers were found (**Tr., p. 375**). Granted the falsehoods here exposed perforce had to have been imputed into the other findings made. This because they sufficed to validate this Affidavit and the arrest warrant Affidavit. See **Affidavit, Doc #2, ¶2 (Re 27, Page Id# 151)** and the **Arrest Warrant (Re 1, Page# 3)**. Also, see **Search Warrants for Hotel**.

Clearly then, it was said (indeed, emphasized) that these hospital papers were found by detectives, as it was. Thus, it could not be made any clearer, these officers were all culpable here. This is so because the inference is, all the law enforcement officers involved were privy to the content of these Affidavits and reports. For sure while they were being filed by Scott Vargo, the aftermaths generated are a matter of Record.

Given, as well, it is a fact, the Case Agent's affidavit was indisputably false, as the quoted segment of his testimony shows. The fact it had no consequential impact is remarkable. In any event, we deem the segment of testimony cited elsewhere, and, otherwise referred to as being

dispositive. Clearly then, the Government's thesis, in its various responses were both indefensible - - right? This because the Agent's testimony, quoted herein is priceless.

For sure then, despite the District Court's molly-coddlement of an egregious fault, and the AUSA's indulgence of these lies told by Scott Vargo (in the search warrant affidavit), and by the DEA agent in his arrest warrant affidavit, one thing is most clear, Montel Westley was wronged, period. It is a reality that the truth here is not merely critical. Indeed, its suppression here was most spectacular. It is also inexcusable. This fol1ows, for here (we know) the law mandated that those identified with the prosecution, as being part of the law enforcement team here, were literally mandated to disclose any, and all, evidence the accused could put to beneficial use in his defense. Indeed, that is the essence of the ***Brady*** concept.

So, let's be very clear, we are accusing people of false swearing, when it was said they re-entered this room to get his shoes and they then saw the items he was convicted of possessing in plain view in the middle of a protective sweep. This was said despite the fact they later got a search warrant to search the room and did so. And, the Affidavit for that warrant did not mention any protective sweep. Also, there was nothing in the Affidavit about that asserted reality either.

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

If only one thing was clear from the Government's previous responses to their realization the affiant had absolutely, indeed indisputably lied, it is most clearly counsel would ignore that reality. And, hope we do likewise that are salient facts here. Indeed, for sure with that vain hope aside Counsel-Opposite has to know we can, and will, prove two things with insuperable facts. *One*, the Affiant has already admitted (and evidence was supplied under oath (both, in writing and testimony) that Officer Vargo is indeed, and in fact, *an admitted perjurer*. *Two* that contrary to his perjurious declarations (made in his Affidavit for the Search Warrant issued and executed in this

case) that resulted in the seizure of the guns Montel Westley was charged with being in possession: he lied therein, as well. And, we contend if he testified before this grand jury he lied there, as well. For sure, if he did testify before this grand jury, then (for sure) he lied to them. For sure, if he testified about the hospital records that were found in his trash pull. Of course, we were not told about that reality.

Next, we know, as being real, nothing other than the "Hospital Documents" retrieved in the "trash pull" ever **connected** the appellant to this house. For sure, as well, other than the fact *he was seen, indeed only once even being near the home*, **and** given the Indictment here only charged *constructive possession,* only one thing is clear. The (naked and unclad) assertion made in the original Search Warrant Affidavit (which talked about that the trash pull having a "positive" boost to the Affidavit (*which admittedly was [simply put] not true*) condemned that charge.

Indeed, only the Case agent's, whose Affidavit formed the basis for which Montel Westley was arrested by him at the hotel. And, we know he was outright lied to by Scott Vargo. Given this Agent admits he communicated what he had been told and read about in the documents that were also filed. This magnifies the assinity in the Court's redactions being an apt salve.

II

Let's also be very clear. The facts recited for us are all the more disturbing because there are versions of a very dispositive events. Some are punctuated by other lies. Indeed, lies the most critical witness in the case admitted he was told. Given the fact these very lies were told by the Government's Chief witness, we believe the Government should have capitulated here. Indeed, rather than do what they did to Montel Westley. So postured, and arguably for reasons unknown to us, we have been given several versions of events, including in the Government's application

for the Search Warrant, issued in connection with the arrest made of Montel Westley at the Hotel. **RE #33, Page 188**.

Next, we have the prosecution and its version of the same event agreeing that Montel Westley was arrested **after** he exited the hotel room. As he put it, this is when the shoe fable was created, and it worked. Obviously, to believe this testimony (given we are dealing with one room of a cheap Hotel) is really hilarious. Since the witness had testified, as shown above that they had "already made sure that nobody was staying in that room". Thus, it hardly makes sense the argument about the need to "sweep" in the context of what was talked about in **Maryland v. Buie**, is really a joke. Indeed, all the moreso given what the **AUSA** said in **his Trial Brief** quoted above.

So, there can be no mistake here, let's be crystal clear. In all of our filings made pretrial to the District Court, the Government's response arguments and briefs, as well as the Government's Trial Brief (**Doc. #48, p. 363**), were consistent as to the sequence of the crucial events here - - that is, those dealing with the events describing the Federal Warrants, their acquisition and execution. Indeed, what was then being said by the AUSA was always the same tune. It was specifically being said, as his pretrial writings show, indeed in brazen opposition in contrast to what is now being said, is quite different. In any event, we later learned the Judge had been lied to about the Hospital documents. Their thesis at all times was, with reference to the arrest, was it occurred in the Hotel room, and he was escorted outside. This makes it hard to believe they took him into the hallway with no shoes on only to take him back inside to get them. This asserted reality was not disputed, by us before the Trial because Montel Westley was not going to be a witness.

For our part, now it seems the Government is being allowed to tell the District Court one version of how the Petitioner was arrested and incidentally how they located the drugs and the weapon inside the hotel room. Well, despite the fact that the trial Judge, in denying approval of the

execution of the arrest warrant and the search warrant for the hotel room, the Government was not thwarted. Indeed, and for sure as shown by the below quote is from its **Trial Brief**.

> A federal arrest warrant was issued for Westley. Westley was not in custody at that time . . . law enforcement ultimately arrested him at the hotel on August 24, 2020, and during the arrest saw in plain view items of contraband. **After placing Westley in custody**, law enforcement applied for and received another search warrant for both the hotel room and a vehicle . . . law enforcement then executed the warrant on August 24, 2020. **Found in that hotel room where Westley had been arrested in the federal arrest warrant** described above was a myriad of drugs and firearms . . ..

Trial Brief, Doc. #48, p. 4. Of course, the word security (or protective) sweep was not used.

III

Next, in connection with this fable, counsel-opposite then who wrote the Trial Brief put it this way (in his new version). Therein we refer to what he actually said, which we deem offensive. While the fact that it took a team, here said to be "our team" to insure their satisfactory in dealing with a man who had surrendered, one is most clear is that it really took never to say that is what happened here to people who read this Government's Trial Brief.

Well despite the fact the Trial judge, in denying our Motion for a New Trial, did so in such a condescending way, clearly sends a message that Motion cannot erase a reality. This is what the Court was told in the Government's Trial Brief:

> On August 5, 2020, a complaint … [in] 1 and 2 of the indictment) and firearms charges relating to a search executed at his residence on June 30, 2020. A federal arrest warrant was issued for Westley. Westley was not in custody at that time. ... Law enforcement ultimately arrested him at the hotel on August 24, 2020, and during the arrest saw in plain view items of contraband. After placing Westley in custody, Law enforcement applied for and received another search warrant for both the hotel room and a vehicle. … Law enforcement then executed the warrant on August 24, 2020. **Found in that hotel room where Westley had been arrested on the**

warrant described above was a myriad of drugs and a firearm …."
Ibid.

Given the Court had been told when they "found in that Hotel room," was then said the contraband he was convicted of possessing. With that being so, it is clear so far as the District Court and the Government is concerned, they can have it both ways. Well, that is so if this Court says so – in this case.

ARGUMENT NO. I:

GIVEN THE FACT THAT THE AFFIANTS ON THESE VARIOUS WARRANTS OUTRIGHT ADMITTED THEY LIED IN THEIR AFFIDAVITS; HENCE (AND THIS HAS BEEN SAID), THEY COMMITTED TWO OFFENSES (ONE AGAINST THE CONSTITUTIONAL PROHIBITION AGAINST ILLEGAL SEARCHES AND SEIZURES AND THE OTHER "AGAINST THE JUDICIARY" ITSELF (AS HAS BEEN SAID). SO POSTURED WHO THEN CAN SAY THE DISTRICT COURT'S FAILURE TO APPROPRAITELY DEAL WITH THIS REALITY, AND TO OTHERWISE CREDIT THE AUSA'S EFFORT TO PURGE THESE AFFIDAVITS HARDLY EVEN MAKES SENSE; HENCE HIS FAILURE TO GRANT AN AQUITTAL OR A NEW TRIAL CANNOT BE DEFENDED.

The above contentions are bottomed on absolute truths. For here the facts showing these Affidavits contained lies are simply put. The accused (in this case) arrived at the trial in the wake of testimony produced by not only the "Case agent", one Christopher Cadogan. He was called as a witness by the defense under favor of **Rule 614**, of our **Rules of Evidence**. The blame for his mendacity, to be sure could not be any clearer. (**tr., 291-296**). While this witness, Agent Christopher Cadogan, clearly was willing to admit, as he did, he was outright lied to. And, he named the culprit as being Scott Vargo, the Affiant on the original Linnet Ave, home.

So postured, we revel that out there this **Strongsville**, **Ohio** Warrant. It to backgrounded this arrest. Still, it is apparent, once Westley surrendered in the door and was exited away he was good to go. But the officers entered the Hotel room to search it – and did.

Indeed, given that fact, one can see the basis for the reasonable birth of the "protective sweep" testimony in our judgement. Granted, it shows, different versions of the arrest then the Government shows in its "Brief" improbable is the fact that because Montel Westley needed his shoes, these officers would have been on their way. Still that aspect of the evidence here is not, and was not written anywhere. And no mention of any such event playing a role here was not even a hint in the Documents made available to the Defense. Also, it is a fact that if it were true there is no way "the protective sweep" concept, as it was played out here, would have been entitled from the Government's Trial Brief.

This is especially so, given the adamancy of our condemnation of Counsel-Opposite's improbable assertion of what we believe a false ploy to debate a point well-made is thus made clear. Indeed, given the summation by the AUSA, arguably but for the fact that Montel Westley did not have on any shoes, which was something we heard for the first time (and which was a lie anyway) they would not have gone back into that room. And this is significant because the version of this arrest and Trial Brief, never hinted there had been any protective sweep, in the sense the AUSA argued. Which is significant nothing he is lying about; hence, it he said should have been believed by the jury.

ARGUMENT NO. II

WHERE, AS HERE, THE AFFIDAVIT FOR A SEARCH WARRANT WAS TOTALLY DEVOID OF ANY BASIS FOR A BELIEF THAT ONE COULD LOCATE ANY TANGIBLE EVIDENCE WHATSOEVER OF DRUG ACTIVITY AT A PARTICULARIZED PLACE DESIGNATED TO BE SEARCHED, IT CANNOT, AND TRULY DID NOT IN OUR JUDGEMENT, SURVIVE MEANINGFUL SCRUTINY.

First off, let's be clear. Apart from the fact argued above that the Affidavit failed to provide a *nexus* between the appellant and the home itself, we are also contending the Affidavit is totally inadequate.

So postured, there was no way the issuing Court could even infer that evidence of any type of drug activity could be found in a search of these particular premises. To be sure, one other thing is likewise clear. The Affidavit here failed to show these searchers were able to understand what they could, and could not, seize. This follows because no one testified they had even been inside this home. And no one testified they had ever seen Montel Westley inside the home. While the Court in referring to **U.S. v. Ellison, 632 F.3d 347 (6th Cir. 2011)** as though it were some sort of savior case. Indeed, and for sure, here it should be noted the said drug transaction there occurred after, the accused came outside and afterwards went back in after its consummation. Clearly, that tells some of us he merely wanted to keep very private his dealings with his visitor. Given, that was obviously his home that makes sense no other significance can be attached to that event. This only shows that, unlike in ***State v. Conway*, 2012 WL 1313397 (Ohio)**, at least the seller returned to the home (from which he exited) to make the sale. And, he came back to the home he owned. And there were two (2) episodes.

Here, the facts here are clear. Indeed, the order entered by the Court with reference to this egregious lie told about the Hospital Discharge papers the Court's pathetic response was as follows:

> **The government admits the Hospital Gunshot Discharge papers error. The record in this case shall accurately reflect that *these hospital records did not relate to Defendant*.** However, Defendant's contention that this error affects the outcome of the suppression motion is misguided … [of course, in their judgement and in the judge of the Court that issued the Warrant. As to that being so, we have the AUSA's opinion].

See **Doc Entry, No. 42** (Entered by Court on: 07/27/2021).

What really and truly makes our case here so formidable is the explanation counsel offered as an excuse for having misled the District Court. Our reference is to his statement that he simply

believed what he had argued repeatedly in all of his various submissions (filed in his responses to our various filings) was based on reports he had read. Still his failure here to allow us to talk to the detective to verify the content of his Search Warrant Affidavit, must be defended, given the Government's culpability. To be sure, to believe that one would have to believe in the impossible to second the Court's emotions. See, ***e.g.,* Doc. #40, p. 236**.

ARGUMENT III

WHERE IN THE MIDST OF A TRIAL, (a) AFTER THE COURT, NOT ONLY, DENIES A MOTION TO SUPPRESS, AND EVEN REFUSES TO ALLOW A HEARING (INDEED IN SPITE OF THE FACT THE AFFIANT ADMITTED HE OUTRIGHT LIED IN THE MOST RELEVANT SEGMENT OF HIS AFFIDAVIT FOR THE SEARCH WARRANT: DUE PROCESS WAS, NOT ONLY VIOLATED, BUT (INDEED FURTHER) FLAUNTED, WHEN THE COURT REFUSED TO HOLD A HEARING BEFORE EXCISING THE LIES.

Here, we have the fact that when called by the accused, indeed as a defense witness, the witness, a DEA officer, right out admitted he had lied. Indeed, in his Federal Arrest Warrant (for Montel Westley) and in his Federal Search Warrant. And, we know both of which were executed. Also, in our post-trial Motion for Judgement of Acquittal and/or a New Trial, both of which, the District Court denied, both, indeed were likewise summarily denied. Also Counsel, as an aspect of that effort also renewed the Motions to Suppress. These had also been filed earlier.

Indeed, we also emphasized all of our earlier contentions. Indeed, and especially so. So postured, given our vehement objections, indeed, and all, to the effect we were sandbagged by the belated reference to the argument, which centralized **Maryland v. Buie**. As to that argument, given nothing can be said even not to justify the argument made, to the extent it is being said our thesis here is assine, and for that reason Counsel should be faulted for Filing to file an additional Motion to Suppress. That argument is faulty – to its core.

Given if that is so, and since the Government's contention that they believe it is a fact Westley needed for his shoes is what this enabled them to argue there was this protective sweep. Well, that argument was made out of whole cloth. During the course of which they then supposedly saw what they had not noticed before as being contraband. The significance of this reality is augmented, indeed critically so, by the fact no mention of this **asserted** facet of the arrest was placed in the Trial Brief, or in any of the Government's pretrial submission. So postured, this reality cannot be ignored with impunity; hence the argument Counsel failed to file an additional Motion to Suppress is a Red Herring.

So postured, this reality makes it most clear, the Petitioner was victimized when the Court not only denied Petitioners Rule 29 Motion for a New Trial, and his Motion for Judgement of Acquittal, both, without a Hearing, and indeed without making any findings, well that finding cannot be defended. For here the facts are clear. Despite and in the wake of, certain egregious flaws, the Trial Court for here denied, both, Petitioner's Rule 29 and Rule 33, which were filed following guilty verdicts, this was done indeed in the wake of reasons that are indefensible. Thus, it inexorably follows the accused was denied due process; hence that situation must be rectified.

First off, let's be clear despite the fact that the Affiants on the three Affidavits admitted their Affidavits were fired with lies. Indeed, this was on (what in our judgement) a critical averment. And this was for reasons that are indefensible. In our judgement that resolution cannot be defended in law, logic or commonsense. For sure, it cannot be done with impunity.

Indeed, it is being said in one instance that despite the fact that we have these admissions (and concessions) by the Affiants to their mendacity. Yet, we have some of these Judges who argue, Counsel should have filed a second Motion to Suppress. Clearly, that would have made no

sense at all. For Montel Westley's arrest arguably could have, in our judgement, survived meaningful scrutiny. For, as stated above, he was a fugitive. And as such arrestable.

Indeed, the facts here show in an instance where that thinking seems totally warped for sure, the Court thinking hardly makes any sense at all. For sure here, while it is being said once it was admitted, by the Affiant himself his Affidavit was egregiously flawed, this petition should have filed a new Motion to Suppress. Well, given that Motion could not survive for reasons that are sacrosanct, it hardly is a response by the Sixth Circuit that could survive meaningful scrutiny.

You see while it is true, our original thesis was that the Federal Arrest Warrant was fruit of a poison tree because given the fact that its prime averment was totally dependent on the State Warrant.

Well, the Court redacted from that State Warrant that particular averment because it was indeed a lie. But the Warrant survived.

However, that reality left intact the Warrant itself; hence, its execution, as fate would have it was able to survive our onslaught.

As the Court of Appeals sees it, and indeed saw it, this Counsel (once it learned of the death of our fruit of the poisonous tree argument could not survive the fact that the Warrant for Westley's arrest clearly survived the lies. Indeed, because he was a fugitive for other reasons.

ARGUMENT IV

GIVEN THE FACT IT IS NOW BEING SAID THAT AFTER THE PETITIONER, MONTEL WESTLEY, OPENED THE HOTEL ROOM, AND WAS ESCORTED AWAY, AND HANDCUFFED, IT HAPPENED THAT BECAUSE HE LACKED ANY SHOES. AND WE DEEMED THIS TO BE NOT MERELY UNLIKELY THAT IT IS SO UNLIKELY THESE OFFICER THEN OBSERVED ANY OF THE CONTRABAND FOUND THEREAFTER IN THE WAKE OF A "PROTECTIVE" OR "SECURITY" SWEEP.

Here it should be noted that prior to trial the Government's **Hearing Brief** (**Doc #48, pg. 303**) was filed. For sure, **it should also be emphasized that nothing was said therein about any protective sweep**. Well, this tells some of us they were relying exclusively on the Search Warrant as the sole basis for this search. Of course, even with that being so, given some of us understand we were also contending the Government was still required to show that the search itself was lawful.

Of course, we truly believe, both, Rulings here were wrong and for sure the Rulings themselves had to be separately evaluated. Also, given we know Montel Westley was told (through the door): they had a Warrant for his arrest. And, we know he surrendered and afterwards was promptly arrested. Simply put then, it is also a fact the Government filed **before Trial** their "Trial Brief". And, for sure, as well, there is nothing in there said about any type of "sweep". For sure that fact must be reckoned with. And, what makes this fact significant is what was written **after** the Court summarily denied our Motion, both, for a New Trial and for an Acquittal.

So postured, and given that being so there was no reason to believably even suppose the witness would say anything about any sweep of any kind, and given the supposed sweep was not, and he had not even mentioned in the Government's Trial Brief (indeed for the first time in this case). So postured, how could we know that the Affiant, who wrote the Federal Warrants, (which told us that **the sole** basis [so to speak]) for the search made of the Hotel room was the fact that those who made the arrest told him they wanted to search and he told them not to until they confer a with a prosecutor. And, this is what they did. How then can that reality be ignored with impunity. Don't ask, he ignored us in **U.S. v. Henderson**, cited above.

Well, that reality tells some of us, indeed those of us who do not "practice law by ear," something they already know haste must make waste, especially when time was not the essence,

we know clearly haste makes waste. Well, the fact that is so, tells some of us, and thankfully the officer who testified about the so called "sweep" was not one of them, that once the officers were told not to search the premises, and get legal advice, which was done, it makes sense to believe that what had already been seen was not enough. Here, of course, it tells us no **Buie** sweep occurred here – despite what the jury was told. Also, the basis for any search sweep was in any event unnecessary. For a look even from outside the door to the small room made that clear.

Let's be very clear here, despite the fact that "the Concurrence" (as the writer of the Lead Opinion calls them when referring to the others on the Panel) he obviously believed, as well, that Montel Westley (who was **only** twenty-five [25] years old when arrested), and who had **never before** even been **charged** with any offense (on offenses) other than two weapons charges, could so rotely be said to have had a "Criminal History" – whatever that means. The truth still is he only had these two (2) prior convictions. Both of which were for the illegal possession of **a firearm**. Granted, on both, he had been incarcerated by the State for more than several years in all. (See [**Opinion, Document 40-2, at page 17]**). Also, and to be sure, it is a fact these Judges, indeed **repeatedly**, argued he had this "Criminal History" – whatever that means. So, let's be clear, our petitioner here had never even been charged with anything **other** than the two "gun possession" charges.

While the above quote is compelling, perhaps even moreso, is a statement extracted from its writer's assailment of the opinion written by the "Concurrence". Here it was written:

> **The concurrence** finds that "the evidence of drug residue in the Linnet residence's trash provides a direct connection between the residence and the evidence sought." However, **the concurrence** fails to address the fact that there is no link between the Linnet Residence and Westley, which would indicate that the residue found in the trash is connected to **his** drug trafficking. Finding that such a

> connection is unnecessary is far too broad of an interpretation of probable cause.

Ibid, p.16. The point, we would make is that *probable cause* should be made of "sterner stuff" than what we had here. And, here all we have is two (2) naked weapons charges.

The above quote is most significant here, indeed truly so. Given the stance taken by the Trial Court in denying our "Motions for a Judgement of Acquittal or a New Trial," our assailment of that denial is intense, because the Court's is hollow. For sure, the Courts magnified remarks, made with reference to still other aspects hollow rulings made by the District Court, for sure, were intensified by his rote denial of our **Motion for Judgement of Acquittal or A New Trial**. This "because [it is believed] the Government [had] presented sufficient evidence for a rational juror to find each element of the convicted offense beyond a reasonable doubt". (**Id., p 8**). You see, as to that nonsense, we contend the conclusion that a showing was made of a realistic link (or connection between Westley and even that home, or even any of the people therein) simply put, was not made. Indeed, the truth showed the occupants were his mother, three of his siblings, and an uncle, and it appears that one or more occupants were drug users – including his mother. The evidence of the presence of any type of drug use was all over the house which was full of adults.

Of course, we dispute that being so. For how could it be knowing the Arrest Warrant Affidavit was based on indisputable lies. Likewise, how can it be these related lies be ignored with impunity. Indeed, as though they were not told to the Court that issued the Warrant. And, even in spite of the fact that Montel Westley surrendered to the officers, who had told him (before he opened the door and exited) they had a Warrant for his arrest. As to all this, of course, we also know the Warrant they referred to was full of lies. These were admitted to by the Affiant who testified he had been lied to.

For sure, something is wrong then with that picture. For sure, as well, while we know that the actual "Picture of Dorian Grey" became (again) authentic once he died. For sure, this fact could have accomplished in a fictional writing. But this is real life; hence, given we know that is so: how can, and how could, the Concurrence do this on saying some of the things it said that disparaged Counsel. Likewise, with reference to the Ruling the District Court made on our Motions, there is no way anyone should say: way to go. Yet, this is what the District Court did. We say that was wrong. And his having done so is indefensible.

So postured, it has to be so that something is wrong with a picture that shows valid "Arrest Warrant". This is so, indeed because it cannot be defended against. It clearly was, based upon asserted to be facts, but also a collection of lies that, for sure, warped its integrity. This assessment includes when he was told: we have (as one would take it) a valid warrant for your arrest. For sure, as to this feat, as well, in our judgement, the reality here cannot be right.

Of course, and next, we agree, because it is a fact as the above quote below indicates. Here because that is so, it must be reckoned with. And we agree, with the writer when it was stated that:

> **The concurrence unduly** relies on the trash pull and attempts to establish that Westley was involved in drug trafficking and had an extensive arrest record that illustrates a history of similar behavior; however, the critical link between his drug trafficking activity and the Linnet Residence remains missing. The search warrant affidavit contained no evidence that Westley distributed narcotics from the Linnet Residence, that he used it to store narcotics, or that any suspicious activity had taken place there.

And likewise, it should be noted, we also agree that:

> The affidavit merely points to one controlled buy in which Westley was seen leaving the residence prior to the sale, a trash pull at the Linnet Residence revealing drug residue but no mention of Westley's name in the trash itself, Westley's criminal history related to drug trafficking, and an ambiguous and ill-defined search

> conducted by the officer attempting to link Westley to the Linnet Residence. The information taken together is deficient as "the affidavit fails to include facts that directly connect the residence with the suspected drug dealing activity." Brown, 828 F.3d at 384.

Id, p.17. What these Quotes show is a collection of naked an unclad assertion which are, and were properly assailed in the last paragraphs quoted above.

ARGUMENT V

GIVEN THE FACT THAT THE COURT'S FAILURE, ONCE IT REALIZED THE CONVICTION WAS CORRUPTED BY A PLETHORA OF LIESS, WHICH INCLUDED THOSE THAT WERE, BOTH, UNDENIABLY TOLD, AND WERE OTHERWISE CLEARLY TOLD WHILE TESTIFYING, IF NOT AN ACQUITTAL, THEN FOR SURE A NEW TRIAL WAS REQUIRED.

For those who have read the Opinions written **for** this case, to be sure, several things are clear. What's being said truly shows the reason Montel Westley lost can be placed on his Counsel. To that end, it is actually being said: he failed to file another Motion to Suppress. This is so, if you can believe some of the things being said in the Opinions. But before doing so, one should first get the facts straight. For sure, one reading these Opinions should never routinely endorse condemnatory statements made therein. This is so unless they are defensible. And, this is especially so if they are dispositive as it seems to be the case here. Indeed, how can it be said we should be punished for failing to move to exclude the product of something we did not know anything about – indeed until after the fact.

For example, here we have a statement that arguably was treated as being, both, sacrosanct and dispositive here. Yet, in our Judgement, it was made out of whole cloth. For example, the **Concurring** Judge, in her decision, wrote that once it was revealed the Affiant on the State Affidavit had lied, our response was inappropriate. Well that short condemnation is not good enough. And, given Christopher Ladogan, the DEA Agent, who was the Affiant on the Arrest

Warrant, which was the basis for Westley being arrested, we should have proceeded differently. Of course, it is clear he nonetheless outright lied therein. Also, it is a fact the Search Warrant for the Hotel room, which was executed – indeed after some delay. They even threatened to force themselves in (indeed for some time). Since they could not break in unless they knew as a fact he was inside, this proves one thing. It is unlikely he did not have the time to conceal anything that was visible. On the other hand, some of us know this.

For sure (as well), indeed as one of the Appellate Judges put it, the Affiant on both Federal Warrants had indeed also been **lied to**. Indeed, it is also clear the AUSA, who virtually gospelizes everything he had been showed he truly believed what he had been told.

Still in all, it is absolutely a fact that some Judges would gospelize on **U.S. v. Ellison, 632 F.3d 349 (2011)**. At least the writer of the lead Opinions expressed a different view of that case. He regarded is significance being that Reginald Ellison went outside and returned to the inside of his home. And here we have the fact the accused did not return to **his home**. And, we know the home here was not proven to be his. For sure, this Court thought that significant.

Of course, here one should read **State v. Conway, 2012 WL 504507**. For the Ellison case's significance is at least diluted more than a pittance by the fact that **State v. Conway, 2012 WL 504507**, there were two episodes. And here, we know once Westley left from these premises **he never returned**. And, the proof he even lived there was never established.

Granted, this Counsel's response is to always cite, **as he did here**, cites **State v. Conway, 2012 WL 504507**. And for good reason. You see in our case, as well, while the accused left the home he did not return. And while Conway was not written by **Brandies**, who graduated from all of the very schools **this Counsel should have attended**, including "Male High School in

Louisville, KY". At least this much is also true. This Counsel learned enough there to believe the thinking in the **Conway** case is an apt response to the **Ellison** lovers.

With that aside, let's also be clear. The reason this Counsel failed to file an additional Motion to Suppress, once it was revealed that the original Affiant had lied, in his Affidavits here. Indeed, thinking somewhat like **Brandies**, this Counsel had convinced himself that it would have been a waste of time. This is so because those who arrested Montel had the right to arrest him on sight, he was a wanted man not only on Federal crimes but for local. Indeed, the Sixth Circuit made that clear. For sure, there were other Arrest Warrants for Westley out there. Indeed, as was said in one of the Opinions below. See **State v. Westley 2023 WL 5377894, page 1**.

So that with this boy, from **Brandies'** old neighborhood, our belief is that the arrest made of Montel Westley could be said to have been deemed legal even if the Arrest Warrant, they had was not. This follows because Westley was also wanted for those State offenses issued by a Local Court, for those traffic violations. So even if this Counsel could not be faulted for not filing any Motion. See **Beck v. Ohio, 379 US 89 (1964)**.

For those who have read the two Opinions rendered, by the Court of Appeals in this case, one thing should be clear. It will be said that the reason is clear Montel Westley lost because his Counsel failed to file an additional Motion to Suppress once the original Affiant had admitted he had outright lied in his Affidavit. It really is that simple. So, let's be clear, the Court of Appeals seems clearly to be saying that once it was shown that the Affiants (on all the Warrants) had outright lied, indeed not unlike Judas (who then did the right thing). Here the people around Scott Vargo (our Judas) did everything they could to avoid subjecting the outright perjurers to any wrath. And, it worked with this District Judge. It also worked with the Court of Appeals. The question is will it also work with this Court. We doubt it. This for reasons that are obvious and valid.

Of course, we already know what the District Court did was effective. For he realized he dare not give us a Hearing. Indeed, his learnings this is clear. For sure he had read all of the AUSA's submissions before the liars capitulated. So, the District Court already knew, and it was for real he had to know the original Affiant on the Affidavit and the Affiant on the Federal Warrants were outright liars. So, when the District Court stated that the trash pull was nonetheless bountiful, which was indefensible, the Court had to know that was a reference to these Hospital papers. Also, he had to know Westley was only twenty-five years old. And while he had been to prison twice on naked weapons charges that was it. And while he had this gun with him when he made that isolated sale to that "dreg", who they paid in exchange for work done for them, not for us, we only know that about him.

Of course, while all a major of the Appellate Court Judges involved here would gospelize their reliance on **U.S. v. Ellison, 632 F.3d 347 (2011)**, other condemned them for doing so. For sure, they glorified its thrust, our response was to cite **State v. Conway, 2012 WL 504507**. And, for sure while it was not written by a **Brandies** (who graduated from the various schools **I should** have attended [including Male High School in Louisville, KY]). Still, it is a fact this Counsel learned enough (from reading about him) to believe the thinking of the **Conway** case was a very apt response to **Ellison** here. This, all the more so because Westley **did not** return to the home, he left from to do his supposed drug deal. And, while Conway, not only, left inside his home and returned, we know Westley was only seen there, was not the tenant and he never returned. To be sure that is clear. Also, the fact Ellison lived there was verifiable.

With that aside let's be clear. The reason this Counsel admitted failed to file an additional Motion to Suppress, once it was revealed that the original Affiant had lied. Indeed, he had done so willfully. Simply put, he outright lied, in the original Affidavit here and spread the word. This, he

had done as the Affiant on the original Warrant. Thus, thinking somewhat like Brandies, this Counsel convinced himself it would have been a waste of time to challenge the efficacy of the Arrest Warrant, or the arrest itself. That would have been a waste of time. This follows because anyone and everyone had the right (and indeed authority) to arrest him on sight. He was after all a wanted man.

To be sure as well, we believed that the arrest made here of Montel Westley would have been deemed legal if they had said (what will be said next time) they were aware of the other Warrants that were mentioned here. Clearly, the officers who arrested Montel Westley had the right to arrest him, indeed on sight. Of course, if we are wrong, we will expect the Government to make that argument. But they will not. They prefer to condemn Counsel for not committing a vain act.

Given those declarations are unassailable, unless it can be said with impunity, Counsel can't be faulted for believing that the arrest made here was lawful because it was based on probable cause, as is, and was required. See **Beck v. Ohio, 379 US 89 (1964)**. And, of course, that was enough. It thus explains why no new motion was filed.

Of course, Counsel's reference is to the following condemnation, which influences the Court below not to do the right thing here (in spite of what was said by the author of the Affidavit) on the basis of which Montel Westley was arrested.

CONCLUSION

Clearly the facts here truly show the power these prosecutors have. This is especially so here because it is so clear here that the most rank argument, he made even sounds artificial, as well as nonsensical. Here, for example, Counsel-Opposite fully endorsed the idea manifested throughout all of his early indications he believed the "trash pull" solidified the fact Montel Westley lived at this home. The one searched, this because the Affiant had said so. And, he

preached his beliefs to our judge. And until his Counsel he would never have believed Scott Vargo was a liar. We say that because of the high praise Counsel gave to him. For sure, if it were otherwise there is no way this Counsel would have bombarded the Court and us with those lies. Indeed, at one point Counsel believed he was big enough to do the right thing. Indeed, with that being so, some of us are surprised that once he realized **he had been lied to**, for sure he would not only rationalize that behavior, he would condemn it. Well, we were wrong. We fault the judge. For he has to believe, unlike what Shakespear once said about Denmark, there was nothing rotten in the pay for work he was getting from the Government about Westley – it will never happen again.

Also, the Court seems clearly to have ignored reality when he said that despite the perjury committed by the Affiant in his Affidavit, those lies he told therein can be ignored when ascribing to his total believability. Also, we have the fact we assail the entry as being unreasonable, as was the trashing of the home. Here, the Court arrogated unto himself the power to disbelieve all evidence contrary to his thesis. If what the Judge did here is okay, it will not be because of anything the AUSA says. We only ask that this Court be fair.

Let's be very clear here: it is being derogatorily written for the Government (about Montel Westley) that he has some sort of **Criminal History**. For sure, he was born on 03/29/1995, **and** he went to prison for a Weapons possession charge when he was **only** eighteen years old. His second weapons conviction occurred a few years later. Still, **he was only twenty-five years old, when arrested for this case. Also, he had never been ever charged with a drug offense before this one**. Again, he was only 25 years old when he was arrested here. So, this is what they mean by "**Criminal History**". Indeed, despite the fact he was only 25 years old, he had never, ever, been charged with a drug offense. For sure that hardly warrants him being deemed what they say: he is – a known traffic offender. Of course, that is for effort – it works.

And, while it is true, as the Record shows he was a fugitive, and the police (from different jurisdictions) were looking for him, it was for certain traffic related charges only – that's it. All were related to his failures to go to traffic Court or pay fines. So, let's be clear about that. Indeed, while it was true he had this "Arrest Record", some in connection with drugs, his "**Criminal History**" does not include even a drug charge. And, he was only twenty-five (25) years old when arrested here.

So postured when Westley was indeed arrested here, the Record is clear. For sure, he was arrestable, indeed by anyone of us. And then there were a number of "Warrants" out there. And, one of them was our Federal Arrest Warrant. What that means, to some of us – at least -- Westley was lawfully arrestable even if the Arrest Warrant was bad. And, with that being so, all that talk about Westley never having sought to suppress the illegal Arrest Warrant is pure nonsense. This is so, granted the Federal Arrest Warrant was based on pure lies, and we did not present that issue directly to the State Court is what they are; hence, we can be faulted for that reason. What is wrong with them thinking is that, once it was learned the Affiant had lied to the Federal Affidavit, as well, who relied on what he said was a valid Warrant, given that reality nothing changed. The onus was still on the Government to prove the contraband was lawfully seized, and he then attempted to do that by proving it was done in the wake of a security sweep. He was nonetheless a fugitive; hence, arrestable. Given then Montel Westley was arrestable on sight – even a citizen's arrest would have been legal. So postured, it follows (because all of the other "warrants" that were out there) anyone could have made the arrest with impunity. At least that is the way we see it.

So postured, and that reality is now being in the pot. Clearly then had Westley filed a Supplement Motion to Suppress based on the lies Vargo told, it would have been argued he was

told he was being arrested, but for the Warrants related to his traffic offense. Given the fact those other warrants were out there.

You see history has shown this Counsel the games the DEA plays. A good example of this was developed in one of our cases, we got no reward from showing one of their supervisors who we assailed as not being worth of belief had once told an AUSA, for sure not the one here, as was shown in one of our cases that was being appealed, if you can believe it.

> follow a suspected drug-dealing family after [they] leave the bank, conduct a traffic stop, "run a drug dog past the money, and when the dog hit on the money, [the officers] could seize it 'just to fuck with them.' "

US v. Taylor & Carl Henderson et. al., 471 Appx.3d 499 (2012). This relevancy here shows there are people like Scott Vargo, out here. And, they truly believe "the end justifies the means". For given the fact that we know there are those that say, as was said here: Montel Westley was properly convicted, and sentenced to the term he received. Indeed, because his "Criminal History" showed the public should be coddled as they were. And also protected. Indeed, not unlike Whitey Bulger and Flemmi who should never have been paid any of our money, yet were, the other fact is we were used – as was this Jury.

For those who have read the various Opinions previously written in the case, especially the one labelled as "the lead opinion", by those said to be in concurrence. For sure, one thing is clear. Both **would** fault Counsel for not filing another Motion to Suppress once it was learned that Scott Vargo **the Affiant** (who conducted the trash pull) had brazenly lied. Indeed, this was done in his Affidavit. For sure if so, he lied, indeed, outright so, when he said that the search made of the trash connected Montel Westley to that home. Of course, he was fully aware, when he did that, he also knew no one could testify they ever saw Montel *inside* the home, or even near the home. This has to be a critical fact here.

Indeed, the absolute most that could even possibly be said by him, was that once-upon-a-time Westley was seen leaving the premises – a two-bedroom home. And, we know who lived inside. It was his mother, his adult siblings (two brothers and a sister) and an uncle all lived. Sleeping (as they were) in the one bedroom was his mother, one brother in the other, his sister was in the attic and the other two (2) in the basement. This was said by the mother who testified.

And, given the Affiant clearly regarded the **trash pull** as having provided them a huge gift -- an absolute bounty, well that belief truly is significant here. For what else could it be. Still, we see it otherwise from the testimony of the Case Agent. His testimony verifies the Affiant could only have been talking about the Hospital documents when he so enthusiastically rejoiced about the trash pull in his Affidavit.

So, let's be very clear, given the Case Agent here, not only, was he personally told by Vargo the Affiant what had been gotten out of the trash – well clearly this had to be a reference to what the Affiant told the Court before he issued the Warrant. For sure, as well, it is significant the Affiant on the Federal Warrants admits he was duped. Yet, our District Court though none of that is relevant. And query nothing else that happened here, other than the events related to this significant matter. Because the end truly did not justify the means for dealing with people like Westley. This follows given the Criminal Histories of the Whitey Bulgers, the Jimmy "the Weazels" and Nicky Barnes of the world. Well Congress did not think so. Neither did Judas. And we know what the judge here thought of Montel Westley. He treated him as he would have done if he had been a member of the shower posse or the Mafia.

As to his proclamation that (not unlike what was said by the AUSA in his responses to the various lies he had also been told, what he wanted is clear of the home search): the lies in the

original Search Warrant Affidavit, and of the person who wrote them, have been cleared. After all the end justifies the means – right?

APPENDIX

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **May 20, 2024**, a copy of the foregoing *Petition For Writ Of Certiorari* was filed electronically. Notice of this filing will be sent via email to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ James R. Willis
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ATTORNEY FOR PETITIONER