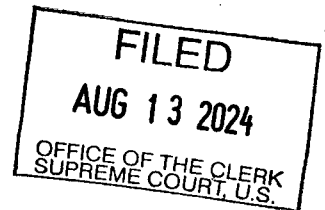


No. 24-5473



IN THE
SUPREME COURT OF THE UNITED STATES

James Williams — PETITIONER
(Your Name)

vs.

United States "et al" — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Williams (21266-5709)
(Your Name)

F.C.I. Ray Brook, P.O. Box 900
(Address)

Ray Brook, NY 12977
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

STATE OF TEXAS

- ① Is it Constitutional to charge an individual for violating Section 924(C) when that person was detained at the time of the seizure of two unloaded firearms recovered from his gym bag that others hampered with, and possessed the bag from others discretion.
- ② Whether the district Court erred on not granting defendant Rule 29 after close of the governments case?
- ③ Did the previous panel erred by affirming both counts when there were no evidence of a drug conspiracy, and the use of a firearm in furtherance of "a drug offense"?
- ④ Does an active C.I. functioning as an agent for a government employee behavior should be ignored once exploited that he broke the chain of Command/Custody, by conducting an unlawful search of ones property in absence of a Search Warrant?

List of Parties

Honorable Judge;

Vincent L. Briccetti
United States District Court
Of the Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Damian Williams

United States Attorney
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Related Cases,

- 1) United States v. Capers, 20 F.4th 105, 113 (2d Cir 2021)
- 2) United States v. Landesman, 17 F.4th 298, 318-319 (2d Cir 2021)
- 3) United States v. Huezio, 546 F.3d 174, 180 (2d Cir 2008)
- 4) United States v. Willis, 14 F.4th 170, 181 (2d Cir 2021)
- 5) United States v. Dhinsa, 243 F.3d 635, 677 (2d Cir 2001)
- 6) United States v. Finley, 245 F.3d 199, 203 (2d Cir 2001)
- 7) United States v. Lewter, 402 F.3d 319, 322 (2d Cir 2005)
- 8) United States v. Jacobsen, 46 U.S. 109, 113 (1984)
- 9) United States v. Jiau, 734 F.3d 147, 151 (2d Cir 2013)
- 10) United States v. Carbone, 204 F.3d 39, 44 (2d Cir 2000)
- 11) United States v. Williams, 205 F.3d 23, 33-34 (2d Cir 2000)
- 12) United States v. Snypse, 441 F.3d 119, 129-30 (2d Cir 2006)
- 13) United States v. Garcia, 291 F.3d 127, 136 (2d Cir 2002)

Table of Authorities Cited

- U.S. v. Santos, 541 F.3d 63, 70-71 (2nd Cir 2008)
- U.S. v. Ross, 694 F. App'x 4, 7 (2nd Cir 2017)
- U.S. v. Boidin, 568 F.3d 24, 29-30 (1st Cir 2009)
- 2 LaFare, Substantive Criminal Law § 12.12.2(c) (6) at 285 (2nd ed. 2003)
- U.S. v. Choice, 201 F.3d 837, 840 (6th Cir 2000)
- Bousely v. U.S., 523 U.S. 614, 140 L. Ed 2d, 828, 118 S.Ct. 1604 (1998)
- Kuhlman v. Wilson, 477 U.S. 436, 91 L. Ed 2d 364, 106 S.Ct. 2616 (1986)
- U.S. v. Johnson, 513 F.2d 819 (2nd Cir 1975)
- U.S. v. Telbott, 460 F. Supp. 253 (S.D. Ohio) aff'd, 590 F.2d 199 (6th Cir 1978)
- Hudley, 47 F.3d at 575
- U.S. v. Anderson, 174 F.3d 51 (5th Cir 1999)
- U.S. v. Heath, 188 F.3d 916 (7th Cir 1999)
- U.S. v. Downs-Moses, 320 F.3d 253 (1st Cir 2003)
- U.S. v. Rosemond, 134 S.Ct. 1240 (2014)
- U.S. v. Sanchez-Garcia, 461 F.3d 939, 946-47
- U.S. v. Gamboni, 439 F.3d 796, 810 (8th Cir 2006)
- Kent, 531 F.3d at 655
- Brown, 560 F.3d at 767-68
- U.S. v. Olano, 507 U.S. 725, 735-36, 113 S.Ct. 1770 123, L. Ed 2d 508 (1993)
- U.S. v. Finley, 245 F.3d 199, 203. (2nd Cir 2001)
- U.S. v. Lewter, 402 F.3d 319, 322 (2nd Cir 2005)
- U.S. v. Bailey v. U.S. 516 U.S. 137, 143, 116 S.Ct. 501, 505, 133 L. Ed 2d 472 (1995)
- U.S. v. Couch, 367 F.3d 557, 561 (6th Cir 2004) (P-18-B)

U.S. v. Birnley, 529 F.2d 103, 107-08 (6th Cir 1976) ... (P-16-B)
Torres-Maldonado, 14 F.3d at 103 ... (P-16-B)
Thomas, 987 F.2d at 702 ... (P-16-B)
Williams, 985 F.2d at 756 ... (P-16-B)
Powell, 929 F.2d at 728 ... (P-16-B)
U.S. v. Reece, 86 F.3d 994, 996 (10th Cir 1996) ... (P-14-B)

Statutes and Rules

21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B) 846

In respect to a narcotic conspiracy, (1) Two or more persons come to an agreement knowingly to violate the drug laws, (2) That each alleged co-conspirator Knew of the unlawful plan, and (3) That they intended to join and participate voluntarily

18 U.S.C. §§ 924(C)(1)(A)(i) and 2

[A]ny person who, during and in relation to any... drug trafficking crime... use or carry a firearm, or who in furtherance of any such crime, possess a firearm, shall, in addition to be punished, or in addition to the punishment provided for such... drug trafficking crime... be sentence to a term of imprisonment of not less than 5 years...

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- U.S. v. Sullivan, 919 F.2d 1403 (10th Cir 1996) (P-13-B)
- U.S. v. Mergerson, 4 F.3d 337, 349 (5th Cir 1993) (P-14-B)
- U.S. v. Taylor, 113 F.3d 1136, 1145 (10th Cir 1997) (P-15-B)(16)
- U.S. v. Mills, 29 F.3d at 549-50 (P-15-B)
- U.S. v. Mackey, 265 F.3d 937, 962 (6th Cir 2001) (P-17-B)
- U.S. v. Maye, 582 F.3d 622 (6th Cir 2009) (P-17-B)
- Davis, 139 S.Ct. 239, 204 L.Ed.2d 757 (2019) (P-17-B)
- (Please See attached Sheet)

STATUTES AND RULES

18 U.S.C. §§ 924(c)(1)(A)(i) and 2

21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B) and 846

OTHER

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 A/A 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 31st 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

Count (1): 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) and 846.

Possession with intent to distribute cocaine base,
to wit 28 grams or more, on or about,
May 25th of 2018, to May 30th of 2018

Count (2): 18 U.S.C. § 924(c)(1)(A)(i) and 2

Use and Carry a firearm during and in relation
to, or possess a firearm in furtherance of a
Crime of Violence or drug trafficking crime.

Fed R. Civ. P. 52(b)

Fed R. Evid. 403 and 402

Statement of the Case

In respect to the finding by the previous panel whereas the Court of Appeals for the Second Circuit affirmed Williams two Count Conviction of Conspiracy to distribute and possess with intent to distribute 28 grams and more of mixtures and substances containing Cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846; Along with Using and Carrying a firearm during and in relation to, and possessing a firearm "in furtherance of" the drug Conspiracy Charged in Count one, and aiding and abetting the same, in violation of 18 U.S.C. §§ 924(C)(1)(A)(i) and 2.

Williams contends to the erroneous finding by the previous panel asserting that the governments evidence did not in fact establish a drug Conspiracy Charge, relying on that while Williams was detained at the Orange County Jail, he conspired with others to transport and store drugs, including 42 grams of Crack Cocaine contained in a gym bag, by directing Ajah Hodges and Blessing Rogers, among others, to participate in transporting and storing the gym bag, was not supported by evidence. Also that Hodges and Rogers both testified that they were aware that Williams was dealing Crack Cocaine, and that they were aware that the gym bag contained drugs.

①

In Sufficiency of the Evidence Supporting the 21 U.S.C. §§ 841(a)(1) 841(b)(1)(B) and 846 Conviction.

- (1) Williams asserts that it was not proven that he had known of the seized drugs in the gym bag of its type and quantity when the evidence reflect that he was detained during the course of his gym bag being mishandled, and out of the presence of the initial custodian, Hodges, to where Hodges had testified that she knew of "Williams selling marijuana and Crack" (Tr. 579) but "was never told by Williams, what the gym bag contained (Tr. 584)". In respect to a narcotics conspiracy case, the record must permit a rational juror to have found
- ✓ (1) the existence of the conspiracy charged; (2) the defendant's knowledge of the conspiracy; (3) that the defendant intentionally joined the conspiracy; and (4) with respect to a conspiracy punishable under 21 U.S.C. § 841(b)(1)(B), that the drug type and quantity were known or reasonably foreseeable to the defendant. *United States v. Santos*, 541 F.3d 63, 70-71 (2d Cir. 2008); see also *United States v. Ross*, 694 F. App'x 4, 7 (2d Cir. 2017) (a defendant "may be held responsible for drug quantity quantities in a conspiracy that stem from transactions in which they participated directly and from transactions in which they did not personally participate, where the evidence shows that the defendant knew of the transactions or they were reasonably foreseeable"). In regards to the Santos matter, the quantity and drug type was not established that it was known to Williams because there were no evidence adduced that Williams discussed with anyone, the specifics of what the bag contained, and the only person Williams initially conversed with about possessing and moving his gym bag, was Hodges, in terms of only

- instructed her to take it back where you got it from" (Tr. 588-89) & (GX-307T), "and that she give the bag to Lee, the owner of the mechanic auto shop." Instead of doing as instructed, Hodge decided to leave the gym bag in her unlocked vehicle, where it sat until the 30th day of May of 2018. As such, Hodge had no interest in going back to retrieve the gym bag, (Tr. 605). When Hodge was questioned about the content in the bag, she denied bearing knowledge or ever being told what the bag contained during her time spent with Williams at the time of his liberty. (Tr. 584) Q "Did Mr. Williams tell you what was in the bag?" A "Not that I can recall, no." Q "And were you able to feel through the outside of the bag, anything else?" A "I felt that there was clothing in the bag, but I never actually opened the bag to see what was in it." So in light, there were no conspiracy that Williams had been charged with that had existed, that he knew about to where he intentionally joined one as to where the drug type and quantity were known by Williams to which any evidence was adduced in his trial via testimonies provided by law officials of the Middletown Police Department, nor Hodge or Rogers, just that the bag had belonged to Williams, and he only wanted Lee to hold it for him.

In addition, regarding to the Ross Case, where it cites that, (a defendant "may be held responsible for drug quantities in a conspiracy that stem from transactions in which they participated directly and from

(3)

transactions in which they did not personally participate, where the evidence shows that defendant knew of the transactions or they were reasonably foreseeable.")

Regarding in the present matter of Williams, there were no evidence reflecting that a drug transaction occurred during the course of the government's theory of the conspiracy, nor were there evidence that Williams intentions was to sell anything within his gym bag (GX-329T-122-136). Rogers:

"No, listen, Sheldon wants to know if you're selling that bag?" Williams "What? Nah, I ain't selling that bag." Rogers,

"No, he's not selling that bag. Nah, he's not selling the bag.

(To Sheldon). Yeah, he's talking about the stuff in the bag.

(To James). Williams "Huh?" Rogers, "The stuff in the

Brooklyn Nets bag." Williams "Nah, hell no. I need that, man."

It was not a reasonably foreseeable crime of a drug conspiracy involving Williams with any of the alleged co-conspirators, to where Williams claimed ownership of the bag and announced that "—Nobody gets that bag, that's mine." (GX-329T; 162-164),

Shortly after Rogers inherit Paul's suggestion on possessing and moving the bag, in terms of taking it with her, after Williams instructed her to "Give that shit to, um, give that shit to Lee for me, man." (GX-329T; 144). Rogers had agreed, because originally,

it was not fixed by Williams that Rogers was suppose to go the shop and possess anything, only just to go to the shop to see if Lee grabbed it for him/Williams." (A. 240-241).

Instead, Rogers admitted that her and Paul had sedately consulted with each other to possess and move the bag elsewhere (Tr. 542-543), which is when Rogers grew agitated

momentarily with Williams after he had told her for the second time to "Give him that jacket in with that bag, man". (GX-329T; 155-161), as she decided to side with Paul, the said C. I's suggestion by still taking the bag with her, "And what do you want me to... I was gonna put that book bag in my attic until your, um, brother came". It was not Williams decision for Rogers to go possess the gym bag at all, nor were there any agreement between Williams, Rogers, nor Cee-Cee, Williams' brother, that Williams ever implicated that he wanted Cee-Cee to possess, or that Cee-Cee knew about such material, in terms to wanting Cee-Cee to have "No, don't give that, don't give my brother that shit neither. Nobody gets that bag. That's mine". (GX-329T; 162-164).

So within the context of the evidence, Williams should not have been found guilty of violating section 846, by a jury, nor should had the previous panel affirmed Count One that alleged a conspiracy to distribute and possess with intent to distribute Cocaine base of the quantity and drug type, that had involved the seizure of 42 grams of Cocaine base, had existed between Williams and others, when "[A] Conspiracy is an agreement between two (or more) parties having a shared objective or design to commit the crime [.] (1) Williams intentions was not to join a drug conspiracy with Hodges for simply requesting her to drop a bag off back to a mechanic shop, which Hodges testified that Williams never discussed matters with her, in substance of what the gym bag contained" (Tr 584), nor did she actually open it up, (the bag) to see what was in it". Vividly

expressed, Hodges testimony proves that her and Williams did not conspire under any circumstance, to knowingly possess Cocaine base, with intent to distribute, to wit: 28 grams or more. (2) Williams did not participate, or express interest in participating in a drug transaction when (1) he did not want to sell anything within the gym bag, nor the bag itself, and (2) his objective was to give Lee the bag so it would be stored, so when Williams regained his liberty, he could have it for himself. Cited in *United States v. Boidi*, 568 F.3d 24, 29-30 (1st Cir 2009). For example, in the context of a buyer-seller relationship between parties, "mere knowledge" by the seller "as to what [the defendant buyer] would do with the drugs is not enough unless" the other person "shared [the defendant buyer's] purpose to re-distribute." *Boidi* at 30. To establish a conspiracy, "there must be a common design, so that if only one party to the agreement has the necessary mental state then even that person may not be convicted of conspiracy." 2 *Lafave Substantive Criminal Law* § 12.2(c)(6), at 285 (2d ed. 2003), quoted in *Boidi*, at 30, n.3. To charge Williams with a conspiracy count to distribute and possess with intent to distribute, it must be shown through proof that the alleged coconspirators shared the same common grounds of the intent, which will consider those to be a co-conspirator. As the evidence itself reflects that Hodges and Williams did not share a common ground to knowingly conspire, and voluntarily to join a conspiracy to distribute, possess with intent to distribute.

Hodges did not know about a drug conspiracy in the form of knowingly joining one voluntarily for being asked to simply take a bag to a remote area and give it to a specific person. Though the bag was dropped off at the mechanic shop by Hodges, but never to the intended person as instructed by Williams, which was to Lee, the auto mechanic owner. In the wake, it must be proven that Hodges knew their were the specific drug type and quantity as cited in Santos, 541 F.3d at 72, inside the Brooklyn Nets bag. Hodges testified that "she did not know", only "assumed" their were drugs in the bag" and that "Williams never told her what was in the bag".

✓ (Tr. 584). It must be a showing of 'knowing' not "assumptions", because when Congress decided to craft a Statute, its point intended was to insert specific elements, required to be established to determine if the accused had actually violated the applied provision.

Therefore, it must be proven that not only Hodges knew of the drug type and quantity that she had succinctly possessed under both occasions. But it also must be proven that the accused Williams had knowledge of the weight of the said seized controlled substance. In effectuating legislative intent, the initial scrutiny of course turns to the Statutory language. Read in context, it's evidence that "knowingly" does apply to the weight element. Indeed, given that a defendant's awareness must extend not only to the fact of possessing something ("knowingly... possesses") but also to the nature of the material possessed ("knowingly...

possessed/possesses ... Cocaine base"), any other reading would be strained. Inasmuch as the knowledge requirement carries through to the end of the sentence, eliminating it from the intervening element - knowingly - would rob the statute of its obvious meaning. Also understanding that there is a mens rea element associated with the weight of the drug. Conversely, a crime is one of "mental culpability" only when a mental state "is required with respect to every material element of an offense" (id.). In the instant case, Williams asserts that the government had failed to meet its burden of proven that Williams knew the quantity of the seized substance which is a requirement. The only thing that the government established was that the gym bag did in fact belong to Williams through provided testimony by Hedges and Rogers, along with Williams, himself, but had never established that Williams proclaim acknowledgment of the content within the gym bag. Additionally, another failed burden by the government, pertaining to Count one, which was misconstrued by the previous panel, was the Conspiracy Charge to whereas, the evidence only reflect that Williams had discussed matters with only one individual about possessing his gym bag and having one other individual hold it for him, which that intended individual was never informed of his expectance to consider Lee a Co-Conspirator to knowingly possess with intent to distribute 42 grams of Cocaine base. Neither Williams or Lee had discussed matters about taking or having possession of the gym bag during

their brief conversation. Relatively expressed, Williams and Cee-Cee, Williams brother, had conversed under two occasions while Williams was detained and Cee-Cee was accompanied by Samantha, and Rogers. During both occasions, no evidence reflect that Cee-Cee had inquired about obtaining a gym bag, but beared interest in safeguarding Williams personal belongings (GX 309T, 310T). There were no essential evidence to corroborate Rogers fictitious testimony that "Cee-Cee told her to go get the bag and knowing what it had contained" (Tr. 369, 372), which the government tend to lean on as validation to tie Williams and Cee-Cee as Co-conspirators, but with respect to Williams, he did not want his brother Cee-Cee to have his gym bag (Br. 27). (GX-329T; 158-164). The essential elements of a conspiracy consist of:

"Knowingly", "Two or more agree to conspire", and "join voluntarily". There were no evidence that Williams

conspired with anyone about obtaining anything illegal in terms of possessing his gym bag, not even the intended person of interest that he had wanted with the gym bag. However, there were provided testimony on behalf of Rogers that "Williams did not instruct her to go possess a bag, nor move it". (Tr. 520). Rogers testified that "her and the said C. I. Sheldon Paul had consulted secretly on possessing and moving Williams bag" (Tr. 542). Acknowledging that suggestion came about from the C. I. due to the alignment that he already had coordinated prior to Rogers possessing the gym bag oppose to Williams initial instructions.

The Courts at a point, brought Clarity to the question regarding a jail call made by Williams to Rogers on the said day of May 30th of 2018, as Rogers misled the Middletown Police Department by providing false statements, claiming that Williams discussed matters with her about going to the Shop - auto mechanic shop, to get his gym bag out of a car, which was not true. (Tr. 527-528) in neither call; a 9:39 a.m., or the 10:00 a.m., call made by Williams to Rogers on May 30th. No other evidence adduced by the government had mounted to where Williams conspired with Rogers to go possess a bag containing 42 grams of Cocaine base knowingly, as to join a Conspiracy voluntarily with Rogers. However, when Rogers did possess Williams gym bag after the mishandling by the C.I. in the absence of Rogers, on May 30th of 2018. The encouragement in regards to possess and move the gym bag was ignited by the said C.I. as Rogers testified to, not Williams (Tr. 542-543) discretion. In the wakes of a call that Williams and Rogers engaged in the night before, occurring on May 29th of 2018. (GX 325T), Williams had only asked Rogers "to go to the mechanic shop and CHECK and TELL Lee to grab that", never what to grab, nor for her to grab or possess and give ANYTHING to Lee, nor to take the bag away from the shop. (Tr. 544-545)

The evidence presented throughout the defense trial in the course of the event was not conspiratorial expectation as the government depict it to be. There were no evidence that Williams bore intentions to join a drug conspiracy with any one, as Williams proclaimed that "he only wanted Lee to hold his gym bag" (325 T). Did not instruct Rogers to go get anything of or for Williams, only to go check and see if Lee had grabbed that, not to take possession of (Tr. 544-545), and when Rogers announced of her possessing Williams bag without his permission, Williams immediately disagreed of Rogers having it, along side denying any interest with entertaining a sell that Rogers advised Williams about that was infused from Sheldon Paul the said C. I., which the citing of Beidi, 568 F.3d 24, 29-30, applies to the present matter. Because there were no indication that Williams intentions was to "re-distribute, re-sell" the seized drugs, alleging to belong to Williams. Despite Williams past events of small quantity sells to a C. I. (not the same involved mentioned above), and an U.C. Undercover Officer (no relation to the pending matter), the adduced evidence did not corroborate the governments theory of a drug conspiracy that Williams did in fact violate the drug laws by conspiring with others to possess 28 grams or more with the intentions to distribute throughout May 25th of 2018, on or about May 30th of 2018.

Respectfully, the Courts proposed purpose is not to look beyond the facts of evidence presented, but is

to cast light on Congress intent in employing the language before us, regarding the reading of a statute being violated by the accused, depicting that the essential elements were established through proof of evidence presented. However, when challenging the sufficiency of the evidence, to the extent, the question turns on the Statutory interpretation, rather than on the sufficiency of the evidence, as reviewed de novo. U.S. v. Choice, 201 F.3d 837, 840 (6th Cir 2000).

In accordance, the evidence did not support the finding of a Conspiracy Charge involving Williams and alleged others to violate the drug laws of 21 U.S.C §§ 846 and 841(a)(1) & (b)(1)(B), to where a judgement of acquittal should be granted on behalf of Williams, doing away with Count one, along side the five (5) years sentence.

Reason For Granting Petition

I beg this Honorable Court to accept and hear this case.

The 2nd Circuit ruling is in conflict with numerous Circuit Courts as well as this Court. *Bousely v. United States*, 523 U.S. 614, 140 L.Ed. 2d 828, 118 S.Ct. 1604 (1998). "Actual innocence means factual innocence, not mere legal insufficiency." *Kuhlman v. Wilson*, 477 U.S. 436, 91 L.Ed. 2d 364, 106 S.Ct. 2616 (1986). The Fifth Circuit, *1987 F.2d 1006 (5th Cir. 1987)*, Justice durability of the Supreme Court suggested that the ends of justice will demand consideration of the merits of claims only where there is a colorable showing of actual, "factual innocence." *Id.* at 2627. Also, "Absent evidence of purposeful behavior; mere presence at scene of crime, even when coupled with knowledge that crime is being committed, is insufficient to prove aiding and abetting." *United States v. Johnson*, 513 F.2d 819 (2d Cir. 1975). In the present matter, Williams was detained at the time of the seized material allegedly belonging to Williams, and the evidence lack sufficiency to establish that Williams conspired with others to join a drug conspiracy, and to use a firearm under any circumstances.

"Presence at scene of offense together with knowledge that crime is being committed is not enough to support conviction under U.S.C.S. § 2; defendant must have associated himself with criminal venture as something that he wished to bring in order to support conviction." *United States v. Talbott*, 460 F.Supp. 253 (S.D. Ohio), *aff'd*, 590 F.2d 192 (6th Cir. 1978).

In respect to Williams matter, (1) Williams was detained during the course of his gym bag being mishandled, and (2) that evidence that Williams had knowledge that a crime was being committed to associate himself with the venture to knowingly participating in one by simply requesting that his gym bag be delivered to a specific individual which only possessed it briefly due to the formality of unaccountable behavior performed by the alleged coconspirator, Blessing Rogers, and any others that Williams did not consent to possessing. In accordance, the principles of sentencing accountability for "jointly undertaken criminal activity" are different, and embrace a narrower range of acts by others, than the principles of conspiracy liability for the same conduct. See U.S.S.G. § 1B1.3, Comment. (n.1). Also, Acts of others that were not within the scope of that agreement are not relevant conduct, "even if those acts were known or reasonably foreseeable to the defendant." § 1B1.3, Comment. (n.3). For instance, when Rogers decided to take possession of Williams gym bag, per discretion of others, not Williams, that's considered acts of others that's not within the scope of agreement between Williams and Rogers. Please view further matters in regards of Rogers provided testimony during cross examine with defense attorney (Tr. 545), in reference of call (325T). To where Rogers admit that Williams never instructed her to go possess such, and she did so on May 30th of 2018 on behalf of Sheldon Paul, a C.I., at the time of the event. So a crime was not a reasonable foreseeable one

involving Williams and Rogers, but more of Rogers and Sheldon Paul, the said C.I.

However, the fact that a defendant has knowledge of additional Criminal acts of another participant in the offense of Conviction is not enough to make the defendant responsible for those acts. More is required, such as evidence that the defendant has pooled profits or resources with the other participant, or has otherwise "directly tied" his success to the activities of the other. *Studley*, 47 F.3d at 575 (citing what is now § 1B1.3, Comment.(n.4), illus. (C)(iv)). In the wake of evidence regarding Williams matter, (1) There was no evidence adduced that Williams instructed, nor discussed matters with Rogers to go possess a bag, causing either to be considered a participant in a Known Crime, which will make Williams responsible for those acts.

Moreover, *United States v. Heath*, 188 F.3d 916 (7th Cir 1999) *United States v. Anderson*, 174 F.3d 515 (5th Cir 1999) Two types of conduct that fail to prove aiding and abetting are "mere presence", and "guilt by association." *United States v. Downs-Moses*, 320 F.3d 253 (1st Cir 2003). "Defendant's mere presence at scene, or even knowledge that crime is being committed is generally insufficient to establish aiding and abetting. Note, that all above mentioned matters, the involved defendant's were present, associated with criminal acting individual(s), and bear[ed] knowledge of behavior. In the present matter (A) Williams was not at liberty during the movement and seizure of the drugs and guns. (B) In no conversation does Williams discuss matters about entertaining a drug sell, but

moreover, DECLINED wanting to sell ANYTHING inquired by Sheldon Paul (See 329 T, 106-144). (C) There were no indication that Williams had acknowledge such contraband, as neither of the witnesses provided testimony of ever seeing or knowing that Williams had, possessed, or owned a firearm.

Furthermore, please see the government's witnesses, to where they were used for the government to violate title 18 U.S.C. 201 (c)(1). Additionally, the government had nothing but assumptions and that violated the petitioners 13th Amendment, U.S.C. 242... (1) This instruction is based on United States v. Rosemond, 134 S. Ct. 1240 (2014). Rosemond was convicted of aiding and abetting the Commission of using a firearm in connection with a drug trafficking crime under 18 U.S.C. § 924(C). The facts involved a shooting committed during a drug deal gone bad. Rosemond conceded that he knew about the drug deal, but he claimed that he did not know that his accomplice had a firearm until the gun was fired. The Supreme Court vacated Rosemond's conviction on the grounds that the jury instructions did not convey the requirement that the defendant had to have prior knowledge of the circumstances of the crime—that is, both that a drug crime was happening and that an accomplice was armed. In the words of the Court, "what is required is 'knowledge at a time the accomplice can do something with it—most notably apt to walk away'."

So with high mounted respect, the petitioner request that the matter be viewed within consideration

as to granting this Writ of Certiorari after great scrutiny.

Petitioner James Williams was indicted on December 9th, of 2020, on a two (2) Count indictment for allegedly violating the following Federal Statute(s) of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846, which charged Williams in Count one (1) as to; participating in a drug conspiracy to distribute, and possess with intent to distribute, to wit; 28 grams and more of mixtures and substances containing Cocaine base, throughout the said days of May 25th of 2018, on or about May 30th of 2018.

Count two (2) Charged Williams with violating the Federal Statute of 18 U.S.C. §§ 924(c)(1)(A)(i) and 2, accusing Williams of "Using and Carrying" a firearm "during and in relation to", and/or possessing a firearm "in furtherance of"; a drug conspiracy, a drug trafficking crime.

Williams was eventually wrongfully convicted by a jury of twelve after an eight (8) day(s) trial on the said date of February 7, 2022, on both counts. On July 1st of 2022, Williams was sentence to a term of ten (10) years by Judge Bricker, followed by four (4) year(s) Supervised release.

In accordance, Williams filed a timely appeal with the U.S. Court of Appeal of the Second Circuit, which was affirmed under frivolous finding, causing the purpose of a Writ of Certiorari to be considered.

(3)

Insufficient evidence of Count two (2) pertaining to in violation of § 924(C).

In respect to the 924(C) violation, Williams contends to the frivolous finding by the U.S. Court of Appeal of the 2nd Circuit that Williams did in fact had/have possession of the guns due to Rogers testimony provided at Williams trial that "Williams's brother acknowledged that the guns in the gym bag belonged to Williams." In all, there were no provided evidence by Rogers that she knew that Williams possessed any firearms, and that Williams instructed her to go possess them in hopes to use them in furtherance of a crime as Congress propose purpose constructing § 924(C). The evidence did not reflect that Williams possessed the firearms to protect his drugs, nor to afford advantage of a crime of violence, or to facilitate a drug trafficking offense. Focusing on the facts of dicta, the issue of statutory construction that we must decide, is whether knowledge of a gun coupled with an act to aid and abet the firearm to be possessed and used in furtherance of an act of violence, or a drug trafficking crime during the course of being possessed by either individual, speculated by the government throughout the said dates of May 25th of 2018 to its seized date May 30th of 2018? (1) Hodges provided testimony that "she had never seen a gun in person". (Tr. 585), and (2) Rogers provided testimony that "Williams never told her to possess the bag."

(1)

With Sheldon Paul being the only person inquiring about purchasing Williams gym bag, and Williams declining to sell the said C.I. anything, where was it a foreseeable crime to bear the intention to distribute 28 grams or more through the course of the Conspiracy theory?

However, Congress intended meaning for crafting the 924(c) Statute as interpret by the petitioner, was to penalize the accused individual(s) for violating the Federal provision by the "Use" of, or "Carrying" a firearm during and in relation to, or possess a firearm in furtherance of, a drug trafficking crime. Hearing that a person "carries" a firearm during a drug transaction, bearing thoughts of "Using" the firearm for either protection, or to promote, advance, or facilitate throughout the course of his venture of conducting such transaction. With that type of perception, that behavior cause the effect of the (A) Subtitle to which suits the element to "Use, attempted use, or threatened use of physical force against the person or property of another. Intelligently thinking; (1) It must be shown that a drug trafficking crime in regards to a transaction involving another person came into existence. (2) During that transaction, the said firearm was on display in a promotional way to advance and facilitate on behalf of the dealer himself. And (3) That oppose buyer made mention to authorities that a firearm was present, and in reach - accessible to the dealer.

Moreover, if no transaction is being conducted, then who is the opposed person that a threat, or

potential use of physical force being pose to?

Accordingly, evidence that the petitioner simultaneously possessed drugs and a firearm, standing alone, would not warrant submitting the charge to the jury "Id. (Citation omitted). Instead, the jury must be able to infer from illustrated evidence from the prosecutor, that the petitioner's possession of the firearm had facilitated the drug crime through evidence that the firearm was used for protection, was kept near the drugs, or was in close proximity to the petitioner during drug transactions, as cited in United States v. Sanchez-Garcia, 461 F.3d. 939, 946-47. In the present matter, Williams was detain throughout the said days of the Conspiracy theory, making it impossible for (1) Williams to engage in a drug transaction, and (2) for Williams to "Use or Carry" a firearm during or in relation to, or possess a firearm "in furtherance of" a drug trafficking crime.

In the wakes of the government's theory of Williams aiding and abetting others to "Use or Carry" a firearm, "during and in relation to, or possess "in furtherance of" a drug trafficking crime - knowingly. The government evidence lacked heavenly.. Williams was charged in Count two for violating the §924(c) Statute, not a §922(g) Statute, meaning that evidence must reflect that Williams instructed others, preferably Hodges and Rogers to "Use or Carry" a firearm, "during and in relation to, or possess

"in furtherance of", a drug trafficking crime. Again, Congress point intended for crafting Section 924(C)-(1)(A) - 2, was to penalize any person that "use" a firearm "in furtherance of" conducting a drug trafficking - drug transaction crime, to which the firearm is shown to be "used" under the condition to pose an attempt threat, threat to use of physical force against a person or property. As we reflect back to provided testimony and call transcripts. On the 27th day of May of 2018, Williams had instructed Hodges to take a bag back to a car - auto repair shop and give it to Lee (Tr. 588-89). Hodges testified that "She did not give the bag to the intended person, but left it in her unlocked vehicle that she did not go back to retrieve" (Tr. 605). When questioned about knowing the content in the bag, her reply was "No, only that she 'assumed there was drugs in the bag, not knowing, because she was never told, nor did she open it to look' (Tr. 584). In regards of being questioned about Government Exhibits 8 & 11, preferably the two seized unloaded firearms, her reply was that "she had never seen them outside of the government's office, let alone, had never seen one in person" (Tr. 585). So in terms, Williams could not have aided Hodges to knowingly "use or carry" a firearm, "during and in relation to, or possess" in furtherance of a drug trafficking crime, because an oppose person need to be present for the firearm to pose a threat to... To the extent

that the question turns on the statutory interpretation, rather than on the sufficiency of the evidence, which the issue should be reviewed de novo. United States v. Choice, 201 F.3d 837, 840 (6th Cir 2000). In terms of violating the provision of §924(c)(1)(A) - 2, to where Williams associated himself with either individual to "use" the unloaded firearms in furtherance of "a drug crime."

Subsequently expressed, regarding Blessing Rogers activities that led up to her provided testimony. On May 29th of 2018, Williams phoned Rogers under a few occasion while still detained at the Orange County Jail, only advising her to "go to the auto mechanic shop, to check if Lee grabbed that for me. If not, tell him to grab it and hold it for me until I get out". (See 325T). The next day, May 30th of 2018, Rogers appeared at the auto shop, only to do the total opposite to Williams request. Rogers took possession of Williams gym bag influenced through the discretion of the C.I. Sheldon Paul. Rogers testified that when she retrieved Williams gym bag, that was her first time ever seeing it, (Tr. 542), which clarifies that Williams have not ever discussed matters about the bag during Williams time at liberty with Rogers to consider Rogers co-conspirators. In further questioning about Call (325T) and who told Rogers to possess and move the bag, her testimony made it clear that it wasn't Williams. Q "Look at the bottom of page 2 and 3 please. All right. And having looked at 325T, does it refresh your recollection that what James wanted you to do at the shop the next day, meaning May 30th, was to go to the shop and

Check and tell Lee to grab it?" A "Yes, that's what it says in this call". Q "Yeah, so he wasn't asking you to take the bag correct?". A "Not in this phone call." (Tr. 545). When Rogers decided to possess and move the bag on May 30th of 2018, the said day of its seizure, She admitted that it was the C.I. whom instructed her to move and store it elsewhere. Q "And during one of those times while he's (Sheldon) on your phone, he told Mr. Williams "I told her she got it, whatever she got, she gotta get up out of there. Correct?". (Tr. 542-543). Q "And that's because Sheldon in fact told you that you have to get that stuff out of there?". A "What's the question?". Q "Sheldon told you that you gotta get that stuff out of there, correct?". A "Yes".

In addition of Rogers providing testimony that during the absence of Williams, "her and Cee-Cee Williams brother sedately discussed matters about the content in the bag, and Cee-Cee supposedly instructed Rogers to go get it and bring it to him". Rogers testimony was not corroborated by adduced evidence that Cee-Cee bear[ed] knowledge or shared interest in a bag due to Williams conversing under numerous occasions with Cee-Cee, and Williams did not want Cee-Cee or anyone else with his gym bag. (See 329T). Despite the bag being possessed by Rogers, the core of the matter is if Williams aided and abetted Rogers to "use" or "carry" the firearm "during and in relation to", or possess the firearm "in furtherance of" ^Mand drug trafficking crime on the said day of May 30th of 2018, which was her first and only time possessing Williams gym bag on behalf of the influence of the C.I.?

With respect to the second element, the phrase "possessed in furtherance of" means that the firearm must have some purpose or effect with respect to the aforementioned possession of Crack Cocaine with intent to distribute. In regards of the present matter, intent to distribute could not have been established when the evidence reflect that Williams refused to sell anything when an offer was presented while being detained (see. 329T, 106-144). So therefore, the firearm had no purpose or effect when no opposed opportunity of a drug transaction was within existence, as Congress impose purpose that the firearm be "used" in the manner to attempted use, or threatened use of physical force against the "PERSON" or property of "ANOTHER". Meaning that an oppose person must exist, be present engaging in a drug transaction to where the dealer possesses a firearm "in furtherance of" to which it's in a promotional manner to help forward or/and facilitate the drug proceed. In the present matter, Williams did not aid and abet Rogers to use a firearm to protect or facilitate a drug trafficking crime when Williams never instructed Rogers to go possess and move a bag to store it elsewhere. As sided in prior case law "in furtherance of" is a slightly higher level of participation than "during and in relation to". *Id.* at 655 (citing *United States v. Gamboa*, 439 F.3d 796, 810 (8th Cir 2006)). Thus, the instruction constitutes plain error because it "would allow the jury to convict on the lesser finding of 'in relation to'". *Kent*, 531 F.3d

at 655; See also, Brown, 560 F.3d at 767-68. Similar instructions was giving in Williams matter, causing an effect to his substantial rights. That error seriously affects the fairness, integrity or public reputation of judicial proceedings. "United States v. Olano, 507 U.S. 725, 735-36, 113 S.Ct. 1770, 123 L.Ed 2d 508 (1993).

As in addition to the irrelevant comparison by the government as well as the U.S. Court of Appeal of the 2nd Circuit, in regards to the following cases, U.S. v. Finley 245 F.3d 199, 203 (2nd Cir 2001), along with U.S. v. Lewter, 402 F.3d 319, 322 (2nd Cir 2005). The Correlation have no suitable claim in their mannerism, initially reflecting on the Finley situation as to where Finley had engaged in a drug transaction, involving an under-cover Rochester Police Officer that have been conducting an investigation stemming from past tense events at drug transactions of the said location of 240 Berlin Street, to which a "Confirmatory" drug buy was set up and completed by the "UC", where momentarily after the purchase of the substance, an awaiting team of officers executed the provided Search Warrant of the residence by forcibly entry. Once inside, the involved officers conducted a sweep of the house, locating Finley in a back bedroom, arrested him, then recovering the pre-recorded buy money of the two \$10 bills from his personnel, additional drugs, and an unloaded sawed-off Shotgun from the Kitchen from which the transaction occurred at. Despite Finley's contention of acknowledging the presence of the unloaded Sawed-off Shotgun during the "Confirmatory" drug buy.

The jury could have inferred that from the gathered and produced evidence that the firearm was stationed for protection for Finley's drug proceeds due to (1) Shortly after the confirmatory drug buy and the search warrant was executed, Finley was the only person present in the residence. (2) The firearm was located in the same area the transaction occurred, to where it was accessible to Finley. (3) Finley was in possession of the pre-recorded money, alongside additional drugs, and (3) Finley was identified by the U.C. As to the opposing matter regarding Williams. (1) There were no investigations being conducted during the course of the five days to where a warrant was issued as to a drug transaction occurred, or proof of intent. (2) The seized firearms was not accessible to Williams, nor knowledgeable to him as to aid and abet one to (knowingly) possess and use "in furtherance of" a crime of violence or a drug trafficking offense. (3) An opposing person was not present to form a potential attempt use, threaten use or physical force as to whereas the U.C. was in the Finley matter during the drug transaction, and (4) Williams seized currency during a search conducted at his residence was not to be reported marked money, nor profitted from any drug proceeds as to Finley was.

Moreover, in the Lewter matter. A probable cause was risen from some sort of illicit acts of drug sells to where both parties adjoined, the Newburgh (New York) Police Department, along with Federal agents, to somehow obtained and executed a Federal Search warrant on Lewter's apartment. During the execution of the search

Warrant at Lewter's apartment, Lewter was knowingly in the presence and possession of the recovered items; a digital scale with white powder on it. Inside the dresser draw - 71.3 grams of Cocaine base, approximately 50 small plastic bags, 1.4 grams of heroin (in 23 individual bags), \$ 423.25 in cash, and under the bed was a .357 Magnum revolver with obliterated serial numbers, loaded with three rounds of hollow-point ammunition and three conventional rounds, not excluding Lewter's provided statement of confirming him being a drug dealer, just a different type. Again, Lewter's behavior was done under the scope of a federal investigation to where a warrant was obtained and executed by both level of authorities.

(1) Lewter's provided statement made matters clear that he was dealing drugs outside of his residence, and would have been a continuing act if not arrested, which establish his intent. (2) The drugs seized was in the same room that Lewter was present in, among the U.S. currency, scale, and loaded firearm that he kept in close proximity to protect himself for whatever cause perceivable to him, and (3) Lewter's seized firearm was loaded within his reach, depicting a possible/potential use manner. As to Williams matter, to show no correlation. (1) Williams was not present or at liberty during the seized material, (2) Williams was not in possession or the presence of anything bearing similar contraband, (3) No prior drug transaction occurred during the course of the five days, or rather two day action to where a warrant was seeked and

obtained under the scope of a drug conspiracy that was arisen from drug transaction as to where of a firearm was reported to be present during the course of the event. Williams issue only came about because Rogers was set up by a C.I. that encouraged her to go against Williams will by taking possession of the gym bag and moving it elsewhere (See Tr. 542-43). When the said C.I. had aligned his handler with Rogers vehicle, that's when a fictitious traffic stop was manifest by the Middletown Police, finding Rogers in possession of the gym bag that later on stated it belonged to Williams. There were no evidence that Williams aided Rogers to violate the statute § 924(c) on the said day of May 30th of 2018, the said day of it's seizure.

In the context of the 924(c) statute, the proper interpretation is that one must "know" that he or she is in possession of the firearm, to where their intentions are to "use" it, to where the government must show some active employment of the firearm, as cited in the ruling of the Supreme Court in the "Bailey" issue, 36 F. 3d, 106, 115, (1994), requiring, instead evidence "sufficient to show an active employment of the firearm by the defendant." *Bailey v. United States*, 516 U.S. 137, 143, 116 S.Ct. 501, 505, 133 L. Ed 2d 472 (1995) (emphasis in original). To where the Court clarified that "a defendant does not violate section 924(c) for merely storing a weapon near drugs or drug proceeds." *Id* at 149, 116 S.Ct. at 508.

The defense did not suggest that Williams had no prior drug history. Rather, the defense focused on the unreliability of the evidence, in part owing the fact that the bag was left untended in an unlocked car which others could have accessed and, in particular, which could have been accessed by a CI under circumstance where police were unable to guard against tampering.

Indeed, as argued in defense summation, the evidence presents a compelling case that the CI illegally went into the bag prior to Blessing Rogers arriving at the Shop, giving ample opportunity for tampering by a CI who had a motive to carry favor with law enforcement, and creating reasonable doubt. The likelihood that the CI got to the bag is evidenced by the facts that there were multiple calls between the CI and the detective beginning at 11:13 a.m., that the detective admitted asking the CI multiple time during their calls whether the CI was "sure" that the bag contained drugs and guns, the detective's dubious claim that he was unable to recall the CI's response, the fact that Blessing Rogers did not arrive at the shop until after noon that day, and the fact that the CI told Rogers he wanted to buy what was in the bag, even though the CI did not look into the bag in her presence, (See Tr. 734-744).

The defense also argued to the jury that there was insufficient evidence of a drug conspiracy, or that the firearms were possessed in connection with a drug-trafficking crime (Tr. 752-755).

The other-acts evidence worked to the defendant's prejudice in the jury's deliberations over these issues. The other acts did not permissibly bridge gaps in the government's proof. Rather, those gaps arose from inherent weaknesses in the government's case, including the unusual fact that the bag in which drugs and guns were found had been left untended in an open car for three days, where anyone (including the CI) could have accessed it.

The district court's decision to allow this other-acts evidence was an abuse of discretion. The theory of admissibility was outweighed by the prejudicial effect, Fed R. Evid. 403, and lack of relevance, Fed R. Evid. 402.

Nor was the prejudice ameliorated by the court's limiting instruction. The defense proposed such an instruction only after the court had overruled objection to the evidence. But, no instruction could be effective in assuring that jurors would treat the evidence as merely explanatory of phone conversations, as opposed to reflecting on Williams' character and criminal propensity.

However, as the Tenth Circuit cited on "constructive possession" cases in the past holding that "joint occupancy" alone cannot sustain the inference of dominion, control, and knowledge. See *id.*, citing *U.S. v. Sullivan*, 919 F.2d 1403 (10th Cir 1990). Thus, in cases of "joint occupancy" in which the government relies on circumstantial evidence of dominion, control,

(13)

and knowledge, "it must present evidence to show some connection or nexus between the defendant and the firearm or other contraband." *Id.* There must be some evidence "supporting at least a plausible inference that the defendant had knowledge of and access to the weapon or contraband," *Id.* at 550 (quoting *U.S. v. Mergerson*, 4 F.3d 337, 349 (5th Cir 1993)). As to the present matter, the Courts sided that despite Williams being detained at the time of his gym bag being mishandled, he did have dominion, control, and knowledge about its proposed destination. In contention, the record of evidence clearly reflects that Williams did not have dominion, control, and knowledge of its foundation, of its intended individual. For (1) When Hedges took the bag to the mechanic shop with instructions to give it to "Lee", the owner, she did less by leaving it in her unlocked vehicle where it sat for 3 full days unattended, with no remorse or intentions to go retrieve it, or make sure that "Lee" had taken possession of it. And (2) Williams did not instruct Rogers to go possess and move his bag on any said day. Instead, Rogers did more by not discussing matters with "Lee" about holding the bag for Williams, which was Williams' initial instructions given to Rogers. She consulted with others sedately to possess and move the bag elsewhere. (Tr. 542-545). *Id.* in *U.S. v. Reece*, 86 F.3d 994, 996 (10th Cir 1996), concluding that the evidence of -

Constructive possession was insufficient when the narcotics were discovered in the pocket of a passenger in a car that the defendant was driving. It was reasoned that "[b]ecause constructive possession requires a nexus between the defendant and the contraband where there is more than one possibility will not satisfy the possession element." *Id.*, U.S. v. Taylor, 113 F.3d 1136, 1145 (10th Cir. 1997). Concluding that evidence of constructive possession was insufficient when the defendant jointly occupied an apartment in which a handgun was discovered and when a government witness's testimony that the "defendant had possessed it one or two times", provided only a vague description of the gun and the date on which she saw him with it.). In reference to U.S. v. Mills, 29 F.3d at 549-50; The defendant's dominion and control over the dining room was insufficient.

The mentioned matters above was to reflect that each individual was at liberty during the course of the seized evidence, granting ample opportunities to coordinate their surroundance, oppose to Williams matter at hand, to where his absence was caused by a prior State legal matter, stagnating his appearance due to detention at the Orange County Jail, making it preposterous to have dominion, control, and knowledge over ANY given thing, as-such-as

his gym bag.

Moreover, retrospect on the perspectiveness of the government's and Court's presumption to substantiate Count (2), § 924(c), due to "Williams announcing wanting to keep the items together". Not acknowledging that "It" is in reference of their theory to Williams claim, "[p]resence alone cannot show the requisite knowledge, power, or intention to exercise control over the unregistered firearm". U.S. v. Birmley, 529 F.2d 103, 107-08 (6th Cir 1976). Also, "a defendant cannot aid and abet a § 924(c) violation without knowing (or having reason to know) that a gun will be used or carried in relation to the underlying crime", to where "a defendant's § 924(c) conviction was overturned on the ground that the defendant had no knowledge that a coconspirator was carrying a gun. See Torres-Maldonado, 14 F.3d at 103, Thomas, 987 F.2d at 702; Williams, 985 F.2d at 756; and Powell, 929 F.2d at 728.

The above mentioned cases does apply to the petitioner, because it could not be determined that Williams had knowledge of a firearm being in his gym bag under any circumstances, nor was any provided testimony that Williams possessed a firearm under any condition as mentioned in Taylor, 113 F.3d, 1145 (10th Cir 1997).

In the present case, the firearms - a revolver and a semi-automatic pistol - were kept wrapped up inside rags and further wrapped up in a jacket, inside a bag that was stored in a closet. Both firearms were unloaded. There were five loose rounds in the bag that were compatible with the revolver, but no other ammunition. The magazine for the pistol was empty and had been removed from the firearm. Neither Hodges nor Rogers both of whom had intimate personal relationships with Williams, claimed ever to have seen William with a firearm. There was no claim that Williams had used, carried, or possessed a firearm in connection with any of the prior drug-related activity adduced at trial, including Hodges' claim of having observe Williams bagging drugs in her apartment. There was no claim that Williams conducted drug transactions inside Hodges apartment, where the bag was stored.

However, succinctly expressed, as cited in *U.S. v. Mackey*, 265 F.3d 457, 462 (6th Cir 2001), per legal perception; "The Committee recognized that the distinction between "in furtherance of", and "during and in relation to", is a subtle one, and may initially prove troublesome for prosecutors," alongside another exploitable complex moment cited in *U.S. v. Maye*, 582 F.3d 622, (6th Cir 2009), that those that passed the bar, misinterpret the language of Section 924(c), which should be considered a "vague law as discussed in the Davis matter; Davis, 139 S.Ct. 2319; 204 L.Ed. 2d 757; (2019) "a single use of a statutory phrase must have a fixed meaning." (Gorsuch,

J.), joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.); which also quoted "Respect for due process and the separation of powers suggests a Court may not, in order to save Congress the trouble of having to write a new law, construe a criminal statute to penalize conduct it does not clearly proscribe." With that being said, how is it that the lower courts find it permissible to allow uneducated individuals (a jury of twelve), to make a proper determination on an interrelated offense? Furthermore as cited in *Bailey* 516 U.S. at 144, 114 S.Ct. 501, after the Supreme Court rejected such a broad interpretation of "use" and held that "use" required some active employment. In the present matter, to which the firearms was reported-recovered, as clearly expressed, that they were not strategically located so that it is quickly and easily available for use, as cited in *U.S. v. Couch*, 367 F.3d 557, 561 (6th Cir 2004).

Conclusively, with respect, Count (2) should be deemed to be dismissed so where the five year sentence is located and the petitioner be granted leave or an immediate release. Respectfully, I thank the courts for their time, and hoping for a timely response.

Date: Aug 7, 2024

Respectfully submitted;
James Williams

James Williams