

No. 24-5737 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES
SEPTEMBER TERM 2024

FILED
OCT 07 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MATT JONES, Petitioner
VS
UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Third Circuit

PETITION FOR WRIT OF CERTIORARI

MATT JONES
PRO SE REPRESENTATION
REG. NO. 76957-066

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Third Circuit Court of Appeals erred in its unprecedented decision in not reversing the District Court's failure to Dismiss the Indictment with Prejudice of a first time impression Double Jeopardy issue based on the Government conceding on Appeal that Petitioner's motion to suppress should have been Granted. The Government re-used evidence from the motion it conceded to be Suppress to convict Petitioner a second time?
2. Whether the Third Circuit Court of Appeals erred in its unprecedented decision in not reversing the District Court's failure to Dismiss the Indictment pursuant to the Speedy Trial Statute not being in conformity with the facts, procedures, and errors of Petitioner's. Its calculations are Notwithstanding ?

PARTIES TO THE PROCEEDINGS

MATT JONES #76957-066, Petitioner
F.C.I. Bennettsville
P.O. BOX 52020
Bennettsville, S.C. 29512
Pro Se Representation for Petitioner

Sara Solow, Esquire, Respondent
United States Attorney's Office-EDPA
615 Chestnut Street-Suite 1250
Philadelphia, PA 19106
SARA.SOLOW@USDOJ.GOV

Petitioner, Matt Jones, prays that this Honorable Supreme Court will issue a Writ of Certiorari to review the unprecedented opinion of the United States Court of Appeals for the Third Circuit Eastern District, entered in the above proceeding on July 12, 2024.

1.

CITATIONS OF OPINIONS AND ORDERS IN CASE

1. The original judgment of conviction of Petitioner in the United States District Court for the Third Circuit Eastern District of Pennsylvania. See Appendix: 102-111
2. The Original judgment of conviction of Petitioner was appealed to the United States Court of Appeals for the Third Circuit Appendix: 62-122.
3. The Third Circuit Court of Appeals issues mandate Appendix: 141
4. The second judgment of conviction of Petitioner in the U.S.D.C. for the Eastern District of Pennsylvania. Appendix: 254-267
5. The United states Court of Appeals for the Third Circuit aaffirmed the conviction and sentence. Appendix: 268

II

JURISDICTIONAL STATEMENT

Jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1). Petitioner seek review of the Order dated July 12, 2024 by the Third Circuit Court of Appeals in case No. 23-1558.

III

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

1. The Fourth Amendment of the United States Constitution provides: 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 warrant shall issue, but upon probable cause...
2. The Fifth Amendment of the United States provides: No person shall be deprived of Life, Liberty, or property without Due Process of law; nor shall any person be subject for the same offence to be twice put in jeopardy of Life or Limb...
3. The Sixth Amendment of the United States Constitution provides: In all criminal prosecutions the accused shall enjoy the Right to a Speedy Trial...

THE STATUTES INVOLVED are 18 U.S.C. §3161(e): The Act addresses retrial following an appeal...The trial shall commence within seventy days from the date the action occasioning the retrial becomes final. The time period begins when the Court of Appeals issues mandate.

18 U.S.C. §3162(a)(2): A defendant bears the burden to support an alleged violation of the Speedy Trial Act.

IV

STATEMENT OF THE CASE

In January of 2018 a confidential Source(CS) known to the New Jersey State Police(NJSP) alerted law enforcement about a woman named Carol from Philadelphia who had access to large quantities of heroin and marijuana. NJSP approved an investigation, and on January 9,2018,a meeting between the CS and Carol was held at the Cherry Hill Mall in Cherry Hill,New Jersey. At this meeting,Carol provided the CS with a sample of suspected heroin. This meeting was monitored by law enforcement and the CS was wearing a consensual wire which recorded the discussion between the CS and Carol. After this transaction, the CS identified "Carol" as Carol Lucy. The suspected narcotics Carol gave to the CS identified and tested positive for heroin.

A subsequent transaction between Carol and the CS was conducted on January 31,2018. Again, this transaction occurred at the Cherry Hill Mall, was consensually recorded, and was observed by law enforcement. At this transaction, the CS paid \$5,250.00 for 75 grams of what subsequently tested positive for heroin.

During the investigation, which at this point also included DEA of Maple Shade,NJ., it was learned that Carol Lucy resided at 1751 Foster Street,Apartment C8-B Philadelphia,PA.

Another transaction between Carol and the CS was set up for February 15,2018, again at the Cherry Hill Mall. Law enforcement observed it, other NJSP members conducted a surveillance of 1751 Foster Street,Apartment C8-B, Carol left the Apartment enter a car alone, drive to a local nail salon. She returned approximately forty-five minutes later to the residence where she was met by a black male who entered the residence with her. Law enforcement later confirmed that this individual was the Petitioner, Matt Jones.

Sometime later Carol left the Apartment and then traveled to Cherry Hill Mall where she met the CS and sold him one hundred grams of heroin for \$7,000.00. This transaction was both recorded

and observed by law enforcement.

After Carol left her residence to travel to Cherry Hill, law enforcement maintained surveillance on Foster Street and observed the Petitioner exit the residence approximately thirty minutes later. The Petitioner was followed first to the 4000 block of Greeby Street and then to the 1600 block of Brill Street. Surveillance of the Petitioner was then terminated.

On March 15, 2018, another controlled purchase of heroin was planned where the CS would purchase one hundred grams of heroin for \$7,000.00. On this date the Petitioner is observed in Philadelphia travelling to a Home Depot where he ultimately meets a female named Taylor Wood in the parking lot. The Petitioner then is seen leaving with WOOD then travel to 1751 Foster street and enter Apartment C8-B. Sometime after a short stay, Taylor leaves the Apartment alone. The petitioner then is seen leaving the Apartment, separately. Sometime later in the day meets the CS in the parking lot of the Philadelphia Mall where the transaction occurs in the dressing room of a clothing store. There Taylor provided 100 grams of heroin in exchange for \$7,000.00.

Several days later, on March 19, 2018, the Petitioner is observed exiting 1751 Foster Street, Apartment C8-B. No other activity occurs that day.

On March 26, 2018, the CS places three calls to a phone attributed to the Petitioner. None of these calls are answered. On April 3, 2018, law enforcement instructs the CS to arrange a meeting with the Petitioner to discuss prices for the intended purchase of larger sums of heroin. Later this day, the CS meets up again somehow with Taylor who brings with her an additional 100 grams of heroin to sell, but the CS has no money and tells her he only wanted to meet with the Petitioner this day, and in fact, through the course of the investigation the CS never meets with the Petitioner, who also resides now at 108 Federal Street Bensalem, PA.

On June 29, 2018, NJSP apply for and obtain a Warrant of Arrest for Carol Lucy. The Warrant was issued in Camden County, New Jersey for the heroin sales she mad to the CS at the Cherry Hill Mall. No arrest warrant was sought for Petitioner nor any search warrant was sought for any premises.

On July 17, 2018, 1:30am through electronic surveillance, law enforcement ping Carol's phone, giving them real time data information as to the location of the cellular phone she owns. Through this information, its learned that the phone is pinging from the interior of the Petitioner's residence at 108 Federal Street, from an upper floor.

Without any prbable cause eight hours later approximately 9:30am on July 17, 2018, numerous law enforcement officers from NJSP, Bensalem Police Department, and Philadelphia Police Department converge on 108 Federal street. They have no arrest warrant for Petitioner nor they have a search warrant for his residence. The Officers bang on the front door of 108 Federal Street and the Petitioner opens the door with his concerns in regards of the banging upon the door. The Officers tell Petitioner they are responding to a 911 call ; a woman screaming, hang-up call regarding an alleged domestic violence issue, a "ruse" they know to be false. Without consent or warrant, the Officers enter the property seizin the petitioner immediately, search through the house sweeping every room with guns out making their way to the third floor where they found Carol sleeping. While inside the residence, Officers claim they see a firearm on a dresser in the third floor.

The Petitioner and Carol Lucy are arrested and taken to the Bensalem Police Department. After the arrest of petitioner and Carol, a search warrant is applied for and obtained for 108 Federal Street. In addition 1751 Foster Street was searched becoming derivative to the illegal search of Petitioner and his residence.

On December 17, 2018 Petitioner and Carol were together indicted

in the Eastern District of Pennsylvania and charged with Conspiracy to Distribute 100 grams or more of heroin, Possession of a firearm by a convicted felon, possession of a firearm in furtherance of a Drug Trafficking Crime, and 3 separate counts of Distribution and aiding and abetting the possession with intent to Distribute heroin on January 31, 2018, February 15, 2018, and March 15, 2018. The Superseding Indictment charges seven counts total against Petitioner. See Appendix: 1-12

Prior to trial, Petitioner filed a Motion to Suppress all physical evidence found both at 108 Federal Street and 1751 Foster Street Apartment C8-B. See Appendix: 13-21. The basis of this Motion was that law enforcement's actions in approaching the petitioner's home, banging on the door and stating to Petitioner, who answered, that there had been an abandoned 911 call that required them to investigate, was an unconstitutional "ruse" which led the Petitioner to believe he had no choice but to allow them into his home to permit a warrantless search or face a grave danger. The Government filed a written motion in opposition in which it urged the Court to deny Petitioner's motion. See Appendix: 22-33. The District Court heard testimony on May 2, 2019, and subsequently requested both the Petitioner and the government to supplement their arguments in support of or in opposition to suppression. Ultimately, the District Court issued an Order and Opinion denying Petitioner's motion on June 25, 2019. See Appendix: 34-44. In its Order and Opinion, the District Court adopted the government's argument that the actions of law enforcement were not unconstitutional and did not violate the Fourth Amendment.

Petitioner subsequently was tried before a jury and was convicted of all seven counts: Conspiracy, Aiding and Abetting, three separate counts of Distribution of heroin, Possession of a firearm by a convicted felon and possession of a firearm in furtherance of a Drug Trafficking Crime 18U.S.C. 924(c). See Appendix: 45-48. Petitioner was sentenced on February 21, 2020, to

an aggregate term of 240 months incarceration. The District Court structured its sentence by giving concurrent sentences of 120 months each on the Conspiracy, Aiding and Abetting, three separate counts of Delivery of heroin and Possession of a firearm by a Convicted Felon. See Appendix: 49-60. It imposed a consecutive sentence of 120 months on the Possession of a firearm in furtherance of a Drug Trafficking Crime 18 U.S.C. §924(c). See Appendix:49-60. Petitioner timely filed a Notice of Appeal to the Third Circuit Court of Appeals. See Appendix: 61. The issue on Appeal was whether the District Court erred in denying Petitioner's Motion to Suppress, and finding that Petitioner consented to the search of his home at 108 Federal street.

Petitioner filed its Brief and Appendix to the Third Circuit Court of Appeals. See Appendix: 62-122. Afterwards, the government filed a motion seeking an extension of time in which to file its Brief. See Appendix: 123-125. That motion was Granted by the Appeal Court. The government then filed a second motion seeking an additional extension of time in which to file its Brief. See Appendix: 127-129. That motion was also Granted. The government then filed a motion with the Third Circuit Court of Appeals seeking Summary Reversal and asking for a Remand of the Petitioner's conviction and requesting that it be excused from filing a Brief. See Appendix: 130-140. A panel of the Third Circuit Granted that motion and ~~mandated~~ the case back to the District Court without instruction. See Appendix: 141.

Upon Remand, the government did not stick to the law of the case it presented in the Court of Appeals. Instead of moving to the motion to suppress, the government filed a motion with the District Court seeking to reschedule a new trial on counts 1-4 and keep the sentence on the three substantive counts of Distribution of heroin 5-7. See Appendix: 142-161. The government now concedes that the search were unconstitutional but just a "harmless error" and the illegal evidence at trial presented to the Jury had no affect to the substantive counts. The Petitioner filed

a Brief in opposition to this motion. See Appendix 162-167. The District Court then issued an Order and Memorandum denying the Government's motion and Memorandum denying the Government's motion and ordering a new trial on all remaining charges. See Appendix: 168-175. The Petitioner then filed two separate motions seeking dismissal of the Indictment. The first was based on an alleged violation of the Speedy Trial Statute, 18 U.S.C. §3161. See Appendix: 176-188. The government filed a response in opposition. See Appendix: 189-199. The District Court issued an Order and Memorandum denying the Petitioner's Speedy Trial motion. See Appendix: 200-209 Prior to trial, Petitioner filed a second motion seeking dismissal of the Indictment, only this time on Double Jeopardy grounds, whether the particular procedure is a constitutional prohibited act for a second run through the ganlet. See Appendix: 210-218. The government filed a response in opposition to this motion. See Appendix: 219-224. The District Court also denied this Motion to Dismiss. See Appendix: 225-227.

The Petitioner then went to trial for a second time, only this time the evidence recovered from 108 Federal Street was not introduced but evidence of 1751 Foster Street, apartment C8-B was introduced, in which is both evidence of said motion to suppress that should have been granted. See Appendix: 13-21. Petitioner was tried on only four separate counts: Conspiracy and the three substantive Distribution of heroin sale. As in his first trial, both Carol Lucy and Taylor Wood testified against him. The Petitioner was found guilty of Conspiracy and only one of the substantive Distribution counts specific to the sales made by Taylor Wood. For the two substantive Distribution counts specific to the sales made by Carol Lucy, Petitioner was found not guilty. See Appendix: 228-229.

Petitioner was then sentenced for a second time on March 14, 2023. During the sentencing hearing, Petitioner's counsel noted the District Court's prior sentencing structure after Petitioner's

first trial and conviction on all counts, and compared those counts and sentences to what Petitioner was found guilty of in his second trial. See Appendix: 229-253. Petitioner's counsel specifically requested the District Court impose the same sentence on the Conspiracy and Distribution counts as it did in his original sentencing, 120 months, and to run them concurrent to each other, again as it did in Petitioner's original sentencing. Instead the District Court imposed sentences of 180 months on both counts to be served concurrently. See Appendix: 255-267. Petitioner then filed a timely Notice of Appeal to the Third Circuit.

Appendix: 268.

The Petitioner then filed his Brief and Appendix to the Third Circuit Court of Appeals through assigned Attorney Richard Giuliani. See Appendix: 269. The Government then filed its Brief in Opposition. See Appendix: 270. The Third Circuit Court of Appeals in an not precedential opinion made its ruling on the matter on July 12, 2024. See Appendix: 271.

V

EXISTENCE OF JURISDICTION BELOW

Petitioner was indicted and convicted in the United States District Court for the Eastern District of Pennsylvania for Conspiracy to Distribute heroin (846); Possession with intent to Distribute heroin, Aiding and Abetting (841)(a)(1), (b)(1)(b)(i) and 18:2.

A timely appeal to the United States Court of Appeals for the Third Circuit was filed on March 28, 2023. The Third Circuit had Jurisdiction pursuant to 28 U.S.C. §1291.

REASONS FOR GRANTING WRIT

Neither Petitioner nor the Third Circuit Court of Appeals have identified any authority from any Circuit Court that requires a Court to find that the Speedy Trial Statute and the Double Jeopardy Clause is violated when the government confesses a Constitutional error in front of the Appeals Court and not allowing them to preside over the subject-matter at hand. In regards of the interpretation and application of these two issues we have an unprecedented matter that warrants the attention of the Supreme Court. The facts and procedural history of Petitioner's case is uncharted.

1. Petitioner was arrested on July 17, 2018, and charged originally by the Commonwealth of Pennsylvania, County of Bucks with Corrupt Organizations and other offenses, only after law enforcement officers unlawfully entered into his home, illegally searching and unearthing evidence. Petitioner was not released on bail.

2. Five months later on December 17, 2018, a criminal complaint was issued against the Petitioner and Carol Lucy in the Eastern District of Pennsylvania. Using the same illegal evidence from Petitioner's home, both was charged with Count 1- Conspiracy to Distribute Heroin, count 2- Possession of a firearm in furtherance of a Drug Trafficking Crime, and Count 3- Possession of firearm by a Felon. ECF 1

3. The Petitioner has his initial appearance before the Honorable Jacob P. Hart on December 18, 2018, temporary detention was granted. ECF 2

4. On December 26, 2018, the Petitioner appeared before the Honorable Carol Sandra Moore Wells. Judge Wells, after having a probable cause hearing and the government using the illegally unearthed evidence, found probable cause to exist against the

Petitioner. The Petitioner remained detained. ECF 10

5. Petitioner was subsequently Indicted on January 16, 2019 as a result of the illegal evidence. ECF 13

6. On January 24, 2019, the Petitioner appeared before the Honorable David R. Strawbridge. The Petitioner pled 'Not Guilty' to all counts. ECF 16

7. On April 12, 2019, the Petitioner filed a Motion to Suppress all physical evidence from both 108 Federal Street and 1751 Foster Street, Apartment C8-B. ECF 38

8. On April 26, 2019, the Government filed a Response to Petitioner's Motion to Suppress Physical evidence from both properties. ECF 39

9. On May 2, 2019, A hearing for the Motion to Suppress was held to suppress all physical evidence from both. At the conclusion of the hearing the District Court gave the Government and Petitioner time to submit additional memoranda in support of their positions. ECF 41

10. On June 19, 2019, A Superseding Indictment, using the same illegal evidence was issued against Petitioner. ECF 54

11. On June 25, 2019, the District Court issued a Memorandum and Order denying the Petitioner's Motion to Suppress all Physical evidence from both 108 Federal Street and 1751 Foster Street, Apartment C8-B. ECF 58-39

12. The Petitioner was then arraigned on the Superseding Indictment on June 26, 2019, and pled 'Not Guilty' to all Counts before the Honorable Lynne A. Sitarski. ECF 60

13. Because of the Superseding Indictment, the District Court rescheduled trial for October 7, 2019, and found that the ends of justice outweighed the public and Petitioner's interest in a Speedy Trial. ECF 61

14. Furthermore, Trial begun on October 7, 2019 and all the illegal evidence from 108 Federal Street was introduced against Petitioner. He was found Guilty of all Counts. ECF 84

15. On February 21, 2020, the Petitioner was sentenced by the District Court to an aggregate sentence of 240 months. ECF 105

16. The Petitioner filed a timely Notice of Appeal to the Third Circuit Court Of Appeals on March 5, 2020. ECF 110

17. The Petitioner filed his Brief and Reproduced Record with the Third Circuit Court of Appeals on December 24, 2020. See Appendix: 62-122

18. The Government reply Brief was due on January 25, 2021.

19. On January 25, 2021, the Government requested, and was granted 21 days in which to file its Brief. The Government's Brief was now due on or before February 16, 2021. See Appendix: 123-125

20. On February 16, 2021, the Government again requested, and was Granted, another 21 days in which to file its Brief. The Government's Brief was now due on or before March 9, 2021. See Appendix: 127-129

21. On March 9, 2021, the Government filed a motion with the Third Circuit Court of Appeals requesting Summary reversal and remand and to be 'excused' from filing its Brief because it now confess that the Petitioner's Motion to Suppress should have been Granted. See Appendix: 130-140

22. On March 29, 2021, A panel of the Third Circuit Court of Appeals Granted the Government's motion, excusing them from filing its Brief.

23. On April 21, 2021, the Third Circuit Court of Appeals issued a terse Mandate remanding the case to the District Court without instructions. See Appendix: 141

24. After Petitioner was sentenced on February 21, 2020, he was remanded to the Bureau of Prisons. The Bureau of Prisons transported the Petitioner to several Federal Correctional facilities and/or Penitentiaries until he was sent to F.C.I. Bennettsville in South Carolina.

25. On September 8, 2021, the District Court set a New Trial date on February 7, 2022, on All charges. ECF128

26. After multiple writs were issued by the District Court, the Petitioner was returned to the Eastern District of Pennsylvania in November of 2021.

27. The Re-trial of Petitioner was greater than(70) days from the reversal of Petitioner's conviction and sentence, and can not be ran through the ganlet twice for the same evidence that was confessed on Appeal to be suppressed. Therfore the indictment should have been Dismissed with Prejudice in violation of 18 U.S.C. §3161 Speedy Trial Statute. This deliberate behavior of the Government also affected the Double Jeopardy clause of the Fifth Amendment.

28. For a second time the Petitioner Appealed to the Third Circuit Court of Appeals. A panel from the Third Circuit affirmed the District Courts ruling in spite of there is no authority from any Circuit Court throughout the Country that can give them the power to agree with Petitioner's arguments. See

Appendix: 269

29. The willfulness of the Government actions cannot be in dispute. Their actions are documented on the record, and are contained in multiple verified writings. The facts and procedural history of this case warrants the attention of the Supreme Court because there is no interpretation or true application based on the Government constructively using illegal evidence to harass and convict a person against their Constitutional right and then change their position and pretend it did it in good-faith before the Appeals Court. Ignorant of Law do not excuse.

VIII

ARGUMENTS AMPLIFYING REASONS FOR WRIT

First the Petitioner search and then the Third Circuit too searched for any Authority with the same Factual and Procedural History of Petitioner's case and none was found. As it relates to the Double Jeopardy the closet analogy petitioner found with binding precedent would come from the Third Circuit's decision in Government of Virgin Islands v Fahie 419 F.3d 249(2005).

In Fahie, the defendant went to trial for illegal possession of a firearm. Id. at 251. During trial, the defense learned of the existence of a report regarding the actual owner of the firearm in question, which had not been turned over in discovery. Id. The trial Court held that the failure to turn over the report was a Brady violation, and subsequently dismissed the prosecution. In Petitioner's case the District Court should have deemed the Third Circuit's Mandate for a Violation of the Petitioner's United States Constitution Fourth Amendment rights.

In reaching its decision in the Fahie Court, it analyzed prior Supreme Court decisions regarding Brady violations and the appropriate remedy to be taken by a trial court. See Giglio v United States, 450 u.s. 150, 154, 92, S.ct. 763, 31 L.Ed.2d, 104(1972) ("A new trial is required if [the Brady violation] could...in any reasonable likelihood have affected the judgment of the jury."); United States v Russell, 411 u.s. 423, 431-32, 93 S.ct. 1637, 36 L.Ed.2d, 366(1973). ("We may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that Due Process principles would absolutely bar the government from invoking judicial process to obtain a conviction.")

In Petitioner's case outrageous conduct by law enforcement is evident and clear. The Due Process in Petitioner's case is reminiscent of the abuses that led to the discontinuation of the "silver platter doctrine." See Elkins v United States 364,U.S. 206,80 s.ct. 1437,4 L.Ed.2d,1669(1960). The principle that evidence obtained by state officials in violation of the United States Constitution Fourth Amendment is inadmissible to begin with a Federal prosecution.

The premeditated actions in Petitioner's case cannot be in dispute. Their willfull wrong by way of design is manifested by the record through multiple verfied writings. For the sake of interest of the people and Petitioner, The Government opposed in writing on April 26,2019 sfter the motion to suppress was filed; 2) at the hearing on motion May 2,2019 when it presented multiple witnesses before the Court; 3) On June 3,2019,when it filed supplemental memorandum in support of denial after the hearing on motion; 4) at Trial itself when it introduced into evidence, which it used to convict the Petitioner.

"In our decisions addressing remedies for Constitutional violations,we to have suggested that willfulness and prejudice are important considerations." See Fahie at 254. See United States v Rosenfeld,780 F.2d 10(3d cir. 1985)(citation omitted);United States v Constanzo 740 F.2d,251(3d cir. 1984)(citations omitted); "These decisions imply that a Court fashioning a remedy for a Brady violation should take into account the particular character and consequences of the Government's actions." Fahie at 254.

First vigorously defending the Constitutionality of the search of Petitioner's residence;and then using the fruits of that unlawful search at Petitioner's trial convictiong him,then abruptly changing its position on the Constitutionality of the violation of Petitioner's Fourth Amendment rights,without even attempting to defend "Why" is an act of Bad-Faith. Subjecting Petitioner to a second Trial due to the Government's wrongful acts and omissions is a violation of Double Jeopardy and/or Speedy Trial

Act.

In Petitioner's case the Third Circuit Court of Appeals in its Affirming the District Court denial of Petitioner's denial of his Double Jeopardy motion in its opinion said "The Double Jeopardy clause permits reprocsecution for the same offense where the defendant wins a reversal on appeal, citing United States v Jorn 400 u.s. 470 483-84. Notwithstanding Petitioner's conviction on Appeal was not contested, reviewed, and reversed by the Appellate Court. Petitioner's case was retried due to the Government confessing to their wrong, not because the Appeals Court presiding over the merits and issuing a decision. The Indictment should have been dismissed upon remand to the District Court because the motion to suppress should have been granted, for the reason this was the stance of the Government circumventing the merits out of the hands of the Appeals Court.

Upon Remand of the Mandate the District Court had no instructions from the Third Circuit Court to give measure to the extent of what to do in regards of the Mandate. The Government ignored its own position of The motion to suppress should have been granted. The Government filed a motion seeking to keep Petitioner sentence to Counts 5,6, and 7 and retrial for Count 1,2,3, and 4. See Appendix: 142-161.

For the sake of Law of the case inwhich is The Fourth Amendment violation and the exclusionary rule, how it should have been applied in this case as it apply in a slew of other cases for deterrence. The ground for the reopening the merits is that the lower Court has misinterpreted the mandate that it recieved.

See Martin v Hunter, 1 wheat, 304, 354, 4 L.Ed. 97, 109; Julian v Central trust Co. 193 u.s. 93, 48 L.Ed. 629, 24 sup.ct. Rep-399.

The Mandate to the District Court is to be interpreted according to the subject-matter of the proceeding so as not to cause injustice. See Supervisors of Wayne County v Kennicott 94 u.s. 499, 24 L.Ed. 260. In Bankers Trust Co. v Bethlehem Steel Corp. The trial court must proceed in accordance with the mandate and law of the

case as established on Appeal. at 761 f.2d 943,950(3d cir.1985)
citing Briggs v Pennsylvania R.Co. 334 u.s.304,306 68 S.Ct.1039,
92L.Ed. 1403(1948).

Where, in a case of trial by Jury, material errors were committed by the Court in admitting evidence, on Remandment a new trial will be granted, and the cause proceeded with as though the Court had granted a new trial originally and there had never been an appeal. On trial, however, the errors corrected by the higher Court will be carefully avoided. See: A treatise on Suits in Chancery by Henry R. Gibson, A.M., LLD, Article VI PROCEEDINGS IN ENFORCEMENT OF DECREES ON REMANDMENT §662 at 7.

Upon remand, the District Court reinstated all charges for a new trial on all evidence. The Government decided that it did not want to put forth the evidence of motion to suppress from 108 Federal Street, on the other hand it put forth 1751 Foster Street, Apartment C8-B, in which is part of the evidence from the motion to suppress. That evidence should too have been inadmissible and because the Government used that evidence at trial to convict Petitioner it is a case of Double Jeopardy. The Indictment should have been dismissed with prejudice.

B. As it relate to the Speedy Trial Act, 18 U.S.C. §3161 at issue is the date from which the Speedy Trial Act computations would begin. Petitioner in his motion, has argued that the starting date for calculations should have been on or before May 19, 2019, the date of the hearing before the District Court on Petitioner's Motion to Suppress. See Appendix: 182.

The District Court, in denying Petitioner's motion, ruled that the appropriate starting date for a Speedy Trial calculation was September 8, 2021. See Appendix: 200-206 In support of this Decision, the District Court cites the portion of the Act stating: "If the defendant is to be tried again following an appeal ... the trial shall commence within seventy days from the date the

action occasioning the retrial becomes final." 18 U.S.C. §3161(e). It further cites the Third Circuit Court's Opinion in United States v Felton, 811 f.2d 190(3d cir. 1987) to support the use of this date which it calculated by referencing the date of the Court's mandate reversing Petitioner's conviction(April 21,2021) and the continuing Standing Order suspending application of the Speedy Trial Act due to the COVID pandemic through September 7,2021. See Appendix:200-206.

Respectfully, this conclusion is flawed. Unlike a contested conviction and Appeal which is reviewed and reversed by an appellate Court, this case was not retried due to the Third Circuit presiding over an appeal and issuing a decision on the merits of the constitutionality of the search of Petitioner's home. The Third Circuit Court issued its mandate for reversal after the Government filed a motion seeking it,not after a contested Appeal. The Government did not even attempt to defend its actions in the District Court. The Speedy Trial Act clearly does not seek to punish the Government if during the course of a successful criminal prosecution a defendant's conviction and sentence are overturned on Appeal. The Act itself clearly contemplates this occurring. However, that is specifically not what occurred here.

The Government should have known or should have decided prior to litigating the merits of Petitioner's motion to suppress before the District Court that the contested search was unconstitutional. The Government should not benefit from the Act's extended period of time in which to try the Petitioner when his conviction and retrial were granted. This is not punishing the Government for losing on appeal,it is recognizing that such an important and consequential decision is one that in good faith must be made in advance of the motion being litigated. In other words, but for the Government's decision to change its position on the constitutionality of the search of Petitioner's home, the case would have been tried,appropriately and timely, the first time.

For these reasons, Petitioner respectfully suggest that the Government's actions have violated the Petitioner's Speedy trial rights under 18 U.S.C. §3121

A. Once this Honorable Court Concludes the Petitioner's Speedy Trial Rights have Been Violated, the next step is to determine if the Indictment should be Dismissed with prejudice.

18 U.S.C. §3162 states, in part:

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or Indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the Court shall consider, among others, each of the following factors: the seriousness of the offense, the facts and circumstances of the case which led to dismissal; and the impact of a reprosecution on the administration of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this action.

18 U.S.C §3162(a)(2). The Supreme Court requires a District Court to carefully consider each of the three factors set forth in this subsection in making a determination as to whether dismissal should be with or without prejudice. See United States v Taylor, 487 U.S.326, 108 S.Ct. 2413, 101 L.Ed. 2d 297(1988) in addition, the Third Circuit has also held that the District Court should also consider prejudice to the defendant as a factor in considering whether dismissal should be with prejudice. See United States v Stevenson, 832 f.3d 412(3d Cir. 2016)

(1) The Seriousness of the Charges

All offenses against the United States are serious, and felony drug offenses are serious. Were this the only factor to consider, however, there could be no case which would lead to dismissal with prejudice, a remedy clearly contemplated by our appellate courts.

(2) The facts and Circumstances leading to the delay here are attributable solely to the Government, and just as importantly, were completely preventable. The Stevenson Court asks the District Court to consider in analyzing the delay:

... did it stem from 'intentional dilatory conduct' or a 'pattern of neglect on the part of the Government,' or rather, from a relatively benign hitch in the prosecutorial process? quoting United States v Cano-Silva, 402 f.3d 1031 (10th Cir. 2005) ('In determining whether the facts and circumstances warrant dismissal with prejudice we focus on the culpability of the conduct that led to the delay.'); see also United States v Blevins, 142 f.3d 223, 226 (5th Cir. 1998) ('Regarding the facts and circumstances leading to the dismissal, we look to whether the Government's failure to meet deadlines was repetitive, regular, and frequent with respect to this Petitioner.')

Stevenson at 420. It should also be noted that "[w]here...the delay-causing conduct is attributable to the sovereign (the court or prosecutor), it inveighs progressively in favor of the accused. As we see it, the appropriateness of barring reprosecution increases in relatively direct proportion to the degree of culpability which attaches." United States v Hastings, 847 f.2d 920, 925 (1st Cir. 1988). In this case, none of the delay can be attributed to the Petitioner. All of the delay is attributable to the Government, and as been stated previously, the Government's actions were intentional and preventable.

(3) The Impact of a Reprosecution on the Administration of the Speedy Trial Act and on the Administration of Justice.

"The main considerations that Courts have taken into account when examining this factor are whether the defendant suffered actual prejudice as a result of the delay and whether the Government engaged in prosecutorial misconduct that must be deterred to ensure compliance with the Act." Stevenson at 422 quoting United States v Howard, 218 f.3d 556, 562 (6th Cir. 2000) (internal citation and quotation marks omitted). The length of the delay, measure of the seriousness of the Speedy Trial violation, in some ways is closely related to the issue of the prejudice to the defendant. The longer the delay, the

greater the presumptive or actual prejudice to the defendant, in terms of his ability to prepare for trial or the restrictions on his liberty." Taylor at 340-41.

The Petitioner has been incarcerated since July 17, 2018. His initial trial was in October of 2019, his retrial in August of 2022, and his second sentencing in March of 2023. It has been greater than six years since his initial arrest and he is just being able to come to the Supreme Court for this Unprecedented case. While it's understood that delay can be attributable to the COVID pandemic, it is again emphasized that the entire delay was the result of the Government's actions. Petitioner was initially sentenced on February 21, 2020, a month prior to the inception of the pandemic and its subsequent effects on our criminal justice system. Had the Government acted appropriately in advance of Petitioner's motion to suppress, the undue delay resulting from the pandemic may very well never have occurred against Petitioner. For all of these reasons, dismissal with prejudice is justified in this case.