No. _____

In The
Supreme Court of The United States

GLENN EDWARDS,

Petitioner,

versus

THE 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

GLENN EDWARDS - PRO SE
REG NO: 71367-066
D. Ray James Correctional Facility
P.O. Box 2000
Folkston, GA 31537

QUESTION(S) PRESENTED

I. WHETHER THE DISTRICT COURT ABUSE ITS DISCRETION IN DENY PETITIONER'S MOTION FOR SUPRESS EVIDENCE USED TO OBTAIN SEARCH WARRANT VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHTS.

A. Philadelphia Police unlawful warrant request.

B. The Philadelphia Ploce trespass onto the Petitioner's property to obtain evience constituted a Fourth Amendment search.

C. Without the search warrant information unlafully obtained from unconstitutional trash pulls, the remaining information is stale and cannot support probale cause finding to justify issuance of warrant.

D. The evidence introduced in trial should have been excluded because the were obtanied by stale information and flawed search warrant.

1. STALENESS OF SEARCH WARRANT

2. Whethe the attorney's failure to argue staleness of the warrant under his motion to supress establishes ineffective assistance of counsel.

II. WHETHER PETITIONER'S DUE PROCESS RIGHTSD WERE VIOLATED BY DISTRICT COURT'S ORDER DENIAL HIS MOTION PURSUANT TO RULE 33 SINCE THERE WAS NO SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION IN COUNT THREE.

1. There are insufficient evidence to support a conviction to count three.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

DAVISON, JOSH, U.S. ASSISTANCE ATTORNEY

RUFE, CYINTHIA M. , HON. DISTRICT JUDGE

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 November 30, 2017.

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

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

[ ] 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).

STATEMENT OF THE CASE

On May 6, 2014, a grand jury in the Eastern District of Pennsylvania returned a four count Indictment charging the Petitioner with one count of distribution of a controlle substance, in violation of 21 U.S.C. § 841(b)(1)(c) [count 1], one count of possession with the intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(b)(1)(C) [count two], one count of firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c) [count three], and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) [count four].

The Petitioner was later convicted as charged and consequenlty on March 31, 2017, the District Court was sentenced to 81 months imprisonment.

The Petitioner filed a timely notice of appeal on April 3, 2017 and the Court of Appeals affirmed the conviction on November 30, 2017.

Therefore, the Petitioner is hereby requesting this Honorable Court to reverse the conviction in the interest of justice as the Petitioner's constitutional rights were seriously violated.

REASON FOR GRANTING THE PETITION

I. WHETHER THE DISTRICT COURT ABUSE ITS DISCRETION IN DENY PETITIONER'S MOTION TO SUPPRESS EVIDENCE USED TO OBTAIN SEARCH WARRANT VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHTS.

The Petitioner contends that this Honorable Court stated on KATZ v. UNITED STATES, 389 U.S. 347, 357 (1967) that a search "are per se unreasonable under the Fourth amendment, subject only to a few specifically established and well-delineated exceptions". See, TERRY v. OHIO, 392 U.S. 1, 20 (1968).

To satisfy the warrant requirement, an impartial judicial office must asses whether the Police have probable cause to make an arrest, conduct a search, or seize evidence, instrumentalities, fruits of a crime or contraband. UNITED STATES v. MALVEAUX, 350 F.3d 555, 557-58 (6th cir. 2003); WARDEN, MD. PENITENTIARY v. HAYDEN, 387 U.S. 294, 301-02 (1967). Hence, there was no probable cause in this case and the warrant which was requested 6 months after the illegal search and seizure conducted by the Philadelphia Police Investigator. UNITED STATES v. UPHAM, 168 F.3d 532, 537 N.3 (1st cir. 1999); UNITED STATES v. WELLS, 648 F.3d 671, 677-79 (8th cir. 2011)(LEGITIMATE EXPECTATION OF PRIVACY IN AREA OF UNPAVED DRIVEWAY FROM WHICH OTHERWISE SHIELDED BACKYARD AND OUTBUILDING WERE VISIBLE).

The Petitioner contends that the evidence produced during a trash pull in his driveway, in wich was used by the Philadelphia police

as a basis to show probable cause ans secure an search warrant was illegal since the office search and seizured evidence from the bags which were inside the Petitioner properly.

Moreover, those illegal evidences were used 6 month after being illegal obtained for the only purpose to secure the warrant.Thus, those evidence was obtained without a warrant and, as such, in violation of the Petitioner's guarantee rights under Fourth and fourteenth amendments.

The Court ignore those violations and allowed the unlawful warrant. However, the items recovered from the Petitioner's house was recovered after the office conduct 6 month before an unlawful trash pull. The evidence inside the Petitioner house should have been excluded as were requested under the Petitioner motion to supress physical evidence, and the District court should have reevaluated the warrant's legitimacy without this tainted evidence. Then the Court would have had to evaluate the staleness of the warrant.

The Petitioner asserts that at the very core of the fourth amendment stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion. SILVERMAN v. UNITED STATES, 365 U.S. 505, 511 (1961). Accordingly, it is a basis principle of fourth amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable an illegal. GROH v. RAMIRE, 540 U.S. 551, 559 (2004)(quoting PAYTON v. NEW, 445 U.S. 573, 589 (1980))(internal quotation omitted); KYLLO v. UNITED STATES, 533 U.S. 27, 31 (2001)(citing ILLINOIS v. RODRIGUEZ, 497 U.S. 177, 181 (1990). The fourth amendment protect the right of a person within his/her own home to be free from unreasonable government intrusion.

FLORIDA v. JARDINES, 133 S. Ct. 1409, 1414 (2013). This protection extends to the areas immediately surrounding the home, known as the curtilage and is "part of the home itself for fourth amendment purpose". OLIVER v. UNITED STATES, 466 U.S. 170, 180; UNITED STATES v. DUNN, 480 U.S. 294, 300 (1987) Thus, challenges the District Court's factual findings with respect to the Petitioner's motion to suppress, are review for abuse of discretion, while the legal conclusions are reviewed de novo. UNITED STATES v. JACKSON, 728 F.3d 367, 372-73 (4th cir. 2013)(witing ORNELAS v. UNITED STATES, 517 U.S. 690, 699 (1996).

The same equally protection should apply to the Petitioner because here clear constitutional violation is established by an philadelphis police office performed a illegally search and seizure which have led to a unlawfully and wrongfully warrant search. FLORIDA v. JARDINES, Suppra; UNITED STATES v. REILLY, 76 F.3d 1271, 1279 (2nd cir. 1996); CARMAN v. CARROL, 749 F.3d 192, 197 (3rd cir. 2014)(judgment rev'd on other grounds, 135 S. Ct. 348 (2014)(per curiam); UNITED STATES v. VAN DUKE, 643 F.2d 992, 994 (4th cir. 1981); UNITED STATES v. HEDRICK, 922 F.2d 396, 399 (7th cir. 1991); UNITED STATES v. WELLS, 648 F.3d 671, 675-679 (8th cir. 2011).

THe Petitioner conteds tha the garbate bags left on the right side of the garage in his driveway was not access to the public. Thus, the office invation and illegal search of those bags without warrant violated his constitutional rights. CALIFORNIA v. GREENWOOD, 486 U.S. 35 (1988).

The officer has never knock in the Petitioner house or ask permission to search those bags seating in the driveway. JARDINES, 133 S.CT. 1409 at 1416-1417.

Here in this case, the Petitioner was not afforded the safeguard in JARDINES since the Philadelphia police breached the curtilage of [the] house when they conducted the trash pull. Because it is fairly and clear to say tha the police officer actions in opening the trash box as well as the trash bags, the officer has violated the protections of the fourth amendment. JACKSON, 728 F.3d at 373.

The Petitioner conteds that the evidence was illegal obtained and those collected tainted evidences including, in the search warrant must be exclude and the District Court failed to excise the offending portion of the warrant to see whether without the improper evidence, the warrant shows probable cause. UNITED STATESv. BISHOP, 264 F.3d 919, 924 (9th cir. 2001); UNITED STATES v. MADRID, 152 F.3d 1034, 1041 (8th cir. 1998). Thus, the Petitioner is entitle to relief because in this case the evidence was obtained in violation of the law. Consequently, the Petitioner rights were violated and the Court should reverse the conviction.

A. PHILADELPHIA POLICE UNLAWFUL WARRANT REQUEST

On August 16, 2013, Philadelphia police investigators made application to a judicial officer of the Philadelphia Court of Common Pleas for a search warrant for the Petitioner house located on 2151 Tyson Avenue in Philadelphia. The search warrant was supported by an affidavit of probable cause which purports to set forth the details of an investigation into alleged drug dealing by the Petitioner and suggests that the Petitioner's home is likely to contain evidence of his drugs distribution.

Philadelphia police officer Michael Williams states that in February of 2013, he initiated a drug investigation against Barrington Dudney who resided also in Philadelphia.

THe affidavit further states that on February 26, 2013, the officer conduct a survellance to the Petitioner house. The offecer alleged that the Petitioner when to a location where he meet with another individual name Alvin William who was known by the police.

On February 28, 2013, another surveillance was conduct into the Petitioner house wich the office alleged seeing the Petitioner drive to another location and meet with another individual who has give him a unknow object.

The probable cause affidavit then skips ahead approximately four and one-half months to July of 2013 when the police officer Williams conduct three searches of garbage receptacles on the Petitioner property, on July 19, July 25 and August 15, 2013. Recovered from those bags was residue of marijuana.

On July 19, 2013, the Police arrested Barrington Dudney who's the Police alleged to point finger at the Petitioner by stating that he has being on the Petitioner house and confirmed to see drugs and guns. Hence, dudney testimony was made based on promises of short sentence and promises that he would be deported back to Jamaica.

In this case there are two independent reasons why the constitutional protection from unreasonable searches and seizures extends to the trash cans placed immediately adjacent to the Petitioner home. First, he had a "reasonable expetation of privacy" in the trash cans and their contents. Second, law enforcement's physical treapass onto the property to seize items and gather information a "seach." FLORIDA v. JARDINES, 133 S. Ct. 1409 (2013). Absent a warrant, the warrantless

"trash pulls" violated Petitioner's Fourth Amendment rights. Id. at 1414 (holding that area around and associated with the home in "part of the home itself for fourth amendment purposes"); GROH v. RAMIREZ, 540 U.S. 551, 559 (2004)("seizure in side a home without a warrant are presumptively unreasonable).

The Supreme Court has addressed whether Fourth Amendment protections extend to trash in CALIFORNIA v. GREENWOOD, 486 U.S. 35 (1988). In GREENWOOD, the police on two different occasions, obtained from GREENWOOD'S trash collector garbage bags left on the curb in front of his house. The Court found it significant that the trash cans were left on the curb, and not near the home's curtilage and held that "the warrantless search and seizure of garbage left for collection outside the curtilage of a home" is not a "search" within the meaning of the fourth Amendment. Id. at 37. The Court clarified its holding between trash left in a public access point and trash near the curtilage: "According, having deposited their garbage in an area particularly suited for public inspection, and in a manner of speaking, public consumption, for the express purpose of having strangers take it, [GREENWOOD] could have had no reasonable expectation of privacy in the" discarded items. Id. at 40-41. The Court additionally reasoned that there can be no reasonable expectation of privacy when the trash, which was in opaque bags, is readily accessible to animals, children, scavengers, or other members of the public. Id.

Applying the same analysis, the Eighth Circuit held that "the constitutionality of a trash pull depends on whether the garbage was readily accessible to the public so as to render any expectation of

privacy unreasonable." UNITED STATES v. COMEAUX, 955 F.2d 586, 589 (8th cir. 1992)(internal quotation omitted); UNITED STATES v. CERTAIN REAL PROPERTY LOCATED AT 987 Fischer Road, 719 F. Supp, 1396 (E.D. Mich. 1989) (finding garbage bags placed against back wall of a house were protected from a warrantless search).

In this case, the Petitioner secured the trash in multiple plastic bags in a secure container. Petitioner's actions evidence a desire to keep his trash private and away from animals, scavengers and people. The cans and their contents were kept in a driveway on his property in the rear of the house. They were not put on a public curb for removal.

Therefore, the actions of the Philadelphia Police office, in trespassing onto Petitioner's property violated his reasonable expectation of property and constituted a search within the fourth Amendment.

B. THE PHILADELPHIA POLICE TRESPASS ONTO THE PETITIONER'S PROPERTY TO OBTAIN EVIDENCE CONSTITUTED A FOURTH AMENDMENT "SEARCH".

The Supreme Court held in UNITED STATES v. JONES, 132 S. Ct. 945 (2012), revived a common-law trespass analysis to fourth Amendment protection. In JONES, a joint task force of federal and District of Columbia law enforcement officers was investigating the defendant for traffickin narcotics. JONES, 132 S. Ct. at 948-49. The task focer sought and received a warrant authorizing the installation of a GPS devise on the defendant's car in the District of Columbia within ten days of the

warrant's issuance. Id. The GPS device, however, was not installed until the eleventh day and was installed in Maryland, not the District of Columbia. Id. The defendant was ultimately indicted, convicted and sentenced to life imprisonment based, in part, on information obtained via the GPS devise. Id. On appeal, the United States Court of Appeals for the District of Columbia reversed the conviction, finding that the admission of evidence obtained from the warrantless use of the GPS devise violated the fourth amendment. The United States Supreme Court agree and held that the placement of a GPS device on the defendant's car constituted a search. Id. at 950-51.

Writing for the majority, Justice scalia held tha the formulation of what constitutes a search, as delineated in KATZ was incomplete. Justice Scale explained that KATZ supplemented but did not replace traditional jurisprudence that linked Fourth Amendment rights to property rights. The Fourth Amendment also protects individuals from government actions that constitute a trespass. Thus, JONES held that while not all trespassory searches offend the fourth Amendment, those that involve "persons, houses, papers, and effects" do invoke that protection, regardless of whether the individual has a reasonable expectation of privacy under KATZ in the item at the time the trespass took place. Id. at 953-54.

The Petitioner contends that common law property themes, clearly stated that "the area immediately surrounding and associate with the home" is "part of the home itself for Fourth Amendment purposes." FLORIDA v. JARDNINES, 133 S. Ct. 1409 (2013).

The Petitioner asserts that by utilizing JARDNINES, this becomes the "easy case". The Police traspassed onto Petitioner's driveway for the

purposeof seizing items located on his property. As a result, police behaved in a manner far beyong what a normal citizen could accomplish without being arrested. If a person approached this area late at night and was stading next to the garage, it is reasonable to assume a passer-by would believe that the person stading at that location going through the garbage, it is quite likely someone would have called the police on them and they could have been arrested for treapassing. Thus, this case is an easy case, a search occurred in a protected area without a warrant. As a result the fruits of the search should be suppressed WONG SUN v. UNITED STATES, 371 U.S. 471, 484 (1963). Thus, the Petitioner is entitle to relief and this conviction should be reverse and the case dismissed for Fourth amendment violation. The search was unlawfully.

C. WHITOUT THE SEARCH WARRANT INFORMATION UNLAWFULLY OBTAINED FROM UNCONSTITUTIONAL TRASH PULLS, THE REMAINING INFORMATION IS STALE AND CANNOT SUPPORT A PROBABLE CAUSE FINDING TO JUSTIFY ISSUANCE OF WARRANT.

The Petitioner asserts that the police obtained a warrant in advance of the search of his home. With respect to a search warrant, the fourth amemdment provides that "no warrant shall issue but upon probable cause, supported by oath or information..." U.S. CONST. AMEND. IV.

In this case, the affidavit of probable cause supplied by the officer Williams contained evidence that was the result of an unlawful search and seizure. MARYLAND v. PRINGLE, 540 U.S. 336, 370-71, 124 S. Ct. 789 (2003)(citations omitted); UNITED STATES v. ZARECK, 210 W.L. 5053916 at 16, Dec. 3 2010 (W.D.Pa.).

As mentioned above, the three searches of the Petitioner's

trash receptacles in July and August of 2013 were warrantless search of items on the curtilage of the Petitioner's home and required a search warrant supported by an affidavit of probable cause.Here the evidence seized during the unlawful search, is derivative evidence, both tangible and testimonial which must be excluded as fruit of the poisonous tree. WONG SUN v. UNITED STATES, 371 U.S. 471, 44-85, 83 S. Ct. 407 (1963).

The Petitioner contends that the information obtained from the unlawful searches in July and August of 2013 must be redacted from the affidavit when considering the totality of the circumstances before the magistrate who approved the warrant. UNITED STATES v. AMANKWAA, 2010 WL 55710, January 4, 2010 (N.D.Pa.). Without the evidence obtained in July and August 2013 trash receptacle searches, the police affidavit is insufficient to suport a finding of probable cause that evidence of criminal activity would be present in the petitioner's house.The only evidence that cointains articulable facts its nearly four and one-half months old is thereby stale. The law is well founded that the probable cause to justify the issuance of warrant must exist a the time the warrant is issued. UNITED STATES v. HARRIS, 42 F.2d 115, 1119 (3rd cir. 1973). In other words, the evidence supporting an affidavit of probable cause must not be stale.Therefore, the Petitioner's conviction cannot stain and must be vacated. In other world, the evidence supporting an affidavit of probable cause must not be stale. When viewed in ligth of the only lawfully obtained information, the affidavit of probable cause conveys evidence of a single trqansaction in February of 2013 followed by what are implied to be suspicious interactions between the Petitioner and other individuals, but for which there is no evidence of actual illegality.

The final part of the warrant that would arguably support a finding of probable cause lacks credibility or sufficient detail to serve the position of the government. The affiant states that Mr. Dudley was arrested and proffed a statement that he was familiar with the Petitioner and traveled with him on several occasions to pick up bulk quantities of marijuana shipped from California. Thus, there is no evidence of any investigation in regarding drugs been shipped from California and Mr. Dudle's credibility in this matter is hardly established in any reasonable way. As a subject criminal convicted who face serious times imprisonment, he has substantial motivation to lie. In fact, Mr. Dudley has confess recently that his proffer was a lie and requested by the government with a promises of prevent Mr. dudley deportation. Thus, the government has ultilized a power tool which makes any witnesses engage in to lie, "bribe ."

The Petitioner contends that the Court should have excise the offending portion of the warrant whether without the improper evidence, the warrant shows probable cause since the evidence was illegally obtained and tainted which is icluded in the search warrant. UNITED STATES v. BISHOP, 264 F.3d 919, 924 (9th cir. 2001); UNITED STATES v. MADRID, 152 F.3d 1034, 1041 (8th cir. 1998). Since the trash pulls were unlawfully obtained, the evidence inside of them recovered should have been excluded and the District Court should have reevaluated the warrant's legitimacy without this tainted evidence. Then, the Court would have had to evaluate the staleness of the warrant.

The Petitioner further contends that this case should have been dismissed in the early stage because this indictment was obtained by

false testimony and unlawfully evidence. In fact the same office williams who testify in front a state Judge admitted trasppesing the Petitioner property in order to obtained the evidence from the garbage bags. However, during his testimony in the Federal Court in front a Federal Judge he complete change his testimony by given now different testimony to avoid disclose the Fourth amendment protection violation which has already occurred and which has made the State Judge dismiss the case.

Therefore, the only way for the government obtained an indictment against the Petitioner is by mislead the grand jury and by introduced false testimony since the violation already has occurred and has result in the case been dismissed by a state Judge. There is no any new evidence presented in the federal Court could clear shows and illegal conduct done by the Petitoner, Rather, there is clear manipulation and introduction of unlawfully evidence obtained in violation of the fourth amendment.

The Petitioner contends also that his conviction have occurred by two different perjury testimony given by officer Williams. If in the state Court he testify that he entered the Petitioner's driveway in order to obtained the evidence used to obtained the search warrant and now in Federal Court he testify that the trash was out to be collect, his testimony are constradictory thereby perjured.

D. THE EVIDENCE INTRODUCED IN TRIAL SHOULD HAVE BEEN EXCLUDED BECAUSE THE WERE OBTAINED BY STALE INFORMATION AND FLAWED SEARCH WARRANT

"Ordinarly, a warrant is necessary before police may open a closed container because by concealing the contents from plan view, the

possessor creates a reasonable expectation of privacy." UNITED STATES v. BANKS, 514 F.3d 769, 773 (8th cir. 2008)(citing ROBBIN v. CALIFORNIA, 453 U.S. 420, 427 (1981), overruled on the grounds by UNITED STATES v. ROSS, 456 U.S. 798 (1982)); CALIFORNIA v. GREENWOOD, 486 U.S. 35, 46 (1988)("A container wich can support a reasonable expectation of privacy may not be searched, even on prbable cause, without a warrant."' (quoting UNITED STATES v. JACOBSEN, 466 U.S. 109, 120, n.17 (1984)).

The Petitioner contends that the bags in his driveway was tightly knotted bags. Thus, the laws states that the bags in question need not be a lockbox, or some other type of container meant to keep others from accessing what is inside. MCWADE v. KELLY, 460 f.3d 260, 272-73 (2nd cir. 2006). Thus, the office who opened the bags by untying the bags have unlawfully conduct a search.

As the evidence from the trash pulls was inadmissible, then the evidence seized in the search was tainted as it was based on a faulty search warrant. MARYLAND v. PRINGLE, 540 U.S. 366, 371 (2003).

Accordingly, the Petitioner is entitled to a new trial.

1. STALENESS OF SEARCH WARRANT

The Petitioner contends that the information to obtaining the warrant was stale. UNITED STATES v. GRUBBS, 547 U.S. 90, 95 n2.(2006); UNITED STATES v. FRECHETTE, 583 F.3d 374, 377 (6th cir. 2009). There is no bright line rule for staleness-it is evaluated on case by case basis. UNITED STATES v. RAYMONDA, 780 F.3d 105, 114 (2nd cir.), cert. denied, 136 S. Ct. 433 (2015). UNITED STATES v. CARROLL, 750 F.3d 700,

705 (7th cir. 2014); UNITED STATES v. HARRIS, 20 F.3d 445, 450 (11th cir. 1994).

The Petitioner contends that the staleness of the February transaction provided insufficient probable cause of a valid search warrant to be executed on August 16, 2013. The contenxt of drug crimes, information goes stale very quickly because drugs are usally sold and consumed in a prompt fashion. UNITED STATES v. BROOKS, 594 F.3d 488, 493 (6th cir. 2010); UNITED STATES v. WAGNER, 989 F.2d 69 (2nd cir. 1993).In this case, the six months time lapse between the February 14th transaction and the August 16th arrest demonstrate a clear knowledge that the Police knew the information was stale thereby necessitating the trash pulls in mid-July.Thus, the District Court erred in denying the motion to suppress based on Staleness.

2. WHETHER THE ATTORNEY'S FAILURE TO ARGUE STALENESS OF THE WARRANT UNDER HIS MOTION TO SUPPRESS ESTABLESHES INEFFECTIVE ASSISTANCE OF COUNSEL.

The Petitioner contends that staleness is an important issue in this case and when his previous attorney did not argue staleness in his motion to suppress, he rendered ineffective assistance of counsel and the ineffectiveness was acknowled by the appeal attorney who was new ot the case at the time of the appeal. MASSARO v. UNITED STATES, 538 U.S. 500, 504 (2003).

Here in this case, the Petitioner did not receive the benefit of important argument necessary for relief under the motion for suppress hearing. The first prong of STRICKLAND test is met in that there was no reason or strategy for Petitioner's first attorney to preclude this argument from his presentation. STRICKLAND, Suppra. It

is evident the Court was struggling with the issue of the length of time between the first drug transaction and the execution of the warrant as its noted the several months timeline in its findings of fact. By highlighting the staleness argument, there is a reason to demonstrate the outcome would have been different and the District Court would have granted the motion to suppress.

Accordingly, the Petitioner respectfully requests the Honorable Supreme Court to vacate the conviction and remand the case for a new trial without the admission of this illegally unlawful seized evidence in the interest of justice.

II. WHETHER PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY DISTRICT COURT'S ORDER DENIAL HIS MOTION PURSUANT TO RULE 33 SINCE THERE WAS NO SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION IN IN COUNT THREE.

Upon the conclusion of the trial, the Petitioner filed a pro se motion for new trial pursuant to rule 33 of the Federal Rules of Criminal Procedure. See, doc. 99. Subsequently a lawyer was appointed to the Petitioner case and a supplemental motion requesting the District Court to vacate the judgment of count three. Thus, the District Court wrongfully denied the motion.

Furthermore, the previous attorney failed to file a motion pursuant to rule 29 in regarding count 3. By failed to file the motion under rule 29, the attorney provided ineffective assistance. There is no legal strategy that the attorney adopted to explaining his failure to filed a motion under rule 29. Thus, the first prong in

STRICKLAND, Suppra. Without a conviction on count three, the outcome of the case would clearly have been different as Appellant would not have received a mandatory terms of 60 months to be served consecutive. Accordingly, the Petitioner meets the second prong of the STRICKLAND test. In additional to dimissal of the count three, the Petitioner argue the District Court error in denying his motion under rule 33.

The Petitioner contends that even viewing the evidence in the light most favorable to the government, no "rational trier of fact could have found the essential elements of the offenses charges...[prove] beyond a reasonable doubt." UNITED STATES v. ANDERSON, 108 F.3d 478, 480 (3rd cir. 1997). However, [u]nlike an insufficiency of the evidence claim, when a District Court evaluates a rule 33 motion it does not view the evidence favorably to the govenrment, but instead exercises its own judgment in assessing the government's case." UNITED STATES v. JOHNSON, 302 F.2d 139, 150 (3rd cir. 2002); UNITED STATES v. BRENNAN, 326 F.3d 176, 189 (3rd cir. 2003). A new trial required on the basis of evidentiary errors when these "errors, when combined, so infected the jury's deliberation that they had a substantial influence on the outcome of the trial. UNITED STATES v. THORNTON, 1 F.3d 149, 156 (3rd cir. 1993). Thus, the Supreme Court should reverse the District Court order denied and vacate the jury's verdict and order a new trial in this matter as the District Court erred in denying the Petitioner's motion for new trial pursuant to rule 33.

1. THERE ARE INSUFFICIENT EVIDENCE TO SUPPORT A CONVICTION TO COUNT THREE.

The Petitioner contends that in his case, the government failed to prove each element of count three beyond a reasonable doubt. The Petitioner argues that the government failed to present sufficient evidence with regard to possession of firearm in furtherance of a drug trafficking offense from which any reasonable juror could find them guilty of that element beyond a reasonable doubt. Even if the Honorable Supreme Court finds after viewing the evidence in the light most favorable to the government that a judgment of acquittal would not have been appropriate i this case, it may still overturn the District Court's denial of a new trial based on the government's failure to prove an essential element of the crime charged beyond a reasonable doubt. JOHNSON, 302 F.3d at 150.

The Petitioner conteds that the the weight of the evidence with regard to the intent element of the sabotage charge is clearly against the verdict. In fact, the Seventh Circuit has held that "[i]f the complete record, testimonial and physical, leaves a strong doubt as to the defendant's guilt, even though not so strong a doubt as to require a judgment of acquittal, the District Court judge may be obliged to grant a new trial." UNITED STATES v. WASHINGTON, 184 F.3d 653, 657 (7th cir. 1999).

On the second day of trial, the government called as a witness Barrigton Dudney to testify. During direct examination of this witness, Dudney was asked whether or not he had seen the Petitioner with a gun.

Dudney states that the Petitioner had a gun, however, when he was pressed about why the Petitioner had a gun the witness stated as follows:

A: I think he said I have that gun to protect his business.

Q: What business are you refering to?

A: He owned a garage.
Q: Okay, did he talk about his gun with regard to his other business?
A: He didn't-no, he didn't mentioned no marijuana.
Q: He never mentioned to you that-
A: No, no the gun for marijuana.

When the government confronted Dudney regarding his prior testimony which was done in front the grand jury appearance, the prior testimony does not demonstrate that the gun was in furtherance of a drug trafficking crime as required by count three of the indictment.

The Petitioner conteds that even the jury had found the witness testimony credible and accepted his testimony as true, this evidence is only enough to support a conviction under count four (18 U.S.C. § 922(g)(1)), however, not in count three.

The Petitioner asserts that futherance of means for the purpose of assisting in, promoting, accomplishing, advancing, or achieving the goal or objective of drug trafficking, specially count one in this case.

The testimony of the government witness clearly stated the Petitioner was carrying the firearm for his protection as a citizen, not as a drug dealer. There is nothing definitive presented that the argument was because the person felt shorted or that there had ever been a dispute over money. Furthermore, there is no evidence that there really was a dispute and this wasn't simply a made-up story that

the Petitioner had recounted to Dudney or that is clear confirmation that the witness was given a false testimony in exchange of sentence reduction as well as a order to avoid deportation. Thus, this is simply evidence that the Petitioner possessed a firearm, but certainly not sufficient evidence to support a conviction that he possessed it to further his criminal activity to sell drug.

Since there was insufficient evidence to prove the Petitioner firearm in furtherance of count one and two, the jury decision convicting him of this offense cannot be allowed to stand. The District Court erred in not granting the motion for new trial to correct this fundamental error.

Therefore, the Petitioner is hereby requesting in the interest of justice that this Honorable Court vacate the judgment and offer the Petitioner a remand for sentence without count three, new trial or the alternative to dismiss the case for violation committed against the Petitioner's constitutional rights.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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