No. _____

In The
Supreme Court of the United States

October Term 2017

Willie Curry,
Petitioner,

v.

United States of America,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court of Appeals
For The Sixth Circuit

Petition for Certiorari

Willie Curry
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Questions Presented

The Fourth Amendment has continuously been applied to cases like the one here. The Sixth Circuit failed to follow that jurisprudence. Does Carpenter and Byrd require a GVR in this case?

The Sixth Circuit acknowledged that the analyst who tested the ostensible DNA did not testfify at Curry's trial, but since Curry's trial counsel failed to object plain-error applied. Does Rosales-Mireles require a GVR?

This Court's recent decision in Montgomery v. Louisiana demonstrates the significance of "age" to a criminal offense. Curry was charged under 18 U.S.C. 1591, where the Government was required to prove Curry "knew" the age of the girls. The Government, however, knew that it could not do so and instead sought refuge in § 1591(c) which permits the Government to rely on a lower scienter requirement even though it was not charged. Does such an usurpation survive a due process challenge?

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To the Chief Justice and Associate
Justices of The Supreme Court:

Willie Curry ("Curry"), acting without counsel respectfully moves for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, and in support states:

Opinion[s] Below

The Sixth Circuit affirmed of Feb. 6, 2018, and rehearing, with suggestions for rehearing en banc was denied April 11, 2018, and both decision are attached as appendix-A

Jurisdiction

This court has jurisdiction under 28 U.S.C. § 1254(1)

Constitutional And Statutory Provisions Involved

The Fourth Amendment to the Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but on probable cause.

The Fifth Amendment to the Constitution:

> The right to due process, both pertaining to notice and to have arbitrary laws enforced against him

Statement

Willie Curry was quitely fishing when he was approached by three females that claimed to have just escaped from a local detention center, and asked Curry for assistance. While this was surly not the most intelligent action to be taken Curry offered the girls a ride. The events that subsequently occurred would forever change Curry's life and land him in federal prison for the greatest portion of his life.

Curry never contested that assisted the girls, only the ostensible facts as they pertain to those girls. That is, Curry vehemently contested any potential "rape" of these girls, and any ostensible abuse that purportedly occurred. Relavant to this petition is whether law enforcement's use of cell-tower information obtained without a warrant that was relied upon to place Curry in a particular location for purposes of obtaining a warrant offends or deprives him of his rights under the Fourth Amendment in light of recent developments from this Court.

Next, the facts were not disputed as to whether Curry actually knew that the girls were under age at the time of ostensible incident[s]. This was relevant because these girls did not come to Curry on a clean slate, that is, they had just escaped from a local detention center. For all that Curry knew they were interm prostitutes that were arrested and placed in the center. After all, the center is not to house the clean at heart. Then, why the escape? They were by definition felons, on the run from the authorities and just happened to come across Curry.

At the trial, the Government called upon witnesses that claimed to be involved in the testing of the purported DNA, but no party could specifically tell the jury with definition that they were the actual individual that tested the DNA that ostensibly belonged to Curry.

Then, as mentioned above, the lack of the appropriate mens rea permitted the Government to obtain a conviction on a theory of strict liability, and theconviction[s] in this case specifically draws against this Court's precedent that age is an element, and that knowledge of that element is essential for a conviction of this kind.

Finally, as argued in the Court below the Government's roaming demonstrates that the indictment, as fashioned, constituted a constructive amendment of the indictment.

Reason[s] for Granting the Writ

This Court recent decision in Carpenter v. United States, No. 16-402, 2018 U.S. LEXIS 3844 (June 22, 2018), calls for, at least, a GVR for the Sixth Circuit to review the collection of cell-tower evidence without a warrant. There is no question, or any facts to suggest that this recent ruling from the Court is not on all-fours with the case here. The Government, in this case, obtained cell phone records in order to place Curry in the area of the ostensible location[s] where the purported conduct took place. Without question this Court directly and without ambiguity held that: "The Government's acquisition of Carpenter's cell-site records was a Fourth Amendment search." Id. at *2. Just as in Carpenter, the Government, in this case, tied Curry to these preposterous actions by attempting to place him in vicinity of the crimes. The Carpenter decision alone calls for a vacatur to permit the Sixth Circuit to reevaluate his Fourth Amendment raised below.

Next, as argued below, Curry's rights to confront witnesses were plainly violated, that is, during the Government's case in chief, a barrage of witnesses were called to substantiate the DNA that was ostensibly Curry's. But, however, the actual analyst that conducted the comparison did not testify. Was it not this Court in Mathis v. United States, 136 S.Ct. 2243 (2016), that found that a good rule of thumb for reading our decisions is that what they say and what they mean are one in the same. In the court below counsel argued under this Court's precedent that Curry's confrontation rights that would have afforded him that

right were violated under Crawford v. Washington, 541 U.S.36, 68-69 (2004); Davis v. Washington, 547 U.S. 813, 822 (2006); Melendez-Diaz v. Massachusetts, 557 U.S. 305, 310 (2009), and Bullcoming v. New Mexico, 564 U.S. 647 (2011), and that in the absence of the actual analyst any scientific evidence would be inadmissible during the trial. The Sixth Circuit panel wholly disregarded this precedent and found that under the plain error standard Curry could not prevail. Recently, however, this Court issued Rosales-Mireles v. United States, No. 16-9493, 2018 U.S. LEXIS 3690 (June 18, 2018), where this Court specifically looked to a court's integrity and public confidence in finding that plain error had occurred, therefore, under Rosales-Mireles, the Sixth Circuit's decision is flawed and the case must be GVR'd under Rosales-Mireles.

Then, in the court below, it was argued that in the absence of the correct sceinter under 18 U.S.C. § 1591, it was impossible for Curry to defend the assertions made by the Government. The issue was whether Curry knew the age of the ostensible victims and recklessly disregarded that knowledge. The Sixth Circuit recognized that the indictment failed to provide Curry with the correct statute --- 18 U.S.C. 1591(c) --- which is supposedly a lower scienter requirement. Apparently, the Sixth Circuit, and perhaps appellate counsel failed to recognize is that this Court recently decided Montgomery v. Louisiana, 136 S.Ct. 718 (2016), where the Court held that age is a factor not to be shunned off when the offender was not of development stage when the defendant committed the crime. Here, however, the age scienter goes directly

against the actus non facit reum nisi mens sit res.

The constitutional importance of the correct mens rea in ensuring due process is rooted in the Western legal tradition and in American founding principles. Dennis v. United States, 341 U.S. 494, 500 (1951)(observing that proof of mens rea "is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence"); see also Brian W. Walsh and Tiffany M. Joslyn, Without Intent: How Congress is Eroding the Criminal Intent Requirement in Federal Law at 5 (2010). "The contention that an injury can amount to a crime only when intentionally inflicted is no provincial or transcient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to chose between good and evil." Morissette v. United States, 342 U.S. 246, 250 (1952).

In 1993, the Eastern District of New York described the intellectual develoment of mens rea protections, from classical philosophy to medieval law to William Blackstone to the Framers of the American Constitution:

> On either an historically based or a more fluid view of the content of the due process clause, the mens rea principle must be given constitutional effect. The various doctrines of culpability encompassed by the principle of mens rea are as deeply rooted as any fundamental rules of law still operative today. As already noted, the comcept of mens rea can be traced to Plato and, since the Middle Ages, has been an integral part of the fabric of the English common law from which we have drawn our own criminal and constitutional analysis. The legal framework against which the Framers of the United States Constitution operated included a strong committment to individual

> blameworthiness as the chief determinant of criminal liability. See Henry M. Hart, Jr., The Aims of the Criminal Law, 23 Law & Cintemp. Probs. 401, 423 (1958)("In the tradition of Anglo-American law, guilt of crimes are personal. The main body of the criminal law, from the Constitution on down, makes sense on no other assumption."); id. at 434 (It is nonsensical to assume that "the views of Blackstone should be . . . cavalierly overriden in interpreting a Constitution written by men who accepted his pronouncements as something approaching gospel.").

United States v. Cordoba Hincaple, 825 F. Supp. 485, 515-15 (E.D. New York 1993). The Sixth Circuit in this case found simply that it could assume that the lesser scienter could be there and therefore no error existed. Then in an absurd finding the Sixth Circuit shifted to Curry the responsibility to argue at trial that he was innocent of the knowlwdge element or the recklessly disregarded the girls' age. Essentially, the Sixth Circuit has rested its decision on strict liability because Curry did not prove the lack of knowledge.

Curry did not shoulder any responsibility to demonstrate his lack of knowledge as the Sixth Circuit suggests. It is a pillar of the criminal law tradition that the burden to prove all elements of an offense lise with the Government. Patterson v. New York, 432 U.S. 197, 215 (1977). Under the Sixth Circuit's approach, this Court's precedent regarding a scienter before each element is mere fodder.

As part of a phenomemon labeled "overcriminalization," mens rea requirements have been eroding in criminal law, and in the Sixth Circuit and throughout the United States such actions are becoming frequent. Erik Luna, The Overcriminalization Phenomenon, 54 Am.

703, 726 (2005). In the 109th Congress (extending from January 3, 2005 to January 2007), "over 57 percent of the offenses considered . . . contained inadequate mens rea requirements." See Walsh and Joslyn, Without Intent, at 3-4. Several of the most prominaent judges in the United States have critized this movement toward statutes that are drafted withut adequate mens rea protections and toward a legal culture in which prosecutors increasingly disregard existing mens rea requirements.

In 2010, for example, prosecutors made virtually no effort to prove that the defendant knew or should known that selecting a particular method of accounting for reporting corporate figures to stockholders was illegal. United States v. Goyal, 629 F.3d 912, 922 (9th Cir. 2010). The defendant's conviction was reversed on appeal, and Judge Alex Kozinski wrote a blistering concurrence:

> This case has consumed an inordinate amount of taxpayers resources, and has no doubt devastated the defendant's personal and professional life.... This is just one of a string of recent cases in which courts have found that federal prosecutors overreached by trying to stretch criminal law beyond its proper bounds. Criminal law should clearly separate conduct that is criminal from conduct that is legal . . . not only because of the dire consequences of a conviction --- including disenfranchishment, incarceration and even deportation --- but also because criminal law represents the community's sense of the type of behavior that merits the moral condemnation of society. When prosecutors have to stretch the law or the evidence to secure a conviction, as they did here, it can hardly be said that such moral judgment is warranted.

Id. at 922 (Kozinski, J., concurring).

Another prominent judge, Richard Posner, has argued that it is unreasonable and unjust to expect that all citizens be knowledgeable about the thousand of criminal laws now in existence. In 1998, for example, a defendant argued that he did not know he was required to relinquish a firearm after a restraining order had been filed against him several years before, nor had he been notified of this requirement by the court. See United States v. Wilson, 159 F.3d 280, 280-81 (7th Cir. 1998). He was nevertheless prosecuted and convicted. See id. Justice Posner dissented:

> We want people to familiarize themselves with the laws bearing on their activities. But a reasonable opportunity doesn't mean being able to go to the local law library and read Title 18. It would be preposterous to suppose that someone from Wilson's milieu is able to take advantage of such an opportunity. If none of the conditions that make it reasonable to dispense with proof of knowledge of the law is present, then to intone "ignorance of the law is no defense" is to condone a violation of fundamental principles for the sake of a modest economy in the administration of criminal justice.

Id. at 296 (Posner, J., dissenting).

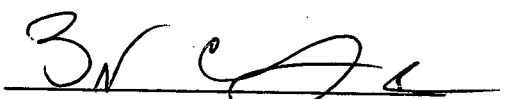
Perhaps most predomently, Justice Antonin Scalia has critized the trend towards overcriminalization and weakend mens rea requirements by writing that, "[i]t should be no surprise that as the volume [of criminal laws] increases, so do the number of imprecise laws. And no surprise that our indulgence of imprecisions that violate the Constitution encourages imprecisions that violate the Constitution." See Sykes v. United States, 131 S.Ct. 2276, 2288 (2011)(Scalia, J., dissenting). "In the field of criminal law, at least," Scalia continued in his dissent, "it is time to call a halt." Id.

Therefore, this Court must step in and follow the late Justice Scalia, and put a halt to this type of conduct that came from the Sixth Circuit. This court should grant certiorari and vacate the judgment and reverse with instructions to grant relief.

Conclusion

Certiorari is warranted in this case.

Filed this 2nd day of July 2018 under the penalty of perjury.



Willie Curry