IN THE SUPREME COURT OF THE UNITED STATES

CASE NO.: _____

FROM THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

LEVI LAPP STOLTZFOOS,
Petitioner-Appellant,

versus

SECRETARY OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS et al,
Respondents-Appellees.

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED (RULE 14 1(a))

Is 18 Pa. C.S. § 5111(a)(3) unconstitutionally overbroad where the statute criminalizes the depositing of lawfully acquired cash into financial institutions, and where Petitioner did not have any criminal *mens rea* or knowledge that his deposits were illegal?

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PETITION FOR WRIT OF CERTIORARI

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

OPINION BELOW

The unpublished Opinion of the United States Court of Appeals for the Third Circuit, issued on April 25, 2018, appears at Appendix A to this Petition.

JURISDICTIONAL STATEMENT

The Third Circuit Court of Appeals entered its judgment on April 25, 2018, denying Petitioner's habeas petition. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This Petition is timely filed within ninety (90) days of the Third Circuit refusing to grant review plus the thirty (30)day extension granted by this Court, allowing Petitioner to file until August 29, 2018.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

A claim that a statute is overbroad is a claim that it violates the substantive due process guarantees set forth not only in First Amendment but also in the Fifth and Fourteenth Amendments of the United States Constitution. A statute is "overbroad" if, by its reach, it punishes constitutionally protected activity as well as illegal activity.

The statute at issue, 18 Pa. C.S. § 5111, appears at Appendix E.

STATEMENT OF THE CASE

Petitioner seeks leave to appeal to this Court, alleging that his conviction was in violation of the United States Constitution where the Pennsylvania Statue he was convicted under, 18 Pa. C.S. § 5111(a)(3) is unconstitutionally overbroad as it punishes a wide range of law-abiding conduct including individuals like Petitioner, who did not possess any criminal *mens rea* or any knowledge that he acted illegally.

Between the period of January 6, 2006 and February 6, 2006, Petitioner, an Amish citizen who kept had his savings in cash at his home, made fifty-eight cash deposits, totaling $541,000 of money which he had earned lawfully throughout his career. He broke the deposits into amounts slightly under $10,000 and deposited the money into ten different banks because he was told by Bank officials that he would have fill out government forms and be subject to IRS investigation if he deposits over $10,000. A jury trial was held before the Honorable Howard F. Knisely of the Lancaster Court of Common Pleas on May 5-8, 2008. Although it was established that Petitioner deposited cash amounts under $10,000 to avoid reports being made, there was no evidence presented at trial that he was aware that

structuring cash deposits to avoid a report being made was illegal. Furthermore, there was evidence that Petitioner had structured similar financial transactions in 1999 and 2001 in order to avoid having to fill out a form without consequences—thus, he had no reason to believe his conduct to be illegal. Nevertheless, Petitioner was convicted of 58 Counts of Dealing in Proceeds of Unlawful Activity under 18 Pa .C.S. § 5111(a)(3). On July 22, 2008, the trial court sentenced Petitioner to an aggregate term of 2-10 years incarceration and a civil penalty of $540,200.

Petitioner filed a direct appeal in the Pennsylvania Superior Court, which upheld his sentence on October 26, 2010. Judge Ford-Elliot of the Pennsylvania Superior Court filed a dissenting opinion, where she held that 18 Pa.C.S. § 5111(a)(3) was unconstitutionally overbroad. See Commonwealth v. Stoltzfoos, 30 MDA 2009 (Pa. Super., October 26, 2010). See Appendix E. Petitioner sought an appeal to Pennsylvania Supreme Court, which denied his petition on June 16, 2011. Commonwealth v. Stoltzfoos, 854 MAL 2010.. Petitioner then filed for post-conviction relief under the Pennsylvania Post Conviction Relief Act 42 Pa.C.S.A. § 9541 et seq, which was dismissed by the trial court on February 3, 2012. He appealed this dismissal, which was affirmed by the Pennsylvania Superior Court on June 13, 2012. See Commonwealth v. Stoltzfoos, 2148 MDA 211 (Pa. Super. June 13, 2012). Petitioner appealed to the Pennsylvania Supreme Court, and was denied review on October 31, 2012. See Commonwealth v. Stoltzfoos, 517 MAL 2012 (Pa. Oct. 31, 2012).

Petitioner filed for a Writ of Habeas Corpus pursuant to 28 U.S.C.§ 2254 in the United States District Court, Eastern District of Pennsylvania. Magistrate Judge Richard A. Loret recommended that the petition for habeas relief be denied. See Appendix C. The

Honorable Legrome D. Davis initially approved the Magistrate Court's recommendations on March 15, 2016 and Petitioner appealed. On August 18, 2016, the Third Circuit remanded this case to the District Court, for further consideration of the Petitioner's filings.[1] On August 23, 2016, current counsel was appointed and directed to file Objections to the Report and Recommendation, which were subsequently filed on November 28, 2016.

On February 28, 2017, the Honorable Legrome D. Davis entered an Order overruling Appellant's objections to the Magistrate's Report and Recommendation and dismissing Appellant's Habeas Corpus Writ without a hearing, declining to issue a Certificate of Appealability. See Appendix B. On April 7, 2017, Counsel filed a Notice of Appeal of the District Court's February 28, 2017 Order with the Third Circuit. This appeal was 8 days outside of the normal 30-day appeal period set forth in the Federal Rules. However, on April 26, 2017, Judge Davis granted Petitioner's request for an extension to file an appeal, and Petitioner was given until May 5, 2017 to file a Notice of Appeal, which Petitioner did. On July 13, 2017, the Third Circuit granted a Certification of Appealability under 28 U.S.C. § 2253(c)(1), with respect to Petitioner's facial overbreadth challenge and his as-applied challenge. Petitioner filed his brief on October 26, 2017. On April 30, 2018, The Third Circuit affirmed the denial of Petitioner's Habeas Petition. See Appendix A. Petitioner now respectfully petitions for a Writ of Certiorari from this Honorable Court.

REASONS FOR GRANTING THE PETITION

18 PA.C.S. § 5111(A)(3) IS UNCONSTITUTIONALLY OVERBROAD WHERE THE

[1] Petitioner also appealed the Lower Court's decision not to appoint counsel for his Petition for Writ of Habeas Corpus and was granted the present CJA counsel.

STATUTE CRIMINALIZES THE DEPOSITING OF LAWFULLY ACQUIRED CASH INTO FINANCIAL INSTITUTIONS WITHOUT ANY CRIMINAL MENS REA OR KNOWLEDGE OF THE ILLEGALITY OF THE DEPOSITS. THE SUPREME COURT NEEDS TO ISSUE THE NECESSARY CLARIFICATION AS TO THE UNCONSTITUTIONALITY OF CERTAIN OVERBROAD STATUTES OUTSIDE OF CONTEXT OF THE FIRST AMENDMENT.

18 Pa. C.S. §5111 is titled "Dealing in Proceeds of Unlawful Activities". Petitioner was convicted under 18 Pa .C.S. §5111(a)(3) despite the fact there was absolutely no allegation, nor was it proven in any way at trial, that Petitioner's funds were derived from unlawful activities. Because §5111(a)(3) allows for this punishment without any proof of criminal intent or knowledge of the criminality of the structuring[2], it is unconstitutionally overbroad.

A claim that a statute is overbroad is a claim that it violates the substantive due process guarantees set forth not only in the First Amendment but also in the Fifth and Fourteenth Amendments of the United States Constitution. A statute is "overbroad" if by its reach it punishes constitutionally protected activity as well as illegal activity. Grayned v. City of Rockford, 408 U.S. 104, 114 (1972). The language of the statute in question literally encompasses a variety of protected lawful conduct. Id., see also NAACP v. Alabama, 377 U.S. 288, 307(1969) ("a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."). Although, as the Third Circuit points out in its opinion, Constitutional overbreadth arguments ordinarily pertain to First Amendment free speech concerns, a challenged statute can be held to sweep excessively so broadly as to be beyond the state's legitimate police powers, or be

[2] Petitioner had done a number of transaction

arbitrary and capricious because it leads to the imposition of punishment bearing little relation to any legitimate governmental interest. See City of Chicago v, Morales, 527 U.S. 41 (1999)) (holding municipal gang ordinance vague). NAACP v. Button, 371 U.S. 415 (1963). In fact, overbreadth claims have been considered by the Court in a significant number of cases. See, e.g., NAACP v. Button, 371 U.S. at 432-33 (1963) (finding barratry statute overbroad); Shelton v. Tucker, 364 U.S. 479, 490 (1960) (declaring statute requiring teachers to file affidavit regarding membership in organizations overbroad). These include situations where the enactment's plain language may outlaw constitutionally protected activity other than free speech, or where it extends broad investigatory powers to law enforcement agents. See Berger v. New York, 388 U.S. 41, 58-60 (1967) (holding state statute authorizing eavesdropping pursuant to court order but on less than probable cause for two-month period, with no termination provision or after-the-fact notice, is contrary to Fourth and Fourteenth Amendments).

This Court has recognized examples of overbreadth being applied outside the free speech context. The first case where it could be argued overbreadth was used outside the context of free speech involved the right to travel. In Aptheker v. Secretary of State, 378 U.S. 500 (1964) a group of U.S. citizens who were ranking officials of the Communist Party of the United States had their passports revoked under a section of the Subversive Activities Control Act of 1950. Id. This act made it a felony for a member of a Communist organization to apply for, use, or attempt to use a passport. Id. These individuals filed suit, seeking declaratory and injunctive relief in a U.S. district court. Id. The plaintiffs argued that the law was unconstitutional and in direct violation of the right of liberty to travel

abroad guaranteed by the Due Process Clause of the Fifth Amendment. Id. at 503. Although the District Court denied relief, upon review, the Court held that the section at issue of the Subversive Activities Control Act too broadly and indiscriminately restricted the right to travel and, thus, abridged liberties guaranteed by the Fifth Amendment. Id. at 504. The Court, stated, "The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment. Id. at 513-4. The Court focused on the language of the act itself and stressed the fact that the act "sweeps too widely... across the liberty guaranteed in the Fifth Amendment." Id. at 514. The Court insisted, "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." Id. at 508. The Court recognized that the government had "less drastic" means within its power to protect national security interests and that the abridgement of liberty in this case was substantial, which is the very definition of overbreadth. See id. at 512-514, (quoting Shelton v. Tucker, 364 U.S. 479, 488 (1960)). While this Court did not explicitly state that this law was "overbroad," the Court strongly implied this through its language. This Court stated that the act "is patently not a regulation narrowly drawn to prevent the supposed evil." This Court considered the concerns that arose from what it had described as an unnecessarily broad statute and stated that laws having the potential of abridging liberty should be narrow in scope, for "precision must be the touchstone of legislation so affecting basic freedoms." Id. at 514.

Likewise, in Louisiana v. United States, 380 U.S. 145 (1965), the U.S. Government

sued the State of Louisiana and four of its voting officials for discrimination against black applicants for voting registration. Id. at 147-148. The federal government asserted that a long-standing plan by the state had been developed to deprive minorities in Louisiana of the right to vote. Id. Specifically, the state used an "interpretation test," which required an applicant for registration to provide a "reasonable interpretation" of any clause in the federal or Louisiana Constitution. "' Id. Administration of this test systematically kept blacks from voting while simultaneously permitting whites to vote. The lower federal court held, and this Court affirmed, that the Louisiana Constitution and statutes requiring the "interpretation test" were invalid on their face and, as applied, in violation of the Fourteenth and Fifteenth Amendments. In rendering this holding, this Court implied that the statute was overbroad by noting that the state's test offered no definite standards for officials to administer the test and no avenue of appeal to rejected applicants. Id. at 153. This Court eloquently declared, “This is not a test but a trap, sufficient to stop even the most brilliant man on his way to the voting booth. Giving the registrars an uncontrolled discretion as to who can and cannot vote was deemed something completely different.” Id. at 150-51. Again, although this Court did not refer explicitly to overbreadth or the doctrine itself, but if one examines the Court's analysis closely, it appears the Court is greatly concerned with the broad scope of the Louisiana laws that authorized the “interpretation test.” See also M. Katherine Boychuk, Comment, Are Stalking Laws Unconstitutionally Vague or Overbroad?, 88 Nw. U. L. REV. 769, 773 n.22 (1994) (noting Court "cases expanding overbreadth doctrine beyond free speech and association").

Berger v. New York, 388 U.S. at 60 (1967), decided two years after Louisiana v.

United States, reflected this Court's willingness to extend the overbreadth doctrine outside the context of the First Amendment into the realm of the Fourth Amendment. Id. at 45. In Berger, during a state bribery investigation, a recording device was planted in an office by an ex-parte order of a justice of the New York Supreme Court. Id. The eavesdropping order permitted monitoring for sixty days. Id. The order was made pursuant to a New York statute authorizing orders if "reasonable grounds" existed for granting an application for such a recording. Id. at 45-46. Portions of the recordings were later admitted in evidence and played to the jury in the state's bribery prosecution, in which the trial court upheld the validity of the statute and the accused was convicted. Id. at 44-45. This Court reversed the conviction, concluding that "the language of New York's statute is too broad in its sweep resulting in a trespassory intrusion into a constitutionally protected area and is, therefore, violative of the Fourth and Fourteenth Amendments." Id. at 44-45. The Court noted that while the statute satisfied some constitutional requirements, "the broad sweep of the statute is immediately observable." Id. Here, the Court questioned whether "reasonable grounds" was the equivalent of "probable cause," which the Fourth Amendment demands, concluded the statute violated the Amendment's "particularity" requirement, said the sixty-day authorization was too long, found it contained no termination provision that would be triggered when ample evidence was uncovered, and determined the statute had no procedure for notice as required for conventional warrants. Id. at 54-60. Unlike Aptheker and Louisiana, the Berger Court relied unabashedly on the overbreadth doctrine outside the First Amendment context. Id. at 54. This Court explicitly stated its distaste for such a broadly worded statute. Id. at 54-60.

It is clear, therefore, that while overbreadth is a doctrine that is primarily used in assessing the Constitutionality of a statute under the First Amendment, it is not the exclusive use of the overbreadth doctrine. Here, the actual Title of the Act perhaps most perfectly illustrate the inherent overbreadth of this statute "Dealing in Proceeds of Unlawful Activities." While it is true that the title of the statute does not control, it is still important to consider the title of the act, as it is a part of the statute. See City Stores Co. v. City of Philadelphia,103 A.2d 664, 667 (1954). Not only does the title of the Statute mention illegal activities, but the first two subsections of the statute detail the various illegal means by which funds could be obtained.

18 Pa. C.S. 5111 provides specifically as follows:

(a) Offense defined—A person commits a felony of the first degree if the person conducts a financial transaction under any of the following circumstances:

(1) With knowledge that the property involved represents the proceeds of unlawful activity, the person acts with the intent to promote the carrying on of the unlawful activity

(2) With knowledge that the property involved represents the proceeds of unlawful activity and that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of unlawful activity

(3) To avoid a transaction reporting requirement under State or Federal Law

Logically, subsection (3) would not be included with the rest of §5111 if it was not linked in any way to unlawful activities. The interpretation that is more intuitively sound is that the entire statute, subsection included, seeks to offer an additional and serious penalty for trying to hide from the government illicitly obtained proceeds. In fact, a person convicted under Subsection (3) is guilty of a felony in the first degree, just as a person convicted

under the first two subsections. The thrust of this statute is clearly to punish specific criminal activity, and not as the Magistrate Court suggested in its Report & Recommendations, which was adopted by the district court below, the crime of structuring in of itself. By failing to consider the statute's title, and its construction as a whole, the courts below have disregarded the statute's actual purpose.

If subsection (3) is not interpreted this way (dealing in unlawful activities), the result leads to an unconstitutionally overbroad statute that punishes protected activities, and is arbitrary and capricious because it leads to a punishment that bears little relation to any governmental interest. See City of Chicago, supra. The standard to assess whether a statute is unconstitutionally vague or overbroad is closely related to whether that standard incorporates a requirement of *mens rea.* See Colautti v. Franklin, 439. U.S. 379, 385 (1979). Unlike subsections (1) and (2) of 18 Pa C.S. § 5111, which require that the defendant knew the property involved in the financial transaction was proceeds obtained from an unlawful activity, subsection (3) of the statute only provides that a defendant knowingly avoided a transactional reporting requirement.

Quite simply, there is no *mens rea* requirement beyond the actual act of conducting a financial transaction to avoid a transactional reporting requirement. A statute written to only require that the defendant knowingly avoided a transactional reporting requirement, without requiring that the concurrent conduct involve an illegal act or the intent to commit such is on its face overbroad, applying a serious criminal penalty to an offender with no *mens rea* to commit any actual crime. See Morissette v. United States, 342 U.S. 246, 263-5 (1952) (*mens rea* of intent cannot consist solely of any intent to commit an *actus reus*;

rather a guilty mind is required, one which intends to commit a crime or wrong).

In Morisette, the defendant was charged with knowingly converting the property of the United States when he salvaged bomb casings which he left on the site of a practice bombing range. 342 U.S. at 247-8. The defendant in that matter argued that he believed the property to be abandoned and did not intend to steal it. The trial court held that his intent was irrelevant—that if he took the bomb casings without permission, that alone was enough to sustain his conviction for conversion. This Court, in reversing held that "knowing conversion requires more than knowledge that defendant was taking the property in his question" and that he "must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion." Id. at 271. Similarly, in the instant matter to sustain a conviction for structuring, the Commonwealth of Pennsylvania should have been required to prove that Petitioner had some knowledge of the criminal aspects of structuring, and not just a desire to avoid excessive paperwork. See Cheek v. United States 498 U.S. 192 (1988)((holding that, with regard to the charge of attempting to avoid income taxes, that the *mens rea* requirement necessitated that the government prove an intentional violation of the law).

Perhaps most tellingly in terms of the apparent overbreadth of this statute, in her dissent in the instant matter before the Pennsylvania Superior Court, Presiding Judge Ford-Elliott pointedly noted that "an otherwise perfectly law-abiding individual with no criminal intent other than simply avoiding a currency transaction report could make a cash deposit of $9,900 of honest money into his savings account at the local bank, and spend the next 20 years in the state penitentiary." Commonwealth of Pennsylvania v. Levi Lapp

Stoltzfoos, (No. 30 MDA 2009, Dissent Ford Elliot, P.J.) See APPENDIX E at Page 2. Judge Ford-Elliot held that Subsection (a)(3) was unconstitutionally overbroad both as applied to the Petitioner in this case, and generally. Id. at 5.

In applying a similar federal statute, Ratzlaf v. United States, 510 U.S.135 (1994) is instructive on this matter. Federal law requires banks and other financial institutions to file a currency transaction report (CTR) with the Secretary of the Treasury for any cash transaction exceeding $10,000. 31 U.S.C. § 5313. A related provision forbids structuring a transaction for the purpose of evading a financial institution's requirement to file CTRs. 31 U.S.C. § 5324 (1994). The Fourth Circuit rejected the argument that Section 5324 violators by their very conduct, exhibit a purpose to do wrong. Id. at 143. The Court further elaborated that structuring a financial transaction is not an "inevitably nefarious activity," and that law-abiding citizens frequently structure private transactions to avoid a report, regulation, or tax without violating the law. Id. at 144.

As eloquently stated by the Fourth Circuit in United States v. Ismail, there is nothing about the act of structuring financial transactions to avoid a reporting requirement that is inherently evil. "Law abiding citizens frequently structure transactions to avoid a report, regulation, or tax without violating the law." United States v. Ismail, 97 F.3d 50, 57 (4th Cir. 1996). In United States v. Averso, 762 F. Supp. 441 (D.N.H. 1991), the United States District Court of New Hampshire noted that there are many occasions in the life of a businessman in which he structures transactions to avoid the impact of some regulation or tax. Id. at 446. "One may structure a company to reduce tax liability, one may structure a transaction over the course of several years to change the way a regulation affects them. If one is not

trying to deprive the government of something to which the government is entitled, there is nothing illegal about such structuring." Id.

In Liparota v United States, 471 U.S. 419 (1985), the defendant was charged with knowingly using, transferring, acquiring, altering, or possessing food stamps in any manner not authorized by statute or regulation. The trial court instructed the jury that the word "knowingly" required that the jury find that the defendant knew what he was doing and was aware of the nature of his conduct, but refused to instruct the jury that the defendant had to have known that what he was doing violated the law. On appeal, the government argued that it was not required to prove any mental state regarding the fact that the acquisition of food stamps was not authorized by statute or regulation. This Court has held that the statute in question (absent indication of contrary purpose) requires a showing that the defendant knew his conduct to be unauthorized by statute or regulation. Id. at 425. This Court held that this construction is particularly appropriate where "to interpret the statute otherwise would be to criminalize a broad range of apparently innocent conduct." Id. at 427.

In the instant matter, although Petitioner deposited amounts just shy of $10,000 in order to avoid having to make a report, there was no indication that he was aware that structuring cash deposits to avoid a report being made was illegal, or that he did so with the mindset of defrauding the federal government or hiding illegally gained funds. The statute, as applied to Petitioner, is punishing innocent conduct. There was simply no evidence produced at trial of any nefarious motive on Petitioner's part and no connection between the funds and any criminal activity. Moreover, as Judge Ford-Elliot pointed out in

her dissent, the statute applies to a wide range of constitutionally protected activity beyond just the actions of Petitioner, rending the statute facially overbroad.

Therefore, because the *mens rea* requirement of Subsection 5111(a)(3) is ambiguous, both regarding level of culpability and as to whether a defendant must know that structuring is illegal in order to sustain a conviction, the statute is unconstitutionally overbroad. See Liparota, 510 U.S. at 148 (defendant entitled to "fair warning…of what the law intends to do if a certain line is passed.").

Even if, however this Court were to reject Petitioner's *mens rea* argument, it is left with the unmistakable fact that the Pennsylvania statute as written is overbroad. As shown above, the Third Circuit's contention that overbreadth cases are exclusively within the province of the First Amendment has been called into question by several decisions of this Court, and the language of this statute, as so eloquently stated by Judge Ford-Elliot, simply punishes legal conduct in an overbroad fashion.

Petitioner does not stand before this Court and argue that all statutes prohibiting any form of structuring are per se unconstitutional. However, the Pennsylvania statute in question, which makes no distinction between the *mens rea* of a defendant wishing to defraud the government and one who innocently was unaware of an admittedly prosaic tax law, is the very definition of an overbroad statute. Ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity. Rewis v. United States, 401 U.S. 808, 812 (1971); see also United States v. Bass, 404 U.S. 336, 347-8 (1971). At the end of its opinion, the Third Circuit states that "One might question the civil penalty exacted in this case under Pennsylvania's anti-structuring law, but that does not mean the law is

unconstitutional…and that [this] Court cannot set aside legislation because it is harsh." Appendix A, Third Circuit Opinion at 12. If indeed this was a just statute that punished the type of *mens rea* our criminal statutes should target, there would be nothing harsh about this sentence. What makes it harsh is that Petitioner was convicted under a statute that was manifestly overbroad and punished lawful conduct. This Court should grant Certiorari in order to clarify what constitutes an overbroad statute under the United States Constitution.

CONCLUSION

For the foregoing reasons, the Petitioner requests that this Court grant the Petition for Certiorari.

Dated: 8/28/18

Respectfully Submitted,

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