

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Musonda Mulenga

a/k/a Emmanuel Guzeh,

PETITIONER

v.

UNITED STATES OF AMERICA

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Appointed pursuant to the
District of Columbia Criminal
Justice Act

Member of the Bar of the
United States Supreme Court

QUESTIONS PRESENTED

1. Whether the opinion from the District of Columbia Court of Appeals is in conflict with opinion of this Court in *Carpenter v. United States*, 136 S.Ct. 2206 (2018). The error of the trial court was not, as held by the District of Columbia of Appeals, harmless

PARTIES TO THE PROCEEDINGS

- 1. Petitioner Musonda Mulenga.** Mr. Mulenga is an individual who was tried in the Superior Court of the District of Columbia. He was acquitted of all but two of 12 indicted charges arising out of a single event. His conviction for second degree murder was affirmed by the District of Columbia Court of Appeals.
- 2. United States of America:** The United States prosecuted Petitioner in the Superior Court of the District of Columbia.

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OPINION BELOW

On May 25, 2018 the District of Columbia Court Appeals affirmed Petitioner's conviction for second degree murder. This Petition addresses this Court's opinion in *Carpenter v. United States* issued in June, 2018. The opinion in Carpenter is directly applicable to this Petition. The issue was raised in the District of Columbia Court of Appeals. The District of Columbia Court of Appeals did not address the issue of a warrantless search for cellphone records noting, "even assuming the trial court erred in its ruling, we are satisfied the that the error was harmless."

The error of the trial court cannot be considered as harmless. Petitioner was acquitted of all but two of the twelve counts charged in the indictment. All of the charged offenses arose out of the same course of conduct.

JURISDICTION

Jurisdiction of the United States Supreme Court is invoked pursuant to Supreme Court Rule 10(b). This petition seeks review of an opinion from the District of Columbia Court of Appeals. The opinion of the District of Columbia Court of Appeals is in conflict with decisions of this Court. The direct appeal was decided on May 25, 2018. Petitioner relies upon Federal Rule of Criminal Procedure 52 to confer jurisdiction upon this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioner relies upon Federal Rule of Criminal Procedure 52 (a) and the decision of this Court in *Carpenter v. United States*, 136 S.Ct. 2206 (2018). Petitioner additionally relies upon the Due Process Clause of the United States Constitution.

STATEMENT OF THE CASE

Petitioner was found guilty of one count of second degree murder, a lesser-included offense of first degree murder in violation of Section 22-2101,-4502 for the killing of Michael Talley.. He was acquitted of the following offenses: First degree murder; felony murder; burglary in the first degree; attempt to commit robbery while armed. All of the charged offenses arose out of the same factual circumstance.

The government's factual case centered around the testimony of two female participants in the crime. LaTonya Hall made money through prostitution in 2010. She was in the same place as Michael Talley the night he was killed. She knew a person named Manny and had an intimate relationship with him. Hall was arrested for the murder of Michael Talley and charged with felony murder. She was scared at the time of her arrest but when interviewed by the police did not tell them everything she did to assist in the crime.

Hall pled guilty with the assistance of counsel to conspiracy to commit robbery and one count of attempted robbery. In return for her plea, Hall had to provide testimony concerning the murder of Talley.

At the time of her conversation with Manny, Hall was staying at

hotels in Prince George's County, Maryland that Manny would pay for. According to the witness, it was nighttime when they arrived at Talley's house. Talley, another "dude" and a female were present at the apartment. Hall went into the apartment with her sister. "We was planning to go in there, basically, look around, see anything that's valuable, worth getting or, you know, know if he might see any money around, drugs or, et cetera."

Hall got inside the apartment and contacted the defendant by telephone. The two sisters left the apartment and went to a car that defendant occupied. They informed defendant they did not see anything worth taking and they did not believe Mike or anyone in there had any money.

Prior to being arrested, Hall never went to the police and said the defendant was the perpetrator of the murder. It was only after being detained and being informed that she could spend the rest of her life in prison that she provided defendant's name. Hall was aware that the only way to get out from the mandatory thirty to life sentence was to provide substantial assistance. .

Natasha Adams, the other female participant, supported herself by posting ads and working as a prostitute. She worked with her sister

LaTonya Hall. Adams was present when Talley was killed. It was Talley who helped her in her business and to whom she may have given money for rides. Talley would help her make titles for her ads with a brief description and post pictures.

Adams was arrested on a bench warrant. At that point she spoke with homicide detectives and worked out a plea bargain. She pled guilty to Possession of Cocaine, Felony Bail Reform Act and Second Degree Theft. She was originally charged with Possession with Intent to Distribute Cocaine. The Second Degree Theft charge arose out of the murder of Michael Talley.

Adams knew the defendant for about a month prior to the shooting. She met defendant with her sister and they all began staying together in hotels and other people's homes. Defendant did not know the decedent. Adams went to Talley's apartment the day of the murder when her sister told her "we were going to chill with Mike that night." Id. 20. The following questions and answers were elicited from Adams:

Q. And at some point, did you hear that there was more than just chilling that was involved in going over there?

A. No.

Q. Well, at some point did you learn that somebody was either going to try to take money or rob Mike while being over there?

A. Not at that point.

Q. At some point, before you actually went over there, did you learn that?

A. No.

According to Adams, defendant drove the three of them to Talley's apartment. Only Adams and her sister Hall went into the apartment. Defendant just dropped them off. When Adams got into the apartment a female and a male in addition to Talley were present. While inside the apartment, Adams heard her sister call defendant to provide "information as far as what was in the house and how many people were there."

Metropolitan Police Department Detective Stephen McDonald was the lead detective in the murder of Michael Talley and went to the location on the day it occurred. McDonald spoke to witnesses shortly after the shooting and neither could identify the shooter. McDonald continued his investigation by tracking cell phone numbers that he obtained from the hotel without a warrant. McDonald went to hotels and obtained the names Natasha Adams and Emanuel Guzeh (Petitioner) from a hotel. In addition,

he acquired records, check in-forms from Country Inn and Suites in Prince George's County, Maryland and personally retrieved those records and other records from the hotel. Id. 130.

The first page of the hotel form showed a check-in for Emmanuel Guzeh. The form included Guzeh's printed name, address, arrival date, departure date, the room he stayed in, the phone number he provided and how he paid. Id. 131. The arrival date was February 16, 2010, the departure date was February 17, 2010, the telephone number listed was (202) 609-2462 and a Maryland driver's license in the name Emanuel Guzeh was listed. Id. 131-32.

F.B.I. Special Agent Brian Horan, of the cellular analysis survey team, was introduced as an expert in cell phones. He reviewed cell phone data from February 2010 pertaining to a homicide at 917 48th Street, N.E., Washington, D.C. The telephone number he used in his analysis was (202) 609-2462 specifically for February 15 and 16, 2010. (A number attributed to Petitioner). According to Horan, "we can estimate the potential area of coverage by looking at the cell sites and also the other cell sites that are in

According to Horan, from "11:50 to 11:53 p.m., for a three minute period of time, the phone hit three different sectors off of these two towers

(near the location of the crime).

X

REASON FOR GRANTING THE PETITION

1. The Opinion of the District of Columbia Court of Appeals is inconsistent with this Court’s opinion in *Carpenter v. United States*

In *Carpenter v. United States*, 128 S. Ct. 2206 (2018), the question that was confronted is how to apply the Fourth Amendment to chronicle a person’s past movements through the record of his cell phone signals. This Court addressed the issue of acquisition of wireless cell-site records revealing the location of a defendant’s cell phone whenever it made or received calls. This Court determined that location information obtained from a wireless carrier is the product of a search and, “the fact that the information is held by a third party does not by itself overcome the user’s claim to Fourth Amendment protection.” *Id.* at 2217.

The Court added:

We decline to grant the state unrestricted access to wireless carrier’s database of physical location information. In light of the deeply revealing nature of CSLI, its depth, breadth and comprehensive reach, and the inescapable and automatic nature of its collection, the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection. The Government’s acquisition of the cell-site records here was a a search under that

Amendment.

Id. 223.

In this matter, Petitioner's cell phone records were seized as part of a warrantless search conducted of the third-party hotel. It was the seizure of the cellphone records that the government relied upon in placing Petitioner near the scene of the charged crimes. In the absence of the cell site records, the government would not have had any credible testimony placing him at the scene. The government would have been left with relying upon the utterly flawed and highly incredible testimony of two factual witnesses who had a clear motive for their inconsistent accounts.

It was clear error for the District of Columbia Court of Appeals not to address the preserved Fourth Amendment argument by citing harmless error. Petitioner was acquitted of first degree murder, felony murder, burglary 1, and attempt to commit robbery while armed arising from the same factual scenario. The verdicts established that the jury certainly rejected the testimony of the two female cooperating eyewitnesses. The only remaining evidence was the cell phone testimony. Had the cell phone evidence been excluded, Petitioner

would have been acquitted on all counts.

Respectfully submitted,

Steven R. Kiersh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing PETITION FOR WRIT OF CERTIORARI was mailed, postage prepaid, on this the 22nd day of August, 2018 to the Office of the Solicitor General, Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20503

Steven R. Kiersh