No. 18-8146

IN THE

SUPREME COURT OF THE UNITED STATES

JAMIE GEER - PETITIONER

vs.

FLORIDA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

JAMIE D. GEER, DC# C06714
Wakulla Correctional Institution
110 Melaleuca Drive
Crawfordville, Florida 32327

ORIGINAL

QUESTION(S) PRESENTED

I. WHETHER THE MINORS CONSENT FOR THE INTERCEPTION OF WIRE COMMUNICATION IS LEGALLY AND CONSTITUTIONALLY VALID, WHEN SECURED BY POLICE ACTING OUTSIDE OF THEIR HOME STATE JURISDICTION, VIOLATING THE VISITED STATE'S WIRETAP ACT PROHIBITING A MINOR FROM CONSENTING?

II. WHETHER POLICE CONDUCT OUTSIDE OF THEIR HOME STATE JURISDICTION IS REASONABLE UNDER THE 4TH AMENDMENT WHEN OFFICERS COMMIT FELONY CRIMINAL ACTS UNDER THE VISITED STATE'S WIRETAP ACT PRIOR TO THE INTERCEPTS?

LIST OF PARTIES

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

[ ] 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:

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CONSTITUTIONAL PROVISIONS

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A 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,
[ ] is unpublished.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,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix - A to the petition and is

[ ] reported at _____; or,
[X] 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[ ] is unpublished.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[ ] is unpublished.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 which the United States Court of Appeals decided my case was _____ .

[ ] 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for 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).

[**X**] For cases from state courts:

The date on which the highest state Court decided my case was July 16, 2018.

A copy of that decision appears at Appendix - A.

[**X**] A timely petition for rehearing was thereafter denied on the following date:

November 2, 2018, and a copy of the order denying rehearing

Appears at Appendix - F.

[ ] 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 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the united States Constitution provides in pertinent part as follows:

"The right of the people to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures shall not be violated..." U.S. Constitution, Amendment IV.

18 U.S.C. § 2511(2)(c)

18 U.S.C. § 2515

18 U.S.C. § 2518(10)(a)

28 U.S.C. § 1254(1)

28 U.S.C. § 1257(a)

Fla. Stat. § 934.06

Fla. Stat. § 934.09(10)(a)

GA. Stat. O.C.G.A. § 16-11-63

GA. Stat. O.C.G.A. § 16-11-66

STATEMENT OF THE CASE

December 1, 2010, in the course of their investigation, FDLE Agents Neal and Bailey, with authorization but without Probable Cause, travel to Douglas County, Georgia to interview the alleged victim, V.H.

At no time was any law enforcement in Georgia contacted, aware, or providing any assistance to FDLE Agents.

After several hours of interviews and a search and seizure, the agents leave. While traveling, they ask a supervisor in Florida for permission to return and conduct an interception of wire communication. Agents arrive again at Diane Johnston's residence around 11:00 p.m.

V.H. consents to the recording. She is 17 years old. Agents Neal and Bailey use their eavesdropping device and have V.H. call from her cell phone to Petitioner's cell phone. The first call records voice mail. During the second call, Petitioner, suspecting extortion, decides to record the call. He asks V.H. to call back on his land-line while preparing an intercept using his I-Phone.

V.H. and the agents decide to move to their State Police car and record the next two calls to Petitioner.

V.H. and Petitioner both use deception to attempt gathering evidence of criminal acts. A couple of things go wrong. V.H. is not asking for hush money. Petitioner also realizes the I-Phone is not suitable as a stand-alone device for capturing V.H.'s conversation and the recording fails.

Agents leave after midnight. The next morning they play the calls several times including for their supervisor in Florida, then return to their home state jurisdiction.

Two weeks later, FDLE Agents, in final preparations for Petitioner's arrest, meet with Clearwater City Officials. The four recorded phone calls are played for city management at a termination hearing without Petitioner's knowledge.

December 13, 2010, Petitioner, serving as Fire Chief for the City of Clearwater, is arrested. Contents of the interceptions are released to the news media the same day. Then the actual recordings are released to various news media and posted to websites around the country.

The intercepts were played in their entirety without objection at trial. Petitioner was convicted as charged.

October 30 and 31, 2017, at Petitioner's post conviction motion evidentiary hearing, the State unexpectedly and without notice, seek to use, disclose, and admit into evidence, all four recorded calls for a new judge. Defense counsel objects. There has been no notice and the intercepts are not an issue in the post conviction proceedings.

The calls are admitted and played in their entirety. But in the course of the hearing it becomes clear through new evidence and testimony, the State has withheld important information regarding the legality of the interceptions.

Several of Petitioner's alleged errors in post conviction are "cannot be deemed harmless" ones. The court denied all grounds citing the recorded phone calls as evidence of guilt.

After the hearing, Petitioner moves to suppress intercepted communication pursuant to 18 U.S.C. 2518(10)(a), 2515, and Florida Statutes Chapter 934.09(10)(a), 934.06, and the Fourth Amendment to the United States Constitution. The grounds for the motion were invalid and involuntary consent given by someone not authorized by law to give it. A hearing was requested (Appendix - A).

The trial court denied the motion on its merits finding the application of Florida Law for the intercepts trumped any violations of Georgia and Federal Wiretap Acts. (Appendix - B).

Petitioner appealed citing the violations of State and Federal Law and Due process under the State and Federal Constitutions. The Second District Court of Appeals affirmed without deciding the merits by treating the motion as an untimely Rule 3.850 Post Conviction Motion. (Appendix - C) Rehearing denied. (Appendix - D)

Petitioner sought Discretionary Review in the Florida Supreme Court and was dismissed. A Motion For Rehearing was prohibited. (Appendix - E).

Petitioner then filed Petition for Writ of Habeas Corpus to Correct a Manifest injustice. The Second District Court of Appeal denied the petition without comment or an evidentiary hearing. (Appendix - A).

Petitioner's Motion for Rehearing was denied. (Appendix - F).

This Petition for Writ of Certiorari followed.

REASONS FOR GRANTING THE PETITION

The State of Florida, with their decision in this case, has determined Florida Law Enforcement may now do in Georgia what Georgia's own law enforcement officers cannot.

By applying Florida's Wiretap Act consent law to out of jurisdiction investigators visiting Georgia, officers may now secure consent from a minor who resides in Georgia, to intercept communications back in their home state of Florida, without the knowledge or assistance of Georgia law enforcement.

Under Georgia's Wiretap Act, a minor may not give consent to an empowered law enforcement officer to record their telephonic conversations under any circumstances. Georgia officers must seek consent from a judge, a parent, or guardian. The parent or guardian may only consent to recordings of minor's phone conversations that occur within their residence. Consent for the minor may not be vicarious. See O.C.G.A. 16-11-66; *Atlanta Indep. Sch. Sys v. S.F.*, LEXIS 124152 (N.D. GA. November. 23, 2010); *Bishop v. State*, 241 GA. App. 517 (S.E. 2d 917 1999).

In Petitioner's case, FDLE Agents, acting as citizens and not empowered to make arrests or search and seizures in Georgia, were in possession of an eavesdropping device in violation of O.C.G.A. 16-11-63, a Felony Criminal Act.

Additionally, Florida has receded from its own decisional case law that once held that out-of-state intercepts of wire communication must comply with the law of the sister state and federal law. See, *Echols v. State*, 484 So. 2d 568 (Fla. 1985); *State v. Stout*, 693 So. 2d 657 (Fla. 4th DCA 1997); *Miller v. State*, 411 So. 2d 944 (Fla. 4th DCA 1982).

Florida Law requires out-of-state jurisdiction police work in partnership with law enforcement having jurisdiction in the sister state. That did not occur in this case.

Florida's new policy has excused FDLE Agents violations of Federal Law that requires law enforcement to secure valid, prior, and voluntary consent for interceptions. See, 18 U.S.C. § 2511(2)(c) and the Fourth Amendment to the United States Constitution.

Additionally, the violations of State Law made these agents conduct unreasonable under the Fourth Amendment. Although Petitioner presented overwhelming evidence at the evidentiary hearing, of coercion and perjury by the alleged victim, state courts repeatedly denied motions seeking a hearing challenging the voluntariness of the purported consent. To date, there has been no hearing on Petitioner's motion to suppress intercepted communication.

Petitioner's case is not the first. The Second District Court of Appeal has a history of excusing violations of State and Federal Wiretap Law in cases alleging

sexual abuse of children. See, *McDade v. State*, 154 So. 3d 292 (Fla. 2014). Petitioner's case is more of the same. The nature of the offense cannot be treated differently under federal statutes and the United States Constitution than other offenses.

Occasionally, state courts need to be put back on track. This Court should act to insure Florida complies with Federal Law in case involving Interstate Investigations, Wiretaps, and Sexual Offenses.

CONCLUSION

In view of the conflict of the decision below with past decisions of this Honorable Court, the Court may wish to consider summary reversal and that the Petition for a Writ of Certiorari should be granted.

Executed this 9TH day of JANUARY, 2019

Respectfully submitted,

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