

ON WRIT OF CERTIORARI IN
THE UNITED STATES SUPREME COURT

19-5972

DIMITRI BERNARD ROBINSON

Petitioner

VS.

Case No. _____

16-005941-01
16-005942-01

KYM WORTHY ET. AL;

Respondent

Chief Prosecutor for Wayne County

CRIMINAL

Prose; MOTION FOR WRIT OF CERTIORARI

FILED

JUL 23 2019

OFFICE OF THE CLERK
SUPREME COURT U.S.

NOW Comes petitioner, Dimitri B. Robinson
who petitions this Honorable Court to
review this motion pursuant to
28 U.S.C. § 1651(a), § 2241, and § 2254(a)

Prose, Dimitri B. Robinson
Saginaw Correctional Facility
9625 Pierce Rd.
Freeland, MI. 48623

QUESTIONS PRESENTED

- I. Was petitioners Fourth Amendment right to privacy and protection violated without probable cause, when law enforcement obtained a unreasonable order for a Pen register, Trap and Trace?
- II. Did law enforcement use petitioners traffic warrant as a pretext to detain and search his residence for evidence of an unrelated homicide?
- III. Did the lower courts Err when they found petitioner waived his right to counsel and to remain silent, after the police reinitiated contact with petitioner after he informed Detective Cox that he wish to seek counsel before being questioned?
- IV. Was petitioner induced by unreasonable acts of law enforcement for the purpose of a investigatory pretext with unnecessary disruptive force?

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COURT RULES, STATUTES, CONSTITUTIONS, AND OTHER AUTHORITIES

US Const., Am IV
28 U.S.C. § 1746
28 U.S.C. § 1651(a), § 2241, § 2254 (a)
18 U.S.C. § 3123, § 3124

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,
☐ is unpublished.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☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 722 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☒ is unpublished.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.

STATEMENT OF JURISDICTION

This question of constitutional law by right of 'privacy' should be reviewed by this Honorable Court, being denied by Michigan Supreme Court on April 30, 2019 stating that the questions presented should not be reviewed in this court.

Petitioner now seeks review under Rule 11, as the unresolved questions of law should be determined by this Court authorized by 28 U.S.C. § 1651(a)

STATEMENT OF FACTS

Petitioner was convicted of first-degree murder, felony-firearm, 2nd degree home invasion, and larceny from a building, following a jury trial in the Wayne County Circuit Court before the Honorable Judge Bruce Morrow. He was sentenced to life in prison without parole.

Mr. Robinson appealed by right to the Court of Appeals, asserting that he was deprived of his Sixth Amendment right to the effective assistance of counsel, where his attorney failed to move to suppress the fruits of an illegal arrest. Additionally, Mr. Robinson asserted that the trial court erred when it denied his motion to suppress his custodial confession based on his earlier assertion that he intended to consult with an attorney "[b]efore he voluntarily went to the police station for an interview. When only he was a "person of interest," which is not a crime or reason for a man hunt, or surveillance team to detain him for the purpose of questioning.

In the years before these relevant events in this case, petitioner (Dimitri Robinson) was in a relationship with Marsha Williams. After they had two children together, the relationship ended and she began dating a Napoleon Varborough. (victim)

STATEMENT OF FACTS

On May 27, 2016 at 4:15 pm the victim and Ms. Williams' son were riding their bicycles to Mr. Yarborough's father's home about four blocks away. A few hours later when they were returning to Ms. Williams' home, a man wearing a mask jumped out from behind some bushes and shot the victim.

After interviewing Ms. Williams, the officers obtained a name of a "possible suspect" from her. At approx. 7:45 pm on May 27, 2016, the petitioner called the Inkster Police stating his mother told him the police wanted to talk with him, Mr. Robinson's call was directed to Detective Brad Cox of the Michigan State Police. Mr. Robinson asked why the police wanted to talk to him, Detective Cox said they wanted to talk to him about a crime. Later after another phone call to Detective Cox, Mr. Robinson told him that he needed time to seek counsel and then would get back in touch with Detective Cox.

The detective admitted that petitioner did not provide him with any substantive information during any of their conversations.

STATEMENT OF FACTS

In the Affidavit, Detective Cox states: Mr. Robinsons' phone number was obtained from Marsha Williams. At trial, Detective Cox said he was able to ascertain petitioners phone number he was calling from, and then sought a "search warrant" to attempt to locate the phone by way of "pinging" that phone.

However, Det. Cox did not apply for a search warrant. Rather, he applied for a Federal Pen Register, Trap and Trace order. (See Appendix C)

So as a result of this unreasonable order, Det. Cox did not merely ask for authorization to ping petitioners phone, but rather for a much more extensive order.

While the application was sworn to by Det. Cox, the resulting order states only the name of "Detective Trooper Rocco Daversa". Furthermore, there was never any mention in the record of Det. Daversa being involved in this investigation, nor did he testify at trial.

Subsequently, the cell phone data revealed petitioners phone was located inside or near a house at 19400 Beland in Detroit, MI. where petitioner and his brother Joshua Robinson lived.

STATEMENT OF FACTS

Using this information, Det. Cox had a surveillance team set up outside this home "in order to attempt petitioner at that location." At approx. 11:30 pm that same night petitioner was outside and was stopped and asked to identify himself. He was then arrested.

According to Det. Cox, because defendant refused to come to the police station, police were forced to search for him.

After obtaining an unreasonable warrant, the officers searched the home and found a piece of mail addressed to defendant - establishing his residency - and a loaded 9mm handgun. Forensics determined that the casings recovered at the scene of the shooting were fired from the 9mm handgun officers recovered at defendant's home. When Det. Cox arrived at 19400 Beland St. officers were securing the house before the search. Det. Cox approached petitioner, and petitioner ask "if he was the officer he spoke with earlier." Det. Cox said he was, but advised him to seek counsel. petitioner responded that he wanted to clear things up. Subsequently petitioner confessed to shooting the victim.

Compelling Reasons to Grant Writ

This case is of significant importance, particularly now, as our courts consider the extent to which law enforcement may utilize rapidly advancing technology, while maintaining the integrity of our Fourth Amendment right against unreasonable government intrusion into our private lives.

Petitioner believes that this case presents the Court with the opportunity to address a critical Fourth Amendment issue that undoubtedly will impact law enforcement practices today and in the future.

In *Carpenter v. United States*, 138 S. Ct. 2206 (2018), the United States Supreme Court held that the law enforcement practices of obtaining a suspect's cell phone data, thereby documenting the phone's location over the course of several days, constituted a search under the Fourth Amendment.

The case at hand presents an extension of this practice, where a detective obtained a court order, as opposed to a search warrant supported by probable cause, compelling petitioners cell phone service provider to ping his phone.

Compelling Reasons To Grant Writ

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const., Am. IV.

That right "shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Warrantless searches are per se unreasonable under the Fourth Amendment. A Fourth Amendment "search" occurs either when "the Government obtains information by physically intruding on a constitutionally protected area".

United States v. Jones, 132 S. Ct. 945, 950 n.3 (2012), or when "the government violates a subjective expectation of privacy that society recognizes as reasonable".

Kyllo v. United States, 533 U.S. 27, 33 (2001) (citing *Katz v. United States*, 389 U.S. 347, 361 (1961)). The exclusionary rule obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

Compelling Reasons To Grant Writ

The exclusionary prohibition extends as well to the indirect as the direct products of such invasions. *Wong Sun v. United States*, 371 US 471, 472 (1963).

Petitioner asserts that his unlawful search was objectively unreasonable and without probable cause "relevant and material to an ongoing criminal investigation".

Furthermore, the United States Supreme Court explained, "an individual maintains a legitimate expectation of privacy in record of his physical movements as captured through [his cell phone data]," and the actions taken by law enforcement to obtain those records "was the product of a search." *Carpenter*, 138 S. Ct. at 2217. The Court rejected the prosecution's position that the third-party doctrine removed any Fourth Amendment protection from *Carpenter's* cell phone data because he voluntarily used the phone, thereby transmitting data to a third-party his cell phone provider.

Compelling Reasons To Grant Writ

The court explained, "[g]iven the unique nature of cell phone location information, the fact that the Government obtained the information from a third-party does not overcome Carpenter's claim to Fourth Amendment protection." *Id.* at 2220. Thus the Court reasoned that modern cell phones are a "new phenomenon," and the data seized from these cell phones is more akin to the location data obtained from GPS tracking devices, which the Court determined in *Jones*, warranted Fourth Amendment protection. *Carpenter*, 138 S. Ct. at 2216.

The Court stressed that our Application of the Fourth Amendment, as technology advances, we "must provide at a minimum the degree of protection it was afforded when it was adopted." *Jones*, 565 U.S. at 411 (emphasis in original).

So as a result, of the lower courts unreasonable discretion to adopt the *Carpenter* case law, they erroneously failed to comport with the Fourth Amendment right, (holding that an individual does have a "reasonable expectation of privacy").

Compelling Reasons To Grant Writ

Therefore the lower courts position fails to contend with the seismic shifts in digital technology that made possible, the tracking of not only petitioners location, but also everyone else's, not for a short period but for decades.

Technically a court 'order', obtained with false information is invalid and the law under 18 U.S.C. § 3123 and § 3124 was not a permissible mechanism for accessing historical (CSLI) cell-site location info. because the showing required, fell short of probable cause. A warrant was necessary to obtain CSLI in the absence of an exception such as exigent circumstances.

When an individual seeks to preserve something as private, and his expectation of privacy is one that society is prepared to recognize as reasonable, official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause.

Compelling Reasons To Grant Writ

In *United States v. Leon*, 468 U.S. 897, 918-21, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). This Honorable Court identified four specific situations in which an officer's reliance on a subsequently invalidated warrant could not be considered to be objectively reasonable: (1) when the warrant is issued on the basis of an affidavit that the affiant knows (or is reckless in not knowing) contains false information, (2) when the issuing magistrate abandons his neutral and detached role and serves as a rubber stamp for police activities; (3) when the affidavit is so lacking in indicia of probable cause that a belief in its existence is objectively unreasonable, and (4) when the warrant is so facially deficient that it can not reasonably be presumed to be valid. Id at 914-23.

Thus petitioner exceeds in showing that this unreasonable search should be reviewed by this honorable court which elucidates the lower court's actions and understanding of transcendent constitutional law under the Fourth Amendment.

Compelling Reasons To Grant Writ

In this present case the trial court erred in denying petitioners motion to suppress custodial statement after he asserted his right to seek counsel.

That, preserved, constitutional error was not harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18 (1967). *People v. Anderson (After Remand)*, 446 Mich 392 (1994); *People v. Casines*, 460 Mich 750 (1999).

Therefore by the overruling of petitioners motion to suppress evidence gain as "fruit of a poisonous tree" and by allowing numerous violations of petitioners Miranda rights, and thereby violated petitioners right to a fair trial, right to due process of law, and right to remain silent, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments.

Also, the Court of Appeals erred as this issue was not novel at the time of Petitioner's trial, but a logical extension of existing Fourth Amendment jurisprudence.

These grounds for relief are preserved for merits review in this Court.

Relief Requested

WHEREFORE, for the foregoing reasons, Petitioner - Dimitri B. Robinson prays this Honorable Court reverse his convictions, and remand to trial court absent the custodial statement and evidence from fruits of an impermissible investigatory arrest.

7/23/19
Date

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