

19-6603

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Dijon Rasheed Brown — PETITIONER
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

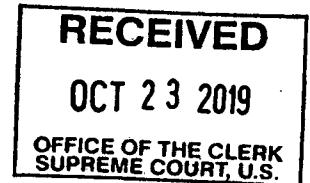
PETITION FOR WRIT OF CERTIORARI

Dijon Rasheed Brown
(Your Name)

FCI Medium-II, P.O Box 3850
(Address)

Adelanto, CA, 92301
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

The Eighth Circuit Court Of Appeals does not require that the conditions governing an anticipatory warrant be explicit, clear, and narrowly drawn. Does the Fourth Amendment of the U.S Constitution tolerate the mere placing of a package containing drugs on a person's property, then executing the warrant when any person takes possession of that package?

In this case 0% of the 57 petit jurors selected for duty were African-American. Does the law require petit jurors be selected from a fair cross section of the community?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment - Unreasonable searches and seizures.

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 upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Sixth Amendment - Rights of accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

28 U.S.C. § 1861 - Declaration of policy.

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

STATEMENT OF THE CASE

On November 10, 2015, after having obtained an anticipatory search warrant for the residence located at 4262 Santa Barbara Drive in Columbia Missouri, agents assembled to attempt controlled delivery of a package containing methamphetamine. A controlled delivery, in this case, means an agent delivers the package of methamphetamine to an adult willing to accept the package on behalf of the listed recipient. See Appendix A, page 3; and Appendix C, page 6. In 1983 the Court explained what is a "controlled delivery", when it wrote, "Frequently, after such discovery (of drugs), law enforcement agents restore the contraband to its container, then close and reseal the container, and authorize the carrier to deliver the container to its owner. When the owner appears to take delivery he is arrested and the container with the contraband is seized and then searched a second time for the contraband known to be there." Illinois v. Andreas, 463 U.S. @770; 77 L.Ed.2d. 1003; 103 S.Ct. 3319 (1983). Other Circuits have also held that the package containing the contraband should be delivered to someone willing to take possession of it. United States v. Miggins, 302 F.3d. 384 (6th Cir. 2002); United States v. Ricciardelli, 998 F.2d. 8 (1st Cir. 1993); and United States v. Hugoboom, 112 F.3d. 1081 (10th Cir. 1997).

In his affidavit, Postal Inspector Christopher J. Farmer confirms, "At approximately 9:55 am, law enforcement officers observed two black males exit the front door and enter a white Chevrolet Suburban". See Appendix E, page 3, ¶8. And, "At approximately 10:04 am, the Subject

Parcel was delivered by an undercover Postal Inspector and was placed next to the front door. An unknown black male subject was observed opening and closing the front door of the residence several times and viewing the package through the screen of the storm door". See Appendix E, page 3, ¶9. Postal Inspector's statements indicate that controlled delivery was not attempted; there was not any knock at the door of the residence or any ringing of a doorbell; there was not an encounter with anyone willing to accept the package; and law enforcement knew people to be inside the residence because they set up surveillance and waited for someone to leave the residence. Then, law enforcement placed the package next to the front door and waited for the people to return so that they would carry the package into the residence, which would then allow law enforcement to execute an anticipatory warrant. By their actions, law enforcement staged the event to occur. Some Circuits, however, require that the conditions governing the execution of the warrant be explicit, clear, and narrowly drawn so as to avoid misunderstanding or manipulation by government agents. United States v. Garcia, 882 F.2d. 699 (2nd Cir. 1989); United States v. Brack, 188 F.3d. 748 (7th Cir. 1999)(citing United States v. Dennis, 115 F.3d. 524 (7th Cir. 1996)); United States v. Perkins, 887 F.3d. 272 (6th Cir. 2018); United States v. Serrano, 209 Fed. Appx. 796 (10th Cir. 2006); and United States v. Ricciardelli, 988 F.2d. 8 (1st Cir. 1993).

Probable cause means a fair probability that contraband or evidence of a crime will be found in a particular place given the circumstances set forth in the affidavit. United States v. Huyck, 849 F.3d. 432 (8th Cir.

2016). In this case law enforcement did not adhere to the circumstances set forth in the affidavit because the Magistrate did not track that same language in the warrant. Based upon the contents of the package Postal Inspector Farmer determined there was a probability of drug activity on the premises, yet did not act within the conditions set forth in the affidavit.

In 1974 the Court ruled that, "The selection of a petit jury from a representative cross section of the community is an essential element of the Sixth Amendment right to a jury trial in criminal cases". Taylor v. Louisiana, 419 U.S. 522; 42 L.Ed.2d. 690; 95 S.Ct. 692 (1974) @ Headnote 3. In this case there were a total of 57 petit jurors selected for duty. Zero percent of those potential jurors were African-American. The percentage of the African-American population in Cole County Missouri alone is 12.4%, but the Western District of Missouri consists of a total of 60 counties. Zero percent of the African-American population in those counties was present or represented in the jury pool in this case.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition because the facts of the case demonstrate a means of arbitrary application of the Fourth and Sixth Amendments, as well as 28 U.S.C § 1861. The affidavit for the search warrant stated that the package must be delivered to someone willing to accept it on behalf of the listed person. The actual warrant required only that the package of drugs cross the threshold of the residence. The language of the warrant allowed law enforcement to simply walk to the door of the residence, place the package next to the door and walk away. Then, wait for someone to come along, pick it up and walk into the residence. The warrant could then be executed.

An example of this arbitrary application would be: Mr. Democrat, who lives next door to Mr. Republican, desires to have Mr. Republican's voting and gun rights taken. He conducts research as how he may get Mr. Republican convicted of a crime. In this process he locates a case which would allow him to do so; the case is United States v. Brown, 2019 U.S App. LEXIS 21019. By reading the case Mr. Democrat learns that he can have a package of drugs mailed to Mr. Republican and have him convicted for violating 21 U.S.C. §§ 841 and 846. So Mr. Democrat reports to the local Postal Inspector that he witnessed his neighbor, Mr. Republican, receive a package of drugs by mail. At this point Mr. Democrat is a witness and begins to assist law enforcement in their investigation and collection of evidence against Mr. Republican. At this point Mr. Democrat puts together a package of drugs, drives across state lines and mails

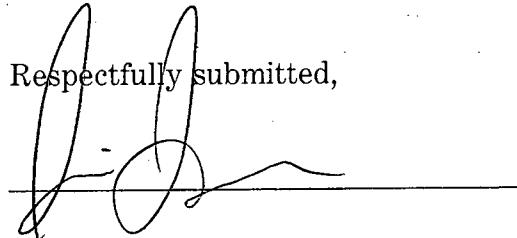
the package to Mr. Republican. Because Mr. Republican is now under investigation and his mail is monitored, the Postal Services is alerted to a "suspicious package" being mailed to Mr. Republican. Law enforcement then go through the process and determine that drugs are contained in the package. They then decide to do a controlled delivery by taking the package to Mr. Republican's residence, waiting for someone to leave, then placing the package next to the door and waiting for someone to come along and carry the package into the house. Once someone does, law enforcement executes their anticipatory search warrant and carries Mr. Republican to jail.

Because Mr. Republican knows he is innocent he elects to exercise his right to a jury trial. Keeping in mind that Mr. Republican is a white man, 57 potential jurors are selected for his trial process but 0% of those potential jurors are white. Does this represent a fair cross section of the community? Then, during the trial the witness, Mr. Democrat testifies that he witnessed Mr. Republican receive drugs via the U.S Mail system and the jury finds him guilty. Is this consistent with the purpose and design of the Fourth and Sixth Amendments? If it is not, then the Court should grant this petition. But if this is consistent with these Amendments, then the Court should say so and publish its opinion so that groups such as "Antifa" may use such against their republican enemies.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature consisting of two stylized loops above a horizontal line, followed by a more fluid, cursive signature below it.

Date: September 16, 2019