

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

19-6841

ADAM SCOTT IV,
petitioner

v

ORIGINAL

UNITED STATES OF AMERICA,
respondent

FILED

NOV 18 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI TO
THIRD CIRCUIT COURT OF APPEALS NO 17-3296

PETITION FOR WRIT OF CERTIORARI

Adam Scott IV
pro se

Proceeding
in forma pauperis

FDC
700 arch st
Phila, Pa 19105

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Questions presented in this Writ pursuant to Rule 14.1(a):

1. Should a wiretap that was not sealed until 30days after interception ended, and 21days after the order expired, be suppressed where that delay was not do to a mistake of law or a unforseen emergency event?
2. Should a Title III wiretap be sealed immediately after interception ended, or should it be sealed after order expires?
3. Should evidence derived from wiretaps be suppressed, if that wire is suppressed due to delayed sealing?

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The citations of opinions & orders pursuant to Rule 14.1(d):

1. The Third Circuit Court of Appeals, app no. 17-3296 with opinion entered on 9/18/19.
2. The District Court for The Eastern District of Pennsylvania, crim no. 10-677 with opinion entered on 10/4/17.

The basis for jurisdiction pursuant to Rule 14.1(e):

The final judgment of The United States Court of Appeals for The Third Circuit for criminal app no. 17-3296 was entered on 9/18/19. The jurisdiction of this court is invoked accordingly under 28 USC § 1254.

The Constitutional statutes pursuant to Rule 14.1(f):

18 USC § 2510(11); 18 USC § 2515; 18 USC § 2518(8)(a); 18 USC § 922(g); 18 USC § 924(c); 21 USC § 841(a); 21 USC § 846; Federal Rule of Criminal Procedure 33(b)(1); S.Rep No 90-1097 (1968)

The material facts to consider pursuant to Rule 14.1(g):

Adam Scott IV was arrested on September 15th, 2010 in West Chester Pennsylvania by the DEA. The petitioner was charged with 21 USC § 846, 21 USC § 841(a), 21 USC § 841(a), 18 USC § 922(g) & 18 USC § 924(c). Scott was found guilty at trial on 7/16/12, sentenced to 300months on 8/8/13 then a direct appeal was filed.

Before the direct appeal was finalized on 7/27/15 the petitioner filed a Fed R Crim P 33(b)(1) motion for new trial on 7/13/15. The District Court held an evidentiary hearing on 1/26/16 and denied the Rule 33 and wiretap suppression motion on 10/4/17. The petitioner timely appealed and on 9/18/19 Third Circuit affirmed.

The Rule 33 was filed before the conviction was affirmed and is not a collateral attack. This instant petition being the 1st opportunity to file for a Writ for Certiorari.

In 2010 The Chester County DA's Office applied for and were granted 5 Title III wiretaps. 2 were placed on Adam Scott's phone, 2 on a state defendant Dimatteo's phones and 1 on federal defendant Marchant's phone. Adam Scott was intercepted in all 5 wires and is an aggrieved party under 18 USC § 2510(11) and has clear standing to suppress all 5 wires.

The 30day wire extension on Marchant started on 5/26/10 and was terminated on 6/2/10 upon Marchant's arrest. The wire was not officially sealed until 9days after termination ended on 6/10/10. The wire was set to expire on 6/24/10.

The 2 Scott wires started on 5/18/10 and were terminated on 6/6/10 upon destruction of the cell phones. These wires were not sealed until 7/6/10, 30days after interception ended, 20days after the wire had expired. These 5 wiretaps, and evidence derived from them, were used in search warrants, played to the grand jury, played at trial and used for sentencing purposes.

The government concedes that neither of those delays in sealing were due to mistakes of law or unforeseen emergency events. Ojeda Rios 495 US 257, 110 S ct 1845 (1990) requires suppression if there was a delay that was not necessitated by those reasons.

On 1/26/16 & 2/5/16 the petitioner filed a motion to suppress that was accepted by the District Court. Honorable J Tucker denied suppression to the Marchant wire and declined to rule on the suppression of the 2 Scott wires.

The Third Circuit affirmed, refusing also to rule on the 2 Scott wiretaps, and without much analysis decided that Scott "waived or forfeited" suppression to the Marchant wire for the purpose of Circuit review.

What is unique is that The Third Circuit pointed out 2 unresolved questions of great importance but refused to rule on either of them. These 2 questions/issues having heavy effect on the entire appeal and Adam Scott's Constitutional Rights.

Under Rule 14.1(g)(ii) The Third Circuit Court of Appeals had jurisdiction pursuant to 28 USC § 1291 as Adam Scott tried and convicted in The Eastern District of Pennsylvania.

Argument amplifying reasons for Certiorari under Rule 14.1(h):

1. SUPPRESSION OF SCOTT WIRES:

The 2 Scott wiretaps were not sealed until 30days after interception ended and 20days after the court approved 30day order expired. The reason for delay was not due to a mistake of law or unforeseen emergency event.

The petitioner filed a motion to suppress that was accepted by the District Court. The court determined that since phone calls that were heard on the 2 Scott wires were intercepted on the Marchant wire, the court didn't have to rule on the Scott wire.

The Marchant wire was NOT intercepted on both Scott wires as the government concedes. The District Court was wholly incorrect. There are other Fourth Amendment violations and evidence derived from the 2 Scott wires that effect the trial & conviction.

The petitioner contends that under Third Circuit precedent the 2 Scott wiretaps should be suppressed first, and the effect of suppression be evaluated afterwards.

US v Vastola 915 F2d 865 (3rd 1990) - "The suppression of tapes is required where the government is unable to offer a satisfactory explanation for a delay in sealing the tapes".

The United States Supreme Court should suppress the 2 Scott wiretaps and remand back to the District Court to determine the effect on the conviction, or remand to the District Court to clearly deny or grant suppression with a appropriate opinion.

2. SEALING AFTER SURVEILLANCE ENDS OR ORDER EXPIRES:

The United States Supreme Court has never clarified as a matter of law, or fact, the unresolved issue if Title III wiretaps should be sealed after continuous surveillance ends or if law enforcement can wait until the order expires to seal?

In relevance to the petitioners case, surveillance on the Marchant wire ended on 6/2/10. The police waited 9days to seal that wire on 6/10/10. The order didn't expire until 6/24/10. If the wire should not be sealed until order expires than there was no delay. If wire should be sealed after surveillance ends then the Marchant wiretap must be suppressed as the delay was not due to a mistake of law or unforeseen emergency event.

The Third Circuit pointed out this but failed to clarify:

"We have suggested that the relevant statutory scheme might require the sealing of wiretap evidence as soon as practical after surveillance ends"

- Page 6, Footnote 4 of opinion entered on 9/18/19

This issue has arisen in other cases, their is a circuit split:

"If tapes are not sealed immediately, meaning as soon as administratively practical, they must be suppressed at trial unless the government can provide a satisfactory explanation.."

-Carson 969 F2d 1480 (3rd 1991)

"The term immediately means that the tapes should be sealed either as soon as practical after the surveillance ends or as soon as practical after the final extension order expires"

-Coney 407 F3d 871 (7th 2005)

"Immediately upon the expiration of the period of the order, or extension thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions"

-Cooper 893 F3d 840 (6th 2018)

Let's say, for arguendo, that law enforcement get a 30day wire on John Smith's phone. On Day 2 of interception Mr. Smith is arrested and interception ends. Can the police wait 28 more days to "immediately" seal the wire? Clearly not.

Congressional intent was pretty clear during the enactment of Title III and the issue of when sealing should take place:

"The period of interception is intended to begin when the interception-in fact- begins and terminates when the interception -in fact- terminates"

-US Congress S.Rep No. 90-1097 at 103 (1968)

The United States Supreme Court should clarify as a matter of law, and fact, that immediate sealing on a Title III wiretap is to commence at the end of continuous interception as The US Congress intended. The petitioners case should be remanded to The District Court in a manner consistent with that ruling.

3. SUPPRESSION DUE TO DELAYED SEALING, DERIVATIVE EVIDENCE:

The United States Supreme Court has never clarified as a matter of law, and fact, the unresolved question if a wiretap is suppressed due to delayed sealing, should evidence derived from that wiretap be suppressed as well?

In relevance to the petitioners case, it appeared that The Third Circuit Court of Appeals agreed that the 2 Scott wiretaps could be suppressed, but that evidence derived from those wires should not be. *It should be noted that the Third Circuits opinion was very ambiguous towards the Scott wires.

Again The Third Circuit noted the importance of an unresolved issue but failed to rule on it:

"It appears to remain an open question in this circuit whether a delay in sealing wiretap evidence prevents its use to show probable cause for other searches"

-Page 8, Footnote 6, of opinion entered on 9/18/19

This issue has arisen in other cases, their is a circuit split:

"18 USC § 2518(8)(a) of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 USC § 2510, contains an explicit exclusionary remedy for noncompliance with sealing requirement" -Quintero 38 F3d 1317 (3rd 1994)

"By itself the failure to record and seal, as set forth in 18 USC § 2518(8)(a), does not rise to the level of a constitutional violation. In the event that there is a violation of law of constitutional magnitude, the court involved in a subsequent trial will apply the existing constitutional law with respect to the exclusionary rule. S. Rep no 99-541, at 23 (1986), as reprinted in 1986 USCCAN 3555, 3527 and H.R. Rep no 99-647, at 48 (1986)"

-Amanuel 615 F3d 117 (2nd 2007)

"The sealing provision includes its own exclusionary remedy: the presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of 18 USC § 2517"

-Martin 618 F3d 705 (7th 2009)

Ofcourse under Wong Sun 371 US 471, 83 S Ct 407 (1963), suppression of a search warrant also mandates suppression of any derivative evidence. That is the embodiment of the Fruit of The poisonous tree doctrine.

The exclusionary rule as outlined in Elkins v US 364 US 206, 80 S Ct 1444 (1960) is also designed to deter future police misconduct. That deterence is satisfied when police delay sealing on a wire and it is suppressed. The exculsionary rule must apply to suppression due to delayed sealing as it does to other reasons.

The petitioner contends that when a wiretap is suppressed due to delayed sealing the exclusionary rule & 18 USC § 2515 should apply in full. The petitioner is unaware of any Constitutional provision where "half suppression" exist.

The United States Supreme Court should clarify as a matter of fact, and law, that when a wiretap is suppressed due to delayed sealing full exclusion and The Poisonous Tree Doctrine should apply. This case should be remanded.

CONCLUSION:

In the spirit of brevity the petitioner has kept this argument as short as possible. The outrageousness of this situation must be reiterated. Law enforcement took 30days to seal 2 wiretaps, the government concedes that this delay was not due to a mistake of law/emergency event and The Third Circuit Court of Appeals did not suppress. The Third Circuits decision is so out of line with normal judicial standards that The Supreme Court must excerise its supervisory powers.

As The Third Circuit noted, this case contains two unresolved questions of great importance. It is doubtful that these questions will ever arise again together. The Supreme Court should take advantage of this opportunity as the facts of this case are clearly established and easy to apply to both questions. The Writ of Certiorari should be granted.

Respectfully Submitted,

A. Scott IV

Adam Scott IV

11/11/19

A.S.