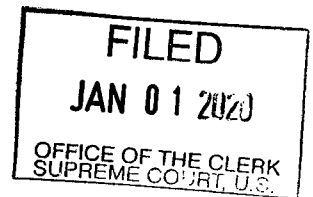


19-7294

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

MOHAMMED KWANING — 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 FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MOHAMMED KWANING
(Your Name)

555 GEO DRIVE
(Address)

PHILIPSBURG, PA 16866
(City, State, Zip Code)

814 768 1200
(Phone Number)

QUESTION(S) PRESENTED

Whether the Government officials conduct violated Petitioner's constitutional rights? where;

- (a) The District Court failed to disclose material evidence favorable to Petitioner and upon request, specifically the Audio Recording of the September 26, 2017 motion hearing.
- (b) The District Court admitted testimonial hearsay of a non-testifying Co-Defendant in a joint trial.
- (c) The sentencing Judge enhanced Petitioner's sentence, based upon a preponderance of the evidence after a jury trial. Thus alleyne and apprendi error exist.

LIST OF PARTIES

- ☒ 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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OTHER

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 14 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☒ is unpublished.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☐ is unpublished.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 _____ 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☐ is unpublished.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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 09/10/2019.

☐ 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: 10/08/2019, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. UNITED STATES CONSTITUTIONAL FIFTH AMENDMENT.
2. UNITED STATES CONSTITUTIONAL SIXTH AMENDMENT.

STATEMENT OF THE CASE

Petitioner. (Kwaning) and six others namely; Issah Mohammed(Mohammed), Sandra Badu(Badu), Francis Osei(Fosu), Mark Dennis(Dennis), Abayomi Davies (Davies) and Charles Mensah(Mensah) were charge with conspiracy to commit Bank and Wire Fraud in violation of 18 U.S.C § 1343 and 18 U.S.C § 1344 under 18 U.S.C § 1349 and eight substantive counts of which count two charged only Petitioner Kwaning with Aggravated Identity Theft, Aiding and Abetting in violations of 18 U.S.C 1028A(a)(1) and 18 U.S.C § 2.

Count three through nine charged Petitioner and the other six Defendants with Bank Fraud in violation of 1343 and Wire Fraud in violation of 1344 and lastly all the substantive counts also charged a violation of 18 U.S.C § 2.

PRETRIAL

In the course of filing Pretrial motions the Government filed a motion to preclude Defendants use of FRE 609 evidence on August 2, 2017, Docket No. 190 and a motion "In Limine" to admit intrinsic evidence alternatively as 404(b) evidence on August 3, 2017, Docket No. 193.

On September 26, 2017 Docket No. 200. The District Court conducted a hearing on the Government's motion "In Limine" to admit, itemized as follows;

1. Evidence of 2010 Fraud Activity and related 2013 Assault.
- 2.
2. May 12, 2014 examination of Petitioner, Kwaning under Oath relating to State Farm Insurance claim for an automobile.

3. March 11, 2015 recorded conversation between Petitioner Kwaning and Babatunde Famojuro.
4. Evidence seized from Cube Smart Storage Facility including contacts from a phone, forensic analysis of Macbook, Air Laptop and its content (Emails, Tax Returns E.t.c) plus the June 6, 2016 recorded Jail call between Kwaning and David Attoh after Petitioner, Kwaning was arrested.

At the said hearing the Government agreed no to introduce item no. 1 on the list, specifically the 2010 Fraud Activity and 2013 Assault, Exhibit "B", thus these were not addressed.

However, the Government proceeded to submit the remaining three items on the list, and Petitioner objected, after hearing the argument from both parties, the District Court ruled "i'm gonna deny" which does not appear on the transcript instead according to the transcript the District Court ruled " i'm gonna deny the motion and let it in", Exhibit B1, six days later, the District Court filed a written order that presented a change in the ruling without a hearing or an appeal by both parties, now, "granted in part and denied in part" the Government motion to admit, which does not correspond to the oral ruling, thus the docket does no correspond Exhibit "C".

TRIAL

During trial the Government recklessly disregard the original Court's order that excluded the introduction of the 404(b) evidence, then introduced it to constructively amend the Indictment by presenting evidence of character although character was not at issue and where character is an element of a crime not charged in the Indictment. The said evidence was also suggestive of Tax and Insurance Fraud both of which were mere allegations not charged

and thus altered the element of the crime charged in the Indictment. And Broadened the possible base of obtaining the conviction.

Furthermore, the District Court admitted testimonial hearsay of Co-Defendant Mark Dennis which implicated Petitioner Kwaning, in violation of Petitioner's right to confrontation guaranteed by the Six Amendment and precedent set by Bruton v. United States, 391 U.S. 123(1968). Through special Agent Cochran (Case Agent) the Government introduced Mark Dennis interview in which Dennis identified, a photo of Petitioner and three other Co-Defendants who had plead guilty and testified at the trial, thus implicated Petitioner.

Through the case Agent the Government also introduced the location where Dennis alleged he and Mohammed met Petitioner Kwaning to discuss the opening of the Bank Account Exhibit "D" where Agent Cochran testified that "this was the location that Mark Dennis indicted that he had met the individual to discuss the opening of the account" and when he was asked who lives there? he answered Arlene Ross and Mohammed Kwaning all of which incriminated Petitioner in the crime. Mark Dennis did not testify and thus prejudiced the Petitioner by denying me a right to confrontation and where there was prove that Mark Dennis who was sitting at the trial table next to Petitioner was guilty of the offense charged, the jury may have thought if he is guilty then Petitioner was guilty too being that all the other Defendants that Mark Dennis identified had admitted guilt.

On November 1, 2017 the jury convicted Petitioner pf all nine counts, after trial Petitioner informed both the original Court (Judge Motz) and new Court (Judge Russel) that the Government use illegal means to convict me Exhibit"E"

and "F" Petitioner also filed a Pro Se motion to reverse the conviction and dismiss the Indictment for bad faith prosecution.

Defense counsel also requested the Audio Recording of the September 26, 2017 hearing Exhibit G to shed light on the original Court's true intention.

During sentencing hearing on September 4, 2017 Exhibit H the District Court withdrew my Pro Se motions without my consent and denied the disclosure of the Audio Recording that was material evidence to proving that Petitioner has been wrongfully convicted and to correcting the record on appeal as required by rule 10(e).

While the District Court denied the disclosure of the Audio Recording which is material to my defense, it failed to correct the record and it forwarded an inaccurate record to the Appeals Court and the Court of Appeal had rely on the inaccurate record to render its decision.

Furthermore, during sentencing, the District Court applied enhancement that increase Petitioner'd sentence 73 months over the guideline based on a preponderance of the evidence after a jury trial, although those were not charged nor found by the jury, thus a violation of "apprendi" Co-Defendant who were jointly tried were not enhanced by the same judge. on appeal, without a review of the audio recording the relied on the government's assertion that, the district court misstated and it issued the written order to correct any misstatement and the court also stated that it was un clear whether the admission of the non-testifying co-defendant recorded interview incriminated pititioner and thus affirmed

MEMORANDUM OF LAW

1. Due process require the Government to disclose material evidence favorable to the accused upon request. Brady v. Maryland (1963) 373 U.S 83, 10 L Ed 2d 215, 83 Ct 11 94; Turner v. United States (2017, U.S) 198 L Ed 2d 443, 137 S Ct 18885, Wearry v. Cain (2016, U.S) 136 S Ct 1002, 194 L Ed 2d 18. Smith v. Cain (2012, U.S) 181 L. Ed 2d 571, 132 S Ct 627. Suppression by prosecutor of evidence favorable to the accused upon request violates Due Process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution.

Here in the instant case the Audio Recording of the September 26, 2017 is material evidence that is favorable to the Defendant, that if disclosed would change the out come of the proceeding, in that, it is proof that.

- (A) The Government recklessly disregarded the Court's order that excluded the introduction of the 404(b) evidence, then introduced it to obtain a conviction.
- (B) The Government assertion that the Court misstated or created a confusion at the time the Court pronounced the ruling and it issued the written order to correct it is false.
- (C) Would undermine the confidence in Petitioner's conviction.

To conclude, Petitioner respectfully request that this Honorable Court must reverse the conviction and remand for evidentiary hearing as the Fourth Circuit could not have believe that the Judge misstated without a review of the Audio Recording.

2. The Confrontation Clause of the Sixth Amendment guarantees the right of a criminal Defendant" to be confronted with the witnesses against him". In Bruton v. United States, 391 U.S 123, 127-28(1968), this Honorable Court held that a Defendant's Sixth Amendment right to cross-examine witnesses against him is violated when the Defendant is inculcated by an out-of-court statement by a non-testifying Co-Defendant that is admitted at their joint trial.

Here in the instant case the Government elicited the hearsay statement of Dennis through Agent Cochran (Case Agent) as well as the recorded interview which Dennis picked Petitioner's photo from a photo line-up which was confirm by Agent Cochran.

Agent Cochran also testified that Dennis identified Sandra Badu, Abayomi Davie and Issah Mohammed. He also testified that Dennis gave a direction to the location where he and Issah allegedly met the individual to discuss the opening of the account and the Fraud Scheme, and when asked who lives at the address he said Petitioner Kwaning Exhibit I , all of which directly prejudiced me and my defense in that the non-testifying Co-Defendants who picked me out of a photo line-up with the case Agent confirming who he had identified and where and who he met to discuss the Fraud Scheme prejudiced my defense because it corroborated the testimony of Issah Mohammed (Key Witness) thereby strengthen the Government's case against Petitioner where the case was weak. See, Monachelli v. Graterford, 884 F. 2d 749, 753(3d Cir 1989) (Confrontation Clause violated because witness testified to statement made by non-testifying Co-Defendant implicating Defendant), U.S v. Schmick, 904 F. 2d 936, 943(5th Cir 1997) (Confrontation Clause violated when Co-Defendant's post-arrest statements

introduced through officer's testimony because statements incriminated Defendant).

To conclude, Petitioner respectfully request that this Honorable Court reverse the conviction for a violation of my substantial rights.

3. Apprendi v. New Jersey(2000) 530 U.S 466, 120 S. Ct 2348, 147 L. Ed. 2d 435, 2000 U.S Lexis 4304, concluded that any facts that increase the prescribed range of penalties to which a criminal Defendant is exposed are element of the crime. The U.S Supreme Court held that the Sixth Amendment provides Defendants with the right to have a jury find those facts beyond a reasonable doubt.

In Alleyne, Justice Thomas concluded that because mandatory minimum sentences increase the penalty for a crime, any fact that increase the mandatory minimum is an "element" that must be submitted to the jury.

Here, the sentencing range supported by the jury's verdict is 24 months to 48 months, but the Judge, rather than the jury, found sophisticated means, intended loss of \$550,000- 1,500, 000, aggravated role and 10 or more victims.

This increase the penalty to which Petitioner is subjected and violate my Sixth Amendment rights. Thus instead of 24-48 months, Petitioner is sentenced to 121 months.

To conclude Petitioner respectfully, request that this Court vacate the sentence and remand for resentencing consistent with similarly situated Co-Defendants who were jointly tried.

The District Court's Statement of Reason that none of the counts of conviction carries a mandatory minimum is contrary to the record, in that count 2 (Agggravated Identity Theft) carries a 2 years(24 months) mandatory minimum.

REASONS FOR GRANTING THE PETITION


Petitioner respectfully, request that this Honorable Court grant this Petition in the interest of Justice, Fairness and Equity under the Law, for the following reasons.

- (1) An issue of exceptional importance being overlooked by the Court below, as the District Court has failed to disclose material evidence favorable to the Petitioner that if disclosed would change the out-come of the case or would undermine the confidence in my conviction.
- (2) The Court below decision conflict with this Court's precedent in Brady, Alleyne, Apprendi, Bruton, and many more.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "K. S. S.", is written over a horizontal line.

Date: 01/01/2020