

19-8204

No. _____

Supreme Court, U.S.
FILED

DEC 13 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ARNOLD EUGENE FOX JR.

— 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 SIXTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Arnold Eugene Fox Jr.

(Your Name)

Federal Correctional Institution; P.O. Box 5000

(Address)

Oakdale, Louisiana 71463

(City, State, Zip Code)

~~N/A~~
~~(Phone Number)~~
ORIGINAL

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Does federal statute 18 U.S.C. § 2422(b) have an **unconstitutionally vague residual clause**, and has the government, District Court, or the Sixth Circuit Court of Appeals answered this issue?
2. Was defense counsel ineffective for failing to request a Suppression Hearing regarding the numerous Fourth Amendment violations in the petitioner's case?
3. Was the Fourth Amendment violated when agents used 5½ year old fraudulent "stale" information in order to obtain a search warrant?
4. Was the Fourth Amendment violated when agents seized numerous items of property that was not criminal/illegal, (i.e. Adult Lingerie), and were not listed as items to seize, and then later claim that they were seeking the items but admit that it was not listed on the warrant?
5. Was it a Fourth Amendment violation for agents to demand the petitioner's cellular phone that was on his person when he was not under arrest?
6. Was the search warrant overboard, and did agents exceed the scope of the warrant to seek evidence of additional possible unrelated crimes of innocent conversations when the purpose of the initial search proved to be unfounded?
7. Were there violations of the Fourth Amendment when the petitioner's vehicle was unlawfully seized by demanding the vehicle keys from the petitioner's son, after the petitioner released custody of the vehicle to his son?
8. Were there violations of the Fourth Amendment when agents then drove the petitioner's vehicle from it properly and legally parked spot, moving it to within the agents complex and storing the vehicle in an unauthorized maintenance garage, and then proceeding to search the vehicle under a false pretense of an inventory search, without a search warrant, in order to secure and search his cellular phone for evidence as agents photos suggest?
9. Did agents violate the petitioner's Fourth Amendment rights when they refused to release the vehicle to a licensed drive, did not obtain a search warrant for 67½ hours later, and would hold the petitioner's vehicle for 11 days?
10. Did federal agents present false information in order to obtain a search warrant from the magistrate judge, and was all this not "**FRUIT OF THE POISONOUS TREE**"?

11. Was there a violation of the Fifth and/or Sixth Amendment and the Fourteenth Amendment of **DUE PROCESS** by the multiple accounts of prosecutorial misconduct and deception when the government filed numerous documents with the Courts that contained **absolutely false information** and presenting **false evidence** at the petitioner's trial?
12. Was the introduction of lingerie as evidence, when it had nothing to do with the petitioner's criminal trial cause him prejudice and resulted in a **fundamentally unfair trial**?
13. Was the introduction of consenting adult women photographed in the lingerie as evidence a violation of the petitioner's and the women being photographed First Amendment rights?
14. Was there prosecutorial misconduct concerning the petitioner's cellular phone transcripts that had the following:
 - a) Said transcripts contained, at minimum, 1169 provable and obvious errors;
 - b) Said transcripts contained, at least 23 **falsely added text** which were titled "deleted";
 - c) Said transcripts showed text allegedly sent to the petitioner from his accuser with the date of 1970, when the petitioner was **ONLY 8 years old**; **his accuser and her parents had not even been born yet**; **iPhones** such as that of the petitioner **DID NOT EXIST**; and the means of communication such as **texting DID NOT EXIST**;
 - d) Said transcripts were missing an **entire page** from the transcripts which supported the petitioner's **actual innocence**; and
 - e) Said transcripts consist of conversations between the petitioner and adult friends but were included by the government to be between the petitioner and his accuser.
15. Is a constitutional violation to purposely alter evidence and also make it so utterly confusing that the jury had to stop their deliberations and request that the District Court clarify the matter?
16. Did the District Court err when it denied the request?
17. Was defense counsel constitutionally ineffective for failing to challenge the accuracy of the transcripts or in seeking suppression prior to trial?
18. Was there prosecutorial misconduct in closing argument where during trial she **clearly vouch** [twice] for the truthfulness of the government's witness thus violating the petitioner's right to a fair trial?

19. Was it a violation of the petitioner's constitutional rights to a fair trial when the prosecution during trial **blatently stated** that the petitioner's witness was committing perjury?
20. Was there prosecutorial misconduct and constitutional violations when the government purposely withheld exculpatory evidence in violation of Brady?
21. Did the prosecution withhold evidence that the government's witness was involved in multiple allegations for allegedly similar conduct in at least one other federal case, (United States v. Michael Lilley), and was this withheld evidence still admissible despite the "Rape Shield Act" without getting into the fact that the petitioner's accuser was a self-admitted prostitute?
22. Did the prosecution withhold additional Brady material by withholding that the petitioner's accuser had a criminal history; drug use; home invasions; threat and violence; as well as gang activity?
23. Did the prosecution violate the petitioner's constitutional rights by withholding that the petitioner's accuser was under surveillance by local law enforcement, and it is the responsibility of the government to research the background of their witness and report those findings to the defense?
24. Did the District Court err in creating a "Constructive Amendment" in its reading of the charges from the indictment during jury instructions by adding the word "AGGRAVATED" in violation of the Fifth Amendment?
25. Is it a violation of due process for the District Court to conduct an **ex parte meeting** in judge's chambers with federal agents and the government's witness?
26. Is it a violation of due process or the constitutional right to a fair trial by improperly influencing the jury by inviting them to lunch where federal agents and the government's witness was also present and reportedly speaking of the criminal trial and other matters?
27. Did the District Court err at sentencing with **unconstitutional** sentence enhancements when the petitioner took his case to trial and none of the enhancements were ever brought before a jury?
28. Did the District Court err by enhancing the petitioner with 2 point "use of computer" enhancement when no computer was involved and the reason for the enhancement was not explained at sentencing?

29. Did the District Court err when sentencing the petitioner to a 2 point "undue influence" enhancement when there was **no evidence** that the petitioner had committed such an act, and that the petitioner's accuser was admitted by the court to be the one misleading and untruthful influence over the petitioner?
30. Did the District Court err when sentencing the petitioner to a 5 point "relative conduct" enhancement for other alleged crimes for which the petitioner had already been cleared of any wrong doing by other investigative authorities?
31. Did the District Court err when sentencing the petitioner to a 2 point "obstruction of justice" enhancement for allegations where **no witness** or **evidence** was offered?
32. Is it a violation of the petitioner's constitutional rights when the District Court and Court of Appeals fail to answer the issue raised by the petitioner and dismiss his filing that have the arguments and briefs that the courts say that he failed to raise?

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LIST OF PARTIES

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

[x] 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:

- John T. Fowlkes Jr, Federal District Court Judge
- Arnold Eugene Fox Jr., Petitioner
- Bryan R. Huffman, prior counsel for the defense
- Debra Ireland, attorney for the government
- Sixth Circuit Court of Appeals
- Solicitor General

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 25-31 to the petition and is

reported at Appeals no. 18-5733; 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 1-24 to the petition and is

reported at 2:11-cr-20302-JTF-1; 2:16-cv-02017-JTF-cgc; 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 September 17, 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: September 17, 2019, and a copy of the order denying rehearing appears at Appendix 32.

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

First Amendment of the Constitution of the United States of America.

Fourth Amendment of the Constitution of the United States of America.

Fifth Amendment of the Constitution of the United States of America.

Sixth Amendment of the Constitution of the United States of America.

Eighth Amendment of the Constitution of the United States of America.

Fourteenth Amendment of the Constitution of the United States of America.

STATEMENT OF THE CASE

On or about November 6, 2011, the petitioner's young 16 yo daughter who had become unencourageable was running away from home for the 4th time in less than a month. The petitioner contacted local law enforcement with the situation after his discover that not only had his daughter's grades laps from all "A's" to "D's", she had also been causing damage to their home; running the streets at night; going to parties; had been drinking; and had become violent towards others to include the petitioner and her girlfriend, and more.

During the police interview, the petitioner's youngest daughter claimed that she was being abused in the home and was taken out as a precaution.

On or about November 9, 2011, the petitioner met with the Department of Child Protective Services (DCPS) to discuss the issues. The petitioner's daughter alleged that the petitioner was being physically and sexually abusive. The petitioner denied the allegations and he stated that he believe the reason for the false allegations was being his daughter was pressuring him to move her and her 15 yo girlfriend [lover] into an apartment together and the petitioner was refusing. There were no allegations made about the petitioner allegedly possessing child pornography. Investigators and the petitioner discuss that the petitioner's daughter was being untruthful because of her responses and the petitioner's willingness to work with DCPS in past claims and problems with his two youngest children with law enforcement.

On or about November 11, 2011, the petitioner's youngest daughter was in contact with the petitioner's first wife [not her mother], and together along with the petitioner's eldest daughter would plot against the petitioner. The petitioner had been fueding with the wife since their divorce in 1991 after he received custody of their children. The petitioner and his eldest daughter had been fueding since 2006 when she moved out of his home at the age of 25. Both women had been alleging false allegations against the petitioner for years. Each claim

would be investigated and then dismissed.

The petitioner's eldest daughter moved out of the petitioner's home after she was accused by DCPS of abuse towards her son and the petitioner's two youngest children, [the abuse was documented by DCPS].

On or about November 14, 2011, the National Center for Missing and Exploited Children was contacted with claims of child abuse and the production of Child Pornography [first time ever being alleged] against the petitioner. The report was allegedly filed by the petitioner's eldest daughter who again had not lived with the petitioner since July of 2006, some 5½ years prior. Allegedly the fraudulent claim stated that child pornography would be discovered in the petitioner's livingroom couch and his backyard shed.

On or about November 16, 2011, friends of the petitioner's youngest daughter began contacting the petitioner via his daughter's phone, trying to find out why his daughter wasn't in school.

In one such call, the petitioner's would be later accuser (S.S.) stated that she was the petitioner's daughter's best friend, and she would later continue to contact the petitioner after knowing that his daughter was not in the home.

On or about November 18, 2011, the petitioner received a series of text messages to his daughter's phone from S.S. between 3:15am to 3:30am frantically seeking the petitioner for help. The petitioner would not discover the text for nearly 16 hours later. Upon discovering the text the petitioner contacted S.S. to see if she was okay. S.S. explained that she was far away from home and was looking for a ride back and thought of the petitioner because he was known for helping people and was trusted. The petitioner explained that he did not carry his daughter's phone and if there is another emergency to call his phone.

Come that evening, S.S. again contacted the petitioner requesting this time money she claimed was needed for gas to visit her ill grandmother in the hospital. The petitioner gave her and her brother a total of \$40.00.

The next day and several days after, the petitioner was again in contact with S.S. who was requesting additional monies. S.S. claimed that the grandmother had been taking care of her and her brothers. That the mother worked away from home in another state, and did not care about the well being of the children. She also explained that her father had been murdered the year before. The petitioner wanted to report the children's situation to DCPS, however, S.S. claimed that they would split the children up and that she also did not want to get her mother into trouble. She begged the petitioner for help.

The petitioner started providing cash, food, and clothing along with other material gifts, up to November 24, 2011.

On or about November 23, 2011, Federal Agents descended on the home of the petitioner with a search warrant seeking the production of child pornography. Agents demanded pictures and videos of alleged children. The petitioner was at a loss as he had no such photos or videos. Agents would then **exceed** the search by removing items that were clearly not porn, such as photos of friends, family, pets, autos, and more. In the end, thousands of items that had no connection to illegal activity would be seized and held for more than $2\frac{1}{2}$ years.

Agents informed the petitioner that he was not under arrest, but demanded that he release his cellular phone that he had on his person. Agents would also discover the petitioner's youngest daughter's phone; talked between themselves; then purposely placed the phone back on the kitchen counter for the petitioner to find.

Agents then harassed the petitioner on the whereabouts of his lawfully purchased and registered firearms; and of pictures of consenting adult women in lingerie and the semi-nude to nude. A remark was made that if the petitioner could take such pictures of women, then he must also be taking them of children as well. The petitioner denied the allegation.

Agents discover and remove adult lingerie that was in a pillow storage compartment of a sleeper couch once used by the petitioner and his second wife. The

lingerie was seized even though it was not on the search warrant as items being sought. Agents would later claim that they were seeking the lingerie.

After a complete and thorough search of the petitioner's computers, cameras, internet interest, and other media, revealed that the petitioner did not produce, possess, or have any interest in the illegal materials being sought and no alleged victim has been discovered or identified.

Agents not being able to make any discoveries for which the warrant was issued settled on alleging that the conversations between the petitioner and S.S. [which consisted of innocent conversations about circumstances with family and friends, and of those of S.S. request for money, were in some way improper or illegal, claiming that the petitioner by his assistance was "GROOMING" S.S. when in actuality it has been S.S. that made the request and expressed the need. In all, there were no communications of anything of a sexual nature.

On or about November 24, 2011, the petitioner went to Mississippi to spend time with friends and have Thanksgiving dinner. While there S.S. anxiously and desperately contacted the petitioner. She had stated that she had found a notice on the door telling them that they were being evicted. She wanted to know if the petitioner would help. The petitioner stated that he was away and would speak with her later. Eventually it was learned that the eviction was a fraud.

Later that evening they met. S.S requested several hundreds of dollars. The petitioner instructed S.S. to relax, nothing was going to happen. That the petitioner needed to talk with her mother or the landlord to resolve the problem. But S.S. became evasive and made excuses. The petitioner became suspicious and would not give her the full requested amount.

The petitioner also explained that his assistance to the family was going to end because of his need to hire an attorney. The petitioner also explained that the appearance to others of him being seen with her. He stated that he was only going to deal with the mother and requested that she contact him. He gave S.S.

\$200 with the expressed condition for the landlord to contact him for any other amount. Then the petitioner returned S.S. home.

Later that evening, S.S. contacted the petitioner and alleged allegations and that if he did not pay up the additional amount, she was going to go to the FBI and claimed to already have their number. The petitioner vehemently denied his accuser's allegations. S.S. then threaten to have him shot. When S.S. realized that this method of extortion was not going to work, she twice stated that she was "only playing", in an attempt to regain the petitioner's trust.

For days to follow, S.S. continually made request for monies, to meet, and was stalking the petitioner. The petitioner did not give her any more money or other assistance because his request to speak with either the mother or landlord was not being met.

The petitioner went to the neighborhood watch where he learned that the money that he was giving to S.S. and her family was being used to purchase illegal drugs and that the family was under the surveillance of law enforcement for criminal activity. Also later the petitioner learned that the mother was putting the children up to making false claims to hussle money and goods.

On or about December 3. 2011, the petitioner confronted S.S. with the allegations and ended all contact. S.S. again claimed to have the FBI number and she threaten the petitioner.

On or about December 9, 2011, the petitioner was contacted by agents and requested to meet with them at their headquarters. Once there the petitioner was arrested and accused of violating Federal Statute 18 U.S.C. § 2422(b), enticement of a minor by "attempted statutory rape".

When the petitioner with his son arrived at the meeting place, he noticed that Agent Lies was repeatedly going out to the empty parking lot to the petitioner's vehicle which was legally and properly parked. The petitioner believing that something was amiss, handed the vehicle keys to his son with instructions to

return the vehicle home and await his call should he be detained. While the petitioner was being arrested inside the federal building, the agents demanded the vehicle keys from the petitioner's son, and then drove him home. While on the trip home, agents tried to persuade him to turn on his father.

Then agents took the vehicle by driving it into a maintenance garage and began to search it. Later the petitioner was lead down where he saw his vehicle with evidence tape all over it, and he protested that his son was not allowed to take the vehicle home rather than it being seized. The petitioner also requested to get another driver for the vehicle and was denied.

The agents had an inventory sheet for the petitioner to sign. Afterwards the petitioner noticed that the cellular phone that had been left [purposely] by agents during the home search was now moved from the center console to the passenger seat. The petitioner questioned why the phone had been moved and was told that his son had moved it, however, later the petitioner would receive photos of the cellular phone and the vehicle, the cellular phone had been clearly moved by agents and had been photographed turned on.

On or about Monday morning, December 12, 2011, the petitioner's son returned with another driver to retrieve the vehicle and were denied. Later that afternoon, agents went to the magistrate judge and was issued a warrant for the cellular phone claiming that it contained conversations between S.S. and the petitioner. The warrant also described that they were still seeking child pornography, something that they already knew that the petitioner was not interested or involved with, and there was certainly no evidence that the phone would contain such information since the petitioner had only used the phone for about a week. The search of the phone was cleared of having such information as to pornography.

The search and arrest warrants would not be issued for approximately 67½ hours after the initial search of the vehicle and arrest. The entire inventory search was clearly a ruse to secure the phone as there were 5 compact storage disk that

could have potentially contained the information that agents claimed that they were seeking that were not seized.

During pretrial, the government made its reports and investigation mainly concerning the petitioner's two daughters. Numerous reports were filed that contain clearly false information.

The government would enlist the assistance of inmates at the detention center to go through the petitioner's mail, legalwork and listen in to his conversation, and then report back to the government false information and claimed it was fact. As a result, an inmate falsely alleged that the petitioner had nude pictures of his eldest son in his youngest son storage. Storage was search and no pictures were produced as there wasn't any to start. Agents found a compact storage disk allegedly containing child pornography. The petitioner was charged even though he knew nothing about the disk before hand. The disk was of the manufacturer Fuji Film, a brand that the petitioner did not use. The petitioner fingerprints were reportedly not on the disk; and the disk was saved using a program that the petitioner did not use. The petitioner was also claimed to be in possession of the disk while being at the detention center. At trial, the petitioner was found not guilty of this one charge.

On or about December 9, 2013, the petitioner went to trial. At trial, the government presented as evidence the adult lingerie and photography magazines. Testimony was also giving, but there was no connection to the case or either charge. Also introduced was cellular phone text transcripts from the two phones. The transcripts were to have more than 1169 errors which added confusion to the reading of the text. The transcripts were not in chronological order. They contained 23 text added by the government. The added text consisted of parts of other text between the petitioner, S.S. and other people known to the petitioner from their conversations. The text consisted of text from the year 1970, before iPhone; texting; when the petitioner was only 8 years old; and his accuser and

her family had not been born. An entire page of text was missing from the transcripts that were presented to the jury, the District Court and/or the Sixth Circuit Court of Appeals which showed that the petitioner's only interest as he had been claiming all along was to help what he thought was a needy family.

Also during trial, the government would vouch [twice] for the government's witness, and would also go on to state that the petitioner's witness was committing prejury. This made the trial fundamentally unfair.

During jury instructions, the District Court erred by adding a "Constructive Amendment" to the indictment by adding that the offense was "aggravated".

After trial, the petitioner discovered that the government was withholding evidence which showed that the government's witness was involved in multiple other cases; had a criminal background; was in a gang; and more.

On or about April 9, 2014, the petitioner was sentenced with enhancements for other allegations that were not before his trial and the jury. Before sentencing the petitioner presented to his counsel the 2013 case of Alleyne showing that the sentencing enhancements were "unconstitutional". He took no action.

The District Court erred in giving the sentencing enhancements. Further, the District Court would not state what the "computer enhancement" was for. Later in the court's response, the court claimed that it was an undiscovered computer, however, the claims, allegations, and trial had nothing to do with a computer and the petitioner's computers had all been accounted for; checked; and cleared by federal agents. The agents 2½ years later returned the computers taken to the petitioner's counsel.

The District Court erred in giving the sentence enhancement for "undue influence". It was clearly presented by the evidence that the petitioner was being manipulated by his accuser. The District Court stated that the petitioner received the enhancement because he should have known better.

The District Court erred in giving the sentence enhancement for "relative con-

duct" on allegations for which he had been cleared; had not been presented to a jury; had not been admitted to by the petitioner; and he had not been previously found guilty of by a conviction.

The District Court erred by giving the sentence enhancement for "obstruction of justice". The petitioner had not tried to persuade his eldest daughter to change her testimony, and she did not testify. Jailhouse phone recordings will positively prove this point. Neither the government nor the defense counsel would request the phone recordings, but yet presented other phone recordings trying to prove some kind of other misconduct which was not proven.

The petitioner was also given the obstruction enhancement because an inmate claimed that pictures of the petitioner's eldest son were removed from storage, pictures that never existed. Neither the petitioner's eldest or youngest sons were interviewed or testified to the existance or not of the photos.

The District Court erred in restricting the petitioner while on supervised release from having a computer; internet; email or other such services. The petitioner does not have a computer or internet crime. The District Court also banned the petitioner from having even lawful pornography, something again the petitioner was not found guilty of. The court also instructed that the ban could be altered by the probation officer, a 180° about-face from the court's decision denying the petitioner.

REASONS FOR GRANTING THE PETITION

Petitioner was clearly subjected to ineffective assistance of counsel or deficient representation in a criminal case, making him subject to an ambiguous federal statute and illegal sentence; and an excessive condition of supervised release as well as other violations of the petitioner's Constitutional rights.

CONCLUSION

This petition for a Writ of Certiorari should be GRANTED to correct a manifest miscarriage of justice which resulted in the conviction of an INNOCENT MAN.

Respectfully Submitted,

On this 11th day of December, 2019



Arnold Eugene Fox Jr.

an INNOCENT, pro-se, indigent litigant

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