

NO. _____

In The
Supreme Court of the United States

JOEY LAMOND BRUNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

David B. Betts
Counsel of Record
ATTORNEY AT LAW
276 Mariners Circle, Suite 201
Columbia, South Carolina 29212
(803) 206-6506
bettslaw@sc.rr.com

Counsel for Petitioner

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QUESTION PRESENTED

Is a wiretap order, which fails to specify the name of the person who authorized the application for such order, insufficient on its face thereby requiring suppression of evidence obtained pursuant to such wiretap order?

LIST OF PARTIES

All parties are shown in the caption of the case.

RELATED CASES

There are no other related cases.

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner, Joey Lamond Brunson, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the Court of Appeals for the Fourth Circuit appears at Appendix A to the petition and has been designated for publication, but is not yet reported.

JURISDICTION

The Court of Appeals decided the case on July 31, 2020. A timely petition for rehearing and rehearing en banc was denied on August 27, 2020 and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, 211-25 (codified as amended at 18 U.S.C. §§2510 et. seq.) sets forth a detailed procedure for the interception of wire, oral, or electronic communications:

18 U.S.C. § 2518(4): Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify— [among other things]

(d) the identity of the agency authorized to intercept the communications, **and of the person** authorizing the application; and. . .
(Emphasis added)

18 U.S.C. § 2518(10)(a): Any aggrieved person in any trial...may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;
 (ii) the order of authorization or approval under which it was intercepted is **insufficient on its face**; or
 (iii) the interception was not made in conformity with the order of authorization or approval.

(Emphasis added)

STATEMENT OF THE CASE

Brunson was convicted on twelve felony charges involving possession and distribution of illegal drugs and use of a phone to facility such activity based upon extensive evidence obtained pursuant to wiretap orders issued by the district court. Prior to trial Brunson moved to exclude evidence obtained pursuant to such wiretap

orders contending that the orders were “insufficient on their face” pursuant to 18 U.S.C. § 2518(10)(a)(ii) because they failed to identify the Department of Justice official who had authorized the applications for the warrants as required by 18 U.S.C. § 2518(4)(d). None of the wiretap orders contained the name of person that had authorized the separate applications for the wiretaps, but the official’s name was contained in the separate applications submitted to the district court judge who issued the wiretap orders. The district denied the motion to suppress concluding that the failure to name the official in the order, while not in compliance with the statute “to the nth degree”, it “nevertheless substantially complied with” the statute. In a subsequent denial of petitioner’s Motion for a New Trial, the district court concluded that the omission of the official’s name from the order was a mere “technical defect”.

REASONS FOR GRANTING PETITION

The decision of the United States Court of Appeals for the Fourth Circuit is in conflict with the decision of the Court of Appeals for the D.C. Circuit in *United States v. Scurry*, 821 F.3d 1 (D.C. Circuit 2016) regarding the same important matter: ie: whether a wiretap order which lacks the information specifically required by Congress is invalid as being “insufficient on its face?” The Fourth Circuit here and

at least four other circuits seem to adopt a “technical defect” exception to the statutory requirements regarding wiretap orders in conflict with the D.C. Circuit’s decision in *Scurry*. See e.g. *United States v. Traitz*, 871 F.3d 368, 379 (3rd Cir. 1989), *United States v. Radcliff*, 331 F.3d 1153, 1161 (10th Cir. 2003), *United States v. Fudge*, 325 F.3d 910, 918 (7th Cir. 2003), *United States v. Cullum*, 410 F.3d 571,576 (9 th Cir. 2005), *United States v. Gray*, 521 F.3d 514, 527-28 (6th Cir 2008).

In a situation on all fours with the instant case, the D.C. Circuit Court held in *Scurry* that “[T]itle III’s facial sufficiency inquiry is limited to the four corners of the wiretap order.” *Scurry* at 9. It rejected the government’s contention, as here, that the omission of the “identity” information required in the wiretap order by 18 U.S.C. 2518(4)(d) could be considered a mere “technical defect.” *Id.* at 12. Reasoning that the insufficiency test of 18 U.S.C. § 2518(10)(a)(ii) was purely mechanical with no room for judicial interpretation concluding that once it is determined by a reviewing court that a wiretap order is facially insufficient the only remedy is suppression. *Id* at 13.

A more important reason for granting a writ of certiorari, as the dissent points out, the majority opinion here conflicts with this court's decision in *Dahda v. United States*, 584 U.S.____, 138 S.Ct. 1491, 200 L.Ed. 842 (2018):

The plain language of 18 U.S.C. § 2518(4), as the Supreme Court recognized in *Dahda v. United States*, 138 S. Ct. 1491 (2018), forecloses any holding that the wiretap orders relied on here were facially sufficient.

Appendix A, Dissent Op. at 20.

With regard to the requirements of 18 U.S.C. § 2518(1)(a)(ii) this court in *Dahda* concluded that:

[I]t is clear that subparagraph (ii) covers at least an order's failure to include information that § 2518(4) specifically requires the order to contain.

* * *

An order lacking that information would deviate from the uniform authorizing requirements that Congress explicitly set forth, **while also falling literally within the phrase ‘insufficient on its face.’”** *Id.* at 1498. (Emphasis added).

As a result, all evidence derived from the wiretaps and testimony regarding such wiretaps should have been suppressed pursuant to 18 U.S.C. § 2515.

CONCLUSION

The petition for a writ of certiorari should be granted to resolve an extremely important conflict not only between one or more circuit courts, which now allow so called “technical defect” exceptions to statutory wiretap order requirement, but because the judgment below conflicts with this court’s own decision in *Dahda*..

Respectfully submitted this 26 th day of October, 2020.

**LAW OFFICES OF
DAVID B. BETTS**



David B. Betts
Counsel of Record
CJA Panel Attorney
276 Mariners Circle—Suite 201
Columbia, SC 29212
(803) 206-6506
Bettslaw@sc.rr.com

Counsel for Petitioner