No. 20-6161

IN THE SUPREME COURT OF THE UNITED STATES

JOEY LAMONT BRUNSON,
Petitioner

Vs.

THE UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR REHEARING

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QUESTIONS PRESENTED

I. Whether Wiretap Orders under Title 18 U.S.C. § 2518(4)(d) can satisfy the Order Identity Requirement by a "title" of that High level Department of Justice official by reference to an external wiretap Application or Must as the Statute Requires, have the Person's "name" be included in the Four Corners of the Wiretap Order?

II. Whether the "Good Faith Exception" in United States vs. Leon, 468 U.S. 897 (1984), extends to Title III's Statutory Remedy for Suppression in 18 U.S.C. § 2515, § 2518(10)(a), Legislated By Congress for Violations of the Omnibus Crime Control and Safe Streets Act of 1968?

LIST OF PARTIES

ALL Parties are listed in the Caption of the Case.

RELATED CASES

United States District Court (D.S.C.):
United States vs. Brunson, NO: 3:14-cr-604 (Sept. 25, 2018)
United States Court of Appeals (4th cir.):
United States vs. Brunson, 968 F.3d 325 (July 31, 2020)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES — PAGE

CONSTITIONAL PROVISIONS

TABLE OF AUTHORITIES (con't)

FEDERAL STATUTES — PAGE

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR REHEARING

Petitioner, Joey Lamont Brunson, respectfully asks and Prays to Yahweh God Almighty, this Petition for Rehearing be granted and a Writ of Certiorari be issued to review the Judgement below.

OPINION BELOW

The Petition for Writ of Certiorari to the Supreme Court was denied, February 22, 2021.

The Opinion of the Court of Appeals for the Fourth Circuit is Published at: United States vs. Brunson, 968 F.3d 325 (4th cir. 2020).

JURISDICTION

Petition for Writ of Certiorari was denied by this Court on February 22, 2021. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

Constitutional and Statutory Provisions

The United States Constitution: Artcle I, §1; Article III, §2; The Fifth Amendment and The Fourth Amendment.
Title III of Omnibus Crime Control and Safe Streets Act of 1968.

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, (codified at 18 U.S.C.§§ 2510(et.seq.) sets forth a detailed Procedure for the interception of wire, oral, or electronic communications and Provides it's own statutory remedy designed by Congress for violations of the Wiretap Act:

18 U.S.C.§ 2515:

> Whenever Any wire or oral communication has been intercepted, No part of the contents of such communication and No Evidence derived therefrom may be received in evidence in ANY Trial, hearing, or other Proceeding, in or before Any Court, Grand Jury, department, officer, Agency, regulatory body Legislative committee or other authority of THE UNITED STATES, a State, or a Political subdivision thereof, if the disclosure of that information would be in violation of this Chapter. [18 USC.§ 2510 et.seq.] (emphasis added)

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) .... specify ... 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, oral or electronic communication intercepted pursuant to this chapter, or evidence derived therefrom, on grounds that -

(ii) the Order of authorization or approval under which it was intercepted is insufficient on it's face;"....

STATEMENT OF THE CASE

Pro Se Petitioner, Brunson, was convicted on twelve felony counts afer a Jury trial, based upon evidence, obtained pursuant to wiretap orders issued by the district court. Prior to trial, Petitioner moved to suppress evidence obtained pursuant to such wiretap orders. Contending the orders were "insufficient on their face" pursuant to 18 U.S.C. § 2518(10)(a)(ii) because they failed to have information explicitly specified and required by statute in § 2518(4)(a-e). None of the wiretap Orders "named the person" who approved the applications for the wiretaps and required by § 2518(4)(d).

The district Court denied the motion, as both the District Court and the AUSA conceded, "the Statute was not followed", but it was a "technical defect."

The United States Court of Appeals for the Fourth Circuit denied Appeal and Rehearing en banc. It's decision, in conflict with several other Circuit Courts; Primarily, The D.C. court of Appeals, which in United States vs. Scurry, 821 F.3d 1 (D.C. cir 2016) held the opposite, ruling in a case exactly on Point with Petitioners; holding that "Title III's facial insufficiency is a mechanical test.... and is limited to the Four Corners of the wiretap order."

In 2018, THE SUPREME COURT, held in it's unanimous decision, that contrary to the Lower Courts' conclusion, 18 U.S.C. § 2518 (10) (a) (ii) did not contain a Giordano-like core concerns requirement, but rather the Statute meant what it said:

"Our interpretation of Subparagraph (ii) makes sense of the Suppression Provision as a whole .... Where an order Lacks information that the wiretap Statute requires it to include, an aggrieved person May suppress the fruits of the order." ....

"It is Clear that subparagraph (ii) covers at Least an orders failure to include information that § 2518 (4) (a-e), specifically requires the Order to contain .... an order lacking that information would deviate from the uniform authorizing requirements that Congress explicitly set forth, while falling literally within the phrase 'insufficient on it's face'." Dahda, Id at 1498. (emphasis added)

REASONS FOR GRANTING REHEARING PETITION

Petitioner, Now asks for a Rehearing to merit the questions the Court itself stated were issues that "The Lower Courts in various contexts have debated [for over 40 years, but never received a concrete interpretation to a statutory Suppression Remedy provided by Congress] which Kinds of defects subparagraph (ii) covers"...stating "We need not, however resolve the questions that these many different cases raise...."; and only resolved Dahda's Question.

Furthermore, as the Government eloquently acknowledged in their "Brief in Opposition", these questions "have not been raised"; and Petitioner's case in Chief Presents the Perfect moment to address the confusion that has plagued in the Lower Courts, before and after Dahda.

QUESTION(I)

Whether Wiretap Orders under Title 18 U.S.C. §2518(4)(d) Can specify an individual's identity by a "title" of that high level Department of Justice Official and reference to an External wiretap APPLication or MUST, as the Statute requires, have the Person's name be included in the Four Corners of the Wiretap Order?

ARGUMENT

As The Court of Appeals for the Fourth Circuit observed, this Court's decision in Dahda vs. United States, 138 S.Ct. 1491 (2018), "does not address how" the Court of Appeals "should determine whether the Orders' failure to include the name(s) of the authorizing official(s) renders them insufficient?". (Emphasis mine)

Congress by contrast, designed Title III so that the absence of evidence of Pre-approval by an individual Justice Department official at either of the two stages would halt the wiretap process. Each identification requirement then has a distinct purpose in the Title III process. Including that identification in the wiretap order facilitates additional oversight, this time by the Parties executing the Order.

Congress created an incentive for field agents and service Providers to examine a wiretap Order for completeness, including the name of the authorizing Justice Department official, with Pre-approval

as a critical check on the overuse or misuse of wiretapping authority. See United States vs. Giordano, 416 U.S. at 516, 528.

Insisting on individual identification in both the application and the order accords with Congress' intent "to make doubly sure that the statutory [wiretap] authority be used with restraint."... Giordano, 416 U.S. at 515.

According to the Report of the Senate Judiciary Committee:

> "...Centralization will avoid the possibility that divergent practices might develop. Should abuses occur, the lines of responsibility lead to an identifiable person. This Provision should go a long way toward guaranteeing that No abuses will happen." S. Rep. No. 90-1097 at 97.

Furthermore, in functional terms, Title III's doubled identification requirements are not redundant. Title III contains evidence of Congress' intent that the Order independent of the Application be used in the Field.

Even the Court of Appeals For the Fourth and D.C. circuits recommended "that to avoid possible confusion in the future" Prosecutors should "submit proposed wiretap Orders that state both the authorizing official's name and title." The Justice Department recognized this several years "after" the orders in Petitioner's case were issued. The Department sent "a circular Memo" to all Federal Prosecutors "recommending" that the "name of the authorizing official be included in Any Proposed Wiretap Order", in February of 2020.

Thus, the violation that the Government continues to downplay

as an "technical defect", was Prodigious enough to prompt concern by Appeals Courts and the D.O.J. to change it's Policy Practice [in Theory] by "recommending" AUSA's to comply? Would you Put a band aid on a bullet wound? I think not!

Ironically, as the Government in it's own words twice admits in it's "Brief in Opposition" (January 2021), that what Congress legislated in §2518(4)(d) is "redundant" (on page 16, para. b), and asking "Why it was necessary to repeat that individual's name in the order?" (page 15 para. 3) (emphasis added).

Clearly, this shows why the Government cannot be trusted to uphold a D.O.J. "recommendation" in field Practice....and this is coming from the ACTING SOLICITOR GENERAL, Jeffery B. WALL; making these disturbing idiotic comments! How then, can one and the Public; trust the Government with such an delicate Privacy issue involving wiretapping? Congress absolutely did not!!

At the time the Orders in Question were issued in 2013, no Court of Appeals had a definitive Supreme Court precedent pertaining to §2518(4)(d) to guide the "Sheep"; Some got it right and a whole lot of lower Courts got it wrong, applying a "core concerns test", mainly to challenges to Applications, not wiretap orders. Still, it does not matter what year or what the court decided, the Statute Supplied an Congressional Suppression Remedy in §2518(10)(a)(ii), §2515 and a clear guidepost in §2518(4)(a-e). See... United States vs. Romero, 2018 Dist. Lexis 218754 (E.D. of TX).

The Government's reliance on out-of-date circuit cases declining to suppress wiretap evidence in circumstances like

here, is misplaced. In those cases, courts reasoned section 2518 (10)(a)(i)'s core concerns test extended to orders that are facially insufficient under section 2518(10)(a)(ii). See United States vs. Gray, 521 F.3d. 514, 524-28 (6th cir. 2008), United States vs. Callum, 410 F.3d 571, 574-76 (9th cir. 2005), United States vs. Radcliff, 331 F.3d 1153, 1161-63 (10th cir. 2003), and United States vs Moore, 41 F.3d 370, 375-76 (8th cir 1994).

Given that §2518(4)(d) specifically requires that a wiretap order contain the "identity of the Agency..." "and of the Person who authorized the wiretap Application"; at oral argument the government twice acknowledged that it was the position of the D.O.J., that §2518(4)(d)'s requirement that an Order Containing the "identity ... of the Person" means "the name of the High Level D.O.J. official who authorized the Application." Never can Just a "title" substitute as the Government recognized and the most natural understanding of "identity" in this contert means "NAME."

Title III's Facial insufficiency inquiry is limited to the four Corners of the wiretap order. Further, the Governments interpretation would allow it in every case in the future to satisfy Title III's Order Identification requirement by a title or an reference to an external Application Identification requirement; effectively rendering section 2518(4)(d) superfluous. The Plain Language of 18 U.S.C. §2518(4)(d) forecloses any holding that the wiretap orders in Petitioner's case were facially sufficient; They were not.

QUESTION (II)

Whether the Good Faith Exception of United States vs. Leon, 468 U.S. 897 (1984), extends to Title III's Statutory remedy for suppression in 18 U.S.C. §2515, §2518(10)(a), Legislated by Congress for violations of the Omnibus Crime Control and Safe Streets Act of 1968?

ARGUMENT

The Fourth Amendment contrains state and federal official's only, it has no applicability to Private Parties. Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522 by contrast, explicitly applies to Private Parties as well as government officials.

Because the Fourth Amendment and Title III differ greatly in scope and purpose, it would be inappropriate to treat the Judicially created Fourth Amendment exclusionary rule as impliedly setting the boundary for the broader Statutory created exclusionary rule of 18 U.S.C. §2515, §2518(10)(a).

The Question remains whether suppression pursuant to section 2515 is the Proper remedy here... "The issue does not run on the Judicially fashioned exclusionary rule aimed at detering violations of the Fourth Amendment rights, but upon the Provisions of title III." see Giordano, 416 U.S. at 524.

Stated in Juxtaposition with Leon Jurisprudence the Eighth Circuit court of Appeals held "that no wiretap Applicant can, in

good faith rely upon a court order authorizing the wiretap when wiretap Applicant failed to comply with the edicts of the Federal Wiretap statute in Procuring the Order."..."without including the name of the Authorizing D.O.J. official on wiretap Applications; there can be No "GOOD Faith" reliance under the statutory scheme carefully crafted by Congress to limit the use of these electronic interceptions. We will take No Part in detracting from Congress' intent "to make doubly sure that the Statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications." United States vs. Lomeli, 676 F.3d 734 (8th cir 2012); quoting Giordano, 416 U.S. at 515. See also United States vs. Rice, 478 F.3d 704 (6th cir. 2007), United States vs. Crabtree, 565 F.3d 887 (4th cir. 2009), United States vs. Spadaccino, 800 F.2d 292, 296 (2nd Cir. 1986), United States vs. Scurry, 821 F.3d 1, 8, 13 (D.C. cir 2018) and United States vs Romero, 2018 Dist. Lexis 218754 (E.D. of TX).

The Cases relied upon by the Government to support the proposition that minor errors or "technical defects" in a wiretap application or Order, do not warrant suppression is always "because either the Judge "Knew" the identity of the authorizing D.O.J. Official or the official was designated by name in the application but that information was omitted from the authorizing Order."

Therefore, allowing the Courts to use the "Good faith Doctrine" or "core concerns test" Not to suppress illegally obtained evidence,

as the statute required under section 2515; 2518(10)(a); (ii). See United States vs. Callum, 410 F.3d 571, 574-77 (9th cir. 2005), United States vs. Fudge, 325 F.3d at 914-18 (7th cir. 2003), United States vs. Radcliff, 331 F.3d 1153; 1160-63 (10th cir. 2003), United States vs. Gray, 521 F.3d 514, 527-28 (6th cir 2008).

As the Government politely suggested as alternative argument in it's "Brief in Opposition", that a Good faith exception should apply and since Petitioner's CJA Attorney didn't raise it for review prior; Petitioner, Now offers review of this substantial Question as presented and is ripe for review.

Invocation of Leon, in the TITLE III context is misguided. The exception is relevant in cases of Constitutional Suppression; it is a Judicially created execption to a Judicially created remedy to Protect a Constitutional right.

This however, is not a constitutional case; the statute controls, and the statute does not provide a good faith exception. Accordingly, the Government itself acknowledged at oral argument in the Fourth Circuit "the SUPREME Court has never imported the Good faith exception into Title III;" but they still are advocating in the alternative "for Good faith reliance" and that's what the Fourth Circuit Majority opinion championed so eroneously. Precisely why Petitioner's grant for Rehearing is dire and appropriate.

The Language and Legislative history of title III, strongly militate against engrafting the Good faith exception into Title III warrants. First, the language in Title III provides that exclusion is the

exclusive remedy for an illegally obtained warrant. In Constrast to the Law governing probable cause under the Fourth Amendments, the law governing electronic surveillance via wiretap is codified in a comprehensive statutory scheme providing explicit requirements, procedures and protections. The statute is clear on its face and does not provide for any exception for violations provided by §§ 2515, 2518 (10)(a), (ii). The Government does not have the Authority to disregard those judgements. It would create a Constitutional controversy.

CLOSING ARGUMENTS

The Questions before This Court, concerns the interpretations of the Suppression Provisions of Title III, §§ 2515, 2518 (10)(a), (ii)... that are of a substantial degree and have a controlling effect, as well as other Substantial grounds not Previously Presented involving substantial Constitutional issues, involving the "Good Faith Doctrine" Applied to Fourth Amendment Search warrants and Title III's section 2518 (4)(d).

In the Dahda's Petition for Certiorari it asked whether "ANY" legal defect that appears within the Four Corners of an otherwise sufficient wiretap Order, is "insufficient on its face" under §2518 (10)(a)(ii). Petitioner Brunson's Writ of Certiorari asked a similar Question Concerning an wiretap Order's Facial insufficiency, but Petitioner's greatly differs in contrast; by "Orders that DID NOT CONTAIN what was required by the Statute in § 2518 (4)(d). The Dahda's wiretap Order had Nothing lacking, but had an "SURPLUS SENTENCE" involving § 2518 (4)(e).

Both concerned a Statutory interpretation of the Suppression provision's subparagraph § 2518 (10)(a)(ii) dealing with Facial insufficiency. And in light of the different related holdings among the several circuits; The Supreme Court granted the Dahda Petition for Certiorari.

Why then, should Brunson's Petition for Certiorari and Rehearing not be given the same; if not MORE OF AN OPPORTUNITY? Is it because of race? I cannot believe the Supreme Court would be inclined to use systemic Racial bias to determine which cases it reviews.... Just three years removed from Dahda's Opinion inwhich similar but Clearly different issues; and Dahda received review where nothing was wrong in the Order, but Petitioner's does have a statutory error, And be denied Justice at the Highest level?

This Court recognized the Problems "The Lower Courts in various contexts have debated Just which kinds of defects subparagraph (ii) Covers." and yet decided..."We need not resolve these Questions these many different cases raise." Astoundly, due to that critical hesitation, this Court has left confusion to Continue in the Lower Courts!

Just as the Fourth Circuit has done, Lower Courts will continue to use the "Good Faith Doctrine" or Mis Apply Dahda to claim "NOT EVERY DEFECT" Call for suppression or even continue allowing a "Title" or "Reference to the Application Identity Requirement" instead of the Statutory required "name of the Person" in section 2518(4)(d). see and Compare Post Dahda cases United States v. Romero, 2018 Dist Lexis 218754 (E.D. of TX) to United States v. Brunson, 968 F.3d 325 (4th cir 2020).

CONCLUSION

Plenary Certiorari review is woefully needed to re-align the lower Courts; Just as it was over forty years ago in Giordano and Chavez; (1974) for Present day resolution to a Prominent Statutory Question of interpretation also Comprising a Constitutional Controversy.

There are NO Guarantees that the Government, who is a creature of habit, will continue to follow the Statute by a D.O.J. "recomm-

endation" via circulars as proven by comments of Acting Solicitor General, Jeffery B. Wall; who himself in his "Brief in Opposition" called § 2518(4)(d) Indentification requirement "Redundant" and asked "Why it was necessary to repeat individual's nAmes in the Order?"... is a clear example of why a Rehearing is Pertinent and Honorable.

At a time when Systemic Racism is being brought to light in America's Criminal Justice System, advocated by the Public at Large and backed by the New Administration; The Supreme Court sitting on the Bench Now, has an opportunity to stand in the interest of Justice and on the right side of the Law of Statutes, the First Canon of law and Constitution to further the Healing of a Nation and restore Public Trust for People of Color and Privacy Concerns in an age where everyone and everything is done with a cell Phone!

Privacy of the Public was an overriding concern of Congress in the Title III Process; especially when the Government and Lower Courts have blurred the lines defined by statute too Long. The Petition Should be Granted.

Respectfully Submitted,

x Joey L. Brunson

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Date: March 14th, 2021