

**CAPITAL CASE**

**No. \_\_\_\_\_**

**IN THE SUPREME COURT OF THE UNITED STATES**

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**RONNIE EUGENE FUSTON,**

**Petitioner,**

**vs.**

**THE STATE OF OKLAHOMA,**

**Respondent.**

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**PETITION FOR WRIT OF CERTIORARI TO  
THE OKLAHOMA COURT OF CRIMINAL APPEALS**

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**November 9, 2020**

## QUESTION PRESENTED

**In a pre-*Carpenter v. United States* case, did the state appellate court err in extending the good faith exception to the Fourth Amendment warrant requirement where law enforcement obtained historic CSLI through the use of a court order under 18 U.S.C. § 2703(d) in contravention of a state statute that required a finding of probable cause for issuance of such an order?**

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OCTOBER TERM, 2020**

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THE STATE OF OKLAHOMA,

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**PETITION FOR WRIT OF CERTIORARI TO  
THE OKLAHOMA COURT OF CRIMINAL APPEALS**

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To: The Honorable Chief Justice and Associate Justices of the United States Supreme Court:

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Oklahoma Court of Criminal Appeals entered in this case.

## **OPINION BELOW**

The Oklahoma Court of Criminal Appeals issued a published opinion in this case, *Fuston v. State*, 2020 OK CR 4, 470 P.3d 306. (Appendix A)

## **JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). The judgment of the Oklahoma appellate court was entered March 5, 2020. (Appendix A) A Petition for Rehearing and Motion To Recall Mandate was filed on May 19, 2020 and subsequently denied in an unpublished order on June 12, 2020. (Appendix B and C) Petitioner's time to file a Petition for a Writ of Certiorari was automatically extended sixty (60) days from the original ninety (90) day deadline under this Court's Order issued on March 19, 2020 making Mr. Fuston's petition due on November 9, 2020.

## **CONSTITUTIONAL AND RELEVANT STATUTORY PROVISIONS**

### **United States Constitution, Amendment IV:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **United States Constitution, Amendment XIV:**

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



**18 U.S.C § 2703:**

**d) Requirements for court order.**--A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

**Okla. Stat. tit. 13, § 176.9 (in relevant part):**

A. Each application for an order authorizing or approving the interception of a wire, oral or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the authority of the Attorney General to make such application. Each application shall include the following information:

C. Upon the submission of the application, an ex parte order may be entered, as requested or as modified, authorizing interception of wire, oral or electronic communications within the territorial jurisdiction of the judicial district of the district attorney requesting the order if the judge of competent jurisdiction determines on the basis of the facts submitted by the applicant that:

1. There is probable cause for belief that an individual is committing, has committed or is about to commit a particular offense enumerated in Section 176.7 of this title;
2. There is probable cause to believe that particular communications concerning the offense will be obtained through such interception;
3. Normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or are too dangerous; or
4. There is probable cause to believe that the facilities from which, or the place where the wire, oral or electronic communications are to be intercepted, are being used by an individual or are about to

be used in connection with the commission of such offense or are leased to, listed in the name of or commonly used by such person.

### **STATEMENT OF THE CASE**

#### **1. Statement of the facts.**

Michael Rhodes was shot and killed by three (3) bullets<sup>1</sup> as he sat on his couch, next to his three (3) year old daughter Jymla, in the living room of his house on October 20, 2012. (Tr.VI 1384)(State's exhibits 63, 66 and 67) After hearing the shots his son, Jalon Rhodes, went downstairs to discover that Mr. Rhodes had been shot. (Tr.IV 798) Jymla was unharmed. The shooting was the result of a two (2) day ongoing dispute between Mr. Rhodes' niece and a group of girls associated with a street gang. The police were dispatched at 11:50 p.m. (Tr.IV 845-846)

The only witness who testified that Ronnie Fuston was at the crime scene at the time of the shooting was Brian Butler, a friend of Mr. Fuston's.<sup>2</sup> Mr. Butler claimed he was with Mr. Fuston on the evening of October 20, 2012 when Fuston received a phone call from "one or more girls" meaning two women known by the street names Lady Bucky and/or Lady Get One. (Tr.V 1023) Butler had met the women in Enid, Oklahoma a few times before the night of the 20<sup>th</sup>. (Tr.V 1026) According to Mr. Butler they wanted Mr. Fuston

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<sup>1</sup> Dr. Chai Choi testified that Mr. Rhodes was shot in the left foot, the left leg and the shoulder. (Tr.VI 1367-1368) The bullet that went into Mr. Rhodes shoulder transgressed the aorta, both lungs and the bronchus. (Tr.VI 1379-1380) (State's exhibit 65)

<sup>2</sup> Mr. Butler's involvement in the investigation in this case began after he was arrested on drug trafficking charges in Enid, Oklahoma and had his wife contact law enforcement to tell them he wanted to talk to them about a homicide case. (Tr.V 1059, 1066) Mr. Butler had prior federal convictions in Alabama, Washington and Alaska when he was charged with Trafficking in Enid such that conviction on that charge would have resulted in a significant sentence. (Tr.V 1067) By cooperating with Garfield County and Oklahoma County against Mr. Fuston he avoided any criminal penalty in Garfield County.

to go to Oklahoma City because there was a fight happening. Since he and Mr. Fuston weren't doing anything Mr. Butler decided to go to Oklahoma City with Mr. Fuston. (Tr.V 1026) They left Enid around 5:00 or 5:30 p.m. to make the hour and half drive to Oklahoma City. (Tr.V 1027)

Other than the testimony of heavily incentivized Butler, the State introduced historic cell tower records to show Mr. Fuston's movements the night of the homicide.

## **2. Disposition of Petitioner's direct appeal.**

*Carpenter v. United States*, 138 S.Ct. 2206 (2018) was decided between Mr. Fuston's conviction and the filing of his direct appeal. However, prior to the issuance of *Carpenter*, Mr. Fuston's defense counsel moved to suppress any evidence derived from the historic cell tower records obtained by the State of Oklahoma by use of a court order signed by Oklahoma County Judge Donald Deason pursuant to 18 U.S.C. § 2703, the Stored Communications Act (SCA), ultimately struck down by the *Carpenter* Court. The defense motion argued that use of a court order rather than a search warrant supported by probable cause violated Mr. Fuston's Fourth Amendment right against unreasonable searches and seizures. (O.R. 533-540) The State filed a written response to the motion arguing that no court has held that a warrant is required to obtain such information. (O.R. 573-579)(O.R. 1064-1065) Judge Elliott denied the Motion To Suppress on August 16, 2016 without a hearing and without making any findings of facts relating to the cell tower records. (8/16/2016 Tr. 17)

Oklahoma County District Attorney Investigator Darren Gordon testified

at trial about obtaining the cell-site location information (CSLI) from T-Mobile and Verizon for phone numbers 405-474-2421 and 405-465-6106 through use of a court order. (Tr.VI 1424-1428, 1435)(Court's exhibit 14-15) That information was the basis of James Liles' CellHawk analysis.<sup>3</sup> (Tr.VII 1583-1604)(State's exhibits 99 and 102) This testimony was critical in placing Mr. Fuston in proximity of the homicide scene as well as corroborating informant Brian Butler's testimony.

The analysis Mr. Liles did in this regard relates to the historic records of transmissions from a cell phone as they hit on three-sided or four-sided cell towers. (Tr.VII 11570-1572) Each antenna on a cell tower is called a sector and covers a 120-degree range or a 90-degree range depending on the number of antennae on the tower. (Tr.VII 1572) What the cell site location information cannot show is how far a cell phone is from the antenna. (Tr.VII 1574) Mr. Liles can generate a general range but the range of tower transmission is greatly affected by weather, obstructions in front of the tower or cell phone traffic at the time. (Tr.VII 1575) Additionally, he admitted that he had no way to know if the cell site location information he receives is accurate. (Tr.VII 1608)

Though the State obtained an extended period of historic cell records, the witness at trial only testified to analysis he did on a couple of hours' worth of records. The billing records introduced as State's exhibit 96 cover the period between September 23, 2012 and October 22, 2012. The records admitted as

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<sup>3</sup> CellHawk is a software made by Hawk Analytics that is used to map cell service location information (CSLI). The Hawk Analytics website describes CellHawk as "...a secure, web-based software that combines cellular engineering experience with a clear understanding of investigators' needs."

State's exhibit 97 cover the period between August 20, 2012 and October 19, 2012. The page numbers reflected on that exhibit are page 8 through page 24 of 34 suggesting that the records span a longer time frame than the exhibit reflects. Mr. Liles was asked to examine records associated with two (2) phone numbers; 405-474-2421 which the State associated with Mr. Fuston and 405-465-6106. (Tr.VII 1584) For the 2421 number he was asked to look at a time range of October 20<sup>th</sup> at 10:00 p.m. until midnight. (Tr.VII 1585) That timeframe relates to the time of the 9-1-1 call about the shooting at the Rhodes house which occurred at 11:42 p.m.

The analysis of the 2421 phone, that the State maintained was Mr. Fuston's phone, showed the phone around the area of Pennsylvania Avenue and 122<sup>nd</sup> Street in Oklahoma City at 9:22 p.m. on October 20<sup>th</sup>. (Tr.VII 1598) That phone moved south but then went back to the north side of the city around 11:30 p.m. (Tr.VII 1600) According to Mr. Liles' analysis the phone hit off a tower whose range included the Rhodes house at 11:42 p.m. (Tr.VII 1600) The phone then moved south around midnight.

Mr. Fuston challenged the trial court's refusal to suppress the cell tower records on appeal. In response, the State on appeal asserted, for the first time and without any fact finding in the court below, that even if the cell tower records required a warrant under *Carpenter*, investigators acted in good faith pursuant to *Illinois v. Krull*, 480 U.S. 340 (1987). In response to the State's newly asserted good faith defense, appellate counsel argued that *Krull* was inapposite to this case because of the difference in the nature of the types of

search and what was statutorily authorized. In supplemental briefing prior to oral argument Mr. Fuston further argued that because Oklahoma's statute governing wire transmissions required probable cause to obtain such records, investigators using the lower standard in the SCA could not have been acting in good faith based on the language of the federal statute. (Appendix D)

In the direct appeal, the Oklahoma Court of Criminal Appeals, applying only an abuse of discretion standard, found that the good faith exception to the warrant requirement applied under these circumstances, and affirmed the denial of the motion to suppress. In so finding the state appellate court held,

At the time law enforcement in this case obtained CSLI from Appellant's phone, the SCA was a recognized permissible means of accessing the information. In mid-2017, the Supreme Court had not established that an SCA order for CSLI was a search within the meaning of the Fourth Amendment. The Officer's in this case therefore had an objectively reasonably good faith belief that no warrant was required to obtain the CSLI from Appellant's phone.

*Fuston*, 470 P.3d at 319. The Court went on to hold that "The trial court did not abuse its discretion in denying the motion to suppress the CSLI obtained from Appellant's phone. *Id.* at 320. The Court's opinion fails to address the conflicting state statute rendering reliance on the SCA misplaced in Oklahoma. Mr. Fuston challenged the Court's omission of any discussion of the state statute on rehearing as well as the application of the abuse of discretion standard. The Court found no grounds for rehearing.

## REASON FOR GRANTING THE WRIT

**THE COURT SHOULD GRANT THE WRIT TO ANSWER THE IMPORTANT QUESTION: Whether the state appellate court erroneously applied the good faith exception to the warrant requirement despite a state statute requiring a finding of probable cause for cell tower records.**

**I. The State’s appellate court’s application of the good faith exception to the warrant requirement, despite a state statute requiring a finding of probable cause, departs from all other state courts’ application of the good faith exception in jurisdictions that require probable cause for a court order.**

The Fourth Amendment of the United States proscribes all unreasonable searches and seizures, and warrantless searches are considered *per se* unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967); *Gomez v. State*, 2007 OK CR 33, ¶ 6, 168 P.3d 1139, 1142. *Carpenter v. United States*, 138 S.Ct. 2206, (2018) holds that a search warrant based on probable cause is necessary for law enforcement to obtain cell site location information under the Fourth Amendment. *Carpenter* challenged the governments seizure of cell site location information through the use of a court order under 18 U.S.C. § 2703—the very same type of court order used to secure Mr. Fuston’s cell site location information in this case by the Oklahoma County District Attorney’s Office.

Based on longstanding Fourth Amendment principals, the Court held that a person has a reasonable expectation of privacy in their physical movement such that the seizure of cell site location information constitutes a search requiring probable cause. *Id.* at 2220. The *Carpenter* Court noted that

a court order issued under the Stored Communications Act, which requires a showing of “reasonable grounds” for “believing that the records were “relevant and material to an ongoing investigation” falls “well short of the probable cause required for a warrant.” *Id.* at 2221. In so holding the Court rejected the government’s position that cell site location records are business records subject to the third-party doctrine of *United States v. Miller*, 425 U.S. 435 (1976) and *Smith v. Maryland*, 442 U.S. 735 (1979).

The specific provision of the Stored Communications Act relied on to secure a court order for the historic cell tower records in this case, 18 U.S.C. § 2703 (d), states in pertinent part, “[I]n the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State.” Clearly, Congress intended that any action by state law enforcement under that provision had to comply with state law.

Okla. Stat. tit. 13, § 176.1 *et seq.* is known as the “Security of Communications Act.” Section 176.9 allows for the issuance of court orders for “wire, oral or electronic communications.” Cell phones are covered by the provisions of the Security of Communications Act. *State v. Serrato*, 2007 OK CR 44, ¶ 12, 176 P.3d 356, 360 (“cellular communication is ‘wire communication’ within the plain and ordinary meaning of the original language of section 176.2(13) of the SCA”). However, the state provision requires that specific information be given to the court issuing the order. Section 176.9(C)(1) requires that in order for an *ex parte* order to issue, the court must find “[T]here is probable cause for belief that an individual is committing, has



committed or is about to commit a particular offense enumerated in Section 176.7” and “There is probable cause to believe that particular communications concerning the offense will be obtained through such interception.” These provisions were not followed in the case. Instead, the Oklahoma County District Attorney’s Office elected to proceed under the less demanding federal statute. One would expect that the Oklahoma County District Attorney’s Office would be familiar with this state statutory provision and see that it clearly conflicted with the reasonable grounds requirement of the SCA. Despite that, the investigator for the Oklahoma County District Attorney’s Office obtained an order under the SCA anyway; a decision now approved by the state appellate court.

A review of the orders issued by the District Court of Oklahoma County on November 30, 2012 shows that an investigator with the Oklahoma County District Attorney’s Office sought, and was granted, access to Mr. Fuston’s historic CSLI. The orders were granted under the authority of 18 U.S.C. § 2703(C) upon a finding that there was an on-going criminal investigation into the death of Michael Rhodes and the cell site location records were relevant to the criminal investigation. As observed by the *Carpenter* Court, that is well short of a finding of probable cause necessary for a warrant.

In addressing Mr. Fuston’s challenge to the use of a court order under the SCA, without any relevant factfinding, the state appellate court held “The officers in this case therefore had an objectively reasonably good faith belief that no warrant was required to obtain the CSLI from Appellant’s phone.”

*Fuston*, 470 P.3d at 319. The good faith exception theory advanced by the State on appeal, and predictably adopted by the state appellate court in this case, ignores a critical element of the good faith exception to the warrant requirement; that law enforcement's reliance on the statute was objectively reasonable.

In *Illinois v. Krull*, 480 U.S. 340, 349-350 (1987), this Court extended the good faith exception to the warrant requirement to law enforcement's objectively reasonable reliance on a state statute, even if the statute is later ruled unconstitutional. The situation in *Krull* involved a state statute authorizing the warrantless seizure of automobiles from Action Iron and Metal Inc. that were believed to be stolen under a statutory scheme that allowed administrative searches of used automobile and parts dealers. *Id.* at 343-344. The statute was ultimately ruled unconstitutional by Illinois Supreme Court and the cars seized from Action Iron and Metal Inc. were suppressed.

In extending the good faith exception to the warrant requirement established in *United States v. Leon*, 468 U.S. 897 (1984) the *Krull* Court explicitly articulated two circumstances that would render reliance on an unconstitutional state statute unreasonable. First, the Court stated, "[A] statute cannot support objectively reasonable reliance if, in passing the statute, the legislature wholly abandoned its responsibility to enact constitutional laws." *Id.* at 355. The second circumstance was if a reasonable officer should have known the statute was unconstitutional." *Id.*

Because Oklahoma has a state statute that requires a finding of probable cause before law enforcement can obtain historic cell tower records, the Oklahoma County District Attorney's Office's reliance on the less demanding federal statute was objectively unreasonable. The Oklahoma Attorney General's Office has recognized that "While a state law may not be less restrictive than the federal act, it may be more restrictive and therefore more protective of individual privacy." *Question Submitted By The Honorable John Nance*, 2000 OK AG 45, ¶ 7. (citation omitted). Here, state law requirements for law enforcement to seize electronic stored communications is more protective than the federal statute at issue in *Carpenter*.

There is no question that many, if not all, federal appellate courts considering the issue have applied the good faith exception to the warrantless seizure of CSLI under the SCA that occurred prior to *Carpenter*. See *United States v. Goldstein*, 914 F.3d 200, 203 (3d Cir. 2019); *United States v. Korte*, 918 F.3d 750, 758 (9th Cir. 2019); *United States v. Chavez*, 894 F.3d 593, 608 (4<sup>th</sup> Cir. 2018); *United States v. Curtis*, 901 F.3d 846, 849 (7th Cir. 2018); *United States v. Joyner*, 899 F.3d 1199, 1204 (11th Cir. 2018)(*per curiam*). However, its application to federal cases is much more straight forward given the fact that *Carpenter* dealt specifically with a federal statute.

State jurisdictions, however, must follow a different analytical path to conduct an analysis of the application of the good faith exception because some states, like Oklahoma, have relevant state statutory authority. For example, some states have considered the good faith exception to warrantless seizures of

CSLI where the state provision, like the SCA, only required a court order. Connecticut has a statutory provision requiring a court order, but not a warrant, for historic CSLI. See General Statutes (Rev. to 2009) § 54-47aa. Following *Carpenter*, the Supreme Court of Connecticut rejected the State's post-*Carpenter* good faith argument because Connecticut does not recognize the good faith exception to the warrant requirement. *State v. Brown*, 331 Conn. 258, 274, 202 A.3d 1003, 1012-1013 (2019)(Good-faith exception was incompatible with provision of Connecticut Constitution prohibiting unreasonable searches or seizures and thus was not recognized in Connecticut). Virginia has a statute that authorized law enforcement to obtain historic CSLI by obtaining a court order rather than a warrant issued upon probable cause. See § 19.2-70.3 of the Code of Virginia. In *Reed v. Commonwealth*, 71 Va.App. 164, 174-175, 834 S.E.2d. 505, 511 (2019) the Court of Appeals of Virginia found that the good faith exception to the warrant requirement applied to pre-*Carpenter* seizures of CSLI because law enforcement acted consistently with the federal and the state statute.

Along with Oklahoma, eight (8) states have statutory provisions<sup>4</sup> that require a warrant based on probable cause to obtain historic CSLI, many of which had already been passed at the time the trial court denied Mr. Fuston's

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<sup>4</sup> It bears noting that Massachusetts recognized a Fourth Amendment privacy interest in historic CSLI prior to *Carpenter* in *Commonwealth v. Augustine*, 467 Mass. 230, 232, 4 N.E.3d 846 (2014). After the case was remanded for a determination of whether there was probable cause for a warrant for CSLI, the Supreme Judicial Court of Massachusetts affirmed the probable cause determination. *Commonwealth v. Augustine*, 472 Mass. 448, 35 N.E.3d 688 (2015).

motion to suppress.<sup>5</sup> Those states are California<sup>6</sup>, Maine<sup>7</sup>, Minnesota<sup>8</sup>, Montana<sup>9</sup>, New Hampshire<sup>10</sup>, Rhode Island<sup>11</sup>, Utah<sup>12</sup> and Vermont<sup>13</sup>. No other state, other than Oklahoma, has found that law enforcement acted in good faith in obtaining a court order under federal law, where a warrant was necessary under state law. Oklahoma is an outlier in this respect and the precedent established in this case functionally allows law enforcement to disregard a more onerous state statute and proceed under a less demanding federal statute. This Court should make the determination that such action on the part of law enforcement is not reasonably objective.

Oklahoma's application of the good faith exception to the warrant requirement despite a state statute demanding probable cause under these circumstances lies in conflict with other states that have considered the good faith exception in the *Carpenter* context. No state has found that law enforcement acted objectively reasonable where a pre-*Carpenter* seizure occurred under the SCA despite a state statutory provision requiring probable cause.

**II. This Court should grant certiorari in this case because it presents the Court with an issue of first impression in a capital case where no other Court will have the opportunity to review the state appellate court's holding.**

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<sup>5</sup> Several other states require a warrant for real-time CSLI. However, those are not detailed here since the issue presented to the Court relates only to historic CSLI.

<sup>6</sup> CA PENAL § 1546.2 (2015).

<sup>7</sup> Me. Rev. Stat. Tit. 16 § 648 (2019).

<sup>8</sup> Minn. Stat. § 626A.42, Subd. 2(a)(2)(2020).

<sup>9</sup> Mont. Code Ann. 46-5-110 (2013).

<sup>10</sup> N.H. Rev. Stat. Ann. § 644-A:1 (2015).

<sup>11</sup> R.I. Gen. Laws § 12-32-2 (2016).

<sup>12</sup> Utah Code Ann. § 77-23c-102 (2014).

<sup>13</sup> Vt. Stat. Ann. tit. 13 § 8102 (2016).

Ronnie Fuston has been convicted and sentenced to death in large part due to unlawfully obtained evidence. In order to affirm his conviction, the state appellate court extended the application of the good faith exception to the warrant requirement in a way that ignored state statutory law and the case law underpinnings of the exception established by this Court. Now, unless this Court reviews the issue, and at a minimum remands the case for an actual hearing on the facts and the law, no other court will ever have the opportunity to review this issue. The reason for that is that Fourth Amendment claims are generally not cognizable in federal habeas.

In *Stone v. Powell*, 428 U.S. 465, 494 (1976) this Court held that were a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, that claim cannot serve as the basis of relief before a federal habeas court. The rationale for the *Stone* Court's ruling is that the temporal proximity of the Fourth Amendment violation to the application of the exclusionary rule is so remote that the exclusionary rule would not serve the deterrent function it is intended to perform. *Id.* Though the length of time it takes for a petitioner to take a case into federal habeas review has been reduced by the statutory timeframes implemented in the Anti-Terrorism and Effective Death Penalty Act of 1996 established a one-year filing period for a federal habeas petition from the time direct appeal is final, 28 U.S.C. § 2244(d)(1), this Court has not departed from the holding in *Stone v. Powell*.

The Tenth Circuit Court of Appeals applies the *Stone* rule to state Fourth Amendment Claims. *Gamble v. Oklahoma*, 583 F.2d 1161 (10<sup>th</sup> Cir. 1978).

Mr. Fuston properly filed a motion to suppress the historic CSLI obtained without a warrant in this case. The district court denied it without hearing and without any conclusions of law except that no court had held that the Fourth Amendment required a warrant for such records. Mr. Fuston raised the issue on direct appeal where the state appellate court applied an expansive reading of the good faith exception to the warrant requirement to justify the warrantless seizure of CSLI in this case, despite a state statute requiring a warrant. This Court is now presented with the issue of whether the application of the good faith exception in this case was justified and comports with the Fourth Amendment. If the Court now declines the opportunity to rule on this issue, no Court will have given this death row inmate full consideration of his Fourth Amendment claim despite the fact that the CSLI was an essential facet of the State's case in the guilt phase of the trial and a state statute prohibited obtaining that information on less than a showing of probable cause.

**CONCLUSION**

Petitioner prays the Court grant his petition to decide that Mr. Fuston's right to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution was violated by the state obtaining CSLI without a warrant and without an applicable exception to the warrant requirement.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER



No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 2020

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RONNIE EUGENE FUSTON,

Petitioner,

vs.

THE STATE OF OKLAHOMA,

Respondent.

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**CERTIFICATE OF SERVICE**

I, Andrea Digilio Miller, member of the bar of this Court, do hereby certify that I have served a copy of the Petition for Writ of Certiorari to the Oklahoma Court of Criminal Appeals on counsel for the Respondent, State of Oklahoma, by depositing the same in the U.S. Mail, postage prepaid, to Jennifer Miller, Chief of the Criminal Division, Office of the Attorney General, 112 State Capitol Building, Oklahoma City, Oklahoma 73105, this 9th day of November, 2020. All parties required to be served have been served.

  
ANDREA DIGILIO MILLER