

No. 20-8472 ORIGINAL

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
JUN 21 2021  
OFFICE OF THE CLERK

\_\_\_\_\_  
Rocky Orosco, Pro Se — PETITIONER  
(Your Name)

vs.

Bobby Lumpkin, T.D.C.J.-Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Fifth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
Rocky Orosco  
(Your Name)

The Polunsky Unit, 3872 FM 350 South,  
(Address)

\_\_\_\_\_  
Livingston, T.X. - 77351  
(City, State, Zip Code)

\_\_\_\_\_  
N/A  
(Phone Number)

### **QUESTION(S) PRESENTED**

- 1) During Mr.Orosco's trial, the State District Attorney told the jury that Mr.Orosco's Cell Phone was "Obtained" with a warrant when it really was not. And, If there has never been a hearing or rulling on the "Obtainment" of Mr.Orosco's Cell Phone in State Court, is Mr.Orosco entitled to recieve a hearing in the Court Of Criminal Appeals Of Texas to challenge the "Obtainment" of his Cell Phone that was used in his trial ?
- 2) Could it be Ineffective Assistance Of Trial Counsel since Mr.Orosco's trial lawyer did not challenge the "Obtainment" of Mr.Orosco's Cell Phone during the Motion To Suppress before trial started ?
- 3) Could it be Ineffective Assistance Of Appellate Counsel since Mr.Orosco's direct appellate lawyer did not challenge the "Obtainment" of Mr.Orosco's Cell Phone during the direct appeal ?

## **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:

## **RELATED CASES**

N/A

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Denying Mr.Orosco's C.O.A.;
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U.S.C. § 2254;
- APPENDIX C- Court Of Criminal Appeals Of Texas Denial Of Mr.  
Orosco's State Writ Of Habeas Corpus;
- APPENDIX D- Volume 3,Page 14 Trial Transcript/Reporters Record  
From Mr.Orosco's Trial;
- APPENDIX E- Volume 5,Page 15 Trial Transcript/Reporters Record  
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- APPENDIX F- A Copy Of Mr.Orosco's Prison Inmate Account History.

## TABLE OF AUTHORITIES CITED

### CASES

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### STATUTES AND RULES

N/A

### OTHER

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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 A 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 B 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 4-16-2021.

☒ 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: \_\_\_\_\_, 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**

The United States Constitution 5th Amendment states as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (United States Constitution 5th Amendment).

The United States Constitution 14th Amendment Section 1 states as follows:

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. (United States Constitution 14th Amendment Section 1).



## STATEMENT OF THE CASE

Mr.Orosco's grounds 1,2,& 3 all involve the primary subject of Mr.Orosco's CELL PHONE.

Before Mr.Orosco's trial started, there was a "Motion To Suppress The Cell Phone Hearing". To show how important of an IMPACT the Cell Phone had in Mr.Orosco's case, during this Motion, the State District Attorney Jennifer Tharp said the following to the trial court judge:

"This is definately monumental evidence that if the court was to grant his motion to suppress, this drastically impacts the states case," (R.R.Vol.3, P.14 / Appendix D).

However, none of the lower courts have ADDRESSED or ACKNOWLEDGED this Vol.3, P.14 Trial Transcript Page at all. Mr.Orosco contends that this page should be included,,and is important to the review & assessment of his case.

Furthermore, during Mr.Orosco's trial, the State District Attorney Chari Kelly made a mistake by telling the jury that the Phone was "Obtained" with a warrant by stating exactly:

"You can absolutely consider that phone and you can absolutely consider everything on it because it was obtained legally with a valid search warrant," (R.R.Vol.5, P.15 / Appendix E).

But, and most importantly, Mr.Orosco contends that the State did NOT actually have a warrant when the Phone was "Obtained".

The warrant that the State had for the Phone was about the SEIZURE of it, not the OBTAINMENT of it.

None of the lower courts have ADDRESSED or ACKNOWLEDGED this Vol.5, P.15 Trial Transcript Page at all. Mr.Orosco contends that this page should be included, and is important to the review & assessment of his case.

So now, Mr.Orosco is presenting an argument & claim under the U.S.Constitutions 5th & 14th Amendment Procedural & Substantive Due Process Rights to a full & fair State Court hearing to challenge the Obtainment of his Cell Phone.

JOHNSTON V. SHAW, 556 F.Supp.406 (1982). (U.S. Constitution 5th Amendment). (U.S. Constitution 14th Amendment).

The violation is the State Courts did not provide Mr.Orosco with a Procedural Due Process Hearing to challenge the Obtainment of Mr.Orosco's Cell Phone.

The warrant for the phone, the Motion To Suppress, and all of the rulings in the lower courts have been about the seizure of the Phone, not the obtainment of it.

As his ground 2, & 3, Mr.Orosco is also presenting Ineffective Assistance Of Counsel claims against his Trial & Direct Appellate Lawyers for not challenging the "Obtainment" of Mr.Orosco's Cell Phone during the Motion To Suppress & and on Direct Appeal, (Strickland V. Washington, 466 U.S. 668 (1984)).

The Cell Phone Constitutionally & Prejudicially impacted Mr. Orosco's trial & appeal process because the State has not provided Mr.Orosco with a Procedural due process hearing to challenge the Obtainment of the Phone in State Court. And now, everyone is discussing the contents of the Phone violating Mr. Orosco's U.S.Constitutional 5th & 14th Amendments Substantive Due Process Rights to privacy before an Obtainment Hearing. ( U.S. Constitution 5th Amendment). (U.S. Constitution 14th Amendment).

Mr.Orosco contends that the processes provided by the lower Courts to fully & fairly litigate this claim have been routinely & systematically applied in such a way as to prevent the actual litigation of this claim.

Mr.Orosco wishes to recieve a U.S. Constitutional 5th & 14th Amendment Procedural Due Process Hearing in the Court Of Criminal Appeals Of Texas to challenge the Obtainment of his Cell Phone because that is the highest Criminal Appellate State Court in Texas.

## REASONS FOR GRANTING THE PETITION

During Mr.Orosco's trial, the State District Attorney made a mistake by telling the jury to consider Mr.Orosco's Phone because it was Obtained with a warrant(RR.Vol.5,P.15/Appendix E). But, Mr.Orosco Contends that there was NOT actually a warrant for the Obtainment of Mr.Orosco's Phone. There was only later a warrant for the SEIZURE of the Phone, not the Obtainment of it. Mr.Orosco further contends that he deserves to have a HEARING to challenge the Obtainment of his Cell Phone in the Court Of Criminal Appeals Of Texas.

Mr.Orosco tried to challenge the Obtainment of his Cell Phone through a Texas State Writ Of Habeas Corpus in the Court Of Criminal Appeals Of Texas. But, the State District Attorney & Trial Court Judge told the appellate court that Mr.Orosco was not credible, that all of this info. was false, and that Mr. Orosco was abusing the writ. So, the appellate court DENIED the Writ based on the trial courts findings without a hearing, (WR-88,740-01), (Appendix C).

Mr.Orosco contends that if the Court Of Criminal Appeals of Texas were to confirm the above Vol.5, P.15 Trial Transcript to be true; then, confirm that there was not actually a warrant for the Obtainment of Mr.Orosco's Cell Phone, then that appellate court will overturn Mr.Orosco's criminal conviction based on illegally "Obtained" evidence that was used during Mr.Orosco's trial. That is why this is so important to Mr.Orosco.

The warrant for Mr.Orosco's phone, the Motion To Suppress The Phone Hearing Before Trial, and all of the RULINGS in the lower courts have been about the SEIZURE of the Phone, not the Obtainment of it.

All of the lower courts were erroneous in rejecting Mr.Orosco's claims because they did not check & confirm the truth of trial transcript pages that would have entitled Mr.Orosco to relief.

The State in Mr.Orosco's case is not going to expose the truth of any of this info. because it will result to the OVERTURNING of there own conviction. And, the State does not want that to happen. That is why Mr.Orosco is trying to bring this info. to the attention of the Court Of Criminal Appeals Of Texas.

Mr.Orosco Contends that the U.S. Constitutional 5th & 14th Amendment Procedural Due Process Rights entitle him to a HEARING to challenge the "Obtainment" of his Cell Phone if there was never a hearing or ruling on the OBTAINMENT of the Phone. Is this correct ? (JOHNSTON V. SHAW, 556 F.Supp.406, AT 413 (1982), (U.S. Constitution 5th Amendment), (U.S. Constitution 14th Amendment)).

The national importance of this Writ is to interpret the U.S. Constitution 5th & 14th Procedural & Substantive Due Process Rights to a hearing to challenge the "Obtainment" of Cell Phone evidence that was used in a criminal trial. Mr.Orosco contends that there are no cases for this particular issue requiring a new U.S. Supreme Court Standard.

Mr.Orosco Contends that he is being deprived of life, liberty, & property without due process of law because the State Of Texas will not allow Mr.Orosco to challenge the Obtainment of his cell Phone that was used as evidence in his criminal trial to convict him, and to sentence him to life in prison, (United States Constitution 5th Amendment), (United States Constitution 14th Amendment).

Mr.Orosco also contends that the State Of Texas is denying him due process, equal protection, and is abridging his privileges and immunities of U.S. Citizenship because the State Of Texas will not allow Mr.Orosco to challenge the "Obtainment" of his Cell Phone that was used as evidence in his criminal trial to convict him, and to sentence him to life in prison, . . .

(United States Constitution 5th Amendment), (United States Constitution 14th Amendment).

The United States Constitution 5th Amendment States as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (United States Constitution 5th Amendment).

The United States Constitution 14th Amendment Section 1 States as follows:

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. (United States Constitution 14th Amendment Section 1).

Because of all the reasons stated above, Mr.Orosco Contends that the U.S. Court Of Appeals For The Fifth Circuit should have granted Mr.Orosco's Certificate Of Appealability (C.O.A.) for the three grounds included in this Writ Of Certiorari, Miller-El V. Cockrell, 537 U.S. 322 (2003).

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rocky / (Garcia)

Date: 6-16-21