

21-5406

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUN 22 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

For The Fifth Circuit

Bryson Tuesno

— PETITIONER

(Your Name)

vs.

Court Of Appeals

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The 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

Bryson Tuesno

(Your Name)

P.O. Box 1031

(Address)

Coleman, Florida 33521

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Is it a violation of one's 6th amendment right to Impartial Jury by allowing one person to contradict another person's testimony with hearsay statements?

In which makes the jury impartial when viewing these statments.

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

UNITED STATES V. HOGAN, 763 F.2d 687 (5TH CIR. 1985)

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OTHER

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 _____ 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☒ is unpublished.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 _____ 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 3/9/21.

☒ 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

6th Amendment Right to Impartial Jury

The government violated Tunesno's 6th amendment right to impartial jury by allowing a F.B.I agent to testify hearsay statements, which contradicted the previous witness's actual statement. Which made the jury impartial because they did not know which statement was the truth. In this case they witness testified her own statement and the agent testified making a statement in which there was no proof of.

STATEMENT OF THE CASE

The government called Gabriel as a hostile witness so it can later call a law enforcement officer to counter attack her testimony with inadmissible hearsay statements. The government could not use Gabriel's prior statement (which she stated she does not remember saying and there was no proof of anything otherwise) through the testimony of another to establish cumulative hearsay evidence against Tuneso.

Admission of Gabriel's testimony was plain error, irrelevant and cumulative. Her testimony and the government's attempt to impeach her testimony was an improper way to cast Tuneso as guilty.

It reflects that the government called Gabriel seemingly to confirm a statement in which there was no proof of. The government attempted to have Gabriel identify a vehicle presented to the jury. Gabriel answered "I don't remember saying that".

In response to Gabriel's testimony the government called agent Adam Plummer who claims he met with Gabriel on August 31, 2016 in order to have a look at her vehicle. Agent Plummer claims he showed Gabriel a photograph containing a Monte Carlo which prompted Gabriel to supposedly say it was her vehicle.

Plummer's testimony was intended to contradict Gabriel's testimony. The government's effort to impeach her testimony concerned the jury. It asked during deliberations for the 302 so it could review that statement.

Like *U.S. v. Hogan*, 763 F.2d 697 (5th Cir. 1985) the prosecution announced to the jury that Gabriel would be a hostile witness. It sought to elicit from her (1) information not in dispute (2) information agent Plummer claims he heard after showing Gabriel a photograph of a Monte Carlo; and (3) information from a meeting in which it allowed Gabriel to leave in the vehicle, which the government claimed was so vital to its investigation.

REASONS FOR GRANTING THE PETITION

In this circuit, the prosecutor may not use a statement under the guise of impeachment for the primary purpose of placing before the jury substantive evidence which is not otherwise admissible. U.S. V. Hogan, 763 F.2d 697 (5th Cir. 1985). Which is a violation of the 6th amendment right to impartial jury. By doing this it allows the government to manipulate the jury by trying to make them believe their witness instead of the witness's testimony, for such a scheme merely serves a subterfuge to undermine the law and avoid the hearsay rule. The danger is obvious. The jury will hear the hearsay testimony, which is not otherwise admissible and is not substantive proof of guilt, but is likely to be received as such proof. The 5th circuit court of appeals granted an appeal very similar (U.S. V. Hogan), But denied Tuesday's. By allowing the government to avoid the hearsay rule it is a clear violation of the 6th amendment.

~~For the reasons herein this conviction should be reversed. The Fifth Circuit~~
has already ruled that "the government may not call a witness to elicit
inadmissible hearsay testimony. In this case that is exactly what the government
did. Also this is a clear violation of one 6th amendment right to impartial
jury. United states V. Hogan 763 F.2d 697 (5th Cir.1985).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Byron Tueno

Date: 7/29/21