

(7)

No. ~~21-1547-3840~~ 21-6800

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 20 2021

OFFICE OF THE CLERK

ABDULKHALIQ MURSHID — PETITIONER
(Your Name)

vs.

State of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Mississippi Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ABDULKHALIQ M. MURSHID
(Your Name)

822 70th pl
(Address)

Meridian, MS 39301
(City, State, Zip Code)

601-678 2445
(Phone Number)

(8)

QUESTION(S) PRESENTED

Whether officers can search my business without a search warrant.
Also, whether the prosecution should look for conviction but not justice. In addition to ineffective assistance of counsel. Lastly, whether the trial court can deprive the petitioner of his compulsory process.

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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

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petitioner have submitted the
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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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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 _____.

[] 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).

[X] For cases from state courts:

The date on which the highest state court decided my case was 10/04/2021. A copy of that decision appears at Appendix A.

[] 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

This case involves Amendment XIV to the United States Constitution which provides:

"All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and the state wherein 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."

This case also involves amendment IV to the United States Constitution which provides:

"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."

This case involves VI to the United States Constitution which provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy ~~and~~ public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which

district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence"

STATEMENT OF THE CASE

The petitioner aggrieved the admission of the search and seizure of his business "Grey Cloud Tobacco" under the plain view doctrine because the officers just walked behind the cash register without invitation. They asked store clerk about the owner although they knew in advance that the owner was detained at the other store "Meridian Discount Tobacco". The store clerk confirmed to the officers the absence of the owner "manager". The officers started asking the store clerk about the sale of Spice. The store clerk responded that the store didn't sell Spice. The officers ordered the store clerk to open the drawer and confiscated the Spice and proceeded to search the whole store including the owner's office. After searching the whole store, they went and applied or filed for the search warrant. The petitioner tried to go to the trial but the state kept amending the indictments as stalling tactics. Also, the petitioner's lawyer continued the court dates without the petitioner's leave. When the petitioner finally went to the trial, the trial court denied his compulsory process; to present evidences. The evidences were videos of the officers raiding the store without a search warrant. Also a video

of the head of the county sheriff stating that the sale of said Spice was legal in the county and he couldn't do anything about it. "It will take him a long time to regulate the sale of Spice" he added. Besides, the petitioner was deprived of his right to subpoena witnesses in his favor regarding the statements of narcotics' officers during their visit to the store to take samples of the Spice. Taking samples, they came back to the store and said it didn't contain any bad chemicals. Also, the petitioner was deprived of his right to call officer "Sharpe", the head of Meridian City "DART" team, who said to the petitioner that he himself tested the samples and they didn't contain any illegal substances. Furthermore, the prosecutor's remarks to the jury prejudiced the petitioner; when the petitioner's wife testified in favor of the petitioner, the prosecutor went banana and said to her "You came here to exonerate him; that is it; is he going to leave here free?" and the prosecutor turned to the jury and said "convict him, he is a drug dealer." The petitioner decided to appeal the verdict but the petitioner's counsel failed to include the third party or expert's testimony in the appeal. The expert witness articulated the exact amount of illegal substances according to the federal weight measurement standards. The state

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of Mississippi failed to articulate the exact amount. One time, the state claimed that the amount was 128 oz. Then the state claimed the amount was 200g or more. Then, the state claimed it was 3; 4/4.16 grams. After that, the state claimed it was 800.16 grams. Finally, the state claimed it was more than 80 grams but less than a kilo.

REASONS FOR GRANTING THE PETITION

A- INEFFECTIVE ASSISTANCE OF COUNSEL

The holding of mississippi courts was based on the ineffective assistance of counsel. The petitioner's counsel failed to call witnesses like the store clerks who should have testified about the narcotics officers' statement during their visit to the store to take samples for testing. The officers took samples more than one occasion. The samples did not contain any illegal substances. Also the petitioner's counsel failed to subpoena officer "Sharpe" who was the head of Meridian DART team. Officer sharpe stated to the petitioner that he himself tested the samples and the samples did not contain any banned chemicals. Furthermore, the counsel failed to subpoena the videos that articulate the head of the county sheriff saying on public TV that the sale of said spice is legal and it will take him a long time to regulate the sale of spice in the county. The petitioner's counsel failed to do so upon the petitioner insistence to subpoena and present all evidences. The assistance of counsel was incompetent and it prejudiced the petitioner. If the counsel subpoenaed the videos and witnesses the results would be different. See Strickland v.

Washington 466 U.S 668 (1984). The Supreme Court has long recognized, with respect to the due process / fair hearing right to counsel, the Sixth Amendment right to counsel, and the equal protection right to counsel, that these rights are not fulfilled if counsel fails to provide effective assistance to the defendant. See *Powell v. Alabama* 287 U.S 45 (1932); *Jones v. Barnes* 463 U.S 745 (1983). The counsel also continued the court date nine times without the petitioner's leave. Even the petitioner insisted to his counsel on going to the trial.

B- IMPORTANCE OF JUSTICE OVER CONVICTION

The remarks of the prosecutor, to the jury, also prejudiced the petitioner. After the petitioner's wife had testified, the prosecutor went banana and said to her "You had come here to acquit him - that was it?!, ~~if~~ he would get out of here free ???" And the prosecutor turned to the jury and said "convict him, he is a drug dealer." That took place with the absence of the instruction of the court and the objection of the counsel to ignore such remarks. Those remarks indicated that the prosecutor was seeking conviction not justice. Also, these remarks constitute a violation of the petitioner's

due process clause as in Berger v. U.S 295 U.S 78 (1935); Darden v. Wainwright 106 S.Ct 2464 (1986). The Supreme Court of United States held that in presenting argument to the jury, the prosecutor is subject to due process limitations. Here due process prohibits statements so prejudicial and inflammatory as to produce a "fundamentally unfair" trial as shown in Darden v. Wainwright 106 S.Ct 2464 (1986).

C - VIOLATION OF 4th AMENDMENT.

The petitioner aggrieved the admission of the search warrant, of his store "Grey cloud Tobacco", after the officers searched the whole store. Furthermore, the petitioner aggrieved the admission of the search and seizure under the plain view doctrine because the officers walked behind the cash register. Then, the started interrogating the store clerk about the sale of spice and the whereabouts of the store owner "petitioner", even if the officers knew that the petitioner was in custody of the other officers in the other store. The store clerk confirmed to the officers the absence of the store owner.

It was an error on the side of the trial court to consider that a plainview search because the officers were already behind the cash register and the ordered the store clerk to open the drawers to look at. The officers were in a place where they were not lawfully present as the U.S Supreme court ruled in *Coolidge v. N.H* 403 U.S 443 (1971). Also, under the plainview Doctrine, the discovery should be in advertent as the U.S Supreme Court ruled in *Chimel v. Cal.*, 395 U.S 610 (1961). In addition, the petitioner aggrieved the holdings of mississippi courts as a consent Search and seizure because the store clerk was not a manager or other person of considerable authority who was left in a complete charge for substantial period of time. The owner "petitioner" left the store for just few minutes to see his wife in the other store. The petitioner was in a complete charge of the store. Also, the petitioner's business policy to the clerks is not to let anybody behind the cash register even her family member. So, the clerk lacked authority to consent as the U.S Supreme Court held in *Most v. U.S* 876 F.2d 191, 199-200 (D.C. cir 1989). Let's suppose that

the store clerk consented the officers to look at the drawer; the officers exceeded the scope of the consent search by searching the entire store including the areas where the petitioner had subjective privacy like "office". That was a violation of consent search as the U.S Supreme court ruled in Michael V. Cresbach, 526 F.3d 1008, 1015-16 (7th Cir. 2008)

D- VIOLATION OF 6th AMENDMENT

The trial court erred in depriving the petitioner of presenting evidences. The trial court stated that it wouldn't play any videos from both parties. By depriving the petitioner of presenting evidences, the trial court prejudiced the petitioner. The U.S Supreme Court held in Washington v. Tex., 388 U.S 14 (1967) that the major case relying directly on the 6th Amendment Compulsory Clause. Also, it ruled in U.S v. Valenzuela-Bernal 458 U.S 858 (1982) that a due process obligation of the prosecutor or prosecution not to preclude defense access to potential witnesses and under limited circumstances, to assist the defense in finding such witnesses.

E- VIOLATION OF SUPREMACY CLAUSE

The Mississippi State drug weight standard is inaccurate and harsher than the Federal Drug Weight Standard. The State Lab failed to articulate the exact of illegal substances- one time, the state claimed the weight was 128 oz. The Second time, it claimed 200 grams or more. The third time, it claimed 3,419.16 grams. The fourth time, it claimed 800.16 grams. Finally, the state claimed the amount was more than 30 grams but less than a kilo. Whereas, the third party "expert witness" confirmed, according to the Federal drug weight standard, the weight of is less than 30 grams. The Federal weight standard should have been prioritized under the implied preempt doctrine of the Supremacy clause. The Federal law is the law of the land-

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Abdulkhalig Musahid

Date: 12/04/2021