No. 21-8150

IN THE

SUPREME COURT OF THE UNITED STATES

Lorenzo Shelton — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lorenzo Shelton
(Your Name)

FCI Coleman Medium, P.O. Box 1032
(Address)

Coleman, Florida 33521-1032
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED #1

(1) Whether the lower courts erred in allowing the Petitioner's cell phone to be searched just because he was on State parole from the State of Tennessee.

The lower courts substantially erred in this case, including the Petitioner's State parole officer and police officers in allowing the Petitioner's cell phone to be illegally searched without "just case," and a probable cause search warrant. A warrantless search of the contents of a cell phone is presumptively unreasonable. **Riley v. California**, 134 S. Ct. 2473 (2014). Petitiioner's Tennessee State parole condition only embraced an agreement "tc search without a warrant of Petitioner's person, vehicle, property, or place of residence by any probation/parole officer or law enforcement officer at any time without reasonable suspicion." Petitioner's parole officer did not have reasonable suspicion to search Petitioner's cell phone because Petitioner's parole agreement did not authorize the search.

The Government in this case failed to demonstrate that its search by a police officer of Petitioner's cell phone was reasonable. There was no warrant nor exigent circumstances to search the Petitioner's phone. A judicial warrant was required because there was no threat to the probation officer, nor the police officers, present with the parole officer. There were no exigent circumstances nor imminent destruction of the cell phone. The probation officer nor the police officers had no exigent circumstances to examine Petitioner's cell phone, whether an emergency satisfied a warrantless search in this case. The search intruded on the Petitioner's individual privacy. **Griffin v. Wisconsin**, 487 U.S. 868, 873-80, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987); **United States v. Knights**, 534 U.S. 112, 118-22, 122 S. Ct. 587, 151 L. Ed. 2d 497 (2001).

Reasonable suspicion requires the government to show a particular and objective basis for suspecting the particular person of criminal activity. It requires more than a mere hunch, such as in this case in point. Possession of the Petitioner's cell phone by the probation officer and police are not a sufficient basis to suspect criminal activity. And the fruits of a search cannot serve as the justification for initiating such a search. The exclusionary rule serves to deter deliberate reckless, or grossly negligent conduct, or in some circumstances recurring or

systemic negligence, such as in Petitioner's case in point. The ultimate touchstone of the Fourth Amendment is reasonableness. **Riley v. California**, 573 U.S. 373, 381-82, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) (quoting **Brigham City v. Stuart**, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). "Reasonableness generally requires the obtaining of a judicial warrant. Id. at 382 (quoting **Vernonia Sch. Dist. 47J v. Acton**, 515 U.S. 646, 653, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995). If there is no warrant, then "a search is reasonable only if it falls within a specific exception to the warrant requirement." Id.

Possession of a cell phone by Petitioner alone was not a satisfiable reasonable suspicion to confiscate Petitioner's phone and search through it for evidence without a warrant. Reasonable suspicion requires that the government show "a particular and objective basis for suspecting the particular person ... of criminal activity." **Payne**, 181 F.3d at 788 (quoting **Cortez**, 449 U.S. at 417-18). It "requires more than a mere hunch." **United States v. Lyons**, 687 F.3d 754, 763 (6th Cir. 2012) (quoting **Dorsey v. Barber**, 517 F.3d 389, 395 (6th Cir. 2008).

There were no exigent circumstances in this case to confiscate the Petitioner's cell phone, in violation of the Petitioner's Fourth Amendment rights to legal search and seizure.

If exigent circumstances in this case did exist, then the parole officer and police officers created it. **Knights**, 534 U.S. at 119; **Tessier**, 814 F.3d at 433. See **King**, 563 U.S. at 462, which cannot support a finding of reasonable suspicion. Application of the exclusionary rule in this case deters suspiciousness and searches of a probationer's or parolee's cell phone post-Riley, where the terms of a probation agreement do not authorize such a search.

Under both **Griffin** and **Knights**'s framework, the government fails to demonstrate that its original search of Petitioner's cell phone was reasonable. See **Herring v. United States**, 555 U.S. 135, 144, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009).

Petitioner hopes and prays that a writ of certiorari will be granted in this case.

QUESTION PRESENTED #2

The U.S. Court of Appeals should have vacated and suppressed the fruits of the warrantless parole search of 317 Tillman Lane, because there was no reliability nor basis of knowledge for the anonymous tip that started this unconstitutional Fourth

Amendment search.

Petitioner requested a suppression hearing in this case based on violations of his Fourth Amendment rights, unconstitutional circumstances, and a warrantless, suspicionless search of the Petitioner because he was a parolee in which in this case was based on unconstitutional circumstances, indicating that the search was conducted out of personal animosity and inherently a suspect suspicionless search from a tipster's call to Petitioner's parole officer. According to Petitioner's parole officer, Mr. Michael Pasqualetto, stated he received a call "from a female," who wished to "remain anonymous," advising that Petitioner was "providing false stubs" presumably in support of his parole employment condition. The anonymous "false pay stub" report somehow caused Mr. Pasqualetto to inquire if Petitioner was "selling drugs." To which the tipster "kind of said if--one and one--you put one and one together, equal that he's selling drugs." This one tipster called from an anonymous call, concerning the Petitioner's employment, went into a full-blown drug and firearm investigation from a tipster that had no reliability in the past and was anonymous, who reported only a perceived irregularity concerning Petitioner's employment status. The probation officer could have simply summoned Petitioner to his office to inquire about his employment or simply contacted the employer to verify Petitioner's status. The tipster's statement was about Petitioner's employment and she never expressed any personal knowledge of any drug trafficking occurring at any residence associated with the Petitioner.

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their person [and] houses ... against unreasonable searches and seizures shall not be violated..." U.S. Const. amendment IV. "Searches conducted outside the judicial process, without prior approval by Judge or Magistrate, are pro-se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions." **Katz v. United States**, 389 U.S. 347, 357 (1967).

Tennessee law from which Petitioner was paroled under, controls the constitutional analysis of the search of the Tillman residence. The first part of the analysis asks if the relevant statute or regulation satisfies the Fourth Amendment's reasonableness requirement. **United States v. Doxey**, 833 F.3d 692, 703 (6th Cir. 2016). The second inquiry is, "whether the facts of the [parole] search

itself satisfy the regulation or statute at issue." **United States v. Loney,** 331 F.3d 515, 520 (6th Cir. 2003).

Petitioner's search itself did not satisfy the parole conditions under Tennessee law. Tennessee law bars searches of a parolee's residence, if the search is not conducted for reasons other than valid law enforcement concerns. A tipster made a call to Petitioner's parole officer out of personal animosity. This tipster had no prior reliability with law enforcement, Petitioner's parole officer without any warrant, without any just cause that was legal, simply without a warrant, went to the Petitioner's residence with police officers, had the Petitioner's residence searched, and another residence that was not listed on Petitioner's parole released documents and had it searched without a warrant, and/or any probable cause, thereby violating the Petitioner's Fourth Amendment rights to legal search and seizure. Every time a disgruntled person calls a parole officer out of animosity, their residence, or a residence they may be visiting can all of a sudden be unconstitutionally searched without a warrant and just cause for the search.

The 20-year-old daughter that was present at the residence when the police and parole officer came to the Tillman residence, did not have the authority to give permission for the residence to be searched regarding the Petitioner, because she lived with her mother at the residence. Therefore, she was not legally able to give permission for the search of the residence. There was no probable cause for the warrantless Tillman search concerning the Petitioner, because he no longer lived there. Petitioner's Fourth Amendment rights were therefore violated to legal search and seizure, based on an anonymous tip, without any reliability from the anonymous tipster who had a personal vendetta against the Petitioner. **Florida v. J.L.**, 120 S. Ct. 1375; **Alabama v. White**, 496 U.S. 325, 110 S. Ct. 2412. If a parole officer had 75 parolees, and they all call based on anonymous tips, do all parolees then get their houses searched based on an anonymous tipster?

Petitioner was never allowed to call his attorney upon request to the parole officer and to the police officer to do so. Petitioner was therefore denied access to a lawyer by the police and his parole officer. Petitioner was never read his Miranda rights.

Petitioner was deliberately called to the Tillman residence by his parole officer, just to have him at the residence while they searched it. All of this was done based on a tipster who had no reliability, and caused Petitioner's substantial rights to be violated. There was no fairness, integrity in this case, becuase

Petitioner's substantial Fourth, Fifth, and Sixth Amendment rights were allowed to be violated by all of the above stated reasons in this argument. If left unchecked, it would verify that when the government is allowed to make such substantial violations of the Petitioner's rights based on these clear errors, and nothing is done about it, then the court's judicial reputation is at stake, because the errors in this argument are clear and affected the judicial proceedings in this case, as Petitioner stated they did.

Tennessee law controls the constitutional analysis of the Tillman residence search in this case. The first part of the analysis asks if the relevant statute or regulation satisfies the Fourth Amendment's reasonableness requirement. **United States v. Doxey**, 833 F.3d 692, 703 (6th Cir. 2016). The second inquiry is, "Whether the facts of the parole search itself satisfy the regulation or statute at issue." Id. at page 704 (quoting **United States v. Loney**, 331 F.3d 515, 520 (6th Cir. 2003). Thus, "parolee searches are an example of the rare instance in which the contours of a federal constitutional right are determined, in part, by the context of State law." **United States v. Freeman**, 479 F.3d 743, 747-48 (10th Cir. 2007). While the Tennessee parole condition at issue here may be constitutional under Samson, the search itself did not satisfy the parole condition under Tennessee law, thereby violating Petitioner's constitutional and substantial rights.

QUESTION PRESENTED #3

Whether the lower courts should have suppressed the fruits of the parole search of 3565 Chesapeake Drive, because the officers did not have probable cause to believe that Petitioner lived at that address.

The lower courts erred clearly in using Petitioner's parole status to illegally and unlawfully search the 3565 Chesapeake Drive residence. Former State parole officer Haley Howell, testified that a 20-year-old female who came to the door of 3565 Chesapeake Drive address, acknowledged that Petitioner had been at the residence through association of her mother. Parole officer Howell, by any means necessary, illegally or unlawfully had to try to tie the Petitioner to the Chesapeake residence. Parole officer Howell conceded that as "a trained parole officer," she needed to tie Petitioner to that residence, period, in order to do a parole search. Even though Petitioner stayed sometimes at the residence as an overnight guest. He did not live there, but he would still have standing to

challenge the search. See **United States v. Grandberry**, 730 F.3d 968, 971 (9th Cir. 2013) (holding that parolee had Fourth Amendment standing to challenge the saerch of an apartment in which he was an overnight guest). Under **Grandberry**, because Petitioner was at times an overnight guest at the Chesapeake resident, he had standing to challenge the search of that residence. Clearly the parole officer and police officers did not have probable cause to search 3565 Chesapeake Drive.

There are reasons to provide greater Fourth Amendment protections to residences in which a parolee is a guest than one in which he is a resident, becuase the State has an interest in protecting the privacy of its law-abiding citizens from intrusion on the basis of simple association with a parolee.

If the defendant possesses a key to a dwelling, providing independent access to the place, he then has a reasonable expectation of privacy. See **United States v. Davis**, 932 F.2d 752, 757 (9th Cir. 1991). In **Davis**, the defendant possessed a key to his friend's apartment and was free to come and go as he pleased. The defendant stored things at the dwelling and took the precaution of storing items in a locked safe to assure privacy. The defendant had previously lived in the apartment, and had independent access to the place searched. Id. When the defendant contested the police search of the apartment as unreasonable, the court used the totality of the circumstances test to determine that the defendant had a sufficient connection to the invaded place to assert Fourth Amendment protection. Id. at 757.

Petitioner's case as well established that he too possessed a reasonable expectation of privacy in the residence at 3565 Chesapeake Drive. Residents at the address confirmed that Petitioner stayed there from time to time as a guest overnight and that he pursued a relationship with a woman who lived at and controlled the Chesapeake Drive residence.

Like the defendant in **United States v. Waller**, 426 F.3d 838, 844-45 (6th Cir. 2005), who had a reasonable expectation of privacy when he stored a bag at a dwelling where he sometimes stayed overnight, Petitioner had a reasonable expectation of privacy in the items he stored in the closet and dresser located in the room that he had secured with a deadbolt lock at the Chesapeake address. As in **Minnesota v. Olson**, 495 U.S. 91, 96-97 (1990), the lower court should have considered the policy rationale for finding Petitioner's reasonable expectation of privacy at the Chesapeake residence.

Like the defendant in **United States v. Waller**, 426 F.3d 838, 844-45 (6th Cir. 2005), who had a reasonable expectation of privacy when he stored a bag at a dwelling where he sometimes stayed overnight, Petitioner had a reasonable expectation of privacy in the items he stored in the closet and dresser located in the room that he had secured with a deadbolt lock at the Chesapeake address. See **Minnesota v. Olson**, 495 U.S. 91, 96-97 (1990). As in **United States v. Health**, 259 F.3d 522, 533 (6th Cir. 2001), Petitioner's circumstances fulfill the indicia of acceptance necessary to establish a reasonable expectation of privacy. **United States v. Grandberry**, 730 F.3d 968 (9th Cir. 2013); and **United States v. Patterson**, 276 F. Supp. 3d 994-1004 (S.D. Cal. 2017) (apply Bolivar, police officers need reasonable suspicion to believe a parolee has control over a room to conduct a legal parole search). **Motley v. Parks**, 432 F.3d 1072, 1080 (9th Cir. 2015).

Under **Grandberry**, the police lacked probable cause to think that Petitioner lived at the Chesapeake residence. First, he appeared to still reside at the Tillman residence. He had long officially reported the Tillman residence as his home; and he had never notified his parole officer that he had moved; second, because the police had never seen Petitioner at the Chesapeake residence, they had not seen anything that made it appear he lived there. See **Grandberry**, 730 F.3d at 971-72 ("none of the officers checked the names of the building's mailboxes to see if Grandberry received mail there. None of them ever observed him carrying groceries, laundry, newspaper, or mail. Third, Petitioner lacked a key to the residence (police discovered he had a key to an interior, padlock room only after they had unlawfully entered the home without a warrant. Fourth, Petitioner never claimed to live at that particular house on Chesapeake. **Grandberry**, 730 F.3d at 978 ("our cases distinguish between evidence that a parolee had visited a particular residence and evidence that the parolee lived there.

Because of these factors weighing meaningfully in favor of a probable cause finding, the police lacked probable cuase to concluded that Petitioner lived there, at the Chesapeake address.

Regardless of Petitioner's status as a parolee and regardless of any other constitutional violations, the search of the Chesapeake residence was unconstitutional and should have been suppressed by the lower courts.

QUESTION PRESENTED #4

Whether a cooperating government witness Latez Murphy was incompetent to testify at trial since he was under the influence of drugs at the time of his testimony, plus he was so impaired that he was belligerent and incoherent. His testimony was unfair and violated Petitioner's due process and confrontation rights.

On cross examination, Government witness Murphy admitted that he had used "weed" (marijuana), "white" "cocaine," and "heroin" the night before his testimony. Mr. Murphy punctuated his cross-examination with unsolicited unresponsive gratuitous declaration of "f**k outta here" directed at defense counsel. This statement was ignored by the lower courts as was the level of Mr. Murphy's impairment. Mr. Murphy was so impaired and incompetent to testify and was incoherent because of how he was responding to questioning. That all of this had a material bearing upon his reliability as a witness. **Wilson v. United States**, 232 U.S. 563, 568 (1914).

What kind of Federal court in the United States and Appeal Court would allow such an incoherent Government witness under the influence of drugs while testifying on the witness stand and the court knows this to be a fact, and you still allow this Government witness to testify anyway, knowing he was on drugs, like marijuana, cocaine, and heroin, and you know he is under the influence of drugs while testifying on the witness stand in a court of law before a jury. You still allow the Petitioner's Fifth Amendment rights to due process to have a Government witness under drug influence, still testify in a court of law, violating the Petitioner's Sixth Amendment rights to cross examine the witness without being under the influence of drugs. The Government had no hesitation about advancing an impaired Government witness to testify against the Petitioner as long as that witness was willing to put drugs and a gun in the Petitioner's hands. The lower courts were unmoved by the Government's witness Mr. Murphy's obvious impairment and conducted no jury out, gatekeeper function to ascertain a level of Government witness Murphy's impairments and his competence as a witness. Without Government witness Murphy, the Government would have been left with the unadorned results of two parole searches.

A criminal defendant states a violation of the confrontation clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness. **Delaware v. Van Arsdall**, 475 U.S. 673, 680 (1986). Given Government witness Murphy's

condition, Petitioner was definitely robbed of a meaningful confrontation right, in violation of the Petitioner's substantial Fifth and Sixth Amendment rights to the confrontation clause. Petitioner states that his right to cross examine this Government witness was totally denied to him by the lower courts to adequately and sufficiently cross examine this witness, because he was impaired on drugs, and not responsive enough to even answer the questions posed to him from the defense. See **Crawford v. Washington**, 541 U.S. 36 (2004). Petitioner's Fifth Amendment right to due process to confront this witness without him being impaired and under the influence of drugs was violated. Petitiioner's Sixth Amendment rights to confront a witness against him without being under the influence and impaired was also violated. These were substantial rights guaranteed to the Petitioner that should never have been violated by the lower courts, thereby stating that Petitioner never even received a fair and impartial trial in violation of all the reasons stated above.

Petitioner hopes and prays that this writ of certiorari will be granted, so that no other Petitioner nor citizen of the United States will ever have to endure the unfairness of such a broken justice system in the Petitioner's case in point.

LIST OF PARTIES

[X] 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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TABLE OF AUTHORITIES

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

[X] 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,
[X] is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

[ ] reported at N/A; 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 N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 3/8/2022.

[X] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/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 N/A. A copy of that decision appears at Appendix N/A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the U.S. Constitution

Sixth Amendment of the U.S. Constitution

Fourth Amendment of the U.S. Constitution

STATEMENT OF THE CASE

Petitioner Lorenzo Shelton was charged in a superseding indictment by a grand jury in the Middle District of Tennessee at Nashville with a one count of possessing with intent to distribute 100 grams or more of a mixture or substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a)(1); one count of possessing with intent to distribute a mixture or substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a)(1); one count of felon in possession of a firearm, in violation of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924, and one count of possessing a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c), superseding indictment.

Petitioner proceeded to trial and was convicted. He was sentenced to 25 years in a Federal United States prison, where he now resides. Petitioner appealed to the Sixth Circuit for its opinion and was denied on March 8, 2022. Petitioner now pursues his claims to the United States Supreme Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable Court does not have to accept this writ of certiorari, because the Supreme Court has discretion to hear and/or accept any case it deems appropriate to accept. However, Petitioner is requesting that this Honorable Court accept his case, because it could be a lesson to the lower courts not to infringe upon the American people's constitutional and substantial rights when a citizen of this country proceeds to trial that his Fifth and Sixth Amendment rights not be taken advantage of as if they don't exist, and that a witness, whether he is a Government witness or not, not be allowed to testify at a trial before a jury if he is under the influence of heroin, cocaine, and marijuana, such as was the case in Petitioner's case in point. Even though this Government witness was under the influence of the drugs stated above a night before trial and was very incoherent at trial, he was still allowed to testify as a Government witness. A grant of this writ would eliminate problems and situations like the one mentioned, and would let the Government know that even they themselves in the United States Attorney's Office are not above the law, but must themselves follow the law.

Petitioner hopes and prays that this writ will be granted and accepted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lorenzo Shelton
Lorenzo Shelton

Date: May 29, 2022