

MAY 11 2022

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No. _____

21-8260

IN THE

SUPREME COURT OF THE UNITED STATES

Tracy Garrett — PETITIONER
(Your Name)

vs.

Warden, FCC Coleman II — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the 11th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tracy Garrett #26919-018
(Your Name)

USP Coleman II - P.O. Box 1034
(Address)

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

N/A
(Phone Number)

RECEIVED

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SUPREME COURT, U.S.

ORIGINAL

QUESTION(S) PRESENTED

The second day into my trial, my attorney raised an objection when the Government's key witness (Detective Sams) was giving testimony about what occurred at my home before the arrest. The District Judge dismissed the Jury and "held" a Motion for Mistrial Hearing (ore tenus motion).

The Government examined Detective Sams first about the consent he received to enter my home. My counsel cross-examined Detective Sams and the District Judge ruled that the search was consensual (177-300, 309).

My counsel at the initial appeal stage placed this very same 4th Amendment issue in the brief. The 11th Circuit declined to entertain. This is a fundamental error. They are refusing to correct this error. There is evidence of the 4th Amendment violation (merits).

Under "Rules of the Supreme Court of the United States" (Adopted April 18, 2019, Effective July 1, 2019), Part III, Rule 10, Section (a), pp. 5-6, "Considerations Governing Review on Certiorari":

...a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;... (emphasis added)

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

- Tracy Garrett v. United States, 6:10-CV-1796-ORL-31KRS U.S. Court of Appeals For the Eleventh Circuit. Judgment Entered: July 17th, 2012
- Tracy Garrett v. United States, No. 12-13988-B U.S. Court of Appeals for The Eleventh Circuit. Judgment Entered: Dec. 7th, 2012
- Tracy Garrett v. United States, No. 16-11634 U.S. Court of Appeals for The Eleventh Circuit. Judgment Entered: 2016
- Tracy Garrett v. United States, No. 17-11286-J U.S. Court of Appeals for The Eleventh Circuit. Judgment Entered: 2017
- Tracy Garrett v. United States, No. 17-12556 U.S. Court of Appeals for The Eleventh Circuit. Judgment Entered: 2017
- Tracy Garrett v. United States, No. 17-14097-C U.S. Court of Appeals for The Eleventh Circuit. Judgment Entered: 2018

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- Kimmelman v. Morrison, 477 U.S. 365, 375, 1065 5th Ct. 2574,
91 L. Ed 2d 305 (1986)
- Huynh v. King, 95 F. 3d 1052, 10 FLA L. Weekly Fed C 430 (11th
cir 1996)
- United States v. Stephens, 365 F. 3d 967, 974 (11th cir. 2004)
- United States v. Rothenberg, 610 F. 3d 621, 624 (11th Cir 2010)
- Green v. Nelson, 595 F. 3d 1245, 1251-52 (11th Cir 2010)

STATUTES AND RULES

- Ore Tenus Rule (Motion for Mistrial)
- Peremptory Challenge Rule
- 14th Amendment of the U.S. Constitution
- 4th Amendment of the U.S. Constitution
- Fed. R. Crim. P. 52(b)

OTHER

We are dealing with a Peremptory Challenge that has affected the fairness, integrity, and public reputation of judicial proceedings.

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APPENDIX B - Tracy Garrett v. Warden, FCC Coleman II, No. 5:21-CV-457-RBD-PRL Acting District Judge Roy B.

APPENDIX C Dalton Jr.

- Tracy Garrett v. United States, No. 21-10014-E Before Cir. Panel, Rosenbaum, Branch, and Grant.

APPENDIX D - Tracy Garrett v. United States, No. 21-11208-E Before Cir. Panel Branch, Rosenbaum, and Grant.

APPENDIX E - U.S. District Court transcripts at 177-300, 309 Criminal Case #: 6:08-CR-021-GAP=KRS-1

APPENDIX F - U.S. Court of Appeals order denial in initial appeal. Appeal #: 12-13988

Appendix G - Tiffany Reeds Department of Motor Vehicle address history.

Appendix H - Affidavit from Orange County Sheriff's Office from Tiffany Reed.

Appendix I - Tracy Garrett v. U.S. Appeals Response #16-11634-A

Appendix J - Tracy Garrett v. U.S. Appeals Response #17-14097-C

OPINIONS BELOW * Attachment *

* The opinion of the United States court of appeals appears at Appendix C to the petition and is unpublished.

* The opinion of the United States court of appeals appears at Appendix D to the petition and is unpublished.

JURISDICTION

☒ For cases from federal courts:

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

☒ 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

- * 14th Amendment of the United States Constitution - Equal Protection Under Due Process (Full and Fair).

I am asserting that the 4th Amendment claim had not been fully developed due to that ruling in the appeals court, where they decline to entertain my preserved claim.

Protective Right - meaningful opportunity to be heard

- * 4th Amendment of the United States Constitution - Search and Seizure
- * 6th Amendment of the United States Constitution - Due Process
- * Green v. Nelson, 595 F. 3d 1245, 1251-52 (11th Cir. 2010)

Regardless of whether a defendant's guilt is established by the excludable evidence, the proper question is whether the outcome of the proceeding would have been different had the motion to suppress been filed and the evidence been excluded.

- * Huynh v. King, 95 F. 3d 1052, 10 FLA. L. Weekly Fed. C 430 (11th Cir 1996) Opportunity for full and fair litigation of the Fourth Amendment.

- * Kimmelman v. Morrison, 477 U.S. 365, 375, 106 S. ct 2574, 91 L. Ed 2d 305 (1986) Probability that the verdict would have been different absent the excludable evidence.

STATEMENT OF THE CASE

Please allow me to explain my position in this matter of my claim of being "Actual Innocence".

Sirs and Madams, I went to trial, and on the second day in the trial my counsel raised an objection tot he Government witness Detective Jason Sams testimony concerning the search of my home. My counsel **requested** to make a motion outside the jury's presence (See **Appendix E**). Counsel clearly stated "There is a 4th Amendment violation that has occurred surrounding the consenting female." District Judge Presnell dismissed the jury and held a hearing under a motion for mistrial hearing (ore tenus rule, see **Appendix E**). The Government examined Detective Jason Sams first, my counsel was allowed to cross-exam. The District Judge ruled that the search was consensual (See Trial Transcripts of Hearing at **Appendix E**).

My counsel placed the same 4th Amendment issue on the Initial Appeal Brief, the 11th Cir. declined to entertain this 4th Amendment claim. "They" (prosecution/court) turned the District Court's ore tenus motion for mistrial into a Motion to Suppress, which was a rabbit hole (See Court of Appeal's response at Grounds 3 in **Appendix F**).

Merits In Support of the Claim

The extended records clearly shows that the Government's key witness, Detective Jason Sams, did not tell the truth about this consenting female. At the District Court's mistrial hearing, Sams stated he saw Tiffany Reed's drivers license, and on her license was my address - 3510 South Westmoreland Drive, Orlando, FL - 2007 (See **Appendix E** at Page 308).

The evidence that is in the record shows that in August 2007 Tiffany Reed's address on her drivers license was, in fact, 5457 Timberleaf Blvd. Apt. 606, Orlando, FL (See **Appendix G**, D.M.V. printout of Tiffany Reed's past address history).

In support of my argument I offer U.S. Appeals court response in my collateral proceeding (Second and Successive 2255) Case # 16-11634-A at Page 3 and 4. Circuit Judges William Pryor, Rosenbaum, and Jill Pryor all agree that "The records may have

STATEMENT OF THE CASE * Continued *

called in to question the credibility of an officer's testimony that Reed had given police permission to search the house where Garrett was arrested." (See Appendix I at Page 3 and 4)

In my collateral attacks, the 11th Circuit has created a new binding precedent "Baptiste, 828 F. 3d 1337 (11th Cir. 2016)". This new Federal Habeas statute requires us to dismiss a claim that has been presented in a prior application to file a 2255 motion (See U.S. Appeals Court Response #17-14097-C, See Appendix j, See dissent at the end).

This Supreme Court is, in fact, seeking a case like the one before you. In *St. Hubert v. United States*, 140 U.S. 1727, the Supreme Court asked for a procedural due process challenge to the 11th Circuit practice of not allowing rehearings on second and successive (Baptiste).

REASONS FOR GRANTING THE PETITION

The Court's integrity and public reputation is at stake if this fundamental miscarriage of justice claim is not granted.

The entitlement of the full and fair process is elementary and I should be allowed to receive the full Initial Appeal proceedings.

Perjury testimony from law enforcement should never go unnoticed.

If this error goes un-rectified it will cause a fundamental miscarriage of justice.

The 14th Amendment is a guarantee that I am entitled to the full and fair process.

The District Court and the Appeals Court dropped the ball and I am paying the price for their mistakes (errors).

CONCLUSION

I am requesting a hearing and also counsel be appointed.
May God bless you all.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tracy Garrett

Date: MAY 1 2022