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No.

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SUPREME COURT U.S.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Graham Schiff — PETITIONER
(Your Name)

State of Maryland vs. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Graham Schiff
(Your Name)

784 Aberdeen Road
(Address)

Bethesda, MD 20814
(City, State, Zip Code)

301-656-4262
(Phone Number)

Questions Presented:

Whether the petitioner's speech, which is content-based, on a matter of public-concern, and made while exercising one's right to counsel, is protected by the first amendment's free speech clause as-applied to the facts of the case

Whether the evidence was insufficient to sustain the convictions because the correspondence that formed the basis of the convictions were based on protected speech.

Whether there was sufficient evidence to convict petitioner of stalking and harassment.

Whether the reasonable-person standard is constitutional in criminal law.

Whether a showing of actual innocence in the record on certiorari to a state court of last resort, should be automatic grounds for intervention by this court.

Whether the malicious abuse of court process by state actors to incarcerate and/or otherwise deprive an actually innocent defendant of their liberty, is a form of cruel and unusual punishment.

List of Parties:

All parties appear in the caption of the case on the cover page

Related Cases:**Maryland State Courts:**

State v. Schiff, 136380c in the Circuit Court for Montgomery County, Maryland; Judgment Entered July 7th, 2021

Schiff v. State, #725 September Term 2021 in the Maryland Court of Special Appeals; Judgment Entered April 27th, 2022

Schiff v. State COA-PET-0115-2022 in the Maryland Court of Appeals; Judgment Entered June 17th, 2022

Federal Courts:

Schiff v. Frosh, DLB-21-2448 in the U.S. District Court for the District of Maryland; Judgment Entered February 3rd, 2022

Schiff v. Frosh, 22-6147 in the U.S. Court of Appeals for the Fourth Circuit; Judgment Entered May 27th, 2022

Supreme Court:

Schiff v. Malagari, 20-6267 in the United States Supreme Court; Judgment Entered December 7th, 2020

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OTHER

①

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 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 State Supreme Court court appears at Appendix C to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 6/17/2022.
A copy of that decision appears at Appendix C.

☐ 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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1st Amendment-Free Speech Clause
- 14th Amendment-Due Process Clause
- 8th Amendment-Cruel and Unusual Punishment Clause

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"Sticks and stones may break my bones, but words will never hurt me"

Whoever coined this proverb, had obviously never heard of the concept of speech integral to criminal conduct.

Statement:

This case represents what is, by a wide margin, the worst abuse of a state court system in American history. The failure of this court to intervene via this petition, would eventually be considered a historic injustice concerning the entire American legal system. Because the corruption in this case is so severe, the relevant facts can be understood in only a few sentences:

Content-speech is presumed unconstitutional. Public-concern speech is also presumed unconstitutional. Convicting someone in a criminal court based on a reasonable-person standard which contains no intent element, is almost always going to be unconstitutional. Everything I just wrote, is the entire basis for how I was charged and convicted in this case.

This case reveals a new form of domestic terrorism, where prosecutors and judges are abusing the immunity afforded to them in their positions, to maliciously abuse the rights of the petitioner as an act of retribution.

Background:

In 2019, the petitioner, Graham Schiff, started e-mailing an Assistant State Attorney named Katherine Getty, regarding a case she had previously prosecuted him for in 2017, where Schiff had represented himself pro se. Schiff was entered as pro se counsel in that case, for the entirety of these e-mails sent to her, and had pending motions at the time. Schiff was intoxicated on prescription drugs, and made comments about Ms. Getty which she claims "emotionally distressed" her. Both she, and the state, concede that absolutely no threats were made, and there was no intent on the part of petitioner; Rather, he was convicted under an unconstitutionally vague reasonable-person standard which tasked a jury with deciding whether a reasonable person would interpret Schiff's speech as seriously emotionally distressing or not.

Subsequently, Schiff was convicted of Stalking (MD Criminal Law Code § 3-802) and Harassment (MD Criminal Law Code § 3-803). There was no probable cause for either charge on the merits of the state statutes, or under the free speech clause of the first amendment because Stalking does not apply to conduct: "*authorized, required, or protected by local, State, or federal law.*" (MD Crim Law Code § 3-802) ;And harassment does not apply to conduct which has a "*legal purpose*" (MD Crim Law Code § 3-803). The jury instructions containing the exact language of the statutes as-applied to Schiff's case, is part of the appendix.

Because the charges are fake, Ms. Getty had to manipulate every aspect of the criminal justice system, from the police, all the way to Maryland's top appellate court, in order to prevent the charges from being properly dismissed as a matter of law. Ms. Getty is not only a prosecutor, she is also the daughter of a Maryland judge (Jeffrey Getty of Allegany County). By taking advantage of these facts, Ms. Getty was able to convince her office to lodge a set of fake charges against Graham Schiff, despite the fact his acts consist entirely of content-speech, which was made to a public official, while also exercising his right to counsel (thereby implicating three different aspects of his protected constitutional free speech rights). He was also convicted using an unconstitutionally vague reasonable-person standard, and the state concedes there was no intent on the part of Schiff.

When the case moved to the appellate level, Schiff was forced to use a public-defender on appeal, in order to afford the case transcript. Despite arguably over a dozen reversible errors, Schiff's counsel raised only Sufficiency and Free Speech arguments. In its opinion, Maryland's intermediate appellate court purposely misapplied basic tenets of constitutional law, in order to prevent Schiff from having his actual innocence vindicated. They cited a 1999 case from Montana which erroneously claimed speech directed to a third party can be criminalized if it emotionally affects a case victim. According to the Chief Judge of Maryland's Court of Special Appeals, this unconstitutional case from Montana is "compelling".

In plainer terms: They purposely changed controlling Maryland free speech precedent to be based on a plainly unconstitutional court case from Montana, because it was necessary to help enable the false allegations of another judge's daughter.

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A writ of certiorari was then filed with Maryland's Supreme Court. This court, the Maryland Court of Appeals, typically takes six to eight weeks to make a decision with regards to certiorari. In this case, arguably one of the worst malicious prosecutions in American history, they took only 11 days to decide that they would not grant certiorari.

In plainer terms: The entire state of Maryland court system was rigged against me, in order to enable the false allegations made against me by a judge's daughter.

Because the corruption in this case is so severe, the relevant facts can be understood in only a few sentences: Content-speech is presumed unconstitutional. Public-concern speech is also presumed unconstitutional. Convicting someone in a criminal court based on a reasonable-person standard which contains no intent element, is almost always going to be unconstitutional. Everything I just wrote, is the entire basis for how I was charged and convicted in this case.

So with these three concepts being presumed unconstitutional, the burden is on the state to prove that I was not entitled to any federal constitutional protections via free speech and due process. Because they cannot meet that burden, they instead pretend as if federal law does not exist, in order to enable the false allegations made by the daughter of a judge. I need this court to understand this very clearly, because the entire Maryland judiciary has been rigged against me, and I need this court to intervene, in order to vindicate my actual innocence.

In order to preserve space in petition, the actual written exhibits which make-up the entirety of evidence in this case, will be contained in the appendix.

Procedural History:

By Information filed in the Circuit Court for Montgomery County, the State charged Appellant, Graham Schiff, with stalking, failure to comply with a peace order, and harassment on September 26th, 2019. Mr. Schiff initially proceeded by way of a bench trial before the Honorable Judge Gary E. Bair on March 9 and 11, 2020. Judge Bair granted the motion for

judgment of acquittal as to count 2, failure to comply with a peace order.

On July 20, 2020, Judge Bair granted the defense motion for new trial and ordered that Mr. Schiff's case be set in for a jury trial in front of a different judge and with a different defense attorney. The Opinion and Order granting Mr. Schiff a new trial was entered on July 23, 2020. On May 24, 2021, Mr. Schiff selected a jury in front of the Honorable Judge John W. Debelius, III. On May 24 and 25, 2021, Mr. Schiff proceeded to trial where a jury, the Honorable Judge Sharon V. Burrell presiding, found Mr. Schiff guilty of stalking and harassment. On June 24, 2021, Judge Burrell sentenced Mr. Schiff to 5 years, with all but 707 days suspended for the stalking conviction and 180 days, concurrent, for the harassment conviction. Mr. Schiff was given credit for 707 days.

When the case moved to the appellate level, Schiff was forced to use a public-defender on appeal, in order to afford the case transcript. Despite arguably over a dozen reversible errors, Schiff's counsel raised only Sufficiency and Free Speech arguments. In its opinion, Maryland's intermediate appellate court purposely misapplied basic tenets of constitutional law, in order to prevent Schiff from having his actual innocence vindicated.

A writ of certiorari was then filed pro se, with Maryland's Supreme Court. This court, the Maryland Court of Appeals, typically takes six to eight weeks to make a decision with regards to certiorari. In this case, arguably one of the worst malicious prosecutions in American history, they took only 11 days to decide that they would not grant certiorari.

Every aspect of Maryland's court system, was maliciously rigged against the petitioner, in order to enable the false allegations in this case, made by the daughter of a judge. Schiff is entitled to dismissal of both convictions, as a matter of law.

Reasons for Granting Writ:

1) State Supreme Split

This petition presents an acknowledged conflict among the state courts of last resort on multiple important, recurring First Amendment questions concerning the ability of state stalking statutes

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to override traditional first amendment free speech protections. The findings of the state of Maryland, directly conflicts with decisions in Illinois (*People v. Relford*, 104 N.E.3d 341 (2017) and North Carolina (*State v. Shackelford*, 264 N.C. App. 542, 825 S.E.2d 689 (N.C. Ct. App. 2019), which held that there is no First Amendment exception for making repeated communications that emotionally distress someone. This clear state split calls out for this Court's immediate review, because there is no general First Amendment exception for making repeated communications that emotionally distress someone.

"From 1791 to the present," the First Amendment has only "permitted restrictions upon the content of speech in a few limited areas," and has never empowered legislators "to disregard these traditional limitations," *United States v. Stevens*, 559 U.S. 460, 468 (2010) (internal quotation omitted). "These historic and traditional categories long familiar to the bar," *id.*, include "advocacy intended, and likely, to incite imminent lawless action; obscenity; defamation; speech integral to criminal conduct; so-called 'fighting words'; child pornography; fraud; true threats; and speech presenting some grave and imminent threat the government has the power to prevent[.]" *United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012)

The question presented carries substantial legal and practical importance for all Americans nationwide. The state split will not resolve without this Court's intervention. Waiting would only magnify the unnecessary chaos from the Maryland courts, which throws out traditional precedent regarding content-speech and gives state prosecutors all across America, the necessary precedent to criminalize political speech on the grounds it causes emotional distress.

The states of Illinois and North Carolina squarely hold that the free-speech clause of the first amendment prohibits criminalizing content-speech on the grounds it causes emotional distress. Absent this Court's intervention, the opposite principle would control in Maryland: Prosecutors would have free reign to use the state Stalking statute as an instrument to criminalize content-speech, no matter how obvious it is that federal law strictly prohibits such an action. Worse, prosecutors in states all across America will have the necessary precedent to criminalize political speech via Stalking statutes. This conflict is glaring and undermines the stability of American democracy as a whole. How can we as Americans have a functioning democracy, if the law

permits criticism against public officials to be criminalized if they claim emotional distress?

The answer? America cannot have a functioning democracy, if such is made possible. Because this case creates the precedent of criminalizing content-speech and public-concern speech, this court must intervene in defense of American democracy.

2) The Findings of Maryland are Inconsistent with First Amendment Law Regarding Content-Speech, Public-Concern Speech, and Speech Made While Exercising Right to Counsel

This petition presents a situation where a state court has willfully and purposely deviated from clearly-established federal law regarding free speech, in order to enable false allegations made by the daughter of a judge, against the petitioner. This offers an extremely important question for the court to litigate, which revolves around state courts making findings of law which are in blatant violation of federal law. The failure of this court to grant certiorari, will severely undermine the entirety of the first amendment's free speech protection. This is because the actions of the state court system in this case, provides a blueprint for prosecutors in other states to successfully prosecute defendants for content-speech, despite it being in violation of the first amendment.

There is no other state which holds that non-threatening content-speech made to a public official can be criminalized under state statutes. The manifest need for intervention by this court, is shown by the Maryland appellate court citing a case from Montana (*State v. McCarthy* - 1999 MT 99, 294 Mont. 270, 980 P.2d 629), in order to justify curtailing the petitioner's speech. Despite that case being plainly unconstitutional, it has remained as precedential law in Montana, since its inception in 1999. As such, this court must offer better guidance to state supreme courts, regarding precedential cases in state courts, which are unconstitutional under federal law. Otherwise, what happened in this case will keep happening:

State courts will cite plainly unconstitutional cases from other states, as a means to purposely deviate from federal law. Look at this nonsensical quote from Maryland's intermediate appellate court:

"The rationale of the Supreme Court of Montana in a case cited in the State's brief is compelling. That court rejected a similar contention by a defendant under a stalking statute, which, like CR § 3-802, contained no express requirement that the communication be made directly to the victim." (No. 725-2021 (Md. Ct. Spec. App. Apr. 27, 2022))

Not that I need to explain this, but the reason why Maryland's Stalking law doesn't contain an express requirement that the communication be directed to a victim, is because speech to a 3rd-party is completely protected by the first amendment. There is no way this court can ignore a case where a state, acting under the color of U.S. law, criminalizes content-speech to a public official on the grounds a state statute can override the free speech clause of the first amendment, and then cites a decades-old case from Montana, in order to justify curtailing speech. These facts demonstrate an extremely important question of federal law this court should litigate, which quite severely conflicts with relevant decisions of this court, regarding free speech.

3) This Case Presents an Opportunity for this Court to Establish Precedent Regarding the Reasonable-Person Standard in Criminal Law

The petitioner was convicted under a reasonable-person standard, which does not carry an intent element. The reasonable-person standard applied to criminal law, has often come under controversy due to it allowing criminal convictions without any intent, a traditional element of due process. Granting certiorari would allow this court to establish precedent for the limits of the reasonable-person standard in criminal law, and by extension, determine if it needs to be declared unconstitutional, on a federal level.

4) This Court Should Intervene Due to the Judicial Misconduct Which Led to this Petition, and to Establish Precedent for Actual Innocence Claims Under Certiorari

The immunity afforded to prosecutors and judges, is not a license to willfully abuse the rights of a criminal defendant whose case involved the daughter of a judge. That is precisely what took place in this case. This court should grant certiorari to ensure that the petitioner receives the proper administration of justice he is entitled to, under the law, since the state of Maryland refused it to him, in order to enable the false allegations of a judge's daughter.

This case presents a special circumstance, where this court must be willing to correct the errors of Maryland's state courts, because these errors were willful, malicious, and made with the express purpose of denying the petitioner of his civil rights under federal law. While typically that is not grounds for the granting of certiorari, it should be in this case, because the record clearly shows that the state of Maryland purposely misapplied federal law, in order to prevent the petitioner from having his actual innocence vindicated. As such, this court must take on the dual-role of not only being a federal court, but also put itself in the role of Maryland's Court of Appeals, since they refused to make decisions in accordance with the law.

Further, the court can determine from the record presented in the petition, that the petitioner is actually innocent of both Stalking and Harassment. Both statutes say they do not apply to legal conduct, and all of the exhibits used to convict the petitioner, consisted of protected speech under the first amendment. Granting certiorari would allow for established precedent regarding whether this court should intervene as a matter of law, if the record indicates that a petitioner is actually innocent of the offenses he was convicted of.

5) This Court Should Declare That The Malicious Abuse of Court Process by State Actors which Willfully Incarcerates or Otherwise Deprives an Actually Innocent Defendant of their Liberty, is Cruel and Unusual Punishment under the Eight Amendment.

Despite this being a writ of certiorari stemming from a state court system, this court can determine from the record, that Schiff is actually innocent of both offenses, and the state of Maryland used abusive court process to cover it up, because the fake case victim is the daughter of a judge. As previously articulated, this court must take on the dual-role of not only being a federal court, but also put itself in the role of Maryland's Court of Appeals, since they refused to make decisions in accordance with the law. The refusal of this court to intervene in this case, will lead to a severe miscarriage-of-justice. This court can determine that Schiff is actually innocent in this case, and they must intervene in some way.

(B)

(2)

No.

IN THE

SUPREME COURT OF THE UNITED STATES

— PETITIONER —

(Your Name)

vs.

— RESPONDENT(S) —

CONCLUSION

PROOF OF SERVICE

The petition for a writ of certiorari should be granted. I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on the respondent(s) and on every other person required to be served by depositing an envelope containing the above documents in the United States mail, postage paid, to a third-party commercial carrier for delivery within 3 calendar days.

Date:

July 20th 2022

The names and addresses of those served are as follows:

Attorney General of Maryland
200 State Office
Baltimore, Maryland 21201

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20th, 2022

Robert S. Schiff
(Signature)