

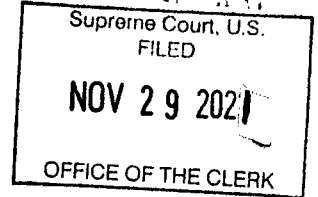
No. 22-5282

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Corrected

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



CORY MINGO — PETITIONER
(Your Name)

VS.

STATE OF FLORIDA — RESPONDENT

FOURTH DISTRICT COURT APPEALS FOR THE STATE OF FLORIDA

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

PETITION FOR A WRIT OF CERTIORARI

CORY MINGO
(Your Name)

SOUTH BAY CORRECTIONAL AND REHABILITATION FACILITY

(Address)

P.O.BOX 7171, SOUTH BAY, FLORIDA 33493
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Question One: Whether the Petitioner was deprived of the effective counsel where counsel failed to file a motion to suppress cell site location information (CSLI) thus violating Petitioner's 4th and 6th Amendments under the United States Constitution and Article 1, Section 9, of the Florida Constitution.

Question Two: Whether the State of Florida did obtain a warrant before accessing cell site location information supported by probable cause a violation of Petitioner's constitutional rights of unreasonableness, warrantless searches?

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:

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PETITIONER DID NOT RECEIVE A COPY OF HIS DENIAL OF THE
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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment protects the right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures. The basic purpose of this is to safeguard the privacy and security of individuals against arbitrary invasion by government officials. The founding generation crafted the Fourth Amendment as a response to the reviled general warrant and writ of assistance of the colonial era, which allowed British Officers to rummage through homes in an unrestrained search for evidence of criminal activity.

AMENDMENT 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and a public trial, by an impartial jury of the State District wherein the crime shall have been committed, which District shall have been previously ascertained by law and to be informed of the nature cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining in his favor and to have the assistance of counsel for his defense.

AMENDMENT 4

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon searched, and person things to be seized.

FEDERAL STATUTES

28 U.S.C. § 1251

(B) The Supreme Court shall have original but not exclusive jurisdiction of

(2) All controversies between United States and a States.

STATEMENT OF CASE AND FACTS

1. The Petitioner was charged with Counts I-V Armed Kidnapping, Counts VI and VII, Armed Robbery, Count VII, Armed Carjacking; Count IX, possession of a firearm by a convicted felon (nolle prosequere).
2. Petitioner was convicted by a jury on all counts, with the exception of Count VII, where he was convicted of a lesser included offense of grand theft auto.
3. The Petitioner was sentenced with 10 years minimum/mandatory pursuant to § 775.087 (2), Fla. Stat. and 10 years with a designation as a Habitual Felony Offender.
4. Petitioner was represented by Robert Resnick, Esq. of the Public Defender's Office of Broward County, Florida.

REASON FOR GRANTING PETITION

PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO FILE A MOTION TO SUPPRESS CELL SITE LOCATION INFORMATION (CSLI) THUS VIOLATING PETITIONER'S 5TH AND 6TH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 9, OF THE FLORIDA CONSTITUTION.

BACKGROUND

ARGUMENT

In this case, prior to trial, Petitioner's trial counsel filed multiple motions in limine, challenging the admissibility of the text messages made from (786) 366-0841, the phone Petitioner allegedly used. (1st Motion in Limine/R62-63; 2nd Motion in Limine/R80-82; See also arguments V6/T83-85) 1st motion; V9/T342-50- 2nd motion; V9/T351). Trial counsel argued that the probative value of these messages substantially outweighed by the prejudicial value. (R62, 81). Trial counsel also argued in his third motion in limine that the text messages were inadmissible because *no warrant or court order* was sought before obtaining them from Metro PCS. (3rd Motion in Limine/R83-88; V9/T342-62).

ANALYSIS

Defense counsel contended the actions of the State in obtaining private text communications without a warrant violated [Petitioner's] Constitutional rights under the 4th Amendment to the United States Constitution and Article 1, Section 12 of the Florida Constitution, and must be limited by excluding the text messages from use at trial.

However, trial counsel failed to file a Motion to suppress the *historical cell phone location data*. This issue has been addressed in the Fourth District Court of

Appeal decision in *Ferrari v. State*, 260 So.3d 295 (Fla. 4th DCA 2018). There the Court held “[T]he trial court erred in denying Petitioner’s motion to suppress cell phone cite data because it was obtained without a warrant based upon probable cause under U.S. Const. Amendment IV, and the good faith exception to the exclusionary rule did not apply because the State was not relying on binding precedent or clearly applicable statutes in obtaining the data.”

The Court reasoned, “[F]errari cited to section 934.23(4) (b) in his motion. Section 934.23 (4) (b), Florida statutes (2001) provides that information pertaining to a subscriber, not including the contents of an electronic communication, must be obtained by warrant, court order, or consent of the subscriber.

We need not determine which subsection applies, because the officer did not comply with either subsection and did not obtain a warrant or court order.” In reversing *Ferrari’s* conviction, the Court also relied upon *Tracy v. State*, 152 So. 3d 504 (Fla. 2014) In *Tracy v. State*, 152 So.3d 504, 525-26 (Fla. 2014), the Florida Supreme Court held that real time CSLI data was protected by the Fourth Amendment, and thus, its use by law enforcement constituted a search which required a warrant based upon probable cause. There, the detective’s had obtained an order pursuant to Section 934.33 authorizing a pen register, but then they used that order to obtain real time CSLI given off by the petitioner’s cell phone. *Id. at 507-09*. Our Supreme Court rejected the application of the good faith exception to the exclusionary rule because there was no binding appellate precedent or court order on which law enforcement could objectively rely. *Id, at 526*. Similarly, the

Supreme Court held in *Carpenter v. United States*, 585 U.S. ____, 138 S. Ct. ____, 201 Led. 2d 507, 2018 US LEXIS 3844 (2018) “that an order authorizing acquisition of historical CSLI issued pursuant to the Federal Stored Communications Act did not satisfy the Fourth Amendment because the order was based upon reasonable suspicion and not hold that the officers acted in good faith in using the SCA”. Indeed, the message of the Supreme Court is unmistakable to law enforcement: “Before compelling a wireless carrier to turn over a subscriber’s CSLI, the Government’s obligation is a similar one-get a warrant.” *Id.* In both these cases, the Court did not apply the good faith exception where a court order was involved, albeit issued without probable cause. Where there is not even an attempt to obtain a court order, as required by statute, there is no good faith attempt to comply with the dictates of law and the Constitution.

For these reasons, we hold that under *Carpenter*, this historical CSLI data was protected by the Fourth Amendment. The acquisition of this data without a warrant based on probable cause constituted an illegal search pursuant to the Fourth Amendment. Further, the good faith exception to the exclusionary rule does not apply because the State was not relying on binding precedent or clearly applicable statutes in obtaining the data.

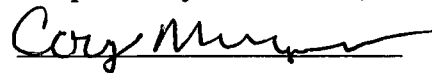
Thus, based upon the above aforementioned authorities, it was incumbent upon counsel to file a motion to suppress the CSLI data in the instant case. The Petitioner was prejudiced by counsel’s failure, where all evidence seized and admitted in his trial was a result of an illegal search and seizure, See, *Strickland v.*

Washington, 104 S.Ct 2054 (1984). In this case, Officer Orlando Almenzar testified that they were tracking a phone and responded to Miami, based on that information (T175). The phone was tracked to the Miami area 7 days after the incident. (T175). The Prosecutor then asked Almenzar, "When you say tracking a phone, is that based on the facts of the case, in investigation of the number that the Petitioner, Corey Mingo, may have been using? Almenzar then testified that they were tracking a phone that belonged to the Petitioner. (T177). Petitioner was seen leaving the house where the phone was tracked to, around 5:30 P.M. that day and was followed and subsequently stopped for running a stop sign, a traffic infraction (T180). They conducted surveillance on a house and saw the Petitioner get into a vehicle. (T179). Other law enforcement in that jurisdiction was also helping out. (T179). The Dodge truck, which was not registered to the Petitioner, was stopped for an alleged traffic violation. (T180). He identified the Petitioner as the occupant of the truck at the time that it was stopped, but acknowledged that he did not know who was driving the truck prior to it being observed leaving the house. (182-189). Two cell phones were in the vehicle, one had Petitioner's fingerprints. (T185, 198). The phone with the fingerprint was on the center console. (T198). He acknowledged that he did not know if the phone was in the Petitioner's name or when the Petitioner's fingerprints got onto the phone (T198-202).

One of the cell phones seized were identified as a phone that the Petitioner was using. In addition, the arrest of the Petitioner resulted in the Petitioner being identified as the perpetrator of the robbery and the search and seizure of evidence

(fireworks) obtained from the home that Petitioner had just exited. The evidence was admitted in trial subsequently prejudicing the Petitioner. Had counsel filed a Motion to suppress the historical CSLI data all additional evidence would have been excluded. See, Clinton v. State, 780 So.2d 960 (Fla. 5th DCA 2001) (If a seizure is illegal under the U.S. Constitution, Amendment IV, it follows that evidence obtained as a result of the seizure is fruit of the poisonous tree, and must be excluded).

Respectfully submitted,



Cory Mingo # L79790

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Dated this ____ (19 day of January, 2022.

Respectfully Submitted,



Name CORY MINGO_____

DC# L79790_____