

22-7167

No. 21-14352-C

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The Supreme Court
Of The United States

Quentin Truley,
Appellant - Petitioner

VS.

United States of America,
Appellee - Respondent

On Writ of Certiorari to The
United States Court of Appeals for
The Eleventh Circuit

Petition For Certiorari Before Final Judgment

Quentin Truley,
Petitioner, Pro Se

FCI Williamsburg
P.O. Box 340
Salters, SC 29590

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SUPREME COURT, U.S.

Questions Presented for Review

- 1) Under categorical approach, is 18 USC § 924(c)'s residual clause held as unconstitutionally vague, as predicated by Conspiracy to Commit Hobbs Act Robbery?
- 2) Does multiple counts of 18 USC § 924(c)'s on a single indictment, all charged for the same conduct, constitute unconstitutional practice of stacking 924(c)'s?
- 3) Has reason for a procedure of search and seizure been presented if prosecution failed to produce under Fed. R. Crim. Pro. Rule. 16, the testimony of the Law Enforcement Officer who initially engaged in the search and seizure conducted?
- 4) Does a defense counsel's disregard for proceedings to course of action on grounds relevant for objection to the prosecution constitute Ineffective Assistance of Counsel?
- 5) Does the District Court abuse its discretion if Courts failed to prevent Ineffective Assistance of Counsel toward a Defendant, upon Defendant's 4 notices to the Courts of Counsel's ineffectiveness?
- 6) Would deprivation of a Defendant's Due Process by

restraint on proceedings to course of action, add
burden on Defendant's right to privilege against
self-incrimination and voluntariness of Defendant's
guilty plea?

In The United States Supreme Court

Quentin Truley,
Appellant

v.

Appeal No. 21-14352-CC

United States of America,
Appellee

Certificate of Interested Persons And Corporate Disclosure Statement

Pursuant to 11th Cir. R. 29.6, the following people and entities have an interest in the outcome of this petition for a writ of certiorari:

Bryant, James W., - Dontarious Matthews' Defense Counsel

Erskine, Kurt R., - United States Attorney

Hames, Adam M., - Attorney for Defendant on Appeal

Herskowitz, Michael V., - Assistant United States Attorney

Johnson, Vionnette R., - Dontarious Matthews' Defense Counsel

Kearns, Stephanie A., - Executive Director, Federal Defender

Program

Marek, Leanne M., - Assistant United States Attorney

Matthews, Dontavious, - Co - Defendant

Pak, Byung J., - Former United States Attorney

Ross, Michael T., - Appellant's Attorney in the District Court

Salinas, Hon. Catherine M., - United States Magistrate Judge

Saul, Michael, - Appellant's Attorney in the District Court

Sommerfield, Lawrence R., - Assistant United States Attorney

Thrash, Jr., Hon. Thomas W., - United States District Judge

Truley, Quentin, - Appellant

Twymon, Keenen, - Dontavious Matthews' Defense Counsel

United States of America, - Appellee

Vineyard, Hon. Russell G., - United States Magistrate Judge

Victims:

J.C.B.,

E.C.,

I.F.C.,

T-Mobile (TMUS) formerly a/k/a Sprint (S),

V.H.,

T.K.,

Metro PCS (PCS) a/k/a T-Mobile (TMUS),

L.S.P.,

Rainbow Clothing,

V.Y.R.,

B.R.,

H.W.,

Certificate of Compliance with Rule 33.2

This petition complies with Rule 33.2
because the petition contains 19 pages and
3,245 words, excluding the parts of the
petition exempted.

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Statement of the Basis for Jurisdiction

Basis for Appellant's petition is to seek discretionary review of the judgment and order entered November 10th, 2022 as to the petitioner's direct appeal; which sentence and conviction was held affirmed.

Statement of the Case (1) Course of Proceedings

Appellant (Quentin Triley and Co-Defendant Dontaious Matthews are indicted in U.S. District Court, 11th Circuit, Northern District of Georgia June 11th, 2019 under 2 Counts of Conspiracy to Commit Hobbs Act Robbery in violation of 18 USC § 1951(a) (Counts 1 and 3), and 2 Counts of Use or Carrying a Firearm During Crime of Violence in violation of 18 USC § 924(c)(1)(A)(ii) (Counts 2 and 4). (Doc. 1). Michael Saul is appointed by Courts as Counsel to represent Appellant. (Doc. 16). Appellant entered admission of guilt to Counts 1-4 of the indictment August 3rd, 2021. (Doc. 108). Co-Defendant of Appellant, Dontaious Matthews tried and found guilty of Count 1, acquitted of Count 2 August 27th, 2021. (Doc. 137). Appellant sentenced to 231 months of confinement, 5 years of supervised release, and 40,000 dollars in restitution November 30th, 2021. (Doc. 156). Notice of Appeal filed as to the Appellant December 8th, 2021. (Doc. 161). Appellant appointed, new counsel, Adam Harnes for direct appeal. (Doc. 170). Conviction and Sentence confirmed by United States Court of Appeals, 11th Circuit, as to the Appellant November 10th, 2022.

(ii) Statement of Facts

(a) (See Affidavit of Warrant for this Case).

(b) (See Actions Between the Appellant... pg. 3).

(c) (See Unpresented Findings... pg. 5)

(d) (See Oral Argument... Fareta and Change of
Plea Hearings pg. 9)

(ii) Statement of Facts

(b) Actions Between the Appellant, Court-Appointed Counsel, and the Courts that caused Prejudicial Circumstance Against the Appellant

Throughout the pre-trial duration of this case, Appellant's Court-Appointed Counsel, Michael Saul made presentation of defense on a single ground; 4th Amend. standing to suppress evidence that the Government obtained from seized personal phones of the Appellant. (Doc. 33, 36, 37). Saul failed to consult with Appellant prior to submission of such filings and overall, before Order by Courts certifying Case Ready for Trial. (Doc. 42). Id. Ultimately, grounds of Saul's Motions 33, 36, 37 were "irrelevant" in challenging findings of the violations as charged, esp. in comparison to grounds of several other "factual findings of this case that would favor the Defense". (See Unpresented Findings... pg. 5).

Throughout the pre-trial duration of this case, the Appellant has advised, suggested, and demanded Saul to produce and present objections on grounds of several "findings that could favor the Defense", which Saul discouraged, disregarded, and refused all together. Id. (1) The Appellant presented several notices to the Courts regarding such actions and circumstances between him and Saul by Motions to Dismiss and Replace Court-Appointed Counsel on grounds of

Ineffectiveness. (Doc. 46, 53, 72, 83), but the Courts denied all submissions. (Doc. 57, 96). However, Co-Defendant of Appellant, Matthews was Granted Consent for Substitution of Counsel. (Doc. 84). The Appellant went to extent of attempting to represent himself in lights of removing Court-Appointed Counsel as representation of defense and exercising opportunity to pursue justification by filing Notice of Pro Se Representation. (Doc. 100). Faretta Hearing was set in regards of Appellant's position as to representation. (Doc. 100). (2) The Appellant then filed 3 Motions by Pro Se: Motion to Dismiss Indictment (Doc. 101), Motion to Suppress Court 1 (Doc. 102), and Motion to Dismiss § 924(c) (Doc. 103).

At the Faretta Hearing, the Courts denied Appellant's request for hearing as to Appellant's Motions 101, 102, 103, ruled that they lack merit, and Appellant withdrew. Notice of Pro Se Representation, Id. However, Courts provided opportunity for Saul to Amend/Correct an "improper submission" (Doc. 35) and permitted opportunity for grounds of "revised motion" to be ruled on. (Doc. 42). Given consideration to the Court's Adjudicative Responsibilities and Authority, such actions have caused prejudicial circumstance where "the Court's exhibition of fairness and equality" between involved parties of a matter is abridged. And such actions have caused error where Appellant's opportunity to course of actions of Criminal Procedure are affected and/or deprived.

(ii) Statement of Facts

(c) Unpresented Findings in Favor of the Defense

(1) Government presented allegation that "a tracking device was placed inside the bag of stolen phones by a Verizon employee, that suspects fled with from the Verizon Robbery is what Dekalb Uniform Patrol Officers used to track and locate the suspects of the robbery, which led them to the white 2015 Nissan Altima the Appellant was an occupant of", as reason of search and seizure conducted on person of the Appellant, the vehicle the Appellant was an occupant of, and its belongings and also as probable cause for Warrant issued by the Courts pertaining to the violations as charged. (Id) (See Affidavit of Warrant). This allegation by the Government has went undisputed.

(1X A) Factual findings of this case are the Government failed to state and present "physical and sound evidence" of recovering an alleged tracking device from person of the Appellant, the vehicle the Appellant was occupant of, and/or any alleged tracking device at all whatsoever. (See Doc. 101, Attachment: #3).

(1X B) Such Findings are "insufficient to conclude the Government's allegation as fact", which questions whether probable cause has been fell short of, if this procedure of search and seizure was reasonable, and if invasion

of the Appellant's rights to "reasonable expectation of privacy" has occurred, all in violation of 4th Amend. Standings.

(2) Government states that "a suspect from both Sprint and Verizon Robberies brandish a firearm in the furtherance of a crime of violence in both predicate acts," all in violation of 18 USC § 924(c)(1)(A)(ii). *Id.* This allegation by the Government also has went undisputed.

(2)(A) Factual findings of this case are that the Government failed to state and present "physical and sound evidence of recovering a firearm from the person of the Appellant, the vehicle the Appellant was occupant of, and/or recovering a firearm in relation to investigations of both predicate offenses at all whatsoever" nor "that the objects the suspects brandished in both predicate offenses possessed the distinctive characteristics that 18 USC § 921 (a)(3) defines as a firearm." (See Doc. 103, Attachment: #4).

(2)(B) Such Findings are insufficient to conclude the Government's allegation as fact, which questions Authentication and Relevance of what findings the Government has presented to support the 924(c) violations as charged.

(3) Prosecution charged 2 Counts of Conspiracy to Commit Hobbs Act Robbery in violation of 18 USC § 1951

suspect wearing pants similar to ones, the Appellant is wearing at the time of his apprehension, and the suspect identified as the Appellant is wearing during Verizon Robbery (Count 3). Id. (Doc. 107, pg. 6, line 11). Such "findings are irrelevant in concluding Government's findings as fact".

(4)(A) Factual findings in relation to the Sprint Robbery that mis-identify the Appellant as suspect:

- Negative Identification of the Appellant in a Photo Identification Line-Up conducted on a Sprint Robbery Victim. (Doc. 102, Attachment: #3),
- Description of "personal details" of the suspect identified as the Appellant that was provided by the victims is "inaccurate in comparison to the personal description of the Appellant",
- "Distinguished differences in the appearances" between the suspects wearing similar pants in both robberies. However, such findings have went unrepresented and unheard.

(ii) Statement of Facts

(d) Oral Argument and Testimony Between the Courts and Appellant During Faretti and Change of Plea Hearings

At the Faretti Hearing there was oral argument between the Courts and Appellant. (Doc. 107) (August 3rd, 2021).

The Courts presented the Appellant with a series of inquiries regarding trial preparation and his position of representation that were consistent with Adjudicative Responsibility.

Between oral argument, the Court's responses and statements toward the Appellant also took an arbitrary and capricious course, where statements were made toward the Appellant such as: (1) "I need to address your client directly and

see if he wishes to continue in this absolutely foolish idea of his of representing himself", Id. (Doc. 107, pg. 9, line

12-14), (2) "And you're not going to leave it up to the Jury. I'm going to be the one that decides what the Jury does and what the Jury doesn't do", in response to Appellant's intent of expressing right to Jury Trial. Id.

(Doc. 107, pg. 13, line 7-9), and (3) "Your objections are nonsense", in response to Appellant's pursuit of opportunity to course of action to present objections of the prosecution. Id. (Doc. 107, pg. 14, line 1-4).

As a response to the degree of the statements made by the Courts toward the Appellant during the Faretti

Hearing along with the circumstances he's endured during this case all together, the Appellant stated during oral argument: "There's no way I can win, I got a prosecutor representing me, and I got a prosecutor judging me". Id. (Doc. 107, pg. 20, line 23 - pg. 21, line 1).

The Appellant soon later withdrew his Notice of Pro Se Representation. Shortly after the Faretha Hearing was concluded, Change of Plea Hearing was arranged where the Appellant entered admission of guilt to all Counts (1-4) of the indictment. Id. (Doc. 108). During the Change of Plea Hearing, the Courts had the U.S. Attorney summarize the Government's presentation for upcoming trial (then scheduled for August 17th, 2021). Before the Appellant's admission of guilt, he had testimony of disagreement with U.S. Attorney's summary of evidence that would be presented against him if the case went to trial in consistence with "unpresented findings" mentioned in this writ. Id. (Doc. 108, pg. 21, line 20 - pg. 22, line 6).

Argument and Authority

I. Appellant's Conspiracy to Commit Hobbs Act Robbery does not constitute Crime of Violence predicate under 18 USC § 924(c). In precedent to *United States v. Davis*, 139 S. Ct. 2319, 204 L. Ed. 2d 757 (2019)

The Appellant argues that his two § 924(c) convictions can not be predicated on Conspiracy to Commit Hobbs Act Robbery based on ruling of law established in *United States v. Davis*. After *Davis*, Conspiracy to Commit Hobbs Act is no longer a "crime of violence" under § 924(c) and thus, Appellant's convictions on Counts 2 and 4 can not stand. In *Davis*, the Supreme Court extended its holdings in *Johnson v. United States*, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015), and *Sessions v. Dimaya*, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018), to § 924(c) and held § 924(c)(3)(B)'s residual clause:

"924(c)(3)- for purposes of this subsection the term "crime of violence" means an offense that is a felony and

(B) that by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the offense",

as unconstitutionally vague.

The inability of Appellant to raise this issue on direct appeal or course of action by pre-trial proceedings is directly attributable to the ineffective assistance of his pre-trial and appellate counsels.

II. Appellant argues that Government's findings fall short of probable cause and fail to introduce fact in reason for search and seizure, in violation of 4th Amend. Standings

For probable cause as Warranted, the Government presents as fact: "Suspects of the Verizon Robbery took a tracking device along with the phones they obtained in commission of the robbery and Law Enforcement Officers used a tracking device to track and locate suspects of the robbery, which led them to the white 2015 Nissan Altima the Appellant was occupant of, directly after the robbery occurred". In accordance with order of ruling to Criminal Procedures for the matters of this case, the Government's complaint not only serves as probable cause, but also as "reason for pursuit of the vehicle Appellant was occupant of and procedure of search and seizure conducted on the

suspected vehicle, its belongings, and the Appellant's person", all by Law Enforcement Officers. In accordance with Criminal Procedure Rule 16

Discovery, the Government's findings and evidence presented are inconsistent with presumption of probable cause as claimed, where (1) the Government has failed to state or produce documentation of the "actual recovery or sighting" of such tracking device.

"Probability of the ability to identify a tracking device's direct location upon its use is none-less-than certain", so "inability to produce findings to recovery of a tracking device as claimed of its use can leave room for uncertainty in fact and presumption of possibilities otherwise"; (2) the Government has stated in documentation that the serial number to the tracking device is unknown.

Altogether, actually identifying the "component holding presumption of the probable cause" has not been completed, and therefore has been fell short of;

(3) the Government has failed to produce documentation of testimony from the Law Enforcement Officer who initially spotted, pursued, and/or stopped the suspected vehicle, which then "initiated engagement" in procedure of search and seizure.

The absence of testimony from the Law

Enforcement Official who initiated the engagement in procedure of search and seizure altogether is "failure to introduce fact of reason" to subject of the search and seizure as conducted, which lacks reason or is "unreasonable" and may oppose "threat to the security of person or effects" of a person whose subject to search and seizure, in violation of 4th Amend. Standings. Where the Appellant is subject of such circumstances, the search and seizure conducted in this case should be held unlawful.

And where the series of 4th Amend. Standings all "rely on presumption of probable cause, this produces such degree of significance and seriousness", which "sound proof and evidence is to be introduced to support such presumption as fact and protect rights to parties involved."

The inability of Appellant to raise this issue on direct appeal or course of action by pre-trial proceedings is directly attributable to the ineffective assistance of his trial and appellate counsels.

III. Appellant argues Ineffective Assistance of Counsel affected substantial rights and deprived constitutional grounds of Due Process

At the account of actions of the Appellant's pre-trial and appellate counsel, the Appellant has endured ineffective assistance, at both pre-trial and appellate levels. The actions of the pre-trial counsel (as stated in the Statement of Facts, section (b), pg. 3), had cause in restraint on the Appellant's opportunity in course of action by Criminal Procedure Rule 12(b) Pre-trial Motion, and has affect toward unconstitutional grounds within both, Due Process and Effective Assistance of Counsel all together. At the appellate level, Appellant's counsel failed to consult with Appellant regarding matters of direct appeal preparation, which resulted in matters presented in this petition for writ of certiorari to not be heard on direct appeal.

The Appellant's outline of errors that went unrepresented and unheard are evidence of prejudiced circumstance endured by the defense.

"To prevail on a claim of ineffective assistance of counsel, the movant must demonstrate both (1) that counsel's performance was deficient, and (2) a reasonable probability that the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

IV. Appellant argues prejudiced circumstance affected intelligence and voluntariness of his Guilty Plea

At the Sentencing Hearing, the Appellant made allocution that:

"the admission of guilt entered on August 3rd was made under psychological duress which caused insufficient awareness due to discrimination and as well as other forms of abuse by the discretions of the Courts".

The Appellant's counsel on appellate level presented argument on basis of Appellant's allocution as ground on direct appeal. Such allocution was made in reference to what the Appellant perceived as mental coercion he'd endured, as result of "prejudiced circumstance", added burden on voluntariness and intelligence of his admission of guilt. "The Supreme Court has long recognized the involuntary nature of a guilty plea obtained by subjecting a criminal defendant to some form of coercion, frequently expressing this recognition by a holding that a guilty plea obtained in such manner is invalid as violating the defendant's constitutional rights." *Kercheval v. United States* (1927) 274 US 220, 71 L Ed 1009, 47 S. Ct. 582.

In this case, the Court's remarks during the Faretti

Hearing, regarding the Appellant's expression of intent to express right to jury trial, as stated (See Statement of Facts, (d) pg. 9) added burden to "prejudiced circumstance" and Appellant's intelligence in right to jury trial. Given consideration to the burdens the Appellant was enduring prior to the Faretha Hearing, due to ineffective assistance of counsel and restraint on proceedings to course of action, the arbitrary and capricious manner of discretion exhibited by the Courts during the Faretha Hearing added to error and "prejudiced circumstance". "Prejudice should be presumed: Where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing; and where circumstances are so prejudiced against the defendant that competent counsel could not render effective assistance". United States v. Cronie, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

And given consideration to the Adjudicative Responsibilities and Authority of the Courts, the "degree of wording regarding matter of constitutional right" exhibited toward a party who must answer to the Courts may affect that party's direction and discretion.

On this writ, the Appellant has outlined error in all levels of proceedings: (1) Arrest, (2) Prosecution, (3) Pre-trial, (4) Judgment, and (5) Appeal. Coming into the

Faretta Hearing, the Appellant "had intentions on expressing right(s) to jury trial and privilege against self-incrimination", but as a result to reason and actions taken place at the Faretta Hearing, the Appellant withdrew such intent by entering admission of guilt. "Guilty plea, in order to be valid, must be both knowing and voluntary - that is, must be voluntary and intelligent choice among alternative courses of action open to criminal defendant - because such plea constitutes waiver of three constitutional rights: right to jury trial, right to confront one's accusers, and privilege against self-incrimination."

Parke v. Raley (1992, US) 121 L. Ed 2d. 391, 113

S. Ct. 517. The Appellant's "testimony of disagreement with the Prosecution's presentation", directly before admission of guilt is evidence to Appellant's

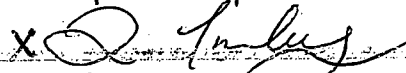
"intent to express right to privilege against self-incrimination", but "prejudiced circumstance" added burden to Appellant's voluntariness and intelligence in discretion [admission of guilt]. The Appellant submits, such errors in prosecution, actions by the Appellant's counsels at both pre-trial and appellate levels, and discretion of the Courts has caused prejudiced circumstance and deprived the Appellant of constitutional grounds of Due Process.

Conclusion

Wherefore, the Appellant submits that he has demonstrated reversible error on the part of the District Court by actions which caused error that deprived him of Due Process. For the foregoing reasons, the Appellant asks this Court to set aside his sentences and order a new hearing on error(s) in prosecution and conviction.

Respectfully submitted this 2nd day of
February, 2023.

Respectfully submitted,

x 

Quentin Truley,
the Appellant

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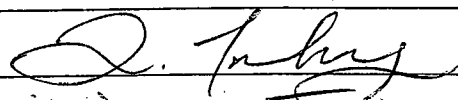
Certificate of Service

This is to certify that I have this day served a copy of the foregoing Petition of Appellant upon:

United States Supreme Court
1 First Street NE
Washington, DC 20543

through the United States Postal Service, by Certified Mail.

Respectfully submitted on this 3rd day of February, 2023.


Quentin Truicy