

No. 23-5241

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAY 02 2023

OFFICE OF THE CLERK

Lenroy Mclean — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeal Second Circuit of New York
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

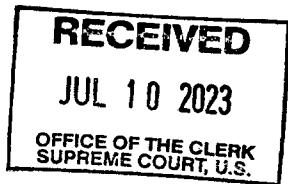
Lenroy Mclean 61524-054
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QUESTION(S) PRESENTED

1. Whether there is a conflict between Kimmelman v Morrison holding that the Fourth Amendment is not a trial right in criminal prosecution and Ex-Parte Milligan holding that it is ?

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

1. Kimmelman v Morrison, 91 L.ed 2d 305, 106 S.ct 2574, 477 US 365 (1986)
2. Ex-Parte Milligan 18 L.ed 281, 4 Wall 2, 18 L.ed 281 (1866)
3. Olmestead v United States, 277 US 438 (1928)

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OTHER

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 A to the petition and is

reported at case # 10-991 second circuit; 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[] is unpublished.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[] is unpublished.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 _____ 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[] is unpublished.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 _____ 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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 30, 2023.

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

Fourth Amendment to the Constitution provides:

The rights of the people to be secure in their person, houses, paper and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched or things to be search.

STATEMENT OF THE CASE

On or about June 20, 2008, the court sitting in the Southern District of New York (SDNY) granted a Title III wiretap on a series of phones. The information obtained therefrom resulted in the indictments in this case. A single July 11, 2008 conversation between codefendant Sanchez and Petitioner is the purported basis connecting Petitioner with the conspiracy. While Petitioner notes that all the Title III warrant were unlawful, his phone call---which is purported to be the only contact to the conspiracy, as there were no other surveillance of Petitioner and the basis of his alleged connection with the conspiracy is this phone call and records derived therefrom that had discriminately placed him at been in two location on the same date and time several miles between these locations.

Petitioner's trial commence in or about March 2009 for conspiracy to distribute five kilograms or more of cocaine in violation of 21 USC §§ 841(b)(1)(A) and 846-he was then sentenced to 228 months with 60 months supervised released.

Petitioner timely filed a notice of appeal on April 5, 2011, following such was his direct appeal to the Second Circuit Court of Appeal--a summary order was issued affirming the District court's judgment.

No petition was filed to the Supreme court for an certiorari. However, on the 8th of March 2022, Petitioner attempted to recall the mandate (10-991cr) in light of the Supreme court cases Dahda and Carpenter of the illegally insufficient evidence of Petitioner's search and seizure evidence used to obtained his conviction--the search and seizure was illegal because 1) Petitioner's cellphone been held without a warrant for 126 days; 2) the phone number in-question (917-577-8186) was no registered to his Sprint/Nextel account dated back into Jan.2007 and 3)the intercepted phone call (July 11th, 2008) was obtained with a warrant issued by a judge sitting in the jurisdiction of the SDNY, and authorized a listening post in New Jersey for agents located in the New Jersey DEA division of NJ. This portion of the jurisdiction argument arises out of the United States Constitution and 18 USC § 2518(10)(a). Substantively, the basis for the indictment, the wiretap applications, the subsequent wiretap application, affidavits and orders demonstrate that as a matter of law, SDNY did not have jurisdiction to issue a title III and the evidence was illegally insufficient in this case.

This petition for writ of certiorari seeks review of the denial of Petitioner's motion to recall its mandate by the Second Circuit court of Appeal dated March 30, 2023.(See Appx. A) Petitioner has clear and conclusive facts of evidence, that the jury was engaged in false surmise and rank speculation of the illegal search and seizure that had implicated Due Process and his fourth amendment rights.

REASONS FOR GRANTING THE PETITION

Question I

Whether there is a conflict between Kimmelman v Morrison holding the fourth amendment is not a trial right in criminal prosecution and Ex-Parte Milligan holding that it is ?

A brief history of the relevant fourth amendment cases---In Olmestead v United States 277 US 438(1928) held that the tapping of wires out side of the premises (relying on the trespass theory) of the defendants did not constitute a search within the meaning of the fourth amendment. Justice Brundeis in his forward thinking dissent viewed it otherwise, writing that it was an "invasion of the sanctities of a man's home and the privacies of life". Id @ 473 (Brundeis J. Dissenting)(quoting Boyd v United States, 116 US 616,630(1886)). Goldman v United States 316 US 129(1942) followed wherein the government had placed a listening device on an exterior wall. The court concluded that because the trespass was not significant, there was no fourth amendment violation. Once again the dissent foreshadowed the onslaught of the government intrusion into the privacy of the citizens of the United States. Chief Justice Stone and Justice Frankfurter simply stated their argument with the dissent Olmestead. Justice Murphy separately referenced the "right of personal privacy. Finally, in Katz v United States, 389 US 347(1967), the court reached the expectation of privacy, holding a violation of the fourth amendment even absence of a trespass. Holding "that the fourth amendment governs...the recording statements overbear..." Id @ 353 (quoting Silverman, @511).

Every case addressing the reasonableness of a warrantless search [begins] with the basic rule that searches conducted outside the judicial process, without prior [lawful] approval by a judge or magistrate, are per se unreasonable under the fourth amendment. See Arizona v Grant 556 US 332,338(2009) quoting Katz v United States, 389 US 347,357(1967).

Warrants are required to safeguard against law enforcement's ferret-like activity in criminal proceeding. See United States v Chadwell, 433 US 1,9(1977)

The ExParte Milligan Supreme court held that "the trial of all crimes, except in case of impeachment, shall be by jury and in the fourth, fifth and six articles of the amendments" See Ex-Parte Milligan 18 Led 281,4 wall 2 @ 119(1866).

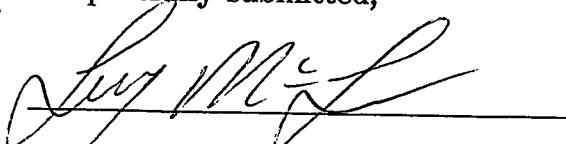
However, the Supreme court in Kimmelman v Morrison alleged that "although it is frequent invoked in criminal trials, the fourth amendment is not a trial right" Kimmelman 477 US @ 374-76 [2][3].

While no federal court has addressed directly such ruling of Kimmelman and Milligan- it creates conflict between search and seizure protections and criminal convictions. When the government utilized insufficient evidence to prosecute the case against Petitioner, such consisted of illegal wiretaps; illegal search of Petitioner's cellphone; improper analysis of the cellphone calls and records. The taint of the illegal seizure can be removed if the evidence is obtained from an independent source unrelated to the illegality, if the evidence would have been inevitably discoverer through "clean" source, or if circumstances demonstrate that the taint is sufficiently attenuated. See Foster v Withrow 159 F.Supp 2d 629,639, n.4(ED. Mich.2001)(citing Nix v Williams 467 US 431,104 S.Ct 2501,81 L.ed 2d 377(1984), Brown v Illinois, 422 US 590,603-04(1975)) Therefore this court should vacated the judgment and remanded the case clarifying the position of the fourth amendment in a criminal prosecution "if the connection between the illegal agent conduct and the discovery and seizure of the evidence is so absurd.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 6-16-2023