

23-7234

ORIGINAL

In The
Supreme Court of the United States

ORLANDO BELL,
Petitioner, Movant

v.

UNITED STATES OF AMERICA
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for D.C Circuit

PETITION FOR WRIT OF CERTIORARI

Orlando Bell
Pro Se Petitioner

Reg. No.: 831-30-007
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Supreme Court, U.S.
FILED

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QUESTION PRESENTED

This Court's precedents set fourth an objective standard that requires recusal when the likelihood of bias on the part of the judge is too high to be constitutionally tolerable, Williams v. Pennsylvania, 579 US, 136 Sct, 195 LEd2d 132 (2016) Lexis 3774. District judge's recusal is required under 28 U.S.C. § 455 if a reasonable and informed observer would question the judge's impartiality, and under 28 U.S.C. § 144 if a judge has personal bias or prejudice either against or in favor of a party, Stone v. Trump (2021) Lexis 175000.

Mr. Bell Fourth Amendment rights to property and Fifth Amendment rights to due process, both were overlooked by district and the D.C Circuit. District court allowed the AUSA who became a witness in the proceedings, which led to the confiscation of Mr. Bell's property.

The questions presented:

Would a reasonable and informed observer question the judge's impartiality who allowed an AUSA who became a witness in proceedings, through his own acknowledgement, to prosecute in the proceedings he's a witness of?

If a judge demonstrates favortism under § 144, for the AUSA who became a witness, is that judge impartial?

1 LIST OF PARTIES

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

4 DIRECTLY RELATED CASES

5 Bell v. United States

6 No. 23-3121 U.S Court of Appeals for D.C
Circuit. Judgement entered October 31, 2023.

7 No. 1:17-cr-234-7, U.S District Court for
8 D.C Circuit. ECF 332 Motion for Return of
Seized Property, entered 12/30/2022 is
9 pending ruling on Motion to Recuse
Presiding Judge, submitted 1/5/2023 and ruling
10 on Mandamus to Recuse presiding Judge from
Seized Property in this Court, submitted to
district court 7/11/2023.

11 No. 23-3121 U.S Court of Appeals for D.C
12 Circuit. Final judgement for Supplemental
Motion for En Banc, Writ of Mandamus to
13 Recuse Presiding Judge from Seized Property.
Filed on February 1, 2024.

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1 **PETITION FOR WRIT OF CERTIORARI**

2 Petitioner Orlando Bell respectfully petitions this Court for writ of
3 certiorari to review the judgement of the United States Court of Appeals
4 for the District of Columbia Circuit in this case.

5 **DECISIONS BELOW**

6 The District of Columbia Circuit denied Bell's Motion for En Banc, Writ
7 of Mandamus to Recuse Presiding Judge from Seized Property on February 1,
8 2024 for the final judgement. En banc was denied on October 31, 2023. This
9 Petition is filed within 90 days of final judgement order. S. Ct. R. 13.
10 This Court has jurisdiction under 28 U.S.C. § 1254(1).

11 **STATUTORY PROVISION INVOLVED**

12 Mr. Bell filed; **FEDERAL RULES CRIMINAL PROCEDURE 41 (g) MOTION FOR**
13 **RETURN OF SEIZED PROPERTY** (ECF 332) on December 19, 2022. The district
14 court granted the movant a Leave to File on January 5, 2023 while the
15 government filed its response on February 17, 2023. The movant then filed
16 **SUPPLEMENTAL MOTION TO RECUSE PRESIDING JUDGE from FEDERAL RULES CRIMINAL**
17 **PROCEEDURE 41(g) MOTION FOR RETURN OF SEIZED PROPERTY** under 28 U.S.C. §
18 455 on March 23, 2023.

19 **INTRODUCTION**

20 "This Court has set a standard, objective standard that requires recusal
21 when the likelihood of bias on the part of the judge is too high to be
22 constitutionally tolerable, Williams v. Pennsylvania, 579 U.S, 136 Sct.,
23 195 LED2d 132 (2016) Lexis 3774. "District judge's recusal is required
24 under 28 U.S.C. § 455 if a reasonable and informed observer would
25 question the judge's impartiality, and under 28 U.S.C. § 144 if a judge
26 has personal bias or prejudice either against or in favor of a party",
27 Stone v. Trump, (2021) Lexis 175000.

STATEMENT OF THE CASE

On March 8, 2017 the United States Park Police Officer by the name of Andrew Keness claimed that he ("found two Virginia carry permits in his (movant's) wallet") See Appendix B at IV line 1-2 and ECF 202 at 65 line 23-25, both showing contradicts 1B234, 1B167 and 1B234 could not have been in the same place at once. It discredit Officer Andrew Keness' credibility of being the arresting officer on March 8, 2017. Movant informed the district court in his § 2255 motion (ECF 283 at 5.1) that he was arrested and transported by ("two officers who never took the stand in his trial or any other proceedings within district court that the movant appeared in.") Contradiction of facts on line 5 above by Andrew Keness' testimony [ECF 200 at 65 line 23-25] shows that Officer Keness is far from being truthful, in taking two conceal gunpermit from Mr. Bell. Since the permit identified as 1B234 were issued by Alexandria City Circuit Court after March 8, 2017. Replacing the permit identified as 1B167 of which were confiscated by F.B.I agents on December 8, 2017. Officer Keness' testimony on page one, Appendix B shows the fact is, AUSA Nihar Mohanty had to had have a picture of all exhibits on the record pertaining to movant's driver's license and pistol permits issued to the movant, with the issueing dates by the State of Virginia. making clear of the facts. Officer Keness' testimony were false when the district court credited his testimony, then gave the green light for Mohanty to proceed as a prosecutorial witness [ECF 200 at 7 line 24-25] after a judicial admission committed by him [ECF 200 at 7 line 9-14], "Technically I would be a witness to (unsigned wiretap) this proceedings", which makes Mr. Nihar Mohanty a facilitator and a witness to the proceeding by his judicial

1 admission, STD. Fire Ins. Co v. Knowles, 133 Sct 1345, 185 LED2D 439, 568
2 U.S 558. The action of Mr. Mohanty being the AUSA along with the hearsay
3 testimony by the United States Park Police Officer, Andrew Keness ultimately
4 led to the seizure of the movant's property by F.B.I on December 9, 2017..

5 The district judge **EXTRAJUDICIAL BIAS** Eempowered the AUSA and the Officer
6 in its action, response to the AUSA "YOU MAY" [ECF 200 at 7 line 25].
7 proceed in the prosecution of the movant. Mr. Mohanty adhere to Judge
8 Trevor McFadden, he prosecute Mr. Bell from start to finish while being
9 one of the primary witness to a wiretap that was illegal on its face,
10 making the movant's proceedings unconstitutional as a result of the
11 illegal wiretap resulting in indictment of movant. The illegal indictment
12 is due to Mohanty's insufficient unsigned affidavit for wiretap of Wayne
13 Holroyd (movant's co-defendant) cell phone which led to the confiscation of
14 the movant's property which is in violation of movant's 4th, and 5th
15 Amendment rights to property and due process clause all due to district
16 judge action in allowing a witness to prosecute is an "EXTRAJUDICIAL BIAS",
17 Barclay/Am. Business Credit v. Adams (In re Adams), 31 F.3d 389 (6th Cir
18 1994). Bishay v. Harris, (2023) U.S . Dist Lexis 59538 (D.C Cir. 2023),
19 "evidence any extrajudicial bias or prejudice see Klayman v. Jud Watch.
20 Inc, 278 F. Supp. 3d 252, 258 (D.C Cir. 2017)".

21 Furthermore the district court credited movant's conviction of '924c,
22 which led to the confiscation of his property on hearsay, and "does not
23 apply", Spurf v. United States, S.ct 273, 39 L.Ed 343 (1895). The hearsay
24 testimony by Officer Andrew Keness cannot apply for the conviction of the
25 movant yet the district court prejudice the movant by applying testimony
26 that the facts has proven to be false.
27

1 **I. The AUSA demonstrated to the district court**
2 **through judicial admission that he is a witness**
3 **to an illegal wiretap**

4 AUSA, Nihar Mohanty acknowledged that he would be a witness to
5 this proceedings (ECF 200 at 7) through judicial admission "expressed
6 waiver [made by AUSA Nihar Mohanty]" "of [the] alleged fact", STD. Fire
7 Ins. Co v. Knowles, 133 Sct 1345, 185 LED.2d 439, 568 U.S 558 (2013
8 Lexis 2370.

9 Mr. Mohanty demonstrated to the judge through a judicial admission that
10 he is a witness to the illegal wiretap, even though the AUSA didn't take
11 the stand. The district judge was informed by the AUSA who was given
12 opportunity to argue in proceedings by the presiding judge, would have to
13 be looked at by a reasonable informed observer (28 U.S.C. § 455(a)) who is
14 this Court, reasonable observer questioning the district judge's
15 impartiality.. In accordance to standard that requires recusal when the
16 likelihood of bias on the part of the judge is too high to be
17 constitutionally tolerable, William v. Pennsylvania, 579 U.S 136, 195
18 LED.2d 132 (2016) Lexis 3774.

19 **II. The district court demonstrated extreme bias and**
20 **prejudice towards the movant**

21 The district court gave credibility to the United States Park Police
22 Officer, Andrew Keness, who must be considered an extrajudicial source in
23 the contex of being, the arresting and transporting officer of the
24 movant; (ECF 202 at 65 line 23-25 "the conceal carry permit for Virginia
25 was in his [movant]'s wallet. I believe there was two of them in there");
26 differs from (ECF 339 at 5 "1B234") collected on 12/7/17 by the FBI and
27 was issued (second/replacement carry permit) by the City of Alexandria
28 Circuit Court after March 8 (when Andrew Keness arrested/confiscated two
29 carry permit from the movant), 2017 identified at (ECF 339 at 5 1B167).

1 AUSA , Nihar Mohanty knew that Officer Keness is an extrajudicial
2 source. Mr. Keness' testimony is the foundation for seizure of movant's
3 property. District judge's "appearance of bias" and "prejudice " "stem from
4 an extrajudicial source", Liberty Lobby v. Dow Jones Co, 838 F 2.d 1287
5 (1988). The district judge "has personal bias" and "prejudice" against the
6 movant and,== "is in favor" of AUSA Nihar Mohanty who counseled Mr. Keness's
7 testimony, Stone v. Trump, (2020) Lexis 175000. Officer Keness must be
8 considered an "extrajudicial witness (in accordance to the previous page
9 line 19-27 of this writ for certiorari), Foreman v. United States, A. 3.d
10 631 (2015). See Appendix B page one line 23-27 and page 2, line 1-14;
11 page V of Appendix B line 16-20.

12 **III. Proceeding in the district court**

13 Mr. Bell filed forfeiture claim on December 19, 2022 and a supple-
14 mental motion shortly after, asking the presiding judge to recuse himself.
15 But not before the presiding judge ordered the government to respond to
16 (ECF 332) Motion for Return of Seized Property by January 19, 2023. The
17 government notified Mr. Bell through deception when it responded to Docket
18 332, by sandwiching its response (ECF 339) deeply between two motion
19 totaling twenty seven (27) single pages, fifty four (54) double pages in
20 total from the Superior Court for the District of Colombia Criminal
21 Division Felony Branch. One filed on 02/23/2022 with Case No. 1973-
22 FEL- 05521 and the other one filed on 02/02/2022 08:21 AM with case No.
23 2013 CF2 01683¹.

24 ¹District court's action in allowing AUSA (ECF 200 at 7 line 24-25) Nihar
25 Mohanty, who should had been compel for examination violated movant's
26 5th Amendment rights to due process, in accordance to the government's
27 service to movant in Appendix B page 7 line 1-14.

1 The district court's response to AUSA, "you may" proceed
2 in argueing/prosecuting when movant's attorney demonstrated
3 ineffectiveness "I'm not going to (compel) call Mr. Mohanty"
4 for examination. The judge's "likelihood of bias" "is too high
5 to be constitutionally tolerable", when Mr. Mohanty informed
6 the court "I will let (movant's lawyer) Mr. Davis question me
7 [ECF 200 at 26 line 9-10] if he would like"², Supra. About a
8 wire-tap that was illegal on its face. The judge should have
9 granted movant's motion to supress the illegal wire-tap³
10 Instead, district judge hoped into an "extrajudicial agreement"
11 made in his "extrajudicial statement" in response, to the
12 government's question "(may I proceed)" is an "extrajudicial
13 agreement" that the judge committed in his "extrajudicial
14 statement" "(you may)", Akl v. Va Hosp Ctr, (2012) Lexis 72927.

15 REASONS FOR GRANTING PETITION

16 "District court's actions" has "result in specific harm to the
17 prosecutorial power" "and the circumstance of the case
18 demonstrates that mandamus (recusal of presiding judge) is
19 appropriate", In Re Michael Flynn, (2020) Lexis 5260. Any per-
20 son reasonable observer would acknowledge that this "case
21 meets the higher bar for reassignment of the district judge's
22 conduct", Ir Re Michael Flynn.

23 ²The district judge showed favortism for the, AUSA, Nihar
24 Mohanty and the United States Park Police Officer Andrew
25 Keness (who the judge found credible). ³Facts of the case has
26 proven his testimony to be untruthful and that the judge over-
27 looked the prosecutorial misconduct of the AUSA by allowing
Mr. Mohanty to question Agent Benjamin Bullington, of which
D.C Circuit overlooked without comparing interaction the AUSA
had with the Agent and Officer Keness, Appendix B at 8 L 1-27.

1 **I: This Court held a judge may not hear a case in**
2 **which he played any role**

3 28 U.S.C. § 455(a)(iv) "Any justice judge, or magistrate
4 [magistrate judge] of the United States shall disqualify
5 himself in any proceedings in which his impartiality reasonable
6 be questioned; (iv) "is to the judge's knowledge likely to be
7 a material witness in the proceedings".

8 When the district judge allowed AUSA, Nihar Mohanty who
9 declared to the district court that he is a witness who the
10 district court allowed in prosecution of the movant, The judge
11 became a witness by his "extrajudicial agreement" in his
12 "extrajudicial statement (ECF 200 at 7), Akl v. Va Hosp Ctr,
13 (2012) Lexis 72827.

14 "A judge may not hear a case in which he played any role",
15 Cobell v. Norton, 334 F .3d 1128, 114, 357 U.S App. D.C 306
16 (D.C Cir 2003).

17 **A. District court violate movant's 5th Amendment**
18 **in displaying extreme bias and prejudice**

19 The district court's prosecutorial witness, AUSA
20 Mohanty became a witness by his "judicial admission" Std.
21 Fire Ins Co V. Knowles, (2013) Lexis 2370. Yet the court gave
22 AUSA Nihar Mohanty the green light to prosecute should be
23 construed as "extreme bias and prejudice" "5th Amendment
24 right violation", England v. Simcoe, Lexis 131965. Movant
25 wasn't afforded his right to due process. The judge was in-
26 formed about AUSA, Mohanty who identified himself as a
27 witness and about the movant's counsel ineffectiveness, in

1 not preventing Mr. Mohanty, the lead AUSA witness by his
2 judicial admission in the proceedings that he's a witness of,
3 and Andrew Keness' accounts of movant's arrest that derived
4 from the illegal wire-tap.

5 Officer Keness couldn't recall, remember or think (after he
6 arrested movant with Officer Ryan McDermott) until the
7 sexual assault (committed by Andrew Keness in the back seat of
8 an under cover car) was brought up by movant's lawyer.

9 Officer Keness' response, "that never happened" (ECF 202
10 at 80 line 15-25) because it was an unidentified officer who
11 sexually assaulted, arrested and transported Mr. Bell in the
12 presence of Officer Ryan McDermott who yelled racial slurs
13 at the movant, while pointing a gun at movant's head, in the
14 presence of the unknown officer who the AUSA, who is a witness
15 to proceedings replaced with Officer Keness due to the
16 district court's extreme bias in allowing Mr. Mohanty to use
17 uncredible witness resulted, in movant's 5th Amendment right
18 violation. Were prejudicial in confiscation of the movant's
19 property and his recusal is warranted to prevent further
20 bias and prejudice demonstrated by the district judge.

21 **B The district court disqualified itself in making**
22 **an extrajudicial source credible in court**

23 Officer Andrew Keness is an extrajudicial source
24 (Appendix B at iv line 20-27), he was never involved in
25 movant's arrest (ECF 328 at 15 1st paragraph) even though he
26 had claimed to be, when the district court credited his
27 testimony making him one of the arresting officer.

1 When Mr. Keness testified on behalf of Officer Ryan McDermott
2 (ECF 283 at 3 2nd paragraph) Keness' testimony was on hearsay. The
3 district judge has disqualified himself in finding Officer Keness'
4 testimony credible in court, Klayman v. Judicial Watch, Inc., 278: Supp 3d

5 **II. The district court and extrajudicial witness being**
6 **AUSA Nihar Mohanty both were in violation of**
7 **movant's 4th Amendment rights due to their actions**
8 **in crediting Officer Andrew Keness' false testimony**

9 The movant has endured an illegal search and seizure due to the
10 disregards of all officers of the court who were directly involved,
11 moving forward, Mr. Mohanty could not be expected to partake in
12 any prosecution should movant be granted a new trial, nor does Christopher
13 Davis (movant's trial lawyer), nor Mary Davis (Movant's Appellate
14 lawyer), nor Elizabeth Van Pelt (movant's § 2255 lawyer) who were all
15 appointed by District and D.C Circuit. Judge Trevor McFadden should not
16 be permitted to preside over the movant's forfeiture or any other claim
17 that derived from case # 1:17-cr-234-007 moving forward.⁴ All officers of
18 of district and circuit court mentioned above has violated movant's 4th
19 Amendment rights through their ineffectiveness; prosecutorial misconduct
20 and **EXTRAJUDICIAL BIAS** all contributed in prejudicing and depriving the
21 movant of his 4th Amendment rights to his property.

22 The officers of the court, exclusively AUSA Nihar Mohanty were a
23 signitor of the movant's indictment resulting in the illegal wiretap
24 which is illegal on its face.⁵ Yet the district judge supported the

25 ⁴District court's and AUSA Nihar Mohanty actions are impeachable, **Mohanty:**
26 "Your Honor will see [wiretap affidavit] is actually unsigned" **COURT:**
27 "Sorry let's give [wiretap affidavit] an exhibit number, what are you up
at the movant's expense. **EXTRAJUDICIAL BIAS** and prejudice in correcting AUSA above, line 25-26 at

1 illegal wiretap in denying the movant's wiretap suppression while crediting
2 hearsay testimony of Officer Keness [ECF 200 at 52 line 12-17 ("he
3 testified and I find that on March 8, 2017, at around 4:30 in the after-
4 noon, he and Investigator McDermott were traveling in an unmarked cruiser.
5 they were wearing plain clothes with tactical equipment that clearly
6 indicated they were police officers"), [at ECF 200 page 55 line 16-17, 25]
7 "Investigator McDermott went up to the driver, the defendant, and noticed
8 he had red eyes watery eyes", according to Keness' testimony. All of
9 Andrew Keness' hearsay testimony resulted in the confiscation of movant's
10 property due to the judge crediting, accepting the hearsay testimony as
11 the fact violating movant's 4th Amendment and 5th amendment rights to
12 property and due process..

13 **III. The issue at hand is clearly a legal and**
14 **constitutional in the scope of the district court**
15 **agreeing to the AUSA Nihar Mhant and the movant's**
16 **counsel ignoring the 4th and 5th Amendment**
17 **afforded to millions of American including movant**

18 The district judge were overzealous in a tyrannical manner,
19 overlooking the AUSA, and movant's trial lawyer 4th and 5th Amendment
20 rights violation. The judge became a witness, and a facilitator in the
21 violations of the movant's 4th and 5th Amendment rights violation by,
22 AUSA Nihar Mohanty, by Christopher Davis (movant's trial lawyer), by
23 Mary Davis (movant's appellate lawyer and by Elizabeth Van Pelt (movant's
24 § 2255 lawyer). The constitutional violations by the court officers above
25 were all prejudicial and judge's action capriciousness is contrary to the
26 facts in his ruling, denying movant's motion to suppress an illegal
27 wiretap signed of by the AUSA who is a witness unofficially in the movant's
wiretap proceeding, indictment and all resulting in prejudicing as well as
depriving the movant of his property in violation of 4th Amendment clause.

IV. This court should demonstrate to the district and appellate court that all judge's impartiality must be percieved as such in United States Corporation and its individual states in granting this movant's petition

This Court should use this particular case to set a precedent to deter a judge from abusing his or her enormous discretion across the United States from any reasonable and objective observer, observing the judge's impartiality. To determine if a judge has demonstrated favoritism to one party over another in order to stop prejudicial capriciousness by judges who entertain and who are involved in any **EXTRAJUDICIAL BIAS**. As in this case where the district court's extraordinary bias violated movant's 4th and 5th Amendment constitutional clause resulting in seizure of Mr. Bell's property.

This case is worthy of resolution, as courts across the country will use this case to determine with a clearer understanding, what is expected from a judge in demonstrating his or her impartiality in proceedings. This Court has full jurisdiction in these matters guaranteed by the United States 5th and 8th Amendment and their equal protection under the law clause.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully Submitted,
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March , 2024