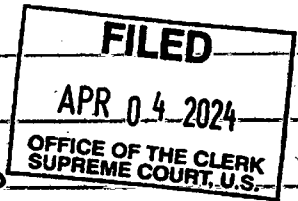


NO: ~~23-7289~~

ORIGINAL

IN THE

Supreme Court of the United States



Robert A. Horse, Petitioner

vs.

Marty J. Jackley, Respondent(s)

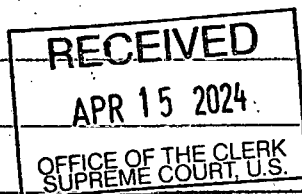
On Petition for A Writ of Certiorari To

South Dakota Supreme Court

Petition For Writ of Certiorari

Pro Se Petitioner:

Robert A. Horse #13466
Mike Duffee State Prison
1412 Wood Street
Springfield, SD 57062



Question Presented

Is a State Supreme Court opinion that the unlitigated missing search warrants and supporting affidavits for Cell Phone Location Data seized from Petitioner Cell Phone Data through a Third Party (Google) an unconstitutional denial of Due Process under the Fourth and Fourteenth Amendments?

Parties

Petitioner, pro se:

Robert A. Horse #13466, Mike Durfee State Prison, 1412 Wood Street,
Springfield, South Dakota, 57062

For Respondent: Marty J. Jackley, Attorney General
State of South Dakota

Prior Opinions and Orders

September 17, 2021 Conviction, Third Degree Rape

January 17, 2024 Direct Appeal, affirmed; State of South Dakota
v. Robert A. Horse, 2 N.W. 3d 383 (S.D. 2024).

Index To Appendices

Appendix A: Decision/opinion of the South Dakota Supreme
Denying Appeal on Direct Review

a trial on the Part II information and admitted the validity of Petitioner's prior felony conviction for enhancement purposes. On March 25, 2022, the Circuit Court sentenced Petitioner to 20 years in prison, which was ordered to be served consecutive with any penitentiary sentence Petitioner is currently serving.

Argument

Petitioner, has attempted, at every stage, to raise the claim of violation of Petitioner's Fourth Amendment in the search of Petitioner's cell phone data and cell phone location data. The search and seizure provided law enforcement with unfettered access to "all contents" of Petitioner's cell phone data, which includes location data from a Third Party. There is no limitation as to the scope of the search of materials and lacks particularity.

The two additional search warrants, which are missing from the record for Petitioner's cell phone location data do not change the issue that a search and seizure occurred of Petitioner's cell phone location data.

As noted above, the State acknowledge that there were two other search warrants that are not part of the appellant record, suggest that the omission was not keeping an adequate record on appeal. The SD Sup. Ct. reliance on warrants that are not part of the record for Petitioner's Direct Appeal purposes is a reckless disregard of constitutional requirements. Moreover, location data obtained from a Third Party (Google) does not change the issue a warrant supported by probable cause is required, even when the location data is held by a Third Party.

This Court declined to extend the Third Party principle to cover cell phone location records. In addition, this Court held that location data held by a Third Party does not by itself overcome the user's claim to Fourth Amendment protection. In fact, location data from a cell phone gathered by a Third Party does not make it any less deserving of Fourth Amendment protection.

Petitioner prays this Court provide protection in Petitioners Fourth and Fourteenth Amendment in Petitioners cell phone data and Petitioners location data as decided in Riley v. California and Carpenter v. U.S., and grant certiorari.

Respectfully submitted this 4th day of April, 2024.

Robert A. Horse

Robert A. Horse, pro se

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert A. House

Date: 4/4/24

Basis of Jurisdiction

Seeking U.S. Supreme Court review of the denial of Direct Review of the South Dakota Supreme Court.

Jurisdiction is conferred on this Court by U.S. Sup. Ct. Rules 10(c) and 13(i). And, the denial conflicts with the Due Process Clause of the U.S. 14th Amendment.

Constitutional Provisions and Statutes

United States Constitution, Amendment XIV.

Statement of the Case

On July 10, 2019, Horse was indicted for one count of Third Degree Rape (SDCL 22-22-1(4)), and, in the alternative, one count of Fourth Degree Rape (SDCL 22-22-1(5)). On October 17, 2019, Horse was alleged to be a habitual offender through the filing of a Part II information. Trial by jury commenced on September 7, 2021. On September 14, 2021, the jury returned a guilty verdict on Count I (Third Degree Rape). On October 8, 2021, Horse waived his right to