23-7492

No. 4:18-cr-00095-DJN-LRL-1

IN THE

SUPREME COURT OF THE UNITED STATES

Trezith Smart — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Trezith Smart
(Your Name)

U.S.P Lee P.O. Box 305 Jonesville V.A. 24263
(Address)

Jonesville V.A. 24263
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

I. Whether the Fourth Circuit Appellate Court commit clear or plain error, relying on findings made 6 days after Judge orally ruled on motion to dismiss. In violation of Speedy Trial Act § 18 U.S.C. 3161(h)(7)(A) in accord with the Supreme Court's holding in Zedner v. United States, 547 U.S. 489, 506-07(2006) stating," findings must be put on the record by the time a court rules on a defendant's motion to dismiss."547 U.S. at 507

II. Whether the Fourth Circuit Appellate Court commit clear or plain error allowing the Government to use a prior inconsistent statement to impeach a witness, without first laying a foundation in District Court. In violation of Federal Rules of Evidence, Rule 613(b).

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:

RELATED CASES

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STATUTES AND RULES

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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals 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[ ] is unpublished.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 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[ ] is unpublished.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[ ] is unpublished.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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was January 22, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Febuary 20, 2024, 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

1. The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

2. The Fifth Amendment of the United States Constitution provides:

> No person shall be deprived of life, liberty, or property without the due process of law.

3. The Sixth Amendment of the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

4. The Fourteenth Amendment of the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.

5. The statues involved and under review are, Title 18, United States Code §3161(c)(1), which states:

> In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commmission of an offense shall commence within seventy days from the filing date of the information or indictment.

Title 18, United States Code §3162(a)(2), which states:

> In a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant.

STATEMENT OF THE CASE

On March 15, 2017 Smart was pulled over on I-12 near Hammond, Louisiana. After K-9 alerted on the vehicle, Smart was found in possession of 5 kilograms of cocaine.

On May 23, 2018 Smart gave he cousin Harold Jones a ride in which he got out of the vehicle and sold CI Antwaine Pittman 27 grams of cocaine.

On June 7,2018 Officer Doskey and Agent Smith found a Irish Spring soap box with plastic bags inside. These items were located in a trash bag in a community dumbster outside a apartment complex.

On July 31, 2018 Officer Doskey gets a search warrant to place on four vehicles Smart was driving.

On August 13, 2018 Smart was pulled over and was found in possession of 27 grams of cocaine, and 15,500 in cash.

On November 1, 2018 Smart was arrested without a warrant.

On December 10, 2018 Smart was indicted on one count conspiracy to possess with intent to distribut 5 kilograms or more of cocaine.

On September 16, 2019 Smart was arrested in Philadelphia P.A., and transported to the Eastern District of Virginia.

On September 27, 2019 Smart was arraigned in the Eastern District of Virginia.

On October 21, 2019 Smart's attorney filed a motion to withdraw because of a conflict of interest regarding a client he previously represented.

On October 23, 2019 without a hearing on the motion to withdraw Judge Allen granted the motion in a Minute Entry stating: For good cause shown, defense counsel is permitted to withdraw, and the Clerk is directed to appoint counsel for this defendant. The ends of justice also require that the trial date of December 10, 2019 be stricken.

On November 11, 2019 newly appointed counsel file a motion to withdraw.

On Noverber 25, 2019 the time Judge Allen decided to have a hearing and granted the motion to withdraw.

On January 14, 2020 the government filed a superseding indictment adding three new counts. Two PWID and using a gun in furtherance.

On January 21, 2020 Smart hired attorney James Broccoletti.

On January 26, 2020 Broccoletti file for a continuance, and trial was continued until April 14, 2020.

Because of covid all trial was canceled until futher notice.

On May 12, 2020 Smart was sent for a competency evaluation delaying trial for another 14 months.

On July 21, 2021 Smart was found competent to stand trial, and was appointed attorney Emily Munn to represent him.

On October 25, 2021 Judge Novak denies Smart motion to dismiss indictment for Speedy Trial Act violation, and to suppress evidence from the March 15 and November 1 traffic stops.

On November 3, 2021 Smart pro se proceeded to trial, and November 4, 2021 Smart was found guilty. Smart was sentence to 360 months.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit committed plain error relying on findings made six days after the Court orally ruled on the motion to dismiss. Contrary to the Supreme Court's holding in Zedner v. United States, 547 U.S. 489,506-07(2006);"findings must be put on the record by the time a Court rule on the motion to dismiss".

Fed. R. Crim. 52(b) provides that a plain error that affects substantial rights may be considered even though it was not brought to the Court's attention. But in order for the Court to undo and revise a sentence or conviction under the plain error standard a Court must not only (1)discern an error, that error must (2)be plain (3)affect the defendant's substantial right, and (4)implicate the fairness, integrity, or public reputation of Judicial proceedings. United States v. Olano, 507 U.S. 725,732 S.Ct.508(1993)

The first requirement is for the Court to discern that there's a error. The Speedy Act 18 U.S.C. 3161(h)(7)(A) tells us that to exclude delay caused by a continuancew, two things must happen: (1) the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in speedy trial, and (2)the Court sets forth in the record of the case, either orally or in writing, its reasons for the findings. In Zedner v. United States the Supreme Court decided that findings could not come after the motion to dismiss ruling.("noting that the best practice is to

place the findings in the record at or near the time when the court grants the continuance.") Judge Novak gave a reason for the continuance at the October 25, 2021 hearing when he ruled on the motion to dismiss. Stating," she had to give your lawyer time to prepare because you're going through lawyers so fast." Which is a completely inaccurate account of what happened. At the time Smart was just arraigned 3 weeks prior to counsel filing the motion to withdraw, and counsel was the first and only attorney appointed to Smart. Therefore Judge Novak's reason for Judge Allen granting the continuance October 23, 2019 is not supported by the record. Judge Novak six days later in his Memorandum Opinion gave all new reasons for Judge Allen granting the countinace. Stating,"given the complexity of the case and the amount of discovery involved, counsel could not have properly prepared for trial." But the Appelate Court relying on these findings opposes this Court's ruling in Zedner. Which in turn is error.

The second requirement for plain error review is that the error plain or obvious. In this case it really dont get anymore obvious than this. Judge Novak orally ruled on the motion to dismiss on October 25, 2021. Before he ruled on the motion he gave a reason for his finding. Six days later on November 1, 2021 he came up with completely different reasons for his finding. Those new reasons was what the Appellate Court relied on. Which is in conflict with this Court's decision in Zedner." findings must be put on record when the Court rule on the motion to dismiss." Therefore the Appellate Court committed plain error.

The third requirement is did it affect the defendant's substantial rights. Its obvious why the Government and the Appellate Court did not mention what was said at the hearing. The reason Judge Novak gave at the hearing is not supported by the record, and if the Appelate Court would have went with the reason stated at the hearing, and not the reasons given in the Memorandum Opinion the Appellate Court would have no choice but to dismiss the indictment. Which is the proper remedy whenever there is a Speedy Trial Act violation. 18 U.S.C. 3162(a)(2). So its clear the error affected the defendants substantial rights.

The fourth requirement is did the error seriously affect the fairness, integrity or public reputation of judicial proceedings. The answer is yes, for the Court to state a reason why a motion is denied, and then days later say something completely different to correct his mistake, is simply not fair. If this benefit was extended to the defendant, then it would be fair, but its not, so its unjust. In regards to the integrity of judicial proceedings, Congrees Pass the Speedy Trial Act to safegaurd the interest of the defendant and the public. If the Court's are allowed to deviate from the laws put in place by Congress and the Supreme Court, the integrity of judicial proceedings would be in jeopordy. Without a doubt all 4 requirements have been met for this Court to correct the error, or remand back to the Appelate Court.

II. The Fourth Circuit Court of Appeals erred in denying the motion to suppress. In violation of the 5th and 14th Amendment, Due Process Clause, and Federal Rules of Evidence, Rule 613(b). Rule 613(b) pertains to witness's prior statement, and determine whether or not they are admissible in Court proceedings. The Fourth Circuit Appelate Court erred relying on a prior inconsistent statement in violation of Rule 613(b). The Appellate Court did not determine whether or not the prior inconsistent statement was admissible under Rule 613(b). There are different requirements to determine whether or not a prior inconsistent statement is admissible, and I will like to go over each one.

First it will be appropriate to determine whether or not Officer Tilford's police report qualifies as a prior inconsistent statement. Officer Tilford's police report is dated March 15, 2017, Tilford testified at the suppression hearing October 25, 2021. So its safe to say the police report is a prior statement. Now we must determine is the report consistent with Tilford's testimony. On October 25, 2021 Officer Tilford testified at the suppression. hearing. Tilford gave numerous descriptions describing Smart's behavior. Suppression hearing page 18 line 12-13,"he debated me whether he was speeding or not and the speed that he was traveling." Page 19 line 22-23,"he had somewhat of an aversion to my presence upon approaching his vehicle." Page 20 line 5,"I just engage in general conversation. Page 20 line 15-17,"It was deliberate answers, and then it was long pauses while staring through the windshield not looking at me." Page 20 line 21,"that was the vibe I got." Page 23 line 19-20,"you know he seemed alittle upset type deal." Dash Cam

video shows the encounter only lasted 2 minutes, but the way Tilford embellished upon his observation, it would seem the encounter lasted much longer.

Tilfords report is not consistent with his testimony at the hearing. When Tilford testified he never said Smart was nervous. In his police report he stated Smart was extremely nervous. This is a big change in position compared to describing Smart's behavior as;"questioning," "he had an aversion, and "he seemed alittle upset." Something else Tilford said in his prior statement that he didnt say when he testified on the stand, was that Smart gave a "inconsistent travel itenerary." Once again this is a big change in position compared to when Tilford testified and said nothing at all about Smart's travel itenerary. The third thing that probably stands out the most is that Tilford didnt mention anything about a gas can in his police report. But relied on it considerably when he testified at the hearing. Thats three times Tilford change his position on what raised his level of suspicion. So the police report definitely qualifies as a prior inconsistent statement.

Before Tilford testified at the hearing there was no way to know Tilford's police report would become a prior inconsistent statement. The report was entered into the evidence, but Tilford's statement contained in the report was never presented to the Court. After Tilford's testimony the report became a prior statement made by Tilford. Combine that with the inconsistencies in the report, and then it turns into a prior inconsistent statement. Now we have to determine whether its admissible in Appellate Court.

Federal Rules of Evidence, Rule 613(b) determines whether a prior inconsistent statement is admissible. Rule 613(b) states" extrinsice evidence of a witness's proir inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statemnt and the adverse party is given an opportunity to examine the witness about it. When extrinsic evidence of a prior inconsistent statement is offered into evidence pursuant to 613(b), a foundation must be established through direct or cross examination in which (1) the witness is presented with the former statement; (2) the witness is asked whether he made the statement; (3) the witness is given an opportunity to admit, deny or explain the statement, and (4) the opposing party is given an opportunity to interrogate the witness on the inconsistent statement. Ayers v. Watson, 132 U.S. 394, 10 S.Ct. 116(1889)

After carefully examining the record, Tilford was never specifically asked about his statement in the police report. Because he was never specifically asked about his statement on the stand at the hearing, no foundation was laid for introduction on appeal for impeachment purposes.

Federal Rules of Evidence, Rule 607 states, "any party, including the party that called the witness, may attack the witness's credibility." The police report was entered into evidence, but examining the record was never used by the Government to supplement or impeach Tilford's testimony at the hearing. But on appeal the Government sole purpose was to use the police report to impeach Tilford's testimony. The Fourth Circuit Appellate Court labeled Tilford's police report as hearsay. Federal Rules of Evidence, Rule 801(c)(2) states,"Evidence would

not constitute hearsay if it is not being used for the truth of the matter asserted, but rather, for impeachment purposes. Since the Government and the Fourth Circuit Appellate Court used Tilford's police report to impeach his testimony on the stand its not hearsay it but an actual statement. Rule 801(c)(2) Therefore I respectfully request this Court to reverse the Appellate Court's decision vacating conviction and sentence or remand back to the Fourth Circuit to correct the error.

For the reasons set forth above, the petition for Writ of Certiorari should be granted, or remand back to the Fourth Circuit Appellate Court to correct the errors.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Trezith Smart

Date: April 26,2024