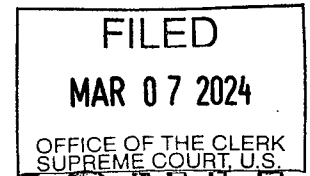


No. 23-7539

IN THE

Supreme Court of the United States



**ORIGINAL**

Eddie Lamar Thomas,

Petitioner

v.

Don Langford,

Respondent

On Petition For Writ Of Certiorari

To The United States District Court of the District of Kansas

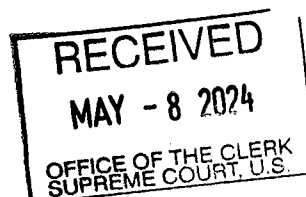
PETITION FOR WRIT OF CERTIORARI

EDDIE LAMAR THOMAS

PRO SE LITIGANT

P. O. BOX 107

ELLSWORTH, KS 67439



## QUESTIONS PRESENTED

1. Mr. Thomas alleged that the district court violated his Fifth Amendment rights. Mr. Thomas was convicted, in larger part, from his statements made to detectives and evidence derived from those statements. The Tenth Circuit relied on the lower court's ruling that statements did not warrant Miranda warnings and the statements were made during the part of the interview that was ruled to be noncustodial and investigative in nature.

## **LIST OF PARTIES**

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 judgement is the subject of this petition is as follows:

Kristafer Ailslieger

Deputy Solicitor General

Bar No. 19626

120 SW 10<sup>th</sup> Avenue

Topeka, Kansas 66612-1597

(785) 296-2215

## **RELATED CASES**

- Thomas v. Langford, No. 23-3118, United States Court of Appeals for the Tenth Circuit. Judgement entered Jan. 11, 2024
- Thomas v. Langford, No. 22-3121-JWL, United States District Court for the District of Kansas. Judgement entered Jun. 20, 2023
- State v. Thomas, 302 Kan. 440, Supreme Court of Kansas. Judgement entered Jul. 24, 2015

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

The Petitioner, Eddie Lamar Thomas Jr., respectfully prays that a Writ of Certiorari issue to review the judgement and opinion of the Tenth Circuit Court of Appeals rendered on January 11, 2024.

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OPINIONS BELOW

The Tenth Circuit affirmed petitioner's convictions in its case no. 23-3118. The opinion is published, and reprinted in the appendix at page 1a, *infra*. The Memorandum and Order of the District Court is reprinted at page 6a, *infra*.

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JURISDICTION

The original opinion of the Tenth Circuit Court of Appeals was entered on January 11, 2024. No petition for rehearing was filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

### U.S. CONST. AMEND. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War of public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### U.S. CONST. AMEND. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USCS § 2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgement of a State court only on the ground that he is in custody in violation of the Constitution or laws of treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted unless it appears that-

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.



(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

(1) In a proceeding instituted by an application for writ of habeas corpus by a person in custody pursuant to the judgement of a State court, a determination of a factual issue made by a State court shall be presumed correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that

(A) the claim relies on

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce the part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, the State shall produce part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by rule promulgated by Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The effectiveness or incompetence of counsel during Federal of State collateral post-conviction proceedings shall not be ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

## STATEMENT OF THE CASE

Christopher Dotson was found dead in his apartment from a single gunshot wound. A search of the victim's cell phone records revealed communications between his phone and the phone of Eddie Thomas. Detectives contacted Thomas and requested to speak with him, under the impression that he was a potential witness and not in any trouble, Thomas agreed to speak with the detectives. Thomas arrived at the Shawnee Police Department with his mother, whom was left in the lobby as detectives escorted Thomas to an interrogation room. Thomas eventually confessed to the shooting after hours of interrogation, and was arrested. At the conclusion of the preliminary hearing Thomas was bound over for trial. Thomas filed a Motion to Suppress statements, and after several hearings, the motion was granted. App. 40a. Thomas filed for Motion to Dismiss based on the ruling of the motion to dismiss, which was granted.

The State refiled charges and Thomas was once again bound over for trial. At trial, the evidence used against Thomas was produced from his statements. The evidence was jean shorts and a white t-shirt with presumptive blood stains, a plastic blue cup with Thomas' fingerprints, the bullet recovered from the wall that could have been fired from a Ruger P94, a redacted video of the interrogation of Thomas and a recorded telephone call from jail. There were no eyewitnesses against Thomas nor a murder weapon furnished. The victim's cell phone and wallet were never found. On direct appeal Thomas' convictions were affirmed. App. 30a. Thomas filed a 60-1507 post-conviction relief in the State court which was summarily

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denied. Thomas appealed and the Kansas Supreme Court affirmed the denial in an unpublished opinion. App. 22a. Thomas filed §2254 citing Fourth, Fifth, Sixth, and Fourteenth Amendment claims. The District court denied because Fourth Amendment issues are barred from review. App. 6a.

“Assuming the application and affidavit for the search warrant contained information both lawfully and unlawfully obtained, the question remains whether the lawfully obtained information by itself supports probable cause that would have justified issuance of the search warrant by the magistrate.” *‘State v. Fisher, 283 Kan. 272, 301, 154 P. 3d 455 (2007) (quoting State v. Weas, 26 Kan. App. 2d 598, 603, 992 P. 2d 598, 603, 992 P. 2d 221[1999], rev. denied 268 Kan. 855[2000])*. In other words, if the lawfully obtained information is sufficient, standing alone, to support the requisite probable cause to issue a warrant, the existence of any unlawfully obtained information will not invalidate the warrant.

*Thomas v. Langford, 2023 U.S. Dist. LEXIS 106559, 2023 WL 4076772 (D. Kan. June 20, 2023)*

The Tenth Circuit Court of Appeals affirmed the denial. App. 1a.

To determine the facts for the purpose of making the Fifth Amendment analysis, the 10<sup>th</sup> Circuit relied on, and quoted the statement of facts from the Kansas Supreme Court opinion on direct appeal. App. 30a. Based on that statement, the 10<sup>th</sup> Circuit found that Thomas cannot successfully challenge his convictions on the ground that failure to give *Miranda* warnings should have

prevented the police from relying on the address-related statements when seeking a search warrant.

## REASONS FOR GRANTING THE WRIT

### I. THE TENTH CIRCUIT'S MISAPPLICATION OF WITHROW AND STONE WARRANTS THIS COURTS ATTENTION

The Tenth Circuit's opinion misapplied *Withrow v. Williams*, 507 U.S. 680 and *Stone v. Powell*, 428 U.S. 465, holding that Thomas does not argue that his un-Mirandized statements were admitted at trial is a misstatement of the record. In his traverse, Thomas enumerated all the evidence used against him at trial. That included his redacted statement to the detectives admitting to being at the victim's house, jeans shorts and a white t-shirt containing presumptive blood stains, and a recorded phone call from jail. The district court applied *Stone* asserting that Thomas' claim is a Fourth Amendment claim. Assessing that this claim is a Fourth Amendment claim is a violation of USCS Fed Rules of Civil Procedure Rule 8(e). Thomas being a pro se litigant, continually attacked his statements and evidence derived from those statements. In applying *Stone*, the court concluded that petitioner does not contend that he was denied an opportunity to fully and fairly litigate Fourth Amendment claims in the state courts and is not entitled to relief.

The problem with this opinion is that it goes against *Withrow* in holding that *Stone* does not extend to cases where a conviction is based on statements. *Withrow* at 682-83. At trial, the state presented evidence of his statements that should have been suppressed according to *Miranda v. Arizona*, 384 U.S. 436. "Failure to administer *Miranda* creates a presumption of compulsion. Consequently, unwarned

statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under Miranda.” *Oregon v. Elstad*, 470 U.S. 298, 307. The state court ruled that Thomas’ statements were hearsay and inadmissible, yet his statements were used against him in trial, most importantly, the redacted video where Thomas admits to being at the victim’s house. The court ruled all of Thomas’ statements suppressed because his will was overborne and coercive questioning was employed. App. 40a. The argument put forth by Thomas has always been that his statements were used against him. The district court noted that the court could not make arguments for Petitioner or act as his advocate in construing pro se pleadings. Thomas v. Langford 2023 US DIST. 106559. The problem is the courts defer to the lower courts without taking account of the argument of petitions as a whole. Thomas attached exhibits to his traverse to support his claims that his statements were inadmissible and used against him. But the respondent claimed that the issue was a Fourth Amendment issue, therefore the court applied *Stone* and focused only on the search warrant. The danger is that prosecutors can disregard coercion and improper police tactics and claim that all statements are voluntary to justify admission of statements and evidence derived from those statements in trial. The Kansas Supreme Court admits that Thomas’ suppressed statements were used to establish probable cause. Foregoing *Patane* the court decided that even though illegal information was used that it was permissible because there was legal information involved. But the ‘legal’ information was derived from the illegal information, which goes against the Self-Incrimination



Clause of the Fifth Amendment. Thomas was coerced into making a confession then the act was passed off as a simple Miranda violation. A statement cannot be coerced and voluntary at the same time. Deference to lower courts can cause district courts to overlook evidence that may contribute to petitioner's claims and misapply clearly guided rules.

As noted before, Thomas' statements were suppressed and inadmissible. This Court has repeatedly explained "that those subjected to coercive police interrogations have an automatic protection from the use of their involuntary statements (or evidence derived from their statements) in any subsequent trial." *Chavez v. Martinez*, 538 U.S. 760; *Oregon v. Elstad* 470 U.S. 298; *United States v. Patane*, 542 U.S. 630. In the Order suppressing Thomas' statements, the court stated "creating this kind of coercive, accusatory environment strongly supports that Defendant was in custody" and "... continue to remain silent and not see his child grow up. . . this type of questioning is coercive." App. 40a. Misapplication of *Withrow* and *Stone* violates Thomas' Fifth Amendment privilege against self-incrimination and Fourteenth Amendment of due process. There were no witness provided as an eyewitness against Thomas and all physical evidence was derived from him statements. The ruling by the Tenth Circuit threatens the violation of Fifth Amendment issues if it involves a search warrant. It allows for a blanket denial of those who claim their statements were used against them, either from search warrants or to establish probable cause. It allows the State to suppress coercive incriminating statements, but utilize the evidence gained from the

statements under the guise that defendants had made voluntary statements to justify seizing the physical evidence. According to this Court, coercive statements and evidence derived from those statements violates the Fifth Amendment Self-Incrimination Clause, and *Stone* cannot overcome the claims of convictions resting on statements.

Because the Tenth Circuit reduced the effect of *Withrow's* standard on convictions based on statements, this Court must grant certiorari.

## II. DECISION IN CONFLICT WITH OTHER CIRCUITS

The Third Circuit in *United States v. St. Rose*, 189 F. Supp. 3d 528, 542-43 (3<sup>rd</sup> Cir.) concluded that “statements regarding his lack of firearm license was made in violation of Miranda and must be suppressed, also suppressed the fruits of his involuntary statements” because the exclusionary rule required it. In the case of Thomas, his statements were suppressed but the evidence derived from those statements were not. In *United States v. Ahmed Khalfan Ghalilani*, 745 F. Supp. 2d (2<sup>nd</sup> Cir.) the court conclude that Abebe’s testimony would violated the Fifth Amendment and that intelligence agencies could not use the evidence or the fruits closely related to the coerced statements. Here, Thomas’ coerced statements were used to secure a search warrant. The detectives had no probable cause besides

Thomas' incriminating statements. The ruling of the Tenth Circuit is clearly at odds with other circuits on this issue.

### **CONCLUSION**

For these reasons, a writ of Certiorari should issue to review the judgement and opinion of the Tenth Circuit.

Respectfully submitted,

Eddie Lamar Thomas Jr.

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