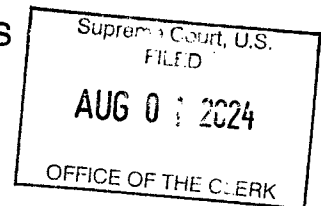


No. 24-5356

IN THE

SUPREME COURT OF THE UNITED STATES



FLOYD PRESTON MILLER III PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE TENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

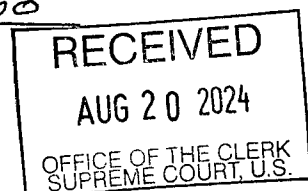
PETITION FOR WRIT OF CERTIORARI

FLOYD PRESTON MILLER III
(Your Name)

MEDICAL CENTER FOR FEDERAL PRISONERS
P.O. BOX 4000
(Address)

SPRINGFIELD, MO 65801-4000
(City, State, Zip Code)

NONE
(Phone Number)



QUESTION(S) PRESENTED

1. WAS PETITIONER DENIED DUE PROCESS WHEN THE DISTRICT COURT FAILED TO NOTIFY HIM OF ITS DECISION AND THE PETITIONER HAD NO CHOICE BUT TO FILE NOTICE OF APPEAL AFTER PROCEDURAL DEADLINE?

2. DOES THE CONSTITUTION ALLOW AN ACCUSED TO BE TRIED AND CONVICTED OF A HYPOTHETICAL CRIME THAT HAS A HYPOTHETICAL VICTIM?

3. THE INDICTMENT CHARGED "SEXUAL ACTIVITY" "TO WIT:" IT CONTINUED WITH HYPOTHETICAL CRIMES. THE SEVENTH CIRCUIT HAS RULED THAT "SEXUAL ACTIVITY" REQUIRES CONTACT; CIRCUITS DISAGREE, WHAT DOES IT MEAN IN 18 USC 2422(b)?

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

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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 6 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☒ is unpublished.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 MILLER NEVER RECEIVE SUCH OPINION; 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☐ is unpublished.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 JUNE 27, 2024.

☒ 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). *AND*
28 U.S.C. § 2106

☐ 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

GO TO NEXT PAGE PLEASE

STATEMENT OF THE CASE

FLOYD PRESTON MILLER III (MILLER) WAS FOUND GUILTY OF THE CHARGE IN A ONE-COUNT INDICTMENT. IT ACCUSED MILLER OF VIOLATING 18 USC 2422 (b) (DOC. 47, 02/21/2018). MILLER WAS SENTENCED TO 164 MONTHS IN PRISON AND 10 YEARS OF SUPERVISED RELEASE. (DOC. 61, 11/30/2018) MILLER APPEALED THE VERDICT. THE CASE WAS AFFIRMED. UNITED STATES V. MILLER, 822 F.3d APPX 777 (10TH CIR. 2020).

ON JULY 13, 2021 MILLER FILED A TIMELY COLLATERAL APPEAL UNDER 28 USC 2255. HE SUBMITTED AN ACCOMPANYING SUPPLEMENT AND SUPPORTING EXHIBITS. (DOC. 83, 07/19/2021)*

THE PARTIES EXCHANGED REPLIES AND MILLER AWAITED THE JUDGE'S DECISION. BETWEEN MAY 3, 2022 AND MARCH 2024, MILLER SENT MULTIPLE REQUESTS TO THE DISTRICT COURT CLERK FOR THE STATUS OF HIS PENDING 28 USC 2255 PETITION (APP. A). THE CLERK RESPONDED EACH TIME BY SENDING MILLER A COPY OF THE UP TO DATE DOCKET SHEET.

* THERE IS A DIFFERENCE BETWEEN MILLER'S FILING DATE AND THAT OF THE CLERK. MILLER UTILIZED THE PRISON MAIL BOX RULE; *HOUSTON V. LACK*, 487 US 266 (1988).

MILLER SENT ANOTHER REQUEST FOR STATUS OF THE CASE WITH THE ARRIVAL OF 2024. THE DISTRICT CLERK RESPONDED ON MARCH 11, 2024 AND ONCE AGAIN SENT AN UP TO DATE DOCKET SHEET TO MILLER. (APP. A).

THE DOCKET SHEET CONTAINED A NEW ENTRY THAT SURPRISED MILLER; (DOC. 91, 12/15/2023). THAT ENTRY REVEALED THAT, UNBEKNOWNST TO MILLER, THE DISTRICT COURT JUDGE HAD DENIED MILLER'S \$ 2255 MOTION AND DECLINED TO ISSUE A COA.

MILLER HAD NOT RECEIVED A COPY OF THE JUDGE'S DECISION. THUS HE BEGAN A SEARCH TO DETERMINE IF THE PRISON OFFICIALS HAD RECEIVED IT BUT WERE WITHHOLDING IT FOR SOME REASON. THE STAFF KNEW NOTHING OF ANY SUCH MAIL FOR MILLER.

ALL PRISONER CORRESPONDENCE ARRIVES AND DEPARTS THROUGH THE INSTITUTION'S MAILROOM. FOLLOWING BOP PROTOCOL, MILLER SENT A REQUEST FORM TO THE "MAIL ROOM STAFF" (APP. B). OFFICER S. TAYLOR, HAVING BEEN NOTIFIED OF THE URGENCY OF THE REQUEST, RESPONDED THE DAY IT WAS SENT. THE RECORDS HELD NO EVIDENCE THAT THE LEGAL MAIL MILLER SOUGHT EVER REACHED THIS INSTITUTION. MILLER FILED A NOTICE OF APPEAL AND EXPLAINED HIS LATE FILING TO THE TENTH CIRCUIT COURT OF APPEALS IN HIS

"DEFENDANT'S DELAYED MOTION FOR A COA." MILLER
RELIED ON 28 USC 2255; RULE 6 (b)(1)(B), FEDERAL RULES OF
CIVIL PROCEDURE; AND THE APPELLATE COURT'S BROAD
AUTHORITY PURSUANT TO 28 USC 2106. MILLER WAS NOT
NOTIFIED OF THE COURT'S DECISION. MILLER WOULD STILL
BE WAITING FOR THE JUDGE TO RULE ON HIS § 2255 HAD HE
NOT REQUESTED TO KNOW THE STATUS FROM THE CLERK.

SOME ONE ERRED; SOME ONE DROPPED THE DUE PROCESS
BALL, BUT IT WAS NOT MILLER. APPENDIX D HAS THOROUGH
INFORMATION RELATING TO THE CASE. HE DID NOT FILE LATE.

MILLER WAS ON AN ADULTS CHAT-ROOM WHEN A FEMALE
ENGAGED HIM IN CONVERSATION. THE SITE DOES NOT
PROVIDE THE TOOLS NEEDED TO RECONNECT WITH A PARTICULAR
INDIVIDUAL AFTER THE INITIAL, RANDOM, CONTACT
HAS BEEN CONCLUDED. AT SOME POINT IN HIS CONVERSATION
WITH THE GIRL ON THE ADULT SITE, HE SUGGESTED THAT THEY
RELOCATE TO A DIFFERENT CONNECTION THAT ALLOWED FOR
RECONNECTING, NO INTRUDERS NOR PLAYING ROLES AND
ROVER INTRUSIONS. THEY DID THAT.

AT SOME POINT, MILLER AND THE GIRL EXCHANGED
PHOTOS OF CERTAIN NUDITY BODY PARTS. SHE WAS IN LAS
VEGAS, NEVADA; MILLER WAS IN ADA, OKLAHOMA. SHE
NEVER INTENDED TO "MEET UP" WITH MILLER. (APP.D:21).
LIKEWISE, MILLER DID NOT INTEND TO "MEET UP" WITH HER (APP.D:22).

THE GIRL'S OLDER SISTER SAW THE PHOTO'S ON THE GIRL'S CELLPHONE. THEIR MOTHER CONTACTED THE LAS VEGAS, NEVADA POLICE. THE CASE WAS TURNED OVER TO A 19-YEAR VETERAN DETECTIVE WHO HANDLED SUCH CASES.

THAT DETECTIVE TRAVELED TO ADA, OKLAHOMA TO INTERVIEW MILLER. THE LAS VEGAS DETECTIVE CHECKED IN WITH THE ADA, OKLAHOMA POLICE DEPARTMENT. TWO ADA POLICEMEN ACCOMPANIED HIM TO MILLER'S RESIDENCE.

MILLER WAS COOPERATIVE; HE AGREED TO BE INTERVIEWED AT THE ADA POLICE DEPARTMENT STATION. AFTER COMPLETING THE MILLER INTERVIEW THE DETECTIVE RETURNED TO LAS VEGAS, NEVADA. LAS VEGAS AUTHORITIES PLACED NO CHARGES AGAINST MILLER. THE OKLAHOMA AUTHORITIES DID NOT CHARGE MILLER WITH A CRIME.

OKLAHOMA HAD NO VICTIM. NO CRIME AGAINST AN OKLAHOMA, MINOR, CITIZEN HAD BEEN COMMITTED. THERE WAS NO VIOLATION OF LAW AND THERE WAS NO VICTIM. THE SOVEREIGN HAD NO LEGAL JURISDICTION TO CHARGE MILLER WITH BREAKING ANY OKLAHOMA LAW. THERE WAS NO CONTACT WITH AN OKLAHOMA MINOR. THE SEXUAL ACTIVITY TERM SAYS TO WIT: AND IDENTIFIES TWO SECTIONS OF OKLAHOMA TITLE 21. NAMELY (TO WIT:) MAKES THE CHARGE SPECIFIC TO OKLAHOMA LAW.

REASONS FOR GRANTING THE PETITION

ON APRIL 7, 2011, JUDGE POSNER, SEVENTH CIRCUIT COURT OF APPEALS, ISSUED THE COURT'S DECISION IN UNITED STATES V. TAYLOR, 640 F.3d 255 (7TH CIR. 2011). THE COURT "SCRUTINIZED" THE STATUTE 18 USC 2422(b) CHARGES. THE COURT DETERMINED THAT THE PHRASE "SEXUAL ACTIVITY" REQUIRES CONTACT. THE COURT REVERSED AND ON REMAND ORDERED ACQUITTAL.

THE CIRCUITS DISAGREE:

UNITED STATES V. BAILEY, 228 F.3d 637, 639 (6TH CIR. 2000)

UNITED STATES V. HUGHES, 632 F.3d 956, 961 (6TH CIR. 2011)

UNITED STATES V. BROUSARD, 669 F.3d 537, 550 (5TH, 11TH CIR. 2012)

UNITED STATES V. FUGIT, 703 F.3d 248, 255 (4TH CIR. 2012)

IN THIS CASE, MILLER WAS IN A CONVERSATION WITH A FEMALE ON AN ADULT WEBSITE. HE AND THE GIRL MOVED TO A DIFFERENT SITE TO ASSURE THEY MIGHT HAVE FURTHER CHATS. THE GIRL TOLD MILLER SHE "AM 15." SINCE THE SITE THEY MOVED FROM WAS ONLY FOR FLEETING CONTACTS AND WAS RESTRICTED TO ADULTS, MILLER ASSUMED SHE WAS CONTINUING SOME ROLE PLAYING SUCH AS IS TYPICAL ON THE FIRST SITE. THE TOPIC OF SEX CAME UP AND THEY EXCHANGED

PHOTOS. IT WAS THOSE PHOTOS THAT BROUGHT THE LAS VEGAS POLICE INTO THE CASE. THE LAS VEGAS, NEVADA AUTHORITIES, HOWEVER, DID NOT INDICT MILLER. THE CASE WAS, INSTEAD, PURSUED BY THE GOVERNMENT AND HE WAS CHARGED WITH VIOLATING OKLAHOMA LAWS.

A FEDERAL GRAND JURY SITTING IN THE EASTERN DISTRICT OF OKLAHOMA, RETURNED A ONE COUNT INDICTMENT. THE CHARGE WAS VIOLATING 18 USC 2422.

THE INDICTMENT SAYS HE USED A VARIETY OF PERSUASIONS

"... TO ENGAGE IN SEXUAL ACTIVITY FOR WHICH A PERSON CAN BE CRIMINALLY CHARGED UNDER STATE LAW, TO WIT: TITLE 21, OKLAHOMA STATUTE, SECTION 1123, LEWD OR INDECENT PROPOSALS OR ACTS WITH A CHILD UNDER 16; AND TITLE 21, OKLAHOMA STATUTE SECTION 1021.2, PROCURING OF A MINOR IN CHILD PORNOGRAPHY, ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 2422 (b) (APP. H).

THERE WAS NO ALLEGED CRIME COMMITTED IN OKLAHOMA; NO ALLEGED VICTIM IN OKLAHOMA. THE FEDERAL INDICTMENT CHARGES THAT MILLER VIOLATED TWO ENTIRE STATUTE SECTIONS. IT DOES NOT SPECIFY THE ACTS MILLER DID AGAINST THIS IMAGINARY CHILD. (DOC. 45, 02/21/2018) (APP. I).

SEE (APP. D). THE INDICTMENT (APP. H) USES A PHRASE
"... SEXUAL ACTIVITY FOR WHICH A PERSON CAN BE
CRIMINALLY CHARGED UNDER OKLAHOMA LAW..."

THE WORD CAN IS DEFINED AS:

"2. USED TO INDICATE POSSIBILITY OR PROBABILITY."
AMERICAN HERITAGE DICTIONARY 2ND COLLEGE EDITION,
232 (1982). SEE (APP. D, 14).

"CRIME IS MADE OF ACTS AND INTENT; AND THESE
MUST BE SET FORTH IN THE INDICTMENT WITH
REASONABLE PARTICULARITY OF TIME, PLACE AND
CIRCUMSTANCES." UNITED STATES V. CRUIKSHANK,
92 U.S. 542, 558, 23 L. ED 588 (1876).

INITIALLY, THE LAS VEGAS AUTHORITIES BELIEVED
THERE MIGHT BE A VIOLATION OF NEVADA STATE LAW. THEY
BORE THE EXPENSE OF SENDING A LAS VEGAS DETECTIVE
TO ADA, OKLAHOMA TO INTERVIEW MILLER. DESPITE
THE EXPENSE OF THEIR INVESTIGATION, NEVADA DID NOT
CHARGE MILLER WITH A CRIME.

AT TRIAL, THE GOVERNMENT PRODUCED THREE
WITNESSES; THEY WERE THE ALLEGED VICTIM'S MOTHER, AND

THE LAS VEGAS, NEVADA DETECTIVE. THE WITNESSES TESTIFIED ABOUT A CRIME THEY ALLEGED WAS PERPETRATED AGAINST A LAS VEGAS NEVADA MINOR, IN LAS VEGAS, AND INVESTIGATED BY LAS VEGAS POLICE.

NO OKLAHOMA WITNESSES WERE CALLED. NO OKLAHOMA VICTIM WAS ALLEGED. THE INDICTMENT CHARGED MILLER WITH A HYPOTHETICAL CRIME AGAINST AN UNNAMED HYPOTHETICAL MINOR.

"I CAN'T CHARACTERIZE THE FACTS IN A HYPOTHETICAL SITUATION, AND I CAN'T APPLY THE LAW TO A HYPOTHETICAL SET OF FACTS." U.S. SUPREME COURT NOMINEE AMY CONEY BARRETT, OCT. 13 [2020] DURING CONFIRMATION HEARINGS, IN RESPONSE TO QUESTION FROM SEN. AMY KLOBUCHAR (D. MN) ABOUT VOTER INTIMIDATION. THE WORLD ALMANAC AND BOOK OF FACTS, 79 (2021).

"THE BAIN CASE, [121 US 1 (1887)] WHICH HAS NEVER BEEN DISPROVED, STANDS FOR THE RULE THAT A COURT CANNOT PERMIT A DEFENDANT TO BE TRIED ON CHARGES THAT ARE NOT MADE IN THE INDICTMENT AGAINST HIM."

(CITATIONS OMITTED). STIRONE V. UNITED STATES, 361 US 212, 217, 4 L. ED. 2D 252, 80 S. CT. 270 (1960). SEE ALSO DE JONGE V. OREGON, 299 US 353, 362, 81 L. ED. 2D 278, 57 S. CT. 255 (1948).

THE SEXUAL ACTIVITY QUESTION

"AND A STATUTE WHICH EITHER FORBIDS OR REQUIRES THE DOING OF AN ACT IN TERMS SO VAGUE THAT MEN OF COMMON INTELLIGENCE MUST NECESSARILY GUESS AT ITS MEANING AND DIFFER AS TO ITS APPLICATION VIOLATES THE FIRST ESSENTIAL OF DUE PROCESS OF LAW. INTERNATIONAL HARVESTER CO. V. KENTUCKY, 234 U.S. 216, 221, 58 L. ED. 1284, 1287, 34 SUP. CT. REP. 853; COLLINS V. KENTUCKY, 234 U.S. 634, 638, 58 L. ED. 1510, 1511, 34 SUP. CT. REP. 924." CONNALLY V. GENERAL CONSTRUCTION CO., 269 U.S. 385, 391, 40 L. ED. 322 (1926).

THE INDICTMENT STATES IN PART: (APP. H) THAT MILLER "... ATTEMPT[ED] TO KNOWINGLY PERSUADE, INDUCE, AN INDIVIDUAL WHOM HE BELIEVED WAS 15 YEARS OLD, TO ENGAGE IN SEXUAL ACTIVITY FOR WHICH A PERSON CAN BE CRIMINALLY CHARGED UNDER OKLAHOMA STATE LAW, TO WIT:..." (APP. H)

THE TERM SEXUAL ACTIVITY MAY MEAN A MYRIAD OF THINGS TO THOSE WHO READ THESE WORDS. IN A POPULAR SONG OF THE 50'S OR 60'S THERE WAS A PHRASE

* EMPHASIS ADDED.

"STANDING ON THE CORNER WATCHING ALL THE GIRLS GO BY, BROTHER YOU CAN'T GO TO JAIL FOR WHAT YOU'RE THINKING
MATTER OF FACT NEITHER CAN I..." DOES THAT, BY §2422(b)
STANDARDS CONSTITUTE SEXUAL ACTIVITY, IS THAT
SEXUAL ACTIVITY? WHAT ABOUT FOUL LANGUAGE?

SEVENTH CIRCUIT COURT OF APPEALS JUDGE POSNER
SCRUTINIZED THE TERM SEXUAL ACTIVITY. JUDGE POSNER
CONCLUDED THAT TITLE 18 DOES NOT DEFINE SEXUAL
ACTIVITY. HE DID DETERMINE THAT 18 USC 2422(b)
DOES REQUIRE CONTACT. THE SEVENTH CIRCUIT REVERSED
AND ACQUITTIED, UNITED STATES V. TAYLOR, 640 F.3d
255 (7TH CIR. 2011). JUDGE MANION WROTE A CONCURRING
OPINION.

THERE IS NO AGREEMENT AMONG THE CIRCUITS AS TO
THE MEANING OF §2422(b)'S SEXUAL ACTIVITY. THE
RECORD (TR1, 60:2-5) AND (TR1, 144:23 - TR1, 145:3) QUOTED
IN (APP. D AT 21, 22), THE GIRL IN LAS VEGAS HAD NO
THOUGHTS OF EVER MEETING UP WITH "THIS PERSON" [MILLER].
LIKE WISE MILLER HAD NO SUCH INCLINATION TO "MEET UP"
WITH THE LAS VEGAS GIRL.

MILLER'S CASE ILLUSTRATES THE UNCONSTITUTIONAL
SNARE THAT 18 USC 2422(b) IS. THE CONSTITUTION DOES
NOT ALLOW TRIAL AND IMPRISONMENT FOR COMMISSION
OF A HYPOTHETICAL CRIME. (APP. I).

"THIRTY YEARS AGO, SOLOMON WACHTLER, THEN CHIEF JUDGE OF THE NEW YORK COURT OF APPEALS, FAMOUSLY REMARKED THAT PROSECUTORS COULD CONVINCE A GRAND JURY TO "INDICT A HAM SANDWICH" IF THAT IS WHAT THEY WANTED." UNITED STATES V. DAVIS, 793 F.3d 712, 728 (7TH CIR. 2015).

THE GOVERNMENT RELIED ON HYPOTHETICALS TO MAKE A CASE. THEY SPECIFIED "TO WIT" BUT NO ACTUAL CRIME OR PARTY IS NAMED, UNDER CRUIKSHANK IT DOES NOT MEET MUSTER.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Floyd Miller

Date: 8/13/24