No. 24-5687

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

SOLOMON ODUBAJO — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SOLOMON ODUBAJO
(Your Name)

P.O. BOX 9000
(Address)

SAFFORD, ARIZONA 85548
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. Given Deputy Twombly's admission on the record (PageID #500, 9-14) that the only factor establishing reasonable suspicion to seize the Parcel was its state of origin being a "source state," was this single factor sufficient? See, Terry v. Ohio, 392 U.S. 1, 21, 88 U.S. S.Ct. 1868 (1968) and United States v. Urrieta, 520 F.3d 569 (6th Cir. 2008).

2. Was the warrantless search of the Parcel an illegal search and seizure in violation of the Fourth Amendment, given the standard established in Ex Parte Jackson, 24 LED 877, 96 US 727 (1878)?

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:

TABLE OF AUTHORITIES CITED

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JURISDICTION

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

The date on which the United States Court of Appeals decided my case was 06/12/2024.

[X] 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).

[ ] 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

Federal Constitutional Provisions

U.S. Const. amend. IV

U.S. Const. amend. V

STATEMENT OF THE CASE

I. THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S OVERRULING OF ODUBAJO'S MOTIONS TO SUPPRESS.

The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures. First class mail is protected by the Fourth Amendment. See, Ex Parte Jackson, 96 U.S. 727 24 L. Ed. 877 (1878) and Oliver v. United States, 239 F.2d 818, 61 A.L.R.2d 1273 (8th Cir. 1957). In Lustiger v. United States, 386 F.2d 132 (9th Cir. 1967), the Court said:

> "The protection against unreasonable search and seizure of one's papers or other effects, guaranteed by the Fourth Amendment extends to their presence in the mail. * * * **Thus, first class mail cannot be seized and retained, nor opened and searched, without the authority of a search warrant.**" 386 F.2d at 139. (Emphasis added.)

Searches conducted without a warrant are per se unreasonable, "subject to a few specifically established and well-delineated exception." Katz v. United States, 398 U.S. 347, 357, 88 S.Ct. 507 (1967). Where law enforcement obtains evidence in violation of the Fourth Amendment, courts should exclude that evidence from use at trial. Mapp v. Ohio, 367 U.S. 643, 653 81 S.Ct. 1684 (1961).

Odubajo moved to suppress M-30 pills found in the Parcel, his personal property and cash found at the home at 1457 Rosewood, and the firearm found in the automobile. The Sixth Circuit Court of Appeals affirmed the District Court's overruling of his motion.

Parcel:

This Court has held that a mail parcel may be detained as long as there is a reasonable suspicion of criminal activity. United States v. Van Leeuwen, 397 U.S. 249, 252, 90 S.Ct. 2019 (1970). Reasonable suspicion results from specific and articulable facts, and rational inferences therefrom, that reasonably justify an intrusion. Terry v.

Ohio, 392 U.S. 1, 21, 88 U.S. S.Ct. 1868 (1968). The Sixth Circuit has held that a police officer's knowledge that a particular city is a source of drugs sent through the mail is relevant to determination of reasonable suspicion in this context. See, United States v. Underwood, 97 F.3d 1453 (6th Cir. 1996). However, despite Deputy Twombly testifying that he found the Parcel suspicious due to its being sent from the State of Arizona (PageID #500, 9-14), the Sixth Circuit has also held in United States v. Urrieta, 520 F.3d 569 (6th Cir. 2008) that,

> "...travel between population centers is a relatively weak indicator of illegal activity because there is almost no city in the country that could not be 'characterize[d] as either a major narcotics distribution center or a city through which drug couriers pass on their way to a major narcotics distribution center.' United States v. Andrews, 600 F.2d 563, 567 (6th Cir. 1979); see also United States (520 F.3d 577) v. Townsend, 305 F.3d 537, 543 (6th Cir. 2002) (holding that a trip between Chicago, Illinois and Columbus, Ohio does not give rise to a reasonable suspicion that the traveler is transporting drugs); Saperstein, 723 F.2d at 1228 (holding that travel to and from a source city is such innocent behavior that it is entitled to little weight in a Fourth Amendment analysis)."

In addition to this, Twombly concedes that he did not mention the destination of the Parcel as a factor for removing it from the postal queue in his affidavit. The only factor he mentioned was that he conducted a CLEAR search (PageID #500, 4-14), yet prior to conducting this, he still lacked the reasonable suspicion to place the Parcel into police custody.

Furthermore, the opening and inspection of the Parcel by Deputy Twombly was unlawful because it was conducted without a warrant and there were no circumstances which might have justified a search; see, United States v. Barry, 673 F.2d 912, 917-918 (6th Cir. 1982) (holding a search and seizure of a package was illegal because the officers "unquestionabl[y]" had sufficient time to seek a warrant) ; likewise, the Parcel was not due to be delivered until 6 PM (PageID #484, 17-19). Twombly also relied upon an assumption, stating on the

record, "I believe he said 'I'll get this out to you'" (PageID #482, 11). When directly examined, he was asked by the government, "Based on that phone call, what was your understanding of the approval status of your warrant?" Twombly replied, "That it was approved" (PageID #482, 12-14). The government further asks why Twombly had thought so and he further replied, "Because... any other times I ever had problems with an affidavit...the judge would let me know right away..." (PageID #482, 15-20). Given the record, Twombly thus actually stated that he assumed the approval status of the warrant based on prior experiences with the Magistrate, rather than on a case-by-case basis. On April 6th, 2022, at 12:18 PM, Twombly searched the Parcel and viewed its contents (PageID #484, 17-19) while Magistrate Baughman did not issue the warrant until 12:56 PM (PageID #485, 2-5). The record also reflects that Twombly conceded that, in his phone call with Magistrate Baughman, it was his belief that Baughman did not specifically use the words "I am going to find probable cause" (PageID #502, 6-8). He acknowledged that he received an email from the Magistrate and that he did not have prior judicial approval due to lack of confirmation that the warrant had been signed (PageID #502, 9-16). His "best guess" for the time of the call was "12:15 or 12:10" (PageID #504, 7-23). Given these discrepancies, Deputy Twombly neither had the constitutionally required judicial approval nor issued warrant to search the Parcel and its contents. On appeal, the government argued that the Good Faith Exception would apply to the Parcel search in the alternative, yet they never made the argument justifying Inevitable Discovery Doctrine (Appendix C, pg. 37). Instead, the Sixth Circuit Court of Appeals made this argument for Inevitable Discovery on behalf of the government (Appendix A, pg. 5) to negate Odubajo's suppression of the evidence

found in the Parcel. However, per United States v. Sineneng-Smith, 590 U.S. 371, 375 (2020), the Court "has a duty to rely only on evidence presented to it by the parties" to avoid the risk of violating "the principle of party representation and judicial restraint." In the government's appellee brief, they conceded that Deputy Twombly executed the "warrant a few minutes too soon" (Appendix C, pg. 38).

Another pertinent issue to be brought to this Court's attention for review is the reluctance of the government to subpoena Mr. Matyas, Magistrate Baughman's courtroom deputy (PageID #545-546). The government had provided statements on the record as to Mr. Matyas's absence as a witness, with the reasoning, "I think that's something my office is sensitive about and I'm sensitive about subpoenaing judges' employees" (PageID #546, 10-11), and that Magistrate Baughman "sort of didn't feel comfortable with Mr. Matyas coming in and being subjected to cross-examination" (PageID #546, 19-25). The absence of witness testimony by Mr. Matyas deprives the record of clarification regarding the specific facts surrounding Magistrate Baughman's issuance of the search warrant; this furthermore deprives Mr. Odubajo of his Fifth Amendment right to due process.

As a result, the search and seizure of the Parcel violated the Fourth Amendment. All evidence obtained after the illegal search and seizure of the Parcel constitutes "Fruits of the Poisonous Tree," per Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), thus, must be suppressed. The judgment by the Sixth Circuit Court of Appeals affirming the District Court's decision must be reversed.

REASONS FOR GRANTING THE PETITION

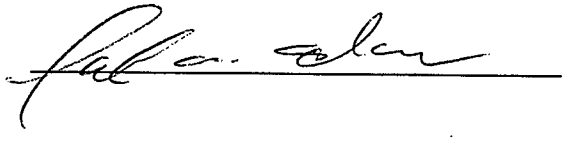
If the presented discrepancies in this petition remain uncorrected, this will have far-reaching implications, not only on future Terry stops, but also on warrantless searches and seizures. To condone the procedural errors in this matter would allow government officials to bypass the Fourth Amendment's warrant requirement, thus allowing them to rely solely on an unwritten modus operandi based upon prior experiences, rather than upon proper set procedure on a case-by-case basis.

The Fourth Amendment aims to balance the need for effective law enforcement with protection of individuals' right to privacy, as well as freedom from arbitrary government intrusion. This principle applies equally to searches conducted on parcels and other property. The search in this matter was not only unreasonable but also violated the fundamental protection of the Fourth Amendment.

CONCLUSION

For the foregoing reasons, Mr. Odubajo respectfully requests that this Court reverse and remand the lower court's judgment. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 09/23/2024