

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Monzelle Lavan Steptoe — PETITIONER
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Circuit Court of Appeals, New Orleans La
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Monzelle Lavan Steptoe #1622644
(Your Name)

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(Address)

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(City, State, Zip Code)

(325) 548-9035
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QUESTION(S) PRESENTED

- 1) Is a newly announced Constitutional Fourth Amendment, illegal search and seizure of Cell Phone Privacy Rights Violation, [Applied Retroactively] pursuant to *Jeremy Tyson Govan's Vs. United States*, 2016 U.S. App. Lexis 4577, for the conduct of criminal prosecution, ~~to be~~ is to be [applied retroactively] to all cases, STATE or Federal, pending on direct review or not yet final, with no exception, for cases in which the new rule constitutes a "clear break" with the past?
- 2) Was the 5th Circuit Court of Appeals in conflict between the decision of the Western District Court of Texas, USDC No. 7:14-CR-215-1, that noted although *Riley* was not decided until six months after Govan's Phone was searched, [Riley applied retroactively] to Govan's case under *Davis Vs. United States*, 564 U.S. 229, 131 S.Ct. 2419, 2430, 180 L.Ed.2d 285 (2011) (holding "newly announced rules of constitutional criminal procedure must apply retroactively to all cases STATE or Federal, pending on direct review or not yet final, with no exception?"). When both the 5th Circuit and District Court established the Violation of the Fourth Amendment Cell Phone Privacy Rights has occurred??
- 3) Is the Petitioner in error for moving to this Court to invoke the [Retroactively effect] of his Fourth Amendment Violation of Cell Phone Privacy Rights, that is the Fruit of the poisonous tree doctrine that occurred 6 years before the newly announced Supreme Court's issuance of its decision in *Riley Vs. California*, in which the 5th Circuit stated the District Court properly ruled that, although search of defendant's cell phone prior to the U.S. Supreme Court's issuance of its decision in *Riley Vs. California* violated the Fourth Amendment.
- 4) Was the Southern District Court, Galveston Division decision in the Petitioner's appeal in error, ~~but~~ because *Davis Vs. United States* ~~and~~ 564 U.S. 229, 131 S.Ct. 2419 (2011) *Danforth Vs. Minnesota*, 552 U.S. 264, 128 S.Ct. 1029 (2008); *Montgomery Vs. Louisiana*, 136 S.Ct. 718 at 723-724. (holding that newly announced substantive rule is retroactive for the conviction's under an unconstitutional Law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. Such consideration of the [Retroactively effect] of Cell Phone Privacy Rights under the Fourth Amendment is a major importance to the public of the issue of the retroactive effect and needs to be addressed by this ~~court~~ Supreme Court of the United States
- 5) When a new substantive rule of constitutional Law controlled the outcome of a case, is the constitution required state collateral review courts to give retroactive effect to that rule?

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:

Petitioner - Monzelle Lavan Steptoe #1622644

Respondent - Lorie Davis, TDCJ, Director

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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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- ☐ reported at unknown; 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 B to the petition and is

- ☒ reported at 2016 U.S. Dist Lexis 60990; 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 May 5, 2016.

☐ 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: September 15, 2017, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

United States Constitutional Fourth Amendment

STATEMENT OF THE CASE

On the date of December 13, 2008 in Alvin Texas at about 11:30 p.m. in the Kroger's Parking Lot, a women was assaulted by an allege suspect who attempted to take the victim's car accordingly to the victim's testimony. The Alvin Police Officer's and Detective was called to the scene and as they was conducting there investigation, Detective Shawn Sewell was ~~on~~ collecting DNA evidence from the victim's vehicle for DNA identification and upon there investigation, Detective Sewell allegedly found a cell phone on the ground some 8 to 10 feet away from the crime scene. The Petitioner's cell phone was closed and off accordingly to Detective Sewell testimony and they collected DNA evidence from the (Petitioner's) Cell Phone for a comparison test. Testimony by Detective Shawn Sewell on January 21, 2010 stated: WE opened it up not knowing who the owner was and not knowing if it even had pertinence to the case yet, turned it on and the screen popped up and gave a name Moe Steptoe, see (R.R.V.3, p. 21, 1-12): Appendix D

Question by the Defense Counsel Faye Gorden to Detective Sewell, stated: Do you have any indication of whether or not the phone could've been there before this crime took place? Answer by Det. Sewell: I have no indication whether it was prior to. Question Q: But is it POSSIBLE that it could've been? A: There is a POSSIBILITY, see (R.R.V.3, p. 46, 1-22) Appendix D

Detective Shawn Sewell of the Alvin Police Department Voluntary Confession to the illegal search and seizure of the Petitioner's Cell Phone without any "Probable Cause". Detective Sewell exhibit "deliberate" "reckless" and "gross negligent" disregard for the Petitioner's Fourth Amendment rights, that was violated.

- Petitioner moves to this Court to [invoke the retroactively effect] in Jeremy Tyson Govan's Vs. United States, 641 Fed. Appx. 434; 2016 U.S. App. Lexis 4517, No. 15-50474, filed March 11, 2016 by the Western District of Texas, USDC No. 7:14-CR-215-1

Substantive rules set forth categorical constitutional guarantees that place certain criminal Laws and punishments altogether beyonds a states power to impose, It follows that when a state enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful.

REASONS FOR GRANTING THE PETITION

The Alvin Police Department, Detective Shawn Sewell Confession to the illegal search and seizure of the (Petitioner's) Cell Phone Privacy Rights, that violated the Fourth Amendment substantive guaranteed Constitutional Right, without any "Probable Cause."

Detective Sewell testimony, stated WE opened it up not knowing who the owner was and not knowing if it even had pertinence to the case yet, turned it on and the screen popped up and gave a name. Moe Steptoe, see (R.R.V.3, p.21, 1-12) Appendix A

Petitioner have a legitimate expectation of privacy rights to his Cell Phone that was off and closed. The Fourth Amendment bars searches of closed container's even if they are not in the owner's possession. Davis, 332 F.3d, at 1167; United States Vs. Fultz, 146 F.3d at 1105 (9th Cir. 1998).

A error is "plain and clear" if the well settled Law of the U.S. Supreme Court or U.S. Court of appeals for the Fifth Circuit establishes that an error has occurred, such error is plain and clear from the Records attached in which the Petitioner has adequately presented to this court for adequate consideration of the retroactive effect of the Law.

When a new substantive rule of constitutional Law controls the outcome of a case, the constitution requires state collateral review courts to give retroactive effect to that rule. Teague's conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts. [Headnote 7] of 136 S.Ct. 718 (2016), Appendix E

[Headnote 8] of 136 S.Ct. 718 page 3: The constitution requires substantive rule to have retroactive effect regardless of when a conviction became final.

[Headnote 10] of 136 S.Ct. 718 page 4: Substantive rules set forth categorical constitutional guarantees that place certain criminal laws and punishment altogether beyond a state's power to impose. It follows that when a state enforces a proscription or penalty barred by the constitution, the resulting conviction, sentence is, by definition unlawful.

[Headnote 12] 136 S.Ct. 718 page 4: A conviction under an unconstitutional Law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. Here the Petitioner has adequately presented the Fourth Amendment violation with clear and plain error and there are other constitutional Violation that has occurred as ~~and~~ the prosecution misconduct for intentionally and knowingly use of Perjury testimony by Det. Sewell in violation of the Petitioner's Miranda Warning Rights of the Tex. Code. Crim. Proc. Art. 38, 22A.3(a) (2), see Angel Resendez Vs. State, 256 S.W.3d, 315 at 336 and the Prosecution intentionally and knowingly suppressed, withheld Exculpatory DNA evidence of the Petitioner's Cell Phone Swabs 004 that is apart of the Fruit of the poisonous tree that was tested for a DNA identification comparison test that was the Petitioner's solo defense in which the STATE and the Court's interference with defense Counsel investigation of requested Motion for independent Examination of DNA evidence that was filed April 20, 2009 ^{was} Denied by court.

But if the Laws are unconstitutional and void. A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to Law and, as a result, void. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

[Headnote 14] 136 S.Ct. 718: If a state may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own postconviction proceeding. Under the Supremacy clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer for a punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal Law, the state court has a duty to grant the relief that federal Laws requires. Where state collateral review proceeding permit prisoners to challenge the lawfulness of their confinement, states cannot refuse to give retroactive effect to a substantive Constitutional right that determines the outcome of that challenge, as in this case at hand here, that needs to be addressed by this court. [LEdHR14]

In adjudicating claims under its collateral review procedures a state may not deny a controlling right asserted under the Constitution, assuming the claim is properly presented in the case. Louisiana follows these basic Supremacy Clause principles in its postconviction proceedings for challenging of the Legality of a sentence or Conviction [LEdHR16] 136 S.Ct. 718, Appendix E

The "source of a new rule" is the constitution itself, what ~~was~~ the Petitioner is actually trying to invoke is the "retroactively effect" of the newly announced right, but whether a violation of that right has occurred prior to the announcement of the new rule will entitle the criminal defendant to the relief sought." see Danforth Vs. Minnesota, 552 U.S. 264, 271, 128 S.Ct. 1029, 169, L.Ed.2d, 839 (2008).

The United States District Court for the Western District of Texas USDC No: 7:14-CR-215-1, 641 Fed. Appx 434; 2016 U.S. App. Lexis 4577 Jeremy Tyson Govan Vs. United States, filed on March 11, 2016. The District Court determined that the search of Govan's Cell Phone violated the Fourth Amendment and the evidence was obtained illegally, (641 Fed. Appx. 436) attached Appendix C

The District Court also noted that although Riley was not decided until six months after Govan's phone was searched, [Riley Applied Retroactively] to Govan's case under Davis Vs. United States, 564 U.S. 229, 131 S.Ct. 2419, 2430 (2011) (holding "Newly announced rules of constitutional Criminal procedure 'must apply retroactively to all cases, STATE or Federal, pending on direct review or not yet final, with no exception.'") (641 Fed. Appx. 436). Appendix C

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Momell S. Stepto #1622544

Date: November 17, 2011