

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MONICE ANDERSON — PETITIONER
(Your Name)

vs.

LORIE DAVIS, DIRECTOR, TDCJ-CID — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MONICE ANDERSON

(Your Name)

3899 STATE HWY. 98

(Address)

NEW BOSTON, TX 75570

(City, State, Zip Code)

(Phone Number)

RECEIVED

DEC 6 - 2017

OFFICE OF THE CLERK
SUPREME COURT U.S.

QUESTION(S) PRESENTED

DID IT VIOLATE PETITIONER'S RIGHTS UNDER THE FOURTH AMENDMENT TO BE FREE FROM ILLEGAL SEARCH AND SEIZURE WHEN POLICE, WITHOUT A WARRANT, OBTAINED FROM PETITIONER'S CELLPHONE PROVIDER THE HISTORICAL CELL SITE DATA TO SUGGEST PETITIONER'S PHYSICAL LOCATION AND MOVEMENTS AT A PARTICULAR TIME?

GROUND TWO

DID TRIAL COUNSEL RENDER INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO MOVE TO SUPPRESS THE CELL SITE HISTORICAL DATA BASED ON A VIOLATION OF PETITIONER'S RIGHT TO BE FREE FROM ILLEGAL SEARCH AND SEIZURE?

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:

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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

☒ 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 _____; 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☒ is unpublished.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 _____; 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 August 29, 2017.

☒ 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 . (Motion filed/Pending)

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

"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE
RIGHT TO...HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE."

U.S. const. Amend. VI

~~XXXXXXXXXX~~

"THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS,
HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES
AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL
ISSUE, BUT UPON PROBABLE CAUSE[.]"

U.S. const. Amend IV

STATEMENT OF THE CASE

Petitioner was convicted of capital murder and sentenced to automatic life without parole. The conviction stems from a murder which occurred during an apparent drug deal gone bad. Petitioner was subsequently connected to the murder through, inter alia, cell phone records and cell site tower records showing Petitioner's movements and location during the time of the murder.

In postconviction proceedings, Petitioner alleged that his Trial Counsel was ineffective for failing to move to suppress the historical cell site tower records based on illegal search and seizure due to the police authorities failure to obtain a warrant in order to obtain such records.

Both the State habeas courts and the federal habeas courts found that Trial Counsel was not ineffective because under the "Third Party Records Doctrine," the admission of the historical cell-site-location used by the State to suggest Petitioner's proximity to the murder was not an unreasonable search and seizure and no warrant was required in order for police to obtain such phone data. (See Appendix B, hereto attached at P. 15).

REASON FOR GRANTING THE PETITION

QUESTION ONE

DID IT VIOLATE THE PETITIONER'S RIGHTS UNDER THE FOURTH AMENDMENT TO BE FREE FROM ILLEGAL SEARCH AND SEIZURE WHEN POLICE, WITHOUT A WARRANT, OBTAINED FROM PETITIONER'S CELLPHONE PROVIDER THE HISTORICAL CELL SITE DATA TO SUGGEST PETITIONER'S PHYSICAL LOCATION AND MOVEMENTS AT A PARTICULAR TIME?

Petitioner's argument is that 1) he retained an objectively reasonable expectation of privacy in his physical movements and location; 2) he did not voluntarily surrender his reasonable expectation of privacy in his physical location and movements simply by using his cell phone; and, 3) because the State did not secure a warrant before obtaining the historical cell site data from the phone provider, Petitioner's Fourth Amendment right was violated.

Review should be granted because there exists a split among federal circuits on whether the third party doctrine applies to historical cell-site-location information. The Third, Fifth, and Eleventh Circuits have rejected the argument that a court order authorized by the Stored Communications Act ("SCA"), compelling the production of the CSLI in those cases, was a search requiring probable cause. See In re Application of the United States for an ORDER, 629 F.3d 304, 313 (3rd Cir. 2010) (cell-site information does not require traditional probable cause determination); In re Application of the U.S. for Historical Cell-Site Data, 724 F.3d 600, 615 (5th Cir. 2015)

(government can use SCA orders to obtain cell-site data information without implicating the Fourth Amendment); United States v. Davis, 785 F.3d 498, 511 (11th Cir. 2015) (en banc) (defendant had no objective expectation of privacy in cell-site tower locations data).

But see United States v. Graham, 796 F.3d 332 (4th Cir. 2015) (government violated Fourth Amendment by seizing cell-site data without a warrant)

Review should also be granted because the Fifth Circuit's and the State habeas Court's opinions in this case contradicts this Court's decisions in United States v. Jones, 132 S.Ct. 945 (2012) and Katz v. United States, 389 U.S. 347 (1967).

GROUND TWO

DID TRIAL COUNSEL RENDER INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO MOVE TO SUPPRESS THE CELL SITE HISTORICAL DATA BASED ON A VIOLATION OF PETITIONER'S RIGHT TO BE FREE FROM ILLEGAL SEARCH AND SEIZURE?

Review should be granted because the Fifth Circuit and State and federal habeas courts' decisions are contrary to this Court's decisions in Strickland v. Washington, 466 U.S. 668 (1984) and Kimmelman v. Morrison, 477 U.S. 365 (1986).

In Kimmelman, supra, based on its decision in Strickland, supra, this Court found that Trial Counsel's performance was deficient due to his failure to properly litigate a Fourth Amendment claim if the claim would have had merit.

As is evinced by the split among the circuits as to the Fourth Amendment issue surrounding the police authorities use of data obtained without a warrant from cellphone providers and the clear issue of such actions by police affecting a defendant's right to privacy, no reasonably competent attorney would have failed to move for the suppression of such illegally obtained evidence.

As this Court held in Strickland, counsel's function is to make the adversarial process work in a particular case. Especially in the context of this case where Petitioner was linked to the murder primarily through information garnered by police from the data which tracked Petitioner's locations and movements to suggest to the jury that Petitioner was present at the location of the murder at the time of the murder. Petitioner suffered prejudice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Manice Anderson

Date: November 27, 2017