

Supreme Court of the United States

In the Matter of:

Docket No. 8

WILLIAM SPINELLI,

Petitioner

vs.

UNITED STATES OF AMERICA

Respondent

Duplication or copying of this transcript
by photographic, electrostatic or other
facsimile means is prohibited under the
order form agreement.

Place Washington, D. C.

Date October 16, 1968

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

P A G E

Oral Argument of Irl B. Baris, on behalf of
Petitioner

3

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

William Spinelli,

Petitioner,

v.

No. 8

United States of America,

Respondent.

Washington, D. C.

Wednesday, October 16, 1968

The above-entitled matter came on for argument at

2:15 p.m.

BEFORE:

EARL WARREN, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
ABE FORTAS, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

ERWIN N. GRISWOLD, Solicitor General
FRED M. VINSON, JR., Assistant Attorney General
JOSEPH J. CONNOLLY, Assistant to the Solicitor General
BEATRICE ROSENBERG, Esq., and
SIDNEY M. GLAZER, Esq.
Attorneys for the Respondent

1 APPEARANCES (Continued):

2 IRL B. BARIS, Esq.
3 Newmark and Baris
4 721 Olive Street
5 St. Louis, Missouri 63101
6 Attorney for Petitioner

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
oOo

P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 8, William Spinelli, Petitioner, versus United States, Respondent.

THE CLERK: Counsel are present.

MR. CHIEF JUSTICE WARREN: Mr. Friedman?

MR. FRIEDMAN: Mr. Chief Justice, may it please the Court, I move that Mr. Joseph J. Connolly, a member of the Bar of the Commonwealth of Pennsylvania, be permitted to argue this case in behalf of the United States.

MR. CHIEF JUSTICE WARREN: The motion is granted.

ORAL ARGUMENT OF IRL B. BARIS

ON BEHALF OF PETITIONER

MR. BARIS: Mr. Chief Justice, may it please the Court, this is a case arising originally in the United States District Court for the Eastern District of Missouri, where the defendant petitioner was tried and convicted and sentenced to a term of three years imprisonment and a fine for violation of the so-called Interstate Racketeering Act, Section 1952, of Title XVIII.

Numerous points were raised upon appeal to the United States Court of Appeals for the Eighth Circuit. There were two hearings held in the United States Court of Appeals. A reversal was first obtained on a search and seizure question. The Government then petitioned for rehearing, which was granted, and upon the prehearing before the Court en banc, the decision of the

1 District Court was affirmed.

2 We then applied petition before this Court for right
3 of certiori, which was granted on March 4 and subsequently it was
4 granted generally and subsequently in May that was limited to the
5 search and seizure question.

6 The problems in the area of search and seizure, the
7 Fourth Amendment problem, which appears in this case, may really
8 be broken down into three separate issues:

9 No. 1, as to the validity of the search warrant inso-
10 far as there being probable cause for its issuance; No. 2, with
11 reference to a time delay in its execution; and No. 3, with
12 reference to items which were seized upon the execution of the
13 search warrant.

14 The affidavit in support of the search warrant was made
15 by a special act of the Federal Bureau of Investigation before
16 the United States Commissioner and set forth a number of instances
17 over a 12-day period during which the petitioner was seen to be
18 crossing an interstate bridge leading from the State of Illinois
19 to the State of Missouri.

20 There was also an indication that petitioner had a
21 reputation among law enforcement agents as a gambler. There was
22 an indication in this affidavit concerning two telephones at a
23 particular apartment which the petitioner on some of these 12
24 days was seen to enter.

25 Finally -- this I think is the crux of the issue

1 involving the problem, because -- the affidavit concluded the
2 FBI had been informed by a confidential -- excuse me, I had better
3 say the Federal Bureau of Investigation has been informed by a
4 confidential, reliable informant that William Spinelli is operating
5 a handbook and accepting wagers and disseminating wagering information
6 by means of the telephones which have been assigned the
7 numbers and they specify the same numbers which had been indicated
8 earlier in the affidavit as being at this particular apartment.
9

10 It is our belief that primarily based upon the other
11 case, there are no underlying circumstances to substantiate the
12 hearsay information which was given to the Commissioner in this
13 affidavit. And that because it was not substantiated, because
14 there was no underlying corroboration, because there was nothing
15 to show the credibility of the alleged informant, that the affidavit
16 was bad and, therefore, the search warrant was improperly
17 issued.

18 We believe, if the Court please, that merely to say
19 that the Federal Bureau of Investigation has received information,
20 has been informed by a confidential reliable informant, that the
21 petitioner is engaging in a handbook operation, does not corroborate
22 itself and that there was nothing by virtue of the travel
23 in interstate commerce.

24 There was nothing by virtue of the telephones being
25 in the apartment. There was nothing by virtue of the petitioner's

1 reputation which substantiated that.

2 Q Suppose the affidavit had been sent confidentially.
3 Would that have made a difference?

4 A Not insofar as there not being any corroboration for
5 what he said.

6 Q Would that cure the alleged defect in the search war-
7 rant?

8 A I don't think it would.

9 Q What would they have to do? Would they have to disclose
10 the name of a person in the search warrant?

11 A No, McCray says it is not necessary.

12 Q What would they have to disclose?

13 A I think, as indicated in the McCray Case, there must
14 be an indication in the affidavit as to why this man is con-
15 sidered to be an anti-reliable informant.

16 Q Reliable and confidential informant and nonreliability,
17 wouldn't it serve the purposes if it were added to that who has
18 furnished this agent, say, with information about gambling on
19 other occasions?

20 A And which has been shown to be adequate. I would say
21 that under those circumstances I would like to see the rules set
22 forth that they must say how long this man has been used in his
23 reliability, how long he has been furnishing the information.
24 But I think you are getting to a situation which I would recog-
25 nize as being an indication in the affidavit as to his reliability.

1 Q That is a bothersome point in the case, to say how much
2 has to be shown in a search warrant. We have confidential infor-
3 mants. You would say that we are getting warm in a way if the
4 affidavit had said confidential informant of nonreliability who
5 has furnished information about gambling operations on other
6 occasions.

7 A Yes, I would say you are getting warm, Mr. Justice
8 Fortas, and I would not be here arguing that point as strenuously
9 as I am if that were in this case. I think the affidavit would
10 be bad for other reasons, as we have indicated in our brief.

11 Q What are the other reasons? It doesn't need anything
12 else to establish probable cause?

13 A They would not need anything else, I think, to establish
14 the reliability of the informant or the credibility of the inform-
15 ant, but you think there must be more in the affidavit than merely
16 saying that this informant says that Spinelli is operating a
17 handbook.

18 Q And that he is given certain information as to other
19 gambling situations?

20 A I would say, yes.

21 Q What else would it have to have?

22 A I would say that it should say that the informant said
23 that he saw someone placing a bet with Mr. Spinelli, that he
24 received information from Mr. Spinelli as to odds, and were he
25 to place a bet, that he himself placed a bet with Mr. Spinelli

1 or that he in some way witnessed more than just a conclusion on
2 his part that he is operating a handbook.

3 Q Is there any authority for all of that?

4 A I think the Aguilar Case is an authority at point.

5 The function of the Commissioner is to determine whether
6 there is probable cause. I feel that the affidavit must contain
7 more than we had here to give the probable cause to the Commis-
8 sioner in the search warrant. I think the Constitution, of course,
9 requires the issuance based upon probable cause and there must
10 be an indication of the probable cause to the Commissioner.

11 Q Which wording of the Constitution?

12 A We have the Fourth Amendment: "The right of the people
13 to be secure in their persons, houses, papers and effects against
14 unreasonable searches and seizures, shall not be violated and no
15 warrant shall issue, but upon probable cause and support by affir-
16 mative and particularly describing the place to be searched and
17 the persons or things to be seized."

18 Q Who is to determine that?

19 A It is to be determined initially by the Commissioner.
20 I think his determination is subject to review by the District
21 Court and by this Court, of course.

22 THE CLERK: The Honorable Court is now adjourned until
23 tomorrow at ten o'clock.

24 (Whereupon, the Court adjourned, to reconvene on the
25 following day, Thursday, October 17, 1968, at 10 a.m.)