ORIGINAL

No. 04-6276

Supreme Court, U.S.
FILED
AUG 31 2004
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Twitty — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

~~ON PETITION FOR A WRIT OF CERTIORARI TO~~

= ON Petition For Extraordinary Writ of Habeas Corpus "
United States District Court (NDGA-ATL)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
= Petition For Extraordinary Writ of Habeas Corpus "
~~PETITION FOR WRIT OF CERTIORARI~~

ANDRE J. TWITTY, 18558-018
(Your Name)

NCI Somers, POB 665
(Address)

Somers CT 06071
(City, State, Zip Code)

(Phone Number)

RECEIVED
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

(1) Does the Government violate Petitioner's First Amendment Right to free Speech on matters of Public Concern, by labling Petitioner's out of Context words derived from an illegally recorded telephone Conversation as a true threat. Then Subsequently changing its theory after trial?

(2) Does the Due Process Clause Permit Federal Judges and Staff attorneys of the lower Courts to Violate Petitioner's First Amendment Right to free Speech, by altering the required Statutory elements of an indictment after it has been returned by a federal Grand Jury, in violation of Title 18 USC 1506? Russell v. U.S., 369 U.S. 749 (1962)

(3) May a Federal Court Pronounce upon meaning of Constitutionality of federal law, When it refuses to first satisfy the question of its own Jurisdiction. And does that failure to do so violate Petitioner's First, Thirteenth & Fourteenth Amendment Rights? Philbrook v. Glodgett, 412 U.S. 707 (1975) Ashwander v. T.V.A., 297 U.S. 288 (1936)

(4) Does a Local Phone call, that does not occur "IN" or have any "Affect" upon Interstate Commerce, give rise to federal Jurisdiction? United States v. Lopez, 514 U.S. 549 (1995) And are the Fifth and Seventh Circuits in Conflict with the First, Sixth & Eleventh Circuits? On this issue?

QUESTION(S) PRESENTED

(5) Did the Government's attorney violate Petitioner's First, Thirteenth, & Fourteenth amendment rights by suppressing exculpatory/impeachment evidence favorable to the Petitioner Kyles v. Whitley 514 U.S. 419 (1995) That subsequently gave rise to the Government's Attorney changing its theory after trial? And does the use of a Presumption violate Petitioner's due Process Rights? County Court v. Allen 442 U.S. 140 (1979) Jackson v. Virginia, 443 U.S. 307 (1979) Sullivan v. Louisiana 508 US 275 (1993)

(6) Did Petitioner's Trial and Appellant violate Petitioner's First, Sixth, Seventh, Thirteenth & Fourteenth Amendment rights by Conspiring with the Government's Attorney to Suppress, then to omit from Petitioner's Direct Appeal brief, the exculpatory / impeachment evidence of Petitioner's Actual innocence, which gave rise to the Government's change of theory after trial? Strickland v. Washington, 466 U.S. 668 (1984) Evitts v. Lucey 469 U.S. 387 (1985) Murray v. Carrier, 447 U.S. 478 (1986)

(7) Did Agents of the F.B.I. violate Petitioner's First, Fourth, Thirteenth & Fourteenth Amendment rights, when the Agents deleted the exculpatory Statement of the Government's Sole Witness. Then fabricated "Minnesota" into their final report? And does this deceit Constitute Perjury and Fraud upon the Court?

STATEMENT OF THE CASE

On 26 June 1998, Petitioner made a local Phone call from his home in Stone Mountain Georgia, to the Studios of WXIA-11ALIVE-TV in downtown Atlanta Georgia, to respond to a local news story broadcast to the Public. Petitioner gave the Producer why Atlanta, or any other City was save from terrorism. Ten minutes into the discussion, another employee of the Station began Secretly recording the Conversation. Subsequently, a Copy of the recording was given to the F.B.I.

On 22 September 1998, Petitioner was indicted on charges of using a telephone to threaten Police in Minnesota by use of explosives and threating a federal officer. On 24 September 1998, Petitioner Pled not guilty to all counts in the indictment. On 27 October 1998, a Superseding indictment was returned. On 30 October 1998, Petitioner Pled not guilty to all Counts in the Superseding indictment.

On 1 April 1999, Petitioner filed a motion to dismiss Count one of the indictment for want of Jurisdiction. Petitioner also filed an amended motion to dismiss the indictment. On 8 April 1999, the District Court denied the motions to dismiss as untimely. On 19 April 1999, Petitioner was convicted. On 30 July 1999, Petitioner was sentenced to 180 months imprisonment. On 30 July 1999, Petitioner filed his timely notice of Appeal.

On 1 July 1999, the Government's Attorney changed his theory regarding Count One.

On 8 January 2002, the Eleventh Circuit Court of Appeals denied Petitioner's Direct Appeal, in an unpublished opinion. On 22 January 2002, Petitioner filed his timely 28USC2255, to challenge the fraud upon the Court by the Government's Attorney. Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 @ 244, 64 S.Ct. 997 @ 1000, 88 LEd 1250 (1944) The refusal of the District Court to review de novo, Petitioner's motion to dismiss Count one for want of jurisdiction, on First Amendment Grounds, Mansfield C & LMR Co. v. Swan, 111 U.S. 379, 4 S.Ct 510 @ 511, 28 LEd 462 (1884) Ashwander v. TVA, 297 U.S. 288 @ 347, 80 LEd 688, 56 S.Ct 466 (1936) Watts v. U.S., 394 U.S. 705 @ 707 (1969) Land Mark Comm Inc. v. Virginia, 435 U.S. 829, 98 S.Ct 1535, 56 LEd. 2d 1 (1978) And due to Someone altering the indictment in the Court of Appeals, in violation of 18USC1506. Harris v. U.S., 536 U.S. ___, 153 LEd. 2d 524, 122 S.Ct ___, (2002)

On 22 July 2003, the District Court Procedurally dismissed Petitioner's 28USC2255, without any adjudication on the merits. On 2 August 2003, Petitioner filed a timely Rule 59(e) motion in the District Court. On 18 March 2004, the District Court once again denied Petitioner's request for relief, without an adjudication on Petitioner's claims. On 26 March 2004 Petitioner filed his timely notice of Appeal. Petitioner now brings this motion / Petition for Extraordinary Writ, due to the Criminal Conduct within the District, and Court of Appeals.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully calls upon this Honorable Court to exercise its Sparingly used discretion. To resolve an issue of National importance, in order to Safeguard the channels of free Speech, expression and exchange of ideas. Guaranteed by the *First Amendment of the United States Constitution. And to reaffirm the illegality of Surreptitous recording of a Private telephone Conversation, in violation of Title III. And to clarify whether a [Local] telephone call that neither occurs "IN" or has any "AFFECT" upon Interstate Commerce, gives rise to federal Jurisdiction. LOPEZ Supra. And to resolve a Split among Several of the Circuit and lower Courts. of whether a Complete "intrastate" use "of" a interstate facility, is equivalent to that of a facility "In" interstate Commerce.

And finally, to decide whether the alteration of a Criminal indictment, after it has been returned by a federal Grand Jury. In violation of 18USC1506. As well as the Suppression of exculpatory / impeachment evidence, that leads to the use of a "Presumption" by the Government's Attorney after Trial. Violates Petitioner's Substantial Due Process Rights.

Thus, Petitioner respectfully request that this Honorable Court exercise its Sparingly used discretion, to resolve these issues of National importance.

"cover-up"

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN - 8 2002
THOMAS K. KAHN
CLERK

No. 99-12706
Non-Argument Calendar

D.C. Docket No. 98-00374-CR-1-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRE J. TWITTY,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia

(January 8, 2002)

Before BLACK, HULL and MARCUS, Circuit Judges:

PER CURIAM:

Defendant Andre J. Twitty appeals his conviction and the imposition of sentence on counts of making a bomb threat by using an instrument of interstate commerce, 18 U.S.C. § 844(e), and making a threat to kill federal law enforcement

this element Not charged see indictment 18USC1506 Violation

This is not the complete charge!!

APPENDIX "A"

Exhibit (3)

FILED IN CHAMBERS
8/2/99
Luther D. Thomas, Clerk
By: D. Wilford
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

-vs-

Case No. 1:98-cr-374-01-JOF

ANDRE TWITTY

Defendant's Attorney:
Pro Se

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant was found guilty by jury on Count(s) one and two of the Indictment.

Accordingly, the defendant is adjudged guilty of such count(s) which involves the following offense:

Title & Section	Nature of Offense	Count No.
18:844(e)	Wilfully communicating a threat	one
18:115(a)(1)(A) , (a)(1)(B) & (b)(4)	Threatening a member of the immediate family of a law enforcement officer and threatening law enforcement officers	two

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay the special assessment of **$ 200.00** which shall be due immediately.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No. 347-62-7779
Defendant's Date of Birth: March 5, 1962
Defendant's Mailing Address:
1730 Wood Bend Road
Stone Mountain, Georgia 30083

Date of Imposition of Sentence:
July 30, 1999

Signed this the 2nd day of August, 1999.

J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

APPENDIX "A"

104

FILED IN CHAMBERS
7-23-03
Luther D. Thomas, Clerk
By: YCCampbell
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
	:	NO. 1:98-CR-0374-JOF
v.	:	
	:	CIVIL ACTION NO.
	:	1:02-CV-0246-JOF
ANDRE TWITTY,	:	
	:	
Defendant/Petitioner.	:	

ORDER

This matter is before the court on Petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [148], Petitioner's motion for release pending appeal [150], and Petitioner's motion for writ of mandamus [154]. Following a jury trial, Petitioner, Andre Twitty, was found guilty of willfully communicating a threat in violation of 18 U.S.C. § 844(e), and threatening federal law enforcement officers and their immediate family members in violation of 18 U.S.C. § 115(a)(1)(A). Petitioner was sentenced to 180 months' imprisonment. Petitioner appealed, and the United States Court of Appeals for the Eleventh Circuit affirmed both his conviction and sentence. Petitioner filed the instant petition for writ of habeas corpus on January 22, 2002. On February 7, 2002, Petitioner filed a motion for