

No. 19A

IN THE SUPREME COURT OF THE UNITED STATES

JON ERIC SHAFFER,
Applicant,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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August 23, 2019

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Third Circuit:

Pursuant to this Court's Rules 13.5, 22, and 30.3, Applicant Jon Eric Shaffer requests a 30-day extension of time to file a petition for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania in this case, to October 16, 2019.

As discussed herein, this case involves an exceptionally important question of federal constitutional law concerning the validity and scope of the "private search" exception to the Fourth Amendment. Applicant requests this extension because he only recently retained Counsel of Record Amir H. Ali to represent him *pro bono* before this Court. Mr. Ali has several substantial briefing deadlines, oral arguments, and a vacation during the relevant period and requires additional time to research the factual record and to conduct the level of analysis that aids this Court in determining whether to grant certiorari.

In support of this request, Applicant states as follows:

1. The Pennsylvania Supreme Court issued its opinion on June 18, 2019. *See Commonwealth v. Shaffer*, 209 A.3d 957 (Pa. 2019) (attached hereto at Attachment A). The time for filing a petition would thus expire on September 16, 2019 absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over the case under 28 U.S.C. § 1257(a).

2. This case concerns an exceptionally important constitutional issue. Applicant was charged and convicted of possession of child pornography after a government-directed search of his laptop. In a fractured (4-1-2) decision, the Pennsylvania Supreme Court majority upheld the search under the “private-search” doctrine. Relying on this Court’s decision in *United States v. Jacobsen*, 466 U.S. 109 (1984), the majority held that the government-directed search of Applicant’s laptop was not a “search” under the Fourth Amendment because a repair technician had previously searched Applicant’s laptop and that initial “viewing of the images extinguished Appellant’s reasonable expectation of privacy in the images of child pornography.” *Shaffer*, 209 A.3d at 973. The court thus concluded that the officer’s subsequent search “infringed upon no legitimate expectation of privacy and, hence, were not a ‘search’ within the meaning of the Fourth Amendment.” *Id.* at 974. Although Mr. Shaffer explicitly argued that the officer’s intrusion was a “search” under the property-based approach to the Fourth Amendment, *see United States v. Jones*, 565 U.S. 400 (2012), the court held *Jones* was “inapplicable” because it

involved only a government search, not a search that had also been “conducted by a private individual.” *Shaffer*, 209 A.3d at 976 n.14. According to the Court, the property-based approach thus did not alter its conclusion that the government-directed search was “not subject to the restrictions of the Fourth Amendment” under *Jacobsen*. *Id.* at 976.

3. Justice Wecht wrote separately to “note [his] disagreement with the Majority’s application of the private search doctrine.” *Shaffer*, 209 A.3d at 983. After reviewing this Court’s decision in *Jacobsen*, he expressed concern that the private-search doctrine “poses readily identifiable risks to an individual’s right of privacy, and entails a considerable potential for abuse” by “essentially plac[ing] the state actor behind private eyes, allowing a law enforcement officer to go wherever a private person before him has gone.” *Id.* at 984. He explained the Supreme Court’s decision in *Jacobsen* was premised on “a virtual certainty that nothing else of significance was in the package,” but “[t]he same cannot be said for a personal computer,” which “contains a wealth of information, both private and public” and “offers virtually limitless areas for exploration.” *Id.* at 984-85. In Justice Wecht’s words: “if the [package in *Jacobsen*] could be said to have an opposite, that opposite would be a personal computer.” *Id.*

4. Applicant intends to file a petition for certiorari asking this Court to resolve important constitutional questions concerning (1) the application of the private-search doctrine to the traditional property-based approach to the Fourth

Amendment, recognized in *United States v. Jones*, 565 U.S. 400 (2012); and (2) the application of the private-search doctrine to digital devices.

5. Applicant requests additional time to file the petition because he only just retained Amir H. Ali to represent him *pro bono* before this Court. Mr. Ali was not involved in the trial or the appellate proceedings that took place in Pennsylvania state courts. He requires additional time to gather the relevant record materials for the state court proceedings and to undertake the research and analysis that aids this Court in determining whether to add a case to its merits docket.

6. During the period of the sought extension, Mr. Ali has previously scheduled family vacations, from August 26 through September 3, 2019, and from October 6 through October 13, 2019;

7. In addition, Mr. Ali has the following substantial briefing deadlines and oral arguments. These include:

- A merits-stage amicus in this Court in *McKinney v. Arizona*, No. 18-1109, due August 28, 2019;
- Oral argument in the U.S. Court of Appeals for the Third Circuit in *Jones v. Capozza*, No. 18-03671, scheduled for September 13, 2019;
- A reply brief in the U.S. Court of Appeals for the Third Circuit in *Dooley v. Wetzel*, 19-1684, due September 19, 2019.
- Oral argument in the U.S. Court of Appeals for the Tenth Circuit in *Smart v. City of Wichita*, No. 18-3242, scheduled for September 23, 2019; and
- A petition for in this Court in *Morgan v. Washington*, No. 19A119, due October 13, 2019.

8. Applicant has not previously sought an extension of time from this Court.

9. For these reasons, Applicant respectfully requests that the time to file a petition for a writ of certiorari be extended to and including October 16, 2019.

Respectfully submitted,



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