

No. 19-7605

OCTOBER TERM, 2019

IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT KANE,

Petitioner

v.

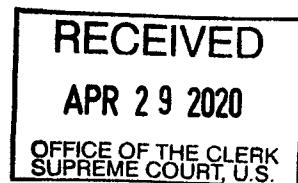
COMMONWEALTH OF PENNSYLVANIA,

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

**PETITION FOR REHEARING OF JUDGMENT OF DENIAL OF WRIT OF
CERTIORARI ON APRIL 6, 2020**

Vincent Kane
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Pro-Se
April 22, 2020



Petitioner respectfully requests a Rehearing of this court's Denial Judgment of Petitioner's Writ of Petition for Certiorari on April 6, 2020 for the following reasons.

The 4th Amendment provides the protection against 'unreasonable' searches and seizures of "effects". In this case the warrantless search of the Petitioner cell phone was unreasonable, and Petitioner did not abandon his ownership rights of his cell phone simply by leaving it in a public place, therefor allowing the state to conduct an unlimited, unrestricted warrantless search of his cell phone. Leaving personal property, such as a cell phone or a car in a public place does not constitute abandonment. The Commonwealth of Pennsylvania theory of abandonment would mean that anyone that leaves their car parked in a public place i.e. a shopping center, stadium parking lot, outside a grocery store whether locked or unlocked should be considered abandoned and therefore, can be seized, thoroughly searched or taken possession of. Detective statement at the Suppression Hearing determining abandonment:

Q: "*So, it is your understanding that if my phone is in a public place I have abandoned any interest in its privacy?"*

A: "*If you are not near it, if it has been left there."*

In this instant case, Petitioner readily admitted to his admission of guilt and when initially confronted by the police immediately and readily admitted to ownership of the cell phone (therefore, re-establishing ownership not abandonment), never denying or refusing to accept responsibility of his actions. What this honorable court needs to understand is that the Commonwealth of Pennsylvania was not pleased with a Misdemeanor charges of Invasion of Privacy, they wanted a Felony charge of Child Pornography, since they have a approx. 1-million-dollar a year Federally funded unit Internet Crimes against Children's taskforce. This instant case had nothing to do with Child Pornography and as a matter of fact the charges were mostly in the past having nothing to do with the leaving of the cell phone behind in a public place.

The Detective in this case recovered and examined every deleted picture off Petitioner's cell phone and all personally, owned electronic equipment all in the hopes to find a single picture of what he could charge this Petitioner with Child Pornography. Testimony from Detective at

Suppression Hearing:

Q: *“Can you go through that for the Court briefly? What does a forensic examination of this type of a device what does that entail?”*

A: *“This type of device I used Cellebrite software which is a cell phone examination tool that we use. I was able to I believe get a physical examination of the phone which gets a lot of deleted stuff, so we were able to recover a lot of videos off of it”*

Therefor opening up pandoras box of a plethora of pictures dating back to when this Petitioner was in grade school. It didn't and wouldn't take much of an effort since the main charge in this case was the Attempt to Create Child Pornography when the Detective came upon deleted pictures of Petitioner innocent outing with fellow teenagers at a Burger King several years in the past. The pictures uncovered by the detective looked like they were aimed at a fellow teenager's companions' shorts, there he found what he was looking for, the Criminal Attempt to Create Child Pornography.

A simple innocent outing has turned into Felony charges of the Criminal Attempt to Create Child Pornography. Speaking with a Computer Forensic expert who advised that more then 75% of all teenagers are carrying around on their cell phones what could be considered Child Pornography. Store posters at the local mall of teenagers modelling swim wear could be considered Child Pornography. Sad, as it is to say but every picture that the Commonwealth of Pennsylvania looks at could be considered Child Pornography, whether the person in the photograph is a minor or not. As this honorable court stated in Riley/Wurie:

“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life,” Boyd, *supra*, at 630. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple— get a warrant.

“Get a warrant” – should have applied in this case as well. The detective in this case was not satisfied with a crime of Invasion of Privacy a Misdemeanor charge, therefor he went on an unrestricted, unfettered fishing expedition into the past of the Petitioner's whole life.

In Conclusion, This Petitioner who has now served over 2 years in an overcrowded prison system, who could have received less time if he had only “PLED GUILTY” refused their intimidation tactics and stood for Justice as he knew that his Constitutional Rights were and are protected by the 4th Amendment which were violated. Citizens of the United Stated should not have to be up-all-night worrying or be concerned that their teenage child has left their cell phone behind in a ‘public place’ allowing the police to enter every aspect of their personal life. Cell phones are an effect and should receive greater constitutional protection and be afforded the protection by OUR 4th Amendment Protection because of the privacy and security interests inherent in ownership and possession, and simply cannot be intruded by leaving it in a public place.

This Court declared it “beyond dispute that a vehicle is an ‘effect’”. Cell phones contain and possess far more personal information then a car or a house, containing an individual’s whole life history. This case has major implications to all citizens of this great country and Riley/Wurie should not be overturned by this denial decision.

Therefore, this Petitioner respectfully requests this Honorable Court to Grant Rehearing on Petitioner’s Writ of Certiorari.

Respectfully submitted:

April 22, 2020



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