

IN THE UNITED STATES SUPREME COURT

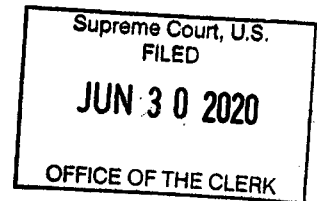
20-6495

ORIGINAL

MS. MICHAEL ALFORD, Pro se

V.

UNITES STATES



CASE NO. 5.16cr28-RH

CIVIL NO. 5.19cv488-RH

APPEAL NO.

19-12371

PETITION

WRIT OF CERTIORARI

APPEAL FROM THE COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

INITIAL BRIEF

Ms. Michael Alford, Pro se

~~_____~~
~~_____~~

COVER

Ms. Michael Alford
fcl Marianna
PO Box 7007
Marianna, FL 32447

Questions

1. Whether The Court erred in Refusing To Return My Personal Property.
2. Whether a Person has a Constitutional Right To Obtain Their Own Personal and Private Property That Pertains Only To Their Personal financial and Medical States and Their Well-being.
3. Whether The Government has a Right To Retain my Personal Property in a Criminal Case Where That Property has No Connection To The Offense, Was Not Purchased at The Time of The alleged Offense, and Contains No Content That links To The Offense.
4. Whether a Person has a Constitutional Private Interest To Obtain Their Own Personal Property in light of Riley V. California, 573 US 373 (2014).

CERTIFICATE OF INTEREST PERSONS:

Michael Alford (Appellant)
Melvin Alford (Father)
Ethel Alford (Mother)
Angie Moore (Sister)

Michelle Daffin (Attorney)
Jonathan Dingue (Attorney)
Barbara Sanders (Attorney)

Larry Bodiford (Judge)
Robert Hinkle (Judge)

Jeffrey Tharp (US Attorney)

ORAL ARGUMENT:

Appellant request oral argument.

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THE COURT OPINIONS:

The United States district court opinion. Exhibit 3- Pages 1-6.

The Eleventh circuit court opinion. Exhibit 4- Pages 1-4.

Reference To The Opinions:	C-2
Jurisdiction:	C-2

REFERENCE TO THE OPINIONS:

1. The district court opinioned that - persons have a constitutional individual interest in their property. id. (P.2, at 3); (Ex. 3- Doc 158, P.3).
2. The district court opinioned that - the cell phone & address book was used to connect me to the offense. id. (P.2, at 5 & 9-14); (Ex. 3- Doc. 158, P.4-5).
3. The Eleventh circuit court opinioned that - the Government will need my cell phone & address book at a new trial to connect me to the michellecuty013 account. id. (P.2, at 6 & 14-15); (Ex. 4, P.4).
4. The district court opinioned that - pass-words and account info can all be recovered, and loosing tools is merely a common hardship. id. (P.2, at 8 & 22-24); (Ex. 3- Doc. 158, P.4-5).

JURISDICTION:

1. A petition for rehearing was timely filed and acknowledged on May 13, 2020. See Exhibit 1.
2. The Eleventh circuit opinion on rehearing was issued on June 26, 2020. See Exhibit 2- (a),(b).
3. From the above, I had [90] days to file a Writ of Certiorari to the US Supreme court. Warmus V. US, 253 F.App 2 (11th Cir. 2007), Close V. US, 336 F.3d 1283 (11th Cir. 2003).

Thus, this court has jurisdiction over the appeal from the Eleventh circuit court. The [90] day toll ran from June 26, 2020, to September 26, 2020.

STATEMENT OF ISSUE - QUESTIONS:

1. Whether the court erred in refusing to return personal property.
2. Whether a person has a constitutional right to obtain their own "personal and private property" that pertains only to their personal financial and medical states and their well-being.
3. Whether the Government has a right to retain "personal property" in a criminal case where that property has no connection to the offense, was not purchased at the time of the alleged offense, and contains no content that links to the offense.
4. Whether a person has a constitutional "private interest" to obtain their own personal property in light of *Riley V. California*, 573 US 373 (2014).

STATEMENT OF THE CASE:

On July 19, 2017, a motion for return of property was filed to the district court on the behalf of my parents and I. id. (Doc. 77).

On September 1, 2017, the district court's denial of my motion was appealed to the Eleventh Circuit court. id. (Doc. 91).

On November 2, 2017, a forfeiture hearing was held on the property, but my elderly parents were unable to appear in court due to their critical condition. id. (Doc. 97); (Doc. 119).

On April 7, 2019, a motion for an order to return property was filed to the district court. id. (Doc. 153). The Government returned property, in part, and denied the HP laptop computer, the mobile phone, and address book. id. (Doc. 154); (Doc. 155); (Doc. 157-1, P.1-2).

On May 30, 2019, the court deemed my response motion, id. (Doc. 156) - as a motion to reconsider, and denied the return of my mobile phone, address book, and failed to address my Father's HP laptop.

On June 19, 2019, it was appealed to the Eleventh circuit court. id. (Doc.159).

On April 30, 2020, a petition for rehearing en banc was filed to the Eleventh circuit court, and was re-denied.

On May 24, 2020, a notice of appeal to the Supreme court was filed to the Eleventh circuit court, but was returned on June 4, 2020, for being "abolished".

On June 22, 2020, an extension in time was filed to the Eleventh circuit court.

SUMMARY OF ARGUMENT:

The court erred when it refused to return my mobile phone, address book, and my Father's HP laptop computer.

ARGUMENT:

1. The law makes clear that - "criminal forfeiture is an aspect of punishment imposed following a conviction of an offense". US V. Knowles, 390 F.Supp 915 (11th Cir. 2010); US V. Elersma, 971 F.2d 630 (11th Cir. 1992). id. (Apl br. P.1).
2. The law also mandates that - "a person has a significant privacy interest in their property". US V. Fulton, 914 F.3d 390 (5th Cir. 2019)(quoting Riley V. California, 573 US 373 (2014))- modern cell phones hold the privacies of life).
3. The district court concedes that - "A person has a constitutional individual interest in their property, and that any denial to the property may cause such irreparable harm". id. Doc. 158, P.3). Richey V. Smith, 515 F.2d 1239, 1243-44 (5th Cir. 1975); Elrod V. Bums, 427 US 347, 373, 96 S.Ct 2673, 49 L.Ed.2d 547 (1976)(the loss of First Amendment freedoms, for even a short period of time, unquestionably constitutes irreparable injury).
4. The Government concedes that because my 2255 motion will more than likely result in a new trial, "the cell phone and address book would be needed to submit at a new trail" id. (Gov. Apl br. P.12); (Apl. denial 11th. P.3).
5. The district court contends that the cell phone and address book "was used to connect me to the offense". id. (Doc. 158, P.4-5). The court concedes that - "its very likely that the denial of my phone and address book could cause hardship, especially after a delay as long as it has occurred here". id. (Doc. 158, P.5).
6. The Eleventh circuit court contends that - "the Government will need my cell phone and address book at a new trial to connect me to the michellecuty013 e-mail account". id. (Apl. denial 11th, P.4). The circuit court also contends that - "when a person files a motion to return property after the close of criminal proceedings, the person is presumed to have a right to its return, and the Gov. must prove a legitimate reason to retain the property". id. (Apl. 11th, P.3).
7. Neither court, however, resolved the claim to my "privacy interest" to my own property in light of Riley, 573 US 373 (2014), and my medical records to my GID treatment. Clisby V. Jones, 960 F.2d 925 (11th Cir. 1992).
8. The district court contends that - "pass words, pin numbers, and security questions, to my online accounts that hold all my medical and business records, can all be recovered", even when I don't have access to the information or even remember any of the pin numbers, etc.. id. (Doc. 158, P.4-5). It also contends that - "loosing thousands in tools is merely a common hardship". id. (P.5).

FACTS OF THE CASE:

9. The mobile phone was purchased in 2011 and did not exist in 2009 at the [time] an individual sent out random spam mails, inadvertently, that included the e-mail michellecuty013 account. id. (Gov. Ex. 46-A-E; Ex. 15). The address book was created around 2011 as well. id. (Gov. Ex. 27- [BCBS]). So it too was not present at the [time] of the alleged offense that occurred in 2009.
10. The michellecuty013 Google account was logged on through several devices, through out the [8] years of existence, including my mobile phone. I never stated that I never used the michellecuty013 account. My statement was that - "I did not create the account for myself, personally".
11. My Father - (Melvin Alford), who went to Heaven on December 26, 2017, was the sole owner of the HP laptop and desktop computer. Both computers were also used to log into the michellecuty013 account. So my "mobile phone" was not the only device to have ever connected to the michellecuty013 account.
12. The address book was used only to store my online business and medical user names, pass-words, and accounts. id. (Gov. Ex. 27, 28). There were no e-mails or other contact information relevant to any of the spam e-mails.
13. The law makes clear that section 2252A makes it a crime to "knowingly" receive a picture containing a performer under age [18], and engaged in sexual conduct. US V. X-Citement Video, 513 US 64, 68-69, 130 L.Ed.2d 372. 115 S.Ct 464 (1994), US V. Pruitt, 638 F.3d 763 (11th Cir. 2011)(2252A does not criminalize inadvertently receipt or possession).
14. The [act] of receiving an e-mail of file does not prove "knowledge" of the actual content inside. US V. Price, 582 F.Appx 846 (11th Cir. 2014)(the word "knowingly" applies to both, the relevant [action], and [knowledge] of the content in question). Meaning that the Government was required to prove that I was expecting the receipt of an e-mail- (zip file) I knew to contain child porn [before] it was received, given that - "I did not have to ever open or view the images" - after receipt, to prove that I "knowingly" received them. id. (Gov. Apl. br. P.42). US V. Lee, 603 F.3d 904 (11th Cir. 2014)(2252A requires that Lee believed he was going to receive child porn), US V. Fabiano, 169 F.3d 1299 (10th Cir. 1999)(if Fabiano did not request the child porn in the e-mail attachments, the jury could then infer that he did not "knowingly" receive them), US V. Szymanski, 631 F.3d 794, 801-02 (6th Cir. 2011)(no proof that Szymanski sought out or requested the e-mail attachments at a point prior to their receipt, and thus, the receipt was not "knowingly"), US V. Samad, 754 F.3d 1091 (4th Cir. 1984)(Gov.

was required to prove that Samad was expecting the receipt of a package he already knew to contain illegal drugs), US V. Polizzi, 549 F.Supp 2d. 308, 342 (2nd D. 2007)(for crimes of "receiving" - proving knowledge, "you know [before] you accept a package" that your committing a crime).

15. Based on all the evidence, and the simply fact that I have never in my life spoken a single word to the individual who sent the spam mail, I did not, nor could I, believe that the zip file actually contained child porn at the [time] it was received in 2009. So my "hands were clean".
16. The Government contends that, by simply proving I owned the michellecuty013 account, proves that I "knowingly" received the zip file, even when I never spoken a single word to the sender.
17. According to law, simply owning or accessing an e-mail account that contains child porn attached to those e-mails does not constitute "knowingly" possession or receipt. US V. Little, 864 F.3d 1283, 1289 (11th Cir. 2017)(Note 2 - evidence that Lee accessed his e-mail containing child porn attached does not prove that he "knowingly" possessed [or received] those images).
18. Thus, the Government presented insufficient evidence at trial and failed to prove that I "knowingly" received an image that showed a person under age [18], and was involved in sexual conduct.

THE ISSUE IN ARGUMENT:

19. Relevant here, is both my mobile phone and address book. Specifically, there is no connection between my phone and the offense. All the actual content on the phone have already been downloaded and printed on paper as Gov. exhibits. Nothing in the exhibits proves "knowledge" to the zip file. The spam mail was sent to the Google account, not to my phone. id. Little, at Note-2.
20. Likewise, my address book has no connection to the offense. It only held the log-in names and pass-words to the michellecuty013 account and nothing more. Merely holding up an address book at trial that simply list the michellecuty013 account does not furtherance the Government's burden in proving knowingly receipt.
21. I have a constitutional right to obtain both my phone and address book that contains my personal and most private data, medical records to my GID treatment, business and financial records, and other important data. I also have a privacy interest to my phone data, private and intimate chats, conversations, and contact

information to my friends, family, and business customers. id. Riley, 573 US 373.

22. Further, the mobile phone and address book containing my online accounts hold the medical records to my years of GID treatment that I'm now challenging in civil court. Without the necessary medical records that reveals the past [20] years of my HRT and SRS transitioning, I have no supporting evidence to prove my argument in receiving SRS. My challenge is against the BOP for denying my constitutional right to receive SRS. Fields V. Smith, 653 F.3d 550 (7th Cir. 2011)(failure to provide SRS is unconstitutional in violation of the Eighth Amendment), De'Lonta V. Johnson, 708 F.3d 520 (4th Cir. 2012)(Same), Stevens V. Beard, 2018 Dist Lexis 74519 (4th D. 2018)(Same). Kosilek V. Spencer, 774 F.3d 63 (1st Cir. 2014)(SRS is a medically necessary treatment to persons with GID), Campbell V. Kollas, Dist Lexis 76144 (7th Cir. 2018)(Same), Norsworth V. Beard, 87 F.Supp 3d. 1164 (9th Cir. 2015)(order granting 1983 civil rights claim to receive SRS), Rush V. Param, 625 F.2d 1150 (5th Cir. 1980)(SRS is medically necessary for treating GID), Rosati V. Igbino, 791 F.3d 1037 (9th Cir. 2015)(Same).

23. I have a right to obtain my phone and address book that retains my personal and private data, pass-words, and other information, to have access to my online accounts that hold the supporting evidence necessary in proving my constitutional right to receive SRS has been denied in violation of my Eighth Amendment. My previous evidence is relevant to show that I have received GID treatment; GID counseling, psychological care, and other feminine transitioning, before being detained. Philips V. Michigan Dept. Corr., 731 F.Supp 792 (WD Mich 1990).

24. Thus, failure to return my mobile phone and address book will cause irreparable injury. Eldrod V. Burns, 427 US 347, 373, 96 S.Ct 2673, 49 L.Ed.2d 547 (1976)(the loss of First Amendment freedoms, for even a short period of time, constitutes irreparable injury), Norsworth, 87 F.Supp 3d. at 1193.

CONCLUSION:

Based on the foregoing, including my individual and privacy interest, and the relevance of my GID medical records to litigate my constitutional violations, I ask that the court's erroneous err be reversed and a mandate be issued that the Government return the property - my phone and address book without further delay.