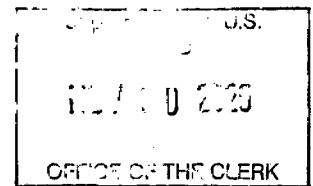


20-6701

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA



Benjamin Pedraza III
— PETITIONER
(Your Name)

vs. Appeals, Medina County, OH
Ninth District Court of
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth District Court of Appeals, Medina County, OH
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benjamin Pedraza III

(Your Name)

2500 S. Avon-Belden Rd.

(Address)

Grafton, OH 44044

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether or not a third party, Appellant, has an expectation of privacy, in terms of cell-phone data that a police officer or detective obtains, however, without a warrant and intends to use said evidence specifically against Appellant in the process of evidence collecting and ultimately seeking conviction? Furthermore, is aforesaid action a violation of the Appellant's Fourth, Fifth, Eighth, and Fourteenth Constitutional Amendments, which Appellant should expect protection from actions that infringe upon them?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

United States Constitutional Amendments: Fourth, Fifth, Eighth, and Fourteenth.

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[x] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

Medina County Court of Appeals

The opinion of the _____ court appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was April 27, 2020. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: September 1, 2020, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Amendments: Fourth, Fifth, Eighth, and Fourteenth.

Ohio Constitution Section 14.

STATEMENT OF THE CASE

Now comes Appellant Benjamin Padraza III, who states that on September 19, 2018, he was arrested on a felony indictment for Sexual Exploitation of a Minor and on May 22, 2018, Appellant was charged with two counts of Pandering Sexually-Oriented Material Involving a Minor of the same conduct under Ohio Revised Code 2907.322 (A)(1)(C).

Appellant met the alleged victim ("T.B.") when they both were employed at a restaurant (The Winking Lizard) and they entered into a relationship with each other, between two individuals of the legal age to give consent. "T.B.'s" e-mail account which the mother reviewed the private e-mails between the appellant and the alledged victim and learned that "T.B." had sent sexually explicit video's of herself and to the Appellant. Discovering the sexually explicit e-mails "T.B.'s" mother contacted the police and provided to "T.B." by her father, who actually pays for the phone and bills connected to it. Therefore, according to established law, ownership of said cell-phone "T.B.'s" father, not the mother. The mother confiscated "T.B.'s" cell-phone and turned it over to police for search. Detective Brian Schmitt did a forensic analysis on the 32 Gigabyte SD Card located in the cell-phone, where the alleged victim had privately created self-recordings and video's of the couple engaging in sexual conduct. In any scenerio, both Appellant and "T.B." had a legitimate and reasonable expectation of privacy. Moreover, Appellant, a third-party, had an independent expectation of privacy. As a result of the Medina Police Department violation of Appellant's United States Constitutionally protected rights, i.e., Fourth, Fifth, Eighth, and Fourteenth, which led to a conviction of Pandering Sexually-Oriented Material.

REASONS FOR GRANTING THE PETITION

The fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. Amend. 14. The Supreme Court has "long recognized that the Amendment's Due process Clause like its Fifth Amendment counterpart, "guarantees more than fair process." The Clause also includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests.

The right of people to be secure in their person's, houses, papers, and effects against unreasonable search and seizures shall not be violated. The Supreme court held that the states were required to suppress evidence obtained in violation of the 4th Amendment. Expressly contained within the first sentence of the 4th Amendment, prohibition against unreasonable search and seizures are familiar terms to law enforcement officers. It imposes for a violation of its protections; it created the remedy of suppression of evidence obtained in violation of the 4th Amendment and that evidence is excluded from use at trial. We need not hold that all evidence is "Fruit from the **Poisonous Tree**" simply because it would not have come to light, hold the illegal actions of the police.

The Trial Court states that the Appellant lack standing to challenge any search of the cell phone of the victim in this case when the Appellant has an actual expectation of privacy that society will prepare to recognize as reasonable; the cell phone and never brought to light until the police and victim's mother who did not have actual authority to search the phone and the mother did not have a common authority to consent to the cell phone owned by the victim's father. The search could not be upheld on the ground that the police reasonably relied on the apparent authority or common authority of the victim's mother because the police knew she was not the cell phone owner and a reasonable officer would have known of his duty to make further inquiry before relying on the mother's illegal consent.

Ohio court have ruled that "a parent who owns or controls the premises in which a child resides has the right to consent to a search thereof even though such search may produce incriminating evidence against the child." State v. Carder (1966), 9 Ohio St.2d 1, 10. See, also State v. Reynolds (1988), 80, Ohio St. 3d 670. Ohio courts have also recognized the limitations of the common authority doctrine, where no such right of access or control exists. See, e.g., State v. Chuey (Apr. 26, 2000) Medina App. No. 2 93 7-M.

The United States Supreme Court found in Riley v. California, 134 S.Ct. 2473, 573 U.S. 373, 189 L.Ed.2d 430, 82 U.S. L.W 4558, 24 Fla. L. Weekly Fed. S 921, (2014), that digital data does not present a risk to officer safety or the risk that the evidence may be destroyed. The United States Supreme Court further found does not further the governments interest and implicates substantially greater privacy interests to justify a search of the contents of a cell phone without a search warrant. The Ohio Supreme Court has also held that "the warrantless search of data within a cell phone seized incident to a lawful arrest is prohibited by the Fourth Amendment when the search is unnecessary for the safety of law-enforcement officers and there are no exigent circumstances. Because the State failed to show that either of these exceptions to the warrant requirement applied, the search of Smith's cell phone was improper, and the trial court was required to exclude from evidence the cell phone records and phone numbers taken from the cell phone. State v. Smith, 124 Ohio St.3d 163, 920 N.E.2d 949, 2009-Ohio-6426, (2009).

"Proper consent can be given by a third party, but the third-party must possess "common authority over the area sought to be searched." State v. Miller, 117 Ohio App.3d 750, 759 (11th Dist. 1997), citing United States v. Matlock, 415 U.S. 164, 172 (1974). (Other citation omitted). "Common authority rests 'on mutual use of the property by persons generally having joint access or control for most purposes,' so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched."

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant request that this court decide the case that presents issues of importance beyond the particular facts and parties involved.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian D. Johnson". The signature is fluid and cursive, with "Brian" on the left, "D." in the middle, and "Johnson" on the right.

Date: November 27, 2020