

No. 22-6580

In the Supreme Court of the United States

DANIEL J CAMPBELL,

Petitioner,

v.

STATE OF OHIO,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is a search reasonable under the Fourth Amendment when a probation officer who lacks required reasonable suspicion and is in violation of Ohio Revised Code 2951.02(A) subjects a probationer to a search of his cell phone and other digital devices, which are not subject to his specific search conditions?

2. Does the word “property” in a probationer’s terms and conditions of community control encompass a cell phone when the conditions include an “Electronics Search Condition” that the probationer was not subject to?

3. Two Fourth Amendment doctrinal frameworks govern the relationship between state actors and individuals to state supervision following release from prison. One arises from the Supreme Court’s decision in *Griffin v. Wisconsin* and the other from the Court’s decision in *United States v. Knights*. Can a state court determine the reasonableness of a search without first testing it by either of these two frameworks?

LIST OF PARTIES

The Petitioner is Daniel J. Campbell, an inmate at the Southeastern Correctional Institution, 5900 BIS Road, Lancaster, Ohio.

The Respondent is the State of Ohio.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. *State of Ohio v. Campbell*, No. 2019-CR-00270 (Ohio Ct. Comm. Pls. Fairfield Cnty.) (sentence entered on December 9, 2019)
2. *State of Ohio v. Campbell*, 157 N.E.3d 373, 2020-Ohio-411989, (conviction overturned and remanded to the trial court on August 18, 2020)
3. *State of Ohio v. Campbell*, No. 2020-1187, --N.E.3d -- (2022) (Ohio) (discretionary review accepted by the Ohio Supreme Court, reversing judgment of the Ohio Fifth District Court of Appeals and reinstating the conviction on October 13, 2022).

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES.....	ii
LIST OF DIRECTLY RELATED PROCEEDINGS	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
STATEMENT OF THE CASE	1
REASONS TO DENY THE WRIT.....	4
I. CAMPBELL'S QUESTIONS PRESENTED ARE NOT PROPERLY BEFORE THIS COURT	4
II. CAMPBELL HAS NOT IDENTIFIED A CONFLICT IN THE INTERPRE- TATION OF FOURTH AMENDMENT JURISPRUDENCE	5
III. THIS CASE INVOLVES ONLY THE OHIO SUPREME COURT'S INTER- PRETATION OF STATE STATUTORY LAW	9
CONCLUSION	11
CERTIFICATE OF SERVICE	12

TABLE OF AUTHORITIES

Cases	Page(s)
Federal Cases	
<i>Brigham City v. Stuart</i> , 547 U.S. 398 (2006)	6
<i>Cardinale v. Louisiana</i> , 394 U.S. 437 (1969)	6
<i>Estelle v. McGuire</i> , 502 U.S. 62 (1991)	10
<i>Riley v. California</i> , 573 U.S. 373 (2014)	5
<i>Samson v. California</i> , 547 U.S. 843 (2006)	6
<i>United States v. Fletcher</i> , 978 F.3d 1009 (2020)	7
<i>United States v. Knights</i> , 534 U.S. 112 (2001)	6
<i>Vernonio School Dist. 47J v. Acton</i> , 515 U.S. 646 (1995)	6
State Cases	
<i>Kettering v. Hollen</i> , 416 N.E.2d 598 (1980)	10
<i>State v. Campbell</i> , -- N.E.3d -- (2022)	5
<i>State v. Emerson</i> , 981 N.E.2d 787 (2012)	10
<i>State v. French</i> , 650 N.E.2d 887 (1995)	10
<i>State v. Jones</i> , 902 N.E.2d 464 (2009)	10
<i>State v. Medford</i> , 517 P.3d 210 (2022)	7
<i>State v. Myers</i> , 271 N.E.2d 245 (1971)	10
<i>State v. Roberts</i> , 513 N.E.2d 720 (1987)	7

Statutes and Rules

Ohio Revised Code 2951.02..... 2

Other Authorities

Fourth Amendment to the U.S. Constitution 6

Article II, Sections 10 and 11 of the Montana Constitution..... 8

STATEMENT OF THE CASE

In August 2013 Petitioner, Daniel J. Campbell, was convicted of robbery and sentenced to serve a three-year prison term. Due to state court appellate proceedings, Campbell did not begin serving his prison term until December 2015. In December 2017 Campbell applied for judicial release from state prison and was granted that release but placed under three years of community control. Community control supervision is Ohio's equivalent to what other states commonly refer to as probation.

Upon his release the trial court explained and Campbell signed supervision terms relevant to this petition stating: "I agree to permit the Court, Community Control Officers, or other appointed persons, to completely investigate and monitor my activities" and, "I consent to being questioned by any community control officer. I consent to searches of my person, my property, my vehicle, and my residence at any time without a warrant. I understand this includes common areas and areas that are exclusive to me."

In August 2018 Campbell's supervising officer went to his home to conduct an unannounced home visit. As stated by Campbell's probation officer, she was considering reducing the level of supervision Campbell when she conducted the home visit and had no independent suspicion of any violations. On the date of Campbell's search, numerous officers were involved and intended to do a series of unannounced home checks on probationers with Campbell being selected first.

Officers knocked on the door and Campbell greeted them. They informed him why they were there and had him sit in the kitchen of the home. Campbell notified

the officers which bedroom in the residence was his. While inside Campbell's bedroom officers located a cellular phone belonging to Campbell and after opening the cellular phone viewed images of child pornography. Subsequently search warrants were executed by the Fairfield County Sheriff's Office to collect and review the content of the cellular phone and other digital devices seized at Campbell's home.

Campbell was subsequently indicted for multiple counts of child pornography. Campbell filed a motion to suppress asserting the supervising officers search of his cellular phone did not comply with R.C. 2951.02, an Ohio statute regulating warrantless searches conducted by probation officers.

R.C. 2951.02 at the time of Campbell's search required in pertinent part that, "during the period of a felony offender's nonresidential sanction, authorized probation officers who are engaged within the scope of their supervisor duties or responsibilities may search, with or without a warrant, the person of the offender, the place of residence of the offender, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the offender has a right, title or interest *** if the probation officers have reasonable ground to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of *** the felony offender's nonresidential sanction."

Campbell asserted the statutory condition that a probation officer possess "reasonable grounds" to conduct a warrantless search represented the baseline level of suspicion necessary to conduct a warrantless "special needs" search of a probationer and applied to him the suspicionless consent to search condition that he signed upon his release from prison.

The State asserted the consent to search provision that Campbell signed as a condition of his probation operated separately from R.C. 2951.02 and that Campbell

had consented to warrantless, suspicionless searches. The State further asserted Campbell's supervising probation officer operated in good faith based upon a valid judicial order of supervision and thus the exclusionary rule should not apply.

The trial court overruled Campbell's motion to suppress finding that he had consented to an unrestricted general search of his property as a term or condition of community control and, alternatively, his supervising officer had acted in good faith pursuant to a judicial order in conducting the search such that the exclusionary rule would not apply. Campbell subsequently entered no contest pleas, was convicted, and ordered to serve a seven-year sentence.

Campbell appealed the trial court's ruling on his motion to suppress and the Ohio Fifth District Court of Appeals ruled that although no Fourth Amendment violation occurred related to the warrantless search of Campbell's phone, his motion to suppress should have been granted. The Fifth District ruled that R.C. 2951.02 required that the supervising officer possess "reasonable grounds" before conducting a warrantless search and applied to Campbell even though he had consented to warrantless, suspicionless searches of his property as a term or condition of his supervision.

The State appealed to the Ohio Supreme Court advancing three primary arguments. First, Campbell's consent as a term or condition of his probation for suspicionless searches of his property operated as consent under the Fourth Amendment. Second, the officer acted in good faith on what was believed to be a lawful judicial order; thus, application of the exclusionary rule would not have been

appropriate. Finally, even if R.C. 2951.02, the Ohio statute requiring “reasonable grounds” precluded Ohio courts from requiring consensual suspicionless searches, the Ohio General Assembly’s decision to not provide any remedy for a statutory violation and the lack of any constitutional violation prevented Ohio courts from applying a judicially crafted exclusionary rule to a statutory violation.

In rendering its decision, the Ohio Supreme Court found that requiring probationers such as Campbell to be subject to warrantless, suspicionless searches did not constitute a Fourth Amendment violation under a consent to search condition of probation.

The Ohio Supreme Court further held that the term property under the consent to search condition Campbell signed “clearly and unambiguously” covered Campbell’s cell phone and thus the search was reasonable under the Fourth Amendment. Despite finding no Fourth Amendment violation, the Ohio Supreme Court concluded that R.C. 2951.02 set a baseline level of “reasonable grounds” suspicion that Ohio trial courts could not override by requiring a suspicionless consent to search condition.

Although the Ohio Supreme Court concluded the search ran afoul of R.C. 2951.02, the lack of any statutory remedy language made it improper to impose the exclusionary rule without any constitutional violations or clear legislative directive. Against this background Campbell asks this Court to exercise discretionary jurisdiction.

REASONS FOR DENYING THE WRIT

I. Campbell's questions presented are not properly before This Court.

As an initial matter the State of Ohio would suggest that Campbell's questions presented, and his supporting argument make it difficult to determine how exactly he believes the Ohio Supreme Court's decision runs contrary to existing Fourth Amendment precedent. Campbell's argument seems to suggest that his writ of certiorari should be granted so this court can take up the issue of whether the decision of *Riley v. California*, 573 U.S. 373 (2014) should be interpreted as increasing a probationer's privacy rights under the Fourth Amendment. However, Campbell did not advance that claim in the trial court, the lower appellate court, or in the Ohio Supreme Court. Rather, Campbell's claims in relation to *Riley* in those courts dealt with whether *Riley* language surrounding the special characteristics of cellular phone data somehow converted cellular phones into a distinct category of property that would not be covered by a general consent to search condition under the term "property". *State v. Campbell*, --- N.E.3d --- (2022), 2022-Ohio-3626, 2022 WL 7171562, ¶¶13, 14. Given that none of the lower courts were presented with an argument by Campbell that *Riley* somehow increased the level of Fourth Amendment protections afforded to probationers and further the Ohio Supreme Court's decision did not decide that issue his questions presented are not properly before This Court for consideration now. It is well established that, "[the United States Supreme] Court will not decide federal constitutional issues raised here for the first time on review of

state court decisions.” *Cardinale v. Louisiana*, 394 U.S. 437, 89 S.Ct. 1161, 22 L.Ed.2d 398 (1969).

II. Campbell has not identified a conflict in the interpretation of Fourth Amendment jurisprudence.

“The right of the people to be secure in their person, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” *Fourth Amendment to the U.S. Constitution*. “The ultimate touchstone of the Fourth Amendment is reasonableness.” *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct.1943, 164 L.Ed.2d 650 (2006). “[W]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant.” *Vernonio School Dist. 47J v. Acton*, 515 U.S. 646, 653, 115 S. Ct. 2386, 132 L.Ed.2d 564 (1995). Despite this general preference for a warrant, numerous exceptions allow for searches lacking a judicially issued warrant. One such exception has sometimes been referred to as “special needs” searches that involve probationers or parolees. In *United States v. Knights*, an officer’s warrantless search of a probationer based upon reasonable suspicion and authorized by his conditions of supervision was held to be constitutionally reasonable. 534 U.S. 112, 122, 122 S. Ct. 587, 151 L.Ed.2d 497 (2001).

The *Knights* court left open the issue of whether a search that lacked individualized suspicion premised upon agreed upon term of supervision would be reasonable under the Fourth Amendment. *Id.* at 120 (footnote 6). In *Samson v. California*, 547 U.S. 843, 126 S.Ct.2193, 165 L.Ed.2d. 250 (2006), the question left open in *Knights* was answered when the Court held that the warrantless, suspicionless searches of a parolee was reasonable under the Fourth Amendment given the parolees diminished expectation of privacy and the state's compelling interest in the safety of the community and rehabilitation of the offender. Ohio law recognizes no material difference exists between probationers and parolees in the context of constitutional guarantees. *State v. Roberts*, 32 Ohio St.3d 225, 229, 513 N.E.2d 720, 723 (1987).

Campbell contends that significant conflict exists as to the interpretation of Fourth Amendment rights in the Ohio Supreme Court's ruling, a singular U.S. Sixth Circuit Court of Appeals ruling in *United States v. Fletcher*, 978 F.3d 1009 (2020), and the Supreme Court of Montana's decision in *State v. Medford*, 410 Montana 146 (2022), 517 P.3d 210, 2022 MT 185. Campbell primarily seems to fault the Ohio Supreme Court for failing to recognize a cell phone as a new protected category of personal property under the Fourth Amendment under the holding of *Riley v. California*.

Campbell fails to state specifically in his petition for certiorari specifically how or why *Riley* has changed existing Fourth Amendment precedent or why it should. At bottom, the primary distinction of the rulings of three separate courts dealt with interpretations of state constitutional law, factual specific determinations related to

the scope of consent given, and whether the terms and conditions of supervision clearly and unambiguously put the probationer on notice that a cell phone could be subject to warrantless search. The alleged conflict between the Ohio Supreme Court's holding, *Fletcher*, and *Medford* had more to do with either interpretations of state constitutional law or fact specific findings made in the individual cases than any real conflict of federal constitutional law.

In *Medford*, the Montana Supreme Court determined that the evidence presented during a suppression hearing only supported the conclusion that a parole officer exceeded the limited consent the parolee had given the supervising officer to review his cell phone. The *Medford* court further noted the parole officer's initial authorized view of the phone provided no additional individualized reasonable suspicion to access other areas of the parolee's cellular phone. In excluding the digital evidence seized from the parolees phone the *Medford* court specifically held that the warrantless search was neither given proper under the scope of consent given or a valid probation search thus violating *Article II, Sections 10 and 11 of the Montana Constitution*. *State v. Medford*, 410 Mont. 146, 160, 168,

In *United States v. Fletcher*, the Sixth District Court of Appeals overturned the district court's holding that a probation officer possessed "reasonable grounds" under R.C. 2951.02 (the same Ohio statute at issue in this petition) to conduct a warrantless search of a probationer's cell phone. The *Fletcher* court further determined that because his conditions of supervision only specified warrantless searches of his

person, motor vehicle and place of residence it would be unreasonable to conclude that warrantless searches of a cellular phone were authorized.

While both *Medford and Fletcher* include discussions regarding the unique characteristics of warrantless searches of cellular phones as described in *Riley v. California*, 134 U.S. 373 (2014), 134 S.Ct. 2473, 189 L.Ed.2d 430, neither court suggested that the *Riley* decision created some new heightened standard related to warrantless searches of a probationer or parolee's cellular phone. The *Riley* decision itself limited its hold to searches incident to the arrest of a recent arrestee, a category of individuals with greater expectations of privacy than probationers and parolees. *Riley* continued to recognize that "other case specific exceptions may justify a warrantless search of a particular phone." *Id.* at 402.

Such an exception exists in this case where Ohio Revised Code 2951.02 authorizes warrantless searches of a probationer and Campbell unambiguously consented to such searches of his property as condition of his probation. The Ohio Supreme Court found that, in contrast to the *Fletcher* decision, "Campbell explicitly consented to a search of his property, something that inarguably encompasses his cell phone." *Campbell* at 14. As Campbell did not have a legitimate expectation of privacy based upon the consent to search condition of his probation, the Ohio Supreme Court determined that no Fourth Amendment violation occurred. *Id.* at 12.

Careful review of the cases Campbell suggests are in conflict regarding the interpretation of Fourth Amendment protections as related to probationers reveal nothing more than cases decided upon independent state constitutional grounds or

factually specific findings related whether the probationer/parolee had a legitimate expectation of privacy as related to warrantless searches of their cellular phones.

III. This case involves only the Ohio Supreme Court's interpretation of state statutory law.

Campbell has not argued that the Ohio statute at play in this case is unconstitutional under the Fourth Amendment. The Ohio Supreme Court agreed that R.C. 2951.02 (A) did not authorize his probation officer to conduct the warrantless search of his cell phone. Campbell at 16. However, the Ohio Supreme Court also noted they saw no Fourth Amendment violation of the officers suspicionless search of Campbell's phone. Id. at 12. The Ohio Supreme Court ultimately concluded that because the Ohio General Assembly had not provided any statutory remedy language for a statutory violation, they were precluded from applying the exclusionary rule to the statutory violation. Id. at 22. Ohio has a long history of not applying the exclusionary rule to statutory violations that do not violate the Fourth Amendment. See *Kettering v. Hollen*, 64 Ohio St.2d 232, 234, 416 N.E.2d 598 (1980); *State v. Emerson*, 134 Ohio St.3d 191, 2012-Ohio-5047, 981 N.E.2d 787; *State v. Jones*, 121 Ohio St.3d 103, 2009-Ohio-316, 902 N.E.2d 464; *State v. Myers*, 26 Ohio St.2d 190, 196-197, 271 N.E.2d 245 (1971); and *State v. French*, 72 Ohio St.3d 446, 449, 650 N.E.2d 887 (1995).

Although Campbell prevailed on his argument of a statutory violation the Ohio Supreme Court ruled the statute provided no remedy and thus reinstated his conviction. While this was not the result Campbell had hoped for, it was determined exclusively upon an interpretation of Ohio state law which is not the province of the federal court system. *Estelle v. McGuire*, 502 U.S. 62, 66, 112 S. Ct. 475, 116 L.Ed.2d 385 (1991).

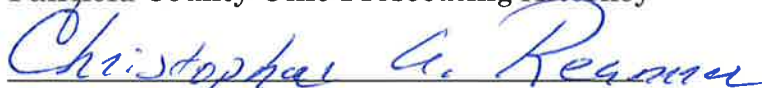
CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel, representing the State of Ohio in this matter, hereby certifies that true and complete paper copy of this brief in opposition was served by U.S. mail service, postage prepaid, upon Daniel J. Campbell, Inmate A768157, c/o, Warden, Southeastern Correctional Institution, 5900 BIS Road, Lancaster, Ohio on May 15, 2023.

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