

No. _____

ORIGINAL

23-6158

IN THE
SUPREME COURT OF THE UNITED STATES

FILED

NOV 27 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Derrick M. Hunt — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Derrick M. Hunt, Reg. No. 55995-048
(Your Name)

F.C.I. Marianna, P.O. Box 7007
(Address)

Marianna, Florida 32447-7007
(City, State, Zip Code)

(850)526-2313 - Main Prison No.
(Phone Number)

RECEIVED

DEC - 5 2023

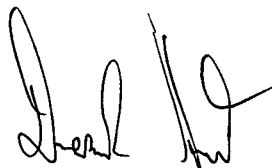
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Did the District Court abuse its discretion in denying Defendant's Motion to Suppress the Search of his computer when the Police searched pursuant to a Warrant that established Probable Cause that a Crime had been committed and that evidence of Child Pornography would be found in his apartment?

Nov. 21, 2023

Date



Derrick M. Hunt, Reg. No. 55995-048
Federal Correctional Institution
P.O. Box 7007
Marianna, Florida 32447-7007

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:

RELATED CASES

N/A

CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT

- A) Adams, Keith E.: Prior Counsel
- B) Baverman, Alan J.: Former Magistrate Judge
Northern District of Georgia
- C) Erskine, Kurt R.: Former U.S. Attorney
- D) Grimberg, Steven D.: U.S. District Judge
Northern District of Georgia
- E) Horn, John A.: Former U.S. Attorney
- F) Hunt, Derrick M., Reg. No. 55995-048
- G) Ivory, Victoria: Attorney for Defendant-Appellant
- H) Jones, Paul Rhinehard: A.U.S.A.
- I) McBath, Elizabeth J.: Magistrate Judge
Northern District of Georgia
- J) A.P.: Minor Victim
- K) Pak, Byung J.: Former U.S. Attorney
- L) Sharkey, Kimberly: Prior Counsel for Defendant D. Hunt
- M) Sommerfeld, Lawrence R.: A.U.S.A.
- N) Strongwater, Jay Lester: Prior Counsel for Defendant
- O) United States of America: Appellee
- P) Yates, Sally Q.: Former U.S. Attorney
- Q) No Publicly Traded Company or Corporation has an interest in
the Outcome of the Case or Appeal



Derrick M. Hunt, Reg. No. 55995-048
Petitioner
Federal Correctional Institution
P.O. Box 7007
Marianna, Florida 32447-7007

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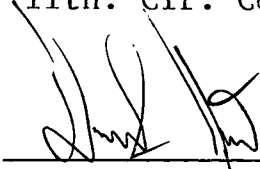
APPENDIX A -- Guilty Plea and Plea Agreement

APPENDIX B - Brief of Appellant, U.S. CT. of App. (11th. Cir.)

APPENDIX C - Brief of Appellee, U.S. Ct of App (11th Cir.)

APPENDIX D - Reply Brief of Appellant US Ct of App (11th Cir)

APPENDIX E - Opinion/Ruling of 11th. Cir. Court of Appeals



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Federal Correctional Institution
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Marianna, Florida 32447-7007

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 E 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 A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ 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.

The opinion of the _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 28, 2023.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- a. U.S. Constitutional Provision / Amendment IV
- b. U.S. Constitutional Provision / Amendment V
- c. U.S. Constitutional Provision / Amendment XIV
- d. 18 U.S.C. § 1030 (e)(1)
- e. 18 U.S.C. § 2251 (a)
- f. 18 U.S.C. § 2251 (e)
- g. 18 U.S.C. § 3231
- h. 18 U.S.C. § 3742
- i. 28 U.S.C. § 1291

TABLE OF AUTHORITIES CITED

CASES:

Chadwick v. United States,

433 U.S. 1 (1997)

Riley v. California,

573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014)

United States v. Delancy,

502 F.3d 1297 (11th. Cir. 2007)

United States v. Hill,

853 Fed. Appx. 351 (11th. Cir. 2021)

United States v. Runyan,

275 F.3d 449 (5th. Cir. 2001)

United v. Ross,

456 U.S. 798 (1982)

Wong Sun v. United States,

371 U.S. 471, 83 S.Ct. 407, 9 L. Ed. 2d 441 (1963)

STATUTES AND RULES:

18 U.S.C. § 2251(a)

28 U.S.C. § 1291

Fed. R. Crim. P. 4

STATEMENT OF THE CASE

(i) Course of Proceedings:

On December 9, 2013, Mr. hunt was named in a Magistrate Complaint alleging that Mr. Hunt did, employ, use, persuade, induce, entice, and coerce a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, said visual depiction having been produced using materials that have been mailed, shipped, or transported in or affecting interstate and foreign commerce in violation of 18 U.S.C. § 2251(a). [Doc. 1]. Mr. Hunt was arrested in Nevada on or about December 9, 2019. [Doc. 3]. On December 19, 2019, an indictment was issued alleging a single count of violating 18 U.S.C. § 2251(a). [Doc. 4].

On Novmeber 16, 2020, Mr. Hunt filed an Omnibus Motion to Suppress. [Doc. 40]. Hearings were held on May 20, 2021 and Septemeber 17, 2021. [Docs. 50, 58, 70, 71.]. Both Parties filed post-hearing briefs [Docs. 74, 76]. The Court orally denied Mr. Hunt's Motion to Suppress on October 6, 2021 and issued a ruling denying Mr. Hunt's Motion to Suppress on December 2, 2021. [Docs. 77, 88, 133 at 9-10].

On May 16, 2022, Mr. Hunt entered a Guilty Plea pursuant to a Plea Agreement with the Government that specifically preserved his right to appeal the denial of his Motion to Suppress. [Docs. 109, 109-1, 134].

On August 29, 2022, Mr. Hunt was sentenced to 210 Months in the Custody of the Bureau of Prisons and Supervised Release for Life. [Docs. 115, 116, 143].

Mr. Hunt filed his Notice of Appeal on August 31, 2022 [Doc. 117].

(ii) Statement of the Facts:

On July 6, 2012, the Police learned that a minor child who had run away indicated that she would be dropped off at a Krystal restaurant. [Doc. 58 at 8-9]. At approximately 2:30 a.m. a person driving a Camaro dropped off a young female matching the description given. [Doc. 58 at 9-10]. The Camaro was stopped; the driver, Mr. Hunt, was arrested for interference with Custody; and the Juvenile was transported to the Police Station. [Doc. 58 11-14].

The Juvenile was interviewed and indicated that she had been with Mr. Hunt for 3-5 weeks and that he had been giving her drugs, having sex with her, and recording the sexual activity. [Doc. 58 at 31-32].

A Search Warrant was obtained for Mr. Hunt's apartment and a search was conducted on July 7, 2012. [Doc. 58 at 34, 41; Doc. 71 at 65]. The Search Warrant was recieved over video teleconferencing and was not recorded or saved. [Doc. 71 at 67-68]. The Search Warrant permitting the Search of Mr. Hunt's apartment did not permit a search of the Data on any devices. [Doc. 71 at 65]. Despite not having a Warrant to search the Devices at Mr. Hunt's residence, someone executing the Warrant looked through Mr. Hunt's computer. [Doc. 71 at 73-76, 80]. A Search Warrant to search the contents of Mr. Hunt's devices was not obtained until July 25, 2012. [Doc. 71 at 67].

(iii) Standard of Review:

A District Court's denial of a Motion to Supress is a mixed question of Law and Fact. *United States v. Delancy*, 502 F.3d 1297, 1304 (11th. Cir. 2007). The District Court's factual findings are accepted as true unless clearly erroneous, and the District Court's interpretation and application of the Law are subject to De Novo review. *Id.*

SUMMARY OF THE ARGUMENT

Law enforcement entered Mr. Hunt's apartment with a Warrant that permitted the seizure of specific items. While in Mr. Hunt's apartment, Law Enforcement searched files on Mr. Hunt's computer. The Warrant did not authorize the search of the contents of Mr. Hunt's computer, which law enforcement knew as they obtained a warrant to search the contents approximately eighteen (18) days after the initial warrant was executed.

ARGUMENT AND CITATIONS OF AUTHORITY

1. The District Court erred in Denying Mr. Hunt's Motion to Suppress

The District Court erred in denying Mr. Hunt's Motion to Suppress because the content of Mr. Hunt's computer was searched without a warrant in violation of the 4th. Amendment to the United States Constitution.

It is undisputed that, while executing the July 7, 2012 warrant, Law Enforcement perused Mr. Hunt's computer. [Doc. 71 at 73, 75]. The District Court found that the following language in the Warrant permitted that search: "computers, laptops, electronic data storage devices, any and all child pornographic images or data located within, photographs, VHS tapes, Compact Disks containing videos.... ." [Doc. 88 (emphasis in original)]. Mr. Hunt asserts that the bolded and underlined language only applied to "data storage devices" and did not apply to Mr. Hunt's computer just as it would not have applied to laptops, VHS tapes, or Compact Disks containing videos. This position is buttressed by the fact that the officer obtained a second

warrant to conduct a forensic search on July 25, 2012 before conducting a full search of the seized computer. [Doc. 58 at 42; Doc. 71 at 67].

In reaching its decisions, the District Court relied on *United States v. Hill*, 853 Fed. Appx. 351 (11th Cir. 2021). Unlike the warrant in this case, that warrant in *Hill* permitted the search for "[e]lectronically stored communications or messages reflecting computer online chat sessions or e-mail messages with, or about, a minor that sexually explicit in nature" and "any computer or storage medium whose seizure is otherwise authorized by this warrant," which clearly authorized the search of any and all electronic devices just as this Court found: "[a] plain reading of the Search Warrant and Attachment B supports the District Court's determination that the Search Warrant encompassed a forensic search of Hill's computer." 853 Fed. Appx. at 354.

Unlike *Hill*, the warrant to search Mr. Hunt's apartment permitted the seizure of computers, but permitted the search of only electronic data storage devices.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV. Generally, any evidence obtained in violation of the Fourth Amendment is inadmissible in Court and must be suppressed as "fruit of the poisonous tree" for the purpose of deterring police misconduct. *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417, 9 L. Ed. 2d 441 (1963). Search Warrants must be based on "probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

In *Riley v. California*, the Supreme Court held that "a Warrant is generally required before" "the information on a cell phone" may be searched, even if the cell phone is seized incident to arrest. 573 U.S. 373, 401, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014). In so deciding, the Supreme Court noted:

The term "cell phone" is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.

Id. at 393.

Riley is consistent with the string of cases that required a Warrant to search the interior of closed containers after they are seized. *Chadwick v. United States*, 433 U.S. 1 (1977)(following the seizure of a foot locker, a closed container, authorities must obtain a search warrant before examining its contents; *United v. Ross*, 456 U.S. 798 (1982)(warrant required to search contents of an opaque container); *United States v. Runyan*, 275 F.3d 449, 458 (5th. Cir. 2001) (assuming that computer disks are containers and subject to standards governing closed container searches).

The warrant to search Mr. Hunt's apartment and seize specified items did not permit law enforcement to search Mr. Hunt's computer, yet they did so anyway. The contents of Mr. Hunt's computer were searched during the execution of the search warrant on July 7, 2012 and before the July 25, 2012 warrant that permitted the search of the contents of Mr. Hunt's computer. As such, all evidence obtained from

Mr. Hunt's computer should have been suppressed by the District Court.

Nov. 21, 2023
Date

A handwritten signature in black ink, appearing to read "D. M. Hunt", written over a horizontal line.

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Federal Correctional Institution
P.O. Box 7007
Marianna, Florida 32447-7007

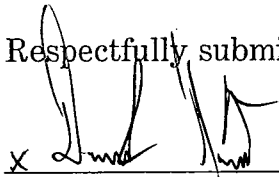
REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the Eleventh Circuit in United States of America vs. Derrick Hunt, Case No. 22-12947 has decided an Important Fourth, Fifth, and Fourteenth U.S. Constitutional Question that has previously been settled by this Court that drastically Conflicts with Relevant prior Decisions of this Court in Riley vs. California, 573 U.S. 373 (2014).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: NOVEMBER 21, 2023