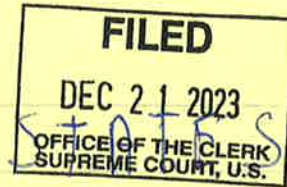


ORIGINAL

23-6434



IN THE UNITED
SUPREME COURT

IN RE: PASCAL GEDEON
ON PETITION FOR WRIT
OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

PETITION FOR WRIT OF
CERTIORARI

PASCAL GEDEON

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53-8434

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Questions presented

- 1) Will delay resulting from pretrial motions be excludable under the Speedy Trial Act if a defendant can show that the motion hearing was deliberately refused with an intent to evade the Speedy Trial Act and the delay is made unexcludable by the district court's plan for prompt disposition of criminal cases?
- 2) Is 18 USC § 2252 narrowly tailored to serve a governmental compelling interest, as an individual has the right to receive information regardless of its social worth?
- 3) Does a Criminologist has the right to access child pornography from the First Amendment, and does that right extend to the general public?

4) IS it cruel and unusual to punish an individual for having access to the video-recording of crime, while that method is never used to prevent other crimes besides sexual abuse, and all video-recordings can incite criminal acts?

5) Does the Equal Protection Clause allow the government to shield children from public trauma and humiliation, and not to victims of assault, arson, robbery, terroristic attack?

6) IS it reasonable under the Fourth Amendment to shield minors from public stigma while no constitutional right exist to be free from it, but it cost another individual's constitutional right to be free for unreasonable seizure to pay for that protection?

7) IS 18 USC § 2252 vague and ambiguous, and do District Courts have jurisdiction over prosecution of child pornography?

(4)

(5)

- 8) IS Suppression required when affiant failed to provide facts to support his conclusions and omitted information that would precluded the issuance of the warrant?
- 9) IF an officer warned a suspect that if he is not forth coming it will make things more difficult for him, and afterward explained to him that it will be assumed that he was going around picking up kids from the playground to bring home. can the statements be deemed voluntary?

List of Parties

Gene E. K. Pratter (District Judge)

Kelly M. Harrell (AUSA)

Related cases

(6)

2:21-cr-00210-GEKP

IN RE: pascal Gedeon 23-2589

Opinions Below

The opinion of the Court of Appeals appears at appendix A to the petition.

Jurisdiction

The date on which the United States Court of Appeals decided my case was November 6th 2023.

The jurisdiction of this Court is invoked under 28 USC § 1254 (1).

As mentioned by Rule 14 of the Supreme Court: "The following are not controlling nor fully measuring the court's discretion!" The petitioner asks this Court to use its discretion to issue the writ to compel the district judge to adjudicate the case before her properly.

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Reason for granting writ

Thousands of Federal judges are usurping power by convicting accused for a crime that does not exist and if such crime did exist it would have violated several constitutional rights. For decades, District Courts had been using pending motions as a loophole to evade the Speedy Trial Act by relying on Henderson in which this Court held that pretrial motions will always be excludable even if the delay was unnecessary and unreasonable. That interpretation is very contradictory to Rule 48 and Rule 50 of the Criminal Procedures, and defeats the very purpose for which the Speedy Trial Act was enacted. Multiple courts held that psychological pressure is not always prohibited, and there is no bright line to what extent it is permitted, but an implication that an accused must choose between the right

to remain silent and the right to be free of immediate arrest is outrageous, and this court must make it clear if it is permissible. Police officers act recklessly to the Fourth Amendment and expect to use good faith as a magic lamp to rub whenever they are in trouble and refuse to provide facts to support their conclusions.

State ment of the case

The petitioner requests that the Supreme Court issues the writ of mandamus to Compel the district judge to adjudicate the case before her properly. As mentioned in Rule 14 of the Supreme Court, the court's discretion is not limited to review of opinion belows as cited by the rule. The Court of Appeals for the Third Circuit refused to exercise its jurisdiction and the petitioner thinks the best remedy is to issue the writ from the Supreme, which of course lies within the discretion of the Justices of the Court.

(8)

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The Court of Appeals claimed that a lack of jurisdiction is not enough to trigger a writ of mandamus. "Courts have not confined themselves to any narrow or technical definition of the term 'jurisdiction', instead, if there has been a judicial usurpation of power the invocation of this extraordinary remedy will be warranted." Santtini, 963 F.2d 585 (1992); River Valley Inc., 507 F.2d 582 (1974) (1974). "There is no doubt that a Circuit Court of Appeals can and will issue a writ of prohibition in aid of its appellate jurisdiction when there is a showing of law or fact that jurisdiction has been assumed by a district court within the circuit which is beyond its legal cognizance." In re Eastman Kodak Co., 48 F.2d 125. The Court of Appeals made the claim that abuse of discretion is not enough to invoke a writ of mandamus. The district court is

Clearly abusing its discretion and a motion to notice plain error was filed to point out to the court how Connelly's confession was admissible because he went on his own to confess and him hearing the "voice of God" is not enough to make his confession involuntary and the motion mentioned all the arguments and cases cited in this petition. An abuse of discretion may not be enough to invoke this writ, but a "clear abuse of discretion" is enough. See *Cheney*, 542 US at 380. AS the delay cause by the Court of appeal is prejudicial and violates due process and justifies granting extraordinary relief. *In re Armani*, 145 Fed. Appx. 749; *Madden*, 102 F.3d at 79. Usually a court of appeals will issue a mandamus when "the district court committed clear error approaching a failure to use its jurisdiction when it has the duty to do so." *LeCherer*, 855 F.2d 1062, 1069 (3d Cir. 1988). AS the court of appeals refused to use its jurisdiction when it has duty to do so, this court can properly issue the writ.

(11)

An individual has the receive information regardless of its social worth. Stanley v. Georgia, 394 US 557, 564, 2 L Ed 2d 542, 89 S. Ct 1243 (1969); Winters v. New York, 333 US 507, 510 92 L. Ed 840, 847, 68 S. Ct. 665 (1948). After all, if a person has the right to receive information without regard to its social-worth, that is without regard of its obscenity - then it would seem to follow that [the government] could not constitutionally punish one who undertake the task to provide that information to a willing adult recipient. Paris adult theatre I, 413 US at 86, n. 9, 37 L. Ed 2d 446, 93 S. Ct. 2628 (Brennan J. dissenting); United States v. Reidel, 402 US 351, 360, 28 L. Ed 2d 813, 91 S. Ct. 1410 (1971) (Marshall J. dissenting); United States v. 12200-Ft Reel's of Film, 413 US 123, 137, 37 L. Ed 2d 500, 93

S. Ct. 2665 (1973) (Douglas J., dissenting). The Due process Clause of the United States Constitution provides protection against governmental interference with certain fundamental rights and liberty interests." Washington v. Glucksberg, 521 US 702, 138 L. Ed 2d 772, 117 S. Ct 2258, 2267 (1997). Where a governmental action restricting that interest, it must be narrowly tailored to serve a compelling [governmental] interest. At 2268

Congress made these findings in Child pornography Prevention Act of 1996, Pub. L. No 104-208, § 121, 11 Stat. 3003-26-27 (1996)

- 1) The use of children in production of child pornography can result in physical and psychological harm to children. Prevent production is a compelling governmental interest.
- 2) Children use in the production of child pornography will suffer continuous harm that will haunt them in the future. In Davis,

424 US 693, 706-10, 96 S. Ct. 1195 (1976) held that an individual has no right to be free from trauma or public humiliation. The Equal Protection Clause will require to extend that protection to other victims of crimes that have been recorded.

- 3) Child pornography is used to seduce children. Prohibition to distribute child pornography to a minor may be a compelling governmental interest.

Paragraphs (5) to (10) are related to virtual child pornography

- 10) (B) Child pornography inflames the desires of child molesters. In Ashcroft 53 US 234, 242, 122 S. Ct. 1389, 152 L. Ed 2d 403 (2002) the Court held that the mere fact that a speech may encourage unlawful acts is not

Sufficient for banning such speech. The Court also noted that the government cannot constitutionally premise legislation on a desirability of controlling a person's private thoughts. (Citing Constitutional law § 930).

11) The sexualization of minors can encourage a societal perception of children as sexual object. Again, the government has no power to control private thoughts or societal perception. On the contrary, society needs to see what kind of danger child molesters represent and what may happen if they do not monitor closely their children. Being made aware, society will be more encourage to report its suspicion to the police when a child may be subject to abuse. Moreover the recording of the 9/11 attack has been around for more than 20 years, and no one in the right state of mind will claim that terroristic had become normal to his perception nor did anyone

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became a terrorist after seeing a video recording of the 9/11 attack.

12) prohibition of Child pornography will encourage the possessors to destroy them. // Possession of obscene material is constitutionally protected in the privacy of home. // United States v. Orito, 413 US 1393 S. Ct 2674, 37 LEd 2d 513 (1973); Stanley, 394 US 557-789 S. Ct. 1243, 22 L. Ed 2d 542 (1969). A compelling interest cannot be to strip citizens of their constitutional rights.

13) The elimination of Child pornography is a compelling interest. // The government has no power to restrict expression because of its message, its idea, its subject matter, or its content. // It is well established that speech may not be prohibited because of concerns

(16)

about subjects - Offending our
Sensibility. Ashcroft at 535 US
245

"Child pornography is the
result of child abuse of real
children by child molesters, the
the production of child pornography
is a by-product, not the primary
reason for sexual abuse of children."
The Prosecutorial Remedies and other
Tools to End the Exploitation of
Children Today Act, Pub L. No.
108-21 § 501 (12), 17 Stat. 650 (2003).

A district court will lack jurisdiction
when an indictment charges a crime
that does not exist in the United
States Code of Service. Gary Grace
2020 US APP LEXIS 1438, BROWN,
752 F.3d at 1353. AS 18 USC
§ 2252 (a) requires courts to
punish any person who distributes,
transports, possesses, receives child
pornography as provided in subsection
(b), and 18 USC 2252 (b) requires
imprisonment of any person who
fails to comply with the requirement

made in Subsection (a) which is to be punished for distribution, transportation, receipt, possession of child pornography. The crime here is the failure to comply with the requirement to be punished for these behaviors. The U.S. Const. art I. Sec 8 cl 18 requires that all laws to be necessary and proper. 18 USC § 2252 is not necessary, as there are dozens of statutes to prevent child abuse. "All statutes may be challenged on the basis that they are wholly arbitrary or irrational in purpose or meaning." *Duke Power Co.*, 438 US 59, 82-84, 57 L. Ed. 2d 595, 98 S. Ct. 2620 (1978). This statute is useless by trying to use a by-product to prevent crime. All video recording of crime are by-product, and the victims of crimes that were recorded are exposed to public stigma. All

Video recording of crimes can incite criminal acts. Mon Key See, Monkey do. "The Equal Protection Clause requires that the government treat alike all similarly situated individuals." City of Cleburn, 473 US 432, 439 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).

The government will be required to extend that protection to all victims of crimes that have been video-recorded. "The cruelty and unusualness of punishments has long been understood to be determined in part by evolving standards of decency which themselves become knowable in part through a consideration of actual penal practices of comparable jurisdiction." Miller, 567 US 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). That method of criminalizing a by-product to prevent future crime is unusual. No other crime is prevented using that method. The government usually wait for a conspiracy or an attempt before initiating a

Criminal prosecution. The mere fact that an individual show an interest in criminal activity without more has never been enough to prosecute criminally. In Henderson, 106 S. Ct 1871, 90 L Ed 2d 299, 476 US 321. This Court held that delay resulting from pending motions will be excludable regardless of the delay being reasonable or necessary. This interpretation is in opposition to Rule 48 and Rule 50 of the Criminal procedures. Under canon of statutory interpretation, a statute must be read as to give meaning to other provision and any interpretation that will render another provision superfluous should be avoided. In dissenting opinion in Henderson, the court noted: "After all, there cannot be an 'other prompt disposition' of motion ~~without~~ unless

there was a prompt disposition in the first place." Id. at 476 U.S. 335. In May 2022, the district Judge attempted to postpone the motion hearing for six months. "Delay from pending motions will not be excluded if the defendant shows that he attempted unsuccessfully to obtain hearings on the pretrial motions or that hearings were deliberately refused with intent to evade the Speedy Trial Act. Where a particular period of delay is rendered non-excludable by the district court's plan for prompt disposition of criminal cases." *Clymer*, 25 F.3d 824, at footnote 6; *Lattany*, 982 F.2d 866; *Henderson*, 476 U.S. at 328.

The officer warned the accused "we don't want to make this more difficult than what it has to be... lying to us, or just not being forthcoming isn't going to help the situation at all." (See EX. B. attached to the Government motion in *Limine* to admit Audio Recording at ECF No 59-1, page 9, line 1-10).

"I want you to be as forthcoming as you can possibly can. That's going to make things easier going forward." The accused was warned a second time that if he refuse to talk it would be worse for him. See page 16, line 15-19. With the last warning, the officer explained how things would get worse. "This is a good opportunity for you to tell your side of the story, how this happened, to what extent this happened. Because when we walk out of here, we don't want to think you're the type of guy who is wandering the street, looking to pick up kids to bring home. But we need to know what's going on." page 17, line 10-19. In *Garrity v. New Jersey*, the Court noted that when an accused is offered a choice "between the rock and

the Whirlpool", the statements are the product of coercion. at 385 US 496. On one hand the accused had the right to remain silent, in the other his right to be free of immediate arrest or avoid prosecution for a greater offense. In Garrity the Court noted where a choice is "between the rock and the whirlpool" duress is inherent in deciding to waive one or the other. It is always for the best interest for a party under duress to choose the lesser of two evils. at 385 US 498. The petitioner is an Haitian Citizen without prior experience with the justice system which made it easier for the agent to coerce him. Court had suppressed confessions for saying "it would be worse" if the accused exert his Constitutional right. See Ramirez, 991 F. Supp. 2d 1258 (S.D. Fla. 2014); Rosa Collazo, 940 F.2d 411; 1991 US App. LEXIS 15265. In Miranda v. Arizona the court held that if an individual held for interrogation by the police indicates in any

manner at any time prior or during the interrogation that he wishes to remain silent the interrogation must cease. A combination of "no, I don't know" was used 17 times every time the officers asked incriminating questions. In *Miranda*, the court noted: "any evidence that the accused was threatened, tricked, cajoled into a waiver will show that the defendant did not voluntarily waive his privileges... A suspect's steadfast denial of the alleged offenses through eight or nine police interrogations over a period of 5 days is subject to no other interpretation than he was compelled by persistent interrogation to forgo his Fifth Amendment privilege against self-incrimination. Although the interrogation in this case lasted an hour, but the denial of the accusations 17 times only means

that the accused did not wish to incriminate himself. The district court interpreted forth coming as to mean to be truthful instead of willing to divulge information. Both interpretations raise constitutional issues. A requirement to be truthful is a denial of the right to deny, a requirement to divulge information is a denial of the right to refuse to answer, as required in Garrity. The most important issue is not the requirement to be forth coming, but the fact that the officer implied consequences will follow if the accused is not forth coming. Two warrants were issued. One to seize a Tumblr account, the other to search 481 Van Kirk St. In both affidavits the affiant misled the judge by saying 18 USC § 2252 prohibits child pornography. The term prohibit is not used in the statute nor was a synonym of that term. Subsection (a) requires that court punish any person who distributes child pornography as provided in subsection (b). And

(25)

Subsection (b) requires imprisonment of any person who fail to the requirement made in subsection (a) which is to be punished for distribution. If the truth was included in the affidavit, the search would have been precluded by the nexus requirement of the Fourth Amendment. See Stearn, 597 F.3d 540, 558 (3rd Cir. 2010); Loy, 19 F.3d 360, 365 (3rd Cir. 1999). The magistrate would have never issued the warrant for a failure to comply with the requirement to be punished for distribution on the basis presented in the affidavit. In Gates, the court required two elements to issue a warrant. That a crime has been committed and there is an expectation that the search will disclose evidence of that crime. The nexus requirement requires a link between the crime

Committed and the place to be searched. In the affidavit, the affiant made his own conclusion that the dates provided by Verizon matched the date the IP address was uploading the images. He did not provide the dates nor did he append the source of his information, nor did he even mention the date when the images were uploaded. The affiant provided the exact description that will fit virtual child pornography, which includes computer-generated images and images modified to appear as a minor. See 18 USC § 2256

Both were made legal in *ASCroft v. Free Speech Coalition*. The best method is to append the images. See *LaFortune*, 520 F.2d at 58; *Syphers*, 426 F.2d at 467. When an affiant provides a description, it must be supported by other facts to allow the magistrate to make his determination independently. A Judge should not accept the complainant's mere conclusions.

See AGuilar v. Texas, 378 US
 108, 84 S. Ct 1509, 12 L. Ed. 2d 723 (1964)
 See also Gates, at 462 US 275.
 18 USC § 2703 (b)(2) was omitted.
 Disclosure is only required if
 the provider does not have access
 to the contents. That information
 would have precluded the search.
 First, improper disclosure is a
 violation of the Chapter. 18 USC
 2707 (g). A magistrate would never
 encourage that. Second, the provider
 had all the power to refuse to
 disclose the contents and if
 the magistrate was made aware
 of that it would have under-
 mined the second element
 required to establish probable
 cause which is the expectation
 that the search will disclose
 evidence of crime. Judicial
 deception occurs when the
 affiant omitted information
 and the warrant would have
 not have issued if the de-

ective had included the information.
Case No - CV-14-2428 at LEXIS 14.
Based on 47 USC § 551(a)(2)(C)
Tumblr is a cable provider, as it
was owned by Verizon in 2019.
Tumblr is required to destroy in-
formation if there is no pending
request. 47 USC § 551(e), 18 USC
§ 2703 (f) provides a period
of retention of 90 days which
can be extended for another 90
days. The first 90 day is triggered
by the CyberTipline. 18 USC § 2258
A (h)(1). The agent made the request
140 days after the CyberTipline
report and never mention a pre-
servation order. The staleness doc-
trine does not usually apply to
child pornography case due to the
fact that collectors of child porno-
graphy are very likely to hold on
to the images for long period of
time and rarely dispose of them,
and experts have the ability to
restore deleted files. But that only
works for a warrant to search
a private individual property.

As we have seen Tumblr is required to destroy information. The information provided by the affidavit for the Tumblr warrant were stale. Good faith does not apply when an officer is the source of his own trouble. Dyer LEXIS 201 798, Crist 627 F. Supp. 2d 575. In Leon the court explained that evidence can properly be suppressed due to an improper determination of probable cause Leon at 468 US 915.

Conclusion

The petition should be granted

Posad Gedeon

2/12/2023

