

Case no.

24-5938

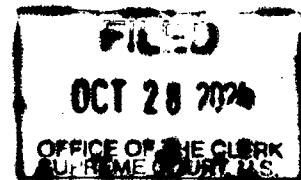
ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

JOHN SCHNEKENBURGER - Petitioner

vs.

UNITED STATES OF AMERICA - Respondent



ON PETITION FOR A WRIT OF CERTIORARI TO
THE EIGHTH CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

John Schnekenburger
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QUESTIONS PRESENTED

1. Whether the scope of 18 USC §2253 allows for the forfeiture of the contents of property, such as real property or electronic devices.
2. Whether a criminal defendant is entitled to the return of non-contraband property that is physically located with forfeited real property or electronic devices, such as furniture, family photos, business files, financial records, clothing, etc.
3. This Petition seeks to resolve a circuit split that pertains to whether a criminal defendant can obtain the non-contraband contents of any forfeited property.

LIST OF PARTIES

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

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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

[X] For cases from federal courts:

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

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- [X] is unpublished.

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

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- [X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case
Was August 1, 2024.

[X] 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 _____ on _____ in Application No. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the application and interpretation of 18 USC §2253.

STATEMENT OF THE CASE

The Petitioner had an open-plea hearing on August 2018. Petitioner objected to the Government's proposed forfeiture. At that time, the Government agreed to remove the forfeiture from the plea agreement according to Petitioner's attorney. Approximately a month after the plea hearing, the Government filed for a preliminary order of forfeiture. Petitioner's attorney did not inform Petitioner of the Government's motion and Petitioner's counsel failed to object to the Government's motion for forfeiture. Prior to sentencing, Petitioner repeatedly asked defense counsel about any forfeiture and counsel stated that he would address any forfeiture concerns after sentencing. Approximately one (1) month after sentencing, Petitioner's counsel filed an objection to the forfeiture. The Government argued that the objection was not timely, and the Court denied Petitioner's objection.

The forfeiture order sought the forfeiture of numerous electronic devices, including devices that did not contain any contraband and that were not involved in the commission of any crime. The Petitioner's criminal case alleged that the Petitioner used the Kik Messenger program to communicate with a minor female. It is undisputed that Petitioner's Dell XPS computer did not contain any contraband, did not contain the Kik Messenger program, and was not used in the commission of any crime.

Petitioner filed a motion for the return of any non-contraband computer files on the Dell XPS computer, including business files, financial files, family photos, etc. The district court denied the motion. While 18 USC §2253 allows the government to seek the forfeiture of property, including the forfeiture of real property, the question before the Court is whether that forfeiture also includes the contents of that property or real property.

REASONS FOR GRANTING THE PETITION

Many people store every aspect of their lives on electronic devices. Those devices are brimming with correspondence, schedules, business files, medical records, financial records, photographs, and music. As a result, a crashing computer or a lost smartphone can lead to catastrophic results for a person who failed to back up that data; the only record for years of a person's life can be lost in an instant.

Individuals who possess child pornography are no different. Those individuals may likewise store important aspects of their lives on their electronic devices. But along with the normal risks of losing their personal data, such individuals also risk losing that personal data when the government seizes their devices for evidence of child pornography. To that end, this case requires the Court to address when a criminal defendant is entitled to the return of his personal computer files when the government seizes his electronic devices or seeks the forfeiture of those devices.

The pertinent statute involved is 18 USC §2253, which states that an individual that is convicted under certain enumerated sex offenses shall forfeit to the government such person's interest in "any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such offense. 18 USC §2253(a)(3).

Importantly, the government's retention of non-contraband data - as distinguished from the physical devices themselves - was required neither by the terms of the forfeiture order, nor by the child pornography forfeiture statute. See, 18 USC §2253.

If the government had sought forfeiture of Petitioner's real property in this matter, the government would be entitled to retention of that real property, but not the contents of that real property, such as Petitioner's clothing, photos, furniture, appliances, or documents located in that real property, such as medical records, financial records, etc. because none of those items are contraband. The same holds true for Petitioner's non-contraband computer files on his electronic devices. Notably, although the government sought the forfeiture of numerous devices, that government only had alleged that one of the devices had actually contained any contraband items.

"A person aggrieved...by the deprivation of property may move for the property's return", Fed. R. Crim. P. 41(g). The Petitioner filed a motion in the district court seeking the return of all non-contraband files from one of the Petitioner's forfeited devices, a Dell XPS computer. It is undisputed that the Dell XPS computer did not contain any contraband and that it was not used to access the Kik Messenger program, nor was it used to access any other devices that may have contained contraband files. The Court denied the Petitioner's motion.

See, APPENDIX A - E

Here, the Petitioner filed his "Resistance to Final Order of Forfeiture on February 14, 2019, arguing that the Dell XPS computer did not contain any contraband and was not used or intended to be used in the commission of any crime. See, Doc. 80, Case No. 3:17-cr-00082-SMR-SBJ. The government sought forfeiture based solely on the affidavit of Special Agent McMillan, who represented that "the following property contained sexually explicit conduct involving children and or was used in the commission of the offense to which the Defendant pled guilty". See,

First, "representations are not evidence, unless adopted by the opponent", U.S. v. Gladding, 775 F.3d 1149, 1153 (9th Cir. 2014). Second, it is undisputed that the record demonstrates that the Dell XPS computer was not used in the commission of any crime at all, and that the Dell XPS computer did not contain any contraband files whatsoever. Despite this, the Petitioner was amicable to the return of the computer files on the Dell XPS computer, rather than the entire device itself because the "spirit of [Rule 41(g)] is one of compromise" that "recognizes that reasonable accommodations might protect both the law enforcement interests of the United States and the property rights of property owners", Ramsden v. U.S., 2 F.3d 322, 327 (9th Cir. 1993). The Ramsden Court explained that "reasonableness under all of the circumstances must be the test when a person seeks to obtain the return of property", Id. at 326.

Here, the government cannot demonstrate that the Dell XPS computer contained any contraband nor can the government demonstrate that the Dell XPS computer was used in the commission of any crime. It is undisputed that the Dell XPS computer contained a plethora of non-contraband computer files that are irreplaceable, including family photos, financial records, medical records, business records, - architectural files, etc. It is hard to imagine a legitimate reason for the government to retain possession of those particular files.

Courts have often allowed the return of non-contraband data and computer files, even years after the forfeiture order was granted. See, e.g., United States v. Boudreau, Case No. 1:16-cr-0011-JJM-LDA, Text Order August 28, 2023 (D.R.I. Aug. 28, 2023)(ordering the return of non-contraband data from a cell phone and external hard drive that had been forfeited); U.S. v. Gladding,

775 F.3d 1149 (9th Cir. 2014). In the case of U.S. v. Boudreau, the Court ordered the government to provide the defendant with data and computer files from a device that had also contained contraband files, even after the device had been forfeited by the defendant.

It is undisputed that the Government still possesses the physical electronic devices and it is undisputed that the data files is still located on those devices. It is undisputed that the Dell XPS computer does not contain any contraband files, and therefore any burden in producing those files to the Petitioner is minimal. To be sure, the Petitioner has even offered to provide the government with a new electronic storage device to allow the government to copy the non-contraband files to that device.

When the government seizes property, it will dispose of the property by either selling the property, using the property, or discarding the property. Here, the government cannot sell Petitioner's family photos, business files, financial records, etc. The Government cannot use Petitioner's family photos, business files, etc. for any legitimate governmental purpose. Therefore, the only option left for the Government is to discard the data files.

As stated above, under 18 USC §2253, when the Government seizes real property, it does not necessarily also seize all of the contents of that real property. The seizure of electronic devices are no different. If Petitioner's home was seized, the government would not also seek forfeiture of a file cabinet located in that home that contained photos and business files. Yet, that is essentially what the Government has done here, except the file cabinet is an electronic storage device. Therefore, the case asks the Court to determine the statutory

interpretation and subsequent application of the statute. This case also asks the Court to resolve a split among the district and appellate courts regarding the return of non-contraband data files from forfeited electronic devices.

CONLUSION

For the reasons stated above, the Court should find that there is a split among the courts as to the application and interpretation of 18 USC §2253 that pertains to whether a criminal defendant is entitled to recovery of any property that is non-contraband that is contained within forfeited property, including real property and electronic devices. The Court should grant the writ to resolve this split and to establish a precedent in the interpretation of the 18 USC §2252 statute.

The petition for a writ of certiorari should be granted.

Respectfully Submitted,



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