24-6698 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH SMITH — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph Smith.
(Your Name)

Inmate No. 70566-007. United States Penitentiary. P.O. BOX 24550.
(Address)

Tucson, AZ. 85734.
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1.) What is the proper test to determine a cross-section challenge under the Duren's second prong. And, how to resolve if 'external factors' are intertwined within the 'systemic exclusion' of the third prong?

2.) Whether or not, allowing the executing law-enforcement officers to enlarge the probable cause, search and seize, based on :

(a) What they are armed with the knowledge of ;

(b) that are not presented to the issuing authority ; and

(c) their interpretation of the Statutes, and not of the issuing authority ;

implicates the 'over-breadth' or 'particularity' concerns of the Fourth Amendment?

3.) Whether or not a district court retain discretion to sequester a witness, irrespective of a party's attempt to designate, once an appropriate record is developed by the parties?

LIST OF PARTIES

[x] 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:

The Parties to this Petition are, Petitioner Joseph Smith, and Respondent, the United States of America.

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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 'A' to the petition and is

[X] reported at 108 F.4th 872 (D.C. App); 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[ ] is unpublished.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

[X] reported at United States v. Smith CR-19-324(BAH), 2021 WL 2982144 (D.D.C. 07/15/2021); 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.

JURISDICTIONAL STATEMENT
(Rule 14.1(e)).

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on July 23, 2024. A timely Petition for Rehearing and Rehearing En Banc was filed on September 5th, 2024. It was denied on October 16th, 2024.

A timely Petition for Writ of Certiorari was filed as mailed on the January 10th, 2025 under the Prison Mailbox Rule. However, the Clerk's Office found that the jurisdictional statement was missing. In a letter dated January 30, 2025 that were received on February 12, 2025, the Clerk extended 60-days to comply with Rule 14.1(e). As filed on date indicated in the Certificate of Service, this Petition is timely.

The Court has jurisdiction to review the judgment as authorized by 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

A.) Statutory background.

On April 19, 2017, then thirteen year old Angelica [1] alleged that Joseph Smith sexually abused her. On April 21, 2017, Officers from the Metropolitan Police Department of the District of Columbia executed a search warrant at Smith's residence. See App[2] 208. More than two years later, on May 10, 2019, Smith was arrested and charged in the Superior Court of the District of Columbia with one count of First Degree Sexual Abuse and four counts of Misdemeanor Sexual Abuse. See United States v. Joseph Smith 2109 FDI 006404.

On June 17, 2019, Smith was charged by criminal complaint and on September 25, 2019, an indictment was issued charging him in 19 counts of violating federal and state child protection laws. See App:5,8. Smith pleaded not guilty to all counts. App:8. On October 1, 2021, nine counts of the indictment were dismissed. App:30. On October 18, 2021, the trial proceeded on the remaining 10 counts. Honorable Beryl A. Howell presided over the trial. App:133-140. On October 27, 2021, the jury returned guilty verdicts on all of the counts. See App:34. The district court sentenced Smith to life on the grouped federal offenses and to concurrent terms of life without release on the D.C. offenses. See App:313-315.

STATEMENT OF RELEVANT FACTS

B. Challenge to jury composition.

On October 18, 2021 and prior to jury voir dire, Smith moved to dismiss the indictment. He alleged Sixth Amendment violation in Jury Section and Service Act (JSSA)[3] App:141-149. Additional time was requested to perfect the motion to include an affidavit from his expert, since he had recently received the race and demography data. App:144 n.2. The Court granted him only 48 hours. App:141. Smith supplemented his motion with the expert's affidavit. App:154-161. In a minute order dated 10/21/21, the court set a scheduling order for additional briefing after the trial. App:33-34. Following the briefing, it denied the motion. App:239-311.

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1. Throughout the complaint and proceedings in district court, the minor victim is referred either by initials A.S. or Angelica.
2. Here App, is referred to Appellate Appendix. Smith at present is denied it's access.
3. Smith did not challenge the Court's JSSA ruling except to the extent that the analysis overlaps with the Sixth Amendment's analysis. See App:276. (even if defendant's JSSA claim was timely, it fails "on the same basis as under the Sixth Amendment").

C. Motion to suppress

On or about April 21 of 2017, Metropolitan Police Department Officer, Jenny Alarenga applied for a warrant in order to search Smith's home. The affidavit in support of recounted A.S's statements to the forensic interviewer. App:63-65. The affidavit averred that Smith would ask and A.S. would comply by sending nude pictures in text messages. A.S. had also observed Smith connecting his cellphone to a computer in the bedroom. Smith also recovered the, cellphone she had used when her Mother left the apartment. App:63-64. The affidavit included general behaviors of suspects who engage in child sexual exploitation by hording such images on their computers. App:65.

Satisfied by the explanation, the same day, DC Superior Court judge issued the warrant that authorized the search of Smith's home :

> Cellular phones, computers, digital storage devices, thumb drives, removable electronic devices such as external hard drives, and the extraction of all electronic data stored inside of them to take place at the residence or a police or court facility, mail matter, any material identifying any resident of the house and to take photographs and sketches of the entire premises, and any items or materials related to the offense of First Degree Child Sexual Abuse.

See App:62. At approximately 5:25 P.M. that day, a team of law enforcement executed the warrant. Id. Neither Smith nor anyone else was in the apartment at the time of execution. App:153. 12 Cellular phones, one computer, three tablets, one Xbox and one air mattress were seized during the process. See App:62.

On May 10, 2017, the Department of Forensic Services (DFS) reported the results of examining 10 electronic devices and the data extracted. App:92-94. Searching of the Lenovo computer revealed activities related to pornography unrelated to the charge. App:93. Another report dated May 11, 2017 revealed additional data extracted from six more electronic devices seized. App:91.

After two years in the year 2019, out of "abundance of caution" Officer Alvangra applied for a warrant to search two of the cell phone seized back in 2017 -- a black Motorola and a white and pink IPhone 6s --. App 69, 72-73 at ¶18. The affidavit supporting his search was 18 pages in length and more specific in comparison to the three page boiler plate affidavit that supported the 2017 search warrant, including the items that needed seizure. App 68-69. On May 6, 2019 a D.S. Superior Court judge issued the search warrant App:67.

As a result of executing this search warrant, the DFS was able to recover incriminating evidence that government introduced at trial.

In 2021, forensic examiner Daniel Ogden reviewed the images of the Lenovo computer's hard drive where he found a backup folder of an iPhone. App:168-169. Using cellebrite tool, he processed the data. App 170-171. The Cellebrite tool revealed that one of the back-up was created early in January 2017 and the other one on January 25, 2017, of an iPhone 6S Plus device. App 171-172 55. During trial, he testified as to user attribution and identified several text messages and photographs alike that were introduced by the government during trial. Ogden also testified to having reviewed text-messages and visual depictions that were recovered from the Motorola cell-phone.

Smith moved to suppress all of the evidence seized during the 2017 search including the Lenovo Computer, white and Phink iPhone 6S, and the Motorola Cellualar phone that government had intended to introduce into evidence. App:44-58. He argued primarily that the warrant was insufficiently particular as to the items to be seized and was overly broad. App 50-54. He also argued that the Leon's good faith exception did not apply. App 55-57. By Memorandum Order dated July 15, 2021, the court there denied the motion. App: 101-128.

D. Motion to exclude witnesses.

As authorized by Rule 615, Smith moved the court to exclude all the witnesses including the FBI case agent Danielle Schnur, from the courtroom, in order to prevent their testimony be tainted or tailored to other witnesses. App: 129-132. In particular, it was noted that FBI case agent Danielle Schnur who had authored several of the FBI-302's was a likely impeachment witness for the defense. App 130 at ¶14. Smith expressly noted that Schnur's credibility as a witness would also be unfairly enhanced in the jury's eyes by the special treatment accorded. App:130-131 at ¶6. In order to develop the record, Smith requested a hearing on this matter. App : 129 at ¶1, n.1. In response the court determined :

> The government has designed Federal Bureau of Investigation Special Agent Schnur as its representative under Rule 615(b). See Gov't's Opp'n at 3. Accordingly, Special Agent Schnur is exempt from exclusion under Rule 615(b), and defendant's motion is DENIED insofar as he seeks to exclude Special Agent Schnur. Since Special Agent Schnur is plainly exempt from exclusion under Rule 615(b), defendant's request for a hearing, see Def's Mot. at 1 n.1, is DENIED.

App : 31 (10/9/2021 Minute Order).

REASONS FOR GRANTING THE PETITION

A. Summary of the reasons offered.

Three reasons exists that support granting the petition.

One, in order to determine threshold disparity issue, the district court below relied on a premise where circuits are split. And in the process imposed a standard far too strict to satisfy a Sixth Amendment violation. The Court here is petitioned to resolve the circuit split and offer such further such guidance to determine whether Sixth Amendment stands violated.

Two, the 2017 search warrant issued by the Superior Court judge that contained a single paragraph broadly describing the things to be seized was insufficiently particular, overbroad, and unrelated to the offense that was alleged to have been committed. As the Appellate Court itself determined, "[t]he [supporting] affidavit here does not meet th[e] high bar[]" to justify granting such a large swath of Smith's property. However, the court's reliance on informations officers were armed with, instead of what was presented in the affidavit for the issuing officer to find the probable cause, requires this Court's intervention.

Three, despite Fed. R. Evid. 615(b), a district court continue to have discretion whether or not to exclude a witness from the courtroom, so that [illegible] a party or their witness are prevented from tailoring their material testimonies to that of other witnesses. As well as an opposing parties needs of impeachment -- using that witness -- are not evaded or obstructed by unfair designation practices. The district court and the reviewing court have read the rules of sequestering in isolation. The jurisdiction of this Court is invoked to resolve, whether or not a district court enjoys discretion under Rule 615 to determine and sequester a witness if a party has established undue prejudice or unfairness, irrespective of the type of designation.

B. Discussing the individual reasons.

I. Proper test to determine a cross-section challenge.

This Court has not identified a specific method or test that courts below could use to measure the representation of a distinctive group in jury pools. The Circuits Courts below have devised their own methods in order to obtain a reasonable picture. They generally rely on both 'absolute' or a 'comparitive' methods of disparity measurements. At times by applying them together, one method can be reasonably expected to offset the shortcomings of the other. These methods have been applied inconsistently among courts below to determine whether or not a party has satisfied Duren [4] second prong.

The courts below also disagree on a threshold value that will reflect an unfair or unreasonable representation has affected the second prong of the test. Or that if there is an 'equal protection' component that needs to be balanced. For example, will it be fair if the government argues that it has satisfied the Sixth Amendment by more or less 90% and the remaining 10% has no meaning or value anyway?.

In satisfying the third prong 'systemic exclusion', a division posits that 'private choices' of potential jurors are not the kind of constitutional infirmity that is contemplated by Duren. These are assigned as 'external factors'. However, what if any, of these 'private choices' are influenced by, or are result of a state enforcing its policies, are not contemplated. Examples of these can be where the state mandates that the potential jurors satisfy conditions such as up-to-date vaccinations, or wear and remain masked all times, or that they be prepared to attend the courts including the day of Sabbath.

None of these concerns, potential or otherwise, are addressed by this Court. Resolving these differences will secure reliability and uniformity in the decisions below. However, it must be noted that the district court below, instead of leaving the conviction out of the purview, it has determined these factors against the backdrop of a conviction [5]. That deceives the Duren test.

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4. See Duren v Missouri 439 U.S. 357, 364 (1979). The three prongs involve : (i) identifying a group qualifying as 'distinctive'; (ii) Was not fairly or reasonably represented in jury vanires; and (iii) 'systemic exclusion' in the jury selection process accounted for the under-representation.

5. the district court concluded that Smith did "not provide sufficient reason to dismiss [his] indictment or provide relief from his validly rendered conviction". In doing so, it treated the test improperly as collateral issue rather than pre-trial. Thus tainted the Duren test. See App:239-40.

II. The courts below have consistently overlooked the overbreadth of warrant issued and the needs of finding probable cause.

When Jenny Alvarenga an eight year MPD veteran drafted the search warrant affidavit in support of searching the premise, she surmised that there is sufficient probable cause that a 'First Degree Child Sexual Abuse' has been committed in violation of DC-Code 22-3008[6]; and that the evidence of the crime could be found in the premise. However, to commit a 'First Degree Child Sexual Abuse', a suspect generally do no use modern cellular or electronic devices.

Nowhere in the definitions, it includes visual depictions of the act, use of cellular devices, or any instruments of interstate or foreign commerce that dominate the Federal Child Sexual Exploitation laws. They are far too attenuated to the DC-Code §22-3008. It appears as though, Alvarenga is servicing Federal Laws in the DC courts. Because, the court there issued a warrant authorizing a seizure of all the electronic devices at the premise. Irrespective of who it belongs to. Hypothetically, if the home was co-habitated by, either a Congressman, Senator, National Security Advisor to the President, Intelligence Agency Personnel, U.S. District Judge, Prosecutor, a Federal Public Defender, or others for that matter, the Officers could have seized their devices too. The reach of this warrant was far too serious to consider. This generosity is after exercising that "abundant caution".

The warrant allows the executing officers to conduct ad-hoc seizure of property. The reviewing court excuses the impermissible by alluding "that police officers [were] armed with information that Smith stored evidence of his crimes on phones and personal computers". However, it does not address, if they were armed, why was it not part of the affidavit for the issuing authority to evaluate the probable cause. Determining probable cause is the duty of magistrate and not of the executing officer. The warrant here allows the scope of the warrant to be expanded at will. In as much as the Constitution itself does not provide, the warrant here provides for the executing law-enforcement officers to reinvent the probable cause, -- beyond the exceptions of judicial doctrines like exigent circumstances and inevitable discovery --. This Court has never held that the good faith exception can be resuscitated a non-existent probable cause for Federal Laws, while executing search for state laws.

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6. It states in part : "whoever, being at least four years older than a child, engages in a sexual act with a that child or causes that child to engage in sexual act shall be imprisoned for ...".
7. Sexual Act, is defined in 22-3001, subsection (8), and Sub part (A) through (D).

These kind of excursions are routinely excused when the matter concerned are related to child sexual abuse. Even though the facts could be repulsive, the Federal Courts are bound by Constitution. Allowing these transgressions to occur does not help the deterrence effect that the Fourth Amendment is designed to prevent. The law-enforcement repeatedly tests the bounds of Fourth Amendment by narrating gory details of the crime after the fact. The deterrence effect has not worked. Therefore, the Court's guidance in this aspect is requested and is enough of a reason to grant the certiorari.

III. The district court will always have discretion. The court's below are reading the rule in isolation.

The circuits interpreting Rule 615 have taken divergent views. The proponents of broad view believe that trial court's apply Rule 615 overriding any other or even superior to other rules to the exclusion of government's case agents from sequestration. The narrow view are of the opinion that the trial court to sequester so as to satisfy the primary principle i.e. preventing the shaping of testimony by one witness to match that of another, and to discourage fabrications and collusions.

This Petition proposes that the trial court should always take a moderate view on the rule 615 and decide sequesteration after common issues have been dealt with in treating the witness' designation in relation to other rules. But the primary thrust remains that the district court will continue to have discretion whether or not to sequester a witness.Trial "courts have broad discretion to achive [the goals of sequesteration and may make whatever provisions [deemed] necessary to manage trials in the interest of justice ... including the sequesteration of witness' before, during, and after testimony." [8] These are among inherent authority to manage trials. Congress may enact rules, but it may not "infringe -- or authorize judicial councils to infringe -- upon judge's trial management authority in any manner it sees fit" [9].

If the trial judge's authority is rescinded, there is a reasonable probability that a party may circumvent other's ability to properly impeach a testimony, simply by designating the witness as case agent. The government has abundant pool of officers to assist them in case presentation. Allowing it to choose "help" from the very witness that the defense intends to use for impeaching is unfair and prejudicial to its strategy. Using designation as a tool, government can cure its deficiencies routinely by assisting them as 'case agents' and allow them to tailor their testimonies accordingly.

The Court's jurisdiction is invoked to decide whether the district court continues to enjoy discretion, and if so, what burdens the parties share to make a prima facie case and an appropriate record that could be reviewed on appeal.

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8. Bradshaw v. Purdue 319 F.Supp. 3d 286, 288 (D.D.C. 2018).

9. McBride v. Comm. 264 F.3d 52, 79 (D.C. Cir, 2001).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph Smith

Date: December 23rd the year 2024.