

25-6864

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA
RESPONDENT

FILED
MAY 30 2025
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SUPREME COURT, U.S.

VS.

GREGORY SCOTT PERSON
PETITIONER

ORIGINAL

PETITION FOR CERTIORARI

APPEAL FROM THE ORDER OF THE PENNSYLVANIA SUPREME COURT AT 550 MAL 2024 ISSUED MARCH 5, 2025 DENYING REVIEW OF THE ORDER OF THE PENNSYLVANIA SUPERIOR COURT AT 1249 MDA 2023 FILED ON OCTOBER 1, 2024 AFFIRMING THE SENTENCE ISSUED ON MAY 16, 2023 AND FILED ON MAY 18, 2023 IN THE COURT OF COMMON PLEAS OF CLINTON COUNTY, CRIMINAL DIVISION, AT NO. CP-18-CR-0000323-2021 BY THE HONORABLE MICHAEL CRAIG P. MILLER, PRESIDENT JUDGE.

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Statement of Questions Involved

1. Is the phrase "any act which corrupts or tends to corrupt" the morals of any minor in 18 Pa. C.S.A. § 6301 (a)(1)(i) vague and indefinite in violation of the First and Fourteenth Amendments of the United States Constitution ?
2. Are defendants Facebook messages constitutionally protected free speech under the First Amendment of the United States Constitution ?
3. Is there a limitation on the scope of criminal liability of 18 Pa. C.S.A. § 2904(a) as indicated by the legislative comments by the Joint State Government Commission, and a fair reading of Model Penal Code section 212.4(1) and the commentary related to that section ?

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CITATION OF REPORTS AND OPINIONS

I. Trial Court Opinion at Docket No. CP-18-CR-0000323-2021 Filed August 2, 2023

II. Trial Court 1925(a) Opinion at Docket No. CP-18-CR-0000323-2021 Filed October 6, 2023

III. Pennsylvania Superior Court Opinion 1249 MDA 2023; 325 A.3d 823; 2024 PA Super 229 Filed October 1, 2024

IV. Pennsylvania Supreme Court Order at No. 550 MAL 2024 Filed March 5, 2025

Jurisdiction of Court

This Court has jurisdiction to review the order of the Pennsylvania Supreme Court filed March 5, 2025 pursuant to 28 U.S.C. § 1257 (a): Final judgements or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United States.

Constitutional Provisions and Statutes

1. First Amendment
2. Fifth Amendment
3. Fourteenth Amendment
4. 28 U.S.C. § 1257 (a)
5. 1 PA. C.S.A. § 1921 (a), (c)
6. 1 Pa. C.S.A. § 1939
7. 18 Pa. C.S.A. § 2904 (a)
8. 18 Pa. C.S.A. § 5903 (a)(1-9), (c)(1), (c)(2)
9. 18 Pa. C.S.A. § 6301 (a)(1)(i)
10. 18 Pa. C.S.A. § 6318 (a)(4)
11. Model Penal Code section 212.4(1)

Statement of the Case

On October 19, 2022 petitioner was convicted by a jury of Corruption of minors (18 PA. C.S.A. § 6301(a)(1)(i)), Unlawful contact with minors (18 PA. C.S.A. § 6318(a)(4)), Interference with custody of children (18 Pa. C.S.A. § 2904(a)). Additionally , the court convicted Mr. Person of Sale of Tabacco to Minors (18 PA. C.S.A. § 6305(a)(2)). Petitioner was deemed a sexually violent predator (svp) on may 16, 2023. He was sentenced to state prison.

Petitioner raised objections before trial in a Habeas Corpus petition presenting all questions presented herein to the trial court which were denied. Petitioner renewed these objections during trial which were again denied. Petitioner filed a timely post-sentence motion which was granted in part by the trial court. The trial court acquitted petitioner of Unlawful Contact With Monors (18 Pa. C.S.A. § 6318(a)(4)) finding that the conviction had no valid legal basis upon which to convict the petitioner. The trial court denied relief on the remaining objections.

Timely appeals followed, from both sides, with the Pennsylvania Superior Court affirming the trial court in all regards on October 1, 2024. Petitioner filed a Petition For Allowance of Appeal to the Pennsylvania Supreme Court which denied review on March 5, 2025.

Argument

I. Is the phrase "any act which corrupts or tends to corrupt" the morals of any minor in 18 Pa. C.S.A. § 6301(a)(1)(i) vague and indefinite in violation of the First and Fourteenth Amendment of the United States Constitution ?

Suggested Answer: YES

18 Pa. C.S.A. § 6301(a)(1)(i) is much akin to the statue struck down by this court in *Papachristou v. City of Jacksonville* 405 U.S. 156, 165-170, 92 S. Ct. 839 in that it is designed as a catch all statute for which a conviction is predicted.

Pennsylvania's statute cast a large net "any act" which literally encompasses everything and is constitutionally vague. After arrest the trial courts are left to decide what actions "corrupt or tend to corrupt" the morals of a minor based on nothing more than third party subjective determinations which create a "standardless sweep that allows policemen, prosecutors, court, and juries to pursue their personal predilections." See: *Smith v. Goguen* 415 U.S. 566, 575, 94 S. Ct. 1242; *Chicago v. Morales* 527 U.S. 41, 65, 119 S. Ct. 1849. That which "corrupts or tends to corrupt lends itself to harsh and discriminatory enforcement which has been found to be unconstitutional. See: *City of South Euclid v. Richardson* 551 N.E.2d 606, 610 (Ohio 1990). The Pennsylvania Superior Court has held that "actions that tend to corrupt the morals of a minor are those that would offend the

Commonsense of the community and the sense of decency, propriety and morality which most people entertain." See: Commonwealth v. Selbolka 205 A.3d 329, 339 (Superior Court opinion, Appendix B, Page 6). This holding specifies no standard of conduct at all and allows for a completely subjective determination by third parties, which allow those parties to react to nothing more than their own personal predilections for which conduct is offensive to community standards, the sense of being indecent, improper, or immoral. This court has consistently invalidated statutes which require nothing more than a subjective determination as to whether conduct is "indecent" Reno v. ACLU 521 U.S. 844, 870871, 117 S. Ct. 2329, or "annoying" Coates v. Cincinnati 402 U.S. 611, 614, 91 S. Ct. 1686, or "words or conduct that offend or annoy police" Houston v. Hill 482 U.S. 451, 464-467, or "loitering" Chicago v. Morales 527 U.S. 41, 119 S. Ct. 1849, or whether something is "unjust and unreasonable" United States v. Cohen Grocery Co. 255 U.S. 81, 89, 41 S. Ct. 298. Moreover the Superior Courts holding as to what conduct violates the statute and the language of the statute itself encourage viewpoint bias by police, prosecutors, courts, and juries. See: Iancu v. Brunetti 588 U.S. 388, 390-399, 139 S. Ct. 2296. The Pennsylvania legislature has not placed any limiting language within the statute to guide law enforcement or which may guide the courts as to what conduct violates the statute and this court has invalidated statutes which fix no ascertainable standards. See: Giaccio v.

Pennsylvania 382 U.S. 399, 86 S. Ct. 518. The Pennsylvania Superior Courts decision in *Commonwealth v. Slocum* 86 A.3d 272, 277-280 explains that 18 Pa. C.S.A. § 6301(a)(1)(i) is designed to be a broad statute, and "that it would be impossible to enumerate every particular act" for which this statute would apply, this fact makes it impossible for any individual of average intelligence to know what the statute proscribes. Likewise, Federal Courts have found the statute "broad enough to include allowing a minor to view an "R" rated video." See: *United States v. Galo* 239 F.3d 572, 582. Obviously the language of the statute is so indefinite that it allows application of the statute to a multitude of constitutionally protected activity at the sole discretion of the police and local prosecutor. This court has invalidated statutes which give the police the power to choose the offending conduct. See: *Houston v. Hill* 482 U.S. 451, 464-467; *Lewis v. City of New Orleans* 415 U.S. 130; *Papachristou v. City of Jacksonville* 405 U.S. 156, 165-170. As demonstrated above, not all "R" rated videos or movies contain proscribed material. Individuals have the opportunity to avoid both the audio and video portions of said videos. See: *Erznoznik v. Jacksonville* 422 U.S. 205, 212-214. This court has counseled that to rely upon prosecutorial discretion to narrow the otherwise wide-ranging scope of a criminal statute's highly abstract general language places great power in the hands of the prosecutor. Doing so risks the pursuit of personal predilections which result in nonuniform execution of that

power across time and geographical locations resulting in arbitrary prosecutions which undermine the public confidence in the criminal justice system. A criminal statute should not be construed on the assumption the the government will use it responsibly. See: *Marinello v. United States* 584 U.S. 1, 11. The Commonwealth pursued prosecution based on the personal predilections of the state trooper and the local prosecutor that petitioner's facebook messages were obscene. See: Appendix F (trial transcript page 151, line 8-12); Appendix B (Superior Court opinion, pages 18-25). The state prosecutor's personal predilections are made more prevalent here and evidenced by the fact that the state persued prosecution of 18 Pa. C.S.A. § 6318(a)(4) (Unlawful contact with a minor), which both the trial court and the Superior Court found had no valid legal basis. See: Appendix C, (trial court opinion, pages 5-8); Appendix B, (Superior Court opinion, pages 18-25). This fact alone should give this court pause and warrant further review of this matter. Additionally two current justices of the Pennsylvania Supreme Court have questioned the constitutionality of this statute. See: *Commonwealth v. Howard* 257 A.3d 1217, 1233-1237 (Pa. 2021) (Justice Wecht); *Commonwealth v. Slocum* 86 A.3d 272, 285 & N.5 (Justice Donohue).

II. Are Petitioner's Facebook messages constitutionally protected free speech under the First Amendment of the United States Constitution ?

Suggested Answer: YES

The Commonwealth pursued prosecution of 18 Pa. C.S.A. § 6301(a)(1)(i) based on the personal predilections of the state trooper and local prosecutor's belief that the content of petitioner's Facebook messages were obscene in violation of 18 Pa. C.S.A. § 5903(a). Pennsylvania has adopted the Miller standard of obscenity. See: *Commonwealth v. Alexander* 258 A.3d 474. Only depictions of patently offensive hard-core pornography or hard-core sexual conduct may be subjected to prosecution. See: *Jenkins v. Georgia* 418 U.S. 153, 160; *Commonwealth v. Krasner* 352 A.2d 479, 481-482. Speech on the internet receives First Amendment protection. See: *Brown v. Entertainment Merchants Assoc.* 564 U.S. 786, 790; *Packingham v. North Carolina* 137 S. Ct. 1730. Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the ideas or message expressed. See: *Reed v. Town of Gilbert* 576 U.S. 155, 164. Government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. See: *Ashcroft v. ACLU* 535 U.S. 564, 573. The State may not proscribe speech due to its own disagreement with the ideas expressed or because those ideas are unpopular in society. See: *R.A.V. v. City of St. Paul* 505 U.S. 377, 382; *Texas v. Johnson* 491 U.S. 397, 414. The obscenity exception to the First Amendment does not cover whatever the legislature, the police, or a local prosecutor find shocking. See: *Brown v. Entertainment Merchants Assoc.* 564 U.S. 786, 792-793. Likewise, the state does not possess a

free-floating power to restrict the ideas to which minors are exposed, nor may speech be suppressed solely to protect the young from ideas or images that the police, local prosecutor, or a legislative body thinks unsuitable for them. See: *Brown v. Entertainment Merchants Assoc.* 564 U.S. 786, 794; *Erznoznik v. Jacksonville* 422 U.S. 205, 212-214. Petitioner reiterates that none of the content of the Facebook messages violate any part of Pennsylvania's obscenity statute. 18 Pa. C.S.A. § 5903 (a)(1-9), (c)(1), (c)(2). Clearly the state has engaged in view-point bias by claiming that petitioner's Facebook messages "offend the commonsense of the community, and the sense of decency, propriety, and morality which most people entertain." Speech which offends is itself a view-point. See: *Iancu v. Brunetti* 588 U.S. 388, 390-399, 139 S. Ct. 2296. Thus petitioner posits that the Facebook messages are not obscene as a matter of law, and are therefore constitutionally protected speech under the First Amendment.

III. Is there a limitation on the scope of criminal liability of 18 Pa. C.S.A. § 2904 as indicated by the legislative comments by the Joint State Government Commission, and a fair reading of Model Penal Code section 212.4(1) and the commentary related to that section ?

Suggested Answer: YES

Petitioner posits that 18 PA. C.S.A. § 2904(a) (interference with custody of

children) does not apply to a brief act, thus petitioner's 22 minute trip to the store can not trigger criminal liability. The Pennsylvania Legislature has declared that courts must ascertain and effectuate the intent of the Legislature. See: 1 PA. C.S.A. § 1921; Commonwealth v. H.D. 247 A.3d 1062, 1067 N.4; Commonwealth v. Rushing 99 A.3d 416, 424-425 (Pa. 2014). When interpreting or applying a statute, it is appropriate to consider official comments. See: 1 Pa. C.S.A. § 1939; Ruhlman v. Ruhlman 291 A.3d 916, 921. It is also appropriate to consult the Model Penal Code authors explanation of a provision. See: Commonwealth v. Gamby 309 A.3d 298, 309; Commonwealth v. H.D. 247 A.3d 1062, 1067, 1070 N.5. Notably the Superior Court did not consult the Model Penal Code, nor read any of it's commentary related to section 212.4(1) and specifically avoided any discussion of that specific section. Reports and comments available to the general assembly at the time of final passage of a statute may be used to construe the statutory provision. See: Indian Rocks Prop. Owners Ass'n v. Gladfelter 28 A.3d 1261, 1272 (Pa. 2011). Thus the Superior Court should have consulted both the Joint State Government Report (Appendix D, pages 105-107) and Model Penal Code section 212.4(1) (Appendix E), and its commentary which is unavailable to this petitioner at pages 257-258. In Commonwealth v. Stewart 544 A.2d 1384, 1388 the Superior Court stated "we are persuaded that it is not merely the act of taking or enticing that constitutes the offense, but rather the continued

maintainance of the child outside of the custodian's dominion." Additionally the court stated (indeed as appellee correctly observes, if the statute was only intended to prohibit the physical taking, there would be no reason for the Joint State Government Commission to have commented that "removal of the child for a brief period is not covered by this section.)" (Appendix B, Superior Court opinion, pages 14-15). The Superior Court later reiterated this point in Commonwealth v. Tompkins 253 A.3d 301, No. 939 MDA 2020 stating " After the initial taking, the act of interference continues only if the individual continually maintains the child outside of the custody of the legal custodian." Citing Stewart 544 A.2d at 1388. The second element of 18 Pa. C.S.A. § 2904(a) "the continued maintainance of the child outside of the custodian's dominion" is premised upon the comment by the Joint State Government Commission that "removal of the child for a brief period is not covered by this section" (Joint State Government Report, Appendix D, page 106) and is supported by Model Penal Code & Commentaries, part II, section 212.4(1), pages 257-258, (Am. Law Inst. 1980). See: Perrin v. State 66 P.3d 21, 39 (discussion of a protracted period). The commentary to section 212.4(1) explains that this definition was not intended "to reach every de minimus instance of unauthorized movement of a child." The commentary then discusses an earlier draft which undertook to distinguish between significant and insignificant acts of custodial interference by limiting liability to acts of removal "for so extended a

period as would be likely to substantially supplant the custodian's authority over the child." The council found this language cumbersome and concluded the same idea is conveyed adequately by defining the offense as a taking from custody. This formulation connotes a substantial interference with parental control, as distinguished from mere physical removal from the custodial premises for a brief period. Without reading the accompanying commentary, one would be hard-pressed to deduce this limitation on the scope of liability from the wording of 212.4(1) itself. Model Penal Code & Commentaries, pp.257-258. Petitioner posits that the Pennsylvania Courts have deprived petitioner of fair due process under the Fifth and Fourteenth Amendments to the United States Constitution by not performing a function the courts are required by the legislature to perform, thus depriving petitioner of an immunity from prosecution which the Pennsylvania State Legislature clearly intended to be available.

Conclusion

Based on the foregoing facts plead herein petitioner request this honorable court to order a review of this case.

Gregory Plann
Signature

11-24-25
Date