A GOVERNMENT'S INTEREST IN PROTECTING ITS SCHOOLCHILDREN: An Analysis of *Camreta v. Greene* and the Fourth Amendment

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I. INTRODUCTION

Fourth Amendment warrant requirements should not attach to the in-school interview of a child whom authorities suspect is a victim of sexual abuse in the home. Specifically, in the case of *Camreta v. Greene*, the Ninth Circuit should have balanced the governmental interest in conducting the interview with the child's right to privacy and concluded that the former outweighed the latter. Furthermore, because the United States Supreme Court refrained from reviewing the Fourth Amendment issue, states should be proactive in developing proper protocols for dealing with child abuse and sexual abuse cases.

II. BACKGROUND

On February 12, 2003, police arrested Nimrod Greene (Nimrod) for sexually abusing the son of his boss and friend, a seven-year-old boy named F.S. *Greene*, 588 F.3d at 1016. According to police, F.S. had told his parents that while intoxicated, Nimrod had touched F.S.'s penis over his jeans on two separate occasions. *Id*. Upon further questioning, F.S.'s mother told police that Nimrod's wife, Sarah Greene, had once talked about how she did not like when Nimrod consumed alcohol because he sometimes made their nine and five-year-old daughters (S.G. and K.G., respectively) sleep with him in his bed. *Id*.

About a week after police learned of these allegations, the Oregon Department of Human Services (DHS) was notified and assigned caseworker Bob Camreta (Camreta) to investigate immediately. *Id*. The following Monday, Camreta and deputy Sheriff Alford (Alford) went to S.G.'s public school to interview her. *Id*. According to Camreta, he chose to interview her at her school because he

considered it to be a neutral and safe place away from the influence of suspects, including S.G.'s parents. *Id* at 1016. Neither DHS, nor Camreta, informed S.G.'s mother Sarah Greene of the plan to interview, nor did they obtain a warrant or a court order. *Id* at 1017.

After arriving at the school, introducing themselves, and asking to interview S.G., Terry Friesen (Friesen), a school guidance counselor, showed them to a private room to conduct the interview. *Id*. Friesen then went to S.G.'s classroom, told S.G. that someone was there to talk with her, and brought her to Alford and Camreta. *Id*. Friesen did not stay for the interview. *Id*.

The interview was conducted by Camreta but with Alford in the room, and although Alford did not ask any questions, he was present for the entire interview and wore a visible badge and firearm. *Id*.

For approximately 2 hours, Camreta interviewed S.G. and according to Camreta during that time she disclosed several incidents of sexual abuse by her father Nimrod, including that the most recent time it had occurred was the week prior and that S.G. had tried to tell her father to stop. *Id*. According to Camreta, she stated that "touching" usually occurred after her father had been drinking alcohol and that she had told her mother, Sarah Greene, about the "touching" but her mother had just responded that it was "one of their secrets". *Id*. According to Camreta, S.G. stated, "when he drinks he tries to do it", meaning, "he tries to touch me somewhere in my private parts. Then I go to the room and lock the door". Camreta also stated that S.G. described incidents where the touching had occurred on her chest and around her buttocks. *Id*.

It is important to note that S.G. later recanted those statements and told the court that she had felt pressured by Camreta during the interview. *Id*. S.G. stated that when Camreta asked her if her father touched her, she had said yes in reference to appropriate touches like, hugs, kisses, piggy back rides and rides on his shoulders. *Id*. She stated, "he kept asking me over and over again if they were bad touches, and I would say no, I don't think my dad touched me in a bad way. [Camreta] would say, 'No that's not it,' and then ask me the same questions again, just in different ways, trying to get me to change my answers. Finally I just started saying yes to whatever he said. And then after a while, he said I could go." *Id*.

After the interview took place, Camreta and Alford spoke with Nimrod and Sarah Greene and each denied the occurrence of any abuse. Despite this and based on other evidence, the state of Oregon indicted Nimrod on six counts of felony sexual assault involving S.G. and F.S. *Id*. at 1018. At trial, the jury could not reach a verdict, and instead of a retrial Nimrod accepted an *Alford* plea with respect to charges involving F.S. In exchange for this, the state of Oregon dropped the charges involving S.G. *Id*.

District Court of Oregon

On February 24, 2005 Sarah Greene filed a 42 U.S.C. §1983 action in district court on behalf of herself and her two daughters. Greene alleged that Camreta and Alford violated the Fourth and Fourteenth Amendment rights to be free form unreasonable search and seizures when they removed S.G. from her classroom and forced her to be interviewed. *Greene*, F.3d at 1020. The district court granted summary judgment in favor of Camreta ruling that S.G. had been seized for purposes

of the Fourth Amendment, but that no constitutional violation had occurred. *Id*. Basing much of their decision on *Terry v. Ohio*, the district court ruled that the seizure of S.G. was reasonable at its inception because it was supported by a reasonable suspicion that S.G. had been sexually abused by her father, and that the seizure was reasonable in scope. Petitioner's Brief to the United States Supreme Court at 4**.** The court further stated that even if the seizure had constituted a violation of S.G.'s rights, Camreta was protected by qualified immunity and therefore not subject to liability. *Id*. at 5.

The Ninth Circuit

On appeal, the Ninth Circuit ruled that under the Fourth Amendment the seizure was unconstitutional at its inception because it was supported by neither a warrant based on probable cause nor an exception to the warrant requirement. *Id* at 6**.** However, the Ninth Circuit did agree that both Camreta and Alford were entitled to qualified immunity, and thus protected from liability.

The United States Supreme Court

Despite having prevailed on the grounds of qualified immunity, Camreta and Alford filed a writ of certiorari to the United States Supreme Court asking the Court to review the Ninth Circuit's Fourth Amendment ruling so that government officers tasked with investigating child abuse cases could have a defined practice and limit their liability.

In their response brief to the court, Respondent, Sarah Greene, argued that because S.G. had not appealed the Ninth Circuit's qualified immunity ruling Camreta and Alford lacked standing and, thus, had no case or controversy to be adjudicated.

The Court disagreed with S.G.'s argument for lack of standing and heard oral arguments on March 1, 2011.

On May 26, 2011, the Court released its opinion. The court rejected the Respondent's argument that Petitioner had no case and controversy, but refrained from ruling on the Fourth Amendment issue. In the opinion by Justice Kagan, the Court stated that Camreta did in fact have a case and controversy reviewable by the Court. However, because S.G. was no longer at risk of being harmed by a potentially unconstitutional seizure and thus incapable of bringing legal action against Camreta, the case was moot. Nevertheless, because of the Court's inability to review Camreta's case, the Court was obligated to vacate the Ninth Circuit's ruling and remand it. Without vacateur, it would be as if Camreta's case had been reviewed and rejected. Thus the Court's only option was to vacate and remand.

The Fourth Amendment issue present in this case is one of a serious nature that should be clarified for law enforcement officials and school administrators. Law enforcement and school administrators both have a compelling interest in the protection of children. They are each tasked with specific responsibilities that at times overlap. Upon review of this case, the Ninth Circuit should account for the weighty burden that both law enforcement and school administrators carry. As discussed below, the argument of Petitioner Camreta should prevail.

III. ARGUMENT

Introduction

In accord with the argument set forth by Petitioner, the Fourth Amendment warrant requirements should not attach to the in-school interview of a child whom

authorities suspect is a victim of sexual abuse in the home. Specifically, in the case of *Camreta v. Greene*, the Ninth Circuit should have balanced the governmental interest in conducting the interview with the child's right to privacy and concluded that the former outweighed the latter. Furthermore, because the United States Supreme Court refrained from reviewing the Fourth Amendment issue, the Ninth Circuit should consider the arguments put forth below.

The Government's Interest in Protecting Children is Overwhelming When Balanced Against Children's Limited Expectation of Privacy While in School.

*New Jersey v. T.L.*O, *Veronia School Dist. 47J v. Acton, Board of Education v. Earls:* these are examples of just some of the cases in which the Supreme Court has ruled that children have a limited expectation of privacy while in school. This is demonstrated in everything from mandatory drug testing to gym class showers to random locker searches. While there is no doubt that most schoolchildren will never be subjected to questioning about potential sexual abuse by their father, and while there is no doubt that Camreta's interview of S.G. an unpleasant and likely traumatic occasion for S.G., it was also necessary. Few of the privacy limitations that schoolchildren experience are pleasant and few are ideal, yet all exist in an effort to promote their greater interest. The seizure of S.G. and the unfortunate intrusion on her privacy was no different.

All fifty states and the District of Columbia have laws and regulations in place that pertain to the prevention and investigation of the abuse of schoolchildren. Every state has mandatory reporting laws requiring teachers and school administrators to intervene on a child's behalf when they suspect abuse. The state of Oregon even permits investigations to take place on school grounds as long as a

school administrator is notified. Parents are aware that while their children are at school the school is responsible for their children and that the school will act as parent during school hours. These are all ways in which the state is involved in and charged with the protection of the child. These are all ways in which the child's limited privacy rights help to protect the child when they are away from the home. When you couple this with the government's interest in preventing and investigating child abuse, which is done in an effort to protect children, it is clear that the government's interest to protect children outweighs the child's very limited right to privacy at school.

The Fourth Amendment Affords Citizens the Right to Be Free from "Unreasonable" Seizures; it Does Not Categorically Require Probable Cause or a Warrant.

The Fourth Amendment to the United States Constitution requires that citizens be free from unreasonable searches and seizures. In their brief to the Court, Respondent argues that the Ninth Circuit's ruling, which was based on the traditional warrant requirement test, was appropriate. As Petitioner states in his brief, warrant requirements and probable cause have long been considered important components in Fourth Amendment seizures, but they have never been considered a substitute for reasonableness. Pet. Brief at 16. In fact, these components play a crucial and necessary role in all searches and arrests that present themselves to law enforcement when the situation is free from the "need to balance the interests and circumstances involved in particular situations." *Dunaway v. New York*, 442 U.S. 200, 208 (1979).

Because law enforcement officials often face "particular situations" in which a finding of probable cause or the obtaining of a warrant is impractical, the law has

evolved and adapted. In his brief to the Court Petitioner Camreta referred to *Terry v. Ohio*, a landmark Supreme Court decision which permitted police officers who possess reasonable suspicion that an individual has committed, is committing, or is about to commit a crime to do a "stop and frisk". *Terry v. Ohio*, 392 U.S. 1 (1968). This departure from traditional Fourth Amendment analyses illustrated the court's recognition that there are instances in law enforcement in which seizures, when they are substantially less intrusive than arrests, are permitted without probable cause or a warrant, and that this determination can be made by conducting a simple balancing test. Pet. Brief at 18. This test consists of balancing "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of interference with individual liberty. *Brown v. Texas*, 443 U.S. 47, 51 (1979). As the Court in *Terry* explained, "that balancing is part of a dual reasonableness inquiry that takes into consideration whether the officers action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20, 28.

In *Illinois v. Lidster*, the Court considered the constitutionality of detaining potential witnesses to a crime. At issue was whether the *suspicionless* detention of drivers at police checkpoints to determine whether or not they had witnessed an area crime amounted to an unreasonable seizure under the Fourth Amendment. Pet. Brief at 20. Ultimately, the Court concluded that the Fourth Amendment does not demand a warrant or probable cause as a necessary predicate to the seizure of potential witnesses. *Id*. Instead, the Court reasoned that a balancing test was

appropriate. "The Fourth Amendment requires a balance of the government's interest served by the seizure, the individual liberty interests at stake, and "the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."" *Id*. (quoting *Illinois v. Lidster*, 540 U.S. 419, 427 (2004).

S.G. was not a suspect of any criminal wrongdoing. Camreta had reasonable suspicion not that she had committed a crime, but that she was in serious physical and psychological danger. In this instance, the government's interest was in protecting S.G. and, as will be expounded on further below, any inaction on their part could have had severe ramifications for S.G. and her sister. As they stated in their brief, Petitioner explains, "the government has a compelling interest in conducting child-abuse investigations in a manner that is least likely to be traumatic for the child and is least likely to taint disclosures of abuse."

Respondent argued that *Lidster* did not apply to the seizure of S.G. and contended that Camreta drew an inaccurate and overbroad reading of *Lidster* because the facts of the two cases were incomparable, thus rendering the tests in *Terry* and *Lidster* irrelevant to S.G.'s seizure. Respondent's Brief to the Court at 62. However, in Oregon at the time of S.G.'s seizure, there was no clear practice or defined guidelines for questioning a child who is suspected to be the victim of sexual abuse in her home and because S.G. was a potential witness and not a suspected criminal or offender, the *Terry/Lidster* test was the appropriate alternative. *Veronia School Dist. 47J v. Acton,* 515 U.S. 646, 652-653 (1995).

As Petitioner notes in his brief to the Court, at the time the Fourth Amendment was drafted the government had no mandated education program and they certainly did not recognize any interest in child protections. Thus a situation like the seizure of S.G. was not foreseeable. Pet. Brief at 23.

Today, the investigations of child sexual abuse cases pose a bevy of hurdles for law enforcement officials, not the least of which is a finding of probable cause and obtaining a warrant. It is of course true that warrant requirements were intended to act as hurdles. That the requirement for a warrant exists and makes searches and seizures for police officers more difficult is in itself a proper check on government and it is a necessity that should not be excluded from most investigations. But due to the nature of the crime of sexual abuse, the victim is often the only witness. Moreover, when that victim is a child and when the suspected offender is that child's father, as was the case with S.G., the victim is far less likely to come forward and far more likely to suffer in silence.

Respondent argues that the invasion of S.G.'s individual liberty was severe. Resp. Brief at 83. There is little question that when S.G. was interviewed the experience was likely upsetting for her, and likely traumatic. But what Respondent fails to consider is what, if any, alternative Camreta had. If the *Terry/Lidster* balancing test was not applicable and law enforcement officers were bound by traditional warrant requirements when there was reasonable suspicion that a child was being abused, their ability to gather the necessary information from the sole potential witness would be so substantially impeded that it would render it near impossible to protect children from abusers, particularly within their own household.

In many jurisdictions, and not just on television, sexually-based offenses are considered especially heinous, particularly when children are involved. Often these jurisdictions have special law enforcement teams or departments dedicated solely to such investigations. Thus, due to the unique nature of the crime, it figures that it may be necessary for the investigation strategies and practices to be distinct from the norm as well. The *Terry/Lidster* balancing test is appropriate here and it abides the Fourth Amendment and the constitution.

IV. CONCLUSION

The Ninth Circuit should review the arguments made by Petitioner Camreta. Child abuse, and child sexual abuse cases are distinct from almost all other crimes: their victims are most vulnerable and often silent and their perpetrators are often unassuming. The risk assumed by requiring strict warrant requirements outweighs the risk of a privacy invasion under the *Terry/Lidster* test.