

No. _____

In The
Supreme Court of the United States

CAMERON HEATH RAY,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

**On Petition For Writ Of Certiorari
To The Court Of Criminal Appeals
Of The State Of Oklahoma**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether it violates the Fourth Amendment to characterize a criminal suspect's car as evidence of a crime when the car is not used in the crime at issue (to wit, a shooting) and when the lower courts of appeals are divided as to whether the vehicle at issue must be of immediate mobility.

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Petitioner Ray asks this Court to issue a writ of certiorari to review the judgment of the Court of Criminal Appeals of the State of Oklahoma.

OPINION BELOW

The opinion of the Court of Criminal Appeals of the State of Oklahoma under review is not reported. (App.1-17).

STATEMENT OF JURISDICTION

The Court of Criminal Appeals of the State of Oklahoma issued its opinion on June 14, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Fourteenth Amendment provides in relevant part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”

STATEMENT OF THE CASE

After a jury trial held October 18-21, 2016, Ray was convicted in the Pontotoc County District Court of two counts of Assault and Battery with a Deadly Weapon. On January 3, 2017, consecutive 15-year sentences were imposed.

Cameron Ray had been separated from his wife, Jennifer, since 2014. On April 5, 2015, a shooting occurred when Cameron came upon a dinner party that Jennifer was hosting in the presence of her friend, Tad Price. The first shot hit Mr. Price; Jennifer Ray was shot in the neck. After the shooting, Cameron Ray left Jennifer's home, throwing the gun out the window after he left.

Before this gun had ever been found, Ray's truck was seized, searched, and parts of the interior were tested for gunshot residue. There was no warrant for this search at the time of the original search.

Only subsequently was a warrant obtained. Ray made a pretrial motion to suppress live rounds of ammunition found during a subsequent search of the vehicle. At a pretrial hearing, the following exchange occurred:

THE COURT: You're aware that there was a search warrant issued for that; is that correct?

DEFENSE COUNSEL: Afterwards, yes. It had already –

THE COURT: Well, it couldn't have been before.

A very salient fact about Ray's truck: it was left at the "scene of the shooting." In other words, the truck having been driven to the house, Ray left the house (apparently on foot). This raises the obvious question of whether or not this truck was a mobile (i.e., still driveable) form of automobile.

When asked why the truck was seized, Sheriff John Christian testified as follows:

We had information of a vehicle that was at the scene of the shooting, a description of that vehicle, and then of course we were provided a name of the person that was driving that vehicle during the course of our time there and then we – I received information that he had – Mr. Ray had driven to the Browns and left that vehicle there. And, so, since it was a vehicle that – that was driven, that was noted as being at the scene of the crime, we felt like we needed to impound that vehicle to be processed for any evidentiary purposes.

REASONS FOR GRANTING THE WRIT

This case presents an important Fourth Amendment issue that has divided appeals courts across the country: to what extent is the immediate characterization and mobility situation of a suspect's car determinative of its qualification as evidence of an underlying crime?

The Oklahoma Court of Criminal Appeals opinion was emphatic: “the vehicle here unquestionably constituted evidence of the very crime being investigated.” Untrue. Ray had fired the shots in the home of his ex-wife; there is no indication that any of the victims knew how he arrived at that home. Nor did Ray’s vehicle play any role in the perpetration of the shooting.

Ray recognizes that where the car itself is evidence of crime, courts are more likely to permit a warrantless search. In *Chambers v. Maroney*, this Court recognized the vehicle search as an “exigent circumstances” exception to the warrant requirement, 399 U.S. 42, 51 (1970). In *Florida v. White*, this Court held that the Fourth Amendment would support the warrantless seizure of a vehicle subject to forfeiture under state law, notwithstanding the absence of probable cause to believe it contained anything seizable. 526 U.S. 559 (1999). In a subsequent inventory search, crack cocaine was found in the ashtray in the vehicle. The court reasoned that the inherit mobility of the vehicle justified the seizure of the automobile itself. Without suggesting that the fact was dispositive, the Court noted that the vehicle had been seized from the parking lot of the employer of the accused and hence the seizure did not entail any invasion of the privacy of the latter.

The first problem is that some lower courts continue to look at more than merely the fact that a vehicle was the target of the search. *See United States v. Fields*, 456 F.3d 519, 524 (5th Cir. 2006), cert. denied, 127 S. Ct. 614, 166 L. Ed. 2d 455 (2006) (“Fields argues

that the automobile exception cannot apply because it requires that the vehicle searched be ‘readily mobile,’ and that due to the crash, Fields’ Impala was not readily mobile when the officer searched it. However, Fields mis-characterizes the automobile exception. Even where an automobile is not immediately mobile at the time of the search, ‘the lesser expectation of privacy resulting from *its use as a readily mobile vehicle* justifie[s] application of the vehicular exception.”); *United States v. Mercado*, 307 F.3d 1226 (10th Cir. 2002) (exception applicable, notwithstanding fact vehicle was immobilized by mechanical problems).

However, other courts confine the inquiry to the immediate mobility situation of the car at issue. *Cash v. Williams*, 455 F.2d 1227, 1231 (6th Cir. 1972) (“*Chambers* is not applicable where there is no danger of the automobile being removed from police access, and no possibility that any possible evidence contained therein would be destroyed.”); *United States v. Mercado*, 307 F.3d 1226 (10th Cir. 2002) (exception applicable, notwithstanding fact vehicle was immobilized by mechanical problems). Yet other cases from the Tenth Circuit have reached the opposite conclusion. *See Lavicky v. Burnett*, 758 F.2d 468, 474 (10th Cir. 1985) (exception inapplicable where engine partially dismantled) (“The pickup here was immobile, because its engine was partially dismantled, and it was on private property, not on a public way.”).

Ray contends that if the correct Constitutional test requires that the suspect vehicle correctly be characterized as a tool of the crime, then the Oklahoma

state courts committed Constitutional error when the analysis as applied to Ray was obviously incorrect. Moreover, if the correct Constitutional test involves an analysis of the mobility situation of a car at issue, then the Oklahoma state courts committed Constitutional error by not considering this factor.



CONCLUSION

Ray respectfully asks the Court to grant a writ of certiorari.

Respectfully submitted this
15th day of October 2018,

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