No. _____

In The
Supreme Court of the United States

EDWARD JAIMAAL PRICE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. Questions Presented

(a) Whether the District Court erred by not suppressing the evidence seized during the illegal search and seizure of the Appellant in violation of Appellant's 4th Amendment Rights under the Constitution of the United States as stated by the Appellant in its Motion to Suppress and its accompanying memorandum. The United States Court of Appeals for the Fourth Circuit erred by affirming the decision of the District Court in its unpublished opinion on February 9, 2018, and not suppressing the evidence seized for the reasons set forth in the Appellant's brief seeking dismissal or a new trial filed in the United States Court of Appeals for the Fourth Circuit. The Defendant, Edward Price, was seized at gunpoint by officers who were searching for Bradley Lamont Price. The officers did not have probable cause to seize the Defendant, and any evidence subsequently obtained should be suppressed.

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IV. Citation to Decision Below

The opinion of the United States Court of Appeals for the Fourth Circuit and the opinion of the United States District Court for the Western District of Virginia: Roanoke Division are unpublished. Ap. p. 1a; Ap. 8a"

V. Jurisdiction

The Supreme Court of the United States has jurisdiction over this case, as it was timely appealed from a judgment the United States District Court dated March 14th, 2017 in the Western District of Virginia, Danville Division, and the United States Court of Appeals for the Fourth Circuit, dated February 9th 2018, and the Supreme Court of the United States has jurisdiction according to 28 U.S.C. § 1254 to hear appeals from the United States District Court and United States Court of Appeals for the Fourth Circuit.

VI. Relevant Constitutional Provision

The Fourth Amendment to the United States Constitution provides, in part, that:

> 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.

VII. Material Proceedings

The Appellant Edward Price was indicted on May 5th, 2016 under 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B) by the Grand Jury of the United States District Court for the Western District of Virginia. The charges had originally been prosecuted in State Court but a federal prosecution was commenced and the state charges were voluntarily dismissed by the Commonwealth of Virginia. After being arrested the appellant was given a secured bond at a bond hearing held in Roanoke, Va. The Appellant filed a motion to suppress the evidence of narcotic drugs seized after this seizure based on an unconstitutional, speculative, and erroneous identification, and based on a violation of his right to be free from unreasonable searches and seizures as set forth in this brief and prior memorandums.

The United States District Court for the Western District of Virginia overruled the Defendant's motion by order dated December 13, 2016, and the Defendant entered a conditional guilty plea. The Court sentenced the Defendant to sixty (60) months imprisonment and the Appellant timely noted his appeal.

On May 1, 2018, the Defendant was notified by the United States Attorney for the Western District of Virginia that it was intending to disclose Brady material regarding the Defendant's case, which is the subject of this appeal. The officer who was the subject of the Brady disclosure filed an objection to the release of the material and a hearing was held on May 16, 2018 in the United States District Court for the Western District of Virginia:

Roanoke Division. The District Court ordered the release of the Brady material on May 16, 2017, and Defendant is presently awaiting the delivery of the Brady material.

VIII. Statement of Facts

The facts in this matter are in dispute.

On November 20, 2015, Appellant Edward Price was leaving a residence in Danville, VA. JA 31, l. 5-7. An officer was waiting in hiding outside of this residence searching for Bradley Lamont Price for whom there were a number of pending warrants. JA 31, l. 6-9. The officers who were present had information regarding Bradley Lamont Price's address which was old and they had access to identifying information and a photograph of the suspect. No attempts to verify this information had been made at any prior time. JA 41, l. 13-17. There were no warrants against the Appellant Edward Price and he was not cited for any violations of the law prior to his seizure in this matter. JA 46, l. 22-24.

The officer who was watching the home when Edward Price left the house could not identify Price as the suspect for whom warrants had been issued. JA 8, l. 6-7. The house from which Price left on the morning of his arrest was not owned by the suspect at large, Bradley Lamont Price, nor had the suspect been observed at this residence in the months leading to Price's seizure. JA 41, l. 7-8.

The officer who was observing Price as he left 623 Wimbish Drive followed Price as he left the

house in a vehicle and made contact with another officer, Deputy Wyatt, and directed that officer to stay near his vehicle as he followed the Appellant Price. Price was not operating a vehicle that was associated with the suspect in any way. JA 41, l. 5-12. No effort was made to ascertain whether the registration to the vehicle was improper or the tags were out of date while the vehicle was in motion or prior to the stop of the vehicle, and no stop was made based on the license plates being expired. No citation was ever issued regarding the license plates.

When Price stopped at a convenience store in a routine manner the officers blocked him in and had him exit at gunpoint. JA 34, l. 18-25. After a brief encounter, it was determined that Price was not the suspect who was being sought. Price was however arrested for drugs which were discovered in a search subsequent to his seizure and detention based upon the mistaken identification. JA 53, l. 24-25. The Appellant offered no resistance to the seizure.

IX. Reasons for Granting Petition

A. The District Court erred by not suppressing the evidence seized during the illegal search and seizure of the Appellant in violation of Appellant's 4th Amendment Rights under the Constitution of the United States. There was a clear seizure of the appellant without probable cause based upon hasty and poorly reasoned speculation that the Appellant was Bradley Lamont Price, an individual with several outstanding criminal warrants. JA 34, l. 6-8. Drugs were found in a search subsequent to the seizure of the Defendant, and after he was detained at gunpoint due to a traffic stop based solely on the

speculative identification. JA 52, l. 5-10. The argument that controlled the decision of the Fourth Circuit Court of Appeals involved the contention that the officers could have made a traffic stop based on expired tags on the vehicle. Such a step could only have generated the issuance of a summons and no search would have been justified upon the issuance of a summons. Additionally, the Appellant contends that the officers on that day observed no such violation and attention to this point is misplaced.

X. Argument

A. The District Court erred by admitting the evidence seized during the illegal search and seizure of the Appellant in violation of Appellant's 4th Amendment Rights under the Constitution of the United States.

Standard of Review

Decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable *de novo*), questions of fact (reviewable for clear error), and matters of discretion (reviewable for abuse of discretion). *Monroe v. Massanari*, 20 Fed. Appx. 238, 2001 U.S. App. LEXIS 22424 (4th Cir. N.C. Oct. 16, 2001) (citing *Harman v. Apfel*, 211 F.3d 1172, 1178). *De novo* review means that this court views the case from the same position as the district court. *See: Wilds v. S.C. DOT*, 9 Fed. Appx. 114, 2001 U.S. App. LEXIS 8794, 31 ELR 20664 (4th Cir. S.C. May 9, 2001); *Lawrence v. Dep't of Interior*, 525 F.3d 916, 920 (9th Cir. 2008). The District Court's findings of fact are reviewed under the

clearly erroneous standard. See Fed. R. Civ. P. 52(a)(6).

This appeal involves mixed issues of fact and law. Therefore, all questions of fact must be reviewed for clear error and issues of law must be reviewed *de novo.*

Analysis

Taking the proper legal questions into account, this reasoning of the Fourth Circuit Court of Appeals fails as there is no evidence to establish that the traffic stop was for expired license plates.

While it is possible to draw reasonable inferences from evidence, the inferences must be reasonable. In this case the arresting officers say that they never intended to make a drug arrest, much less a traffic stop. No person ever discussed a registration issue at the time of the stop, nor took any enforcement action. No charges were issued, no trial took place. It clearly seems that this reasoning is a reconstruction of what the government feels could have occurred on that day and not a reliance on what actually happened.

There is a great benefit when officers perform ordinary police work. Police officers who observe a violation of the law, issue citations or warrants, and document the violations for subsequent judicial action perform a great service. The public and the judiciary can depend on this conduct. In this case, there are untimely reports of violations of law, which were not deemed of any significance at the time of

the seizure and which were not even dignified by the issuance or a citation. The spectre of profiling looms large when police conduct, as out of the ordinary as it was in this case, seeks justification through conduct which was only important through reconstruction and the attempts to justify the stop months later in federal court, on grounds which were never the reason for the seizure of the stop.

The officers in this case were certainly aware that the issuance of a summons would not allow a custodial search. *Knowles v. Iowa*, 525 U.S. 113, 119 S. Ct. 484 (1998); *Lovelace v. Virginia*, 526 U.S. 1108, 119 S. Ct. 1751 (1999), *Lovelace v. Virginia*, 522 S.E.2d 856 (1999). Additionally, as is stated *infra* in this Writ, the arresting officer who conducted the search never smelled marijuana. It is reasonable to conclude that no arrest or search would ever have occurred if the arresting officer had merely issued a summons for expired tags or continued to decline the issuance of a summons as actually occurred.

The Fourth Amendment protects individuals from "unreasonable searches and seizures." When a police officer breaches this Fourth Amendment protection and evidence is seized by the government in violation of this constitutional right, such evidence is customarily suppressed pursuant to the exclusionary rule. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). *Wong Sun v. United States* 371 U.S. 471, 835 S. Ct. 407, 9 L. Ed. 2d 441, 1963 U.S. LEXIS 2431 (1963).

I. THE SEIZURE

The Appellant Price was seized by officers Wyatt and Carroll when he stopped at the convenience store while running an ordinary errand. He was blocked in by the officers' vehicles who activated their lights (JA 32, l. 24-25, JA 45, l. 6-15) and told him to exit the vehicle at gunpoint. There was agreement at trial that Price was seized at this point. Such action amounts to the special police scrutiny that Justice Sotomayor referenced in *Utah v. Strieff*, 579 U.S. ____, 136 S. Ct. 2056, 2070 (2016). There was a complete absence of information demonstrating Appellant Edward Price was the fugitive Bradley Lamont Price. Officer Carroll believed Officer Wyatt to have made the identification (JA 31, l. 5-9) and Officer Wyatt believed Officer Carroll to have made the identification of Bradley Lamont Price. JA 61, l. 1-9. Neither officer had made an identification. JA 61, l. 1-4; JA 53, 19-20. In fact, if either officer had simply walked into the convenience store with Edward Price and asked him to identify himself they would have learned that he was not the suspect. Instead, a drama played out in the parking lot without a shred of evidence to support the supposed identification. The house where the pursuit began was not a location where Bradley Lamont Price was staying, the vehicle was not the suspect's vehicle or a vehicle that the suspect was known to use, Edward Price did not fit the description of the defendant any more than thousands of black males in the Danville area (JA 57, l. 20-25), and the information that was being used to identify the suspect was stale. (JA 39, l. 10-15, JA 40, l. 5-11). The seizure of the Appellant and

the search of his person occurred before any arrest or citation in this matter JA 50, l. 17-23.

Having established the illegality of the seizure, the focus of the inquiry shifts to whether the exclusionary rule should apply to the evidence of an unrelated narcotics possession charge based upon the items recovered during a search of the defendant.

Historically the rationales for the "search incident to arrest" exception were (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. *Knowles v. Iowa*, 525 U.S. 113, 119 S. Ct. 484 (1998) at 117, 119. However, in this case, the police officers had not shown a need to preserve any evidence. There was no traffic citation or the issuance of any other charge after the seizure. Further, as discussed in *Lovelace v. Commonwealth*, 258 Va. 588, 522 S.E.2d 856 (1999), even if there had been a citation issued, the issuance of a citation does not permit a full search in the same way that a custodial arrest would. Even an arrest for possession of marijuana in Virginia can be done by a summons, without a full arrest.

Police could have conducted a *Terry* "patdown" of Appellant if there was a reasonable concern for officer safety, and once that patdown was conducted, any reasonable concern would have dissipated. *Terry v. Ohio*, 392 U.S. 1, 22 (1968). When Appellant was removed from the vehicle his hands were in the air (T p 38 L 15-23) and he was patted down for weapons and still not released from handcuffs prior

to a search, nor was he asked to retrieve his operator's license from his wallet. T. p. 38, l 1-8. A pat down search that produces no weapon or obviously illegal substance cannot be the basis for a further search, as it is unlikely there would be further grounds for a reasonable articulable suspicion of criminal activity. *See: Bandy v. Commonwealth,* 52 Va. App. 510, 664 S.E.2d 519 (2008) (holding Police officers may seize nonthreatening contraband detected during a protective patdown search of the sort permitted by *Terry* so long as the officers' search stays within the bounds marked by *Terry*. If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons); *Terry v. Ohio,* 392 U.S. 1, 30 (1968) (holding that an officer is entitled to conduct search only where the initial stages of the encounter serves to dispel his reasonable fear for his own or for other's safety). Appellant posed no threat to the safety of the public at the time of this search and there was no claim by the officers that the drugs were discovered during a pat down search of the defendant. The complete and intrusive search of Appellant's vehicle and person incident to the issuance of a mere citation without probable cause is not in accordance with the Fourth Amendment, nor *Lovelace*, nor *Knowles,* and any evidence obtained as a result of the search should be suppressed.

Under *United States v. Adkinson*, 297 U.S. 157, 56 S. Ct. 391 (1936), a traffic stop is only

reasonable in scope relative to the circumstances that justified that stop under the Fourth Amendment. The officers must use the least intrusive means reasonably available in investigating the officer's suspicion. The Appellant was removed from the vehicle at gunpoint, by officers who did not ask for any identification, vehicle registration, or expeditiously determine the driver's identity prior to the seizure and subsequent search. JA 50, l. 18-24. The search and seizure of Appellant and his vehicle in the absence of a valid arrest or search warrant or an identification based on pure conjecture was unlawful and violated his Fourth Amendment protection against unreasonable searches and seizures.

The District Court relied upon the Appellant having been arrested prior to the search. Officer Carroll conducted the search and did not search in any respect with regard to the odor of marijuana. He did not note the smell of marijuana. Instead, he assumed that the Appellant indicated he should search for identification in his front pocket while his wallet and identification in plain view on the seat of the car in front of him. JA 55, l. 1-22. No reconstruction of the facts leading to the search should be allowed, as the searching officer, Officer Carroll, did what he did without reference to an odor of marijuana which he did not note as being present. Probable cause to search should be confined to the reasons to the person conducting the search possessed. Even a search warrant which lacks probable cause is not a proper basis for seizing evidence and requires suppression of the items seized. *United States v. Doyle,* 650 F.3d 460 (4th Cir.

2011). The government cannot rely on Officer Wyatt's reasons when Officer Carroll conducted the search and failed to note the odor of marijuana noted by Officer Wyatt.

There are three recognized exceptions to the warrant requirement of the United States Constitution: the independent source rule, the inevitable discovery rule, and the attenuation doctrine give rise to the use of evidence obtained in violation of the Fourth Amendment. There was clearly no independent source of information which would have led to the discovery of the narcotic that led to Price's arrest, nor was there a warrant for arrest for a separate offense which would have triggered the inevitable discovery rule. Therefore, at issue in the present case is the attenuation doctrine and its applicability to situations where an individual is stopped upon speculation that he is wanted on outstanding criminal warrants.

The Supreme Court of the United States recently held in *Utah v. Strieff* that the attenuation doctrine allowed for the admission of evidence seized where an officer who made an unconstitutional investigatory stop learned during that stop that the suspect was subject to a valid arrest warrant and searched the suspect pursuant to the warrant. *Utah v. Strieff*, 136 S. Ct. 2056 (2016); *Vasquez v. Commonwealth*, 291 Va. 232, 781 S.E.2d 920 (2016). However, *Streiff* is distinguishable from the present case, since in *Streiff*, there was no error regarding the identity of the person detained. In *Streiff*, the defendant was stopped based on what officers believed to be a drug deal based on an anonymous

tip. *Streiff* at 2059. The defendant in that case was followed to a convenience store after the conclusion of the alleged sale and asked to identify himself. *Id.* In the present case, Appellant Edward Price was operating his motor vehicle in the city of Danville on November 20, 2015, when law enforcement blocked his vehicle. JA 61, l. 5-9. The police were looking for Bradley Lamont Price. After the Appellant stopped, he was forcibly removed from his vehicle at gunpoint. JA 47, l. 1-6; JA 61, l. 8-9. All incriminating evidence was found after this seizure.

Strieff relied on three factors from *Brown v. Illinois,* 422 U.S. 590 (1975): temporal proximity, the presence of intervening circumstances, and the purpose and flagrancy of the official conduct. Temporal proximity must be decided against the officers in this case as the illegal seizure occurred essentially contemporaneously with the seizure of the narcotics. There was no warrant or similar reason for the detention or continued detention of the Appellant prior to the search and therefore this second factor is decided against the government.

The District Court held that Appellant Price was subject to a valid search, either on the basis of consent or a valid search incident to arrest based on the odor of marijuana. However, this search was not conducted pursuant to the Appellant's Consent or as a valid search incident to arrest for possession of marijuana. Officer Carroll unambiguously stated that the search was based on his assumption that the Appellant nodded in an effort to demonstrate the location of his identification, which was lying on the seat of the car. JA 36, l. 8-10. Officer Carroll did not

base his search on the odor of marijuana and no marijuana was apparently found and an arrest based on the odor of marijuana lacks probable cause. Unlike *Chen (infra),* there were no fruits from the search for marijuana according to the officer who conducted the search. Consent was not clearly and unambiguously given, and the officers improperly used the outcome of the search in order to justify the search retroactively.

The Supreme Court has held that consent to search must be clearly and unambiguously given by a Defendant. *See: Schneckloth v. Bustamonte,* 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854, 1973 U.S. LEXIS 6 (U.S. May 29, 1973) (holding that a consent to search must not be coerced, by explicit or implicit means, by implied threat or coerced force, no matter how subtly the coercion is applied); *see also: United States v. Miller,* 933 F. Supp. 501, 1996 U.S. Dist. LEXIS 15109 (M.D.N.C. Apr. 5, 1996) (holding that in cases where the government alleges that consent was given, the government must prove that an individual freely and intelligently gave his or her unequivocal and specific consent to the search, uncontaminated by any duress or coercion, actual or implied). Officer Carroll assumed Appellant Price nodded in the general direction of his pocket after being stopped, forced from his car, and held at gunpoint. The operator's license was in his wallet in plain view in his vehicle, not his pocket. JA 55, l. 1-22. This is hardly unequivocal consent, as Price was in fear of the police and unable to contest the search during the stop due to the overwhelming presence of the police and their weapons. JA 61, l. 21-24.

Furthermore, the lower court held that even if Appellant Price's consent was not freely given, then the search was valid incident to his eventual arrest. This is also not consistent with the law. As an initial matter, where an officer conducts a search in the absence of a warrant, the government bears the burden of proving its validity. *United States v. Chen*, 811 F. Supp. 2d 1193, 2011 U.S. Dist. LEXIS 106898 (M.D.N.C. Sept. 20, 2011). Furthermore, while a police officer may not rely on the fruits of the search to demonstrate probable cause for an arrest, any evidence uncovered during a permissible search is admissible against the suspect in a criminal trial. *Chen*, 811 F. Supp. 2d at 1204. Here, Appellant Price had committed no crime and had not resisted the officer's requests of him. JA 61, l. 11-14. He was merely trying to open his door at an officer's request. JA 61, l. 14-24. The officers had no interest in making an "arrest for a straight up drug case." T.p. 52, l. 15-17. Appellant did not specifically deny statements regarding nodding because he denied the entire course of those events. JA 61, l. 12-19, 22-24.

Lastly, the purpose and flagrancy of the violation needs to be examined. The behavior was more reckless than purposeful but yet, the great proliferation of police intrusion into the everyday life of ordinary people is a flagrant problem. Flagrancy does not have to be limited to an inquiry concerning whether the behavior was calculated to obtain evidence. Systematic abuse of ordinary law enforcement methods such as a traffic stop are flagrant and fundamental variances from the protections that an average citizen should feel inure to him directly from the United States Constitution.

Just as in ancient times the phrase "I am a Roman Citizen" afforded a degree of respect from those who might seek to impose their will upon a person, American Citizens should be free from the convoluted and contorted reasoning that allows officers to rummage at will through the lives of ordinary citizens. Since none of the three factors concerning exigency are found to favor the Government in this matter there should not be a finding that the attenuation doctrine requires that the exclusionary rule should not apply in the appellant's present case before this court.

Bradley Lamont Price was married to Taleita Jeffries Price. A vehicle was registered in his name and his wife's name at a different address than Appellant. During the course of the several miles that the officer followed Appellant before initiating the alleged traffic stop, there existed ample time to run the vehicle's license plates and discover that the vehicle was registered to Appellant, and not to Bradley Lamont Price. JA 48, l. 3-14.

When courts fail to suppress illegally obtained evidence, they reward "manifest neglect if not an open defiance of the prohibitions of the Constitution." *Strieff* at 926, citing *Weeks v. United States*, 232 U.S. 394 (1914). Excluding the evidence obtained from the unreasonable search of Defendant's vehicle "would significantly deter police from committing similar constitutional violations in the future." *Strieff* (Kagan, J. Dissent). Therefore, in the interest of protecting Constitutional rights and in the absence of probable cause, exigent circumstances, consent, or a valid warrant, any and

all evidence obtained pursuant to this illegal search should be suppressed.

XI. Conclusion

For the reasons set forth in this Petition for Writ of Certiorari, the Appellant respectfully requests that the evidence requested to be suppressed in his motion to suppress be suppressed and that his charges be dismissed or that he be awarded a new trial in this matter.

XII. Request for Oral Argument

The Appellant requests an opportunity to orally present his objections to the ruling of the United States District Court to this honorable Court. This is the 9 of July, 2018.

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