

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

NALENZER LEE EDWARDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

As recently as 2014, this Court reemphasized that an informant's knowledge of a suspect's future movements may be indicative of some familiarity with the suspect's affairs, but it does not necessarily imply the informant knows whether the suspect is carrying hidden contraband. *Navarette v. California*, 572 U.S. 393, 399 (2014), *citing Florida v. J.L.*, 529 U.S. 266, 271 (2000). The question presented is:

Did the Court of Appeals for the Eighth Circuit error in finding probable cause to justify a vehicle stop and the arrest of petitioner, where a previously reliable confidential informant twice correctly predicted that petitioner would drive from Columbia, Missouri, to Jefferson City, Missouri, supposedly for the purpose of purchasing heroin, but where police gave minimum effort to confirm petitioner would actually be in possession of heroin at the time of arrest, beyond following petitioner on his trips to Jefferson City?

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PETITION FOR WRIT OF CERTIORARI

Nalenzer Lee Edwards respectfully prays that a writ of certiorari issue to review the United States Court of Appeals for the Eighth Circuit's May 31, 2018, opinion holding that probable cause supported the warrantless arrest of Mr. Edwards and the subsequent warrantless search of his vehicle, where police relied on a confidential informant's report that Mr. Edwards would be travelling to a particular location and returning from that location with drugs.

OPINION BELOW

The United States Court of Appeals for the Eighth Circuit's opinion is published at *United States v. Nalenz Lee Edwards*, 891 F.3d 708 (8th Cir. 2018). Petitioner's Appendix ("Pet. App.") A. The order of the District Court for the Western District of Missouri denying petitioner's suppression motion is unpublished. Pet. App. B.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered judgment on May 31, 2018. Petitioner timely filed this petition within ninety days of the filing of the appellate court's judgment and opinion.

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution 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.

U.S. CONST. amend. IV

STATEMENT OF THE CASE

I. Material Facts

On June 10, 2015, a confidential informant advised Detective Giger of the Columbia, Missouri, Police Department that Nalenzer Lee Edwards would be traveling from Columbia to Jefferson City, Missouri, to obtain heroin from his dealer. The confidential informant did not provide a specific address in Jefferson City where the drug transaction would occur, but he did inform Detective Giger that Mr. Edwards' dealer was a black female named Tasha. According to Detective Giger, he had used this particular informant for several months prior to June 10, 2015, and found the informant's information to be reliable.

Armed with the information from the informant, Detective Giger coordinated with the Drug Enforcement Agency (DEA) and the Jefferson City Police Department to surveil Mr. Edwards on the afternoon of June 10, 2015. During this surveillance, law enforcement officers followed Mr. Edwards from a hotel in Columbia to a house in Jefferson City. Mr. Edwards entered the house and remained there for about thirty minutes. He then drove back to the Columbia hotel where his travel began. Mr. Edwards made no stops in Jefferson City, other than at the house police watched him enter. However, there is nothing in the record showing with whom Mr. Edwards met in Jefferson City, if anyone. Moreover, nothing in the record confirms that Mr. Edwards actually picked up heroin.

Detective Greg Bestgen of the Jefferson City Police Department, who assisted Detective Giger with the investigation, was familiar with the house Mr. Edwards

visited, due to prior narcotics investigations. Detective Bestgen knew a woman named Natasha Terrell resided there. Based on the day's activities, Detective Bestgen decided to conduct a trash pull at the residence. That evening, he collected trash left outside the house and searched it, discovering drug paraphernalia consistent with drug trafficking. Detective Bestgen then applied for and received a state search warrant for the residence but held off on executing it.

On June 17, 2015, Detective Giger's confidential informant again informed him that Mr. Edwards would be traveling from Columbia to Jefferson City to visit his drug dealer to purchase heroin. And again, Detective Giger coordinated with DEA and Jefferson City police to follow Mr. Edwards. On his end, Detective Bestgen coordinated with a SWAT unit from his department to execute the previously obtained search warrant of the Terrell residence after Mr. Edwards left there. Detective Bestgen also asked Jefferson City Police Officer Paul Gash to be on standby, so Officer Gash could pull over Mr. Edwards after he left the house. Detective Bestgen instructed Officer Gash to arrest Mr. Edwards on contact. No one applied to a court to obtain either a warrant to arrest Mr. Edwards or a warrant to search his car or hotel room.

During the afternoon of June 17th, Mr. Edwards again drove from Columbia to the Terrell house in Jefferson City, followed by surveillance units. Upon arrival, he entered the house. A short time later, Ms. Terrell arrived and entered the house through her garage. Mr. Edwards was at the house for a total of about thirty minutes before leaving.

Detectives followed Mr. Edwards from the scene until Officer Gash caught up in his patrol car. Officer Gash followed Mr. Edwards for a short while on the highway between Jefferson City and Columbia, until they reached a stretch where Officer Gash believed he could safely conduct a car stop. Once Officer Gash stopped Mr. Edwards' vehicle, he put handcuffs on Mr. Edwards and placed him in the back of his patrol car, thus complying with Detective Bestgen's directive to arrest Mr. Edwards on contact. While following Mr. Edwards, Officer Gash did not observe any traffic violations. Furthermore, detectives testified that no one ever saw Mr. Edwards conduct any illegal activity in the Jefferson City house. Taken together, this means the sole basis of the car stop and arrest was Detective Bestgen's directive.

After arresting Mr. Edwards, Officer Gash requested permission to search Mr. Edwards' vehicle, which Mr. Edwards denied. Officer Gash, who was also a K-9 officer, walked his trained drug-sniffing dog around the outside of Mr. Edwards' car, but the dog failed to alert to the presence of any drugs. At trial, Officer Gash opined that his dog failed to alert to the presence of any drugs because only about four minutes had elapsed from the time Mr. Edwards left the house to when he pulled over Mr. Edwards. In any event, Officer Gash called Detective Bestgen, who told him to search the car anyway, because there was sufficient probable cause to support a search.

During his warrantless search of Mr. Edwards' vehicle, Officer Gash noticed a part of the instrument panel appeared loose. When he pulled on the panel, it

came free of the dash and revealed four small, individually wrapped packages of heroin. Later lab testing confirmed that Officer Gash recovered approximately twenty grams of heroin.

When the car stop was taking place, Detective Bestgen and the SWAT team simultaneously executed the search warrant at the Terrell house. There, police recovered approximately five grams of heroin, forty-five grams of crack cocaine, and about \$7,000.00 in cash. Additionally, one of the two persons in the house told police that Mr. Edwards had left the house with twenty grams of heroin.

After his arrest, officers took Mr. Edwards to a police station in Jefferson City, where he provided a *Mirandized* statement to detectives. In the statement, Mr. Edwards admitted receiving from Ms. Terrell the twenty grams of heroin found in his car and that, over the course of three to four months, he obtained approximately one hundred grams of heroin from her.

Prior to trial, Mr. Edwards moved to have any evidence or statements derived from his warrantless arrest and the warrantless search of his car suppressed. The district court denied his motion, a decision the appellate court upheld.

II. Proceedings Below

Based upon the investigation described above, a grand jury in the United States District Court for the Western District of Missouri indicted Mr. Edwards with one count of conspiracy to distribute heroin, in violation of 21 U.S.C. §846, and one count of possessing heroin with the intent to distribute it, in violation of 21

U.S.C. §841. The district court had original jurisdiction of the matter under 18 U.S.C. §3231, in that Mr. Edwards was charged with offenses against the laws of the United States.

Mr. Edwards filed a motion to suppress evidence recovered due to his warrantless arrest and the related warrantless search of his vehicle. Claiming it was fruit of the poisonous tree, the motion also sought to suppress a subsequent statement made during a police interview. The magistrate judge conducted an evidentiary hearing on September 28, 2015. He filed his Report and Recommendation, suggesting the denial of the suppression motion, on January 28, 2016. The district court entered an order on March 8, 2016, adopting the magistrate judge's findings of fact and conclusions of law, and denying Mr. Edwards' motion.

After a two day trial concluded on May 3, 2016, a jury returned verdicts of guilty on both counts of the indictment. On February 6, 2017, the district court sentenced Mr. Edwards to a total of 156 months of imprisonment. An appeal timely followed.

Mr. Edwards' trial counsel raised only one issue on appeal, namely whether the district court erred in finding the warrantless arrest of Mr. Edwards and the related warrantless search of his car did not offend the Fourth Amendment.

On May 31, 2018, a panel of the Eighth Circuit filed its judgment and published its opinion, affirming the district court's order denying the Mr. Edwards' suppression motion. Specifically, the appellate court held that the statements of the

confidential informant combined with corroborating evidence gathered during the investigation to establish probable cause to arrest Mr. Edwards for drug trafficking. *United States v. Edwards*, 891 F.3d at 711.

REASONS FOR GRANTING THE PETITION FOR WRIT

This Court should grant certiorari because the opinion of the Eighth Circuit is contrary to this Court's controlling precedents concerning use of an informant's information to establish probable cause or reasonable suspicion to interact with a suspect, including *Navarette v. California*, 572 U.S. 393 (2014); *Florida v. J.L.*, 529 U.S. 266 (2000); *Alabama v. White*, 496 U.S. 325 (1990); *Illinois v. Gates*, 462 U.S. 213 (1983); *Adams v. Williams*, 407 U.S. 143 (1972); and *Draper v. United States*, 358 U.S. 307 (1959). Each of these cases support the conclusion police had reasonable suspicion to further investigate Mr. Edwards' activities, but the information known to police was not sufficient to support a finding of probable cause at the moment they stopped Mr. Edwards' vehicle and placed him under arrest.

- I. The facts of this case support a finding that, at the time of Mr. Edwards' arrest, reasonable suspicion existed to believe he may have been involved in criminal activity; however, the same facts do not support a finding that probable cause for arrest existed.**

The primary issue in this case is whether probable cause to arrest Mr. Edwards existed at the moment police stopped his car for the purpose of arresting him and searching his car. If there was no probable cause to arrest Mr. Edwards at

the very moment of his stop, it follows that there was no probable cause to search his car.¹ This Court recently summarized probable cause to arrest in the following way:

The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Because arrests are seizures of persons, they must be reasonable under the circumstances. A warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence.

To determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. Because probable cause deals with probabilities and depends on the totality of the circumstances, it is a fluid concept that is not readily, or even usefully, reduced to a neat set of legal rules. It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. Probable cause is not a high bar.

District of Columbia v. Wesby, 138 S.Ct. 577, 585-586 (2018)(internal quotations and citations omitted).

On the other hand, reasonable suspicion is “a particularized and objective basis for suspecting the particular person stopped’ of breaking the law.” *Heien v. North Carolina*, 135 S.Ct. 530, 536 (2014). A mere hunch does not create reasonable suspicion, but “the level of suspicion the standard requires is . . . ‘obviously less’ than is necessary for probable cause.” *Navarette v. California*, 572

¹ At some point after Mr. Edwards’ arrest, police interviewed someone in the Jefferson City house, who said Mr. Edwards left the house with twenty grams of heroin. This information was eventually forwarded to the arresting officer, but it was not known to him at the time of arrest or initial K-9 search. The Eighth Circuit found this additional information irrelevant, writing: “In any event, officers did not need the second informant’s statement to establish probable cause, because statements from the first informant and subsequent investigation were sufficient.” *United States v. Edwards*, 891 F.3d at 712.

U.S. at 397. Despite this, “the Fourth Amendment requires at least a minimal level of objective justification for making the stop.” *Illinois v. Wardlow*, 528 U.S. 119, 120 (2000).

This is a case related to the use of a confidential informant to establish probable cause to arrest a person and then to search their car. The Court has considered the use of informants a number of times, but the two cases most directly on point—because of the use of confidential informants known to investigating police—are *Draper v. United States*, 358 U.S. 307 (1959), and *Adams v. Williams*, 407 U.S. 143 (1972).

Draper is an example of a case where the use of a known, reliable informant coupled with police corroboration of the informant’s information served to establish probable cause for an arrest. There, a reliable informant advised a federal narcotics agent that Draper was a drug dealer in Denver. A few days later, the informant told the agent that Draper had travelled to Chicago by train, where he was going to pick up three ounces of heroin and return to Denver by train on the morning of September 8th or September 9th. The informant gave the agent a detailed description of what Draper would be wearing, and also said he would be carrying a tan zipper bag and walking really fast. *Draper v. United States*, 358 U.S. at 309.

Based on this information, the agent went to the train station on the morning of September 8th and watched the passengers disembarking from all trains coming from Chicago. He did not find Draper, so the agent returned to the station the following morning. On that day, the agent enjoyed greater success, in that he saw

Draper get off a train from Chicago, dressed as predicted and carrying a tan bag. Draper also started walking fast to the exit. When the agent and a local police officer with him caught up to Draper, they arrested him and found him to be in possession of two packages of heroin and a syringe. *Draper v. United States*, 358 U.S. at 309-310.

After a conviction for violating federal narcotics laws, Draper complained that the informant's information was insufficient to show that he was violating the law or to justify his warrantless arrest. In response, this Court wrote: "Probable cause exists where 'the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Draper v. United States*, 358 U.S. at 313. In light of the informant's prior reliability and the agent's ability to corroborate every detail of the informant's information, including a return from Chicago, the carrying of a tan zipper bag, and Draper's penchant for walking fast, the Court ruled that probable cause existed for Draper's arrest. *Draper v. United States*, 358 U.S. at 313-314.

In *Adams*, the focus was on whether a police officer, based on a known informant's tip, had reasonable suspicion to suspect a man named Robert Williams would be in possession of a gun and drugs. In that case, a police officer was on patrol in a high crime area. A person known to the officer approached his cruiser and told him that a person sitting in a nearby vehicle was carrying narcotics and

had a gun on his hip. The officer approached the vehicle to investigate the information. He tapped on a car window and asked the occupant, Williams, to open the door. When Williams rolled down his window instead, the officer reached inside and pulled a concealed revolver from Williams' waist. The revolver was in the exact location the informant had described. The officer then placed Williams under arrest for unlawful possession of the revolver. Subsequent searches of Williams and the car revealed an additional firearm and heroin. *Adams v. Williams*, 407 U.S. at 144-145.

In response to Williams' argument that the informant's tip did not provide the officer justification for seizing his revolver, which led to the later arrest and search, the Court started: "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U.S. at 145. Rather, *Terry v. Ohio* allows an officer to investigate the possibility of criminal activity even absent probable cause for an arrest, and where that officer is justified in believing the person being investigated is armed and dangerous, he may conduct a limited search to assure his safety. *Adams v. Williams*, 407 U.S. at 145-146, citing *Terry v. Ohio*, 392 U.S. 1, 24 (1968).

In the end, the Court in *Adams* decided that the informant's tip, largely unverified, may not have been sufficient to establish probable cause, but it was reliable enough to justify the officer's forcible stop of Williams. *Adams v. Williams*, 407 U.S. at 147.

The controlling facts in the instant case are more closely aligned to *Adams* than *Draper*. Unlike *Draper*, where the federal agent corroborated every detail provided by his informant, the police here did nothing but follow Mr. Edwards to and from Jefferson City. Because of this, information associated with Mr. Edwards' supposed criminal activity was left largely unverified, as was the case in *Adams*.

Indeed, police only corroborated innocent details provided by the informant, namely that Mr. Edwards would be driving to and from Jefferson City. *United States v. Gibson*, 928 F.2d 250, 253 (8th Cir. 1991)(Where informant's tip is detailed and based on personal observation, police failure to corroborate anything but the innocent details leaves finding of probable cause lacking.). Police did not confirm that Tasha, whom the confidential informant said was Mr. Edwards' dealer, was the same person as Natasha Terrell. *United States v. Freitas*, 716 F.2d 1216, 1222 (9th Cir. 1983)("The hypothesis that the 'Mike' named by the informant was [defendant] Michael Buster was strictly conjecture on the part of the agents, and was not confirmed by the informant."). Police did not see Mr. Edwards actually meet with anyone in Jefferson City, although during his second trip Ms. Terrell was observed to arrive at and enter a house in which Mr. Edwards was previously observed to enter. Neither the confidential informant nor police saw Mr. Edwards buy heroin or stash it in his car, even though he was under law enforcement's constant surveillance.

Police, apparently, did not ask the confidential informant whether Mr. Edwards returned from his first trip with heroin. Prior to stopping Mr. Edwards'

car during the return from his second trip to Jefferson City, police did nothing to corroborate that he purchased and possessed heroin. Again, an informant's knowledge of a suspect's future movements may be indicative of some familiarity with the suspect's affairs, but it does not necessarily imply the informant knows whether the suspect is carrying hidden contraband. *Navarette v. California*, 572 U.S. at 399, *citing Florida v. J.L.*, 529 U.S. at 271; *see also Carter v. Hamaoui*, 699 Fed.Appx. 519, 530 (6th Cir. 2017)(unpublished)(Tip that a black flatbed truck headed eastbound on highway, loaded with soda cans and bags of marijuana, is insufficient, because it merely described a condition that existed at the time of the call.).

It is telling in this case that police obtained a search warrant of the Terrell house in Jefferson City after Mr. Edwards' first visit there, but they did not seek a search warrant for Mr. Edwards' hotel room after the visit. Police were fully aware they lacked probable cause for such a search, and they developed no additional evidence of Mr. Edwards' alleged criminal activities thereafter. This Court has held that "[w]here the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person." *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). Further, "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause . . ." *Ybarra v. Illinois*, 444 U.S. at 91. Because of the lack of additional investigation into Mr. Edwards' activities, when it comes to arguing for probable cause, the government is compelled to hang its hat on the fact that Mr.

Edwards visited the house of a person “independently suspected of criminal activity.” That approach, obviously, is insufficient to establish probable cause.

CONCLUSION

For the reasons above, Nalenzer Lee Edwards submits that the Eighth Circuit erred in finding probable cause existed to stop the vehicle driven by Mr. Edwards for the purpose of placing him under arrest and conducting a warrantless search of the vehicle. The opinion of the Eighth Circuit is in direct conflict with the precedents of this Court and with the opinions of the other federal circuits. Accordingly, Mr. Edwards respectfully prays that this Court grant his petition for writ of certiorari and reverse the Eighth Circuit’s opinion.

Respectfully submitted,

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