

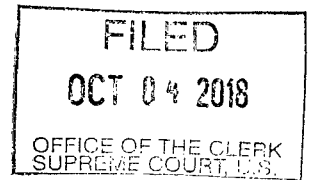
NO. **18-7875**

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In The  
Supreme Court of the United States

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October Term 2018



Lionel Cannon,  
Defendant-Petitioner,

v.

United States of America.,  
Plaintiff-Respondent.

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On Petition For A Writ of Certiorari To The  
United States Court of Appeals  
For The Third Circuit

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Petition for Certiorari

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Lionel Cannon  
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## Questions Presented

Lionel Cannon Argued in the Court below that the District Court erred in denying his motion for a Franks hearing, and that Court abused its discretion in its interpretation of the necessity clause for the wiretaps. Separately, Cannon argued that he was denied his rights under the Fourth Amendment when law enforcement searched his vehicle without a warrant. Recently, this Court issued the opinion in Carpenter which provided his claim[s] support and he placed the Third Circuit on notice of that decision. Was Cannon denied his Fourth Amendment rights?

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<u>Wong Sun v. United States</u> , 371 U.S. 471 (1964)	(5)

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To the Chief Justice and Associate  
Justices of the Supreme Court:

Acting without counsel Lionel Cannon (Cannon), respectfully  
moves for a petition for certiorari to the United States Court of  
Appeals for the Third Circuit reversing the decision affirming  
that court and in support thereof states:

Opinions Below

The Third circuit affirmed on February 13, 2018, and rehearing  
was denied on July 6, 2018, and both are reproduced in exhibit-A

## Jurisdiction

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

## Constitutional Provisions involved

The Fourth Amendment in pertinent part:

[Cannon] has a right to privacy, and free from searches without a warrant.

### I. Statement of the Case

While driving in California Cannon was stopped by law enforcement. That stop was the product of a request from law enforcement in another state seeking a stop, but specifically informed California police to provide their own probable cause for the stop. Failing to yield to these instructions, California police stopped Cannon and placed him in the back of police car and proceeded to search his vehicle. Cannon was not a threat and no exigent circumstances existed. When law enforcement failed to discover anything in the front of the vehicle, it searched the rear of the vehicle without a warrant and discovered a bag. The officer opened the bag and found that it contained currency and what he believed was a controlled substance. Cannon was arrested and this case ensued.

Cannon was indicted in the Western District of Pennsylvania under 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A), in violation of § 846, which involved ostensible drugs amounting to at least five kilograms of

cocaine.

Subsequently, on November 13, 2014, Cannon was indicted in the Northern District of Ohio, under 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) for the ostensible possession of 136.63 grams of heroin. Cannon filed a barrage of motions which included motions to suppress the evidence found in his vehicles, but the court denied said actions. Consequently, Cannon negotiated a conditional plea where from his understanding, he could appeal the denial of those motions. As a result Cannon was sentenced to 156-months.

Cannon appealed but his lawyer filed a wholly incompetent brief which the Third Circuit critized counsel for and Cannon filed a pro'se brief addressing his Fourth Amendment issue[s]. The Third Circuit affirmed and Cannon petitioned for rehearing with suggestions for en banc review. On July 6, 2018, rehearing was denied.

## II. Reason For Granting Certiorari

It is irrefutable that Cannon was denied his rights under the Fourth Amendment. That is, the search of his vehicle was without a warrant and no cause can be shown to avoid the need to to forego the warrant. Those are the facts, and they are undisputed. See Exhibit-B.

Cannon was wholly denied his rights under the Fourth Amendment and he now rests his position on the fact that a law enforcement "officer may, consistent with the Fourth Amendment, conduct a

brief, investigatory stop when the officer has reasonable, articulable suspicion that criminal activity is afoot." Illinois v. Wardlow, 528 U.S. 119, 123 (2000) citing Terry v. Ohio, 392 U.S. 1, 30 (1968). A court must consider the totality of circumstances in evaluating whether reasonable suspicion supports a Terry stop. See e.g. United States v. Arvizu, 534 U.S. 266, 273-74 (2002). A reasonable suspicion is "a less demanding standard than probable cause," but it still requires "at least a minimal level of objective justification for making the stop." Wardlow, 528 U.S. at 123 (citing United States v. Sokolow, 490 U.S. 1, 7 (1989)). Officers must, however, have more than "a mere hunch." Arvizu 534 U.S. at 274 (quoting Terry, 392 U.S. at 27). To support the stop, a police officer must have a particularized and objective basis for suspecting a particular person of criminal activity. See e.g., United States v. Goodfich, 450 F.3d 552, 559 (3rd Cir. 2006). Only the facts known to the police at the time of the stop itself may be considered. See e.g., United States v. Brown, 448 F.3d 239, 245 (3rd cir. 2006) ("Only then can we evaluate the presence or absence of reasonable suspicion, as we must consider only 'the facts available to the officer at the moment of the seizure.'" (quoting Terry, 392 U.S. at 21-22)); United States v. Ublies, 224 F.3d 213, 218-19 (3rd Cir. 2000) ("As noted above, [t]he reasonableness of official suspicion must be measured by what the officers knew before they conducted their search." (quoting J.L., 529 U.S. at 271)). Evidence obtained as the result of such a "Terry stop" "that does meet this exception must be suppressed as 'fruit of the poisonous

tree.'" Brown, 448 F.3d at 244 (quoting Wong Sun v. United States, 371 U.S. 471, 487-88 (1964)).

During a lawful traffic stop, police officers "ha[ve] the authority and duty to control the vehicle and its occupants, at least for a brief period of time." United States v. Bonner, 363 F.3d 213, 217 (3rd Cir. 2004). Upon lawfully stopping a vehicle, an officer may request the driver to step out of the vehicle. Pennsylvania v. Mimms, 434 U.S. 106, 111 (1997). Additionally, an officer can order "passengers to get out of the car pending completion of the [traffic] stop." Maryland v. Wilson, 519 U.S. 408, 415 (1997). Also, an officer can require passenger to remain in a vehicle. See United States v. Moorefield, 111 F.3d 10, 13 (3rd Cir. 1997)("Just as the Court in Wilson found ordering a passenger out of the car to be a minimal intrusion on personal liberty, we find the imposition of having to remain in the car with hands raised equally minimal.").

In this case, the initial stop of the vehicle Cannon was operating progressed into a warrantless search of the vehicle. Searches conducted without a warrant are per se unreasonable, subject to few exceptions. Horton v. California, 469 U.S. 128, 133 n.4 (1990); United States v. Salmon, 944 F.2d 1106 (3rd Cir. 1991). One such exception is "the automobile exception." "The automobile exception to the warrant requirement permits law enforcement to seize and search an automobile without a warrant if 'probable cause exists to believe it contains contraband.'" United States v. Burton, 288 F.3d 91, 100 (3rd Cir. 2002)(quoting

Pennsylvania v. LaBron, 518 U.S. 938, 940 (1996)). Probable cause to search requires a "fair probability that contraband or evidence of a crime will be found in a particular place." Burton, 288 F.3d at 103 (quoting Illinois v. Gates 462 U.S. 213, 238 (1983)).

In this case, the interaction between Cannon and the police officers was unlawful. Initially, it is submitted that the traffic stop of Cannon's vehicle was not based on reasonable suspicion. Cannon submits that the officers did not have reasonable suspicion to initiate a traffic stop because he did not violate any traffic laws prior to conducting the stop. Moreover, Cannon argues that the police officers conducting the stop failed to follow the instructions and find the required probable cause for the stop. The record, in this case, plainly shows that the task force informed Long Beach police that Cannon was there and that they needed that department to conduct a stop. But, the Task Force specifically told Long Beach police that they had to congregate up their own probable cause. Instead, Long Beach police simply stopped Cannon placed him in the back of the car and conducted the search without a warrant. Those are facts, and the constitution simply does not tolerate such action by law enforcement without a warrant.

#### Conclusion

The Court should grant certiorari and appoint counsel.

Filed this 29th day of September 2018 under 28 U.S.C. § 1746.

  
Lionel Cannon

Exhibit-A