

18-8411 **ORIGINAL**

Docket No.

Supreme Court, U.S.
FILED

FEB 13 2018

In The
United States
Supreme Court

OFFICE OF THE CLERK

Lecephrus Pierce
Petitioner

v

United States of America
Respondent

On writ to the United States Supreme Court
From the Court of Appeals for the eleventh circuit
AC Docket No. 18-4188
DC Docket No. 4:17-cr-00256-RHB-1

Pro-se
Petitioner

Lecephrus Pierce
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#26828-171

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Question Presented

Whether in affirming the petitioner's conviction the fourth circuit court of appeals abandoned established Supreme Court precedent when they found no fourth amendment violation by law enforcement with respect to the unlawful traffic stop as well as the warrantless search of the petitioner's vehicle?

(i)

List of Parties

All parties appear in the caption of the case on the cover page.

Opinions Below

Please See Appendix A

Jurisdiction

the date in which the court of appeals for the eleventh circuit affirmed my conviction was November 19, 2018.

No petition for a rehearing was filed.

This Honorable Court has jurisdiction to hear this case pursuant to 28 USC §1254(1)

Constitutional and Statutory
Provisions Involved

18 USC §924(c)(1)(A)

21 USC §841(a)(1),(b)(1)(c)

28 USC §1254(1)

US Const. amend. IV

US Const. amend. V

Table of Authorities

Brown v Illinois 422 US 590 (1975)
Delaware v Prouse 440 US 648 (1979)
Florida v Royer 460 US 491(1983)
Illinois v Caballes 543 US 405 (2005)
Terry v Ohio 392 US 1 (1983)
Whren v United States 517 US 806 (1996)
Wong Sun v United States 371 US 471 (1963)
United States v Sharpe 470 US 675 (1985)
United States v Sokolow 490 US 1 (1989)

Statement of the Case

the petitioner pleaded guilty to possessing cocaine with the intent to distribute in violation of 21 USC §842(a)(1),(b)(1)(c) as well as using or otherwise carrying and possessing a firearm during or in the furtherance of a drug trafficking crime in violation of 18 USC §924(c)(1)(A).

The district court sentenced the petitioner to the following:

13 months with respect to 21 USC §841(a)(1),(b)(1)(c), and 60 months with respect to 18 USC §924(c)(1)(A)

The sentences were imposed to be served consecutive to each other for a total effective sentence of 79 months.

The petitioner filed a direct appeal with the court of appeals for the fourth circuit.

The sole issue the petitioner appealed was,

"...Whether the district court erred in denying the petitioner's motion to suppress evidence obtained by law enforcement obtained subsequent to a traffic stop."

The fact associated with the direct appeal as well as this instant petition are as follows:

Myrtle Beach (SC) police department officers stopped the petitioner as he was driving on June 16, 2016.

The law officers alleged that the petitioner had made an illegal left turn by not turning into the lane nearest to him which precipitated the stop.

The petitioner on the other hand, alleges that the left hand turn was in fact legal, and that the officers lacked the probable cause to stop him.

In any event, the petitioner contends that once the stop was made, the officers prolonged the stop, claiming that had smelled marijuana. The officers conducted an unlawful, warrantless search of the petitioner and discovered a firearm.

The petitioner was "pat-frisked" three (3) times however the officers found no signs or evidence of drugs.

The petitioner, handcuffed, was brought to the police station and as he was exiting the police cruiser, officers found a small bag containing cocaine, "in their own vehicle" and charged this petitioner with possession.

Question Presented

Whether, in affirming the petitioner's conviction, the fourth circuit court of appeals abandoned established Supreme Court precedent when that found no fourth amendment violation by law enforcement with respect to the unlawful traffic stop was well as the warrantless search of the petitioner's vehicle?

Reasons for Granting the Writ

The fourth amendment protects the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.¹

In general, evidence discovered as a result of a fourth amendment violation is subject to suppression under the exclusionary rule; Wong Sun v United States 371 US 471 (1963).

Evidence derived from an illegal search may be admissible depending on, whether granting establishment of the primary illegality, the evidence to which the instant objection is made has been achieved through an exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.²

1 U.S. Const. amend. IV

2 Wong Sun 371 US at 476

Here, it is the petitioner's contention that probable cause was lacking to detain him even after he was issued a warning ticket for the purported illegal left turn.

The traffic stop was completed once the officer issued the warning ticket.

The continued detention of this petitioner therefore required the officer to have a reasonable suspicion of criminal activity, Florida v Royer 460 US 491 (1983).

Since Terry v Ohio 392 US 1 (1968) a "reasonable suspicion" of criminal activity has justified an officer's brief stop or detention of the suspect sufficient to permit the officer to allay the suspicion. Reasonable suspicion is demonstrated when an officer points to a specific and articulable facts which, taken together with rational inferences from those facts, evince more than an inchoate and unparticularized suspicion or a hunch of criminal activity.

Here, no such reasonable suspicion existed.

The officer claims that the petitioner made an improper left hand turn. Upon stopping the vehicle, the officer suspected that the petitioner was involved in some illicit drug activity. The officer then patted down the petitioner three (3) times and discovered nothing.

The stop should have ceased at this point.

Thus, where there is sufficient attenuation between the unlawful search and the acquisition of evidence the "taint" of that unlawful search is purged, Brown v Illinois 422 US 590 (1975)

this court should therefore determine whether the lane change made by the petitioner, improper or not, is an intervening circumstance sufficient to purge the taint of the illegal search.

The government, in this case, argued that the lane change purged the taint of the unlawful search.

The petitioner argues that there was no illegal lane change and, even assuming arguendo, that there was, the search remains unlawful and the evidence must be suppressed.

(i) Probable Cause to Search the Vehicle as well as the Petitioner

During a lawful stop (which this petitioner contest) on officer may briefly inquire into unrelated matters, but may not definitively abandon the prosecution of the traffic stop and embark on another sustained course on investigation absent additional justification.

The officer may take other actions that do not constitute a search within the meaning of the fourth amendment such as conducting a perimeter canine sniff of the vehicle, Illinois v Caballes 543 US 404 (2005)

Which the officers involved here did not do. Undaunted, the officer, continued the stop by conducting a warrantless search of the petitioner's vehicle, despite the fact that the petitioner was not near the vehicle and at that point, discovered the firearm in the vehicle and arrested the petitioner.

The stop should have ceased when the officer patted down the petitioner and found nothing.

Even assuming arguendo, that the officer had a "reasonable suspicion" of illicit drug activity, that reasonable suspicion concluded.

This court has long recognized that this standard is not readily or even usefully, reduced to a neat set of legal rules, but rather, entails common sense, non technical conceptions that deal with factual and practical considerations of everyday life United States v Sokolw 490 US 1 (1989).

For this reason, in assessing reasonable suspicion, courts must "consider the totality of the circumstances" and "give due weight to common sense and judgements reached by officers in light of their experience and training".

In this instant matter, utilizing common sense and the totality of the circumstances, the officer, even if he had a "reasonable suspicion", (which the petitioner alleges he did not) to pat the petitioner down, that reasonable suspicion concluded when the officer did not find any contraband on the person of the petitioner.

(ii) The officer extended the time of the stop thereby violating the petitioner's constitutional protections

A traffic stop may not be extended beyond the time reasonably necessary to effectuate the stop, absent reasonable suspicion justifying further detention as a Terry, *supra*, stop, Illinois v Cavalles 543 US 405 (2005)

It is well established that a temporary detention of individuals during the stop of an automobile by police constitutes a seizure, no matter how brief the detention or limited it's purpose, Delaware v Prouse 440 US 648 (1979)

An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances.³

The Maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is...

"....whether the detention lasted longer than necessary given it's purpose."⁴

³ Whren 517 US at 810

⁴ Royer 460 US at 495

Thus once the driver has demonstrated that he is entitled to operate his vehicle and the police officer has issued the requisite warning or ticket, the driver must be allowed to proceed on his way, United States v Sharpe 470 US 675 (1985)

In the instant matter, the officers prolonged the traffic stop. The officer found nothing on the petitioner's person, however, the officer remained unfazed, as he began searching the petitioner's vehicle.

Despite the fact that the officer discovered a weapon, the search was unlawful as the officer never had probable cause to stop the petitioner to begin with.

Even if the officer declared that the petitioner made an illegal left hand turn, the officer had no reasonable suspicion to pat down the petitioner.

The officer, however, prolonged the stop by conducting a warrantless search of the vehicle.

This petitioner contends that his constitutional rights were violated and as a result, the evidence obtained was don so unconstitutionally.

Conclusion

Wherefore, for all of the aforementioned reasons this court should grant this petition for a writ of certiorari and further find that the officer's actions were unlawful in violation of the petitioner's fourth and fifth amendment rights.

Respectfully Submitted



Lecephrus N. Pierce

Petitioner

Pro-Se