No. 18-9036

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Gregory T. Brown — PETITIONER
(Your Name)

vs.

Commonwealth of Virginia (4th Cir) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregory Brown
(Your Name)

3600 Woods Way
(Address)

State Farm, Virginia 23160
(City, State, Zip Code)

(Phone Number)

INTRODUCTORY STATEMENT

The following questions are to answer the questions of whether the defendants Fourth Ammendment Constitutional rights were violated. It is clear the arresting officer went above and beyond to illustrate a picture with numerous reasons to give him probable cause to arrest yet none are substantiated or corroberated by the law,the wittnesses, his fellow officers, or his statements in which he concedes that the defendant would have been free to leave.Which the courts have established are his Constitutional right when involved in a"routine" consenual encounter with law enforcement.The Plain smell doctrine was clearly abused when he states he smelled .89grams of unburnt marijuana from fifteen feet away, in a bag,in the defendants pocket, outside, amongst a group. The courts havesaid it takes 2-5pounds (896-2240grams) of unburnt marijuana in a car to emit a strong odor. Commonwealth of Virginia v. Arthur Cherry, Norfolk 2012 Va. Cir 227 Docket CR11-3689.Also, in Mendenhall,446 U.S. at554, states the fact that a policeman identifies himself as law enforcement,without more, doesnt convert the encounter into a seizure requiring some level of objective justification. Aperson approached in this way may legaly disregard the questions and walk away,which is what the defendant did in this case. The questions also aim at whether the defendant should have been afforded the expectation of privacy since he possessed housekeys and by homeowners words had unlimited access to the home while she was at workand the detention happened within the curtilage of the home.

QUESTIONS

1.Was the entry by law enforcement onthe curtilage of the property based on an unsubstantiated tip,without consent, violative of the Fourth Ammendment?

2.Was it reasonable to acost the defendant,where he was not particularly described as one of the persons "allegedly" handling a brick of marijuana by the unidentified caller?

3. Does Terry v. Ohio supersede Horton v. California,496U.S. 128 142 (1990) if the officer was on the curtilage where he smelled marijuana emitting from the defendant in violation of Dakota v. Opperman?

4. Since no consent was requested or obtained was this a Fourth Ammendment violation, when arresting officer states "defendant would have felt free to leave"?

5. Was officers attmpts at an illegal arrest reason for the defendant to consider him an aggressor and give defendant reason to pull away from his grasp,when no mention of illegal activity was mentioned or no mention of any kind of threat was brought up?

6. Was Mendenhall test met when the officer states he approached with 4 officers, parked on an adjacent street and came to explain the call to service and never mentions to defendant or fellow officers he smells marijuana,yet detains defendant when he allegedly begins to walk away?

7.If officers did not observe any illegal activity nor was "anonymous call specific in identifying or describing anyone, where was probale cause established?

8. Was officers claim of smelling.89grams of unburnt marijuana,from

fifteen feet away, outside pretextual or self-serving based on the call to service alleging"7 people handling what looks like a brick of marijuana"?

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LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Court of Appeals of Virginia court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

Opinions Below

There are no published opinions about this case

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 10-29-18. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: 1-31-19, and a copy of the order denying rehearing appears at Appendix G.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

JURISDICTION

Mr. Gregory Browns petition for "rehearing" to the Supreme Court of virginia was denied on January 31st 2019.Mr. Browninvokes this courts jurisdiction under 28 U.S.C. 1257, having filedin a timely manner this petition for a Writ of Certiorariwithin ninety days of the Virginia Supreme courts Judgement.

CONSTITUTIONAL PROVISIONS

Constitution Ammendment 4

Unreasonable searches and seizures

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 noWarrants shall issue, but upon probable cause, supported by Oath and affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Constitution Ammendment 14(section1)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are the citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;Nor shall any State deprive any person of life ,liberty,or property, without due process of law; Nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

19.2-59 Search without warrant prohibited;when search without warrant lawful

No officer of the law or any other person shall search any place,thing or person, except by virtue of and under a warrant issued by a proper officer.Any officer or other person searching any place,thing or person otherwise than by virtue of and under search warrant shall be guilty of malfeasance in office.Any officer or person violating the provisions of this shall be liable to any person aggreived thereby in both compensatory and punitive damages. Any officer found guilty of a second offense under this section shall, upon conviction thereof, immediately forfeit his office and such finding shall be deemed to create a vacancy in such office to be filled according to law.

Civil rights
1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under colorof any statute, ordinance regulation,custom, or usage,of any State or Territory or the District of Columbia, subjects,or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, priveledges, or immunities secured by the Constitution and laws,shall be liable to the party injured in an action at law,suit in equity or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or ommision taken in such officers judicial capacity, injunctive relief shall not be granted unless a declatory decree was violated or declatory relief was unavailable.

STATEMENT OF CASE

On or about the 22nd day of May 2014, officer Foss along with 4 other Virginia Beach officers responded to a "nuisance" call in the 700 block of Hayes avenue. The "anonymous " caller stated that there were "7people handling what looks like a brick of marijuana". The officers parked on an adjacent street and snuck up on the residence. Upon arriving at the residence officer Foss says hebegins to smell "unburnt" marijuana coming from the defendantwhois approximately fifteen feet awayin officer Foss' assessment. The defendant is in the driveway of homeowner Bridgette Carreiro who is also present along with her sister-in-law Simone Vanradar, her son , and three toddlers. Officer Foss also mentions that there is an unknown male present who the 5 officers fail to search,question,or decsribe in any detail, next to the defendant.No one got a name from this personand officer Foss is the only person who has any recollection of this unknown person.

As the officers get closer officer Fossstates that he makes contact with defendant and Bridgette carreiro and begins to explain why they are there.While explaining the call to service Officer Foss says a scuffle breaks out between officer Snyder and another person who is a few feet away. This is denied by officer Snyder whostates he was in no scuffle and had no issues at all with anyone involving a scuffle.At that time officer Foss says the defendant attempts to walk awaytoward the home,a statement which he then changes at Suppression hearing to the defendant sorta walked away from him. Officer Foss says that he tells the defendant to stopto which the defendant ignoresbecause he has not been accused of having committed any criminal activity nor been asked for identification, or been

told that he wreaked of unburnt marijuana.Officer Foss admits he does not know what he said only that the defendant would have felt free to leavebefore he grabs his arm. The defendant reponds by pullin away and says to the officer"get off me","you cant search me" and "what have i done". However, officer Foss wrestles the defendant to the ground and searches him without a warrant finding a quanity of herion and crack and less than one gram of marijuana.

REASONS FOR GRANTING WRIT

A. To avoid the error of the Court in which they denied suppressing the evidence when officers unconstitutionally searched and seized Mr. Brown after Mendenhall v. U.S. clearly states it is the right of a citizen to simply walk away from a "routine" police inquiry if said person is not accused of illegal activity.Also, nor does the fact that a policeman identifies himself as law enforcement, without more , convert the encounter into a seizure requiring some level of objective justification. a person approached in this way may legally disregard the questions and walk away. Florida v. Royer, 460 U.S. at497.

B. To avoid error of the court in which they denied suppressing evidence when police went within the curtilage of the townhome violating defendants expectation of privacy.

C. To avoid error of the Court in which they denied suppressing evidence where an"anonymous " tip with nothing linking defendant by description in any way, led to an investigative inquiry which led to an illegal arrest. the court erred in not making evidence found "fruit of a poisonous tree",

REASONS FOR GRANTING PETITION

There are many questions about this incident and whether there was probable cause in this case. Before we get into that we should visit the fact(s) surrounding whether the defendant had an expectation of privacy when officers came onto the driveway of a townhome where the defendant as well as several others including the homeowner,Bridgette Carreiro,her sister-in-law,Simone Vanrada Bridgettes stepson,and three toddlers playing in the driveway,while their mothers watched from a few feet away sitting in lawn chairs. There was an"anonymous" call stating that there were " 7people handling what looks like a brick of marijuana".The police(approx.4) including the arresting officer Foss parked on an adjacent street out of the view of the residence and crept up on the home. Upon arriving at 710 Hayes avenue the officers proceeded to explain the call to service To Bridgette Carreiro as well as the defendant.. At this point we look at Collins v. commonwealth of virginia 138 S. court 1663;201 L Ed.2d (2018). It states that the driveway was an adjacentarea to a home and to which the home life extended. In Commonwealth of virginia v. David Kurnard Hackett,Court of appeals Va. App. Lexis 120 No. 2594(2008), it states a detective without a warrant lacked probable cause to enter defendants backyard prior to a drug transaction. The backyard was within the curtilage of a home in which the defendant had an expectation of privacy. In this case the driveway was about 5 feet from the front door and chairs, toys ,as wellas a gate wre within a few feet inplaces where there would have been an expectation of privacy. Also, in Hackett the curtilageis defined as the area immediately surrounding a private

house where the occupants have a reasonable and legitimate expecvtation of privacy that society is prepared to accept. The extent of the curtilage is determined by factors that bear upon w whether an individual reasonably may expect thearea in question should be treated as the home itself. When Government agents conduct a search and seizure within protected areas of a dwelling without a warrant such actions are presumptively unreasonable and unlawful unless they are supported by probable cause and exigent circumstance3s. In this case homeowner and her sister were sitting in chairs watching their children play 5 feet from the door to the home.In Jones v. Commonwealth of Virginia,32 Va. App. 30(2000),Hayes v. Commonwealth of Virginia,App. 647,655,514 S.E 2d 357,360(1999) and Minnesota v. Olson,109L. ED 2D,85 495,U.S.91 it is clear that a reasonable expectation to privacy is given when although defendant had moved his residence"he remained co-owner, had recent and continuing access toit, and routinely and frequently visited the property. In the current case the defendant had in his possession keys to the front door, letters inside the home,and per the homeowner Bridgette Carreiro had unlimited access to the home even when she was at work. Therefore he should have been afforded the expectation of privacy.

It has been a long time since U.S. v. Mendenhall 446 U.S. 544 has been decided. Yet we still find that some current cases are in need of insight of that particular case. This one in particular. Mendenhall clearly states that specific factors are to be considered in determining whether a reasonable person would feel free to leave (1) thje number of officers present at the scene, in this case 4; (ii)Whether the officers were in uniform, in this case they were(iii)

Whether the officers displayed their weapons, in this case at least one wittness says they did;(iv)whether they touched the defendant or made any attempt to block his departure in any wayor restrain his movement,several wittneses say they immediately restrained the defendant upon arrival;(v) "The use of language or tone of voice indicating that compliance with the officers request might be compelled, in Preliminary the officer states that he asked the defendant to stop , then in suppression he states that he told the defendant to stop;(vi)whether the officers informed the defendant that they suspected him of "illegal activity" rather than treating as a "routine"encounter in nature, Officer Foss specifically states he approached and began to explain the call to service and admittingly says he never asked the defendant could he search him or told the defendant he suspected him of any illegal activity,nor did he inform any of his fellow officers that he suspected the defendant in any illegal activity prior to the defendant attempting to walk away;(vii) whether the officer requested from the defendant some form of identification,and the officer promptly returned it. Here the key elements were the officers admission that the defendant would have felt free to leave which by United Statesv. Gray883 F.2d 320,322 (4th cir 199) as well as United States v. Nathaniel Black U.S. court of appeals(4th cir)707 F. 3d 531 state that a person is seized within the meaning of theFourth Ammendment if in view of all [of] the circumstances surrounding the incident a reasonable person would have believed that he was free to leave. In Hodari D.499 U.S. at628 the Supreme court explained that "Mendenhall establishes that the test for existence of a "show of authority" is an objective one not whether the citizenpercieved that he was being ordered to

restrict his movement, but whether officers words and actions would have conveyed that to a reasonable person. By the officers testimony he walked up and explained the call to service, never mentioning to the defendant he suspected him of any "illegal activity", which brings up Florida v. Royer, 460 U.S. at 497 Police do not violate the Fourth Ammendment by merely approaching a person in a public place, asking if the person is willing to answer a few questionsor putting questions to the person. However, inMendenhall it goes on to say that nor would the fact that an officer identifies himself as law enforcement,without more,convert the encounter into a seizure requiring some level of objective justification. Aperson approached in this way may legally disregard the questions and walk away.This is what happened.Officer states he explained call to service and defendant attempts to walk away which is his Fourth Ammendment Constitutional right since he hasnt been accused of anything.

Furthermore, in Michigan v. Chestnut, 486 U.S. at 574n7 it states the free to leave standard is an objective test not a subjective inquiry.And the subjective intent of the officers is irrelevant to the assessment of the Fourth Ammendment implications of police conduct on to the extent that that intent has been conveyed to the person confronted. The uncommunicated intent of the police is irrelevant to the determination of whether seizure occured. The relevance of this is on numerous occasions the officers attempt to circumvent the law by first stating that upon arrival from fifteen feet away he observed defendant and another man talking a few feet away implying

some sort of transaction which was refuted by the disappearance of this unknown person in an area with 4 other officers present. The officer then says he smells marijuana (unburnt) from that distance which is also refuted by Commonwealth of Virginia v. Arthur Cherry , Norfolk 6-12-2012 VA. Cir. 227, Dockett C911-3689 which states the smell of unburnt marijuana is difficult to smell unless present in large quantities. Investigator/Narc officer testified that a significant anount "approximately "2-5pounds(896-1680grams) would be required to emit a strong odor. Cherry was inside a vehicle.In this case less than 1 gram (.89) was recovered and it was inside the defendants pocket, outside, inside a bag.

In Anne Johnson v. United States 92 L Ed 436 (333 U.S. 1047) No. 329 12-18-47 An informers tip that some unknown is smoking opiom combined with officers sense of smell which led to the door of ones home plus slight noise after knock is not sufficient probable cause to justify a lawful arrest and incidental search and seizure. Where law enforcement officers enter ostensibly for purposes of making a general exploritory search for materials to connect someone to some crime, the search amounts to an illegal invasion of privacy and is repungent to the Fourth Ammendment. In Wheeler v. Goodman 5-11-71 330 Supp.1356 it states a "tip" of the "anonymous caller" even coupled with lack of clear gender in the names on a hotel register would have been insufficient to support the issuance of a search warrant. Lt. knew he lacked probable cause to get a search warrant. Clearly then searching without a warrant was unjustified. In this case officer Foss attempted to succeed in circumventing the law, the Fourth

Ammendment as well as procedure. In an opinion from Anne Johnson v. United States(333 U.S. 10-17)No. 329 one Justice stated that although over a considerable period of time numerous complaints concerning the use of the premises had been recieved, the agents made no effort to obtain a warrant for making a search. They had abundant opporntunity to do so and to proceed in an orderly way even after odor emphasized their suspicion moreover a short period of watching would have prevented such a possibility. To justify an ivestigative stop based on an"anonymous" tip police do not have to verify every detail, but significate aspects of the informers information must be independently corroberated, Gregory v. Commonwealth of Virginia,22 Va. App.100,468 S.E. 2d 117(1996), United States v. Reaves,512 F.3d 123 (4th Cir.)2008. An "anonymous" tip must have some predictive element or some discriptiion of ongoing "criminal activity" to give probable cause.Harrisv. Commonwealth of Virginia,276 Va.689,668 S.E.2d 141 (2008). In this case the defendant was not described in any way. The "anonymous" caller states "7 people handling what looks like a brick of marijuana."

The next issue is the consent to search which the arresting officer admittingly says was not requested or consented to. In Lee Edward Sattler v. Commonwealth of Virginia, court of AppealsVa.app. 366;457 S.E.2d 398 No.0146-94-2(1995), An officer must be able to point to specific and articable facts which, taken together with rational inferences from those facts "reasonably lead himto conclude" in light of his expierence that "criminal activity is afoot and "suspect is armed and dangerous",Stanley v. Commonwealth of Virginia,16 Va App. 873;433 S.e.2d 512 (1993). In this case there are no facts that are not disputed by the witnesses, the other officer, or even the arresting officers own testimony. The officer never stated

he felt in danger and stated the defendant attempted to walk away from him, not run. Finally feeling as if he couldnt allow the defendant to go free the officer grabs him. The officer states that he does not know what was said or what he said only that he wouldnt have just grabbed the defendant for no reason. At that poin the defendant by the officers testimony says "get

off of me" and "you cant search me" which in Erie Lawrence v. Commonwealth Of Virginia,40 Va. App. 95 an opinion, the courts say consent must be unequivocal,specific and intelligently given and is not lightly inferred. Although it need not be oral, mere acquienscence, particularly when no request is made, is insufficient to constitute consent. Obviously there was no request asked for or obtained for the defendant to react in this manner.In fact officer states that until he starts to pull away he never told the defendant "i suspect you of a crime" or asks the defendant for permission to search him. By grabbing the defendant without warning or request to search,let alone inquiry about posible "illegal activity" Billington v. Smith,292 F.3d 1177(9th Cir) 2002,states that if an officer intentionally or recklessly provokes a violent confrontation the provocation is an independent violation of the Fourth Ammendment.
If an arrest or stop is used merely as a pretext to search for evidence, that search constitutes a violation of the Fourth Ammendment. A stop is pretextual if the facts of a case suggest that a reasonable officer would not have pursued the minor offense in the abscence of a desire to investigate an unrelated more serious offense. United States v. Hernandez,55 F.3d 445 (9th Cir. 1995. In determining whether probable cause exists, reviewing courts are required to focus upon what the circumstances meant to a trained officer. Nevertheless, an officers determination of probable cause must be based on objective facts. Suspicion or even "strong reason to suspect"is not enough to constitute

probable cause. The arresting officer gave many examples ,almost, evry concievable one why there was probable cause. The man who disappeared, who no one else recalls being present.The smell of less than 1 gram of unburnt marijuana from fifteen feet away, outside when defendant is allegedley amongst two other people. The allegded scuffle in which the officer who was allegedley involved, vehemently denies ever occurred. And because of said scuffle the defendants alledged attempt to flee towards the home in his preliminary statement , then sort of away from the officer by the officers testimony at suppression. The officer gave evry reason why there was probable cause, yet not one time did the officer convey to the defendant that he suspected himof "illegal activity" or wished to search him. Yet when defendant exercised his Fourth Ammendment right to walk away from a consenual encounter where he was not linked to any "illegal activity" or described by any witness as a culprit, the officer decides to grab him not remembering what he said to the defndant only that he wouldnt have grabbed him for no reason.which in essence is exactly what he did. This is also supported by the officers' own testimony where he states defendant kept saying "get off of me". After all of this officer also adds to the reasons for probable cause, that he smells marijuana. If he did indeed smell marijuana, this should have been conveyed to the defendant or at least one of the four other officers that were present. It was not. That is the definition of an illegal search and seizure.

At least four times in2011 we admonished against the Governments misuse of innocent facts as an indicia of supicious activity. See U.S. v. Powell,666 F.3d 180(4th Cir2010);Massenburg 654 F.3d 480; U.S. v. Digiovanni,650 F 3d 498 (4th Cir 2011) and U.S. v. Foster,634 F.3d 243 (4th Cir 2011). Although factors "susceptible of innocent explanation", taken together, may "form a particularized and objective basis" for reasonable suspicion for a Terry stop. U.S. v. Arvizu, 534 U.S. 266, 151 L.Ed 2d 740 (2002) this is not such a case. Instead, we encounter yet another situation where the Government attempts to meet its Terry burden by patching together a set of innocent, suspicion-free facts, which cannot rationally be relied upon to establish reasonable suspicion.

Lastly, the dispatched call never specifically named or desribed anyone, only said"7 people handling what looks like a brick of marijuan. The defendant was not desrcibed or linked to call in any way nor to the marijuana sticking out of the other mans pocket. There was no mention of any illegal activity, nervousness or threat by the defendant. At no time did the officer feel threatened and thru his own admission the defendant would have felt free to leave. That is the definition of an illegal search and seizure. The officer never conveyed to the defendant or his fellow officers (4other officers) that he suspected him of anything so defendant was within his Fourth Ammendment Constitutional rights when he walked away.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregory Brown

Date: 4-16-19

ZURI ELIZABETH POLK
NOTARY PUBLIC
Commonwealth of Virginia
Registration No. 7802048
My Commission Expires March 31, 2022

4/16/19