Case No. 18-9520

SCAZ Case No. CR-18-0186-PR

CAAZ Case No. 1 CA-SA 17-0258

MCSC Case No. CR2013-003413

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
FEB 19 2019
OFFICE OF THE CLERK

ALAN MICHAEL BARTLETT

Defendant - Petitioner

vs.

ARIZONA

Plaintiff - Respondent

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI OF PETITION FOR REVIEW DECISION OF THE SUPREME COURT OF ARIZONA

Alan M. Bartlett #T242560
3250 W. Lower Buckeye Road
Phoenix, Arizona 85009
Petitioner - Pro Se

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QUESTION PRESENTED

Whether in light of Coolidge vs. New Hampshire, 403 US 443 (1971), Judge Susanna C. Pineda, for the State of Arizona, abused discretion, denying Petitioner Bartlett's motion to suppress arrest and evidence unlawfully obtained in violation of the 4th USCA, 6th USCA, and 14th USCA amendment of the United States Constitution, where Pineda lacked requisite neutrality required under Coolidge to render such judgment after participating in previous federal prosecution where Bartlett was convicted of same course of conduct.

LIST OF PARTIES

Petitioner - Defendant;

1. Alan Michael Bartlett #T242560
   3250 W. Lower Buckeye Road
   Phoenix, Arizona 85009

VS.

Respondent - Plaintiff;

1. Arizona Attorney General
   % Marc Brnovich
   % Joseph T. Maziraz
   1275 W. Washington Street
   Phoenix, Arizona 85007

2. Susanna C. Pineda
   Judge of the Superior Court
   Maricopa County Superior Court
   175 W. Madison Street
   Phoenix, Arizona 85003

All parties do not appear in coversheet caption.

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PETITION FOR WRIT OF CERTIORARI

I. OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A, of the petition and is unpublished.

II. JURISTICTION

The Maricopa County Superior Court had origional juristiction over the criminal prosecution under the Arizona Constitution, article 6, section 14.

The Arizona Court of Appeals had juristiction over the special action petition under the Arizona Constitution, article 6, section 9, and Arizona Revised Statutes; ARS 13-120 and ARS 13-4033.

The Supreme Court of Arizona had juristiction over the petition for review under the Arizona Constitution, article 6, section 5, and Rule 8, Arizona Rules of Special Action Petition.

The Supreme Court of the United States has juristiction over this petition for writ of certiorari under the United States Constitution, 28 USCA 1257.

To decline juristiction would force Bartlett to choose between two untenable options; (1) proceeding to trial without exercising his 4th USCA, 6th USCA, and 14th USCA amendment right to conduct an evidencuary hearing into the constitutionality of Arizona's unlawful arrest and warrantless search, and (2) the lengthy appeal process, assuming the state continues this contumcious behavior, further violating his 6th USCA and 14th USCA amendment due process rights.

Although mandamus juristiction is discretionary, the Supreme Court's exercise of that discretion is particularly appropriate where parties have no equally plain, speedy, and adequate remedy by appeal. In this case, Bartlett argues that Judge Susanna C. Pineda, for the State of Arizona, abused discretion, mindful that the court abuses discretion when it makes a legal error.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

a. Investigatory Stops of Persons

Not all encounters between individuals and police are seizures governed by the Forth Amendment. US vs. Drayton, 536 US 194, 200 (2002). A seizure occurs when a reasonable person; (1) would not "feel free to leave", or, (2) would not feel free to decline the officers requests or otherwise terminate the encounter. Brendlin vs. California, 551 US 249, 255 (2007). Investigatory stops - brief seizures by police officers that fall short of traditional arrests - are governed by the Forth Amendment and are lawful when justified by a reasonable suspicion, that an individual is engaged in criminal activity. Terry vs. Ohio, 392 US 1, 28-31 (1968). Reasonable suspicion - a lesser standard than probable cause, exists when an officer can "point to specific" and articulable facts, which, when taken together with rational inferences from those facts, reasonably warrant the intrusion.

Terry vs. Ohio, 392 US 1, 21 (1968). Inarticulable hunches or generalized suspicions are insufficient. Terry vs. Ohio, 392 US 1, 22, 27 (1968). In adopting this formulation, the Supreme Court in Terry vs. Ohio emphasized the importance of balancing "the need to search or seize against the invasion which the search or seizure entails" to determine whether a search or seizure is lawful. Terry vs. Ohio, 392 US 1, 21 (1968).

To determine whether reasonable suspicion existed at the time of the encounter, courts use the "totality of circumstances" test. Navarette vs. Cal., 134 S. Ct. 1683, 1687, 1690 (2014). Police may stop and question a person for a limited period of time when they reasonably suspect that the person is engaged in criminal activity. Terry vs. Ohio, 392 US 1, 22-24 (1968).

Generally, investigatory stops are valid only if the suspicion is objectively reasonable. Navarette vs. Cal., 134 S.Ct. 1683, 1687 (2014). An officers subjective intentions are irrelevant to the constitutionality of an investigatory stop under the Forth Amendment. Whren vs. U.S., 517 US 806, 811-13 (1996). The primary basis for reasonable suspicion are a police officer's personal observations, Illinois vs. Wardlow, 528 US 119, 124-25 (2000), and the officer's knowledge obtained or imputed from others that a crime has been committed. Navarette vs. Cal., 134 S.Ct. 1683, 1688-89 (2014). Courts afford considerable deference to the observations and conclusions of the police, reasoning that an experienced officer can infer criminal activity from conduct that may seem innocuous to a lay observer. US vs. Arvizu, 534 US 266, 277 (2002).

Isolated and minimal instances of innocent activity are insufficient to construe reasonable suspicion, Reid vs. Georgia, 448 US 438, 441 (1980), but several apparently innocent activities taken together may meet the required standard. US vs. Sokolow, 490 US 1, 3, 9 (1989).

Reliable information from an informant may also create reasonable suspicion and justify an investigatory stop. Navarette vs. Cal., 134 S.Ct. 1683, 1688-89 (2014). Courts assess the reliability of an informant's tip on a sliding scale: greater corroboration is necessary to justify acting on a tip from an unknown informant or an informant of uncertain trustworthiness, Navarette vs. Cal., 134 S.Ct. 1683, 1688-90 (2014), whereas less corroboration will suffice if the informant is from a known source or a source that has proven trustworthy in the past. Adams vs. Williams, 407 US 143, 148 (1972).

The presence of a suspect in a high-crime neighborhood does not, standing alone, justify seizure. Brown vs. Texas, 443 US 47, 52 (1979). Courts may use these factors, however, in assessing the totality of circumstances surrounding a seizure. For example, a suspects unprovoked flight upon seeing the police can justify a seizure when it occurs in a high-crime neighborhood. Illinois vs. Wardlow, 528 US 119, 124 (2000). Generalized suspicion of criminal activity based solely on prior arrest record does not justify seizure. US vs. Grandberry, 730 F.3d 968 (2013), Whren vs. US, 517 US 806, 810 (1996), Beck vs. Ohio, 379 US 89 (1964).

Police activities during an investigatory stop must be reasonably related to the circumstances that initally justified the stop. Rodriguez vs. US, 135 S.Ct. 1609, 1615 (2015). During a lawful investigatory stop, police may ask questions or request documents to establish a person's identity or to confirm or to dispel suspicions of criminal activity. Rodriguez vs. US, 135 S.Ct. 1609, 1612 (2015). If reasonable suspicion does not exist, police may still order occupants out of a vehicle they have lawfully stopped. Maryland vs. Wilson, 519 US 408, 410 (1997). In addition to detentions that are justified in the absence of a warrant, a detention may be justified because a valid search warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants on or in immediate vicinity of the premises while the search is conducted. Bailey vs. US, 133 S.Ct. 1031, 1042 (2013).

When the police hold a suspect beyond the amount of time necessary to effectuate the purpose of the stop, the seizure becomes an arrest and must be supported by probable cause. Florida vs. Royer, 460 US 491, 501 (1983). The Supreme Court has declined to establish a bright-line rule to determine when an investigatory stop becomes an arrest. US vs. Sharpe, 470 US 675, 685 (1985). Instead, whether an investigatory stop has become an arrest is decided on a case-by-case basis. In making such decisions, courts consider the diligence of police in resolving their reasonable suspicion as quickly as possible, US vs. Sharpe, 470 US 675, 686 (1985), the scope and nature of the restraints placed on an individual's liberty, US vs. Guzman-Padilla, 573 F.3d 865, 885-86 (2009), and whether police transported the individual to another location. Florida vs. Royer, 460 US 491, 502-03 (1983). The mere existance of a less intrusive means of investigation does not make a detention unreasonable. Florida vs. Royer, 460 US 491, 500 (1983). When a detainee's own actions contribute to the duration of a stop, a longer detention may be reasonable.

US vs. Sharpe, 470 US 675, 687-88 (1985).

b. Investigatory Detentions of Property

Under the Forth Amendment, seizures of property in which a person has a legitimate privacy intrest, Illinois vs. Caballes, 543 US 405, 408 (2005), US vs. Place, 462 US 696, 706-07 (1983), are valid only when police reasonably suspect that a property constitutes or contains evidence of criminal activity, US vs. Place, 462 US 696, 706 (1983). Seizures of property that is abandoned, in plain view, or obtained by consent, US vs. Matlock, 415 US 164 (1974), are valid because the Forth Amendment does not protect voluntarily-surrendered privacy intrests. Cal. vs Hodari, 499 US 621, 629 (1991). When evaluating the reasonableness of a property seizure, courts consider the duration and intrusiveness of the seizure, notwithstanding how quickly police conducted their investigations of the seized property and whether police moved the seized property to a different location after seizing it. US vs. Place, 462 US 696, 709-10 (1993).

Although brief seizures of property are valid if based on reasonable suspicion, a subsequent search of seized property is generally valid only if executed pursuant to a warrant issued upon probable cause. Smith vs. Ohio, 494 US 541, 542-43 (1990).

C. Seizures of Items in Plain View

In certain situations, police may seize evidence that is in plain view without a warrant. Coolidge vs. New Hampshire, 403 US 443, 465 (1971). First, the police must not "violate the Forth Amendment in arriving at a place from which the evidence could be plainly viewed. Horton vs. Cal., 496 US 128, 136 (1990). Thus, police may lawfully seize evidence in plain view when executing a search warrant, Coolidge vs. New Hampshire, 403 US 443, 465 (1971), or arrest warrant, US vs. Hudson, 100 F.3d 1409, 1420 (1996), and when conducting a lawful warrantless search, Texas vs. Brown, 460 US 730, 739 (1983). Second, the incriminating charactor of the evidence seized must be immediately apparent, Horton vs. Cal., 496 US 128, 128, 136-37 (1990), and police may not disturb and further investigate an item to discern it's evidencuary value without probable cause. Arizona vs. Hicks, 480 US 321, 322 (1987). To establish probable cause, however, police may lawfully engage in investigatory action not considered a search under the Forth Amendment. US vs. Dunn, 480 US 294, 305 (1987).

Warrantless seizures of evidence based on the plain view doctrine may be valid even if the officers expected to find the seized evidence. Horton vs. Cal., 496 US 128, 137-41 (1990). The plain view doctrine also permits police to seize a container if it's incriminating charactor is immediately apparent, Texas vs. Brown, 460 US 730, 742-43, (1983), and police may search inside that container if it's contents are in plain view. Ark. vs. Sanders, 442 US 753, 765 (1979). In Minnesota vs. Dickerson, 508 US 366, 375 (1993), the court expanded the plain view doctrine to include a "plain touch" corolloy. Several courts have also adopted "plain smell", Illinois vs.

Caballes, 543 US 405, 409-10 (2005), and "plain hearing", US vs. Mankani, 738 F.2d 538, 544-45 (1984), corollaries.

D. Consent Searches

Government officials may conduct a search without a warrant or probable cause based upon an individuals consent, so long as that consent: (1) was voluntary, Fernandez vs. Cal., 134 S.Ct. 1126, 1129-30 (2014), and (2) came from someone authorized to give it. Fernandez vs. Cal., 134 S.Ct. 1126, 1131 (2014). Any evidence discovered during a lawful consent search may be seized and admitted at trial. US vs. Matlock, 415 US 164, 177 (1974). Consent may be express or implied and need not be knowingly and intelligent, US vs. Drayton, 536 US 194, 206-07 (2002), even though it constitutes a waiver of the Forth Amendment rights. Schneckloth vs. Bustamonte, 412 US 218, 235 (1973).

To determine whether consent was given voluntarily, courts examine the totality of circumstances. Schneckloth vs. Bustamonte, 412 US 218, 227 (1973). Factors that weigh on the court's determination of voluntariness include: (1) the consenting individuals knowledge of the constitutional right to refuse consent, US vs. Drayton, 536 US 194, 206-07 (2002), (2) the consenting individuals age, intelligence, education, and language ability, Schneckloth vs. Bustamonte, 412 US 218, 226 (1973), (3) the degree to which the consenting individual cooperates with the police, US vs. Vongvay, 594 F.3d 1111, 1120 (2010), (4) the consenting individuals attitude about the likelihood of the discovery of contraband, US vs. Todhunter, 297 F.3d 886, 891 (2002), and (5) the length of detention and the nature of questioning, Schneckloth vs. Bustamonte, 412 US 218, 226 (1973), including police threat of physical punishment, Schneckloth vs. Bustamonte, 412 US 218, 226 (1973), or other coercive behavior, US vs. Mendenhall, 446 US 544, 557 (1980).

No single factor is dispositive. Schneckloth vs. Bustamonte, 412 US 218, 226-27 (1973). Moreover, the influence of drugs, intoxication, and mental agitation do not automatically render consent involuntary. US vs. George, 987 F.2d 1428, 1431 (1993). Additionally, persons in lawfully detained vehicles do not have to be advised that they are free to leave before giving voluntary consent. Ohio vs. Robinette, 519 US 33, 35-40 (1996). Whether consent was voluntary is a question of fact reviewed under a clearly erroneous standard. US vs. Vongxay, 594 F.3d 1111, 1120 (2010)

Consent is not voluntary if given in acquiescence to a claim of lawful authority. Bumper vs. N.C., 391 US 543, 548-49 (1968). Therefore, may not be justified based on consent given only after the offical conducting the search asserts possession of a warrant or the possibility of obtaining a warrant if necessary. Bumper vs. N.C., 391 US 543, 548-49, (1968). In addition, consent cannot justify a search conducted in relience upon a warrant if a court subsequently determines that the warrant was invalid. Bumper vs. N.C., 391 US 543, 549 (1968).

Consent to search is generally invalid if an illegal search or seizure occurred before consent was given. Florida vs. Royer, 460 US 491, 501-08 (1983). If, however, consent to search is given under conditions sufficently attenuated from an illegal arrest or search, evidence discovered during the subsequent search will not be suppressed, Wong Sun vs. US, 371 US 471, 487-88 (1963).

In addition to express consent, consent may be implied by the circumstances surrounding the search, US vs. Bautista, 362 F.3d 584, 591-92 (2004), (holding consent to enter not implied), US vs. Basher, 629 F.3d 1161, 1168 (2011), (holding consent to enter implied), the persons prior actions or agreements, National Treasury Employees Union vs. Van Raab, 489 US 656, 671-72 (1989), or the person's failure to object to the search. US v. Morales, 861 F.2d 396, 399-400 (1988).

A warrantless search is valid when law enforcement personel rely on a person's "apparent authority" to consent to the search if the reliance is in good faith and is reasonable based on all facts known by police at the time of the search. US vs. Tosti; 733 F.3d 816, 823-24 (2013). Some courts have held that even if a third party is acting as an informant or other agent of the government, that person may still consent to a warrantless search if otherwise empowered to consent. Gall vs. US, 552 US 38 (2007).

The scope of a consent search may not exceed the scope of the consent given, Florida vs. Jimenco, 500 US 248, 251 (1991). The scope of consent is determined by asking how a reasonable person would have understood the conversation between the officer and the suspect or third-party when consent was given. Florida vs. Jimenco, 500 US 248, 250-51 (1991). Generally, the express object of the search defines the scope of consent, unless the suspect or third-party giving consent expressly limits its scope, Florida vs. Jimenco, 500 US 248, 251 (1991).

Consent to search may be revoked if

a person effectively withdraws consent before the search is completed, and police may not continue searching based on prior consent. US vs. Ho, 94 F.3d 932, 934 (1996).

IV. STATEMENT OF THE CASE

a. This is a fraud prosecution where Petitioner Bartlett is accused of diverting corporate proceeds into personal accounts.

The State of Arizona has charged him with fraudulent schemes and artifaces, forgery, and taking the identity of another for paying old fines and restitution to the state court with corporate proceeds.

The indictment contains the following charges:

Count 1, Fraudulent Schemes and Artifaces (ARS 13-2310)
Count 2-20, Forgery (ARS 13-2002)
Count 21-22, Taking Identity of Another (ARS 13-2008)

B. Bartlett is sole-member and resident statutory agent of two Arizona limited liability companies; United States Disabled Veterans, LLC., and United States Handicapped - Disadvantaged Services, LLC., registered at the Arizona Corporation Commission, Arizona Department of Revenue, and United States Treasury - Internal Revenue Service.

As an Arizona State University graduate, Bartlett organized these for-profit businesses to employ the disadvantaged and disabled. However, over time, the businesses experienced complex "bank teller" frauds that he was unable to circumvent, and businesses were forced to disolve. see US vs. Christianson, (2015) WL 11120665 where data link computor tracking software was used unlawfully to devalue target companies for hostile take-over. After reporting these suffisticated bank teller frauds to state and federal law enforcement, proceeds from business activities were turned over to the Clerk of the Maricopa County Superior Court-collections unit, on advice of Maricopa County Sheriff - Lt. Chad Brackman in exchange for twenty-five year old fines and restitution.

Bartlett argues that he is the only person other than the accountholder with implied authority, Landau vs. US, 886 F.2d 322 (1989), to allocate these resources to third-party handling, and Maricopa County Sheriff's Office has no apparent authority to arrest and/or charge anybody for those decisions absent reasonable suspicion or probable cause to believe a crime has occurred, he contends that he broke no law and committed no crime allocating recievables to third-party payment processing because the State of Arizona has no authority to charge and indict him when no crime reported, nor committed. Bartett was subsequently indicted three years later in 2013.

V. REASONS FOR GRANTING THE WRIT

Bartlett argues that the State of Arizona violated his Forth Amendment right to be free from unreasonable searches and seizures, he contends that the Maricopa County Sheriff's Office made a decision to indict him on serious fraud, forgery, and identity theft charges absent reasonable suspicion and/or probable cause to believe any crime has occurred. (see EXHIBIT A, MCSO Incident Report). When Bartlett delivered the recievables to the Maricopa County Collections Unit, the Sheriff was called and asked to deliver those payments to the Clerk of the Maricopa County Superior Court's Office. While doing so, according to the Sheriff's incident report, he noticed when looking up Bartlett to determine what account to apply the payments to, that he had been arrested 6-7 times since 1991, and based on this made a "hasty generalization" ~~that~~ Bartlett must be using stolen accounts to pay old restitution and fines. In Beck vs. Ohio, 379 US 89 (1964), the Supreme Court held that a defendant's prior arrest record could not support a finding of probable cause. In US v. Grandberry, 730 F.3d 968 (2013), the Ninth Circuit concludes that a search and/or arrest must be supported by probable cause, and that a suspects prior arrest record or parole status does not constitute probable cause. In short, Bartlett was apparently arrested because he had a prior arrest record, in violation of his Forth Amendment rights.

Bartlett argues that under Franks vs. Delaware, 438 US 154 (1978), where he makes a substancial showing that a false statement knowingly and intentionally, or with reckless disregard for the truth caused an unconstitutional arrest, he is entitled to an evidencuary hearing under the Forth Amendment.

On August 2, 2017, Judge Susanna C. Pineda improperly denied Bartlett's motion to suppress in violation of the Fourteenth Amendment. Bartlett argues that under Coolidge vs. New Hampshire, 403 US 443 (1971), where the Supreme Court held that a warrant must only issue before a "neutral and detached" magistrate, this rule also applies to trial court judges and suppression motions. For example, in Maricopa County Superior Court when a defendant lodges his suppression motion, it is assigned a "third-party neutral and detached magistrate" to hear and decide the motion on its merits. In this case, Bartlett's motion was not assigned to a "third party neutral and detached magistrate, in violation of due process, and was arbitrarly denied by trial court Judge Susanna C. Pineda. (See APPENDIX C). Bartlett argues that not only has his Forth Amendment right been violated at the time of arrest, but his due process rights under the Fourteenth Amendment have been violated denying his motion to suppress without a third party neutral magistrate and an evidencuary hearing.

VI. CONCLUSION

ACCORDINGLY, Bartlett seeks this court's order vacating the decision of the Arizona Court of Appeals, and that the court order his motion to suppress granted, suppressing any and all evidence obtained in violation of the Forth Amendment, and dismissing the twenty-two count indictment lodged against him in the above-captioned matter.

Conversely, if the court is unable to reach the same conclusion, Bartlett applies to this court for an order vacating the Arizona Court of Appeals decision remanding matter for a "full and fair" evidencuary hearing before a ~~third~~ party neutral and detached magistrate, to decide his motion to suppress on the merits.

DATED this 18th day of Febuary, 2019.

Alan M. Bartlett
Petitioner - Pro Se