

IN THE SUPREME COURT OF THE UNITED STATES

SAMANTHA WINTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner was "in custody" for purposes of Miranda v. Arizona, 384 U.S. 436 (1966), when she voluntarily went to a police station to be interviewed and was repeatedly advised that she was not under arrest and was free to leave at any time.

2. Whether Federal Rule of Evidence 404(b) required exclusion of evidence obtained from a car driven by petitioner's boyfriend following a traffic stop.

3. Whether the search of the car petitioner's boyfriend was driving violated the Fourth Amendment.

4. Whether any evidentiary errors were harmless.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Va.)

United States v. Winter, No. 18-CR-7 (July 20, 2018)

United States Court of Appeals (4th Cir.)

United States v. Winter, No. 18-4520 (May 3, 2019)

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No. 19-5458

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A3) is not published in the Federal Reporter but is reprinted at 770 Fed. Appx. 72. The opinion and order of the district court (Pet. App. A4-A11) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 2019. The petition for a writ of certiorari was filed on July 31, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was convicted of possession of a firearm by an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3); making a false statement in connection with the purchase of a firearm, in violation of 18 U.S.C. 922(a)(6); and making a false statement to a licensed firearm dealer, in violation of 18 U.S.C. 924(a)(1)(A). C.A. App. 617. The district court sentenced petitioner to two years of probation on each count, with the special condition that she serve 15 days of intermittent incarceration. Id. at 618-619. The court of appeals affirmed. Pet. App. A1-A3.

1. a. In December 2016, petitioner and her boyfriend, Devon Byrd, visited a federally licensed firearms dealer in Warrenton, Virginia. C.A. App. 162, 224-226, 237-238. Byrd was unable to purchase a firearm because he is prohibited from possessing one under 18 U.S.C. 922(g). C.A. App. 238-239. Petitioner, however, purchased a handgun. Id. at 234. To purchase the gun, petitioner was required to fill out Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Form 4473, a federal form allowing law enforcement entities to trace a firearm to its purchaser. Id. at 227, 270.

The ATF Form 4473 lists categories of persons who are prohibited from purchasing firearms. C.A. App. 270-271. Question 11(e) of the form asks whether the purchaser was "an unlawful user

of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance.” Id. at 232. Petitioner checked “No.” Ibid. Contrary to her representation on the form, petitioner was a regular marijuana user at the time she purchased the weapon. Id. at 271.

b. On May 8, 2017, the United States Postal Service identified two suspicious packages, both destined for the same address. C.A. App. 199, 402. After a drug-sniffing dog alerted on one of the packages, the Postal Service obtained a search warrant. Id. at 402. The package contained gummy candies laced with tetrahydrocannabinol (THC), a chemical component of marijuana. Id. at 261, 370.

Law enforcement then conducted a controlled delivery of the other package. C.A. App. 263. They observed Byrd entering the location where the package was delivered with an empty backpack, and leaving a short time later with a full backpack. Id. at 202-203, 263-264. Law enforcement followed the car Byrd was driving and, after Byrd began speeding, conducted a traffic stop. Id. at 203-204.

Upon approaching the car, police observed a firearm near the center console. C.A. App. 181-182. They also smelled marijuana. Id. at 182. The police secured the gun and removed Byrd from the car. Ibid. After a drug-sniffing dog alerted to the presence of controlled substances, police searched the vehicle and discovered the backpack containing approximately ten pounds of THC gummies.

Id. at 183-185, 404. Police also found petitioner's wallet, driver's license, and other personal belongings in the car. Id. at 189-191, 210. Law enforcement learned that the vehicle belonged to petitioner's father and that the firearm was the one that petitioner had purchased in December 2016. Id. at 30, 203-204, 265.

Byrd was arrested, and law enforcement had the car towed to the police department's impound lot. C.A. App. 211-212, 265. They later searched Byrd's cell phone pursuant to a search warrant and discovered texts between Byrd and petitioner in which petitioner said she was "high" and asked Byrd for controlled substances, including marijuana and THC gummies. Id. at 588-590, 593, 599.

c. After Byrd was arrested and law enforcement learned that the firearm found with him belonged to petitioner, a detective called petitioner to tell her that they had the car and to ask her to come to the station to answer some questions. C.A. App. 218-219. Petitioner voluntarily went to the police station that evening. Id. at 610; see Pet. App. A5. The person who drove her to the station waited outside for her. Pet. App. A6.

Inside the station, petitioner was joined in an interview room by Detective Glen Massey of the King George County Sheriff's Office, and ATF Special Agents Jeff Grabman and Michael Fernald. 2 C.A. App., Video of Samantha Winter Interview (Winter Interview) at 9:18 pm; see Gov't C.A. Br. 6; C.A. App. 198, 259, 391. Detective Massey told petitioner that she was "not under arrest or

anything like that. So * * * you can stop talking to us whenever you want, and say you ready to leave, you know, like that." Winter Interview at 9:18.

The interview lasted approximately 38 minutes. Winter Interview at 9:18-9:56. Petitioner admitted to owning the firearm found in the car and told the officers that Byrd regularly drove the car while she was at work. Id. at 9:19, 9:22. The agents then asked about petitioner's drug use, and informed her that they were not concerned that she smoked marijuana. Id. at 9:20. Petitioner admitted that she smoked marijuana daily. Id. at 9:21. Petitioner asked if she could get her car back, and the agents responded that they would talk about her car later. Id. at 9:27.

Petitioner said that she had begun smoking marijuana the previous year. Winter Interview at 9:27. Agent Fernald then stated, "I don't care about the weed piece, but do you remember the paperwork you filled out when you bought the gun?" Id. at 9:28. Petitioner then admitted that she had lied on the ATF Form 4473 when she denied using marijuana. Id. at 9:28-9:29. Agent Fernald informed petitioner that she may face felony charges for lying on the form, and that telling the truth about her boyfriend's activities would not "get [her] in more trouble." Id. at 9:29-9:30.

Petitioner asked if she should call an attorney, and the agents responded that she was not under arrest. Winter Interview at 9:31. Petitioner asked the agents, "If I walk out of here, are

y'all going to arrest me?" Ibid. The agents responded that they were "not even talking about that right now" and reiterated that she was not under arrest. Id. at 9:31-9:32. The agents also told petitioner that they were not planning to arrest her in the future. Id. at 9:32. The agents stated, "I think if you tell us the truth, we're going to present that to the prosecutor, okay? And a prosecutor is going to ultimately make that decision." Ibid. Petitioner reiterated that she did "lie on the form." Id. at 9:34. She stated that she could not go to jail, and the agents responded that they were not talking about taking her to jail. Ibid.

Petitioner asked if there was any possibility that she would get her car back. Winter Interview at 9:34. Agent Fernald responded that there was a chance, but "a lot has to do with you telling the truth." Ibid. The agents asked her where she obtained her marijuana but, after she refused to answer, did not press her on the issue. Id. at 9:39-9:40. Petitioner then again admitted to lying on ATF Form 4473. Winter Interview 9:44. The agents responded that her lie was "serious" and that they may have to talk with her again. Ibid. Petitioner stated that she might lose her job if she could not get her car back, and the agents responded that they would ask Detective Massey about her car. Ibid.

Detective Massey determined that petitioner's car was locked in evidence overnight and that he would not be able to retrieve any of her belongings until the next day. Winter Interview at 9:55-9:56. Petitioner then stood up and said that she wanted to

leave. Id. at 9:56. Detective Massey offered to walk her out and told her he would get her a ride if needed, but she instead left with the person who had brought her to the interview, who was still waiting outside. Ibid.; Pet. App. A6.

2. On January 25, 2018, a federal grand jury returned a superseding indictment charging petitioner with one count of possession of a firearm by an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3); one count of making a false statement in connection with the purchase of a firearm, in violation of 18 U.S.C. 922(a)(6) and 924(a)(2); and one count of making a false statement to a licensed firearm dealer, in violation of 18 U.S.C. 924(a)(1)(A). C.A. App. 13-15.

Prior to trial, petitioner moved to exclude her statements to law enforcement, arguing that she was in custody during the interview and did not receive Miranda warnings. Pet. App. A4. The district court denied the motion, finding that petitioner was not in custody. Id. at A6; C.A. App. 43-45. Petitioner also moved, under Federal Rule of Evidence 404(b), to exclude evidence of Byrd's arrest and his drug activity. Pet. App. A6. The court reasoned that the evidence was intrinsic to the case and therefore not subject to Rule 404(b), and in any event admissible under the Rule, but gave a limiting instruction. Pet. App. A8-A9; C.A. App. 350, 502. Finally, petitioner filed a motion to suppress the items seized from the car after the traffic stop, which the court also denied. Pet. App. A6-A10.

The jury found petitioner guilty on all counts. C.A. App. 617. The district court sentenced petitioner to two years of probation on each count, with the special condition that she serve 15 days of intermittent incarceration. Id. at 618-619.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A1-A3. Petitioner argued that the district court erred by denying her motions to suppress and her motion to exclude evidence under Federal Rule of Evidence 404(b). Pet. C.A. Br. 10-27. She also argued that none of those alleged errors was harmless. Id. at 27-29. The court of appeals rejected those contentions "for the reasons stated by the district court." Pet. App. A2.

ARGUMENT

Petitioner contends (Pet. 22-39) that her statements to law enforcement should have been suppressed because they were the result of an unwarned custodial interrogation in violation of Miranda v. Arizona, 384 U.S. 436 (1966), and that evidence seized from the car her boyfriend was driving at the time of his arrest should have been suppressed under the Fourth Amendment or excluded under Federal Rule of Evidence 404(b). She further contends (Pet. 40-42) that those alleged errors were not harmless. The court of appeals correctly rejected petitioner's factbound claims of error, and none of petitioner's claims implicates a division of authority among the courts of appeals or otherwise warrants review. The petition for a writ of certiorari should be denied.

1. Petitioner contends (Pet. 22-26) that her statements to law enforcement admitting that she lied on ATF Form 4473 were made during a custodial interrogation, and thus should have been suppressed at trial because she did not receive Miranda warnings. The court of appeals correctly rejected that argument. Pet. App. A2. In doing so, it applied well-settled law concerning the determination of whether an individual is "in custody" for purposes of Miranda to the facts of this case. That factbound decision does not warrant further review.

a. Under Miranda, statements obtained during custodial interrogation are generally admissible against the defendant at trial only if the defendant received specified warnings before the statements were made. 384 U.S. at 478-479. Law enforcement officers are not required to make Miranda warnings every time they question someone, however. Rather, the warnings are necessary "only where there has been such a restriction on a person's freedom as to render him 'in custody.'" Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam).

In determining whether a person was "'in custody,'" "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983) (per curiam) (quoting Mathiason, 429 U.S. at 495). This Court has emphasized that, in making that determination, a reviewing court must examine "the objective circumstances of the interrogation,"

Stansbury v. California, 511 U.S. 318, 323 (1994) (per curiam), to determine "how a reasonable person in th[e individual's] position would perceive his or her freedom to leave," id. at 325.

Under those settled principles, petitioner was not "in custody" during her interview. As the district court explained, petitioner came to the police station voluntarily. Pet. App. A5. She was told before the interview began that she was not under arrest and was free to leave at any time. Winter Interview at 9:18; cf. Mathiason, 429 U.S. at 495 (finding that defendant was not in custody where "[h]e came voluntarily to the police station, where he was immediately informed that he was not under arrest"). Law enforcement officers subsequently repeated multiple times that she was not under arrest, Winter Interview at 9:31-9:32, and told her that she could stop talking whenever she chose, id. at 9:18. Eventually, petitioner ended the interview of her own accord. Id. at 9:56. The entire interview lasted less than 40 minutes. See p. 5, supra.

Having reviewed a video of the interview and "considered the totality of the circumstances," including all of the facts above as well as petitioner's unsubstantiated claims that she was "dependent on her car," the district court found "nothing to suggest that the interview was custodial, that [petitioner's] will was overborn, or that her statement was otherwise compelled." Pet. App. A6. The court of appeals correctly rejected petitioner's challenges to the district court's determination. Id. at A2.

b. Petitioner does not contend that the decision below conflicts with decisions of any other court of appeals or with any decision of this Court. Instead, she argues (Pet. 23-26) that the court of appeals' decision upholding the admission of those statements conflicts with its earlier decision in United States v. Giddins, 858 F.3d 870 (4th Cir. 2017). That is not correct. As the lower courts correctly recognized, Giddins simply applied the same legal standard to different facts, concluding that on those different facts the defendant in Giddins was in custody. Pet. App. A2, A6. In any event, even if Giddins and the decision below were in conflict, such an intra-circuit conflict would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam); Sup. Ct. R. 10.

2. Petitioner next argues (Pet. 27-33) that the district court abused its discretion in admitting evidence of Byrd's arrest, the drugs found in the vehicle Byrd was driving at the time of that arrest, and text messages between petitioner and Byrd discussing marijuana use. The court of appeals correctly upheld the admission of that evidence, and petitioner fails to explain why this factbound evidentiary ruling merits review by this Court.

a. Rule 404(b) addresses the use at trial of "[e]vidence of a crime, wrong, or other act." Fed. R. Evid. 404(b). Such evidence is "not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character," but "may be admissible for another purpose, such

as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."

Ibid.

Here, the court of appeals correctly determined that the district court did not abuse its discretion in admitting evidence of Byrd's arrest, the drugs found in the vehicle Byrd was driving at the time of that arrest, and the text messages reflecting petitioner's use of controlled substances. Pet. App. A2; see id. at A8-A10. In order to convict petitioner under 18 U.S.C. 922(g)(3), the government was required to prove that petitioner's marijuana use was "consistent, prolonged, and close in time to" her possession of a gun. C.A. App. 517 (jury instructions); see also Pet. App. A8-A9. The use of her car to transport THC gummies, the presence in the car at that time of the gun that she purchased after falsely claiming not to use illegal drugs, and the text messages that petitioner exchanged with Byrd, which discussed both the THC gummies and marijuana, were all direct evidence that petitioner was a regular marijuana user at the time she possessed the gun, in violation of Section 922(g)(3). They were not the sort of propensity evidence that Rule 404(b) forbids.

As the district court recognized, the challenged evidence was admissible to show, under Rule 404(b), petitioner's "motive, intent, knowledge, and absence of mistake when she lied about her drug use on Form 4473, and subsequently possessed the firearm while using controlled substances." Pet. App. A9. The government's

theory of the crime was that petitioner lied on the ATF Form 4473 so that she could purchase a firearm to share with Byrd, who trafficked in drugs but could not purchase a firearm himself. C.A. App. 526, 529. The evidence involving Byrd's arrest for drugs was thus highly relevant to proving that motive.

b. Petitioner does not argue that the court below applied an incorrect legal standard under Rule 404(b), or that her case would have been resolved differently under another circuit's approach. Instead, she makes the factbound contention that "[e]vidence of Mr. Byrd's arrest did not address any element of the charged offenses." Pet. 31. As explained above, that contention is incorrect and, in any event, would not warrant this Court's review. See United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

3. Petitioner next contends (Pet. 33-39) that law enforcement conducted an illegal search of the car after Byrd's traffic stop, and that the district court therefore erred in admitting the evidence found in the car. Specifically, petitioner argues that law enforcement lacked probable cause to justify a warrantless search of the car, and that no exceptions to the warrant requirement applied. The court of appeals correctly upheld the district court's rejection of this argument under well-settled law. Pet. App. A2; see id. at A7-A8. No basis exists for further review of this factbound issue.

The Fourth Amendment does not require law enforcement to obtain a warrant before searching an automobile if probable cause exists to believe the vehicle contains contraband. See, e.g., Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (per curiam) ("If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more."). Probable cause exists if, under the totality of the circumstances, a reasonable person would believe that contraband will be found in the vehicle. Ornelas v. United States, 517 U.S. 690, 696 (1996); Illinois v. Gates, 462 U.S. 213, 238 (1983).

The lower courts correctly applied that settled law here. As the district court explained, the Postal Service had identified two suspicious packages addressed to the same location and determined that one of the packages contained THC gummy candy. Pet. App. A7. Law enforcement then conducted a controlled delivery of the other package and saw Byrd enter the location where the package was delivered, then exit with a full backpack. Ibid. Officers followed Byrd and, when he began speeding, stopped him, at which point they observed a gun and smelled marijuana. Ibid. A drug-sniffing dog alerted to the presence of controlled substances in the car. Ibid. These circumstances provided ample probable cause to believe that the car contained contraband and thus to search the car. Id. at A8; see Florida v. Harris, 568 U.S. 237, 246-247 (2013). Thus, even assuming that petitioner had

standing to object to the search of the car, which belonged to her father and was regularly used by Byrd, see Gov't C.A. Br. 5, 25-27, her Fourth Amendment rights were not violated by the admission of the evidence found in the search.

4. Finally, petitioner (Pet. 40-42) asks this Court to address whether the district court's admission of her confession and the evidence found in the vehicle, if erroneous, was nevertheless harmless. The lack of an underlying error makes it unnecessary to consider that question in this case, and the court of appeals accordingly did not do so. In any event, as with petitioner's other claims, the harmlessness of any error would require a factbound determination that would not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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