

No. 19-5596

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IN THE SUPREME COURT OF THE UNITED STATES

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ERIC T. LATHAM, PETITIONER

v.

UNITED STATES OF AMERICA

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

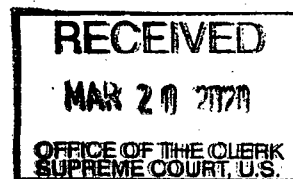
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BRIEF FOR PETITIONER IN SUPPORT OF REHEARING

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ERIC T. LATHAM,  
As Pro Se Litigate

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## QUESTION PRESENTED

Whether police officers violated Petitioner's clearly established Fourth Amendment right by searching Petitioner's vehicle after having all the evidence necessary to issue the traffic tickets/warnings, and after the officers made the objective decision not to arrest Petitioner for the alleged officer observed traffic offense(s) prior to the search.

1. Warrantless Vehicle Searches Incident To Arrest

The Fourth Amendment provides:

"The right of the people to be secure in their persons, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

As the text make clear, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" Brigham City v. Stuart, 547 U.S. 398, 403 (2006). This Court's cases have determined that "[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant." Vernonia School Dist J v. Acton, 515 U.S. 646, 654 (1995). Such a warrant ensures that the inferences to support a search are "drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14 (1948). In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement. See, Kentucky v. King, 563 U.S. 452, 459-460 (2011).

The precedent for the Circuits today is, Arizona v. Gant, 556 U.S. 332 (2009) for the search incident to arrest in the vehicle context. "Although motorist's privacy interest in vehicle is less substantial than in home, former interest is nevertheless important and deserving of constitutional protection. Rule that gives police power to search automobile passenger compartment and every purse, briefcase, or other container within that space whenever individual is caught committing traffic offense, when there is no basis for believing evidencing of offense might be found in vehicle, creates serious and recurring threat to the privacy of countless individuals. Character of threat

implicates central Fourth Amendment concern about giving police officers unbridled discretion to rummage at will among person's private effects." Arizona v. Gant (2009) 556 US 332, 129 S Ct 1710, 173 L Ed 2d 485.

**2. The Government Construed The Officer's Police Report  
And Testimony In The Present Case**

The government contended that, the officers in the present case had took all the informal steps of making an official arrest prior to the search of the vehicle, see, case no. 19-5596, government's response, p. 7, and the government reached this conclusion by these statements:

- Q. Who secured him (Latham)?
- A. I did (ofc. Freeman).
- Q. How did you do it?
- A. With handcuffs.
- Q. And where did you put him once he was cuffed?
- A. I put him in the back of my patrol car.
- Q. At that point was he being arrested?
- A. He was being detained for an investigation.
- Q. Okay. What was being investigated?
- A. Open alcohol.

See, case no. 1-17-cr-4, Mot. To Suppress Hearing. RE 46, Page ID# 216. The officer gave a similar testimony, which goes as followed:

- Q. All right. Now, did you arrest him for drunk driving?
- A. No.
- Q. Did you arrest him for any kind of crime?
- A. No.

id. at 246, but the officers did go on to search Petitioner's vehicle based SOLELY on the open container violation:

- Q. At that point was the vehicle searched?
- A. Yes, it was.
- Q. Why?
- A. Based on the open container violation that we noted earlier.

id. at 236.

The officers only asserted that "Petitioner was NOT under arrest prior to the search and the only bases for the search was the open container violation,"

and the officers only handcuffed and secured Petitioner in patrol car, and Federal law in this Court as well as in the Sixth Circuit is clear that it allows police to detain someone in the back of a cruiser without that detention becoming an arrest. See, Michigan v. Summers, 452 U.S. 692, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981)(detention is different than arrest); see also, Bennett v. City of Eastpointe, 410 F.3d 810, 837-38 (6th Cir. 2005)(placing a handcuffed detainee into the back of a police cruiser does not turn detention into arrest).

For the purpose of Federal Constitutional law, Petitioner was detained incident to alleged traffic stop. The objective to investigate the alleged traffic offense was completed prior to the detention, and the officers objectively had the choice of issuing traffic tickets / warnings or arrest Petitioner, but the officer then unconstitutionally subjected Petitioner to the search of him and his vehicle. Because Petitioner was not under arrest under any definition, the police exceeded their authority when they searched Petitioner's vehicle and the fruits of that unconstitutional search should have been suppressed.

The Sixth Circuit Court erred in its judgement as well and the government, due to this NOT being a search incident to a lawful arrest because Petitioner was only being detained for the alleged traffic offenses per say the officers involved in the case. According to former 6th Cir. R. 206(c), one panel could not overrule another panel's decision, absent intervening inconsistent opinion from this Court of which there is none, and this Court should reverse the Sixth Circuit Court's decision due to it being inconsistent with this Court Precedent cases.

### 3. Conclusion

Petitioner respectfully requests a rehearing, and this Court to GRANT

the writ of certiorari or Grant Reverse, and Remand to the Sixth Circuit with instructions to comply with federal law, and suppress any evidence in the search of the present case.

**CERTIFICATE**

I, the Petitioner, certify that the grounds are controlling effect(s), and or substantial grounds not previously presented.

Date: March 11, 2020

Respectfully Submitted,  
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cc: See Attached Service List

Attached Exhibits: Exhibit 1- Police Report (p. 6 of 14); Exhibit 1A- officer's testimony in case; Exhibit 1B- Other officers testimony in this case; and Exhibit 1C- is more of the officer's testimony. Petitioner has provided a copy of the records mentioned in this case.

PLEASE NOTE: Any correspondence be mark "Special Mail- Open only in the presence of the inmate," on the front of the envelope.

19-5596

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**Additional material  
from this filing is  
available in the  
Clerk's Office.**