

No. 19-7241

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

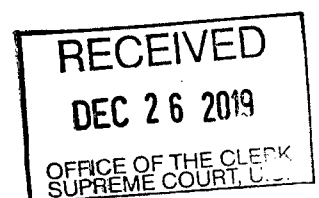
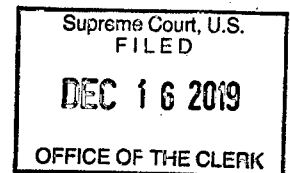
WILLIAM COX -- PETITIONER

Vs.

STATE OF LOUISIANA -- RESPONDENT
ON PETITION FOR WRIT OF CERTIORARI TO
LOUISIANA FIRST CIRCUIT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

William Cox
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QUESTION(S) PRESENTED

Should law enforcement be allowed to utilize armed assaults by confidential informants as pretext for circumventing the Fourth Amendment guarantee against unreasonable searches and seizures?

LIST OF PARTIES

☒ 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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION.....	5
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A – Decision of State Court of Appeals

APPENDIX B – Decision of Trial Court

APPENDIX C – Decision of State Supreme Court Denying Review

TABLE OF AUTHORITIES CITED

CASE	PAGE NUMBER
Payton v. New York, 445 U.S. 573 (1980).....	5
State v. Cunningham, 412 So.2d 1329 (La. 1982).....	6
State v. Hathaway, 411 So.2d 1074 (La. 1982)	6
State v. Keller, 403 So.2d 693 (La. 1981)	6
State v. Ragsdale, 381 So.2d 492 (La. 1980).....	5
Steagald v. United States, 451 U.S. 204, 101 S.Ct. 1642 (1981).....	5
United States v. United States District Court, 407 U.S. 297, 313 (1972).....	7
Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091	7
Wong Sun v. United States, 37 U.S. 471, 488; 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)	8

STATUTES AND RULES

LSA-Const. art. I. § 5 (1974)	6
U.S. Const. Amend. IV	6

OPINIONS BELOW

State v. William Gene Cox, Jr., 272 So. 3d 597 (La. App. 1 Cir. 2/22/19)

JURISDICTION

Writ applications were denied by the Louisiana Supreme Court on September 17, 2019.

STATEMENT OF THE CASE

On November 29, 2017, Appellant was convicted by a jury before the honorable Charlotte H. Foster to one (1) count of Possession of Firearm or Carrying Concealed Weapon by Convicted Felon and one (1) count of Possession of a Schedule II Controlled Dangerous Substance – Hydromorphone. On February 5, 2018, Appellant was sentenced to 20 years at hard labor.

Prior to the trial, the defendant filed a Motion to Suppress requesting that the physical evidence, seized upon search of his residence on or about August 20, 2016, be suppressed, asserting that the evidence to be used against him was illegally obtained in violation of his rights guaranteed to him by the 14th Amendment to the US Constitution as well as those guaranteed by Article 1, Sec. 5 of the Constitution of the State of Louisiana. The Motion to Suppress was denied without written reasons and defendant proceeded to trial, resulting in his conviction and sentence.

Defendant appealed to the First Circuit Court of Appeal, who affirmed.

Defendant sought writs in the Louisiana Supreme Court, which were denied.

Defendant now petitions the United States Supreme Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

The zeal of police to persecute vice law violators becomes exceedingly hazardous to the public when utilizing an armed assault on a suspect by a confidential informant as pretext for exigent circumstances searches and without providing a meaningful opportunity to refuse consent to search.

Petitioner was assaulted outside of his home, where he performs motorcycle maintenance, by a man with a blunt weapon. Petitioner, a Viet Nam Veteran, successfully defended the attack with pepper spray. The attacker fled to the location of a detective who was parked in an unmarked car nearby. The attacker was not apprehended, but the detective drove up to Petitioner's property with the intention of searching his residence.

The detective then insisted on searching the residence of Petitioner, though certain that Petitioner only acted in self-defense against the armed assault of one of the detective's confidential informant. Essentially, the law enforcement officer created the exigency by which he hoped to circumvent Constitutional protection against unlawful searches and seizures.

In the absence of consent or exigent circumstances, the United States Supreme Court has consistently held that the entry into a home to conduct a search or to make an arrest is unreasonable under the fourth amendment unless done pursuant to a warrant. *Steagald v. United States*, 451 U.S. 204, 101 S.Ct. 1642 (1981). The Louisiana Supreme Court has endorsed this rule of law. *State v. Ragsdale*, 381 So.2d 492 (La. 1980); LSA-Const. art. I. § 5 (1974).

"The fourth amendment protects the individual's privacy in a variety of settings. *Payton v. New York*, 445 U.S. 573 (1980). In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home – a zone that finds its

roots in clear and specific constitutional terms: 'The right of the people to be secure in their ... houses ... shall not be violated.' *Id.* At 589 ... That language unequivocally establishes the proposition that '[at] the very core [of the fourth amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' *Id.* At 589-590. In terms that apply equally to seizures of property and seizures of persons, the fourth amendment has drawn a firm line at the entrance to the house. *Id.* At 590. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.* at 590.

The United States and Louisiana Constitutions afford a person protection against unreasonable searches and seizures by requiring that the police obtain a warrant supported by probable cause before they conduct a search or seizure. U.S. Const. Amend. IV; La. Const. Art. I § 5 (1974); *State v. Keller*, 403 So.2d 693 (La. 1981). Probable cause exists when fact within the officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a reasonable man in the belief that the place to be searched will contain the object of the search (a suspect or contraband). *Ragsdale*, *supra* at 495.

Once the accused has demonstrated that he was subjected to a warrantless search or seizure, the state bears the burden of justifying the intrusion as one of the narrowly defined exceptions to the warrant requirement. *State v. Cunningham*, 412 So.2d 1329 (La. 1982). The exceptions include where the police are in "hot pursuit" of a suspect, or where there is a danger of destruction of evidence. *State v. Hathaway*, 411 So.2d 1074 (La. 1982). These exceptions, also known as exigent circumstances, will justify a warrantless search and seizure only if the police had probable cause and if obtaining a warrant was truly impractical. *Cunningham*, *supra* at 1331; *Hathaway*, *supra* at 1079.

Exigent Circumstances

Although declining to consider the scope of any exception for exigent circumstances that might justify warrantless home arrests in *Payton*, supra, the United States Supreme Court has emphasized that exceptions to the warrant requirement are “few in number and carefully delineated” [*United States v. United States District Court*, 407 U.S. 297, 313 (1972)] and that police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests. *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091. An entry based on exigent circumstances must be limited in scope to its purpose. Therefore, the police may not continue the search once it is determined that an exigency no longer exists. If the police determine the exigency that initially allowed their entry into the residence no longer exists, any subsequent search is illegal and any contraband discovered pursuant to the illegal search is inadmissible.

Consent

The constitutional right to be secure against Fourth Amendment/Art. I § 5 intrusions may be waived. When an individual consents to a search, this constitutes one of the well-recognized exceptions to the warrant requirement, as well as the requirement of probable cause. *Ragsdale*, supra at 497.

A consent to search made after an illegal entry is valid only if the circumstances indicate that it was free and voluntary and not an exploitation of the illegality. *Ragsdale*, supra at 497. In resolving this issue the court must consider whether the officers informed the defendant of his right to refuse permission to search; the temporal proximity between the initial intrusion and the

consent; the presence of intervening circumstances; and the purpose and flagrancy of the official misconduct.

Evidence that is obtained as the fruit of a constitutional violation is subject to exclusion if it results from the exploitation of the illegality. *Wong Sun v. United States*, 37 U.S. 471, 488; 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). The statement of a witness constitutes the fruits of an illegal search when there is a strong connection between the statement and the illegal search. *Id.*


The fact that a statement may be characterized as voluntary is not determinative of whether it is nevertheless the fruit of illegal activity. Where there is a causal link between the statement and the illegal activity, the statement will be deemed to be the fruit of that illegal activity unless it is shown that the connection has become so attenuated as to purge the statement of the original taint. *Id.*

So when consent is obtained after illegal police activity such as an illegal search or arrest, the unlawful police action presumptively taints and renders involuntary any consent to search. The consent will be held voluntary only if there is clear and convincing proof of an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior official illegal action.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William Cox', is written over a horizontal line.

William Cox, *pro-se*

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Date: 12-15-19