19-7628

No. 19-30330

USDC No. 2:18-CV-8975

IN THE

SUPREME COURT OF THE UNITED STATES

GLEN GARY GUYN --- PETITIONER

Vs.

JASON KENT, WARDEN --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF CERTIORARI

GLEN GARY GUYN # 127925
(Your Name)

P.O. BOX 788 / U-1-D-E

JACKSON, LA 70748-0788
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1.) Whether Mr. Guyn's Fourth Amendment right against unreasonable searches and seizures was violated.

2.) Whether the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration.

3.) Whether the continued incarceration of Mr. Guyn would be a violation of his Rights to Due Process of Law from the errors committed.

LIST OF PARTIES

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

[X] 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:

District Attorney
Warren Montgomery
701 N Columbia St.
Covington, La. 70433

Warden Jason Kent
Dixon Correctional Institute
P.O. Box 788
Jackson, La. 70748

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

The Petitioner, Glen Gary Guyn, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Fifth Circuit Courts rendered in these proceedings in December 2019.

OPINIONS BELOW

Cases from federal courts:

APPENDIX A The ruling of the United States Court of Appeals for the Fifth Circuit denying Mr. Guyn's COA.

APPENDIX B The ruling of the United States District Court for the Eastern District of Louisiana dismissing Mr. Guyn's petition with prejudice.

APPENDIX C The report and recommendation of the United States Magistrate Judge for the Eastern District of Louisiana dismissing Mr. Guyn's petition with prejudice.

Cases from state courts:

APPENDIX D The Louisiana Supreme Court Judgment denying Writ of Certiorari and/or Review.

APPENDIX E The Louisiana First Circuit Court of Appeals denying Mr. Guyn's appeal.

JURISDICTIONAL STATEMENT

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 4, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Judgments of the Louisiana Supreme Court were entered in 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. IV

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 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.

28 U.S.C. 2254

Louisiana Constitution Art. I, 16, 17.

PROCEDURAL HISTORY OF THE CASE

On June 10, 2015, petitioner, Mr. Guyn, was charged by bill of information with possession of a schedule IV controlled dangerous substance (alprazolam), a violation of La. R.S. 40:969(C) (count one); possession with intent to distribute a schedule II controlled dangerous substance (methamphetamine), a violation of La. R.S. 40:967(A)(1) (count two); and operation of a clandestine laboratory, a violation of La. R.S. 40:983 (count three) The state severed count one and proceeded to trial on counts two and three. On October 13, 2015, petitioner was found guilty as charged by a jury. On December 7, 2015, the petitioner was sentenced to 40 years hard labor without the benefit of probation or suspension of sentence.

Petitioner has exhausted all State and Federal remedies.

STATEMENT OF THE CASE

Petitioner was accused by the officers of crossing the center line in the road, however, petitioner was never given a sobriety, breathalyzer, or blood test to determine if he was intoxicated. Instead he was handcuffed and forced into the back of a pickup truck while officers searched the vehicle he was driving.

When pressured to sign the consent to search form petitioner placed "UD" beside his name to show he was forcibly doing this *under duress*.

These issues were brought up in both the State and Federal level. At no time did either court acknowledge petitioner's Fourth Amendment violation, instead all that was mentioned was "defendant argues that the officers unlawfully prolonged the stop and that defendant did not freely and voluntarily consent to the search of the vehicle." Nothing was ever mentioned about petitioner signing his consent form *under duress*.

REASONS FOR GRANTING THE WRIT

Petitioner's Fourth Amendment right against unreasonable searches and seizures was violated.

TERRY STOP VIOLATION

The trial court erred by a denying petitioner's Motion to Suppress the Evidence, thus, allowing petitioner's Fourth Amendment Right to remain violated. The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *U.S. Const., Amend. IV.* " A traffic stop entails a seizure for purposes of the Fourth Amendment. See, *United States v. Brigham,* 382 F.3d 500, 506 (5th Cir. 2004) (stopping a vehicle and detaining its occupant(s) constitutes a seizure). Traffic stops,

whether supported by probable cause or a reasonable suspicion, are treated as Terry stops. See *Terry v. Ohio,* 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

Under *Terry*, a law enforcement officer may temporarily detain a person when the "officer has a reasonable, articulable suspicion that a person has committed or is about to commit a crime." *United States v. Chavez,* 281 F.3d 479, 485 (5th Cir. 2002) *(citing Terry v. Ohio,* 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). Reasonable suspicion may be described as "'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Id.* (citing *Ornelas v. United States,* 517 U.S. 690, 696, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996)). To satisfy the Fourth Amendment, the stopping officer must be able to "articulate more than an 'inchoate and unparticularized suspicion or "hunch"' of criminal activity." *Id.* (citing *Illinois v. Wardlow*, 528 U.S. 119, 123-24, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000)). The Fourth Amendment requires but a "minimal level of objective justification for making the stop," and requires "a showing considerably less than preponderance of the evidence." *Id.* (citation omitted). The validity of the stop is determined under "the totality of the circumstances-the whole picture." *Id.* (citing *United States v. Sokolow,* 490 U.S. 1, 7-8, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989)).

A *Terry* analysis is two-tiered: (1) whether the officer's action of stopping the vehicle was justified at its inception; and (2) whether the officer's actions were reasonably related in scope to the circumstances that justified the stop. *United States v. Shabazz,* 993 F.2d 431, 435 (5th Cir. 1993) *(citing Terry,* 392 U.S. at 19-20); *United States v. Valadez,* 267 F.3d 395, 398 (5th Cir. 2001). Typically, the defendant bears the burden of proving by a preponderance of the evidence that the challenged search or

seizure was unconstitutional. (citation omitted). However, when the law *United States v. Waldrop,* 404 F.3d 365, 368 (5th Cir. 2005) enforcement officer acts without a warrant; the government bears the burden of proving that the search was valid.

I. *Terry's* First Prong

"For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle." *United States v. Lopez-Moreno,* 420 F.3d 420, 430 (5th Cir. 2005).

In this case, Officers Goings, Adcox and Garbo initially stopped petitioner because they claimed his vehicle crossed the center line while headed towards Det. Garbo positioned at Porter's curve. Accordingly, Officers Goings, Adcox and Garbo had reasonable suspicion to initially stop petitioner vehicle.

II.*Terry's* Second Prong

The second prong of the *Terry* inquiry focuses upon whether the stopping officer's actions were: "reasonably related to the circumstances that justified the stop, or to dispelling his reasonable suspicion developed during the stop". This is because a detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop unless further reasonable suspicion, supported by articulable facts, emerges. *Brigham,* 382 F.3d at 507 (citations omitted).

The United States Fifth Circuit Court has recognized that pursuant to an initial traffic stop, a police officer may (1) examine the driver's license and registration of the driver and vehicle, and run a computer check to investigate whether the driver has any outstanding warrants and if the vehicle was stolen; (2) ask the driver to exit the vehicle;

and (3) ask the driver and any passengers about the purpose and itinerary of their trip, including other unrelated questions. See generally *Brigham,* 382 F.3d at 508; *United States v. Dortch,* 199 F.3d 193, 198 (5th Cir. 1999); *Shabazz,* 993 F.2d at 437. Detention during these actions is reasonable under the Fourth Amendment. "Although an officer's inquiry may be wide-ranging, once all relevant computer checks have come back clean, there is no more reasonable suspicion, and, as a general matter, continued questioning thereafter unconstitutionally prolongs the detention." *Lopez-Moreno*, 420 F.3d at 431. (citations omitted). "To continue a detention after such a point, the officer must have a reasonable suspicion supported by articulable facts that a crime has been or is being committed." *United States v. Santiago,* 310 F.3d 336, 342 (5th Cir. 2002).

In this case, Officers Goings, Adcox and Garbo's initial questioning of petitioner (before they ran any computer checks) was fully within the scope of the initial traffic stop. As cited above, the Fifth Circuit has repeatedly held that pursuant to a valid stop, a police officer may request the driver's license and registration, run a license and criminal background check, and question the driver regarding his origin and itinerary. *See Dortch, supra* (detention and questioning while computer check was pending was lawful). However, to extend the detention (once the computer background check comes back), Officers Goings, Adcox and Garbo needed to articulate specific facts which support a reasonable suspicion of additional criminal activity. As seen from the record, none of this was done.

The alleged grounds articulated by Officers Goings, Adcox and Garbo to support their suspicions are susceptible to innocent explanation. It seems that if these officers were concerned with any type of illegal activity going on at least one of them would have

performed a sobriety test on petitioner to see if he was intoxicated. At "*no time*" did either of them do this. The vast majority of Officers Goings, Adcox and Garbo's suspicions focused upon circumstances that could have been allayed by asking follow-up questions. None of this was done either. All they focused on was searching the vehicle petitioner was driving.

Here, the only circumstance that was not readily amenable to explanation by petitioner was Officers Goings, Adcox and Garbo's perception that petitioner appeared to be intoxicated by crossing the center line. The courts are generally obliged to accord deference and even "great respect" to an officer's training and experience. See *Jenson,* 462 F.3d at 405. However, the courts are not compelled to rubberstamp an officer's proffered rationale simply because he invokes his training and experience.

Officers Goings, Adcox and Garbo, however, did not articulate how petitioner's behavior or any other circumstances indicated that he was engaged in illegal drug activity or some other specific criminal activity. *See Jenson, supra*; *see also Santiago, supra* (search was unreasonable even though officer thought that the car might contain drugs, because any suspicion of drug trafficking was dispelled once the licenses cleared). Accordingly, Officers Goings, Adcox and Garbo's suspicions comprised no more than a hunch.

Although it is admittedly a close question, upon consideration of the totality of circumstances, this court is compelled to find that Officers Goings, Adcox and Garbo have not demonstrated a reasonable suspicion sufficient to prolong petitioner's traffic stop. Thus, a constitutional violation occurred the moment that Officers Goings, Adcox

and Garbo detained petitioner past the point when they were supposed to run his background check.

III. Consent to Search

A consensual encounter may follow the end of a valid traffic stop. *United States v. Sanchez-Pena,* 336 F.3d 431, 442 (5th Cir. 2003) (citation omitted). Two different standards apply to determine whether a defendant consents to a search: "'the normal standard for *consensual searches that occur subsequent to legal stops*' and the heightened consent standard that applies to a consent to search obtained after an illegal stop." *Id.* (citation omitted).

Under the first standard, a valid consent to search must be "free and voluntary." *Shabazz,* 993 F.2d at 438 (citation omitted). The state typically has the burden of proving voluntary consent by a preponderance of the evidence. *Id.* "The voluntariness of consent is a question of fact to be determined on the totality of the circumstances." *Id.* To determine whether consent to search was obtained voluntarily, the courts consider the following factors, (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police tactics; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse consent; (5) his education level and intelligence; and (6) his belief that no incriminating evidence will be found. *Id.* Although all six factors are relevant, no single factor is dispositive. *Id*

When consent to search is obtained following a Fourth Amendment violation, the consent "may, but does not necessarily, dissipate the taint" of the constitutional transgression. *Jones,* 234 F.3d at 242 (citation omitted). Under these circumstances, not only must the consent be voluntary, it also must represent "an independent act of free

will" sufficient to break the "causal chain" between the illegal detention and the consent *Id.* In this regard, the court must consider "1) the temporal proximity of the illegal conduct and the consent; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the initial misconduct." *Id.* Ultimately, the consent to search cannot be the product of the illegal detention. *Jenson, supra.*

Applying the foregoing considerations here, this court should find that the state has not established neither the voluntariness of the consent, nor the requisite causal interruption. At the outset, this court should observe that Officers Goings, Adcox and Garbo did not perform a sobriety test before seeking consent to search the vehicle. Petitioner also initially agreed to continue to talk to Officers Goings, Adcox and Garbo after they did not seem concerned about the sobriety test.

This sequence supports an inference that petitioner thought that he was free to leave at the time they seemed "not too worried about doing the sobriety test".
On the other hand, Officers Goings, Adcox and Garbo never told petitioner that he was free to leave.

Moreover, the situation quickly changed when Officers Goings, Adcox and Garbo asked petitioner for his consent to search the vehicle. At that point, petitioner expressed some hesitation and inquired why Officers Goings, Adcox and Garbo wanted to search his vehicle. Officers Goings, Adcox and Garbo replied "because we can". They then asked if petitioner had been drinking and he replied "no".

Immediately thereafter Officers Goings, Adcox and Garbo pushed the question again and asked if they could search his vehicle. Petitioner again replied "no" because the vehicle was not his and he did not know what was in it. It was at this point that Officer

Goings said "O-well, it's going to be your word against mine or ours". (Tr. Trans. Pg 110)That's when Mr. Guyn said "I'm signing this Rights form, but I'm signing it "*under duress*", with the letters *"U.D."* placed behind his name (see state Exhibit No. 17 during trial) (Tr. Trans. Pg 110). At this point Officers Goings, Adcox and Garbo handcuffed petitioner and placed him in the back of the vehicle (*truck*).

Taken together, a reasonable person would likely, and, as it turns out, correctly, infer that the investigating officer suspected him of wrongdoing. See *United States v. Gonzales,* 79 F.3d 413, 420 (5th Cir.1996) ("[A] statement by a law enforcement officer that an individual is suspected of illegal activity is persuasive evidence that the fourth amendment has been implicated.").

Moreover, during this discourse, Officers Goings, Adcox and Garbo repeated some earlier questions and continued to search the vehicle. Under these circumstances, this court should not be persuaded that when petitioner signed the consent form, his custodial status was voluntary or free of perceivably intimidating police tactics.

Although Officers Goings, Adcox and Garbo ensured that petitioner signed a consent to search form, which stated that he had been informed that he could refuse to consent, Officers Goings, Adcox and Garbo did not, in fact, explain this portion of the form to petitioner. Accordingly, the state did not established that petitioner was aware of his right to refuse consent.

The record contains no evidence regarding petitioner's educational level and intelligence. There is also no question but that petitioner fully cooperated with Officers Goings, Adcox and Garbo. Upon consideration of the totality of the circumstances, this court should find that petitioner's consent was not voluntary. In any event, even if

petitioner had voluntarily consented to the search, it remained the product of the illegal detention. While Officers Goings, Adcox and Garbo constitutional transgression was very egregious, they sought consent no more than one or two minutes after the unconstitutional detention. See *United States v. Johnson,* 264 F.3d 1140, *2 (5th Cir. Jun. 18, 2001) (unpubl.) (lapse of twenty or thirty minutes between the illegal conduct and the consent is characterized as a "close" temporal proximity). Although the fact that Officers Goings, Adcox and Garbo did not perform a sobriety test before seeking consent to search may be considered an intervening circumstance, there is no indication that petitioner knew, subjectively or objectively, that he was free to leave.

IV. All Evidence Obtained As a Result of the Search Must Be Suppressed

"Under the fruit of the poisonous tree doctrine, 'all evidence derived from the . . . illegal search . . . must be suppressed, unless the state shows that there was a break in the chain of events sufficient to refute the inference that the evidence was a product of the constitutional violation.' "*Jenson,* 462 F.3d at 408 (quoting *Dortch,* 199 F.3d at 200-01) (ellipsis in original)."The test for determining whether evidence is inadmissible as fruit of the poisonous tree is 'whether, granting establishment of the primary illegality, the evidence . . . has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' "*Ward v. Dretke,* 420 F.3d 479, 488 (5th Cir. 2005) *(quoting Wong Sun v. United States,* 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)).

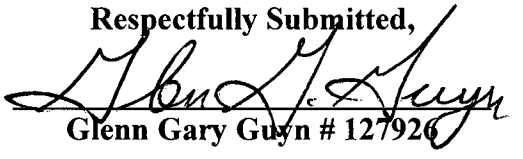
Here, there is no indication that the officers would have discovered close to a hundred pseudoephedrine pills, lithium batteries in a sock, Xanax, a scale, and baggies, but for their unconstitutional detention and search of petitioner's barrowed vehicle. Thus,

"*all*" of the physical evidence discovered as a result of the search warrant is fruit of the poisonous tree and should have been suppressed. *Thibodeaux, supra* (evidence obtained as a result of an illegal seizure must be suppressed).

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Fifth Circuit Courts.

Respectfully Submitted,



Glenn Gary Guyn # 127926