

19-7667

No.: \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
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SUPREME COURT IN THE  
UNITED STATES

ROBERT TREMAINE WILLIAMS,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Robert Tremaine Williams  
Reg No. 17231-002  
FCI Talladega  
PMB 1000  
Talladega, AL. 35160

QUESTION PRESENTED

WHETHER THE PROMISE TO BE FREE TO LEAVE AFTER CLEARANCE  
OF DRIVER'S LICENSE, VEHICLE PAPERS, AND WARRANTS---  
with issuance of a warning traffic citation--- TO  
BEING HELD BY OFFICERS-K-9 AUTHORITATIVE  
POSITIONINGS, WAS "COERCIVE MEANS" CONSTITUTING A  
"SEIZURE" UNDER THE 4TH AMENDMENT; ESPECIALLY IN LIGHT  
OF THE DELETION OF THE VIDEO CAM RECORDING  
OF THE EVENT?

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### ARGUMENT:

#### I.

WHETHER THE PROMISE TO BE FREE TO LEAVE AFTER CLEARANCE OF DRIVER'S LICENSE, VEHICLE PAPERS, AND WARRANTS--WITH ISSUANCE OF A WARNING TRAFFIC CITATION--TO BEING HELD BY OFFICERS-K-9 AUTHORITATIVE POSITIONINGS, WAS "COERCIVE MEANS" CONSTITUTING A "SEIZURE" UNDER THE 4TH AMENDMENT; ESPECIALLY IN LIGHT OF THE DELETION OF THE VIDEO CAM RECORDING OF THE EVENT?

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OPINION BELOW

The lower courts determined that the traffic stop was lawful from its inception and the subsequent questioning of Petitioner after he received his license and warning citation (the promise to be able to leave after clearance of the computer check) was a consensual encounter and not a seizure for purposes of offending the Fourth Amendment to the Constitution. See, lower courts' Opinions marked Appendix A.

JURISDICTION

Jurisdiction is established as this is an appeal from the denial of a Direct Review. The Writ is timely as it falls within the 90 days allocated by this Court's rule. The Direct Appeal was denied on August 27, 2019.

**CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED**

**Supreme Court**

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## STATEMENT OF THE CASE

An indictment filed in May 2017, charged Petitioner with possessing 500 grams of cocaine with intent to distribute, in violation of 21 U.S.C. § 841. The charge arose from a traffic stop along Interstate 10 near Lake Charles, Louisiana on September 9, 2014. Petitioner moved to suppress the cocaine found during that traffic stop, leading to an evidentiary hearing before a U.S. magistrate judge.

On September 9, 2014, Corporal Chad Booth ("Cpl. Booth"), an officer with the Lake Charles Police Department, was working patrol on the Interstate-10 corridor. ROA.102. Cpl. Booth was parked on mile marker 35 perpendicular to the road with his vehicle facing eastbound. ROA.103. He was watching cars travel from west to east and could see approximately one mile down the road. ROA.103. He kept a K-9 in his vehicle while on patrol for the dual purpose of narcotics detention and bite work. Id., 101.

At around 6a.m. Petitioner was traveling on Interstate-10 through Calcasieu Parish near Lake Charles, Louisiana, near mile marker 35 in a Grand Marquis. Id. 104. The speed limit changed from 60 miles per hour to 70 miles per hour at mile marker 34 on Interstate-10. Id., 123. As he approached mile marker 35, where Cpl. Booth's patrol unit was parked, Petitioner's vehicle was in the left lane of the Interstate. Id., 104. Cpl. Booth noticed that the headlights of the Grand

Marquis and those of the 18-wheeler traveling next to it in the right lane made it appear as if the vehicles were driving side by side rather than passing one another. Id., 104. Cpl. Booth watched the Grand Marquis travel for about a half a mile before it passed his location at mile marker 35. Id., 105. After watching the vehicles pass, Cpl. Booth left his position on the side of the interstate and began traveling behind the Grand Marquis. Id., 35. Cpl. Booth did not activate his emergency lights. ROA.34. The Grand Marquis then passed the 18-wheeler and began traveling in the right lane. Id., 127. Cpl. Booth then activated his emergency lights and initiated a traffic stop on the Grand Marquis. Id. Petitioner immediately pulled over---both vehicles pulled off the Interstates at marker 36. Id.

Cpl. Booth noticed the vehicle Petitioner was driving had Alabama license plate. Id., 108. Cpl. Booth exited his vehicle and approached the Grand Marquis. Id. Petitioner was asked to produce his driver's license and Petitioner complied. Id. Cpl. Booth noticed Petitioner's hands were shaking, that there was sweat on his hands, and although Cpl. Booth could feel the air conditioner from his position outside of the vehicle, Cpl. Booth noticed sweat building on the bridge of Petitioner's nose. Id.

Petitioner explained to Cpl. Booth that he was traveling on the Interstate because he was returning to Alabama after having had a job interview in Beaumont, Texas. ROA.111. Petitioner did not provide the details to Cpl. Booth of which

company he interviewed with, but he did explain that it was a refinery in Beaumont, Texas for a scaffolding job. Id. Cpl. Booth then noticed that Petitioner's carotid artery began to pulsate visibly. Id. Further, Cpl. Booth believed Petitioner was hesitant to answer questions and broke up his responses with the sound "uh" so to allow for more time to think of an answer. Id., 112. Finally, Cpl. Booth observed that Petitioner was traveling from Texas and that was consistent with drug traffickers often travel. Id.

Cpl. Booth took Petitioner's driver's license and informed him that he was going to run a computer check on the license. Id. Cpl. Booth advised Petitioner if the computer check did not produce results warranting further investigation, he would just give Petitioner a warning. Id. Cpl. Booth returned to his patrol unit to run a computer check on Petitioner's driver's license. Id. A Corporal Kevin Hoover ("Cpl. Hoover"), arrived on the scene while Cpl. Booth was conducting the computer check. Id. The computer check returned negative results. Id. Cpl. Booth exited his vehicle and requested Petitioner also exit his vehicle to sign the written warning. Id. Petitioner complied and exited his vehicle to sign the written warning. Cpl. Booth believed he observed continued signs of nervousness from Petitioner as he signed the written warning. Cpl. Booth then returned Petitioner's driver's license to him. Id.

Although Cpl. Booth had assured Petitioner that he would be able to leave if the computer check produced negative

results, Cpl. Booth did not inform Petitioner that he was free to go. Instead, Cpl. Booth asked Petitioner if he would agree to speak to Cpl. Booth some more. Id. Petitioner acquiesced. In response to Cpl. Booth's questions, Petitioner stated that he had interviewed with Chevron, explained he was on his way back to Alabama to make money, and that his children kept calling for him to return to Alabama. Id. Cpl. Booth claimed Petitioner still appeared nervous and that his answers were inconsistent. Id. Based on his continued conversation with Petitioner, Cpl. Booth believed Petitioner was involved in some form of criminal activity. Id.

Cpl. Booth produced a search and seizure form seeking Petitioner's consent to search the vehicle. Petitioner informed Cpl. Booth that he could not read and, in response, Cpl. Booth read the form to Petitioner. Petitioner declined to allow the Officers to search the vehicle. Id. Cpl. Booth then advised Petitioner that he was going to utilize his K-9 to walk around the perimeter of the vehicle. Cpl. Booth then employed the K-9 he had in his patrol unit and the K-9 alerted as it walked around the vehicle. Id. Cpl. Booth informed Petitioner that he had probable cause and was going to search his vehicle. The Officers discovered approximately 2.5 pounds of cocaine in Petitioner's trunk. Petitioner was arrested. Id.

Although the entirety of the traffic stop and search was captured on the dash camera in Cpl. Booth's patrol unit, Cpl. Booth failed to take the steps required to preserve the video

During pre-trial proceedings, Petitioner moved to suppress the warrantless seizure of his person, as well as the search of his vehicle, on the grounds that the initial traffic stop was not justified at its inception and that the traffic stop was unlawfully extended. ROA.35-46. The Government opposed the motion and a hearing ensued. Id.

Following the hearing on the Motion to Suppress, the Magistrate Judge issued a Report and Recommendation recommending that Petitioner's Motion to Suppress be denied. Id. In recommending that the Motion to Suppress be denied, the Magistrate Judge found that Cpl. Booth credibly testified that he observed conduct by Petitioner in violation of LA. REV. STAT. § 32:71(B)(1)(a) prohibiting vehicles from traveling in the left lane except under certain limited circumstances, none of which applied to Petitioner's case. Id., at 61-63. The Magistrate Judge found that Cpl. Booth had observed Petitioner traveling in the left lane from about a half a mile before he began his pursuit, and that this conduct continued even after Cpl. Booth began following Petitioner. Id. Thus, the Magistrate Judge found that the traffic stop was justified at its inception. Id.

Further, the Magistrate Judge found that the traffic stop was lawfully extended when Cpl. Booth continued to questioned Petitioner after completing his computer check and obtaining

Petitioner's signature on the notice of violation citation. Id. The Magistrate Judge found that the traffic stop was converted into a consensual encounter because the circumstances indicated that Petitioner should have believed himself free to leave. Id. Thus, the Magistrate Judge found that the extension of the traffic stop did not violate the Fourth Amendment. Id.

Petitioner objected to these findings and legal conclusions contained in the Report and Recommendation. Id. The district court determined the findings and recommendations by the Magistrate Judge were correct under applicable law and denied Petitioner's Motion to Suppress. Id.

Subsequently after the Motion to Suppress was denied, Petitioner entered a conditional guilty plea and his case proceeded to sentencing. ROA.77-81, ROA.194. The Presentence Investigation Report ("PSR") prepared in anticipation of sentencing calculated a total offense level of 21, and with a Criminal History Category of VI, the advisory guideline imprisonment range was 77 to 96 months. Id.

Petitioner appeared before the district court for sentencing on July 26, 2018. Id. Petitioner requested a sentence of 77-months imprisonment. In support thereof, Petitioner argued his family support system, who were present in court at sentencing, justified a sentence of 77-months. Id. Indeed, a Letter of Support submitted on behalf of Petitioner emphasized that he had the resources to make the changes he needed to make in his life. Id. Further, he argued that his substance abuse problem, which contributed to his involvement

in the instant offense, justified a sentence of 77-months imprisonment. Petitioner did not personally address the district court at sentencing. Id.

The Government requested a sentence of 96-months citing Petitioner's criminal history. Id.

The district court imposed a sentence of 96-months imprisonment with a four-year term of supervised release. ROA.185; ROA.84-89. Petitioner objected to the sentence as substantially unreasonable. Id. A timely notice of appeal was filed on August 1, 2019. An appeal ensued.

Upon appeal on the issues concerning the Motion to Suppress, the Fifth Circuit went through the events leading to the appeal and concluded:

"In light of our caselaw, the relatively low proof required for reasonable suspicion, and the standard of review favoring the prevailing party below, we conclude that the Government met its burden. Reasonable suspicion supported continuing to detain Williams so Booth could conduct the dog sniff. The dog's alert, in turn, furnished probable cause to search the vehicle. See *United States v. Ned*, 637 F.3d 562, 567-68 (5th Cir. 2011). Accordingly, we affirm the denial of Williams's motion to suppress."

REASONS FOR GRANTING THE WRIT

This Court is the Supreme Law of the Land and has the final say-so concerning what the law is. In this proceeding, Petitioner urges this Honorable Court to clear up the confusion with the courts below concerning the demarcation between what is a consensual encounter not infringing with coercive means and coercive means constituting a seizure. This is the province of this Court.

The well of this Fourth Amendment's interests need to be replenished.

I.

**THE LOWER COURTS ERRED IN DETERMINING THE TRAFFIC STOP WAS  
A CONSENSUAL ENCOUNTER AND NOT UNLAWFULLY EXTENDED AFTER  
CORPORAL BOOTH RETURNED PETITIONER'S IDENTIFICATION**

As part of a traffic stop, an officer may conduct a reasonable inquiry, including running a computer check on driver and vehicle papers. United States v. Shabazz, 993 F.2d 431, 437 (5th Cir. 1993). He may also ask questions about the subjects' itinerary and the purpose of their trip. United States v. Brigham, 382 F.3d 500, 508 (5th Cir. 2004). He may even ask unrelated questions, so long as these do not extend the duration of the stop. Shabazz, at 436-37. However, "once the tasks tied to the traffic infraction are---or reasonably should be---completed, the authority for the seizure ends unless the Government can show an exception to the Fourth Amendment that allows the stop to continue." United States v. Penagonzalez, 618 Fed. App'x 195, 198 (5th Cir. 2015)(quotations and alterations omitted). "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." United States v. Franklin, 323 F.3d 1298, 1301 (11th Cir. 2003). If the citizen's cooperation is induced by "coercive means" or if a reasonable person would not "feel free to terminate the encounter," however, then the encounter is no longer consensual, a seizure has occurred, and the citizen's Fourth Amendment rights are implicated. See, United States v.

Drayton, 536 U.S. 194, 201, 122 S.Ct. 2105, 153 L.ED2d 242 (2002).

In determining whether a police-citizen encounter was consensual or whether a seizure has occurred, we consider the following factors:

whether a citizen's path is blocked or impeded; whether identification is retained; the suspect's age, education and intelligence; the length of the suspect's detention and questioning; the number of police officers present; the display of weapons; any physical touching of the suspect, and the language and tone of voice of the police. We do not apply these factors rigidly, however, but rather use them as relevant guidance, to be considered "among other things". The ultimate inquiry remains whether a person's freedom of movement was restrained by physical force or by submission to a show of authority. See, California v. Hodari D, 499 U.S. 621, 626 (1991).

The lower courts' determination that the traffic stop turned into a consensual encounter is in error. Cpl. Booth's objective conduct would have communicated to a reasonable person that he was not free to leave, especially if Cpl. Booth wouldn't have deleted the video recording on this particular stop.

After obtaining Petitioner's driver's license from him, Cpl. Booth assured (promised) Petitioner that he would receive a warning. ROA.20-21. Simply receiving a warning means you are free to leave. However, after the computer check returned no red flags or warrants, Cpl. Booth did not inform Petitioner

that he was free to leave. ROA.131. Cpl. Booth had returned Petitioner's driver's license to him, but Petitioner was not free to leave because Petitioner was helmed up on the side of the Interstate in front of a marked patrol unit containing a K-9 trained to search for narcotics flanked by two uniformed police officers. Cpl. Booth immediately asked Mr. Williams if he would speak with him some more. Id., 131.

Moreover, the return of the driver's license and the request to answer more questions occurred during a single interaction between Cpl. Booth and Petitioner. Cpl. Booth failed to communicate in any way to Petitioner that the traffic stop had ended and that he was free to leave. A reasonable person would feel at that point that the officer was not going to allow him to leave. Matter of factly, Petitioner was asked to exit the vehicle and was questioned by both officers. Id. They conducted, then, an unconstitutional, extended detention unsupported by reasonable suspicion, not a consensual encounter. See, United States v. Perkins, 348 F.3d 965, 971 (11th Cir. 2003) ("In this circuit, we have required more than the innocuous characteristics of nervousness, a habit of repeating questions, and an out-of-state license for giving rise to reasonable suspicion"); United States v. Portillo-Aguirre, 311 F.3d 647, 656 n. 49 (5th Cir. 2002). Petitioner's nervousness which Cpl. Booth states rose to a reasonable suspicion is incorrect. Nervousness is an "entirely natural reaction to police presence." United States v. McKoy, 428 F.3d 38, 40 (1st Cir. 2005).

The record, clearly, establishes that--outside the evidence of the video recording of the traffic stop-- that "coercive means" were employed. Petitioner's path was blocked or impeded by his removal from his vehicle (just to sign the warning citation) to be accosted by standing on the side of an interstate highway, two officers, two officers interrogation, their authoritative stances and position around Petitioner, position of their patrol cars and a K-9 dog with its presence being known.

Petitioner was not free to leave. Petitioner was seized under the interests of the Fourth Amendment.

#### CONCLUSION

Wherefore, premise considered, the Writ should be Granted, whether outright or GVR, with instructions to the lower courts.

Respectfully submitted,

  
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Robert Tremaine Williams