Docket No. 19-7716

IN THE SUPREME COURT OF THE UNITED STATES

TIMMY WALLACE,

Petitioner,

– against –

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

On Certiorari to the United States Court of Appeals
For the Second Circuit

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PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, petitioner Timmy Wallace ("petitioner" or "Mr. Wallace") respectfully petitions this Court for an order (1) granting rehearing of the order denying certiorari in this case, (2) vacating the Court's March 23, 2020 order denying certiorari, and (3) granting certiorari on the issue of whether the traffic stop was unlawfully prolonged pursuant to Rodriguez v. United States, 135 S. Ct. 1609 (2015) and/or whether petitioner's conviction must be vacated pursuant to Rehaif v. United States, 139 S. Ct. 2191 (2019).

This petition for rehearing is timely because it is made within 25 days of this Court's March 23, 2020 order denying certiorari. Petitioner further submits that the Tenth Circuit's decision in United States v. Mayville, ___ F.3d ___, 2020 WL 1684057 (10th Cir. Apr. 7, 2020) and the Sixth Circuit's decision in United States v. Lott, ___ F.3d ___, 2020 WL 1542306 (6th Cir. Apr. 1, 2020), both decided since certiorari was denied in this case, puts the need for this Court's review of prolongation of computerized vehicle checks in sharper relief.

1. As this Court will recall, petitioner Timmy Wallace's vehicle was stopped at 7:20 p.m. on May 25, 2015 in the Bronx, New York.[1] The officers who stopped Mr. Wallace ran a "Rugby" computer check which, within *two minutes*, revealed that Mr. Wallace had a valid license; that the vehicle was registered to him; that there were no

[1] Petitioner respectfully refers this Court to the certiorari petition for a more complete description of the relevant facts.

reports of it being stolen; that the license plate, vehicle type and VIN checked out; and that Mr. Wallace had no outstanding warrants – in other words, all the purposes of a traffic stop under Rodriguez, supra. By the admission of the sergeant on the scene, this Rugby search dispelled any possibility of the car being stolen. Nevertheless, a two-judge majority of the Second Circuit held that the officers were entitled to inspect the vehicle for an additional seven minutes, ultimately finding a missing doorjamb VIN number and then a gun, on the basis of alleged indicia of theft that had been noted *before* the Rugby search conclusively showed that the vehicle belonged to Mr. Wallace. See United States v. Wallace, 937 F.3d 130, 140-42 (2d Dept. 2019).

2. The Mayville decision is the other side of the coin. In Mayville, the police stopped defendant John Elisha Mayville and *failed* to run a computer search although they had a database available to them, instead doing a radio dispatch check that took a considerably longer time. See Mayville, 2020 WL 1684057, *2. Before obtaining the results of the dispatch check, one of the officers, Trooper Tripodi, called for a drug dog, who arrived and alerted to the odor of narcotics. Id.

On appeal from a conditional guilty plea, Mayville argued that the officers violated his Fourth Amendment rights by failing to conduct the check in the most expeditious possible manner. The Tenth Circuit framed the question as "whether the troopers' conduct, including Trooper Tripodi's decision to request a Triple I check through dispatch rather than conduct the criminal-history check on the computer in his patrol car, was reasonable under the circumstances." Id., *4.

The Mayville court acknowledged that, under Rodriguez, "even ordinary

inquiries incident to a traffic stop and permissible safety precautions must be completed within a reasonable amount of time." Id. However, the Tenth Circuit "[saw] no reason to apply a different rule simply because an officer elects to conduct a Triple I check through dispatch rather than research a motorist's criminal history on the computer in his patrol car." Id. After referring to the fact that Mayville was driving an out-of-state vehicle, the court stated:

> Although Trooper Tripodi could have executed the traffic stop without running the records check through dispatch, and instead relied exclusively on the information available on the computer in his patrol car, his actions did not violate Defendant's Fourth Amendment rights. *As the Court has repeatedly admonished, the Fourth Amendment does not require officers to use the least intrusive or most efficient means conceivable to effectuate a traffic stop.* While we can imagine other situations in which an officer's decision to run a Triple I check through dispatch would unreasonably prolong a traffic stop, that is not the case here. The evidence in this case shows the troopers acted reasonably diligent in executing the tasks incident to the traffic stop, and their actions did not unlawfully extend the stop beyond the pursuit of the stop's mission.

Id., *5 (emphasis added).

3. The Sixth Circuit's decision in Lott, supra, also demonstrates why computerized checks during traffic stops represent a rapidly developing area of law that warrants review. The officers who stopped Lott for a left-lane infraction noticed "sign[s] of nervousness" beyond what was ordinary for a traffic stop. See Lott, 2020 WL 1542306, *1. They told him that they would not issue a traffic infraction but ran his license through a "mobile-data-computer terminal search" to check for warrants. Id. Without waiting for the results, one of the troopers continued to ask Lott questions,

ultimately eliciting an admission to possessing marijuana. Id. A search then revealed heroin, other drugs, and money. Id.

On appeal, the Sixth Circuit acknowledged that under Rodriguez, a traffic stop must end "when tasks tied to the traffic infraction are—or reasonably should have been—completed;' whichever comes first." Id., *3. The court further acknowledged that prior to Lott admitting to possessing marijuana, there was insufficient reasonable suspicion to prolong the stop. Id. Over Lott's objection, however, the court held that the trooper was not required to wait for the results of the computer search before asking further questions:

> The magistrate judge found that "Trooper King had not received the results from the mobile data terminal before initiating the canine sniff." But at issue is not when an officer chooses to receive database results but whether the warrant search was over or should have been over. The record contains no information about when King expected the results of the warrant search—or reasonably should have. And while the timeline of the roadside encounter provided by the parties is imprecise (King estimated 5-10 minutes elapsed between the stop and the dog sniff), we know that, at most, two or three minutes elapsed between King inputting Lott's information into the warrant search and Lott's marijuana admission. There is no indication that King delayed his return to the patrol car beyond the first instance search results may have been returned. The record therefore provides no basis for concluding that the warrant search had finished by the time Lott admitted to possessing marijuana.

Id., *4. Left unsaid was what a "reasonable time" to conduct a computer search might be, although other circuits have surmised that four to seven minutes is reasonable, see Hall v. City of Chicago, __ F.3d ___, 2020 WL 1327204, *6 (7th Cir. Mar. 23, 2020) – a

surmise that appears to be based on the *ipse dixit* of the court rather than any evidence concerning how long computer checks take or should take.

4. The combined effect of Mayville, Lott, and the instant case is to eviscerate police officers' obligation to conduct traffic stops expeditiously and to minimize the Fourth Amendment intrusion as Rodriguez requires. Under Mayville, officers need not use the fastest available means to conduct vehicle and criminal checks; under Lott, officers who *do* use the fastest available means need not await the results; and under the Second Circuit's decision in this case, even officers who use the fastest means *and obtain a result* can nevertheless continue to prolong the stop based on pre-existing suspicions that the checks have dispelled. This poses a "heads I win, tails you lose" situation for motorists whose vehicles are stopped: on the one hand, officers can buy time to conduct inspections or summon drug dogs by using slower means to conduct their checks, and on the other hand, even if they use the fastest means, they are free to ignore it or even to decide that the information obtained via those means simply does not count.

Such a result cannot be tenable under Rodriguez. At the heart of Rodriguez is that a traffic stop may last no longer than it absolutely has to, and that even minimal further intrusion is unlawful. An obligation on the part of law enforcement officers to use the most expeditious possible means to conduct the routine incidents of a traffic stop, and to govern themselves by the information they obtain via such means, is surely inherent in the duty not to prolong traffic stops. More and more police departments have remotely accessible computer databases available to them, and such

databases are virtually tailor-made to minimize Fourth Amendment intrusion – so how can it be lawful for officers who conduct traffic stops to not use such devices and/or to ignore the results if they do?

This Court should therefore find that the interaction of computerized law enforcement databases and traffic stops is a developing area of law that warrants fully briefing and examination – if nothing else, the fact that *three* precedential circuit court decisions (Mayville, Lott and Hall) have been decided in the short time since certiorari was denied in this case is living proof of that. Therefore, certiorari should be granted to petitioner Wallace on the issue of whether the traffic stop in this case was unlawfully prolonged under Rodriguez.

5. Finally, petitioner calls to this Court's attention its decision in Rehaif, supra, which was decided after his direct appeal was fully briefed and argued. In Rehaif, this Court held that in order to convict a defendant of possessing a firearm in violation of federal law, there must be proof that the defendant knew he was in a category of person prohibited from owning guns. See Rehaif, 139 S. Ct. at 2200. Here, the government did not adduce any proof that Mr. Wallace knew he was a convicted felon and therefore in a prohibited category. This complete failure of proof requires that Mr. Wallace's conviction be vacated or, at minimum, that this Court should grant certiorari, vacate his conviction, and remand to the Second Circuit for further consideration in light of Rehaif.

CONCLUSION

WHEREFORE, in light of the foregoing, petitioner Timmy Wallace prays that

this Court (1) grant rehearing of the order denying his petition for certiorari in this case, (2) vacate the Court's March 23, 2020 order denying certiorari, (3) issue an order granting certiorari on the issue of whether the traffic stop was unlawfully prolonged pursuant to Rodriguez, supra, and/or whether the conviction must be vacated under Rehaif, supra, and (4) grant such other and further relief to petitioner as may seem just and proper.

Dated: New York, NY
April 14, 2020

Respectfully submitted,

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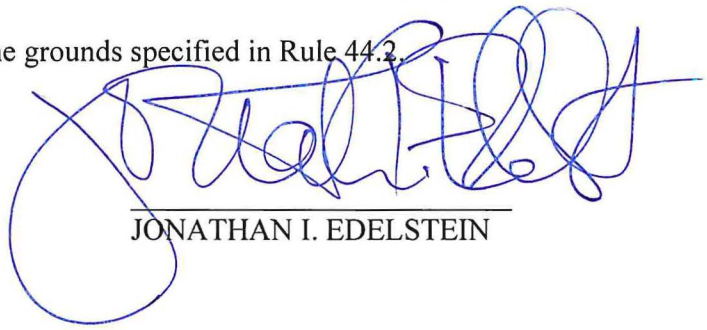
CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.



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