

No. 19-782

Supreme Court, U.S.
FILED

JAN 09 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Ronald Hayward - PETITIONER

vs.

STATE OF OHIO -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Ronald Hayward/Inmate No.#720-397

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ORIGINAL

QUESTION(S) PRESENTED

1. Do a police officer have probable cause to search a vehicle or a box truck without a search warrant?
2. Do citizens has the protection of the Fourth Amendment Right of the United States Constitution?
3. If a police officer drives by an location and sees several Black males unloading a box truck at an loading dock, unloading watermelons, Does the police officer has a right to search the box truck without first obtaining an search warrant? Does this violates the Fourth Amendment Right to the United States Constitution?

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:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 19-3571; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2019 U.S. Dist. LEXIS 26468; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☒ reported at 2019 Ohio LEXIS 560; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Tenth District Court of Appeals court appears at Appendix D to the petition and is

☐ reported at 2018 Ohio 1070; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10/11/2019.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 3/20/19.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The Fourth Amendment itself contains no provisions expressly precluding the use of evidence obtained in violation of its commands. In stead, the exclusionary rule is a judicially created remedy, designed to safeguard Fourth Amendment rights generally through its deterrent effect. Thus, where an individual's Fourth Amendment rights have been violated, the issue becomes whether suppression of the evidence will create a sufficient deterrent effect to prevent future violations.

Petitioner's 4th amendment rights were violated when the police officer search the box truck without first obtaining a search warrant.

Unquestionably, Petitioner is entitled to the 4th amendment protection as he was physically unloading watermelons from the box truck, as this inestimable right of personal security belongs as much to the citizen on the streets as to the -- homeowner closeted in his study to dispose of his secret affairs.

Thus, where events are circumstantially innocuous in themselves, or too skeletal and ambiguous to create any reasonable suspicion that the Petitioner were engaged in or was about to engage in criminal activity, and the search of the box truck without any search warrant was unwarranted and unconstitutional, whereas too, when the 1st police officer search the box truck without obtaining a search

warrant before searching the box truck, it was not until several hours had passed, before the Officers obtained any search warrant. Searching a vehicle without probable cause is unwarranted and unconstitutional, and questionable associations and furtive gestures are not enough to constitute probable cause to search any vehicle without first obtaining a search warrant.

STATEMENT OF THE CASE

Ronald Hayward, a pro se Ohio prisoner, applies for a certificate of appealability ("COA") from the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. In 2015, a jury convicted Hayward the Petitioner of possession of marijuana and trafficking in marijuana, and the trial court sentenced him to 8 years of imprisonment. Petitioner appealed, and the Ohio Court of Appeals reversed because the trial court had overruled Petitioner's motion to suppress, by using the incorrect standard. *State v. Hayward*, No. 15AP-1097, 2016 WL 6602218 (Ohio Ct. App. Nov. 8, 2016.)

On remand, the trial court then issued an amended judgment reinstating Petitioner's original judgment of conviction.

Petitioner appealed again, and this time the Ohio Court of Appeals affirmed. *State v. Hayward*, No. 11AP-390, 2018 WL 1448734 (Ohio Ct. App. Mar. 23, 2018). The Ohio Supreme Court denied Petitioner's motion for leave to file a delayed appeal. *State v. Hayward*, 119 N.E.3d 433 (Ohio 2019) (Table). Petitioner then filed a §2254 petition. A magistrate judge recommended denying Petitioner's petition because Petitioner had procedurally defaulted his claims when he failed to file a timely appeal of his conviction to the Ohio Supreme Court. *Hayward v. Warden, Grafton Corr. Inst.*, No. 2:19-cv-1313, 2019 WL 2058628, at *6 (S.D. Ohio May 9, 2019) (report and recommendation). The district court adopted that recommendation over Petitioner's objections, denied the petition, and declined to issue a COA. *Hayward v. Warden, Grafton Corr. Inst.*, No. 2:19-CV-1313, 2019 WL 2289578 (S.D. Ohio May 29, 2019).

In this case Petitioner's 4th amendment rights was violated when the 1st arriving police officer searched the box truck without first obtaining a search warrant. Unquestionably, Petitioner is entitled to the 4th amendment protection as he was physically doing his job by unloading watermelons from the box truck, as instructed from the male whom owned the box truck, whom was not at the scene, and Petitioner had no knowledge of any contraband in the box truck. However, as this inestimable right of personal security belongs as much to the citizen on the streets as to the homeowner closeted in his study to dispose of his secret affairs.

Thus, where events are circumstantially innocuous in themselves, or too skeletal and ambiguous to create any reasonable suspicion that the Petitioner were engaged in or was about to engage in criminal activity, and the search of the box truck without any search warrant being obtained was unwarranted and unconstitutional, and in violation of the Petitioner's 4th amendment rights, whereas to, when the first police officer searched the box truck without obtaining a search warrant before searching the box truck, it was not until several hours went by before a search warrant appeared after the illegal search of the box truck, as though the first officer did not search the box truck without a search warrant, which was unwarranted and unconstitutional. Nevertheless, questionable associations and furtive gestures are not enough to constitute probable cause to search any vehicle or box truck without first obtaining a search warrant.

Officer Carr violated Petitioner's constitutional rights when he opened the box truck without a warrant and no exception saves the search. See, State v. Jones, 70 Ohio App.3d 554, 591 N.E.2d 810 (1990). Despite the fact that the police obtained a warrant after performing the warrantless search, it is agreed that there was no warrant obtained before Officer Carr opened the box truck. This Court has previously observed the relevant inquiry when the automobile exception is asserted:

The automobile exception is a specifically established and well delineated exception to the warrant requirement.

See U.S. v. Ross at 825, citing Carroll v. U.S., 267 U.S. 132, 45 S.Ct. 280, 69 L. Ed. 543, T.D. 3686 (1925). In this case Officer Carr did not possess the requisite probable cause to open the box truck prior to opening the truck.

While the trial court in its decision, lists circumstances it found troubling. Officer Carr's testimony simply does not support a finding that at the time he performed the warrantless search, he had probable cause to believe that the box truck specifically contained contraband. All evidence obtained by the police as a result of the warrantless search and seizure was the product of unlawful police conduct. The evidence was the fruit of the poisonous tree and should have been suppressed. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441.

Petitioner's rights to due process and a fair trial was violated under the Fifth and Fourteenth Amendments to the United States Constitution, when trial court entered a conviction against Petitioner for trafficking in drugs, in absence of sufficient evidence.

The trial court's finding Petitioner was guilty of trafficking in drugs was not supported by sufficient evidence because the State failed to prove that Petitioner actually knew the marijuana was in the vehicles. When a verdict is not supported by sufficient evidence, the conviction must be vacated, because every defendant has a constitutional right to a fair trial. U.S. Const. Amend. V and XIV; *Tumey v. Ohio* (1927), 273 U.S. 510, 523. Before the prosecutor may obtain a conviction for any offense, it must prove every element of that offense beyond a reasonable doubt. *Sullivan v. Louisiana* (1993), 508 U.S. 275, 277-78; *Jackson v. Virginia* (1979), 443 U.S. 307, 316; *In re Winship* (1970), 397 U.S. 358, 361-64.

A conviction based upon sufficient evidence must be overturned. *Jackson* at 315-18. The standard for review of a sufficiency-of-the-evidence claim is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson* at 319. If the conviction is based on legally insufficient evidence it constitutes a denial of due process, citing *Tibbs v. Florida* (1982), 457 U.S. 31, and *Jackson*. In this case prosecutor failed to prove that Petitioner Hayward knew the marijuana was in the vehicles. When the Officers first approached Petitioner Hayward and his co-defendants, no one attempted to flee, no one appeared nervous and they all fully cooperated with the officers.

Petitioner told the officers that they were contracted to do the work by the truck owner and made repeated attempts to contact the owner. When the marijuana was discovered, there was no odor and it was packages were opaque. There was in-

sufficient evidence presented that Petitioner Hayward knew there was marijuana in the vehicles . See State v.Kingsland,177 Ohio App.3d 655,2008-Ohio-148,895 N.E.2d 633.

The jury lost its way when it found Petitioner guilty of possession of marijuana and trafficking in drugs wvre against the manifest weight of the evidence,is whether substantial evidence exists upon which the trier of fact could reasonably concluded that all of the elements of an offense have been proven beyond a reasonable doubt,State v.Eley(1978),56 Ohio St.2d 169,syllabus. Petitioner points out that a difference exists between a reversal stemming from insufficient evidence and one prompted by the weight of the evidence,citing Tibbs v.Florida(1982),457 U.S.31,37. Here in this case,the jury lost its way when it determined that Petitioner Hayward knew the marijuana was in the vehicles.

For the foregoing reasons,this Court should vacate Petitioner's Hayward's conviction,or in the alernative,reverse the conviction and remand for a new trial.

REASONS FOR GRANTING THE PETITION

is because[sic] Officer Carr opened the box truck then search it without obtaining an search warrant violated Petitioner's Rights under the Fourth and Fourteenth Amendment to the United States Constitution. Because the search incident thereto were unconstitutional and illegal. And reasons also to grant the petition, it was error for both the United States Court of Appeals, and the United States District Court of Ohio to dismiss Petitioner's petition, because it failed to give a person of ordinary intelligence fair notice that his completed conduct of filing a delayed appeal in the Ohio Supreme Court was forbidden by the statute, which conflicts in other Ohio Supreme Court's decisions, See State v. Slaughter, 2019-2027 filing delayed appeals, and other district court's procedural proceeding in Ohio, by stating the fourth amendment right violations are not cognizable in habeas relief, conflicting with Stone v. Powell, 422 U.S. 1055 where fourth amendment rights violation pertaining to searches, and arrests illegal is cognizable, therefore, the petition must be granted in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ronald Hayman

Date: 1/8/20