

No. 19-8147

ORIGINAL

Supreme Court, U.S.
FILED

MAR 18 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ROMULO MURILLO-MORALES — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURTS OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROMULO MURILLO-MORALES
(Your Name)

16 NORTH TALMADGE
(Address)

NEW BRUNSWICK NJ, 08901
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether PETITIONER'S conviction is constitutional, where the search and seizure of the petitioner was without a warrant and probable cause in violation of the Fourth and Fourteenth Amendments?

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	4-11
REASONS FOR GRANTING THE WRIT	12
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A : Decision of the United States Court of appeals
for the Second Circuit.

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
BRENDLIN V. CALIFORNIA, 551 u.s. 249	8
UNITED STATES V. EVANS, 2012 u.s. Dist	8
FLORIDA V. BOSTICK 501 u.s. 429	8
UNITED STATES V. MENDENHALL, 446 u.s. 544	8
YBARRA V. ILLINOIS, 444 u.s. 85	9
U.S. V. SHARPE, 470 u.s. 675	10
TERRY V. OHIO, 392 u.s. 1	10
U.S. V. SHABAZZ, 993 F.2d 431	10
U.S. V. GREGORY, 79 F.3d 973	10
WHREN V. U.S., 116 S.ct. 1769	10
U.S. V. TORO PELAEZ, 107 F.3d 819	10
DUNAWAY V. NEW YORK, 442 u.s. 200	11

STATUTES AND RULES

21 usc § 841(a)(1)

21 usc § 841(b)(1)(B)

OTHER

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 _____; 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☐ is unpublished.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 _____ to the petition and is

☐ reported at _____; 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 _____ to the petition and is

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☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; 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 10/21/2019.

☐ 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: NO NOTICE SERVED, 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

CONSTITUTIONAL FOURTH AND FOURTEENTH AMENDMENTS.

STATEMENT OF THE CASE

1. A review of the criminal complaint sworn to by Christopher Cooke, and a DEA form 6(a) prepared subsequently by him alleges the following facts:

a. At approximately 2:13 P.M. Cooke observed a green Volkswagen Passat parked in front of 3601 Johnson Avenue in the Bronx. He then observed the passenger of the vehicle, later identified as the defendant ROMULO MURILLO-MORALES, exit the passenger seat and walk to the rear of the car. He then proceeded to the driver's side door and leaned in towards the rear of the vehicle. MURILLO-MORALES then returned to the front passenger seat of the car. (see Exhibit "A" 6, ¶2).

b. Although Agent Cooke alleges that the driver, later identified as LUIS GIL, manipulated the lights of the vehicle "consistent with the operation of a concealed compartment", while MURILLO-MORALES was by the driver's door (see Exhibit "A", DEA Form 6, ¶2), such actions are equally consistent with the operation of the blinker, hazard and headlights of the vehicle in a lawful manner. Significantly, Agent Cooke did not observe MURILLO-MORALES remove anything from or carry anything into the vehicle when re-entered.

c. Approximately 3 minutes later Cooke observed GIL exit the car carrying a black satchel type bag and enter 3614 Johnson Avenue. MURILLO-MORALES remained in the car.

d. Agent Cooke alleges that a few minutes later CI was instructed to enter 3614 Johnson Avenue to meet with GIL. Although the CI met with GIL allegedly for the purpose of purchasing 1-2 kilograms of cocaine no drug transaction took place. moreover Although it is alleged that GIL "displayed the satchel" to the CI There is no indication that the CI saw the contents of the Satchel or actually observed any cocaine while in the apartment. Indeed Cooke alleges that the CI allegedly informed GIL that "he could not complete the deal because his sources of money was not there", [See Criminal Complaint, Exhibit "B" 5, ¶(g) and (h) and exhibit "A", DEA Form 6, ¶3 (while in the apartment the CI contacted special Agent Romero" who acted in the capacity of the individual who Possessed the money, and stated in sum and substance he had waited Long enough and would not return")]

e. Although Agent Cooke alleges in the complaint that GIL Acknowledged to the CI that he had one kilogram of cocaine in the Satchel while in the apartment, a close reading of Agent Cooke's Report, reveals that the CI did not inform the agents of this Until sometime after the seizures. (See Exhibit "A", DEA Form 6, ¶3).

f. In summary, at the time GIL entered the Volkswagen neither The agents nor the CI had observed any narcotics. More significantly They were aware that no transaction had taken place nor was one Contemplated to occur.

g. Nonetheless, lacking a sufficient basis to believe that a Crime had been or was about to be committed "shortly after GIL entered the vehicle Agents Cooke and romano pulled up alongside The vehicle in order to keep the vehicle from driving off". The Agents then approached the vehicle and ordered both GIL and MURILLO-MORALES to exit the car. Agent Cooke alleges that "[a]s they exited the vehicle [he] looked into the rear of the vehicle and observed a brick shaped package, on the floor of the vehicle behind the driver's seat". (See Exhibit "A", DEA Form 6, ¶4).

h. Significantly, the volkswagen is a four door sedan. Since Gil exited the front driver's seat there would have been no reason for the rear driver's side door to be opened. Annexed as Exhibit "C" is GMM00025, two photographs provided by the government. The two photographs display the "brick-shaped package" allegedly observed by Agent Cooke GIL exited the front driver's seat. The photographs make clear that such an observation could not be made absent the opening of the rear driver's side door. Certainly, it creates at a bare minimum a factual issue concerning the ability for Agent Cooke to make a "plain view" observation of the brick shaped package as he alleges".

i. As a consequence of this "observation", which the defendant submits was in fact a warrant less search, for which the agents lacked probable cause, exigency and the scope of which was constitutionally impermissible, GIL and MURILLO-MORALES were placed under arrest and transported to the DEA New York Field Office for processing at 2:45 P.M. (See Exhibit "A", DEA Form 6, ¶4).

J. It is alleged that at 4.00 P.M GIL provided written consent to search the vehicle. The agents thereafter conducted a full search of the vehicle, including a concealed compartment, or "trap", leading to the recovery of additional items, including a sum of United States currency. (See Exhibit "A", DEA FORM 611 5).

K. As Set forth more fully herein, the defendant ROMULO MURILLO-MORALES sought to suppress all property recovered from the Volkswagen Jetta and any fruits thereof, conducted on January 30, 2015 and the district court denied.

ARGUMENT

Under the fourth amendment, every search or seizure by a government agent must be reasonable. In general, searches and seizures are unreasonable and invalid unless based on probable cause and executed pursuant to a warrant.

A. Standing

A passenger in a vehicle, like the driver, is seized for Fourth Amendment purposes. BRENDLIN V. CALIFORNIA, 551 U.S. 249, 256-57 (2007), UNITED STATES V. EVANS, 2012 U.S. Dist. LEXIS 165895 (S.D.N.Y. 2012) (HON. Robert W. Sweet). A person is seized and thus entitled to challenge the government's action when officers, by physical force or a show of authority, terminate or retrain the person's freedom of movement through means intentionally applied. FLORIDA V. BOSTICK, 501 U.S. 429, 434. When police actions do not show an unambiguous intent to restrain or when an individual's submission takes the form of passive acquiescence, the test for telling when seizure occurs is whether, in light of all the surrounding circumstances, a reasonable person would have believed he was not free to leave. UNITED STATES V. MENDENHALL, 446 U.S. 544. 554.

Certainly here Petitioner MURILLO-MORALES was seized because no reasonable person in his position when agents Cooke and Romano pulled up alongside the vehicle in order to keep the vehicle from driving off, approached the vehicle and ordered both he and Gil to exit the car, would have understood the Agents to be exercising control to the point that no one in the car was free to depart without police permission. See BOSTICK, supra at 436.

B. Lack Of Probable Cause

A person's mere nearness in place to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person; where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person, and this requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be, the fourth and fourteenth amendments protecting the legitimate expectations of privacy of persons, not place. see YBARRA V. ILLINOIS, 444 U.S. 85, 62 LED 2D 238 (1979).

As discussed above at the time the agents blocked the ability of the Volkswagen to move and ordered GIL and PETITIONER to exit they were aware that any contemplated narcotics transaction would not be taking place. Neither they nor the CI had actually observed any narcotics in the possession of GIL, PETITIONER or the vehicle. Therefore with or without any information allegedly acquired in connection with the ongoing investigation that a quantity of narcotics were to be delivered to this location, the seizure of the vehicle, and PETITIONER were without probable cause in that, law enforcement authorities lacked any factual basis to believe that either of the vehicle or their occupants were engaged in unlawful conduct at the time of the seizure.

Stop of a vehicle are considered seizures and accorded Fourth amendment protection even though the purpose of the stop is limited and the resulting detention quite brief,U.S. V. SHARPE 470 U.S.675,682(1985).As with pedestrian stops,a vehicle stop must be supported by reasonable suspicion and analyzed under the framework established by TERRY V. OHIO,392 U.S.1(1968), U.S. V. SHABAZZ,993 F.2d 431,434(5th Cir.1993).The dual inquiry noted in TERRY is the same in the context of a vehicle stop;(1) was the officer's action justified at its inception;and(2) was it reasonably related in scope to the circumstances justifying the stop in the first place.

If the stop is extended and the occupants detained,there must be additional reasonable suspicion to support the seizure. See U.S. V. GREGORY,79 F.3d 973,979(10th Cir.1996).Most such stops are justified as"traffic stops"where the officer alleges some form of minor traffic violation to justify the stop.See WHREN V. U.S.116 S.Ct.1769(1996).However where a traffic violation is not asserted as justification for the stop there must be other evidence to form the basis for a reasonable suspicion of some other form of criminal activity to comport with the Fourth Amendment.U.S. V. TORO-PELAEZ 107 F.3d 819,825 (10th Cir.1997).

It is respectfully submitted that at the time PETITIONER was detained on Johnson Avenue,while the vehicle he was a passenger in was parked and not moving to justify even a traffic stop,both PETITIONER and the vehicle were"seized",as such term is defined under Fourth Amendment jurisprudence.At the time of the seizures the law enforcement authorities lacked either an

articuable suspicion or probable cause to believe that the PETITIONER had committed an offense. Accordingly the court must consider in the first instance whether the information acquired in connection with an ongoing investigation that a quantity of narcotics were to be delivered and subsequent observations of the agents are sufficient to form the basis for the seizure of the PETITIONER and the vehicle. It is respectfully submitted that the information then available to the agents, which in essence was that a contemplated narcotics transaction between GIL and CI would not occur, and no narcotics has been actually observed, failed to rise to the level to justify the seizure of the petitioner and the vehicle. Accordingly, pursuant to DUNAWAY V. NEW YORK, 442 U.S. 200 (1979), the fruits of such an unlawful stop, including any physical evidence or statement acquired as a result of this unlawful seizure violate the Fourth and fourteenth Amendment.

The search and seizure was made without warrant and without legal authority; was not incident to an arrest; there was no probable cause for the search and seizure and there were no exigent circumstances justifying a search without a warrant.

For the foregoing reason petitioner respectfully request that this Honorable Court must reverse the conviction for a violation of my right's pursuant to the Fourth and Fourteenth Amendments to the United States Constitution.

REASONS FOR GRANTING THE PETITION

The Court belows decision conflict with this Court's precedent and other Circuit Court decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



ROMULO MURILLO-MORALES

Date: 3/18/2020