

No. 20-_____

SUPREME COURT OF THE UNITED STATES

Brandon Lee Alexander

Petitioner,

vs.

United States of America,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

In order to deny a motion to suppress where a warrantless inventory search is found to have violated the defendant's constitutional rights, should the inevitable discovery rule exception to the exclusionary rule include primary evidence discovered during the unconstitutional search without any evidence of the absence of bad faith on the part of law enforcement officers who conducted that search?

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IV. Petition for Writ of Certiorari

Brandon Lee Alexander, an inmate currently incarcerated at Butner Low Federal Correction Institution, Butner, North Carolina, by and through Jerry W. Laughlin, his court-appointed attorney, respectfully petitions this Court for a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals.

V. Opinions Below

The decision by the Sixth Circuit Court of Appeals denying Mr. Brandon's direct appeal in pertinent part is reported as United States v. Brandon Lee Alexander, No. 19-5607 (6th Cir. April 1, 2020).

VI. Jurisdiction

Mr. Alexander invokes this Court's jurisdiction under 28 U.S.C. §1257, having timely filed this petition for writ of certiorari within ninety(90) days of the entry of the decision and judgment by the Sixth Circuit Court of Appeals.

VII. Constitutional Provision Involved

United States Constitution Amendment 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.

VIII. Statement of the Case

In 1984, this Court held in Nix v. Williams, 467 U.S. 431 (1984), that evidence about the location and condition of the victim's body, which had been obtained from the defendant in violation of his Sixth Amendment right to counsel, was admissible if law enforcement could prove by preponderance of the evidence that such evidence would have "inevitably" been discovered without the defendant's statements. In finding that the challenged evidence was admissible, the Court found that the prosecution had met its burden of proof because before the incriminating statement was obtained from the defendant, a massive search had been undertaken in the general location where the body was ultimately found.

Therefore, this Court then held that the derivative evidence from the violation of the constitutional rights of a defendant was admissible, and not subject to the exclusionary rule adopted to protect such constitutional rights, because the prosecution had demonstrated by a preponderance of the proof that the incriminating evidence would have inevitably been discovered without the violation of the defendant's constitutional rights.

This case presents the question of whether primary evidence, rather than derivative evidence, obtained as a direct result of the violation of the constitutional rights of the defendant is admissible, and not subject to the exclusionary rule, if the prosecution can prove by preponderance of the evidence that it would inevitably have been discovered based upon hypothetical assumptions of what might have occurred, and without the proof of the lack of bad faith on behalf of the officers conducting the unconstitutional search that resulted in the discovery of such primary evidence.

1. The Arrest For Traffic Violation and Search of Alexander's Vehicle

During an investigation of whether methamphetamine was being sold at 712 Baker Street, Morristown, Tennessee, the home of the mother of Brandon Alexander, Detective Pete Shockley of the Morristown Police Department ("MPD") learned that Mr. Alexander's driver's license was suspended. Thereafter, on April 24, 2017, Shockley saw Alexander leave the house and drive away in a vehicle, and Shockley then participated in the stop of that vehicle. When Shockley approached the vehicle, he saw a bank deposit bag that was zippered closed on the front seat, and he also noticed a safe with a digital keypad in the back seat thereof. Alexander was placed under arrest for driving on a suspended driver's license.

Shockley asked Alexander for permission to search the vehicle, but Alexander refused. Shockley then performed what he asserted was an "inventory"

search of the Alexander vehicle, during which there was discovered in the Alexander vehicle a baggie with methamphetamine residue, drug paraphernalia, and over \$11,000.00 in cash in the closed bank deposit bag.

After the completion of the search of Alexander's vehicle, Shockley subsequently found 35 grams of methamphetamine in Alexander's waistband. Alexander was then taken to jail and his vehicle was towed.

The following day, Shockley obtained a search warrant for the safe found in the back seat of Alexander's vehicle, and in executing that search warrant he discovered a pistol and documents pertaining to Alexander in the safe. As a result of his arrest on April 24, 2017, a Federal grand jury indicted Alexander for possession with the intent to distribute methamphetamine, possession of a firearm in furtherance of a drug trafficking offense, and possession of a firearm as a felon.

Alexander moved to suppress the fruits of the April 24, 2017 search of his vehicle, and an evidentiary hearing was held before a Magistrate Judge. The Magistrate Judge upheld the search on the sole ground that it was a properly conducted inventory search. The district court adopted the Report and Recommendation of the Magistrate Judge and found that the April 24, 2017 search of Alexander's vehicle was proper under the inventory search exception.

The items of evidence found during that inventory search of Alexander's vehicle were then admitted into evidence at Mr. Alexander's trial, and the jury found him guilty of each of the three (3) counts for which he was charged as a result of the April 24, 2017 search, as well as another charge stemming from a subsequent arrest.

2. Direct Appeal

On direct appeal, Alexander renewed his argument that his Fourth Amendment rights had been violated when the officers searched his vehicle on April 24, 2017. Alexander insisted on appeal that the search of his vehicle on that occasion was not a constitutionally permissible inventory search thereof because the Morristown Police Department had not adopted guiding principles that govern the scope of vehicle inventory searches.

The Sixth Circuit Court of Appeals, after finding that there was no evidence of either "standardized criteria" or "established routine" governing the scope of inventory searches by the Morristown Police Department, it had to conclude the search was conducted with "uncertified discretion." Therefore the Court of Appeals held that the inventory search exception to the requirement of a search warrant did not apply in this case, and that the evidence obtained from the search of Alexander's vehicle was not admissible for that reason.

Nevertheless, the Sixth Circuit Court of Appeals then went on to find that the evidence obtained from Mr. Alexander's vehicle as a direct result of the search thereof on April 24, 2017, was admissible because it found that "the inevitable discovery doctrine salvages the April 24, 2017, search."

The Court concluded that because of the discovery of the methamphetamine in Mr. Alexander's waistband subsequent to the actual search of his vehicle, had the officers waited until after that was discovered, such evidence would have been sufficient to justify a warrantless search of Alexander's vehicle either because of probable cause to believe the vehicle contained contraband or evidence of criminal activity, and also would have been justified pursuant to the automobile exception to the search warrant requirement.

IX. Reasons for Granting The Writ

- A. To avoid deprivations of the right to be free from unreasonable warrantless searches, this Court should clarify the inevitable discovery doctrine to preclude the admissibility of primary evidence obtained in violation of Fourth Amendment rights under the inevitable discovery exception.

The exclusionary rule provides an incentive for the police to follow the law. When exceptions to the exclusionary rule are created, the result is to remove the incentive. As stated by one commentator:

[T]he existence of the inevitable discovery exception *will* provide the police with an incentive to avoid the warrant requirement. The police might seek the most expeditious method of obtaining the evidence without regard to its illegality, knowing that, as long as they could have obtained the evidence legally, their efforts will not result in its suppression. This approach will indeed affect the deterrence rational of the exclusionary rule as it was encourage the police to take procedural shortcuts rather than to comply with the law.

Richard M. Bloom, Inevitable Discovery: An Exception Beyond the Fruits, Boston College Law School (1992), page 95.

While the decision of the Court in Murray v. United States, 487 U.S. 533 (1988) is a case in which the Court concluded that the independent source rule applies not only to derivative evidence, but also to primary evidence, many lower courts have since also applied the inevitable discovery rule to both primary and derivative evidence. On the other hand, other courts have maintained that the inevitable discovery rule does not extend to evidence obtained as a direct result of the unconstitutional act. See United States v. Polanco, 93 F. 3d 555, 561 (9th Cir. 1996) (interpreting Nix v. Williams, as implying that the inevitable discovery doctrine does not "allow admission of the unconstitutional inculpatory statement itself.") In the words of another commentator:

[T]he Supreme Court has done nothing to expressly expand the inevitable discovery doctrine to primary evidence, whereas it has expressly expanded the independent source in Murray. This may suggest that the two doctrines have relevant differences, which justify treating them differently. Independent source situations deal with an established

historical fact, an action that has actually occurred, whereas inevitable discovery situations deal with speculation, a hypothetical event, or the possibility that something would have occurred. Because a supposedly "inevitability" is less tangible and consequently not as readily provable as an independent source discovery that has actually occurred, it would be quite appropriate to allow the inevitable discovery doctrine less leeway than one would allow the independent source doctrine.

Troy E. Golden, The Inevitable Discovery Doctrine Today, B.Y.U. Journal of Public Law, Vol. 13 (1998), page 112.

The point is, of course, if left unchecked, the inevitable discovery rule, when applied to the admission of primary evidence located during the unconstitutional search, may very well effectively override the exclusionary rule designed to protect constitutional rights.

B. To avoid deprivations of the right to be free from unreasonable warrantless searches, this Court should at least preclude the admissibility of primary evidence obtained in violation of the Fourth Amendment under the inevitable discovery exception in the absence of proof by the prosecution of the absence of bad faith by the investigating officers.

Given the fact that the application of the inevitable discovery rule has such a great likelihood of being used by law enforcement to undermine the constitutional rights protected by the exclusionary rule, more should be required for the prosecution before it is applied by our courts.

If the inevitable discovery rule is to be used to admit primary evidence illegally obtained, there is the possibility, that without more to the use of this exception than the mere assumptions and hypotheticals upon which it is ordinarily based, it could surely render ineffective the deterrent purpose of the exclusionary rule.

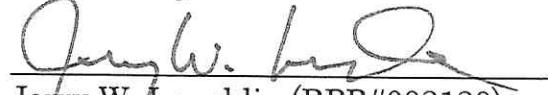
Therefore, Mr. Alexander would submit that in order to preserve some of the effectiveness of the deterrence of the exclusionary rule to the violation of the constitutional rights of our citizens, when it comes to the use of this exception for the admission of primary evidence, the Court must at least impose proof by the prosecution of the absence of bad faith by the officers when authorizing the courts to apply this exception. In this case the evidence introduced by the prosecution over Mr. Alexander's objection was evidence obtained as a direct result of the violation of his Fourth Amendment Rights, primary evidence, without any proof by the prosecution of the absence of bad faith by the officers conducting that impermissible search.

X. Conclusion

For the foregoing reasons, Mr. Alexander respectfully requests that this Court issue a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals.

Dated this 19th day of June, 2020.

Respectfully Submitted:



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