

20-5829

No. 19-1326

Supreme Court, U.S.  
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In The  
Supreme Court of the United States

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JERRY FRUIT,

Petitioner

V.

UNITED STATES OF AMERICA

Respondent.

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On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Third Circuit

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PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

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QUESTION PRESENTED FOR REVIEW

The question presented is:

Whether police may delay an traffic stop, in the interest of officer safety, absent probable cause, in order to conduct a search?

## INTERESTED PARTIES

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:

United States v. Garner, 19-1038

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### PETITION FOR A WRIT OF CERTIORARI

Jerry Fruit respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

### OPINIONS BELOW

The Third Circuit's precedential opinion affirming the the district court's denial of Petitioner's motion to suppress is attached as Appendix 1a. The Opinion of the Third Circuit denying a petition for rehearing is attached as Appendix 19a.

### STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Third Circuit entered its judgment in favor of the respondent on May 29, 2020, and denied Petitioner's petition for rehearing on July 28, 2020. The petition is timely under S.Ct. R. 13.3. The Third Circuit had jurisdiction pursuant to 28 U.S.C. § 1291.

### CONSTITUTIONAL PROVISION INVOLVED

Petitioner's petition for a writ of certiorari invokes the Fourth Amendment's right to be free from unreasonable searches and seizures:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches



searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, ~~supported~~ supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### STATEMENT OF THE CASE

On July 5, 2016, Pennsylvania State Trooper, Kent Ramirez, stopped a car with a New York license plate for speeding on Interstate 81 near Harrisburg, Pennsylvania. Prior to the stop, Trooper Ramirez ran the license plate and learned the car was owned by Enterprise Rent-A-Car, though it lacked the typical bar code rental stickers.

When Ramirez approached the passenger side of the vehicle, he smelled a strong odor of air freshener and noticed that each vent had an air freshener clipped to it. Ramirez identified himself, asked for the driver's license, and explained that the driver was speeding. Because traffic was noisy, Ramirez asked the driver to exit the vehicle so they could talk on the side of the road.

The driver, Jerry Fruit, gave Ramirez his driver's license and rental car agreement. In response to an inquiry from Ramirez, Fruit said he was traveling from Manhattan to Hagerstown, Maryland to visit his cousin for about two days.

He also identified his passenger, Tykei Garner, as his cousin. The rental agreement listed Fruit as the authorized driver of the vehicle, but limited to the state of New York. And the agreement stated that it covered a rental period of June 11-15, so it appeared to have expired twenty days before the traffic stop. When asked about that discrepancy, Fruit explained that he was in a car accident, his car had been in the shop for a month, and the rental agreement was through his insurance company.

Before he returned to his cruiser to run Fruit's license and contact Enterprise about the status of Fruit's rental contract, Trooper Ramirez asked Fruit a series of questions about his employment, prior traffic tickets, and criminal history. Trooper Ramirez thereafter asked the passenger (Garner) to get out of the car so he could question him. As with Fruit, Ramirez asked Garner questions unrelated to the traffic stop, including about his criminal history.

Twelve minutes into the traffic stop, Trooper Ramirez returned to his vehicle to check with Enterprise on the status of the rental agreement and verify Fruit's and Garner's driving records and criminal histories. Ramirez learned from a computer search that neither Fruit nor Garner had any outstanding warrants, although Fruit was on supervised release for a federal crime. He also learned that both men

had extensive criminal records, including drug and weapons crimes. Ramirez then called the Pennsylvania Criminal Intelligence Center, which reported that both men had been subjects of high intensity drug trafficking area investigations. Finally, Enterprise confirmed that Fruit had extended the rental agreement beyond the listed expiration date.

After learning all these things, Trooper Ramirez resolved to ask permission to search the vehicle but waited for backup before doing so. App. at 6a. The backup officer, Trooper Severin Thierwechter, arrived 37 minutes into the stop. Trooper Ramirez then asked Fruit if he could search the car, but Fruit declined. Ramirez then advised Fruit that he was calling for a K-9 unit and Fruit was not free to leave. Ramirez called for a K-9 unit, and Trooper John Mearkle arrived with dog Zigi 17 minutes later - 56 minutes into the stop. The dog alerted twice at the passenger's side door. The troopers searched the car themselves and found bags containing cocaine and heroin in the trunk. So they arrested Fruit and Garner.

Fruit and Garner were indicted for conspiracy to possess with intent to distribute heroin and cocaine and possession with intent to distribute the same. They moved to suppress the evidence seized during the traffic stop, arguing that the

they were seized in violation of their Fourth Amendment rights because Trooper Ramirez extended the traffic stop longer than necessary to issue a speeding ticket and lacked authority to engage in the ensuing criminal investigation.

After an evidentiary hearing, the district court denied their joint motion to suppress all fruits of the search and seizure on grounds that prolongation of the stop beyond its traffic-related mission violated the Fourth Amendment. In 2018, Fruit pleaded guilty to both counts under a plea agreement preserving his right to appeal the denial of his motion to suppress. Garner was convicted of both counts by jury. Garner moved for judgment of acquittal and a new trial which the district court denied. The court sentenced Fruit and Garner each to the mandatory minimum of 120 months' imprisonment with both counts to run concurrently. They appealed and their cases were consolidated for oral argument and disposition.

The Third Circuit affirmed, holding that Trooper Ramirez had reasonable suspicion to extend the stop before he engaged in any unrelated investigation. App. at 12a. The Court also found that Ramirez called for backup for his safety, which the Court held is consistent with the mission of the traffic stop. App. at 13a. The Third Circuit denied Fruit's petition for rehearing or rehearing en banc. App. at 19a.

### REASON FOR GRANTING THE WRIT

The Third Circuit's decision in this case conflict with the decision of this Court and other court of appeals. See S.Ct. R. 10(a)-(c); Pennsylvania v. Mimms, 434 U.S. 106, 107 (1977) ("Because we disagree with this conclusion, we grant the Commonwealth's petition for certiorari and reverse the judgment of the Supreme Court of Pennsylvania."). The Third Circuit failed to appreciate the clear illegality of a ten-fifteen minute delay because of its mistaken premise, from a previous case in the Third Circuit, that tasks tied to officer safety are also part of a stop's mission under Rodriguez v. United States, 135 S.Ct. 1609, 1616 (2015), so long as its done to protect officers. Relying on this logic, the Third Circuit concluded that Trooper Ramirez request for backup in this case was consistent with the mission of his traffic stop. App. at 13a.

I. The Third Circuit's holding conflicts with Rodriguez and the decisions of other circuits.

The Third Circuit betrayed a fundamental misunderstanding of Rodriguez in holding that Trooper Ramirez's request for backup - for officer safety - and the attendant delay is consistent with the mission of any traffic stop. App. at 13a.

In Rodriguez, this Court made clear that an officer's "mission" during a traffic stop is "to address the traffic violation that warranted the stop...and attend to related safety concerns." 135 S.Ct. at 1614 (citations omitted). This Court acknowledged that "traffic stops are 'especially fraught with danger to police officers' ... so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." Id. at 1616. "On-scene investigation into other crimes," the Court said, "detours from that mission" as do "safety precautions taken in order to facilitate such detours." Id.

Here, in a precedential decision, the Third Circuit enunciates a per se rule that tasks tied to officer safety is consistent with the mission of "any" traffic stop. In advancing this rule, the Third Circuit rely on United States v. Clark, 902 F.3d 404, 410 (3d Cir. 2018). App. at 13a. According to Clark, "tasks tied to officer safety are also part of the stop's mission when done out of an interest to protect officers." Id. (citing Rodriguez, 135 S.Ct. at 1616). This rule is unsupported dictum and conflicts with this Court's decision in Rodriguez.

For example, in Rodriguez, the officer who initiated the stop already had a dog in his vehicle. Id. at 1612. For his safety, however, he waited for backup to arrive before conducting the dog sniff. Id. at 1613, 1618; see also United States v. Rodriguez, 741 F.3d 905 907 (8th Cir. 2014) (explaining that he did so for his safety because there were two persons in Rodriguez's vehicle). Despite the fact that the officer waited for backup for his safety - officer safety - this Court held that, absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures. Id. at 1616-17. Accordingly, any suggestion that a delay for backup in the interest of officer safety is consistent with the mission of "any" traffic stop would contravene this Court's decision in Rodriguez.

One necessary corollary to Rodriguez - which the Third Circuit failed to appreciate - is that "the government's officer safety interest stems from the mission of the stop itself" and that courts must determine whether the officer's safety precautions were taken to further the legitimate purpose of the stop. Id. at 1616. The problem with the dog sniff in Rodriguez was that it was a measure aimed at "detecting evidence of ordinary criminal wrongdoing" and "not

fairly characterized as part of the officer's traffic mission." Id. And efforts to "detect crime in general or drug trafficking in particular" are "different in kind" from interests in highway and officer safety. Id.

Other courts of appeals that have addressed Rodriguez or Pennsylvania v. Mimms, 434 U.S. 106 (1977), which it relied, have also reached the conclusion that tasks tied to officer safety may not be part of a stop's mission. See United States v. Stewart, 902 F.3d 664, 674 (7th Cir. 2018)( suggesting that 75 seconds used to call for backup might unlawfully prolong the stop, but the record was inadequate to determine if the officer's purpose was for both officer safety and a dog sniff); United States v. Acosta, 157 F.3d 9, 20 (1st Cir. 1998) ("[t]he government has failed to demonstrate that Acosta's transportation to the customs enclosure area was itself within the limits of a Terry stop. Plainly, therefore, the need to facilitate that very detention cannot provide a valid justification for the use of handcuffs") (citing Florida v. Royer, 460 U.S. 491, 505 (1983) (in turn citing Mimms, 434 U.S. at 109-111)).



The Third Circuit has now done both. Compare United States v. Green, 897 F.3d 173 182 (3d Cir. 2018) ("Rodriguez would seem to suggest that the validity of Volk waiting for backup turns on his motivation for making the request-- traffic-based or otherwise...") with Clark, 902 F.3d at 410 ("[t]asks tied to officer safety are also part of the stop's mission when done out of an interest to protect officers.") and Appendix 13a ("Ramirez explained that he called for backup for officer safety which is consistent with the mission of any traffic stop."). Assessing the tolerable duration of a stop, solely on the officer's safety, as the Third Circuit did here, would effectively allow police to leverage the safety rationale into a justification for "detect[ing] crime in general or drug trafficking in particular" clearly rejected in Rodriguez. Rodriguez, 135 S.Ct. at 1616.

In this case, Trooper Ramirez called for backup after running Fruit and Garner's records and Trooper Thierwechter arrived within ten or fifteen minutes. App. at 6 and 14. On appeal Fruit argued that Ramirez exercised a lack of diligence in his stop, rendering it tantamount to an arrest requiring probable cause. Id. at 13. He contended that Ramirez should not have waited for another trooper to arrive. Id.

The Government, on the other hand, argued that "[b]y the time Tpr. Ramirez actually expanded his investigation by requesting backup to search the vehicle, there can be no question reasonable suspicion was firmly established" id. at 40a - 41a, and that "it was reasonable and undoubtedly prudent for Tpr. Ramirez to request backup before conducting a search in the interest of officer safety." Id. at 59a- 60a.

But, like the dog sniff in Rodriguez, a search detours from a traffic-stop mission. Under Rodriguez, "[s]o too do safety precautions taken in order to facilitate such a detour[]." 135 S.Ct. at 1616. And even though the Third Circuit found that Ramirez established reasonable suspicion during the first few minutes of the stop, App. at 12a, "[i]n the name of investigating a person who is no more than suspected of criminal activity, the police may not carry out a full search of the person or of his automobile or other effects." See Royer, 460 U.S. at 499. Thus, Ramirez delay to await backup still impermissibly extended the detention because the purpose for such precaution arose from his effort to conduct a full search exceeding the bounds of an investigatory detention. See Rodriguez, 135 S.Ct. at 1614 (explaining that in both Terry and traffic stops, "the tolerable duration of police inquiries ... is determined by t

the seizure's mission," and "may 'last no longer than is necessary to effectuate that purpose'") (quoting Royer, 460 U.S. at 500).

#### CONCLUSION

For the reasons above, the petition for a writ of certiorari should be granted.

Dated: September, 9, 2020

Respectfully submitted

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