No. _____

In The

Supreme Court of the United States

RAYMOND ALAN GRIFFIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

MAY A DISTRICT COURT MAKE FINDINGS OF FACT RESOLVING CONTESTED ISSUES IN DETERMINING THAT THE THRESHOLD FOR HOLDING AN EVIDENTIARY HEARING ON A DEFENDANT'S MOTION TO SUPPRESS HAS NOT BEEN MET?

TABLE OF CONTENTS

Page:

TABLE OF AUTORITES

Page(s):

Cases:

Constitutionnel Provisions:

OPINION BELOW

The decision of the Fourth Circuit affirming defendant's conviction was entered April 30, 2020, is unpublished. The opinion and the order denying rehearing is reprinted as Appendix 11a to this Petition. (Appendix 11a, *infra*).

STATEMENT OF SUPREME COURT JURISDICTION

The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1) to review the decision rendered by the United States Court of Appeals for the Fourth Circuit on April 28, 2020 and the order denying rehearing entered on June 12, 2020.

STATUTORY PROVISIONS INVOLVED

Rule 47 of the Federal Rules of Criminal Procedure states:

(a) In General. A party applying to the court for an order must do so by motion.

(b) Form and Content of a Motion. A motion—except when made during a trial or hearing—must be in writing, unless the court permits the party to make the motion by other means. A motion must state the grounds on which it is based and the relief or order sought. A motion may be supported by affidavit.

(c) Timing of a Motion. A party must serve a written motion—other than one that the court may hear ex parte—and any hearing notice at least 7 days before the hearing date, unless a rule or court order sets a different period. For good cause, the court may set a different period upon ex parte application.

(d) Affidavit Supporting a Motion. The moving party must serve any supporting affidavit with the motion. A responding party must serve any opposing affidavit at least one day before the hearing, unless the court permits later service.

STATEMENT OF THE CASE

Raymond Alan Griffin was indicted by a grand jury on March 28, 2018 on one count of unarmed bank robbery. J.A. p. 18. Prior to trial, Defendant filed a motion to suppress evidence produced when the police initiated an investigative stop on August 29, 2017. J.A. p. 20. On September 24, 2018, the district court denied the motion to suppress without a hearing. J.A. 361.

Jury trial before Chief U.S. District Judge Terrence Boyle began on January 7, 2019. J.A. P. 366. The jury returned a guilty verdict. J.A. p. 660. At a May 10, 2019 sentencing hearing, the district court sentenced Defendant Griffin to a term of imprisonment of 240 months, along with a three year term of supervised release. J.A. p. 686. Notice of appeal was entered May 15, 2019. J.A. p. 693.

On appeal, Mr. Griffin challenged the district court's failure to hold an evidentiary hearing on the motion to suppress and the failure to grant a judgment of acquittal. The Court of Appeals affirmed defendant's conviction and sentence of 240 months. Defendant filed *a pro se* petition for rehearing which the Court of Appeals denied on June 12, 2020.

MOTION TO SUPPRESS

The charges in this case arose out of a robbery on August 29, 2017 of the Wells Fargo Bank branch located at 3500 Millbrook Road, Raleigh, North Carolina. Shortly after the bank robbery Raleigh police officer Willhauer initiated an investigative stop and questioned of Defendant Griffin at a construction site approximately a half mile from the bank. During this stop the Raleigh police handcuffed defendant and

conducted a warrantless search of Defendant's backpack, finding two bandanas. After that search, police searched Mr. Griffin's person finding $2,159 dollars. In addition, the police searched a nearby porta john and found discarded clothes and a Food Lion bag and then arrested Defendant Griffin.

On July 18, 2018, Defendant filed a *pro se* motion to suppress in which he contended that the evidence produced from the investigative stop and the search of his person should be suppressed. J.A. p. 20 - 48. In his motion, that was supported by 290 pages of the government discovery materials, J.A. p. 50 – 340., Defendant Griffin contended that Raleigh police officer Willhauer did not have reasonable grounds for the stop. J.A. p. 37-39. He asserted that the clothes he was wearing that did match the clothes of the robbery suspect and that he did not match the description of the robbery suspect provided by the bank tellers. Defendant further contended that the officer then handcuffed and detained him for more than an hour. J.A. p. 22. During this detention, Raleigh police conducted a search of Mr. Griffin's backpack finding two bandanas. Police also conducted a show up identification with one of the bank tellers who failed to identify Defendant Griffin as the robber. J.A. p. 22-23. Defendant further alleged that Raleigh police then conducted a warrantless search of Defendant's person during which time police confiscated $2,159, which the government later contended comprised the bank robbery loot. The government responded to the motion to suppress by contending that the detention and search of Defendant Griffin was a legitimate *Terry v. Ohio*, 392 U.S. 1 (1968), stop and that the search of backpack was consensual. J.A. p. 346.

Without conducting an evidentiary hearing, the district court denied the motion to suppress finding that the defendant's detention was a legitimate *Terry* stop, that defendant matched the reported description of the robber, that the search of the backpack was consensual, and that black bandanas were found in the backpack were in plain view. J.A. 361-64.

In considering the issue of when an evidentiary hearing is required the Court of Appeals stated:

> In this regard, a hearing is required only if the motion to suppress is "sufficiently definite, specific, detailed, and non-conjectural" to enable a district court to conclude that contested issues of fact going to the validity of the search are in question. *United States v. Unimex, Inc.*, 991 F.2d 546, 551 (9th Cir. 1993) (internal quotation marks omitted); see *United States v. Harrelson*, 705 F.2d 733, 737 (5th Cir. 1983) ("Factual allegations set forth in the defendant's motion [to suppress], including any accompanying affidavits, must be sufficiently definite, specific, detailed, and nonconjectural, to enable the court to conclude that a substantial claim is presented." (internal quotation marks omitted))**.**

Appendix 11a, *infra*.

REASONS FOR GRANTING THE WRIT

I. THE ISSUE OF WHEN A DISTRICT COURT IS REQUIRED TO HOLD AN EVIDENTIARY HEARING ON A MOTION TO SUPPRESS IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT.

In general, evidentiary hearings on motion to suppress are not required unless the movant points to material disputed facts. See e.g., *United States v. Cox,* 1992 U.S. App. LEXIS 2229 (No. 90-5853, 4th Cir. 1992), adopting *United States v. Nechy,* 665 F.2d 775, 776 (7th Cir. 1981). In this regard, the standard followed by the Fourth Circuit is similar to those from other circuits: "A hearing is required only if the movant makes a sufficient threshold showing that material facts are in doubt or

dispute, and that such facts cannot reliably be resolved on a paper record." *United States v. Staula*, 80 F.3d 596, 603 (1st Cir. 1996); see also *United States v. Sophie*, 900 F.2d 1064,1071 (7th Cir. 1990); and *United States v. Villegas,* 388 F.3d 317, 324 (7th Cir. 2004).

Despite enunciating this standard, the Court of Appeals for the Fourth Circuit here concluded that no evidentiary hearing was required despite the defendant identifying important material facts he disputed. In doing so the Court of Appeals approved the district court making findings of act that resolved contested issues important to determining the motion. This is demonstrated by comparing the matters the motion to suppress contested with the district court's order rejecting the motion.

In his motion, Defendant contested numerous facts that the government contended that justified the search of the Defendant's person and belonging, the contested facts included:

1. That he met the description of the robbery suspect. J.A. p. 356. Teller Gonzalez reported that the robber was 5'7", 150 pounds, wearing a white or cream-colored shirt, white pants. JA p. 73. Defendant is 6 foot, 175 pounds. JA p. 696.

2. Officer Willauer's report asserted that defendant consented to the search of his back pack. J.A. p. 84. In contrast, Defendant asserted that after Officer Willauer handcuffed and sat him on the ground, that he did not consent to the search of his backpack but simply responded to

Willauer's question of where his identification was by saying it was in his backpack. J.A. p. 21, J.A. p. 356.

3. Defendant asserted that he was seen leaving a different porta john than the one in which the robber's clothes were found, again contrary to Officer Willauers report and later trial testimony. J.A. p. 22.

4. Defendant contended in his motion that he was detained, handcuffed for over an hour before his arrest. J.A. p. 21. Officer Willauer's report did not indicate the time that defendant was detained but it did give a general sequence of events that occurred prior to the arrest. See J.A. p. 83-86.

Despite defendant's request for an evidentiary hearing, J.A. p. 358, and without holding a hearing of any sort, the district court denied defendant's motion to suppress based solely on the motion papers. In doing so, the district court made findings of fact and resolved the contested issues. The entirety of the district court's order denying the motion to suppress is as follows:

> Law enforcement may briefly detain an individual for investigative purposes when there is reasonable suspicion, based on "articulable facts," that criminal activity is afoot. *Terry v. Ohio,* 392 U.S. 1 (1968). There must be at least some "minimal level of objective justification for making the stop." *Illinois v. Wardlow,* 528 U.S. 119, 123 (2000) (citing *United States v. Sokolow,* 490 U.S. 1, 7 (1989)). Here, (1) there was reasonable suspicion to stop defendant, (2) defendant consented to the limited search of his backpack, and (3) there was probable cause to arrest defendant. Officer Willauer observed defendant, who fit the robbery suspect's physical description, within a few hundred yards of the bank, behaving suspiciously at a construction site. This was sufficient to justify the Terry stop. Defendant then permitted Officer Willauer to open his backpack to get his identification, and Officer Willauer saw the black bandanas in plain view. Finally, Officer

> Willauer's discovery of clothing matching the robbery suspect's clothing in the porta-john that the defendant had just exited, the black bandanas, and the amount of cash in defendant's pockets would lead any reasonable person to believe that defendant had committed the robbery. Thus, there was probable cause to arrest him. Accordingly, the defendant's motion to suppress evidence is denied.

J.A. p. 364.

The Fourth Circuit's willingness to let a district court resolve disputed issues on a cold record stands in stark contrast to the approach taken by the Fifth Circuit. For example in *United States v. Ramirez-Gonzalez*, 87 F.3d 712 (5th Cir. 1996), the Court of Appeal for the Fifth Circuit reversed the grant of a motion to suppress that was based solely on the affidavits filed in support and opposition of the motion. In doing so the court stated:

> An appellate court necessarily bases its review on the record developed by the trial court, and it relies heavily on the trial court's factual findings unless those findings are clearly erroneous. However, in order to be able to review the trial court's findings, an appellate court must have a well-developed record to review. After carefully reviewing the sparse record in this case, we conclude that the parties overemphasized expediency in the hearing below to the detriment of providing a clear and complete record from which this court can measure the district court's ultimate ruling against the background of Supreme Court precedent.

87 F.3d at 716.

Evidentiary hearings are especially important in cases where the decision to uphold a stop or search is heavily dependent on facts such as whether defendant matched the description of a robbery suspect, whether a handcuffed defendant actually consented to the search of his property as opposed to acquiescing to an investigating officer's assertion of force after handcuffing him.

Here, instead of holding an evidentiary hearing to hear sworn testimony in order to make findings as to the material facts upon which the validity of the *Terry* stop depends and as to the material facts on which the validity of a consent search depends, the district court simply entered an order denying the motion upon the cold record in front of it. In doing so, the district court summarily determined that the defendant was acting suspiciously and that he matched the description of the robbery suspect. Both of these material facts were disputed by the defendant. The district court further found that defendant consented to a limited search of his backpack, another material fact that was contested by the defendant's motion. The district court found that the search and arrest of the defendant was supported by the defendant exiting the porta john in which the robber's clothing was found, another "fact" that was disputed in defendant's motion.

Determinations of the reasonableness of the scope and extent of investigative stops are fact specific. *United States v. Guijon-Ortiz*, 660 F.3d 757 (4th Cir. 2011). Similarly, whether a citizen stopped by police has consented to a search, or instead has simply acquiesced to show of force by police, depends on the totality of the circumstances and is again very fact specific. *United States v. Robertson,* 736 F.3d 677 (4th Cir. 2013). Evidentiary hearings are especially warranted where searches occur in the context of an investigative stops, since factual nuances are critical to determining whether a stop of the person was justified initially, whether the extent of the detention is reasonable, whether a search of the person and the person's effects

during the stop can be justified as a consensual search or a protective search, or whether the detention has escalated into an arrest without probable cause.

Here it was contested whether Mr. Griffin gave affirmative consent to the search of his backpack. It was unclear how long Mr. Griffin had been detained before the search of his backpack was conducted. It was unclear when during this detention the search of Mr. Griffin's person occurred (that found cash on him) and it was unclear what the justification for that search was. These factors inform whether a valid consensual search was conducted in this case and could only be resolved after an evidentiary hearing.

The importance of whether a district court can resolve contested issues in determining the threshold question of whether to hold an evidentiary hearing on a motion to suppress is of critical importance in many cases. Police stops and searches of citizen initiate many criminal cases and provide much, if not all, the evidence against defendants in many of these cases. The Fourth Circuit's opinion below paid only lip service to the purpose for holding evidentiary hearings and thereby undermined the protections provided by the Fourth Amendment against unreasonable search and seizures. The procedures followed by the lower courts in dealing with motions to suppress are critically importance in preserving adequate protection against unreasonable searches and seizure. In order to secure these protections, the Supreme Court should grant the request for writ of certiorari and take this opportunity to elucidate the procedures for the consideration of motions to suppress in the lower courts.

CONCLUSION

Petitioner Griffin respectfully requests that the Supreme Court review this case in order to resolve this important question of federal law affecting numerous criminal defendants each year.

This the 6th day of November, 2020.

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