No. 20-_____

IN THE

SUPREME COURT OF THE UNITED STATES

ANDY WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

Although an officer's subjective intentions are irrelevant when a search is based on probable cause to arrest, this Court has "expressly distinguished cases where we had addressed the validity of searches conducted in the absence of probable cause," like inventory searches. Indianapolis v. Edmond, 531 U.S. 32, 45 (2000) (citing Whren v. United States, 517 U.S. 806, 810-13 (1996) (distinguishing inventory searches from warrantless searches based on probable cause to arrest)). But this Court also stated that, in the context of programmatic searches and seizures, like inventory searches, the Fourth Amendment inquiry has "nothing to do with discerning the mind of the individual officer," but is directed at "ensuring that the purpose behind the *program* is not 'ultimately indistinguishable from the general interest in crime control.'" Brigham City v. Stuart, 547 U.S. 398, 405 (2006) (emphasis in original).

The Court of Appeals, in this case, relied on Brigham City. However, Brigham City was not an inventory-search case, but a warrantless arrest in a person's home, based on exigent circumstances. And this Court later indicated, again, that in the context of inventory searches, an officer's improper motive can invalidate such a search under the Fourth Amendment. Kentucky v. King, 563 U.S. 452, 464 (2011).

Here, Petitioner was arrested principally for traffic

violations and taken to a precinct. The police then conducted an inventory search of the rental car he had been driving, finding property, but nothing illegal. The officers then started processing the arrest, intending to release him on a "desk appearance ticket." And he was allowed to make a phone call. An officer overheard Williams's conversation, became suspicious, and conferred with other officers. Prompted by this suspicion, he and other officers then searched the car a second time, without bothering with a warrant. Forcibly pulling open a console panel in the car, not designed to open, they found a gun. The district court and the Court of Appeals held that the second search was simply an inventory search, regardless of the officers's reasons for conducting the second search.

Question One: Was the second warrantless search of the car -- which followed the completed inventory search and was prompted by an officer's later-developed suspicions -- an impermissible warrantless search in violation of the Fourth Amendment?

Question Two: Under Rehaif v. United States, 139 S.Ct. 2191 (2019), should Petitioner's conviction of possessing a firearm while being a prohibited person, in violation of 18 U.S.C. § 922(g), be vacated?

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Petitioner Andy Williams respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit affirming his conviction.

Opinion Below and Jurisdiction

The opinion of the United States Court of Appeals for the Second Circuit is reported at 930 F.3d 44 (2d Cir. 2019) and appears at Pet. App. 2a-23a. The opinion of the United States District Court for the Eastern District of New York is available at 2016 WL 4542352 and appears at Pet. App. 24a-32a. The Second Circuit's order denying rehearing and rehearing en banc appears at Pet. App.1a.

Statement of Jurisdiction

The District Court had jurisdiction under 18 U.S.C. § 3231. The Second Circuit had jurisdiction under 28 U.S.C. § 1291, entered judgment on July 9, 2019, and denied a timely petition for rehearing and rehearing en banc on July 1, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions

1. The Fourth Amendment to the United States Constitution provides: "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."

2. Section 922(g)(1) of Title 18 provides in relevant part: "It shall be unlawful for any person … who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year … to … possess in or affecting commerce, any firearm or ammunition."

3. Section 924(a)(2) of Title 18 provides:

"Whoever knowingly violates subsection ... (g) ... of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

Statement of the Case

I. Factual background

A. The traffic stop and arrest

On the morning of August 27, 2015, Andy Williams was driving a rental car in Brooklyn, New York. The car had been rented from Hertz by his friend Jennisha Hosam. See Suppression hearing ("H.") at 9-14.[1] But he was an "additional authorized operator" under the rental agreement with Hertz. Id.[2]

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[1] The suppression was held over a two-day period, on June 7, 2016, and June 27, 2016.

[2] "The Hertz rental agreement include[d] an 'Authorization for Additional Authorized Operator ('AAO')' and lists Williams as an AAO, for the term of the agreement until the vehicles return." (continued...)

He was stopped by plainclothes officers of the New York Police Department ("NYPD"), who parked in an unmarked car surveilling the funeral of a gang member. The officers said Williams's car was traveling "above the speed limit" and was moving in and out of traffic lanes without signaling. The officers pulled over Williams, who did not engage in any "evasive or elusive driving" on noticing the detectives and "was compliant" with the officers' request that he produce his license. H.14-15, 34-39.

William provided his driver's license and a Hertz rental agreement for the car. As noted, the rental agreement contained the name of Jennisha Hosam, but also stated there was an "additional authorized operator" of the rental car -- which was Williams -- although it did not contain Williams's name.

Williams told the officers that the renter of the car, Ms. Hosam, was allowing him to use it, and he was taking the car back to her. Mr. Williams was arrested for the traffic violations and for unauthorized use of a motor vehicle. He was driven to the precinct in a police car, while an officer drove the rental car to the precinct. H.16, 45.

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[2] (...continued)
United States v. Williams, 2016 WL 11447844, at *5 (E.D.N.Y. July 20, 2016), report and recommendation adopted by, 2016 WL 452352 (E.D.N.Y. Aug. 31, 2016).

B. <u>The First Search:</u> At the precinct, police conduct an inventory search of the rental car, finish the search, and decide to issue a desk appearance ticket.

On arriving at the precinct, the officers placed Williams in a holding cell and two officers conducted a inventory search of the car. The officers' intended to give Williams "a desk appearance ticket," a DAT, which would mean that, instead of being held in custody to be arraigned before a judge, Williams would be released from the precinct that night and given a summons to appear in court on an appointed date. H.46-48.

Two detectives, Dominick Latorre and Joseph Fichter, went to "conduct the inventory search of the car," which was in a parking space in front of the precinct.

The detectives searched places of the car "that were all in open and plain view when looking inside." H.18. They opened the trunk and looked inside, including the area around "the spare tire." They also searched the glove compartment and the side of the car doors: "the door where there are spaces for things[.]" H.18, 48. They searched the places in the "vehicle that were all in open and plain view[.]" H.18.

Latorre and Fichter found a black mask in the trunk, and a pair of gloves and a roll of duct tape in the car's interior, and took them into the precinct, where "[t]hey were placed on the side." H.18, 48, 49.

C. <u>The Second Search:</u> An officer develops a suspicion, on overhearing Williams talking on the phone, confers with other officers, and decides on a second search.

Detective Latorre then began processing the arrest and took Williams's fingerprints, which "have to be attached to the arrest form." H.49.

Williams asked Latorre what was going to happen to the rental car. And Latorre said something like, "we're probably going to get it towed" and take custody of it. H.53. Williams then asked to make a phone call, and Latorre let him use a "police phone." H.18-19, 49. Latorre heard Williams telling someone to come and get the car because "they're looking to tow it. You need to come get this car up out of here." H.19, 50.

Williams presumably was speaking to Jennisha Hosam, who allowed him to use the car and was on the rental agreement. The Detective didn't inquire about whether Williams was speaking to her and whether she was coming to get her rental car. He rather became suspicious because of the "urgency in the way" Williams was telling the person to retrieve the car and his nervousness. H.19, 50. He suspected there "might have been something of value inside the car that I wasn't aware of[.]" H.19.

Latorre discussed what he had overheard with the other officers of the "gang squad." He said that, after Williams's phone "conversation was done, and he was put back in the holding cell, I relayed [the conversation] to Detective Fichter and some of other

members of the gang squad." H.53.

It "was a mutual decision on the whole team's behalf" that they would search the car a second time. H.54. Latorre stated: "[w]e all agreed that we should take a look once again and see if there was something more apparent than it was the first time." H.54. The officers of the gang squad decided "to go back out there, do it one more time, and be as thorough as we can." H.54. But no one suggested that, "if we're going to go search this car more thoroughly[,] we have to get a warrant[.]" H.55.

Latorre and Detective Fichter went outside to perform another search of the car. They saw Detective Ashley Breton, another member of the Brooklyn South Gang Squad, and asked him to help with the new search. They told Breton "something to the effect of this was the second search, we like we missed something, we want to be more thorough." H.56. They asked Breton to lend a hand with the second search. H.56. Breton said Latorre and Fichter told him they were doing an inventory search of a car. H.65, 73.

Detective Breton searched the interior of the car: "under the seats, the arm rest, the rear seats, and then to the front." H.72. In the front seat area of the car, there was a center console containing the gear shift. On the side of the console were plastic panels "put together by pop-in screws[.]" H.21. Breton forced open the plastic panel, saying he "popped" it out. H.57, 68. In a space under the console was a gun. H.21, 66-67.

The plastic panel on the console that Breton "popped" out was not a "sliding panel" designed to open to a storage space. The panel was not designed to be opened at all. It "was designed to hold fast" as part of the structure of the console and designed to stay "[p]ermanently closed." H.57, 75-76. So to remove the panel, Breton grabbed onto it and pulled it apart. H.20, 58. Breton said the plastic panels could be reattached and that he had seen panels like this before and contraband hidden behind them. H.70, 71.

D. Williams is charged with violating 18 U.S.C. § 922(g)(1), and district court denies the motion to suppress

Williams was subsequently charged, in federal court, in a single-count indictment, with possessing a firearm after having been convicted of a felony: a violation of 18 U.S.C. § 922(g)(1).

The district court denied Williams's motion to suppress the firearm. And three jury trials followed. After two trials ended in hung juries, he was found guilty after a third trial and sentenced to 56 months' imprisonment.

In denying the motion to suppress, the district court stated that both searches were inventory searches. The New York Police Department Patrol Guide ("Patrol Guide"), the court stated, provides that "the purpose of an inventory search is to: 'protect property, ensure against unwarranted claims of theft, and protect uniformed members of the service and others against dangerous instrumentalities.'" Pet. App. 29a. And "[f]orce may be used only

if it can be done with minimal damage, unless: officers reasonably suspect that the item contains weapons, explosives, hazardous materials or contraband; the items are in plain view; or the contents can be inferred from the outward appearance of the container." Id. (citing Patrol Guide at 1).

The section of the NYPD Patrol Guide, titled "Inventory Searches of Automobiles and Other Property," is a less-than-two-page document that was attached to Williams's motion to dismiss. But even in its briefly stated, general terms, the Patrol Guide doesn't say that officers can disassemble a car or pry open structures of the car that are not designed for storage and are not meant to open at all. Although it says officers can use "force [to] open a trunk, glove compartment, etc." -- if this can be done with minimal damage or there's reasonable suspicion of things such as weapons, hazardous materials or contraband -- trunks and glove compartments are places designed for storage.

Here, the district court noted that the items found in the first search –- the mask, gloves, and duct tape -- were "in 'plain view.'" [6]. As for the second search -- after Latorre overheard Petitioner's telephone conversation -- the court concluded this was merely another inventory search. It also stated that the second search "comports with the N.Y.P.D. Patrol Guide which requires a 'thorough' search of the vehicle[.]" Pet. App. 31a.

The court also said that the fact that "Latorre testified that

he might find contraband in addition to other items does not indicate bad faith or rise to the level of an investigation." Pet. App. 31a. And "[i]n Breton's experience, an inventory search consists of looking 'for hidden compartments'" (id.), although the court did not say that any provision of the Patrol Guide provided for this.

II. The direct appeal

A. The Court of Appeals affirms the second search, after the inventory search, as just another inventory search

Petitioner appealed, renewing his argument that the second search could not be upheld as valid inventory search. He argued that the second search was not a valid inventory search, but an impermissible warrantless search to investigate suspicions aroused by the detective listening to Williams's conversation, in violation of the Fourth Amendment.

The Second Circuit affirmed, holding that this is simply a case where police conducted two inventory searches, rather than one such search -- as is typical -- notwithstanding that the second search occurred only after the detective listened in on Williams's conversation, and conferred the other members of his squad.

First, it concluded that "both searches of Williams's car were conducted in accordance with the NYPD's standardized procedures for inventory searches as described in the Department's Patrol Guide[.]" 930 F.3d at 54. The Circuit concluded that, although

Detective Breton had to force open the console "of Williams's car by removing the console's paneling" to expose the gun, "the Patrol Guide specifically says that officers can force open the 'trunk, glove compartment, etc.[.]'" Id. But, again the examples provided in the Patrol Guide -- trunks and glove compartments -- are spaces designed for people to store things inside and to be opened for that purpose.

Second, the court noted Petitioner's argument that the Patrol Guide does not provide for "*multiple* inventory searches," but stated "'we do not think ... *every detail* of search procedure must be governed by a standardized policy.'" 930 F.3d at 55 (alterations and emphasis in original) (quoting United States v. Lopez, 547 F.3d 364, 371 (2d Cir. 2008). It held that a police department's procedures need only be such "that officers are not allowed 'so much latitude' as to whether, when, and how to search that inventory searches, in practice, become a 'purposeful and general means of discovering evidence of crime.'" 903 F.3d at 55 (quoting Florida v. Wells, 495 U.S. 1, 4 (1990)). "Here, the second inventory search did not run afoul of this principle, even if not specifically provided for in the Patrol Guide." 903 F.3d at 55. The court did, however, rely on Detective Breton's individual testimony, at the suppression hearing, based on his personal experience, that "searching behind the paneling of a car's center console is a 'common' practice." 903 F.3d at 554.

Finally, the court concluded that whether the officers conducted the second search to find inculpatory evidence was irrelevant under the NYPD's inventory-search program. Id. at 56-57. It held that the officer's subjective purpose in conducting the inventory search is irrelevant. Id. at 56. All that matters is "the purpose of the administrative program itself": i.e., whether the two-page inventory-search program of the NYPD's Patrol Guide was itself designed to produce inculpatory evidence, rather than an inventory. Id.

B. The Rehearing Petition: Williams argues that the Court's decision in Rehaif v. United States, 139 S.Ct. 2191 (June 21, 2019) requires that his conviction of possessing a firearm while being a prohibited person, in violation of 18 U.S.C. § 922(g), be vacated.

Shortly before the Court of Appeals' decision in Williams's case (on July 9, 2019), this Court decided Rehaif v. United States, 139 S. Ct. 2191 (June 21, 2019). On rehearing, Williams argued that Rehaif compels reversal of his conviction for violating 18 U.S.C. § 922(g).

Per Rehaif, § 922(g) requires proof, not only that the defendant knew he possessed a firearm, but "also that he knew he had the relevant status when he possessed it." Id. at 2194. Thus, "in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove **both** that the defendant knew he possessed a firearm **and** that he knew he belonged to the relevant category of

persons barred from possessing a firearm." Id. at 2200 (emphasis added).

In Mr. Williams's case, the indictment did not charge that he knew, when he possessed the firearm, that he had been convicted of a crime punishable by more than one year of imprisonment. No evidence of his knowledge was introduced at trial, and the jury was not instructed to find this element. The lack of either allegation or proof of the requisite knowledge necessitates reversal.

And Mr. Williams's only two felony convictions were for drug offenses for which he did not serve more than one year in prison. He was sentenced to "1 year custody," in Kings County Supreme Court (in 2013), for selling "one twist of crack cocaine to an undercover officer in exchange for money." See Presentence Report ("PSR") at 6, ¶ 21. On his second conviction (also in 2013), he was again sentenced to one year in custody, for selling "two twists of crack cocaine" to an apprehended buyer; however, he was not "[a]dmitted into custody" until March 21, 2013, and paroled on November 4, 2013, which is only 7 months and 14 days. Id.

On July 1, 2020, the Court of Appeals denied rehearing. It stated: "Appellant, Andy Williams, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*." Pet. App at 1a.

Reasons for Granting the Writ

I. The Court of Appeals has decided an important constitutional question, erroneously holding that, in the context of inventory searches, the subjective motivations of the police are irrelevant.

A. The Court has not clarified whether, in the context of inventory searches, the specific motivation of the police to confirm their suspicions is relevant to the Fourth Amendment analysis.

In Whren v. United States, this Court held that an individual officer's subjective intentions are irrelevant to the Fourth Amendment validity of a search and seizure that is justified objectively by probable cause to believe an offense has been committed. 517 U.S. 806, 810-13 (1996)). The Court has noted, however, that, "[i]n so holding, we expressly distinguished cases where we had addressed the validity of searches conducted in the absence of probable cause." Indianapolis v. Edmond, 531 U.S. 32, 45 (2000) (citing Whren, 517 U.S. at 811–812). So, "'while '[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis,'" such motivations "may be relevant to the validity of Fourth Amendment intrusions" not based on individualized suspicion or probable cause. Edmonds, 531 U.S. at 45-46 (quoting Whren, 517 U.S. at 813)).

Inventory searches are exempt from the warrant requirement because they are part of the "routine caretaking functions" of the police, not "'a subterfuge for criminal investigation.'" Colorado

v. Bertine, 479 U.S. 367, 371 (1987) (quoting South Dakota v. Opperman, 428 U.S. 364, 370 n.5 (1976)). An inventory search, therefore, must not be a "ruse for general rummaging in order to discover incriminating evidence." Florida v. Wells, 495 U.S. 1, 4 (1990).

But, as the Second Circuit noted here, in Brigham City v. Stuart, 547 U.S. 398 (2006), the Court stated that the Fourth Amendment inquiry in the context of programmatic searches and seizures, like inventory searches, has "nothing to do with discerning the mind of the individual officer, but is directed at "ensuring that the purpose behind the *program* is not 'ultimately indistinguishable from the general interest in crime control.'" Id. at 405 (emphasis in original); see Williams, 930 F.3d at 56 (discussing Brigham City).

However, Brigham City did not concern an inventory search, but the warrantless arrest of a person in the home, based on exigent circumstances. And the Court subsequently indicated that in the context of inventory searches, an officer's improper motive *can* invalidate "'objectively justifiable behavior under the Fourth Amendment.'" Kentucky v. King, 563 U.S. 452, 464 (2011) (quoting Whren, 517 U.S. at 812).

The court of appeals, therefore, has "decided an important question of federal law that has not been but should be settled by this Court." Sup. Ct. R. 10(c). The Court should grant certiorari

to clarify that, in the inventory-search context, police officers' subjective motivations to confirm suspicions about criminality are relevant and can invalidate the search.

B. The court of appeals was wrong. The evidence seized during the second search –- a search conducted after an inventory search had been completed -- should have been suppressed as a warrantless search prompted by the officers' newly developed suspicions.

The Fourth Amendment's protections "against unreasonable searches and seizures[,]" U.S. Const. amend. IV, include the unreasonable search and seizure of automobiles. See Delaware v. Prouse 440 U.S. 648, 653 (1979). "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967) (footnotes omitted).

An "inventory search" of the personal effects of someone under arrest is exempted from the warrant requirement because such searches are considered part of the "community caretaking functions" of the police, "divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

"The policies behind the warrant requirement are not

implicated in an inventory search, nor is the related concept of probable cause," because "'[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures.... The probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations.'" Colorado v. Bertine, 479 U.S. 367, 371 (1987) (ellipsis in original) (quoting South Dakota v. Opperman, 428 U.S. 364, 370 n.5 (1976)).

Inventory searches are considered essentially administrative, non-investigatory acts. This Court refers to them as mere "caretaking" activities. Bertine, 479 U.S. at 371 (1987) (inventory searches are part of the "administrative caretaking functions" of police); Opperman, 428 U.S. at 370-71 (describing inventory searches as part of "police caretaking activities" and as "caretaking procedures").

The inventory search was "developed in response to three distinct needs": the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger. Opperman, 428 U.S. at 369; see also Florida v. Wells, 495 U.S. 1, 4 (1990) ("'[I]nventory procedures serve to protect an owner's property while it is in the

custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.'") (quoting Bertine, 479 U.S. at 372)).

"The practice [of inventory searches] has been viewed as essential to respond to incidents of theft or vandalism." Opperman, 428 U.S. at 369; accord Illinois v. Lafayette, 462 U.S. 640, 648 (1983) (inventory search is an "administrative method" by police departments to "deter theft by and false claims against its employees and preserve the security of the stationhouse").

Thus, the justification for exempting inventory searches from the warrant requirement is that such searches are not conducted for the purpose of finding incriminating evidence, but "to protect an owner's property" while it is in police custody, "to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." Wells, 495 U.S. at 4 (citation omitted). Thus, the police may carry out a departmental policy on inventory searches "so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." Bertine, 479 U.S. at 375.

Consistent with these principles, this Court has stated that an inventory search "must not be a ruse for a general rummaging in order to discover incriminating evidence." Wells, 495 U.S. at 4. And the police "must not be allowed so much latitude that inventory

searches are turned into 'a purposeful and general means of discovering evidence of crime[.]'" Id. (quoting Bertine, 479 U.S. at 379 (Blackmun, J., concurring)).

Thus, in Bertine, 479 U.S. at 372, the Court, in approving an inventory search, found it significant that there had been "no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation[.]" Id.; accord Whren, 517 U.S. at 811.

Moreover, although an assessment of the reasonableness of police conduct under the Fourth Amendment involves "'predominantly an *objective* inquiry,'" Ashcroft v. al-Kidd, 563 U.S. 731, 736 (2011) (emphasis added) (citation omitted), an officer's "'actual motivations'" are relevant in the limited category of searches that are permissible absent probable cause, or a warrant, such as searches "made for the purpose of inventory or administration." Whren, 517 U.S. at 811-12; id. at 812 ("we never held, *outside* the context of inventory search or administrative inspection . . . , that an officer's motive invalidates" a search) (emphasis added); al-Kidd, 563 U.S. at 736.

As discussed above, the justification for "the exemption from the need for probable cause (and a warrant), which is accorded to searches made for the purpose of inventory" is that the police are acting according to their administrative caretaking function. Whren, 517 U.S. at 811-12. Therefore, even if the police have the

discretionary power to take protective custody of, and hence inventory, a particular motor vehicle, they violate the Constitution if they act "'in bad faith or for the sole purpose of investigation.'" Id. (quoting Bertine, 479 U.S. at 372).

In this case, NYPD officers conducted two searches of Williams's car. After completing an inventory search –- examining the car's interior areas, the glove compartment, and the trunk -- the officers brought what they found into the stationhouse and began processing Williams's arrest, intending to give him a Desk Appearance Ticket. But an officer heard Williams talking on the phone. And something Williams said, as well as his demeanor and tone of voice, made Detective Latorre suspicious. He conferred with colleagues in the Brooklyn South Gang Squad. And it "was a mutual decision on the whole team's behalf" to conduct a second search of the car.

The officers then conducted a second search of the car. This was not an inventory search undertaken as part of the "caretaking activities" that police departments perform. This second search was a purposeful investigatory endeavor, to follow the officer's suspicions and find evidence of a crime.

The NYPD policy on which the Court of Appeals relied, is a less-than-two-page document that contains few, if any, prohibitions. As examples of parts of a car that can be forced open, it identifies the trunk and glove compartment, which are

designed to be opened to store things inside. However, the Court of Appeals held these examples did not prohibit the officers from forcing open a console that wasn't designed to opened. The NYPD policy gave no guidance on when it is permissible to conduct more than one search, as part of a caretaking function. But the Court of Appeals took this silence to mean the multiple searches in this case were consistent with the NYPD policy and therefore were conducted pursuant to a standardized procedure. However, the two pages of the NYPD Patrol Guide were insufficient guidelines to justify the second search as a mere act of inventory.

Rather, the NYPD officers' second search of the car, without obtaining a warrant, was a "ruse for a general rummaging in order to discover incriminating evidence." Wells, 495 U.S. at 4. It therefore was not a valid inventory search. Hence, the NYPD officers were required to obtain a warrant to search the car a second time to comply with the Fourth Amendment. See Wells, id. Accordingly, the gun they recovered should be suppressed.

II. Rehaif v. United States, 139 S.Ct. 2191 (2019) requires that Williams's conviction of possessing a firearm while being a prohibited person, in violation of 18 U.S.C. § 922(g), be vacated.

In light of Rehaif, the evidence at trial was insufficient on the § 922(g) count. The indictment did not allege Williams's knowledge of his status as a prohibited person when he was alleged to have possessed the firearm, and no proof of such knowledge was introduced at trial. And the jury was not instructed on the

element, but was told: “It is not necessary that the government prove that the defendant knew that the crime was punishable by imprisonment for more than one year[.]” And although Mr. Williams had previously been convicted of two felony offenses, neither of the sentences imposed for those prior convictions exceeded one year.

The evidence, therefore, was insufficient to establish a § 922(g) offense. See Jackson v. Virginia, 443 U.S. 307, 316 (1979) (“no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof -- defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.”). The Court, therefore, should grant the writ, vacate the § 922(g) conviction, and remand to the Circuit.

Conclusion

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

Dated: New York, New York
November 30, 2020

Respectfully submitted,

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