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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

DOUGLAS KNICELY, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

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

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I. QUESTION PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit erred when it affirmed the district court's denial of Appellants' pretrial motion to suppress?

II. PARTIES TO THE PROCEEDING

Mr. Douglas Knicely is joined as Petitioner by his co-defendants at the District Court, Mr. Oscar Watkins, and Mr. Terry Trapp, pursuant to Supreme Court Rule 12.4. Messrs. Watkins, Trapp, and Knicely also filed an appeal in each of their cases, Nos. 19-4427, 19-4521, and 19-4473 respectively, which were consolidated by the United States Court of Appeals for the Fourth Circuit.

The United States of America is the Respondent in this matter.

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V. OPINIONS BELOW

The unpublished opinion by the United States Court of Appeal for the Fourth Circuit in this consolidated case, *United States v. Oscar Watkins, Douglas Knicely, and Terry Trapp*, Nos. 19-4427, 19-4473, and 19-4521, is attached to this Petition as Appendix A. The Order denying the Appellants' Petition for Rehearing or Rehearing *En Banc* is attached as Appendix B. The judgment of the United States Court of Appeals for the Fourth Circuit is attached as Appendix C. The final judgment order of the United States District Court for the Northern District of West Virginia is unreported and is attached to this Petition as Appendix D.

VI. JURISDICTION

This Petition seeks review of an unpublished opinion of the United States Court of Appeals for the Fourth Circuit, decided on June 17, 2020. In this consolidated appeal, Appellants filed a timely Petition for Rehearing or Rehearing *En Banc* on June 30, 2020, and the Fourth Circuit denied the petition on July 14, 2020. Pursuant to Miscellaneous Order of March 19, 2020, Appellants file the instant Petition within 150 days of the Order denying of the Petition for Rehearing or Rehearing *En Banc*. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3. of this Court.

VII. CONSTITUTIONAL PROVISION INVOLVED

This case requires interpretation and application of the Fourth Amendment to the United States Constitution, which provides, “[t]he 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.” U.S. Const., amend. IV.

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction.

Because these charges constituted offenses against the United States, the district court had jurisdiction pursuant to 18 U.S.C. § 3231. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

B. Factual Background.

On November 6, 2018, a grand jury sitting in the Northern District of West Virginia at Clarksburg returned an eight-count indictment charging Terry Willie Trapp, Oscar Aaron Watkins, and Douglas Charles Knically (hereinafter, the Appellants) with various drug offenses in violation of 21 U.S.C. §§ 841(a) and (b), and two of the counts charged Watkins and Trapp with unlawful possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). J.A. 11-19.¹

The indictment arose after an officer with the Morgantown, West Virginia, Police Department conducted the seizure of Messrs. Knically and Watkins, then seated in Knically's truck in the parking lot of a Morgantown hotel. Around 1:00am on the morning of January 4, 2019, Knically parked his truck in the lot of Euro-Suites Hotel near West Virginia University in Morgantown. Officer Breakiron pulled into the parking lot with his fully marked police SUV, headlights illuminated, effectively

¹ All references to the "J.A." are to the Joint Appendices, filed by the parties on appeal to the United States Court of Appeals for the Fourth Circuit.

blocking Knicely's truck from leaving. This blocking of Knicely's vehicle, an illegal seizure by Officer Breakiron in Appellants' view, is the fulcrum of the reasonable suspicion analysis in this case.

Officer Breakiron had observed Knicely's truck while driving on a public road nearby. Because the taillights of Knicely's truck were on in the parking lot, Officer Breakiron believed the truck was "suspicious," and he drove his marked police SUV into an adjacent bank parking lot to conduct surveillance. Watkins, an African American man, exited the Euro-Suites, walked across the parking lot, and entered Knicely's truck. After the truck's interior light went on and off "a couple of times," Breakiron formed the belief that a drug deal was taking place. So, the officer drove into the hotel parking lot, which has only one ingress/egress location, and parked behind Knicely's truck at an angle, between Knicely's truck and the exit. Officer Breakiron grabbed a flashlight and walked directly to Knicely's truck, to conduct a drug investigation. In Appellants' view, this seizure was unlawful and lacking in reasonable suspicion of a then-ongoing crime.

Upon contacting the occupants of the vehicle, Officer Breakiron purportedly detected the scent of marijuana, which lead to a search of the vehicle and subsequent search of the hotel room. The instant indictment arose from the physical evidence subsequently discovered as a result of the officers' searches of Knicely's truck and the hotel room.

C. Procedural History.

After being indicted in federal court, Appellants moved to suppress the evidence obtained during the traffic stop on January 3, 2019. J.A. 20-27, 28-53. Appellants argued that Breakiron, who conducted the illegal seizure, lacked reasonable suspicion because Watkins and Knicely were merely sitting in Knicely's truck when Breakiron effectively blocked them in the parking lot with his fully marked police SUV, his headlights illuminated as he approached the truck in full uniform with his flashlight on with the intent to conduct a drug investigation. J.A. 22-26, 28-32. Second, Appellants argued that the district court erred in denying the motion to suppress the drug evidence and firearms seized from the hotel room following the traffic stop, as "fruit of the poisonous tree." J.A. 10, 20-24.

An evidentiary hearing was held on Appellants' motion on January 29, 2019, before the United States Magistrate Court in Clarksburg. J.A. 109-322. The government presented Officer Breakiron's testimony at the hearing. J.A. 115-203. The Magistrate Court produced a Report and Recommendation ("R&R"), calling for the Appellants' motion to be granted. J.A. 351. The R&R included reasoning that 1) this was not a consensual encounter; defendants Knicely and Watkins were seized at the time Breakiron pulled into the parking lot of the Euro-Suites Hotel because Breakiron blocked the exit and treated defendants as though they were suspected of illegal activity; 2) Breakiron did not have the requisite reasonable suspicion to seize the defendants and conduct an investigatory detention; 3) any probable cause to search the vehicle was predicated upon a small amount of marijuana during the

encounter and was irrelevant because the encounter was unlawful at its inception; and 4) as to the state search warrant for the hotel room, no intervening circumstance purged the taint of the initial detention. J.A. 371-380.

The United States District Court rejected the Magistrate Court's R&R and denied Appellants' motion to suppress. J.A. 485. In summary, the District Court found that under the totality of the circumstances, that the defendants were not seized at the time the officer entered the parking lot, and that the officer engaged in a consensual police-citizen encounter where no reasonable suspicion was required. J.A. 504. Further, the District Court held that the moment the police officer smelled marijuana, he had probable cause to search the vehicle. J.A. 504. The District Court concluded by denying the motion to suppress. J.A. 504.

After the denial of Appellants' motion to suppress, the case proceeded to plea negotiations. Each defendant entered a conditional guilty plea to the drug conspiracy charged in Count One of the Indictment, preserving the right to appeal the denial of the motion to suppress. J.A. 505-522. Between February 25, 2019 and March 1, 2019, each of the three co-defendants entered conditional guilty pleas to Count One. J.A. 505-522. On May 30, 2019, Watkins was sentenced to 156 months of imprisonment to be followed by five years of supervised release. J.A. 523-529. On June 21, 2019, Knicely was sentenced to a term of 120 months of imprisonment, to be followed by a five-year term of supervised release. J.A. 539-540. On July 17, 2019, Trapp was sentenced to 235 months of imprisonment, to be followed by 5 years of supervised release. J.A. 541-547.

After their individual sentencing hearings, Watkins filed a timely notice of appeal to the United States Court of Appeals for the Fourth Circuit on June 11, 2019. J.A. 530-531. On June 26, 2019, Knicely filed a timely notice of appeal of the district court's judgment. J.A. 539-540. Trapp filed his timely notice of appeal on July 19, 2019. J.A. 548. The Fourth Circuit filed an order on July 23, 2019, consolidating the three appeals.

D. The United States Court of Appeals for the Fourth Circuit.

On appeal, Appellants challenged the district court's denial of the pretrial motion to suppress all the evidence seized from Knicely's truck, given that Officer Breakiron seized Knicely and Watkins in their vehicle immediately upon approaching Knicely's truck without having the necessary reasonable, articulable suspicion of criminal activity then ongoing. Appellants based their argument on Fourth Circuit precedent that indicated the police officer Breakiron seized the two men in their vehicle immediately upon contact with them in order to interrogate them and commence a drug investigation, rather than to conduct a mere consensual encounter.

Secondly, Appellants argued that the district court erred in denying the Appellant's motion to suppress the physical evidence seized from Trapp's hotel room, based upon a search by Officer Breakiron tainted by the officer's initial Fourth Amendment violation.

The government responded that Appellants' pretrial motion to suppress was properly denied, as the initial encounter between Officer Breakiron and Appellants

Watkins and Knicely, was consensual, and that the officer did not use his vehicle to block the exit from the parking lot.

The Fourth Circuit held oral argument in this case following the submission of briefs from the parties, including an Opening Brief of Appellants, a Response from the Government, and Appellants' Reply.

The Fourth Circuit, in its unpublished opinion, held that Watkins and Knicely were not seized when Officer Breakiron pulled into the Euro-Suites parking lot and approached Knicely's truck. Opinion at 14. "Officer Breakiron did not block their exit from the parking lot, and the rest of his actions were consistent with a routine encounter. Thus, a reasonable person would have felt free to leave when Officer Breakiron pulled into the parking lot and began approaching the vehicle." Opinion at 14. Further, the Opinion holds that because Watkins and Knicely were not unlawfully seized, the evidence later seized from Trapp's hotel room was not fruit of the poisonous tree. Opinion at 15.

Appellants petitioned the Fourth Circuit for a Rehearing/Rehearing *En Banc*, asking the Fourth Circuit to reconsider its opinion in this case, as it appears to conflict directly with the Fourth Circuit's holding in *United States v. Jones*, 678 F.3d 293, 295 (4th Cir. 2012). In *Jones*, the Fourth Circuit considered the denial of a motion to suppress, which alleged that two officers unlawfully seized the defendant after the officers parked behind the defendant's vehicle and approached his car on foot to conduct an investigation. *Id.* at 295. The defendant in *Jones* argued that the blocking of his vehicle did not amount to a mere consensual encounter between

himself and the two officers; the Fourth Circuit agreed with the defendant, and found that a reasonable person in Mr. Jones' position would not have felt free to leave, given the totality of the circumstances. *Id.* at 304-305.

Here, Appellants argued that the holding of *Jones* should direct the holding in their case, as *Jones*, a published opinion from the Fourth Circuit, was not meaningfully distinguishable from their own case. The Fourth Circuit disagreed and declined Appellants' petition to review its holding here on July 14, 2020.

IX. REASONS FOR GRANTING THE WRIT

The writ should be granted to determine whether the district court properly denied Appellants' pretrial motion to suppress physical evidence seized after the seizure of Appellants Knicely and Watkins. In Appellants' view, this seizure of the two men was unlawful. The Fourth Circuit's unpublished opinion upholds the district court's decision to deny the motion to suppress, affirming the convictions and sentences of Appellants. However, Appellants aver that the Fourth Circuit's holding this case conflicts with the Fourth Circuit's earlier, published decision in *United States v. Jones*, 678 F.3d 293 (4th Cir. 2012), as the facts of the instant case cannot be meaningfully distinguished from *Jones*. Appellants respectfully request that this Honorable Court grant the writ in order to address the Fourth Circuit's decision here which conflicts with its earlier precedent.

ARGUMENT

A Fourth Amendment seizure occurs when there is a governmental termination of freedom of movement through means intentionally applied. *See Brendlin v. California*, 551 U.S. 249 (2007). For the purposes of whether a person is “seized” by an officer under the Fourth Amendment, relevant intent is that conveyed to the person confronted. *Id.* at 261. The Supreme Court has long required “at least articulable and reasonably suspicion” to support random, investigative traffic stops. *See Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

In *United States v. Jones*, 678 F.3d 293, 295 (4th Cir. 2012), the Fourth Circuit reviewed the denial of a motion to suppress made on the same grounds as the instant case, to wit, that two officers unlawfully seized Jones after they parked behind Jones and approached his car on foot to conduct an investigation. Jones argued that this was not routine and did not amount to a mere consensual encounter. The Fourth Circuit reversed and found that a reasonable person in the Jones’s position would not have felt free to leave given the totality of the circumstances. *Id.* at 304-305.

The Appellants here contend that *Jones*, a published opinion, is not meaningfully distinguishable from this case. When one carefully compares the materials facts in both cases, the cases appear nearly identical.

In *Jones*, a car driven by an African American male, Jones, along with three male passengers, traveled in a high-crime neighborhood in downtown Richmond, Virginia, bearing New York tags. *Id.* Suspecting that the men were involved in

drug trafficking, two police officers in a marked police vehicle followed Jones's car. *Id.* at 295-296.

Similarly, Officer Breakiron observed Knicely's truck in a parking lot known for drugs. J.A. 117-118. Officer Breakiron observed Watkins, who is an African American man, walk from the Euro-Suites Hotel and enter Knicely's truck. J.A. 118, 550. Breakiron suspected the men were involved in drug trafficking and continued surveillance of the truck in Officer Breakiron's marked police cruiser. J.A. 118-119, 124.

In *Jones*, the officers found no traffic violation committed by Jones as a basis to stop the car. *Jones* at 295-296. However, Jones had turned into an apartment complex with signs at the entrance warning, "No Trespassing." *Id.* The officers, under the belief that the men were trespassing, followed Jones's car into the complex without activating their sirens or lights. *Id.*

Similarly, Officer Breakiron found no traffic violation committed by Knicey, who was in the driver's seat of a parked truck. J.A. 156. Knicely and Watkins occupied the parking area of the hotel -- which was private property -- and Officer Breakiron believed they were there to deal drugs, not as lawful hotel guests. J.A. 124. Officer Breakiron did not activate his emergency siren or lights. J.A. 389-390.

In *Jones*, the apartment complex had only one road for its residents to enter with diagonal parking spaces on either side. *Id.* at 297. Jones pulled into a parking space and two of the passengers exited the vehicle, while Jones and another

passenger stood near the driver's side door. *Id.* The two officers then parked behind Jones's car rather than parking in the designated parking spaces. *Id.*

Similarly, the Euro-Suites Hotel has a rectangular parking lot with one entrance, serving as the only means of ingress and egress for its patrons. J.A. 95, 189. There is an unmarked lane in the middle of the parking lot for cars to travel through the parking lot with parking spaces on either side. J.A. 95. Officer Breakiron "pulled in behind [Knically's] vehicle in the parking lot in [his] police cruiser" rather than in one of the designated parking spaces. J.A. 119. Like Jones, Knically and Watkins remained with the truck as Officer Breakiron approached on foot. J.A. 119, 124-125.

The officers in *Jones* exited their marked police vehicle and approached on foot, in uniform, while armed. *Jones* at 300. Similar here, Breakiron exited his marked police vehicle and approached on foot, in uniform, while armed. *Jones* at J.A. J.A. 115-116, 158, 358.

At a suppression hearing, one officer in *Jones* testified that Jones could have backed his vehicle up, but it would have had him going the wrong direction on the one-way street, or Jones could have requested the officers to move their patrol car. *Jones* at 297. Here, Officer Breakiron testified at a suppressing hearing that Knically could not leave at all: "he was not leaving because I was there." J.A. 159.

As the officers approached Jones and the passengers in Jones's car, one officer asked Jones if he lived in the apartments and Jones responded that he did.

Jones at 297. Then, left with no suspicion of trespassing, the officers immediately requested that Jones and a passenger lift their shirts to make sure they were not carrying weapons. *Id.* Jones and the passenger complied. *Id.*

Here, upon approaching Knicely and Watkins in Knicely's truck, Officer Breakiron asked the men if they had rooms in the hotel, what they were doing in the parking lot and "if there was anything illegal in the car [he] needed to worry about." J.A. 127. Breakiron used his flashlight to inspect Knicely, Watkins and the interior of the truck. J.A. 197, 301.

In *Jones*, the officers requested that they conduct a pat down of Jones and the passenger. *Jones* at 297. Jones and the passenger complied. *Id.* Officers were unable to find any weapons on the two men. *Id.* The officers finally asked for Jones's identification in which Jones stated that he had left it in his apartment. *Id.* The two officers then detained Jones on the violation of driving without a license. *Id.* Jones was arrested for driving on a revoked license and a search incident to arrest revealed a gun and a bag of marijuana on his person. *Id.*

Here, within minutes, other officers from the Morgantown Police Department arrived as backup for Breakiron, including Sgt. Jason Ammons ("Ammons") and Officer Dave Helms ("Helms"). J.A. 193-194. Breakiron and Ammons instructed Knicely and Watkins to step out of the truck for a pat down search. J.A. 359. They complied. Helms and the K-9 conducted a free air sniff of the truck and the K-9 reportedly alerted to the presence of controlled substances. J.A. 238-242, 359. The officers searched the truck and discovered drug evidence, including

methamphetamine, a scale, Xanax pills, and a small quantity of cocaine base. J.A. 359-360, 556.

The Fourth Circuit held that Appellants' argument that Officer Breakiron seized Watkins and Knicely by blocking their exit was unsupported by the record, as Officer Breakiron's body camera footage "provides several vantage pointed as to where Officer Breakiron's police cruiser was parked in relation to Knicely's truck" and that Knicely's ability to drive his vehicle out of the parking lot would not have required any "special maneuvering" to proceed. This evidence, though, is undercut by Officer Breakiron's own testimony at the suppression hearing that Knicely could not leave upon Officer Breakiron's entry into the parking lot. J.A. 159.

Moreover, what reasonable person feels free to leave a scene upon being approached by a fully marked police SUV cruiser at 1:00am?

All panels are bound by prior panel decisions in the same circuit. *See Capital Produce Co. v. United States*, 930 F.2d 1077, 1078 (4th Cir. 1991). Given that the instant case cannot be distinguished meaningfully from *Jones*, an earlier, published decision, the Fourth Circuit should have reached a result similar to the *Jones* in the instant matter.

The Fourth Circuit's holding in the instant case muddies the waters of an important Fourth Amendment discussion for both police officers and members of the public, namely, an understanding of the difference between consensual encounters and custodial seizures that implicate the Fourth Amendment. When does attempting to leave a parking lot in which the police enter be considered fleeing from the police?

Based on Officer Breakiron's testimony at the suppression hearing in this matter, if the Appellants had attempted to leave the parking lot, would they not have been followed swiftly by the officer for the attempt to evade him? The Fourth Circuit's decision here effectively removes one's agency to choose not to consensually encounter the police in a similar situation. This is not acceptable under the Fourth Amendment, and for this reason, this Court should review the decision below.

X. CONCLUSION

For these reasons, Appellants respectfully request that this Honorable Court grant a writ of certiorari and review the judgment of the Court of Appeals.

Respectfully submitted,

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