

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

MONWELL DWIGHT BOOTH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTIONS PRESENTED

WHETHER THE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DECISION THAT PETITIONER'S FOURTH AMENDMENT RIGHTS WERE NOT VIOLATED?

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Monwell Dwight Booth petitions for a Writ of Certiorari to review the United States Court of Appeals for the Ninth Circuit's memorandum affirming the District Court's decision that Mr. Booth's Fourth Amendment Rights were not violated.

JURISDICTION

The court of appeals issued its memorandum of Mr. Booth's appeal on September 8, 2020. Appendix A. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

OPINION BELOW

United States Court of Appeals for the Ninth Circuit issued its memorandum affirming the District Court's sentencing. The memorandum is attached as Appendix A.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the Constitution of the United States. Appendix B.

STATEMENT OF THE CASE

Monwell Dwight Booth pled guilty in Federal court to the sole count in the Indictment and admitted the forfeiture allegation pursuant to the Rule 11(a)(2) plea agreement which allowed Booth to plead guilty but preserve his right to appeal the lower court's ruling on his Motion to Suppress.

The Indictment charged Mr. Booth with being a Prohibited Person in Possession of a Firearm in violation of Title 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The charge stems when Billings City Police Officers were dispatched to Mr. Booth's residence on a burglary call by a suspicious neighbor.

Once police were on the scene, the neighbor explained that a suspicious male had exited Mr. Booth's residence. The officers approached the residence's back door and observed damage as if someone had forcibly entered the home. Appendices C and D.

The officers then entered the home and cleared the residence confirming no one was inside. During this sweep, officers observed several firearms on a shelf in an upstairs bedroom closet as well as magazines for the firearms sitting halfway out of a safe immediately next to the firearms. Appendix C.

The officers proceeded to contact Mr. Booth concerning the burglary. He informed the officers not to enter the residence and stated that other individuals – a girlfriend and daughter – were on their way to his home until he finished work. Later, officers checked with a list of individuals supervised by the Montana Department of Corrections and learned that Mr. Booth was being supervised by Montana Probation/Parole. Appendix C.

The officers then contacted Probation and Parole and obtained permission to search the residence where after a discussion with Booth's girlfriend about several of the firearms they subsequently seized all weapons at the residence. Appendices C and D.

After the plea hearing, Mr. Booth was sentenced by Chief United States District Judge Dana L. Christensen to a term of imprisonment of 36 months concurrent to a State of Montana sentence. At sentencing, the District Court varied downward from the recommended Guidelines range of 46-57 months.

SUMMARY OF ARGUMENT

The appellate court by *de novo* review affirmed the lower court's ruling. In doing so, it erred. While there were signs of a potential burglary due to the broken door and suspicious person exiting, there were no exigent circumstances for the officers to enter the Booth residence without a warrant.

ARGUMENT

I. THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S RULING THAT PETITIONER'S FOURTH AMENDMENT RIGHTS WERE NOT VIOLATED.

To make a lawful entry into a home in the absence of a warrant, officers must have either probable cause and exigent circumstances or an emergency sufficient to justify the entry. These exceptions to the warrant requirement are narrow and their boundaries are rigorously guarded. In the present case, there was no exigency.

The search violated the Fourth Amendment of the United States Constitution and all evidence found from that search must be suppressed pursuant to the Exclusionary Rule. In addition, evidence discovered by the subsequent parole search must also be suppressed pursuant to the fruit of the poisonous tree doctrine. The Fourth Amendment provides that "[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.” *United States v. Perea-Rey*, 680 F.3d 1179, 1186 (9th Cir. 2012) (quoting *Payton v. New York*, 445 U.S. 573, 586 (1980)).

“A warrantless search of a house is *per se* unreasonable and absent exigency or consent, warrantless entry into the home is impermissible under the Fourth Amendment.” *United States v. Shaibu*, 920 F.2d 1423, 1425 (9th Cir. 1990). Evidence that is recovered following an illegal entry into a home is inadmissible and must be suppressed under the exclusionary rule. *Id.*

An exception to the warrant requirement exists, however, when “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the *United States v. Snipe*, 515 F.3d 947, 950 (9th Cir. 2008) (quoting *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978)). This “exigency” exception derives from police officers’ investigatory function. *Id.*

Fisher v. City of San Jose, 558 F.3d 1069, 1075 (9th Cir. 2009) defined exigent circumstances as “those circumstances that would cause a reasonable person to believe that entry . . . was necessary to prevent physical harm to officers or other persons . . . the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”

In this case, when the officers got to the residence, the neighbor had already notified dispatch and later the officers that he witnessed a suspicious individual leave the residence. He also told them that while he did not witness the burglary, he checked the Booth residence afterwards, and no one was inside.

The officers conducted a cursory inspection of the area and noted that the back door was damaged, a panel was missing, and glass was broken around it. Otherwise, there was no further damage to the house nor was there anything noted unusual about the house. Additionally, the officers failed to note anything else suspicious about the house: there was no sound or smells emanating from the house nor were there anyone noted inside of the house. Appendices C and D.

Yet it took the officers to enter the residence and conduct a sweep before they even attempted to contact Mr. Booth or the landlord about the alleged burglary. And once Mr. Booth was contacted, he informed them in no uncertain terms to not enter the residence and that everything was going to be fine and that members of his family would be arriving to check out his residence until he could leave work. Thus there was clearly no exigency because the burglary was already a *fait accompli* and the only witness to it said that someone left the residence and he checked it out. Appendix C.

There are occasions where courts have upheld a warrantless entry into a home to investigate a burglary by justifying it under the exigent circumstances exception.

One of those decisions to uphold the search is found in *United States v. Valles-Valencia*, 811 F.2d 1232, 1236 (9th Cir. 1987), where “[t]he circumstances known to the officers supported probable cause to enter the building to learn what was happening. After the officers entered the upstairs and arrested Soto-Leal and Bustamante, they were justified in conducting a protective sweep of the remaining rooms. They reasonably believed that “there might be other persons on the premises who could pose some danger to them.”

Other federal circuits also have held that a warrantless entry into a house is justified when the police officers have probable cause to believe that a burglary is in progress. *United States v. Brown*, 449 F.3d 741, 748 (6th Cir. 2006); *United States v. McCullough*, 457 F.3d 1150, 1164 (10th Cir. 2006); and *United States v. Johnson*, 9 F.3d 506, 509-10 (6th Cir. 1993).

Again, in the present case, the neighbor already informed the officers that a suspicious person left the area and that he already checked the house for anyone by poking his head inside the door. The officers failed to contact Mr. Booth first before entering. This would not have taken a considerable amount of time and would have notified the officers to not enter the residence until Mr. Booth’s associates arrived at the residence. Appendix C.

Furthermore, there was no need for quick action as there was no emergency. Thus based upon relevant caselaw and facts, the officers failed to have the required

exigency to enter Mr. Booth's residence, and as such, violated the Constitutional Rights of Mr. Booth.

CONCLUSION

FOR THESE REASONS, Petitioner asks this Honorable Court to grant a writ of certiorari and review the judgement of the Ninth Circuit Court of Appeals.

Dated this 4th day of December, 2020.

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