No. 20-8180

IN THE SUPREME COURT OF THE UNITED STATES

BENJAMIN ROSS, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

ORIGINAL

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

PETITION FOR A WRIT OF CERTIORARI

BENJAMIN ROSS PRO SE
FCI MCKEAN
P.O. BOX 8000
BRADFORD, PA 16701

QUESTIONS FOR REVIEW

NO. 1 WHETHER THE FOURTH AMENDMENT REQUIRES REASONABLE, ARTICULABLE SUSPICION AND PROBABLE CAUSE TO JUSTIFY A PRETEXTUAL TRAFFIC STOP?

NO. 2. WHETHER REASONABLE SUSPICION OF CRIMINAL ACTIVITY AND PETITIONERS NERVOUSNESS JUSTIFY DETAINING, PAT SEARCHING, AND HAVING DRUG DOG SNIFF PETITIONERS VEHICLE VIOLATE THE SUPREME COURT'S RULING IN RODRIGUEZ v. UNITED STATES, AND WHETHER THE PROLONGED DETENTION VIOLATED THE FOURTH AMENDMENT?

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V.

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Benjamin R. Ross asks that a writ of certiorari is issued to review the Judgement and Opinion entered by the United States Court of Appeals for the Sixth Circuit on March 2, 2021, which is a unpublished opinion.

PARTIES TO THE PROCEEDING:

The caption of the case names all the parties to the proceeding in the court below.

OPINIONS BELOW:

The Court of Appeals opinion affirming the denial of Petitioner's Motion to Suppress is attached hereto as Appendix A.

The Court of Appeals Order denying Petitioner's Motion to Extend the Time to File a Rehearing En Banc is attached hereto as Appendix B.

The Opinion of the District Court denying Petitioner's Motion to Suppress is attached hereto as Appendix C.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES:

The Court of Appeals OPINION affirming the denial of Petitioner's Motion to Suppress was entered March 2, 2021. The Court of Appeals denial of Petitioner's motion requesting an extension of time to file a rehearing en banc motion was denied March 29, 2021. This Petition is filed within 150 days of both orders mentioned above. See Sup. Ct. Order dated March 19, 2020. This Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE:

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 person or things to be seized.

STATEMENT OF THE CASE

On May 16, 2019, a Criminal Complaint was filed in the United States District Court for the Northern District of Ohio by Special Agent Paul Stroney Jr., D.E.A., in which the criminal complain alleged that on May 15, 2019, Petitioner violated 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), possession with intent to distribute controlled substances. The complaint was based on his Affidavit, which alleged, on the above described date, Petitioner who was driving a BMW sedan, was stopped on Southern Boulevard in Youngstown Ohio by Ohio State Highway Patrol (OSHP) Sergeant Dunbar. Petitioner was allegedly stopped for having excessive window tint, and while Sergeant Dunbar was speaking with Petitioner, observed "criminal indicators". While Sergeant Dunbar was interacting with Petitioner, OSHP Trooper Baker arrived at the scene, at which point Dunbar asked Petitioner to exit his vehicle and conducted a consensual pat-down. Subsequently, Petitioner was placed in the cruiser. Trooper Baker then used his certified narcotics detection canine to conduct an open air sniff of the exterior of Petitioner's car. The canine alerted to the odor of controlled substances at the driver's side of the car, then the troopers began a search of the car, locating 4.25 ounces of light blue pills packaged within two layers of vacuum sealed plastic marked with an "M" inside a rectangle and "30" above a line on the reverse side. Affiant alleged that, based on his experience and training the markings on the pills, their faint blue color, and the fact that they were sealed in vacuum sealed plastic packaging caused Affiant to believe the pills actually contained Fentanyl, a schedule II controlled substance; and, that Petitioner had two cell phones in his possession which indicated to Affiant, based

on his experience and training, that often drug trafficker's utilize multiple cellular telephones in order to thwart law enforcement investigations. The Complaint was signed by Magistrate Judge Limbert. (R.1, Page ID ## 1-8)

Petitioner was arrested at the scene of the stop. On May 17, 2019, he was appointed a Federal Public Defender, an initial appearance was held. On May 22, 2019, a preliminary examination and a detention hearing were held and the Court found that probable cause existed for the charge, and Petitioner was bound over to the Grand Jury. Petitioner was ordered detained and remanded to the custody of the U.S. Marshals. (R.6, and R. 16, Page ID ## 71-116). On May 23, 2019, the Court entered and Order of Detention. (R. 7, Page ID ## 42-43).

On June 4, 2019, the Grand Jury returned and indictment charging Petitioner with One Count of Knowingly and Intentionally Attempting to Possess with intent to Distribute approximately 117.70 grams of fentanyl, a violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), and 846. (R. 10, Page ID ## 47-51).

On August 30, 2019, Petitioner filed a Motion to Suppress (R. 24, Page ID ## 136-139) in which he claimed that the traffic stop violated the Fourth Amendment of the U.S. Constitution, arguing that "the officers did not have a reasonable, articulable suspicion or probable cause to stop [his] vehicle", and therefore asked that all evidence obtained be suppressed. (R. 24 Page ID ## 136-139). On September 10, 2019, the Government filed a response thereto in which it argued that the stop of Petitioner was reasonable at its inception because the Petitioner's traffic violations. (R. 26, Page ID ## 141-155, R. 26-1, Page ID # 156, R. 26-2, Page ID ## 157-164, R. 26-3, Page ID # 165, and R. 26-4, Page ID # 166). After a hearing was conducted on September 23, 2019 (R. 46 Page ID ## 277-403), the lower Court entered an Order denying the Motion to Suppress, finding that the stop in question was reasonable and that the officer's had reasonable suspicion to stop Petitioner because the car he was driving had ex-

cessive window tint and the Petitioner did not use a turn signal. (R. 30, Page ID ## 175-179).

Petitioner, pursuant to a Plea Agreement filed on October 15, 2019, agreed to plead guilty to the indictment. However, Petitioner reserved the right to appeal any sentence to the extent it exceeded that maximum sentencing imprisonment range determined under the advisory Sentencing Guidelines, and the District Court's denial of his motion to suppress. (R. 31, Page ID ## 180-189).

Petitioner's sentence occurred on February 4, 2020. He was also sentenced at the same hearing for a violation ot his supervised release which began on May 17, 2019, imposed for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). As to the criminal case, based on the fact Petitioner's criminal history and the fact that he committed the crime he plead guilty to while on supervised release, the Court followed the recommendation of the Probation Officer in the Presentence Investigation Report and varied upward two levels and imposed a sentence of 120 months, which was an upward variance of 15 months from Petitioner's advisory guideline range. (R. 48, Page ID # 449-451). The final judgment in the criminal case was entered on February 10, 2020. Petitioner was sentenced to an additional 24 months to run consecutively for the supervised release violation.

Petitioner filed a notice of appeal from the final judgment in this case on February 11, 2020.

On August 12, 2020, Petitioner filed his direct appeal brief in the United States Court of Appeals for the Sixth Circuit. There, Petitioner argued that the police did not have reasonable suspicion or probable cause to stop Petitioner's vehicle for an alleged traffic violation. Petitioner also argued that the District Court erred when it imposed an upward variance without providing specific reasons for its decision.

On October 28, 2020, the Government filed its motion in opposition of Petitioner's direct appeal alleging that 1) the record supported the Court's factual determination that the trooper observed Petitioner commit a traffic violation, and 2) the court adequately articulated its reasoning for varying upward by 15-months in Petitioner's sentence.

On March 2, 2021, the United States Court ot Appeals for the Sixth Circuit issued its OPINION on Petitioner's direct appeal, which was not recommended for publication, affirming the judgment of the District Court. In the Court of Appeals OPINION, it must be noted that the Court pointed to two specific errors made by the District Court that seriously harmed the Petitioner's case, but the Court of Appeals failed to correct the lower courts mistakes.

On March 29, 2021, Petitioner's then Counsel filed a motion for extention of time to file a Petition for Panel Rehearing, with an attached Petition for Panel Rehearing. On the same date (March 29, 2021) the Court of Appeals for the Sixth Circuit submitted its ORDER denying motion to extend time to file rehearing petition. The Court also filed its ORDER declaring the panel rehearing petition as moot.

REASONS FOR GRANTING WRIT

ARGUMENT NO. 1

WHETHER THE FOURTH AMENDMENT REQUIRES REASONABLE, ARTICULABLE SUSPICION AND PROBABLE CAUSE TO JUSTIFY A PRETEXTUAL TRAFFIC STOP?

Petitioner avers that Sergeant Dunbar of the Ohio State Highway Patrol ("OHSP") did not have reasonable, articulable suspicion or probable cause to initiate the pretextual traffic stop on his vehicle. On May 15, 2019 Sergeant Dunbar, who was waiting for Petitioner to leave a residence so that they can initiate a traffic stop of Petitioner's BMW. It is apparent from the record of this criminal case that Sergeant Dunbar created his own probable cause or reasonable suspicion that Petitioner committed a traffic violation. Sergeant Dunbar claimed that he stopped Petitioner's vehicle for excessive window tint, in which the officer submitted in his investigation notes. (R. 26-2, Page ID ##157-164). During the Motion to Suppress hearing, for the first time, Sergeant Dunbar stated the he also stopped Petitioner because "of the late use of his turn signal," (R. 46, Page ID # 12, and R. 30, Page ID # 175), however, it would have been incumbent for Sergeant Dunbar to submit in his investigation notes that he stopped Petitioner for his late use of the turn signal, if in fact, this did occur.

"Police may briefly stop an individual for investigation if they have a 'reasonable suspicion' that the individual has committed a crime. United States v. Palomino, 100 F. 3d 446, 449 (6th Cir. 1996); Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). The same standards applies to vehicle stops. See also Delaware v. Prouse, 440 U.S. 648, 663, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). The Sixth Circuit as well as other Court's has explained

that the 'reasonable suspicion' standard requires that law enforcement officers possess specific facts tending to indicate criminal activity before initiating an investigative detention:

> 'Reasonable suspicion' is more than an ill-defined; it must be based upon a particularized and objective basis for suspecting the particular person of criminal activity. It requires specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant an investigatory stop.

Williams v. Leatherwood, 258 Fed. Appx. 817, 821 (6th Cir. 2007). Reasonable suspicion must be apparent "at the moment that they initiate the stop, and not after the defendant has been stopped." Feathers v. Aye, 319 F.3d 843, 848 (6th Cir. 2003); See also, United States v. Hughes, 606 F.3d 311 (6th Cir. 2010)(holding in pertinent part, "an officer may not use after-the-fact rationalizations to justify a traffic stop...).

The Fourth Amendment permits an officer who has probable cause to believe a traffic violation is occurring to detain the automobile, regardless of the officer's subjective intention for the stop. United States v. Burton, 334 F.3d 514, 516, (6th Cir. 2003)(citing United States v. Whren, 517 U.S. at 812-13). Consequently, [a] driver's failure to use a turn signal provides probable cause to justify a traffic stop irrespective of the officer's subjective intent, (if the driver actually failed to signal). United States v. Jackson, 682 F.3d 448, 453 (6th Cir. 2012).

Ohio law requires window tinting to allow at least 50% of the light to pass through. See Ohio Revised Code Section 4513.241 and Ohio Admin. Code Section 4501-41-03(A)(3). Ohio law requires that "a signal of intention to turn or move right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle...before turning." Ohio Revised Code Section 4511.39(A).

According to the record, the stop in question occurred on May 15, 2019 at approximately 4:25 p.m., near the intersection of Lowell Avenue and Southern Blvd., in Youngstown, Ohio. Just before the stop, OSHP Sergeant Dunbar was parked in a cruiser directly in back of OSHP Officer Baker's SUV on Lowell Avenue approximately 1/10th of a mile from Southern Blvd. The officers were working "criminal interdiction" and as stated before, were waiting for Petitioner "to leave the house." (R. 46 Page ID # 85). The record is clear that the officers expected Petitioner to appear driving a car and they planned on stopping him. The officers were working with the D.E.A. that day. (R. 46, Page ID ## 46-47). Sergeant Dunbar was appointed to make the traffic stop, and Officer Baker, who was a canine handler (R. 46, Page ID # 74), was going to have his dog sniff for the odor of narcotics around Petitioner's car after the stop. The stop was recorded on Sergeant Dunbar's dash-cam and the video was offered by the Government as Exhibit 1 in the Opposition to Petitioner's Motion to Suppress. (R. 26-1, Page ID # 156). The dash-cam video provides the best record of what occurred both shortly before and after the stop. The dash-cam video also reveals that Sergeant Dunbar created his own false probable cause or reasonable suspicion to initiate the pretextual traffic stop of Petitioner's vehicle.

Sergeant Dunbar's dash-cam reveals that at the beginning of the video, he is standing next to Officer Baker's SUV speaking with him (BAKER) while on Lowell Avenue. According to the time on the dash-cam, Sergeant Dunbar got into his cruiser, pulled out around Officer Baker's SUV and drove towards Southern Blvd, which was approximately 1/10th of a mile away at the end of Lowell Avenue. At 1:21 on the video, Petitioner, driving his BMW, can be seen emerging from a side

street and making a left turn onto Lowell Avenue in front of Sergeant Dunbar. The video shows him making the turn onto Lowell Avenue from 1:21-1:25. At this particular point, Sergeant Dunbar is approximately 300 yards from Petitioner. Upon noticing Petitioner, Sergeant Dunbar can be seen speeding up to get closer to Petitioner's vehicle. During the Suppression Hearing, Sergeant Dunbar testified that at approximately 1:23-1:25 on the video, he noticed the illegal window tint on Petitioner's car from approximately 300 yards away. (R. 46, Page ID ## 50-51).

At 1:26-1:32 on the video, Petitioner's car, while on Lowell Avenue is approaching Southern Blvd., and Petitioner's left-hand turn signal appears to be on. At 1:30 on the video, Sergeant Dunbar turned on his lights and sirens and initiated the stop. At this particular point, Petitioner was still on Lowell Avenue and had "NOT" even begun to turn onto Southern Blvd. Petitioner is seen turning from Lowell Avenue onto Southern Blvd., from 1:30-1:34; Petitioner's turn signal still appears to be on before he makes the turn. At this point, it clear that the turn signal is prominently displayed, and at 1:36 Petitioner comes to a complete stop.

From 1:26-1:32, the video reveals that when Sergeant Dunbar was at a distance directly behind Petitioner, or when Sergeant Dunbar was viewing Petitioner during the turn, Petitioner's turn signal is not as pronounced but, upon a careful inspection, demonstrates that the turn signal was nonetheless visible. When Sergeant Dunbar pulls up fairly close to Petitioner, the turn signal is prominent. The turn signal can clearly be seen from 1:26-1:34.

Did Sergeant Dunbar have reasonable suspicion or probable cause to support that Petitioner had illegal window tinting and/or failed to signal as he was

turning onto Southern Blvd from Lowell Avenue? The Honorable Supreme Court's answer to this question tor review should be "NO". The evidence clearly shows that Dunbar and Baker were stationed, as apart of the interdiction team, along with the D.E.A., awaiting for Petitioner to leave a residence driving a car and they intended to "stop it"--that is before they ever saw Petitioner's vehicle. (R. 46, Page ID # 85). Sergeant Dunbar also noted in his Initial Incident Summary and his Report of Investigation, Investigative Notes, that on May 15, 2019, he was working in the area of Southern Boulevard and Lowell Avenue when he "noticed a black BMW sedan with extremely dark window tint..." (R. 26-2, Page ID #163). In Sergeant Dunbar's testimony at the Suppression Hearing, he stated he noticed the window tint on Petitioner's car sometime between the 1:23-1:25 point on the video. At this point, Sergeant Dunbar is approximately 300 feet from Petitioner. (R. 26, Page ID ##50-51). The video reveals that Sergeant Dunbar could not have seen if Petitioner's vehicle had excessive window tint. Sergeant Dunbar of course had to testify that he noticed some traffic violation, thus creating his own probable cause to initiate the stop at 1:30 of the video evidence. Moreover, Sergeant Dunbar testified that Petitioner did not have his turn signal on until Petitioner had completely pulled onto Southern Blvd., which is clearly at odds with the video. To determine the accuracy of Sergeant Dunbar's testimony, it is necessary to keep in mind that Dunbar intended to stop Petitioner betore he ever saw him. (R. 46, Page ID #85). Dunbar, of course, knew he had to observe some type of traffic violation to justify the stop, in which is exactly why Dunbar falsified and created the bizzar story that Petitioner did not use a turn signal (including the excessive windows that he saw from 300 yards away). Dunbar's testimony concerning the turn signal is clearly refuted by the video that Dunbar

testified that Petitioner did not turn his signal on until he was on Southern Boulevard. This point is clearly untrue--Petitioner had his signal on at 1:26 and he was stopped at 1:36 on the video. This information is useful in evaluating the credibility of Sergeant Dunbar, not only with respect to the claim that Petitioner did not use his turn signal until he was on Southern Boulevard, but also as to when Dunbar noticed the existence of the window tint on the passenger side of the vehicle.

A review of the video by the Supreme Court would reveal Sergeant Dunbar initiated the stop of Petitioner's vehicle without having specific facts reflecting any criminal activity. In regards to the window tinting, a review of the video by the Supreme Court would reveal that Sergeant Dunbar that knowledge after initiating the stop, not when Dunbar first observed Petitioner in his car when he was 300-yards away. This is a case where the police were going to stop Petitioner on some suspected illicit drug activity and created evidence of traffic violations to justify the stop.

Petitioner is aware of the holdings of Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996). Accordingly, such a pretextual stop like Petitioner's must comport with the Fourth Amendment. As the United States Supreme Court has held:

> "...an automobile stop is...subject to the constitutional imperative that it not be "unreasonable" under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the

> police have probable cause to believe that a traffic violation has occurred. [See Delaware v. Prouse, 440 U.S. 648, 659, 99 S. Ct. 1391, 1399, 59 L. Ed. 2d 660 (1979); Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S. Ct. 330, 332, 54 L. Ed. 2d 331 (1977) (per curiam).] Whren, 517 U.S. at 810. The test endorsed by the Supreme Court is whether the particular officer making the stop, regardless of his actual subjective motives, had probable cause to believe that a traffic offense has occurred. Id. at 813."

The objective test was applied in the Sixth Circuit even before the pronouncement in Whren. See United States v. Ferguson, 8 F.3d 385 (6th Cir. 1993)(holding that "so long as the officer has probable cause to believe that a traffic violation has occurred or was occurring, the resulting stop is not unlawful and does not violate the Fourth Amendment").

The full and complete record demonstrates the facts that Sergeant Dunbar did not have reasonable suspicion or probable cause to perform the pretextual traffic stop on Petitioner's vehicle, and Sergeant Dunbar created his own set of visual traffic violations to initiate the stop. The facts in the record (Suppression Hearing Trans.) would also demonstrate that once Sergeant Dunbar reviewed the dash-cam video, his testimony slightly changed stating he saw the late turn signal first and then the tinted windows; however, initially, in Dunbar's Reports he stated he saw the dark tinted windows from 300 yards away. It is completely evident that Sergeant Dunbar changed his testimony to fit his version of probable cause, but Sergeant Dunbar's created version of probable cause or reasonable suspicion is clearly refuted by the dash-cam and his testimony, thus, the Supreme Court should grant Certiorari because the stop of Petitioner's vehicle violated the Fourth Amendment. Certiorari should also be granted in this case to fix the provisions and holding in Whren, because of the incredible numbers of possible motor civil traffic provisions governing the operation of

automobiles, officers will always be able to allege some traffic violation that provides the police with the ability to stop anyone they choose without violating the Fourth Amendment. With these facts in hand, the police cannot assume the existence and create their own probable cause claiming that a traffic violation has occurred when initiating a pretextual traffic stop. The Fourth Amendment requires the police to have reasonable suspicion or probable cause when they initiate a stop. In order to protect against the police from mistakenly or intentionally claiming the presence of such traffic violations, when in fact, they did not occur, Petitioner asks this Honorable Supreme Court to be vigilant in reviewing the independent evidence, such as the video dash-cam and Sergeant Dunbar's Investigation Reports, and subsequent testimony in this case in deciding whether the stop was based upon reasonable suspicion and/or probable cause to justify the stop. The lower Court's ignored the above described facts from the record. The Petitioner respectfully asks this Honorable Supreme Court to grant a Writ of Certiorari in this case.

ARGUMENT NO. 2

WHETHER REASONABLE SUSPICION OF CRIMINAL ACTIVITY AND PETITIONERS NERVOUSNESS JUSTIFY DETAINING, PAT SEARCHING, AND HAVING A DRUG DOG SNIFF PETITIONERS VEHICLE VIOLATE THE SUPREME COURT'S RULING IN RODRIGUEZ v. UNITED STATES, AND WHETHER THE PROLONGED DETENTION VIOLATED THE FOURTH AMENDMENT?

Petitioner avers that the lower Court's erred when it believed that it did not have to analyze whether Sergeant Dunbar's observations of Petitioner's nervous behavior was sufficient to justify prolonging the traffic stop by detaining Petitioner, making him exit his vehicle, pat-searching him, detaining him in the police car and having a K-9 sniff for narcotics.

Contrary to the lower Court's belief, officers can use "nervousness as one of the indicators to believe a suspect is up to criminal activity," but it can not be used as a solo indicator. The Sixth Circuit has repeatedly held that "nervousness-even extreme nervousness-'is an unreliable indicator' of someone's dangerousness, 'especially in the context of a traffic stop.'" See United States v. Richardson, 385 F.3d 625, 630 (6th Cir. 2004)(collecting cases). It is not uncommon for an individual to become "nervous during a traffic stop, even when they have nothing to hide or fear." Id. F.3d at 630-31. See also United States v. Lott, 954 F.3d 919 (6th Cir. 2020), stating a seizure can be extended if "something happened during the stop to cause the officer to have a reasonable and articulable suspicion that criminal activity is afoot." United States v. Stepp, 680 F.3d 651, 661 (6th Cir. 2012)(quoting United States v. Davis, 430 F.3d at 353). But nervous behavior alone is legally insufficient to establish such reasonable suspicion.

In Petitioner's case, Sergeant Dunbar only alleged to have witnessed that

Petitioner "seemed very nervous" (R. 46: D
asked if there were any other indicators o
and he had bad window tint, Sergeant Dunba

"I noticed his voice was shaky...."
Thus, contrary to the lower court's belief
as a indicator of Petitioner being suspecte
against the Sixth Circuit's case law or pre
continued detention of Petitioner a violati

Furthermore, The Sixth Circuit Court o
Supreme Court's decision in Rodriguez v. U
Rodriguez, the Supreme Court held that offi
to have a drug dog sniff a car-a crime dete
to a traffic stop-absent independent reaso
ist(s). Id. This Court determined that the
by detaining Rodriguez for seven or eight m
stop by issuing him a ticket. Id at 135 S.
argument that the prolongation of the stop
minimis). Authority for the seizure thus en
infraction are-or reasonably should have be

This Court addressed that the "ordinar
stop" that do not impermissibly extend the
license, determining whether their are any
driver, and inspecting the automobile's reg
Id. at 1615.

The approach employed by Sergeant Dunb

the time needed to complete the initial investigation. Rodriguez, 135 S. Ct. at 1612 (the seizure becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission). Sergeant Dunbar abandoned the window tint violation and the alleged signal violation and immediately pursued a separate investigation for which Sergeant Dunbar had no justification, or no reasonbale suspicion to pursue. Petitioner was in the process of showing Sergeant Dunbar his registration, and at this point, Sergeant Dunbar believed Petitioner was "very nervous" and required Petitioner to exit his vehicle to subject Petitioner to a pat-search and to detain him in the patrol vehicle, without the intentions to arrest Petitioner for the alleged window tint or turn signal violation. The stop went beyond the time that the Constitution would permit under these circumstances. The canine sniff of the vehicle was conducted after the stop should have ended. By contrast, if the totality of the circumstances, viewed objectively, establishes that Sergeant Dunbar, without reasonable suspicion, definitively abandoned the prosecution of the traffic stop and embarked on another sustained course of of investigation, this would surely bespeak a lack of diligence. Sergeant Dunbar did not diligently pursue the traffic ticket for the alleged violations of the window tint or the turn signal. Sergeant Dunbar didn't even issue a warning for the alleged violations, instead he (Dunbar) engaged Petitioner into a "pat-search and detained him in the patrol vehicle." "Police are not allowed to use the time that would have been needed for incidental inquiries as "bonus time" to venture out and conduct unrelated investigations." United States v. Lujan, 2018 U.S. Dist. LEXIS 13229, 2018 WL 3742452, at *6 (E.D. Tenn. Aug. 8, 2018). The Sergeant's belief that there was reasonable ar-

ticulable suspicion to believe criminal activity may be afoot, because Petitioner was nervous, and conducting a pat-search and detaining Petitioner were all designed for "ferreting out unrelated criminal conduct" that simply prolonged the stop. United States v. Everett, 601 F.3d 484, 495 (6th Cir. 2010). Rather, Sergeant Dunbar pursued the pat-down, detaining, and another line of questioning, unlawfully extended the stop prior to the dog conducting the sniff of the vehicle. In United States v. Stepp, 680 F.3d 651, 662 (6th Cir. 2012) the Sixth Circuit recognized that there was a danger that an officer could delay pursuing the initial traffic violation until "she has satisfied herself that all of her hunches were unfounded." Id. Indeed, in that case, the Sixth Circuit found that just six minutes of extraneous questioning constituted an unreasonable seizure. Thus, "any ... prolonged, even de minimis, is an unreasonable extension of an otherwise lawful stop." Stepp, 680 F.3d at 661-62. In Stepp, following the officer questioning the defendants, he called for a canine unit, which took three and a half minutes to arrive. The Sixth Circuit found this unreasonably prolonged the stop. This is what occurred here, in Petitioner's case.

Sergeant Dunbar only claimed he had reasonable suspicion of criminal activity based on Petitioner's nervousness, however, Sergeant Dunbar could not point to any other indicators to believe criminal activity was afoot to conduct the pat-search, detention, and questioning of Petitioner, prior to the drug dog arriving to the scene, which was at the point when Dunbar had unnecessarily prolonged the stop. An officer cannot unlawfully prolong a seizure to obtain reasonable suspicion of criminal activity to justify a search of the vehicle. See, e.g., Rodriguez, 135 S. Ct. at 1616.

The touchstone of any Fourth Amendment analysis is reasonableness. Petitioner asks this Honorable Supreme Court to conduct a fact-bound, context-dependent inquiry into this case. With the Supreme Court Justices, having fully considered the circumstances as they unfolded during the stop, as viewed on the dash-cam, in conjunction with Sergeant Dunbar's testimony, the Court should find no acceptable purpose of Sergeant Dunbar's extended detention, prolonged questioning of Petitioner, pat-search, detainment, and subsequent dog sniff after the traffic should have ended. The Supreme Court's other concern should respectfully be, that police officer's are using the state of the law [based on Whren] as carte blanche permission to stop and search 'target' or 'profile' vehicles for drugs and that it should be the lower Court's responsibility to make sure that police officers act appropriately and not abuse the power legally afforded to them by, among other things, caretully scrutinizing a police officer's testimony as to the purpose of the initial traffic stop.

CONCLUSION

FOR THESE REASONS, Petitioner asks this Honorable Supreme Court to GRANT Certiorari and review the Judgment of the Sixth Circuit Court of Appeals.

Respectfully Submitted,

/s/ Benjamin Ross

BENJAMIN ROSS PRO SE PETITIONER

May 11, 2021