No. 20-8180

IN THE SUPREME COURT OF THE UNITED STATES

BENJAMIN ROSS
Petitioner

vs.

UNITED STATES OF AMERICA
Respondent

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

PETITION FOR REHEARING

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PETITION FOR REHEARING
(Sup. Ct. R. 44.1)

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because: This case is before the Court, on the Northern District of Ohio at Cleveland, denial of Petitioner Benjamin Ross' Motion to Suppress (USA v. Ross, Case: 1:19-cr-00351-JRA, DOC #: 30), and the Sixth Circuit Court of Appeals, affirming the denial (USA v. Ross, Appeal No, 20-3163, DOC: 43-2). The Motion seeked to exclude, on the Fourth Amendment grounds, evidence that law enforcement officers obtained during a traffic stop. Of course, the Fourth Amendment does not prohibit all searches and seizures, but rather only unreasonable ones. Although reasonableness frameworks rarely gives rise to Bright-line rules, This Court had announced one such rule in connection with traffic stops, prior to the case at bar. In Rodriguez v. United States, this Court held that, absent reasonable suspicion, law enforcement officers cannot undertake investigative activities unrelated to a traffic stop that will prolong that stop.[1] Period.[2] Even a de minimis prolongation triggers the prohibition. Measured against that standard, the Appellate Court, and District Court, should have granted Petitioner's Motion to Suppress. The officers here initiated investigative activities that prolonged the traffic stop, and were unable to articulate grounds, existing when they started those investigative activities, giving rise to a reasonable suspicion of criminal conduct. And, no exception to the exclusionary rule is available on the

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1 See, Rodriguez v. United States, 575 U.S. 348, 350-51 (2015).

2 Id.

on the facts here that would allow the Government to use the evidence obtained through that improper search, and for the reasons stated, Petitioner's case should be, GRANTED, REVERSED, and REMANDED, with instructions to examine this case under the Rodriguez's standards.

NERVOUS BEHAVIOR ALONE IN LEGALLY INSUFFICIENT TO ESTABLISH SUCH REASONABLE SUSPICION UNDER CURRENT SIXTH CIRCUIT LAW

Prior to the case at bar, the Sixth Circuit Court of Appeals has repeatedly held that "nervousness even-extreme nervousness, 'is an unreliable indicator' of someone's dangerousness or criminal activity, 'especially in the context of a traffic stop.'"[3] It is not uncommon for an individual to become "nervous during a traffic stop, even when they have nothing to hide or fear."[4] Thus, nervous behavior alone is legally insufficient to establish such the level of reasonable suspicion needed.

In Petitioner's case, the officer only alleged to have witnessed that Petitioner "... seemed very nervous."[5] And, when asked if there were any other indicators other than Petitioner breathing heavy and he had bad window tint, the officer stated: "I noticed his voice was shaky...."[6]

Contrary to the Appeals Court, and District Court belief, the officer could not only rely on Petitioner's "nervousness as a indicator of Petitioner being engaged into criminal activities, so, the officer's actions extended the traffic stop, when he had Petitioner existed the vehicle and be subjected

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3 See, United States v. Richardson, 385 F.3d 625, 630 (6th Cir. 2004)(collection cases)

4 Id.

5 Case: 1:19-cr-00351-JRA, DOC #: 46, Hearing on Mot. to Suppress, PageID #: 289

6 Id. at PageID #: 335.

to a pat-search, and that pat-search unreasonablely extended the traffic stop, and that violated Petitioner clearly established Fourth Amendment right under Rodriguez.[7]

1. On October 4, 2021, this Court denied the petition for writ of certiorari.

2. Petitioner had briefed the crucial issue in his case carefully and was aware that a related issue was already decided by this Court in Rodriguez v. United States, supra.

3. Petitioner was not granted any opportunity by the lower Courts to rise the similarity of his case to the Rodriguez case or to suggest why he case should be determined by the same rule.

4. This case contains serveral crucial factual and procedural from the cases cited by Petitioner in the Appellant's brief that warrant its determination by a different of at least altered rule.

   a. This Court's ruling in Rodriguez, which held that: Prolonging stop to conduct a dog sniff impermissible. Rodriguez v. United States, 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492, 496 (2015)(case was remanded to determine whether detention for the dog sniff was independently supported by individualized suspicion).

   b. The Sixth Circuit have cautioned against relying on nervousness for an officer's reasonable suspicion of dangerousness. See, United States v. Pedicini, 804 F. App'x 351, 335 (6th Cir. 2020)(quoting United States v. Noble, 762 F.3d 509, 522 (6th Cir. 2014)(recognizing that "nervousness-even extreme nervousness-'is an unreliable indicator of someone's dangerousness, 'especially in the context of a traffic stop.'").

5. In those earlier decisions, United States v. Noble, the Sixth Circuit noted that: "nervousness alone is not an indicator of reasonable suspicion," and in Rodriguez v. United States, this Court held that: "a seizure is justified only by a police-observed traffic violation and becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation. The Court should note that, Petitioner's case have similar issues, and should be treated the same as the cases mentioned.

[7] Rodriguez, 575 U.S. at 350-51.

6. A rehearing tightly and squarely focused on the similarity between this case and Rodriguez v. United States, supra, case, and whether these similarities merit the same rule of law, is a matter of fundamental fairness to Petitioner and would not unduly burden the Court.

Conclusion

For the reasons just stated, Benjamin Ross urges that this petition for rehearing be granted, and that, on further consideration, the evidence in the case at bar be excluded, the Petition for Certiorari be granted or the judgment of the Lower court be reversed or as appropriate.

Dated: October 19, 2021

Respectfully submitted,

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