
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

NO. _____

Shane LaGrange,

Petitioner,

-vs.-

United States of America,

Respondent.

**Petition for Writ of Certiorari to
the United States Court of Appeals
for the Eighth Circuit
(8th Cir. Case No. 19-2307)**

WEBB L. WASSMER
Wassmer Law Office, PLC
5320 Winslow Road
Marion, IA 52302
Telephone: (319) 210-4288
e-mail: wassmerlaw@yahoo.com

ATTORNEY FOR PETITIONER
SHANE LaGRANGE

QUESTION PRESENTED

- I. WHETHER THE EIGHTH CIRCUIT IMPROPERLY CONCLUDED THAT THE FOURTH AMENDMENT PERMITS THE COURT TO FIND THAT REASONABLE SUSPICION FOR A TRAFFIC STOP EXISTED BASED ON FACTS THAT THE OFFICERS INVOLVED DID NOT BELIEVE CREATED REASONABLE SUSPICION?**

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINION BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT.....	7
I. THE EIGHTH CIRCUIT ERRED IN FINDING THAT REASONABLE SUSPICION TO BELIEVE THAT MR. LAGRANGE WAS IN POSSESSION OF A FIREARM EXISTED BASED ON INFORMATION THAT THE OFFICERS INVOLVED DID NOT BELIEVE CREATED REASONABLE SUSPICION.....	7
CONCLUSION.....	10

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Shane LaGrange, respectfully requests that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Eighth Circuit in this matter.

OPINION BELOW

On December 9, 2020, the United States Court of Appeals for the Eighth Circuit entered its Opinion and Judgment, App. 1, 7, affirming the June 20, 2019, Judgment and sentence of the United States District Court for the Northern District of Iowa.

JURISDICTION

The Eighth Circuit's jurisdiction was based on 28 U.S.C. § 1291. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Eighth Circuit filed its Opinion and Judgment on December 9, 2020. App. 1, 7. Mr. LaGrange filed a timely Petition for Rehearing and Rehearing En Banc on December 23, 2020. The Eighth Circuit summarily denied that Petition on January 20, 2021. This Petition for Writ of Certiorari is timely filed within one hundred-fifty (150) days of the filing of the Eighth Circuit's denial of Mr. LaGrange's Petition for Rehearing and Rehearing En Banc.¹

¹The deadline for filing a Petition for Writ of Certiorari was extended to 150 days by this Court's Order of March 19, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.

Constitution of the United States, Fourth Amendment

STATEMENT OF THE CASE

Petitioner Shane Lee LaGrange was indicted on three counts on September 11, 2018 (DCD 2).² Count 1 charged Mr. LaGrange with Possession with Intent to Distribute a Controlled Substance (Methamphetamine) in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 851. Count 2 charged Mr. LaGrange with Possession of a Firearm in Connection with a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c). Count 3 charged Mr. LaGrange with Possession of a Firearm by a Felon, in violation of 18 U.S.C. § 922(g)(1), 922(j), and 924(a)(2).

The charges arose out of an encounter between Mr. LaGrange and Cedar Rapids Police Officers Matt Messer and Lucas Liddle on December 29, 2017. (DCD 29 at 2). Although additional facts will be discussed below, the salient facts are as follows.

At the beginning of their shift, Officers Messer and Liddle received an intelligence memorandum stating that another officer had been advised by an informant that Mr. LaGrange had been seen in possession of a firearm a couple of days earlier and was staying at different hotels on 33rd Avenue SW in Cedar Rapids. (Hrg. Tr. 10-12). Officers Messer and Liddle were assigned to patrol in that area. (Hrg. Tr. 12). Officer Messer had previous experience with Mr.

²“App.” refers to the Appendix. “DCD” refers to the District Court’s Docket in criminal case *United States v. LaGrange*, N.D. Iowa No. 1:18CR00090-01-CJW-MAR. “Hrg. Tr.” refers to the transcript of the hearing on Mr. LaGrange’s Motion to Suppress, held November 5, 2018, and filed at DCD 16.

LaGrange. (Hrg. Tr. 11). Officer Liddle was not familiar with Mr. LaGrange. (Hrg. Tr. 81).

While on patrol, they saw a white Grand Prix parked and running in a hotel parking lot with at least one person inside. (Hrg. Tr. 16, 54). The officers left the parking lot. (Hrg. Tr. 18).

The officers returned to that parking lot fifteen to twenty minutes later. (Hrg. Tr. 18-19). As they pulled into the parking lot, the white Grand Prix was driving towards them. (Hrg. Tr. 18-19). They observed the driver attempting to hide his face, but Officer Messer identified Mr. LaGrange as the driver. (Hrg. Tr. 21-22). Mr. LaGrange drove to a nearby restaurant parking lot, where he parked and exited his vehicle. (Hrg. Tr. 25). The officers pulled up behind him, called out to him, and quickly detained and handcuffed him after they believed his hand was located near his waistband where a gun might be located. (Hrg. Tr. 28-29).

Methamphetamine was found on Mr. LaGrange's person. (Hrg. Tr. 90-91). A subsequent search of the car found a firearm in the center console. (Hrg. Tr. 40-41). Mr. LaGrange also made subsequent statements to police. (Hrg. Tr. 74, 119).

Mr. LaGrange filed a Motion to Suppress on October 17, 2018. (DCD 7). He argued that his seizure without a valid traffic stop or *Terry* stop was unconstitutional. *Id.* He sought suppression of the methamphetamine, the firearm, and his statements. *Id.* The Government resisted. (DCD 10).

The District Court, the Honorable CJ Williams, issued its Order denying the Motion to Suppress on February 13, 2019. (DCD 29). The District Court set forth its central holdings as follows:

First, the District Court held that "the officers had reasonable suspicion that defendant was driving with a suspended license sufficient to initiate an investigatory stop." (DCD 29 at 11-12).

Second, the District Court found that Officer Messer's factual mistake that there was an active warrant for Mr. LaGrange was reasonable. (DCD 29 at 12-13).

Third, the Court found moot the question of whether the tip from the unproven confidential informant was sufficiently reliable to provide reasonable suspicion. (DCD 29 at 13).

Fourth, the District Court rejected the Government's argument of inevitable discovery. (DCD 29 at 13-15).

After the District Court denied his Motion to Suppress, Mr. LaGrange entered a conditional plea of guilty to Counts 1 and 2, preserving his right to appeal the denial of the Motion to Suppress. (DCD 35 - Report and Recommendation to Accept Guilty Plea; DCD 38 - Order Accepting Guilty Plea; Sent. Tr. 40-41 - advisement of appeal rights).

Mr. LaGrange was sentenced on June 19, 2019, to 240 months in prison, consisting of 180 months on Count 1 and a consecutive 60 months on Count 2. (DCD 51; Sent. Tr. 37). Count 3 was dismissed at sentencing. (Sent. Tr. 39-40).

Mr. LaGrange appealed. He argued, first, that Officer Messer did not have a reasonable suspicion that Mr. LaGrange was driving with a suspended license. *See* Appellant's Brief, filed September 3, 2019, at Section I(B). Second, he argued that Officer Messer's mistaken belief that there was an arrest warrant outstanding for Mr. LaGrange was not objectively reasonable. *Id.* at Section I(C).

The Government, in its brief on appeal, responded to the arguments raised by Mr. LaGrange. The Government also argued that the officers had a reasonable suspicion to stop Mr. LaGrange based on the informant's tip. *See* Government's Brief at page 13 et seq.

The Eighth Circuit issued its Opinion on December 9, 2020 (attached). The Eighth Circuit did not address the two issues decided by the District Court and raised by Mr. LaGrange. *See* Opinion at 4. Instead, the Eighth Circuit concluded that the officers had reasonable suspicion to believe that Mr. LaGrange was in unlawful possession of a firearm. *Id.* Mr. LaGrange filed a Petition for Rehearing and Rehearing *En Banc* on December 23, 2020. The Eighth Circuit denied that Petition on January 20, 2021.

REASONS FOR GRANTING THE WRIT

Certiorari is properly granted as the Eighth Circuit's decision in this case conflicts with the decisions of this Court. *See* Supreme Court Rule 10(c) ("a United States Court of Appeals . . . has decided an important federal question that conflicts with relevant decisions of this Court").

I. THE EIGHTH CIRCUIT ERRED IN FINDING THAT REASONABLE SUSPICION TO BELIEVE THAT MR. LAGRANGE WAS IN POSSESSION OF A FIREARM EXISTED BASED ON INFORMATION THAT THE OFFICERS INVOLVED DID NOT BELIEVE CREATED REASONABLE SUSPICION

""[A]s a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal." *Ornelas v. United States*, --- U.S. ----, ----, 116 S.Ct. 1657 1663, 134 L.Ed.2d 911 (1996)." *United States v. Caldwell*, 97 F.3d 1063, 1067 (8th Cir. 1996).

The main fact that the Eighth Circuit ignored is that Officer Messer testified that the officers did not have probable cause to stop Mr. LaGrange based on the informant's tip. (Hrg. Tr. 50). It was improper for the Eighth Circuit to conclude that the officers had sufficient information to stop Mr. LaGrange for possession of a firearm, when the officers involved did not so believe.

As noted by the Eighth Circuit, "[a]n officer is entitled to draw specific reasonable inferences from the facts in light of his experience. *Terry v. Ohio*, 392

U.S. 1, 27 (1968).” App. 5 The Eighth Circuit discussed why the informant's tip that Mr. LaGrange had a gun was sufficiently reliable. *Id.* The Eighth Circuit also discussed other factors giving rise to reasonable suspicion. *Id.* at 6. The Eighth Circuit concluded that “[t]he officers were justified in relying on the informant's tip.” *Id.* at 5.

The fatal flaw in the Eighth Circuit's reasoning, however, is that the officers did not rely on the informant's tip or the other factors discussed to stop Mr. LaGrange. The officers relied on: (1) Officer Messer's belief that Mr. LaGrange was driving with a suspended license; and (2) Officer Messer's mistaken belief that there was an arrest warrant out for Mr. LaGrange. The Eighth Circuit addressed neither of those issues.

The only reasons that Officer Messer gave for stopping Mr. LaGrange were his mistaken belief that Mr. LaGrange had an outstanding arrest warrant and that Mr. LaGrange's driving license had been suspended:

Q. And you say this was going on while you were attempting to run him, what does that mean?

A. So typically what we do is, when we saw him, at this point, based on the memo, I believed that he potentially had a warrant, but we also believed that he was suspended, so we usually run subjects through our NCIC in-car computer to check their driving status.

Q. Why do you believe at this time he would have a warrant?

A. I think I was confused at that point because the memo had the heading Wanted Subjects.

Q. Okay. Why do you believe at that time he was suspended?

A. From my previous dealings with Shane LaGrange in the past, he's always been suspended. I knew he had been arrested on a suspension.

(Hrg. Tr. 23).

In fact, Officer Messer specifically testified that he did not believe that the informant's tip was sufficiently reliable:

Q. A CI stated he saw Mr. LaGrange in possession of a gun, correct?

A. Yes.

Q. And you don't know who that CI is?

A. No.

Q. You have no idea of the veracity or the reliability of that information when you received this memo, correct?

A. No.

Q. And you don't know whether it's based on information from a drug addict who doesn't know what's going on, correct?

A. Yes.

Q. Yes, you did know?

A. No. Correct, I'm sorry.

Q. Okay. So you don't know if the CI was someone who

was a known liar, correct?

A. Correct.

Q. And that's why, after getting this information, you couldn't just walk up to Shane LaGrange and arrest him, correct?

A. Correct.

Q. You needed something more?

A. Correct.

(Hrg. Tr. 51-52).

The Eighth Circuit's approach in this case conflicts with *Terry v. Ohio*.

Officers cannot rely on inferences that they never actually drew.

Accordingly, the Court should grant certiorari as the Eighth Circuit decided the lawfulness of the stop on a basis that the officers involved did not rely upon.

CONCLUSION

Petitioner Shane LaGrange respectfully requests this Court to grant certiorari in this matter. Petitioner LaGrange further requests this Court to reverse and remand this matter to Court of Appeals for the Eighth Circuit with directions to remand to the District Court to grant Mr. LaGrange's Motion to Suppress.

Respectfully Submitted,

Wassmer
WEBB L. WASSMER
Wassmer Law Office, PLC
5320 Winslow Road
Marion, IA 52302
Telephone: (319) 210-4288
e-mail: wassmerlaw@yahoo.com

ATTORNEY FOR PETITIONER
SHANE LaGRANGE