

21-5131 ORIGINAL
No. 18-

SUPREME COURT OF THE UNITED STATES

Negrito Paul Noel,

Petitioner,

VS.

Trooper James Buonaugurio,

Respondent.

Supreme Court, U.S.
FILED

JUN 25 2021

OFFICE OF THE CLERK

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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JUN 25 2021

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SUPREME COURT, U.S.

1. Question Presented

Whether a user of a 'Personal Use Vehicle', who was arrested absent Probable Cause of a crime, lose the right to maintain a section 1983 claim for false arrest, if he was found guilty of the traffic infractions.

2. Question Presented

Whether a Fourteenth Amendment due process right violation exists when a Section 1983 claim is thrown out because the United States Marshals Office served the complaint and summons by mail instead of using personal service?

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 19 2021.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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<p>A. To AVOID ERRONEOUS DEPRIVATIONS OF THE RIGHT TO BE FREE FROM FALSE ARREST, THIS COURT SHOULD CLARIFY WHICH TYPES OF VEHICLES THAT ARE NOT INCLUDED IN THE TERM ‘MOTOR VEHICLE’ UNDER THE CONSOLIDATED LAW’S OF NEW YORKS VTL CODE VERSES THE UNITED STATES CODE DEFINITIONS. THIS CONTROVERSY HAS SINGLE HANDEDLY CAUSED THE DEATH OF SO MANY MEN OVER THE YEARS, IT MAY BE TIME TO GIVE LAW ENFORCEMENT BRIGHT LINES.....</p>	
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IV. Petition for Writ Of Certiorari

Negrato Paul Noel, a resident of the great state of New York, Rochester New York, Pro se, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals.

V. Opinions Below

The decision by the United States Court of Appeals denying Mr. Noel direct appeal is reported as Negrato v. Buonaugurio. The United States Court of Appeals denied Mr. Noel's petition for a trial and affirmed the dismissal of the case on December 22, 2017.

The District Court of western judgement and decision

VI. Jurisdiction

Mr. Noel's petition for rehearing to the United States Court of Appeal was denied on December 22, 2017. Mr. Noel invokes this Court's jurisdiction under 28 U.S.C. S 1257, having timely filed this petition.

VII. Constitutional Provisions Involved

United States Constitution, Amendment IV:

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.

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States a of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. Statement of the Case

This petition arises out of a complaint from Mr. Noel, who was unlawfully stopped, falsely arrested without handcuffs, ticketed, injured, and imprisoned during the prolonged traffic stop absent probable cause of a crime by New York State Police Trooper James Buonaugurio on January 11th, 2019. A hearing was conducted and Mr. Noel was found guilty of the Motor Vehicle traffic infractions. Based on the loss, the District Court dismissed the matter stating that the traffic infractions created probable cause of a crime and that under 1983 a claim for false arrest cannot be maintained.

Traffic infractions have no bearing on Federal Questions.

The Use of Traffic Infractions

VAT§ 155 is clear regarding how 'traffic infractions' should be used in law.

- VAT§ 155. "...A traffic infraction is not a crime and the punishment imposed therefore shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility as a witness or otherwise of any person convicted thereof..." This definition shall be retroactive and shall apply to all acts..." Edited.

Traffic infractions cannot be used to establish 'Probable Cause' and are not binding authority in the analysis to answer constitutional rights Federal Questions.

Error of the Court

This District Court may have misrepresentation of the meaning of the Fourth Amendment:

- "The Fourth Amendment requires that an officer making [] a [traffic] stop have probable cause or reasonable suspicion that the person stopped has committed a traffic violation or is otherwise engaged in or about to be engaged in criminal activity." *Holeman v. City of New London*, 425 F.3d 184, 189 (2d 2005).

This specific misquote of the opinion in the Whren case is significant because it treats 'traffic infractions' as crimes when they are not as discussed above. In *Holeman*, a traffic violation was drawn in the same breath as '...criminal activity...' implying that a mere observation of a possible traffic code violation generates 'probable cause' to arrest. This is dangerous and infringes on the fourth amendment stripping it of the protection it provides me. *Holeman* conflicts with the words of Justice Scalia and offends the meaning of the Fourth Amendment. Justice Scalia said in the unanimous opinion announcement:

"...the Fourth Amendment guarantees the right of the people to be secured 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]. As interpreted by this Court that provision requires that before the police may cease a motorist even if only for a brief period and a limited purpose they must have probable cause to believe that a crime has been committed or at least a reasonable suspicion of unlawful activity..." (Edited, and to include the entire fourth amendment.)

To use *Holeman's* modification of such a touchstone Opinion, destroys the requirement of a warrant or 'probable cause' to be present before an arrest can take place, to a mere hunch from an officer of a non-criminal code infraction to arrest. The intention of the Opinion was not to change the Fourth Amendment so that it be worth nothing, but to extend it to include criminal activity supported by evidence to satisfy the issuance of an arrest warrant. In this case, Trooper Buonaugurio had no lawful authority to arrest (there was no crime) and he had no legal authority to ticket ('Personal use vehicles' are omitted from language of the written code violations). A seizure or an arrest must be supported by evidence of a crime, See *Tennessee*. Since my arrest was not supported by evidence of a crime, the fourth amendment was violated. As an initial matter, a jury of 12 should

decide whether a crime was committed during the arrest. See *Posr v. Doherty*, 944 F.2d 91, 96-100 (2d Cir. 1991)

When the reasonableness standard is applied to Justice Scalia's Opinion Announcement, the misquotes become "...Reasonable cause to believe a traffic violation occurred...". This alteration is less offensive to the Fourth Amendment because at least '...reasonable cause...' is used as an adjective and expresses a subjective view. At least the reasonable standard does not imply that a traffic infraction (violation) is a crime, and it leaves room for the policeman to prove the elements of the alleged traffic code to justify issuing a ticket. Here, there was no crime, so there was no authority to arrest even if it is to issue a non-criminal ticket. The Trooper had no authority to arrest in this case as a matter of law.

Service was executed properly

The Plaintiff-Appellant contends that service of the complaint and summons was proper and was perfected.

Rule 4 (f) Proving Service.

- (1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. **Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.**

- (3) *Validity of Service; Amending Proof.* Failure to prove service does not affect the validity of service

'The acknowledgment of receipt of summons and complaint by mail' and the 'Affidavit of the execution of the process of service' state that the package was delivered and properly served by the U.S. Marshal's Office. Moreover, it was not returned to the Marshals Office which proves that the package was accepted. The U.S. Marshals office was sent the package on 5/7/19 and 21-days were given for an answer. The answer was mailed on May 31st, 2019, 3 days late without an excusable neglect or a Rule 12 (b)(4) or (5) motion to challenged insufficient process or service of process which under Rule 12(g)(2) must be filed instead of a Rule 12(b)(6) motion to dismiss.

Rule 12 (g) JOINING MOTIONS.

- (2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule **must not make another motion under this rule raising a defense or objection** that was available to the party but omitted from its earlier motion.

Since Rule 12(b)(4) or (5) was not filed, the Defendant is in default. As a general matter, when service is by the U.S. Marshals Office, it is the affidavit which proves service. Rule 4(L)(1) & (3) and pursuant to its website. Moreover, the District Court nor the Marshal's Office moved to amend the process, because the service was valid. Since Rule 12(b)(6) was raised this confirms that service was sufficient and proper. At this stage, Rule 55 (a) and (b) applies. Default should be entered by the clerk or by the court. Therefore, this Court should make a 'Summary Order' to that effect not inconsistent with the above Rules. Junior v. City of New York 85 A.D.2d 683 (N.Y. App. Div. 1981)

REASONS FOR GRANTING THE WRIT

- A. To avoid erroneous deprivations of the right travel on the highway using a 'Personal Use Vehicle', should make a bright line between the 'Motor Vehicle' which the police have a 'special duty' to enforce and 'Personal Use Vehicles' which they may enforce if the constitution allows, meaning there must be a crime involved.

In Whren v. United States, this Court adopted a set of prophylactic measures to protect a suspect's Fourth Amendment rights to be free from unreasonable seizure

This case presents this Court with an opportunity to clarify the Whren case to only include 'Motor Vehicles' and to leave 'Personal Use vehicles' alone.

CONCLUSION

For the foregoing reasons, Mr. Noel respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals.

DATED this 17th day of June, 2021.



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