

No. _____

21 - 6436

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Korey Stewart

(Your Name)

PETITIONER FILED

NOV 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Second Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Korey Stewart

(Your Name)

F.C.I Ray Brook Box 900

(Address)

Ray Brook, New York 12977

(City, State, Zip Code)

N/A

(Phone Number)

Questions Presented

- 1.) The first question presented is whether a reasonable trained law enforcement officer could have concluded that the evidence available to the agents at the time they arrested me constituted probable cause to believe that I had committed the crime of conspiracy to distribute narcotics?
- 2.) Does the constitution impose constraints on federal agent's power to postpone the filing of formal charges to suit their own convenience?
- 3.) What type of restraints on a person's liberty must be imposed to trigger an arrestee's rights to a prompt judicial determination of probable cause, Speedy Trial, speedy presentment and Due Process?
- 4.) Did the district court and court of appeals err in denying my motion to suppress when I was arrested without a warrant on August 27th, 2015, where the arrest was lacking in probable cause and the arresting agents possessed insufficient, unreliable and vague information that I had engaged or was engaging in criminal activity at the time they arrested me.
- 5.) Did the district court and court of appeals err in denying my motion to suppress and/or dismiss the indictment as a result of the prolonged delay between my arrest in 2015 and my presentment in court in 2018 on a complaint, a period of almost 31 months, which was the

product of a pretextual arrest and an abusive and
vidative disregard of my rights under Federal Rules
of Criminal Procedure 48(b), ~~5(a)~~ Speedy Trial Act and
Federal Rules of Criminal Procedure 5(b) and 5(b)?

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List of Parties

All parties appear in the caption of the case on the cover page.

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- United States v. Stewart No: 2:18-cr-30-1, United States District court of Vermont, Judgment entered May 26, 2020.
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In The
Supreme Court of the United States
Petition For Writ of Certiorari

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Opinions Below

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported at 2021 U.S. App. Lexis 12758.

The opinion of the United States district court appears at Appendix B to the petition and is reported at 2019 U.S. Dist. Lexis 201453.

The opinion of the United States district court appears at Appendix C to the petition and is ~~to~~ not reported or published.

Jurisdiction

The date on which the United States Court of Appeals decided my case was April 27th, 2021.

A timely petition for rehearing was denied by the United States Court of Appeals on July 6th, 2021 and a copy of the docket ~~sheet~~ sheet reflecting that date is at Appendix D.

Statement of the case

I, Petitioner, Korey Stewart appealed a criminal judgement that was entered against me May 26, 2020. On April 27, 2021 the Second Circuit Court of Appeals affirmed the conviction. I requested a rehearing which was denied on July 6th, 2021.

I entered a conditional plea to an Information charging a narcotics distribution conspiracy and a money laundering conspiracy on December 6th, 2019, pursuant to an agreement with ^{the} government and with the acquiescence of the district court. I was sentenced on May 22, 2020 to a term of imprisonment of 110 months on each count to run concurrently, as well as concurrent terms of 3 years and 4 years of supervised release.

My case stretched for nearly five years, from August 27, 2015, when I was first arrested and taken into custody by Vermont DEA until I was sentenced on May 22, 2020. During that time, several motions to suppress were filed on my behalf, both by my counsel and pro se, all of which were denied by the district court. However I was able to preserve the right to appeal certain of those denials by

the terms of my conditional plea. I contend that the district court erred in denying my motions and the court of appeals erred by affirming the district court's decision.

I was first charged in district court of Vermont on March 9, 2018. I was initially arrested by Vermont DEA on August 27, 2015 in the parking lot of the apartment complex of an alleged drug dealer and cooperating witness by the name of Stephanie Banfield in Essex Junction, Vermont. I was also detained on September 22nd, 2016, as a result of a traffic stop on I-93 in the town of Hooksett, New Hampshire. On both occasions I was released and not brought before the court, even though I was held in custody for a number of hours during which time I was strip searched, fingerprinted, photographed, and had my property seized after being released pending further investigation. Ultimately, on March 15th, 2018, I was brought before the district court in Maine on the above described complaint. I was ordered to be removed to the district court in Vermont where the complaint had been filed.

I was thereafter indicted. I was arraigned in the district court on April 2nd, 2018 on a

single count indictment charging me and others with conspiracy to distribute controlled substances, I pled not guilty and my detention continued. Three superseding indictments followed in which additional defendants were named, an assertion of a sentencing enhancement under 21 USC §851 was added, and an additional accusation of conspiracy to commit money laundering was charged, in which I pled not guilty to.

Motions filed on my behalf focused on my prior encounters with law enforcement. I moved for suppression of evidence seized as a result of my warrantless arrest in Essex Junction, Vermont on August 27, 2015th, contending that my arrest was unconstitutional and lacked probable cause and that any statement I provided as well as physical evidence seized as a result of the illegal arrest therefore had to be suppressed. Following an evidentiary hearing on December 11th, 2018, the district court entered an opinion and order dated February 8th, 2019, denying my motion in its entirety. The opinion was preserved for appellate review by my conditional plea.

Another motion was filed on my behalf

on May 3rd, 2019, which focused on the September 22nd, 2016 traffic stop on I-93 in New Hampshire. I contended that the traffic stop had been undertaken without reasonable suspicion or probable cause and therefore violated my Fourth Amendment rights. After an evidentiary hearing and supplemental briefing, the court issued an opinion and order dated September 4th, 2019, denying my motion to suppress. This opinion is not preserved by the conditional plea terms.

The final set of motions filed by me was submitted September 18th, 2019. Those motions were filed pro se and sought various relief, specifically suppression of evidence as a result of violations of Federal Rule of Criminal Procedure 5(a) and 5(b) in connection with my August 27th, 2015 arrest; suppression of identification evidence based on an impermissibly suggestive photo identification of me; and dismissal of the third superseding indictment based on a violation of Federal Rule of Criminal Procedure 48(b) and the Speedy Trial Act. My motions were denied in an opinion and order dated November 20th, 2019. My motion for reconsideration was denied as well. The court's opinion and order of

November 20th, 2019, was preserved for appellate review by the conditional plea.

The August 27, 2015 Arrest

On August 27, 2015, the DEA was conducting an interdiction detail involving a Known heroin user Cody Sargent in Chittenden County, Vermont. At a gas station in Colchester, Vermont the agents observed Sargent enter the automobile of a woman soon to be identified as Stephanie Banfield and purchase drugs from her. When the agents approached Banfield, she admitted she was a heroin user but falsely denied selling heroin to Sargent and claimed the currency she possessed came in part from her father. A quantity of suspected heroin was recovered by the agents from Banfield and she was placed under arrest.

The DEA agents continued to interview Banfield, and she ultimately told the agents that she was a distributor of heroin and that her supplier was an individual named "T", whom she believed was from N.Y. She described T as a thin black male, with no tattoos and no facial hair. She also added that "T" had a white Volvo automobile with

out-of-state license plates and a missing front plate. Banfield also said that "T" works for a ~~guy~~ black guy from New York named "SKIP". She stated that "T" also was working with a female named "Amber" that she deposited drug proceeds in the account of. The DEA asked Banfield for a further description of T, but all she could offer was a remarkably offensive statement that he was "black, tall, skinny, they all look the same." She stated that she had last seen "T" the day before and she expected that he would come to her residence to collect drug proceeds from her. Banfield did not provide any additional details as to height or weight or age or facial hair or tattoos to describe "SKIP" (me) and did not identify the kind of car T drove, nor did she state when she had seen me last or when she expected to see me. The agent had not heard of "SKIP" before.

During her interview, Banfield admitted to having drugs and drug proceeds she claimed were due to be given to "T" at her apartment, and she provided written consent for agents to search her apartment.

The DEA then sent a search team to

Banfield's apartment located in an apartment complex in Essex Junction, Vermont to conduct a search based on her information and consent. There the agents seized a quantity of crack cocaine, an additional \$2323 from a wallet in Banfield's bedroom, and other evidence indicating drug activity.

As the search concluded, a white volvo approached the apartment complex and was seen by an agent stationed for surveillance. The car had a rear plate from Florida and was missing a front plate. It parked facing Banfield's apartment about 100 feet away.

A second car, a Nissan Maxima, arrived a few minutes after the Volvo arrived and parked in the same fashion as the Volvo with about two car widths in between the two cars. When the agents were informed of the car's presence, they approached both vehicles with guns drawn, demanding the occupants out of the vehicles. I was pulled from the Nissan Maxima, thrown to the ground and handcuffed immediately. I was subjected to a canine sniff and then lifted from the ground. The agents asked me if I had identification and I told him it was in my

wallet in my pocket and he retrieved it.

The ID was fictitious but the agents didn't know that until after I was released.

Amber, "T", and I were arrested for conspiracy and was transported to a local police station for processing. After the arrest \$3,336 was recovered from the Maxima along with cellphones, a bank deposit receipt and other physical evidence but no narcotics. I was held in custody for about 2 hours during which time I was strip searched, fingerprinted, and photographed. I was also interviewed but when I requested counsel the interview was terminated.

Banfield was shown a single photo of me which she identified as "SKIP". I was released without any of my property being returned to me. No complaint was filed against me by the agents, nor was I presented before a magistrate judge or any judicial officer of any kind. I did not become the subject of criminal court proceedings until the complaint on March 9th, 2018 although I was arrested based off of alleged probable cause by federal agents on August 27th, 2015.

Reasons for Granting the Petition

The court should grant certiorari on each of my issues because the decisions by the district court and court of appeals conflicts with court's precedent and with decisions in other circuits as well as the second circuit. Also some of the issues I raised are rare and never been addressed by the Supreme Court with these relevant facts.

First the government's prosecution of me rested on an illegal foundation from it's inception on August 27, 2015 when I was arrested based on less than probable cause. Then the abuse of power and abuse of the arrest process continued when I wasn't promptly presented to a magistrate judge or state or local judicial officer as required after a warrantless arrest and seizure of property. I wasn't given the opportunity to have a prompt judicial determination of probable cause before or after being deprived of liberty when my property was taken from me and later was used against me to obtain warrants and convict me. My Due Process rights were violated when I was charged 31 months after

the initial arrest on August 27th, 2015. The DEA tainted my case by playing the role of judge, jury, and prosecutor. There was no legal reason to arrest me and if the arrest was legal, the agents had no reason or authority to release me without authorization from the Assistant United States Attorney and/or a judge or magistrate. That is the distinguishing facts between my case and the cases that the lower court ~~rely~~ rely on to justify the actions of the arresting agents.

I. Lack of probable cause

A valid arrest requires probable cause, United States v. Delossantos, 536 F.3d 155, 158 (2nd Cir 2008), citing Devenpeck v. Alford 543 U.S. 146, 152 (2004); United States v. Watson 423 U.S. 411, 417 (1976). To constitute probable cause, the arresting officer must have "knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime." The standard for probable cause is objective, not subjective, and depends on the court's analysis of the events leading up to the arrest.

Whren v. United States, 517 U.S. 806 (1996); Maryland v. Pringle, 540 U.S. 366, 371 (2003), where the arrest is lacking in probable cause, it is illegal, and any items seized will be held admissible, including any statement or confession made by the defendant, Haupp v. Texas, 538 U.S. 626 (2003). A defendant's right to insist on probable cause, and move to suppress evidence where it is lacking, derives from the guarantee of the Fourth Amendment that protects "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." A lawful arrest authorizes a search of the person arrested. (Virginia v. Moore, 128 S. Ct. 1598 (2008)); United States v. Diaz, 854 F.3d 197 (2nd Cir. 2017), cert. denied 138 S. Ct. 981 (2018). However, where the arrest is illegal because it is lacking in probable cause, and there is no consent by the person arrested or prior judicial authorization, even evidence generated at booking such as fingerprints or photographs is inadmissible. (Hayes v. Florida, 470 U.S. 811 (1985). The search of a car without a warrant requires a valid arrest and custody of the defendant. (United States v. Powell, 451 F.3d 862 (D.C. Cir 2006), cert. denied 128 S. Ct. 646 (2007).

Evidence derived from an illegal search must also be suppressed as "fruit of the poisonous tree", (United States v. Wong Sun, 371 U.S. 471 (1963))

Upon these grounds, all of the evidence seized from me and all of the evidence derived from it should have been suppressed. My arrest was without probable cause, and therefore lacked validity under Fourth Amendment principles and case law.

The district court concluded that the detention of me met constitutional standards, relying principally on the decision in Michigan v. Summers, 452 U.S. 692 (1981), which approved the detention of an occupant on the premises during a search warrant execution. The holding in Summers, according to the court, was not confined to the place to be searched but extended to its "immediate vicinity". The court found that the search in the present case was a consent search rather than pursuant to a warrant, but the same Summers justification of officer safety, orderly completion of the search and preventing flight still applied. It further found that detention pursuant to Summers did not require suspicion of criminal activity or probable cause. Under the

circumstances, detention of me was held proper by the district court as was the brandishing of weapons, the use of handcuffs and the demand for identification.

The court also determined that probable cause existed for the agents to arrest me soon as I pulled in to the parking lot.

It relied on the fact that, prior to the arrest, "two vehicles arrived at the apartment complex that Banfield lived in, close temporal and physical proximity," one of which (presumably the Volvo driven by "T") matched Banfield's description of "T's car. Both cars parked in similar fashion (which was only one of two ways to park) and the occupants did not exit the vehicles, and Banfield stated she expected her source of supply [presumably "T"] to visit her apartment to collect drug proceeds. Based on these facts, the court concluded that it was reasonable for the agents to proceed as if the occupants of both vehicles, not just the Volvo, were engaged in drug-related activity.

There is nothing criminal or suspicious about my arrival to a multi building apartment complex two minutes after a vehicle that was suspected of drug activity.

The District court and Court of Appeals
erred in finding the arrest of me on
August 27, 2015 was supported by probable cause
By any reasonable view of the facts
of this case, I was arrested by the
DEA agents at the time I was pulled from
the Maxima at gun point and placed on the
ground and handcuffed, in which the district
court found as well. At that time the agents
didn't have probable cause or even reasonable
suspicion to arrest me or the driver of the
Maxima. The Maxima was not the vehicle of
interest and the agents testified to not even
being able to see inside of the Maxima
when they approached. I could of been a
resident of the complex or delivering pizza.
There was no reasonable reason to believe
that I would arrive or if there was reason
to believe I would arrive, there was no
reason to believe I would be a passenger
in the Maxima. The agents used the fruits
of that unlawful arrest to establish probable
cause over three years later for the arrest.
They also used the fruits of the arrest and
detention to form a basis for my indictment.
This was far more than a "detention" of
a kind described by the Supreme Court and

relied on by the district court in Michigan v. Summers, 452 U.S. 692 (1981). Rather, it was a full blown-arrest of me, the legality of which depended on the existence of probable cause at the time the agents took me into custody. Michigan v. Summers states that "formal arrests or seizures resembling formal arrests must be supported by probable cause." Clearly the seizure of me on August 27, 2015 had all the attributes of a formal arrest but was lacking in probable cause. At the time of my arrest the agents didn't know who I was or how I looked. The Supreme Court case of United States v. Watson, 423 U.S. 411 S. Ct. 820 (1976) states "facts within arresting officer's knowledge establish probable cause."

The facts within the arresting officer's knowledge at the time of my arrest was as follows:

(1) Stephanie Banfield was selling narcotics on behalf of a guy named "T" who is skinny, tall, black, without any facial hair or tattoos;

(2) "T" may come by Banfield's apartment to pick up drug proceeds, he drives a white Volvo with out of state plates. It also is missing a license plate in the front; (3) "T" works for a guy named "SKIP" which is a black

guy from New York; (4) Banfield was instructed by "T" to deposit drug proceeds in the bank account of a person named "Amber".

When the facts and knowledge possessed by the agents are reduced to it's essence, it's clear that I was arrested on less than probable cause. Probable cause requires law enforcement to possess knowledge or reliable information that a person to be arrested has committed or is committing a crime. United States v. Delossantos, 536 F.3d.

155, 158 (2d Cir 2008), and the information must particularized to that individual. (quoting Ybarra v. Illinois 444 U.S. 85, 91 (1979)). There was no information given that was particularized to me. Mere proximity, without more, is not enough.

The reliance on Michigan v. Summers is inapplicable for the same reasons it was misplaced in the Supreme Court case of United States v. Bailey, U.S. 133 S.Ct. 1031 (2013). The Supreme Court reasoned that detaining an individual outside the immediate vicinity of the place to be searched does not serve any of the law enforcement interests enumerated in Summers.

I was not in the "immediate vicinity" of Banfield's apartment, the search was being

conducted inside of a second floor apartment. Mean while I was in the vehicle in the parking lot over 100 feet away from the building and even further away from her apartment. The agents didn't have any evidence to possibly secure from me or the vehicle because they didn't who I was or who was in the vehicle, I didn't have any reason to flee because I didn't know any police was there until it was too late. Also, a consensual search does not carry the same authority as a search pursuant to a warrant that's issued by a neutral detached magistrate. The holding in *United States v. Bailey* U.S. 133 S. Ct. 1031 (2013) should apply in my case.

Ironically, the district court's opinion likely would have reached a correct conclusion had it relied on it's own decision in *United States v. Livingston*, 191 F. Supp. 3d 334 (D. VT 2016). In that case, also involving Vermont DEA and a narcotics trafficking investigation, the defendant, an alleged drug courier, challenged her warrantless arrest as lacking in probable cause. The government's proof in *Livingston* was based primarily upon information supplied by an informant, and the "core question" was whether that information was reliable.

United States v. Wagner, 989 F.2d 69, 72 (2d Cir 1993).

Unlike the Livingston informant, Banfield had no demonstrated history of reliability and could not be established as a generally reliable and accurate source of information. In fact, there was no proof that she was even known to the DEA agents before August 27, 2015. Some of her information was corroborated by the agents' search of her apartment, but drug related items were found that she had not disclosed such as heroin and cocaine. She also began her multiple statements to the agents with false denials of drug activity. She described "T's" car, the white Volvo, accurately but made no mention of a Nissan Maxima.

Even if Ms. Banfield had not given the agents reason to question her veracity and her basis of knowledge with respect to me (SKIP), the description she provided of me as a "black male from New York" was far too vague to justify the immediate arrest of me when I pulled into the parking lot of her multi-unit apartment building.

As the district court of Vermont made clear in Livingston, while law enforcement may be justified in immediately arresting a suspect where he

matches an "exact and precise" description provided by a reliable informant, "generalized descriptions" are insufficient to meet the probable cause standard. (quoting *Draper v. United States*, 358 U.S. 307, 309 (1959)). Vermont district and other courts have repeatedly found descriptions that were substantially more specific than the one provided by Ms. Banfield to be insufficient to create probable cause for an immediate arrest. *United States v. Grant*, 682 F.3d 827, 833 (9th Cir. 2012) (holding that "although [the defendant] may have fit the description of the suspect as 'male, black, dark complexion, thin build,' that description was much too general by itself to support probable cause"); *United States v. Short*, 570 F.2d 1051, 1054 (D.C. Cir. 1978) (holding that although the defendant was found approximately two blocks from the crime scene with the same haircut and similar clothing to the crime suspect, "the description... fit many young people in that area of Washington," and the officers thus lacked probable cause to arrest the defendant.) If these more detailed descriptions were insufficient to meet the probable cause standard, then the description of "SKIP" as a "black male from New York" was, without question, fatally deficient.

Furthermore, even assuming that the agents had probable cause to arrest "T" because he was driving a white Volvo with an out-of-state license plate, the fact that me and Amber arrived in the parking lot of a multi-unit apartment building at around the same time as "T" did not justify the agent's decision to extract me and Amber from another and immediately arrest us. The Supreme court has made clear that, "where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person," *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) (emphasis supplied). "This requirement cannot be undercut or avoided simply by pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be". *Id.* Accordingly, "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search or arrest that person". (citing *Sibron v. New York*, 293 U.S. 40, 62-53 (1968)).

In arresting me and the driver of Maxima because we happened to be in the same parking lot as another vehicle that matched the description

provided by Ms. Banfield, the agents violated the principle so clearly enunciated in Ybarra: that law enforcement may not rely on "guilt by association" to justify the arrest of a person for whom they lack particularized probable cause.

The delay and procedural manipulation resulted in prejudice and tainted my conviction

From the time of my arrest on August 27, 2015, until I was presented in court on a complaint on March 15, 2018, nearly thirty-one months passed for the government to get its case against me underway. During that time, things changed. The government gained evidence by abusing the arrest process, witnesses died who would have testified favorably on my behalf, and charges became more serious as drug weights accumulated as more transactions occurred. The deliberate stalling and use of illegally obtained evidence in my case resulted in prejudice to me and poorly served the interests of justice, and should have resulted in the suppression of evidence or, more appropriately, the dismissal of the indictment against me.

Violation of Rule 48(b) of Federal Rule of Criminal Procedure

I moved the district court for a dismissal of the indictment pursuant to a violation of rule 48(b) and the Due process clause. That rule permits the court to grant such a dismissal "if unnecessary delay occurs in: (1) presenting a charge to a grand jury; (2) filing an information against a defendant; or (3) bringing a defendant to trial." My motion was denied and the court of appeals affirmed, although the court did not and could not conclude that unnecessary delay had not occurred. Instead the court relied on additional requirements that it engrafted on the rule but which are not within the Rule's language.

The district court first noted that a defendant, and me in particular, is adequately protected from "overly stale criminal charges by the applicable statute of limitations, citing *United States v. Ewell*, 383 U.S. 116, 122 (1966) (holding "the only lapse of time prior to arrest" that will activate a presumption of prejudice "is that established by the statute of limitations.") But I had been arrested and released, unlike the defendant in *Ewell*, and my motion was not based on time prior to my arrest on August 27, 2015, the prosecution of me, for purposes of my motion, began on the day of my August 27, 2015 arrest.

The district court and court of appeals relied on

case authorities holding that the government is "under no duty to file charges as soon as probable cause exists" or "as soon as the requisite proof has been developed against one participant on one charge". (United States v. Louasco, 431 U.S. 783 (1977)). But that is not the position I took in my motion. I did not state that the government was required to commence its prosecution of me once probable cause existed. The government began the prosecution of me once I was arrested based on probable cause and they unnecessarily delayed indicting me, charging me and bringing me to trial as stated in Rule 48(b) and the Sixth Amendment. The Supreme Court in the case of United States v. Marion, 404 U.S. 307, 319 (1971) held that the rule to be limited to "post-arrest situations" and this is a "post arrest" situation.

The court of Appeals acknowledged that a due process violation was present but claimed I didn't raise that argument, although I did.

The delay in my case was a substantial delay and an unnecessary delay. On August 27, 2015 when the arrest based on probable cause was made, the government had all the evidence and participants needed to forego prosecution. Ms. Banfield mentioned her alleged supplier, her supplier's alleged boss, and the

alleged money launderer, so to delay prosecution wasn't necessary. The government also had a drug seizure at that time. In the Supreme Court case of *United States v. Nickens*, 116 U.S. App. DC 338 F.2d 808, 813 (1963) the court stated "if during delay, the government's case is already in it's hands, the balance of advantage shifts more in favor of the government, the more the government lags." "Under our constitutional system such a tactic is not available to police and prosecutors". Also in the Supreme Court case of *Beavers v. Haubert*, 198 U.S. 77, 87 (1905), the court stated, "the government will often delay arresting an individual whom it's case is complete if the agent is still obtaining evidence against other individuals. In such a situation, the government has made a deliberate choice for a supposed advantage." The fact remains that the advantage arises out of a deliberate and avoidable choice on the part of law enforcement authorities, which is clearly the case at hand.

Inordinate delay between arrest, indictment and trial may impair a defendant's ability to present an effective defense. (*Klopfer v. North Carolina*, 386 U.S. 213, 221-226 (1967); *Smith v. Hooey*, 393 U.S. 374 (1969)).

In the case of *United States v. Marion* 404 U.S. 307 (1971), the appellant was not arrested, charged, or

otherwise subjected to formal restraint prior to indictment, which are the distinguishing facts from my case, which should in return have an opposite result because I was in fact arrested prior to indictment, the fact that I was released after several hours doesn't diminish the delay or prejudice. In the case of *Baker v. McCollan*, 443 U.S. 137, 99 S. Ct. 2689 (1979), the Supreme court indicated that the time period relevant to determining whether this right had been violated began upon indictment, upon another method other formal charge, or upon arrest pursuant to probable cause. With that being established by the highest court known to man, my right to a speedy trial was triggered when I arrested based on probable cause on August 27, 2015. The fact that law enforcement over stepped their boundaries by releasing me several hours later does not wave that right and the district court or Court of appeals did not cite any authoritative case law that cites that my right is waved if I'm released by the arresting officers. The Supervisory power of the Supreme court should address this issue of circumvention and abuse of the power to make warrant-less arrest by law enforcement.

Violation of Speedy Trial Act (18 USC § 3161(b))

A related issue I raised concerned my rights under the Speedy Trial Act (18 USC 3161(b)). The "catch and release" maneuver by law enforcement deprived me of my right under the Speedy Trial Act. In relevant part, 18 USC § 3161(b) provides: Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.

I was arrested on August 27, 2015 for conspiracy to distribute narcotics. (See police report) I was indicted for conspiracy to distribute narcotics on March 22nd, 2018 stemming from the August 27th, 2015 arrest. It's clear that the August arrest was in connection to the March 2018 indictment which is well over 30 days, more like thirty-one months.

The government whole heartedly relied on the case of United States v. Bloom, 865 F.2d 485, 490 (2nd Cir. 1989) to deny my motion to dismiss the indictment and the court of appeals agreed and affirmed. The government argues that, since I was released from the police station after about 2 hours and being that the

arresting agents didn't file charges or ^a complaint, my right to a speedy trial or any other rights was not triggered. The August arrest formed the basis for the indictment and everything seized that day was used to get a countless number of warrants and ultimately led to my indictment and conviction.

The defendant in Bloom was not arrested based on probable cause nor subjected to substantial restrictions for purposes of answering criminal charges, where as, I was arrested and substantial restraints was imposed on me.

The Bloom case does not mandate the denial of my motion simply because law enforcement released me after two hours without complying with 5(a) and 5(b) of Federal Rules of Criminal procedure. The second circuit case of United States v. Digregorio, 795 F.Supp. 630, 638 (S.D.N.Y. 1992) proved that. In that case the defendant was arrested and released after several hours like I was. The defendant moved to dismiss the indictment for a violation of the Speedy Trial Act and for a violation of Rule 5(a). The government relied on Bloom to deny the motion, the court disagreed with the government's position on the Speedy Trial issue and decided

an evidentiary hearing was needed to figure out the relevant facts pertaining to the arrest. The same inquiry should of applied to my case. It's been determined that procedural stagnation on behalf of arresting officers does not waive a defendant's right to a speedy trial. It is the restraint on individual liberty, not merely procedural stagnation following the filing of formal charges which congress intended to protect against when it passed the act. (quoting United States v. Osunde, 638 F. Supp. 171, 174 (N.D. Cal 1986).

Bloom states that "an arrest that is not for the purpose of answering to criminal charges does not trigger the Speedy Trial Act" because there was no "concurrent action" depriving the defendant of liberty for the purpose of facing charges. Well, I was deprived of liberty when I was pulled from the vehicle and transported to the police station then I was released without my phone or money being returned to me. That was definitely a deprivation of liberty, and those items were seized to be used against me on the charges I was eventually indicted for. Not to mention, an arrest for any other reason other than to face charges is a pretextual arrest or an arrest for investigative purposes

which is both illegal. This issue and similar issue needs to be addressed and commented on by the Supreme Court. Law enforcement officers have a new found power if the decision to charge a person or not is solely up to them. Federal Rules of Criminal Procedure is in place to limit these type of stealthy tactics by federal agents.

Violation of Rules 5(a) and 5(b) of Federal Rules of Criminal Procedure

Rule 5(a)(1)(a) of Federal Rules of Criminal Procedure states: "a person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise." The exceptions listed at Rule 5(a)(2) do not have application to my case, nor does Rule 5(a)(3). Rule 5(b) does fall within the facts of my case and provides that "if a defendant is arrested without a warrant, a complaint meeting Rule 4(a)'s requirement of probable cause must be promptly filed in the district where the offense was allegedly committed."

When I was arrested on August 27th, 2015, I wasn't presented to any magistrate or judicial officer of any kind and a complaint wasn't promptly filed

as Rule 5(b) demands.

The district court found that Rule 5 was "not violated in the course of my arrest because it did not obligate law enforcement to charge an arrestee with a criminal offense", I'm not sure where the government read that in the text of the Rule. The rule is clear and the exceptions to the Rule is clear. The arresting officers were suppose to file a complaint establishing probable cause and leave the rest up to the prosecution to decide. Once an arrest is made, officers have no authority to release the arrested person, but must take him before a magistrate who determines what shall presently be done with him. (quoting *United States v. Gilliam*, 87 F.Supp. 808 (D.Tenn 1950).

There a three cases I found where federal agents pulled the same "catch and release" tactic and the court found Rule 5(a) was violated. (*United States v. DiGregorio*, 795 F.Supp. 630 (S.D.N.Y 1992); *United States v. Roberts*, 928 F.Supp. 910 (W.D.Mo. 1996); *United States v. Davis*, 21 F.Supp. 2d 979 (8th Cir 1998).

The Supreme Court recognized that a law enforcement officer's desire to conduct further investigation does not constitute a reasonable basis for delay under 18 USC 3501(c). See *United States v. Cortez* 556 U.S. 303, 129 S.Ct. 1558 (2009). which is exactly the

case here. The Supreme Court has also recognized that Fourth Amendment rights may be implicated when officers circumvent the judicial determination of probable cause requirement by not charging arrestees, quoting *United States v. Alvarez-Sanchez* 511 U.S. 350 L.Ed. 2d 319, 14 S. Ct. 1599 (1994); *County of Riverside v. McLaughlin*, 500 U.S. 44, 56, 114 L.Ed 2d. 49, 111 S. Ct. 1661 (1991), which is exactly the case here as well. The arrest of me on August 27th, 2015 amounts to an abusive and pretextual investigatory device, and was clearly illegal. (*Adams v. United States* 399 F.2d 574 (DC. Cir 1968))

The authorities used the time that I was in their custody to gather evidence to be used against me, to process me including stripping me naked, taking my photograph and obtaining my fingerprints to connect me to future crimes, which they did. They also used everything seized that day to apply for warrants. Once all of the evidentiary value was squeezed out of the arrest they released me "pending further investigation" without returning anything that was seized. I suffered all of the detriment that the arrest process could inflict upon a person but received none of the protection that Rule 5(a) and 5(b) affords an arrestee. The case of *United States v. Jones*, 676 F.2d 327, 331 (8th Cir 1982)

doesn't apply because his release was authorized by the Assistant United States Attorney, mine wasn't. Mere stopping may constitute arrest if officer's purpose is to ~~arrest~~ assert custody over an individual in connection with crime; officers asking person to accompany him to police station or similar place may alone be sufficient to invoke protection of Rule 5(a), quoting: Fuller v. United States, 407 F.2d 1199, 132 U.S. App. D.C. 264 (D.C. Cir 1967) cert. denied, 393 U.S. 1120, 89 S. Ct. 999, 22 L. Ed 2d 125 (1969). ~~the~~ With that being said, the second circuit erred when they decided Rule 5(a) didn't apply to the August 27th, 2015 arrest.

Conclusion

The petition for a writ of certiorari should be granted because this is a rare case and circumstances with limited case law with similar facts. The Supreme court needs to be ~~heard from the~~ on the legality of the behavior and conduct of law enforcement.

Respectfully submitted,
Corey Atwood

November 10th, 2021