

No.: _____

SUPREME COURT OF THE UNITED STATES

REGINALD E. BLANDFORD,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to
The New York State Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

This Court has held that under the Fourth Amendment police officers may not extend a traffic stop to conduct a drug sniff of a vehicle's exterior without having reasonable suspicion of criminal activity. This case poses the question of whether a law enforcement officer in New York may extend a traffic stop to conduct a drug sniff of a vehicle's exterior without having reasonable suspicion of criminal activity, using a lesser standard of suspicion, founded suspicion, in violation of Fourth Amendment and in direct conflict with this Court's Precedent.

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IV. Petition for Writ of Certiorari

Reginald Blandford respectfully petitions the Court for a writ of certiorari to review the opinion and judgment entered by the State of New York Court of Appeals on October 14, 2021.

V. Opinions Below

The decision of the State of New York Court of Appeals affirming Blandford's conviction can be found at 37 N.Y.3d 1062 (October 14, 2021). A copy of the State of New York Court of Appeals Slip Opinion is appended to this Petition. (App. A1). The State of New York Supreme Court's Appellate Division Memorandum and Order can be found at 190 A.D.3d 1033 (January 7, 2021), and a copy of that opinion is also contained in the Appendix. (App. A2). The State of New York Supreme Court's Order denying the Petitioner's Motion to Suppress is unpublished, but a transcribed copy of its Findings and Order and Blandford's Motion to Dismiss and Omnibus Motion are attached to this petition. (App. A3)

VI. Jurisdiction

The judgment of the State of New York Court of Appeals was entered on October 14, 2021. (App. A1). Blandford invokes this Court's jurisdiction under 28 U.S.C. §1257(a), having timely filed this petition for a writ of certiorari within ninety days of the State of New York Court of Appeal's Judgment.

The New York State Court of Appeals has decided an important Federal Constitutional question in a way that conflicts with relevant decisions of this Court and the Fourth Amendment.

VII. Constitutional Provisions Involved

Reginald Blandford's Petition for a Writ of Certiorari involves the Fourth Amendment's right to be free from unreasonable searches and seizures:

U.S. Const. Amend. 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.

VIII. Statement of the Case

In *Rodriguez v United States*, 575 U.S. 348 (2015), this Court abrogated the “de minimis” extension of a traffic to resolve a split in the circuits and among state courts and held that an officer must have reasonable suspicion to extend a traffic stop to conduct a canine sniff of the outside of a vehicle. This Court reasoned that although the use of a canine unit may cause only a small extension of the stop, it is not fairly characterized as connected to the mission of a traffic stop and is therefore unlawful absent reasonable suspicion of criminal activity. *Rodriguez v.*

United States, 575 U.S. 34, 355 (2015). Once a police officer engages in conduct outside of and beyond the ordinary and routine inquiries incident to a traffic stop, police officers must have reasonable suspicion of criminal activity to use a canine unit. *Id.*

“Beyond determining whether to issue a traffic ticket, an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop.’” *Rodriguez* at 355 *citing Illinois v. Caballes*, 543 U.S. 405, 408 (2005). These inquiries include checking the driver’s license, determining whether there is an outstanding warrant against the driver, and inspecting the automobile’s registration and insurance documents. “These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Rodriguez* at 355 *citing Delaware v Prouse*, 44 U.S. 648, 658-660 (1979). However, using a dog sniff is not an ordinary incident to a traffic stop because the dog sniff is aimed at detecting evidence of a crime unconnected to roadway safety. *Rodriguez* at 355.

In sum, ordinary inquiries incident to the traffic stop and issuance of a traffic ticket are allowed because these inquiries are closely connected to roadway safety. By contrast, “[l]acking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer’s traffic mission.” *Rodriguez* at 356. Therefore, a police officer may not extend a traffic stop to conduct a canine sniff of a vehicle, unless the officer has reasonable suspicion of criminal activity. *Id.*

The question presented in this case is whether a law enforcement officer may extend a traffic stop to conduct a canine sniff of the vehicle under a state law standard that is lower than the U.S.

Constitutional standard; specifically, without having reasonable suspicion in violation of this Court's precedent.

1. The Traffic Stop

On November 16, 2017 Blandford stopped and parked at the On-The-Way convenience store located in Elmira, New York. He was there to pick-up a friend who lives in the neighborhood to give him a ride home.

According to police the On-The-Way was a known "trouble spot" for drug sales. Blandford went into the convenience store. As he left the store, Blandford made physical contact with at least one individual of a group of individuals standing outside his neighborhood store, giving handshakes, hugging, high fives and talking. (App. A3-35). Police saw no money or drugs exchanged in the convenience store parking lot. (App. A3-23)

After picking-up the passenger, Blandford was stopped by Trooper Shive for an inadequate license plate lamp at approximately 5:10 pm. (App. A3-50).

After the stop, Trooper Shive made several inquiries related to the traffic stop such as requesting proof of registration, insurance card, and identification. (App. A3-38). After verifying the registration and ownership of the vehicle, Shive started questioning Blandford about what he had been doing at the convenience store. Shive asked about the reason why Blandford why he had

been reaching in the back seat right before the stop. Blandford explained that he was reaching for his wallet. The police also checked the passenger's identification. (App. A3-38).

After more questions about Blandford's actions, Shive ordered Blandford out of the vehicle and then escorted him to the rear of the vehicle. Officer continued to question Blandford and determined that he had some affiliation with the passenger, Gerdeep Singh, whose family owns the convenience store. (App. A3-39).

Shive then verified that Blandford was giving him a ride home from the store. At this point Trooper Shive had not issued a traffic citation or conducted any other activity connected to the mission of the traffic stop. Instead, Shive continued to question Blandford about why he was at the convenience store. Shive did not believe that he saw Blandford come out of the store with any purchases and so he continued to ask Blandford about why he was at the store and did not believe that he purchased any item at the store. (App. A3-39).

Before finishing up with the inadequate license plate light ticket, Shive asked for consent to search the vehicle. Blandford consented to a search of the passenger compartment, the area he was questioned about. Trooper Shive then went into the vehicle through an open door and looked through the passenger compartment. Trooper Shive found nothing in plain sight except a seat, the floorboard, some personal effects and Blandford's wallet in the back part of the vehicle. Trooper Shive neither saw Blandford doing anything in particular, nor in a particular manner that was particularly suspicious. (App. A3-58).

Having found nothing, and without any particularized or articulable facts of criminal activity Trooper Shive deployed a canine unit and discovered what later turned out to be 1.6 pounds of marijuana in a backpack within the trunk. (App. A3-45).

Although the drug dog sat in the patrol car the whole time, in particular at the commencement of the traffic stop, Trooper Shive waited to employ it until he believed he had a founded suspicion (New York's constitutional automobile standard) to use the canine to search the exterior of the vehicle.

The record clearly indicates that officer abandoned the mission of the traffic stop to issue a ticket for an inadequate license plate light. The traffic ticket was never issued to Blandford before he was ordered out of the vehicle, nor before the officer searched the passenger compartment of the vehicle, nor before the drug dog was used to conduct a search without having reasonable suspicion of criminal activity. Nevertheless, Blandford was arrested, taken into custody and processed after the marijuana was discovered.

2. The State of New York Chemung County Court Proceeding

The People of the State of New York charged Blandford with criminal possession of marijuana in the second degree in violation of Penal Law § 221.25, a felony. Blandford filed a motion to suppress the drug evidence, arguing that the police officers lacked neither founded suspicion under New York law, nor reasonable suspicion under Federal Constitutional law of criminal activity to abandon the mission of the traffic stop and use a canine unit to search the exterior of

the vehicle. After hearing the evidence, Judge Christopher Baker denied the motion. (Entire suppression Decision is contained in Appendix “A3” from pages A3-78-89).

Judge Baker applying New York law found that Blandford’s innocuous hand shaking and hugging at the convenience store, an area known for crime, coupled with his furtive movements at the time of the traffic stop were sufficient to give rise to a level two stop under *People v. De Bour*, 40 N.Y.2d 210, 223 (1976) (holding that police have a right to interfere with a citizen to the extent necessary to gain explanatory information short of having reasonable suspicion). Judge Baker stated that under New York law a canine search is permissible where the police have level two founded suspicion that criminality is afoot. (App. A3-86).

At no time did Judge Baker find that Trooper Shive had reasonable suspicion to use a canine outside of the officer’s mission of the traffic stop to issue a traffic citation. Shive even testified at the suppression hearing that he did not see Blandford doing anything in particular, nor in a particular manner that was particularly suspicious. (App. A3-58).

Blandford, in his Motion to Dismiss, asserted that the federal standard, reasonable suspicion, under *Rodriguez v. United States*, 575 U.S. 348 (2015) should apply to these facts because beyond the initial traffic stop, it was clear that the purpose of the stop was to investigate criminal activity other than the purpose of the initial traffic stop for an inadequate license plate light. (App. A3-92, 100).

The argument was presented in Blandford's Motion to Suppress. (App. A3-91, 98-100). At the conclusion of the suppression hearing, Blandford rested on his papers. (App. A3-78). However, Judge Baker, the Suppression Judge, and every subsequent court in New York chose to ignore the argument in favor of New York precedent, which allows a police officer to extend a traffic stop with a lesser standard of suspicion, founded suspicion, rather than the reasonable suspicion of criminal activity standard required under the Fourth Amendment and this Court's precedent.

3. The State of New York Supreme Court Appellate Division's Third Department's Proceeding

The Appellate Division affirmed the Chemung County Court's decision. The Appellate Division concluded that the officer had properly extended the traffic stop beyond its initial justification to conduct the canine search because the officer had with a founded suspicion that criminal activity was afoot. *People v. Blandford*, 190 A.D.3d 1033 (3d Dept. 2021).

The Appellate Division stated that “[t]he detention of a motorist after a traffic stop ‘must be reasonably related in scope, including its length, to the circumstances which justified the detention in the first instance, unless circumstances arise which furnish the police with a founded suspicion that criminal activity is afoot.’” *People v. Blandford*, 190 A.D.3d 1033, 1036 *citing People v. Banks*, 148 A.D.3d 1359, 1360 (3d Dept. 2017) [internal quotation marks and citations omitted].

The Appellate Division further stated “[s]uch a founded suspicion permits the extension of the stop beyond its original purpose and “authorizes a request for consent to search and [a] canine

search of the vehicle's exterior" *Id. citing People v. Boler*, 106 A.D.3d 1119, 1122 (3d Dept. 2013); *see People v. Devone*, 15 N.Y.3d 106, 113–114 (2010).

The federal Constitutional argument applying the reasonable suspicion standard was next presented in Blandford's Appellant's Brief to the State of New York Supreme Court's Appellate Division. Blandford again asserted that the federal standard, reasonable suspicion, under *Rodriguez v. United States*, 575 U.S. 348 (2015) should apply to these facts because beyond the initial traffic stop, it was clear that the purpose of the stop was to investigate criminal activity other than the purpose of the initial traffic stop for an inadequate license plate light. (App. A2-34).

The State of New York Supreme Court's Appellate Division also chose to ignore the argument in favor of New York precedent, which allows a police officer to extend a traffic stop with a lesser standard of suspicion, founded suspicion, rather than the reasonable suspicion of criminal activity standard required under the Fourth Amendment and this Court's precedent.

4. The Decision of the New York State Court of Appeals

The New York Court of Appeals affirmed the Appellate Division's holding and stated that "[a] canine sniff search of a vehicle's exterior is lawful if police possess a founded suspicion that criminal activity is afoot. *see People v. Devone*, 15 N.Y.3d 106, 110 (2010)."

The New York Court of Appeals in *People v. Devone* stated that “the more demanding ‘reasonable suspicion’ standard applies to a canine sniff outside the door of one’s residence.” 15 N.Y.3d 106, 110-112 (2010) *citing People v. Dunn*, 77 N.Y.2d 19, 25 (1990), *cert. denied* 501 U.S. 1219 (1991). “It follows that law enforcement need only meet a lesser standard before conducting a canine sniff of the exterior of a lawfully stopped vehicle. *Devone* at 112. Thus, application of the founded suspicion standard is appropriate where the police officer extends a traffic stop to conduct a canine search of a vehicle’s exterior.

The Fourth Amendment allows a police officer to extend a traffic stop to conduct a canine sniff of a vehicle, so long as the officer has reasonable suspicion of criminal activity. Under New York law a police officer may extend a traffic stop to conduct a canine sniff of the vehicle without having reasonable suspicion. The officer need only a founded suspicion of criminal activity to extend a traffic stop. *Devone*, 15 N.Y.3d at 110.

Founded suspicion is a lower standard of suspicion than reasonable suspicion. Founded suspicion does not require the officer to have any particularized or articulable facts of criminal activity and is unconstitutional as a matter of Federal Constitutional law.

Blandford again asserted that the federal standard, reasonable suspicion, under *Rodriguez v. United States*, 575 U.S. 348 (2015) should apply to these facts because beyond the initial traffic stop, it was clear that the purpose of the stop was to investigate criminal activity other than the purpose of the initial traffic stop for an inadequate license plate light. (App. A1-36-40).

The argument was next presented in Blandford's Appellant's Letter Brief and Appendix to the State of New York Court of Appeals. (App. A1). The State of New York Court of Appeals also chose to ignore the argument in favor of New York precedent, which allows a police officer to extend a traffic stop with a lesser standard of suspicion, rather than the reasonable suspicion of criminal activity standard required under the Fourth Amendment and this Court's precedent.

The New York Court of Appeals Decision of October 14, 2021 is significant because Justice Wilson, in his lengthy dissent, asserted that the Appellate Division that the record supported the fact that Trooper Shive extended the traffic stop beyond its initial justification in violation of *Rodriguez* and the Fourth Amendment. *People v Blandford*, 37 N.Y.3d 1062 (2021), *citing People v. Blandford*, 190 A.D.2d 1033, 1036-1037 (3d Dept. 2021) (Appellate Division decision below).

That same dissent is also significant because it supports Petitioner Blandford's position that *People v. Devone*, 15 N.Y.3d 106 is unconstitutional because *Devove* allows police officers in New York to extend a traffic stop using a lesser standard of suspicion, founded suspicion, without the officer having reasonable suspicion, the higher standard required to extend a traffic stop under *Rodriguez v. United States*, 575 U.S. 348, *Blandford*, 37 N.Y.3d. at 1072.

Accordingly, based on the above, Reginald Blandford seeks a writ of certiorari from the New York Court of Appeals decision.

IX. Reasons for Granting the Writ

The Fourth Amendment only allows a police officer to extend a traffic stop to conduct a canine sniff of a vehicle, so long as the officer has reasonable suspicion of criminal activity. *Rodriguez v. United States*, 575 U.S. 348.

New York law allows a police officer to extend a traffic stop to conduct a canine sniff of the vehicle, so long as the officer has a founded suspicion of criminal activity. *People v Devone*, 15 N.Y.3d 106. Founded suspicion is a “lesser” standard of suspicion than reasonable suspicion. *Id.* Founded suspicion does not require the officer to have any particularized or articulable facts of criminal activity. *Id.*

I. New York law allowing police officers to extend a traffic stop to conduct canine a sniff of a vehicle without having reasonable suspicion that a crime is or has been committed stands in conflict with this Court’s precedent and violates the Fourth Amendment.

New York law allows law enforcement officers to extend a traffic stop and to conduct canine sniffs where law enforcement officers have only a founded suspicion of criminal activity, not reasonable suspicion, in violation of the Fourth Amendment and this Court’s precedent.

This lower standard of suspicion was first announced in *People v. De Bour*, 40 N.Y.2d 210, 222-223 (1976) when the New York Court of Appeals established a four-level test to determine the legality of encounters between police officers and individuals under New York state law. These four levels of suspicion (Levels I-IV) or the right inquiry initially applied to in person or street

encounters, but was later extended to automobile stops. *People v. Devone*, 15 N.Y.3d 106, 110-112 (2010).

The Level II founded suspicion that criminality was afoot allows an officer to engage in the greater degree of intrusion based on some indicia of criminality short of the officer possessing reasonable suspicion needed to effect a seizure. See *People v Hollman*, 79 N.Y.2d 181, 182-184 (1992) discussing *People v De Bour* 40 N.Y.2d 210 (1992). The Level III standard of suspicion requires an officer to have reasonable suspicion that a particular person is, or is about to be involved in criminal activity and is similar to that level of suspicion required under federal constitutional law. *People v. De Bour* 40 N.Y.2d 210, 222-223 (1992); see *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (reasonable suspicion must be more than just a hunch, stating that the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion).

Again, Under *People v. Devone*, New York allows law enforcement officers to extend a traffic stop to conduct a canine search of the vehicle's exterior if the officer has a founded suspicion of criminal activity, Level II suspicion, which is a lower level of suspicion than required under the reasonable suspicion standard. *People v. Devone*, 15 N.Y.3d 106, 112-113 (2010).

In sum, the New York Courts allow police officers to extend a traffic stop beyond its original purpose to conduct a canine sniff of the vehicle's exterior where the officer possesses only a founded suspicion of criminal activity. An officer need only have some present non-specific indicia of criminality based on observable conduct, a standard which provides far less protection

to individuals than does the reasonable suspicion standard and violates the Fourth Amendment’s mandate that individuals be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.

A police officer’s ability to extend a traffic stop beyond its original purpose possessing only a founded suspicion of criminal activity in New York stands in direct conflict with *Rodriguez v. United States*, 575 U.S. 348 (2015). Thus New York’s law allowing a police officer to extend a traffic stop possessing only a lesser standard of suspicion, founded suspicion, rather than the reasonable suspicion standard required under the Fourth Amendment and this Court’s precedent.

According to this Court, an officer must have an articulable and reasonable suspicion of criminal activity unrelated to the traffic stop to extend the stop to conduct a canine sniff of the vehicle. with *Rodriguez v. United States*, 575 U.S. 348 (2015). Under the reasonable suspicion standard, a police officer must possess a particularized and objective basis for suspecting the particular person is or is about to be engaged in criminal activity. *See e.g., Brown v. Texas*, 443 U.S. 47, 51 (1979).

However, in this case Police Officer, Shive even testified at the suppression hearing that he did not see Blandford doing anything in particular, nor in a particular manner that was particularly suspicious. (App. A3-58).

Shive, operating under New York, believed that he could extend the traffic Blandford so long as he had a founded suspicion of criminal activity, a “lesser” standard of suspicion than reasonable

suspicion. Operating under a founded suspicion standard based on stale information and a hunch, Shive extended the traffic stop to conduct a canine sniff of the vehicle's exterior without having a reasonable suspicion of criminal activity in direct conflict with this Court's precedent and in violation of the Fourth Amendment.

Every court in New York chose to ignore *Rodriguez v. United States*, 575 U.S. 348 (2015), which requires a police officer to have reasonable suspicion of criminal activity to extend a traffic stop in favor of New York precedent, which allows a police officer to extend a traffic stop with a lesser standard of suspicion, founded suspicion.

Thus, Blandford respectfully requests that this Court to apply Rodriguez and hold New York law unconstitutional because in New York an officer should not be allowed to extend a traffic stop to conduct a canine sniff of a vehicle's exterior without having reasonable suspicion.

II. The question of whether the Fourth Amendment tolerates using a lower founded suspicion standard to extend a traffic stop to conduct a canine sniff, rather than reasonable suspicion, is a question of exceptional importance.

In sum, there is a fundamental difference between extending a traffic stop to conduct a canine sniff of a vehicle's exterior using a lesser founded suspicion standard rather than a reasonable suspicion standard.

The question presented in this petition is important to both law enforcement officers and to the citizens they detain.

The Fourth Amendment demands that individuals be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Uniform application of law is required to satisfy these requirements.

Yet, the citizens of New York are not provided such protection to be secure from unreasonable law enforcement, earaches and seizures, nor from unreasonable intrusions upon their liberty interests because a police officer in New York extend a traffic stop beyond its original purpose to conduct a canine sniff of the vehicle's exterior where the officer possesses only a founded suspicion of criminal activity

Based on extensive research, since this Court decided *Rodriguez v. United States*, 575 U.S. 348 (2015), state courts in all other jurisdictions apply the reasonable suspicion standard of criminal activity to allow police officers to extend a traffic stop beyond its original purpose to conduct a canine sniff of the vehicle's exterior. *See e.g., Commonwealth v. Smith*, 542 S.W.3d 276 (2018) (finding that the canine sniff search improperly extended the traffic stop where the officer lacked reasonable suspicion of criminal activity beyond the reason of the traffic stop); *State v. Morgan*, 452 P.3d 434 (2019) (finding that the police officer lacked reasonable suspicion to extend the duration of the traffic stop to conduct a canine sniff); and *State v. Jacobsen*, 464 P.3d 318 (Idaho Ct. App. 2020) (finding that even a officer had a 43-second delay while the officer had a casual conversation with the passenger in order to facilitate a drug dog sniff was and unreasonable extension of the traffic stop when unsupported by reasonable suspicion).

Only in New York can a police officer extend a traffic stop beyond its original purpose to conduct a canine sniff of the vehicle's exterior where the officer possesses only a founded suspicion of criminal activity and not a reasonable suspicion.

Application of this founded suspicion standard in New York allows law enforcement officers to operate outside the constitutional limits of the Fourth Amendment and is unconstitutional as a matter of law.

This Court must grant this Petition to find New York law unconstitutional as it pertains to extending a traffic stop beyond its original purpose to conduct a canine sniff of the vehicle's exterior where the officer possesses only a founded suspicion of criminal activity and not a reasonable suspicion. Since this Court decided. *Rodriguez v. United States*, 575 U.S. 348 (2015). New York's law became unconstitutional on its face.

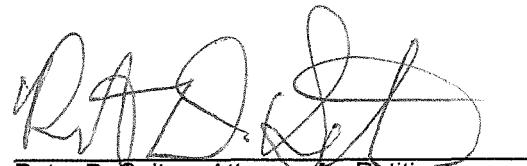
Even before *Rodriguez* was decided commentators argued that under *Devone*, New York citizens were actually less protected from unreasonable searches and seizures by the government. *Brady Begeal, People v. Devone: New York Offers Drivers More Protection from Warrantless Canine-Sniff Searches ... Or Does It?* 4 Alb. Gov't L. Rev. 827 (2011) (concluding that *Devone* will encourage rather than inhibit the use of canine sniff-searching by police officers on the roadway because it will be easier for police officers to establish the requisite "founded suspicion" of any "criminality", rather than requiring police officers to possess the more stringent reasonable suspicion standard of criminal activity).

The question presented in Blandford's case is also significant because of its potential ramifications in other areas of Fourth Amendment jurisprudence. To stem any further erosion of the Fourth Amendment's safeguards, this Court should grant certiorari.

X. Conclusion

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari.

Respectfully Submitted



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