No.

In the Supreme Court of the United States

ARTHUR MILES,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

Heather Clark
Clark Law Office
P.O. Box 879
Waterford, Connecticut 06385
Tel.: (203) 772-7939
Email: heather@hclarklaw.com

Counsel of Record

QUESTION PRESENTED

I. Can facts observed or learned by a police officer after he decided to initiate a traffic stop, which traffic stop was delayed a short distance only based on weather-related road conditions and a narrow shoulder, satisfy the reasonable suspicion requirement under the Fourth Amendment to the United States Constitution?

TABLE OF CONTENTS

Page

APPENDIX

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTORY PROVISIONS

RULES

OPINIONS BELOW

The opinion of the United States Court of Appeals for First Circuit is United States v. Miles, 18 F.4th 76 (1st Cir. 2021). The judgment of the United States Court of Appeals for the First Circuit is reprinted at Pet. App. 1a.[1] The judgment of the United States District Court for the District of New Hampshire, Docket No.2:18-cr-00144-GZS-1, is reprinted at Add. 1.

JURISDICTION

The First Circuit entered judgment on November 17, 2021. See Pet. App. 1a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Amendment IV to the United States Constitution protects: "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."

STATEMENT OF THE CASE

A grand jury indicted Arthur Miles for possession with intent to distribute a controlled substance analogue, commonly known as cyclopropyl fentanyl, in violation of 21 U.S.C. § 841(a)(1) and § 841(b)(1)(C). See A 10-11. Miles filed a motion to suppress, which he amended (Doc. 49). The amended motion argued first that the

[1] The appendix filed with this petition is cited as "Pet. App.;" the addendum to the petitioner's brief filed in the First Circuit is cited as "Add;" the documents filed in the district court are cited as "Doc;" and the transcript in the district court is cited as "Tr."

initial stop of Miles's vehicle violated the Fourth Amendment because not based on a reasonable suspicion. See A 12-28. The government opposed Miles's motion, see A 48-63, and an evidentiary hearing was held on July 2, 2019, see A 66-112.

Maine State Police Sergeant Thomas Pappas testified that he was working on the southbound Maine Turnpike on December 12, 2017 around 10:30 p.m.; remaining patches of sleet and ice on the Turnpike during a wintry mix led to a reduced maximum speed of 45 miles per hour. See Tr. 7.2.19 at 9. Pappas noticed a gray 2005 Infiniti driving in the left lane "in the 30-mile-an-hour range" around mile marker 50. He observed and followed Miles's vehicle driving in the left lane for two miles, with no other vehicles traveling nearby. See Id. at 10-11.

Around mile marker 49 (after approximately one mile), Pappas testified that he observed a sign on the median, posted to the left of southbound traffic, indicating that vehicles must "[k]eep right except to pass." See Tr. 7.2.19 at 12. Importantly, Pappas admitted that he intended to stop Miles's vehicle "even though he hadn't reached that sign;" Pappas testified that he "had a preplanned event to stop that vehicle at 48 southbound, that wide shoulder." See Id. at 41, 49. Moreover, Pappas testified that even if Miles "pulled back over into the right lane," Pappas would have stopped Miles's vehicle for "[t]he same thing," i.e., traveling in the left lane without passing. See Id. at 78.

Also import, Pappas admitted that he could not enforce the reduced 45 mile per hour maximum speed caution because it is "a recommendation," not an actionable offense. See Tr. 7.2.19 at 39-40.

Once stopped, Pappas approached the passenger's side of the vehicle; the passenger rolled down her window and Pappas observed a bottle of Moet in the back seat and smelled burning marijuana. See Tr. 7.2.19 at 18-19. Miles explained that he was driving because the passenger was fatigued, but he did not have a license. See Id. at 19-20. Miles further explained that he was coming from a restaurant in Lewiston, Maine, a town Pappas knew related to illegal drug trafficking, at which time Pappas ordered Miles to exit the vehicle. See Id. at 20, 69.

Outside the vehicle, Pappas questioned Miles, who answered that his license was suspended; he was on probation in Massachusetts; he was not allowed to leave Massachusetts; he spent eight and a half to eleven years in prison on a drug conviction; and he "beat a murder charge." See Tr. 7.2.19 at 21. Pappas asked Miles "if he had anything on him," to which Miles responded no, but said: "[y]ou could search me." See Id. at 21-22. When searching Miles, Pappas noticed "significant amounts on money in [Miles's] pocket." See Id. at 22.

Pappas returned to his vehicle to obtain Miles's criminal history and license status and to attempt to contact Miles's probation officer; Miles remained outside the state vehicle at the "passenger's side window." See Tr. 7.2.19 at 23. On further questioning, Miles said that he was visiting Derek, "Jah" and "Bless" in Lewiston; Pappas knew of Derek Weeks and Jah Bless, the street name of Jaquan Miller, in the Lewiston area, "both of which [were] investigated for drug trafficking and gun trafficking." See Id. at 24.

Pappas instructed Miles to put "his hands on the hood" of the state vehicle

while he spoke with another sergeant who interviewed the passenger of the vehicle; that sergeant reported discrepancies with Miles's answers. See Tr. 7.2.19 at 26. Pappas also learned from dispatch that Miles was on bail in Maine, with a standard condition to not possess or use alcohol or illegal drugs, subject to search of his person, vehicle, or residence on articulable suspicion. See Id. at 29, 31, 33; A 65. After learning the bail condition, Pappas "exited [his] vehicle and handcuffed [Miles]," at which time Pappas first smelled alcohol on Miles's breath. See Tr. 7.2.19 at 34-36.

Pappas testified that he searched the vehicle subject to Miles's bail condition basing the claimed articulable suspicion on Miles's suspended license and cash, the odor of marijuana in the vehicle, the alcohol in the back seat and the "trip story." See Tr. 7.2.19 at 36. As a result of the search, Pappas recovered what he "believed initially to be 30 milligram oxycodone tablets."[2] See Id.

Next, Trooper Matthew Williams testified that on December 12, 2017 at approximately 7:30 p.m. he was parked in a closed toll lane facing southbound observing the northbound traffic and randomly running license plates. See Tr. 7.2.19 at 86-87. At that time, he ran the license on the Infiniti and learned that it was registered to Indigo Wilkerson. See Id. at 88. On hearing the Wilkerson name over dispatch later that evening, Williams contacted Pappas to report that he "had run that vehicle several hours earlier" when traveling northbound through the York toll. See Id. at 89-90.

---

[2] Testing confirmed that they were counterfeit oxycodone tablets containing cyclopropyl fentanyl, a chemical analogue of fentanyl. See A 114.

The district court denied Miles's amended motion to suppress. See Add. 1-9. Miles then entered a written conditional guilty plea, "reserv[ing] the right…to have an appellate court review this [district] court's decisions dated July 17, 2019 on my Amended Motion to Suppress." See A 116. The district court sentenced Miles to 35 months in prison, three years of supervised release and a $100 special assessment. See Add. 11-12, 15.

Miles timely appealed; the First Circuit affirmed the denial of the amended motion to suppress. The First Circuit concluded that Miles's "argument runs head-long into Supreme Court precedent holding that the Fourth Amendment calculus depends on objective reasonableness, not subjective intent," citing Whren v. United States, 517 U.S. 506 (1996). Miles, 18 F.4th at 77.

This petition for a writ of certiorari is filed timely.

REASON FOR GRANTING THE WRIT

I. THE IMPORTANT QUESTION OF WHAT CONSTITUTES THE INCEPTION OF A TRAFFIC STOP UNDER THE FOURTH AMENDMENT.

The First Circuit has decided an important question of federal law in a way that conflicts with the relevant decisions of this Court in United States v. Arvizu, 534 U.S. 266 (2002) and Kansas v. Glover, 140 S.Ct. 1183 (2020), for which this Court should grant certiorari to define more clearly what constitutes the "inception" of a traffic stop. See S.Ct. R., Rule 10(c).

Well-established: "The Fourth Amendment prohibits 'unreasonable searches and seizures' by the Government, and its protections extend to brief investigative

stops of persons or vehicles that fall short of traditional arrest." See United States v. Arvizu, 534 U.S. 266, 273 (2002) (citing Terry v. Ohio, 392 U.S. 1, 9 (1968)). To satisfy the Fourth Amendment, "the officer's action" must be "supported by reasonable suspicion to believe that criminal activity may be afoot." See Id. (citing Terry, 392 U.S. at 30 and United States v. Sokolow, 490 U.S. 1, 7 (1989)) (internal quotes omitted).

Although this Court has "recognized that the concept of reasonable suspicion is somewhat abstract," "[w]hen discussing how reviewing courts should make reasonable-suspicion determinations, [this Court] [has] said repeatedly that they must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." See Arvizu, 534 U.S. at 273; see also Kansas v. Glover, 140 S.Ct. 1183, 1187 (2020).

Put differently, reasonable suspicion "must be determined case by case, and that determination entails broad-based consideration of all the attendant circumstances." See United States v. Chhien, 266 F.3d 1, 6 (1st Cir. 2001); see also United States v. Arnott, 758 F.3d 40, 44 (1st Cir. 2014) ("[t]he totality of the circumstances includes, but is not limited to, 'various objective observations, information from police reports…and consideration of the modes or patterns of operation of certain kinds of lawbreakers'").

Of course, "[r]easonable suspicion, as the term implies, requires more than a naked hunch that a particular person may be engaged in some illegal activity." See

Chhien, 266 F.3d at 6; see also Glover, 140 S.Ct. at 1187-88; Arvizu, 534 U.S. at 274. And importantly, "in the context of a traffic stop," the reviewing court "must ask whether the officer's actions were justified at their inception." See Chhien, 266 F.3d at 6 (emphasis added); Arnott, 758 F.3d at 43 (the "police are not allowed to make an initial stop unless they have a reasonable, articulable suspicion about an individual's involvement in some criminal activity") (emphasis added).

Key to the analysis here is the term "inception." In Glover, this Court relied on those objective facts observed by the officer "[b]efore initiating the stop," to wit, the officer observed an individual operating a truck, the registered owner of which had a revoked license. "The fact that the registered owner," learned after initiating the stop, was "not always the driver of the vehicle[did] not negate the reasonableness of [the officer's] inference." Glover, 140 S.Ct. at 1188.

In Arvizu, this Court rejected the Ninth Circuit's approach to the "totality of the circumstances," which addressed, in isolation, each objective fact observed by the officer before initiating the stop, to wit, the officer observed a minivan ("a type of automobile…smugglers used"), which "slowed dramatically" as a law enforcement vehicle approached; the "driver appeared stiff and his posture [was] very rigid; the children, who waved at the officer "on and off for about four or five minutes," were seated with their knees "unusually high;" and the minivan was registered to an address "in an aera notorious for alien and narcotics smuggling." Arvizu, 269-71, 276-77.

Contrary to the First Circuit opinion below, Whren v. United States, 517 U.S.

806 (1996), did not address the "inception" of a traffic stop differently. In Whren, the officer observed "a dark…truck with temporary license plates and youth occupants waiting at a stop sign," and the "driver looking down into the lap of the passenger;" after "more than 20 seconds," the "police car executed a U-turn…to head back toward the truck," which "suddenly" and "without signaling…sped off at an 'unreasonable' speed." Whren, 517 U.S. at 808.

After stopping the truck, the officer further observed "two large plastic bags of what appeared to be crack cocaine in…Whren's hands." Whren, 517 U.S. at 808. Of import, this Court did not rely on the officer's observations after initiating the stop. This Court held affirmed that "the officers had probable cause to believe that petitioners had violated the traffic code. That rendered stop reasonable under the Fourth Amendment, the evidence thereby discovered," to wit, the crack cocaine, was "admissible." Id. at 819.

Applied here, the totality of the circumstances observed by Pappas when he initiated the traffic stop did not constitute a reasonable, articulable suspicion of criminal activity.

Pappas noticed a gray 2005 Infiniti driving in the left lane "in the 30-mile-an-hour range" in poor driving conditions, which included patches of sleet and ice and a posted reduced maximum speed of 45 miles per hour, around mile marker 50 on the Maine Turnpike. Pappas followed the Infiniti in the left lane and quickly closed the distance because he (Pappas) was driving at 45 miles per hour. See Tr. 7.2.19 at 9-11. Of course, as Pappas admitted, he could not enforce the reduced 45 mile per

hour maximum speed caution because "it's just a recommendation," not an actionable offense. See Tr. 7.2.19 at 39-40.

After about one mile, around mile marker 49, Pappas observed a sign on the median, posted to the left of the southbound traffic, indicating that vehicles must "[k]eep right except to pass." See Tr. 7.2.19 at 12. Important, Pappas admitted that he intended to stop Miles's vehicle "even though he hadn't reached that sign." See Id. at 41, 49 ("preplanned event to stop that vehicle at 48 southbound). Moreover, Pappas testified that even if Miles "pulled back over into the right lane," he would have stopped Miles's vehicle for "[t]he same thing," i.e., traveling in the left lane without passing. See Id. at 78.

Before initiating the traffic stop, the only other facts known to Pappas were that Trooper Williams ran the Infiniti's license plate earlier that date and learned that the vehicle was registered to Indigo Wilkerson in Dorchester, Massachusetts. See Tr. 7.2.19 at 45. Pappas participated in the 2013 arrest of Wilkerson's brother, located on the same street, who "subsequently was convicted of very serious drug offenses and sent to jail for a long time." See Id. at 45-46.

Pappas continued to follow directly behind Miles's vehicle in the left lane and initiated a traffic stop at mile marker 48, as planned, amidst the sleet and rain. See Tr. 7.2.19 at 13.

Under the undisputed facts, Pappas improperly based the decision to initiate a traffic stop on a mere hunch, because the vehicle was registered to the convicted and incarcerated Wilkerson's sister. See United States v. Camacho, 661 F.3d 718,

726-27 (1st Cir. 2011) (police "lacked an objectively reasonable, particularized basis for suspecting Camacho of criminal activity," i.e., a gang related street brawl, when Camacho was not recognized by officers at the scene, was not affiliated with a gang, did not fit the description of any men in the street brawl, and was walking normally on a residential sidewalk).

The gray Infiniti had not yet passed the "[k]eep right except to pass" sign when Pappas decided to stop the vehicle. Even as Miles passed that sign, he was followed by a fast approaching (at a significant 15 mile per hour increased speed) marked state law enforcement vehicle in poor driving conditions, including patches of sleet and ice. See e.g. Tr. 7.2.2019 at 12, 41,45-46, 49, 78. Further, the traffic stop was not delayed because of any observed conduct by the Infiniti, but rather, because of the poor driving conditions and the smaller shoulder between mile markers 49 and 48. See Id. at 13. The totality of these circumstances do not establish a reasonable suspicion of criminal activity.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,
Arthur Miles
By Counsel

/s/ Heather Clark

Heather Clark
Clark Law Office
P.O. Box 879
Waterford, Connecticut 06385
Tel.: (203) 772-7939
Email: heather@hclarklaw.com

Dated: February 14, 2022