

JAN 02 2022

OFFICE OF THE CLERK

NO. 21-7508

IN THE
SUPREME COURT OF THE UNITED STATES

DRAVEN GREENE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

DRAVEN GREENE

Fed. Reg. No. 22852-032

Federal Correctional Institution

P.O. Box 1009

Welch, WV 24801

Phone No. N/A

Pro se petitioner

ORIGINAL

QUESTIONS PRESENTED

(1) Does the Community caretaker exception to the Fourth Amendment of the U.S. Constitution extend to occupied vehicles in non-emergency situations?

(2) Should evidence obtained from community caretaker searches be excluded as criminal evidence to stem abuses to the Fourth Amendment of the U.S. Constitution?

LIST OF THE PARTIES

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

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Appendix A. Decision of the Sixth Cir. Court of Appeals denying suppression of evidence in U.S. v Draven Greene, No. 20-6313, from July 29, 2021.

Appendix B. Decision of U.S. District Court for the Eastern District of Kentucky, Lexington Division, under the Hon. Judge Gregory F. Van Tatenhove, denying suppression in U.S. v Draven Greene, case no. 5:19-cr-00153-GFVT-MAS, from May 27, 2020.

Appendix C. Report and Recommendation of U.S. District Court Magistrate Stinnett, of the Eastern District of Kentucky, Lexington Division, recommending denial in suppression in U.S. v Draven Greene, case no. 5:19-cr-00153-GFVT-MAS, from April 20, 2020.

Appendix D. Decision of Sixth Cir. Court of Appeals denying an en banc hearing in U.S. v Green, No. 20-6313, on October 5, 2021.

TABLE OF AUTHORITIES

Cases

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STATUTES AND RULES

U.S. Constitution, Amendment IV

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR THE WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below:

OPINIONS BELOW

[X] For cases from Federal Courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

[X] reported at 2021 U.S. App. LEXIS 22671

The opinion of the United States District Court appears at Appendix B to the petition and is

[X] reported at 2020 U.S. Dist. LEXIS 91788

The Report and Recommendation of the U.S. District Court Magistrate appears at Appendix C to the petition and is

[X] reported at 2020 U.S. Dist. LEXIS 92467

The denial of the Sixth Circuit Appellate Court hearing en banc appears at Appendix D to the petition and is not currently posted to Lexis Nexis but was issued on October 5, 2021

2 JURISDICTION

[X] For cases from federal courts

The date on which the United States Court of Appeals decided the Petitioner's case was July 29, 2021

[] No petition for rehearing was timely filed for this case

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 5, 2021, and a copy of the order denying rehearing appears at Appendix D.

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

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Constitutional and Statutory Provisions Involved

1) Fourth Amendment, United States Constitution

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 CASELegal Background -

The petitioner was seated in the drivers seat of his idling vehicle with his girlfriend in the passenger seat. The car was parked in the parking lot of a restaurant, early in the morning. Two police officers approached the vehicle and discovered the couple sleeping inside it. The police banged on the windows of the vehicle, at first awakening the passenger. The officer on the drivers side opened the vehicle without permission of the occupants, followed by the officer on the passenger side. Upon opening the doors of the vehicle, the officers justified the further examination of the vehicle by claiming they smelled marijuana. The search uncovered a hand gun and meth. The petitioner was arrested. Later supplements to the petitioner's police reports included newfound concerns for the petitioner's well-being as the petitioner sought suppression of the search.

The Petitioner sought suppression based on violations of the Fourth Amendment of the U.S. Constitution. Specifically the petitioner argued that the community caretaker exception to the Fourth Amendment that the government was using to defend its search and the fruits thereof was not applicable based on

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the representations of the government. The government stated there were two justifications for this Community caretaker search, 1) The petitioner's well-being; and, 2) the gun officers stated they viewed on the back seat from outside the vehicle. It needs to be noted, the officers stated they saw the gun from outside the vehicle, in the dark, through tinted windows, and on floor boards, something entirely impossible. But taking the officers at their word, they had a dual purpose in searching the vehicle. The problem for the government is that for this search to be valid under the Community caretaker exception to the Fourth Amendment, there can only be one purpose for executing this search, that being the well-being of the petitioner. The search for the gun required the execution of a search warrant.

In denying the petitioner relief, the court relied heavily on *Cady v. Dombrowski*, 93 S.Ct. 2523, 37 L. Ed. 2d 706, 413 U.S. 433 (1973). But *Cady* bears little resemblance to petitioner's. In *Cady*, the case involved an abandoned vehicle that was wrecked and authorities had cause to believe the car contained a handgun, which had to be recovered to protect the community from a would be burglar who could breach the locked trunk and then terrorize the community with this gun. In the petitioner's case, his car was occupied by two people, running, and parked in a parking lot. While the

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Petitioner was asleep, it was not evident he was breaking any laws nor in the throes of a medical emergency. The only commonality with Cady is that both owned cars and guns. Cady held that vehicles are "effects" within the meaning of the Fourth Amendment provision guaranteeing the right of people to be secure in their effects against unreasonable searches.

"Except in certain carefully defined classes of cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant." In the petitioner's case, police never had custody or control of the vehicle, the vehicle was not disabled, and it did not present a safety hazard.

Shortly before the petitioner's case was decided by the Sixth Circuit, the U.S. Supreme Court decided *Caniglia v. Strom*, 141 S. Ct. 1596 (2021). *Caniglia*, which dealt with the Fourth Amendment rights of people in their homes, made observations relevant to the petitioner's case. Specifically, "A recognition of the existence of 'community caretaking' tasks, like rendering aid to motorists in disabled vehicles is NOT an open-ended license to perform them anywhere." The *Caniglia* court also highlighted the Cady Court's contrasts in "treatment of a vehicle under police

control with a search of a car..." and that of a parked car. The Caniglia Court also pointed to *Riley v California*, 573 U.S. 373, 381, 134 S. Ct. 2473, 189 L. Ed 2d 430 (2014), which stated "... the ultimate touchstone of the Fourth Amendment is reasonableness." Is it reasonable to allow evidence obtained from a search where police pulled a person from a running vehicle that was parked in a restaurant parking lot, absent any medical emergency, by labeling it a community caretaker exception to the Fourth Amendment? What does it mean to be secure in your effects? Is it constitutionally sound to allow any evidence seized by authorities acting as caretakers to use emergency life saving measures to gather evidence in contrivance of the Fourth Amendment?

REASONS FOR GRANTING THE PETITION

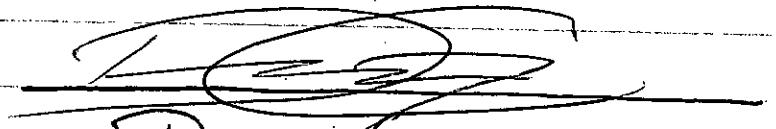
The court should grant certiorari in this case because the abuse of the community caretaker exception to the Fourth Amendment is rampant. This case is illustrative of that. Both police and courts are using community caretaker as an end run around the Fourth Amendment. The community caretaker exception, an invention of the court, is similar to the "doctrine of qualified immunity," and like qualified immunity, is being grossly abused to a point it is rendering the Fourth Amendment almost meaningless. In the petitioner's case, the police feigned concern for the well-being of the petitioner to protect the fruits of their illegal search and the courts accepted their absurd and impossible claims to ensure the petitioner was held accountable. The only way to preserve the Fourth Amendment and still allow police to carry on as community caretakers is to have evidence suppressed when it is seized when police are acting in caretaker roles.

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CONCLUSION

The petition for a writ of certiorari should be granted.

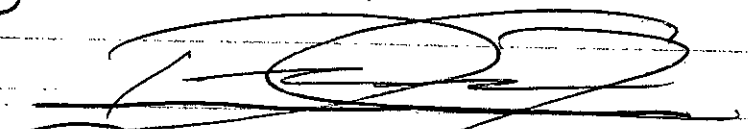
Respectfully submitted,


Draven Greene

Date: March 13, 2022

CERTIFICATE OF SERVICE

I, Draven Greene, certify under penalty of perjury that on this 13 day of March of 2022 I sent a true copy of this motion to the U.S. Supreme Court, Office of the Clerk, 1 First St., NE; Washington D.C. 20543 and a copy to Solicitor General of the United States; Department of Justice; 950 Pennsylvania Ave., NW; Room 5616; Washington, D.C. 20530-0001, via U.S. Mail, postage prepaid, placed in the inmate mail box at FCI McDowell, West Virginia.


Draven Greene