
IN THE
SUPREME COURT OF THE UNITED STATES

JAMES COMBS,
Petitioner,
v.
STATE OF INDIANA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

M. Slaimon Ayoubi
Counsel of Record
1111 E. 54th St., Ste. 111
Indianapolis, Indiana 46220
Tel: 317-702-7591
E-mail: sly@slylaw.com

October 27, 2021

QUESTION PRESENTED

Whether the Fourth Amendment's plain view and/or open view doctrines permit a police officer, uninvited and without a warrant, to enter upon private property, approach a home, and perform an otherwise pre-textual search of a vehicle parked a few feet from the house.

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PETITION FOR WRIT OF CERTIORARI

Petitioner James Combs respectfully petitions for a writ of certiorari to review the judgement of the Supreme Court of Indiana.

OPINIONS BELOW

The opinion of the Supreme Court of Indiana is reported at 20S-CR-616, N.E. 3d (Ind., June 3, 2021). App. 1. The decision of the Court of Appeals of Indiana is reported at Combs v. State, 150 N.E.3d 266 (Ind. Ct. App. 2020). App. 22. The decision of the Superior Court of Boone County, No. 06D02-1702-f3-134, was issued from the bench and is not reported, but is reprinted at App. 48.

JURISDICTION

The Supreme Court of Indiana entered judgment on June 3, 2021. App. 1. This Court has jurisdiction under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution reads:

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

I. Factual history.

On February 11, 2017, Combs was driving his gold van when he swerved to avoid another vehicle and struck an electrical box in Lebanon. App. 23. After the accident, Combs exited his vehicle and took photographs of the damage. *Id.* Witnesses described Combs as “lethargic” and “quiet” at the scene of the accident. *Id.* Witnesses also reported to law enforcement that Combs looked for something under the driver’s seat of the vehicle, was “rummaging around,” and trying to “push things around.” *Id.* at 24. Shortly thereafter, Combs left the scene. *Id.*

Officer James Koontz, a patrol officer with the Lebanon Police Department, responded to a dispatch call regarding the accident and arrived approximately two minutes later. *Id.* Combs was not at the scene when Officer Koontz arrived. Witnesses directed Officer Koontz to a nearby neighborhood, to

which Combs reportedly drove after the accident. Officer Koontz traveled to the neighborhood, where he observed a fluid trail and a damaged van. *Id.*

The van was parked in Combs' driveway and had a flat driver-side front tire; Officer Koontz observed that the fluid trail continued up the driveway to the van. *Id.* Officer Koontz arrived as Combs stepped from the driver's seat of the van. *Id.* Officer Koontz advised Combs to remove his hands from his pockets and asked if Combs had any weapons. *Id.* Combs advised Officer Koontz he had three guns on his person, which Officer Koontz removed. *Id.* Combs also stated that he intended to call the police about the accident. *Id.*

Officer Koontz requested Combs' identification. *Id.* As Combs retrieved his identification from the van, Officer Koontz observed a knife in "the area between the two front seats." *Id.* Officer Koontz asked Combs to step away from the van. *Id.* As Officer Koontz questioned Combs about the accident, witnesses to the accident arrived at Combs' house. *Id.* Officer Koontz asked Combs for permission to search the van; however, Combs

refused, unless Combs could hand Officer Koontz the items in the vehicle. *Id.* at 25.

During the conversation, Officer Koontz observed that Combs' eyes were glassy, Combs had pinpoint pupils, and Combs' speech was slowed. *Id.* Officer Koontz did not detect any odors from Combs' breath; however, Officer Koontz became suspicious that Combs may be under the influence of medication or drugs. *Id.* Accordingly, Officer Koontz proceeded with an investigation for operating while intoxicated. *Id.* Several other officers arrived at the scene, including Lieutenant Rich Mount, with the Lebanon Police Department. *Id.*

Combs failed two of the field sobriety tests; however, a portable breath test was negative for alcohol. *Id.* Officer Koontz asked if Combs took any prescription medication that day, and Combs advised that he took his prescribed Adderall medication. *Id.* Officer Koontz read Combs the Indiana Implied Consent Law, and Combs agreed to submit to a chemical test. *Id.*

At some point after Combs was handcuffed to be transported for the chemical test, but before

Combs was taken to the hospital, Officer Koontz asked Combs if Officer Koontz could look under the front seat of his van. *Id.* Combs initially consented to the officers looking under the front passenger seat of the van. *Id.* The officers looked under the seat and found a black bag. *Id.* Combs, however, told the officers that they could not look inside the bag. *Id.* at 25-26. The officers then ended their search. *Id.* at 26.

As Officer Koontz transported Combs to the hospital for the chemical test, Lieutenant Mount telephoned the prosecutor's office from his vehicle. *Id.* Lieutenant Mount remained with Combs' van to "figure out . . . what [officers] were gonna [sic] do with the [van]." *Id.* The officers learned that the van contained valuable items related to Combs' business. *Id.*

The officers called for the van to be towed, and an inventory search of the van was conducted while the van was still in the driveway. *Id.* The inventory search yielded several personal items, including white pills in a clear bag, and a prescription bottle belonging to Combs. *Id.* The white pills were identified as Alprazolam, Hydrocodone, Oxycodone—

all controlled substances. Some personal items collected from the van were turned over to Combs' wife at the scene. *Id.* Two days later, Combs' van was also returned to his wife. *Id.*

Combs' urine drug screen revealed the presence of amphetamine, A- Hydroxyalprazolam, "which is a metabolite for Xanax," hydrocodone, oxycodone, and T.H.C. *Id.* The blood screen detected the presence of alprazolam and amphetamine. *Id.*

II. Proceedings below.

On February 13, 2017, the State charged Combs with Counts I, II, and III, possession of narcotic drugs, Level 3 felonies; Count IV, possession of a controlled substance, a Level 6 felony; Count V, operating a vehicle while intoxicated endangering a person, a Class A misdemeanor; Count VI, operating a vehicle while intoxicated, a Class C misdemeanor; Count VII, operating a vehicle with a schedule I or II controlled substance or its metabolite in the body, a Class C misdemeanor; Count VIII, leaving the scene of an accident, a Class B misdemeanor; and Count IX, public intoxication, a Class B misdemeanor. *Id.* at 27.

On May 10, 2017, Combs filed a motion to suppress all evidence obtained from the search of Combs' van, which he claimed violated his rights pursuant to the Fourth and Fifth Amendments of the United States Constitution and Article 1, Section 11 of the Indiana Constitution. On July 7, 2017, the trial court held a hearing on Combs' motion to suppress. *Id.*

At the hearing on the motion to suppress, Lieutenant Mount testified that he "was leaning towards towing [the van] as evidence because it was involved in the leaving the scene of a property damage accident," and police department policy allows impoundment when the vehicle is evidence of a crime. *Id.* Lieutenant Mount then testified that officers were "definitely" going to arrest Combs for leaving the scene of a property damage accident after his blood draw at the hospital; therefore, officers began the process of impounding and inventorying the van. *Id.* at 28. When he was asked whether a less intrusive method was available to obtain the needed evidence, Lieutenant Mount testified that this procedure was "just [the department's] policy." *Id.*

In closing arguments at the hearing on the motion to suppress, the State argued that the decision to impound Combs' van was "discretionary." *Id.* On August 9, 2017, the trial court issued an order denying Combs' motion to suppress. *Id.* The trial court found that the officers had probable cause to believe the van was connected to criminal activity, and thus, could seize the van without a warrant. *Id.*

Combs filed a motion to reconsider on August 27, 2018. *Id.* The trial court entered an order again denying Combs' motion to suppress and found as follows:

This Court finds that in this case under consideration, the State did not rely on the automobile exception to enter onto Defendant's property and seize evidence as was prohibited in *Collins v. Virginia*[, __ U.S. __, 138 S. Ct. 1663 (2018)]. The officer first to arrive at Defendant's residence was in fresh pursuit of the Defendant and his arrival at Defendant's residence occurred at the same time the alleged crime was unfolding. These exigent circumstances allowed the officer to

enter onto Defendant's property. Additionally, the officer had probable cause to believe the Defendant had violated I.C. 9-26-1-1.1[] and further, had the authority to arrest the Defendant on his property as a result. The obvious nature of Defendant's van as evidence of Leaving the Scene of an Accident allowed its seizure pursuant to the plain view doctrine... *Id.* at 28-29.

Combs moved to certify the order for interlocutory appeal on September 26, 2018, which the trial court granted on September 28, 2018. *Id.*

The Supreme Court of Indiana denied jurisdiction over Combs' interlocutory appeal. *Id.* at 29.

At Combs' jury trial from May 14 to May 16, 2019, witnesses testified to the foregoing facts. Combs lodged a continuing objection to the evidence recovered from the van. *Id.* At the trial, Lieutenant Mount again testified that law enforcement towed Combs' van as evidence of a crime. *Id.* Lieutenant Mount testified that he did not obtain a warrant to

search the van because obtaining a search warrant was “a pain in the a**.” *Id.*

Combs appealed, arguing, among other things, that the trial court erroneously admitted the pills. App. 4. The Court of Appeals of Indiana found that Combs’ federal constitutional rights were violated. *Id.* It concluded “the towing and impound search ... were merely pretextual means by which officers could search the [van] to find incriminating evidence.” *Id.* Because “Combs admitted that he was going to contact law enforcement regarding the accident ... it [was] not clear why the officers needed the van to solve the crime.” *Id.* The “indices of pretext” meant “the search ... was unreasonable” and “impermissible under the open view and plain view doctrines and the Fourth Amendment.” *Id.* Because the pills should have been suppressed, the panel reversed Combs’ convictions for Counts I, II, II. *Id.* It declined to address his state constitutional argument. *Id.*

The State petitioned for transfer to the Supreme Court of Indiana. *Id.* at 5. The Supreme Court of Indiana concluded 4-1 that the seizure and

search of Combs' van fell under recognized exceptions to the Fourth Amendment's warrant requirement. App.1.

Furthermore, the Dissenting Opinion authored by Justice Goff stated "the touchstone of the Fourth Amendment is reasonableness. App. 21. Justice Goff further stated in his dissent that he would reverse, "Because I believe the seizure of Combs's van was unreasonable, and thus violated his Fourth Amendment rights, I would reverse his convictions for the three counts of possession of a narcotic drug and remand for further proceedings.

Id.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Indiana's decision unnecessarily and unreasonably extends the government's reach into our private lives in violation of the Fourth Amendment of the United States Constitution as clarified in *Collins*.

The issue being whether the open view and/or plain view doctrines are operable to permit a police officer to enter private, residential property

(specifically, the curtilage of the home), and perform a pre-textual search of a vehicle without a warrant.

Certiorari is warranted here to resolve the split of authority and to clarify the proper scope and application of the open view and plain view doctrines consistent with the Fourth Amendment's warrant requirements.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

M. Slaimon Ayoubi
Counsel of Record
1111 E. 54th St., Ste. 111
Indianapolis, Indiana 46220
Tel: 317-702-7591
E-mail: sly@slylaw.com

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