No. __-_____

SUPREME COURT OF THE UNITED STATES

Shaun Farrington,

Petitioner,

Vs.

The United States,

Respondent.

On Petition for a Writ of Certiorari to
the United States Courts of Appeals
for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Elizabeth Araguas
NIDEY ERDAHL MEIER & ARAGUÁS, PLC
425 2nd Street SE, Suite 1000
Cedar Rapids, IA 52401
Tel.: (319) 369-0000
Fax: (319) 369-6972
E-mail: earaguas@eiowalaw.com

Question Presented

1. The circuit courts divide regarding Smith v. Phillips implication of implied bias. This Court should decide whether the Sixth Amendment right to an impartial jury is impacted when circumstances indicate implied bias but the court allows the juror to sit because they proclaimed they can be impartial?
2. The vehicle exception of the Fourth Amendment allows officers to seize and search the contents of a vehicle without a warrant if probable cause exists. This Court needs to decide whether to extend the vehicle exception to allow officers to conduct an additional warrantless search of the contents of a vehicle after the traffic stop is completed and an initial search was completed?

List of Parties And Corporate Disclosure Statement

Shaun Farrington is the Petitioner in this case and was represented in the Court below by Elizabeth Araguas.

The United States of America is the Respondent and was represented in the Court below by AUSA Torrie Schneider.

Related Proceedings

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

United States District Court (S.D. Iowa):

United States v. Farrington, No. 6:20-cr-02018-CJW-1 (April 18, 2021)

United States Court of Appeals (8th Cir.):

United States v. Farrington, No. 21-2974 (Judgment on August 1st, 2022)

Table of Contents

Appendix Contents

Table of Authorities

CASES

In the United States Supreme Court

In the United States Court of Appeals

Constitutional Provisions

Petition for Writ of Certiorari

Petitioner Shaun Farrington prays that a writ of certiorari be granted to review the judgment of the Eighth Circuit Court of Appeals entered on August 1st, 2022.

Opinions Below

The opinion of the Court of Appeals (App. 3a-10a) is reported at 42 F.4th 895.

Jurisdiction

The judgment of the court of appeals was entered on August 01, 2022. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

Constitutional Provisions Involved

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.

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Statement of the Case

Currently pending before this Court is the Petition for Certiorari of Shaun Farrington (Case No. 21-2974), which presents two fundamental questions. The first is whether the Sixth Amendment right to an impartial jury is impacted when circumstances indicate juror bias but the court allows them to sit as a juror because the juror has proclaimed they can be impartial. The second question is whether the vehicle exception of the Fourth Amendment extends to allow officers to subject the contents seized from a vehicle and hours later subject them to additional tests before applying for a warrant.

In Mr. Farrington's case, a jury convicted Mr. Farrington of Conspiracy to distribute fifty grams or more of actual methamphetamine under 21 U.S.C. § 841(a)(1), 841(b)(1)(A), 846 and possession with intent to distribute at least fifty grams or more of methamphetamine under 21 U.S.C. § 841(a)(1), 841(b)(1)(A).

Before trial Mr. Farrington filed a motion to suppress the evidence found within contents of the vehicle that was seized under the vehicle exception. The magistrate in district court issued a recommendation that the suppression motion be denied and the district court judge subsequently denied the motion.

During jury selection Mr. Farrington attempted to strike a juror for cause because the juror had previously had repeated contact with a witness used to prosecute Mr. Farrington. The district court decided there was not a harm of bias from the juror because she assured the court that her past contacts did not inhibit her ability to be impartial.

This Court needs to determine two key issues. First whether a juror's assurance of being unbiased is sufficient to overcome circumstances that would typically indicate bias. Second this Court needs to determine whether the vehicle exception extends to containers within the vehicle once those containers are removed from the vehicle and the vehicle is seized.

Facts Regarding the Sixth Amendment Jury Issue

1. After jury selection but before trial commenced, a juror informed the district court that she realized she recognized the name of a Government witness, Detective Traishondus Bunch.
2. Detective Bunch served as a Rule 404(b) witness at Farrington's trial, he testified that Farrington had engaged in drug-related activity in the past.
3. The district court questioned the juror, and she explained that she had corresponded with Detective Bunch by email about drug activity occurring in the parking lot outside of her residence. She had emailed Detective Bunch about once or twice a week during a nine-month period, reporting her observations of drug activity.
4. About three years before Farrington's trial, she moved away from the residence and had no further contact with Detective Bunch.
5. The district court asked the juror if there was "anything about those experiences that causes you any concern in your own mind about your ability to be fair to both sides in this case?" The juror responded, "No, sir." The district court then asked, "Are you willing to wait and listen to Officer

Bunch's testimony before deciding whether you believe it?" The juror answered, "Yes." The defense moved to strike the juror for cause, but the district court denied the motion.

Facts Regarding the Fourth Amendment Search Issue

6. In October 2019, Henry County Sheriff's Office Investigator Jesse Bell was surveilling a vehicle as part of a drug investigation. He watched Farrington and Stefani Goodwin leave a motel, approach the vehicle, and place several bags into the car.

7. They entered the vehicle, and Farrington drove away. Because Farrington's driver's license was suspended, Investigator Bell asked Sergeant David Wall to conduct a traffic stop. Sergeant Wall stopped the vehicle at approximately 6:46 p.m.

8. After a drug detection dog signaled that he had detected drugs, Sergeant Wall searched the vehicle and discovered drug paraphernalia and four lockboxes.

9. Farrington was arrested and the lockboxes were seized and transported to an evidence shed at the sheriff's office, and the vehicle was separately towed to the sheriff's office.

10. Prior to 10:00 p.m., Sergeant Wall used a drug detection dog to conduct a sniff test around the lockboxes, and Uno signaled that he detected drugs.

11. The officers then obtained a search warrant for the lockboxes, and the search revealed methamphetamine. Sergeant Wall testified that the time between

the sniff test at the sheriff's office and the issuance of the search warrant was about two hours.

Reasons for Granting the Writ

A. The Supreme Court Should Clarify Whether And When A Juror May Be Struck For Cause, On The Basis Of Implied Bias.

In the present matter, the Eighth Circuit relied on Moran v. Clarke, in particular a line from the opinion stating that, in order to obtain reversal based on district court's denial of motion to strike juror, "a juror must profess his inability to be impartial and resist any attempt to rehabilitate his position." Moran v. Clarke, 443 F.3d 646, 649–51 (8th Cir. 2006). There is an intra and inter-circuit split on the issue of whether the juror needs to state that she is biased, or whether it can be implied. The Supreme Court should accept this matter and resolve the split.

In the Farrington opinion, the Eighth Circuit ignored its findings in Sanders v. Norris (a case decided post-Moran), which acknowledged that the circuit has a mixed history of dealing with implied juror bias. Sanders v. Norris, 529 F.3d 787, 791 (8th Cir. 2008). The court in Sanders found that there were situations in which "the average person could [not] remain impartial." Id. At 792. In Sanders, the Eighth Circuit embraced case law from other circuits regarding implied bias, such as striking for cause jurors who worked at a bank in a bank robbery case. Id. At 798.

The scattershot views on implied juror bias, across the circuit courts, have their roots in unclear Supreme Court jurisprudence. In 1936, this Court ruled in United States v. Wood that a party challenging for a juror for cause must show "actual partiality growing out of the nature and circumstances of [the] particular case[ ]."

U.S. v. Wood, 299 U.S. 123, 149 (1936). The Court found that it was not "sensible" to impute bias to government employees as prospective jurors in a criminal case, on the basis that they may have bias in favor of the prosecution as an arm of the government. Id. The Court was not clear as to when it would be "sensible" to impute bias in the Wood opinion.

Nearly fifty years later, in Smith v. Phillips, this Court found against a petitioner who asked the Court to impute bias to a juror who had applied for a job with the prosecutor's office during the course of the trial. Smith v. Phillips, 455 U.S. 209, 221 (1982). The Court's decision left some gray area as to whether, and when, juror bias may be imputed. Justice O'Connor attempted to clear up the decision with her concurrence:

> I concur in the Court's opinion, but write separately to express my view that the opinion does not foreclose the use of "implied bias" in appropriate circumstances… [I]n certain instances a hearing may be inadequate for uncovering a juror's biases, leaving serious question whether the trial court had subjected the defendant to manifestly unjust procedures resulting in a miscarriage of justice. While each case must turn on its own facts, there are some extreme situations that would justify a finding of implied bias. Some examples might include a revelation that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the criminal transaction. Whether or not the state proceedings result in a finding of "no bias," the Sixth Amendment right to an impartial jury should not allow a verdict to stand under such circumstances.

Smith v. Phillips, 455 U.S. at 222.

In Farrington's trial, the juror in question had particularized experience as an informant, in a drug investigation, involving the same officer who testified against Farrington. Allowing her to remain in the jury denied Farrington his constitutional

right to an impartial jury, and presented a situation like those contemplated by Justice O'Connor in her concurrence in Smith. This Court should address the unevenness in the application of Wood, Smith, and related cases, and establish a clear test for when a juror may be biased, in spite of their assertions to the contrary.

B. The Supreme Court Should Rule the "Dog Sniff" Search of the Contents of A Vehicle Violates The Fourth Amendment Because it was Performed Absent a Warrant, After a Completed Traffic Stop, After a Completed Vehicle Search, and Vehicle was Not Subject to and Inventory.

The Court has authorized warrantless search of vehicles with probable starting in the case. United States v. Johns allowed the delay of a vehicle search with probable cause under the Carroll vehicle. See, 469 U.S. 478 (1985). In Johns law enforcement did not search the vehicles or their contents when they were seized. Id. at 481. The Court in Johns found that a delay in a vehicle search is not necessary unreasonable. Id. at 487. The Court in Johns cited United States v. Place stating that the door remained open to a finding of violation based on delay alone adversely affected privacy. Id. (citing United States v. Place, 462 U.S. 696, 103 (1983)).

This Court has held that a "dog sniff" search can qualify as a search of constitutional concern. See Florida v. Jardines, 569 U.S. 1, (2013). Citizens are afforded Fourth Amendment protection where they enjoy a legitimate expectation of privacy. See, Katz v. United States, 389 U.S. 347, (1967).

The Court has laid down guidance for a dog sniff search performed subject to a traffic stop and warrantless search of a vehicle and its contains subject to and inventorying. Law enforcement may subject a vehicle to a dog sniff without prolonging a traffic stop without reasonable suspicion. Rodriguez v. United States, 575 U.S. 348, 350, (2015). However, "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." Id. A dog sniff search of a vehicle after a completed traffic stop violates the Fourth Amendment. Id. at 358.

The Government may search a vehicle or luggage found in a vehicle subject and inventory of the vehicle only if that "inventory search" is done when police are "following standard police procedures that mandate the opening of such containers in every impounded vehicle." Colorado v. Bertine, 479 U.S. 367, 377, (1987). The Government bears the burden of showing compliance with that an inventory search is part of the community caretaking exception and not for purposes of investigation. Cady v. Dombrowski, 413 U.S.433, 441, (1973). The search and inventory must be and may not be "a ruse for a general rummaging in order to discover incriminating evidence." Florida v. Wells, 495 U.S. 1, 4, (1990).

The "dog sniff" search of the contents of a vehicle was performed absent a warrant, after a completed traffic stop, after a completed vehicle search, and not subject to and inventory violates the Fourth Amendment.

The Eighth Circuit authorized a search without a warrant and outside any recognized exception by denying Mr. Farrington's appeal. The district court in its

order overruling Defendant's objections to the report and recommendation treated the locked containers as if they were part of the vehicle and rejected any application of case law outside the vehicle context. However, the Circuit Court misapplied the vehicle case law. The search completed after the vehicle after it was impounded was the second search of the vehicle and delayed search authorized in Johns. That second "dog sniff" of the vehicle was performed long after a traffic stop had been completed. The vehicle had been functionally impounded by placing it and its contents in locked shed, yet the standard procedure required under the inventory exception did not exist.

The Circuit Court in its ruling erred w relying on Johns because Johns authorizes a delayed warrantless search not multiple searches of a vehicle. Unlike in Johns where the DEA did not search the vehicles at the airstrip but simply seized them, here the police performed a search of the vehicle before its seizure. Once impounded and after other investigation, police performed a second search of the vehicle by subjecting its contents to a second dog sniff. Police performed this second dog sniff correctly believing that they needed a search warrant to complete a second search of the vehicle contents. However, that second sniff was outside the warrantless search authorized by Johns and prior to the police obtaining a valid search warrant. The second warrantless search violated the Fourth Amendment because it falls outside all well-defined exceptions including a delayed vehicle search and the resulting should be suppressed.

The Circuit Court cited to United States v. Pulido-Ayala, suggesting that the dog sniff of a seized vehicle may not be a search under the Fourth Amendment implicating the Fourth Amendment. 892 F.3d 315, 318 (8th Cir. 2018). However, the facts that the traffic stop had been completed, along with an initial vehicle search premised on a first dog sniff, and the vehicle had been seized and secured removes the issue here from the Pulido-Ayala, and Illinois v. Caballes, exception. 892 F.3d 315, 318 (8th Cir. 2018), 543 U.S. 405, 409 (2005). Once a vehicle is seized (and searched), the Fourth Amendment is implicated and the question becomes the reasonableness of the intrusion and its scope.

Finally, the inventory search exception does not apply because law enforcement was not following a well-defined standard procedure and because the search was investigatory in nature. The requirements of the inventory search exception protect the privacy interest of individuals whose vehicles have been seized by law enforcement. Because this vehicle in question had been towed taken to a secure police facility and stored for a short period before being searched again, had the police followed a standardized procedure for non-investigatory purposes an inventory search would have permissible. However, the search in question was not a valid inventory search.

The second search or the vehicle and its contents violated the fourth amendment because it was warrantless and now of the well-defined exceptions apply. Multiple searches of a vehicle are not authorized under Johns. A dog sniff after a completed traffic stop is not authorized under Rodriguez. 575 U.S. at 350.

The warrantless search of a vehicle secured on police property is only authorized if completed subject to a standardized procedure and for a non-investigatory purpose. Because the search was warrantless and without an applicable exception to the warrant requirement any evidence resulting should be suppressed.

Conclusion

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ Elizabeth Araguás
Elizabeth Araguás
Nidey Erdahl Meier & Araguás, PLC.
425 2nd Street, SE, Suite 1000
Cedar Rapids, IA 52401
*Counsel of Record
ATTORNEY FOR PETITIONER