

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ORENTHA JAMES PEA — PETITIONER

VS.

UNITED STATES — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Fernandez v. California*, 571 U.S. 292, 306, 134 S. Ct. 1126, 1136, 188 L. Ed. 2d 25 (2014), this Court acknowledged that, if “*Randolph* requires presence on the premises to be searched, there may be cases in which the outer boundary of the premises is disputed” and that the *Randolph* “Court adopted a rule that applies only when the affected individual is near the premises being searched.”

Officers searched a residence over objections Orentha James Pea made from a police car in front of the residence. Officers had placed Mr. Pea in that police car after he exited the residence and before they gained consent to search from Mr. Pea’s estranged wife, while in view of and earshot of Mr. Pea. In the search, officers recovered the firearm and ammunition supporting Mr. Pea’s convictions.

The United States Fifth Circuit Court of Appeals found that, “[b]ecause Pea objected to the search of his wife’s residence after he was arrested and placed in a police cruiser, he was not physically present at the residence and was unable to override his estranged wife’s consent.” *United States v. Pea*, 21-30691, 2022 U.S. App. LEXIS 21874, at p. 2, 2022 WL 3153800 (5th Cir. Aug. 8, 2022) (summary calendar) (*per curiam*) (unpublished).

Did the Fifth Circuit err when it found Mr. Pea’s Fourth Amendment rights were not violated because the *Randolph/Fernandez* exception “applies only when the objector is standing in the door saying ‘stay out’ when officers propose to make a consent search.” *Pea*, 2022 U.S. App. LEXIS 21874, at p. 2.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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(for the United States)

RELATED CASES

None.

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Fifth Court of Appeals appears at Appendix C to the petition and is reported at *United States v. Pea*, 21-30691, 2022 U.S. App. LEXIS 21874, 2022 WL 3153800 (5th Cir. Aug. 8, 2022) (summary calendar) (*per curiam*) (unpublished).

The opinion of the United States District Court appears at Appendix B to the petition and is reported at *United States v. Pea*, 19-294, 2020 U.S. Dist. LEXIS 46459 (W.D. La., Mar. 17, 2020), and is unpublished.

The report and recommendation of the United States Magistrate Judge appears at Appendix A and is reported at *United States v. Pea*, 19-294, 2020 U.S. Dist. LEXIS 87501 (W.D. La., Jan. 29, 2020), and is unpublished.

JURISDICTION

The United States Court of Appeals decided the case on August 8, 2022. No petition for rehearing was filed timely in the case. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment

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

On September 25, 2019, Mr. Pea was indicted in a 2-count indictment. ROA. 3, 20-21. The Government charged that, “[o]n or about January 13, 2019 and January 14, 2019, in the Western District of Louisiana, the Defendant, **Orentha James Pea**, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm, to wit, a Springfield Armory pistol, model XDs-93.3, 9x19 caliber, and ammunition, and the firearm and ammunition were in and affecting interstate or foreign commerce, all in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).” ROA. 20. The Government also charged that “[o]n or about January 13, 2019 and January 14, 2019, in the Western District of Louisiana, the Defendant, **Orentha James Pea**, knowing he had previously been convicted of a misdemeanor crime of domestic violence, knowingly possessed a firearm, to wit, a Springfield Armory pistol, model XDs-93.3, 9x19 caliber, and ammunition, and the firearm and ammunition were in and affecting interstate or foreign commerce, all in violation of Title 18, United States Code, Sections 922(g)(9) and 924(a)(2).” ROA. 20-21. Mr. Pea entered pleas of not guilty on October 7, 2019. ROA. 3.

On December 2, 2019, Mr. Pea filed a motion to suppress the firearm and ammunition recovered after a warrantless search of “Ms. Montgomery’s” home. ROA. 32-39. On December 17, 2019, the Government filed an opposition to Mr. Pea’s motion. ROA. 40-43.

On January 29, 2020, the Magistrate Judge issued a Report and Recommendation (“R&R”), recommending that the District Court deny Mr. Pea’s motion to suppress. ROA. 45-51. On February 12, 2020, Mr. Pea objected to the R&R. ROA. 59-64. On March 17, 2020, the District Court, in a Memorandum Ruling, adopted the R&R and denied Mr. Pea’s motion to suppress. ROA. 65-73.

On May 24, 2021, jury selection occurred. ROA. 13, 269. From May 25, to May 26, 2021, a jury trial occurred. ROA. 13-14, 272-90, 487-847. On May 26, 2021, the jury found Mr. Pea guilty as charged. ROA. 14, 372, 839-42.

The PSI, as amended, determined Mr. Pea’s total offense level was 28 and his criminal history category was V. ROA. 896, 1231-37, 1244. Mr. Pea’s guideline sentencing range was 130 to 162 months of imprisonment, with a mandatory minimum sentence of 120 months of imprisonment. ROA. 897, 1244.

On October 28, 2021, the District Court sentenced Mr. Pea to 120 months of imprisonment. ROA. 17, 361-62, 848-948.¹ On November 8, 2021, Mr. Pea filed a timely notice of appeal. ROA. 17, 367-68. On August 8, 2022, the United States Fifth Circuit Court of Appeals affirmed Mr. Pea’s conviction and sentence. This timely petition follows.

¹ On the Government’s motion after the trial and before sentencing, the District Court vacated Mr. Pea’s conviction on Count Two. ROA. 350-54.

REASONS FOR GRANTING THE PETITION

In his motion to suppress, Mr. Pea noted that “Mr. Pea can be heard on the dash cam footage telling police, on more than one occasion, that they needed to get a warrant before searching the home.” ROA. 34. Indeed, in its memorandum opposing Mr. Pea’s motion for summary judgment, the Government stated that “[p]olice arrested Pea and placed him in the back of a police car that was parked in the street. Pea told police that he would not give consent to search his wife’s home. Police spoke with Pea’s wife who gave them verbal consent to search her home for the pistol.” ROA. 41.²

Thus, the issue of Mr. Pea’s refusing consent to the warrantless search was not contested for purposes of the motion to suppress. Therefore, the Fifth Circuit could not have found that Mr. Pea did not timely refuse consent to the warrantless search. Indeed, it would have been error for the Fifth Circuit to have done so.

Officer Richard Pollitt, who recovered the firearm and ammunition at issue, saw Mr. Pea come out of the garage and saw the door to “Ms. Montgomery’s” home close behind Mr. Pea. ROA. 646-47; Gov’t Fifth Circuit Br., 5 (“Pea had returned to the house, and met the officers at the garage door threshold. ROA. 378”). According to Officer Pollitt’s testimony, Mr. Pea was alone in “Ms. Montgomery’s” home at that time. ROA. 647.

² Courts can “treat statements in briefs as binding judicial admissions of fact.” *City Nat'l Bank v. United States*, 907 F.2d 536, 544 (5th Cir. 1990). Whether they do “so, however, is within . . . [their] discretion.” *Id.* (citing cases).

Given Officer Pollitt’s observations, a reasonable officer, at the very least, should have been able to offer a justification for why Ms. Montgomery was able to override Mr. Pea’s refusal to consent to a warrantless search of “Ms. Montgomery’s” home. The Government failed to offer testimony to provide such justification.

Because it failed to do so, the Government failed to justify the warrantless search of “Ms. Montgomery’s” home over Mr. Pea’s timely and contemporaneous objection. *See Georgia v. Randolph*, 547 U.S. 103, 120, 126 S. Ct. 1515, 1526, 164 L. Ed. 2d 208 (2006) (“We therefore hold that a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident.”); *compare Fernandez v. California*, 571 U.S. 292, 306, 134 S. Ct. 1126, 1136, 188 L. Ed. 2d 25 (2014) (finding that, if “*Randolph* requires presence on the premises to be searched, there may be cases in which the outer boundary of the premises is disputed” and that the *Randolph* Court adopted a rule that applies only when the affected individual is near the premises being searched.””).

As *Randolph* and *Fernandez* preceded this search, no reasonable officer could believe that a lawful consensual search could occur after Mr. Pea made a temporally proximate refusal to consent.³ Therefore, the Fifth Circuit erred when it affirmed the denial of Mr. Pea’s motion to suppress.

³ At worst, whether Mr. Pea’s location in the police car in front of the residence is too removed, despite its temporal proximity to the search, to invoke *Randolph* and *Fernandez* is a novel issue that should be addressed by this Court.

Accordingly, Mr. Pea respectfully submits that this Court should find the firearm and ammunition purportedly recovered from “Ms. Montgomery’s” home were seized unlawfully and unreasonably in violation of the Fourth Amendment and should be suppressed. Further, this Court should reverse the decision of the Fifth Circuit and remand this matter to the Fifth Circuit for further proceedings consistent with this opinion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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