
NO. 22-_____

IN THE UNITED STATES SUPREME COURT

TERM

SHANE ALAN NAULT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Ninth Circuit

Elizabeth T. Musick
Musick & Tierney Law, PLLC
CJA Panel Attorney
P.O. Box 726
Bozeman, MT 59771
(406) 235-1456

Counsel for the Petitioner

QUESTION PRESENTED FOR REVIEW

1. Whether seizing an individual seated in a parked car in a private parking lot should be analyzed in the context of a “traffic stop” under *Rodriguez*, or an “investigatory stop” under *Terry*, for purposes of defining the proper scope of the seizure’s mission.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW	2
TABLE OF AUTHORITIES	5
OPINIONS BELOW	6
JURISDICTIONAL STATEMENT	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	9
STATEMENT OF THE CASE AND FACTS	10
REASONS FOR GRANTING OF THE WRIT	17
I. Whether seizing an individual seated in a parked car in a private parking lot should be analyzed in the context of a “traffic stop” under <i>Rodriguez</i> , or an “investigatory stop” under <i>Terry</i> , for purposes of defining the proper scope of the seizure’s mission.	17
CONCLUSION	21

APPENDIX:

- A. Order, United States Court of Appeals for the Ninth Circuit, *United States of America v. Shane Alan Nault*, Court of Appeals No. 20-30231, denying Petition for Rehearing *En Banc*, August 29, 2022.
- B. Opinion, United States Court of Appeals for the Ninth Circuit, *United States of America v. Shane Alan Nault*, Court of Appeals No. 20-30231, affirming the district court, July 21, 2022.
- C. Judgment In A Criminal Case, United States District Court for the District of Montana at Great Falls Division, *United States of America v. Shane Alan Nault*, District Court No. 4:19-cr-00051-BMM-1, October 14, 2020.
- D. Court Order Denying Motion to Traverse Search Warrant, United States District Court at Great Falls Division, *United States of America v. Shane Alan Nault*, District Court No. 4:19-cr-00051-BMM-1, June 17, 2020.
- E. Selection from Transcript of Motion Hearing, United States District Court at Great Falls Division, *United States of America v. Shane Alan Nault*, District Court No. 4:19-cr-00051-BMM-1, denying Motion to Suppress, December 10, 2019.

TABLE OF AUTHORITIES

A. CASES

<i>Arizona v. Johnson</i> , 555 U.S. 323 (2009).....	17
<i>Brown v. Texas</i> , 443 U.S. 47 (1979)	19
<i>Davis v. Mississippi</i> , 394 U.S. 721 (1969)	18
<i>Delaware v. Prouse</i> , 440 U.S. 648 (1979)	19
<i>Franks v. Delaware</i> , 436 U.S. 154 (1978)	8,14
<i>Rodriguez v. United States</i> , 575 U.S. 348 (2015).....	2, 15 17, 18, 20-21
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	2, 16-21
<i>United States v. Brignoni-Ponce</i> , 422 U.S. 873 (1975)	19
<i>United States v. Gorman</i> , 859 F.3d 706 (9th Cir. 2017).....	17, 20

B. STATUTES AND RULES

21 U.S.C. § 841(a)(1)	7
18 U.S.C. § 922(g)(1)	7
28 U.S.C. § 1254(1)	7
Rules of the Supreme Court of the United States Rule 13(1)	7
Rules of the Supreme Court of the United States Rule 29.4(a).	8

C. CONSTITUTIONAL PROVISIONS

Amendment IV of the United States Constitution	8, 9, 16-20
--	-------------

OPINIONS BELOW

1. Order, United States Court of Appeals for the Ninth Circuit, *United States of America v. Shane Alan Nault*, Court of Appeals No. 20-30231, denying Petition for Rehearing *En Banc*, August 29, 2022.
2. Opinion, United States Court of Appeals for the Ninth Circuit, *United States of America v. Shane Alan Nault*, Court of Appeals No. 20-30231, affirming the district court, July 21, 2022.
3. Judgment In A Criminal Case, United States District Court for the District of Montana at Great Falls Division, *United States of America v. Shane Alan Nault*, District Court No. 4:19-cr-00051-BMM-1, October 14, 2020.
4. Court Order Denying Motion to Traverse Search Warrant, United States District Court at Great Falls Division, *United States of America v. Shane Alan Nault*, District Court No. 4:19-cr-00051-BMM-1, June 17, 2020.

JURISDICTIONAL STATEMENT

Mr. Nault pled guilty to Count II, 21 U.S.C. § 841(a)(1), for Possession with Intent to Distribute Methamphetamine, and Count IV, 18 U.S.C. § 922(g)(1), for Prohibited Person in Possession of a Firearm. The District Court for the District of Montana (District Court) sentenced him pursuant to the Sentencing Reform Act of 1984 to one hundred eighty (180) months imprisonment with the Bureau of Prisons on Count II, and one hundred twenty (120) months imprisonment on Count IV, to run concurrently, with five (5) years of supervision to follow on Count II and three (3) years of supervision to follow on Count IV, to run concurrently with each other. He appealed, challenging the denial of his pretrial Motion to Suppress and Motion to Traverse Search Warrant. Oral Argument was held on October 4, 2021 in Seattle, Washington before Ninth Circuit Judges Milan D. Smith, Jr., Jacqueline Nguyen, and A. Wallace Tashima. The United States Court of Appeals for the Ninth Circuit (Ninth Circuit) entered its Opinion, affirming the Judgment of the District Court on July 21, 2022. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1). Rule 13(1) of the Supreme Court allows for ninety days within which to file a Petition for a Writ of Certiorari after entry of the Judgment of the Court of Appeals, except if a Petition for Rehearing is timely filed, the time to file the Petition for a Writ of Certiorari runs from the date of the denial of rehearing. Mr. Nault timely filed a Petition for Rehearing *En Banc* on August 4, 2022. The Ninth Circuit denied

Mr. Nault's Petition for Rehearing *En Banc* on August 29, 2022. Accordingly, this Petition is timely filed.

Pursuant to Rule 29.4(a) of the Supreme Court, appropriate service is made to the Solicitor General of the United States and to Assistant United States Attorney Jeffrey K. Starnes, who appeared in the Ninth Circuit on behalf of the United States Attorney's Office, a federal office which is authorized by law to appear before this Court on its own behalf.

Petitioner Nault respectfully prays that a Writ of Certiorari issues to review the Opinion of the Ninth Circuit. In that Opinion, the Ninth Circuit affirmed the District Court's determination that the police officer's continuation of the stop in which he was looking for a woman with an outstanding warrant and requested Mr. Nault provide documents such as his license, registration, and proof of insurance, did not violate the Fourth Amendment because the request fell within the mission of the stop. Further, the Ninth Circuit affirmed the District Court's determination that Mr. Nault was not entitled to a *Franks* hearing on his Motion to Traverse the Search Warrant. Mr. Nault challenges those findings.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.

18 U.S.C. § 922(g):

It shall be unlawful for any person –

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

21 U.S.C. § 841(a)(1):

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance[.]

STATEMENT OF THE CASE AND FACTS

On March 30, 2018, at approximately 8:00 a.m., the Tri-Agency Task Force (TATF) informed Havre Police Officers that they were attempting to locate a 2004 red GMC Sierra pick up, which was registered to a woman named Joei Ross. TATF agents informed the Officers that the vehicle had an arrest warrant attached to it for Joei Ross for failing to appear in a driving without insurance case.¹

At approximately 1:30 p.m., Officer Jordan Chroniger identified the 2004 red GMC Sierra pick up in the High Land Park Zip Trip parking lot in Havre, Montana. Chroniger approached the vehicle under the stated purpose of serving the arrest warrant on Ms. Ross. Chroniger claims that due to the window tint, he could not identify the driver of the vehicle.²

Chroniger made contact with Mr. Nault and asked him where Ms. Ross was located. Mr. Nault responded that Ms. Ross was at the Emporium Gas Station. Chroniger went on to ask Mr. Nault for his license, registration, and insurance. When Mr. Nault could not immediately produce these documents, Chroniger began to ask Mr. Nault questions related to his ability to operate a motor vehicle. Chroniger

¹ The citation that Ms. Ross received for driving without insurance was in a different vehicle, not the red 2004 GMC truck.

² Mr. Nault is a white male, shaved head, approximately five foot eight inches in height, and he weighs approximately one hundred seventy-five pounds. Ms. Ross is a white female, approximately five foot three inches in height, with shoulder length platinum blonde hair, and she weighs approximately one hundred five pounds.

reported that Mr. Nault was “fidgety” and that his pupils were constricted, which led him to believe that Mr. Nault was possibly under the influence of narcotics. Chroniger forcibly assisted Mr. Nault out of the vehicle over Mr. Nault’s objection and immediately conducted a pat down search of Mr. Nault, which revealed a pair of brass knuckles, a pocket knife, and a marijuana pipe. Chroniger conducted field sobriety tests and a full Driving under the Influence (DUI) investigation, which ultimately resulted in Mr. Nault’s arrest for suspicion of DUI.

Chroniger then contacted TAFT agents and informed them of the arrest. Agents Brenton Beard, CJ Reichelt, and Jake Wells responded to the location. Chroniger transported Mr. Nault to the Hill County Detention Center, and Agents contacted U.S. Border Patrol Agent Nick Ost and requested that he bring his canine partner to conduct a dog sniff on the red 2004 GMC Sierra pick up.

Agent Ost reported that he received the call from Agent CJ Reichelt at 1:45 p.m., and that he arrived at the scene at 1:52 p.m. He reported that he “conducted a non-intrusive canine sniff of the exterior of the vehicle with [his] assigned service canine Nato (150093). Nato alerted to the open driver side door. [He] advised Agent Reichelt and Officer Olsen of the alert.” He further reported that he departed the scene at 2:06 p.m. Ost gave no description of Nato’s behavior in the search, only that he “alerted.” Other officers gave no description of Nato’s behavior or actions, and they indicated that their knowledge of the “alert” was based solely on Ost’s

report of its occurrence. “Based on the positive indication by Nato, Agent Beard seized the vehicle to later apply for a search warrant.”

Agent Beard then applied for, and was granted, a search warrant to search the red 2004 GMC Sierra. During the search, Agent Beard discovered methamphetamine and a firearm which formed the basis of Counts I-IV of Mr. Nault’s indictment.

No video recording was made of the dog sniff. The substantive portion of Agent Ost’s report was two pages and did not include a description of Nato’s behavior or actions. Agent Beard did not make any claims in the search warrant application as to his experience with Nato; however, he did represent that Nato was accurate in prior searches. The only description of Nato’s behavior in the search of Mr. Nault’s vehicle was that he gave a “positive indication” on the vehicle. *Id.*

It was the methamphetamine and firearm that Mr. Nault sought to suppress at the District Court level. Mr. Nault filed a Motion to Suppress on November 19, 2019. The District Court held an evidentiary hearing on Mr. Nault’s Motion on December 10, 2019 and denied Mr. Nault’s Motion to Suppress at the conclusion of the hearing. The Court held as follows:

All right. This matter [sic] submitted. I think here the officers had a right to approach the running vehicle in the parking lot at the Zip Trip when the owner of the vehicle – the registered owner of the vehicle had an outstanding warrant, even though that was a misdemeanor warrant for no insurance. But at the very least they could knock on the door and make sure that the owner with the outstanding warrant for no

insurance wasn't to flaunt the law by driving with no insurance by driving the car to the Zip Trip. They knock on the door and discover it's not Ms. Ross.

In fact, its Mr. Nault in the vehicle. He's the driver of the vehicle. It's running. He's in actual physical control. Under Montana law, I think that entitles the officers to ask for his driver's license, the vehicle registration, and proof of insurance. He cannot provide any of those documents.

And then the officer's questioning leads them to have a reasonable suspicion that Mr. Nault is under the influence of some drug. He steps out of the vehicle, at which point I think they lawfully conduct a pat down. Mr. Nault volunteers that he has brass knuckles, and then they discover the drug paraphernalia. I think those two victims [sic] for which he was eventually cited, gave the officers the right to arrest Mr. Nault.

We then went off on the field sobriety tests. I don't think there was anything improper about those tests or the way that they were conducted. It's hard to gauge what happened from a layperson's standpoint. The officer testified in good faith about the triggers he saw or the violations he saw. They weren't really refuted on cross-examination. But even if I were to set aside the field sobriety tests, the propriety of those, I think we have the arrest on the drug paraphernalia and the brass knuckles as sufficient cause to warrant the arrest of Mr. Nault.

And upon arresting Mr. Nault, the vehicle proper [sic] could have been impounded just as it was after the field sobriety test. And once the vehicle is impounded, there's no violation of bringing the drug dog. Ms. Lord classifies the dog sniff as fruit of the poisonous tree, but there's no violation at that point. I don't have a direct challenge to the drug sniff. That information was provided by Agent Ost to Officer Beard. Officer Beard in his warrant application includes the information to the other officers regarding the drug dog sniff, the drug paraphernalia, the brass knuckles the field sobriety tests, as well as the earlier stop – excuse me – earlier controlled buy of the drugs from Mr. Nault. I think all of that information was sufficient to establish probable cause to support the warrant. So I'm going to deny Ms. Lord's motion

to suppress the statements.

APP040 – APP042.

Thereafter, Mr. Nault requested new counsel, and the Court appointed Elizabeth T. Musick to represent Mr. Nault in the District Court. Mr. Nault, through his newly appointed counsel, filed a Motion to Traverse Search Warrant on May 29, 2020. The District Court set a hearing on Mr. Nault’s Motion for June 17, 2020. Thereafter, the District Court, on its own motion, re-set the hearing for June 24, 2020. The Government filed a Response Brief on June 11, 2020. The District Court issued a written Order denying Mr. Nault’s Motion to Traverse Search Warrant on June 17, 2020, and vacated the previously set hearing. APP036 – APP039. In support of its Order denying Mr. Nault’s Motion to Traverse Search Warrant and vacating the hearing, the District Court found that Mr. Nault failed to make a substantial preliminary showing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). *Id.* The District Court found that Mr. Nault failed to demonstrate that the material omissions he identified in the warrant application were deliberate or reckless, and that he failed to make a significant preliminary showing that the drug dog sniff was material to the probable cause determination for the search warrant.

Id.

Thereafter, Mr. Nault pled guilty to Counts II and IV and pled true to the forfeiture allegation on June 24, 2020, pursuant to a conditional Plea Agreement.

Sentencing was set in the District Court for October 14, 2020. The Government dismissed Counts I and III of the indictment. Mr. Nault was sentenced to 180 months in the custody of the Bureau of Prisons on Count II and 120 months in the custody of the Bureau of Prisons on Count IV, concurrent, with five years of supervised release to follow. APP029 – APP035. No fine was imposed. *Id.* A timely Notice of Appeal was filed on October 27, 2020.

Mr. Nault filed his Opening Brief with the Ninth Circuit Court of Appeals on January 26, 2021. On direct appeal, Mr. Nault argued that the District Court erred in failing to suppress the evidence found during the vehicle search as fruit of the poisonous tree, and that the District Court erred in failing to Traverse the Search Warrant. The Government filed an Answering Brief on March 29, 2021, and Mr. Nault filed a Reply Brief on May 20, 2021. The Ninth Circuit Court of Appeals heard Oral Argument on October 4, 2021. On July 21, 2022, the Ninth Circuit issued its Opinion, which affirmed the District Court’s ruling on Mr. Nault’s Motion to Suppress and his Motion to Traverse the Search Warrant. APP002 – APP028. The majority analyzed the seizure of Mr. Nault in the context of a “traffic-stop,” pursuant to *Rodriguez v. United States*, 575 U.S. 348 (2015), which allowed them to conclude that a request for Mr. Nault’s license, registration, and proof of insurance was part of the stop’s “mission,” and therefore, did not unlawfully prolong the seizure of Mr. Nault, despite the fact that Mr. Nault was not stopped for a traffic violation and law

enforcement's purpose was to serve an arrest warrant an another individual named Joei Ross. APP016 – APP017. The dissent determined that the Ninth Circuit Court of Appeals should have analyzed the seizure of Mr. Nault in the context of an "investigative stop" pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), which would require a finding that the seizure of Mr. Nault was unlawfully prolonged in violation of the Fourth Amendment, and the evidence against him should have been suppressed. APP023 – APP024.

REASONS FOR GRANTING OF THE WRIT

I. Whether seizing an individual seated in a parked car in a private parking lot should be analyzed in the context of a “traffic stop” under *Rodriguez*, or an “investigatory stop” under *Terry*, for purposes of defining the proper scope of the seizure’s mission.

Courts analyze seizures under the Fourth Amendment to the United States Constitution depending on the nature of the seizure. Mr. Nault’s seizure should be analyzed in the context of an “investigatory stop,” pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). However, the majority in the Ninth Circuit Court’s Opinion concluded, applying the principles set forth in *Rodriguez*, that Officer Chroniger’s request for documents from Mr. Nault was not only a part of the Officer’s mission in serving the warrant on Ms. Ross, but that “it was an integral component of – rather than a prolongation of – the vehicle stop.” APP012 (citing *United States v. Gorman*, 859 F.3d 706, 714 (9th Cir. 2017)). In reaching that decision, the Ninth Circuit’s focus presupposes that the seizure of Mr. Nault was characterized as a “traffic-stop” rather than an “investigatory stop.”

A traffic stop begins “when a vehicle is pulled over for investigation of a traffic violation.” *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). Further defining a traffic stop, *Rodriguez* held that “when police stop a vehicle for a traffic violation, they may prolong the stop to conduct ‘ordinary inquiries’ incident to the stop, including asking the driver for his license, registration, and proof of insurance, because these inquiries ‘are part of the officer’s traffic mission’ and ‘serve the same

objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.”” APP018. In this case, no traffic violation occurred, and the District Court and Ninth Circuit erred in analyzing and affirming Mr. Nault’s seizure under this rule.

Unlike a traffic stop, for an investigatory stop, an officer must have reasonable or particularized suspicion of wrongdoing in order to briefly detain a person to confirm or dispel that suspicion. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Here, the officers were not conducting a traffic stop, they were conducting an investigatory stop with the purpose to serve Joei Ross with an arrest warrant. When they learned that Ms. Ross was not present with Mr. Nault in the vehicle, and they were told her current location by Mr. Nault, “their mission was completed and their authority for the seizure ended.” APP019. Based on these principles, the dissent correctly determined that because the mission of the seizure was to serve Joei Ross with an arrest warrant, the seizure must be analyzed under the principles set forth in *Terry*, rather than *Rodriguez*.

The Fourth Amendment “applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.” *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16-19 (1968). “[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person, and the Fourth Amendment requires that seizure

to be reasonable.” *Terry*, 392 U.S. at 16; *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). “The Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society’s legitimate interests require the seizure of the particular individual.” *Brown v. Texas*, 443 U.S. 47, 51 (1979); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). In order to stop an individual, the officers must have “reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.” *Brown*, 443 U.S. at 51, *Delaware*, 440 U.S. at 663; *Brignoni-Ponce*, 422 U.S. at 882-883.

It is undisputed that Officer Chroniger had reasonable suspicion that Joei Ross, the registered owner of the vehicle, had committed a crime because she had an active arrest warrant for failure to appear. However, he did not have reasonable suspicion that Mr. Nault had committed a crime or was about to commit a crime until after he had unlawfully prolonged the seizure of Mr. Nault and violated his Fourth Amendment rights. Once Officer Chroniger determined that Joei Ross was not present in the vehicle, the authority for the brief detention of Mr. Nault ended. Judge Tashima wrote in his dissent,

The officers completed their mission when they determined that Ross was not present. There were no “unresolved matters” to address; no “attendant tasks” to complete; no “necessary actions related to the traffic stop” to be performed. The officers here, therefore, could not prolong the stop to conduct unrelated inquiries.

APP023. “A stop that is unreasonably prolonged . . . violates the Constitution.” *United States v. Gorman*, 859 F.3d 706, 714 (9th Cir. 2017) (as corrected). When analyzed correctly, under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny, as discussed *supra*, this Court should reach the conclusion that Mr. Nault’s Fourth Amendment rights were violated. The majority in the Ninth Circuit erred when it failed to analyze the seizure in this context, as an “investigative stop,” rather than in the context of a “traffic-stop” under *Rodriguez*. For these reasons, Mr. Nault prays that the Court will grant this Petition for Certiorari and clarify that seizing an individual not suspected of a traffic violation but seated in a parked vehicle in a private parking lot must comply with *Terry* because it is an investigatory stop. Mr. Nault’s case provides this Court with the opportunity to determine when a seizure of an individual in a parked vehicle should be characterized as a “traffic-stop” and when a seizure of an individual in a parked vehicle should be characterized as an “investigatory stop,” for purposes of defining the scope of the “mission” of the stop.

CONCLUSION

This case presents a question of exceptional importance. The stop of Mr. Nault should have been characterized as an “investigatory stop,” pursuant to *Terry*, rather than as a “traffic stop” pursuant to *Rodriguez*. In consideration of the foregoing, Petitioner urges the Court to grant certiorari review in order to resolve the important question of how to define the scope of the “mission” of the stop when an individual is seized while seated in a parked vehicle in a public parking lot for the purpose of serving an arrest warrant on another individual who is not present. Petitioner respectfully submits that the Petition for Certiorari should be granted.

Dated this 21st day of November, 2022.

Respectfully submitted,

MUSICK & TIERNEY LAW, PLLC

By: _____


Elizabeth T. Musick
P.O. Box 726
Bozeman, MT 59771
(406) 235-1456