

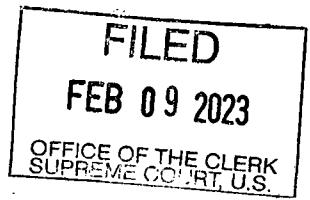
No.

22-6810

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Mr. Jason Tarris — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Tarris # 10397-509
(Your Name)

FCI-Gilmer Po Box 6000
(Address)

Glenville, WV. 26351
(City, State, Zip Code)

1/2
(Phone Number)

QUESTION(S) PRESENTED

1) Whether suppressed evidence or evidence not belonging to the defendant can be used against the defendant to prosecute him?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- 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:

RELATED CASES

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STATUTES AND RULES

OTHER

Fruit of the Poisonous Tree

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

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov. 17. 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ILLEGAL SEARCH AND SEIZURE

STATEMENT OF THE CASE

On 02-18-20, Mr. Jarvis was pulled over by Mansfield Police Department, driving a 2004 Toyota Camry. At the same time. Lt. Carroll, a Mansfeild Police Officer was following Mr. Jarvis. Officer Carroll ran the plates and found several "notes" about the vehicle. Pulling next to the vehicle, Officer Carroll "claimed" that the rearview mirror was not present (a minor violation) in order to initiate the stop. Both, Mr. Jarvis and his companion (Ms. Byerly), gave social security numbers, which came back with no warrants. After said check, Mr. Jarvis was allowed to leave but requested his copy of the citation/warning due to the traffic infraction. Officer Carroll ordered Mr. Jarvis out of the vehicle and asked for permission to search him. Mr. jarvis responded twice "NO". Officer Carroll, without cause, reached into Mr. Jarvis' pocket to "discover" a baggie with possible narcotics, later identified as methamphetamine. Under arrest, the vehicle and passenger was searched and numerous items were confiscated.

During his hearing, Mr. Jarvis requested that Counsel file a motion to suppress "pertaining to an illegal and pretextual Terry v. Ohio traffic stop" (R.311 id at PageID#1218). When Counsel refused, Mr. Jarvis attached his request draft of a Motion to Suppress the evidence seized from the traffic stop. (ID at PageID# 1223-26).

After being explicitly instructed by the Judge to do so, Counsel filed said motion to suppress the evidence confiscated during the traffic stop (R.337). The drugs seized during the stop formed the allegations against him. The motion to suppress

all evidence seized during the traffic stop was SUCCESSFUL and
ALL evidence therein was ordered suppressed (R.377: Opinion
and Order, PageID#1693).

REASONS FOR GRANTING THE PETITION

A cursory investigation by counsel would have indicated that the only means that investigating officers had of obtaining the telephone at issue (and thereby the contents on it) was from the traffic stop and subsequent arrest of Mr. Jarvis that was later ruled unconstitutional and suppressed. Without that stop and illegal search, Mr. Jarvis' companion would not have been arrested and it is likely that the phone and its contents would never have gotten in the officers possession. Thus, because trial court held that search and stop was unconstitutional, any and all evidence obtained from it should have been excluded ad Fruit of the Poisonous Tree.

More pertinent on his appeal, Mr. Jarvis explained to the court that there is evidence that has been brought forth that DID NOT belong to him but his ex-girlfriend (the companion) (R.566: Hrg. Tr.). The Court clarified, "are you asking that cellphone data from your girlfriend be suppressed?" (R.559, Hrg. Tr., PageID#3126). To Mr. Jarvis' response, "that, too, and I also had a pretext." (Id.). To the extent that Mr. Jarvis strongly requested that Counsel should file a Suppression Motion. The Court determined that the evidence before the attorney regarding the illegal stop required the attorney to test the legality of the seizure. At worst, the motion would have been denied, but, at best, the motion would have been granted and all evidence against Mr. Jarvis suppressed and the case dismissed against him.

It was only after the explicit instruction by the Judge to do so that Counsel filed the motion to suppress the evidence

confiscated by the police during the traffic stop that occurred 02-18-20 (R.337: Motion to Suppress, PageID#1303). That motion proved SUCCESSFUL. For the Court ruled:

"I am going to suppress the evidence...I don't think there was a right to reach into the pocket. I don't think that defendant consented to it, and I don't think the officer could legitimately believe that he consented to it...So, I'll grant the motion to suppress".

(R.567: Mtn. to Suppress).

Prosecution, clearly admitted that the evidence was utilized to prosecute Mr. Jarvis, the "phone that we subsequently recovered from Ms. Byerly (the companion), does that show drug trafficking, et cetera and communications between Mr. Jarvis and Ms. Byerly. Yes." (Id. at PageID#3135).

Officers only became acquainted with and aware of Mr. Jarvis' companion, Ms. Byerly, as a result of the arrest that occurred during the 02-18-20 traffic stop. Because of those events, they obtained her cellphone with the evidence on it that was used to indict Mr. Jarvis on Count One, the ultimate count of conviction. Without the unlawful reaching into Mr. Jarvis' pocket, the arrest would not have occurred and the phone would likely not have been received by police.

For Mr. Jarvis to challenge the use of the phone, the issue must be addressed as to whether or not he "has a legitimate expectation of privacy in the invaded" item, here, Ms. Byerly's callphone. (See Rakas v. Illinois, 439 U.S. 128, 143 (1978). A subjective expectation of privacy is legitimate if it is "one that society is prepared to recognize as reasonable." Id. Clearly

Mr. Jarvis had an expectation of privacy, and thus, standing, to challenge the stop and search of his pockets by officers during the 02-18-20 stop. This was exhibited by his victorious challenge to the search of his pockets during that stop via one motion to suppress that was filed. (See R.377: Opinion and Order, PageID#1689). Prior to the constitutional violation of Mr. Jarvis' rights, the arresting officer admitted that he was only going to give Mr. Jarvis "a written warning and let them go." (R.567: Supression Hrg. Tr., PageID#3250). However, after reaching into Mr. Jarvis' pockets, the officer arrested both Mr. Jarvi and Ms. Byerly. It was this event and arrest that ultimately led to the government to get Ms. Byerly's cellphone and the evidence on it. (R.559: Tr. of Hrg., PageID#3126-27).

The phone is Fruit of the Poisonous Tree as it was obtained as a direct result of the illegal search and arrest of Mr. Jarvis and Ms. Byerly on 02-18-20. The Fourth Amendment exclusionary rule "extends as well to the indirect as the direct products of unconstitutional invasions..." (see Wong Sun v. United States, 371 U.S. 471, 484 (1963); United States v. LaPradd, 480 Fed. Appx. 405, 409 (6th Cir. 2012); United States v. Valencia, 913 F.2d 378, 382 (7th Cir. 1990); also see United States v. Robeles-Ortega, 348 F.3d 679, 681 (7th Cir. 2003)). Thus, courts "must determine whether the evidence was come at by the exploitation of the initial illegality or instead by means sufficiently distinguishable to be purged of the primary taint." (see United States v. Elmore, 18 F.4th 193, 199 (6th Cir. 2021); see also Segura v. United States, 468 U.S. 796, 804 (1984) and Wong Sun v. United

States, 371 U.S. 471, 488 (1963)). Equally important, Courts have held that the exclusionary rule extends to evidence derived from third parties. (See United States v. Meece, 580 F.3d 616, 619-20 (7th Cir. 2009)). The Key is that the Fruit of the Poisonous Tree doctrine "bars the admissibility of evidence which police derivatively obtain from an unconstitutional search or seizure." (See United Staes v. Pearce, 531 F.3d 374, 381 (6th Cir. 2008)).

The law supported Mr. Jarvis' request to challenge the use of the evidence obtained from Ms. Byerly's phone. Once this crucial evidence was suppressed, the government should not have been able to maintain its charge, let alone obtain a guilty plea from Mr. Jarvis, thereby changing the outcome of this case. Because of such, Mr. Jarvis was prejudiced and his conviction should be vacated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jason Davis

Date: Feb 9 2023