NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

RUBEN RAMIREZ-RIVERA,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Mr. Ramirez-River's Fourth Amendment rights were violated when his motion to suppress all fruits of an illegal traffic stop was denied?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

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

United States v. Ruben Ramirez-Rivera, No. 21-14032-Cr-Middlebrooks (April 27, 2022)

United States Court of Appeals (11th Cir.):

United States v. Ruben Ramirez-Rivera, No. 22-11662 (April 27, 2023)

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PETITION FOR WRIT OF CERTIORARI

Ruben Ramirez-Rivera respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 22-11662 in that court on April 27, 2023, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on April 27, 2023. This petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following constitutional and statutory provisions:

> **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."

STATEMENT OF THE CASE

On September 27, 2020, a federal grand jury in Highlands County, in the Southern District of Florida, returned an indictment against Mr. Ramirez-Rivera, charging him with one count of possession with intent to distribute fentanyl, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(vi) (Count 1); one count of possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) (Count 2); and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C.§ 924(c)(1)(A)(i) (Count 3). The indictment also contained a forfeiture provision. Mr. Ramirez-Rivera filed a motion to suppress physical evidence on January 20, 2022. The district court held an evidentiary hearing on the motion on February 14, 2022, and subsequently denied the motion. On February 22, 2022, Mr. Ramirez-Rivera entered conditional pleas of guilty to Counts 1 and 3 one of the Indictment, pursuant to stipulated facts and a written plea agreement. The agreement permitted him to reserve his right to appeal the denial of his motion to suppress.

Sentencing began on April 27, 2022. At that time, the district court sentenced Mr. Ramirez-Rivera to 120 months' imprisonment on Count 1, and 60 months' imprisonment on Count 3, to run consecutive to Count 1, for a total of 180 months' imprisonment, to be followed by five (5) years of supervised release. The district court dismissed Count 2 of the indictment. Mr. Ramirez-Rivera timely filed a notice of appeal.

On appeal, the Eleventh Circuit Court of Appeals affirmed Mr. Ramirez-Rivera's conviction. The Eleventh Circuit found that Mr. Ramirez-Rivera had not shown that the district court erred in denying the motion to suppress because the traffic stop was based on reasonable suspicion and law enforcement did not unlawfully prolong the stop.

I. Motion To Suppress

Before entering a conditional plea, Mr. Ramirez-Rivera filed a motion to suppress all physical evidence and all post-arrest statements, arguing that law enforcement had no probable cause to stop the vehicle Mr. Ramirez-Rivera's was in because there was no violation of Florida traffic laws permitting the stop. In addition, defense counsel argued that law enforcement's continued detention of Mr. Ramirez-Rivera to conduct a "drug sniff" was unlawful and violated the Fourth Amendment to the Constitution. Therefore, the firearm, firearm magazines, drugs and all post-arrest statements should be suppressed.

At the motion to suppress hearing, held on February 14, 2022, one witness, Detective Seth Abelin with the Highlands County Sheriff's office, was called. On September 27, 2020, Abelin was assigned to road patrol, working the Delta squad night shift. At approximately 7:37 p.m. he had pulled into the parking lot of the Frito-Lay chip factory to type up some reports. At that time, he observed a blue Ford Focus traveling southbound on North Central Avenue approaching Auburn Street. As the vehicle passed by, Abelin noticed that part of the tag was

unreadable. Abelin then pulled out of the parking lot, got behind the vehicle and conducted a traffic stop at approximately 7:38 p.m. The vehicle stopped in a residential neighborhood and there were no street lights in that area. It was dark outside and headlights were needed at that time. The vehicle had a temporary paper tag that the witness could see with his light shining on the back rear end of the vehicle from approximately 30 feet. The vehicle had two tag lights. The left light was working but the right light was not working. After stopping the vehicle, Abelin never went back and checked the tag or the lighting on the tag.

Two people were inside the vehicle. Mr. Ramirez-Rivera was in the front right passenger seat and a tall, Hispanic male was driving the vehicle. Abelin said that he observed Mr. Ramirez-Rivera and that, "He was nervous, wouldn't make eye contact with me when I requested the documents. He lit up a cigarette, and wouldn't make eye contact with me and was shaking." Both of the individuals in the vehicle were able to speak "at least some English." Abelin said that when he first approached the vehicle he introduced himself, advised them of the reason for the traffic stop and asked for driver's license, registration and insurance. He then asked the passenger, Mr. Ramirez-Rivera, for his identification. He also asked the individuals if they had any weapons on them. After receiving the documents Abelin did not do the records check immediately but continued talking to the individuals. Abelin was eventually joined by K-9 handler Deputy Jones, and a K-9 sniff was conducted of the vehicle. Abelin asked the individuals to get out of the car, which

they did, and then asked the driver if he could conduct a pat down for weapons on him. The driver consented. No weapon was found on the driver. Deputy Jones conducted a similar pat down with Mr. Ramirez-Rivera and no weapon was found. Abelin then relayed the driver's license number for the driver and the identification card of the passenger, along with the names to dispatch. Dispatch came back with no warrant for Mr. Ramirez-Rivera but that he had a suspended license. Mr. Ramirez-Rivera was not driving that night.

While the K-9 sniff was conducted, Abelin talked to the defendant off camera and observed that he "smelled of fresh cannabis." He asked the defendant about the odor of marijuana and said the defendant told him that he had smoked approximately one hour ago. Based on that information, he searched the defendant. During the search he discovered two clear baggies in his front right pocket. The first clear baggie contained "a white powder like substance." Abelin said, "Based on my training and experience, I suspected this to be cocaine, and the second baggie contained rectangular pills, and I suspected that to be Alprazolam or Xanax." During the dog sniff the K-9 gave a positive response for the presence of a controlled substance. Abelin interviewed the defendant and he admitted having Xanax and cocaine in his pockets. Later, the vehicle was searched and marijuana was found in the vehicle along with a black bag and the defendant admitted the bag was his. Inside the bag was a firearm, magazine, fentanyl and cocaine. Police

officers determined the driver of the vehicle was not involved and released him with a verbal warning for the tag light.

After hearing argument, the district court denied the motion to suppress stating that the court was relying on *United States v. Harris*, 526 F.3d 1334 (11th Cir. 2008) for the principle "that a traffic stop is constitutional if it is either based on probable cause to believe a traffic violation has occurred or justified by reasonable suspicion." The district court noted that Florida Statute Section 316.221.2 "says that a tail light must illuminate the rear registration plate and render it legible from 50 feet, and the testimony here of the officer was that he couldn't see the side of this tag and it was not legible from 50 feet." Accordingly, the district court found that "this was a traffic stop based on probable cause to believe a traffic violation had occurred or justified by reasonable suspicion."

Regarding the search, the district court stated:

> The facts are very close here. The whole event here was eight minutes. It all occurred before dispatch sent or reported the results of the officer's inquiries that were directly related to the traffic stop, and so I don't find that it was unreasonably extended in duration. And it all occurred during the time reasonably expended with respect to the traffic stop.
>
> Further, I find that once the traffic stop was conducted and the officer smelled marijuana and found cocaine and Xanex, there was an independent basis to detain the Defendant and search the vehicle.
>
> So, for those reasons, I find that the search was not unreasonable under the Fourth Amendment and deny the motion to suppress.

II. Proffer of Facts In Support of Conditional Plea

The parties agreed that had the case proceeded to trial, the government would have been able to prove the allegations contained within Count One of the Indictment, which charged the defendant with possession with intent to distribute a controlled substance, that is, 400 grams or more of a mixture and substance containing a detectable amount of fentanyl, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(A)(vi), and Count Three of the Indictment, which charged the defendant with possession of a firearm in furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1)(A)(i). The defendant stipulated that those allegations, elements of the crime and the following recitation of the facts shall constitute the underlying factual basis for the entry of a plea of guilty in this case:

On September 27, 2020, Highlands County, Florida Sheriff's Office ("HCSO") Deputy ("Dep.") Seth Abelin was conducting traffic enforcement in Avon Park, Highlands County, in the Southern District of Florida. Dep. Abelin observed a blue Ford Focus and, at around 7:38 p.m., conducted a traffic stop on the vehicle after observing one of the tag lights to be inoperable. Defendant was located in the front passenger seat of the vehicle and appeared to be nervous.

Both Defendant and the driver were asked to step out of the vehicle and toward the squad car. Dep. Abelin spoke with Defendant and noted an odor of fresh marijuana coming from his person. Defendant denied having cannabis but

admitted that he smoked marijuana about an hour prior. Dep. Abelin then searched Defendant and found two small baggies; one contained a white powder of suspected cocaine, and the other contained a white pill of suspected Xanax.

Around the time of the questioning, another deputy conducted a canine sniff of the vehicle, and the canine gave a positive response for the presence of controlled substances. As law enforcement began a search of the vehicle, Dep. Abelin conducted a post-*Miranda* interview of Defendant. Defendant was asked if there was anything in the vehicle, and he responded that whatever they found in the vehicle was his, and that the driver was just giving him a ride.

Law enforcement then recovered a black bag from the rear seat of the vehicle. In that bag, deputies found a loaded Smith & Wesson .40 caliber pistol along with two other loaded magazines, one of which was extended. The bag also contained, as shown by later lab testing, approximately 698 grams of fentanyl and 482 grams of cocaine, along with 107 alprazolam pills. Deputies also found around 16 grams of marijuana and 80 boxes of THC vape pens.

Defendant was then interviewed again, and he admitted that the black bag was his. When asked what was in the black bag, Defendant stated "a big problem," and then said it contained cocaine, weed oils, and a gun. Defendant again said that the driver was innocent.

Regarding Count One, the parties agree that these facts, which do not include all the facts known to the government and the defendant, are sufficient to

prove that: (i) the defendant knowingly possessed fentanyl; and (ii) the defendant intended to distribute the fentanyl; and (iii) the fentanyl equaled 400 grams or more, in violation of Title 21, United States Code, § 841(a)(1) and (b)(1)(A)(vi).

Regarding Count Three, the parties agree that these facts, which do not include all the facts known to the government and the defendant, are sufficient to prove that: (i) the defendant committed the drug trafficking crime charged in Count One; and (ii) the defendant knowingly possessed a firearm in furtherance of such crime, in violation of Title 18, United States Code, Section 924(c)(1)(A)(i).

REASON FOR GRANTING THE WRIT

I. There Was No Violation of Florida Traffic Laws and Law Enforcement Had No Probable Cause to Stop the Vehicle.

The Fourth Amendment of the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. The touchstone of the Fourth Amendment is reasonableness, and reasonableness is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate government interests. *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999).

The Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417–418 (1981); see also *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). The stop by police of an occupied automobile for a traffic violation constitutes a "seizure" within the Fourth Amendment. *Whren v. United States,* 517 U.S. 806, 809–10 (1996). Therefore, to justify a warrantless seizure, the government must "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the intrusion. *Terry* at 21 (emphasis added). In *Whren*, the Court also established a clear test for determining when a traffic stop is reasonable. *Whren* at 806. The Court found "[s]ubjective intentions play no role in the ordinary, probable-cause Fourth Amendment analysis." *Id.* at 813 (emphasis added). It also

held if an officer has probable cause at the time of the stop to believe the individual has "violated the traffic code [then that] render[s] the stop reasonable under the Fourth Amendment." *Id*. at 819.

When the police officer who stopped and arrested a defendant is a state officer, the legality of his conduct should be determined by the law of Florida subject to the requirements of the United States Constitution. *See United States v. Taylor*, 797 F.2d 1563 (11th Cir. 1986). Florida Statute states:

> Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

Fla. Stat. § 316.221(b) (2020). As long as a vehicle has a single operational light and the tag was "clearly legible," there is no violation of the statute, and the officer does not have probable cause to stop a vehicle. *Langello v. States*, 970 So.2d 491, 492 (Fla. 2nd DCA 2007). Here, Deputy Abelin confirmed that one of the two rear tag lights was inoperable. Like *Langello*, a violation of the Florida Statute did not occur and Deputy Abelin did not have probable cause to stop the vehicle. The statute requires only a single operational light. Moreover, a reasonable officer should know the statutory requirements for taillights as prescribed by Fla. Stat. § 316.221 and law enforcement officers are charged with knowledge of the law. *Doctor v. State*, 596 So.2d 442, 447 (Fla. 1992).

In the instant case, the alleged basis and probable cause to stop the vehicle came from a traffic violation, specifically, a tag light citation. The district court noted that Florida Statute § 316.221.2 "says that a tail light must illuminate the rear registration plate and render it legible from 50 feet, and the testimony here of the officer was that he couldn't see the side of this tag and it was not legible from 50 feet." A review of the testimony, however, fails to show any testimony or evidence that the officer could not see the tag from 50 feet. There was no testimony of approximately how far Abelin was from the vehicle when he first spotted it but it was likely more than 50 feet. Abelin testified that he could definitely see the tag from at least 30 feet but did not say that he had to be within 30 feet in order to see the tag. In other words, there was no testimony that the tag could not be read from 50 feet. Accordingly, the district court erred in making this finding when there was no testimony or evidence to support it. Here, a violation of Fla. Stat. § 316.221 did not occur and Deputy Abelin did not have probable cause to stop the vehicle. The stop was invalid and all evidence obtained as a result of Mr. Ramirez-Rivera's arrest should have been suppressed. Accordingly, the Eleventh Circuit erred in affirming the district court's failure to suppress all evidence based on no probable cause for the stop.

II. Law Enforcement's Continued Detention of Ruben Ramirez-Rivera to Conduct A "Drug Sniff" was Unlawful and Violated the Fourth Amendment to the Constitution.

Furthermore, even if the Eleventh Circuit correctly concluded that the police legitimately stopped the vehicle for an inoperable tag light, Ramirez-Rivera's continued detention to enable a police dog to conduct a "drug sniff" of the vehicle was unlawful and in violation of the Fourth Amendment to the United States Constitution. Police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. *Rodriguez v. United States,* 575 U.S. 348 (2015). Once the investigation for the traffic violation terminated, Ramirez-Rivera should have been permitted to continue on his way. His continued detention, however, resulted in an investigative "stop" which must be supported by reasonable suspicion in order to be valid. *Terry v. Ohio*, 392 U.S. 1 (1968). The police must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, *id.* at 21, justify a reasonable and articulable suspicion that the person seized is engaged in criminal activity. *Reid v. Georgia*, 448 U.S. 438 (1980).

The instant case stands in stark contrast to *United States v. Hardy*, 855 F.2d 753 (11th Cir. 1988), where the Eleventh Circuit found "specific and articulable facts" that persons seized as part of a routine stop for speeding, were engaged in criminal activity from the "gaps and inconsistences" in their answers to routine questions. For instance, neither the passenger nor the driver in *Hardy* knew each

other's last names, even though they claimed to have been vacationing together. In addition, they gave different and inconsistent accounts of the vacation. And the driver had no identification.

Nor is this case like *United States v. Wilson*, 853 F.2d 869 (11th Cir. 1988), where the Eleventh Circuit found probable cause to justify a defendant's continued detention during a proper traffic stop from: (1) a short white straw covered with a white powdery substance in plain view on the front seat, and (2) a radio check which revealed that the defendant's license had been suspended. The "additional facts and circumstances occurring after [the trooper] decided to stop *Wilson*, but before he arrested [him]," justified the continued detention which amounted to a custodial arrest. *Id*. Here, by contrast, there were no "additional facts" to support a further detention. The contraband was not in plain view. Once a valid identification was provided and the traffic violation investigation was completed, there was nothing to justify the continued detention. It was illegal.

III. The Firearms and Controlled Substances Found on Defendant's Person and the Vehicle Are Fruit of a Poisonous Tree.

Under the exclusionary rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal seizure. *Mapp v. Ohio*, 367 U.S. 643 (1961). Furthermore, the exclusionary rule mandates the exclusion of derivative evidence, both tangible and testimonial, that is

the product of unlawfully seized evidence or is acquired as an indirect result of that conduct. *Wong Sun v. United States*, 371 U.S. 471 (1963). When applying the exclusionary rule to derivative evidence, a court must determine whether the evidence is tainted by the illegality of the seizure. This Court addressed the issue of later discovered evidence by placing the focus on how the evidence was obtained: "[w]hether, granting establishment of the primary illegality, the evidence to which instant objection is made has come by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Id*. at 487-88. The firearm and controlled substances found in this case were the direct result of the unlawful search of Ramirez-Rivera and the vehicle. Thus, the exclusionary rule requires that his post-arrest statements be suppressed, as they are the fruits of a poisonous tree.

"The exclusionary rule applies not only to the illegally obtained evidence itself, but also to other incriminating evidence derived from the primary evidence." *United States v. Terzado-Madruga,* 897 F.2d 1099, 1113 (11th Cir. 1990); *Nix v. Williams*, 467 U.S. 431, 441 (1984) (citing *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, (1920)). The exclusionary rule bars the admission of evidence obtained in violation of the Constitution and it extends beyond the direct products of police misconduct to evidence derived from the illegal conduct, or "fruit of the poisonous tree." *Nardone v. United States*, 308 U.S. 338, 341 (1939). In conclusion, the exclusionary doctrine bars evidence that has been illegally obtained

only if the "fruit" is sufficiently connected to the "poisonous tree." In this case, the stop was unlawful, and the gun, magazines and drugs found are fruit of the poisonous tree. Thus, the exclusionary rule requires that the evidence be suppressed and the Eleventh Circuit erred in failing to make this finding.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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