No. 23-5793

IN THE SUPREME COURT OF THE UNITED STATES

PHILLIP SERAPIO BACA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner, a passenger in a vehicle that was lawfully stopped for traffic violations, was entitled to suppression of a firearm subsequently discovered in the automobile, in the absence of a causal connection between his continued detention and the discovery.

RELATED PROCEEDINGS

United States District Court (D. Colo.):

United States v. Baca, No. 22-cr-42 (Oct. 26, 2022)

United States Court of Appeals (10th Cir.):

United States v. Baca, No. 22-1377 (July 14, 2023)

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OPINIONS BELOW

The order and judgment of the court of appeals (Pet. App. A1-A3) is not published in the Federal Reporter but is available at 2023 WL 4542143. The order of the district court denying petitioner's motion to suppress (Pet. App. A4-A5) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 14, 2023. The petition for a writ of certiorari was filed on October 12, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Colorado, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 30 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A3.

1. In January 2022, police officers in Denver, Colorado, stopped a car for having tinted windows and missing a front license plate. Pet. App. A1. There were three occupants in the car: the driver, petitioner (the front-seat passenger), and petitioner's adult son (the backseat passenger). Ibid. An officer recognized petitioner's son as a member of a criminal street gang that was engaged in a street feud with a second gang. Ibid. The officer observed that petitioner's son "looked 'extremely nervous' and 'was looking around the car and grabbing at his pockets with his hands.'" Ibid. (citation omitted). Because the officers believed that the car might contain weapons that posed a threat to their safety during the traffic stop, they ordered the occupants out of the car. Ibid.

After the occupants exited the car, the officers observed a handgun in plain view on the rear passenger floorboard under the driver's seat. Pet. App. A1; Presentence Investigation Report

(PSR) ¶ 12. The officers also located a loaded handgun under the driver's seat, PSR ¶ 12, and a third loaded gun in a holster that was partially under the front passenger seat where petitioner had been sitting. PSR ¶ 13; Pet. App. A1. Based on the position of the holstered gun, the officers determined that it "could not have been placed there by anyone other than" petitioner; subsequent DNA testing results provided "very strong support" that petitioner's DNA was on the gun; and petitioner later admitted in a plea agreement that he had constructively possessed the gun. PSR ¶¶ 13, 15; see Pet. App. A1.

2. A grand jury in the District of Colorado charged petitioner with possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Indictment 1.

Petitioner moved to suppress the firearm found under his seat, based on the assertion that the officers had unlawfully prolonged the stop beyond the time needed to address the license plate and tinted window violations. D. Ct. Doc. 24, at 4-7 (Mar. 14, 2022); see Rodriguez v. United States, 575 U.S. 348, 354 (2015). Petitioner acknowledged, however, that his argument was foreclosed by the court of appeals' decision United States v. DeLuca, 269 F.3d 1128 (10th Cir. 2001), which had explained that absent a showing that items in a car "would never have been found but for his, and only his, unlawful detention," a passenger cannot show

any "factual nexus" between his prolonged seizure and the search of a car. Id. at 1133; see D. Ct. Doc. 24, at 7-8.

The district court accordingly denied the motion. Pet. App. A4-A5. It found that petitioner "had no possessory interest" in the car and could not show that the evidence seized during the search would not have been discovered but for petitioner's allegedly unlawful detention. Id. at A5. Petitioner pleaded guilty, and the district court sentenced him to 30 months of imprisonment, to be followed by three years of supervised release. Judgment 1-3.

3. The court of appeals affirmed. Pet. App. A1-A3. Petitioner again acknowledged that the court was bound by controlling precedent in DeLuca. Id. at A2. The court explained that in DeLuca, it had held that a defendant who "'lack[s] the requisite possessory or ownership interest in a vehicle' may not 'directly challenge a search of that vehicle,' but 'may nonetheless contest the lawfulness of his own detention and seek to suppress evidence found in the vehicle as the fruit of the defendant's illegal detention.'" Ibid. (quoting DeLuca, 269 F.3d at 1132) (brackets in original). To suppress evidence under DeLuca, a defendant must show (1) that the detention violated his Fourth Amendment rights; and (2) a factual nexus between the illegality and the challenged evidence. Ibid. Petitioner conceded that he was unable to demonstrate a factual nexus between his own detention

and the discovery of the firearm. Ibid. Accordingly, the court of appeals determined that the district court had correctly denied the motion. Ibid.

ARGUMENT

Petitioner contends (Pet. 5-6) that he is entitled to suppression of the firearm found under his passenger seat, based on the assertion that he was unlawfully detained when the traffic stop was prolonged beyond the time necessary to address the license-plate and tinted-window violations. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. This Court has previously denied certiorari on this issue, see Pulliam v. United States, 549 U.S. 952 (2006) (No. 05-10687), and should follow the same course here.

1. Petitioner contends that the firearm discovered under the front passenger seat during the search should be suppressed because it was the fruit of his allegedly unlawfully prolonged detention after a concededly lawful traffic stop. This Court, however, has repeatedly reaffirmed the principle that the exclusionary rule is applicable only where there is a significant causal connection between the identified illegality and the discovery of the evidence for which suppression is sought. See, e.g., Hudson v. Michigan, 547 U.S. 586, 592 (2006); New York v. Harris, 495 U.S. 14, 19 (1990); Segura v. United States, 468 U.S.

796, 804 (1984). For purposes of determining whether evidence is the "fruit" of a prior illegality, the relevant inquiry is whether the evidence was "come at by exploitation of th[e] illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Wong Sun v. United States, 371 U.S. 471, 488 (1963) (citation omitted).

As the court of appeals explained (Pet. App. A2), petitioner failed to demonstrate that the firearm was the fruit of his continued detention. No evidence suggested that the officers' decision to search the car rested on information they obtained during petitioner's continued detention. Nor did any evidence suggest that, if petitioner had not been detained after the initial stop, he would have been able to depart the scene and take the car with him. The search in this case thus was not enabled or promoted by petitioner's allegedly unlawful detention after the initial, lawful stop. Under the causation principle incorporated in the exclusionary rule, therefore, petitioner was not entitled to suppression of the firearm.

Other courts agree with the court of appeals' decision in United States v. DeLuca, 269 F.3d 1128 (10th Cir. 2001), that a passenger in a car that was lawfully stopped cannot ordinarily obtain suppression of evidence found in the car on the ground that the seizure of the passenger was unduly prolonged. See United States v. Pulliam, 405 F.3d 782, 787-791 (9th Cir. 2005) (denying

suppression where defendant "failed to demonstrate that the gun is in some sense the product of his detention"), cert. denied, 549 U.S. 952 (2006); United States v. Carter, 14 F.3d 1150, 1154-1155 (6th Cir.) (denying suppression where discovery of contraband was not fruit of passenger's unlawful detention), cert. denied, 513 U.S. 853 (1994).

Petitioner errs in contending (Pet. 8-9) that this Court's decision in Brendlin v. California, 551 U.S. 249 (2007), casts doubt on that approach. Brendlin held that a passenger can object to the unlawfulness of the initial seizure of the car and seek suppression as a result of that illegality. But Brendlin does not address whether, if an initial stop is lawful but its duration is unreasonable, a passenger can obtain suppression of evidence found in the car. See United States v. Figueredo-Diaz, 718 F.3d 568, 576 n.5 (6th Cir. 2013) (explaining that factual nexus requirement is consistent with Brendlin's holding that passenger may challenge the legality of a traffic stop). Brendlin therefore does not address the issue here.

2. Petitioner is also incorrect in asserting (Pet. 7-8) that the Third and Sixth Circuits have disagreed with DeLuca.

In United States v. Mosley, 454 F.3d 249 (2006), the Third Circuit held that a passenger who lacks an expectation of privacy in an automobile in which he was riding can obtain suppression of evidence seized from the automobile where the initial traffic stop

was illegal under the Fourth Amendment. See id. at 269 (finding causal "links" between the illegal stop and the subsequent discovery of evidence, thus requiring the government to establish "one of the traditional exceptions" to the exclusionary rule in order to avoid suppression). Mosley specifically noted that the Tenth Circuit's decision in DeLuca was "inapposite," because DeLuca applies only where the initial traffic stop was legal. Id. at 255; see id. at 255 n.11 (noting in "dicta" that the "rationale" of Mosley "might be thought" inconsistent with the rationale underlying the Tenth Circuit's holding in DeLuca, but leaving the issue open for decision "when an appropriate case arises").

And in United States v. Torres-Ramos, 536 F.3d 542, 549, cert. denied, 555 U.S. 1088 (2008), and 556 U.S. 1196 (2009), the Sixth Circuit simply recognized that passengers have standing to challenge the legality of a traffic stop and the legality of their continued detention beyond the initial stop. Id. at 549-550. The court then concluded that reasonable suspicion existed for the passengers' continued detention and therefore affirmed denial of their motions to suppress. Id. at 550-553.

Consistent with its prior decision in United States v. Carter, supra, and the decision below in this case, the Sixth Circuit continues to apply a causation requirement to a passenger's suppression claim when considering a prolonged detention. In United States v. Figueredo-Diaz, for example, the Sixth Circuit

cited its decision in Carter and the Tenth Circuit's decision in DeLuca to explain that a passenger seeking to suppress evidence found in a vehicle must show that the passenger's continued unlawful detention proximately caused the vehicle search. See 718 F.3d at 576-577; see also United States v. Bah, 794 F.3d 617, 626-627 (6th Cir.) (passenger could not seek suppression of items located in vehicle, but could seek suppression of items in his wallet, based on his allegedly prolonged detention), cert. denied, 577 U.S. 1018 (2015).

3. Finally, this case would be a poor vehicle in which to address the question presented because the traffic stop was not unreasonably prolonged. See Gov't C.A. Br. 5 n.1 (preserving that issue, which was not litigated below due to the binding precedent of DeLuca). Petitioner therefore could not prevail on his suppression motion even if no nexus requirement applied.

In Pennsylvania v. Mimms, this Court held that a police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle. 434 U.S. 106, 111 n.6 (1977) (per curiam). The Court emphasized the "legitimate and weighty" interest in officer safety, especially in light of the "inordinate risk" posed by traffic stops, and found that the additional intrusion of being ordered out of a vehicle that was lawfully stopped was "de minimis." Id. at 110-111 (emphasis omitted). And in Rodriguez v. United States, 575 U.S. 348 (2015), this Court

held that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' -- to address the traffic violation that warranted the stop and attend to related safety concerns." Id. at 354 (citations omitted). Actions that further the legitimate interest in officer safety "stem[] from the mission of the stop itself," id. at 356, and are accordingly permissible.

Petitioner does not contest the legality of the traffic stop for a missing front license plate and tinted windows. The officers' decision to order petitioner and the other occupants out of the car for officer safety during the stop was reasonable, especially after they recognized petitioner's son in the backseat as a known member of a gang engaged in a feud and observed his nervous behavior. Pet. App. A1. Petitioner appears to suggest (Pet. 2) that the officers could not prolong the stop beyond the point where the driver pointed out that his front license plate was sitting on the vehicle's dashboard. But he offers no reason why the presence of the front license plate inside the cabin of a vehicle with tinted windows should have brought the traffic stop to an end.

To the contrary, the officers were permitted both to take whatever steps might be necessary to "determin[e] whether to issue a traffic ticket," and to conduct "'ordinary inquiries incident to the traffic stop,'" which "[t]ypically" include "checking the

driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Rodriguez, 575 U.S. at 355 (brackets and citation omitted). And they were permitted to "attend to related safety concerns" in doing so. Id. at 354; see id. at 356.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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