No. 23-5918

IN THE SUPREME COURT OF THE UNITED STATES

THEODORE LEE WILLIAMS, II, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the lower courts erred in rejecting petitioner's claim of unlawful detention, where he was stopped after committing a traffic violation, immediately exited his vehicle and proceeded in a manner that police experience indicated was highly suggestive of impending flight, and an officer attempted to handcuff him.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Williams, No. 20-cr-353 (Feb. 3, 2022)

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

United States v. Williams, No. 22-10426 (Apr. 5, 2023), petition for reh'g denied (June 30, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. C) is not published in the Federal Reporter but is available at 2023 WL 2785223. The order of the district court (Pet. App. A) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 5, 2023. A petition for rehearing was denied on June 30, 2023 (Pet. App. D). On September 18, 2023, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including October 28, 2023. The petition for a writ of certiorari

was filed on October 27, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Middle District of Florida, petitioner was convicted on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2) (2018). Judgment 1. He was sentenced to 57 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. C.

1. On the evening of May 28, 2020, an undercover officer in Hillsborough County, Florida, observed a car fail to stop at a stop sign. Pet. App. A3. The undercover officer radioed his observation to a uniformed deputy officer in the area. Ibid. The deputy initiated a traffic stop as the car turned into a convenience store parking lot. Id. at A4.

Petitioner, the driver of the car, then quickly exited his car and walked towards the deputy. Pet. App. A4. Petitioner appeared nervous and acted like he was trying to distance himself from his car. Ibid. In the deputy's experience, such actions were suggestive of flight, and the deputy accordingly decided to place petitioner in handcuffs while the deputy conducted the traffic stop. Id. at A4 & n.4. When the deputy placed his hand on petitioner's arm to handcuff him, petitioner pulled away and

attempted to flee. Id. at A4. The deputy grabbed petitioner's shirt and both of them fell to the ground. Ibid. The deputy and the undercover officer, who had arrived at the scene, then arrested petitioner for resisting arrest. Id. at A4-A5.

The deputy searched petitioner incident to that arrest and found a package containing suspected marijuana. Pet. App. A5. Petitioner stated that he did not want to go back to prison and asked to call his mother and girlfriend with his cell phone, which was still in his car. Id. at A6. The deputy put petitioner in the patrol car and went to retrieve petitioner's cell phone from petitioner's car. Ibid. When the deputy entered petitioner's car to turn off the ignition, he saw not only a cell phone, but also a firearm, on the floor at the base of the driver's seat. Ibid.

2. A grand jury in the Middle District of Florida charged petitioner with one count of possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Pet. App. A1; see id. at B1. Petitioner moved to suppress the items found during the search of his car. Id. at A1.

At an evidentiary hearing, the deputy testified that he decided to handcuff petitioner during the traffic stop because petitioner had quickly gotten out of his car and walked towards the deputy, the deputy believed that he was the sole officer at the scene (not realizing that the undercover officer was there as well), and the stop occurred in a high-crime area. Pet. App. A4.

The deputy and the undercover officer further testified that, based on their experience and training, it was uncommon for someone to exit his car during a traffic stop, and that such conduct usually indicates that "the person is either going to flee on foot or does not want law enforcement to approach the window of his vehicle." Id. at A4 n.4.

Following the evidentiary hearing, the district court denied petitioner's motion to suppress. Pet. App. A1-A13. The court rejected petitioner's claim that the deputy's attempt to handcuff him was an unconstitutional arrest lacking probable cause. Id. at A8. "Under Terry v. Ohio, 392 U.S. 1 (1968)," the court explained, "an officer may briefly detain a person if he has a reasonable, articulable suspicion that the person has committed or is about to commit a crime." Ibid. And the court observed that "[d]uring the encounter, an officer may take reasonably necessary steps, including handcuffing or otherwise restraining the person, to protect himself and/or the public and to maintain the status quo when such action is reasonable under the circumstances." Ibid. (citing United States v. Hensley, 469 U.S. 221, 235 (1985)).

Turning to the facts of this case, the district court determined that the deputy's "attempt to detain [petitioner] by placing [him] in handcuffs f[ell] within the scope of a Terry stop, and that it was a reasonable action under the circumstances -- to provide for officer safety and to prevent [petitioner] from leaving

the scene." Pet. App. A9. The court found that the deputy "testified credibly that he attempted to detain [petitioner] (before [petitioner] fled) due to officer safety, safety of others on the scene, and to keep [petitioner] from fleeing." Ibid. In particular, the court reasoned that petitioner's "nervous behavior upon exiting his car, his attempt to distance himself from his car and approach [the deputy], the time and location of the stop, and the fact that [the deputy] believed that he was the only deputy on the scene at the time justified his attempted detention." Ibid. "While [the deputy] could have used methods other than handcuffing [petitioner] in order to detain him," the court continued, "he was not required to and his decision to use handcuffs did not turn the attempted detention into a de facto arrest." Ibid. The district court also found that, once petitioner tried to flee, the deputy had probable cause to arrest him for resisting arrest. Id. at A9-A10.

Petitioner proceeded to a bench trial, and the district court found him guilty of the felon-in-possession charge. Judgment 1. And it subsequently sentenced him to 57 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. C1-C7. The court noted that "[a] police officer may lawfully detain someone without a warrant if he has reasonable suspicion that the person has participated in or is

about to participate in criminal activity, which includes minor traffic violations." Id. at C4. The court then observed, citing this Court's decision in Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam), that "[w]hen an officer has already lawfully detained a driver, an additional intrusion into the driver's personal liberty is justified if it is outweighed by legitimate concerns for the officer's safety." Pet. App. C4 (citing Mimms, 434 U.S. at 111). And the court explained that "it is reasonable[] for officers to use handcuffs to protect themselves during an investigative detention." Id. at C5 (quoting Gray ex rel. Alexander v. Bostic, 458 F.3d 1295, 1306 (11th Cir. 2006), cert. denied, 550 U.S. 956 (2007)).

The court of appeals agreed with the district court that "[u]nder the totality of the circumstances" here, the deputy's "attempt to use handcuffs on [petitioner] for safety reasons was reasonable and did not turn the detention into a de facto arrest." Pet. App. C5. The court of appeals emphasized the deputy's testimony that, "[b]ased on his experience, * * * when people exit their vehicle quickly on traffic stops, there is a high likelihood they will flee on foot." Ibid. The court reasoned that, "[b]ecause [the deputy] believed himself to be the only officer on the scene, and because [petitioner] exited the vehicle quickly, appeared nervous, and appeared to be distancing himself from the vehicle, [the deputy] made the decision to detain

[petitioner] for safety reasons" -- "a legitimate justification." Ibid. And the court found nothing in the record to "contradict the [district court's] determination that the officer's testimony was credible." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 6-11) that his traffic stop became unlawful when the deputy tried to handcuff him. The lower court decisions are correct, and the court of appeals' factbound, unpublished, and nonprecedential decision does not conflict with any decision of this Court or another court of appeals. No further review is warranted.

1. "[T]he central inquiry under the Fourth Amendment [is] the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." Terry v. Ohio, 392 U.S. 1, 19 (1968); see Birchfield v. North Dakota, 579 U.S. 438, 477 (2016) ("[R]easonableness is always the touchstone of Fourth Amendment analysis."). In Terry, this Court held that officers may stop and briefly detain a suspect for investigation if they have reasonable suspicion that criminal activity is afoot. 392 U.S. at 30. In considering whether an officer used an appropriate level of force to effectuate an investigatory stop under Terry, the ultimate question is whether the measures used by the officer were "reasonably necessary to protect [his] personal

safety and to maintain the status quo during the course of the stop." United States v. Hensley, 469 U.S. 221, 235 (1985).

Here, the lower courts correctly found that the deputy's attempt to handcuff petitioner during the traffic stop satisfied that standard. See Pet. App. C5; Pet. App. A9. As the court of appeals explained, the deputy suspected -- based on his experience -- "a high likelihood" that petitioner "w[ould] flee on foot" because he had "exit[ed] [his] vehicle quickly on [the] traffic stop[]," "walked back towards [the deputy's] car," "appeared nervous," and "was trying to distance himself from [his] vehicle." Pet. App. C2, C5. The deputy also "believed himself to be the only officer on the scene." Id. at C5. Given those factual circumstances, indicating petitioner's possible flight and the absence of backup, the deputy reasonably attempted to handcuff petitioner "to provide for officer safety and to prevent [petitioner] from leaving the scene." Pet. App. A9.

2. Petitioner errs (Pet. 9-11) in arguing that the decision below conflicts with the plurality opinion in Florida v. Royer, 460 U.S. 491 (1983). The plurality in Royer suggested that "the investigative methods employed [during a Terry stop] should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Id. at 500. In United States v. Sharpe, 470 U.S. 675 (1985), however, the Court clarified that "[t]he fact that the protection of the public might,

in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable." Id. at 687 (quoting Cady v. Dombrowski, 413 U.S. 433, 447 (1973)) (brackets in original). Indeed, "[a] creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished." Id. at 686-687. Thus, "[t]he question is not simply whether some alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it." Id. at 687.

Petitioner identifies no authority to support his assertion (Pet. 10) that an officer must invariably give a suspect "an opportunity to comply with verbal commands before attempting to handcuff him." In fact, courts have consistently recognized that "handcuffing the particular person during the stop" -- even without a prior verbal command -- may sometimes be "needed for safety or to prevent flight." United States v. Howard, 729 F.3d 655, 661 (7th Cir. 2013); see pp. 10-11, infra. Here, both lower courts found that the deputy had a "legitimate justification" for handcuffing petitioner because the deputy "believed himself to be the only officer on the scene," and petitioner "exited the vehicle quickly, appeared nervous, and appeared to be distancing himself from the vehicle" in order to flee. Pet. App. C5; see Pet. App. A9.

That case-specific application of an established legal standard to particular facts does not warrant this Court's review. This Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Indeed, "under what [the Court] ha[s] called the 'two-court rule,' th[at] policy has been applied with particular rigor when," as here, "[the] district court and court of appeals are in agreement as to what conclusion the record requires." Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see, e.g., Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949).*

3. Petitioner is mistaken in suggesting (Pet. 7-9) that review is warranted because the courts of appeals are divided on the question presented.

The courts of appeals agree on the principal issue here -- that "officers may use handcuffs in the course of a Terry stop" when "a suspect threatens physical danger or flight." United

* Petitioner briefly asserts (Pet. 10 n.4) that he in fact "made no further movements after exiting the vehicle and closing the door." But the district court specifically found otherwise, Pet. App. A4, and the court of appeals determined that "[t]he District Court's factual findings were not clearly erroneous," Pet. App. C5. That factual finding does not warrant further review in this Court.

States v. Cervantes-Flores, 421 F.3d 825, 830 (9th Cir. 2005) (per curiam), cert. denied, 547 U.S. 1114 (2006), overruled on other grounds by United States v. Orozco-Acosta, 607 F.3d 1156, 1158-1159 (9th Cir. 2010), cert. denied, 562 U.S. 1154 (2011); see, e.g., United States v. Bailey, 743 F.3d 322, 340-341 (2d Cir.) ("[T]he government may be able to point to circumstances supporting a reasonable basis to think that even an unarmed person poses a present physical threat or flight risk warranting handcuffing."), cert. denied, 574 U.S. 1038 (2014); Howard, 729 F.3d at 661; El-Ghazzawy v. Berthiaume, 636 F.3d 452, 457 (8th Cir. 2011) ("[T]he use of handcuffs [during a Terry stop] * * * requires the [officer] to demonstrate that the facts available to the officer would warrant a man of reasonable caution in the belief that the action taken was appropriate.") (citation omitted; third set of brackets in original); Lundstrom v. Romero, 616 F.3d 1108, 1122 (10th Cir. 2010) ("Officers are authorized to handcuff individuals during the course of investigative detentions if doing so is reasonably necessary to protect their personal safety or maintain the status quo.").

Petitioner cites (Pet. 7-8) no case to the contrary. Some of petitioner's cited cases expressly recognize officer authority to handcuff suspects during Terry stops when doing so is reasonable under the circumstances. See Bailey, 743 F.3d at 340; United States v. Albert, 579 F.3d 1188, 1193 (10th Cir. 2009) (explaining

that "the use of handcuffs" is permissible where "'the facts available to the officer would warrant a man of reasonable caution in the belief that the action taken was appropriate'") (citation omitted); United States v. Tilmon, 19 F.3d 1221, 1228 (7th Cir. 1994) (noting that "handcuffing" had become "quite acceptable in the context of a Terry analysis"). Other cases cited by petitioner never considered any Fourth Amendment issue concerning handcuffing of suspects. See United States v. Palmer, 820 F.3d 640, 649 (4th Cir. 2016); United States v. Young, 707 F.3d 598, 605-606 (6th Cir. 2012), cert. denied, 569 U.S. 1039 (2013); United States v. Baron, 860 F.2d 911, 914-915 (9th Cir. 1988), cert. denied, 490 U.S. 1040 (1989). The only cited cases finding Fourth Amendment violations turned on "the circumstances involved," without suggesting that handcuffing suspects during Terry stops is invariably impermissible -- let alone that it is impermissible when reasonably necessary to protect officer safety or prevent flight. United States v. Aquino, 674 F.3d 918, 923 (8th Cir. 2012); see Allen v. Hays, 65 F.4th 736, 746 (5th Cir. 2023) (acknowledging that "handcuffing a suspect . . . do[es] not automatically convert an investigatory detention into an arrest") (citation omitted).

Petitioner relatedly suggests (Pet. 7) disagreement over the general legal standard courts apply when "determining whether a Terry stop has ripened into a de facto arrest." But while some

court of appeals decisions reference the "least intrusive means reasonably available" language from Royer as one factor in the Fourth Amendment reasonableness inquiry, 460 U.S. at 500, no circuit treats that concept as the determinative criterion when assessing whether the methods used during a Terry stop have gone too far.

Indeed, the circuits that petitioner claims have adopted his preferred legal rule also recognize that "the law does not require that the officer employ the least intrusive means conceivable." Palmer, 820 F.3d at 649 (emphasis added); see, e.g., United States v. Street, 614 F.3d 228, 233 (6th Cir. 2010) ("[T]he Fourth Amendment demands reasonableness, not unforgiving scrutiny; it demands that the officer take sensible steps given the circumstances of the encounter, not that he take the least intrusive steps imaginable."); United States v. Martinez, 462 F.3d 903, 907 (8th Cir. 2006) ("During a Terry stop, officers are authorized to take such steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the stop."), cert. denied, 549 U.S. 1272 (2007); Tilmon, 19 F.3d at 1225 ("[T]he fact that the protection of the public might, in the abstract, have been accomplished by less intrusive means does not, by itself, render the search unreasonable.") (citation and internal quotation marks omitted); United States v. Sanders, 994 F.2d 200, 208 (5th Cir.) ("The question * * * is whether the

police acted unreasonably in failing to recognize a less intrusive method or to pursue it.") (quoting Sharpe, 470 U.S. at 687) (brackets and internal quotation marks omitted), cert. denied, 510 U.S. 955 and 510 U.S. 1014 (1993); Martinez v. Nygaard, 831 F.2d 822, 827 (9th Cir. 1987) ("[A] reviewing court should keep in mind the pace of events occurring at the time of the stop and should not substitute its judgment about the best means of investigation for that of the officers.").

The Eleventh Circuit employs the same approach. While "[t]he question of reasonableness may sometimes turn on whether less intrusive means were practically available," May v. City of Nahunta, 846 F.3d 1320, 1330 n.6 (11th Cir. 2017), the fundamental issue is always whether officers have "take[n] reasonable action, based upon the circumstances, to protect themselves during investigative detentions," United States v. Hastamorir, 881 F.2d 1551, 1556 (11th Cir. 1989). And such reasonable action can include "handcuff[ing] a detainee when the officer reasonably believes that the detainee presents a potential threat to safety" or a flight risk. Gray ex rel. Alexander v. Bostic, 458 F.3d 1295, 1305-1306 (11th Cir. 2006), cert. denied, 550 U.S. 956 (2007).

Petitioner recognizes (Pet. 9) that the Eleventh Circuit has applied the rule that he advocates, but claims that the court of appeals "abandoned that position" in the unpublished decision below. But even assuming that were correct, because "[u]npublished

opinions are not binding precedent," United States v. Izurieta, 710 F.3d 1176, 1179 (11th Cir. 2013), the decision below does not itself create any binding law on the issue. Rather, the Eleventh Circuit's rule remains the one from Hastamorir and Bostic -- which the decision below cited and applied, see Pet. App. C5, and which petitioner appears to accept, Pet. 9. At all events, any resolution of intracircuit tension would be the task of the court of appeals, not this Court. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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