

NO.

23-6550

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

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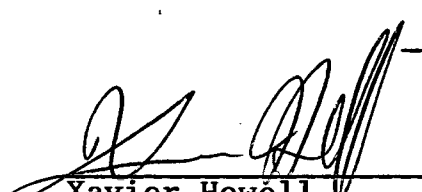
XAVIER HOWELL,
Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
for the Fourth Circuit
Appeal No. 21-4634

PETITION FOR A WRIT OF CERTIORARI



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QUESTION PRESENTED

Whether a Warrantless Stop of a Vehicle, Based Solely on Proximity to a Motel Known for Drug Trafficking, in the Absence of any Actual Violation of the Law, and Subsequently Followed by a Free Air Sniff of the Vehicle Conducted Without the Defendant's Consent, is Permissible Under the Standards Established in Terry v. Ohio and Consistent With the Protections Afforded by the Fourth Amendment?

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I. STATEMENT OF THE CASE

On February 5, 2020, Petitioner ("Howell" or "Mr. Howell"), was indicted for one count of conspiracy and two counts of possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1), and 18 U.S.C. § 2. See, United States v. Howell, 71 F.4th 195 (4th Cir. 2023). On June 20, 2020, he filed a motion to suppress the fruits of the September 27, 2019 police stop, detention and search, which provided the evidence that was the basis for all of his convictions. The Government opposed the motion. Mr. Howell appealed. Id.

On September 26, 2019, detective Beha testified that he and others were investigating a tip from a CI that a specific target with a specific name, not Howell, was trafficking a significant amount of drugs. The CI informed the detective the target would be staying at the Aloft Hotel.

Mr. Howell was subjected to a warrantless stop by law enforcement officers without any reasonable suspicion of criminal activity. The stop was based solely on the fact that Howell's vehicle was observed exiting a motel known for drug trafficking. Subsequently, the officer called for a K-9 unit to conduct a free air sniff of the vehicle, again without Mr. Howell's consent. The lower courts upheld the constitutionality of these actions as in accord with Terry v. Ohio, 392 U.S. 1 (1968), raising a paramount question regarding the protection of citizen's Fourth Amendment rights.

II. STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on June 22, 2023. (See Appendix A). Rehearing was denied on July 18, 2023. (See Appendix B). This Court has jurisdiction over the present case pursuant to 28 U.S.C. § 1254 (1) as it involves a federal question concerning the Fourth Amendment and the interpretation and application of Terry v. Ohio.

III. STATEMENT OF ARGUMENT

A. The Warrantless Stop of Howell's Vehicle Was Unreasonable

Under the Fourth Amendment to the United States Constitution, "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. Generally, evidence obtained during a search or seizure conducted in violation of the Fourth Amendment is to be excluded at trial pursuant to the exclusionary rule. United States v. Stephens, 764 F.3d 327, 335 (4th Cir. 2014).

Consistent with the Fourth Amendment, law enforcements officers may conduct a brief investigatory stop of an individual or vehicle if they have reasonable, articulable suspicion that criminal activity is afoot. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968). A traffic stop constitutes an investigatory seizure within the meaning of the Fourth Amendment. Delware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed. 2d 660 (1979). Under the Fourth Amendment, police officers may conduct a traffic stop if they observe conduct that establishes either probable cause or reasonable suspicion to believe that a traffic violation has occurred. United States v. Johnson, 734 F.3d 270, 275 (4th Cir. 2013).

The Government argued that the stop of Mr. Howell was justified because the officers had a reasonable suspicion of criminal activity based on Detective Beha's observation of Howell leaving the Aloft hotel, and alleged place where drug trafficking occurs. Specifically, the Government relied on the testimony that the Aloft hotel is located in a high crime area, and that detective Beha's suspicion in question occurred in part because the Aloft had, at times, been known as a place where drug dealers stayed. However, the fact that the stop "took place...in a high-crime area is a relevant factor in the totality of the circumstances analysis," but it is "not itself sufficient" to establish reasonable suspicion. United States v. Cloud, 994 F.3d 233, 248 (4th Cir. 2021). Indeed, the United States Court of Appeals for the Fourth Circuit has cautioned that because "the demographics of those who reside in high crime neighborhoods often consist of racial minorities and individuals disadvantaged by their social and economic circumstances...[t]o conclude that mere presence in a high crime area...is sufficient justification for detention by law enforcement is to accept carte blanche the implicit assertion that Fourth Amendment protections are reserved only for a certain race or class of people." United States v. Black, 707 F.3d 531, 542 (4th Cir. 2013). Notably, in the present case, there was no request to investigate Mr. Howell for any particular suspicious activity at the Aloft hotel on the day in question.

It is clear that under the Fourth Amendment, law enforcement must possess specific and articulable facts that support a reasonable suspicion of criminal activity in order to justify a warrantless stop. Here, the officers lack any reasonable suspicion that Howell

had committed or was about to commit a crime. The fact that Mr. Howell's vehicle was seen exiting a motel known for drug trafficking, without any further evidence of illegal activity, is an insufficient basis for a reasonable suspicion.

This Court has consistently held that mere suspicion, not supported by any objective facts, cannot constitute reasonable suspicion: "an officer can only stop and detain a person to investigate when the officer specific, articulable facts which, taken together with rational inferences from those facts, reasonably warrants the intrusion." Payton v. New York, 445 U.S. 573 (1980) (emphasis added).

It is undisputed that Mr. Howell never committed any traffic infraction or conducted any illegal activity in this case. The officer admitted these facts, and as a ruse the officer told Howell that the license plate did not match the registration of the car. The absence of a traffic violation or any other illegal conduct by Mr. Howell underscores the unreasonable nature of the stop and contravenes this Court's precedence in Terry. While location can be one factor in assessing reasonable suspicion, proximity to a hotel known for drug trafficking does not, alone, establish the requisite reasonable suspicion.

B. The Free Air Sniff Conducted Without Consent Violates Petitioner's Fourth Amendment Rights

"The Fourth Amendment's requirement that searches and seizures be founded upon an objective justification, governs all seizures of the person, 'including seizures that involve only a brief detention short of traditional arrest.'" United States v. Mendenhall, 446 U.S. 544, 551, 100 S.Ct. 1870, 64 L.Ed. 2d 497 (1980) (quoting United States v. Brignion-Ponce, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.

2d 607 (1975)). "Whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person," and the Fourth Amendment requires that the seizure be 'reasonable.'" Brignoni-Ponce, 422 U.S. at 878 (quoting Terry, 392 U.S. at 16).

In this case, the subsequent request for a K-9 unit to conduct a free air sniff of Mr. Howell's vehicle, performed without his consent, flagrantly disregards the Fourth Amendment protections as outlined in Terry v. Ohio. In Terry, this Court recognized a limited exception to the general requirement of a warrant for searches and seizures, allowing for brief investigatory stops based on reasonable suspicion. However, Terry did not authorize law enforcement to extend these stops without reasonable suspicion or to conduct warrantless searches without consent.

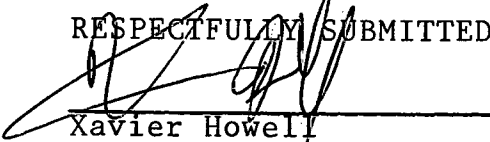
In Mendenhall, this Court held that an individual is deemed seized "only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." The subsequent free air sniff, conducted without consent, contravenes this standard by unduly prolonging the seizure without any justification.

Additionally, Delaware establishes that absence of probable cause or reasonable suspicion renders a search or seizure unreasonable under the Fourth Amendment. Just as a roadblock stop made in the absence of individualized suspicion was deemed invalid, so too should the warrantless extension of a stop without reasonable suspicion or consent be deemed impermissible under the Fourth Amendment.

IV. CONCLUSION

The warrantless stop of Mr. Howell's vehicle, initiated without any reasonable suspicion or criminal activity, proper justification, or consent, was unjustifiable and runs counter to both the principles enshrined in Terry v. Ohio and the Fourth Amendment's protections against unreasonable searches and seizures. This case presents an opportunity for htis Court to reaffirm and clarify the standards for Terry stops and uphold the fundamental rights guaranteed by the Constitution.

RESPECTFULLY SUBMITTED this 6th day of October, 2023.


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