No.

IN THE

Supreme Court of the United States

KWUAN MONTRELL BAKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In the context of pretextual traffic stops, this Court has held that, although the Fourth Amendment requires courts to "weigh the governmental and individual interests implicated," "the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren v. United States*, 517 U.S. 806, 817 (1996)

The question presented is whether an admittedly pretextual traffic stop by law enforcement violates the Fourth Amendment when it is based not on probable cause, but only on reasonable suspicion of a crime.

PARTIES TO THE PROCEEDING

Pursuant to Sup. Ct. R. 14.1(b)(i), Petitioner submits that there are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *United States v. Baker*, No. 22-13937 (11th Cir. Feb. 27, 2024);
- *United States v. Baker*, No. 22-CR-14012 (S.D. Fla. Aug. 9, 2022).

There are no other related proceedings within the meaning of Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Kwuan Montrell Baker ("Petitioner") respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The Eleventh Circuit's opinion in *United States v. Baker*, No. 22-13937 (App. 1a) is unreported, and is available at 2024 WL 797148 (11th Cir. Feb. 27, 2024).

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 United States Court of Appeals for the Eleventh Circuit had jurisdiction over this cause pursuant to 28

U.S.C. § 1291. The decision of the court of appeals was entered on February 27, 2024 (App. 1a), and an extension of time to file a petition for a writ of certiorari was granted on May 6, 2024. This petition is timely filed pursuant to Sup. Ct. R. 13.1 and this Court's subsequent order.

INTRODUCTION

The crucial protections of the Fourth Amendment have long been held sacrosanct. That is particularly so in the context of criminal prosecutions, where the guarantee that "people [will] be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" without probable cause provides an indispensable safeguard against wanton harassment or ultra vires intrusions by law enforcement. *See* U.S. Const. amend. IV. To ensure that right is respected, this Court has fashioned the "exclusionary rule," and explained that "the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment . . . generally through its deterrent effect." *United States v. Calandra*, 414 U.S. 338, 347–48 (1974).

In the context of traffic stops, the Court has determined that the Fourth Amendment does not render pretextual stops by law enforcement inherently unconstitutional, because the inquiry turns on the "reasonableness" of the intrusion after balancing of all relevant factors, and "[w]ith rare exceptions . . . the result of that balancing is not in doubt **where the search or seizure is based upon probable cause**." *Whren v. United States*, 517 U.S. 806, 817 (1996) (emphasis added). That logic, though, does not extend to cases where, as here, the district court

specifically found—after briefing and a hearing—that *no* probable cause existed for the pretextual violation. Instead, the district court upheld the traffic stop of the vehicle in which Petitioner was a passenger—and the subsequent search of both Petitioner and the driver—based on law enforcement's "reasonable suspicion" of criminal conduct. While that may be sufficient to justify a brief, investigatory *Terry* stop, it is not sufficient to justify a pretextual traffic stop, or the search of the vehicle's passenger that followed.

When law enforcement began surveillance of the car in which Petitioner was riding, at the behest of the driver's probation officer, they were looking for a reason to pull the driver over and search him for narcotics. That is corroborated by the radio traffic between the five undercover deputies, driving unmarked cars, who were following the driver, waiting to "light him up" "[w]henever we got PC." Had the officers properly found probable cause for the minor traffic violation cited—here, failure to maintain a lane—before conducting the pretextual stop, the intention of the officers would not have rendered the stop and ensuing search unconstitutional under controlling caselaw. But because the district court properly found that no probable cause existed, this pretextual stop falls on the wrong side of the line between permissible and impermissible incursions into the quintessential protections of the Fourth Amendment.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

On April 6, 2021, Petitioner was riding in a car driven by Jordan Kane when deputies from the Saint Lucie County Sheriff's Office ("SLCSO") pulled them over, ordered the two men out of the car, and searched them. As Petitioner would later find out, this supposed "traffic stop" was not random. The five deputies from the Special Investigations Section of the SLCSO ("SIS") that pulled them over had started following the driver, Mr. Kane, earlier that day because they had been contacted by Mr. Kane's probation officer, who told the deputies that Mr. Kane had a positive drug test and then failed to show up for a scheduled drug test the day prior. (Dist. Ct. Dkt. No. 30 at 15–16). One of the deputies, Deputy Evan Ridle, also said that the SLCSO knew the driver as someone who "frequently use[d] narcotics," based on prior arrests. (*Id*. at 17).

After following the car for nearly an hour, the SIS team decided they wanted to stop and search the driver. They discussed this in the contemporaneous radio communications, but acknowledged that, at that point, there was no basis to stop the vehicle. For another mile and a half, the five deputies in unmarked cars followed the vehicle, waiting for someone to come up with probable cause for a pretextual traffic stop that would allow them to search the car and its occupants for narcotics. (*See* Dist. Ct. Dkt. No. 30 at 35; Dist. Ct. Dkt. No. 28-1 at 10:40). The exchange is as follows:

> Deputy Osteen: We can stop him up here, if [inaudible] wants us to.

> Deputy Tomaszewski: [inaudible] just give it a couple, a couple stop lights and we'll take him.
>
> . . .
>
> Deputy Osteen: I'm just going to stay in front now, Evan's going to get next to him. Whenever we got PC we can just stop him.
>
> Deputy Tomaszewski: Yep, I'm good with it. Whenever we can let's take him.
>
> Deputy Ridle: If you got PC call it out. He's failing to maintain a lane behind me . . . he keeps going toward that center line and crossing over it.
>
> Unknown: You have good PC. You have [inaudible].
>
> Deputy Osteen: [inaudible] light him up. [inaudible]

(Dist. Ct. Dkt. No. 28-1 at 9:51). The officers then turned on their lights and carried out the traffic stop underlying this appeal, searching both the driver and Petitioner. (Dist. Ct. Dkt. No. 30 at 59).

II. PROCEDURAL BACKGROUND

On February 3, 2022, a federal grand jury returned a three-count indictment against Petitioner, charging him with: (i) being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); (ii) possessing, with intent to distribute, a controlled substance, in violation of 21 U.S.C. § 841(a)(1); and (iii) possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). (Dist. Ct. Dkt. No. 1).

A few months later, on April 22, 2022, Petitioner filed a motion to suppress the physical evidence recovered—including the firearm, drugs, and ammunition—as well as any statements given following the traffic stop, which he contended had violated

the Fourth Amendment. (Dist. Ct. Dkt. No. 20). The government filed a response, arguing that the traffic stop for failure to maintain a single lane was legitimate, and therefore neither the stop nor the searches that followed violated the Fourth Amendment. (Dist. Ct. Dkt. No. 22).

District Court Judge Aileen Cannon set a hearing on the motion, which was held on May 20, 2022. (Dist. Ct. Dkt. No. 30). After the hearing, the district court reserved decision and ordered supplemental briefing. (Dist. Ct. Dkt. No. 27). The motion was denied on August 9, 2022. (App. 1b). In its written order, the district court found that the stated basis for the traffic stop—failure to maintain a lane in violation of Fla. Stat. § 316.089—was *not* supported by the evidence, and that there was no probable cause for a stop on that basis. (App.3b). Nonetheless, the court denied the motion to suppress because it found that, "regardless of the initial subjective reason for conducting the stop, officers had reasonable suspicion to stop the driver of the vehicle for driving under the influence and attempted fleeing and eluding and, to a lesser extent (although sufficiently present), illegal tints." (App. 4b).

Following the entry of Judge Cannon's order denying the motion to suppress, Petitioner entered a conditional plea of guilty, which preserved his right to appeal the court's decision on the motion to suppress. (Dist. Ct. Dkt. No. 51 at 1–2). The government further acknowledged in the plea agreement "that an order suppressing the subject evidence, or an appeal granting such relief, is case dispositive." (*Id*. at 3).

Petitioner's sentencing hearing was held on November 14, 2022. The district court sentenced him to 90 months imprisonment, followed by a three-year-term of supervised release. (Dist. Ct. Dkt. No. 71 at 17). Petitioner timely filed a notice of appeal to the United States Court of Appeals for the Eleventh Circuit on November 21, 2022 (Dist. Ct. Dkt. No. 60).

On February 27, 2024, the Eleventh Circuit issued an unpublished, *per curiam* opinion affirming the denial of Petitioner's Motion to Suppress. (App. 1a). After setting out the different standards for a traffic stop based on probable cause and one based on reasonable suspicion, the panel cited to *Whren* for the proposition that "an officer's subjective motivations have no bearing on whether a traffic stop is reasonable under the Fourth Amendment." (App. 4a) (citing *Whren*, 517 U.S. at 813). Then, despite the repeated references to the probable cause requirement that was part of *Whren*'s holding, the panel conflated this standard with the standard on which the district court relied in this case—the lower threshold of reasonable suspicion. (App. 6a) (Noting that, "as we've explained, an arresting officer's state of mind, except for the facts that he knows, is irrelevant to the existence of probable cause, and an officer's 'subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause'" and concluding that "so long as officers had a reasonable suspicion of a traffic violation by [the driver], it is irrelevant whether the stop was pretextual or that officers did not arrest [the driver] based on any or all these grounds.") (internal citations omitted). In other words, after finding that the admittedly pretextual traffic stop in this case was supported only by

reasonable suspicion, the Eleventh Circuit inexplicably held that the *Whren* standard—requiring probable cause—permitted the pretextual stop in this case, where no probable cause was present. (App. 8a–9a) (holding that, because "the officers had reasonable suspicion to stop [the driver] based upon driving under the influence, . . . this case 'is governed by the usual rule that probable cause to believe the law has been broken 'outbalances' private interest in avoiding police contact.'") (internal citations omitted). This petition follows.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit's decision conflates the rule for pretextual stops based on probable cause with the rule permitting brief, *Terry* stops based on the lower standard of reasonable suspicion. In so doing, it pronounces a novel exclusion to the requirement of probable cause in the Fourth Amendment, which is both unconstitutional and conflicts with this Court's prior decisions in *Whren*, 517 U.S. 806, and *Terry v. Ohio*, 392 U.S. 1 (1968).

I. The Eleventh Circuit's Opinion Conflates Reasonable Suspicion and Probable Cause, which Violates the Fourth Amendment

The Fourth Amendment protects people's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. Traffic stops qualify as seizures under the Fourth Amendment, and therefore are subject to the same constitutional protections as are other types of seizures. *United States v. Perkins*, 348 F.3d 965, 969 (11th Cir. 2003) (citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)).

Under this Court's precedent, there are two distinct ways that a traffic stop can comport with the Fourth Amendment. *See Terry*, 392 U.S. 1. First, a traffic stop

and subsequent search can be constitutional if there is probable cause to believe a traffic violation has occurred. *Id.* This requires that law enforcement "have facts and circumstances within their knowledge sufficient to warrant a reasonable belief that the suspect had committed or was committing a crime." *Beck v. Ohio*, 379 U.S. 89, 91 (1964). Second, a brief traffic stop can be justified by "reasonable suspicion," if it comports with the narrow exception to the probable cause requirement announced in *Terry*. 392 U.S. 1; *see also United States v. Harris*, 526 F.3d 1334, 1337 (11th Cir. 2008); *United States v. Tookes*, 633 F.2d 712, 715 (5th Cir. 1980). Specifically, that exception has been read to mean that "police may stop persons and detain them briefly in order to investigate a reasonable suspicion that such persons are engaged in criminal activity." *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990). Reasonable suspicion in this context must be more than an "inchoate and unparticularized suspicion or hunch," and requires "that a police officer 'be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quotation marks omitted); *Tapia*, 912 F.2d at 1370 (quoting *Terry*, 392 U.S. at 21).

These two standards are very different. So, too, is the type and scope of a search that is permissible after a stop has been made, depending on which of these two bases is invoked as its justification. *Terry*, 392 U.S. 1. Yet in its opinion, the Eleventh Circuit conflates the two, holding that "the officers had **reasonable suspicion** to stop the driver based upon driving under the influence, which means

that this case 'is governed by the usual rule that **probable cause** to believe the law has been broken 'outbalances' private interest in avoiding police contact.'" (App. 8a–9a) (quoting *Whren*, 517 U.S. at 817–18) (emphasis added). That is not the proposition for which *Whren* stands, and conflating these two standards creates a rule that would violate the Fourth Amendment.

II. Reasonable Suspicion Cannot Justify a Pretextual Stop in the Absence of Probable Cause

The difference in the permissible intrusions attendant to a search and seizure based on probable cause and one based on reasonable suspicion is tied to the text of the Fourth Amendment. That text prohibits *unreasonable* searches and seizures *without* probable cause. U.S. Const. amend. IV. Thus, as this Court has noted, although the Fourth Amendment requires courts to "weigh the governmental and individual interests implicated" in a search, "[w]ith rare exceptions . . . the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren*, 517 U.S. at 817. In other words, if a stop is based on probable cause, it is unlikely to run afoul of the Fourth Amendment's prohibition on searches and seizures *without* probable cause.

The Court's decision in *Whren* leaned heavily on this point; in finding the pretextual stop constitutional, it specifically noted petitioner's concession that there *was* probable cause for the pretextual crime, even though the subjective intent of the officer did not align with that ex-post justification. *Whren*, 517 U.S. at 810 ("Petitioners accept that Officer Soto had probable cause to believe that various provisions of the District of Columbia traffic code had been violated. . . . They argue,

however, that 'in the unique context of civil traffic regulations' probable cause is not enough."). The Court's reliance on probable cause to uphold the pretextual stop in that case is further underscored by the fact that the opinion expressly distinguished cases that "involve[] police intrusion *without the probable cause that is its traditional justification*." *Whren*, 517 U.S. at 817 (emphasis in original). That distinction makes sense, given the threshold protection against unreasonable searches and seizures afforded by the requirement of probable cause. Those protections do not exist when a stop is conducted based on the substantially lower threshold of reasonable suspicion, and is precisely why *Terry* so narrowly circumscribes the permissible scope of the concomitant intrusion on an individual's Fourth Amendment rights.

Here, there is no question that the district court's denial of Petitioner's motion to suppress was predicated on a finding that (1) the stop was pretextual, (2) there was no probable cause for the stop, and (3) the stop was based on the deputies' reasonable suspicion of criminal activity. (*See* App. 4b) ("The Court accepts and agrees with Defendant that the evidence does not support a traffic stop based on a violation of Fla. Stat. § 316.089(1). But that is not the end of the inquiry under the Fourth Amendment. An officer's subjective reason for making a stop need not be the criminal activity for which the objective facts furnish reasonable suspicion or probable cause. . . . [R]egardless of the initial subjective reason for conducting the stop, officers had reasonable suspicion to stop the driver of the vehicle for driving under the influence and for attempted fleeing and eluding, and to a lesser extent (although sufficiently present), illegal tints."). So, too, was the Eleventh Circuit's

affirmance of the district court's decision. (App. 3a) (quoting *Whren* and defining a pretextual stop, but finding that "the officers had reasonable suspicion to stop [the driver] based upon driving under the influence, which means that this case 'is governed by the usual rule that probable cause to believe the law has been broken 'outbalances' private interest in avoiding police contact.'"). This premise and purported rule of law—that, in the absence of probable cause, an officer's reasonable suspicion can justify an admittedly pretextual traffic stop and search of the vehicle and its occupants—violates the Fourth Amendment.

III. The Question Presented is Important, and This Petition is an Ideal Vehicle

The record in this case is uniquely well-situated for deciding this issue, because the district court expressly found that there was no probable cause present for the stated basis of the traffic stop—failure to maintain a lane—and predicated its decision on a finding that the traffic stop was valid "regardless of the initial subjective reason for conducting the stop" based on the deputies' "reasonable suspicion." (App. 4b). In other words, the district court relied on—and the Eleventh Circuit adopted—a belief that reasonable suspicion can justify not only a limited *Terry* stop, but also an admittedly pretextual stop and subsequent search, even where no probable cause exists. That is not, and cannot be, the law.

This Court should grant certiorari to resolve this important constitutional question about the scope of the Fourth Amendment's protections against unreasonable searches and seizures. The Eleventh Circuit's opinion in this case would have significant implications for a broad swath of criminal defendants, as it

would dramatically expand the scope of a police officer's lawful authority in the context of pretextual traffic stops where no probable cause exists. Additionally, this rule would functionally erase the firm boundary of permissible police conduct during a *Terry* stop, that has been carefully circumscribed by this Court.

CONCLUSION

Based upon the foregoing, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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