

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN MICHAEL MURPHY — PETITIONER

VS.

UNITED STATES — RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under the plain-touch doctrine established by *Minnesota v. Dickerson*, 508 U.S. 366, 375, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993), deputies unconstitutionally removed an unknown object from under Mr. John Michael Murphy's pants even though, before the unknown object was removed, neither deputy, who had felt the unknown object through Mr. Murphy's pants, believed it was a weapon or contraband.

For the reasons set forth herein, the United States District Court and the United State Fifth Circuit Court of Appeals erred in denying Mr. Murphy's motion to suppress. Unless this Court addresses this constitutional violation, citizens will be subject to warrantless searches based on pat downs that fail to reveal, by plain touch, that a suspected object is either a weapon or contraband. This Court should grant a writ of certiorari, correct this error, and provide guidance for a situation likely to recur and to continue to weaken the Fourth Amendment absent action by this Court.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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RELATED CASES

1. *United States v. Murphy*, 2023 U.S. Dist. LEXIS 4215, 2023 WL 2471374 (W.D. La. Jan 26, 2023) (report and recommendation), *adopted by United States v. Murphy*, 2023 U.S. Dist. LEXIS 41016, 2023 WL 2464980 (W.D. La. Mar. 10, 2023)
2. *United States v. Murphy*, 2024 U.S. App. LEXIS 9830, 2024 WL 1736345 (5th Cir. Apr. 23, 2024)

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IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion of the United States Fifth Circuit Court of Appeals appears at Appendix B to the petition and is reported at *United States v. Murphy*, 2024 U.S. App. LEXIS 9830, 2024 WL 1736345 (5th Cir. Apr. 23, 2024).

The Report and Recommendation to deny the motion to suppress and the Order adopting the Report and Recommendation by the United States District Court for the Western District of Louisiana appear at Appendix A and are published at *United States v. Murphy*, 2023 U.S. Dist. LEXIS 4215, 2023 WL 2471374 (W.D. La. Jan 26, 2023) (report and recommendation), *adopted by United States v. Murphy*, 2023 U.S. Dist. LEXIS 41016, 2023 WL 2464980 (W.D. La. Mar. 10, 2023).

JURISDICTION

The United States Court of Appeals decided the case on April 23, 2024. No petition for rehearing was filed timely in the case. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

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

A. Relevant Facts

On November 16, 2021, Sabine Parish Sheriff's deputies had reason to believe Mr. Murphy would be in possession of methamphetamine. ROA. 87-88 (Motion to Suppress transcript ("MTS tr."), 4-5). Therefore, a BOLO was placed on a white Chevy Cobalt in which Mr. Murphy was expected to be traveling. ROA. 88, 100, 132 (MTS tr., 5, 17, 49).

Based on the BOLO, Deputy Samuel Beason stopped a car in which Mr. Murphy was a passenger. ROA. 99-101 (MTS tr., 16-18). The vehicle was stopped because its driver was believed to have a suspended license and because it was following too closely to another vehicle. ROA. 99-101 (MTS tr., 16-18).

After the vehicle was stopped, the driver consented to a search. ROA. 105 (MTS tr., 22). Before searching the vehicle, Deputy Beason did not pat down the driver or Mr. Murphy. ROA. 108-10 (MTS tr., 25-27). Deputy Beason did not fear for his safety, and he knew both the driver and Mr. Murphy before this stop. ROA. 103, 108-10 (MTS, 20, 25-27).

After Deputy Nicholas Sandel arrived at the stop, he did not search Mr. Murphy or the driver. ROA. 122-24 (MTS tr., 39-41). Deputy Sandel also knew Mr. Murphy before the stop. ROA. 137 (MTS tr., 54).

Several minutes after initially interacting with Mr. Murphy and the driver and only after receiving a phone call, Deputy Sandel asked Mr. Murphy if he had been searched. ROA. 122-25, 131-35 (MTS tr., 39-42, 48-52). After Mr. Murphy

responded that he had not been searched, Deputy Sandel conducted a pat down. ROA. 122-25 (MTS tr., 39-42). Deputy Sandel could not recall if during the phone call, he had been told to search Mr. Murphy. ROA. 122-25, 131-35 (MTS tr., 39-42, 48-52).

Immediately before the pat down, Mr. Murphy disclosed that he had a pocket knife and turned the pocket knife over to Deputy Sandel. ROA. 123-24, 126, 130, 141 (MTS tr., 40-41, 43, 47, 58). Before the pat down, the search of the vehicle was almost completed, and no contraband or weapons had been recovered. ROA. 122-25, 131-35 (MTS tr., 39-42, 48-52). During the pat down, Deputy Sandel did not feel, see, or recover any weapons or contraband, other than the pocket knife voluntarily surrendered by Mr. Murphy. ROA. 122-25, 131-35 (MTS tr., 39-42, 48-52).

However, Deputy Sandel did feel an unknown object in Mr. Murphy's pants. ROA. 122-25, 131-35 (MTS tr., 39-42, 48-52). Deputy Sandel believed this unknown object was not natural, *i.e.*, it was not part of Mr. Murphy's body. ROA. 135 (MTS tr., 52).

Because Deputy Sandel did not have on gloves, he called Deputy Beason away from the vehicle search to remove the object from under Mr. Murphy's pants. ROA. 126 (MTS tr., 43). Before reaching into Mr. Murphy's pants, Deputy Beason did not feel what he believed to be a weapon or contraband. ROA. 113 (MTS tr., 30).

B. Action before the District Court

On June 15, 2022, Mr. Murphy was charged with possession with intent to distribute methamphetamine. ROA. 2, 10. The Government charged that, "[o]n or

about November 16, 2021, in the Western District of Louisiana, the defendant, John Michael Murphy, did knowingly and intentionally possess with the intent to distribute fifty (50) grams or more of methamphetamine, a Schedule II controlled substance, all in violation of Title 21, United States Code, Sections 841(a)(1) & (b)(1)(A)(viii).” ROA. 10.

On August 15, 2022, Mr. Murphy filed a Motion to Suppress. ROA. 4, 18-20. On September 14, 2022, the Government filed an Opposition. ROA. 4, 27-34. On October 25, 2022, the District Court held a hearing on the Motion to Suppress. ROA. 4-5, 36, 84-145.

On December 14, 2022, Mr. Murphy filed a Supplemental Memorandum in Support of his Motion to Suppress. ROA. 5, 37-44. On January 10, 2023, the Government filed a Supplemental Memorandum in Opposition to Mr. Murphy’s Motion to Suppress. ROA. 5, 45-50.

On January 26, 2023, the Magistrate Judge issued a Report and Recommendation, recommending that Mr. Murphy’s Motion to Suppress be denied. ROA. 5-6, 51-55. On February 7, 2023, Mr. Murphy filed Objections to the Report and Recommendation. ROA. 6, 56-63. On February 21, 2023, the Government filed a Response in Support of the Report and Recommendation. ROA. 6, 64-69. On March 10, 2023, the District Court adopted the Report and Recommendation and denied Mr. Murphy’s Motion to Suppress. ROA. 6, 70.

On April 11, 2023, Mr. Murphy pled guilty. ROA. 6-7, 146-72, 193-205.

The PSI, determined that Mr. Murphy's total offense level was 29 and that his criminal history category was VI. ROA. 278-86, 296. Mr. Murphy's guideline sentencing range was 151 to 188 months of imprisonment. ROA. 296.

On August 22, 2023, the District Court sentenced Mr. Murphy to 151 months of imprisonment. ROA. 7, 72-79, 173-88. On September 5, 2023, a notice of appeal was filed as to the August 24, 2023, judgment. ROA. 7, 74-81.

On April 23, 2024, the United States Fifth Circuit Court of Appeals affirmed Mr. Murphy's conviction and sentence. This timely petition follows.

REASONS FOR GRANTING THE PETITION

A. Introduction

Sabine Parish Sheriff's Deputy Samuel Beason recovered methamphetamine from Mr. John Michael Murphy by unreasonably and unconstitutionally removing an unknown object from Mr. Murphy's pants during a roadside detention. Before Deputy Beason removed the unknown object, neither he nor Deputy Nicholas Sandel, both of whom felt the unknown object through Mr. Murphy's pants, believed the unknown object was a weapon or contraband.

Under *Minnesota v. Dickerson*, 508 U.S. 366, 375, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993), this search violated Mr. Murphy's Fourth Amendment rights as it was not justified under *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), or its progeny. Accordingly, the methamphetamine and all statements made after the illegal search and seizure should be suppressed, and the Government should be precluded from introducing the methamphetamine and such statements against Mr. Murphy. For these reasons, this Court should grant this writ, grant Mr. Murphy's motion to suppress, reverse his conviction, vacate his sentence, and remand this matter for further proceedings consistent with this Court's decision.

B. Before removing an unknown item from under Mr. Murphy's pants, neither Deputy Sandel nor Deputy Beason believed the unknown object was a weapon or contraband.

During Deputy Sandel's testimony, the following exchange occurred:

- Q. When you patted Mr. Murphy down, what did -- describe what the object felt like.
- A. It was like a hard crystal in his pants.
- Q. Did it feel like a weapon?
- A. No.
- Q. Did it feel like a gun?
- A. No, sir.
- Q. Didn't feel like a knife?
- A. No, sir.
- Q. Did it feel like a -- well, did it feel like methamphetamine?
- A. From the outside of the pants, when I felt it, I didn't realize what it was at first; I just knew that it was foreign, it was not part of the body.
- Q. And you didn't realize what it was, in fact, until it was pulled out and put on that car?
- A. Yes, sir.

MTS tr., 52; *accord* MTS tr., 30 (Deputy Beason's testimony concerning what the unknown object felt like before it was removed from Mr. Murphy's pants.)

If Deputy Sandel or Deputy Beason had a reasonable basis to believe Mr. Murphy was armed and dangerous, they could have patted down Mr. Murphy and could have recovered any item that, based on plain feel or plain sight, could have been a weapon or contraband. However, neither before the pat down nor after the pat down did either deputy have a reasonable belief Mr. Murphy was armed and dangerous. ROA. 108-10, 137 (MTS tr., 25-27, 54); Gov't exhibits 3-4 (body camera and dash camera video of the deputies' interactions with Mr. Murphy and the driver, which make it clear that Mr. Murphy was not perceived to be armed and dangerous before the pat down); *but see* ROA. 108, 137-42 (MTS tr., 25, 54-59) (testimony in which the deputies attempted to justify being concerned Mr. Murphy could be armed and dangerous).

Further, neither deputy believed the unknown object was a weapon or contraband before it was removed. ROA. 108-10, 137-42 (MTS tr., 25-27, 54-59). Rather, Deputy Beason removed the unknown object from Mr. Murphy's pants because he was ordered to do so by Deputy Sandel, when neither deputy believed the unknown object was a weapon or contraband. ROA. 112-14, 135 (MTS tr., 29-31, 52).

Accordingly, Mr. Murphy's Fourth Amendment rights were violated. Therefore, the methamphetamine and all statements obtained after the violation of these rights must be suppressed.

C. The Report and Recommendation

The Report and Recommendation erred in its legal conclusion that “the methamphetamine was properly removed from inside Defendant’s pants under the plain feel doctrine.” ROA. 54 (R&R, 4). As noted above and based on undisputed testimony, neither deputy immediately believed the unknown object was a weapon or contraband before it was removed. MTS tr., 25-27, 29-31, 52, 54-59.

Indeed, the R&R found Deputy “Sandel then conducted the pat down and felt a ‘hard crystal in [Defendant’s] pants.’ Tr. 52. [Note: The item was not in Defendant’s pocket, which likely made Sandel even more suspicious, because he immediately placed Defendant in handcuffs.] The object did not feel like a weapon. Sandel did not know what it was until the object was pulled out. Tr. 52.” ROA. 53 (R&R, 3) (alterations and brackets in original).

Further, the R&R found that “Sandel was not wearing gloves, so he asked Beason, who was wearing gloves during the vehicle search, to come and remove the object. Beason stuck his hand down in Defendant’s pants (Tr. 29-30) ‘in between [Defendant’s] legs’ to remove it. Tr. 23. The object turned out to be 136 grams of pure methamphetamine. Tr. 44.” ROA. 53.

That is, Deputy Beason had no immediate suspicions of what the object was based on how it felt through Mr. Murphy’s pants. Rather, Deputy Beason removed an unknown object from Mr. Murphy’s pants because he was ordered to do so by Deputy Sandel, when neither deputy immediately believed based on plain feel that the unknown object was a weapon or contraband. ROA. 135 (MTS tr., 52). Thus,

under *Dickerson*, the methamphetamine was unconstitutionally searched and seized in violation of Mr. Murphy's Fourth Amendment rights.

In *United States v. Borne*, 239 F. App'x 185, 187 (6th Cir. 2007), cited in the R&R, ROA. 54, the law enforcement officer, based on plain feel, believed an object was contraband before the item was removed. *See, Borne*, 239 F. App'x at 187 ("In conducting the pat-down, Garner felt what he thought was narcotics in distinctive packaging in the pocket of Borne's jeans. Reaching in, he retrieved what turned out to be a small amount of methamphetamine wrapped in a bag with a knot. Although Garner claims that the contents of the package could not have been identified as contraband merely by feel, the magistrate judge credited the testimony of the trooper and held that the seizure was justified under what has been commonly referred to as the 'plain feel' doctrine and recognized as an exception to the Fourth Amendment's warrant requirement.")

Here, in contrast, the deputies did not immediately believe the object on Mr. Murphy's person was a weapon or contraband until after it was unconstitutionally searched on his person and seized from his person. Indeed, while they may have had suspicions, they did not immediately believe it was contraband or a weapon until after the illegal search and seizure lead to the removal of an unknown object. Accordingly, the District Court should not have adopted the Report and Recommendation that "the methamphetamine was properly removed from inside Defendant's pants under the plain feel doctrine." ROA. 54 (R&R, 4). Instead, it should have found that, under *Dickerson* and its progeny, Mr. Murphy's Fourth

Amendment rights were violated. Therefore, it should have suppressed the methamphetamine and all statements obtained after the violation of these rights.

To address this violation of the Fourth Amendment, this Court should grant this writ, should reverse the District Court's decision to deny Mr. Murphy's motion to suppress, should grant Mr. Murphy's motion to suppress, should reverse Mr. Murphy's conviction, should vacate his sentence, and should remand this matter to the District Court for further proceedings consistent with this Court's ruling.

CONCLUSION

The petition for a writ of certiorari should be granted. To address this violation of the Fourth Amendment, Mr. Murphy's motion to suppress should be granted, his conviction should be reversed, his sentence should be vacated, and this matter should be remanded to the District Court for further proceedings consistent with this Court's ruling.

Respectfully submitted,
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