ORIGINAL

No. 24-5396

IN THE

SUPREME COURT OF THE UNITED STATES

Pedro Pablo Fuentes - PETITIONER

vs.

Steven Harpe - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATE DITRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

PETITION FOR WRIT OF CERTIORARI

SEEKING REVIEW BEFORE JUDGMENT UNDERT RULE 11 OF CASE NO. 24-6094, WHICH REMAINS PENDING IN THE TENTH CIRCIUT COURT OF APPEALS

Pedro Pablo Fuentes

8607 S.E. Flower Mound Rd.

Lawton, OK. 73501

QUESTION(S) PRESENTED

On a traffic-stop after the Officer, gave the citation to Petitioner, and Petitioner, did not give him consent to search his vehicle. **1.**Why does the Petitioner has to stay and be restraint from his freedom of movement by being place in the back seat of the patrol vehicle? Just because Petitioner, was under investigation? **2.**Why is it fair to use "The Collective Knowledge Doctrine" to hold Petitioner, after the Officer, gave the citation to Petitioner? Just because the Officer, who pull-over the Petitioner, said in State Court that the lead Detective told him that he might have load of Methamphetamine in his vehicle, but the Officer did not have a search warrant to search the vehicle, or did he have consent to search plus he already gave the citation to Petitioner. **3.**Why is it fair for a Judge, to said "it because "The Collective Knowledge-Doctrine" why the Officer, can hold you there to run a K-9 after the citation was giving to you"? **4.**Why is it the cases Petitioner, is using are not right for the situation that Petitioner, was in ? When the cases that Petitioner, is using are Supreme Court decision. **5.**Why haven't none of the Court told the Petitioner, why the cases he using are wrong the for situation he's in.

LIST OF PARTIES

Steven Harpe,-Respondent

John M. O'Connor, Oklahoma Attorney General

Shon T. Erwin, United States Magistrate Judge

Bernard M. Jones,United States District Judge

TABLE OF AUTHORITITES CITED

CASES PAGE NUMBER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of Certiorari issues to review the judgment below. Seeking review before judgment under Rule 11 of case No. 24- 6094, which remains pending in the Tenth Circuit Court Of Appeals

OPINIONS BELOW

In the United State District Court For The Western District Of Oklahoma Report And Recommendation of Shon T. Erwin, United State Magistrate Judge

In the United State District Court For The Western District Of Oklahoma, Order of Bernard M. Jones,United States District Judge

JURISDICTION

The jurisdiction of this Court is invoked under Rule 11, 28 U.S.C.§ 1254 (1). Seeking review before judgment under Rule 11 of case No. 24- 6094, which remains pending in the Tenth Circuit Court Of Appeals

C 1254. Courts of appeals; Certiorari; certified questions Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

ON the date of 25th, April 2023, Petitioner, file a Petition for Writ Habeas Corpus 28 U.S.C.§ 2254. [Doc No. 1] with a (Motion) **Leave to Proceed In Forma Pauperis.** On the date of 29th April,2024 A certificate of Appealability is DENIED, as the Court Concludes Petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253 (c) (2). On the date of May 13, 2024 Petitioner filed a Notice of Intent to Appeal to the Tenth Circuit Court Of Appeals. On

June 17, 2024 Petitioner filed a Application For a Certificate of Appealability. While the Application For a Certificate For Appealability is pending Petitioner, has to the date of September 23, 2024 to Filed Writ Of Certiorari.

CONSTITUTIONAL AMD STATUTORY PROVISIONS INVOLED

4th Amendment of the United States Constitution, under Article ll, and Article II § 7 and § 20 of the Oklahoma Constitution.

STATEMENT OF THE CASE

ON the date of 25th, April 2023, Petitioner, file a Petition for Writ Habeas Corpus 28 U.S.C.§ 2254. [Doc No. 1] with a (Motion) **Leave to Proceed In Forma Pauperis.** On the date of 12th , May 2023, it was recommended that Petitioner's Motion **(ECF NO. 2)** be Denied and that he be ordered to per pay the full $5.00 filing fee. ON the date of 26th , May 2023, Petitioner, pay the full amount of the filing fee $5.00. On the same date of 26th, May 2024, the court Order, that the Court **ADOPTS** the Report and Recommended **[Doc. No. 6]** and Denies Petitioner's motion to proceed forma pauperis **[Doc. No. 2]** and refers this matter to Magistrate Judge Erwin, for proceedings as outlined in the Court's earlier referral. **[Doc. No. 5]**. On the date of 2th, June 2023, the court file a Report And Recommendation, the unsigned recommends that the Court **Dismiss** the Petition in its entirety because it includes exhausted and unexhausted claims. However, the undersigned also recommends that if Mr. Fuentes, Files and Amended Petition including only the exhausted claim, the Court grant the

amendment and allow the case to proceed on that claim.**[Doc. No. 9].** The date of 5th July 2023, Accordingly, the Court ADOPTS the Report and Recommendation **[Doc. No. 9]** and **DISMISSES** Petitioner's Petition for a Writ of Habeas Corpus 28 U.S.C § 2254, without prejudice. Additionally, a certificate of appealability is **DENIED**, as the Court concludes Petitioner, has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C.§ 2253 (c) **[Doc. No. 11].** On the date of 13th July, 2023, Petitioner, filed a **Motion to Amended Petition, and the Amended Petition with Brief (ECF NO. 15 & 16)** do to the fact that Petitioner, did not received the Report and Recommendation **[Doc. No. 9]** until the date of 28th June, 2023. Nine days after the deadline. On the date of 15th July, 2023, the court **GRANTS** Petitioner motion to Amend Petition **[Doc. No. 15&16]** as follows; the Court **VACATES** its July 5th , 2023, Order and Judgment **[Doc. No. 11]** refers this matter to Magistrate Judge Erwin, for proceedings. On the date of 17th August, 2023 After examination of the Amended Petition and Brief **(ECF NO. 15 & 16)** (hereafter "Petition") for writ of Habeas Corpus 28 U.S.C § 2254 Presented to the Clerk of this Court, **IT IS ORDERED THAT:** 1. The Respondent, shall file a response to the allegations of the Petition within thirty (30) days from the date of this order. The response shall indicate: On the date of 5th September, 2023, the Respondent, filed a response to the allegations of the Petition. On the date of 25th September, 2023, the Petitioner, filed **RESPONSE IN OPPOSITION TO RESPONDENT'S RESPONSE.** On the date of 8th March, 2024 the Court **Order** On February 6, 2024, Judge Erwin, issued a report and Recommendation recommending that the Petition for Writ of Habeas Corpus 28 U.S.C. § 2254 be denied. **[Doc. No.23]**. Petitioner, was advised of his right to object to the Report and Recommendation by February 23, 2024. No objection has been filed. Petitioner, has therefore waived any right to appellate review of the factual and legal issues in the Report and Recommendation. *See Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991).* Accordingly, the **Court ADOPTS the Report and Recommendation [Doc. No. 23]** and Denies Petitioner's Petition for Writ of Habeas Corpus 28 U.S.C. § 2254. On the date of 20th March, 2024,

Petitioner, filed **Motion For Reconsideration** due to the fact that Petitioner, never received **[Doc No. 23]** and could not have being able to Object to the Report and Recommendation. On the date of 1th April, 2024 the Court Order On March 27, 2024, Petitioner filed a Motion for Reconsideration **[Doc No. 26].** In his motion, Petitioner, states that he never received a copy of the Report and Recommendation and requests the Court to mail him a copy of the February 6, 2024, Report and Recommendation and to allow him to submit and objection to the Report and Recommendation. Upon reviews of Petitioner's Motion, the Court Grants Petitioner's Motion for Reconsideration **[Doc. No. 26]** as follows: the Court **VACATES** its March 8, 2024 Order and Judgment **[Doc. No. 24 & 25]** and DIRECTS the Court Clerk to mail Petitioner a copy of the February 6, 2024 Report and Recommendation **[Doc. No. 23]**. Petitioner, shall file his Objections to the Report and Recommendation by April 22, 2024. On the date of 18th April,2024, Petitioner, filed **OBJECTION TO THE REPORT AND RECOMMENDATION [Doc No. 29]**. On the date of 29th April, 2024, the Court **Order** Accordingly, the Court ADOPTS the Report and Recommendation **[Doc No. 23]** and DENIES Petitioner's Petition for Writ of Habeas Corpus 28 U.S.C.§ 2254 **[Doc. No. 15]**. A certificate of appealability is DENIED, as the Court Concludes Petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253 (c) (2). On the same date of 29th April,2024, Petitioner, filed **Motion to Supplement Brief and Relief Sought [Doc No. 32]**. On the date of 6th May, 2024, the Court **Order** Accordingly, the Court DENIES Petitioner Motion to Supplement Brief and Relief Sought]**[Doc No. 32]**. On the date of 1th May, 2024, Petitioner file **Motion to Stay [Doc No. 34]** and Petitioner's **Motion for Post-Conviction Relief [Doc No. 35]**. On the date of 10th May, 2024, Petitioner, filed a Notice of Appeal. On the date of 15th May, 2024, the Court **Order,** Accordingly, the Court DENIES Petitioner's **Motion to Stay [Doc. No. 34]** and **Petitioner's Motion for Post-Conviction Relief [Doc No. 35]**. Also on the same date of 15th May, 2024, the Court **Order** Accordingly, the Court finds Petitioner is not entitled to proceed without payment of the filing fee, and

the motion for leave to appeal in forma pauperis is **DENIED**. Petitioner is advised that unless he pays the $605.00 appellate filing fee in full to the Clerk of this Court within 20 days of the date of this Order, his action may be subject to dismissal by the appellate court.

REASONS FOR GRANTING THE PETITIONER

My name is Pedro Pablo Fuentes, and I got mine Fourth Amendments violated by Sergeant Ricketts. On the date of July 16, 2016 I was coming back from Arizona, while I was exiting on Morgan Rd. in Oklahoma City, I got pull-over by Sergeant Ricketts. Which at inception he told me the reason I got pull over was because I was speeding and tale gating. I did not want to chit-chat with him so he told me to "step out of my vehicle" and he told to "to stand in the back of my vehicle while he went to write the citation". Officer McDaniel, arrived at the scene and I ask him "way it was taking so long to write a citation". Which he respondent to " I just got here and don 't know what' s going on". At that time Sergeant Ricketts, step out of his patrol vehicle and told me "that he had the writing citation". He went through the step of how to pay for it or if I wanted to go to Court I had that right. After I sign the citation he told me " now that this is out the way do you mine if I ask you a few question". I said "no I did not mine". He ask me if "I had any drugs in the vehicle" which I reply "that I did not have anything illegal in the vehicle". He ask me "if I mine if he search my vehicle". Which I reply " that he was not searching my vehicle" and I ask him "for my citation so I could leave". Which he said " that I could not leave and that I could either wait on the side of road until they ran a K-9 around my vehicle or I could wait in the back set of his patrol vehicle". I told him that "I was not doing neither and like he was not giving me the citation that he could mail me the citation" at that time he started walking toward me and he told me "like I did not want to wait on the side of the road that I could wait in the back seat of his patrol vehicle". He patted me down and give me my citation and put me in the back seat of his patrol vehicle. Well they found drugs in my vehicle but it was done after my Fourth Amendments violated.

What we have here is that the United State District Court For The Western District Of Oklahoma are in conflict with decision of Rodriguez v. United States, 135 S. ct 1609, 191 L. Ed. 2d. 492 (2015) United States Supreme Court ruling, and they want to use the Collective-knowledge Doctrine to justify the action of the Officer just because the Petitioner, was under investigation and is of importance that the United States Supreme Court make a ruling on this case so this won't happen to another individual that is in a similarly situation as Petitioner, that Petitioner, was under investigation and the Officers did not had the right to put Petitioner, in the back seat of the patrol vehicle so they could run a K-9 around his vehicle after they gave Petitioner, the writing citation.

STATE OF THE FACT

Around June 6, 2016, Oklahoma City Detective Chad Cook, with the Criminal Enterprise Task Force, learned information from a known reliable and well-vetted confidential informant (CI) that Fuentes and other members of his family were involved with drug trafficking. The CI gave Detective Cook, specific information about Fuentes, including a physical description of him, the car he was driving, and the residence from which he and other family members were trafficking drugs, and indicated this activity involved large sums of money and methamphetamine. Detective Cook opened an investigation and began attempting to corroborate this information. He got a break in this regard on June 13, 2016 when police were called to the scene of a domestic disturbance involving Fuentes at his mother's house. While there officers saw what they would later describe as "as a good amount of methamphetamine" and money in the kitchen.

Armed with this information, Detective Cook sought and obtained a search warrant authorizing the installation and use of an electronic tracking device on the car Fuentes drove. Pursuant to this warrant, the tracking device was installed on Fuentes's car on or about June 20, 2016.

During this same general time period, investigation detectives received information from a second reliable CI that Fuentes was going to travel west to pick up a load of drugs and bring them back to Oklahoma. While monitoring the tracking device, Detective Cook saw the vehicle driven to Phoenix, Arizona, a city known to Detective Cook as a distribution hub for illegal drugs. A team of of task force

members organized to follow the car back into Oklahoma City, Detective Cook alerted Oklahoma City Police, including Sergeant John Ricketts, about the moving surveillance. Detective Cook advised the Oklahoma City officers of the make, model, and tag number of the car he was tracking and surveilling and that it was suspected to be involved in drug trafficking. **Detective Cook requested that an Oklahoma City officers stop the vehicle once it was in Oklahoma County if any traffic violations were observed.(Tr.17)**

On this day, July 16 2016, Oklahoma City Police Sergeant John Ricketts, was working highway interdiction when he received information from officers with the Special Projects Unit that they "had a tracker on a vehicle that was coming in that would be carrying a load of dope". Besides being informed of the make, model, and color of the vehicle at issue, Sergeant Ricketts was also told that the driver would be Pedro Fuentes and he was suspected of going out of state to pick up a load of drugs and was bringing it back. Sergeant Ricketts was asked to stop Fuentes if he observed Fuentes commit a traffic-violation.

At around 9:00 P.M. that evening, as Petitioner Fuentes's vehicle approached Morgan Road in Canadian County, Oklahoma City Police Officer John Ricketts observed it speeding, and changing lanes without signaling, (Tr.43; S. Exh. #2). At approximately 9:00 P.M. , Officer Ricketts initiated a traffic stop of Petitioner Fuentes's, vehicle.

Officer Ricketts, made contact with Petitioner Fuentes, asked him for his license, and informed him of the traffic violations for which he was being stopped. (Tr. 44) Officer Ricketts thought Petitioner Fuentes, was nervous and agitated during the traffic stop. (Tr.45) Officer Ricketts then directed Petitioner Fuentes, to exit his vehicle. (Tr.46) Petitioner Fuentes, was the only occupant of the vehicle. (Tr.58

As he and Petitioner Fuentes, stood outside the vehicle, Officer Ricketts, issued a traffic citation. (Tr.47,) As Officer Ricketts, was writing the ticket, he paused to ask that a k-9 unit be dispatched to the location of the Traffic stop. (Tr.47) Oklahoma County Sheriff's Deputy Cody McDaniel arrived on the scene with his drug dog approximately two minutes later. (Tr> 49, 80-83; See O.R. 67; S. Exh # 2) The dog alerted on the vehicle. (Tr.50) after Petitioner Fuentes, received the citation from Sergeant Rickett, Petitioner, was place in the back seat of patrol under investigative detention because Petitioner, denied permission to search the vehicle and Petitioner, was restrains from his freedom to walk away (Tr.70 & 75). The officers found a duffal bag containing multiple bundles of methamphetamine. (Tr. 50) The total weight of methamphetamine found, as agreed to in the stipulation, was approximately 4,441.51 grams. Ricketts' testified the decision to call the drug dog and search the vehicle were based on information he learned prior to the traffic stop. Petitioner Fuentes, vehicle was being tracked by law enforcement, based on information received by a confidential informant. (Tr. 10-13) That information had bee provided to a court in order to get approval for a GPS tracker on Petitioner Fuentes's, vehicle. (Tr. 13) Law enforcement, including Officer Ricketts, were aware of the informant's claims regarding Petitioner Fuentes's, drug activity, and were aware when he was traveling from the west into Oklahoma City. (Tr 16-170 Ricketts' testimony established that officers were on the lookout for Petitioner Fuentes, vehicle, looking for a reason to make a traffic stop and then search the search the vehicle. (Tr. 47) Officer Ricketts told Petitioner Fuentes, that a drug dog would be run around his vehicle because he was acting nervous. (S.Exh. #2) The evidence in the case shows that the decision to search his vehicle had already been made.

ARGUMENT

In the Report and Recommendation made by**[Doc No. 23]** he applied the law incorrectly,and

that the district court erred in its recitation of understanding of the facts. On the Report and Recommendation he refer to this. On Page 4

C. The Law

1. Constitutional Provisions on Search and Seizure

Both the United States and Oklahoma constitutions protect one's right to be free from unreasonable searches and seizures. U.S. Const. Amend. IV;Okla. Const. Article II, Section 30. It is well-established that a traffic stop is a seizure under the Fourth Amendment. State v. Strawn, 2018 OK CR 2, 21 419 P. 3d 249, 253 (quoting Seabolt [v. State], 2006 OK CR 50, 6, 152 P. 3d [235,] 237). To meet this requirement of reasonableness, the and duration of a traffic stop must be related to the purpose of the stop and must last no longer than is necessary to effectuate the stop, in this case to investigate the observed traffic violations. Seabolt, 2006 OK CR 50, 6 152 P.3d at 237 (citing Florida v. Royer, 460, U.S. 491, 500 (1983); Terry v. Ohio, 392 U>s> 1, 20 (1968). "If the length of the investigative detention goes beyond the time necessary to reasonably effectuate the reason for the stop, the Fourth Amendment requires reasonable suspicion that the person stopped has committed, is committing or is about to committing, or is about to commit a crime." Seabolt, 2006 OK CR 50, 6 152 P.3d at 237-38. It is the prosecution's burden to prove the reasonableness of an officer's suspicion. United States b. Lopez, 849 F.3d 921, 925 (10th Cir. 2015)[)]. "[R]easonable suspicion is not, is meant to be an onerous standard." Pettit, 785 F.3d at 1379 (quoting United State v. Kitchell, 653F.3d 1206, 1219 (10th Cir. 2011). in determining the reasonableness of a detention under the Fourth Amendment, we employ the "totality of the circumstances" test. State v. Bass, 2013 OK CR 7, 12 , 300 P.3d 1193, 1196-97. See also United States v. Arvizu, 534 U.S. 266, 273 (2002).

Right here the Judge, quotes United States v. Kitchell, 653 F.3d 1206, 1219 (10th Cir. 2011).A. Mr. Shigemura's Appeal of the Denial of {2011 U.S. App. LEXIS 15}the Motion to Suppress Mr. Shigemura argues that the district court should have granted the motion to suppress because the traffic stop and search of the vehicle violated his Fourth Amendment rights in a number of ways. Specifically, Mr. Shigemura argues that **(1) the traffic stop was not justified at its inception;** (2) the ensuing detention was not reasonably related in scope to the circumstances of the traffic stop; (3) Meco's drug sniff constituted an "unreasonable general search" in light of the widespread contamination of currency with cocaine residue; and (4) Meco was not a sufficiently reliable narcotics dog. As discussed below, each of these contentions fails.

That's not what the Petitioner, is arguing. Petitioner, not dispute that Officer Sergeant Ricktte, did not have probable cause to stop and frisk him. In fact what the Petitioner, is arguing is the inception

of the suspicion-stop. The suspicion-stop was not justified at its inception, no one is arguing the inception of a traffic stop. The Petitioner is also arguing that he was under investigation by the O.C.P.D. and that lead Detective Chad Cook, requested that an Oklahoma City officers to stop the vehicle once it was in Oklahoma County if any traffic violations were observed (Tr.17). Under suspicion-pull-over the Police Officer, have to follow the rule and regulations of a suspicion-pull-over.

The Law states, in accordance to Rodriguez v. United States, 135 S. ct 1609, 191 L. Ed. 2d. 492 (2015) Although all traffic stop must be executed reasonable, our precedents made clear that all traffic stops justifies by reasonable suspicion are subject to additional limitations that those justify by probable cause are not. **A traffic stop based on reasonable suspicion like all {Terry} stop must be "justified at inception" and reasonably related in the scope to the circumstances which justified the interference in the first place** Hibel 542 U.S. At 185, 124 S. Ct. 2451 internal (quotation marks omitted) It also can not continue for an excessive period of time or resemble a traditional arrest, "Id at 185 186-124 S. Ct. 2451

Hibel 542 U.S at 185-186 It also "Can not continue for a excessive period of time United States v. Place, 462 U.S. 696, 103 S.Ct. 2637 77 L. Ed. 2d. 110 (1983) or resemble a traditional arrest." United states v. Place, 462 U.S. 696 103 S. Ct. 2637 77 L. Ed. 2d.110 (1983)

traditional arrest. Hiibel, 542 U. S., at 185, 124 S. Ct. 2451, 159 L. Ed. 2d 292

Search and Seizure ⊏ 11.5 - brief investigative stop - reasonability

Under Terry v Ohio (1968) 392 US 1, 20 L Ed 2d 889, 88 S Ct 1868, a law enforcement officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further. To insure that the resulting seizure is reasonable for purposes of the Federal Constitution's Fourth Amendment, a Terry stop must

be limited. Thus, the officer's action must be (1) justified at its inception, and (2) reasonably related in scope to the circumstances which justified the interference in the first place. For example, the seizure cannot continue for an excessive period of time or resemble a traditional arrest.

[542 US 186]

continue for an excessive period of time, see United States v Place, 462 US 696, 709, 77 L Ed 2d 110, 103 S Ct 2637 (1983), or resemble a traditional arrest

FOOTNOTES

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1 The "seizure" at issue in Terry v Ohio, was the actual physical restraint imposed on the suspect. 392 US, at 19, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. The Court assumed that the officer's initial approach and questioning of the suspect did not amount to a "seizure." Id., at 19, n 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. The Court acknowledged, however, that "seizures" may occur irrespective of the imposition of actual physical restraint. The Court stated that "[i]t must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Id., at 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. See also id., at 19, n 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. This standard, however, is easier to state than it is to apply. Compare United States v Mendenhall, 446 US 544, 550-557, 64 L Ed 2d 497, 100 S Ct 1870 (1980) (opinion of Stewart, J.), with Florida v Royer, 460 US 491, 511-512, 75 L Ed 2d 229, 103 S Ct 1319 (1983) (Brennan, J., concurring in result).

2 The stops " 'usually consume[d] no more than a minute.' " United States v Brignoni-Ponce, 422 US, at 880, 45 L Ed 2d 607, 95 S Ct 2574.

Hiibel, 542 U. S., at 185, 124 S. Ct. 2451, 159 L. Ed. 2d 292

[542 US 187]

traditional arrest. Brown v Texas, 443 US 47, 61 L Ed 2d 357, 99 S Ct 2637 (1979)
Search and Seizure ⊏ 2, 5, 11 - Fourth Amendment - application - detention short of arrest

4. The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest; 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.

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Subjecting it to the sniff test- no matter how brief-could not be justified on less then probable cause

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It's difficult to understand how this intrusion is knot more senere then a brief-stop for questioning of even a limited, on-the-spot-pat-down search for weapons.

First Explaintion

10).recommending a maximum of 20 minutes for a Terry stop

Second Explaintion

1). It must be recognized that when ever a police officer accost an individual and restrains his freedom to walk away, he has seized that person Id, at 16, 88, S Ct. at 1877 See also Id, at 19, n. 1688 S Ct. at 1879, n, 16 his standard, however, is easier to state than it is to apply compare United States v. Mendenhall , 446 U.S 544, 550,-557 100 S Ct. 1870, 1875, 64 L. Ed. 2d. 497 (1980) Opinion of Stewart J.) with Florida v. Royer U.S. 103, S. Ct. 1319, 1330, 75 L. ed. 2d. 229 (1983) (Brennon J. Concurring in result.)

Second Explaintion

2). The stop usually consumed no more than a minute United States v. Brignoni-Ponce, 422 U.S. 873, 880, 95 S. Ct. 2574, 4579, 45 L. Ed. 2d. 607 (19750

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Most importantly the suspect must be free to leave after a short time

Ricketts's, testimony established that officers were on the lookout for Petitioner Fuentes's vehicle, and looking for a reason to make a traffic-stop and the search the vehicle if permission was giving. (Tr. 17) Yes the officers did have a right to stop and give Petitioner Fuentes, a citation for the traffic-violation. But they did not have the right to put him under investigative detention, or search his vehicle with out consent of a search of the vehicle. The most importance fact here is that Petitioner Fuentes, did not want to chit chat with the officer at inception, so there was not a reason to put him under investigative detention.

The Law States, in accordance to *State vs. Hewitt, 495 so, 2d. 809,11 Fla weekly 2054 (Fla.App.1986)*

> It cites Isham v. State.369 SO.2d.103.(Fla.4 DCA,1979) holding that the police had the right and even a duty to investigate a telephone call received from an anonymous informant. It struck down, the search following the encounter because the information relayed did not suggest that the defendant was armed with a dangerous weapon and there exited neither consent nor probable cause to search.[The case explains that if the automobile stop is prompted not by probable cause, but by an officer's suspicion that criminal activity may be present, the legality of the stop is then message by the fourth amendment's general prescription against unreasonable search and seizures.] The reasonableness of the officers conduct is in turn determined by balancing the violation of the individual's privacy rights against the public interest in preventing crime.(At a suppression hearing an officer should be able to point to the specific and articable facts which, take together with rational interference from those facts, reasonably warrant that criminal activity is afoot (Terry) the articable facts inducing the stop need not need to directly observed by the officer. They may be furnished by a known informant, and if the information provided carries enough indicia of reliability a stop will not be invalidated *(Adams v. Williams, 1972).* Other cases have permitted police encounters with individuals or vehicle even though the information provided come from anonymous source and was unrelated to the suspect's possession of a dangerous weapon (Citation Omitted)
>
> The above rules apply only to the initial encounter – **not to a search**-. Although a stop of a vehicle may under particular circumstances be reasonable even though probable cause does not exist, a further intrusion may not be judicially condoned unless *consent is giving by occupant. (U.S. v. Brignoni-Ponce, 422 U.S.881-882; 95 S. ct.(2574) at 2580-81(45 L.Ed.2d.607 (1975)*

In accordance to *State vs. Hewitt, 495 so, 2d. 809,11 Fla weekly 2054 (Fla.App.1986) the officers, could not -search.* The above rules apply only to the initial encounter – **not to a search**-. Although a stop of a vehicle may under particular circumstances be reasonable even though probable cause does not exist, a further intrusion may not be judicially condoned unless *consent is giving by occupant. (U.S. v. Brignoni-Ponce, 422 U.S.881-882; 95 S. ct.(2574) at 2580-81(45 L.Ed.2d.607 (1975) On Petitioner case Petitioner Fuentes, did not give consent to search his vehicle.*

Sergeant Ricketts, gave the citation to Petitioner Fuentes, (Tr.75) and told him he was placing him in the back seat of Sergeant Rickeets, patrol vehicle under investigative detention (Tr.71). restrains his freedom to walk away, and this was done while Petitioner Fuentes, protested that he did not want to stay after he was given the citation. This is were The United State District Court For the Western District Of Oklahoma, are contrary to the law are in error with *Brendlin v. California.*

The Law States, in accordance to *Brendlin v. California 127, S.Ct. 2400, 168, L.Ed.2d. 132, 551, U. S. 249, 75 (2007)*

A person is seize by police and thus entitled to challenge the Governments action under the fourth Amendment when an officer "by means of physical force or show of authority" terminates or restrains his freedom of movement *(Florida v. Bostick, 501, U.S. 429, 434, 111 S.Ct. 2382, 115, L.Ed.2d. 389 (1991) quoting (Terry v. Ohio 392, U.S. 1, 19, n 16, 18, S.Ct. 1868, 20 L.Ed.2d.628, (1989)* through means intentionally applied *(Browes v. County of Inyo, 489 us. 593, 597, 109, S.Ct. 1378, 103 L.Ed. 2d. 628 (1989)*(emphasis original) "Thus unintentional person,,, (May be) the object of the dentition" so long the detention is willfully and not merely the consequence of "an unknowing act" *Id, at 597, 109, S.Ct. 1378; Cf County of Sacramento v. Lewis, 523 U.S. 833, 844, 118, S.Ct. 1708, 140 L.Ed.2d. 1034 (1998)* (No seizure when the police officers accidentally struck and killed a motorcycle passenger during a high pursuit) A police officer may make a seizure by show of authority and with out

actual submission other wise there is at most an attempted seizure, so far as the fourth amendment is concerned see *(California v. Hodar. D. 499, U.S. 621, 626, n. 2 111 S.Ct. 1547, 113, L.Ed.2d. 690 (1991) (Lewis, Supre, at 844, 845, n.7 118 S.Ct. 1708*

This is were United States Magistrate Judge Shom T. Erwin, erred in its recitation of under standing of the fact. For some reason the Judge, thinks that Petitioner, is arguing the inception of the traffic-stop. The argument the Petitioner Fuentes, was stating forth, is that at inception Sergeant Ricketts, made contact with Petitioner Fuentes, asked him for his license, and informed him of the traffic violations for which he was being stopped for which were speeding and tailgating (Tr. 44). Sergeant Rickett, never told Petitioner, that he got pull- over on a suspicion-pull-over for Sergeant Rickett, to place Petitioner, under investigative detention which is not supported by the law. There's no case that supported investigative detention after the defendant doesn't give consent to search his vehicle. What the law states, in a case like Petitioner, is that after the citation was sign and issue then the Petitioner, has the right to leave, if the Petitioner, choose to. Which in this case that's exactly what happen Petitioner, did not want to stay and wait for the K-9 to do a sniff around his vehicle (Tr. 70 & 75).

In the Report and Recommendation made by United States Magistrate Judge Shon T. Erwin, **[Doc No. 23]** he applied the law incorrectly, and that the district court erred in its recitation or understanding of the facts. On the Report and Recommendation United States Magistrate Judge Shon T. Erwin, refer to this. On Page 5

2. The Collective Knowledge Doctrine

In response, the State maintains that Sgt. Rickett's [sic] roadside detention was lawful based upon information known by Detective Cook and those assisting his investigation, under the Fellow Officer Rule or Collective Knowledge Doctrine. This legal rule, which imputes reasonable suspicion or probable cause possessed by one officer or group, to another officer who actually conducts a search or

seizure, has a pedigree in this court nearly five decades old. "It's is well settled that an agent may rely upon his fellow officers to supply the information which forms **the basis of the arresting officer's reasonable grounds for believing that the law is being violated."** Holt v. State, 1973 OK CR 38, 14, 506 P. 2d 561, 566.

We examined if more recently and more in depth in State v. Iven, 2014 OK CR 8, 10, 355 P.3d 264, 268

The rule for imputing knowledge from one officer to another is known variously as the "collective-knowledge" doctrine or the "fellow-officer" rule. United State v. Chavez, 534 F.3d 1338, 1345 (10th Cir. 2008). **Generally stated, the doctrine allows an officer to stop, arrest, or search a suspect in limited circumstances, e**ven if the officer does not have firsthand knowledge of all of the facts that amount to reasonable suspicion of probable cause to justify the action. This principle derives from the recognition that law enforcement officers must be permitted to work collectively in the performance of their duties and act on directions and information given by one officer to another. United State v. Durval, 742 F.3d 246, 253 (6th Cir. 2014)

The Collective Knowledge Doctrine has both vertical and horizontal application. The vertical application. The vertical application, implicated here, occurs "when an officer having probable cause or reasonable suspicion instructs another officer to act, even without communication all of the information necessary to justify the action." United State v. Whitley, 680 F.3d 1227, 1234 (10th Cir 2012). The officer taking action does not need to personally be aware of the facts justifying the detention because " officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." United State v. Hensley, 469 U.S. 221, 231, (1985) (quoting United State v. Robinson, 536 F.2d 1298, 1299 (9th Cir. 1976). Fuentes' claim that extending the duration of a traffic stop is permissible based only upon factors observed personally by the officers

during the traffic stop is simply not supported by the law ." [W]e reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person." Adams v. Williams, 407 U.S. 143, 147, (1972).

This Doctrine should not be use on the case against Petitioner, due to the fact that no body ask Sergeant Rickett, to make a arrest on Petitioner. He was **requested by Detective Chad Cook, to stop the vehicle once it was in Oklahoma County if any traffic violations were observed** (Tr.17).

Meaning of Collective-Knowledge-Doctrine

The Collective Knowledge Doctrine essentrilly proved that when one officer know sufficient information to justify an arrest of a target if he for request that another officer is attributed to the second officer for purpose of determining whether there was probable cause for arrest. United State v. Massenburg 654,F.3d 480 (4th Cir 2011)

In case of State v. Iven, 2014 OK., CR 8, 10 355 P.3d 264, 268, Deputy Craig Smith of the Blaine County Sheriff Department was dispatched to a call of domestic dispute. Deputy Smith arrived at area and located the alleged victim, B.H. Hiding in a trash trailer near the airport. The victim visibly shaken and crying, B.H. Described being involved in an altercation with Iven. Deputy Smith observed recent physical injuries to B.H. including blood on her nose and under her eyes welling to the lift side of her mouth,and bruises and abrasions on her arms and legs. Deputy Smith made request to Deputy Spiva based on information know to him. Further investigation after the arrest led to additional chargers.

In Petitioner Fuentes, case there was no domestic call. In Iven, case B.H. bare the marks of a domestic on her face that Iven, might have allegedly beat her up. In Petitioner Fuentes, case he was just suspected of drug trafficking, no prove of this drug trafficking like B.H. face. In Iven, case Deputy Craig Smith, made a requested for a arrest on suspected Iven, for allegedly beating up B. H.. In Petitioner Fuentes, case Detective Chad Cook, requested that an Oklahoma City Officer, stop the

vehicle once it was in Oklahoma Country if any traffic violations were observed, (Tr. 17) Detective Chad Cook, never requested an arrest of Petitioner Fuentes, like Deputy Craig Smith, did on Iven, case on Petitioner Fuentes case the arrest came after the Petitioner, rights were violated.

Iven case is irrelevant to Petitioner Fuentes, case and really can not be and should not be relate to Petitioner Fuentes, case, because the case against Petitioner Fuentes, was a investigation of aggravated trafficking not a domestic and no body would have ask for a arrest because no officer, seen Petitioner Fuentes, buying of selling drugs, but this other case is more relevant to Petitioner Fuentes,case.

Guandong v. State, 2022 WY. 83

In the case of Mr. Guandong, the defendant was stopped by one officer because, earlier in the day, another officer stopped another vehicle had collected evidence that suggested that the defendant was trafficking drug in his vehicle. *See Gunandong 3-12* Trooper Kirlin, pull over Mr. Guandong's, vehicle because the information he had obtain from another officer. Trooper Kirlin, had another officer prepare the written warning so that he could run the drug dog around the car (Mr. Guandong did not challenged the fact of the drug dog sniff or any delays caused by the drug dog sniff.)

The Wyoming Supreme Court affirmed the denial of the motion to suppress on the basis that the "Collective Knowledge Doctrine" gave Trooper Kirlin, sufficient ground to make the initial stop. Chief Justice Fox, writing for the unamimous Court, concluded as follows.

"On consideration [the] fact in light of his training and experience Trooper Kirlin, concluded that the driver of the Corolla was transporting drugs and, based on the totality of the circumstances, we will defer to his ability to distinguish between, Innocent and suspicious actions" Guandong. 2 (quoting Feency v. State, 2009 WY 67,13 208 P.3d 50, (WYO 2009)

In the case of Guandong. Trooper Kinlin, had another officer prepare the written warning, so that he could run the drug dog around the vehicle of Mr. Guandong. In the case of Petitioner Fuentes,

Officer Rickett, had written the citation and gave the citation to Petitioner, (Tr. 17) before he place Petitioner, in the back seat of his patrol vehicle, and than had Officer McDaniel run his K-9 sniff around Petitioner's vehicle. Officer McDaniel, choose to run the K-9 around Petitioner's vehicle after the issue of the citation, and not when Officer McDaniel, got to the scene which is a violated of the Petitioner, Fourth Amendment rights. In the case of Guandong, Mr. Guandong, did not challenged the fact of the drug dog sniff of of any delays caused by the drug dog sniff. In the case of Petitioner, he did challenged the delayed caused by the K-9 sniff. His complaint, got him place in the back seat of the patrol vehicle while the officers run the K-9 around, Petitioner's vehicle because he did not want the K-9 to go around his vehicle.

Where Shon T, Erwin United States Magistrate Judge, error by applied the law incorrectly and he also error in its recitation of understanding of the facts, he's more concern on trying to justify the traffic-stop Shon T, Erwin United States Magistrate Judge, error by applied the law incorrectly and he also error in its recitation of understanding if the facts, he's more concern on trying to justify the traffic-stop and not what accorded after the traffic-stop. The argument the Petitioner Fuentes, was stating forth, was that there was no reason to extended the traffic-stop after the issue of the citation regardless if another Officer gave Sergeant Rickett, inside knowledge that Petitioner, might be carry drugs. Because that's not the reason Sergeant Rickett, stop the Petitioner. At the inception of the stop Sergeant Ricketts, told Petitioner, that he was being stop for speeding and tailgating, Sergeant Ricketts, would have never suspected that Petitioner had a drugs in the vehicle if it wasn't for the inside knowledge giving to him by Detective Chad Cook.

As the Court, can see Shon T, Erwin United States Magistrate Judge, error by using the "Collective Knowledge Doctrine" because Detective Chad Cook, never made a requested to arrest Petitioner. In Accordance to Detective Chad Cook, own requested, that an Oklahoma City Officer, stop the vehicle once it was in Oklahoma County if any traffic violations were observed,(Tr. 17) not a

requested to arrested Petitioner, and search his vehicle after arresting him. What Petitioner, is state is that O.C.P.D. had open investigation on the Fuentes Family, and because of this investigation Detective Chad Cook, was following Petitioner, through a G.P.S tracking device. He requested for a Oklahoma City Officer to make a traffic-stop if Petitioner, made any traffic-violation (TR.17). The Officer who pull-over Petitioner, on a traffic-violation had being brief earlier that day by Detective Chad Cook, that Petitioner, might have loan of drugs in the vehicle. Officer Ricketts, approach the vehicle of Petitioner, after he pull him over, and he stated the reason he was pulling-over Petitioner, was because Petitioner, was speeding, and tailgating. Officer Ricketts, try to engage in a conversation with Petitioner, but Petitioner, "told him that he did not want to chit-chat with him to just write him his citation" Petitioner, was just exercising his rights to remain silence. After Officer Rickett, had writing the citation he again try to engage in conversation with Petitioner, tell him "now the citation is done and out the way, would Fuentes, answer a few question". Which Fuentes, said "yes he would answer a few question". Do to the fact that earlier in the day Officer Rickett, was brief that Petitioner, might be carrying a loan of methamphetamine he want to know if Petitoner, had any drugs in the vehicle. Which Petitioner, told him "no he did not have any drugs in the vehicle". If it wasn't for the briefing that Officer Rickett, had earlier that day Officer Rickett, would have never suspected that Petitioner, had any drugs in the vehicle just from the traffic-stop. He probably would of let him go after writing the citation and never would of insistent of getting consent to search the vehicle of Petitioner. When Petitioner, did not give consent for his vehicle to get search Officer Rickett, got frustrated and told Petitioner, that he had two choices that Petitioner, would wait on the side walk or the back seat of the patrol vehicle while they ran a K-9 around Petitioner's vehicle. Which Petitioer, reply " that he wasn't going to wait for no K-9 to be ran around his vehicle and like he sign the citation he was free to leave" and Petitoner, started to leave. When Officer Rickett, stop Petitioner, and told him "like you don't want to wait on the side walk I'm placing you in the back seat of my patrol vehicle while we ran the K-9 around your vehicle".

Before he place Petitioner, in the back seat of his patrol vehicle he pat Petitioner, for weapons and after he did not find anything on Petitioner, he gave him the sign citation and then place him in the back seat of patrol vehicle under investigative detention (Tr. 70 & 75).

But the law state in accordance to *Brendlin v. California 127, S.Ct. 2400, 168, L.Ed.2d. 132, 551, U. S. 249, 75 (2007)*A person is seize by police and thus entitled to challenge the Governments action under the fourth Amendment when an officer "by means of physical force or show of authority" terminates or restrains his freedom of movement that Officer has committed a Fourth Amendment violation. Beside Officer Rickett, place Petitioner, under investigative detention because Petitioner, did not lie to Officer Ricketts, about anything, is not like when Officer Ricketts, try to engage in conversation with Petitioner, at the inception of the stop. Petitioner, told him that "he was coming from EL Reno, Oklahoma" when Officer Rickett, knew that Petitioner, was traveling back from Arizona. That lie would gave Officer Ricketts, suspicion of Petitioner, for lying to him and he would of try to find out of why Petitoner, was lying to him about his traveling. Officer Ricketts, would then had the right to place him on investigative detention, but that's not the case here Petitioner, choose to exercise his right to remain silence. So there was no reason to place him under investigative detention and most important "The Collective-Knowledge-Doctrine" is when one Officer request another Officer to make a arrest of a individual. ***"The Collective Knowledge Doctrine" essentrilly proved that when one officer know sufficient information to justify an arrest of a target if he for request that another officer is attributed to the second officer for purpose of determining whether there was probable cause for arrest. United State v. Massenburg 654,F.3d 480 (4th Cir 2011)***

Petitioner, did not get arrested by Officer Ricketts, until the drugs where found in his vehicle. The hold time before the finding of the drugs in Petitioner's vehicle. Petitioner, was under investigative detention not under arrest like Shon T, Erwin United States Magistrate Judge, error by applied the law incorrectly and error in its recitation of understanding if the facts, he's more concern on trying to justify

the arrested than what happen after the stop.

Last Shon T, Erwin United States Magistrate Judge, error by applied the law incorrectly for not applying to the Antiterrorism and Effective Death Penalty Act.Under the Antiterrorism and Effective Death Penalty Acthereinafter referred to as the AEDPA , a petition for writ of habeas corpus will not be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication of the claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the Unites States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Sections 2254 (d) and (e) (1):

In Miller- El v. Cockkrell, 537 U.S 322 (2003, seven members of the Court joined by Justice Scalia in a separate concurring opinion and over a solitary dissent by Justice Thomas rejected the 5th Circuit attempt to consolidate two separate provisions of AEDPA (sections 2254(d)(2 and (e) (10 to require habeas corpus petitioners to prove that the state court decision was objectively unreasonable by clear and convincing evidence Id. At 341. This was too demanding a standard, the Court declared, on more than one level. It was incorrect for the Court of Appeals, when looking at the merits, to merge the independent requirements of §§ 2254(d) and (e) (1). AEDPA does not require petitioner to prove that a decision is objectively unreasonable by clear and convincing evidence. The clear and convincing evidence standard is found in § 2254(e)(1), but that subsection pertains only to state-court determinations of factual issues, [and does not apply to ultimate state court} decisions. Subsection (d) (2) contains the unreasonable requirement and applies to the granting of habeas relief. Id. At 341 42. The Court also took the opportunity in Miller- El to underscore the federal courts obligation on federal habeas corpus review to scrutinize state court judgments carefully and grant relief where appropriate.

Addressing federal habeas corpus review of factual determinations by state court, where AEDPA Sections 2254(d)(2) and (e)(1) call for certain forms of deference to state determinations (see infra § 20. 2c), the Court instructed that deference does not imply. Abandonment of abdication of judicial review. Deference does not by definition preclude relief. A federal court can disagree with a state court credibility determination and when guided by AEDPA, conclude the decision was unreasonable or that the factual premises was incorrect by clear convincing evidence. Id. At 340

In Brumfield v. Cain, 135 S. Ct. 2269 (2015), the Court held under section 2254(d)(2) that a state court decision denying a death-row inmate an opportunity to prove he was intellectually disabled and thus exempt from capital punishment under Atkins v. Virginia,536 U.S. 304 (2002), was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Id. At 2273. The Court found that the state court had unreasonably views Brumfield IA test score 75 as belying the claim that Brumfield was intellectually disabled when in fact this evidence was entirely consistent with intellectual disability once the margin of error for IQ tests was considered, and there was no evidence of any higher IQ test score that could render the state court determination reasonable. Id. At 2277 78. The state court also unreasonably found that the record failed to raise any question as to Brumfield impairment in adaptive skill. Id. At 2279. As the Court explained, the evidence in the state court record provided substantial grounds to question Brumfiekd adaptive functioning Id. At 2280. Although other evidence in the record before the state court may have cut against Brumfierld claim of intellectual disability needed only to raise a reasonable doubt as to his intellectual capacity to be entitled to an evidentiary hearing on his Atkins claim, and none of the countervailing evidence could be said to foreclose all reasonable doubt. Id. At 2280,81. Accordingly, the Court held, Brumfield was entitled to have his Atkins claim considered on the merits in federal court. Id. At 22733. The Court observed once again, as it had in Miller-El v. Cockrell, 537 U.S. at 340, that even in the context of federal habeas, deference does not imply abandonment or abdication of

judicial reviews, and does nowt by definition preclude relief. Id. 2277.

§ 32.4. Rules for applying section 2254(d)(2)

AEDPA amended section 2254(d) provides that a state prisoner habeas corpus application shall not be granted with respect to any claim that was adjudicated on the merit in State court proceedings unless the adjudication of the claim

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.1

Shon T, Erwin United States Magistrate Judge error for not applying the AEDPA when any one who reads Petitioner, case knows that the State Court) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the Unites States; or.

CONCLUSION

The petition for a Writ of Certiorari should be granted because as the court can see, this is the court where Rodriguez, case was over turn, this Court was where the opinion came from. Petitioner, was under investigation before he got pull-over. The Officers, did not tell him that he was under investigation. The Officers, told him that the reason he was being pull-over was because he was speeding and tale-gating. So Petitioner, should have be able to walk away once the citation was sign. But that was the not the case here, Oklahoma Attorney General, wants to use the Collective Knowledge-Doctrine that has nothing to with Petitioner, case to justify the actions of the Officers. Petitioner, is asking the court to reverse his sentence because the evidence should have be suppress at Trial Court. Because the Officers, violated Petitioner, Fourth Amendments rights when they put

Petitioner, in the back seat of the patrol vehicle terminating and restrains his freedom of movement or freedom to walk away after they gave Petitioner, the sign citation Court should make a fair ruling on this case.

Respectfully Submitted,

Pedro Fuentes

August 14, 2024

Date