No.

In The

Supreme Court of the United States

SHABORN WASINGTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether it was error for the Eleventh Circuit to uphold the district court's order denying Petitioner's Motion to Suppress items obtained through an unconstitutional warrantless search and seizure where there was no warrant and no applicable exception to the warrant's requirements.

LIST OF PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED CASES

There are no proceedings directly related to this case as required by Supreme Court Rule 14(1)(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

COMES NOW, Petitioner, Shaborn Washington ("Petitioner"), by and through undersigned counsel, and respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The order and opinion of the Eleventh Circuit Court of Appeals that is sought review of is in No. 23-12612[1] [App. 1a] unpublished opinion dated November 6, 2024.

JURISDICTION

The United States District Court for the Middle District of Florida asserted subject matter jurisdiction pursuant to 18 U.S.C. § 3231. The district court entered judgment sentencing Petitioner to 100-months of incarceration, followed by three years of supervision. [App. 1a].

The Eleventh Circuit had jurisdiction pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3742(a)(1).

This Petition seeks review of an Eleventh Circuit's Judgment dated November 6, 2024. [App. 1a]. This Honorable Court has Jurisdiction pursuant to 28 U.S.C. § 1254(1) and Rule 10 of the Rules of the Supreme Court of the United States.

[1] References to Petitioner's Appendix before this Honorable Court is made as "APP. #_".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> 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. Course of Proceedings and Disposition in Court Below

On August 12, 2021, Shaborn Washington ("Mr. Washington" or "Petitioner") was indicted in a one-count indictment.

Count I charged that

> On or about January 16, 2021, in the Middle District of Florida, the defendant SHABORN WASHINGTON, knowing that he had been previously convicted in any court of a crime punishable for a term exceeding one year, […] did knowingly possess, in and affecting interstate commerce, a firearm and ammunition, that is, a Pheonix Arms firearm, Remmington ammunition, and CCI ammunition. In violation of 18 U.S.C. §§ 922(g)(1) and 924(e). [2]
>
> [APPX 2, Doc 1].

On June 30, 2022, Mr. Washington filed "Defendant's Motion to Suppress Evidence; Memorandum of Points and Authorities" (the "Motion to Suppress") APPX 3 [Doc 20]. On July 13, 2022, the Government filed its "Response in Opposition to Defendant's Motion to Suppress" [APPX 4, Doc 32].

On November 15, 2022, the United States District Court for the Middle District of Florida heard argument on Mr. Washington's Motion to Suppress. [APPX 6, Doc 56]. At the conclusion of the hearing, the trial court reserved on its ruling.

On November 29, 2022, the district court entered an order denying the Motion to Suppress. [APPX 7, Doc 57]. In its Opinion and Order, the trial court held (1) there was a reasonable suspicion that criminal activity was afoot (2) that the vehicle in which Appellant was a passenger was parked "in the area" of that suspicion because

[2] All references to Petitioner's Appendix filed in the United States Court of Appeals for the Eleventh Circuit are designated "APPX" plus the relevant page numbers.

it was parked in the greater "commercial area," (3) that under the totality of the circumstances the there was reasonable suspicion for a *Terry* stop of the vehicle, and (4) the parking lot constituted a "highway" because it met the language of, "the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic" under Fla. Stat. § 316.217. [APPX 7, Doc 57, P. 7 & P. 8-11].

On February 13, 2023, a 1-day bench trial was conducted before the Honorable Sherri Polster Chappell, at which time, the evidence at issue was admitted against Appellant. At the conclusion of the trial, Appellant was convicted. [Dis. Ct. Doc 72][3].

On July 31, 2023, Appellant's sentencing hearing was held. Appellant was sentenced to 100-months of incarceration, followed by three years of supervision, $100.00 in monetary penalties, and forfeiture of the assets seized in the traffic stop.

On August 9, 2023, Appellant filed his Notice of Appeal as to the Order denying the Appellant's Motion to Suppress. [Dis. Ct. Doc 98]. Appellant is currently incarcerated serving the imposed sentence. On December 21, 2023, Petitioner filed his initial brief with the 11th Circuit Court of Appeals. *U.S. v. Washington*, Case No. 23-12612-G. On May 7, 2024, Respondent filed its response brief. On June 27, 2024, Petitioner filed his reply brief.

On November 6, 2024 the Eleventh Circuit entered an Opinion affirming the district court. [App. 1a].

[3] All references to the Docket Entries from trial court proceedings docket of the Middle District for the State of Florida will be designated as "Dist. Ct. Doc."

B. Statement of Facts

On Saturday, January 16, 2021, Appellant and other family members were in a vehicle traveling from Sarasota County to Miami. During the trip, the vehicle needed to refuel. The vehicle's driver exited the vehicle from I-75 South at exit 123. The driver then turned left on Corkscrew Road and proceeded to the nearest gas station, a Shell station, located in the far southeast corner of the Miromar Outlet complex.

The vehicle approached the pumps at the Shell station and attempted to purchase gas from the outside pump. However, because of the time in the evening, the pumps were not operating and did not allow the transaction to go through. Still in need of gas, the vehicle occupants decided to proceed to the next closest gas station. The Shell station shared a connected parking lot with the adjacent Wells Fargo Bank.

Prior to the time Petitioner was at the Shell station, an employee of the Domino's Pizza located across the street near the intersection of Ben Hill Griffin Parkway and Corkscrew Road, in Estero, Florida, called 911 and speculated about hearing potential gunshots. The caller stated that she was relying upon the declarations of her employees that there might have been gunshots and she didn't know because she was "deaf." She added that her employees were also not sure if it was in fact gunshots that they heard. The 911 caller referred to the general location of the possible shots as being near "Miromar Outlets," which is a large shopping center including numerous tracts of land, an outdoor mall and numerous other

businesses, as well as the gas station and Wells Fargo Bank. The Wells Fargo gas station abuts the southern end of the entire area away from the outlets.

Former officer, Jonathan Roedding of the Lee County Sheriff's Office ("LCSO") testified that he was employed as a deputy sheriff by the LCSO on the date at issue, and that he now has a civilian job. [APPX 9, Doc 103, P 12: L1-17].

He responded to the general area in order to investigate the potential gunfire reported by the 911 caller. [APPX 9, Doc 103, P 13-14]. Roedding arrived in four in a half to five minutes. [APPX 9, Doc. 103, p 13, l 24-25; P 14, l 1]. The 911 caller never provided a description of any vehicle, make of a vehicle, color of any vehicle, license plate number, or the number of occupants of any vehicle. [APPX 9, Doc. 103, P. 17. L. 1-12].

Upon arriving in the area, Roedding cruised into the area containing numerous businesses surrounding Miromar Outlets. He proceeded to the Wells Fargo, at the time, with his headlights turned off, and only his parking lights illuminated." [Sentencing Hearing Transcript, p. 19, l. 20-21]. Roedding viewed the vehicle that Appellant was a passenger in. Officer Roedding testified that his vehicle's headlights did not need to be on when he entered the Wells Fargo parking lot because he did not need them on when he was on a "private road." [Sentencing Hearing Transcript, p. 19, l. 20-21.]

However, Roedding stated that he viewed the vehicle in which Appellant was a passenger and proceeded to seize it because of an alleged traffic violation of… failing

to have headlights on, in the exact same area of the parking lot in which his patrol vehicle traveled without headlights.

Of note, the 911 caller had not provided any details about any people or any make, model, or color of any vehicle being involved in the potential gunshot fire sound. The only detail about vehicles being involved was that vehicles were heard driving fast from the area.

Roedding had a mere hunch that the vehicle in the parking lot might be involved in some illicit activity. This was allegedly based upon the vehicle beginning to drive in the parking lot slowly without its headlights on. He initiated a stop in the Wells Fargo parking lot by turning on his patrol lights.

Deputy Roedding stated that he observed a black sedan that was leaving a gas station parking lot in the complex near the front of the Wells Fargo Bank. Deputy Roedding drove up to the vehicle, asserted his legal authority by activating his emergency lights and siren, in order to effectuate in his words, "a traffic stop." Again, this occurred on private property. At this point, Appellant and the other passengers were seized.

The vehicle was not being operated on a public road and it had not been observed to have committed any traffic violations. No descriptions had been provided to law enforcement about vehicle(s) or suspect(s) by the 911 caller, or by anyone else. No reports had been made by either the Wells Fargo Bank security or the gas station about potential illegal behavior. No evidence was provided that Wells Fargo ever authorized traffic monitoring in its parking lot.

Furthermore, prior to seizing the vehicle, the officer witnessed no behavior from the vehicle or its occupants that would have given him reasonable suspicion to make the stop.

During the warrantless seizure of Defendant, Deputy Roedding approached the vehicle. During this point, the vehicle was not free to leave and was unlawfully detained. There were two passengers in the front of the vehicle and a third located in the back seat

Deputy Roedding ordered all three occupants out of the vehicle. All occupants complied and were directed to stay at the rear of their vehicle. A search of the vehicle revealed a black and brown Smith and Wesson under the front passenger seat where Tyree Shaheem Jamal Brown was sitting. Deputy Roedding's search during the unlawful seizure also recovered a bag from under the rear bench seat.

The deputy then proceeded to open the bag and search inside it without a warrant or consent. Inside of the bag, Deputy Roedding located a silver and black Phoenix Arms handgun.

The firearm was placed into police custody and Defendant and the other vehicle occupants were subsequently released.

On August 12, 2021, Mr. Washington was indicted in a one-count indictment. Count One alleges that Defendant while being a convicted felon, did knowingly possess, in and affecting interstate commerce, a firearm and ammunition, that is, a Phoenix Arms firearm, Remington ammunition, and CCI ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). [APPX 2, Doc. 1].

REASONS FOR GRANTING WRIT OF CERTIORARI

I. THE ELEVENTH CIRCUIT ERRED IN IT ANALYSIS AFFIRMING THE DENIAL OF PETITIONER'S MOTION TO SUPPRESS BASED ON A 911 CALL COMBINED WITH THE VEHICLE'S MOVEMENT IN A WAY THAT CONFLICTS WITH FOURTH AMENDMENT PRINCIPLES SET BY SUPREME COURT PRECEDENT ON REASONABLE SUSPICION.

The Court's Opinion affirming the district court's denial of Petitioner's Motion to Suppress is contrary to this Court's precedent and presents a precedent-setting question of exceptional importance thereby warranting a writ of certiorari.

On June 30, 2022, Mr. Washington filed his Motion to Suppress in which he argued that his Fourth Amendment rights had been violated by law enforcement's warrantless searches when officers stopped the vehicle merely upon it being in a general location that the 911 call came from. Mr. Washington's vehicle was not fleeing or driving erratically from the scene rather it was near the scene contrary to the caller's description.

The officers unconstitutionally seized Mr. Washington and searched his items. In doing so, the officers deprived the judicial branch of its constitutional authority to determine the existence of probable cause and to determine whether or not to issue a warrant. The result was an unconstitutional, warrantless search of Mr. Washington's personal effects and an unconstitutional, warrantless prolonged seizure of Mr. Washington.

The Fourth Amendment provides,

> 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 person or things to be seized.

U.S. CONST. amend. IV (emphasis added).

"[S]earches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment— subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (emphasis added).

The purpose of the warrant requirement is to ensure that the decision is made "by a neutral and detached magistrate instead of being judged by the officer engaged in the often-competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14, (1948).

A traffic stop has been recognized as a 'seizure' within the meaning of the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 809-10 (1996). Furthermore, Courts have for centuries noted the importance of obtaining prior judicial approval. "[T]he police must, whenever practicable, obtain advance judicial approval of searches and seizures through a warrant procedure." *Terry v. Ohio, 392 US 1, 20 (1968).* The Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty. *See Gerstein v. Pugh, 420 U.S. 103, 113-114 (1975)(emphasis added).*

"[S]earches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment— subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (emphasis added).

The purpose of the warrant requirement is to ensure that the decision is made "by a neutral and detached magistrate instead of being judged by the officer engaged in the often-competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14, (1948).

Unreasonable delays are those "delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991).

At the "very heart of the Fourth Amendment directive" is that

> where practical, a governmental search and seizure should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify invasion of a citizen's private premises or conversation. Inherent in the concept of a warrant is its issuance by a 'neutral and detached magistrate.

United States v. United States Dist. Court for Eastern Dist. of Mich., 407 U.S. 297, 316 (1972)(emphasis added).

In United States Dist. Court for Eastern Dist. of Mich., This Court clarified,

> Over two centuries ago, Lord Mansfield held that common-law principles prohibited warrants that ordered the arrest of unnamed individuals who the officer might conclude were guilty of seditious libel. "It is not fit," said Mansfield, "that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer."

United States v. United States Dist. Court for Eastern Dist. of Mich., 407 U.S. at 316 (emphasis added); *citing Leach v. Three of the King's Messengers*, 19 How. St. Tr. 1001, 1027 (1765); *See also*, *Malley v. Briggs,* 475 U.S. 335, 352 (1996).

"These Fourth Amendment freedoms cannot properly be guaranteed if [limited] solely within the discretion of the Executive Branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates." *United States Dist. Court for Eastern Dist. of Mich.,* 407 U.S. at 317. "The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech." *Id.*

"The Fourth Amendment contemplates a prior judicial judgment, not the risk that executive discretion may be reasonably exercised." *Id.* at 317. "This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of Government." *Id.* citing Harlan, Thoughts at a Dedication: Keeping the Judicial Function in Balance, 49 A. B. A. J. 943-944 (1963).

"The independent check upon executive discretion is not satisfied, as the Government argues, by 'extremely limited' post-surveillance judicial review." *Id.*, *See also, Delaware v. Prouse*, 440 US 648, 655 (1979) ("other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field[.]'").

In the present case, the Eleventh Circuit's affirmation of the denial of Petitioner's Motion to Suppress relies on the flawed conclusion that the officer had reasonable suspicion to conduct an investigatory stop based on the totality of the

circumstances, including a speculative 911 call and Mr. Washington's vehicle movement. This decision contravenes established Supreme Court principles governing reasonable suspicion and the Fourth Amendment, warranting review by this Court.

A. The 911 Call Lacks the Necessary Specificity and Reliability.

A critical element of the Eleventh Circuit's analysis was its finding that the 911 call contributed to the officer's reasonable suspicion. Specifically, the Opinion states that, "[t]he 911 call bore several indicia of reliability. The call was made via the 911 emergency system and provided a detailed, contemporaneous report, which individuals in the background corroborated." [App. 1a]. Additionally, the Opinion states that, "while the caller did not provide an eye-witness account, *id.*, she described the noises that her employees personally heard and perceived. Finally, the caller in this case more than anonymous tipster – she identified herself as the manager of a Domino's and provided her name and phone number." [App. 1a].

These characterizations are inconsistent with the actual call. The caller was unsure of what she heard or saw, as neither she nor her staffed observed anything definitive. The information was purely speculative, suggesting only that a gun might have been fired somewhere within a large shopping complex. Although, the use of the 911 system might lend some credibility, it does not, by itself, provide sufficient detail to establish reasonable suspicion for stopping every vehicle in the exterior of the shopping center.

The court in *Alabama v. White* held that an anonymous tip must possesses sufficient reliability, including specific, corroborative details, not merely conclusory or generalized observations. *Alabama v. White*, 496 U.S. 325 (1990).

In that case, police received an anonymous tip alleging that Vanessa While would soon leave a specific apartment building in a brown Plymouth station wagon – with a broken right taillight – and head to Dobey's Motel while carrying about an ounce of cocaine in a case. *White*, 496 U.S. 325 at 327. Acting on the tip, officers from the Police Department monitored the area and observed a woman leaving the building and entering a car matching the description. *Id.* at 327. They followed the vehicle along the most direct route to Dobey's Motion and eventually stopped it. *Id.* A consensual search of the car led to the discovery of a locked attache case, which, when opened with the respondent's assistance yielded marijuana, and later, cocaine was found in her purse. *Id.*

The issue in that case was whether the anonymous tip, when corroborated by independent police work, provided sufficient reasonable suspicion to justify the investigatory stop under the Fourth Amendment. *Id.* at 330. The court explained that while an anonymous tip on its own might not warrant a stop, the corroborated details—such as the observed departure, matching vehicle description, and the route taken—imparted sufficient indicia of reliability. *Id.*

In contrast, the 911 call in this case provided no matching or corroborative details linking Mr. Washington to any criminal activity. The call speculated that a gunshot or fireworks might have been heard, from an unknown location in a

sprawling shopping complex. The caller admitted uncertainty about the event, claiming that she did not see anything and could not confirm whether gunshots had actually occurred because she is deaf. This is far from the corroborated, predictive information found in *White*, where officers were able to verify key aspects of the tip through their own observations. The absence of any identifying details about Mr. Washington or the vehicle, cited in the Opinion, particularly the lack of a description of the Petitioner or the occupants of the vehicle, further demonstrates that the 911 call lacked the specificity required to establish reasonable suspicion.

The court's reliance on this 911 call, which amounted to little more than speculation, is directly opposed to the principles in *White*, where corroborated details substantiated the reasonableness of the stop.

This lack of specificity is problematic when viewed through the lens of established precedent. For example, in *Illinois v. Wardlow*, the Supreme Court emphasized that reasonable suspicion must be based on more than an, "inchoate and unparticularized suspicion or 'hunch'" of criminal activity. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). Although in *Wardlow* the officers relied on the additional factor of unprovoked flight in a high-crime area to justify their stop, the case underscores that such stops require an objective basis supported by specific, corroborated facts. *Wardlow*, 528 U.S. 119 at 123. In *Wardlow*, even as the majority ultimately upheld the stop based on a combination of factors, the court's analysis makes clear that isolated, vague indicators are insufficient to meet the Fourth Amendment Standard. *Id.*

In the instant case the 911 call did not provide any independently verifiable details – no description of Mr. Washington or the vehicle, and no observable corroboration at the scene. The call's ambiguity reduces it to little more than a speculative tip, failing short of the precise and objective standard mandated by *Wardlow*. Thus, just as *Wardlow* rejects the notion that a mere hunch can justify an investigate stop, so too does the uncorroborated and non-specific nature of the 911 call fail to establish the reasonable suspicion necessary to support the warrantless seizure in the present matter.

Additionally, in *U.S. v. Grigg*, Justin Wells Grigg was stopped by police in Nampa, Idaho, after a citizen complained that his car stereo was playing at an excessively loud volume in violation of a local noise ordinance. *U.S. v. Grigg*, 498 F. 3d 1070, 1072 (9th Cir. 2007). Acting on the complaint, officers initiated an investigative stop to identify the driver and resolve the complaint. *Grigg*, 498 F. 3d 1070 at 1072. During the stop, while following standard investigative procedures, police discovered an unregistered automatic firearm in Grigg's vehicle, which ultimately led to his arrest and subsequent conviction for possessing an unregistered firearm. *Id.* at 1072.

Grigg moved to suppress both the firearm and his post-arrest statements, arguing that the stop violated his Fourth Amendment rights. *Id.* at 1072. He contended that stopping his vehicle solely based on a minor noise violation – a misdemeanor offense – was an unreasonable intrusion, especially given that less intrusive alternatives existed for identifying him. *Id.* at 1074. Although the district

court denied his motion to suppress, the Ninth Circuit reversed that decision. The appellate court applied the balancing test from *Hensley* and related precedents, concluding that the minimal nature of the alleged offense did not justify the invasive stop. *Id.* at 1082. In light of these factors, the court found the investigative stop unconstitutional and remanded the case for further proceedings consistent with its opinion. *Id.* Specifically, "the district court determined that (1) the investigating officers did not know the identity or residence of the driver of the Cougar, (2) the driver was in the process of driving away before the stop, and (3) the officers sought to stop the driver to gain more information about Harm's noise complaint and identify the driver." *Id.* at 1073.

Essentially, the Ninth Circuit found that the stop in *U.S. v. Griggs* was unreasonable because the complaint was relatively minor, and less intrusive means were available to verify the driver's identity. *Id.* at 1074. This highlights that investigatory stops based on unreliable information should not justify warrantless searches.

By analogy, the 911 call at issue here suffers from the same deficiencies. It did not include specific information about Mr. Washington, nor did it provide observable, corroborated facts to elevate the report beyond mere speculation. Without such reliable detail, the call cannot serve as the objective basis for a *Terry* stop. Therefore, as in *Grigg*, the uncorroborated, non-specific nature of the 911 call renders it insufficient to justify the warrantless seizure and subsequent search, in violation of the Fourth Amendment.

In light of the foregoing analysis, it is clear that the investigative stop in the present case rested on a vague and speculative 9111 call that failed to provide the specific, corroborated facts required to establish reasonable suspicion. As underscored in *Illinois v. Wardlow*, the Fourth Amendment demands more than an unparticularized hunch to justify a stop, and isolated, ambiguous indicators are insufficient to meet this threshold. Given that the 911 call in this case offered only imprecise information without any independently verifiable details linking Mr. Washington or his vehicle to criminal activity, it falls short of the objective standard required by precedent, rendering the warrantless seizure and subsequent search unconstitutional.

B. Minimal Vehicular Movement Does Not Constitute Unprovoked Flight.

Equally problematic is the court's reliance on the vehicle's slow departure as a component of reasonable suspicion. The opinion observes that "when Roedding turned the headlights of his marked vehicle toward the car, the car drove away, inexplicably driving about five miles an hour and riding the brakes" [App. 1a]. While the court acknowledges that "[a]n individual's presence in an area of expected criminal activity, standing alone, does not create reasonable suspicion," it nonetheless finds that the vehicle's minimal movement, when coupled with the 911 call, was sufficient to establish reasonable suspicion. The minimal movement does not, by any objective measure, indicate that criminal activity was afoot, and thus it should not have provided the necessary basis for a seizure.

It is well understood that distancing oneself from police does not always arise from a guilty conscience. "There are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity." *United States v. Gordon*, 231 F.3d 750, 756 (11th Cir. 2000). As the Supreme Court stated over a century ago:

> It is a matter of common knowledge that men who are entirely innocent do sometimes fly from the scene of a crime through fear of being apprehended as the guilty parties, or from an unwillingness to appear as witnesses. Nor is it true as an accepted axiom of criminal law that 'the wicked flee when no man pursueth, but the righteous are as bold as a lion.' Innocent men sometimes hesitate to confront a jury -- not necessarily because they fear that the jury will not protect them, but because they do not wish their names to appear in connection with criminal acts, are humiliated at being obliged to incur the popular odium of an arrest and trial, or because they do not wish to be put to the annoyance or expense of defending themselves.

Alberty v. *United States,* 162 U.S. 499, 511 (1896).

"In addition to these concerns, a reasonable person may conclude that an officer's sudden appearance indicates nearby criminal activity. And where there is criminal activity there is also a substantial element of danger -- either from the criminal or from a confrontation between the criminal and the police. These considerations can lead to an innocent and understandable desire to quit the vicinity with all speed." *Illinois v. Wardlow*, 528 U.S. 119, 131 (2000).

Additionally, individuals may find the police themselves to pose a danger. "Among some citizens, particularly minorities and those residing in high crime areas, there is also the possibility that the fleeing person is entirely innocent, but, with or

without justification, believes that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer's sudden presence." *Illinois v. Wardlow*, 528 U.S. 119, 132 (2000).

"[E]ven in a high crime neighborhood unprovoked flight does not invariably lead to reasonable suspicion. On the contrary, because many factors providing innocent motivations for unprovoked flight are concentrated in high crime areas, the character of the neighborhood arguably makes an inference of guilt less appropriate, rather than more so." *Illinois v. Wardlow*, 528 U.S. 119, 139 (2000).

For example, the Eleventh Circuit held a slow, short distancing of the suspect from police in a similar manner as Defendant here does not of itself arise to reasonable suspicion. The appellate court was "mindful that the Supreme Court has held that a person approached by law enforcement is entitled to 'ignore his interrogator and walk away.'" *Young v. Brady*, 793 Fed. Appx. 905, 912 (11th Cir. 2019) (citing *United States v. Mendenahall*, 446 U.S. 544, 554 (1980)). The appellate court also noted that "the speed at which a defendant flees, and whether they engaged in 'flight from law enforcement officials,' factor into the totality of the circumstances." *Young*, 793 Fed. Appx. at 912 (citing *Gordon*, 231 F.3d at 757; *United States v. Willis*, 759 F.2d 1486, 1497 (11th Cir. 1985). The court in *Young* concluded, "Here, based on the totality of the circumstances, we cannot say that Young's short travel from the parking lot under the bridge in Sidney Lanier Park to a nearby parking lot created arguable reasonable suspicion. To that end, we disagree with Brady's characterization that Young 'fled' from Brady." *Young,* 793 Fed. Appx. at 912.

Here, Defendant behaved in a similar manner as Young. When Deputy Roedding entered the parking lot, Defendant travelled at a slow pace of approximately five miles per hour for a short distance of thirty to forty yards. Just as *Young* held that the officer violated the suspect's Fourth Amendment right by stopping the suspect after he was "disinterestedly leaving a situation involving a police officer," Detective Roedding lacked reasonable suspicion from Defendant merely moving a short distance away from him at a slow pace. *Id.* at 913.

In conclusion, the Court's reliance on the vehicle's slow departure to establish reasonable suspicion is fundamentally flawed. The evidence shows that Mr. Washington's movement—traveling at approximately five miles per hour for a mere thirty to forty yards—mirrors scenarios in which unprovoked flight is innocently motivated, as demonstrated in *Young v. Brady*, where such minimal distancing did not rise to the level of reasonable suspicion. As underscored in *Illinois v. Wardlow*, unprovoked flight in a high-crime area does not invariably justify a Terry stop, given that innocent motivations—ranging from fear of police contact to a desire to avoid unwarranted confrontation—are common. Moreover, as noted in *United States v. Gordon*, the mere act of fleeing does not conclusively indicate criminal activity; rather, it must be evaluated in the context of the totality of the circumstances. Therefore, the officer's reliance on the defendant's minimal movement, absent any additional corroborative factors, fails to satisfy the Fourth Amendment's requirement for objective justification, rendering the seizure unconstitutional.

CONCLUSION

For the foregoing reasons, the Supreme Court should grant Shaborn Washington's Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

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[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-12612

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHABORN WASHINGTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:21-cr-00070-SPC-KCD-1

Before ROSENBAUM, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Shaborn Washington appeals his conviction for being a felon in possession of a firearm, arguing that the district court erred by denying his motion to suppress evidence. The district court denied Washington's motion to suppress, relying upon two separate and independent grounds—i.e. (1) that there was reasonable suspicion for the investigatory stop based upon the 911 call and upon the actions of the car in which Washington was a passenger in response to the arrival of the officer's marked vehicle; and (2) that there was probable cause to stop the car based upon the traffic violation of driving without headlights. Washington challenges both of the alternative rulings. Washington argues that the police lacked reasonable suspicion to initiate an investigatory stop based on a 911 call that reported gunshots coming from the Wells Fargo where he and his companions were parked. Because we affirm the judgment of the district court on the basis of the first of its alternative rulings, we need not address the ruling that there was probable cause based on the traffic violation.

"A denial of a motion to suppress involves mixed questions of fact and law." *United States v. Campbell*, 26 F.4th 860, 870 (11th Cir. 2022) (*en banc*) (quotation marks omitted), *cert. denied*, 143 S. Ct. 95 (2022). When reviewing the denial of a motion to suppress, we review the district court's findings of fact for clear error and its

application of law to those facts *de novo*, construing all facts in the light most favorable to the prevailing party. *Id.*

The Fourth Amendment guarantees the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. "A traffic stop is a seizure within the meaning of the Fourth Amendment." *Campbell*, 26 F.4th at 880. For a traffic stop to comply with the Fourth Amendment, the stopping officer must have reasonable suspicion that the person stopped has engaged in criminal activity. *Id.* "We look to the totality of the circumstances to decide if the police had reasonable suspicion." *United States v. Bruce*, 977 F.3d 1112, 1117 (11th Cir. 2020). This inquiry ultimately "hinges on 'both the content of information possessed by police and its degree of reliability.'" *Id.* (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)).

Where the information possessed by police is derived from a 911 call, the Supreme Court has recognized several potential indicia of the call's reliability. *Navarette v. California*, 572 U.S. 393, 397 (2014); *see also Bruce*, 977 F.3d at 1117. Among these "indicators of veracity" are (1) the caller claiming eyewitness knowledge of the reported events, (2) the caller providing a "contemporaneous report," and (3) the caller using the 911 emergency system. *Navarette*, 572 U.S. at 399-401; *Bruce*, 977 F.3d at 1117. Where all three of the above are present, we have held that even an anonymous tip can be considered reliable without the need for additional corroboration by police. *Bruce*, 977 F.3d at 1117-18.

Additionally, while "[a]n individual's presence in an area of expected criminal activity, standing alone," does not create reasonable suspicion, their presence *does* create reasonable suspicion when combined with unprovoked flight upon the arrival of police. *United States v. Gordon*, 231 F.3d 750, 755-57 (11th Cir. 2000) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124-125 (2000)).

Here, Deputy Roedding had reasonable suspicion to stop the car Washington was in because (1) the 911 call was sufficiently reliable to make the Wells Fargo parking lot a place of expected criminal activity, and (2) the car fled—albeit slowly—upon his arrival. First, as the district court found in its order denying Washington's motion to suppress, the 911 call bore several indicia of reliability. The call was made via the 911 emergency system and provided a detailed, contemporaneous report, which individuals in the background corroborated. *Navarette*, 572 U.S. at 399-401; *Bruce*, 977 F.3d at 1117. Additionally, while the caller did not provide an eyewitness account, *id.*, she described the noises that she and her employees personally heard and perceived. Finally, the caller in this case was more than an anonymous tipster—she identified herself as the manager of a Domino's and provided her name and phone number. Deputy Roedding was therefore justified in crediting the 911 call's report that potential gunshots had been fired in and screams for help heard from the area of the Wells Fargo parking lot where Washington and his companions were parked. *Navarette*, 572 U.S. at 399 401; *Bruce*, 977 F.3d at 1117.

When Roedding cruised into the Wells Fargo parking lot roughly five minutes after receiving the shots fired call, the car Washington was in was parked. Although the mere presence of the car in an area of suspected criminal activity did not provide Roedding with reasonable suspicion to initiate a stop, *Gordon*, 231 F.3d at 755-57, Roedding's testimony established that, when he entered the lot, the car Washington was in was parked perpendicular to the marked spaces in the Wells Fargo parking lot, with no obvious purpose for being there at 2 AM. The motor of the car was running but the headlights were not on. When Roedding turned the headlights of his marked vehicle toward the car, the car drove away, inexplicably driving about five miles an hour and riding the brakes. The car drove this way for about 30 to 40 yards without its lights on. While the car's flight was certainly not "headlong," there is no indication that it was in response to anything other than Roedding's arrival in the parking lot in a marked cruiser. *Gordon*, 231 F.3d at 757.

Thus, Roedding had reasonable suspicion that the car's occupants were involved in criminal activity based on (1) the car's presence in an area of expected criminal activity and (2) its unprovoked flight upon his arrival. *Id.* at 756-57. Accordingly, the district court did not err in denying Washington's motion to suppress.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12612

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHABORN WASHINGTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:21-cr-00070-SPC-KCD-1

JUDGMENT

ISSUED AS MANDATE 12/5/2024

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: November 6, 2024

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE 12/5/2024

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

SHABORN WASHINGTON

Case Number: 2:21-cr-70-SPC-KCD

USM Number: 04509-510

Joseph A. Davidow, CJA
9015 Strada Stell Ct Ste 106
Naples, FL 34109-4373

JUDGMENT IN A CRIMINAL CASE

Defendant was found guilty to Count One of the Indictment. Defendant is adjudicated guilty of this offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
8 U.S.C. §§ 922(g)(1) and 924(e)	Felon in Possession of a Firearm and Ammunition	January 16, 2021	One

Defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that Defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Judgment:

July 31, 2023

SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

August 2, 2023

»

Shaborn Washington
2:21-cr-70-SPC-KCD

IMPRISONMENT

Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **100-MONTHS**.

The Court makes the following recommendations to the Bureau of Prisons:

- **Incarceration in a facility close to home (Coleman FCI, or close to Fort Myers, Florida).**

Defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Shaborn Washington
2:21-cr-70-SPC-KCD

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **3-YEARS**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
4. Defendant shall cooperate in the collection of DNA, as directed by the probation officer.

The defendant shall comply with the standard conditions that have been adopted by this court as well as any other conditions on the attached page.

Shaborn Washington
2:21-cr-70-SPC-KCD

STANDARD CONDITIONS OF SUPERVISION

As part of Defendant's supervised release, Defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for Defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in Defendant's conduct and condition.

1. Defendant must report to the probation office in the federal judicial district where Defendant is authorized to reside within 72 hours of Defendant's release from imprisonment, unless the probation officer instructs Defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, Defendant will receive instructions from the court or the probation officer about how and when Defendant must report to the probation officer, and Defendant must report to the probation officer as instructed.
3. Defendant must not knowingly leave the federal judicial district where Defendant is authorized to reside without first getting permission from the court or the probation officer.
4. Defendant must answer truthfully the questions asked by Defendant's probation officer.
5. Defendant must live at a place approved by the probation officer. If Defendant plans to change where Defendant lives or anything about Defendant's living arrangements (such as the people Defendant lives with), Defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. Defendant must allow the probation officer to visit Defendant at any time at Defendant's home or elsewhere, and Defendant must permit the probation officer to take any items prohibited by the conditions of Defendant's supervision that the probation officer observes in plain view.
7. Defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses Defendant from doing so. If Defendant does not have full-time employment Defendant must try to find full-time employment, unless the probation officer excuses Defendant from doing so. If Defendant plans to change where Defendant works or anything about Defendant's work (such as Defendant's position or Defendant's job responsibilities), Defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. Defendant must not communicate or interact with anyone Defendant knows is engaged in criminal activity. If Defendant knows someone has been convicted of a felony, Defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If Defendant is arrested or questioned by a law enforcement officer, Defendant must notify the probation officer within 72 hours.
10. Defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. Defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that Defendant poses a risk to another person (including an organization), the probation officer may require Defendant to notify the person about the risk and Defendant must comply with that instruction. The probation officer may contact the person and confirm that Defendant has notified the person about the risk.
13. Defendant must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature:_____ Date:_____

Shaborn Washington
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ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, Defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, Defendant is directed to submit to random drug testing.

2. Defendant shall submit to a search of Defendant's person, residence, place of business, any storage units under Defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. Defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

3. Defendant shall submit to random drug testing not to exceed 104 tests per year.

Shaborn Washington
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CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	Assessment	AVAA Assessment[1]	JVTA Assessment[2]	Fine	Restitution
TOTALS	**$100.00**	**$0.00**	**$0.00**	**WAIVED**	**$0.00**

SCHEDULE OF PAYMENTS

Special assessment shall be paid in full and is due immediately.

Having assessed Defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Indictment (Doc. 1) and Order of Forfeiture (Doc. 90), that are subject to forfeiture.

[1] Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
[2] Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.