

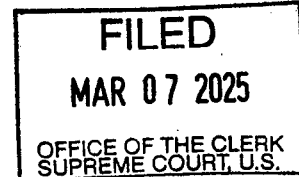
No. 24-6903

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN SHELDON PICKENS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.



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

PETITION FOR A WRIT OF CERTIORARI

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Pro Se

QUESTION PRESENTED

In the case below, police warrantlessly monitored Petitioner's cell phone GPS data. Using this information, the police located Petitioner and made an unconstitutional investigatory stop. Petitioner fled during the stop. Once the flee concluded, police searched Petitioner's car and found the evidence that resulted in Petitioner's conviction for a controlled substances offense. The district court held that Petitioner's flee triggered the independent source exception to the Fourth Amendment's exclusionary rule.

The question presented by this petition is:

Does an unlawful flee that would not have happened but for the police's violation of the Fourth Amendment trigger the independent source exception to the Fourth Amendment's exclusionary rule?

LIST OF PARTIES

All parties appear in the caption on the cover page of this Petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner John Sheldon Pickens respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The opinion below is unpublished and is reprinted in the Appendix to this Petition.

JURISDICTION

The Eighth Circuit Court of Appeals issued its decision on December 10, 2024. Hence, this Petition is timely. This Court has jurisdiction to review the decision of the Court of Appeals under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Not applicable.

INTRODUCTION

The Fourth Amendment's exclusionary rule provides that evidence obtained by the police in violation of the Fourth Amendment's prohibitions against unreasonable searches and seizures cannot be used to convict us of a crime. The exclusionary rule is the primary check against the police's intrusion into our privacy. Without it, there is no penalty for unreasonable searches and seizures and no incentive for the police to obey the Fourth Amendment.

The lower court has created an exception to the exclusionary rule so wide that it threatens to swallow the exclusionary rule whole—and thus remove the police's incentive to comply with the Fourth Amendment. According to the lower court, evidence derivative of a Fourth Amendment violation is admissible if there is a violation of the law (however minor) between the Fourth Amendment violation and the evidence's discovery. Put in formal terms, the lower court held that a violation of the law triggers the independent source exception to the exclusionary rule.

In the case below, this principle manifested itself in the following factual context: the police monitored Petitioner's cell phone GPS data without a warrant in violation of the Fourth Amendment's prohibition against unreasonable searches. Then, the police used this data to find Petitioner and conduct an unconstitutional investigatory stop in violation of the Fourth Amendment's prohibition against

unreasonable seizures. Petitioner fled and was stopped. The police searched his car and found contraband that resulted in Petitioner's conviction for a controlled substances offense.

Most courts analyze the admissibility of evidence under these circumstances under the attenuation exception to the Fourth Amendment's exclusionary rule. The attenuation exception requires courts to weigh the flagrancy of police misconduct against the existence of intervening circumstances and temporal proximity between the police misconduct and the discovery of the evidence. The attenuation exception is a balancing test that considers multiple factors.

The independent source exception is not a balancing test. The only question asked in applying the independent source exception is whether evidence was discovered independently of a Fourth Amendment violation. This test does not consider the flagrancy of police misconduct or any other factors.

The lower court's application of the independent source exception to the facts in this case gives the police a blank check to violate our Fourth Amendment privacy rights and then wait for a violation of the law—*e.g.*, speeding, failure to signal, expired tags, failure to wear a seatbelt, etc.—to bypass a Fourth Amendment violation. Under the lower court's ruling, the most trivial violation of the law can excuse the most flagrant Fourth Amendment violation.

This Court and the Circuit Courts have properly applied the attenuation balancing test to these facts versus the independent source exception. This Court's

intervention is urgently needed to close the gaping Fourth Amendment loophole created by the lower court's decision.

STATEMENT OF FACTS

1. Saint Paul Police Commander Salim Omari gained access to Petitioner's cell phone GPS data via a search warrant. Omari obtained the search warrant to apprehend Petitioner on an outstanding warrant. Omari executed the search warrant, apprehended Petitioner and the search warrant expired. In violation of the Fourth Amendment's prohibition against unreasonable searches, Omari continued monitoring Petitioner's cell phone GPS data. This monitoring was warrantless because the search warrant had expired.

2. While monitoring Petitioner's cell phone GPS data, Omari noticed that Petitioner made a short term trip to Chicago. Suspicious that Petitioner was transporting controlled substances, Omari arranged an unconstitutional investigatory stop on Interstate Highway 94—just on the Minnesota side of the Minnesota-Wisconsin border. The attempted unconstitutional investigatory stop missed Petitioner, who travelled to St. Paul, Minnesota.

3. Omari's team located Petitioner in a residential neighborhood of St. Paul and, in violation of the Fourth Amendment's prohibition against unreasonable seizures, subjected Petitioner to an unconstitutional investigatory stop.

4. Petitioner pulled over, but then unmarked police cars barreled towards Petitioner. This action provoked a flight/fight response in Petitioner. Petitioner fled.

The flee ended and Petitioner was detained. Police found the controlled substances that gave rise to this case.

5. The government charged Petitioner with possession of controlled substances with intent to distribute. Petitioner's counsel told Petitioner that he would file a suppression motion, but then inexplicably withdrew the motion the day of the suppression hearing. Petitioner's counsel never refiled the suppression motion. Petitioner went to trial and was convicted based on the evidence that was derivative of the police's Fourth Amendment violations.

6. Petitioner fired his attorney and the attorney's firm apologized for the attorney's deficient performance. Petitioner's new counsel filed a post-trial motion to suppress the unlawfully obtained evidence. The district court denied the post-trial motion, holding that Petitioner had waived the issue. The Eighth Circuit affirmed and held that Petitioner had waived the issue by not prosecuting a pretrial motion to suppress the unlawfully obtained evidence.

7. Petitioner filed a 28 U.S.C. § 2255 motion seeking to vacate his conviction. The grounds in the § 2255 motion included a ground that Petitioner was convicted in violation of his Sixth Amendment right to the effective assistance of counsel because his attorney was prejudicially deficient in his attempt to suppress the unlawfully obtained evidence.

8. The district court denied Petitioner's § 2255 motion, holding that Petitioner counsel's deficient performance was not prejudicial because Petitioner's suppression motion was futile.

9. The district court reasoned that Petitioner's flee provided police with an independent source of the unlawfully obtained evidence—notwithstanding that police would not have encountered Petitioner without Omari's warrantless GPS monitoring and the unreasonable seizure in St. Paul.

10. The district court rejected Petitioner's position that the flee should be evaluated as an attenuation issue because the flee was derivative of the unconstitutional GPS monitoring and investigatory stop. Petitioner argued that the police's blatant Fourth Amendment violation and the violation of Minnesota's criminal prohibition against warrantless cell phone GPS location monitoring, Minn. Stat. §§ 626A.37, 626A.35, outweighed the other factors considered in connection with attenuation.

11. Petitioner filed a timely notice of appeal, which the Eighth Circuit construed as a request for a Certificate of Appealability. The Eighth Circuit denied Petitioner's request for certificate of appealability and Petitioner's request for a panel rehearing.

12. Petitioner seeks review of the Eighth Circuit's denial of a certificate of appealability.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully requests that the Court accept review of the question presented because: (1) the question has generated conflicting authority among lower courts; (2) the question is important, with a weighty impact upon the

administration of criminal justice; and (3) this case presents an apt vehicle to resolve the question.

I. The question presented has created a divide in the lower courts.

In denying Petitioner's request for a certificate of appealability, the Eighth Circuit affirmed the district court's application of the independent source doctrine to Petitioner's suppression argument. In doing so, the Eighth Circuit created a divide between itself and other Circuit Courts. The Eighth Circuit analyzed the suppression issue in Petitioner's case via the independent source doctrine; other Circuit Courts analyze the issue through the attenuation doctrine.

A. Legal background regarding the exclusionary rule.

The Fourth Amendment to the United States Constitution prohibits the government from committing unreasonable searches and seizures. U.S. Const. Amend. IV. Evidence derived in violation of the Fourth Amendment's prohibitions is subject to exclusion unless an exception to the exclusionary rule applies. *See, e.g., Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 6 L. Ed. 1081 (1961). The policy rationale for the exclusionary rule is to deter police misconduct. *Hudson v. Michigan*, 547 U.S. 586, 591, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006).

There are recognized exceptions to the exclusionary rule. *See, e.g., Murray v. United States*, 487 U.S. 533, 537, 108 S. Ct. 2529, 101 L. Ed. 2d 472 (1988). Two exceptions are at issue in this Petition: (1) the independent source doctrine; and (2) attenuation.

1. Attenuation exception.

The attenuation exception applies if there is sufficient separation between a Fourth Amendment violation and the police's acquisition of evidence, such that the taint of the Fourth Amendment violation has been purged. In assessing attenuation, courts weigh three factors: (1) the temporal proximity between the Fourth Amendment violation and the discovery of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. *Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S. Ct. 2254, 45 L. Ed. 416 (1975). The third factor is "particularly" significant because the suppression rule exists to deter law police misconduct. *Id.* at 604.

2. Independent source doctrine.

The independent source doctrine is distinct from the attenuation doctrine and allows courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate source. *Murray*, 487 U.S. at 537. It does not apply if the evidence is not separately discovered through an independent source, but is instead only found as a direct result of an earlier constitutional violation.

B. Eighth Circuit.

The Eighth Circuit affirmed the district court's application of the independent source exception to the evidence seized from Petitioner. The district court held that a violation of law triggers the independent source doctrine with respect to any evidence discovered after a violation of the law—even if the violation

would not have happened but for a Fourth Amendment violation. District Court Order at 10. Put in concrete terms, the district court held that Petitioners' flee (which would not have happened but for the police's warrantless GPS tracking and unconstitutional investigatory stop) resulted in the police discovering evidence independently from a separate source.

C. Fourth Circuit.

In *United States v. Terry*, 909 F.3d 716 (4th Cir. 2018), in violation of the Fourth Amendment, the police placed a GPS tracker on the defendant's car without obtaining a warrant. While tracking the defendant, the police observed that defendant was speeding. The police executed a traffic stop and, during the traffic stop, discovered controlled substances that resulted in defendant's conviction. The Fourth Circuit applied the attenuation doctrine to these circumstances and held that the police's egregious misconduct warranted suppression.

The Fourth Circuit's *Terry* decision conflicts with the Eighth Circuit's decision in the case below. The Eighth Circuit would have allowed admission of the controlled substances, reasoning that the defendant's speeding triggered the independent source exception to the exclusionary rule. The Eighth Circuit would not have applied the attenuation balancing test.

D. Sixth Circuit.

In *United States v. Lee*, 862 F. Supp. 2d 560 (E.D. Ky., 2012), in violation of the Fourth Amendment, police warrantlessly tracked the defendant's GPS information. While following the defendant based on the GPS information, police

observed a seat belt violation and stopped defendant. During the stop, the officer smelled marijuana. A drug sniffing dog alerted. Police searched the car, found 150 pounds of marijuana and gained a confession.

U.S. District Court Judge Thapur invoked Sixth Circuit precedent and applied the attenuation balancing test to these circumstances. The district court rejected the notion that the defendant's seatbelt violation overcame the police's Fourth Amendment violation and suppressed the marijuana and the confession.

The *Lee* decision conflicts with the Eighth Circuit's decision in the case below. The Eighth Circuit would have allowed admission of the marijuana and the confession, reasoning that the defendant's seat belt violation triggered the independent source exception to the exclusionary rule. The Eighth Circuit would not have applied the attenuation balancing test.

This Court should grant review to resolve the conflicts described above.

II. The question is important, with a weighty impact on the administration of criminal justice.

This Court regularly reviews Fourth Amendment questions. *See, e.g., Wong Sun v. United States*, 371 U.S. 471 (1963) (reviewing whether flight after officers appeared at the door attenuated evidence discovered after flight concluded); *Segura v. United States*, 468 U.S. 796 (1984) (reviewing whether independent source for search warrant made evidence admissible despite initial illegal entry); *Jones v. United States*, 565 U.S. 400 (2012) (reviewing whether installation of a GPS tracking device on a vehicle and the subsequent use of that device to track the vehicle's location was a Fourth Amendment covered search); *Utah v. Strieff*, 579

U.S. 232 (2016) (reviewing whether outstanding arrest warrant attenuated evidence seized after Fourth Amendment violation); *Carpenter v. United States*, 585 U.S. 296 (2018) (reviewing whether government's acquisition of historical cell-site location was a search under the Fourth Amendment).

The question presented in this petition is of similar importance to the Fourth Amendment questions that have previously been taken up by this Court. This is true in part because the Eighth Circuit's decision threatens to swallow the exclusionary rule whole. The decision authorizes the most minor violation of the law to overcome the most egregious Fourth Amendment violation. Under the Eighth Circuit's rule, a seatbelt violation could overcome the warrantless GPS tracking at issue in *Jones v. United States*, 565 U.S. 400 (2012) and driving even one mile per hour over the speed limit could overcome the warrantless acquisition of historical cell site data at issue in *Carpenter v. United States*, 585 U.S. 296 (2018).

By granting review, the Court would defend the Fourth Amendment against the loophole created by the Eighth Circuit's decision.

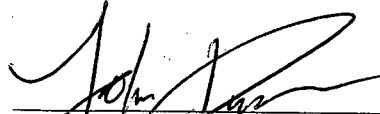
III. This case presents an apt vehicle to resolve the question.

This case presents an apt vehicle to resolve the question. In a 28 U.S.C. § 2255 proceeding—just as in an ordinary civil proceeding—the allegations in the petition are assumed to be true. The district court dismissed the petition without an evidentiary hearing, so there are no factual disputes. This case presents the Court with an opportunity to address the question as a pure question of Fourth Amendment law.

CONCLUSION

The Court should grant this Petition.

Respectfully submitted,



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Dated: March 4, 2025