

No. _____

=====

IN THE
SUPREME COURT OF THE UNITED STATES

DESHAUN JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Corrected Petition for Writ of Certiorari to the United States Court of
Appeals for the Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

D. ROBERT MARION JR., ESQUIRE
Counsel of Record
CHARLTON LAW
617 S. Pike Road
Sarver, PA 16055
bobby@charltonlawyers.com
(724) 540-1161
(724) 540-1164 (Fax)

QUESTIONS PRESENTED

1. Whether the Third Circuit Court of Appeals erred in affirming the District Court's denial of Appellant's Motion to Suppress.

PARTIES TO THE PROCEEDING

The Petitioner is Deshaun Jones, an individual. The Respondent is the United States of America. There is no party with an interest to disclose pursuant to Rule 29(6).

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| <u>TABLE OF AUTHORITIES</u> | 3 |
| <u>OPINIONS BELOW</u> | 5 |
| <u>JURISDICTION</u> | 5 |
| <u>CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED</u> | 6 |
| <u>STATEMENT OF THE FACTS</u> | 6 |
| <u>REASONS FOR GRANTING THE PETITION</u> | 7 |
| <u>1. The Third Circuit Court of Appeals erred in affirming the judgment of the District Court because Detective Rebel lacked reasonable suspicion to extend the traffic stop</u> | 8 |
| <u>2. The Third Circuit Court of Appeals erred in affirming the judgment of the District Court because the District Court applied the wrong standard in determining that the smell of marijuana alone justified the extension of the traffic stop</u> | 10 |
| <u>3. It is an important federal question whether the smell of marijuana alone is sufficient to extend a traffic stop with the legalization of marijuana. District Courts have disagreed on the issue and it is likely that a Circuit Split will develop on the issue</u> | 11 |
| <u>4. The Third Circuit Court of Appeals erred in determining that the Rodriguez moment occurred when Detective Rebel asked the driver of the vehicle if there was marijuana in the vehicle</u> | 13 |
| <u>CONCLUSION</u> | 15 |

TABLE OF AUTHORITIES

| | Page |
|--|------------|
| Cases | |
| <i>United States v. Deshaun Jones</i> No. 24-1558 (3d Cir. Feb. 21, 2025). | 5 |
| <i>United States v. Deshaun Jones</i> , No. CR 2-21-cr-00017-001, (W.D. Pa. Nov. 3, 2023). | 5 |
| <i>Illinois v. Caballes</i> , 543 U.S. 405 (2005)..... | 8 |
| <i>Rodriguez v. United States</i> , 575 U.S. 348 (2015)..... | 8-9, 13-14 |
| <i>Fla. v. Royer</i> , 460 U.S. 491 (1983)..... | 8 |
| <i>United States v. Hurtt</i> , 31 F.4th 152 (3d Cir. 2022) | 8-9, 13 |
| <i>States v. Registe</i> , 830 F.App’x 708 (3d Cir. 2020) | 11 |
| <i>United States v. Ramos</i> , 443 F.3d 304 (3d Cir. 2006)..... | 11 |
| <i>United States v. Jackson</i> , 103 F.4th 483 (7th Cir. 2024), reh'g denied, No. 23-1708, 2024 WL 3737320 (7th Cir. Aug. 7, 2024) | 11 |
| <i>United States v. Malik</i> , 963 F.3d 1014 (9th Cir. 2020) | 11 |
| <i>United States v. Jones</i> , 438 F. Supp. 3d 1039 (N.D. Cal. 2020) | 12 |
| <i>United States v. Maffei</i> , 827 F. App'x 760 (9th Cir. 2020) | 12 |
| <i>Minafée v. Bernalillo Cnty. Bd. of Commissioners</i> , 664 F. Supp. 3d 1283, 1300 (D.N.M. 2023) | 12 |

OPINIONS BELOW

1. *United States v. Deshaun Jones* No. 24-1558 (3d Cir. Feb. 21, 2025).
2. *United States v. Deshaun Jones*, No. CR 2-21-cr-00017-001, (W.D. Pa. Nov. 3, 2023).

The judgment of the United States Court of Appeals for the Third Circuit, entered on February 21, 2025 with an Order affirming the District Court's decision on Appellant's Motion to Suppress. (Appendix, pages, 17-23). The Memorandum Opinion and Order of the United States District Court for the Western District of Pennsylvania, entered on August 28, 2024 (Appendix, pages, 1-14) denying Appellant's Motion to Suppress.

JURISDICTION

Jurisdiction is conferred upon this Court by 28 U.S.C. §1254(1), which grants the United States Supreme Court jurisdiction to review by writ of certiorari all final judgments of the courts of appeals. Jurisdiction is also conferred upon this Court by 28 U.S.C. §1651(a), which grants the United States Supreme Court jurisdiction to issue all writs necessary or appropriate in aid of its respective jurisdiction and agreeable to the usages and principles of law.

The time for filing a Petition for Writ of Certiorari began to run on February 21, 2025 when the United States Court of Appeals for the Third Circuit affirmed the District Court's Opinion. The time for filing a Petition for Writ of Certiorari expires after May 22, 2025.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION

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 FACTS

This is an appeal raising an error committed by the District Court for the Western District of Pennsylvania. Specifically, Mr. Jones alleges that the District Court erred by denying his Motion to Suppress for illegal search and seizure. Mr. Jones requested that the District Court suppress the evidence seized from a bag inside of his vehicle because the police did not have reasonable suspicion to stop his vehicle nor reasonable suspicion or probable cause to extend the traffic stop and conduct a dog sniff.

On August 24, 2024, the District Court denied the Motion to Suppress and issued a Memorandum Opinion. On March 13, 2024, the District Court Sentenced Mr. Jones to 60 months of incarceration under a plea agreement that had an appellate waiver for the Motion to Suppress. As such, Mr. Jones appealed the denial of his Motion to Suppress and the Third Circuit affirmed the denial of the District Court.

REASONS FOR GRANTING THE PETITION

1. The Third Circuit Court of Appeals erred in affirming the judgment of the District Court because Detective Rebel lacked reasonable suspicion to extend the traffic stop.
2. The Third Circuit Court of Appeals erred in affirming the judgment of the District Court because the District Court applied the wrong standard in determining that the smell of marijuana alone justified the extension of the traffic stop.
3. It is an important federal question whether the smell of marijuana alone is sufficient to extend a traffic stop with the legalization of marijuana. District Courts have disagreed on the issue and it is likely that a Circuit split will develop on the issue.
4. The Third Circuit Court of Appeals erred in determining that the *Rodriguez* moment occurred when Detective Rebel asked the driver of the vehicle if there was marijuana in the vehicle because Detective Rebel did not need any additional information to determine if a window tint violation occurred after he walked up to the window.

I. THE THIRD CIRCUIT ERRED IN AFFIRMING THE JUDGMENT OF THE DISTRICT COURT BECAUSE DETECTIVE REBEL LACKED REASONABLE SUSPICION TO EXTEND THE TRAFFIC STOP

Detective Rebel did not have reasonable suspicion to extend the traffic stop of Appellant beyond issuing a ticket for a window tint violation. “A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Illinois v. Caballes*, 543 U.S. 405, 407 (2005).

“Like a Terry stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's ‘mission’—to address the traffic violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 354, (2015)(internal citations omitted). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*

“[A] traffic stop ‘prolonged beyond’ the time in fact needed for the officer to complete his traffic-based inquiries is ‘unlawful.’” *Id.* at 349. “Further, when conducting an investigative detention, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.” *Fla. v. Royer*, 460 U.S. 491, 500 (1983).

“When reviewing an allegation that a traffic stop started out properly but later was improperly extended, we ‘look[] to the facts and circumstances confronting [the officer] to determine whether his or her actions during the stop were reasonable.’” *United States v. Hurtt*, 31 F.4th 152, 159 (3d Cir. 2022)(internal citations omitted).

“An unreasonable extension occurs when an officer, without reasonable suspicion, diverts from a stop's traffic-based purpose to investigate other crimes.’ The required inquiry proceeds in two stages: ‘we must first determine [if and] when the stop was ‘measurably extend[ed]’; and second, [a]fter determining when the stop was extended—the ‘Rodriguez moment,’ so to speak—we can assess whether the facts available ... at that time were sufficient to establish reasonable suspicion.’ After the Rodriguez moment, ‘nothing later in the stop can inform our reasonable suspicion analysis.’ In short, we ask whether the mission of the traffic stop was continuously carried out before the discovery of evidence giving rise to a reasonable suspicion of criminality. Any break in that mission taints the stop because it is the result of an unreasonable delay.” *Id.*

Even “‘unrelated inquiries’ resulting in even a de minimis extension are unlawful if not supported by reasonable suspicion.” *Id.* “Determining the ‘relatedness’ of any given action to the basic mission of investigating a traffic violation requires assessing whether the action was something ordinarily incident to a traffic stop. Such actions normally include ‘checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.’ In performing these on-mission tasks, ‘[o]fficers should be reasonably diligent,’ and ‘the best indication of whether an officer has been reasonably diligent is by ‘noting what the officer actually did and how he [or she] did it.’” *Id.* (internal citations omitted).

Here, Detective Rebel pulled the vehicle over for an alleged window tint violation, so the Rodriguez moment happened when he walked to the vehicle and was able to observe the tint. At that moment, prior to the passenger window coming down, he would have been able to determine if he needed to issue a ticket. As such, he did not need any additional time to complete the investigation for a window tint violation. He simply needed to issue a ticket to Petitioner and then go on his way. He had no need to make any additional inquiries as he had no indication of any other traffic violation or the commission of any other crime.

Detective Rebel stated that he smelled marijuana as soon as the passenger window came down. However, this testimony was not credible. The marijuana that was found was wrapped in another bag on the back seat of the vehicle. (Appendix, pages 15-16). Meaning, the smell would have been reduced. In addition, the drug-sniffing dog did not smell drugs on the passenger side of the vehicle, but instead smelled them on the driver's side. Again, indicating that any drug smell (including marijuana) would not have been strong enough for Detective Rebel to smell on the passenger side of the vehicle. Without the smell of marijuana, Detective Rebel did not have sufficient reasonable suspicion or probable cause to extend the traffic stop beyond issuing a ticket for the dark window tint.

II. THE THIRD CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT BECAUSE THE DISTRICT APPLIED THE WRONG STANDARD WHEN DETERMINING WHETHER REASONABLE SUSPICION EXISTED

The District Court determined that the smell of marijuana alone created probable cause to extend the traffic stop. (Appendix, page 11). The District Court

relied on *States v. Registe*, 830 F.App'x 708 (3d Cir. 2020) and *United States v. Ramos*, 443 F.3d 304 (3d Cir. 2006) to support this conclusion. However, *Registe* misinterpreted *Ramos*. In *United States v. Ushery*, 400 F. App'x 674, 676 (3d Cir. 2010), the Third Circuit determined that *Ramos* held that the smell of marijuana alone could support reasonable suspicion, but not necessarily probable cause. *Id.* Meaning, the District Court was applying the wrong standard when determining whether reasonable suspicion or probable cause existed to extend the traffic stop. As such, the case should be remanded to allow the District Court to apply the correct standard.

III. THE QUESTION OF WHETHER THE SMELL OF MARIJUANA ALONE JUSTIFIES THE EXTENSION OF A TRAFFIC STOP IS AN IMPORTANT FEDERAL QUESTION

Whether the smell of marijuana alone creates reasonable suspicion to extend a traffic stop is an important federal question that must be answered to give guidance to the District Courts and the Circuit Courts. As marijuana becomes legal in more and more states, the District Courts are offering contradictory rulings. For example, the following courts determined that the smell of marijuana alone justified the extension of a traffic stop or search of a vehicle even though marijuana had been legalized in the state: *United States v. Jackson*, 103 F.4th 483, 489 (7th Cir. 2024), reh'g denied, No. 23-1708, 2024 WL 3737320 (7th Cir. Aug. 7, 2024)(the smell of marijuana alone created probable cause to search a vehicle even though marijuana legal because the packaging and use of marijuana still regulated); and *United States v. Malik*, 963 F.3d 1014, 1015 (9th Cir. 2020) (the smell of marijuana alone created

probable cause to search the vehicle despite legalization because it is still illegal to consume marijuana in public or in a moving vehicle).

On the other hand, the following courts determined that the smell of marijuana alone did not justify the extension of a traffic stop or the search of a vehicle: ***United States v. Jones***, 438 F. Supp. 3d 1039, 1053 (N.D. Cal. 2020)(holding that since California law has legalized marijuana, smell alone is not sufficient to create probable cause to search a vehicle); ***United States v. Maffei***, 827 F. App'x 760, 761 (9th Cir. 2020)(change in California law means that the odor of marijuana alone does not create probable cause to search a vehicle); and ***Minafée v. Bernalillo Cnty. Bd. of Commissioners***, 664 F. Supp. 3d 1283, 1300 (D.N.M. 2023) (the smell of marijuana alone justified the extension of the traffic stop because marijuana was illegal at the time of the stop)(thus, suggesting that the court would have held differently if marijuana was legal).

Many jurisdictions have legalized marijuana, including Pennsylvania, and many more are considering doing so in the future, including the Federal Government. As such, District Courts and Circuit Courts are in need of clarification and guidance on how to deal with the smell/odor of marijuana in relation to the police extending traffic stops. This case presents the opportunity for this Honorable Court to issue this guidance.

IV. THE THIRD CIRCUIT COURT OF APPEALS ERRED IN DETERMINING THAT THE RODRIGUEZ MOMENT OCCURRED WHEN DETECTIVE REBEL ASKED THE DRIVER OF THE VEHICLE IF THERE WAS MARIJUANA.

“When reviewing an allegation that a traffic stop started out properly but later was improperly extended, we ‘look[] to the facts and circumstances confronting [the officer] to determine whether his or her actions during the stop were reasonable.’” *United States v. Hurtt*, 31 F.4th 152, 159 (3d Cir. 2022)(internal citations omitted).

“‘An unreasonable extension occurs when an officer, without reasonable suspicion, diverts from a stop’s traffic-based purpose to investigate other crimes.’ The required inquiry proceeds in two stages: ‘we must first determine [if and] when the stop was ‘measurably extend[ed]’; and second, ‘[a]fter determining when the stop was extended—the ‘Rodriguez moment,’ so to speak—we can assess whether the facts available ... at that time were sufficient to establish reasonable suspicion.’ After the Rodriguez moment, ‘nothing later in the stop can inform our reasonable suspicion analysis.’ In short, we ask whether the mission of the traffic stop was continuously carried out before the discovery of evidence giving rise to a reasonable suspicion of criminality. Any break in that mission taints the stop because it is the result of an unreasonable delay.” *Id.*

Even “‘unrelated inquiries’ resulting in even a de minimis extension are unlawful if not supported by reasonable suspicion.” *Id.* “Determining the ‘relatedness’ of any given action to the basic mission of investigating a traffic violation requires assessing whether the action was something ordinarily incident

to a traffic stop. Such actions normally include ‘checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.’ In performing these on-mission tasks, ‘[o]fficers should be reasonably diligent,’ and ‘the best indication of whether an officer has been reasonably diligent is by ‘noting what the officer actually did and how he [or she] did it.’” *Id.* (internal citations omitted).

Detective Rebel pulled the vehicle over for an alleged window tint violation, so the *Rodriguez* moment happened when he walked to the vehicle and was able to observe the tint. At that moment, prior to the passenger window coming down, he would have been able to determine if a ticket needed to be issued. As such, he did not need any additional time to complete the investigation for a window tint violation. He simply needed to issue a ticket to Petitioner and then go on his way. He had no need to make any additional inquiries as he had no indication of any other traffic violation or the commission of any other crime. There is a need for this Honorable Court to clarify that police cannot go on fishing expeditions every time a vehicle is pulled over for a minor traffic violation.

CONCLUSION

For the reasons stated above, the petition for certiorari should be granted.

Respectfully submitted,

/s/ D. Robert Marion Jr.

D. ROBERT MARION JR., ESQUIRE

Counsel for Appellant

CHARLTON LAW

617 S. Pike Road

Sarver, PA 16055

(724) 540-1161

(724) 540-1164 (Fax)