

In the Supreme Court of the United States

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STATE OF SOUTH CAROLINA,
Petitioner,

v.

ALPHONSO CHAVES THOMPSON,
Respondent.

◆

On Petition for Writ of Certiorari
To the Supreme Court of South Carolina

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REPLY TO BRIEF IN OPPOSITION

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ARGUMENT IN REPLY

In its decision below, the South Carolina Supreme Court reversed Thompson's convictions while relying upon a state-court decision citing to *Mapp v. Ohio*, 367 U.S. 643 (1961), for the proposition evidence seized in violation of the Fourth Amendment must invariably be excluded from trial. (App. 15). In doing so, the state court did *not* make any statements suggesting its decision rested upon or was controlled by any independent state-law grounds. *See Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985) ("[W]e will not assume that a state-court decision rests on adequate and independent state grounds when the 'state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion.'" (citation omitted)). To the contrary, the court supported its decision to reverse by citing to a decision that was decided solely upon federal constitutional law grounds while identifying the Fourth Amendment as the constitutional provision mandating reversal. *See State v. Khingratsaiphon*, 572 S.E.2d 456, 459-460 (S.C. 2002) (analyzing the propriety of a search solely pursuant to the Fourth Amendment).

Accordingly, the decision below rested primarily upon federal constitutional law, and the South Carolina Supreme Court was necessarily required to follow this Court's precedent when analyzing the issue before it pursuant to the Fourth Amendment. *See Elmendorf v. Taylor*, 23 U.S. 152,

160 (1825) (instructing “the construction given by this Court to the constitution and laws of the United States is received by all as the true construction”). However, the court did *not* do so and, instead, decided Thompson’s case in a manner that directly conflicts with this Court’s precedent in *United States v. Leon*, 468 U.S. 897 (1984), by relying on a long-abandoned approach to the exclusionary rule derived from the *Mapp* decision. *See Davis v. United States*, 564 U.S. 229, 237-238 (2011) (“Admittedly, there was a time when our exclusionary-rule cases were not nearly so discriminating in their approach to the doctrine. . . . As late as our 1971 decision in *Whiteley v. Warden, Wyo. State Penitentiary*, . . . the Court ‘treated identification of a Fourth Amendment violation as synonymous with application of the exclusionary rule.’ In time, however, we came to acknowledge the exclusionary rule for what it undoubtedly is—a ‘judicially created remedy’ of this Court’s own making. We abandoned the old, ‘reflexive’ application of the doctrine, and imposed a more rigorous weighing of its costs and deterrence benefits. In a line of cases beginning with *United States v. Leon*, . . . we also recalibrated our cost-benefit analysis in exclusion cases to focus the inquiry on the ‘flagrancy of the police misconduct’ at issue.” (citations omitted)).

Based on the clear conflict between the decision below and the decisions of this Court on a matter of federal constitutional law, the State of South Carolina has asked this Court through its petition for a writ of certiorari to review Thompson’s

case and summarily reverse the state court's decision to ensure this Court's decisions are followed when the Fourth Amendment is interpreted and applied by the state's courts. Contrarily, through his brief in opposition, Thompson asks this Court to deny the state's petition for a variety of different reasons.

Initially, Thompson maintains the state failed to identify any recognized reasons for this Court to grant certiorari in his case. In so maintaining, Thompson ignores the question presented, which asks whether the decision of the South Carolina Supreme Court directly conflicts with this Court's precedent on a matter of federal constitutional law. Significantly, the existence of a conflict between a decision of this Court and a decision of a lower court on an important matter of federal law constitutes a legitimate and compelling reason for a grant of certiorari, and this Court has exercised its discretion to review such conflicts in prior cases. *See, e.g., Egan v. City of Aurora, Illinois*, 365 U.S. 514, 515 (1961) (granting certiorari and taking further action where the lower court decided the case in a manner "apparently" inconsistent with this Court's precedent).

Additionally, Thompson attempts to recast the state's petition as a mere attempt to have this Court decide whether the state court's decision was correct. However, the state is not asking this Court to determine whether the South Carolina Supreme Court's decision was ultimately correct on the issue of probable cause, which is the sole matter decided

below. Likewise, the state is not asking this Court to conduct its own analysis of the factual record to determine whether the “good faith” exception was applicable in Thompson’s case, which has not yet been determined or even addressed by the state court. Instead, the state is asking this Court to grant certiorari, reverse the state court’s decision, and remand the matter to allow the South Carolina Supreme Court to apply federal constitutional law in a manner that does not directly conflict with this Court’s precedent, which the state court was required to do—and failed to do—in deciding Thompson’s case pursuant to the Fourth Amendment. *See Sims v. Georgia*, 385 U.S. 538, 544 (1967) (recognizing this Court’s federal constitutional decisions are binding on state courts).

Further, Thompson contends this Court should not grant certiorari because there is no apparent division among the state courts on the question presented in the state’s petition. Notably though, there cannot be a division amongst the state courts in regard to an interpretation of the Fourth Amendment as state courts are *required* to follow this Court’s interpretation on matters of federal constitutional law. *See Provident Inst. for Sav. v. Massachusetts*, 73 U.S. 611, 628 (1867) (“[T]he decisions of this court in cases involving Federal questions are conclusive authorities in the State courts[.]”). Because the South Carolina Supreme Court’s decision below directly and improperly conflicts with this Court’s precedent, certiorari should be granted to ensure clarity in the application of the Fourth Amendment by South

Carolina courts in future cases and to aid in the prevention of future misapplications of the United States Constitution in state-court decisions. See *Arizona v. Evans*, 514 U.S. 1, 9 (1995) (“[O]ur authority as final arbiter of the United States Constitution could be eroded by a lack of clarity in state-court decisions.”).

Similarly, Thompson asserts this Court should deny certiorari because nothing required the South Carolina Supreme Court to address or apply the *Leon* decision below. However, as the state court resolved Thompson’s case on Fourth Amendment grounds, it was, in fact, required to follow and apply the *Leon* decision in resolving the issue before it on federal constitutional law grounds but wholly failed to do so when it ceased its analysis with a citation to *Mapp* for the long-abandoned proposition evidence seized in violation of the Fourth Amendment must be excluded from trial. Cf. *James v. City of Boise, Idaho*, 136 S. Ct. 685, 686-687 (2016) (“The Idaho Supreme Court, like any other state or federal court, is bound by this Court’s interpretation of federal law. The state court erred in concluding otherwise. The judgment of the Idaho Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.”).

Furthermore, Thompson maintains this Court should not review the decision below because the state court neither stated nor implied it was interpreting the Fourth Amendment more restrictively than it has been interpreted by this

Court. Significantly though, the South Carolina Supreme Court *did*, in fact, interpret the Fourth Amendment in a significantly more restrictive manner than this Court when it referred to this Court's earlier precedent for the long-abandoned proposition evidence seized in violation of the *Fourth Amendment* must invariably be excluded from trial as support for its decision to reverse in Thompson's case. *See Davis*, 564 U.S. at 237-238 (recognizing the law regarding the applicability of the exclusionary rule has been altered and recalibrated in the decades since *Mapp* was decided to shift away from a reflexive application of the rule upon the discovery of a constitutional violation); *see also Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 556-557 (1940) ("[W]e cannot be content with a dismissal of the petition where there is strong indication . . . that the federal constitution as judicially construed controlled the decision below. . . . It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.").

Finally, Thompson avers this Court should decline to grant certiorari in his case because the South Carolina Supreme Court could potentially reverse his convictions as a matter of state law even if this Court ultimately reversed the state court's decision on federal constitutional law grounds.

While unquestionably correct the state court *could* ultimately resolve Thompson’s case on state-law grounds in the event its decision is not permitted to stand in its current form, such a possibility does *not* preclude or counsel against this Court’s review of the state court’s decision. To the contrary, such a possibility *supports* the issuance of a writ of certiorari in Thompson’s case because review of the decision below would leave the state court in a better position to evaluate the important issue before it without being influenced by its erroneous view of what the Fourth Amendment requires. *See Evans*, 514 U.S. at 8 (“[S]tate courts are absolutely free to interpret state constitutional provisions to accord greater protections to individual rights than do similar provisions of the United States Constitution. . . . Under our decision today, the State of Arizona remains free to seek whatever solutions it chooses to problems of law enforcement posed by the advent of computerization. Indeed, it is freer to do so because it is disabused of its erroneous view of what the United States Constitution requires.” (footnote omitted)).

For those reasons coupled with the reasons advanced in the petition for writ of certiorari, this Court should exercise its authority on matters of federal constitutional law and grant certiorari to ensure its decisions are being correctly followed as required. By doing so, this Court will maintain uniformity in the application of the Fourth Amendment in South Carolina and other states while also protecting South Carolina’s citizens from enduring the societal harms that flow from the

unjustified exclusion of probative evidence of guilt in criminal cases. *See, e.g., Stone v. Powell*, 428 U.S. 465, 490-491 (1976) (“The disparity in particular cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the [exclusionary] rule is contrary to the idea of proportionality that is essential to the concept of justice. Thus, although the rule is thought to deter unlawful police activity in part through the nurturing of respect for Fourth Amendment values, if applied indiscriminately it may well have the opposite effect of generating disrespect for the law and administration of justice.” (footnotes omitted)).

CONCLUSION

For all the reasons in the petition for writ of certiorari and this reply brief, the petition for writ of certiorari should be granted, the decision of the South Carolina Supreme Court should be summarily reversed, and the matter should be remanded to allow for the applicability of the “good faith” exception to the exclusionary rule to be properly considered and addressed as required.

Respectfully submitted,

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