

No. _____

In the
Supreme Court of the United States

GREGORY PRESLEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

**On Petition for a Writ of Certiorari
to the Supreme Court of Florida**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether law enforcement may, as a matter of course, detain passengers from a lawfully stopped vehicle for the reasonable duration of the traffic stop without violating the Fourth Amendment.
2. Did this Court's opinions in Brendlin v. California, 551 U.S. 249 (2007) which gives passengers standing to challenge the basis for a traffic stop, and Arizona v. Johnson, 555 U.S. 323 (2009) which gives officers the right to perform a patdown of passengers from a stopped vehicle upon reasonable suspicion that they may be armed and dangerous, hold that law enforcement officers may prevent passengers from leaving a traffic stop when they lack reasonable suspicion to detain them.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Gregory Presley respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion from the Florida Supreme Court appears at appendix A to this petition. The court's opinion is published at 227 So.3d 95 (Fla. 2017); 42 Fla. L. Weekly S817 (Fla. September 20, 2017).

JURISDICTION

The Florida Supreme Court issued its decision on September 20, 2017. A copy is attached at appendix A. The Florida Supreme Court entered final judgment on the appeal on October 12, 2017. A copy of the judgment is attached at appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution 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 persons or things to be seized.

U.S. Const. Amend. IV

STATEMENT OF THE CASE

Petitioner Gregory Presley was on probation in two cases. On January 29, 2015, the vehicle he was traveling in was stopped for a faulty tail light and stop sign violation. Petitioner and the driver of the vehicle were standing outside the vehicle, while a second passenger, who was in handcuffs, was behaving belligerently. Officers approached Petitioner and asked for his identification, which he provided. The officer asked him questions, and Petitioner stated that the group of passengers had been at his aunt's house earlier that evening. He admitted during the conversation that he had been consuming alcohol. Petitioner asked, "So what's the problem?" The officer responded, "I don't know, man. This is a traffic stop, you're part of it. So we're hanging out. That's all there is to it." Later, in response to a question by Petitioner, the officer said "We're just talking, man. You can't go anywhere at the moment because you're part of this stop." A background check revealed that Petitioner was on drug offender probation with the condition that he not consume alcohol. He was arrested for the violation of probation. During the search of his person incident to arrest, police recovered a plastic bag containing powder cocaine from Petitioner's pocket.

Petitioner filed a motion to suppress his statements and the evidence seized because he was illegally detained during the traffic stop. The trial court denied the motion, concluding that although Petitioner was detained, the detention was limited in duration and did not interfere with his Fourth Amendment rights. His probation was revoked and he was sentenced to fifteen years in prison for the earlier drug crimes. Petitioner appealed his conviction. Among other claims, he argued that the police were

required to allow him to leave the scene of the traffic stop because they lacked reasonable suspicion to detain him. Officers testified at the suppression hearing that they had no independent reason to detain Petitioner, but that they had detained him because he was a passenger in the vehicle which was lawfully stopped. The First District Court of Appeal affirmed, holding that “an officer may, as a matter of course, detain a passenger during a lawful traffic stop without violating the passenger’s Fourth Amendment rights.” Presley v. State, 204 So.3d 84 (Fla. 1st DCA 2016). The Supreme Court of Florida approved that decision, relying on this Court’s decisions in Brendlin and Johnson to hold that an officer may, as a matter of course, detain a passenger during a lawful traffic stop without violating the Fourth Amendment.

REASONS FOR GRANTING THE PETITION

I. The Florida Supreme Court’s Decision Below Conflicts with the Clear Precedent of This Court

In answering the questions presented, the Florida Supreme Court misapprehends the precedent of this Court in Brendlin and Johnson. The Florida Supreme Court writes:

“The evolution of these cases—primarily the statements in Brendlin, 551 U.S. at 258, 127 S.Ct. 2400, that “[i]t is ... reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety,” and in Johnson, 555 U.S. at 333, 129 S.Ct. 781, that “[t]he temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop” (emphasis added)—demonstrates that the... courts correctly held that law enforcement officers may prevent passengers from leaving a traffic stop, as a matter of course, without violating the Fourth Amendment.”

See Presley v. State, 227 So.3d 95, 106 (Fla. 2017).

The question in Brendlin, generally framed as one of “standing,” is a different concept altogether. It is a necessary precursor to a Fourth Amendment challenge. The cases of Brendlin v. California and Arizona v. Johnson do not answer the question in this case in the way the Florida Supreme Court construes them. In fact, Brendlin and Johnson actually support the opposite conclusion— that officers *may not* detain passengers without reasonable suspicion. In Brendlin, the defendant was charged with possession and manufacture of methamphetamine, and he moved to suppress the evidence obtained in the searches of his person and the car as fruits of an unconstitutional seizure, arguing that the officers lacked probable cause or reasonable suspicion to make the traffic stop. Brendlin v. California, 551 U.S. 249, 253 (2007). Brendlin did not assert that his Fourth Amendment rights were violated by the search of the vehicle, but claimed only that the traffic stop was an unlawful seizure of his person. Id. The trial court denied the suppression motion after finding that the stop was lawful and Brendlin was not seized until law enforcement ordered him out of the car and formally arrested him. Id. The California Supreme Court noted the state’s concession that the officers had no reasonable basis to suspect unlawful operation of the car, but still held suppression unwarranted because a passenger “is not seized as a constitutional matter in the absence of additional circumstances that would indicate to a reasonable person that he or she was the subject of the peace officer’s investigation or show of authority.” Id. The court reasoned that Brendlin was not seized by the traffic stop because the driver was its exclusive target, that a passenger cannot submit to an officer’s show of authority while the driver controls the car, and that once the car

has been pulled off the road, a passenger “would feel free to depart or otherwise to conduct his or her affairs as though the police were not present.” Id. at 254.

This Court was faced with the question of whether a traffic stop subjects a passenger, as well as the driver, to Fourth Amendment seizure. In reversing the California Supreme Court, this Court in Brendlin found that the Fourth Amendment protections afforded to the driver apply equally to the passenger to mean that the passenger could also challenge whether the police stop was lawful. Brendlin was an *expansion of liberty* to passengers in a vehicle, and not a diminution of liberty as the Florida Supreme Court suggests. Brendlin addressed the issue of whether a passenger *who chooses to stay* at the stop has actually been seized, rather than whether the police officer acted constitutionally by *requiring the passenger to stay*.

Arizona v. Johnson answered the question of whether law enforcement could order a passenger out of the vehicle and perform a Terry patdown for officer safety if the passenger is suspected to be armed. This Court held that under these narrow circumstances, the officer’s patdown of a passenger did not violate the Fourth Amendment’s prohibition on unreasonable searches and seizures. The instant case does not contain these unique set of facts. Here, Mr. Presley was not suspected to be armed. Yet the Florida Supreme Court completely misses the important qualification from Johnson, which is that “to justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person

subjected to the frisk is armed and dangerous.” Arizona v. Johnson, 555 U.S. 323, 327 (2009)(emphasis added).

Instead, the Florida Supreme Court’s opinion focuses on the language “The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.” This language is important, but it refers to the first Terry condition, a lawful investigatory stop. It is a reference to standing, not a ruling by this Court that it is reasonable under the Fourth Amendment for a police officer to detain a passenger, for whom there is no independent reasonable suspicion. The Florida Supreme Court’s opinion is an illogical extension of this Court’s precedent that reaches an inverse result: that because a passenger is seized for standing pursuant to Brendlin, and the police may pat him down if suspected to be armed pursuant to Johnson, then the police need not have particularized suspicion as to him in order to require him to stay. This is wrong.

Accordingly, the Florida Supreme Court’s opinion creates an intolerable conflict on this matter of law. The Florida Supreme Court’s holding is not merely an inconsistency in dicta or general principles utilized. It patently conflicts with the clear precedent of this Court. The Florida Supreme Court’s bright line rule that passengers may be detained as a matter of course, without reasonable suspicion, dispenses with this Court’s reasonableness framework in evaluating Fourth Amendment issues. Pennsylvania v. Mimms, 434 U.S. 106 (1977)(“the touchstone of... analysis under the Fourth Amendment is always the reasonableness in all circumstances of the particular governmental invasion of a citizen’s personal security.”); Florida v. Jimeno, 500 U.S.

248, 250 (1991)(“the touchstone of the Fourth Amendment is reasonableness.”) While officer safety is an important, legitimate consideration in the Fourth Amendment’s reasonableness framework, this Court has not held, as the Florida Supreme Court does, that officer safety is itself an exception to the Fourth Amendment. General and unparticularized concerns for officer safety do not discharge the reasonableness framework for Fourth Amendment analysis. In fact, the Court’s opinion in Johnson specifically considers officer safety when it allows for patdowns when officers believe a passenger is armed. But it still explicitly requires reasonable suspicion as to the individual passenger. Arizona v. Johnson, 555 U.S. 323, 327 (2009)(“the police must harbor reasonable suspicion *that the person subjected to the frisk* is armed and dangerous.”)(emphasis added).

II. The Question Presented Is a Question of Recurring National Importance.

Undoubtedly, the impact of the Florida Supreme Court’s decision is recurring. In every traffic stop where a passenger is in a vehicle, the police in Florida are detaining them in violation of the Fourth Amendment. This question presents an issue of importance of the issue “to the public as distinguished from” importance to the particular “parties” involved. Layne & Bowler Corp v. Western Well Works, 261 U.S. 387, 393 (1923). This question is of great national importance, potentially affecting the lives and freedom of over 20 million people in Florida. Moreover, if more states follow Florida’s lead—as may reasonably happen due to the Florida Supreme Court’s reliance on this Court’s opinions—millions more innocent citizens will be illegally detained in

every traffic stop. It stands to reason that the Fourth Amendment—indeed, much of the United States Constitution—exists to protect individuals from a government that exercises power arbitrarily through the power of the police force. In Florida, police are now permitted to detain arbitrarily wholly innocent people for something as innocuous as a faulty tail light in the vehicle in which they are traveling as passengers.

III. The Question Involves an Important Constitutional Issue

The controlling issue in the case is a federal issue because it arises under the United State Constitution and it is a substantial question affecting most of the population (i.e., anybody who ever rides as a passenger in a vehicle.) The highest state court in Florida decided the federal question: the state court’s judgment did not rely on an independent ground of state law. In fact, the search and seizure provision of the Florida Constitution contains a conformity clause providing that the right shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Art. I, § 12, Fla. Const.; see also State v. Butler, 655 So.2d 1123, 1125 (Fla. 1995) (holding that Florida courts are “bound, on search and seizure issues, to follow the opinions of the United States Supreme Court regardless of whether the claim of an illegal arrest or search is predicated upon the provisions of the Florida or United States Constitutions.”)

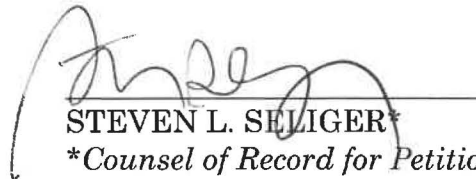
CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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