24-6962

ORIGINAL

In the Supreme Court of the United States

No. _____

UNITED STATES OF AMERICA,

Respondent,

V.

PRINCE L. SPELLMAN,

Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR THE

EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1.) Whether this Courts decision in Combs v. United States 408 US 224, 33 L Ed 2d 308, 92 SCT 2284 (1972) and its progeny should be sustained when the district court holds a suppression hearing?

2.) Whether the Court of Appeals determination of reasonable suspicion was proper; erred in ignoring the manner in which the stop took place claim; and erred in not deciding whether the Fourth Amendment was violated?

3.) Whether the Court of Appeals erred in finding no prosecutorial misconduct?

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Prince Spellman , pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished (App.,1a -3a). The opinion of the District Court are located in the App. (App.,b and c)

Jurisdiction

The Judgment of the Court of Appeals was entered on February 26, along with the Opinion (App.,1a-3a). A request for an exention of time to file for rehearing was denied on July 16, 2024 (App.,1d). The District Court exercised jurisdiction over this federal criminal case pursuant to 18 U.S.C. 3231. The Eighth Circuit had jurisdiction over the appeal pursuant to 28 U.S.C. 1291 and 18 U.S.C. 3742. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The Fourth Amendment guarantees that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated.

The Fourth Amendment is applicable to the States through the Fourteenth Amendment. See U.S. Cont. IV and XIV Amend. The Fourth Amendment does not only shield those who have title to a searched vehicle. It also includes those who are in lawful possession or control of anothers vehicle. At a suppression hearing an accused may show lawful possession of a vehicle by demonstrating permission to lawfully possess the vehicle amongst other things. See **United States v. Byrd**, 138 S.Ct. 1518,1530,200 L. Ed. 2d 805 (2018). The determinative issue is whether an accused had a reasonable expectation of privacy in the vehicle. See **Rakas v. Illinois**,439 U.S.128,143,99 S.Ct.421 58 L. ED. 2d 387(1978). Here, tested against the principles of Rakas, the record is inadequately developed to permit the District Court or the Court of Appeals to determine whether petitioners own Fourth Amendment rights were violated. "Since there has not been any factual deterrmination of whether petitioner had an interest in the searched premises...we vacate the judgment...and remand...for further proceedings. See **Combs v. United States**,408 US 224,33 L Ed 2d 308,92 SCT 2284(1972)

Reasonable suspicion has to be based on a "particularized and objective basis" See **United States v. Cortez**,449 U.S.411, 417,101 S.Ct.690,66 L.Ed.2d 621(1981). Reasonable suspicion may be based on an informants tip where the tip is both "reliable and corroborated" See **Adams v. Williams**,407 U.S.143, 147,92 S.Ct.1921 32 L. Ed.2d 612(1972). The Fourth Amendment prohibits "unreasonable" "searches and seizures" by the government, and its protections extend to investigatory stops. See **United States v. Arizu**,534 U.S.266,27B,122 S.Ct.744,151 L.Ed.2d 740(2000). Officers may only conduct investigatory stops if they if they have reasonable suspicion.

The manner in which the stop took placemust fall within the scope of a Terry stop. A Terry stop is unreasonable if the officers use the "least intrusive means available" See **Terry v. Ohio**,392 U.S.1,9,88 S.Ct.1868 20 L.Ed.2d 889(1968). "stopping car and detaining its occupants constitute seizure under the Fourth Amendment. See **United States v.Hensley**,469 U.S.221,226 8B L.Ed.2d 604,105 S.Ct.675(1985).The traffic stop was conducted with tire-spikes before officers used their over-head lights. If the investigatory stop "exceeded the scope of a Terry stop,then the stop would become a de facto arrest that must be supported by probable cause" See **Pollreis v. Marzolf**,446 F.Supp.3d 444(8th Cir. 2020).

It is established that a conviction obtained through use of false evidence known to be such by representatives of the state falls under the Fourteenth Amendment. "knowing use of perjured testimony requires that a conviction be set aside",if the perjured testimony could have affected the judgment of the jury. See **Napue v. Illinois**,360 U.S.264,269,79 S.Ct.117B,3 L.Ed.2d 1217(1959). The prosecution heard its witness testify at the suppression hearing, "This would be like our NCJIS plate search

history from that time frame" in support of contemporaneous testimony "we ran the plate". The prosecution made no attempt to correct or clarify that testimony instead allowed that testimony to be presented at trial for the jury to understand a falsified basis for the stop. The prosecution reasonably knew its witness was lying about running the plate because he never presented actual proof of such at the suppression hearing.

Statement

Mr. Spellmans attorney moved to suppress the physical evidence and inculpatory statements, on grounds that the evidence was obtained as a result of an illegal and unconstitutional traffic stop and search of the petitioners person and the vehicle. Mr. Spellmans attorney argued "the Fourth Amendment serves to protect against unresonable searches and seizures". When the requirements of the Fourth Amendment are not met, the Court being fully advised in the premises, must consider all evidence obtained from the search and seizure to be "inadmissible fruits". It follows that the attorney argued that the stop, search and seizure was unconstitutional, the investigation lacked sufficient reliable information and the traffic infraction was fabricated. The prosecution opposed. Neither party broached the legitimate expectation of privacy issue. See Dist. Ct. Doc. 26-27;and 32.

At the suppression hearing evidence showed that on March 9, 2021 a traffic stop was conducted on a 2017 Jeep Cheerokee, Latitude bearing license plate number WRF-761 (App.,2e.-3e). The Jeep was registered to Lisa Gunter.(App.,4e). Mr. Spellman was the driver of the Jeep at the time of the traffic stop.(App., 5e), and Ms. Gunter was not present at the time of the stop. (App.,ex.108,6e-7e). According to officer Rengo the Jeep was allegedly the subject vehicle to a shot-spotter incident on March 8, 2021 (App.,8e). After an illegal stop and search of the vehicle evidence of drugs and a firearm was seized.

Alleged Basis for the Stop. At the suppression hearing officer Brock Rengo testified about alleged unfolding events during his initial response to a March 8,2021 shot-spotter incident. Detective Ricardo Martinez testified about what allegedly compelled him to order the felony traffic stop on the Jeep on March 9, 2021.

On March 8, 2021 officer Rengo and his partner responded to a shot-spotter near 2877 Fort Street in Omaha, NE (App.,9e-10e). Officer Rengo testified as they met with their Sgt. (Kyler), whom which also responded, cruiser to cruiser, a newer model silver Jeep crossed him and his partners vehicle(App.,11e-12e). The officers allegedly got behind the Jeep and officer Rengo ran the plate through NCJIS and it came back to Lisa Gunter (App.,13.1e-14e). At the suppression hearing officer Rengo indentified evidence to support his running the plate allegation as "This would be like our NCJIS plate search history from that time frame". The exhibit was received by the Court(App.,15e-16e;43.1e-43.2e). The exhibit was indexed as a 911 detailed

incident report(App.,42e). Officer Rengo testified exhibit 104 is a true and accurate copy of what he described it to be(App., 16e). There is no cruiser camera video of the officers following the Jeep(App.,17e). The Court accepted this testimony as officer observation together with witnesses reports, whom allegedly flagged Sgt. Kyler down, that a black male fired five shots in the air then jumped in a silver Jeep with black on top bearing WRX on the plate, in finding reasonable suspicion. These witnesses reported from 5628 North 29th Street. (App.,18e-19e; and ex 103). The officers did no further investigation on the alleged plate(App.,18e;20e-22e).

According to Detective Ricardo Martinez, on March 9,2021 the Jeep was stopped for a traffic infraction and reasonable suspicion (App.,23e-24e). The District Court ruled that the traffic infraction was not the reason for the stop(App.,7b.ft.n.). Detective Martinez testified he heard radio traffic of the plate being ran(App., 25e-28e). Detective Martinez did not respond to the March 8,2021 incident(App.,25e-26e). Upon seeing the Jeep Detective Martinez notified dispatch that he spotted a vehicle involved in a shots-fired and a high-risk stop ensued(App.,29e-30e). The initial intrusion consisted of officers striking the Jeep with tire-spikes before activating their over-head lights(App.,31e;32e). Andrew Woodard testified if a vehicle flees from a traffic stop its general procedure to use stop sticks. Officer Woodard testified he didnt know why the stop sticks were used.(App.,33e). Officer Woodard testified he didnt know if the vehicle was trying to flee(App.,33e-34e). Government exhibit 2 shows Officer Brants body-worn-camera recording the officer who struck the Jeep saying "he didnt know why he struck the Jeep with tire-spikes" (ex. 2). Officer Woodard testified his dash camera video goes back thirty seconds from the point officers activate their over-head lights(App.,34e). Officer Woodard initiated the felony traffic stop(App.,35e). Detective Martinez testified the Jeep pulled over immediately as soon as the traffic stop began(App., 32e). The stop sticks were deployed at 31st and Taylor(App.,32e). The traffic stop began in Mcdonalds parking lot at 30th and Ames where officers activated their over-head lights(App.,34e;36e;and 32e). Detective Martinez did not know who was in the Jeep(App., 37e), and the Jeep was not the subject of any warrants(App.,38e-39e).

The Court determined that there was reasonable suspicion for the stop and relied primarily on officer Rengos testimony that he ran the plate, and exhibit 104 as identified to "this would be like our NCJIS plate search history from that time frame", in making that determination. The Court stated the smell of marijana and the gun sighted in plain view gave the officers probable cause to search therefore the firearm and drugs were not illegally obtained.(App.,1c-9c). Counsel for the defense objected to reasonable suspicion, the Courts finding officer Rengo ran the plate, the record is incomplete, and the recommendations that the motion to suppress be denied. Dist.Ct.Doc.62. The Article III judge adopted the Magistrates findings in its entirety(App.,

1c-9c). Mr. Spellman objected to officer Rengos testimony at trial(App.,2f) through which the illegally seized evidence was admissible. Mr. Spellman also requested the trial Court to re-open the suppression issue and was denied(App.,2g-4g). Mr. Spellman appealed the suppression decision. Ct.of App.Doc 5315260, the prosecution responded, Ct.of App.Doc.5338688, and Mr. Spellman was not allowed to reply. The Court of Appeals affirmed without addressing majority of petitioners claims, or inquiry into standing. Motion for an extension of time to file for rehearing and motion requesting counsel was denied on July 16, 2024.

In **Combs v. United States**,408,US 224,33 L Ed 2d 308,92 SCT 2284(1972), this Court vacated and remanded for completing the record stating "wherin the record is barren of facts necessary to determine whether he had such standing". In a per curiam opinion, expressing the views of eight members of this Court, it was held that the case be remanded for a determination of whether the accused had a sufficient interest in the searched premises to permit him to object to the search and seizure. In the instant case the record is barren of the Courts necessary determination of standing, however the Court held a hearing. This Court in **United States v. Padilla**, 508 U.S.77,81-82,113 S.Ct.1936,123 L.Ed.2d 635(1993) in reversing the Court of Appeals held inpart on that reversal "expectations of privacy and property interest govern the analysis of the Fourth Amendment search and seizure claims". In **Padilla** the case was remanded for consideration whether a property interest was protected by the Fourth Amendment that was interfered with by the stop or a reasonable expectation of privacy that was invaded by the search of the automobile. Here,the Courts analysis is not complete.

On May 20, 2021 Prince Spellman was indicted on a III count indictment. Count I possession with intent to distribute, 21 U.S.C. 841(a)(1)and (b)(1), Count II possession of a firearm in furtherance of drug trafficking, 18 U.S.C. 924 (c)(1)(A), and Count III felon in possession of a firearm, 18 U.S.C. 922 (g)(1) and 924(a)(2). Mr. Spellman moved to suppress the illegally seized evidence. The suppression hearing was held on February 3, 2022 and March 14, 2022. The Suppression ruling was unfavorable to Mr. Spellman. Mr. Spellmans attorney filed an objection to which again was unfavorable. Neither ruling contained therein the Courts determination on standing. The conclude reasonable suspicion justified the stop. Mr. Spellman requested counsel to withdraw for failure to properly defend him against "gun involved" allegations. (Mr.Spellman does not have transcripts of minutes to the withdrawal proceeding, however, it is docketed in the Dist. Ct. as docket 81). Mr. Spellman was granted permission to proceed pro se and also attended a Feretta hearing. A jury trial was held on the alleged facts established at the suppression hearing on September 27-30, 2022. Mr. Spellman was found guilty on all counts. The District Court sentenced Mr. Spellman to 450 months to be followed by 5 years supervised release. Mr. Spellman appealed the suppression ruling for abuse of discretion

and prosecutorial misconduct at the suppression hearing and at trial. The prosecution responded to Mr. Spellmans opening brief without service of the brief or the appendix. Mr. Spellman received notice from the Court of Appeals that the prosecution filed an appendix, however, no notice of the brief was received. Mr. Spellmans deadline expired December 4, 2024 which triggered November 27, 2023. The Court of Appeals affirmed February 26, 2024. Mr. Spellman filed a motion to recall the mandate and reopen the case so that he may reply and was denied. Ct.of App.Doc filings 5386315-2 and 5389736. Mr. Spellman filed for an extention for rehearing and filed a motion for appointment of counsel due to the lack of law library access and was denied on both motions. Ct.of App.Doc.5413467 and 5413470.

REASONS FOR GRANTING THE PETITION

The Opinion below seemingly ignores a deep-seated policy requirement of Fourth Amendment jurisprudence on the threshold issue of whether petitioner had a privacy interest in the seized vehicle. The Opinion is in conflict with Supreme Court precedent. Other Circuits on their own have reversed and remanded where the issue of positing standing was a bilateral failure in the first instance. The lower Courts determination of reasonable suspicion was made on a barren record, not subject to the reasonable expectation of privacy test and appears to overlook meritorios Fourth Amendment claims on that ground. Under the reasonable expectation of privacy test, no reasonable mind using common-sense judgment would rely on testimony "this would be like our NCJIS plate search history from that time frame" or the underlying exhibit and determine there was reasonable suspicion to stop petitioners vehicle, when that evidence does not support the Courts reasonable suspicion determination. The necessity for granting the petition and allowing petitioner to demonstrate he had a reasonable expectation of privacy is valid and warranted because for one the record is incomplete, two it promotes effectuation of deterrence of officer misconduct in this Courts exclusionary rule against violations to the Cont. 4th Amend, and three without standing petitioner cannot object to the evidence as inadmissible at trial.

Wherefore, this Court should grant, and petitioner prays it does, certiorari to correct the Court of Appeals error in its significantly unusual reasonable suspicion determination because it so far departs from the accepted and usual course of judicial proceedings, and it sanctions such a departure of the District Court, as to call for this Courts exercise of its supervisory power.

A. The Court of Appeals erred in Holding reasonable suspicion on an incomplete record.

" The touchstone of Fourth Amendment analysis has been the question whether a person has a constitutionally protected reasonable expectation of privacy". United States v. Douglas, 744 F .3d 1065,1069 (8th Cir.2014) (citing Katz v. United States 389 U.S.347,19 L.Ed.2d 576,88 S.Ct.507(1967)).

1. The record is"barren of facts necessary to determine whether petitioner had a sufficient interest" in the searched vehicle, as required by Combs.

In Combs this Court remanded the case with directions that the case be returned to the District Court for further proceedings because "the record was barren of facts necessary to determine whether the accused had a sufficient interest in the searched premises to permit him to object to the search and seizure". See Combs.

Although the Court of Appeals stated upon "careful review" it made its decision, the Court overlooked the fact that this case is in conflict with this Courts precedent in Combs, its own precedent and other Circuit precedent on the threshold inquiry of privacy interest given rise to standing.

The Fourth Amendment gaurentees citizens the right to be free from unreasonable searches and seizures. U.S. Cont. Amend IV. "Fourth Amendment rights are personal rights that may not be asserted vicariously" See United States v. Barragan,379 F .3d 524,529(8th Cir 2004). The Amendment protects "the right of the people to be secure in their persons houses papers and effects.

The concept of reasonable expectation of privacy, first

announced in Katz looked beyond distinctions developed in property and tort law in evaluating whether a person has a sufficient connection to the thing or place searched to assert Fourth Amendment interest in it. Katz did not abandon reliance on property-based concepts. Katz was about an accused who entered a public phone booth and the Court analogized the booth to a friends apartment, a taxicab and hotel room. Katz expanded the Courts inquiry into the Fourth Amendment analysis to include whether a reasonable person could have expected privacy. The two-pronged Katz test was adopted by this Court in full in Terry a year later. It appears Combs made the inquiry into the reasonable expectation of privacy test a requirement if it was not already enuciated as such. Combs held "the case would be remanded because the record was barren of facts necessary to determine... sufficient interest...to object to the search and seizure. In 1978 the Supreme Court reformulated in substantive terms the appropriate Fourth Amendment inquiry. That inquiry, the Court stated, in turn "requires a determination of whether the disputed search and seizure infringed an interest of the defendant which the Fourth Amendment was designed to protect" See Rakas. It appears the Eighth Circuit followed this requirement in United States v. Best, 135 F.3d 1223(8th Cir.1998). In Best the Court of Appeals remanded the case to the District Court for failing to make "factual determinations whether Best had standing".

On standing, the Court considers, "ownership, possession and/or control of the area searched or the items seized; historical use of the property or item; ability to regulate access; the

totality of the circumstances surrounding the search; the existence or nonexistence of subjective anticipation of privacy and the objective reasonableness of the expectation of privacy considering the specific facts of the case" See **United States v. Gomez**,F.3d 254,256(8th Cir.1994)(citing **United States v. Sanchez** 943 F.2d 110 ,113(1st Cir.1991). No such thing is considered here in the instant case.

Expectation of privacy does not differ whether the car is rented or owned. See **Byrd v. United States**, 138 S.Ct.1518,1530, 200 L.Ed.2d 805(2018) (seeing no reason why expectation of privacy would differ when a car is rented or owned). The Eighth Circuit has determined the driver of a vehicle may have a reasonable expectation of privacy if the driver shows he was in "law ful possession" of that vehicle. See **United States v. White**,962 F.3d 1052,1054(8th Cir.2020). The Eighth Circuit further stated, when the driver is not the owner of the vehicle a reasonable expectation of privacy may still be shown if the driver proves the vehicles lawful owner or renter gave the person permission to drive it. See **United States v. Bettis**,946 F.3d 1024,1027-29 (8th Cir.2020); **White**; **United States v. Muhammad**,58 F. 3d 353, 355(8th Cir.1995); and **Gomez**. The issue of standing to challenge the illegal evidence, is dispositive of a motion to suppress, where the reasonable expectation of privacy burden has not been met. Claims that the vehicle is petitioners per se is not enough to fulfill that burden, it falls considerably short. The Court is not required to entertain claims that evidence was unlawfully

seized unless the claimant could demonstrate that he had standing to press the contention. See **Alderman v. United States**, 394 US 165,22 L Ed 2d 176,89 S Ct 961(1969). If the Court holds a suppression hearing the Court must include a factual determination of standing in its Fourth Amendment analysis. ("where a motion to suppress fails to allege facts that if proven, would establish the defendants legitimate expectation of privacy in the premises searched or items seized, the district court is not required to hold an evidentiary hearing") See **United States v. Sneed**,732 F .2d 886,888(11th Cir.1984), and **United States v. Jackson** 618 Fed Appx. 472 (11th Cir.2015). The Court in **Jackson** also stated ("standing to challenge a search or seizure is a threshold issue that the district court must address when [ruling] on a motion to suppress".) The **Jackson** Court in relying on **Combs** went on to say ("if the district court addresses the merits of a defendants Fourth Amendment claim without evidence relating to his standing to bring such a claim, a reviewing court may be required to remand the case for fact-finding on the standing issue").It appears to be a conflict in the Circuits here because as just shown the **Jackson** Court says when ever there is a hearing on a motion to suppress the District Court is required to receive evidence relating to standing. The Court of Appeals decision in **Jackson**, on that matter, appears to align with this Courts decision in **Combs** to vacate and remand to the District Court for further fact-finding on the issue of standing, and this Courts decision in **Padilla** stating, ("expectation of privacy and property

interest govern the analysis of the Fourth Amendment search and seizure claims"). Whereas, here, the Eighth Circuit appears to have shrugged its shoulders at the fact that the current record does not contain any determination of an expectation of privacy and much less the necessity to promote unity amongst the Circuits and Supreme Court precedent. See also **United States v. Bouffard**,917 F .2d 67B,(footnote 3.)(1st Cir.1990) ("the merits issue whether the defendant possessed a legitimate expectation of privacy in the area searched is inescapable in any search and seizure case"). **Bouffard** in relying on **Combs** also stated, ("fundamental fairness warrant remand in order to afford the defendant an opportunity to attempt to establish the requisite expectation of privacy"); **United States v. Pena**,961 F .2d 333(2nd Cir.1991) ("the record was not adequately developed to permit the district court or us on this appeal to determine ...Fourth Amendment interest"). **Pena** relying on **Combs**, remanded for the issue to be determined whether **Pena** had a protectible Fourth Amendment interest.

The case at bar is equal to **Combs** on the standing issue in many respects. Standing was neither asserted nor challenged and the District Court did not make any determination as to standing. However, the instant case slightly differs from **Combs** once **Combs** met the Court of Appeals, verse the instant case meeting its Court of Appeals. In the former the appellate Court addressed the standing issue sua sponte in the negative

to Combs, in the latter the Court of Appeals did not mention any standing even though the record begs of it. Nonetheless, the instant case aligns back up with Combs in that, like Combs, the appellate Court did not reach the merits of most the petitioners claims on violation of the Fourth Amendment and made no determination of whether the Fourth Amendment was violated. Although the Jackson Court of Appeals did not remand, and still however finding error in the lack of a standing determination, that decision was justified because the lack of a standing determination as to evidence not contributing to a conviction is considered harmless. Here, the harmless exception doesnt apply because the very evidence sought to challenge is the sole basis on which petitioners conviction stands. Petitioner lawfully possessed the unregistered vehicle,(App.,4e;1h).

2. "petitioners failure to make any such assertion, either at trial or at the pretrial suppression hearing, may well be explained by the related failure of the government to make any challenge in the District Court to petitioners standing to raise his Fourth Amendment claim" See Combs.

Although Combs did not make an assertion of possessory or property claim to the searched premises, the Court expressed that the government may well share in the blame for the lack of Combs assertion because the government did not challenge Combs standing to raise an illegal search and seizure claim, thereby not putting Combs to his burden of proving he had a privacy interest. Compare Rakas (remand denied where prosecutor had challenged defendants "standing" at suppression hearing) with

Combs (case remanded where prosecutor did not challenge standing). See also United States v. Perez,644 F.2d 1299(9th Cir.1980) (remanding inpart because the legitimate expectation of privacy issue was not addressed in the district court citing Combs " Perezs failure to assert privacy interest" may well be explained by the "related failure of the government to make any challenge" to Perezs standing).; See also Bouffard (same-citing Combs).

The thresshold issue of whether petitioner had a reasonable expectation of privacy needs to be determined because " expectations of privacy and property interest govern the analysis of Fourth Amendment search and seizure claims". See Padilla. The Supreme Court no longer views the question as one of standing, the issue is now regarded as one of whether the defendants substantive Fourth Amendment rights were invaded. See Perez (citing United States v. Salvucci,448 U.S.83,87 n.4,100 S. Ct.2547,2551 n.4,65 L Ed 2d 619(1980). In order to address this issue, the Court must determine whether an accused had any legitimate expectation of privacy in the vehicle. ("to make this determination a court must engage in a fact-specific expectation of privacy analysis"). See United States v. Santiago 950 F .Supp.590(S.D.N.Y.1996)(quoting Rakas). When the District Court did not pass upon the reasonable expectation of privacy issue , other Circuits addressed the issue. See Bouffard(1stCir.) Perez; Combs(6th Cir.); United States v. Miller,686 F.2d 850 (1st Cir.1980)and Padilla(9th Cir.).

The uniqueness about this case held against the aforementioned cases in comparing the standing issues, that stands out, is the fact that the total record is barren of a reasonable expectation of privacy determination and was never addressed in District Court or the Court of Appeals, while the other cases did not make it outside the appellate Court without the issue being broached. However the principal seems pretty clear that standing must be determined in every search and seizure claim invariably, calling for remand for further proceedings.

3. "if petitioner can establish facts showing such interest ...re-examination of the validity"of the stop, search and seizure"would then be appropriate to resolve...whether evidence ...seized...was properly introduced at petitioners trial". -Combs.

Without a determination of whether petitioner had any expectation of privacy the Fourth Amendment could not have been included in the lower Courts decisions. According to other Circuit precedent, since there was a hearing held the standing issue should have been addressed because it is included in the Fourth Amendment analysis. Certainly, petitioner will be able to demonstrate a reasonable expectation of privacy, as the vehicle was in his mothers name, therefore remand would not be frivoluos, in fact if this Court may so allow the attached affidavit to be included in the record, of evidence of petitioners mother showing he was in lawful possession of the vehicle.(App.,1h).(to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the places searched") See **Minnesota v. Carter,**

525 US 8B,88,119 S.Ct.469,142 1.Ed. 2d 37B(1998). If the Court may permit the case to be remanded for futher fact finding, then the proper inquiry may be made into whether the government intrusion infringed upon the personal and societal values protected by the Fourth Amendment and will permit the Court to determine if petitioners own Fourth Amendment rights were violated. After such a determination the Court would then inturn be allowed to re-examine its reasonable suspicion determination through a more complete Fourth Amendment analysis. See Pena (first address the question whether Pena had any Fourth Amendment interest...If the inquiry is answered affirmatively, the district court must next determine the issue of probable cause.)

Conclusion

Without standing to challenge the illegal stop search and seizure officer misconduct escapes reprimand. The following argument in section B will outline the officer misconduct more but it is clear. It is necessary to reverse this conviction and remand for further proceedings because it will promote uniformity to this Courts decision in stating the Fourth Amendment is governed by expectations of privacy and that aspect of the Fourth Amendment analysis is missing in the instant case, where petitioner is not the registered owner of the vehicle.

Wherefore fundamental fairness warrants reversal for the fact specific determination of whether petitioner had an expectation of privacy in order to challenge the stop.

B. The Court of Appeals erred in finding reasonable suspicion to make this stop without a substatial basis to support its decision.

The Court of Appeals announced in its decision "the officers had reasonable suspicion to stop his vehicle, as it met the description of a vehicle involved in a shots-fired incident", (App.,1a-3a). The Court stated "a vehicle" not "the" vehicle which leaves room to distinguish the Jeep from the actual suspect vehicle. The Court of Appeals in stating "his vehicle" is inaccurate because the vehicle was not registered to petitioner. Even though petitioner, in being unlearned in law, characterized the vehicle as his own in his brief to the appellate Court, further study of law by petitioner has shown claiming the vehicle is his own is not an accurate statement and now divorces that claim to enable proper characterization of the Jeeps true owner whom which is by law, registered to Lisa Gunter, petitioners mother. (App.,1h).

The Court does not go into detail on how it came to its conclusions, however, it relied on United States v. Bell,480 F.3d 860,86B(8th Cir.2007), in doing so.

Looking at the record on whats likely to be the evidence the Court relied on in drawing its reasonable suspicion conclusion, that evidence falls considerably short of the standards set out in Bell. The Eighth Circuit in Bell pointedly outlined what it was relying on to draw its conclusions of the law, which is vastly lacking here in the instant case.

In deciding whether reasonable suspicion exist to make

the stop, the Court must consider the "totality-of-the-circumstances". See **Illinois v. Gates**, 462 US 213 243 N.13,108 S.Ct.2317 76 L Ed .2d 527(1988). The information in support "must provide the magistrate with a substantial basis for determining the existence of" reasonable suspicion. See **Gates**. Conclusory statements are"inadequate to supply such a basis", **Gates**. Officer Rengo testified that he followed the Jeep and ran its plate,(App.,13.1e-14e). Officer Rengo contemporaneously stated pertaining to evidence-to-support that he ran the plate, "this would be like our plate search history from that time frame"(App.,15e-16e), This piece of evidence is key to the lower Courts reasonable suspicion determination because it would give officer observation of a suspect Jeep. But the officers were lying about following the Jeep and running the plate and the proof is that the officers could not identify an actual NCJIS record. So the officers testimony as to following the Jeep and running the plate cannot be reasonably relied on. The officers testimony remains conclusory and does not provide the "magistrate with a substantial basis" to determine that the plate was ran. "A sworn statement of an affiant that "he has cause to suspect and does believe" the Jeep was the suspect Jeep "will not do". See **Gates** (quoting **Nathanson v. United States**,290 US 41 78 L Ed 159,54 S Ct 11(1933)). As in **Nathanson**, so too, here the officers testimony doesnt meet the requirements of providing a substantial basis. "The question is whether those portions

of the affidavit describing the results of the police investigation of the respondents, when considered in light of the tip," would permit the suspicions engendered by the informants report to ripen into judgment that a crime was being committed. See **Gates**. The answer to that question, here, would be an affirmative no. In fact the officers identification of exhibit 104 seriously detracts from belief, the officer followed the Jeep and ran the plate. The information the lower Court relied on was not "trustworthy information" See **Beck v. Ohio**,379 US 89,13 L Ed 2d 142,85 SCT 223,(1964). The appellate Court did not look into the intricate details of the evidence relied upon by the District Court. "Although the reviewing court will pay substantial deference to judicial determinations of probable cause, the court must still insist that the magistrate perform his neutral and detached function and not serve merely as a rubber stamp for police" See **Aquilar v. Texas**,378 US 108,12 L Ed 2d 723,84 SCT 1509(1964).

The Court of Appeals should have rejected this rubber stamping because it defeats the purpose of a motion to suppress. "The very purpose of a motion to suppress is to...compell enforcement officers to respect the constitutional security of all of us under the Fourth Amendment". See **McCray v. Illinois**, 386 U.S.300,307-08 87 S.Ct. 1056,18 L.Ed.2d 62(1967). Truthfullness of the officers should be a concern of the Court of Appeal. See McCray.

The Fifth Circuit in addressing a similar issue in Cramer v. NEC Corp. of Am,496 Fed Appx.461(2012), ruled that evidence "could be" the document was insufficient and noncommital in regards to proving the document "is" what it was claimed to be. See Cramer. So too,here, officer Rengos testimony, "this would be like" NCJIS, is insufficient and noncommital to represent an authentic NCJIS record. No where in Bell will the Court find Detective Cox identifying any evidence as "this would be like" proof in supporting reasonable suspicion. No where in the tradition of American jurisprudence, outside of sophistrey, for that matter, can petitioner find, and challenges the prosecution to find, any Circuit Court that sanctioned such unusual unreliable testimony and its underlying exhibit. (104).

1 . The alleged informant tips were not shown to be reliable or corroborated.

In Bell the Eighth Circuit, relying on Adams v. Williams, 407 U.S.143,147,32 L.Ed.2d 612,92 S.Ct.1921(1972), stated, reasonable suspicion may be based on an informants tip where the tip is both reliable and corroborated. The appellate Court also stated the stop of Bells vehicle was based on more than "inarticulate hunches". See Bell. Unlike Bell, in the instant case, the informants tips were not,by any method, proven to be reliable or corroborated and the stop was based on inarticulate hunches.

A tip may be considered reliable, where the assessment of the reliability of the tip took place. No such determination of an assessment of the tipsters reliability took place here

as it did in Bell. For instance, Detective Cox testified about why he thought the informant was reliable before he acted on the information. Here, no officer testified why they thought the informants were reliable, reporting a shots-fired in an area where the shot-spotter did not pick up the fired-shots. (App.,18e-19e). The informants actually gave the officers information of a silver Jeep with black on top bearing WRX on the plate, that description does not reasonably link the Jeep in the instant case to the suspect vehicle because the Jeep is silver with no black on top and has WRF on the plate. The Omaha Police linked the Jeep to the shots-fired incident, not the informants, who were talking about another kind of Jeep.

The tip was not corroborated by officer observation like the tip in Bell was. In Bell the appellate Court pointed to detailed examples of how Detective Cox thouroughly corroborated the informants tip. Here, the only example the Court can point to for corroboration of the informants tip is officer Rengos testimony he "followed" the vehicle "ran the plate" and "This would be like" proof of running the plate. That evidence does not amount to a substantial basis supporting reasonable suspicion. (the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding reasonable suspicion existed). See Gates. Under the totality-of-the-circumstances analysis officer Rengos testimony should not be reliable and does not serve to

corroborate the tip, therefore it should not have been included. The "totality-of-the-circumstances analysis...permits a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) attending an informants tip". See Gates. The "mere conclusory" statements gave the appellate Court "virtually no basis at all for making a judgment regarding" reasonable suspicion. See Gates. The instant case is sufficiently distinguished from Bell for the aforementioned reasons. "The evidence on which the Court relies in ruling on a suppression motion must be reliable and probative". See United States v. Golden, 418 F.Supp.3d 416,422 (D.Minn.2019). There was no reasonable suspicion, officers made it up.

2. The manner in which the stop took place exceeded the scope of a Terry Stop.

Under Terry the officers are permitted to investigate a reasonable suspicion by using the least intrusive means necessary to effectuate the stop. See Hensley. If the investigatory stop exceed the stops proper scope any evidence derived from the stop is inadmissible at trial. See Wong Sun v. United States, 371 U.S.471,484,9 L.Ed.2d 441,88 S.Ct.407(1968). There were no tire-spikes used in Bell so this issue is independent and was not addressed by the Court of Appeals. The officers used tire-spikes to stop the Jeep before petitioner had a chance to submit to the officers show of authority by way of activating their over-head lights first,(App.,31e-32e). This intrusion is unheard of and substantially falls outside

the scope of a Terry stop which is required to be brief. The officers actions in blowing the tire out before operating their over-head lights comports more with an arrest, than brevity for purposes of confirming or dispelling their suspicion. Even if there was reasonable suspicion to make this stop the manner in which the stop took place violates the Fourth Amendment. (an arrest based only on reasonable suspicion is illegal). See **Gerstein v. Pugh**,420 U.S.103,43 L. Ed. 2d 54,95 S.Ct.854(1975). There is no evidence of the Jeep fleeing from the officers which would have warranted the officers use of the tire-spikes, (App.,33e-34e). Exhibit 2 shows the officer who deployed the tire-spikes state he did not know why he used them. See (ex.2 at time stamp, 4:24-4:39). The Court of Appeals erred in ignoring this meritorious Fourth Amendment claim because the manner which the stop took place violated the Fourth Amendment.

3. The Court of Appeals made no determination of whether the Fourth Amendment was violated.

In **Bell** the Court of Appeals stated it will "review de novo whether the Fourth Amendment was violated". The record here, as is does not contain the Courts view on whether the Fourth Amendment was violated as it said it should. The Supreme Court said in **Ornelas v. United States**,134 2 LED 2d,116 SCT 1657,134 LED 2d 911,517 US 690(1996), "we hold that the ultimate question of reasonable suspicion...to make a warrantless search should be reviewed de novo" leaving no deference to the District

Court. The Supreme Court in Ornelas also stated, "the prime benefit of de novo review...is...to prevent a miscarriage of justice that might result from...legal determinations of a single judge". Instead of the appellate Court correcting the record as it is barren of standing and contains significant officer misconduct, it left the judgment of a single judge (magistrate), in place.The apellate Court was required to make its own determinations of the issues raised by petitioner, and the standing issue, which was not raised until now. A reviewing Court "makes its own determinations of disputed issues" and "de novo review is non deferential and requires an independent review of the entire matter". See **Branch v. Martin**,886 F.2d 1043,1046(8th Cir.1989). ("De novo is a Latin term literally meaning 'as new'. Our review is independent and not premised on the district courts appropriate use of discretion. We are concerned only with the proper application of the law"). See **United States v. Backer**,362 F.3d 504,508(8th Cir.2004).

Conclusion

This stop was illegal. The officers had no reasonable suspicion to believe the Jeep was involved in any criminal activity. The officers themselves put the Jeep in the area of this crime after-the-fact the illegal stop turned up evidence, a misconduct so egregious as to demand deterence. Even if reasonable suspicion existed the manner in which the stop took place exceeded the scope of a Terry stop by far.

Therefore, the evidence should be inadmissible at trial

as it was illegally obtained because how the officers came across the evidence violates the Fourth Amendment.

C. The Court of Appeals erred in finding no prosecutorial misconduct when it is clear the prosecution knew its witness was not being truthful.

The Court of Appeals ruled that petitioner failed to show that the government knowingly elicited false testimony, or that such testimony likely affected the jurys verdict. That ruling appears to have been made without the Court addressing petitioners claim that the prosecution heard its witness testify at the suppression hearing "This would be like our NCJIS plate search history from that time frame", in support of its witness contemporaneous testimony he "ran the plate". Taking the testimony on its face the prosecution should not have had its witness testify in front of the jury that its witness ran the plate when the prosecutor knew of the imprecise and contradictory testimony in support of that claim, serving to detract from belief the officers ran the plate. This trial cant be termed fair in any sense. The prosecution allowing its witness to testify that he ran the plate violates petitioners Due Process right to a fair trial because that evidence gives reason to disbelieve the officers. (The constitutional requirement of due process is not satisfied where a conviction is obtained by the presentation of testimony known to the prosecuting authorites to be perjured). See Alcorta v. Texas, 355 US 28, 2 L Ed 2d 9,78 SCT 103(1957). The prosecution would

like the Court to believe it didnt know its witness was lying to the jury about running the plate but the evidence is far to glaring in that the prosecution heard the witness. At trial officer Rengo lied to the jury stating he ran the plate, (App., 3f-4f), and the prosecution did nothing about it. Petitioner did object to officer Rengos testimony, (App.,2f). Officer Rengo lying to the jury about running the plate on the Jeep substantially affected the jury because the jury was mislead to believe the officers were in a lawful position to discover the evidence petitioner was on trial for. (Defendant was entitled to a jury that was not laboring under a government-sanctioned false impression of material evidence when it decided the question of guilt or innocence as to defendant). See United States v Barham,595 F.2d 2B1(5th Cir.19790). For those reasons this conviction should be reversed, as it was in Barham. Disclosure of the truth that officer Rengo hedged testimonial proof of running the plate may have in a considerable way affected the judgment of the jury, however, the jury was deprived of relevant evidence to the credibility of the witness. See Barham. In Napue v. Illinois, 1959,360 US 264,79 S.Ct.117B 3 L. Ed.2d 1217, this Court made clear when the prosecutor obtains a conviction with the aid of false evidence which it knows to be false and allows it to go uncorrected, the convicton cannot stand. A "lie is a lie", and the lie here affected the jurys verdict and prejudced the petitioner.

Conclusion

Wherefore , this conviction was obtained through the use of false testimony at trial that was material to the witnesses credibility and question of guilt or innocence, and should be overturned and remanded for a new trial to correct the errors.

D. The Questions Presented Warrant this Courts Review.

The suppression ruling is not the result of a substantive Fourth Amendment analysis and is in conflict with Combs, Rakas, and Padilla. The issue of a defendants standing is invariably intertwined with substantive Fourth Amendment analysis. The Court of Appeals in the instant case did not apply the law.

There was no reasonable suspicion in this case it was made up by police officers after-the-fact drugs and a firearm turned up. The officer misconduct cannot be addressed without having standing to challenge the officers actions.

This Court in Napue stated that when the prosecutor obtains a conviction with the aid of false evidence and does not correct it the conviction cannot stand. The prosecutor reasonably knew its witness was lying about running the plate on the Jeep because it heard testimony identification of the evidence in support and did not seek to clarify or correct it..

Respectfully, Submitted,
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March,13,2025

Prince Spellman
Dated: March 13, 2025

CERTIFICATE

I I Prince Spellman, hereby certify that this filing complies with the page limitations set out in the Supreme Court Rule 33.2(b) because it does not exceed 40 pages.

Declaration under 28 U.S.C. 1746

Dated: March 13,2025

This filing has been placed in the possession of a C/O here at Florence U.S.P. prison to be mailed for filing with the Clerk of the Supreme Court, as required by Supreme Court Rule 29.2., on March 13, 2025 and was prepaid with postage and certified.

Prince Spell