

No. _____

In the
Supreme Court of the United States

JOSEPH DAVIS

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether errors in an inventory search report are indicative of a “ruse” under *Florida v. Wells*, 495 U.S. 1, 4 (1990), thereby rendering the use of evidence uncovered during the inventory search a violation of Joseph Davis’s Fourth Amendment right to be free from unreasonable search and seizure.

PARTIES TO THE PROCEEDING

Joseph Davis is a resident of New Hampshire. He is currently incarcerated at FCI Schuylkill, in Minersville, Pennsylvania.

As this is a criminal proceeding, the United States of America was the prosecuting party, and Joseph Davis was the defendant before the First Circuit Court of Appeals.

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Joseph Davis respectfully petitions this Court for a writ of certiorari to review the decision of the United States Court of Appeals for the First Circuit in this case.

REPORT OF OPINION

The opinion of the First Circuit Court of Appeals (*Norman H. Stall, J.*) sought to be reviewed is *United States v. Davis*, 909 F.3d 9 (1st Cir. 2018), which is appended hereto at pages 7-27.

JURISDICTION

Joseph Davis was charged with being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1); 18 U.S.C. § 924(a)(2). Davis sought to suppress the gun on a variety of grounds, and a first trial ended with a hung jury. He was then convicted in a bench trial (*Landya B. McCafferty, J.*), and in June 2017 sentenced to 50 months incarceration.

The judgment of the First Circuit Court of Appeals affirming the conviction was entered on November 20, 2018.

The First Circuit had jurisdiction 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).

Service is being made on the Solicitor General of the United States, in accordance with United States Supreme Court Rules 14.1(e) and 29.4.

UNITED STATES CONSTITUTION FOURTH AMENDMENT

“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 CASE

Around midnight on Independence Day weekend in 2016, Joseph Davis, a rap musician, was performing at Cloud 9, a beach-side club on Ocean Boulevard in Hampton Beach, New Hampshire. Davis's girlfriend, Tori Payne, had driven Davis to the venue earlier in the evening in Payne's 2013 Ford Focus sedan, and was on the Ocean Boulevard strip promoting the show. Outside after the performance, Davis was badly in need of a restroom.

Davis got into Payne's car and drove 5 to 15 seconds, or about 150 feet, across the street. He parked the car in a legal parking spot in front of a public bathhouse, but perpendicular to the painted lines, and in a place reserved for handicapped patrons, which he was not. The police, stationed nearby, detained him for not illuminating his headlights, resulting in Davis embarrassingly urinating in the car during the detention.

Davis was arrested for drunk driving and motor vehicle violations. Although those charges were later dropped after tests showed Davis's blood alcohol level was below the legal limit, Davis had been taken to the police station, leaving the car stranded with no driver. Hampton Police Officer Christopher Zigler first entered the car specifically to seize items of evidentiary value to the drunk driving charge. Officer Zigler then arranged to have the car towed and performed an inventory search. He later reentered the car, purportedly to put the key in the ignition for the tow operator.

The Hampton Beach Inventory Search Policy provides that, in recording items found during an inventory search:

Multiple items similar in nature listed in the inventory may be recorded in aggregate totals instead of listing each item individually, i.e. items of clothing can be listed as several shirts, numerous pairs of pants, etc. Expensive items should be separately listed such as jewelry, etc.

The evidence indicated that various possessions belonging to Davis, Payne, and their daughter were in the car at the time of the inventory search. These included Davis's cell phone, Payne's purse, a portable vacuum cleaner, and articles of adult and children's clothing. Also, Payne testified that, unbeknownst to Davis,

she had placed a gun – lately retrieved from her deceased grandfather’s estate and for which she had a permit – in the vacuum cleaner bag in the car’s trunk.

Officer Zigler maintained, however, that he found the gun lodged between the driver’s seat and center console when he reentered to insert the key. At the police station, Davis was confronted with the gun, and later charged with being a felon in possession of a firearm. Based on his proximity to the gun during his short drive, and statements he made at the station, the court convicted him and sentenced him to a period of incarceration.

REASONS TO GRANT THIS PETITION

An inventory search under the community caretaking function must be “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). “[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence,” *Florida v. Wells*, 495 U.S. 1, 4 (1990), or a “purposeful and general means of discovering evidence of crime.” *Colorado v. Bertine*, 479 U.S. 367, 376 (1987) (Blackmun, J., concurring). Rather, the police must “have solid, non-investigatory reasons for impounding a car.” *United States v. Coccia*, 446 F.3d 233, 239 (1st Cir. 2016) (internal quotation marks omitted). When there are no “solid, non-investigatory reasons for impounding a car,” an inventory search is pretextual, and thus invalid. *United States v. Marshall*, 986 F.2d 1171, 1175 (8th Cir. 1993) (invalidating inventory search as it “was directed toward finding evidentiary items to be used in a criminal proceeding”).

The Tenth Circuit has held that when a “decision to impound the car was not made until after the search revealed incriminating evidence against [the defendant] ... it [is] exceedingly difficult to believe [it] was an inventory search conducted to protect the police from liability after the decision was made to impound the car.” *United States v. Edwards*, 632 F.3d 633, 644 (10th Cir. 2001). The Ninth Circuit has held that whether an inventory was a “ruse” under *Wells* depends upon the officer’s subjective intent, and therefore the court “must determine whether [the defendant] has produced evidence that demonstrates the officers would not have searched and seized items from the car he was driving but for an impermissible motive.” *United States v. Johnson*, 889 F.3d 1120, 1126 (9th Cir. 2018). In the current case, the First Circuit noted that its policy regarding inventory searches is that they are permissible whenever objectively justified “considering all the facts and circumstances of a given case.” *United States v. Davis*, 909 F.3d 9, 16 (1st Cir. 2018) (internal quotation marks omitted).

Thus, whether the incomplete or inaccurate inventory here is indicative of an improper investigatory motive is a subjective inquiry in the Ninth Circuit, an objective inquiry in the First Circuit, and – while not entirely clear – a subjective sense of the reviewing tribunal in the Tenth Circuit.

Officer Zigler’s actions suggest a pretext for search, rather than non-investigatory reasons. Not only did he reenter the car after the inventory was

complete, but the report of his inventory search lists only a “purse/wallet in trunk belonging to female [registered owner].” Items of obvious value were not on the inventory. It does not mention Davis’s phone, Payne’s vacuum cleaner, adult or children’s clothing, nor any gun – even though the Hampton Inventory Policy directs how to group them. The inventory search in this case was a ruse.

While the First Circuit ruled that on an objective basis it did not appear Officer Zigler was engaged in a ruse, the outcome in the Ninth Circuit may have been different because the inquiry would have been into Zigler’s subjective intent, and also may have been different in the Tenth Circuit because that court would have applied its own subjective view of the record.

This Court should grant a writ of certiorari to decide what standard of review of the evidence is proper when determining whether an inventory search is an investigatory ruse. The Court should then find that the search in this case violated Mr. Davis’s Fourth Amendment right to be free from unreasonable searches and seizures, suppress the gun, and reverse the conviction.

CONCLUSION

This Court should grant this petition for a writ of certiorari, and reverse the decision of the First Circuit Court of Appeals.

Respectfully Submitted,

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