

**2004 SPRING QUALIFYING
TOURNAMENT PROBLEM**

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Following the denial of his appeal to the Twelfth Circuit Court of Appeals, Peter Gibbons petitioned the Supreme Court of the United States for a writ of certiorari as to the issue addressed by the appellate court. On December 15, 2003, the Supreme Court granted Petitioner's writ for certiorari.

The Court has asked for a 10 page brief (subject to the Tournament instructions and restrictions) on the issue, which is due on February 19, 2004. Oral argument is scheduled before the Supreme Court on February 28, 2004.

IN THE SUPREME COURT
OF THE UNITED STATES

PETER GIBBONS,	:	
	:	
Petitioner,	:	
	:	No. 02-2004
-against-	:	
	:	
UNITED STATES OF AMERICA	:	
Respondent.	:	

The petition for a writ of certiorari is GRANTED.

/s/ _____
Justice S. Truth
Chief Justice of the Supreme
Court of the United States

Dated: December 15, 2003

UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

UNITED STATES OF AMERICA,	:	
Appellee,	:	
	:	
-against-	:	ORDER DENYING APPEAL
	:	
PETER GIBBONS	:	
Appellant.	:	

Appellant Peter Gibbons has asked this Court to review the lower court denial of his motion to suppress evidence found as a result of police questioning during a traffic stop. Appellant asserts that an officer's question as to whether he was in possession of narcotics violated his privacy rights under the Fourth Amendment. Appellant argues that expanding questioning beyond the initial justification for the traffic stop was a constitutional violation, and any evidence discovered as a result of his response should not be admitted.

PROCEDURAL HISTORY

Appellant filed a pretrial motion in the United States District Court for the District of Initech to suppress all evidence obtained from the search of his car pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure. On September 24, 2003, Judge Chrazee Milton denied the Motion to Suppress. Mr. Gibbons was found guilty of possession with the intent to distribute or dispense a controlled substance in violation of 21 U.S.C. §§ 841(a) and 841(b)(1)(a). On October 3, 2003, Judge Milton entered his Order sentencing Mr. Gibbons to 120 months of imprisonment, to be followed by five years of supervised release, and a \$100 mandatory special assessment.

Appellant subsequently filed his Notice of Appeal, arguing that the district court committed reversible error by denying his motion to suppress the evidence as to the fifty grams of cocaine admitted at trial, thereby denying Appellant a fair trial. On November 4, 2003, we certified the following issue for argument in this Court:

Whether the Fourth Amendment requires police questioning at a traffic stop to be reasonably related to the initial justification for the stop.

FINDINGS OF FACT

On July 17, 2003, Mr. Gibbons was driving southbound through Flair City on Highway 7 when Flair City Police Officer William Lumbergh ordered his car to the side of the road. Officer Lumbergh suspected a violation of Initech Vehicle Code Init. Rev. Stat. § 420-420 (2000), which specifies that objects on the window of a vehicle must be limited in size to allow for adequate driver visibility. Officer Lumbergh checked Mr. Gibbons' driver's license and vehicle registration and requested a background check over the police radio. Officer Lumbergh then inspected the Grateful Dead sticker that was affixed to the exterior of the back window and issued a verbal warning that the sticker might be in violation of the vehicle traffic code, recommending that it be removed.

While the background check was being processed, Officer Lumbergh perceived that Mr. Gibbons was sweating and acting nervously. Officer Lumbergh engaged Mr. Gibbons in small talk, asking whether Mr. Gibbons was coming from a rock concert and whether the sticker was something that a lot of his friends would identify with. Mr. Gibbons did not directly respond. Officer Lumbergh then asked Mr. Gibbons whether he had any illegal drugs in the vehicle. Mr. Gibbons answered that he did. Officer Lumbergh searched the interior of the car, and found a cardboard box on the back seat that contained 50 grams of crack cocaine. He arrested Mr. Gibbons for a class A1 felony offense. Mr. Gibbons was indicted by a grand jury.

DISCUSSION

Appellant does not argue that his initial stop was unlawful. Instead, he bases his argument on the assertion that Officer Lumbergh's question regarding drug possession was not related in substance to the justification for the stop. Mr. Gibbons argues that whether he may have been transporting drugs had nothing to do with the fact that he was driving with potentially obstructed visibility and thus, was an illegal search and seizure under the Fourth Amendment of the Constitution.

We do not believe that Officer Lumbergh's question can be justified as based upon a reasonable suspicion of further illegal activity; in fact, there is very little validity in the factors Officer Lumbergh lists as having sparked his suspicion of further illicit activity. It is entirely reasonable that Mr. Gibbons was sweating from being in a car without air-conditioning during the summertime, and that he appeared nervous because he was being stopped and detained by an officer of the law, rather than because he was displaying signs of guilt from criminal activity.

This court, however, finds that the content of Officer Lumbergh's question does not have any bearing on the constitutionality of the traffic stop. We do not believe that police questions alone can be considered searches or seizures. Although the courts have long recognized that evidence obtained as a result of the exploitation of an illegal search or seizure should be suppressed, it cannot be said that law enforcement officers violate the Fourth Amendment by merely approaching an individual on the street or in another public place and asking him if he is willing to answer some questions.

We hold that reasonableness of scope can only be seen as applying to the duration of the stop. Because Officer Lumbergh did not extend the duration of Mr. Gibbons' stop, all aspects of their interaction during the stop are held admissible.

Accordingly, we AFFIRM the decision of the district court.

IT IS SO ORDERED.

/s/ _____
Rod Crew
Circuit Court Chief Judge
United States Court of Appeals
for the Twelfth Circuit

Dated: December 1, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF INITECH

UNITED STATES OF AMERICA :
 :
 :
 -against- :
 : NOTICE OF APPEAL
 PETER GIBBONS, :
 :
 Defendant. :
 :
 :

NOTICE IS HEREBY GIVEN that Peter Gibbons, Defendant in the above-entitled action, hereby appeals to the United States Court of Appeals for the Twelfth Circuit, from the final judgment of the Honorable Chrazee Milton, dated October 3, 2003, in which Defendant was found guilty of violating 21 U.S.C. § 841(a) for unlawful possession of a controlled substance with intent to distribute. Defendant appeals on the grounds that the district court committed reversible error by denying Defendant's motion to suppress fifty grams of cocaine admitted at trial, thereby denying Defendant a fair trial.

/s/ _____
Attorney for Defendant
Law Office of S. Pace
15 Chotchie Street
Flair City, Initech 21999

Dated: October 5, 2003

UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

UNITED STATES OF AMERICA,	:	
Appellee,	:	
	:	
-against-	:	ORDER GRANTING APPEAL
	:	
PETER GIBBONS	:	
Appellant.	:	

CREW, J.

An application having been made for leave to make an appeal from the judgment entered by the District Court for the District of Initech, dated October 5, 2003, it is hereby:

ORDERED, that said appeal be granted and that the following issue is certified for argument in this Court:

Whether the Fourth Amendment requires police questioning at a traffic stop to be reasonably related to the initial justification for the stop.

/s/ _____
Rod Crew
Circuit Court Chief Judge
United States Court of Appeals
for the Twelfth Circuit

Dated: November 4, 2003

United States of America
Flair City Police Department
10 Mike Judge Street
Flair City, Initech 21999

AFFIDAVIT

Officer William Lumbergh, of the Flair City Police Department, being duly sworn, deposes and says:

1. I am an officer with the Flair City Police Department, and have been for the past eight years.
2. On July 17, 2003, I noticed a green 1984 Cadillac El Dorado driving southbound on Highway 7 with a large sticker affixed to the back window. The sticker's size and location seemed to be obscuring the driver's vision in violation of section 420-420 of the Initech State Vehicular Code.
3. I directed the vehicle to pull over to the side of the highway. I inspected the driver's license and confirmed that the driver was Mr. Peter Gibbons. I verified Mr. Gibbons was the vehicle's registered owner.
4. Over the police radio, I asked dispatch to run a background check on the driver over the Trans-continental Profile Search (TPS) system and contact me when the TPS report was received.
5. I inspected the above-mentioned sticker and found that it was a logo for the rock band The Grateful Dead. It measured eight inches by eight inches and was situated at the bottom of the center of the back window. I believed this to be a violation of the Code but decided to give Mr. Gibbons only a verbal warning that he should remove the "Deadhead" sticker on the back of his Cadillac, as it unlawfully prevented him from looking back.
6. I considered Mr. Gibbons to be acting very nervous throughout our exchange. He was sweating heavily and his answers were curt. I noted that his vehicle bore out-of-state license plates; in my training and experience as a police officer I know that it is not unusual for drug couriers to transport drugs across state lines in rented vehicles. It is also common for couriers to use older-model vehicles. I also know that drug couriers are often very anxious when confronted by law enforcement.

7. While waiting for dispatch to complete its background check on Mr. Gibbons, I engaged him in conversation to calm him down. I recall asking him what he did for a living, where he was coming from, if he was coming from a Dead concert, if he went to lots of Dead concerts, and if a lot of his friends listened to the same music. I do not recall the specifics of the questions, but I asked them in a conversational manner.

8. Towards the end of our exchange, I asked Mr. Gibbons if he had any drugs in the vehicle. He replied that he did.

9. I told Mr. Gibbons to exit the vehicle and stand on the shoulder of the highway as I proceeded to search the interior of his car. I found a cardboard box in the back seat of the car that contained what was later determined to be 50 grams of crack cocaine.

10. I seized the drugs and placed Mr. Gibbons under arrest for possession of a controlled substance. The quantity of cocaine base that he possessed qualified him for a class A1 felony under Initech Penal Code § 1515. En route to the station house, dispatch announced that the TPS report had not found anything unusual.

/s/ _____
Officer William Lumbergh
Flair City Police Department

/s/ _____
Drew O'Face
Notary Public

Dated: July 18, 2003

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF INITECH

UNITED STATES OF AMERICA :
 :
 :
 -against- :
 : GRAND JURY TRANSCRIPT
 PETER GIBBONS, :
 : [EXCERPT]
 Defendant. :
 :
 :

Appearing for the Government, Bob Porter.

* * *

Testimony of Mr. Peter Gibbons, on DIRECT EXAMINATION by
Bob Porter, attorney for the government.

Mr. Porter: Why did you believe you were being pulled over?

Mr. Gibbons: I had absolutely no idea. I was driving the
speed limit, minding my business, doing nothing
wrong, uhm, traffic-wise.

Mr. Porter: What did Officer Lumbergh tell you that he had
pulled you over for?

Mr. Gibbons: He said that the sticker I had on my back window
was probably too large and could have been
obstructing my vision. He made some crack about
having a Deadhead sticker on my Cadillac.
Whatever, I've heard it before.

Mr. Porter: Did he say that the sticker was the only reason
he pulled you over?

Mr. Gibbons: Yeah.

* * *

Mr. Porter: Describe the events of the traffic stop.

Mr. Gibbons: After he pulled me over he came up to my window
and asked for my license and registration. He
read my license into the radio on his shoulder,

and gave them both back. He asked how I was doing that day, and I went, "Fine." Then he looked at the sticker and gave me the warning and whatever. Then he asked if I was going or coming from a Deadhead concert. I went "No." Then he asked if a lot of my friends were into that. I didn't say anything 'cause it didn't sound like a question. Then suddenly, he goes, "You wouldn't happen to have any drugs in the car, would you?"

Mr. Porter: And what was your response?

Mr. Gibbons: Well, I figure I'm busted, he's gotta know something. And I didn't wanna get shot or anything, I've seen that stuff in the movies way too much, you know what I mean? So I go, "Yes, I do."

Mr. Porter: Were you acting unusually before he asked you that question, like something was wrong?

Mr. Gibbons: No, man. I mean, it was the middle of July, a really hot day in a car with no air conditioning, so I was probably a little moist. I was wearing jeans and cotton shirt. But you know, my attitude, I was real cool. Well, right up till he asked about the dope and I started thinking about getting shot.

* * *

/s/_____
Don Henley
Transcriber

Dated: July 19, 2003