No. 01-134

In the Supreme Court of the United States

JAMES D. ABBOTT,
A/K/A JOHN JASPER ROBERSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether an officer's stop of a vehicle in which petitioner had been a passenger violated the Fourth Amendment.

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OPINION BELOW

The per curiam opinion of the court of appeals (Pet. App. A1-A2) is unpublished, but the decision is noted at 246 F.3d 668 (Table).

JURISDICTION

The judgment of the court of appeals was entered on March 19, 2001. An order denying rehearing was entered on April 23, 2001. Pet. App. C1. The petition for a writ of certiorari was filed on July 23, 2001 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner pleaded guilty in the United States District Court for the District of South Carolina to possessing cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to 63 months' imprisonment, to be followed by five years of supervised release. The court of appeals affirmed. Pet. App. A1-A2.

1. On December 14, 1999, Trooper David Robinson —a 14-year veteran of the South Carolina Highway Patrol—observed the vehicle in front of him on Interstate 85 cross from the right lane about seven or eight inches into the emergency lane, then back again. Robinson stopped the car under the authority of South Carolina Code Annotated § 56-5-1900(a) (Law Co-op. 1991), which requires that a vehicle "be driven as nearly as practicable entirely within a single lane." The stop and the ensuing conversation between Robinson and Linda Fuller, the driver, and petitioner, a passenger, was videotaped. C.A. App. 25-26, 35-37, 43-44; Gov't C.A. Br. 2, 4.

Robinson explained why he had stopped them and asked Fuller for her license and registration. As he did so, he smelled burnt marijuana in the car. Since the car was rented, he asked petitioner and Fuller where they had driven from and their destination. They replied that they had been in Atlanta overnight and were headed to Spartanburg. Petitioner said he had been looking for a job in Atlanta; Fuller said she had been house-hunting there. From his experience and training, Robinson knew Atlanta to be a source of drugs, and he knew Interstate 85 to be a route used by drug traffickers. Robinson unsuccessfully sought consent to search the car. He then called the Highway Patrol for a drug-

detecting dog to be brought to the scene to sniff the car's exterior. While waiting for the dog to arrive, he asked Fuller and then petitioner to exit the vehicle, and patted them down for weapons. Fuller seemed nervous; she kept turning and looking back toward the car. Both before and after Fuller got out of the car, petitioner moved around inside it; with his left arm, he reached over the seat into the floorboard area behind the driver's seat. C.A. App. 26-30, 33-34, 38-39, 46, 48; Gov't C.A. Br. 2-3.

Outside the car, Fuller asked for her jacket. Robinson said that he could not let her re-enter the vehicle, but that with her permission, he would retrieve the jacket for her. She agreed, and Robinson got the jacket, which was between the console and her seat. He again smelled burnt marijuana in the car. After checking the jacket for weapons, he handed it to her and asked her if there was any marijuana in the car or if anyone had smoked some there. Fuller admitted that she had smoked half of a marijuana cigarette earlier that day and that the other half was still in the car. After relating this to a backup officer who had by then arrived at the scene, Robinson searched the vehicle and found the marijuana cigarette. In the backseat, he found a bag that contained handfuls of small plastic baggies and 21 pills. In the trunk, he found two kilograms of cocaine. Fuller and petitioner were arrested and charged with possessing marijuana and cocaine with intent to distribute them.[1] Fuller was separately issued a warning ticket for her traffic offense. C.A.

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[1] At petitioner's plea hearing, the government amended the indictment, with petitioner's consent, to charge only cocaine. Plea Tr. 18-19.

App. 30-32, 42-43, 45-46; Gov't C.A. Br. 3; Def.'s Br. in Supp. of Mot. to Suppress at 2.

2. The district court denied petitioner's motion to suppress. C.A. App. 63-66. The court found that the stop "for an improper lane change was permissible" because "the trooper perceived that the vehicle moved into the emergency lane which is not a driving lane." *Id.* at 63. The court further concluded that "there is no intrusion on the Fourth Amendment" regardless of the seriousness of the traffic violation and "even if the officer would not have made the stop but for some hunch or some inarticulable suspicion of other criminal activity." *Ibid.* The court explained that the test for a valid stop is an objective one, requiring only probable cause or reasonable suspicion. *Ibid.*

The court determined that "the trooper had a reasonable articulable suspicion to detain the defendant[s] * * * after issuing a warning for the traffic violation." C.A. App. 64. The court credited the testimony of Trooper Robinson, an experienced officer, that he smelled marijuana when he first approached the vehicle, especially in light of Fuller's admission that she had smoked marijuana earlier that day and that part of a marijuana cigarette was in the car. *Ibid.*

The court further found that even if, as petitioner argued, Trooper Robinson did not smell burnt marijuana until he retrieved Fuller's jacket, the ten-minute detention was not unreasonable under the totality of the circumstances. C.A. App. 64-65. The court explained that petitioner and Fuller were traveling on Interstate 85, a known drug corridor, and that they told Robinson they were coming from Atlanta, which was a known drug source city. *Ibid.* They also told Robinson that they had stayed in Atlanta only overnight, even though the reasons they had given for the trip—house-

hunting and job-hunting—would have seemed to merit a longer stay. *Id.* at 65. Moreover, Fuller had behaved nervously when asked about her license and the car's registration, and petitioner had made suspicious movements inside the car both before and after Robinson questioned Fuller outside the vehicle. Also, the vehicle was rented, and Robinson was concerned that there might be weapons in it; indeed, when Robinson retrieved Fuller's jacket, he patted it down for weapons before giving it to her. Following Robinson's statement to Fuller that he smelled burnt marijuana, she admitted that she had smoked marijuana earlier in the day and that half of a marijuana cigarette was still in the car. *Ibid.* At that point, the court explained, Robinson "clearly had probable cause that the vehicle contained contraband that justified his search of the vehicle," including the bag found on the backseat, which had contained the pills and the baggies, and the cocaine in the trunk. *Id.* at 65-66.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A1-A2. The court held that "the district court did not err in concluding the evidence was admissible," and it "affirm[ed] on the reasoning the court articulated at the hearing on the motion to suppress the evidence." *Id.* at A2 (citing *Whren* v. *United States*, 517 U.S. 806, 813 (1996), and *United States* v. *Hassan El*, 5 F.3d 726, 730 (4th Cir. 1993), cert. denied, 511 U.S. 1006 (1994)).

ARGUMENT

1. Petitioner argues (Pet. 4-5) that the district court should have suppressed the evidence seized from the rental vehicle because the officer's initial stop of the vehicle was "pretextual." That contention lacks merit. In *Whren* v. *United States*, 517 U.S. 806 (1996), this

Court held that the stop of a car where the police had probable cause to believe that the driver had committed a civil traffic violation did not offend the Fourth Amendment, even if the stop was "pretextual" in the sense that the officer was motivated by some additional law enforcement objective. See *id.* at 813 ("a traffic-violation arrest * * * [will] not be rendered invalid by the fact that it was 'a mere pretext for a narcotics search'") (quoting *United States* v. *Robinson*, 414 U.S. 218, 221 n.1 (1973)); see also *Arkansas* v. *Sullivan*, 121 S. Ct. 1876, 1878 (2001) (per curiam) (reaffirming *Whren*). The court of appeals therefore correctly relied on *Whren* in affirming the district court's denial of petitioner's motion to suppress. Pet. App. A2.[2]

2. Petitioner further argues (Pet. 5-8) that officer Robinson lacked authority under state law to stop the vehicle because Fuller's driving did not violate South Carolina Code Annotated § 56-5-1900(a) (Law Co-op. 1991). Petitioner also relies on *United States* v. *Gregory*, 79 F.3d 973, 978 (10th Cir. 1996), in which the court of appeals held that an isolated incident of a vehicle's crossing into the emergency lane in the particular circumstances of that case did not constitute

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[2] Petitioner relies on *United States* v. *Miller*, 821 F.2d 546, 549 (11th Cir. 1987), in which the court of appeals ruled a traffic stop unconstitutional because, in its view, "a reasonable officer would not have stopped Miller absent some other motive" than that he "strayed over the white line a few inches for a few seconds." That decision was issued before this Court's decision in *Whren*. Indeed, the Eleventh Circuit has recognized that "in *Whren* * * * the Supreme Court rejected our former approach and held that the constitutional 'reasonableness' of a traffic stop is determined irrespective of 'intent,' either of the individual officer involved * * * or any theoretical 'reasonable officer.'" *Riley* v. *City of Montgomery*, 104 F.3d 1247, 1252 (1997).

a traffic offense under Utah law. The issues of state traffic law raised by petitioner do not merit the attention of this Court. Cf. *Salve Regina College* v. *Russell*, 499 U.S. 225, 235 n.3 (1991) (describing "several cases in which this Court declined to review *de novo* questions of state law" as resting on "the manner in which this Court chooses to expend its limited resources"); *Brockett* v. *Spokane Arcades, Inc.*, 472 U.S. 491, 499, 500 (1985) (noting Court's general deference to interpretation of state law by district courts and courts of appeals).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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