No. 02-809

IN THE
Supreme Court of the United States

STATE OF MARYLAND,
Petitioner,
v.

JOSEPH JERMAINE PRINGLE,
Respondent.

On Writ of Certiorari To The Court of Appeals of Maryland

REPLY BRIEF FOR PETITIONER

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REPLY ARGUMENT

I. THERE WAS PROBABLE CAUSE TO ARREST RESPONDENT AND THE OTHER OCCUPANTS OF THE CAR.

When Officer Snyder's lawful stop and search uncovered cash and drugs in the car occupied by Respondent, Partlow, and Smith, the officer properly assessed the totality of the circumstances and determined that there was individualized probable cause to arrest all three men. The arrest was based on much more than Respondent's mere presence in the car. It was supported by the facts and reasonable inferences drawn from those facts, including: both cash and drugs were found in two different parts of the car, supporting an inference that two or more people were engaged in criminal activity; all three occupants denied knowledge of the drugs; the money and drugs were easily accessible to all; it was three o'clock in the morning, a time when few persons are carpooling to work; an inference could be drawn that all three were engaged in a common illicit enterprise; drugs are often sold, and cash is an indicator of such sales; groups of persons often use and sell drugs; drugs can be possessed jointly and constructively; to avoid arrest, persons will hide drugs in a common place or near another; persons who carry illegal drugs will lie to the police to avoid arrest; and persons traveling in cars can easily change places.

Refusing to acknowledge that these facts provided probable cause for his arrest, Respondent takes three equally futile tacks. First, Respondent fails to reckon with the totality of all of the circumstances, choosing instead to focus on some facts, while ignoring others. This, of course, is the wrong approach to probable cause. Second, Respondent attempts to characterize this case as one of guilt by mere presence or by association with others known to be involved in criminality. This does not comport with the realities of the case. Third, Respondent relies on this Court's cases that were decided in

markedly different contexts in an effort to show that he was subjected to a "dragnet" arrest. Given that Respondent was a passenger in a car containing a large quantity of cash and drugs packaged for distribution, it hardly can be said that he was swept up in an overbroad or mass arrest.

A. Respondent's "divide-and-conquer" approach to the totality of the circumstances should be rejected.

Respondent argues that his arrest "was based on nothing more than his presence in a car in which hidden drugs were discovered." Resp. Br. at 36. In so arguing, Respondent highlights some of the facts, while ignoring others. As to the facts he does discuss, Respondent analyzes them in isolation and draws from them only those inferences favorable to him, ignoring equally or more plausible inferences suggesting his complicity in the crime. This "divide-and-conquer"analysis–eschewed in *United States v. Arvizu*, 534 U.S. 266, 274 (2002)–contravenes this Court's totality of the circumstances approach to the Fourth Amendment and should be rejected here.

Respondent points to the fact that the drugs were "hidden" in the car, not in plain view. Resp. Br. at 23; *see* Amici ACLU et al. Br. at 18. It is hardly remarkable that persons in possession of illegal drugs would hide them from others who might see them or from the police when their car is stopped. *See United States v. Ross*, 456 U.S. 798, 820 (1982) (by their nature, contraband goods "must be withheld from public view"). What is significant is that, because the cash and cocaine were in easily accessible areas of the passenger compartment, the officer could infer that each of the occupants had knowledge of the items. Perhaps if the drugs had been located in a remote compartment, which could only be known or accessed by the owner or driver, the situation would be

different, but such was not the case here.[1]

Indeed, although Respondent suggests that the result in *County Court of Ulster County v. Allen*, 442 U.S. 140 (1979), was based on the fact that the contraband was in plain view, Resp. Br. at 23, the Court cited with approval New York's presumption that persons traveling in cars "are aware of, and culpably involved in, possession of dangerous drugs found *abandoned or secreted* in a vehicle." 442 U.S. at 165 n.27 (emphasis added). In explaining the basis for the presumption, the New York commission report stated: "'We do not believe that persons transporting dealership quantities of contraband are likely to go driving about with innocent friends or that they are likely to pick up strangers.'" *Id.* (quoting *Interim Report of Temporary State Comm'n to Evaluate Drug Laws*, N.Y. Leg. Doc. No. 10, at 69 (1972)).[2] Thus, the mere fact that the drugs were concealed in the present case, but the guns in *Allen* were in open view, is not significant for probable cause purposes.

Respondent also makes much of the fact that he was in the front seat, but the drugs were hidden in the back seat. Resp. Br. at 36. Further, Respondent notes that the arresting officer did not see him act suspiciously or make furtive movements. *Id.* This overlooks the fact that a large quantity of cash was found directly in front of Respondent, i.e., in the glove compartment.[3]

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[1] Respondent characterizes the area where the cocaine was found as a "hidden compartment." Resp. Br. at 22, 28. In actuality, the drugs were found in a clear plastic baggie behind a pull-down armrest in the back seat, (JA 13, 40-41), an area within easy reach of all occupants of the passenger compartment.

[2] In the present case, the drugs found were packaged in five small plastic bags, inside a larger Ziploc bag. (Pet. App. 3a; JA 13). Respondent was convicted of possession with intent to distribute cocaine. (Pet. App. 1a; JA 1).

[3] With regard to the money found in the car, Respondent does not dispute that cash was found in the glove compartment. Resp. Br.

It also ignores the fact that the drugs were found within easy reach of the front seat occupants. And, it ignores the fact that, for all the officer knew, Respondent was the rear seat passenger five minutes before the traffic stop occurred.

Under the totality of circumstances, there was probable cause to arrest Respondent and the other occupants of the car. Indeed, in many, if not most, situations where drugs are found in the passenger compartment of a private car, probable cause will exist to arrest all of the occupants.[4] Contrary to Respondent's contention, the ultimate determination of probable cause generally will not "turn[] on such niceties as the size and configuration of the vehicle." Resp. Br. at 28. Rather than any one factor controlling the analysis, the totality of the circumstances is determinative of the probable cause issue.

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at 1. Yet, Respondent challenges the references in the briefs to the amount of money and descriptions of it as a "roll," a "substantial amount," a "large quantity," or whether it totaled $763. Resp. Br. at 35. Significantly, however, the majority opinion of the Court of Appeals states that the officer "seized $763.00 from the glove compartment," (Pet. App. 3a), and the dissent characterizes it as "a large stash of cash in the glove compartment," (Pet. App. 39a). Amici arguing in support of Respondent also refer to the cash as "a large roll of money" totaling "$763." Amici ACLU et al. Br. at 1, 2.

[4] When drugs are found on a bus, on a train, or in a public place, however, the probable cause calculus changes significantly. In such cases, there generally will not be an inference that unrelated people know each other or are engaged in a common enterprise. *See Ybarra v. Illinois*, 444 U.S. 85, 90 (1979) (no connection between customer at tavern and bartender who was subject of search). Contrary to the assertion of amici for Respondent, Petitioner is not seeking to overrule *Ybarra*, nor is it "urging this Court to create a new, *per se* rule that police discovery of contraband provides probable cause to arrest everyone on the scene, even when the contraband *is not in plain view*." Amici ACLU et al. Br. at 22.

Generally speaking, however, passengers in a large sport utility vehicle such as a Ford Expedition will fare much the same as the occupants of a Mini Cooper. Here, the probable cause to arrest Respondent was particularly strong because the arrest occurred at 3:00 a.m., the car was a mid-size sedan, the passengers appeared to know each other, drugs and money were found in two separate and accessible areas of the passenger compartment, and all three occupants denied knowledge of the money and the drugs.

B. Respondent was not arrested merely because of his presence or association with a known criminal.

Respondent incorrectly characterizes Petitioner's position as advocating arrests "absent a particularized suspicion," Resp. Br. at 34, and "based on nothing more than guilt by association," *id.* at 27. To the contrary, Petitioner fully agrees with Respondent that particularized suspicion is necessary for probable cause to arrest. Here, the officer "singled out" Respondent and the two other occupants of the car because the officer had particularized probable cause to arrest all three men.[5]

This is not a case of mere guilt by association. Respondent was not arrested simply because he spoke with or was near

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[5] The repeated references to language from *Vernonia School District 47J v. Acton*, 515 U.S. 646, 668, 678 (1995) (O'Connor, J., dissenting), relating to the requirement of individualized suspicion, although accurate, do not inform the issue here. Amici ACLU et al. Br. at 3, 4, 6, 7, 18. That the Court has permitted suspicionless seizures and searches based upon neutral standards in certain "special needs" cases is irrelevant to Respondent's case. Despite the suggestion by Respondent, Resp. Br. at 29-30, Petitioner has never argued that the arrest here was justified by any special need beyond law enforcement. The garden-variety arrest in this case complied with the historical imperative of individualized probable cause.

someone whom officers had probable cause to arrest. Rather, Respondent was in a car where a clear baggie of drugs was found behind an armrest and a large quantity of cash was discovered in the glove compartment. Under the totality of the circumstances, probable cause necessarily focused on all three occupants, and not on any one of them to the exclusion of the others. Thus, there was a fair probability that Respondent (as well as the other two men) was involved in criminal activity.[6]

The authority Respondent relies upon is inapposite. This case is not the same as *Sibron v. New York*, 392 U.S. 40, 62-63 (1968), in which the Court ruled that officers did not have probable cause to arrest Sibron merely because he had conversations with narcotics addicts over an eight-hour period. Resp. Br. at 27. Had Respondent not been present in the car where drugs were found, but simply was arrested eight hours after he spoke to one of the persons in the car, he might have a point. Here, of course, Respondent was in the car where drugs packaged for distribution were found. Unlike Sibron, Respondent was not arrested merely for his prior conversations with known criminals elsewhere.

The case of *Ybarra v. Illinois*, 444 U.S. 85 (1979), is also unavailing. Pet. Br. at 25. To be sure, the search of Ybarra, one of a number of people in a bar where drugs were found, was illegal. 444 U.S. at 88. The fact that Ybarra "made no gestures indicative of criminal conduct, made no movements that might suggest an attempt to conceal contraband, and said

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[6] Where multiple suspects are concerned, this fair probability judgment must be made individually as to each person. As one commentator states: "Because we cannot quantify the concept of reasonableness, one necessarily can only engage in a commonsense appraisal of the reasonableness of the police activity in question. In the Model Code's words, the basis for each arrest or search must 'be considered independently.'" Joseph D. Grano, *Probable Cause and Common Sense: A Reply to the Critics of Illinois v. Gates,* 17 U. Mich. J. L. Ref. 465, 498 (1984).

nothing of a suspicious nature to the police officers," *id.* at 91, was significant in the context of that case. But it is spurious to argue that the same facts here negate probable cause to arrest Respondent. Respondent seems to argue that unless the police catch someone red-handed, or at least observe some overtly suspicious behavior, they can never arrest the passengers of a car even when an officer finds drugs, easily accessible to the occupants, secreted in the passenger compartment. Under Respondent's approach, presumably it would make no difference whether there was one or three persons in the car, so long as the officer observes no furtive movements or "gestures indicative of criminal conduct." Granted, if Respondent had been arrested merely because he was a passenger in a taxi after the driver was arrested for possession of drugs found in the glove compartment, such an arrest, absent more, would be illegal. Here, however, Respondent was not arrested based on his "mere propinquity to others independently suspected of criminal activity." *Ybarra*, 444 U.S. at 91. Rather, he was as intimately and equally connected to the drugs and cash that precipitated the arrest as were the car's other occupants.

Neither can this Court's decision in *United States v. Di Re*, 332 U.S. 581 (1948), provide Respondent any solace. Resp. Br. at 13-18. The facts of *Di Re* are quite different from those here. Pet. Br. at 24-25. There, a government informant directly implicated the driver, and only the driver. 332 U.S. at 583. There was no evidence implicating Di Re or even showing that he was present in the car at the time of the illegal transaction. *Id.* at 593-94. Even if Di Re had witnessed the transfer of the counterfeit coupons, the crime "does not necessarily involve any act visibly criminal." *Id.* at 593.

A far different situation existed here. This case does not involve a government informant who was present and knew which person or persons had put the money and drugs in the car. Nor was there articulated evidence specifically negating the culpability of Respondent. Respondent and the other two occupants of the car were quite capable of jointly and

constructively possessing the cocaine, a crime that is "visibly criminal." Indeed, recognizing the peculiar facts of *Di Re*, the Court specifically stated that in other circumstances an inference could be drawn that a person who accompanies others to a criminal enterprise is not an innocent bystander. *Id.* at 593-94.

Moreover, *Di Re* was decided long before this Court's more recent decisions establishing that an inference can be drawn that passengers traveling together in a car are engaged in a common enterprise, and that the discovery of contraband justifies an inference of joint culpability. *See Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999); *Maryland v. Wilson*, 519 U.S. 408, 413-14 (1997); *County Court of Ulster County v. Allen*, 442 U.S. at 143-45. Although the impact of those decisions on the continued vitality of *Di Re* is debatable, *see* Amicus U.S. Br. at 20; Amici Ohio et al. Br. at 16, its facts are so different from those of the present case that *Di Re* does not control the outcome here.[7]

C. Respondent was not subjected to a "dragnet" arrest.

In addition to theorizing that he was arrested based on his mere presence at the scene of a crime, Respondent further

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[7] In any event, it can hardly be said that *Houghton* "reaffirmed the continued vitality of *Di Re*," as Respondent contends. Resp. Br. at 27; *see* Amici ACLU et al. Br. at 28. To be sure, *Di Re* was not overruled, but was distinguished on its facts, as was *Ybarra*. *Wyoming v. Houghton,* 526 U.S. at 303. In so doing, the Court remarked that "a car passenger–unlike the unwitting tavern patron in *Ybarra*–will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id.* at 304-05. If anything, the "common enterprise" approach of cases such as *Houghton, Wilson,* and *Allen* supports Respondent's arrest and calls into question the continued efficacy of *Di Re*'s approach to probable cause.

contends he was the victim of an illegal "sweeping" arrest. Resp. Br. at 30-33. Respondent cites three cases: *Wong Sun v. United States*, 371 U.S. 471 (1963), *Mallory v. United States*, 354 U.S. 449 (1957), and *Johnson v. United States*, 333 U.S. 10 (1948). Resp. Br. at 18-20, 31-32. These cases do not inform the issue here. *Wong Sun* would be apposite if a fruit of the poisonous tree or attenuation question were involved, but there is none. *Mallory* would be of use if the case had anything to do with prompt presentment before a judicial officer, but it does not. *Johnson* would be most helpful if Respondent's arrest had taken place in a hotel room or a home, but the necessity of a search or arrest warrant is not implicated here in the least. To be sure, probable cause to arrest is peripherally involved in each case, but the thrust of all three decisions is directed elsewhere.

Several salient facts distinguish *Johnson* from the present case. First, the central point of *Johnson* is that officers must ordinarily obtain a warrant before entering a residence. As the Court stated: "When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent." 333 U.S. at 14. Thus, the problem with the arrest in *Johnson* was not so much one of probable cause as it was with the lack of a warrant. Indeed, at the time of the warrantless entry, "the officers were possessed of evidence which a magistrate might have found to be probable cause for issuing a search warrant." *Id.* at 13. Second, the Court did not need to reach the question of probable cause to arrest Ms. Johnson because the entry itself was illegal and, further, the government conceded the issue. *Id.* at 16. Third, prior to the illegal entry, the officer did not know who or how many people were in the room, what they were doing, and whether drugs would even be found in the room. Finally, a hotel room, house, or apartment is fundamentally different from a car, in terms of size, numbers of persons who might be present, and accessibility to hidden areas. Certainly, given these dramatically distinguishable facts, *Johnson* cannot be read to establish a rule that probable cause does not exist to

arrest multiple occupants of a car when cocaine is found in the passenger compartment of that car.

Nor does *Wong Sun* aid Respondent's argument. In that case, officers learned from an arrestee that he had bought heroin from a person known to him as "Blackie" Toy and that Toy operated a laundry somewhere on Leavenworth Street. 371 U.S. at 473. Based on this information alone, the officers arrested James Wah Toy, who operated a laundry on Leavenworth Street known as "Oye's Laundry." *Id.* at 473-74. As the Court noted, the informant's accusation "invited the officers to roam the length of Leavenworth Street (some 30 blocks)." *Id.* at 480. Toy's name was not over the door, the officers had no reason to equate "Blackie" Toy and "James Wah" Toy, and had no other information to narrow the scope of their search to this particular Toy. *Id.* at 480-81. Indeed, the Court described the information known to the officers as "no better than the wholesale or 'dragnet' search warrant, which we have condemned." *Id.* at 481 n.9.

These facts are far different from those confronting the officer who arrested Respondent. The officer knew that cocaine was in the car and that only three persons were present. Such a narrow focus was wholly lacking in *Wong Sun*, where the scant information pointed to a large universe of potential suspects. The street was 30 blocks long, the laundry's name did not bear that of Toy, and the officers had no reason to believe that Blackie was James Wah. *Id.* at 480-81. The arrest in the present case took place under totally different circumstances. The officer did not search up and down a street for some unknown person based on information provided by an arrestee. The officer lawfully stopped the vehicle for speeding and a seat belt violation. (Pet. App. 2a-3a; JA 5). The officer did not rummage through cars in a 30-block area, looking for evidence of some unknown crime; rather, the officer, after consent, searched a single car. (Pet. App. 3a; JA 10-11). Upon the discovery of cocaine packaged for distribution, the officer arrested the three occupants of that car. (Pet. App. 3a-4a; JA

14, 43).

Finally, Respondent relies upon *Mallory* for the proposition that the officer who arrested him lacked probable cause, and that he was the victim of a mass arrest for the unlawful purpose of investigating a crime. Resp. Br. at 31-32.[8] The decision in *Mallory* did not turn on the legality of the arrest, but rather on the length of time it took to bring the arrestee before a magistrate for a probable cause determination. 354 U.S. at 455. Moreover, the Court's opinion suggests that officers *had* probable cause to arrest Mallory. *Id.* ("the police had ample evidence from other sources than the petitioner for regarding the petitioner as the chief suspect"); *see* Model Code of Pre-Arraignment Procedure § 120.1 commentary at 295 n.14 (1975) (arguing that Court did not suggest arrest of Mallory was illegal). The evil decried in *Mallory* was not an arrest on less than probable cause, but the undue and unnecessary delay in bringing the arrestee before a magistrate. Thus, the Court's admonition at the conclusion of its opinion, that police may not "arrest, as it were, at large," and use the interrogation process to determine probable cause, *id.* at 456, was not directly related to the facts of the case itself. In Respondent's case, of course, the officer did not arrest "at large." The car in which Respondent was riding was not stopped along with 20 or 30 others in the area, on information that some car in the vicinity was transporting cocaine. Rather, the narrowly focused arrest came only after the officer lawfully observed drugs in the car in which Respondent was present.

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[8] Respondent also looks to *Davis v. Mississippi*, 394 U.S. 721 (1969), for comfort. Resp. Br. at 30-31. The round-up of 24 men, without warrants or probable cause, for the purpose of fingerprinting them in connection with an unsolved rape case, *Davis*, 394 U.S. at 722, has nothing in common with the situation here.

II. RESPONDENT'S PROPOSED BRIGHT-LINE RULE THAT THE OWNER OR DRIVER SHOULD ALWAYS BE ARRESTED IS ANTITHETICAL TO THIS COURT'S PROBABLE CAUSE DECISIONS.

Respondent's principal challenge throughout is that an officer must have individualized probable cause before making an arrest and, because probable cause did not focus exclusively on him, Respondent could not be arrested. Logically then, according to Respondent, no one in the car could be arrested because no one was singled out as the perpetrator. Perhaps recognizing the folly of such a position, Respondent switches gears and ultimately argues that he "would allow the police to arrest the driver/owner of the automobile as well as any passengers for whom a reasonable individualized suspicion may be inferred from the totality of the circumstances where contraband is found concealed inside the car." Resp. Br. at 35. As support, Respondent relies upon the distinction this Court drew between drivers and passengers in *Rakas v. Illinois*, 439 U.S. 128 (1978). Resp. Br. at 37-38.

This curious hybrid of a bright-line rule that drivers should always be arrested and a traditional totality of the circumstances approach is illogical and should be rejected for several reasons. First, Respondent's rule is inconsistent with the proper consideration of particularized probable cause. Pet. Br. at 27-28. This Court has "consistently eschewed bright-line rules," *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), and, with respect to probable cause to arrest, has applied a totality of the circumstances test. Pet. Br. at 15-16. To veer from that course, particularly when the rule Respondent posits defies notions of common sense and natural human behavior, is ill-advised.

Second, Respondent's rule is internally inconsistent. Respondent argues at length that the officer lacked individualized suspicion sufficient to arrest him, but then categorically presumes guilt of the driver despite no evidence of wrongdoing beyond that of Respondent himself. Why

should an officer who sees no furtive conduct on the part of anyone in the car presume the driver, but not the passenger, is aware of contraband hidden there, when all in the car have equal access to the area? And, of course, Respondent's rule does not limit the possibility that mistakes may be made, given that owners or drivers who invite others into their vehicles "do not generally search them." *County Court of Ulster County v. Allen*, 442 U.S. at 174 (Powell, J., dissenting). As a matter of common sense, a front or rear seat passenger can easily stash something behind an armrest or in the glove compartment and the driver would be none the wiser.

Finally, the doctrinal underpinning of Respondent's rule rests upon quicksand. The distinction this Court drew in *Rakas* between drivers and passengers has nothing to do with the issue of probable cause to arrest. To say, as the Court did in *Rakas*, that a driver or owner has a greater expectation of privacy in his car than does a mere passenger is one thing. 439 U.S. at 148-49. It is quite another to say, as Respondent does, that the passenger has any less access to the passenger areas of the car.[9] Indeed, passengers in the rear of a car have more, not less, access to that area than does the driver.

In sum, Respondent would have officers arrest the driver, but never the passengers, when a car is stopped and drugs and money are found under the circumstances here. Respondent's rule, not Petitioner's, countenances "a police practice that foreseeably *increases* the number of mistakes," Resp. Br. at 34, as it would have in Respondent's case. Respondent's rule, as well, misapprehends the nature of probable cause. The standard for probable cause is not a sufficiency of evidence standard. Rather, an officer need only make a reasonable judgment about the fair probability of criminal activity. Here, Officer Snyder

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[9] Similarly, in *Rawlings v. Kentucky*, 448 U.S. 98, 101 & n.1 (1980), the defendant could not challenge the search of his friend's purse because he had no legitimate expectation of privacy in it, but he certainly had access to it when he placed his drugs there.

did just that when he arrested Respondent.

CONCLUSION

For the reasons stated herein, and in the State of Maryland's principal brief, the judgment of the Court of Appeals of Maryland should be reversed.

Respectfully submitted,

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