ORIGINAL

Zong B. Mua, Pro Se
#04629-046
Federal Prison Camp Nellis
C.S. 4500
North Las Vegas, Nevada
89036-4500

00-5279

Supreme Court, U.S.
FILED
JUN 26 2000
OFFICE OF THE CLERK

In re Zong B. Mua
IN THE SUPREME COURT OF THE UNITED STATES

ZONG B. MUA, PRO SE PETITIONER v. UNITED STATES RESPONDENT	MOTIONS FOR LEAVE TO FILE WRIT OF HABEAS CORPUS UNDER ARTICLE III, CONSTITUTION FOR THE UNITED STATES OF AMERICA: 28 U.S.C., § 2241 18 U.S.C., § 3231 CERTIFICATE OF SERVICE.

Now comes Zong B. Mua in his private-natural-capacity as a Sovereign-American and moves this Honorable Supreme Court by way of this action--Writ of Habeas Corpus, "...Writ of Habeas Corpus which is regarded as a suit for one's person freedom. Matter of Pacific R. Commissioner, C. C. Cal. 1887, 32 F.24.", for his immediate release from imprisonment grounded upon the Constitution for the United States, of America, Characterization of the Court, statutes of the United States, the Common Law, the Law of our Land.

I. INTRODUCTION

1) The exceptional circumstances that warrant the exercise of the Supreme Court's discretionary powers in aid of the

QUESTIONS PRESENTED

I. WAS JURISDICTION OBTAINED INITIALLY OCTOBER 8, 1994 WITH AN INVESTIGATION FOLLOWING A STOP FOR A TRAFFIC VIOLATION VIOLATIVE OF PETITIONER'S FIRST, FOURTH, AND FIFTH AMENDMENT RIGHTS WHICH LED TO DETENTION WITHOUT BENEFIT OF COUNSEL AND QUESTIONING FOR TEN (10) DAYS BY THE POLICE OF THE STATE OF MONTANA?

II. WAS THE TREATMENT OF MR. MUA, HIS INTERROGATION WHILE BEING STOPPED AND SUBSEQUENTLY, FAIR, JUST LEGAL AND LAWFUL CONSIDERING HIS DEFICIENT ENGLISH LANGUAGE SKILLS?

III. WERE THE PROCEDURES FOR THE (A) ARREST; (B) SEARCH AND SEIZURE OF MUA'S PROPERTY; AND, (C) CUSTODY DETENTION FOR TEN (10) DAYS WITHIN THE BOUNDS OF LEGAL AND LAWFUL CONSTITUTIONAL PROTECTIONS?

IV. WAS IT WITHIN THE AUTHORITY OF DAWSON COUNTY, STATE OF MONTANA POLICE OFFICER TO DETAIN AND QUESTION MUA FOR TEN (10) DAYS AND THEN TURN PETITIONER OVER TO THE FEDERAL UNITED STATES FOR PROCECUTION? DID THE STATE OF MONTANA HAVE JURISDICTION OF MUA?

V. DID THE UNITED STATES LEGALLY AND LAWFULLY HAVE JURISDICTION OF THIS ISSUE GIVEN THE LACK OF OWNERSHIP/TITLE OF PROPERTY UNDER WHICH THE COURT HOUSE EXISTS, LACK OF CESSION OF LAND BY THE STATE OF MONTANA, AND ACCEPTANCE OF SAID LAND BY THE CONGRESS OF THE UNITED STATES? CAN THE COURT SUSTAIN A FELONY CONVICTION FOR DRUGS WITHOUT JURISDICTION?

Zong B. Mua, Pro Se
#04629-046
Nellis Federal Prison Camp
C.S. 4500
North Las Vegas, Nevada
89036-4500

In Propria Persona

IN THE SUPREME COURT OF THE UNITED STATES

ZONG B. MUA, Pro Se PETITIONER v. UNITED STATES RESPONDENT	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF WRIT OF HABEAS CORPUS UNDER ARTICLE III, CONSTITUTION FOR THE UNITED STATES OF AMERICA: 28 U.S.C., SECTION 2241.

FACTS

On Saturday, October 8, 1994, at approximately 7:20 P.M., Defendant was driving east on I-94 near Glendive, Montana. At the same time, Dawson County Sheriff's Deputy Wally peter was heading west on I-94. Noticing the Defendant's vehicle, Deputy Peter activated his radar. Apparently, the radar indicated that Defendant was traveling at 77 m.p.h. Deputy Peter activated his patrol lights, crossed the median, and stopped defendant near the Whoopup Creek Exit on east I-94.

Deputy peter asked for and received the defendant's license and the rental agreement for the car he was driving. Deputy Peter returned to his car ran a check on Defendant's Washington Driver's license and was informed that there were no warrant or record on the Defendant.

Deputy Peter then discovered that he did not have a citation book with him and, accordingly, could not issue defendant a traffic ticket. Deputy Peter appears to have then returned to Mr. Mua's vehicle and commenced a conversation with him. Deputy Peter reports that he then asked Mr. Mua from where he was coming and engaged him in conversation while he visually inspected the interior of the car.

Deputy Peter then asked Mr. Mua if he were carrying any weapons or drugs. After denying the same several times because he did not understand the questioning, Mr. Mua apparently advised the officer that he had a gun. Mr. Mua then was told to get out of the car and instructed to go to the rear of his car and remain there. Deputy Peter then asked where the gun was. Mr. Mua informed Deputy Peter that the gun was in the duffel bag on the floor of passenger side. Deputy Peter then opened the passenger-side door and removed it. Deputy Peter also searched under the front seat and in the glove box at that time. The Deputy also seized Mr. Mua's drive's license again. He then detained Mr. Mua while he ran a check on the gun to determine if it was stolen. That check turned up negative. He again asked dispatch to run a record on Mr. Mua. No record was found.

Deputy Peter then searched the inside of Mr. Mua's vehicle, and said he obtained the voluntary consent of Mr. Mua for that search. Mr. Mua contradicts that, since he did not understand English very well. One of the items removed from the car was locked briefcase.

Deputy Peter asked Mr. Mua to open the briefcase. Mr. Mua thought he had to, and could not and indicated to Deputy Peter that he did not know how to open the briefcase. Deputy Peter then searched the trunk of the car and Mr. Mua's suitcase finding nothing.

Deputy Peter then called Deputy County Attorney Fred Unmack and explained the situation to him. Following that conversation, Deputy Peter told Mr. Mua that he was "very concerned about what may be inside the briefcase." Deputy Peter then retrieved a tire iron from his car and through words and actions instructed Mr. Mua to break the lock on the briefcase. Mr. Mua did so without protest or understanding. Inside the briefcase, Deputy Peter discovered a white plastic sack which appeared to contain narcotics. Mr. Mua was then handcuffed and placed in the rear seat of the patrol car. Mr. Mua did not understand what was taking place fully.

Deputy Peter transported Mr. Mua to the Dawson County Sheriff's office where he was held in custody without being booked. Deputy County Attorney Unmack, following which he and officer Benson interviewed the defendant. During that interview, the defendant made statements which he clearly did not know the significance or nor understood. The interview was tape recorded and transcribed. A reading of the transcript shows that the Defendant had no significant understanding of what was happening or what his rights were. Near the beginning of the interview, the following exchange takes place:

Deputy Peter: "You obviously can't communicate real well in English but you do understand it. Is that right? Okay. So, just put um, that you understand English, uh if you do."

Mr. Mua: "Um, when . . . you know, when we talk uh, slow uh, we talk . . ."

Deputy Peter: "How would you describe as to how you understand it? Is it pretty good, or . . . ".

Mr. Mua: "No. It's kind of uh . . . if I say pretty good then uh, that mean, I can understand everything, right?"

Deputy Peter: "Not necessarily. Okay. That'd be fine. I can understand some . . . [unintelligible]. Okay, how do you spell you name again? Zong?"

Even though it was apparent that Mr. Mua did not understand English well enough to protect himself or to voluntarily waive his rights, the Sheriff's Deputy went forward with a lengthy interview.

The same process was followed on the next day when Mr. Mua was interviewed by Agents Ross Magnuson and Ray G. Malley of the Montana Narcotics Investigation Bureau. Again, a review of the transcript shows great difficulty in communication and that Mr. Mua does not really, substantially , understand the English language.

A. THE SEARCH WAS IN VIOLATION OF THE FIRST AMENDMENT RIGHT TO NOT SPEAK, THE RIGHT TO PRIVACY, THE RIGHT TO NOT BE A WITNESS AGAINST ONESELF.

The initial stop by Deputy Peter and the requirement that Mr. Mua show his driver's license and registration were lawful and necessary. So was the officer's request for an NCIC check on the Defendant and his vehicle. See United States v. Recalde, 761 F2d 1448, 1455 (10th Cir. 1985).

The continued detention of Mr. Mua at the roadside cannot be justified, however, and is a infringement of Mua's First, Fourth and Fifth Amendment rights.

After the NCIC check showed no information on the Defendant, Deputy Peter returned to Mr. Mua's vehicle and told him he would give him only a warning. He then handed Mr. Mua's his driver's license. Rather than allowing Mr. Mua to proceed, however, Deputy Peter continued questioning him. The deputy's own report sets forth his reasons and hear setting forth verbatim:

> I then returned to the car and spoke with Mua. I informed him I didn't have any tickets with me and I would have to let him go but he would need to slow down. I then returned his driver's license and rental agreement to him. I then asked Mua about the nature of his trip. At first he hesitated and then said he was going to Michigan to see his mother as she was not feeling well. I commented to him about the expense of the trip as the rental agreement appear to indicate a fee of $650.00 for the use of the car. I then asked him where he was coming from. He said he was driving from Seattle and was going to Michigan. The more I talked with Mua it appeared he became more nervous. I observed an opened duffel bag on the floor in the front and maps spread out on the front passenger seat. There was some fast food wrappers scattered around inside the car. There was also a briefcase on the floor in the back seat area. Everything I saw was consistent with the training and experience I have received indicating I may be dealing with someone transporting illegal narcotics. [Emphasis supplied].

(Investigative report of Deputy Wally Peter, p. 2). Deputy Peter then asked Mr. Mua several times whether or not he was carrying any guns or drugs. At first, Mua indicated that he was carrying neither. Deputy Peter asked the question over and over. When Mua indicated that he did have a pistol in the car, Deputy Peter removed Mua from the vehicle and had him stand at the back of the vehicle.

Deputy Peter also at that time again took possession of Mr. Mua's driver's license. Deputy Peter then searched the inside of the car and recovered the pistol. He then ran an NCIC check on the pistol which turned out negative. He then asked for permission to search the vehicle and, in fact, did search the vehicle, its contents, Defendant's suitcases, and Defendant's briefcase. After Deputy Peter discovered what he believed to be narcotics in Defendant's briefcase, he handcuffed Defendant.

After the reason for the initial traffic stop, i.e., speeding, was concluded, the officer had no legal right to further detain Mr. Mua absent a showing based upon the facts then evident to him that he had an "objectively reasonable suspicion" justifying the continued seizure and detention of Mr. Mua. See, United States v. Daniel, 804 F.Supp. 1330, 1334 (D. Nev. 1992); United States v. Sharpe, 470 U.S. 675, 105 s.Ct. 1568, 84 L.Ed.2d 605, 613 (1985). Here, there is nothing which would give rise to any particularized suspicion of criminal activity. The items mentioned by Deputy Peter in his report are all innocent and show Mua's lack of knowledge of speak English. One suspects that every member of the bar, both prosecutorial and defense, as well as members of the judiciary, have at one time or another traveled in the same manner as Mr. Mua. Hanging one's sport coat on a hanger in the back seat is not unusual or suspicious. The use of roadmaps while driving in an unfamiliar area is also not suspicious. Having fast food wrappers scattered on the floor may be evidence of sloppiness, but it certainly is not evidence of criminal behavior.

> Law enforcement must obey the requirements of the Fourth Amendment when performing their duties. We place particular emphasis on the Fourth Amendment "concern that evidence not be obtained by exploitation of illegal police conduct."

18 F.3d at 882-883.

Those factors apply equally to this case. There was no break in the illegal detention of Mr. Mua and any consent obtained in tainted and the evidence thus discovered illegal whether or not the consent was otherwise voluntary, or even understood by Mua. This Court has no choice but to issue its order for WRite of Habeas Corpus.

B. DEPENDANT'S CONSENT WAS NOT VOLUNTARY, NOR UNDERSTOOD AND IS A FIRST AMENDMENT VIOLATION, AND THEREFORE FOURTH AMENDMENT AND FIFTH AMENDMENT VIOLATION.

The Fourth Amendment to the United States Constitution protects the citizens of this country against "unreasonable searches and seizures" and provides that no search warrant shall issue "but upon probable cause." As noted by the United States Supreme Court:

> **Thus, themost basic Constitutional rule in this area is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, area per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions."**

Coolidge v. New Hamphsire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564, 576 (1971). One of the well-established exceptions to the warrant and probable cause requirement is a search conducted pursuant to consent. consent can be a waiver of both the search warrant and probable cause, but not without understanding. Consent affords both knowledge and understanding.

Under those circumstances, no doubt exists but that whatever consent was obtained was not voluntary and, thus, the search was unlawful and the evidence must be suppressed.

C. INFRINGEMENT OF FIRST AMENDMENT DUE TO LANGUAGE BARRIERS.

Following the illegal detention and search of Defendant's vehicle, he was transported in handcuffs to the Dawson County Sheriff's Department in Glendive. He was thereafter interrogated by Dawson County Deputy Wally Peter and a Fish & Game officer. Although his **Miranda** warnings were given, the transcripts and tape recordings indicate that Mr. Mua did not, in fact, understand his rights. Furthermore, the statements given by Mr. Mua are directly linked to the prior illegality and are "fruit of the poisonous tree." **Wong Sun v. United States,** 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed2d 441 (1963).

Second, even though Mr. Mua was provided with the **Miranda** warnings prior to each of the statements, a review of the circumstances surrounding those statements indicates that his supposed waiver of his rights was not voluntary. **In Moran v. Burbine,** 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410, 421 (1986), the United States Supreme Court noted that there were two elements of any inquiry into whether or not the defendant had voluntarily waived his **miranda rights:**

> First, the relinguishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waive must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation"

VIII.

CONCISE ARGUMENT

Mr. Mua was stopped at about 7:20 P.M., October 8, 1994 by Officer Peter of the Dawson County Sheriff's Department for apparently speeding. Officer Peter requested Mr. Mua's drivers license and registration/proof of insurance at the stop. Mr. Mua complied with the request producing all documents necessary. Officer Peter ran routine traffic checks and all documents were in order.

Officer Peter returned the documents to Mr. Mua indicating he would not issue a traffic citation but only offer a warning. Officer Peter then leaned on the door with his elbow at face level of Mr. Mua, and began looking into the front and back of Mr. Mua's rented automobile. Officer Peter's face breaking the plane of the driver's side window, at which Mr. Mua had to move his head away from the open drive's side window, Officer Peter began questioning Mr. Mua about his travels.

This behavior was clearly beyond the bounds of Officer Peter's authority and was strictly admonished in **U.S. v. Kim, 25 F.3d 1426,** where in the court said, "We are mindful that police interrogation of automobile occupants typically involves a greater degree of intrusiveness than questioning of pedestrians and thus more readily impinges on the Fourth Amendment. **Mendenhall, 446 U.S. at 556-57, 100 S.Ct. at 1877-79."** The court further said at page 1430 that, "Questioning by law enforcement officers constitutes an investigatory stop only if ,

"in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." '...64 **L.Ed.2d 497 (1980) (plurality).**" The initial traffic stop being complete, Officer Peter began an investigation, an interrogation without probable cause/foundation.

Mr. Mua answered Officer Peter's questions as best he could in broken English. Mr. Mua did this out of respect and for the fact that Officer Peter was an officer of the law that was accorded unquestionable authority due to Mr. Mua's training as an officer in the Laotian Army, which assisted the United States during the war in Vietnam.

Mr. Mua had not been told by Officer Peter that he was free to be on his way after the traffic stop, warning, and return of documents. Mr. Mua had no understanding that he could go or even begin to question Officer Peter as to whether he could leave, nor was he able to formulate the question in English sufficient to be respectful of the authority figure present at his window. Mr. Mua felt compelled to speak with Officer Peter due to Officer Peter's domineering physical presence while leaning on the door of Mr. Mua's car. Mr. Mua also noted that Officer Peter was armed.

Officer Peter asked several times, after his initial question about Mr. Mua's travels, whether Mr. Mua had "...any guns or drugs." Mr. Mua could not clearly understand the questioning of Officer Peter. The third time Officer peter phrased the question about guns or drugs, Mr. Mua said he was in possession of a gun.

Mua was asked, in an abrupt fashion, to get out the car. Mr. Mua was immediately pat-searched and then instructed to step between the patrol car and Mr. Mua's. Officer Peter began to look for the gun. He found it in a duffel bag which was on the floor of the passenger side while also searching other areas of the car. Officer Peter had been informed by Mr. Mua of the location of the gun before the search.

Officer Peter ran a check on the seized property (gun) and all was in order regarding the legal specifics of gun ownership by Mr. Mua. After the gun check and clearance, however, Officer Peter continued his illegal search of Mr. Mua's vehicle without obtaining permission from Mr. Mua, nor warning Mr. Mua of any of his rights or that he was under arrest.

A briefcase was located by Officer Peter and Mr. Mua was instructed to open it. Mr. Mua was coerced by Officer Peter and the circumstances to comply with said instructions. The briefcase was then opened by Mr. Mua with a tire iron that Officer Peter had retrieved from the trunk of Mr. Mua's car for the occasion. Mr. Mua did not consent to this search either, nor any of the seizures, and surly did not understand the nature of this roadside investigation and interrogations due to Mr. Mua's deficient English Language skills. Mr. Mua clearly was intimidated by the insistence and presence of Officer Peter.

The subsequent events from the initial traffic stop through the ten (10) day detention in Glendive Jail, the United States' indictment, pre-trial hearings with incompetent translators and

counsel with ensuing trial and conviction, were in offense of all good care and diligence regarding Mr. Mua's rights guaranteed and protected in our country by the Constitution for the United States of America and our Bill of Rights.

No logic, reason, or rationale can justify the abuse of power by Officer Peter and the subsequent blatant disrespect, disregard, and infringement of Mr. Mua's rights. Mr. Mua was convicted and has spent five plus (5+ yrs.) years in prison to date.

Very much on point in this case is the Ninth Circuit's decision in **U.S. v. Chan-Jimenez, CR-95-00542-WDB,** argued and submitted August 8, 1997, San Francisco, California, before B. Fletcher, R. Boochever, and S. Reinhardt, Circuit Judges. The conclusion here in the Ninth Circuit, and should also have been in this case, was: "Officer Price's (Officer Peter's) search of Chan-Jimenez's truck (Mr. Mua's rented automobile) was not supported by either probable cause or valid consent. The fruits of the illegal search should have been excluded, and the district court therefore erred in denying the motion to suppress." (Emphasis and Editorial inserts added by author).

Mr. Mua's issue is distinctly similar, yet with another more compelling element, that of forceful detention at roadside at night, with interrogation by a Montana Police Officer in full knowledge of Mr. Mua's inability to speak--and most importantly comprehend--the English Language. The record will show that Mr. Mua was also found by Officer Peter to not be able to write or read the English Language, further compounding the infringement of Mr. Mua's rights.

Mr. Mua was detained by **"SILENT FORCE:"** (1) the presence of Officer Peter boldly perched on Mr. Mua's car window; (2) the darkness, a cold gusty wind in Mr. Mua's face, punctuated by the flashing red lights of the patrol car and Officer Peter's large flashlight; (3) the intimidating presence of a weapon on Officer Peter's hip belt; (4) a strange face (Officer Peter's) in Mr. Mua's face; (5) questions which Mr. Mua did not fully clearly understand given the conditions and the accent of a Montana Police Officer, Officer Peter; and, (6) Mr. Mua's past experience in the Vietnam War as a freedom fighter for the United States with Mr. Mua's enate oriental respect for authority and compliance with an American in uniform, a traditional authority figure.

Clearly, Officer Peter had no probable cause or foundation for suspicion for his questions or search; and, clearly, Mr. Mua gave no consent at any time to engage in a conversation with Officer Peter, or a search of his car, for he did not understand the language, nor did Mr. Mua comprehend the import of the investigation taking place sans his consent.

This detention--illegal, unlawful as the record reveals--and resultant conviction, infringes JUSTICE in Mr. Mua's case and sorely affects the fairness, the public reputation and integrity of our judicial system and proceedings in America!

Therefore, the Writ of Habeas Corpus should be so ordered by this Honorable Supreme Court as requested by Mr. Mua, and Mr. Mua be **SET FREE!**