

No. 08-31958

IN THE SUPREME COURT OF THE UNITED STATES

February Term, 2009

Rushmore County, Craven, Police Department,

Petitioner,

v.

William R. Tracey,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BRIEF FOR THE PETITIONER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution reads:

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.

The pertinent portion of the Fourteenth Amendment to the United States Constitution reads:

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Craven Statute § 19-166.81 (relevant provisions):

It is a violation of statute to be in possession of a concealed firearm.

Craven Statute § 11-198.01 (relevant provisions):

It is a violation of statute to commit adultery.

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I. QUESTIONS PRESENTED

1. Under Fourth Amendment Jurisprudence, is a police officer, acting under reasonable suspicion that a suspect may be involved in a comprehensive paramilitary illegal gun distribution operation, permitted to slightly move the suspects winter coat when the suspect becomes visibly agitated and uncooperative, including berating the officer and trying to leave the scene on multiple occasions, when asked simple investigatory questions such as his name?
2. Is terminating a police officer for violating a state law against adultery prohibited by the Substantive Due Process Clause of the Fourteenth Amendment of the United States Constitution when the person with whom he engaged in extramarital sex with was his direct supervisor's estranged daughter, who had a history of publicizing false allegations against the officer's department, and when the termination occurred while the terminated officer was working undercover on an illegal arms dealing investigation?