NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

MARKUS DAVIS, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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

JONATHAN D. BYRNE
ASSISTANT FEDERAL PUBLIC DEFENDER
Office of the Federal Public Defender, Southern District of West Virginia
Room 3400, Robert C. Byrd Federal Courthouse
300 Virginia Street, East
Charleston, West Virginia 25301
Telephone: 304/347-3350
Counsel for Petitioner

CHRISTIAN M. CAPECE
FEDERAL PUBLIC DEFENDER

GEORGE H. LANCASTER, JR.
ASSISTANT FEDERAL PUBLIC DEFENDER

I. QUESTION PRESENTED FOR REVIEW

Whether factors based largely on prior incidents, some years old, can provide a police officer with the reasonable suspicion the Fourth Amendment requires to pat down a driver following a traffic stop.

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IV. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *United States v. Davis*, ___ F.App'x ___, 2018 WL 3546905 (4th Cir. 2018), is an unpublished opinion and is attached to this Petition as Appendix A. The basis of the issue presented in this Petition was presented to the district court during a pretrial motions hearing on a motion to suppress. The memorandum opinion and order denying Davis' motion to suppress is attached to this Petition as Appendix B. The final judgment order of the district court is unreported and is attached to this Petition as Appendix C.

V. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on July 24, 2018. This Petition is filed within 90 days of the date the court's judgment. No petition for rehearing was filed. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VI. STATUTES AND REGULATIONS INVOLVED

The issue in this Petition requires interpretation and application of the Fourth Amendment to the United States Constitution, which provides:

> 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

VII. STATEMENT OF THE CASE

A. Federal Jurisdiction

This Petition arises from the prosecution of Markus Davis ("Davis") for being a felon in possession of a firearm. On March 1, 2017, a criminal complaint was filed in the Southern District of West Virginia charging Davis with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). J.A 7-10.[1] An indictment charging the same offense was returned on March 7, 2017. J.A. 11-12. Because that charge constitutes an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the final judgment and sentence imposed after Davis was convicted on the count charged in the indictment. A judgment and commitment order was entered on December 1, 2017. J.A. 165-171. Davis filed a timely notice of appeal on December 15, 2017. J.A. 172. The United States Court of Appeals for the Fourth Circuit had jurisdiction to review this matter pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

B. Facts Pertinent to the Issue Presented

This case arises from a traffic stop in Charleston, West Virginia, during which a firearm was recovered from Davis. The stop and search were based not only on what happened at that time, but on reports of criminal activity from the night before and conduct of Davis that took place years earlier. The firearm recovered from Davis

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[1] "J.A." refers to the Joint Appendix that was filed with the Fourth Circuit in this appeal.

formed the basis of the indictment and was the only evidence supporting his plea and conviction.

1. The day after a report of firearm brandishing, an officer stops Davis and seizes a firearm from him.

About 12:30 a.m. on February 21, 2017, someone called 911 to report an incident involving the brandishing of a firearm. J.A. 74-75, 137. The caller, who referred to himself as "Troy Smith," told a dispatcher that a man and two women drove past him in a maroon Chevrolet Caprice while displaying firearms and "talking about shooting people." J.A. 137. He then called back, this time referring to himself as "Tony," to inform the dispatcher that the car had returned and driven through the area again. The dispatcher asked if "Troy/Tony" would be willing to talk to an officer, to which he responded that they could send an officer if they wanted. An officer arrived and talked to the caller, who identified himself as Leandre London. London told the officer that the car looked like "an old cop car," that he spoke with the driver, and that one of the women "threatened him with a .22 caliber handgun." *Id.* London provided the officer with a signed statement. *Id.*

Early the next morning, February 22, 2017, Charleston Police Sergeant S.M. Webb ("Webb") was on patrol in downtown Charleston when he saw a maroon Chevrolet Caprice. J.A. 137. Aware of the incident the previous night and of the description of the vehicle involved, Webb began following it. J.A. 137-138. In conversation with the police dispatcher, Webb said that he was "looking for a reason

to stop here" about four blocks after he began following the car. J.A. 173. Webb also reported the license plate number and learned that the car, a 1994 Chevrolet Caprice, was registered to Davis and Katrina Artis. Another officer then reported that both Davis and Artis had "been in federal prison on firearm charges." J.A. 138. The car eventually pulled over and parked on the side of the road. Webb pulled in behind and turned the lights of his cruiser on. *Id.*

Davis opened the door and began to get out of the car, but Webb directed him to remain in the car. Davis complied. J.A. 138. While Webb was still in his car, another officer, McMaster, arrived, driving the wrong way down a one-way street, and blocked Davis in. J.A. 138-139. Webb and McMaster then made their way to the driver's window to talk with Davis. Davis offered his driver's license and vehicle registration, but Webb did not take them. Instead, Webb asked Davis to get out of the car. Davis refused, questioning why he had to and complained that Webb's purported reason for the stop – that Davis was not wearing his seatbelt – was not sufficient to justify such an order. Webb explained that, based on Davis' prior history of possessing weapons, he intended to pat him down to see if he was armed. Davis denied having any weapons. J.A. 139.

After several minutes of talking with Webb, Davis got out of his car. As he was turning to put his hands on top of the car, as Webb instructed, Webb "perceived that he was reaching down in his waist area." J.A. 139. Webb, McMaster, and Barnette, a third officer who had arrived on the scene, took Davis to the ground, put him in

handcuffs, and placed him under arrest. *Id.* A search of Davis then uncovered a .45 caliber pistol. J.A. 139-140.

2. Davis moves to suppress the firearm.

After the discovery of the firearm, Davis was charged (first in a complaint, then in an indictment) with being a felon in possession of a firearm. J.A. 7-12. Davis filed a motion to suppress, in which he argued that the seizure and search of him violated the Fourth Amendment. J.A. 13-16. The Government countered that the stop itself was lawful and that the search was based on reasonable suspicion that Davis was armed and dangerous. J.A. 17-25.

A hearing on the motion to suppress was held on June 5, 2017. J.A. 53-135. The sole witness to testify was Webb. J.A. 58-103. A 19-year police veteran, he explained that the night before the stop of Davis he heard, via radio, reports of "a brandishing call" involving a maroon "old-style police car." J.A. 58-60. He testified that such a car is "not at all" typical in Charleston. J.A. 60. Early the next morning, February 22, Webb saw a car that matched that description and began to follow it. J.A. 61. He was "looking for reasonable suspicion to stop it" and testified that "at some point, I noticed that the driver . . . was not wearing a seatbelt." J.A. 62. He was able to do this, he explained, because passing street lights "silhouetted . . . the driver's body and I could plainly see that he wasn't wearing a seatbelt." *Id.* When the district court later stated that "I don't really see how you can tell from the video that he's not wearing a seatbelt," Webb explained that "[y]ou don't do that on a daily basis,

respectively, sir." J.A. 96. Webb also explained of his observation that "obviously, it was after the point where I said I was looking for reasonable suspicion to stop." J.A. 97.

As to the interactions with Davis himself, Webb testified that he was "not complying with my demands to ask him to step out of the vehicle" and "he kept reaching for something over on the passenger side area." J.A. 69. Davis was not "keeping his hands up to where [Webb] could see them." *Id.* Webb told Davis to get out of the car "[m]any, many, many, many times" before he got out. J.A. 99. When Davis did get out of the car, Webb testified that he "started to put his hands up on the car" as instructed, "but then he was pulling his hands back towards his waist area and, at some point, he started to turn on me, on us." J.A. 70. After Davis was taken to the ground, he was put under arrest "for resisting and obstructing" for not complying with Webb's commands. *Id.* It was after that point that the firearm was recovered. J.A. 71.[2]

Webb also testified that he had a prior interaction with Davis. Approximately seven years earlier, Webb had been at the police station when other officers were trying to strip search Davis, whom they suspected was hiding drugs. Davis, Webb explained, "resisted the strip search" and "started fighting with us, and it took about three or four of us to get him back into cuffs." J.A. 65.

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[2] During Webb's testimony the parties introduced videos of the stop and the officers' interaction with Davis taken from their patrol cars, as well as recordings of the radio traffic before and during the stop. J.A. 67, 96, 173.

On cross examination, Webb admitted that he did not tell any of the other officers on the scene, or anyone via radio, that he made the traffic stop on the basis of Davis not wearing a seatbelt. J.A. 90. He also admitted that he did not ask Davis for his driver's license and registration, as would normally be the case for a traffic stop. J.A. 101-102. Going over the video in detail, Webb said that before Davis was taken to the ground it "felt like" he was "reaching for his waist," but admitted that he was "shoving [Davis] up into the car." J.A. 93. Davis was "already pushed up against the car" when "it felt like he was turning on us." J.A. 94.

The district court denied Davis' motion to suppress in a written opinion and order. J.A. 136-152. First, the district court concluded that Davis was the subject of a lawful traffic stop. The district court found Webb's testimony that he was able to see that Davis was not wearing his seatbelt "credible, particularly as the dashboard camera video from [Webb's] cruiser shows several instances where [Davis] was clearly silhouetted by lights on the street and no seatbelt is visible." J.A. 143. Therefore, "because the evidence supports the Government's claim that Sgt. Web observed that [Davis] was not wearing his seatbelt," he had justification for the stop based on probable cause of a traffic violation. J.A. 143-144. In addition, the district court concluded that any delay in effectuating the traffic stop was due to Davis' refusal to comply with Webb's request to get out of his car. J.A. 144-145.

Second, the district court concluded that there was no Fourth Amendment violation with the search of Davis' person that uncovered the firearm. J.A. 145-152.

The district court concluded that three factors combined to provide Webb with the reasonable suspicion that Davis was armed and dangerous and could be subject to a patdown.[3] First, the district court held that Davis' prior criminal record, while not sufficient on its own to justify the patdown, played into the calculus. Thus "knowledge that [Davis] had a firearm conviction, coupled with his personal experience with [Davis], strongly supports [Webb's] belief that [Davis] may have been armed and dangerous." J.A. 148. Second, the district court concluded that Davis' behavior during the stop "offers some support for Sgt. Webb's reasonable suspicion" that he may have been armed and dangerous. J.A. 149. Finally, the district court concluded that the information about the previous night's incident and that Davis' "car was similar to the description of the vehicle" involved "was an appropriate consideration in Sgt. Webb's reasonable suspicion that [Davis] may have been armed and dangerous." J.A. 151. The district court concluded that while "any of the factors standing alone may have been insufficient, taken together they support a finding that Sgt. Webb's suspicion that [Davis] may have been armed was reasonable." J.A. 151-152.

3. Davis pleads guilty and is sentenced.

Following the denial of his motion to suppress, Davis entered into a plea agreement with the Government in which he agreed to plead guilty to the charge in the indictment. J.A. 154-162. As part of the plea agreement, Davis retained his right

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[3] Because the district court concluded Webb had reasonable suspicion to justify the patdown, it was "unnecessary to decide if the search was also valid as a search incident to arrest." J.A. 146, fn. 9.

to appeal the district court's denial of his motion to suppress. J.A. 158. Davis entered his guilty plea on August 2, 2017. J.A. 163-164. On November 27, 2017, he was sentenced to 57 months in prison, to be followed by a three-year term of supervised release. J.A. 166-167.

4. The Fourth Circuit affirms the district court's denial of Davis' motion to suppress.

On appeal, Davis raised two issues related to his motion to suppress. First, he argued that the district court clearly erred by concluding that Webb had probable cause to stop him for a seatbelt violation. Second, he argued that the facts that presented themselves as the traffic stop developed were not sufficient to create reasonable suspicion that Davis was armed and dangerous. Therefore, Webb had no basis for patting him down and discovering the firearm.

The Fourth Circuit rejected both arguments in an unpublished opinion. *United States v. Davis*, ___ F.App'x ___, 2018 WL 3546905 (4th Cir. 2018). As to the stop itself, the court noted that while Webb might have had an "ulterior motive" for the stop, after "examining Webb's testimony and the video footage . . . we are unconvinced that the district court clearly erred in crediting Webb's assertion that he could see that Davis was not wearing a seatbelt." *Id.* at *2. As to whether there was reasonable suspicion to justify Webb's patdown of Davis, the court held that there was, based on (1) Davis' prior firearm offense, which was "probative of whether he was armed and dangerous;" (2) Webb's prior encounter with Davis where he "attempted to fight several officers" and thus "might pose a danger when approached;" (3) Davis' hand

movements in the car; and, (4) the "marked similar[ity]" between Davis' car and the vehicle involved in the brandishing incident the night before. *Id.* "Viewing the totality of the evidence," the court stated, "we conclude that Webb's patdown of Davis was supported by reasonable suspicion." *Id.*

VIII. REASON FOR GRANTING THE WRIT

This Petition should be granted to determine whether factors based largely on prior incidents, some years old, can provide a police officer with the reasonable suspicion the Fourth Amendment requires to pat down a driver following a traffic stop.

Davis was pulled over for not wearing his seatbelt. The patdown search that uncovered the firearm that was the basis for his conviction was based primarily on conduct that occurred before that traffic stop, in some instances years before. Whether such factors justify a patdown search is an important question of federal law that has not been, but should be, settled by this Court. Rules of the Supreme Court 10(c).

A. An officer must possess at least reasonable suspicion that a person is armed and dangerous before searching them. Webb lacked that suspicion when he patted down Davis.

The Constitution protects the rights of citizens "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. As one court put it, "before an officer 'places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so.'" *United States v. Powell,* 666 F.3d 180, 185 (4th Cir. 2011),

quoting *Sibron v. New York*, 392 U.S. 40, 64 (1968). That a person is subject to a lawful traffic stop does not justify any such contact. "To justify a patdown of the driver or a passenger during a traffic stop . . . the police must harbour reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Arizona v. Johnson*, 555 U.S. 323, 327 (2009).

Officers are allowed to perform a protective patdown search "when a reasonably prudent officer in similar circumstances would believe that his safety or the safety of others was in danger." *United States v. Sakyi*, 160 F.3d 164, 167 (4th Cir. 1998). In order to make such a search, an officer "must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous." *Sibron*, 392 U.S. at 64. The presence of reasonable suspicion must be determined from the totality of the circumstances, *United States v. Sokolow*, 490 U.S. 1, 8 (1989), that existed "at the time of the seizure." *United States v. Gooding*, 695 F.2d 78, 82 (4th Cir. 1982).

It is well settled that, when evaluating a police officer's interaction with a citizen under the Fourth Amendment, courts must consider the totality of the relevant circumstances. See, e.g., *District of Columbia v. Wesby*, 138 S.Ct. 577, 588 (2018)(reversing lower court determination of probable cause because it "viewed each fact in isolation, rather than as a factor in the totality of the circumstances")(internal quotation marks omitted). However, that does not mean that each factor that makes up the totality of the circumstances avoids individual scrutiny.

In *United States v. Bowman*, 884 F.3d 200, 2018 WL 1093942 (4th Cir. 2018), the court examined a traffic stop that extended into a drug investigation, complete with the appearance of a drug sniffing dog. Bowman moved to suppress the drugs found during a search of the vehicle, but the district court denied the motion. *Id.* at 205-208. It did so after examining the "totality of the circumstances." *Id.* at 208. The Fourth Circuit reversed, ultimately concluding that the totality of the circumstances did not support the conclusion that the police officer had reasonable suspicion to extend the traffic stop. *Id.* at 218-219. Before it did so, however, the court engaged in a lengthy examination of each of the particular factors the district court had found the officer relied upon to generate reasonable suspicion. *Id.* at 212-218. That was because "in considering whether the factors articulated by a police officer amount to reasonable suspicion, this court 'will separately address each of these factors before evaluating them together with the other circumstances of the traffic stop.'" *Id.* at 214, quoting *United States v. Powell*, 666 F.3d 180, 187–88 (4th Cir. 2011).

Close examination of each factor is particularly important in cases like this one, where the district court concluded that any of the factors upon which the officer relied to justify a search did not, on their own, give rise to reasonable suspicion. J.A. 151-152. The Fourth Circuit identified four factors that it concluded, when considered in their totality, gave Webb reasonable suspicion that Davis was armed and dangerous. *Davis*, 2018 WL 3546905 at *2. An examination of those factors shows

that, even when taken together, they do not suggest that Davis was armed and dangerous.

The first two factors identified by the Fourth Circuit involved Davis' prior history. J.A. 147-148. One part of that history was Davis' prior conviction for being a felon in possession of a firearm. However, a single prior conviction for illegal possession of a firearm sheds little light on whether Davis was armed and dangerous on the night Webb stopped him. Indeed, nothing in the record indicates whether Webb thought the prior conviction was ten days or ten years old. The stop happened nearly six years after Davis' prior conviction. J.A. 12. Furthermore, nothing in the other officer's report to Webb indicated the facts of the case, including whether Davis was doing anything with the gun other than merely possessing it. Furthermore, the single prior conviction is considerably less enlightening than the priors in *United States v. Spivey*, 287 F.App'x 240 (4th Cir. 2008), upon which the district court relied. J.A. 147. The defendant in *Spivey* had "multiple prior convictions involving firearms" in addition to "pending charges for shooting into a house occupied by children." *Spivey*, 287 F.App'x at 241; see also, *United States v. Amaya*, 530 F.App'x 767 (10th Cir. 2013)(prior possession relevant to reasonable suspicion where defendant was on probation for a federal firearms offense, implying that he had recently been in possession of a firearm). A single prior conviction for simple possession of a firearm does not rise to the same level.

The other part of Davis' history that the Fourth Circuit found fed into Webb's reasonable suspicion was Webb's particular prior experience with Davis. J.A. 148. The incident, which Webb "guesstimate[d]" was "seven years ago approximately," J.A. 65, involved Davis' objections to a strip search. Courts have recognized that such searches are "terrifying, demeaning, and humiliating." *Sims v. Labowitz*, 877 F.3d 171, 178 (4th Cir. 2017). It is thus not surprising that a person might try to resist one. Regardless, that Davis tried to resist a forcible search of his body seven years before Webb interacted with him on the street does not suggest he was either armed or dangerous at that time.

The third factor that the Fourth Circuit identified as supporting reasonable suspicion that Davis was armed and dangerous was "Davis' hand movements in the cabin of his vehicle," although it did not identify what those movements were or why they were suspect. *Davis*, 2018 WL 3546905 at *2. The district court found that Davis "was moving his hands around inside the vehicle, including in the passenger's side area where Sgt. Webb could not easily see them." J.A. 139. However, this was only one of many factors (discussed below) related to Davis' behavior that the district court identified as "lend[ing] some support" to a conclusion that Davis was armed and dangerous. J.A. 149. Neither the district court nor the Fourth Circuit explained why those movements led to that conclusion. Indeed, people pulled over by police frequently move their hands in their vehicle in order to procure a driver's license, registration, and other documentation to give to the officer. It is not enough for

behavior to be labeled suspicious. See, e.g., *United States v. Foster*, 634 F.3d 243, 248 (4th Cir. 2011)(cautioning against "attempts to spin these largely mundane acts into a web of deception"); *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997)(for innocent factors to lead to reasonable suspicion there must be "concrete reasons for such an interpretation"); *Bowman*, 884 F.3d at 218-219 (same). That is particularly important in a case like this, where the movement of Davis' hands are the only factor upon which the Fourth Circuit relied that involved Davis' conduct during the traffic stop itself.

The final factor that the Fourth Circuit concluded fed into Webb's reasonable suspicion that Davis was armed and dangerous was the information regarding the prior night's brandishing incidents. J.A. 149-151. As the district court put it, because "a brandishing necessarily involves a firearm" and Davis' car "was similar to the description of the vehicle involved" the brandishing incidents "support[ed] [Webb's] suspicion that [Davis] may have been armed during the traffic stop." J.A. 149. There are many flaws in that analysis. First, Davis' car matched the one involved in the incidents in only the most basic ways. There was nothing unique about the car described by the person who reported the brandishing incidents. More importantly, the caller did not provide the license plate number, which could have directly tied the vehicle to Davis. Second, the caller did not identify Davis as one of the people involved in the brandishing, even though he told police he talked to the driver. J.A. 137.

Third, and most important, is the fact that the only person who provided information about the brandishing incident is a known liar. When an officer arrived on February 21 to talk to the person who called to complain about the brandishing incidents he took a statement from Leandre London. London admitted he was the person who called 911. J.A. 80. However, the first time he called 911 he identified himself as "Troy Smith." The second time he called he identified himself as "Tony." J.A. 137. Thus, when he provided a third name (possibly his real one), London was admitting to the officer that he had lied previously.[4] Whether London's aliases require he be labeled as an anonymous tipster or not is less important than the fact that he admitted providing false information to police. Given that the information he did provide was vague, uncorroborated, and did not directly tie Davis to the brandishing, that information should carry little weight in determining whether Davis was armed and dangerous the next day.

At best, Webb might have been able to infer that Davis' car was the one involved in the brandishing incident. But that is giving Webb's instinct too much weight. Given that the report of the prior night did not definitively identify the make or model of the car, provide a license plate number, or any identification of the driver, it was more of a hunch than an inference. Courts correctly look with suspicion on hunches in the Fourth Amendment context. See, e.g., *Terry v. Ohio*, 392 U.S. 1, 22

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[4] To the extent that Webb relied on information passed on to him from other officers, that those officers knew London lied about his identity must be attributed to him. See, *United States v. Ramirez*, 473 F.3d 1026, 1032 (9th Cir. 2007).

(1968)(reasonable suspicion guards against "intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches"); *United States v. McCoy*, 513 F.3d 405, 416 (4th Cir. 2008)(Gregory, J., dissenting)(Fourth Amendment is "not a general warrant to hunt out the 'nefarious in the mundane' based on hunches, intuition, or stereotypes").

In addition, the district court identified Davis' conduct on the night of the stop, specifically his "initial resistance" to Webb's request that he exit the car, as playing into Webb's reasonable suspicion that Davis was armed and dangerous. J.A. 149. However, examination of the totality of that behavior shows that Davis' conduct was not threatening or unusual. First, Davis did not attempt to outrun or otherwise flee from Webb once Webb turned to pursue him. While Webb did not activate his emergency lights until Davis was stopped, if Webb could see Davis' silhouette due to traffic lights, Davis could see the shape of Webb's patrol car as well. Second, when Davis initially began to get out of his car when Webb initiated the stop, he complied with Webb's order to stay in the car. J.A. 138. Third, although Davis did not immediately get out of the car when Webb asked him to do so, he was not violent or confrontational in his refusal. Instead, he merely carried on a conversation with Webb about Webb's authority to order him out of the car based on a seatbelt violation. While those trained in Fourth Amendment jurisprudence know that an officer in such a situation has the authority to order someone out of a car, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), many members of the public are unaware of that precedent.

Asking "can police order you out of your car?" returns nearly 1.8 billion results on Google.[5] One defense lawyer in Chicago says it is a "question that I receive on almost a daily basis at my law firm." Kelly W. Patterson, *Know Your Rights: Can the Police Make You Get Out of Your Car?* Copblock (February 27, 2016), https://www.copblock.org/154737/know-your-rights-can-police-make-you-get-out-of-car/ (last visited October 17, 2018). The issue is contentious enough that some attorneys even get the matter wrong. Christina Strebenz, *If the Cops Pull You Over, These Are Your Rights*, Business Insider (November 22, 2013), http://www.businessinsider.com/what-rights-do-you-have-when-pulled-over-2013-11 (last visited October 17, 2018)(quoting a "New York traffic attorney and former traffic court judge" as explaining that "[y]ou have a right to stay in your car"). Given that, Davis' initial resistance to exiting his car says little about whether he was armed and dangerous.[6]

IX. CONCLUSION

For the reasons stated, the Supreme Court should grant certiorari in this case.

Date: October 22, 2018.

Respectfully submitted,

MARKUS DAVIS

By Counsel

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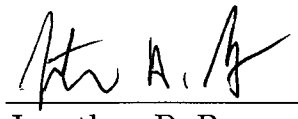
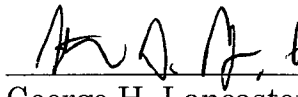
[5] Search using the quoted text at www.google.com on October 17, 2018.

[6] The district court is correct that Davis' continued resistance can play no part in the analysis because Webb had already announced his plan to perform at patdown search of Davis before that resistance took place. J.A. 139, 149.

CHRISTIAN M. CAPECE
FEDERAL PUBLIC DEFENDER



Jonathan D. Byrne
Assistant Federal Public Defender
Counsel of Record



George H. Lancaster
Assistant Federal Public Defender