NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

CLEVELAND MCDOWELL MEADOR, IV, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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

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I. QUESTION PRESENTED FOR REVIEW

Whether police officers violate the Fourth Amendment when they obtain consent to search a person's home, then keep that person outside the home, preventing them from supervising the search and limiting or withdrawing the consent initially given.

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IV. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *United States v. Meador*, ___ F.App'x ___, 2018 WL 4214247 (4th Cir. 2018), is an unpublished opinion and is attached to this Petition as Appendix A. The basis of the issue presented in this Petition was presented to the district court during a pretrial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 and ruled upon at that hearing. The relevant portion of the transcript in which Meador's motion to suppress is denied 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 September 5, 2018. This Petition is filed within 90 days of the date of 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 presented 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 Cleveland McDowell Meador, IV ("Meador") for being a felon in possession of a firearm. On June 27, 2017, an indictment was filed in the Southern District of West Virginia charging Meador with possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). J.A. 8-9.[1] 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 Meador was convicted at trial of the charge in the indictment. J.A. 183. A judgment order was entered on January 24, 2018. J.A. 222-228. Meador timely filed a notice of appeal on February 6, 2018. J.A. 229. 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 search of Meador's home during which a firearm was recovered. Meador unsuccessfully sought to suppress that firearm. After plea negotiations broke down and a conditional guilty plea was not available, Meador went

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

to trial in order to preserve his right to seek review of that decision from the Court of Appeals.

1. A gun is found in Meador's home and he is charged with being a felon in possession of it.

On October 17, 2017, a Saint Albans, West Virginia, police officer received information during a traffic stop alleging that Meador had drugs and a firearm in his home. The officer (and several others) went to Meador's home and spoke with Meador outside. Meador agreed that the officers could search his home. He remained outside while the search took place. Although no drugs were found, officers found a firearm located in an air conditioning vent. Meador admitted he was on home confinement following a conviction for third offense driving under the influence, a felony. He also told officers that he knew the firearm was in his home. J.A. 252.

As a result of the firearm recovered from his home, Meador was charged with being a felon in possession of a firearm. J.A. 8-9.

2. Meador unsuccessfully moves to suppress the firearm.

Meador filed a motion to suppress the firearm. J.A. 10-17. In it, he did not argue that the consent to search he gave was invalid, but that the actions of the police officers prevented him from effectively managing the search. By detaining him outside his home and preventing him from going back into the house, the officers short circuited his ability to revoke consent or limit its scope. J.A. 14-15. In response, the Government argued that Meador's initial consent was voluntary and that he did

not request to go back inside his home or otherwise attempt to limit the scope of the search once it began. J.A. 22-24.

A hearing on Meador's motion to suppress was held on October 5, 2017. J.A. 27-104. As the district court noted, "there doesn't seem to be any dispute that there was a valid, written, informed consent" and that the focus should be on "what happened after that." J.A. 36.

The Government presented testimony from three Saint Albans police officers. The first was Matthew Cooper ("Cooper"), the officer who received the initial tip that led the officers to Meador's door. Cooper testified about how he went to the home, spoke with Meador, and obtained his consent to search the home. J.A. 39-41. Cooper went into the home and, after finding nothing during an initial search, noticed a bucket below an "air register" which had a tab that "wasn't exactly secured as the other tab had been." J.A. 42. Cooper opened the register, removed an air filter, and discovered a firearm "up inside of that air return." J.A. 43. Cooper put the firearm on the bucket and had another officer bring Meador inside. When he saw the gun, Meador said "[t]hat doesn't look good for me, does it?" J.A. 44. Meador was arrested and taken to the police station, where he gave a statement. Cooper explained that Meador "was very honest with me" and "did admit having the gun in the home." J.A. 46. Meador also admitted he was a convicted felon. J.A. 47. Finally, Cooper testified that Meador never asked to go back in the house, nor did he tell Meador he could not go back inside the house while the search was ongoing. J.A. 48.

However, on cross examination, Cooper conceded that Meador was outside during the search and he was inside, and therefore Meador could not have asked him to go inside. J.A. 49. Cooper also testified that when Meador came out of the house he was not fully dressed. J.A. 52. He also admitted that another officer's role during the search was to "keep people outside so they didn't interfere." J.A. 54-55. Cooper also admitted that he provided false information during his grand jury testimony regarding the beginning of the investigation at Meador's home. Cooper testified before the grand jury that the tip that led him to Meador's home was from an anonymous source, when in fact the person was known to him. J.A. 56-57.

The next officer to testify was Patrick Michael Farry ("Farry"). J.A. 64-77. Farry was with Cooper while he obtained Meador's consent to search and during the eventual search of Meador's home. J.A. 65-67. However, Farry left the scene to respond to another call and, when he returned, the firearm had already been recovered. J.A. 68-69. Farry also testified that Meador did not ask if he could go back in the house and explained that he told Meador that "he could stop the search any time he wanted." J.A. 69. On cross examination, however, Farry admitted that he never wrote a report about the incident and, therefore, there was no contemporaneous record of that conversation. J.A. 71, 77.

The final officer to testify was Jared Austin ("Austin"). J.A. 78-84. Austin remained outside the home while the search was conducted. He testified that Meador never asked to go back inside the house and that he never told Meador he could not

do so. J.A. 79. However, on cross examination, Austin testified that he was on the scene for approximately 30 minutes and "I never spoke with the defendant." J.A. 80. While Meador did not speak to him, one of the other people waiting outside asked his permission to smoke a cigarette. *Id.* He explained that "[m]ost of the time someone asks a police officer for permission if they can smoke." J.A. 81. When asked, "[w]hen the police officer has them detained?, he answered, "[c]orrect." *Id.* He also agreed that his job on the scene was "[m]aking sure they don't run off inside the house[.]" J.A. 83.

Meador also testified about the day of the search. J.A. 85-96. He testified that he "argued" with Cooper "for . . . probably 15 minutes of the fact of drugs in the house" before he consented to the search. J.A. 88. He also testified that he talked to Austin and that "I figured it was going to take a while so I asked him if I could go in and get my cigarettes and a shirt." J.A. 91. Austin's response was "not until after the search is over." *Id.* Meador asked a second time and was again told he could not go back in until the search was finished. J.A. 91-92. When asked on cross examination whether he ever asked the officers to leave or tell them he did not want to talk, Meador explained that "I didn't think all that was an option." J.A. 93.

After hearing additional argument, the district court denied Meador's motion. The district court explained that "I find that the defendant in this case made an informed consent to search" and that "[a]t no time is there any evidence from the government or the defendant that he attempted to limit or stop the search." J.A. 101. To revoke a consent a person must "act clearly inconsistent with the consent or by

unambiguous statement" withdraw consent and "[n]othing like that happened here." *Id.*

3. Meador is convicted at trial of being a felon in possession of a firearm and sentenced.

Meador's trial was held on October 17, 2017. J.A. 107-173. Before the jury was selected, the district court stated that "[i]t's my understanding that, for lack of a better phrase, we're going through the motions here" and asked Meador's counsel "[w]hat's going on?" J.A. 108. Counsel explained that "[w]e would like to appeal your ruling on our pretrial motion." *Id.* The district court then directed the parties to "[p]ut on the evidence that you have that he's a felon. That ought to take about a minute." J.A. 109. "Then," the district court continued, "put on the evidence he was in possession of a firearm, if you have it. That ought to take about a minute. And if there's no opening or closing, we should be done here in about half an hour." *Id.* The district court concluded that "I don't understand this, but we'll play along." *Id.* It added that the district court "understood from speaking with the CJA panel attorney" that the "Federal Public Defender's Office was too busy to take new cases because they were short on personnel" and that it "[l]ooks like you're really jammed up this morning." *Id.* The district court concluded that "I don't appreciate this and I want you to pass that word back to" the Federal Public Defender. *Id.*

Meador's counsel went on to explain that "our real interest is in preserving the adverse pretrial motion" but that if Meador were to stipulate that he possessed the firearm "the Court of Appeals could find that it is now harmless error since we've now

given the government enough evidence to convict" and that "it puts us in a predicament." J.A. 111.[2] Counsel explained that if the Government "would offer us a conditional plea without their other waivers that are normally associated with their plea agreements, [Meador] would gladly sign it and preserve his pretrial motion." *Id.* The district court responded that what "I don't like about the situation where it's apparent to the public and to the jury and everybody that it's a waste of time essentially." *Id.*

The jury convicted Meador of the charge in the indictment. J.A. 168, 183.

A sentencing hearing for Meador was held on January 24, 2018. J.A. 199-221. The district court overruled Meador's objection that he was not to be awarded a reduction for acceptance of responsibility, because "this case is not the rare situation where the defendant has clearly demonstrated acceptance of responsibility" because he "put the government to its burden of proof at trial by requiring them to prove that he was a felon at the time of the offense of conviction." J.A. 207. The district court imposed a sentence of 24 months in prison, followed by a three-year term of supervised release. J.A. 214. The district court explained that "[w]hether or not I had granted you acceptance of responsibility, I would have imposed the same sentence." J.A. 217-218.

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[2] See, e.g., *United States v. Wolfe*, 442 F.App'x. 16, 17 (4th Cir. 2011)(where defendant stipulated to possession of firearm at trial he could not pursue denial of motion to suppress on appeal; issue was moot because even if Wolfe prevailed it "would not redress Wolfe's proffered injury").

4. The Fourth Circuit affirms Meador's conviction and sentence.

In an unpublished decision, the Fourth Circuit affirmed the denial of Meador's motion to suppress and affirmed his sentence. *United States v. Meador*, ___ F.App'x ___, 2018 WL 4214247 (4th Cir. 2018). As to the motion to suppress, the court noted that there was no dispute that Meador gave consent and never rescinded it. It also concluded that there was "no evidence that the officers caused Meador to believe that he did not have a right to stop or limit the search," noting that the officers did not use "harsh or coercive language" and that while Meador was kept outside the home he was not in handcuffs. *Id.* at *1. In addition, because the district court did not make a specific finding that Meador asked to go back in the house, "there is no evidence that Meador made any request at all regarding reentering the house." *Id.* As to the sentence, the court concluded that any error in denying Meador credit for acceptance of responsibility was harmless, because the district court stated it would have imposed the same 24-month sentence regardless of the Guideline calculation. *Id.* at *2.

VIII. REASONS FOR GRANTING THE WRIT

This Petition should be granted to determine whether police officers violate the Fourth Amendment when they obtain consent to search a person's home, preventing them from supervising the search and limiting or withdrawing the consent initially given.

Meador gave consent for police officers to search his home. Once given, he had

the right to revoke that consent entirely or limit it as he saw fit. He was unable to do so, however, because the police kept him from going inside to see what was actually happening in his home. Whether such behavior by police, depriving someone of the ability to revoke or modify their consent to search their home, violates the Fourth Amendment is an important question of Constitutional law that has not been, but should be, settled by this Court. Rules of the Supreme Court 10(c).

A. Meador was prevented from revoking or limiting the consent to search by the conduct of the officers during the search.

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. A search undertaken without a warrant based on probable cause is *per se* unreasonable, unless one of several limited exceptions apply. One of those exceptions is when a search is conducted after consent is given. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). In cases where "a prosecutor seeks to rely upon consent to justify the lawfulness of the search, he has the burden of proving that the consent was, in fact, freely and voluntarily given." *Id.* at 222. Whether consent, if given, was done so "freely and voluntarily" requires an examination of "the totality of the circumstances surrounding the consent." *United States v. Lattimore*, 87 F.3d 647, 650 (4th Cir. 1996)(*en banc*). When examining the totality of the circumstances, courts must examine both the "characteristics of the accused" as well as "the conditions under which the consent to search was given." *Lattimore*, 87 F.3d at 650.

A suspect who initially consents to a search may choose to limit or withdraw their consent at any time during the course of the search. *Florida v. Jimeno*, 500 U.S. 248, 252 (1991)("[a] suspect may of course delimit as he chooses the scope of the search to which he consents."). In other words, "the individual's power to consent to a search necessarily entails the right to withhold consent altogether, to limit the consent search in any manner, to revoke one's consent (prior to the discovery of evidence by police), and to terminate a search already in progress." *United States v. Felix*, 134 F.Supp.2d 162, 172 (D. Mass. 2001); see also, Wayne R. LaFave, *Search and Seizure: Treatise on the Fourth Amendment* § 3.10(f), n. 232 (4th ed., 2004)("[b]ecause consent may be withdrawn, it would seem that a defendant should be entitled to object to post-consent conduct of the police which, in effect, deprived the consenting party of the ability to make a withdrawal"). The ability to actually exercise such control, however, is severely curtailed when the officers conducting the search prevent someone from exercising those rights.

The Ninth Circuit confronted this issue in *United States v. McWeeney*, 454 F.3d 1030 (9th Cir. 2006). The defendants, McWeeney and Lopez, were in a car belonging to McWeeney's mother when it was stopped. McWeeney had permission to use the car, which Lopez was driving. Both of them gave consent to search the car, but the officer who made the stop waited for backup before executing the search. *Id.* at 1032. Once the search began, McWeeney and Lopez were ordered to "stand facing the front of" one of the patrol cars and "[n]either . . . was allowed to observe the search." *Id.* at

1033. When one of the men tried to look back at the car, an officer ordered him to "face forward and stop looking back." *Id.* The search uncovered a firearm in the trunk. *Id.* Reviewing the denial of McWeeney's motion to suppress, the court noted that "[j]ust as the Fourth Amendment would be valueless without the use of the exclusionary rule, so too would the right to withdraw consent be valueless if law enforcement officers are permitted deliberately to coerce a citizen into believing that he or she had no authority to enforce that right." *Id.* at 1035. The court reversed, concluding that it was possible "that the officers in this case improperly coerced McWeeney and Lopez into believing that they had no right to withdraw or limit their consent." *Id.* Remand was required for the district court to take evidence on the matter.[3] One judge dissented, not from the basic holding, but on the need for remand, stating, "[w]hen one of them peeked over his shoulder he was told in no uncertain terms to turn back. What more 'coercion' was needed to prevent them from determining what was going on?" *Id.* at 1038 (Fletcher, J., dissenting in part).

Courts have also recognized that an officer's interference with the exercise of a person's Fourth Amendment rights can require suppression. In *United States v. Rush*, 808 F.3d 1007 (4th Cir. 2015), police went to search an apartment with the consent of one tenant, knowing another tenant was present. When that cotenant asked what was going on, the officers lied and said they had a warrant to search the

[3] The evidentiary hearing never occurred. McWeeney pled guilty and received a reduced sentence of time-served., 2:03-cr-00195, Dkt. No. 78 (D. Nev. Dec. 06, 2006).

apartment. *Id.* at 1008-1009. The district court concluded that such deception interfered with the cotenant's rights under *Georgia v. Randolph*, 547 U.S. 103 (2006), to object to a consensual search. *Id.* at 1009. The Fourth Circuit then held that suppression was required as a result of the Fourth Amendment violation. *Id.* at 1013.

While the facts in *Rush* involved active deception, the effects of Meador not being allowed back in his home are the same. Austin, the officer detailed to stay outside during the search and whose job was "[m]aking sure they don't run off inside the house," J.A. 83, interfered with the full exercise of Meador's Fourth Amendment rights. He did not accidentally keep Meador outside; he did so intentionally as a vital part of his job. That violated Meador's Fourth Amendment rights.

Meador testified that he asked to go inside while the search was underway – twice. J.A. 91-92. Cooper and Farry were inside at the time and, therefore, cannot say whether he made this request. J.A. 49, 65-67. Austin's testimony that he never heard Meador make such a request should be rejected, because Austin also testified that "I never spoke with [Meador]." J.A. 80. That Austin would be with Meador for nearly twenty minutes and never speak with him, about anything, is simply unbelievable. By contrast, Meador has been honest and forthright since that day – Cooper testified that he was "very honest with me," J.A. 46 – and made a reasonable request to be able to get fully dressed and get cigarettes to pass the time while the officers worked. It was clear error not to credit Meador's testimony. See, *United States v. Prokupek*, 632 F.3d 460, 462 (8th Cir. 2011)(when a witness' "story itself [is] so internally

inconsistent or implausible on its face that a reasonable factfinder would not credit it ... the court of appeals may well find clear error even in a finding purportedly based on a credibility determination'"), quoting *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575 (1985).

By keeping Meador from entering his home, the officers prevented Meador from limiting or revoking the consent he gave earlier. That is why courts have routinely upheld consent searches when the defendant was present to supervise them. See, e.g., *United States v. Street*, 472 F.3d 1298, 1307-09 (11th Cir. 2006)(search upheld where defendant signed a consent to search form, was "free to move about [his house]" during the search, and where "[n]owhere in or on the form he signed did [defendant] indicate a desire to restrict the search. Nor did he otherwise indicate to the agents that he wanted to exclude any property from the scope of the search"); *United States v. Stribling*, 94 F.3d 321, 324 (7th Cir. 1996)("[Defendant] was *present* during the search; she could (and should) have protested at the time if she believed [the police] exceeded the scope of her consent, as it was her burden to limit that scope"). Meador was denied that opportunity. See, *United States v. Turner*, 169 F.3d 84, 89 (1st Cir. 1999)(rejecting government's argument that defendant's failure to object constituted consent since defendant was downstairs with a detective throughout the search, thus had no meaningful opportunity to object to the search upstairs).

The Fourth Circuit's decision in *United States v. Ortiz*, 669 F.3d 439 (4th Cir. 2012), does not suggest otherwise because there are significant factual distinctions between *Ortiz* and this case, limiting its precedential impact. Ortiz was driving in Maryland when he was pulled over for speeding. At some point before the stop, local authorities had received information from investigators in New Jersey that Ortiz was hauling drugs and money. *Ortiz*, 669 F.3d at 441-442. As a result, the officer who made the stop was "instructed to drag out the traffic stop in order to enable a more experienced officer and a drug dog to arrive at the scene." *Id.* at 442. Eventually, officers asked for permission to search the car and Ortiz told them that "he was in no rush, [they] could take [their] time, and [they] were free to search his vehicle." *Id.* Before searching, however, the officers asked for permission again, this time asking if they could "look around" for signs of "tampering or theft," to which Ortiz responded, "sure, sure." *Id.* The search for the "concealed vehicle identification number" led one officer to pull up the rear seat, where he found a hidden compartment and six kilograms of cocaine. *Id.* at 443.

Ortiz moved to suppress, arguing both that his consent was tainted by the length of the stop and that the search exceeded the scope of his consent. *Ortiz*, 669 F.3d at 443. On appeal, the court affirmed on a different ground – that the officers had probable cause to search the car, regardless of Ortiz's consent. *Id.* at 447. In what is arguably *dicta*, "as an additional basis for our decision," the court also concluded that Ortiz's consent to search, "given twice" was voluntary. *Id.* The places where the

officers searched were within the scope of his consents, one given for drugs and one for evidence of "tampering or theft." *Id.* at 447-448. More importantly, Ortiz was present for those searches and "observed the troopers as they conducted the search and made no objection." *Id.* at 448.

That is the key distinction with this case. Meador testified that he asked to go inside while the search was underway – also twice. J.A. 91-92. Cooper and Farry were inside at the time and, therefore, cannot say whether he made this request. J.A. 49, 65-67. Austin's testimony that he never heard Meador make such a request should be rejected, because Austin also testified that "I never spoke with [Meador]." J.A. 80. That Austin would be with Meador for nearly twenty minutes and never speak with him, about anything, is simply unbelievable. By contrast, Meador has been honest and forthright since that day – Cooper testified that he was "very honest with me," J.A. 46 – and made a reasonable request to be able to get fully dressed and get cigarettes to pass the time while the officers worked. It is irrelevant that Meador did not specifically ask to go inside to supervise the search. He tried to go inside, where he would have been in that position, and was prevented from doing so. That interfered with his assertion (or withholding) of his Fourth Amendment rights.

By keeping Meador from entering his home, the officers prevented Meador from limiting or revoking the consent he gave earlier. That is what makes this case more like *McWeeney* than *Ortiz*. Meador gave valid consent to search his home. The officers involved then prohibited him from supervising the search, keeping him from

limiting it in any way or revoking that consent. Such interference with Fourth Amendment rights is a Fourth Amendment violation in itself.

IX. CONCLUSION

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

Date: December 4, 2018.

Respectfully submitted,

CLEVELAND MCDOWELL MEADOR IV

By Counsel

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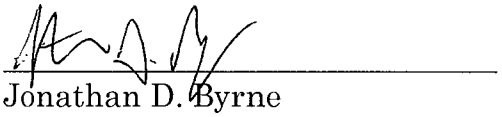

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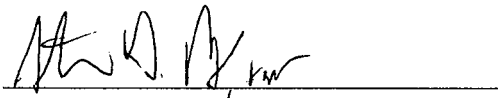

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