No. 19-5347 ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Joshua Davis — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Frederick Davis #31367-171
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(Address)
Terre Haute, Indiana, 47808
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) Will this Honorable Court revisit Florida V. Harris to clarify what the Court meant by "THE DOG'S ALERT"? Is THE DOG'S ALERT the behavior that the dog is TRAINED to display when it smells narcotics, or any UNTRAINED behavior the handler chooses to subjectively identify as an alert? And to resolve a split concerning this issue among the Circuits and their lower courts.

(2) Does an uncorroborated anonymous tip and contradicted nervous behavior give rise to reasonable suspicion to extend a traffic stop and wait for back up to arrive to conduct an "INTERDICTION STOP"?

(3) At what point does a Terry Frisk go beyond its scope and become a probable cause search for evidence of a crime? Can an officer performing a search for weapons order the citizen being searched to remove NONCONTRABAND items from the citizen's pockets? And Does an officer demanding a citizen to open their mouth for the purpose of the officer to look for drugs exceed the scopes of Terry and Dickerson?

(4) Can manufactured Reasonable Suspicion be used to extend a traffic stop to conduct a dog sniff in the face of contradicting evidence? Is an officer's subjective good faith alone the standard for reasonable suspicion?

(5) Did the K-9's UNTRAINED BEHAVIOR amount to probable cause or mere reasonable suspicion? Can the dog's handler pick and choose which behaviors amount to probable cause?

(6) Can an officer perform a second search of a citizen's person after exceeding the scope of the first search? At what point does a citizen that is detained become arrested and does that arrest have to be supported by evidence of a crime or can the officer use the fruits of the search incident to [redacted] that arrest as the basis for the arrest? Can the reason of such arrest be something the citizen wasn't ever charged with?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 6, 2019.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 18, 2019, and a copy of the order denying rehearing appears at Appendix C.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including June 30, 2019 (date) on May 10, 2019 (date) in Application No. 18 A 1154.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment of the United States Constitution. . . .

The Fourth Amendment to the U. S. Constitution 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.

STATEMENT OF THE CASE

Around the beginning to the middle of December of 2015, Sgt. Nathan Rollins of the Berkeley County Sheriff's Office in Moncks Corner, South Carolina allegedly received an anonymous tip from a Berkeley County resident. The report [redacted] that Sgt. Rollins wrote concerning the tip," A Berkeley County resident informed Sgt. Rollins that Mr. Davis was involved in a multikilogram methamphetamine organization and Mr. Davis supplied large quantities of high quality methamphetamine to the [redacted] Berkeley, Dorchester and Charleston Counties." Armed with this alleged tip, Rollins set out to investigate this tip through surveillance of Mr. Davis and his residence. During this surveillance, Rollins was unable to corroborate any of the vague, bare boned details supplied by the unknown tipster.

On December 28, 2015, Rollins was allegedly surveiling Davis' residence when Davis drove past his position. Rollins allegedly observed some minor traffic infractions. Rollins got behind Davis' vehicle and activated his blue lights, which then automatically activated his dash camera. The entire traffic stop was captured on video, but the sound is absent due to Rollins claiming that the microphone was broken. Mr. Davis immediately pulled to the side of the road. Rollins approached the passenger side of Davis' vehicle and immediately orders Mr. Davis out of his vehicle. Without starting the traffic stop procedures, Rollins detained Mr. Davis on the side of the road and waited for back up to arrive to conduct an "interdiction stop" on the allegations of nervous behavior that is contradicted by video and based on the uncorroborated tip. While waiting for back up to arrive, Rollins alleges to have observed marijuana all down the front of Davis' t-shirt. Allegations that are contradicted by video and by Rollins' actions on the video. As back up arrives, Rollins performs a search on Davis looking for evidence of a crime. During this search, Rollins demands Davis to remove money from his pocket and orders Davis to open his mouth so that Rollins could look for drugs inside Davis' mouth.

While back up officers stood by Davis, Rollins opened Davis' drivers door and removed Davis' female pitbull puppy from Davis' vehicle and gave the puppy to Davis to hold. Rollins then retrieved his K-9, Blitz, from his patrol vehicle to conduct a free air sniff of Davis' vehicle. Blitz is a male, aggressive alert dog, thus Blitz's trained alert is scratching. Rollins walked Blitz around the vehicle twice. On the first pass, Blitz paused near the driver's door and on the second pass, Rollins used his fingers to show Blitz where to sniff. As Rollins approached the driver's door, Rollins lifted his fingers up to the driver's side window and Blitz followed his fingers, which caused Blitz to stand up on his hind legs and place his paws on the drivers door before following Rollins' fingers down low and on around the vehicle. It is undisputed that Blitz never scratched.

Rollins alleged that the pause and standing on hind legs were changes in behavior that Blitz was not trained to show and therefore constituted alerts. Rollins claimed that the trained scratching is only displayed when Blitz locates the source of the odor. Rollins then

returned Blitz to his vehicle and proceeded to search Davis' vehicle by hand as opposed to allowing Blitz to enter Davis' vehicle. Rollins' reasons for not allowing Blitz to enter the vehicle were, because Rollins "knew that Davis' puppy had just been inside of the vehicle, he didn't know if there were any needles or anything that could harm Blitz inside the vehicle and he didn't want Blitz to tear up the interior of the car." During the search of the vehicle, nothing illegal was found, but Rollins alleges there was marijuana that he forgot to collect. Mr. Davis was then placed under arrest without any evidence of a crime being committed and during a search incident to that [redacted] arrest, Rollins felt a bulge in the crotch area of Davis' pants. The bulge turned out to be approximately 96 grams of methamphetamine, 18 grams of crack cocaine, 12 grams of powder cocaine and a digital scale. Mr. Davis was not charged with any marijuana and received a warning ticket days later for the traffic infractions only.

Rollins then sought and obtained a search warrant for Davis' residence based on the results of the traffic stop. During the search of the residence, officers located a digital safe in the closet of the master bedroom. After forcing entry into the safe, officers allegedly found approximately 502 grams of additional methamphetamine and a Ruger P-90 model .45 caliber ACP firearm. An Arminus .38 caliber revolver was located on a table beside the bed.

This traffic stop and the ensuing seach warrant formed the basis for counts 1, 2 and 3 of the federal indictment. Count 4 of the [redacted] indictment came from a seperate incident. Count 1 of the indictment charges Davis with being in violation of [redacted] 21 U.S.C. § 841 (a)(1), 841 (b)(1)(A), 841 (b)(1)(C). Count 2 of the indictment charges Davis with being in violation of 18 U.S.C. § 922 (g)(1), 924 (A)(2), 924 (e). Count 3 of the indictment was dismissed.

In May of 2017, Mr. Davis was given a hearing for the motion to suppress evidence. In June of 2017, a decision and order was issued by the District Court denying the motion to suppress. In August of 2017, into a conditional plea agreement under Fed.R.Crim.P. 11 (a)(2), preserving his right to appeal the lower court's ruling on his Suppression motion. In January of 2018, the District Court sentenced Mr. Davis to a term of 292 months to be served [redacted] in the Bureau of Prisons.

On February 7, 2018, Mr. Davis filed a timely appeal. On February 6, 2019, the Court of Appeals for the Fourth Circuit affirmed the District Court's decision. On February 22, 2019, Mr. Davis filed a timely petition for a rehearing. On March 18, 2019, the Court of Appeals for the Fourth Circuit denied the petition for a rehearing.

A timely Writ of Certiorari is now filed by Mr. Davis in the Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION

SEE: Question 1: REVISITING FLORIDA V. HARRIS?

In Florida V. Harris, 133 S. Ct. 1050 (2013), this Honorable Court held that "if a bona fide organization has certified a dog after testing his reliability in a controlled setting, or if the dog has recently and successfully completed a training program that evaluated his proficiancy, a court can presume (subject to any conflicting evidence offered) that "THE DOG'S ALERT" provides probable cause to search, using a "Totality-of-the Circumstances" approach."

The petitioner humbly requests this Honorable Court to revisit Florida V. Harris, Id., and clarify exactly what the Court meant in its holding when it stated that "THE DOG'S ALERT" provides probable cause to search. Simple logic would lead one to interpret this [redacted] statement to mean exactly what it says and that is, if a Drug detection dog is trained, tested and certified by bona fide organizations to display a certain behavior at the odor of narcotics, then if that dog displays that trained, tested and certified behavior, then it should be assumed that the dog smells an odor that it was trained to detect. Therefore, that trained behavior would support probable cause and the ensuing search would be unquestionable. Prior to Florida V. Harris, this Honorable Court stated in Illinois V. Caballes, 543 U.S. 405, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005), "An alert from a well trained dog provides probable cause to search."

In the industry, the organizations use only use two techniques in their training a drug detection dog. One technique is teaching the dog to become an aggressive alert dog. An aggressive alert dog is typically taught to aggressively scratch at the object that the narcotic odor is emanating from. The other technique is teaching the dog to become a passive alert dog. A passive alert dog is typically taught to sit and stare at the object that narcotic odor is emanating from. Any person looking through a common sense lense would expect a well trained dog, that has [redacted] been tested and certified to display the behavior that it was trained to display.

However, a common sense lense is not always used, before and after Harris, some courts have misinterpreted this Court's language to mean that as long as a dog is certified by a bona fide organization, that dog's handler is allowed to subjectively choose ANY Untrained behavior displayed by the dog as a means to use as an alert for probable cause [redacted] to search. Any Untrained behavior could be ANY COMMON dog behavior such as, but not limited to; the dog's head turned, the dog's ears laid back, the dog's breathing changed, the dog's mouth closed, tail wagging, etc. See:

United States V. Prada, 577 F. 3d 1275 (10th Cir. 2009); United States V. Holleman, 743 F. 3d 1152 (8th Cir. 2013); United States V. Thomas, 726 F. 3d 1086 (9th Cir. 2013); United States V. Brooks, 589 F. Supp. 2d 618 (U.S.D.C. 2008); United States V. Shen, U.S. Dist. Lexis 25947 (2018); and United States V. Davis, 2:16-Cr-381 (U.S.D.C. Dist. of South Carolina Div. of Charleston 2017. See: Suppression hearing decision).

The Petitioner stated that the common sense lense is not always used, because some courts have used the common sense lense to make their decisions before and after Harris. These courts have interpeted this Honorable Court's language to mean exactly what it states in its precedents and that is, the only way to satisfy probable cause to search by a Drug detection dog if for the dog to be trained, tested and Certified by bona fide organizations and the dog's alert must be the Alert that it was trained, tested and certified to exhibit when it smells the odor of narcotics. Nothing less than this trained Alert will satisfy probable cause to search. It would be extremely hard for an organization to test and certify a drug detection dog without first knowing what the dog's trained alert is and then visually see that dog display that behavior at the location of the hidden narcotics.

In United States V. Wilson, 995 F. Supp. 2d 455 (U.S.D.C. W. Dist. of North Carolina 2014) the court stated succinctly, "A court cannot accept a handler's subjective determination that the dog has made some otherwise undetectable alert which conclusion would be for all practical purposes, immune from review." (Citing: Beck V. Ohio, 379 U.S. 89 1964) When these common dog behaviors that are untrained are not even labeled as alerts in the dog's training records, they are impossible to compare and review. Also see: United States V. Jacobs, 986 F. 2d 1231 (8th Cir. 1993); United States V. Rivas, 157 F. 3d 364 (5th cir. 1998); and United States V. Diaz, 2018 Dist. Lexis 58775 (U.S.D.C. Dist. of South Carolina Div. of Charleston) (Citing Harris, and relying on Wilson).

As this Honorable Court can see, the split among the Circuit Courts and their lower courts runs much deeper and penetrates farther than the average spit among the circuits, where one court of Appeals rules one way and their lower courts follow them and another Court of Appeals rules a different way and their lower courts follow them. The instant issue causes splits in the same circuits and sometimes the splits are in the same division of the same district. See: United States V. Diaz and United States V. Davis, in Diaz, the court did not allow the untrained behavior to constitute a valid alert, but the Davis court did. Sometimes the splits are between the lower courts and their Upper Circuits. (See: United States V. Diaz; United States V. Wilson compared to United States V. Davis, No. 18-4042 (4th Cir. 2019)).

For the abovestated reasons, the petitioner humbly states that this question is ripe for Supreme Court review, there is no uniformity in the law regarding this important question that meets the requirements for consideration for Granting [redacted] Certiorari under Rule 10(a) and Rule 10(c) of the Supreme Court Rules. Though the question and rules are not binding, the question effects the rights and public welfare of society as a whole.

Though Drug detection dogs can be very useful, they are still animals and their usage and actions should be governed by one set of rules and laws and not a pick and choose set of rules. Drug detection dogs are [redacted] a helpful accessory that is equivolent to the likes of other law enforcement equipment such as a radar to test speeds and if the radar is not performing correctly then it [redacted] cannot be used and the same goes for the dog. If the dog is not performing correctly, then his incorrect responses and actions should not be used to provide probable cause [redacted] to search an American Citizen or his belongings. The Appellate and District Courts are unimaginably divided on this issue and need this Honorable Court to exercise its Supervisory Power.

See: Question 2: EXTENDING TRAFFIC STOP TO CONDUCT AN INTERDICTION STOP?

In Terry V. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 899 (1968), this Honorable Court ruled that [redacted] a stop may become "unlawful if it is prolonged beyond the reasonable time required to complete its mission." Thus we evaluate "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was neccessary to detain the defendant." To prolong a traffic stop "beyond the scope of a routine traffic stop," an officer [redacted] must possess a justification for doing so other than the initial traffic violation that prompted the stop in the first place." This requires "either the driver's consent or reasonable suspicion that criminal activity is afoot." This Honorable Court further solidified it's standing in Arizona V. Johnson, 555 U.S. 323, 129 S. Ct. 781, 172 L. Ed. 694 (2009) and Rodriguez V. United States, 135 S. Ct. 1609 (2015). To determine reasonable suspicion, we turn to the totality-of-the-circumstances.

In December of 2015, Sgt. Nathan Rollins allegedly received an anonymous, bare bones tip that Joshua Davis was a large scale methamphetamine dealer. Though the lower courts described this tip as highly detailed, the written report of the tip only contained vague descriptions. The tipster never said how he or she knew that Davis was involved in a large drug organization, no names or descriptions were provided of others that were a part of an organization and no information on Davis' movements or predicted behaviors. In Florida V. J.L., 146 L. Ed. 2d 254, 529 U.S. 266 (2000), this Honorable Court held that "anonymous tips do not exhibit sufficient indicia of reliability to provide reasonable suspicion." Rollins' testimony at the suppression hearing

showed that his testing of the informants reliability failed. Rollins was asked by defense counsel, "Anything that led you to believe there's drug transactions going on at his house?" Rollins answered, "me observing him doing that, **NO.** The information that I was provided of him actually doing that, yes." (Supp. Tr. pg 67) Rollins discredited his informant's [redacted] knowledge and credibility through the surveillance of Davis' residence. The informant did not explain how he or she knew about the drugs and there was no basis for believing that the informant had inside information. And Rollins' claim that the informant allegedly supplied him with the location of Davis' residence and an accurate description of Davis' vehicle does not show that the tipster had knowledge of concealed criminal activity.

In the middle of the day on December 28, 2015, Mr. Davis leaves his residence to run a couple of errands. He was on his way to the bank to deposit some money into his bank account and drop off his dirty clothes [redacted] at the Dry Cleaners. Mr. Davis decided to allow his female pitbull puppy to ride along with him on his brief journey. Sgt. Rollins, who was driving a fully marked Berkeley County Sheriff's Deputy K-9 unit that day was parked down the street out of sight from Davis' residence. Rollins was allegedly surveilling Davis' residence at the time, but from a location that the residence could not be seen from.

As Davis passes Rollins' location, Rollins claims to have observed three minor traffic violations and pulled Davis over. The mission of this traffic stop was supposed to be to determine if the frame around the tag was illegal, determine if Davis made an improper left turn and determine if the window tint was too dark. Once Rollins approached Davis' vehicle, it became obvious that Rollins had a different mission. Rollins was determined to search Mr. Davis for drugs fueled by the uncorroborated tip. Rollins testified, "When I conduct any type of 'interdiction stops', that's where I conduct my business is at the front of my patrol vehicle." (Supp. Tr. pg 33) Rollins had Davis exit the vehicle in less than 20 seconds of approaching Davis' vehicle. Rollins attempts to use normal [redacted] Citizen [redacted] behavior as a means of nervous behavior. His claim that Davis lit a fresh cigarette is completely normal for any citizen to do and does not indicate nervousness. Rollins allowed the suspicion for Davis that was fueled by the uncorroborated tip to cause Rollins to view everything Davis did as suspicious.

Rollins' patrol was equiped with an in car dash camera video, but he claims that the audio was broken. The entire stop is caught on tape, but the sound is completely absent. The nervous behaviors that Rollins claims to have viewed are contradicted [redacted] by the close up view of the dash camera video. With the dash camera lense only feet away, none of the nervous behaviors can be seen on the video.

The reasonable time to complete this traffic stop is impossible to calculate, because Rollins never attempted to complete this traffic stop. On the video, Rollins can be seen taking out his ticket pad and placed it on the hood of his patrol, but throughout the entire video, Rollins never started writing any tickets. Instead of preparing the ticket, Rollins abandoned the mission of the traffic stop and embarked on a course of action consistant with an officer conducting a drug investigation.

The lower Courts used Johnson, which is distinguishable from the instant case. In Johnson, the defendant was from a gang infested area and was wearing gang colors. In the instant case, Davis was leaving his residence, which is located in a extremely low crime area, in fact three of Davis' immediate neighbors were police officers. There was nothing suggestive of any drug activity. The courts failed to even consider the Supreme Court [redacted] precedent of J.L. to [redacted] determine if the anonymous tip contained the indicia of reliability to provide reasonable suspicion of drug activity and [redacted] instead applied United States V. Sakyi, 160 F. 3d [redacted] 164 (1998), a case that the Supreme Court mentions [redacted] in J.L., that may not exhibit the indicia of reliability needed.

The question presented here applies to the rights of the general public and meets the considerations described in Rule 10 (a) and Rule 10 (c) of the [redacted] Rules of the Supreme Court. To allow the law enforcement agencies to continue to conduct drug [redacted] investigations during routine traffic stops based on manufactured reasonable suspicion would strip american citizens of their precious rights.

See: Question 3: TERRY FRISK OR PROBABLE CAUSE SEARCH FOR EVIDENCE?

In Terry, this Honorable Court ruled that an officer may conduct a pat down for weapons if the officer has reasonable suspicion that the person may be armed and dangerous. The search must be limited in scope and must consist of a pat down of the outer garments only. The purpose of this search is limited to looking for weapons only, NOT EVIDENCE OF A CRIME. Once a Terry Frisk exceeds this scope, it crosses a threshold and becomes a more intrusive search.

In Minnesota V. Dickerson, 508 U.S. 366 (1993), This Honorable Court added the plain feel doctrine. Under Dickerson, the police may seize non-threatening contraband felt during a legal Terry frisk, so long as the contraband was instantly recognizable from plain feel, a corollary to the plain view exception to the Fourth Amendment's warrant requirement. The court laid down stringent limits for the plain feel doctrine, the search had to be part of a protective pat down for weapons, justified on the reasonable suspicion the person may be armed and dangerous, and the contraband nature of the object must be immediately obvious by touch to the officer.

As back up officers arrived on the scene, Rollins asked Davis for Consent to search his person and [redacted] Davis refused to give consent. Immediately after Davis' refusal to consent, Rollins conducted a search of Davis' person. The government asked Rollins, "Okay. So once your back-up officers got there, what did you do?" Rollins answered, "I asked the defendant -- the defendant for consent to search his person." The government asked, "And did he give consent?" Rollins answered, "He [redacted] denied." The government asked, "And what did you do?" Rollins said, "I asked him to place his

hands on the hood of the patrol vehicle, and I was going to conduct a Terry Frisk." The goverments question to that was," Why did you -- why were you doing a Terry Frisk of the defendant?" Rollins' answer is not the stipulation for justifying a Terry Frisk," Because I had reasonable suspicion that criminal activity was afoot." (Supp. Tr. pg 36) Reasonable suspicion of criminal activity is reasons for justifying the extension of a traffic stop, not to conduct a Terry Frisk. The only justification to conduct a Terry Frisk is the officer Must possess reasonable suspicion that the person may be armed and dangerous. The language in Terry is simple and Rollins' testimony does not support the initial search of the defendant. And his reasons for reasonable suspicion of criminal [redacted] activity were not properly analyzed.

During this illegal pat down, Rollins felt a large lump in Davis' left front pocket. Rollins demanded to know what the lump was and Davis advised Rollins that the lump was only money. Rollins ordered Davis to remove the money from [redacted] his pocket and Rollins immediately confiscated it. Rollins testified, "That was in his left-hand pocket. I felt a large bulge in his front left pocket and asked him what it was, and he said money. And I said, do you mind pulling it out." This action violated Terry and Dickerson. The lower courts allowed the illegal search and justified this illegal confiscating of non-contraband items, because they ruled that Davis' removal of the money versus Rollins' removing it was consentual. Rollins testified that Davis denied consent to the search. Davis had no reason to believe that he had the right to refuse to remove the money. Rollins ordering Davis to remove the money during this search was the same as Rollins removing the money himself. And once the money was identified as non-contraband it should have been returned to Davis' pocket. (Supp. Tr. pg 40)

During this same illegal search, Rollins ordered Davis to open [redacted] his mouth so that Rollins could look into his mouth for drugs. During Rollins' testimony, it was established that Rollins was looking for evidence. The government asked Rollins," Okay. Now, beyond frisking his person, did you look anywhere else beyond where you would normally with a Terry Frisk?" Rollins answered," I did." Rollins was then asked," Where did you look?" Rollins answered," I asked the defendant to open his mouth." The government asked," And why did you ask him to do that?" Rollins answered," From experience and the way that he was talking, I wanted to make sure that the defendant didn't consume any marijuana or drugs to try to destroy or hide the evidence." This testimony clearly shows that Rollins was searching for evidence and not weapons. This clearly violates Terry. Neither lower court would even consider this issue. They both fail to address it in either of their decisions. Again, the lower courts blatantly disregard well established Supreme court law and allow law enforcement to violate the rights of an American citizen. (Supp. Tr. pg 37).

The lower courts again used distinguishable cases to justify their [redacted] decisions. They rely on Sakyi and Johnson using the anonymous tip to justify this illegal search. They allow Rollins' hunch fueled by a tip that Rollins

himself proved to be uncredible. And the lower courts disregarded the admitted violations of this search. Furthermore, Rollins had no reason to think Davis was armed and dangerous and Rollins' actions support that he felt comfortable around the defendant. Rollins waited approximately five minutes to call for back up, and waited about six and a half minutes to conduct the first search of Davis. This also seperates the instant case from Johnson. In Johnson, the defendant was frisked moments after he was ordered from the vehicle. Rollins' reason for waiting to search Davis is waiting for back up to arrive to deter any flight or fight responses from Davis. Rollins allowed Davis to remain uncuffed through the entire stop. A well trained, experienced officer is not going to allow a person that he suspects is armed and dangerous to remain armed for over six minutes. Rollins' arrest report is written saying, [redacted] "Sgt. Rollins conducted a pat down for weapons and called for a back up unit." (Arrest Report) This indicates that he thought that he conducted the pat down before he even called for any back up, not an officer waiting for back up to conduct the search.

This conduct is being allowed by the the lower courts, and the citizens of the United States are suffering. Citizens are being humiliated and embarassed in open public. This question is ripe for review pursuant to Rule 10 (a) and Rule 10 (c) of the Rules of the Supreme Court. This question raises multiple issues that need this Court's Supervisory Power to clarify.

[redacted]

See: Question 4: CONTRADICTED REASONABLE SUSPICION ENOUGH TO EXTEND FOR DOG SNIFF?

In Rodriquez, this Honorable Court explained that "even a de minimis delay in a traffic stop to conduct a dog sniff must be justified by reasonable suspicion of criminal activity." In the instant case, the lower courts listed five reasons that provided Rollins with reasonable suspicion and justified extending the traffic stop. The Appellate Court rubber stamped the District Court without viewing the record. Each of the five reasons fail, even under the relatively lower standard of reasonable suspicion. The first three reasons are based solely on Rollins' subjective analysis. There is zero corroboration, but more than one source of CONTRADICTING EVIDENCE. The fourth is based on an unparticularized hunch fueled by an improperly analyzed tip. And the fifth is based on evidence obtained in a violation of Terry and Dickerson.

A) Marijuana on Front of Davis' T-Shirt

In Beck, this Honorable Court ruled, "If an officer's subjective good faith alone were the test, the protection's of the Fourth Amendment would evaporate, and the people would be secure in their persons, houses, papers and effects, only in the descretion of the police." Given the constitutional right at issue, the Supreme Court has found this premise unacceptable. Rollins cannot be allowed to just say things in the face

of all evidence pointing to the contrary and just because he is a police officer he gets the benefit of the doubt.

Rollins' claimed that he observed what appeared to be marijuana particles all down the front of Davis' black t-shirt, is contradicted by the dash camera video, other testimony and Rollins' actions. Rollins took no steps to confirm or dispel his suspicions of there being marijuana on the front of Davis' shirt. It is undisputed that Rollins never attempted to perform a closer examination of Davis' shirt, did not attempt to collect any of the alleged marijuana, did not mention the alleged marijuana to Davis or his on-scene back up officers, and he did not document it in his warning ticket that he prepared sometime after Davis was arrested. The video shows Davis up close for the entire stop and his shirt is black with the writing on the shirt in red glitter. The red glitter can be clearly seen against the black background, but no green or anything else can be seen. Both on-scene back up officers testified that neither of them seen any marijuana nor did Rollins discuss any marijuana with them. Davis also testified that there was nothing on his shirt. So, out of the four total people at the stop and the camera, Rollins was the only person that could see this mysterious marijuana and he kept this secret all to himself. And the courts simply believed Rollins over all this evidence because he is a police officer. If this is allowed, then why even go through a suppression hearing? If the police is always right then why does evidence matter?

B) Alleged Nervous Behavior

Rollins' testimony is that it was his subjective reason that Davis was nervous. Defense counsel asked Rollins, "But your subjective reason was that he was nervous?" Rollins answered, "Yes." (Supp. Tr. pg 91) His testimony goes further to say that normal people are nervous around police, but that Davis was different, because Davis' nervousness increased. Defense Counsel asked Rollins, "A lot of people are nervous around police officers even if they have nothing to hide, right?" Rollins answered, "That's correct in a way, but your client was a lot different than majority of the individuals that I conducted business with, due to his increasing nervousness." (Supp. Tr. pg 91) Again, we are asked to believe Rollins over our own eyes. The video does not support Rollins' claims of nervous behavior and surely disproves the claims of increase in nervousness. The video contradicts Rollins' claims. The courts used <u>hindsight</u> to determine that Davis was unusually nervous. The court said, "He's giving you his impression the gentleman seemed unusually nervous. We now know he was carrying a large amount of drugs on him, which suggests to me that the officer made a correct perception that the [redacted] gentleman was unusually nervous." Again, there are no need for suppression hearings if the opposing evidence [redacted] carries no weight and the success of the search changes the character of the search. To allow police officers to decide everything strips the entire Fourth Amendment away from the American citizens. (Supp. Tr. pg 100-101)

C) Blowing Smoke

Rollins accused Davis of intentially blowing cigarette smoke in Rollins' face, to mask the smell of drugs. The video and Rollins subsequent actions do not support this claim. Davis can be seen puffing on his cigarette approximately five times in a six minute span. Far less than a nervous chain smoker and far less than a person on a quest of trying to hide or cover a smell. The smoke exiting Davis' mouth is not intentially directed in Rollins' direction and the smoke can clearly be seen dissipitating in the wind before it reaches Rollins. Furthermore, Rollins testified that Davis was detained the entire stop. Rollins made demands this entire stop. Simple logic says that if Davis had truly blown smoke at Rollins, then Rollins would have simply ordered Davis to put the cigarette out. His actions and the video again contradict his claims. And again, the courts sided with this officer when faced with obvious contradicting evidence.

D) Reputation as a Drug Dealer

Under Terry, reasonable suspicion by definition must be reasonable. And it must be based on "specific and articulable FACTS which, taken together, with rational inferences from those FACTS, evince more than inchoate and unparticularized suspicion or hunch of criminal activity." This reputation that the lower courts rely upon is based solely on a tip that Rollins was unable to verify through his investigation. This one uncorroborated tip is not enough to label Davis a KNOWN DRUG DEALER. The lower Courts fail to even mention the leading Supreme Court precedent on analyzing anonymous tips, Florida V. J.L. If one uncorroborated tip is all it took to label someone as something, then the United States law enforcement community would be filled with Dirty officers, judges and our countries leaders would be labeled as certain things. And an accurate address and vehicle description is easily accessible by the internet. These decisions effect the general public as a whole.

E) CASH

The cash was found and confiscated in violation of Terry and Dickerson. There is no evidence that Rollins thought that the bulge in Davis' pocket was any type of contraband. Dickerson specifies that the contraband must be readily identified by touch. The cash cannot be used for reasonable suspicion analysis.

To extend the stop to conduct a dog sniff there must be reasonable suspicion and reasonable suspicion must be based on specific and articulable facts. The only fact that was presented in the reasons for reasonable suspicion is the money that was obtained illegally.

The only reason Rollins extended the seach was to satisfy Rollins' hunch and curiosity. To allow the lower courts to ignore well established Supreme Court case law allows law enforcement to decide who and what the United States Constitution applies to and who it doesn't apply to. The question presented falls within the stipulations for consideration of review pursuant to Rule 10(a) and Rule 10(c) of the Rules of the Supreme Court. Case law governing this issue needs to be clarified.

See: Question 5: UNTRAINED DOG ALERT?

In Harris, a dog must be certified or recently successfully completed a training program for the dog's to be considered reliable. Drug detection is taught to the dog and the alert behavior is also taught to the dog. In fact, this distinctive, trained behavior is instilled in the dog before the dog is even purchased by the law enforcement agency. Accredited training schools only teach 2 distinctive responses. Those responses are either Aggressive Alert or Passive Alert. An aggressive alert dog is typically taught to scratch at the odor of narcotics. A passive alert dog is typically taught to sit and stare at an object that the odor is coming from. It is undisputed that each dog is only taught a single response.

In the instant case, moments before Rollins conducted the free air sniff, Rollins opened the driver's door of Davis' vehicle and removed Davis' pitbull puppy from Davis' vehicle. Rollins then walked Blitz around Davis' vehicle twice. On the first pass, the only visible behavior that can be seen is that Blitz briefly paused near the area that Rollins had just extracted the female puppy from. On the second pass, Rollins shortened Blitz's leash and dragged Blitz back towards the driver's door. As Rollins pulled Blitz, Rollins snapped his fingers and moved his fingers up and down the side of Davis' vehicle. Rollins testified these actions were to Motivate Blitz and to show Blitz where to smell. The Court asked Rollins, "officer, what purpose is the hand up and down?" Rollins answered, "Just to keep the dog motivated, to keep him in motion to keep moving throughout the search." (Supp. Tr. pg 104) This answer shows that Blitz's pause on the first pass was a common dog behavior and that Blitz was unmotivated. Then the defense Counsel asked Rollins, "Why do you need to keep the dog motivated?" Rollins answered, "Because you don't want an unmotivated dog. It would be unreliable if your dog did not want to work." (Supp. Tr. pg 104) So, when Blitz paused on the first pass, Blitz was unmotivated and unmotivation makes Blitz unreliable. Defense Counsel went on to ask Rollins, "So you were coaching him along to motivate him. And you paused slightly

before the driver's side door." Rollins replied, "Right." (Supp. Tr. pg 104) Rollins' motivation to keep the dog in motion and moving throughout the search, was interrupted by Rollins' abrupt pause by the driver's door and the only way for Blitz to continue the search pattern was to follow [redacted] Rollins' fingers up and that was what Blitz did. This action was an obvious cue, but Blitz still did not give his trained signal that he smelled narcotics. Any common dog would have stood on his legs at that point, with his owner standing [redacted] in front of him and snapping their fingers above the dog's head. Drug detection dogs are not common pets. They are instead taught to communicate with their handlers with a [redacted] specific behavior and ordinary dog behavior is distinguishable from the distinct behavior that is taught to the trained drug detector.

The distinctive behavior that was taught to Blitz to communicate to his handler that he found the odor of narcotics is scratching and this is undisputed by testimony. Rollins testified, "It's going to be a trained behavior. With Blitz, he's an aggressive alert dog, which typically you train an aggressive alert dog to scratch." (Supp. Tr. pg 49-50) Rollins tries to explain that the trained behavior is a final response, but he [redacted] labels Blitz as an aggressive alert dog, not an aggressive final response dog. It is undisputed that Blitz did not display the signal that he was taught to show. [redacted] Blitz did not scratch. The government expert testified that Blitz did not show his trained response. [redacted] Sgt. Wannemacher stated, "I see a behavior change when he does the head turn coming up. He does not go into a final response." According to testimony, the final response is [redacted] the name that government witnesses give to the trained alert.

According to all government witnesses, Blitz only gives his trained response when he locates the source of the odor. Sgt. Wannemacher states, "That pinpoint is actually the aggressive response, in this case Blitz would have to scratch and bite at it, At Source." (Supp. Tr. Pg 181) Sgt. Rollins states, "It's going to be a trained behavior. With Blitz, he's an aggressive alert dog, which typically you train an aggressive alert dog to scratch. So his final response when he locates that source, he will scratch on that source to try to get it out." (Supp. Tr. pg 49-50) Rollins' testimony proves that Blitz was Certified on locating the source. Rollins said, "Yes, That's where the location of the aid, that's where it was placed inside the vehicle by the Master Trainer, and that's where K-9 Blitz located the source." (Supp. Tr. pg 54) This shows that Blitz did not pass this Certification by displaying any kind of common behavior change. Rollins and Wannemacher both say that Blitz scratches at the source and the test shows that Blitz located the source everytime. There fore, Blitz was certified to scratch only. The field and [redacted] training records of Blitz supports this, in free air sniffs of vehicles. The only behavior that Blitz displays that Rollins ever

calls an alert, includes scratching. And even though the drugs are hidden inside the vehicles in various spots, Blitz always scratches on the doors on the outside of the vehicles. In response to the court's questioning about Blitz's most common responses, Rollins answered under oath, "The most common with the Free Air Sniff of a Vehicle would be a change in behavior, would be a head turn and the way they breath. And jumping. That's three of Blitz's main things is his head turn, his change in breathing and his jumping." (Supp. Tr. pg 105) A quick look at Blitz's field and training records of vehicles proves Rollins' answer to be entirely false. Scratching is clearly the most common response. There is a single record of a vehicle search showing that Blitz had a change in behavior, but Rollins admitted in the record that Blitz had a change in behavior, but did not alert. The vehicle was searched anyways and nothing was found. There are zero records of vehicle searches where Blitz jumped. And one training record stated that Rollins observed Blitz have a strong head turn and a change in breathing, but Rollins does not label them as an alert.

In the lower courts decisions, they relied upon records of building searches and ignore the vehicle search records. The building search records are not free air sniffs, because they take place inside where air is trapped. The records they used also were records of hides that were extremely high, therefore made it impossible for Blitz to scratch, for example, in the light fixture in the ceiling, in the open door of the ceiling attic, in the crown molding along the ceiling, in the vent above the fireplace, etc. and the jump that Blitz displays in these records are jumps that involve Blitz's whole body launching into the air. Blitz was unable to reach the object that the odor was coming from.

Another supporting factor that Blitz's behavior may have been caused by a distraction rather than drugs is Rollins' testimony about why he chose to put Blitz back into his patrol rather than allowing Blitz to enter Davis' vehicle. The government asked Rollins, "And why did you put Blitz back in the vehicle as opposed to having him search the vehicle?" Rollins' answer is supportive that the puppy's scent would effect Blitz's reliability, "I knew that Joshua Davis' puppy was inside the vehicle. I don't know if theres anything inside the car as far as needles that go along with some of the drug use, and I typically didn't want him tearing up the vehicle." (Supp. Tr. pg 58) The problem with Rollins' logic is that Blitz is supposed to be tested with other odors present during certification, therefore the puppy's presence should not have mattered, because Rollins had already removed the puppy from Davis' vehicle. Rollins' second reason falls short for two reasons: one, the information that Rollins received from the anonymous tipster did not contain information about any type of drug use, only that Davis was a large scale Drug dealer and two, Davis' puppy running around loose in the vehicle would

certainly deter one from [redacted] imagining dangerous items lying around for an expensive puppy to get ahold of. Rollins' third reason is contradicted by past field records where Blitz was allowed to enter numerous vehicles.

The lower courts found the Defense expert, Mr. Falco uncredible for testifying to what was undisputed. During Mr. Falco's testimony, defense Counsel asked Mr. Falco, "And looking at Blitz's records specifically, does Blitz typically scratch when he alerts?" Mr. Falco answered, "Yes. Every record that I saw, the dog's alert trained behavior is to scratch." Defense Counsel asked, "Every single one of them?" Mr. Falco's answer is, "Yes." (Supp. Tr. pg 139) What Mr. Falco testified to was the dog's alert trained behavior. The dog handler himself testified that [redacted] Blitz is trained to scratch. Judge Gergel wanted to label other behaviors as trained behavior, but the one behavior Blitz was trained to show is scratching. (See District Court's Decision pg 14 footnotes) Just because Rollins has called some other behavior an alert does not make that behavior a trained behavior. Mr. Falco further clarifies this in the very next answer he gives. Defense Counsel asked, "Did you find any that showed a change in behavior in breathing pattern and a head turn?" "Well, that's not an alert, that's just something the dog does when they're searching and finds something interesting." (Supp. Tr. pg 139-140)

Furthermore, the government's expert witness, Sgt. Wannamacher, who is employed by the North American Police Work Dog Association as a Master Trainer was asked by Defense Counsel if a change in behavior is enough for a dog to get certified by the NAPWDA. Wannamacher gave [redacted] an indirect vague answer of, "They can have change in behavior, they have that, and they work to the source, and they can can tell me where the hide is, they can be certified through the North American Police Work Dog Association, per our bylaws." (Supp. Tr. pg 188) Notice the words "THEY WORK TO THE SOURCE" and this same witness earlier testified that "Blitz would have to Scratch and Bite at it, at SOURCE." And Rollins testified, "When he locates the source, he'll SCRATCH." (Supp. Tr. pg 105) And earlier in his testimony, while the government was walking him through Blitz's Certification with the NAPWDA, Rollins stated, "That's where Blitz located the Source." And when Blitz locates the source, Blitz displays the trained signal of scratching. The Master Trainer passed Blitz's Certification based on the sole behavior of

SCRATCHING. Therefore, the behaviors displayed at or near Davis' vehicle did not amount to probable cause and the ensuing search was illegal.

Police officer's cannot be allowed to conduct searches based on a K-9's uncertified behavior. As Harris states," If a drug detection dog is certified, then the courts can presume the dog's alert to be reliable and provides probable cause to search." Simple logic says that the dog's alert is the same behavior that it displayed during its certification process. To allow officers to use an uncertified behavior as a means of searching probable cause would deprive American Citizens of their rights that are protected by the United States Constitution. Consideration of reviewing this question is supported by Rule 10 (a) and Rule 10 (c) of the Rules of the Supreme Court.

See Question 6: SECOND SEARCH?

In United States V. Di Re, 332 U.S. 581, 68 S.Ct. 222, 92 L. Ed. 210 (1948), this Honorable Court ruled that," it is the officer's responsibility to know what he arresting for and why, and the one in the unhappy plight of being arrested is not required to test the legality of the arrest before the officer who is making it."

Mr. Davis was Detained from the moment he was ordered out of his vehicle for Rollins to conduct an "INTERDICTION STOP." Rollins was asked about not allowing Davis access to his phone to call his attorney. Defense counsel asked Rollins," But he was not free to go?" Rollins answered," No." Defense counsel then asked," He was Detained?" Rollins answered," Correct." (Supp. Tr. pg 100) This took place approximately one minute into the stop according to Rollins and Davis' status remained "Detained" could not be expected to change until Mr. Davis was allowed to leave or placed under arrest. Any prudent person would have believed that they were arrested when Rollins abandoned the search of Davis' vehicle less than a minute into [redacted] that search to order Davis to place his hands behind [redacted] his back and placed handcuffs on him. There are not different levels of detainment, Davis' status changed from Detained to arrested with Rollins abruptly discontinued the vehicle search and placed handcuffs on Davis. Rollins' claim that he was conducting a probable cause search for evidence of a crime is not allowed due to Rollins already performing a search of Davis' person

that consisted of Rollins searching for evidence of a crime. When a search is permitted, [redacted] "A search" means one search. Sgt. Rollins cannot be permitted to keep searching for evidence over and over when the evidence is not found during the first search for evidence.

Rollins had already violated Terry and Dickerson and therefore should not be permitted to conduct another search. The fruits of the poisonous tree doctrine blocks evidence found after an illegal search. The only legal search at this point would be a search incident to an arrest. The problem with this is that the only charges that Davis received were based on the fruits of this second search. The lower courts use hypotheticals when trying to justify this second search. The lower court's decision states, "Defendant could have been arrested based on marijuana found in his car or even for his illegal window tint." (Order and opinion of District Court pg 15) The District Court's use of United States V. Currence, 446 F.3d 554 (2006) is entirely dispositive, because there is no evidence that Davis possessed marijuana and he was not charged with marijuana possession and Davis was given a warning ticket for the untested and unverified window tint violation. Citizens cannot be arrested for reasons or crimes that he is never charged with, that violates Di Re. The second hypothetical is that Rollins conducted a probable cause search based on Blitz's uncertified alert. The fact is that Rollins had already conducted a search of Davis that exceeded the scopes of Terry and Dickerson and fell within the scopes of probable cause searches for evidence. Therefore, the only search allowed at this point is a search incident to arrest, but again, Davis was not charged with any crime at this point. And the Supreme Court stated in Di Re, "a search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success."

Police officers cannot be allowed to [redacted] go about illegally searching citizens and to continue seaching [redacted] that same citizen over and over after violating that [redacted] citizen's constitutional rights. And officers cannot be allowed to continue illegally arresting citizens with no just cause for the arrest. And illegal arrests cannot be made legal by the fruits of the search that ensued the illegal arrest. Circuit courts must follow Supreme Court case law and not ignore it. Considerations for Granting Certiorari on this issue falls under Rule 10 (a) of the Rules of the Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Doe

Date: June 16, 2019