

NO. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**OCTOBER TERM 2019**

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**EMORY CHILES, Petitioner,**

**v.**

**UNITED STATES OF AMERICA, Respondent**

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

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## **I. QUESTION PRESENTED**

Whether the Court of Appeals for the Fourth Circuit erred when it affirmed the district court's denial of Chiles' motion to suppress evidence?

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#### IV. OPINIONS BELOW

The unpublished opinion by the United States Court of Appeals for the Fourth Circuit in the case, *United States v. Emory Chiles*, No. 18-4569, is attached to this Petition as Appendix A. The Order denying Chiles' Petition for Rehearing or Rehearing *En Banc* is attached as Appendix B. The judgment of the United States Court of Appeals for the Fourth Circuit is attached as Appendix C. The final judgment order of the United States District Court for the Northern District of West Virginia are unreported and are attached to this Petition as Appendix D.

## V. JURISDICTION

This Petition seeks review of an opinion of the United States Court of Appeals for the Fourth Circuit entered on April 23, 2019. A petition for rehearing or rehearing *en banc* was filed, and denied on June 4, 2019. This Petition is filed within 90 days of the denial of Chiles' Petition for Rehearing or Rehearing *En Banc*. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

## **VI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case requires interpretation and application of the Fourth Amendment to the United States Constitution that 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.**

Because these charges constituted offenses against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

### **B. Factual Background.**

On the evening of November 2, 2017, Emory Chiles rode as a passenger in a Volkswagen car driven by his friend, Trevor Townsend. J.A. 338-339.<sup>1</sup> Townsend drove Chiles to see his sister in Ohio and then back to Morgantown, West Virginia, in Monongalia County, where Chiles lived. J.A. 347. The trip from Ohio was unremarkable until the two men began traveling southbound on I-79. After crossing from Pennsylvania into West Virginia, Townsend noticed two police vehicles stopped on the side of the interstate with the emergency lights on. J.A. 20. Townsend passed the police vehicles and continued south toward Morgantown, West Virginia. J.A. 73-74.

Moments later, near the exit for West Virginia University, a police vehicle approached Townsend's car from behind with its emergency lights on. J.A. 74-75. Townsend pulled his car onto the shoulder. J.A. 76. Deputy Oziemblowsky

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<sup>1</sup> "J.A." refers to the parties' joint appendix filed in connection with Mr. Chiles' appeal to the United States Court of Appeals for the Fourth Circuit.

approached the driver's side window and told Townsend the reason that he pulled Townsend over was that a taillight was out. J.A. 100. This surprised Townsend because he believed the tail lights had been working and he proceeded to explain to the officer that this was a car recently purchased by his mother. J.A. 105.

At this time, Deputy Oziemblowsky asked Townsend whether he had his license, registration and proof of insurance. J.A. 76. Townsend responded he did not due to his license being suspended for a previous DUI, but was able to produce an ID card from a bag in the backseat. J.A. 77, 104. Next, the Deputy Oziemblowsky asked Townsend if there were any weapons or anything he should be concerned about in the vehicle. Townsend said no, but told the office he had a knife and in compliance with the officer's directions, Townsend put his pocket knife on the consol. J.A. 111, 464.

After returning to his patrol car, about 5 minutes into the stop, Deputy Oziemblowsky radioed MECCA-911 to follow up on the license plate. J.A. 464. Apparently, Deputy Oziemblowsky asked MECCA-911 to search for information about the license prior to the traffic stop. The MECCA-911 operator could not determine a make for the car based on the license plate, but advised the license was not issued to a Volkswagen. Deputy Oziemblowsky then requested information from NCIC to confirm whether Townsend was not a licensed driver. The MECCA-911 operator confirmed that Townsend had an expired license. J.A. 464.

Meanwhile, Sgt. Stockett, the K-9 handler, arrived. J.A. 146-147. Sgt. Stockett interviewed Chiles, who was seated in the passenger seat. J.A. 147. Chiles produced

an identification card from New York, and explained that they had come from Ohio. Chiles disclosed that he had been to prison in the past and Chiles advised that he was recording the encounter with his cell phone. J.A. 147-154.

After the interview, Sgt. Stockett approached Deputy Oziemblowsky at his patrol car. Deputy Oziemblowsky stated “[T]ell me you are going to run the dog on this one” to Sgt. Stockett. J.A. 105, 120-21. Sgt. Stockett replied yes. J.A. 120-21. At this point the NCIC information was not yet confirmed, and no information about Chiles had been received. J.A. 121.

After about 10 minutes into the stop, Deputy Oziemblowsky informed Sgt. Stockett that he was still waiting for NCIC information requested, suggesting there was time to bring the dog in and around the car. J.A. 161-62. During their conversation, however, the MECCA-911 operator responded with the NCIC information indicating that Townsend’s license was revoked for “SRO DUI” and unpaid citations. J.A. 122. An “SRO DUI” is a suspended or revoked operators license based upon a prior offense for driving while under the influence. J.A. 101. The officers removed Townsend from the vehicle and Sgt. Stockett retrieved the dog from his vehicle. J.A. 464. Deputy Oziemblowsky asked permission to pat down Trevor upon exiting the vehicle, approximately 13 minutes into the stop. Townsend consented to the pat down and nothing was recovered from that pat down. About one minute later, Chiles exited car and walked behind the car on the side of I-79, recording the encounter with the police and their interaction with Townsend. J.A. 464. Sgt. Stockett walked the drug dog around the vehicle and the dog started barking. J.A. 110. The dog alerted on the

vehicle. J.A. 125.

Deputy Oziemblowsky continued to question Townsend and Chiles on the side of I-79 for a few more minutes while Sgt. Stockett searched the vehicle. J.A. 464. About 20 minutes into the stop, Deputy Oziemblowsky asked Chiles whether he has any weapons on him and if he can pat him down. J.A. 110. Chiles declined the pat down. J.A. 110. Deputy Oziemblowsky advise Chiles he is going to pat him down anyway “under *Terry v. Ohio*.” J.A. 110. Deputy Oziemblowsky grabbed Chiles and proceeded to pat him down. J.A. 125. Through this prolonged detention and pat down, a Ruger pistol, model P95DSC, 9mm caliber, serial number 314-71838 was found in Chiles’s waistband as well as two bags containing brown powder from his jacket. J.A. 465. These bags contained approximately 112 grams of suspected heroin. At this time the officers placed Chiles under arrest. MECCA-911 confirmed that Chiles was a felon and prohibited from possessing firearms.

### **C. Procedural History.**

On February 6, 2018, a grand jury sitting in the Northern District of West Virginia at Clarksburg returned a three-count indictment charging Chiles with the following crimes: Count One, possession with intent to distribute heroin in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); Count Two, the use of a firearm during and in relation to a drug offense in violation of 18 U.S.C. § 924(c)(1)(A)(i); and count three, the unlawful possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924(a)(2). J.A. 15-17. Chiles qualified for appointed counsel and the district court appointed undersigned counsel to represent him. J.A. 4.

On March 27, 2018, Chiles moved to suppress the evidence obtained during the traffic stop. J.A. 19. First, Chiles argued that Deputy Oziemblowsky lacked probable cause for the traffic stop because, according to Townsend and the body camera video, the tail light of the car was possibly dim, but not “out” as Deputy Oziemblowsky claimed. J.A. 27. Second, Chiles argued that Deputy Oziemblowsky and Sgt. Stockett lacked reasonable suspicion to detain Chiles -- who was merely a bystander during the traffic stop -- and that the detention and the entire traffic stop were unnecessarily and artificially extended in order to conduct the dog sniff. J.A. 28. Finally, Chiles argued that the officers lacked the reasonable suspicion to believe that Chiles was armed and dangerous and, therefore, the officers had no basis to perform a pat down search. J.A. 30.

Two evidentiary hearings were held on Chiles’s motion, the first on March 29, 2018, and the second on April 2, 2018, before the United States Magistrate Judge Michael J. Aloï, in Clarksburg. J.A. 70, 140. The government presented the testimony of the two officers who performed the traffic stop, Deputy Oziemblowsky and Sgt. Stockett. J.A. 71, 141.

The Magistrate Judge produced a Report and Recommendation (“R&R”), that called for the denial of the motion to suppress. J.A. 201. The R&R reasoned that Chiles had been lawfully detained pursuant to a lawful traffic stop that was justified at its inception and remained reasonable in scope. J.A. 234-235. Regarding the taillight of the Volkswagen, the R&R found that it was not in proper working condition under West Virginia traffic laws, such that reasonable suspicion could arise. J.A. 209.

Next, the R&R found that neither Sgt. Stockett's inquiries nor the dog sniff improperly extended the duration of the stop. J.A. 212. Further, it concluded that reasonable suspicion existed that Chiles was both armed and dangerous when he was frisked. J.A. 221. Finally, the R&R concluded that reasonable suspicion existed that Chiles was engaged in illicit drug activity, particularly in light of the dog's alert on the vehicle. J.A. 223.

Chiles filed five objections to the R&R. J.A. 226. First, he objected to the finding that the vehicle stop was justified at its inception. The taillight on Townsend's vehicle was not "out" as the video from one of the officer's body camera demonstrated. J.A. 226. Next, Chiles objected to the R&R's suggestion that a K-9 sniff was constitutionally acceptable if it occurred within the time required to issue a citation. J.A. 227. Chiles argued that the officers artificially extended the scope of the traffic stop to conduct a drug investigation that included a K-9 sniff, in violation of *Rodriguez v. United States*, 135 S. Ct. 1609, 1612 (2015). J.A. 228. Third, Chiles objected to the finding that his detention was lawful after the mission of the stop concluded, as his detention had nothing to do with the traffic violations at issue. J.A. 228. Fourth, Chiles objected that there was no reasonable suspicion of drug activity. J.A. 229. Finally, Chiles objected that the frisk of his person given that it was not based on a reasonable belief that he was then armed and dangerous. J.A. 230.

The district court adopted the R&R, denying Chiles's motion to suppress. J.A. 233. The district court made the following four findings: 1) the vehicle stop was justified at its inception because the tail light was not in "proper working condition;"

2) the officers worked diligently to verify information and did not unreasonably extend the traffic stop; 3) Chiles was lawfully detained as a passenger at the time of the frisk of his person; and 4) officers may conduct a frisk of passengers of stopped vehicles when there is reasonable suspicion that the person is armed and dangerous. J.A. 237-238.

Chiles proceeded to jury trial before United States District Court Judge Irene M. Keeley, from April 16<sup>th</sup> to April 17, 2018, in Clarksburg, West Virginia. J.A. 245. A jury found Chiles guilty of possession with intent to distribute heroin as charged in Count One, the use of a firearm during and in relation to a drug offense as charged in Count Two, and the unlawful possession of a firearm as charged in Count Three. J.A. 240-242.

Final sentencing took place on August 6, 2018. J.A. 398. The district court sentenced Chiles to a total effective sentence of thirty years in prison, including a sentence of one hundred and eighty months on Count One, a sentence of one hundred and eighty months consecutive to all other counts on Count Two, and a sentence of ninety months concurrent with Count One on Count Three. J.A. 452. These prison sentences are to be followed by concurrent three year terms of supervised release. J.A. 453. The district court entered judgment order on August 7, 2018. J.A. 451. On August 9, 2018, Chiles filed his notice of appeal. J.A. 458-59.

Chiles timely appealed to the Fourth Circuit. In an unpublished, per curiam decision, the Fourth Circuit affirmed the judgment of the district court on April 23, 2019. The Fourth Circuit held, without elaboration, that it “conclude[d] for the reasons

stated by the district court that the court properly denied the motion to suppress.”  
Opinion at 2.

Chiles timely filed a Petition for Rehearing or Rehearing *En Banc* on May 7, 2019. The Fourth Circuit denied Chiles’ Petition on June 7, 2019.

### VIII. REASONS FOR GRANTING THE WRIT

**The writ should be granted to determine whether Mr. Chiles’ Fourth Amendment rights were infringed when the district court denied his motion to suppress evidence seized after police conducted an illegal roadside vehicle search of the vehicle in which Chiles was a passenger without justification.**

Like all other citizens, Chiles deserves a ruling on appeal that is commensurate with established law. The opinion of the Court of Appeals for the Fourth Circuit represents a serious and unwarranted departure from Supreme Court precedent. The departure is of such a degree that it places the opinion outside the accepted and usual course of judicial proceedings and calls for an exercise of this Court’s supervisory power. See Sup. Ct. R.10 (a).

**A. Officers unnecessarily and intentionally prolonged a simple traffic stop in order to conduct a K-9 sniff for drugs and this clearly violated Chiles’ rights because it is undisputed that the officers lacked independent reasonable suspicion.**

Here, the applicable legal principles are basic and not full of nuance. The temporary detention of individuals during a traffic stop of an automobile constitutes a seizure. *Whren v. United States*, 517 U.S. 806, 809 (1996). A seizure for a traffic violation justifies a police investigation of that violation. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). Pursuant to *Terry v. Ohio*, the Court analyzes



the propriety of the stop on two fronts: 1) whether the police officer's actions were justified at its inception; and 2) whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop. 392 U.S. 1 (1968); *see also United States v. Digiovanni*, 650 F.3d 498, 506 (4th Cir. 2011), abrogated in part on other grounds by *Rodriguez*, 135 S. Ct. 1609 (2015).

Like a *Terry* stop, the constitutionally permissible duration of police inquiries in the traffic stop context is determined by the seizure's "mission" -- to address the traffic violation that warranted the traffic stop. *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005). Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the stop. *Id.* at 408. Typically, such inquiries involve checking driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance and the officers went well beyond this point in this case. There is no case law to support the idea that a dog sniff is related to a routine stop for traffic violations.

If an officer wishes to detain the occupant of a vehicle beyond the scope of a routine traffic stop, the officer *must be able to articulate an independent reasonable suspicion that criminal activity is afoot and any further detention beyond the scope of the stop is illegal unless the officer has reasonable suspicion of a serious crime*. *See United States v. Brugal*, 209 F.3d 353, 357-58 (4th Cir. 2000). A seizure justified only by a police-observed traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation. *See Rodriguez*, 135 S. Ct. at 1612.

This case involves a straightforward violation of the rule in *Rodriguez*. The violation is so clear that it is surprising that the Fourth Circuit’s opinion failed to recognize the error. This Court should grant the writ to correct the obvious error.

Here, upon being stopped by Oziemblowsky, Townsend and Chiles were detained. J.A. 163. The sole “mission” of the traffic stop was to identify Mr. Townsend and to issue whatever warnings or violation notices that the lead police officer, in his discretion, chose to issue. J.A. 103. Oziemblowsky testified that prior to the K-9 search, he received by radio the information he requested about Townsend, and confirmed Townsend was “SRO DUI.” J.A. 107-108.

This radio communication was critical and it marked the end of the mission of the traffic stop. That is, Oziemblowsky testified that it was policy to arrest individuals for the offense SRO DUI. J.A. 108. This was a “forthwith offense” so the individual must be arrested when there is probable cause. J.A. 102. Oziemblowsky acknowledged that he could have arrested Townsend at that point in time, prior to the K-9 search, J.A. 108, and Chiles contends Ozeimblowsky was duty bound to do so. Nevertheless, Oziemblowsky testified that he chose not to arrest Mr. Townsend at that point. Oziemblowsky preferred, instead, to continue with a drug investigation, which included a K-9 sniff. J.A. 108.

This course of action violated Chiles’ rights given that Oziemblosky failed to articulate any independent reasonable suspicion that justified a continued detention of Chiles during the K-9 sniff. Oziemblowsky admitted as much during his testimony before the district court. This admission resolves the issue of a Fourth Amendment

violation simply and easily. Oziemblowsky's own testimony shows that he intentionally took more time than was necessary under the circumstances to arrest Townsend and to complete the mission of the traffic stop. This intentional delay caused Chiles, a mere passenger in the vehicle, to be detained longer than necessary, without the requisite independent reasonable suspicion. Chiles never should have been subjected to a K-9 search. This procedure was specifically prohibited under *Rodriguez*, which holds that a traffic stop exceeding the time needed to handle the matter for which the stop was initiated violates the Fourth Amendment. 135 S. Ct. 1609, 1612 (2015).

## IX. CONCLUSION

For these reasons, Chiles asks that this Honorable Court grant a writ of certiorari and review the judgment of the court of appeals.

Respectfully submitted,

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