No. 20-564

IN THE SUPREME COURT OF THE UNITED STATES

RODNEY CARLISLE, JR., PETITIONER

v.

COMMONWEALTH OF KENTUCKY, RESPONDENT

On Petition for a Writ of Certiorari
To the Supreme Court of Kentucky

Respondent's Brief in Opposition

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Question Presented

Whether the Fourth Amendment allows a law enforcement officer to conduct a safety-based criminal history check of an individual during a traffic stop, regardless of whether that individual poses a known threat.

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Statement of the Case

Factual history

At about 3:00 p.m. on September 8, 2017, Covington Police Officer Brian Powers stopped the driver of a Ford F150 pickup truck on Pleasant Street near Scott Street. (Powers Vid. 00:50, 01:33;[1] Hr'g Vid. R., 5/10/18, 2:06:15, 2:27:10.) Powers approached and asked the driver—Daniel Hughes—to turn the truck off so Powers could hear him. (Powers Vid. 1:40.) Hughes wore no shirt; Petitioner Rodney Carlisle sat in the passenger seat and wore a plush sweater. (Powers Vid. 14:46, 15:23.) Powers told Hughes the exhaust was too loud and that he could not see the taillights—both were too dark, and the left one was not visible at all. (Powers Vid. 2:06:15, 2:06:50, 2:27:10.) Powers asked Hughes where they came from, and where he lived. Hughes said they came from Newport, and he had been staying with a friend on Washington Street in Newport. Powers asked him where they were headed. Hughes said "right here" and pointed to a Sunoco station. Hughes answered Powers's question about where on Washington Street he was staying. Power then asked why they came all the way over to that location. Hughes said they were getting gas there and then he was going to help someone in the Latonia

[1] The recording from Officer Powers's body-worn camera was introduced into evidence during the suppression hearing. Carlisle submitted a duplicate of that recording with his petition.

neighborhood move.[2] Powers asked where in Latonia, and then asked who he was helping. Hughes answered vaguely that he thought it was on Glenn (Avenue)—he didn't know the address—and that it was a woman named Becky. Powers asked about the passenger, and Hughes identified him as his friend R.C. Powers asked who the vehicle was registered to. Hughes identified the owner and said that he was a friend. (Powers Vid. 1:40–2:36; Hr'g Vid. R., 5/10/18, 2:15:00.)

Powers obtained Hughes's driver's license. While Hughes looked for insurance documents Powers asked Carlisle if he had his identification, and Carlisle handed a state identification card to him. Powers asked Hughes if he had been arrested before. Hughes said he had been arrested for possession of drug paraphernalia, and not for anything else in a long time. He said he had been driving the truck for a couple of weeks. Hughes finally found the insurance card and Powers returned to his cruiser with the documents, as his sergeant and another officer watched Hughes and Carlisle. (Powers Vid. 2:36–4:19, 7:07.) Powers said "shady" to a civilian who sat in his passenger seat. (Powers Vid. 4:20.)

Both Officer Powers and the passenger commented on the mutilated state of Hughes's driver's license. The information on the card was severely effaced. (Powers Vid. 4:45, 7:07.) Powers told the passenger that he intended to see if the two men

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[2] Powers and his sergeant later commented to each other on the implausibility of Hughes and Carlisle driving all the way from Washington Street in Newport to that particular Sunoco to get gas. (Powers Vid. 20:56.)

had prior charges. (Powers Vid. 5:59.) He commonly ran criminal history checks to see if individuals had prior charges relating to firearms. (Hr'g Vid. R., 5/10/18, 2:24:50.) Officer Powers entered information into his mobile data terminal to obtain the criminal histories, and apparently had no trouble locating Carlisle's. He said he could not get a return on Hughes, and both he and his passenger attempted to decipher the numbers of Hughes's driver's license as he entered additional information and waited for returns. (Powers Vid. 7:06–8:02.) On one database he found a criminal history on Hughes and commented on his various prior charges. (Powers Vid. 8:35.) He said he would see if Hughes would allow him to search the vehicle. (Powers Vid. 9:00.)

Officer Powers said twice that no information was coming back on Hughes's driver's license number. (Powers Vid. 7:06–7:20, 9:45.) He contacted the dispatcher with what he incorrectly believed that number to be. (Powers Vid. 10:00.) While he waited on the dispatcher, the passenger asked him if he tried both the ID number and a social security number. He replied that he tried everything. (Powers Vid. 10:40.) He then attempted to find Hughes on a driver's licensing "name file." He found Hughes on that file. It included Hughes's license number and the fact his license was suspended. (Powers Vid. 10:48–11:11.) Powers told his passenger that an illegible number on the license was a "6" and that "[h]e's jacked it up or done something to change it." (Powers Vid. 11:20.) The dispatcher asked Powers to confirm the number, and he was able to provide the correct number that time. The

dispatcher asked him to stand by. (Powers Vid. 11:35.) He commented to the passenger he wanted to make sure Hughes did not have any warrants he was missing. (Powers Vid. 12:15.) After waiting another minute and a half for the information he stepped out and asked his passenger to say "clear" if the dispatcher responded, or to get his attention if there was a warrant. (Powers Vid. 13:45.)

As Powers returned Hughes's documents to him, they could hear the dispatcher speak over a radio. She said that Hughes's license was suspended and he was clear of warrants. Hughes said that he was unaware of the license suspension. Powers told Hughes he would not cite him, but Hughes would have to park the vehicle. Hughes asked if he could park it at Sunoco, and Powers said he could. (Powers Vid. 14:00–14:39.) Powers then asked Hughes if anything illegal was in the vehicle, such as weapons or drugs. Hughes said no, he only had the pocket knife he had mentioned during the first conversation. Powers asked, "[m]ind if I take a look?" Hughes said, "no." (Powers Vid. 14:39; Pet. App. 3a–4a.) Officer Powers and his sergeant searched the truck and found a scale, bags of unused syringes, multiple cell phones, a cannister of butane, and a cellophane wrapper covered in apparent drug residue. (Powers Vid. 16:47–26:33.) The officers then searched Carlisle and Hughes. (Powers Vid. 28:00, 39:20.) They seized controlled substances and a large amount of cash from Carlisle. (Pet. App. 4a–6a.) More controlled substances were found on Carlisle at the jail. (R. 5; Trial Vid. R., 9/25/18, 1:34:15.)

Procedural history

Carlisle was indicted for separate offenses of trafficking in cocaine, heroin, and methamphetamine as well as being a second-degree persistent felony offender. (R. 16–17.) Carlisle moved to suppress the evidence, on multiple grounds, and the court denied the motion. Relevant to the issue raised here, the trial court distinguished the facts from those in *Rodriguez v. United States*, 575 U.S. 348 (2015), and in *Davis v. Commonwealth*, 484 S.W.3d 288 (Ky. 2016), which prohibited the prolonging of a traffic stop for a canine sniff in the absence of reasonable suspicion. The court considered whether Hughes's consent was voluntary—an issue Carlisle had not raised or argued—and determined that it was. The court did not find it necessary to determine whether Officer Powers prolonged the stop. (Pet. App. 31a–32a.)

A jury found Carlisle guilty of each underlying offense but deadlocked as to the penalties. The trial court declared a mistrial as to the penalty phase. (R. 123–25.) Carlisle and the Commonwealth agreed to an unenhanced total of 20 years imprisonment for the underlying offenses, and the court sentenced Carlisle accordingly. (R. 127–30; Sentencing Vid. R., 11/26/18, 9:39:55–9:41:48, 9:46:00.)

The Kentucky Supreme Court affirmed Carlisle's conviction. (Pet. App. 2a.) Relating to the duration of the traffic stop, the court held that Officer Powers's questions to Hughes about his travel plans were appropriate as an ordinary inquiry incident to a traffic stop, and were particularly relevant to the traffic violation for

faulty equipment. (Pet. App. 13a–14a.) The court also held that "an officer reasonably may ask for the identification and perform a criminal-records check of a driver and any passengers during an otherwise lawful traffic stop to determine an individual's prior contact with law enforcement. Such a task is an ordinary inquiry related to officer safety." (Pet. App. 19a.) And the mission of the traffic stop had not yet concluded when Hughes consented to a search of the vehicle. (Pet. App. 12a.)

Argument Summary

This case is not suitable for grant of a writ of certiorari.

Carlisle alleges a split in the federal circuit courts and state courts that isn't there. He cites decisions of the Third, Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits, as well as the supreme courts of Georgia and Kentucky. Each of those decisions is congruous with the others, and with decisions of other federal circuit courts and state courts of last resort.

Even if the question that Carlisle presents warrants this Court's consideration at some point, this case is not the vehicle for it. Carlisle claims that the check of his criminal history prolonged the traffic stop, but he does not suggest that it caused the seizure of evidence. It did not, and the question presented is merely an academic one in this case.

Finally, the Kentucky Supreme Court reached the correct result. A criminal record check during a traffic stop is minimally intrusive and informs law enforcement officers of potential threats.

Reasons for Denying the Petition

I. The United States Courts of Appeal are not in conflict regarding criminal record checks during traffic stops, and the Kentucky Supreme Court's decision does not conflict with decisions of those courts or other state courts of last resort.

Officer Powers checked both Hughes's and Carlisle's criminal histories. In his petition Carlisle presents a general question of whether a law enforcement officer may conduct a criminal history check on an individual during a traffic stop. He does not distinguish between a check of a driver and a passenger.

In *Rodriguez v. United States*, 575 U.S. 348 (2015), this Court established a parameter on the permissible duration of a traffic stop. It held

> that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation.

Id. at 350 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

In that case, a police officer stopped Rodriguez and his passenger after observing him commit a traffic violation. The officer collected Rodriguez's documents and ran a records check from his patrol car. He returned to Rodriquez's vehicle, obtained the passenger's driver's license, and questioned the passenger. He went back to his patrol car, completed a records check on the passenger, and wrote a warning ticket for Rodriguez. He also called for a second officer. He returned to Rodriguez's vehicle a third time, issued the written warning, and returned the

documents to Rodriguez and the passenger. He then asked Rodriguez for permission to walk his dog around the vehicle, and Rodriguez refused. He continued to detain Rodriguez until the second officer arrived, allowing him the opportunity to bring out the dog. Seven or eight minutes after the officer completed the mission of the stop by issuing the written warning, the dog indicated the presence of drugs in the vehicle. A search of the vehicle revealed methamphetamine. *Id.* at 351–53.

The continued seizure of Rodriguez following the issuance of the warning was unlawful. A stop for a traffic infraction may not last longer than is necessary to address the infraction and attend to related safety concerns. *Id.* at 354 (citations omitted). An officer's mission in a traffic stop includes determining whether to issue a ticket, and engaging in ordinary inquiries incident to the traffic stop. "Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 355 (citations omitted). On the other hand, a dog sniff is aimed at detecting evidence of criminal wrongdoing unrelated to the purpose of the stop, and is not part of the officer's mission. *Id.* at 355–56 (citation omitted).

Because the officer continued to detain Rodriguez after he had completed the mission of the stop, it was unnecessary to evaluate the lawfulness of the criminal records checks on Rodriguez and his passenger prior to the issuance of the written warning. But the Court commented:

> Traffic stops are "especially fraught with danger to police officers," [*Arizona v. Johnson*, 555 U.S. 323, 330 (2009)] (internal quotation marks omitted), so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely. Cf. *United States v. Holt*, 264 F.3d 1215, 1221–1222 (C.A.10 2001) (en banc) (recognizing officer safety justification for criminal record and outstanding warrant checks), abrogated on other grounds as recognized in *United States v. Stewart*, 473 F.3d 1265, 1269 (C.A.10 2007).

Id. at 356.

After *Rodriguez*, federal courts of appeal that have reviewed criminal record checks of vehicle occupants have indeed determined they are justified for the safety of officers.

The Tenth Circuit recently held that "an officer's decision to run a criminal-history check on an occupant of a vehicle after initiating a traffic stop is justifiable as a 'negligibly burdensome precaution' consistent with the important governmental interest in officer safety." *United States v. Mayville*, 955 F.3d 825, 830 (10th Cir. 2020).

The Seventh Circuit recently restated that "when police conduct a stop, 'they are entitled to demand the driver's identification, of course, and it is routine to check the driver's record for active warrants, driving history, and criminal history. Those checks are done for important reasons, including officer safety.'" *United States v. Simon*, 937 F.3d 820 (7th Cir. 2019) (quoting *Swanigan v. City of Chicago*, 881 F.3d 577, 586 (7th Cir. 2018) (Hamilton, J., concurring in part and dissenting in part)); *see also United States v. Sanford*, 806 F.3d 954, 956 (7th Cir. 2015) (stating

that even without reasonable suspicion of criminal activity an officer may reasonably use a computer to check the criminal histories of a vehicle's occupants).

The Eighth Circuit also held that "[a]n officer may complete routine tasks during a traffic stop, which can include a computerized check of the vehicle's registration and the driver's license and criminal history, as well as the preparation of a citation or warning." *United States v. Fuehrer*, 844 F.3d 767, 772 (8th Cir. 2016) (internal quotation marks omitted) (quoting *United States v. Ovando–Garzo*, 752 F.3d 1161, 1163 (8th Cir. 2014), and *United States v. Quintero–Felix*, 714 F.3d 563, 567 (8th Cir. 2013)).

In Carlisle's appeal, the Kentucky Supreme Court examined decisions of the Fourth Circuit, which

> held that "an officer reasonably may search a computer database during a traffic stop to determine an individual's prior contact with local law enforcement, just as an officer may engage in the indisputably proper action of searching computer databases for an individual's outstanding warrants." *United States v. Hill*, 852 F.3d 377, 383 (4th Cir. 2017) (citations omitted); *see also United States v. Palmer*, 820 F.3d 640, 649 (4th Cir. 2016) ("An officer is entitled to conduct safety-related checks that do not bear directly on the reasons for the stop, such as requesting a driver's license and vehicle registration, or checking for criminal records and outstanding arrest warrants." (citing *Rodriguez*, 575 U.S. at 354–55, 135 S.Ct. 1609)).

(Pet. App. 15a.)

And the First Circuit stated that "the Supreme Court has characterized a criminal-record check as a 'negligibly burdensome precaution' that may be

necessary in order to complete the mission of the traffic stop safely." *United States v. Dion*, 859 F.3d 114, 127 n.11 (1st Cir. 2017) (quoting *Rodriguez*, 576 U.S. at 356).

The notion that federal circuit courts of appeal are split on the issue of criminal history checks arises from a misconception of the Ninth Circuit's holding in *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015). In Carlisle's appeal, the Kentucky Supreme Court cited the decision as contrary to the decisions of other circuits. But in doing so it conflated the "ex-felon registration check" in *Evans*—a criminal investigation—with criminal history checks. (Pet. App. 14a.) Carlisle does the same in his petition. (Pet. 10–11.)

In *Evans*, an officer who had a drug-detection dog stopped a driver for traffic offenses. He told the driver that he would only issue a warning, and he collected the licenses of both the driver and passenger—who were codefendants—and conducted records checks in his patrol car to determine whether the driver's license was valid and whether either had a warrant. The officer conducted this check through the dispatcher, who informed him that there were no issues. Separately the officer used his computer to check the driver's name in a database, and learned that the driver had a felony arrest record. *Id.* at 781–83.

Because the officer learned that the driver had a felony arrest record, he asked the dispatcher to run an ex-felon registration check—a separate investigation to determine whether the felony charges resulted in convictions that required the driver to register his current residential address in the state of Nevada and, if so,

whether the driver had done so. Violation of the requirement is a misdemeanor offense under Nevada law. *Id.* at 783 n.5. The officer told the driver he was only waiting on the results of the ex-felon registration check, and the driver would be free to leave if the check showed proper registration. More than eight minutes after the start of that check the dispatcher informed the officer that the driver had two convictions and was properly registered. The officer told the driver he was free to leave, then asked for consent to search the car. The driver refused consent, and the officer continued the detention in order to walk his dog around the car. The dog alerted to the odor of drugs. A subsequent search of the car revealed drugs, and a handgun in the passenger's backpack. *Id.* at 783–84.

Evans did not cast doubt on the legality of the general criminal history check. It held that the ex-felon registration check and the dog sniff were aimed at detecting criminal wrongdoing, and extended the traffic stop beyond the time reasonably required to complete its mission. *Id.* at 786. Nothing in the decision is contrary to the holdings of other federal circuits that permit routine criminal history checks for safety purposes. The ex-felon registration check is qualitatively different as an investigation into whether an individual committed a specific criminal offense.

Subsequent to *Evans* the Ninth Circuit distinguished a permissible routine criminal history check at a traffic stop from a subsequent non-routine record check—conducted via a multijurisdictional intelligence center—that unlawfully prolonged the stop. *United States v. Gorman*, 859 F.3d 706, 711, 715 (9th Cir. 2017),

order corrected, 870 F.3d 963 (9th Cir. 2017). This decision reinforces the fact that in *Evans*, the initial criminal record checks of the driver and passenger were not the problem.

Carlisle also claims that in the pre-*Rodriguez* decision *United States v. Purcell*, 236 F.3d 1274 (11th Cir. 2001), the Eleventh Circuit rejected a categorical rule permitting criminal history checks during traffic stops. (Pet. 11–12.) In fact, the court expressly endorsed them, holding that "[t]he request for criminal histories as part of a routine computer check is justified for officer safety. It is both reasonable and minimally intrusive." *Id.* at 1278. Carlisle fixes on the court's comment about the reasonableness of a check. (Pet. at 11–12.) But the court did not mean that an officer must have a particular safety concern to run a history check. Rather, the duration must be reasonable. "So long as the computer check does not prolong the traffic stop beyond a reasonable amount of time under the circumstances of the stop, the inclusion of a request for criminal histories does not constitute a Fourth Amendment violation." *Id.* at 1279. *See also United States v. Holt*, 777 F.3d 1234, 1256 (11th Cir. 2015) (applying *Purcell* in determining that traffic stops that included routine record checks were not unreasonably prolonged). The Eleventh Circuit's endorsement of routine criminal history checks is no different than those of other circuits. In fact, in *Mayville*—the most recent federal appellate decision to state that a criminal history check on a vehicle occupant is justified as a safety precaution—also stated that the check cannot unreasonably

prolong the stop. 955 F.3d at 831 (citing *Rodriguez*, 575 U.S. at 356; *Holt*, 264 F.3d at 1221–22).

And Carlisle suggests that the Third Circuit leaned against routine criminal history checks in *United States v. Clark*, 902 F.3d 404 (3d Cir. 2018). (Pet. 12 n.3.) It did not. In *Clark*, the district and appellate courts did not question an officer's license and registration check that provided the motorist's criminal history. Rather, the officer's continued detention of the motorist after completion of the stop's mission—just so the officer could interrogate the motorist about his criminal history—was deemed unlawful. *Id.* at 406–07, 410–11. In fact, both courts noted that the questioning was redundant in that the officer already acquired the motorist's criminal history information through the computer check. *Id.* at 411 n.6. The Third Circuit's most direct statement on criminal history checks was in the unpublished decision *United States v. Frierson*, 611 Fed. Appx. 82 (3d Cir. 2015). The court found that an officer reasonably addressed a traffic violation by checking the driver's license, registration, and criminal history. *Id.* at 85 (citing *Rodriguez*, 575 U.S. at 355–56). Upon discovering that the driver was previously convicted of manslaughter and unlawful weapon possession, the officer was further justified in waiting for a backup officer. *Id.* at 84–85.

Thus, there is no split in the federal circuits that have addressed the issue of criminal history checks. The Kentucky Supreme Court's decision was also in accord with those of its counterparts in other states. The court relied in substantial part on

State v. Allen, 779 S.E.2d 248, 251–58 (Ga. 2015), in determining that identification requests and criminal records checks are ordinary inquiries related to officer safety. (Pet. App. 16a–20a.) Similarly, in *State v. Martinez*, 424 P.3d 83, 86 (Utah 2017), the court determined that an officer did not impermissibly extend a traffic stop by asking the passenger for identification and running a background check.

In Washington, *the state constitution* prohibits an officer from requesting a passenger's identification for investigative purposes, without an independent reason to do so. *State v. Rankin*, 92 P.3d 202, 206 (Wash. 2004). This does not indicate a split in Fourth Amendment jurisprudence.

With no substantial difference between the decisions of the federal circuits and the state courts of last resort as to whether a criminal history check impermissibly prolongs a traffic stop in the absence of reasonable suspicion of criminal activity under the Fourth Amendment, a writ of certiorari is not justified under U.S. Sup. Ct. R. 10(b).

II. This case is a poor vehicle for certiorari in that Officer Powers's check of Carlisle's criminal history did not cause the seizure of evidence.

Regardless of whether the question that Carlisle presents should be reviewed at some point, this is not the case for it. Carlisle states that Officer Powers's check of his criminal history prolonged the traffic stop. (Pet. i, 1, 8, 18.) He does not suggest a nexus between that and the seizure of evidence.

The Kentucky Supreme Court determined that because Officer Powers's questions to Hughes and his inquiry into the men's criminal histories were

appropriate and related to the mission of the stop, it did not need to consider whether they "prolonged the duration of the traffic stop by any length of time." (Pet. App. 19a–20a.) The court also did not consider whether Officer Power's criminal history check of Carlisle caused the seizure of evidence.

Carlisle notes that Officer Powers spent approximately nine minutes in his patrol car, during which time he checked Hughes's and Carlisle's criminal histories. (Pet. 5). *Officer Powers spent that much time there because Hughes's driver's license was mutilated.* As Officer Powers told his passenger, Hughes had "jacked it up or done something to change it." (Powers Vid. 11:20.) The Kentucky Supreme Court stated that Officer Powers "had trouble running Hughes's license number because the license was damaged and some of the numbers were illegible, so he contacted dispatch for assistance. Dispatch eventually responded that Hughes's license was suspended." (Pet. App. 3a.) That does not quite capture the effort required to check Hughes's license and warrant status. The recording from Officer Powers's body-worn camera demonstrates that he tried multiple ways through databases and conversations with a dispatcher to determine whether Hughes had a valid license or an arrest warrant. (Powers Vid. 7:17–13:45.) Carlisle does not dispute that those actions furthered the mission of the traffic stop. By the time Officer Powers got out of the cruiser to approach Hughes, he still had not received confirmation that Hughes's license was suspended and he still did not know whether Hughes had an arrest warrant. (Powers Vid. 13:45–14:15.)

When Officer Powers received confirmation that Hughes's license was suspended and told Hughes he would have to park the vehicle, Hughes voluntarily consented to Officer Power's request to search it. Officer Powers's subjective motivation in asking him for that consent is not relevant. *See Ohio v. Robinette*, 519 U.S. 33, 38 (1996); *Whren v. United States*, 517 U.S. 806, 813–15 (1996). Evidence seized from the truck led the officers to search Hughes and Carlisle. (Powers Vid. 28:00–33:40, 39:20; Hr'g Vid. R., 5/10/18, 2:14:10, 2:19:40, 2:20:20, 2:26:00.)

Though Carlisle complains that the check of his criminal history prolonged the stop for an indeterminate period, he does not tie any such delay to the seizure of evidence.

Under the exclusionary rule, "evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure." *United States v. Calandra*, 414 U.S. 338, 347 (1974) (citations omitted). The rule is not indiscriminately applied. The question of whether police violated the Fourth Amendment rights of the party who seeks to invoke the rule is an issue separate from whether the sanction is appropriate in a given case. *Hudson v. Michigan*, 547 U.S. 586, 591–92 (2006) (citing *United States v. Leon*, 468 U.S. 897 (1984)). But-for causation between police misconduct and the seizure of evidence is a necessary, though not in itself sufficient, condition for the suppression of evidence. *Id.* at 592. Even when the evidence would not have come to light but for illegal action by police, its seizure may be too attenuated to justify exclusion if it came

about by means other than exploitation of the illegality or if the causal connection is remote. *Id.* at 592–93 (citations omitted).

In *Hudson*, this Court determined that the violation by police of the knock-and-announce requirement in the execution of a valid search warrant was not a but-for cause of the seizure of evidence. Thus, the exclusionary rule did not apply. *Id.* at 592, 594. *See also United States v. Ramirez*, 523 U.S. 65, 72 n.3 (1998) (the exclusionary rule requires a "sufficient causal relationship" between misconduct and the discovery of evidence).

An improper delay by police officers in the execution of a traffic stop requires the exclusion of evidence seized *because* of that delay. In *Rodriguez*, the officer delayed the traffic stop in order to lead his dog around the motorist's vehicle and develop probable cause to search it. 575 U.S. at 352. Carlisle argues that "allowing unnecessary criminal-records checks gives the police an opportunity to 'string[] along the stop until a drug dog arrive[s].'" (Pet. 16 (quoting *State v. Salcedo*, 935 N.W.2d 572, 580 (Iowa 2019)).) Indeed, a common argument for suppression of evidence is that the prolonging of a traffic stop permitted time for a dog sniff which resulted in probable cause to search a vehicle. *See Mayville*, 955 F.3d at 828, 832–33, *Simon*, 937 F.3d at 826; *Fuehrer*, 844 F.3d at 772–73; *Evans*, 786 F.3d at 783–84; *Allen*, 779 S.E.2d 248, 251–58; *see also Palmer*, 820 F.3d at 648 (officer smelled marijuana during extension of traffic stop, before dog alerted to vehicle).

That type of case—where but-for causation is alleged—provides a suitable vehicle for review of the question Carlisle raises. Here, Carlisle does not allege that the check of his criminal history caused the seizure of evidence. This case is a poor vehicle for review of the question raised.

III. The Kentucky Supreme Court ruled correctly.

In determining that an officer may perform criminal records checks of a vehicle's occupants during a lawful stop, the Kentucky Supreme Court noted that officers are authorized to take such steps as are reasonably necessary for their personal safety in the course of the stop. (Pet. App. 19a (citing *United States v. Hensley*, 469 U.S. 221, 235 (1985)). This Court called it "too plain for argument" that the government's interest in officer safety is "is both legitimate and weighty," given the "inordinate risks confronting an officer as he approaches a person seated in an automobile." *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). "Indeed, it appears 'that a significant percentage of murders of police officers occurs when the officers are making traffic stops.'" *Id.* (quoting *United States v. Robinson*, 414 U.S. 218, 234 n.5 (1973)). This Court also noted that the potential risk is not from the driver alone:

> It would seem that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop. And the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver.
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> . . .

> In summary, danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car.

Maryland v. Wilson, 519 U.S. 408, 414 (1997).

For example, in *Hill*, during a traffic stop an officer entered the names of the driver and passenger into computer databases operated by the Department of Motor Vehicles and the National Crime Information Center. The latter provided an "alert" that "both men had been associated with drug trafficking and were 'likely armed.'" And, in fact, the passenger was unlawfully armed. 852 F.3d 377, 379–80. The Fourth Circuit's opinion noted the potential dangers posed by drivers and passengers, and held that the database searches were reasonable. *Id.* at 383.

Carlisle states that an officer should be permitted to run a criminal record check during a traffic stop only when circumstances raise a safety concern. (Pet. 14.) In other words, he requests the creation of standard somewhere between an officer's discretion and a reasonable suspicion of criminal activity. Even if that were workable, it is unreasonable because an officer's discovery of an individual's history of violence *may be the circumstance* that alerts the officer to a danger.

Here, Officer Powers commonly ran criminal history checks to see if individuals had prior firearms-related charges. (Hr'g Vid. R., 5/10/18, 2:24:50.) He asked Carlisle if he happened to have identification, and Carlisle handed his identification card to him. (Powers Vid. 2:58.) Powers then learned through the criminal history check that Carlisle was previously charged with the unlawful possession of a handgun by a convicted felon. (Powers Vid. 17:30.) This check was

the type of "negligibly burdensome precaution" endorsed in *Rodriguez*. 575 U.S. at 356.

Conclusion

Wherefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

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