

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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GEONTAY PATTERSON – PETITIONER

v.

UNITED STATES OF AMERICA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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## **QUESTIONS PRESENTED**

- I. Mr. Patterson moved to suppress controlled substances found during a search of his person because there was no constitutional basis to seize and search him. There were no specific and articulable facts that Mr. Patterson was a present danger and was armed. Did the district court improperly find there was justification for the search and seizure and did the appellate court improperly affirm the district court?
- II. Mr. Patterson moved to suppress controlled substances found because he was unlawfully detained when there was no reasonable suspicion to justify the detention. Did the district court improperly find there was reasonable suspicion and did the appellate court improperly affirm the district court?
- III. Mr. Patterson moved to suppress controlled substances found because the officers carried out a prolonged detention beyond the time reasonably required to complete the mission of issuing a ticket for the traffic violations. Did the district court improperly determine there was no prolonged detention and did the appellate court improperly affirm the district court?

## **LIST OF PARTIES**

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

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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**

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished. It is attached as Appendix A.

## JURISDICTION

The date on which the United States Court of Appeals for the Sixth Circuit decided Mr. Patterson's case was April 27, 2021. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment of the United States Constitution

## STATEMENT OF THE CASE

A criminal complaint was issued against Mr. Patterson on March 14, 2019. (Complaint, RE 1, Page ID # 1.) An indictment was then filed on April 10, 2019, charging Mr. Patterson with one count of possession with intent to distribute methamphetamine, fentanyl, and cocaine base. (Indictment, RE 14, Page ID # 22.) On August 18, 2019, a motion hearing was held based on Mr. Patterson's motions to suppress. (Transcript, RE 38, Page ID # 101.)

Testimony revealed that on February 22, 2019, Michigan State Police Trooper Kyle Sandford was patrolling what he described as a high crime area of both violent and narcotic drug crime in Muskegon Heights. (Transcript, RE 38, Page ID # 104, 119.) However, the trooper had no statistics to back up that description. (Transcript, RE 38, Page ID # 120.) He initiated a traffic stop on the car Mr. Patterson was a passenger in due to a defective plate light just after 11:00 p.m. (Transcript, RE 38, Page ID # 104, 105, 106.) The trooper also stated that the brake light on the passenger side of the car was out as well. (Transcript, RE 38, Page ID # 105.) The trooper testified that the vehicle did not come to an immediate stop, but instead slowed and rolled for a quarter of a mile or so before coming to a complete stop. (Transcript, RE 38, Page ID # 106.) The trooper indicated that he believed this could sometimes mean that the occupants were trying to hide something illegal or contemplating fleeing the scene. (Transcript, RE 38, Page ID # 106.)

During the motion hearing, the government admitted the dashcam footage of the traffic stop. (Transcript, RE 38, Page ID # 104-105.) The officer asked the driver to produce her license, registration, and proof of insurance while at the

same time looking to see if there was anything visible in the car that was illegal or could be a danger to him. (Transcript, RE 38, Page ID # 107.) Besides the female driver, there were two male passengers. (Transcript, RE 38, Page ID # 107.) Mr. Patterson was in the front passenger seat and the other man was seated in the back seat. (Transcript, RE 38, Page ID # 107.)

Trooper Sandford's partner ran up to the vehicle, which was said to be standard procedure when a car is slow to stop so the officer can see what is happening in that vehicle. (Transcript, RE 38, Page ID # 108.) The trooper stated that he spoke with the driver, who responded to him. (Transcript, RE 38, Page ID # 110.) The trooper said he then attempted to talk with Mr. Patterson, but Mr. Patterson did not respond. (Transcript, RE 38, Page ID # 110.) Instead, the trooper claimed that Mr. Patterson stared straight ahead without blinking and appeared "frozen." (Transcript, RE 38, Page ID # 110.) The trooper stated he then spoke to the backseat passenger, who responded, and then he turned his attention back to Mr. Patterson again. (Transcript, RE 38, Page ID # 110.) The trooper said that Mr. Patterson responded this time, but he still did not look at the trooper and continued to stare straight ahead. (Transcript, RE 38, Page ID # 110, 121.) The trooper claimed that he thought this was unusual. (Transcript, RE 38, Page ID # 110.)

At the same time, Trooper Sandford's partner was outside the passenger window and was shining a flashlight directly into Mr. Patterson's face. (Transcript, RE 38, Page ID # 111.) He stated that Mr. Patterson did not move, and he did not ask the trooper to move the light off his face. (Transcript, RE 38, Page ID # 111.) While Trooper Sandford acknowledged that some people are

nervous during traffic stops—and may even tell him not to speak to them if they are not the driver—he claimed he still found Mr. Patterson’s behavior concerning. (Transcript, RE 38, Page ID # 111.) He stated he could see Mr. Patterson’s breathing through a puffy winter jacket. (Transcript, RE 38, Page ID # 112.)

Upon return to the police car, the troopers discussed what Trooper Sandford described as Mr. Patterson’s “unusual behavior.” (Transcript, RE 38, Page ID # 109.) The trooper stated that he believed Mr. Patterson was “very nervous and it was an indicator that something might not be right[.]” (Transcript, RE 38, Page ID # 109.) Trooper Sandford’s partner allegedly observed the same behavior. (Transcript, RE 38, Page ID # 109.) Of note, during that conversation with his partner, there was no mention of a weapon or the officer being concerned for his own safety or anyone else’s. (Transcript, RE 38, Page ID # 124.)

Later in the video, Trooper Sandford’s partner saw an unsealed bottle of alcohol in the back seat that was partially covered by some clothing. (Transcript, RE 38, Page ID # 114.) The bottle was directly next to the backseat passenger. (Transcript, RE 38, Page ID # 114.) The backseat passenger was then asked to step out of the vehicle by Trooper Sandford’s partner. (Transcript, RE 38, Page ID # 114.) The backseat passenger admitted that the alcohol was his. (Transcript, RE 38, Page ID # 129-130.) The backseat passenger was searched, and two rounds of ammunition were found in one pocket and two hydrocodone pills were found in the other. (Transcript, RE 38, Page ID # 115.) Trooper Sandford claimed that his partner informed him of this over the top of the car. (Transcript, RE 38, Page ID # 115.)

At this point, the driver was then asked to step out of the vehicle. (Transcript, RE 38, Page ID # 115-116.) She was moved so that she was standing by Trooper Sandford's partner and Trooper Sandford claimed that they made sure she did not have any weapons on her. (Transcript, RE 38, Page ID # 116.) Of import here, though, Trooper Sandford specifically stated that he did not search the driver, he just had her raise her coat—with no pat down—and then had her walk to the back of the vehicle. (Transcript, RE 38, Page ID # 126.) A female officer arrived later and patted her down. (Transcript, RE 38, Page ID # 131-132.) The driver was not put into handcuffs when she was taken out of the car like Mr. Patterson was soon to be, and she was allowed to walk around freely because no one was paying any attention to what she was doing. (Transcript, RE 38, Page ID # 126-127.) In fact, the driver even got back into the vehicle at one point, and Trooper Sandford claimed that he did not know that until he saw it while reviewing the video footage later. (Transcript, RE 38, Page ID # 127.) At some point, the driver admitted knowing that there was open alcohol in the car. (Transcript, RE 38, Page ID # 114-115.)

Trooper Sandford had Mr. Patterson step out of the vehicle—and he was immediately put into handcuffs. (Transcript, RE 38, Page ID # 116.) He was the last one removed from the vehicle, there were no furtive movements on the part of Mr. Patterson, and he was not witnessed to be in possession of any weapons. (Transcript, RE 38, Page ID # 122-123.) The trooper said that Mr. Patterson did reach under the seat briefly, but he believed that Mr. Patterson had just dropped his cellular phone and was picking it back up. (Transcript, RE 38, Page ID # 122-123.)

Despite all this, Trooper Sandford walked Mr. Patterson to the back of the vehicle and performed a *Terry*<sup>1</sup> pat down. (Transcript, RE 38, Page ID # 116.) The officer claimed that Mr. Patterson was searched in this manner because the officer perceived him as being nervous, so he thought Mr. Patterson may have had a weapon on his person. (Transcript, RE 38, Page ID # 116-117.)

The trooper stated that during the search he felt a hard substance that was larger than a wallet or some keys in Mr. Patterson's right pocket and pulled out what he believed to be methamphetamine. (Transcript, RE 38, Page ID # 117, 118.) The trooper began an "incident to arrest search" and began to check Mr. Patterson's other pockets. (Transcript, RE 38, Page ID # 117.) The officer found what he believed to be crack cocaine, heroin, and more methamphetamine in Mr. Patterson's left pocket. (Transcript, RE 38, Page ID # 117.)

On cross-examination, Trooper Sandford acknowledged that the time it took for the car to come to a complete stop was solely at the discretion of the driver. (Transcript, RE 38, Page ID # 120.) The driver, alone, was the person in control of the car. (Transcript, RE 38, Page ID # 120.) And while it took the driver about a quarter of a mile to stop, the car stopped within thirty seconds. (Transcript, RE 38, Page ID # 120.)

Trooper Sandford also acknowledged that people do not like being pulled over by the police. (Transcript, RE 38, Page ID # 123.) He admitted that not everyone liked to speak to him and, in fact, did not even need to respond. (Transcript, RE 38, Page ID # 1120-121.) When the trooper asks a citizen a question, they are not required to respond and can ignore a "how are you this

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<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1; 88 S. Ct. 1868; 20 L. Ed. 2d 889 (1968)

evening" question or any other inquiry the trooper may make. (Transcript, RE 38, Page ID # 121.) And despite the fact that he did not need to, Mr. Patterson still responded to Trooper Sandford the second time that the trooper spoke to him. (Transcript, RE 38, Page ID # 121.)

Mr. Patterson never disobeyed a lawful command made by Trooper Sandford. (Transcript, RE 38, Page ID # 121.) When the trooper instructed Mr. Patterson to get out of the car, Mr. Patterson did. (Transcript, RE 38, Page ID # 121.) Again, Trooper Sandford noted that Mr. Patterson had not made any furtive movements. (Transcript, RE 38, Page ID # 122-123.) Mr. Patterson asked if he was being detained, and the trooper told him that he was being detained and so was everyone in the vehicle. (Transcript, RE 38, Page ID # 122-123.)

Notably, when Trooper Sandford and his partner had earlier been talking in their vehicle after having first approached the vehicle they pulled over, there was no mention of a weapon or a concern about a weapon. (Transcript, RE 38, Page ID # 124.) Neither officer expressed a concern for their safety. (Transcript, RE 38, Page ID # 124.) In fact, they both walked back to their patrol car with their backs to the vehicle. (Transcript, RE 38, Page ID # 125.) No weapon was seen and there was no indication there may be a weapon in the car, let alone one near or on Mr. Patterson. (Transcript, RE 38, Page ID # 125.)

But Trooper Sandford was determined to find a reason to get everyone out of the car. (Transcript, RE 38, Page ID # 125-126.) He claimed the reason for this was a concern that someone had something that would make Mr. Patterson appear nervous. (Transcript, RE 38, Page ID # 125-126.) But there was still no mention of a weapon. (Transcript, RE 38, Page ID # 126.)

Trooper Sandford had previously testified at Mr. Patterson's state court preliminary examination that he pulled Mr. Patterson out of the car in order to search the car, put him in handcuffs, and pat him down, even though Mr. Patterson was not doing anything. (Transcript, RE 38, Page ID # 128.) Then, after feeling what he believed to be narcotics, Trooper Sandford continued to search Mr. Patterson. (Transcript, RE 38, Page ID # 128.) Yet in order to do that initial pat down, Trooper Sandford agreed that he needed to have "specific and articulable facts that the individual is a present danger and is armed[.]" (Transcript, RE 38, Page ID # 129.)

But Trooper Sandford simply did not have those facts as it related to Mr. Patterson. (See Transcript, RE 38, Page ID # 129.) He had no evidence that Mr. Patterson knew anything about the alcohol in the backseat or that tied him to it. (Transcript, RE 38, Page ID # 130.) He had no evidence that tied Mr. Patterson to the ammunition that the backseat passenger had in his pocket. (Transcript, RE 38, Page ID # 130.) Mr. Patterson obeyed every lawful command that he was given. (Transcript, RE 38, Page ID # 130.) And Mr. Patterson made no furtive movements. (Transcript, RE 38, Page ID # 130.) The trooper also agreed that in light of all the news stories about young African American men having been shot by police, it did not seem out of the realm of possibility that Mr. Patterson—as a young African American male—may be nervous during a traffic stop when pulled over by police. (Transcript, RE 38, Page ID # 123-124.)

While Trooper Sandford said he found it suspicious that Mr. Patterson did not move, he also agreed with the fact that, as a law enforcement officer, he would not want people moving around through the vehicle or grabbing something from

the glove box, a bag, or their pockets. (Transcript, RE 38, Page ID # 133.) Mr. Patterson having hands out would be a good thing for a law enforcement officer. (Transcript, RE 38, Page ID # 133-134.) There simply was no imminent danger in this situation, and Trooper Sandford agreed with that. (Transcript, RE 38, Page ID # 134.)

Further, the driver was not handcuffed, but Mr. Patterson was. (Transcript, RE 38, Page ID # 148.) Mr. Patterson was put in handcuffs and searched, but the driver was allowed to walk around freely and even got back into the car at one point. (Transcript, RE 38, Page ID # 127, 148.)

Despite all this, the court found the trooper's testimony to be credible in terms of what he and his partner were facing during the course of the traffic stop. (Transcript, RE 38, Page ID # 159.) It listed the slow roll to a stop by the driver, Mr. Patterson appearing to be nervous and not looking at the officer, the fact that the driver had some past narcotics-related contacts with police, and the open alcohol that was found next to the passenger in the backseat that led to the discovery of the two rounds of ammunition and Norco pills found in the possession of the backseat passenger. (Transcript, RE 38, Page ID # 159-161.)

The court ruled the discovery of the ammunition as the "inflection point for a determination of this particular motion." (Transcript, RE 38, Page ID # 161.) It stated that was the "game changer" as to whether it was appropriate to pat down the individuals in the vehicle. (Transcript, RE 38, Page ID # 161.) And the court found that in the context of the slow-rolling stop and after finding the bullets, it was reasonable for the troopers to think a weapon could be in the vehicle or on a person. (Transcript, RE 38, Page ID # 161.) The court stated that the officers were

allowed to search the vehicle for more open alcohol, if nothing else, and that it was proper for them to take Mr. Patterson out of the car to conduct that search. (Transcript, RE 38, Page ID # 161-162.)

But Mr. Patterson was not just taken out of the car; he was taken out of the car and then handcuffed. (Transcript, RE 38, Page ID # 162.) He asked whether he was being detained—which he clearly was at that point—and a pat down was done where narcotics were found. (Transcript, RE 38, Page ID # 162.) The court then stated that it was satisfied based on the totality of the circumstances that the pat down was lawful under the Fourth Amendment after the ammunition was found. (Transcript, RE 38, Page ID # 162-163.)

Pursuant to a plea agreement, on December 9, 2019, Mr. Patterson pleaded guilty to the charge contained in count one of the indictment. (Transcript, RE 68, Page ID # 349, 351, 356.) That charge indicated that Mr. Patterson had knowingly and intentionally possessed with intent to distribute 50 grams or more of methamphetamine, an amount of fentanyl, and an amount of crack cocaine. (Transcript, RE 68, Page ID # 352.) It was noted that the plea agreement was conditional. (Transcript, RE 68, Page ID # 354-355.) In it, Mr. Patterson reserved the right to appeal the suppression motions that he filed, along with the motion for reconsideration that was also denied. (Transcript, RE 68, Page ID # 354-355.)

On May 19, 2020, Mr. Patterson appeared for sentencing. (Transcript, RE 69, Page ID # 363.) While Mr. Patterson's intelligence and great potential were noted by the court, the court stated it was nonetheless required to sentence Mr. Patterson to a minimum of 10 years imprisonment. (Transcript, RE 69, Page ID #

371-374, 378.) Mr. Patterson filed an appeal with the United States Court of Appeals for the Sixth Circuit, and his conviction was affirmed. (Appendix A.)

### **REASONS FOR GRANTING THE PETITION**

#### **I. Mr. Patterson was unreasonably searched during the traffic stop because there was no constitutional rationale that supported the officer's actions.**

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Fourth Amendment applies to all seizures of a person, even if the stop involves only a brief detention that is short of arrest. *United States v. Noble*, 762 F.3d 509, 519 (6th Cir. 2014). Searches conducted outside the judicial process are *per se* unreasonable subject only to a few specifically established and well-delineated exceptions. *Katz v. United States*, 389 U.S. 347, 357; 88 S. Ct. 507; 19 L. Ed. 2d 576 (1967).

##### **A. There was no reasonable suspicion to search Mr. Patterson.**

“No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Terry v. Ohio*, 392 U.S. 1, 8; 88 S. Ct. 1868; 20 L. Ed. 2d 889 (1968), quoting *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251; 11 S. Ct. 1000; 35 L. Ed. 734 (1891). An officer may perform a pat-down of a driver and any passengers only if there is reasonable suspicion that a person may be armed and dangerous. *Knowles v. Iowa*, 525 U.S. 113, 118; 119 S. Ct. 484; 142 L. Ed. 2d 492 (1998). This exception is a narrow one. *Dunaway v. New York*, 442 U.S. 200, 210; 99 S. Ct. 2248; 60 L. Ed. 2d 824 (1979).

“When a reviewing court determines that an initial investigatory stop was lawful, it must apply a different, more onerous standard to determine whether an ensuing frisk for weapons was lawful. This separate standard is more burdensome, in recognition that a frisk or pat down is ‘a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.’” *United States v. Monsivais*, 848 F.3d 353, 357 n. 1 (5th Cir. 2017), quoting *Terry*, 392 U.S. at 17. “[T]o proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.” *Id.*, quoting *Arizona v. Johnson*, 555 U.S. 323, 326-327; 129 S. Ct. 781; 172 L. Ed. 2d 694 (2009).

Reasonable suspicion is based on an objective test, and reasonable suspicion requires more than just a hunch. *Noble*, 762 F.3d at 521-522. Reasonable suspicion demands a particularized and objective basis for suspecting that the *particular person* being searched is armed and dangerous. *Id.* at 522; see also *United States v. Cortez*, 449 U.S. 411, 417-418; 101 S. Ct. 690; 66 L. Ed. 2d 621 (1981). “[T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *United States v. Wilson*, 506 F.3d 488, 492 (6th Cir. 2007), quoting *Terry*, 392 U.S. at 27.

In *Noble*, 762 F.3d at 522, the United States Court of Appeals for the Sixth Circuit held that the police improperly searched a passenger in a vehicle because there was not reasonable suspicion. The government had proffered three reasons to support its position—Mr. Noble was extremely nervous, the vehicle that Mr. Noble was traveling in was suspected to be connected to drug trafficking, and individuals involved in drug trafficking will more often than not carry a weapon

to protect themselves. *Id.* The Sixth Circuit rejected all these reasons and held that the search was unconstitutional. *Id.* at 525-526.

“[T]he Fourth Amendment does not tolerate, nor has the Supreme Court or this Court ever condoned, pat-down searches without some specific and articulable facts to warrant a reasonable officer in the belief that the person detained was armed and dangerous.” *Id.* at 525, quoting *Bennett v. City of Eastpointe*, 410 F.3d 810, 841 (6th Cir. 2005). Further, even a valid stop does not necessarily grant the police authority to perform a pat-down search. *Bennett*, 410 F.3d at 822. In Mr. Patterson’s case, he was a passenger in a car that was stopped for minor traffic violations. (Transcript, RE 38, Page ID # 104, 105, 106.) There were no specific and articulable facts to warrant the search of Mr. Patterson. He engaged in no conduct that would justify the officer’s search. Mr. Patterson gave no indication that he would engage in assaultive conduct, especially given the length of the traffic stop before the search was even conducted. (See Transcript, RE 38, Page ID # 122-123.) Instead, the officers waited an extended period of time before removing Mr. Patterson from the vehicle and searching him with no justification that he was armed and dangerous. The officers’ comments to each other during the traffic stop and their actions prove that there was no basis to justify a search of Mr. Patterson for any safety concerns about weapons.

**B. Items found on another passenger did not justify the search of Mr. Patterson.**

Contrary to the Sixth Circuit’s rationale, there was no justification for the search of Mr. Patterson based on the alleged items found on and near the backseat passenger. “[A] person’s mere presence in a car, which the police believe is connected to drug trafficking, is not an automatic green light for frisking that

person.” *Noble*, 762 F.3d at 523. And a person may not be frisked just because of his choice of companions. *United States v. Bell*, 762 F.2d 495, 499 (6th Cir. 1985). There is no constitutional “automatic companion” rule that justifies a frisk. *Id.* A person’s mere proximity to others suspected of criminal activity does not give rise to a constitutional justification to search that person. *Id.*

“The Supreme Court has made clear that an officer must have specific, articulable reasons to believe that a particular person is armed and dangerous before the officer may frisk a suspect.” *Noble*, 762 F.3d at 523. A generalized search for weapons is unconstitutional. *Ybarra v. Illinois*, 444 U.S. 85, 93-94; 100 S. Ct. 338; 62 L. Ed. 2d 238 (1979). “The ‘narrow scope’ of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an authorized narcotics search is taking place.” *Id.* at 94. A person, merely by being present in a suspected car, does not lose the constitutional protections for the search of his person that he would otherwise be entitled. *United States v. Di Re*, 332 U.S. 581, 587; 68 S. Ct. 222; 92 L. Ed. 210 (1948).

In the instant case, the fact that the backseat passenger was found to be in possession of an open bottle of alcohol, pills, and even bullets in his pocket does not justify the search of Mr. Patterson. There was no evidence that tied Mr. Patterson to any of these items. Items found on another passenger do not suddenly mean that the police have specific and articulable facts that justify a search of Mr. Patterson because he may be armed and dangerous. See *Wilson*, 506 F.3d at 495. Corroboration is required before allowing a frisk for weapons. *Noble*, 762 F.3d at 524. There was no such corroboration to justify the search of Mr. Patterson. There

was no justification to justify a search of Mr. Patterson because there was no evidence that he was presently *armed and dangerous*.

**C. Supposed nervousness does not justify the search of Mr. Patterson.**

In *Noble*, 762 F.3d at 522, the government attempted to justify the search of Mr. Noble because he was “extremely nervous.” The Sixth Circuit said that “[t]ime and again,” the court has held that nervousness, including extreme nervousness, is an unreliable indicator of a person’s dangerousness, especially in the context of a traffic stop. *Id.*; see also *Wilson*, 506 F.3d at 495-496; *Stepp*, 680 F.3d at 665; *United States v. Lyons*, 687 F.3d 754, 770 (6th Cir. 2012).

“[N]ervousness alone is insufficient for probable cause.” *United States v. Collazo*, 818 F.3d 247, 260 (6th Cir. 2016). Nervousness itself is also insufficient grounds for reasonable suspicion. *United States v. Mesa*, 62 F.3d 159, 162 (6th Cir. 1995). It is common for a person to be nervous when confronted with the police, even if the person is not currently engaged in criminal activity. *Monsivais*, 848 F.3d at 359; *United States v. Hall*, 978 F.2d 616, 621 (6th Cir. 1992).

Likewise, any purported “nervousness” exhibited by Mr. Patterson during the initial encounter did not justify a search for weapons after the police waited approximately ten minutes to do so. In fact, Trooper Sandford, the officer who conducted the traffic stop, admitted that people do not like being pulled over by the police. (Transcript, RE 38, Page ID # 123.) People who are pulled over do not even have an obligation to respond to officers’ questions, yet Mr. Patterson still responded to him. (Transcript, RE 38, Page ID # 121.)

“[T]he Constitution does not command individuals to enthusiastically greet law enforcement . . . .” *Monsivais*, 848 F.3d at 360. This Court has made it

abundantly clear that unless a police officer has reasonable suspicion to conduct an investigatory stop, an individual has a right to ignore the police. *Illinois v. Wardlow*, 528 U.S. 119, 125; 120 S. Ct. 673; 145 L. Ed. 2d 570 (2000). And courts have routinely stated that purported nervousness, which the officer claims in this case, must be treated with caution. See *United States v. Fernandez*, 18 F.3d 874, 879 (10th Cir. 1994).

The trooper acknowledged that in light of all the news stories about young African-American men having been shot by the police, it is possible that Mr. Patterson—as a young African-American male—was nervous during the traffic stop when pulled over by the police for reasons other than criminality. (Transcript, RE 38, Page ID # 123-124.) This purported nervousness did not justify the search of Mr. Patterson.

Mr. Patterson was not the driver of the car. There was no evidence that he had committed any offense. A person's mere proximity to others suspected of criminal activity does not give rise to a constitutional justification to search that person. *Bell*, 762 F.2d at 499. The open alcohol was next to the backseat passenger—there was no evidence that it related in any way to Mr. Patterson or that he even knew it was there. The fact that the driver previously had drug offenses in her history did not justify the search of Mr. Patterson. Using this history to justify the search of a *passenger* now means that any person who associates with another who has any sort of criminal history subjects themselves to a search by the police. Additionally, the police did not truly care about this history because the driver was not even put into handcuffs like Mr. Patterson was,

and she was allowed to walk around freely, even getting back into the vehicle at one point.

Moreover, there was no evidence that Mr. Patterson possessed a firearm or any sort of weapon. There was no evidence that Mr. Patterson behaved in any sort of threatening, assaultive, or furtive manner. And the ammunition found in the pocket of the *backseat passenger* did not translate into specific and articulable facts that Mr. Patterson was suddenly armed and dangerous. Evidence found in the pocket of the backseat passenger could not suddenly be justifiable cause to seize and search Mr. Patterson. The district court and Sixth Circuit's rationale is that "guilt by association" now justifies the search of a bystander under the notion that he is an imminent threat of being armed and dangerous. This cannot be countenanced.

**II. Mr. Patterson was unlawfully detained when there was no reasonable suspicion to justify the detention.**

The Fourth Amendment protection against unreasonable searches and seizures applies to traffic stops, including the driver and any passengers. *Noble*, 762 F.3d at 519. Police officers may order drivers and passengers out of the automobile during the traffic stop without violating the Fourth Amendment. *Id.* at 521. Importantly, "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407; 125 S. Ct. 834; 160 L. Ed. 2d 842 (2005).

As mentioned in detail above, the trooper who detained Mr. Patterson did not know about the bullets found in the passenger's pocket when he told Mr. Patterson that he was being detained. While the traffic stop footage indicates that

the officer mentioned something to the trooper after feeling the passenger's *left* pocket, the bullets were found in the passenger's *right* pocket. This does not support the notion that the trooper knew of the bullets and that was the reason for Mr. Patterson's detention and subsequent search. Instead, the video appears to indicate that Mr. Patterson was detained without any consideration of the bullets found in the other passenger's pocket. However, as previously argued and analyzed, even if the police knew of the bullets in the backseat passenger's pocket, this does not rise to the level of justification to search Mr. Patterson, *a totally different and separate person.*

**III. The officers carried out a prolonged detention beyond the time reasonably required to complete the mission of issuing a ticket for the traffic violations.**

Traffic stops are, by their nature, typically short in duration; thus, they are akin to *Terry* stops. *Rodriguez v. United States*, 575 U.S. 348, 354; 135 S. Ct. 1609; 191 L. Ed. 2d 492 (2015). “[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop . . . and attend to related safety concerns.” *Id.* The stop may not last longer than is necessary to achieve this mission. *Id.* “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*

In Mr. Patterson's case, approximately 10 minutes elapsed from the time the traffic stop began before the police decided to search him. The car was originally pulled over for an alleged equipment violation of a defective plate light and a defective brake light. After questioning the occupants of the car for about three minutes, the officers went back into their police car. In the traffic stop

footage, the troopers discuss how to get the occupants out of the car with one trooper saying that the driver had all her paperwork, so he did not originally make the occupants get out of the car. This conversation inside the police car lasts for about three minutes. During this time, the two officers were sitting in the car trying to conjure a way to get the occupants out of the car instead of carrying on with their traffic stop as the law requires. The mission of the stop was achieved, and the officers should have given the driver a ticket for the violations—if they felt the need to—and let the car and its occupants go on its way. Because tasks for the traffic stop should have been completed after the officer had the driver's paperwork and ran it through the computer, authority for the seizure ended and the detention was prolonged, thus violating Mr. Patterson's constitutional rights and requiring suppression.

#### **CONCLUSION AND RELIEF REQUESTED**

Mr. Patterson's constitutional rights were violated, and the district court and United States Court of Appeals for the Sixth Circuit erroneously held otherwise. Accordingly, Mr. Patterson respectfully requests that this Court grant his petition.

Respectfully submitted,

CHARTIER & NYAMFUKUDZA, P.L.C.

08/31/2021  
Date

/s/ MARY CHARTIER  
Mary Chartier