

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

**JASON WATTIE BUZZARD and
PAUL WILLIAM MARTIN, *Petitioners*,**

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX A

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

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1 F.4th 198
United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff – Appellee,
v.
Jason Wattie BUZZARD, Defendant – Appellant.
United States of America, Plaintiff – Appellee,
v.
Paul William Martin, Defendant – Appellant.
United States of America, Plaintiff – Appellee,
v.
Paul Martin, Defendant – Appellant.

No. 20-4087, No. 20-4221, No. 20-4228

|
Argued: January 28, 2021

|
Decided: June 11, 2021

Synopsis

Background: Defendant pled guilty in the United States District Court for the Southern District of West Virginia, Joseph R. Goodwin, J., to being a felon in possession of firearms, and codefendant was found guilty of being a felon in possession of firearms. Defendant and codefendant appealed.

Holdings: The Court of Appeals, [Diaz](#), Circuit Judge, held that:

[1] officer's question, during traffic stop, asking whether there was anything illegal in the car related to officer safety and, thus, related to the traffic stop's mission;

[2] officer's question, during traffic stop, asking whether there was anything illegal in the car did not unlawfully extend the traffic stop; and

[3] evidence was sufficient for the jury to conclude that defendant possessed the guns recovered from car so as to support defendant's conviction for being felon in possession of firearms.

Affirmed.

Procedural Posture(s): Appellate Review; Trial or Guilt Phase Motion or Objection; Pre-Trial Hearing Motion.

West Headnotes (8)

[1] [**Criminal Law**](#) ↪ [Review De Novo](#)

[**Criminal Law**](#) ↪ [Evidence wrongfully obtained](#)

When reviewing the denial of a motion to suppress, appellate courts review suppression court's factual findings for clear error and its legal determinations de novo.

[2] [**Criminal Law**](#) ↪ [Reception of evidence](#)

When the government prevails on a defendant's motion to suppress, appellate court views the evidence in the light most favorable to the government.

[3] [**Automobiles**](#) ↪ [Inquiry; license, registration, or warrant checks](#)

Officer's question, during traffic stop, asking whether there was anything illegal in the car related to officer safety and, thus, related to the traffic stop's mission; defendants were in the car, and thus, officer was outnumbered, and officer asked the question because of the time of night and the high drug area, defendant's history, and defendant's behavior, and given the totality of the circumstances, it made sense that officer needed to know more about what defendants had in their car. [U.S. Const. Amend. 4](#).

[1 Cases that cite this headnote](#)

[4] [**Automobiles**](#) ↪ [Inquiry; license, registration, or warrant checks](#)

Officer's question, during traffic stop, asking whether there was anything illegal in the car did not unlawfully extend the traffic stop; officer was mid-stop when he asked whether there was anything illegal in car, officer did not yet have the information he needed to perform the customary checks on the driver and car, and he was waiting for an additional officer to arrive so he could safely proceed with the stop. [U.S. Const. Amend. 4](#).

[1 Cases that cite this headnote](#)

[5] [**Weapons**](#) ↪ [Possession](#)

Evidence was sufficient for the jury to conclude that defendant possessed the guns recovered from car so as to support defendant's conviction for being felon in possession of firearms; evidence showed that defendant's cohort arranged to sell the guns to defendant and that they negotiated the price, location, and timeframe for the sale, evidence showed that police found gun under the driver's seat towards the backseat and another gun under passenger's seat, both within reach of where defendant was sitting, evidence indicated that defendant knew that his cohort had guns in the car, and not only did cohort testify that he handed guns to defendant when defendant got into the car, there was circumstantial evidence that defendant was the one who hid the guns under the driver's and passenger's seats of car.

[6] [Criminal Law](#) ↵ [Review De Novo](#)

Appellate courts review the denial of a motion for acquittal de novo.

[7] [Criminal Law](#) ↵ [Construction of Evidence](#)

[Criminal Law](#) ↵ [Substantial evidence](#)

Appellate courts must uphold the jury's verdict if, viewing the evidence in the light most favorable to the government, substantial evidence supports it.

[8] [Criminal Law](#) ↵ [Degree of proof](#)

“Substantial evidence” to support defendant's conviction is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt.

***200** Appeals from the United States District Court for the Southern District of West Virginia, at Charleston. [Joseph R. Goodwin](#), District Judge. (2:19-cr-00022-1; 2:19-cr-00021-1; 2:16-cr-00143-1)

Attorneys and Law Firms

ARGUED: [David Robert Bungard](#), OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellants. Louie Alexander Hamner, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee. ON BRIEF: [Gerald Morton Titus](#),

III, SPILMAN, THOMAS & BATTLE, PLLC, for Appellant Jason Wattie Buzzard. Wesley P. Page, Federal Public Defender, Jonathan D. Byrne, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant Paul William Martin. Michael B. Stuart, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before MOTZ, DIAZ, and RICHARDSON, Circuit Judges.

Opinion

Affirmed by published opinion. Judge Diaz wrote the opinion, in which Judge Motz and Judge Richardson joined.

DIAZ, Circuit Judge:

In this consolidated appeal, Jason Wattie Buzzard and Paul William Martin challenge the district court's denial of their motions to suppress evidence found when police searched a car they occupied. Martin also challenges the denial of his motion for acquittal at trial and the revocation of his term of supervised release at sentencing. For the following reasons, we affirm.

I.

A.

Shortly after 1:30am on October 12, 2018, West Virginia police officer Tyler Dawson pulled over a car for a defective brake light.¹ Buzzard was driving and Martin was in the passenger seat of the car, which had recently left the parking lot of a Sheetz gas station and convenience store. Dawson, who was patrolling alone that night, called into dispatch that he was stopping a vehicle with two occupants and gave his location. He then approached the vehicle and recognized Martin (he'd had prior interactions with Martin while on duty).

¹ The parties agree that Dawson lawfully initiated the traffic stop.

At some point during the stop, Dawson asked whether there was anything illegal in the car (the parties dispute when this occurred). In response, Buzzard and Martin both volunteered drug paraphernalia; Buzzard produced a marijuana “bowl” from under his shirt and Martin produced a hypodermic needle and syringe.

Additional officers arrived on the scene and Buzzard and Martin were removed from the vehicle. The officers searched the car and recovered two handguns wrapped in socks—one from under the driver's seat and one from under the passenger's seat. They arrested Buzzard and Martin, who were each charged with being a felon in possession of firearms.²

² Martin's probation officer subsequently filed a petition to revoke a term of supervised release that Martin was serving for a prior offense.

***201 B.**

Martin and Buzzard filed nearly identical motions to suppress the guns, together with additional evidence found in the vehicle. They claimed that Officer Dawson violated their Fourth Amendment rights by asking whether there was anything illegal in the car because the question wasn't related to the traffic stop's mission and unlawfully prolonged the stop. After a joint evidentiary hearing, the district court denied both motions.

C.

Buzzard pleaded guilty to being a felon in possession of firearms. His plea agreement preserved his right to appeal the denial of his motion to suppress.

Martin went to trial on a second superseding indictment that charged him with being, and conspiring to be, a felon in possession of firearms. At the close of the government's case, Martin moved for a judgment of acquittal on both counts. The district court granted the motion with respect to the conspiracy charge but denied it with respect to the possession charge. The jury found Martin guilty of being a felon in possession of firearms. During sentencing, the district court granted the petition to revoke Martin's previous term of supervised release.

This appeal followed.

II.

[1] [2] Buzzard and Martin maintain that the district court should have suppressed the guns because Officer Dawson violated their Fourth Amendment rights when he asked whether there was anything illegal in the car. When reviewing the denial of a motion to suppress, we review factual findings for clear error and legal determinations de novo. *United States v. Scott*, 941 F.3d 677, 683

(4th Cir. 2019). When, as here, the government prevailed below, we view the evidence in the light most favorable to the government.  [United States v. Jamison, 509 F.3d 623, 628 \(4th Cir. 2007\)](#).

A.

The evidence before the district court included Dawson's, Buzzard's, and Martin's testimony at the suppression hearing. Dawson testified as follows. The traffic stop occurred in a high-crime area, where officers, including Dawson himself, had previously made multiple arrests for narcotics. There's a known drug house within a block of the location, and people often use the free Wi-Fi at the Sheetz to arrange drug deals.

Dawson made the call to dispatch as soon as he pulled the car over. On his overnight shift, it's common practice that when a lone officer calls in that he's stopping a vehicle with more than one occupant, another officer will join him as soon as possible. That night, the first additional officer arrived within three to five minutes.

After making the call, Dawson walked to the driver's side window and spoke with Buzzard. At this point in a traffic stop, Dawson “[a]lways advise[s] [the occupants] why [he] stopped them and then [] always ask[s] for license[,] [] registration, [and] proof of insurance.” J.A. 150. In response to this request, Buzzard began looking for the registration and insurance and explained that it wasn't his car. Dawson then recognized Martin in the passenger's seat. He knew that Martin had a history of drug addiction, that he'd recently gotten out of prison, and that he was a convicted felon.

As Dawson spoke with Buzzard, Martin kept moving and looking around. Martin *202 “would not sit still in the seat and [] wasn't making eye contact with” Dawson. J.A. 153. Martin also interrupted Dawson repeatedly as he spoke with Buzzard, saying things like “hey, you know, we're not up to anything. It's just me.” *Id.* Martin's behavior was abnormal for a passenger during a traffic stop, and Dawson suspected that he might run.

Because it was late at night and there were two individuals in the car—one of whom he thought might run—Dawson decided to wait for another officer to arrive before returning to his vehicle to check what information he could (Buzzard hadn't been able to provide a driver's license, registration, or insurance). While waiting for an additional officer to arrive, Dawson asked Buzzard if there was anything illegal in the vehicle. He asked this question because of “the time of night and the high drug area, Mr. Martin's history and Mr. Martin's behavior.” J.A. 158. In response, Buzzard volunteered the marijuana bowl. Dawson had Buzzard step out of the vehicle and performed a pat search for weapons. During this time, “Martin was bent over. He seemed to be fiddling around near the floorboard of the car.” J.A. 160.

As Dawson finished his pat search of Buzzard, Officer Tony Messer arrived. Dawson passed Buzzard off to Messer and moved to Martin's side of the car. That's when Martin produced a hypodermic needle and syringe to Dawson. After Dawson asked Martin to step out of the vehicle and began to perform a pat search on him, Messer told Dawson to cuff Martin because there were guns in the car (after Dawson passed Buzzard off to Messer, Buzzard told Messer that Martin had guns in the car). The police ultimately searched the car and found the two handguns wrapped in socks under the driver's and passenger's seats.

Martin told a different story. He testified that Dawson never introduced himself, mentioned the reason for the stop, or asked Buzzard for his license and registration. Rather, Martin testified, Dawson simply walked up to Buzzard's window and asked, "Is there anything illegal in the car?" J.A. 181–82. Martin further testified that he later heard Dawson tell Buzzard that he pulled them over because he'd seen Martin get in the car at Sheetz.³

³ On cross, the government elicited that Martin had four prior felony convictions.

Buzzard, who was sequestered during Martin's testimony, similarly testified that Dawson simply walked up to his window and asked whether he had anything illegal in the car. He denied that Dawson introduced himself, told Buzzard the reason he'd stopped the car, or asked for Buzzard's license and registration. Buzzard also testified that he'd later heard Dawson tell Messer that Dawson had "seen Mr. Martin in the car and knew he was up to something." J.A. 187. On cross, the government asked whether Buzzard had talked with Martin about the case while in prison and, when Buzzard answered no, impeached him with a recorded jail call in which Buzzard and Martin spoke about the case with a woman Buzzard was dating at the time.⁴

⁴ The government also elicited that Buzzard had three prior felony convictions.

B.

Buzzard and Martin argue that Dawson's question violated their Fourth Amendment rights because (1) it wasn't related to the traffic stop's mission, and (2) it unlawfully prolonged the stop. We take each argument in turn.

*203 1.

[3] Buzzard and Martin contend that, by asking whether there was anything illegal in the vehicle, Dawson "transformed a legitimate traffic stop into an investigation to see if Buzzard and Martin were engaged in any criminal conduct." Appellant's Br. at 14. Because the question was "directed

toward general law enforcement goals, not the basis for the traffic stop or concerns for officer safety,” they argue, “[t]he investigation unduly extended the traffic stop without Dawson having reasonable suspicion to do so.” *Id.* at 14–15. The district court rejected this argument, reasoning that the question was related to the stop’s mission because it relates to both officer and highway safety.

Buzzard and Martin rely primarily on  *Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). There, a K-9 officer pulled over a vehicle that had slowly veered onto the shoulder of the highway before jerking back onto the road.  *Rodriguez*, 575 U.S. at 351, 135 S.Ct. 1609. The officer questioned the driver and the passenger, ran records checks on both men, called for backup, wrote a warning ticket, and returned the men’s documents.  *Id.* at 351–52, 135 S.Ct. 1609. He then asked for permission to walk his dog around the vehicle.  *Id.* at 352, 135 S.Ct. 1609. The driver refused, but the officer did so anyway, and the dog alerted to the presence of drugs.  *Id.* “All told, seven or eight minutes had elapsed from the time [the officer] issued the written warning until the dog indicated the presence of drugs.”  *Id.* The police subsequently searched the vehicle and found a large bag of methamphetamine.  *Id.*

The Supreme Court held that the dog sniff was outside the scope of the traffic stop’s mission.  *Id.* at 356, 135 S.Ct. 1609. The Court explained that “the 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.* at 354, 135 S.Ct. 1609 (cleaned up). Because a dog sniff “is a measure aimed at detecting evidence of ordinary criminal wrongdoing” and “[l]ack[s] the same close connection to roadway safety as [] ordinary inquiries, a dog sniff is not fairly characterized as part of the officer’s traffic mission.”  *Id.* at 355–56, 135 S.Ct. 1609 (cleaned up).

Here, the district court determined that Dawson’s question related to officer safety, reasoning that it “could expose dangerous weapons or narcotics” and that courts “have already recognized the authority of officers conducting a traffic stop to inquire about dangerous weapons.” *United States v. Martin*, 395 F. Supp. 3d 756, 760 (S.D.W. Va. 2019) (citing  *United States v. Everett*, 601 F.3d 484, 495 (6th Cir. 2010);  *Arizona v. Johnson*, 555 U.S. 323, 327, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009)) (cleaned up). The court also reasoned that “asking generally if illegal items are in the vehicle relates to highway safety at least as much as searching for traffic warrants to ensure that ‘vehicles on the road are operated safely and responsibly’ or to ‘make[] it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.’ ” *Id.* (quoting  *Rodriguez*, 575 U.S. at 355, 135 S.Ct. 1609). Thus, the court held, Dawson’s question was permissible because it related to the traffic stop’s mission.

Viewing the evidence in the light most favorable to the government, we agree with the district court that Dawson's question related to officer safety and thus related to the traffic stop's mission. Dawson was outnumbered, and he asked the question because of "the time of night and the high drug area, Mr. Martin's history and Mr. Martin's behavior." J.A. 158. Given the *204 totality of the circumstances, it makes sense that he needed to know more about what Buzzard and Martin had in the car.

It's true that the question "Is there anything illegal in the vehicle?" could be interpreted more broadly than one worded slightly differently (for example, "Is there anything dangerous in the vehicle?" or "Are there weapons in the vehicle?"). But given the importance of officer safety and the Supreme Court's repeated recognition that "[t]raffic stops are 'especially fraught with danger to police officers,' "  [Rodriguez, 575 U.S. at 356, 135 S.Ct. 1609](#) (quoting  [Johnson, 555 U.S. at 330, 129 S.Ct. 781](#)), we decline to require such laser-like precision from an officer asking a single question in these circumstances.

2.

[4] In any event, Dawson's question didn't extend the stop by even a second. In arguing that the question unlawfully prolonged the stop, Buzzard and Martin again rely on  [Rodriguez](#). Prior to deciding  [Rodriguez](#), the Supreme Court held that a dog sniff conducted *during* a lawful traffic stop doesn't violate the Fourth Amendment. See  [Illinois v. Caballes, 543 U.S. 405, 408, 125 S.Ct. 834, 160 L.Ed.2d 842 \(2005\)](#). In  [Rodriguez](#), the Court considered "whether the Fourth Amendment tolerates a dog sniff conducted *after completion* of a traffic stop."  [575 U.S. at 350, 135 S.Ct. 1609](#) (emphasis added). The Court said no, holding 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, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.

 [Id. at 350–51, 135 S.Ct. 1609](#) (cleaned up).

Viewing the evidence in the light most favorable to the government, Dawson was mid-stop when he asked whether there was anything illegal in the vehicle. He didn't yet have the information

he needed to perform the customary checks on the driver and vehicle, and he was waiting for an additional officer to arrive so he could safely proceed with the stop. Because the question was asked during a lawful traffic stop and didn't prolong the stop, it passes constitutional muster under  [Rodriguez](#) even if it exceeded the scope of the stop's mission. See  [United States v. Bowman](#), 884 F.3d 200, 210 (4th Cir. 2018) ("[P]olice during the course of a traffic stop may question a vehicle's occupants on topics unrelated to the traffic infraction ... as long as the police do not extend an otherwise-completed traffic stop in order to conduct these unrelated investigations.") (cleaned up).⁵

⁵ The government contends that Dawson also had reasonable suspicion that Buzzard and Martin were engaging (or about to engage) in criminal activity. Because we find that Dawson's question was related to the stop's mission and didn't extend it, we need not decide this issue.

Accordingly, we affirm the district court's denial of the motions to suppress.

III.

[\[5\]](#) Martin also challenges the district court's denial of his motion for acquittal of the felon in possession charge. Specifically, he argues that there was insufficient evidence for the jury to conclude that he possessed the guns recovered from the car.

A.

[\[6\]](#) [\[7\]](#) [\[8\]](#) We review the denial of a motion for acquittal de novo. *205 [United States v. Kiza](#), 855 F.3d 596, 601 (4th Cir. 2017). "We must uphold the jury's verdict if, viewing the evidence in the light most favorable to the government, substantial evidence supports it." *Id.* "[S]ubstantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt."  [United States v. Cornell](#), 780 F.3d 616, 630 (4th Cir. 2015).

B.

Relevant here, the jury heard the following evidence. Before Martin met Buzzard at Sheetz that night, the two used Facebook Messenger to arrange for Buzzard to sell the guns to Martin. They negotiated the price, location, and timeframe for the sale, and the messages culminated with

Buzzard arriving to pick up Martin from Sheetz. Indeed, surveillance footage from Sheetz shows Martin getting into the car with Buzzard. And importantly, Buzzard testified that he physically handed the guns to Martin when Martin got into the car.

Officer Dawson testified that, while he was searching Buzzard, he could see Martin “out of the corner of [his] eye ... still rummaging through his pockets, and ... going down towards the floorboard of where he was seated in the passenger seat.” J.A. 314. And after Martin was removed from the car, he told Dawson that Buzzard had guns in the car that Buzzard was trying to get rid of.

The police eventually found a gun under the driver's seat towards the backseat and another gun under the passenger's seat, both within reach of where Martin was sitting. Officer Adam Criss, who arrived on the scene after Officer Messer and helped search the car, testified that he found a white sock under the passenger's seat that “felt kind of heavy,” and when he handled the sock it “felt like the handle of a pistol inside the sock.” J.A. 442–43.

This evidence was more than sufficient for the jury to conclude that Martin possessed the guns. Martin knew that Buzzard had the guns in the car and intended to buy them. And not only did Buzzard testify that he handed the guns to Martin when Martin got into the car, there's also plenty of circumstantial evidence that Martin was the one who hid the guns under the driver's and passenger's seats.⁶

⁶ Martin contends that even if the jury believed that Buzzard handed him the socks, there's no evidence that Martin knew there were guns inside them. But Officer Criss could tell there was a gun inside one of the socks immediately upon handling it and, in any event, the evidence indicating that Martin was the one who hid the guns suggests that he knew what they were.

We thus affirm the district court in denying Martin's motion for acquittal. And because Martin's challenge to the revocation of his prior term of supervised release is based entirely on his assertion that there wasn't substantial evidence for his conviction, we likewise affirm that decision.

* * *

Accordingly, the district court's judgments are

AFFIRMED.

All Citations

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IN THE SUPREME COURT OF THE UNITED STATES

**JASON WATTIE BUZZARD and
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APPENDIX B

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 2:19-cr-00022

JASON WATTIE BUZZARD

MEMORANDUM OPINION AND ORDER

Pending before the court is the defendant's Motion to Suppress [ECF No. 20]. The court held a hearing on this Motion on April 24, 2019, and ordered additional briefing. The defendant and the government have submitted additional briefs, and the matter is now ripe for review. For the following reasons, the Motion is **DENIED**.

I. Background

The defendant seeks to suppress several items of evidence that he claims were unlawfully seized. At the suppression hearing, the court heard testimony of Paul Martin, Defendant Jason Buzzard, and Officer Tyler Dawson. The parties agree that on October 12, 2018, the defendant was leaving a gas station at approximately 1:36 a.m. when Officer Dawson stopped the defendant because of a defective brake light.

Officer Dawson testified that he made contact with Defendant Buzzard, the driver, and testified that during these kinds of traffic stops, he “[a]lways advise[s] [the driver] why [he] stopped them and then [he] always ask[s] for license and

registration, proof of insurance.” Tr. Mot. Suppress 8:3–4. Officer Dawson testified that while Defendant Buzzard was searching for the vehicle’s registration and insurance, Defendant Buzzard stated that the vehicle was not his. *Id.* at 8:9–10. Officer Dawson testified that he observed the passenger, Mr. Martin, appearing as if he were about to run. *Id.* at 15:1–3. Officer Dawson explained that Mr. Martin was moving and looking around and not making eye contact, but interrupting him while he was speaking with Defendant Buzzard by saying things like “Hey, you know me, we’re not up to anything. It’s just me.” *Id.* at 10–11. He stated that Mr. Martin would lean forward, back, look right and look left. He explained that it was uncommon for passengers to act the way that Mr. Martin was acting; most people, he said, would sit still in their seat and listen to and watch the officer. *Id.* at 11:7–24. He testified that he knew Mr. Martin from three other encounters. One included Mr. Martin riding his bike around some vehicles late at night, where Officer Dawson suspected that Mr. Martin might be breaking into cars. *Id.* at 8. The second was a run in at Thomas Memorial Hospital where Mr. Martin was being treated for drug addiction. *Id.* at 9. And the third was when Officer Dawson responded to a domestic dispute involving Mr. Martin. *Id.* at 35:13–24. He explained that at the time of the stop, he knew that Mr. Martin had a history of drug addition, that he just got out of prison, and that he had prior felonies. *Id.* at 9–10.

Officer Dawson went on to testify that the area where he pulled over the defendant was what he believes to be a high crime area, commonly involving

narcotics, noting dozens of arrests made by him alone. *Id.* at 12. He explained a drug trade practice of using the gas station wi-fi to set up deals and noted a known drug house within a block of the stop. *Id.*

Officer Dawson testified that in a normal situation, he would run the driver's information—i.e., Defendant Buzzard's driver's license information and a warrant check. He did not, however, run these routine checks. *Id.* at 14. Officer Dawson testified that because there were two persons in the car, he decided to wait for an additional officer. *Id.* at 14–15. Notably, he did not call for backup specifically as much as he hoped for a second officer to arrive. He explained that when someone begins a stop, his shift's practice is to say, "Hey, I've got two occupants in the vehicle," and normally, another officer listening in will come to the scene. *Id.* at 15. Assuming that a second officer would arrive, Officer Dawson decided to wait, and while waiting, he asked Defendant Buzzard a single question: Is there anything illegal in the vehicle? Indeed, Officer Dawson's field case report states as follows:

I made contact with the driver/suspect Jason Buzzard I observed the other suspect, Paul Martin . . . , sitting in the front passenger seat of the suspect vehicle. While speaking with Buzzard, I asked if he had anything illegal in the vehicle.

Police Report [ECF No. 32-1] 2. When defense counsel asked Officer Dawson why he asked that single question, Officer Dawson said that he asked it based on the time of night, the location, Mr. Martin's history, and Mr. Martin's behavior. Tr. Mot. Suppress 15.

On the other hand, Defendant Buzzard and Mr. Martin, after being sequestered, separately testified that the first question that Officer Dawson asked immediately after approaching the car for the first time was whether there was anything illegal in the car. Regardless of the timing, once asked, Defendant Buzzard produced a bowl of marijuana that was hidden under his shirt. Mr. Martin told Officer Dawson that he had one too and would eventually surrender a syringe. After a search of the car, Officer Dawson found two firearms, one hidden under the driver's seat and the other hidden under the passenger's seat. The police arrested Defendant Buzzard and Mr. Martin and also confiscated Defendant Buzzard's cell phone.

Defendant Buzzard moved to suppress the contraband. He argues that the question "Is there anything illegal in the vehicle?" was beyond the scope of the purpose of the stop and that by asking it, the question unlawfully prolonged the stop. Consequently, he argues that in order to ask the "unrelated" question, Officer Dawson needed reasonable suspicion or the defendant's consent. The defendant does not challenge the lawfulness of the traffic stop. Both parties agree that Officer Dawson lacked consent. The court is presented with two questions: whether the single question was related to the mission of the stop, and if not, whether the single question unlawfully prolonged the stop.

II. Legal Standard

When deciding a motion to suppress, the district court may make findings of fact and conclusions of law. *United States v. Stevenson*, 396 F.3d 538, 541 (4th Cir.

2005). During the hearing, “the credibility of the witness[es] and the weight to be given the evidence, together with the inferences, deductions and conclusions to be drawn from the evidence, are all matters to be determined by the trial judge.” *United States v. McKneely*, 6 F.3d 1447, 1452–53 (10th Cir. 1993) (quoting *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991)). *See also Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 56 F.3d 556, 567 (4th Cir. 1995) (“[I]n the usual case, the factfinder is in a better position to make judgments about the reliability of some forms of evidence than a reviewing body acting solely on the basis of a written record of that evidence. Evaluation of the credibility of a live witness is the most obvious example.”) (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 623 (1993)). The burden of proof is on the party who seeks to suppress the evidence. *United States v. Dickerson*, 655 F.2d 559, 561 (4th Cir. 1981). Once the defendant establishes a basis for his motion to suppress, the burden shifts to the government to prove the admissibility of the challenged evidence by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974).

III. Discussion

“[I]n determining whether a traffic stop is reasonable, [courts] apply the standard articulated in *Terry v. Ohio*, 392 U.S. 1 (1968), wherein the court asks (1) if the stop was ‘legitimate at its inception,’ *United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017), and (2) if ‘the officer’s actions during the seizure were reasonably related

in scope to the basis for the traffic stop,’ *Williams*, 808 F.3d at 245.” *United States v. Bowman*, 884 F.3d 200, 209 (4th Cir. 2018).

Taking these principles into account, in this case, the officer asked a single question, whether there was anything illegal in the car. Police Report [ECF No. 32-1] 2. The first question before the court is whether this question was related to the mission of the stop. The second question before the court is if the question was not related to the mission of the stop, whether the single question unlawfully prolonged the stop.

a. Whether the Question was Related to the Mission of the Traffic Stop

The United States Supreme Court has made clear that because “traffic stops are ‘especially fraught with danger to police officers,’” an officer “may need to take certain negligibly burdensome precautions in order to complete his mission safely.”

Rodriguez v. United States, 135 S. Ct. 1609, 1616 (2015) (quoting *Arizona v. Johnson*, 555 U.S. 323, 330 (2009)). “Unlike a general interest in criminal enforcement, however, the government’s officer safety interest stems from the mission of the stop itself.” *Id.* at 1616. For instance, an officer may order the driver out of the car for safety purposes because officer safety weighs greater than the “‘de minimis’ additional intrusion of requiring a driver, lawfully stopped, to exit a vehicle.” *Id.*

(citing *Pennsylvania v. Mimms*, 434 U.S. 106, 110–11 (1977)); *see also Maryland v. Wilson*, 519 U.S. 408, 413–15 (expanding *Mimms* to include all passengers).

In addition, “an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop.’” *Rodriguez*, 135 S. Ct. at 1615 (quoting *Illinois v. Caballes*, 543 U.S. 405, 408 (2005)). “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.* “These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Id.*

In this case, the officer asked the single question, whether there was anything illegal in the car. Police Report [ECF No. 32-1] 2. Because the question is related to officer safety, the question is therefore related to the mission of the stop itself. *See Rodriguez*, 135 S. Ct. at 1615. The question could expose dangerous weapons or narcotics. Courts have already recognized the authority of “officers conducting a traffic stop [to] inquire about dangerous weapons.” *United States v. Everett*, 601 F.3d 484, 495 (6th Cir. 2010) (“[I]t would be irrational to conclude that officers cannot take the ‘less intrusive [measure]’ of ‘simply [asking] whether a driver has a gun.’”); *see also Johnson*, 555 U.S. at 327 (finding that a stop, which included the officer asking if there were any weapons in the vehicle, was a legitimate stop). This single question is certainly less intrusive than ordering the driver and passengers out of the car. *See Mimms*, 434 U.S. at 110–11; *see also Wilson*, 519 U.S. at 413–15. As another court

has reasoned, “If a police officer may, in the interest of officer safety, order all occupants out of the vehicle for the duration of the stop without violating the Fourth Amendment, the officer may take a less burdensome precaution to ensure officer safety.” *State v. Wright*, 2019 WI 45, 926 N.W.2d 157, 163.

Further, asking generally if illegal items are in the vehicle relates to highway safety at least as much as searching for traffic warrants to ensure that “vehicles on the road are operated safely and responsibly” or to “make[] it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.” *Rodriguez*, 135 S. Ct. at 1615. Indeed, Officer Dawson’s question would be much more likely to dispel safety concerns than a database of past potentially criminal conduct. It is also increasingly more likely that the single question would dispose of related concerns than a warrant for a “previous traffic offense,” and certainly more likely to ensure the vehicle is operating safely and responsibly than checking the registration and proof of insurance. *See Rodriguez*, 135 S. Ct. at 1615.

b. Whether the Question Unlawfully Prolonged the Stop

The “Fourth Amendment tolerate[s] certain unrelated investigations that [do] not lengthen the roadside detention.” *Id.* at 1614 (citing *Johnson*, 555 U.S. at 327–28; *Caballes*, 543 U.S. at 406, 408) (brackets added). “An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop,” but “he

may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id.*

Even assuming here that the single question, whether there is anything illegal in the car, was not related to the mission of the traffic stop, the question did not violate the Fourth Amendment because it did not lengthen the traffic stop. This is true whether or not the question was asked initially, as the defendant argues, or after initiating contact with the defendant, as the government argues. In either scenario, the question was asked concurrently with the traffic mission related activities. The defendant relies on *Rodriguez* to argue the question unconstitutionally extended the stop. However, the temporal significance *Rodriguez* places on police actions for dog sniffs is impractical as it pertains to officer questioning. *Rodriguez* answered the question whether a dog sniff is allowed if it extends a traffic stop, even if for a few minutes. *Id.* at 1612–17. *Rodriguez* specifically distinguished police questioning from dog sniffs. *Id.* at 1615 (“A dog sniff, by contrast, is a measure aimed at ‘detect[ing] evidence of ordinary criminal wrongdoing.’” *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000)). Justice Alito noted in his dissent in *Rodriguez* that “it remains true that police may ask questions aimed at uncovering other criminal conduct and may order occupants out of their car during a valid stop.” *Id.* at 1625 n. 2 (Alito, J., dissenting). Unlike prolonging a traffic stop for a dog sniff, a single question is such a de minimis

extension of time that it likely cannot be measured. Therefore, the single question could not have measurably prolonged the stop.

The Fourth Circuit has found that asking unrelated questions while waiting for a background check did not prolong the stop.¹ *See United States v. Green*, 740 F.3d 275, 281 (4th Cir. 2014) (finding that officers “brief questioning about matters unrelated to the traffic violations did not run afoul of the scope component of *Terry’s* second prong” when asked during a criminal history check). The Fourth Circuit said again in *Bowman* that “police *during the course of a traffic stop* may question a vehicle’s occupants on topics unrelated to the traffic infraction.” *United States v. Bowman*, 884 F.3d 200, 210 (4th Cir. 2018) (citing *Johnson*, 555 U.S. at 333 (2009)). In addition, commentators have noted that brief questioning may not prolong a stop when an officer interrogates a single motorist while checking the motorist’s documents or awaiting a criminal history or outstanding warrant check. *See* Tracey Maclin, *Anthony Amsterdam’s Perspectives on the Fourth Amendment, and What It Teaches About the Good and Bad in Rodriguez v. United States*, 100 MINN. L. REV. 1939, 1983 (2016). Here too, Officer Dawson’s single, noninvasive, general question related to officer and highway safety asked while the defendant had yet to produce

¹ While the Fourth Circuit in *United States v. Ortiz*, 110 F.3d 61 (4th Cir. 1997) (unpublished table decision), found that an officer was justified in inquiring whether the defendant had anything illegal in the car *because* he had reasonable suspicion, being decided before *Rodriguez*, *Ortiz* did not evaluate (1) whether the officer’s question was within the scope of the mission or (2) whether the officer’s question unlawfully prolonged the stop. Nor did it need to with a finding of reasonable suspicion.

registration and insurance did not prolong the stop any longer than reasonably necessary to complete the stop's mission.

Further, merely asking a general, broad question about whether anything illegal is in the car does not begin a new investigation into other crimes. Officers can always make general inquiries; such general inquiries do not prolong traffic stops. "Anything illegal in the car?" is an incidental question furthering legitimate law enforcement goals. Such a question cannot be held to begin a new investigation into other crimes.

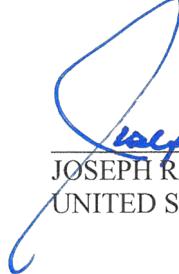
I cannot find that Officer Dawson's single question violated the defendant's Fourth Amendment rights and should invoke the extraordinary remedy of the exclusionary rule. *See Hudson v. Michigan*, 547 U.S. 586, 591 (2006) (Exclusion "has always been our last resort, not our first impulse."). I **FIND** that Officer Dawson's single question was a constitutionally permissive question that not only was within the scope of a traffic stop's mission, but also did not unlawfully extend the defendant's seizure. Accordingly, because Officer Dawson's question was both within the scope of the mission and within the time reasonably necessary to complete the stop, a finding of reasonable suspicion is unnecessary.

IV. Conclusion

For the foregoing reasons, the defendant's Motion to Suppress [ECF No. 20] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to the defendant and counsel, the United States Attorney, the United

States Probation Office, and the United States Marshal. The court further DIRECTS the Clerk to post a copy of this published opinion on the court's website, www.wvsd.uscourts.gov.

ENTER: September 3, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

**JASON WATTIE BUZZARD and
PAUL WILLIAM MARTIN, *Petitioners*,**

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX C

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

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Counsel for Petitioner Paul William Martin**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 2:19-cr-00021

PAUL WILLIAM MARTIN

MEMORANDUM OPINION AND ORDER

Pending before the court is the defendant's Motion to Suppress [ECF No. 32]. The court held a hearing on this Motion on April 24, 2019, and ordered additional briefing. The defendant and the government have submitted additional briefs, and the matter is now ripe for review. For the following reasons, the Motion is **DENIED**.

I. Background

The defendant seeks to suppress several items of evidence that he claims were unlawfully seized. At the suppression hearing, the court heard testimony of Defendant Paul Martin, Jason Buzzard, and Officer Tyler Dawson. The parties agree that on October 12, 2018, the defendant was leaving a gas station at approximately 1:36 a.m. when Officer Dawson stopped the defendant because of a defective brake light.

Officer Dawson testified that he made contact with Mr. Buzzard, the driver, and testified that during these kinds of traffic stops, he "[a]lways advise[s] [the

driver] why [he] stopped them and then [he] always ask[s] for license and registration, proof of insurance.” Tr. Mot. Suppress 8:3–4. Officer Dawson testified that while Mr. Buzzard was searching for the vehicle’s registration and insurance, Mr. Buzzard stated that the vehicle was not his. *Id.* at 8:9–10. Officer Dawson testified that he observed the passenger, Defendant Martin, appearing as if he were about to run. *Id.* at 15:1–3. Officer Dawson explained that Defendant Martin was moving and looking around and not making eye contact, but interrupting him while he was speaking with Mr. Buzzard by saying things like “Hey, you know me, we’re not up to anything. It’s just me.” *Id.* at 10–11. He stated that Defendant Martin would lean forward, back, look right and look left. He explained that it was uncommon for passengers to act the way that Defendant Martin was acting; most people, he said, would sit still in their seat and listen to and watch the officer. *Id.* at 11:7–24. He testified that he knew Defendant Martin from three other encounters. One included Defendant Martin riding his bike around some vehicles late at night, where Officer Dawson suspected that Defendant Martin might be breaking into cars. *Id.* at 8. The second was a run in at Thomas Memorial Hospital where Defendant Martin was being treated for drug addiction. *Id.* at 9. And the third was when Officer Dawson responded to a domestic dispute involving Mr. Martin. *Id.* at 35:13–24. He explained that at the time of the stop, he knew that Defendant Martin had a history of drug addition, that he just got out of prison, and that he had prior felonies. *Id.* at 9–10.

Officer Dawson went on to testify that the area where he pulled over the defendant was what he believes to be a high crime area, commonly involving narcotics, noting dozens of arrests made by him alone. *Id.* at 12. He explained a drug trade practice of using the gas station wi-fi to set up deals and noted a known drug house within a block of the stop. *Id.*

Officer Dawson testified that in a normal situation, he would run the driver's information—i.e., Mr. Buzzard's driver's license information and a warrant check. He did not, however, run these routine checks. *Id.* at 14. Officer Dawson testified that because there were two persons in the car, he decided to wait for an additional officer. *Id.* at 14–15. Notably, he did not call for backup specifically as much as he hoped for a second officer to arrive. He explained that when someone begins a stop, his shift's practice is to say, "Hey, I've got two occupants in the vehicle," and normally, another officer listening in will come to the scene. *Id.* at 15. Assuming that a second officer would arrive, Officer Dawson decided to wait, and while waiting, he asked Mr. Buzzard a single question: Is there anything illegal in the vehicle? Indeed, Officer Dawson's field case report states as follows:

I made contact with the driver/suspect Jason Buzzard I observed the other suspect, Paul Martin . . . , sitting in the front passenger seat of the suspect vehicle. While speaking with Buzzard, I asked if he had anything illegal in the vehicle.

Police Report [ECF No. 32-1] 2. When defense counsel asked Officer Dawson why he asked that single question, Officer Dawson said that he asked it based on the time of

night, the location, Defendant Martin's history, and Defendant Martin's behavior. Tr. Mot. Suppress 15.

On the other hand, the Defendant Martin and Mr. Buzzard, after being sequestered, separately testified that the first question that Officer Dawson asked immediately after approaching the car for the first time was whether there was anything illegal in the car. Regardless of the timing, once asked, Mr. Buzzard produced a bowl of marijuana that was hidden under his shirt. Defendant Martin told Officer Dawson that he had one too and would eventually surrender a syringe. After a search of the car, Officer Dawson found two firearms, one hidden under the driver's seat and the other hidden under the passenger's seat. The police arrested Defendant Martin and Mr. Buzzard and also confiscated Mr. Buzzard's cell phone.

Defendant Martin moved to suppress the contraband. He argues that the question "Is there anything illegal in the vehicle?" was beyond the scope of the purpose of the stop and that by asking it, the question unlawfully prolonged the stop. Consequently, he argues that in order to ask the "unrelated" question, Officer Dawson needed reasonable suspicion or consent. Defendant Martin does not challenge the lawfulness of the traffic stop. Both parties agree that Officer Dawson lacked consent. The court is presented with two questions: whether the single question was related to the mission of the stop, and if not, whether the single question unlawfully prolonged the stop.

II. Legal Standard

When deciding a motion to suppress, the district court may make findings of fact and conclusions of law. *United States v. Stevenson*, 396 F.3d 538, 541 (4th Cir. 2005). During the hearing, “the credibility of the witness[es] and the weight to be given the evidence, together with the inferences, deductions and conclusions to be drawn from the evidence, are all matters to be determined by the trial judge.” *United States v. McKneely*, 6 F.3d 1447, 1452–53 (10th Cir. 1993) (quoting *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991)). *See also Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 56 F.3d 556, 567 (4th Cir. 1995) (“[I]n the usual case, the factfinder is in a better position to make judgments about the reliability of some forms of evidence than a reviewing body acting solely on the basis of a written record of that evidence. Evaluation of the credibility of a live witness is the most obvious example.”) (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 623 (1993)). The burden of proof is on the party who seeks to suppress the evidence. *United States v. Dickerson*, 655 F.2d 559, 561 (4th Cir. 1981). Once the defendant establishes a basis for his motion to suppress, the burden shifts to the government to prove the admissibility of the challenged evidence by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974).

III. Discussion

“[I]n determining whether a traffic stop is reasonable, [courts] apply the standard articulated in *Terry v. Ohio*, 392 U.S. 1 (1968), wherein the court asks (1) if the stop was ‘legitimate at its inception,’ *United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017), and (2) if ‘the officer’s actions during the seizure were reasonably related in scope to the basis for the traffic stop,’ *Williams*, 808 F.3d at 245.” *United States v. Bowman*, 884 F.3d 200, 209 (4th Cir. 2018).

Taking these principles into account, in this case, the officer asked a single question, whether there was anything illegal in the car. Police Report [ECF No. 32-1] 2. The first question before the court is whether this question was related to the mission of the stop. The second question before the court is if the question was not related to the mission of the stop, whether the single question unlawfully prolonged the stop.

a. Whether the Question was Related to the Mission of the Traffic Stop

The United States Supreme Court has made clear that because “traffic stops are ‘especially fraught with danger to police officers,’” an officer “may need to take certain negligibly burdensome precautions in order to complete his mission safely.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1616 (2015) (quoting *Arizona v. Johnson*, 555 U.S. 323, 330 (2009)). “Unlike a general interest in criminal enforcement, however, the government’s officer safety interest stems from the mission of the stop itself.” *Id.* at 1616. For instance, an officer may order the driver out of the car for

safety purposes because officer safety weighs greater than the “*de minimis*” additional intrusion of requiring a driver, lawfully stopped, to exit a vehicle.” *Id.* (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 110–11 (1977)); *see also Maryland v. Wilson*, 519 U.S. 408, 413–15 (expanding *Mimms* to include all passengers).

In addition, “an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop.’” *Rodriguez*, 135 S. Ct. at 1615 (quoting *Illinois v. Caballes*, 543 U.S. 405, 408 (2005)). “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.* “These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Id.*

In this case, the officer asked the single question, whether there was anything illegal in the car. Police Report [ECF No. 32-1] 2. Because the question is related to officer safety, the question is therefore related to the mission of the stop itself. *See Rodriguez*, 135 S. Ct. at 1615. The question could expose dangerous weapons or narcotics. Courts have already recognized the authority of “officers conducting a traffic stop [to] inquire about dangerous weapons.” *United States v. Everett*, 601 F.3d 484, 495 (6th Cir. 2010) (“[I]t would be irrational to conclude that officers cannot take the ‘less intrusive [measure]’ of ‘simply [asking] whether a driver has a gun.’”); *see also Johnson*, 555 U.S. at 327 (finding that a stop, which included the officer asking if there were any weapons in the vehicle, was a legitimate stop). This single question

is certainly less intrusive than ordering the driver and passengers out of the car. *See Mimms*, 434 U.S. at 110–11; *see also Wilson*, 519 U.S. at 413–15. As another court has reasoned, “If a police officer may, in the interest of officer safety, order all occupants out of the vehicle for the duration of the stop without violating the Fourth Amendment, the officer may take a less burdensome precaution to ensure officer safety.” *State v. Wright*, 2019 WI 45, 926 N.W.2d 157, 163.

Further, asking generally if illegal items are in the vehicle relates to highway safety at least as much as searching for traffic warrants to ensure that “vehicles on the road are operated safely and responsibly” or to “make[] it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.” *Rodriguez*, 135 S. Ct. at 1615. Indeed, Officer Dawson’s question would be much more likely to dispel safety concerns than a database of past potentially criminal conduct. It is also increasingly more likely that the single question would dispose of related concerns than a warrant for a “previous traffic offense,” and certainly more likely to ensure the vehicle is operating safely and responsibly than checking the registration and proof of insurance. *See Rodriguez*, 135 S. Ct. at 1615.

b. Whether the Question Unlawfully Prolonged the Stop

The “Fourth Amendment tolerate[s] certain unrelated investigations that [do] not lengthen the roadside detention.” *Id.* at 1614 (citing *Johnson*, 555 U.S. at 327–28; *Caballes*, 543 U.S. at 406, 408) (brackets added). “An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop,” but “he

may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id.*

Even assuming here that the single question, whether there is anything illegal in the car, was not related to the mission of the traffic stop, the question did not violate the Fourth Amendment because it did not lengthen the traffic stop. This is true whether or not the question was asked initially, as the defendant argues, or after initiating contact with the defendant, as the government argues. In either scenario, the question was asked concurrently with the traffic mission related activities. The defendant relies on *Rodriguez* to argue the question unconstitutionally extended the stop. However, the temporal significance *Rodriguez* places on police actions for dog sniffs is impractical as it pertains to officer questioning. *Rodriguez* answered the question whether a dog sniff is allowed if it extends a traffic stop, even if for a few minutes. *Id.* at 1612–17. *Rodriguez* specifically distinguished police questioning from dog sniffs. *Id.* at 1615 (“A dog sniff, by contrast, is a measure aimed at ‘detect[ing] evidence of ordinary criminal wrongdoing.’” *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000)). Justice Alito noted in his dissent in *Rodriguez* that “it remains true that police may ask questions aimed at uncovering other criminal conduct and may order occupants out of their car during a valid stop.” *Id.* at 1625 n. 2 (Alito, J., dissenting). Unlike prolonging a traffic stop for a dog sniff, a single question is such a de minimis

extension of time that it likely cannot be measured. Therefore, the single question could not have measurably prolonged the stop.

The Fourth Circuit has found that asking unrelated questions while waiting for a background check did not prolong the stop.¹ *See United States v. Green*, 740 F.3d 275, 281 (4th Cir. 2014) (finding that officers “brief questioning about matters unrelated to the traffic violations did not run afoul of the scope component of *Terry’s* second prong” when asked during a criminal history check). The Fourth Circuit said again in *Bowman* that “police *during the course of a traffic stop* may question a vehicle’s occupants on topics unrelated to the traffic infraction.” *United States v. Bowman*, 884 F.3d 200, 210 (4th Cir. 2018) (citing *Johnson*, 555 U.S. at 333 (2009)). In addition, commentators have noted that brief questioning may not prolong a stop when an officer interrogates a single motorist while checking the motorist’s documents or awaiting a criminal history or outstanding warrant check. *See* Tracey Maclin, *Anthony Amsterdam’s Perspectives on the Fourth Amendment, and What It Teaches About the Good and Bad in Rodriguez v. United States*, 100 MINN. L. REV. 1939, 1983 (2016). Here too, Officer Dawson’s single, noninvasive, general question related to officer and highway safety asked while the driver had yet to produce

¹ While the Fourth Circuit in *United States v. Ortiz*, 110 F.3d 61 (4th Cir. 1997) (unpublished table decision), found that an officer was justified in inquiring whether the defendant had anything illegal in the car *because* he had reasonable suspicion, being decided before *Rodriguez*, *Ortiz* did not evaluate (1) whether the officer’s question was within the scope of the mission or (2) whether the officer’s question unlawfully prolonged the stop. Nor did it need to with a finding of reasonable suspicion.

registration and insurance did not prolong the stop any longer than reasonably necessary to complete the stop's mission.

Further, merely asking a general, broad question about whether anything illegal is in the car does not begin a new investigation into other crimes. Officers can always make general inquiries; such general inquiries do not prolong traffic stops. "Anything illegal in the car?" is an incidental question furthering legitimate law enforcement goals. Such a question cannot be held to begin a new investigation into other crimes.

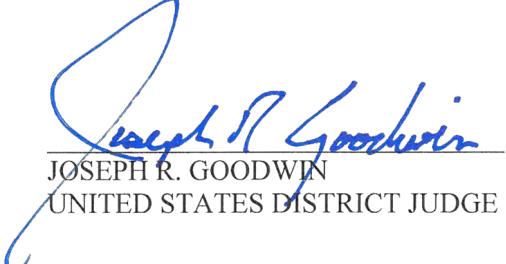
I cannot find that Officer Dawson's single question violated the defendant's Fourth Amendment rights and should invoke the extraordinary remedy of the exclusionary rule. *See Hudson v. Michigan*, 547 U.S. 586, 591 (2006) (Exclusion "has always been our last resort, not our first impulse."). I **FIND** that Officer Dawson's single question was a constitutionally permissive question that not only was within the scope of a traffic stop's mission, but also did not unlawfully extend the defendant's seizure. Accordingly, because Officer Dawson's question was both within the scope of the mission and within the time reasonably necessary to complete the stop, a finding of reasonable suspicion is unnecessary.

IV. Conclusion

For the foregoing reasons, the defendant's Motion to Suppress [ECF No. 32] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to the defendant and counsel, the United States Attorney, the United

States Probation Office, and the United States Marshal. The court further DIRECTS the Clerk to post a copy of this published opinion on the court's website, www.wvsd.uscourts.gov.

ENTER: September 3, 2019


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

**JASON WATTIE BUZZARD and
PAUL WILLIAM MARTIN, *Petitioners*,**

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX D

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

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Jonathan D. Byrne, Appellate Counsel
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jonathan_byrne@fd.org
Counsel for Petitioner Paul William Martin

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

JASON WATTIE BUZZARD

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:19-cr-00022

USM Number: 15206-088

Gerald M. Titus, II

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) one

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 922 (g) (1) and 924 (a) (2)	Felon in Possession of Firearms	10/12/2018	One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

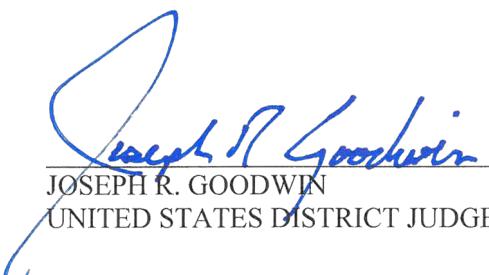
The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/17/2020

Date of Imposition of Judgment



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

1/17/2020

Date

DEFENDANT: JASON WATTIE BUZZARD
CASE NUMBER: 2:19-cr-00022

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
18 months

The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed at FCI Ashland;
that the defendant be allowed to participate in the Drug Abuse Treatment Program.
that the defendant be evaluated for mental health treatment and anger management.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JASON WATTIE BUZZARD
CASE NUMBER: 2:19-cr-00022

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JASON WATTIE BUZZARD
CASE NUMBER: 2:19-cr-00022

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JASON WATTIE BUZZARD
CASE NUMBER: 2:19-cr-00022

SPECIAL CONDITIONS OF SUPERVISION

The defendant will participate in a program of testing, counseling and treatment for drug and alcohol abuse as directed by the probation officer.

The defendant shall immediately, upon release, participate in a drug treatment program.

The defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

- 1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
- 2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- 3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- 4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
- 5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

DEFENDANT: JASON WATTIE BUZZARD
CASE NUMBER: 2:19-cr-00022

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>TOTALS</u>	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$ 100.00	\$	\$	\$	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JASON WATTIE BUZZARD
CASE NUMBER: 2:19-cr-00022

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The \$100 special assessment will be paid through participation in the Inmate Financial Responsibility Program.

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

**JASON WATTIE BUZZARD and
PAUL WILLIAM MARTIN, *Petitioners*,**

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX E

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

Gerald Morton Titus, III
Spilman, Thomas & Battle, PLLC
300 Kanawha Boulevard, East
Post Office Box 273
Charleston, West Virginia 25321
304/340-3800
gtitus@spilmanlaw.com
Counsel for Petitioner Jason Wattie Buzzard

Jonathan D. Byrne, Appellate Counsel
Counsel of Record

Wesley P. Page, Federal Public Defender
David R. Bungard, Assistant Federal Public Defender
Office of the Federal Public Defender
Southern District of West Virginia
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
304/347-3350
jonathan_byrne@fd.org
Counsel for Petitioner Paul William Martin

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

PAUL WILLIAM MARTIN

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:19-cr-00021

USM Number: 14350-088

David Bungard and Wes Page

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) two of the Second Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 922 (g) (1) and 924 (a)(2)	Possession of Firearms by a Convicted Felon	10/12/2018	Two

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

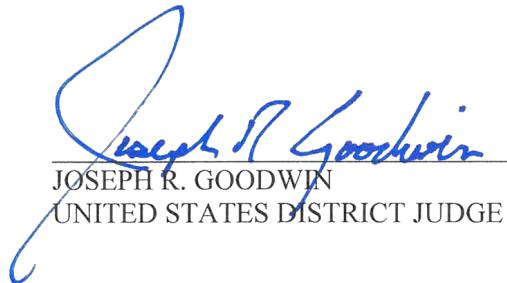
The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

3/11/2020

Date of Imposition of Judgment



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

3/11/2020

Date

DEFENDANT: PAUL WILLIAM MARTIN
CASE NUMBER: 2:19-cr-00021

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
46 months

The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed at a facility that provides the Comprehensive Drug Abuse Treatment Program.
that the defendant be allowed to participate in the Comprehensive Drug Abuse Treatment Program.
that the defendant be housed as close to Charleston, WV as possible.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PAUL WILLIAM MARTIN
CASE NUMBER: 2:19-cr-00021

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: PAUL WILLIAM MARTIN
CASE NUMBER: 2:19-cr-00021

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: PAUL WILLIAM MARTIN
CASE NUMBER: 2:19-cr-00021

SPECIAL CONDITIONS OF SUPERVISION

The defendant will participate in a program of testing, mental health treatment, counseling and treatment for drug and alcohol abuse as directed by the probation officer.

The court recommends inpatient drug treatment.

The defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

- 1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
- 2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- 3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- 4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
- 5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

DEFENDANT: PAUL WILLIAM MARTIN
CASE NUMBER: 2:19-cr-00021

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$ 100.00	\$	\$	\$	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: PAUL WILLIAM MARTIN
CASE NUMBER: 2:19-cr-00021

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The \$100 due immediately. If not paid immediately, the defendant shall pay the fine in payments of not less than \$25 per quarter through participation in the Bureau of Prisons' Inmate Financial Responsibility Program in quarterly installments of \$25. Any remaining balance shall be paid during the term of supervised release in minimum installments of no less than \$25 per month, with the first installment to be paid within 30 days of release from incarceration, until the full amount has been paid. Payments shall be paid to the Clerk of the Court at the following address: United States District Clerk's Office, Robert C. Byrd Federal Building, United States Courthouse, 300 Virginia Street East, Charleston, West Virginia, 25301