CRIMINAL CASE

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In The

SUPREME COURT OF THE UNITED STATES

Trevor Dawson Ewers,

Applicant/Petitioner,

v.

Commonwealth of Virginia,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the Commonwealth of Virginia

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTION PRESENTED

Where officers work together in concerted action to "produce" reasonable suspicion when there is none to affect a traffic stop with the sole purpose of removing a backseat passenger from the vehicle, under what circumstances does such stop and seizure violate the Fourth Amendment Rights (as applied through the Fourteenth Amendment) of the backseat passenger?

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IV. Petition for Writ of Certiorari

Trevor Dawson Ewers, an inmate currently incarcerated at the Amherst Adult Detention Center in Madison Heights, Virginia, by and through his court appointed counsel, Matthew L. Pack, respectfully petitions this court for a writ of certiorari to review the judgment of the Supreme Court of Virginia.

V. Opinions Below

The decision by the Virginia Supreme Court denying Mr. Ewers' direct appeal is styled as *Trevor Dawson Ewers v. Commonwealth of Virginia,* Docket No. 201526 (August 31, 2021). Further, the refusal of the Virginia Supreme Court was based upon the denial of the appeal by the Virginia Court of Appeals, Record No. 0029-20-3 (September 9, 2020).

VI. Jurisdiction

Mr. Ewers' direct appeal was denied by the Virginia Supreme Court on August 31, 2021. This Court will have jurisdiction over any timely filed petition for writ of certiorari in this case pursuant to 28 U.S.C. § 1257(1). The petitioner was granted an extension by the Chief Justice of this Honorable Court to file a petition for writ of certiorari no later than January 28, 2022.

VII. Constitutional Provisions Involved

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. Statement of the Case

Over 25 years ago, this Court held in *Whren v. United States* that a stop and temporary seizure of a driver and passenger of a motor vehicle is Constitutional so long as there is an objective, reasonable basis for the traffic stop overall. The officer's subjective reasoning is irrelevant for determining whether the overall traffic stop is Constitutional. *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996).

The subjective belief of the officer is irrelevant unless there is an improper motive in attempting to conduct a traffic stop to specifically "find" a reason to remove the passenger/appellant from the vehicle. The scope of the detention must be narrowly tailored to its underlying justification. Otherwise, every traffic stop for a license plate bulb not illuminated to be visible from 50 feet would lead to law enforcement conducting stop and seizures of every vehicle in such condition. This cannot be what this Court contemplated when rendering its decision in *Whren v. United States*. Such an extension to the seizure of every passenger of a vehicle with a license plate light not illuminated to be visible from 50 feet gives law enforcement *carte blanch* authority for unlawful pretextual stops and seizures.

This case presents the question of how far this Court wishes to extend the ruling in *Whren* and its progeny, especially in light of *Rodriguez v. United States*, 575 U.S. 348 (2015) and *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Ct. 1409, 1414 (2013). It is the Petitioner's contention that the question of whether The Fourth Amendment as implemented through The Fourteenth Amendment is violated by law enforcement when acting on a hunch, conducting a traffic stop, and then removing the backseat passenger without the requisite independent, probable cause to remove such passenger. This is a matter that the Petitioner believes has not been fully settled by this Court, and the Petitioner believes that such matter should be settled by this Court.

1. The events leading up to and traffic stop of the vehicle.

On the evening of September 22, 2017, Keshan Agnew ("Agnew"), left a cookout in order to meet Trevor Ewers ("Ewers") and give him a ride home. (M.T. 97). Agnew testified that he pulled into the Food Lion parking lot in order to meet and pick up Ewers to give him a ride home. (M.T. 101, 102). Agnew did not notice anything illegal about the PT Cruiser prior to operating it. (M.T. 98). However, he stated that he did not walk around the PT Cruiser and see if all the lights worked. (M.T. 107). Nor did he have a conversation with the woman passenger, who he assumed owned the vehicle, whether everything was operable and legal on the vehicle. (M.T. 107). Agnew was giving Ewers a ride home because Ewers had been drinking and that he had not consumed any alcohol. (M.T. 99).

After he picked up Ewers, Agnew drove to the Quick-E Mart to buy a pack of

cigarettes. (M.T. 102). He saw the police car sitting across the road near a real estate place across from the CVS in the Town of Amherst. (M.T. 102). He left and began driving Agnew testified that he noticed a police officer following him from the time he was in the Town of Amherst until the time of the stop which was approximately ten to twenty minutes. (M.T. 100, 101).

Officer Robinson, with the Amherst Town Police, testified that the only reason he followed the PT Cruiser instead of the black vehicle was because Ewers got out of the vehicle, sat in the other vehicle, and then got back in the PT Cruiser and that he just felt like there may have been something inside of the PT Cruiser that shouldn't have been in there. (M.T. 47). He followed the PT Cruiser for approximately a mile at the speed limit and did not observe any traffic violations. (M.T. 48). At that point he contacted Deputy William Nash ("Nash") of the Amherst County Sheriff's Office ("ACSO") and told him what he had observed. (M.T. 49). Robinson testified that at that time he did not have any reasonable suspicion to pull the PT Cruiser over. (M.T. 49).

Robinson testified that he contacted Nash to assist him in stopping the vehicle. (M.T. 49, 50). However, he testified that from the point he observed the vehicle in Food Lion parking lot until the time that he called Nash, he had not observed anything that gave him reasonable articulable suspicion to stop the vehicle. (M.T. 51).

Robinson testified that while he followed the PT Cruiser he did not notice that the tag light was not illuminated. (M.T. 52). Robinson testified that he contacted

Nash to see if they, referring to the deputies, could find a reason to stop the PT Cruiser. (M.T. 53). Robinson testified that once the deputies caught up to him, Kara pulled up alongside of him. (M.T. 53).

2. Seizure of Ewers, the backseat, driver's side passenger

Deputy Erin Karajankovich stated that she observed a license plate light out and the license plate light was the only reason for the stop. Such was not the reason for getting any of the occupants out. (M.T. 29). Karajankovich testified that prior to instructing Meador to get Ewers out of the car, she had no other interactions with Ewers. (T. 246). Karajankovich also testified that Ewers was not that much of a concern to her while she was at the vehicle and speaking to him. (T. 247).

Deputy Jason Meador stated that when he arrived on scene, Karajankovich and Robinson were behind the PT Cruiser and that he approached the vehicle and went to the rear passenger's side and started to speak to the occupant. (M.T. 61, 68). He testified that he began to speak to Ewers while Karajankovich relayed the occupants' information to dispatch. (M.T. 61).

Meador testified that he had a conversation with Ewers. (M.T. 62). Meador did not ask Ewers any specific questions about the stop. (M.T. 62). Ewers was smoking a cigarette upon Meador's approach to the vehicle. (T. 232). When Meador got to the driver's side rear seat passenger window, he ordered that Ewers dispose of the cigarette and then grabbed it from Ewers' hand and threw it down. (T. 232). Meador could smell the odor of alcohol and immediately noticed that Ewers was very intoxicated or under the influence of something. (T. 231, 232). Ewers asked Meador

multiple times what the vehicle was being stopped for. (T. 232). Meador told Ewers he believed that Ewers was too intoxicated at the time of the traffic stop and that he doubted Ewers' ability to understand the reason for the traffic stop. (T. 234, 235). Meador remembered Ewers was visibly intoxicated and that he could smell alcohol from Ewers and that his speech was slurred, along with the fact that Ewers told him he was intoxicated. (M.T. 62). Meador stated that he decided to get Ewers out of the vehicle when Kara approached Meador while he was speaking to Ewers and asked him to have Ewers exit the vehicle so she could talk to him. (M.T. 63).

Meador then opened the door to get Ewers out and Ewers did not resist or say no to getting out, but that Ewers was obviously intoxicated and stumbled out. (M.T. 64). Meador immediately grabbed Ewers' arm to control him and try to put his hands up against the car. (M.T. 64). Meador stated that he thought Ewers was having trouble with his balance and told him to put his hands on the car numerous times. (M.T. 64, 65). At that time Ewers reached into his pocket and produced a handgun. (T. 215).

3. Direct appeal

On direct appeal to the Virginia Court of Appeals, Ewers renewed his argument he made in a motion to suppress before the trial court that has was unlawfully seized from the vehicle, and if such seizure had not occurred, no other crime(s) would have occurred. The Virginia Court of Appeals refused to rule on the legality of the stop and seizure based upon Ewers' conduct after the stop and seizure. They held that, even assuming without deciding that the officers unlawfully stopped

and seized the appellant, no suppressible evidence was obtained as a result of the allegedly improper conduct. However, Ewers argued, through counsel, that if not for the egregious conduct of law enforcement, the situation would not have occurred at all.

Ewers appealed the Virginia Court of Appeals' decision to the Supreme Court of Virginia, where his petition for appeal was refused by the Virginia Supreme Court on August 31, 2021.

IX. Reasons for Granting the Writ

A. To clarify the appropriate standard and limitations of *Whren* and its progeny as such standard and limitation seem to be in conflict between state and federal courts giving rise to violent encounters with law enforcement.

"On appeal, we apply a *de novo* standard of review in determining whether a person has been seized in violation of the Fourth Amendment. *McCain v. Commonwealth*, 261 Va. 483, 489, 545 S.E.2d 541, 545 (2001). However, we also must review findings of historical fact for clear error and give due weight to inferences drawn from those facts. *Ornelas v. United States*, 517 U.S. 690, 699, 134 L. Ed. 2d 911, 116 S. Ct. 1657 (1996); *Reittinger v. Commonwealth*, 260 Va. 232, 236, 532 S.E.2d 25, 27 (2000)." *quoting Harris v. Commonwealth*, 266 Va. 28, 32, 581 S.E.2d 206, 209 (2003).

"A defendant's claim that evidence was seized in violation of the Fourth Amendment presents a mixed question of law and fact that we review de novo on appeal." *Bolden v. Commonwealth*, 263 Va. 465, 470, 561 S.E.2d 701, 704 (2002); *McCain*, 261 Va. at 489, 545 S.E.2d at 545; *see also Ornelas* at 699. "In making such

a determination, we give deference to the factual findings of the trial court and independently determine whether the manner in which the evidence was obtained meets the requirements of the Fourth Amendment." *Bolden*, 263 Va. at 470, 561 S.E.2d at 704; *McCain*, 261 Va. at 490, 545 S.E.2d at 545; *Bass v. Commonwealth*, 259 Va. 470, 475, 525 S.E.2d 921, 924 (2000). "The defendant has the burden to show that the trial court's denial of his suppression motion, when the evidence is considered in the light most favorable to the Commonwealth, was reversible error." *Bolden*, 263 Va. at 470, 561 S.E.2d at 704; *McCain*, 261 Va. at 490, 545 S.E.2d at 545; *Fore v. Commonwealth*, 220 Va. 1007, 1010, 265 S.E.2d 729, 731 (1980). *Murphy v. Commonwealth*, 264 Va. 568, 573 (2002).

"When the police stop a vehicle and detain its occupants, the action constitutes a "seizure" of the person for Fourth Amendment purposes. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). If an officer has an "articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law", the officer may conduct an investigatory stop of the vehicle to ascertain whether the suspicions are accurate.

In *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996), this Court ruled "regardless of an officer's subjective reason for stopping a vehicle, the stop is legal provided there is an objectively reasonable basis for the stop."

"In *Whren*, the petitioners argued that the Fourth Amendment test for traffic

stops should not be whether probable cause existed to justify the stop, but whether a police officer, acting reasonably, would have made the stop for the reason given. The Court rejected the notion that an officer's ulterior motives could invalidate police conduct that is justifiable on the basis of probable cause to believe a violation has occurred. In doing so, the Court reaffirmed the analysis set forth in *Prouse*." *Commonwealth v. Wells*, 2007 Va. App. LEXIS 9, *9, 2007 WL 43631

1. Unconstitutional Scope of the Stop

"A seizure for a traffic violation justifies a police investigation of that violation. "[A] relatively brief encounter," a routine traffic stop is "more analogous to a so-called '*Terry* stop' . . . than to a formal arrest." *Knowles* v. *Iowa*, 525 U. S. 113, 117, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998) (quoting *Berkemer* v. *McCarty*, 468 U. S. 420, 439, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984), in turn citing *Terry* v. *Ohio*, 392 U. S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). See also *Arizona* v. *Johnson*, 555 U. S. 323, 330, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009). Like a *Terry* stop, 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, *Caballes*, 543 U. S., at 407 125 S. Ct. 834, 160 L. Ed. 2d 842, and attend to related safety concerns, *infra*, at 356-357, 191 L. Ed. 2d, at 499-500. See also *United States* v. *Sharpe*, 470 U. S. 675, 685, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985); *Florida* v. *Royer*, 460 U. S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983) (plurality opinion) ("***The scope of the detention must be carefully tailored to its underlying justification.***"). Because addressing the infraction is the purpose

of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." *Ibid.* See also *Caballes*, 543 U. S., at 407, 125 S. Ct. 834, 160 L. Ed. 2d 842. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. See *Sharpe*, 470 U. S., at 686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (in determining the reasonable duration of a stop, "it [is] appropriate to examine whether the police diligently pursued [the] investigation"). *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). (***emphasis added***).

"Prior to *Rodriguez*, Supreme Court precedent made clear that "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, *so long as those inquiries do not measurably extend the duration of the stop.*" *Johnson*, 555 U.S. at 333 (emphasis added) (citing *Muehler*, 544 U.S. at 100-01). Virginia cases recognized this established principle and interpreted it to permit *de minimis* delay. *See Atkins v. Commonwealth*, 57 Va. App. 2, 15-16, 698 S.E.2d 249, 256 (2010); *Ellis v. Commonwealth*, 52 Va. App. 220, 226-27, 662 S.E.2d 640, 643 (2008). In June of 2014, therefore, "binding precedent established that a *de minimis* delay in the completion of a traffic stop to conduct an investigation unrelated to the purpose of the stop did not violate the Fourth Amendment's prohibition against unlawful seizures." *Matthews*, 65 Va. App. at 348, 778 S.E.2d at 129. Not until the decision in *Rodriguez*, 135 S. Ct. at 1615-16, did the United States Supreme Court explain that such *de minimis* delay measurably extends a traffic stop and, consequently, absent independent reasonable suspicion, violates the Fourth

Amendment. *See Matthews*, 65 Va. App. at 344-45, 348-49, 778 S.E.2d at 127-30." *quoting Watts v. Commonwealth*, 2016 Va. App. LEXIS 358, *14-15, 2016 WL 7368109

On the evening of September 22, 2017, Agnew left a cookout to meet Ewers and give him a ride home. (M.T. 97). Agnew testified that he pulled into the Food Lion parking lot to meet and pick up Ewers to give him a ride home. (M.T. 101, 102). Agnew stated that the black vehicle that was next to them was the person that brought him to Food Lion in order to drive Ewers. (M.T. 102, 103). Agnew did not notice anything illegal about the PT Cruiser prior to operating it. (M.T. 98). However, he stated that he did not walk around the PT Cruiser and see if all the lights worked. (M.T. 107). Nor did he have a conversation with the woman passenger, who he assumed owned the vehicle, whether everything was operable and legal on the vehicle. (M.T. 107). At the time, Agnew resided with his mother on Coolwell Road and he knew Ewers to reside approximately two minutes away on the same road. (M.T. 98, 99). Agnew testified that he did not see any illegal activity occur in the vehicle that night and that he was giving Ewers a ride home because Ewers had been drinking and that he had not consumed any alcohol. (M.T. 99).

The purported reason for the stop was for a license plate light that wasn't visible within fifty (50) feet while traveling down a highway at appropriate highway speeds (M.T. 48). However, Robinson had "suspicion" or a "hunch" that some sort of drug activity had occurred at a convenience store some several miles away from the stop (M.T. 47-48). Robinson requested help to get probable cause to stop the vehicle

(T. 50). While following the vehicle for miles attempting to develop a reason to initiate a traffic stop, Robinson did not pay attention as to whether the PT Cruiser's tag light wasn't illuminated (T. 52). Robinson then calls Nash to "find a reason to stop the vehicle" (T. 53).

The fundamental difference between this case and *Whren* is that the defendants in *Whren* were in a "high drug area" and had observable behavior that directly led to their stop and arrest. In the case at bar, Robinson saw a few "suspicious" issues he observed at a convenience store, and then, based upon his hunch, Robinson followed the vehicle for quite some time while calling Nash requesting that he and other officers "find a reason to pull the vehicle over." Curiously, while following the vehicle and trying to find a reason to initiate a traffic stop, Robinson didn't pay attention, nor observe any tag light out on the vehicle.

2. Subjective Belief of Officer Not Relevant Unless Improper Motive

"The Fourth Amendment "indicates with some precision the places and things encompassed by its protections: ***persons***, houses, papers, and ***effects***." *Oliver* v. *United States*, 466 U.S. 170, 176, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984), *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Ct. 1409, 1414 (2013). (***emphasis added***)

"But those cases [such as *Whren*] merely hold a stop or search that is objectively reasonable is not vitiated by the fact that the officer's real reason for making the stop or search has nothing to do with the validating reason. Thus, the defendant will not be heard to complain that although he was speeding, the officer's real reason for the stop was racial harassment. *Whren*, 517 at 810, 813, 116 S. Ct.

1769, 135 L. Ed. 2d 89. Here, however, the question before the Court is precisely *whether* the officer's conduct was an objectively reasonable search. As we have described, that depends upon whether the officers had an implied license to enter the porch, which in turn depends upon the purpose for which they entered. Here, their behavior objectively reveals a purpose to conduct a search, which is not what anyone would think he had license to do." *Jardines*, 569 at 10, 133 S. Ct. 1416-1417, 185 L. Ed. 2d 503.

Much like the officers in *Jardines*, the officer's motivations and objective seizure of the Defendant by pulling him out of the vehicle was completely unreasonable. The Defendant in this case was the driver's side rear seat passenger inside of the PT Cruiser that was stopped by Karajankovich at the Monroe Post Office in Amherst County, Virginia. (T. 277). While Ewers did not respond to Karajankovich question about drugs and weapons, Karajankovich testified that Ewers did make statements to her about being intoxicated and that he was trying to get a ride home. (T. 246). Karajankovich testified that prior to instructing Meador to get Ewers out of the car, she had absolutely no other interactions with Ewers prior to him being ordered out of the car. (T. 246). Karajankovich also testified that Ewers was not that much of a concern to her while she was at the vehicle and speaking to him. (T. 247).

Meador was the shift supervisor for patrol deputies with the ACSO on the evening of September 22, 2017. Meador testified that he was at the traffic stop in order to assist and that when he arrived Karajankovich was already questioning the occupants of the PT Cruiser. (M.T. 60, 61). Meador stated that prior to his arrival he

only knew that Robinson requested assistance with a stop, Karajankovich had found a way to stop the PT Cruiser, and that there had been some suspicious activity with the PT Cruiser witnessed by Robinson. (M.T. 69). Meador testified that it was his understanding that one of the possibilities for the stop was to look for something with regard to drugs or something of that nature and that he did not know what the reasonable articulable suspicion for pulling over the PT Cruiser was. (M.T. 69, 70).

Meador stated that when he arrived on scene, Karajankovich and Robinson were behind the PT Cruiser speaking and that he approached the PT Cruiser and went to the rear passenger's side and started to speak to the occupant so that he could watch the vehicle. (M.T. 61, 68). He testified that he began to speak to Ewers while Karajankovich relayed the occupants' information to dispatch. (M.T. 61).

Meador testified that he had a conversation with Ewers. (M.T. 62). Meador did not ask Ewers any specific questions about the stop. (M.T. 62). Ewers was smoking a cigarette upon Meador's approach to the vehicle. (T. 232). When Meador got to the driver's side rear seat passenger window, he ordered that Ewers dispose of the cigarette and then grabbed it from Ewers' hand and threw it down. (T. 232). Meador could smell the odor of alcohol and immediately noticed that Ewers was very intoxicated or under the influence of something. (T. 231, 232). Ewers asked Meador multiple times what the vehicle was being stopped for. (T. 232). Meador told Ewers he believed that Ewers was too intoxicated at the time of the traffic stop and that he doubted Ewers' ability to understand the reason for the traffic stop. (T. 234, 235).

Meador remembered Ewers was visibly intoxicated and that he could smell

alcohol from Ewers and that his speech was slurred. (M.T. 62). Along with the fact that Ewers told him he was intoxicated. (M.T. 62). Meador stated that he decided to get Ewers out of the vehicle when Kara approached him while he was speaking to Ewers and asked him to have Ewers exit the vehicle so she could talk to him. (M.T. 63). Meador stated that at that time when he asked Ewers to get out of the vehicle he had been at the post office for between five and ten minutes. (M.T. 63). Meador testified that he told Ewers that he was going to get him out of the car and that he was going to pat him down and that he needed to put his hands on the car so that he could do so. (M.T. 64).

3. A "Frisk" May Only Occur if it is Believed that the Passenger is "Armed and Dangerous"

"During the course of a traffic stop, an officer may take certain steps to protect himself, such as asking the driver and any passengers to exit the vehicle. *Maryland v. Wilson,* 519 U.S. 408, 414-15, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997). "[P]olice officers may also detain passengers beside an automobile until the completion of a lawful traffic stop." *Harris v. Commonwealth,* 27 Va. App. 554, 562, 500 S.E.2d 257, 261 (1998) (citing *Hatcher v. Commonwealth,* 14 Va. App. 487, 491-92, 419 S.E.2d 256, 259, 8 Va. Law Rep. 3063 (1992)). An officer's authority to order an occupant from a vehicle during a traffic stop is justified by the potential risks associated with traffic investigation that implicate safety concerns. *Wilson,* 519 U.S. at 413-14; *see Pennsylvania v. Mimms,* 434 U.S. 106, 110-11, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977). There was nothing constitutionally improper about Thompson asking McCain to exit the vehicle, nor was it improper to detain McCain during the traffic stop. The

resolution of McCain's motion to suppress hinges upon the constitutional propriety of subjecting McCain to a seizure and pat-down search after he exited the vehicle. "Because a frisk or 'pat-down' is substantially more intrusive than an order to exit a vehicle, . . . an officer must have justification for a frisk or a 'pat-down' beyond the mere justification for the traffic stop." *United States v. Sakyi,* 160 F.3d 164, 169 (4th Cir. 1998). An officer may not automatically search a driver or his passengers pursuant to the issuance of a traffic citation or in the course of a *Terry* stop, but he may frisk the driver and passengers for weapons if he develops reasonable suspicion during the traffic or *Terry* stop to believe the particular person to be frisked is armed and dangerous. *Knowles v. Iowa,* 525 U.S. 113, 117-18, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998); *see Adams v. Williams,* 407 U.S. 143, 146, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972). "Even in high crime areas, where the possibility that any given individual is armed is significant, *Terry* requires reasonable, individualized suspicion before a frisk for weapons can be conducted." *Maryland v. Buie,* 494 U.S. 325, 334 n.2, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990).

"Circumstances relevant in this analysis include characteristics of the area surrounding the stop, the time of the stop, the specific conduct of the suspect individual, the character of the offense under suspicion, and the unique perspective of a police officer trained and experienced in the detection of crime." *See Terry,* 392 U.S. at 28; *Whitfield v. Commonwealth,* 265 Va. 358, 362, 576 S.E.2d 463, 465 (2003). ***Nervousness during the course of a traffic stop, standing alone, is insufficient to justify a frisk for weapons,*** but "nervous,

evasive behavior is a pertinent factor" for consideration in assessing the totality of the circumstances. *Wardlow,* 528 U.S. at 124 (citing *United States v. Brignoni-Ponce,* 422 U.S. 873, 885, 95 S. Ct. 2574, 45 L. Ed. 2d 607 (1975); *Florida v. Rodriguez,* 469 U.S. 1, 6, 105 S. Ct. 308, 83 L. Ed. 2d 165 (1984); *United States v. Sokolow,* 490 U.S. at 8-9)) *McCain v. Commonwealth*, 275 Va. 546, 554, 659 S.E.2d 512, 517 (Va. 2008). (***emphasis added*).**

Meador's testimony confirms that there was no reason law enforcement had to think that the Defendant was "armed and dangerous." In fact, through the entirety of the exchange with law enforcement, the only reason that the officers had to get the Defendant out of the car was that he was intoxicated trying to get a ride home. Robinson had a hunch about narcotics in the vehicle, and then a concentrated effort was placed to get the Defendant out of the vehicle. The traffic stop was initiated for a tag light that didn't illuminate at least fifty (50) feet was a ruse focused to justify the unreasonable search and seizure of the Defendant because, absent their testimony concerning the tag light, Robinson testified that law enforcement had neither reasonable suspicion for the traffic stop, nor probable cause to remove the Defendant from the vehicle.

IX. Conclusion

For the foregoing reasons, Treevor Dawson Ewers, by and through the undersigned counsel, respectfully requests that this Court issue a writ of certiorari to review the judgment of the Virginia Supreme Court. This case presents this Court with unique opportunity to clarify some of its previous decisions and prevent

overreaching actions by law enforcement that have led to violent encounters with such law enforcement.

DATED this 15th day of March, 2022.

Respectfully submitted,

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