NO. _____

In The Supreme Court of the United States

JAYSON MCNEIL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Dated: April 7, 2022

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QUESTION PRESENTED

Did the Trial Court err in denial of the Petitioner's Motion to Suppress evidence from a traffic stop and resulting search and seizure that was unconstitutional in scope and duration, in violation of the Fourth and Fifth Amendments to the U.S. Constitution.

LIST OF PARTIES TO THE PROCEEDING

The names of all parties appear in the caption of this case on the cover page.

STATEMENT OF RELATED CASES

- *U.S. v. McNeil*, No. 5:19CR-120-1-D, U.S. District Court for the Eastern District of North Carolina, Judgment filed April 29, 2020.

- *U.S. v. McNeil*, No. 20-4289, U.S. Court of Appeals for the Fourth Circuit, Judgment filed January 13, 2022.

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PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner Jayson McNeil (hereinafter "McNeil" or "Petitioner") and does respectfully petition the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion is unpublished but was filed under case heading Fourth Circuit, No. 20-4289 and decided on January 13, 2022. The judgment of the United States District Court for the Eastern District of North Carolina is found at *United States v. McNeil*, Case No. 5:19-cr-00120-D-1, ECF Docket No. 137 (E.D.N.C. April 29, 2020).

JURISDICTION

The Fourth Circuit entered its judgment on January 13, 2022, after review of the District Court judgment, with jurisdiction conferred to the District Court under 18 U.S.C. § 3231. Appellate jurisdiction is conferred upon the United States Court of Appeals for the Fourth Circuit under 28 U.S.C. § 1291, and Federal Rules of Appellate Procedure 4(b). Review by the Court of Appeals is authorized to the Fourth Circuit by 18 U.S.C. § 3742 (a)(2).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and affects, 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."

The procedures and execution thereof are guaranteed under the Fifth Amendment to the United States Constitution, in which "No person shall be held to or answer for a capital, otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property by taken for public use, without just compensation."

INTRODUCTION

In this case, Jayson McNeil appealed from his convictions and resulting life sentence for Distributing Heroin Resulting in Death, in violation of 21 U.S.C. § 841(a)(1) and related drug charges for Conspiracy to Distribute a Kilogram or More of Heroin, in violation of 21 U.S.C. § 841(a)(1)(A), Possession with Intent to Distribute Heroin, in violation of 21 U.S.C. § 846, Possession to Distribute in violation of 21 U.S.C. § 841(a)(1), and Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g)(1) and § 924. Enhancement penalties were sought under 18 U.S.C. § 851. (JA 9)

On appeal, McNeil challenges his convictions, arguing that the District Court erred in denying his Motion to Suppress the evidence derived from a traffic stop.

The Trial Court took evidence and made its findings of fact, some of which are beyond the ability of the arresting officer to see, hear and know the information provided. McNeil challenges his life sentence, in that the findings of the Trial Court and supporting facts were erroneous in fact and law.

STATEMENT OF THE CASE

The Petitioner was charged for offenses after a series of investigations and incidents related to a reported heroin overdose in a parking lot of an apartment complex in Raleigh, North Carolina. Under the law enforcement investigation, it appeared that an individual, Parker Roth Stephenson, was found dead while slumped over in the seat of his vehicle. After officers on the scene attempted to administer Narcan and after receiving some resuscitation through CPR, Mr. Stephenson passed away after arriving at the hospital. The reported cause of death was fentanyl toxicity. (JA 1074)

During the investigation, deputies with the Wake County Sheriff's Department conducted a search of Mr. Stephenson's vehicle and located various items of drug paraphernalia, which included a hypodermic needle with a liquid inside and a piece of wax paper, consistent with heroin bundling wrappings. A search of Stephenson's cell phone revealed that prior to this overdose, he had exchanged certain text messages, from which police believed that Jayson McNeil sold a quantity of heroin to Stephenson about the time of his death. Police acted on the belief that the heroin contained a certain amount of fentanyl, and may have created a drug overdose. (JA 5)

At a later date, on June 27, 2018, a Wake County Sheriff's Office deputy initiated a traffic stop on a vehicle driven by Antoine Elghossain, an unindicted individual, and Mr. McNeil, who was a passenger. During the traffic stop, officers detained the vehicle, after questionable cause to stop the vehicle. After conducting conversations with Mr. Elghossain, and further conversations with Mr. McNeil, the officers extended the stop. After a period of detention, at the side of the road, a narcotics K-9 dog was brought to the scene and deputies searched the car for presence of narcotics.

During the search of the vehicle, detectives seized two suboxone strips, and 49 bindles of heroin (a bindle is expected to be .69 grams of heroin). Furthermore, McNeil was found to be in possession of $1,564.00 in U.S. currency. Also, a digital scale was located in the trunk of Elghossain's vehicle, which McNeil claimed to be the owner of. As a result of the traffic stop, Elghossain and McNeil were arrested. (JA 1074)

In the continuing investigation, on July 1, 2018, Mr. McNeil provided a statement to investigating officers. Mr. McNeil admitted to purchasing drugs, including a gram of heroin. (JA 1074)

McNeil further stated he purchased portions of heroin that may have had fentanyl included in the heroin mixture. McNeil further told detectives that he had been selling heroin for six months to support his own heroin habit. Furthermore, there was a reported jail conversation by phone which McNeil discussed with his

wife a weapon that was located in his apartment in Raleigh, which was a .380 caliber pistol found in a closet.

In summary, and during the trial, the Government called a number of witnesses who testified before the jury, as to the heroin distribution practices of McNeil. Several of these individuals were purchasers and/or drug dealers, who dealt with the Defendant directly. The Government's evidence included a number of drug operatives who describe their activities, as well as those of McNeil in 2018.

MOTION TO SUPPRESS

Prior to the trial, Petitioner filed a Motion to Suppress the evidence and statements related to the vehicle stop. The Trial Court took evidence related to issues involving the Defendant's Motion to Suppress, which was timely received prior to trial. This involved evidence from the June 27, 2018 stop and search of the vehicle in which Mr. McNeil was a passenger.

The testimony was primarily derived from Deputy Justin Hastings, a deputy of the Wake County Sheriff's Department. (JA 44)

The deputy had been employed by the Wake County Sheriff's Department for almost 5 years. On June 27, 2018, Officer Hastings had been assigned to the interdiction team of the Drugs and Vice Special Investigations. As a result, deputies were stationed in the area of Capital Boulevard near the Franklin/Wake County line. At this point they were operating in the City of Wake Forest, North Carolina. (JA 47)

Officer Hastings and other deputies were sitting in a stationary location watching traffic on Capital Boulevard. They were sitting perpendicular to Capital Boulevard. While he was stationed in that position, Officer Hastings saw a vehicle that "appeared to be speeding". (JA 47)

The posted speed limit was 55 mph, but without verification, Officer Hastings made an estimation of speed to be 65 mph to 70 mph. He was sitting in a marked patrol car at approximately 12:50 a.m., in a dark area, without a radar unit, or other speed device. There was no indication that Hastings was seeking individuals that were speeding or otherwise engaged in traffic violations. Hastings believed that there were a couple of streetlights that sit on Capital Boulevard in front of his vehicle. (JA 49)

After the vehicle had passed his location, he pulled out from his position and observed that the car was traveling approximately 55 to 60 mph (the speed limit was 55 mph). (JA 50)

Hastings continued to follow the vehicle by pacing. After turning on his blue lights, the white Nissan pulled over to the side of the road, and was otherwise operated lawfully.

After reaching the vehicle, the officer walked to the passenger side and identified himself to the driver and passenger. There was conversation with the driver in which there was indication that the two occupants were coming from New Jersey. The driver, Mr. Elghossain, was busy obtaining his license. The officer contends that from his position he could see the driver's hands were shaking, and

could notice "track marks" from the passenger side of the car. There is no indication that the officer identified which arm, the method that he had identified the track marks, the location of track marks or bruising, or how light was available inside the car. The officer further said that in the darkness and across the car, he could see McNeil's carotid artery pulsating. This the officer took to be a sign of nervousness.

The officer went back to his vehicle to check license and registration information. He again approached the white car after returning to his patrol vehicle, after calling the stop in to his dispatchers. The officer re-approached the vehicle and made contact with the driver, Mr. Elghossain, on the driver's side. The driver was asked to step back to the passenger seat of the patrol vehicle. Mr. Elghossain, at that point, was still making phone contact with his father about the registration. Mr. McNeil was seated in the passenger seat and was talking on his cellular phone. The interdiction officer indicated that he thought Mr. Elghossain was under the influence of opioids. (JA 57)

After some discussion, Deputy O'Byrne, also arrived at the location of the stop. Both officers engaged in conversations about where the occupants may have been. The officers believed that because the occupants had been to New Jersey that was a direct identification of possible narcotics trafficking. (JA 60)

After some discussion, the officer chose not to cite Mr. Elghossain for speeding, or any offense, although that was the purpose of the stop, in Hastings' testimony. The inspection violation, the officer wished to cite, was not effective, as it was in the 30-day window for compliance. (JA 61)

The officer had observed the driver's license and returned it to Mr. Elghossain. In essence, at 1:04 a.m., all matters regarding the stop and potential violations were resolved.

The interdiction officer then asked for consent to search the vehicle. Mr. Elghossain, the driver, indicated he preferred not to have a search as he wished to have his lawyer present. After the request for search was denied, the officer decided to detain the vehicle and defendants further in order to engage in a drug investigation. (JA 63) The occupants were not allowed to leave.

A short time later, at 1:05 a.m., a narcotics dog was brought on the scene to walk around the vehicle, or seek a drug investigation of the car. (JA 63)

According to officers, the drug dog alerted to the vehicle, and they continued their search. A search of the vehicle resulted in officers finding 46 bindles of heroin, Suboxone strips, digital scale, syringes, a box of plastic baggies. Mr. McNeil was also found to have $1,564.00 in U.S. currency on his person.

The Petitioner filed a Motion to Suppress based on the stop and search of the targeted vehicle. The Trial Court heard a Motion to Suppress, took evidence related to the stop and seizure and determined that the evidence would be admissible at the trial of the Petitioner McNeil. (JA 159)

REASONS FOR GRANTING THE PETITION

The Defendant contends that the Trial Court erred by allowing evidence from law enforcement to conduct a stop and search of the vehicle, and allowing evidence of the searches of the passengers and from the automobile stop. The Petitioner contends there was no cause for a vehicle stop that was shown under the evidence presented.

McNeil contends the stop was in response to a possible lookout and a hunch that the Defendant may be in the area or traveling, but the officer had no reasonable suspicion to stop the car on Capital Boulevard. The Defendant further contends that the Government is not permitted to use the "fruits of the poisonous tree", as set forth under Wong Sun v. U.S., 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). The primary investigation of the Defendant commenced at the time of the stop on June 27, 2018, and the identification of drugs and paraphernalia during the stop. The traffic stop initiated from a purported speeding investigation, during which no traffic violations were cited. While traffic violations can allow a stop and search under certain circumstances, as in Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996), this still requires a "reasonably articulable suspicion". The traffic stop did not show any violations, as the officer claimed the vehicle was traveling 55-60 mph when chasing the vehicle. The previous estimate of the speed was unverified without a radar unit, speed device or other officers making a determination. No supporting data or evidence could show how the officer could determine a speeding violation.

An officer may stop and briefly detain a person for investigative purposes when there is "reasonable suspicion", based on articulable facts that criminal activities afoot. See Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), Illinois v. Wardlow, 528 U.S. 119, 124, 120 S. Ct. 673, 145, L. Ed. 2d 570 (2000). Whether there is reasonable suspicion depends on the totality of the circumstances, including the information known to the officer and any reasonable inferences to be drawn at the time of the stop. United States v. Arvisu, 534 U.S. 266 (2002), *supra*. The legitimacy of an investigative stop turns to what constitutes a "reasonable suspicion", which the Fourth Circuit has called a "common proposition…crediting the practical experience of officers who observe on a daily basis what transpires on the street." United States v. Lender, 985 F. 2d 151, 154 (4th Cir. 1993).

An officer's reliance on a "mere hunch", or an uncorroborated anonymous tip, is insufficient to establish reasonable suspicion. U.S. v. Arvisu, 534 U.S. 266, 274, 122 S. Ct. 744, 151 L. Ed. 2d 540 (2002); Florida v. J.L., 529 U.S. 266, 270-74, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000). The stop and search is a seizure under Federal law. In Brendlin v. California, 551 U.S. 249, 168 L. Ed. 2d 132, 127 S. Ct. 2400 (2007), a unanimous decision joined all Federal Courts of Appeal and held that a traffic stop is a seizure of both the driver and any passenger, and therefore either may challenge the constitutionality of the stop. See Brendlin at 2408, citing United States v. Rusher, 966 F. 2d 868, 874 (4th Cir. 1992), Note 4. The Petitioner was a passenger in this case.

The Supreme Court held that a passenger-defendant "was seized from the moment…a car came to a halt on the side of the road", and that it was "error to deny his suppression motion on the grounds that the seizure occurred only at the former arrest". Brendlin, 127 S. Ct. at 2410. In announcing the Trial Court's decision, as to the Motion to Suppress on December 19, 2019, the Trial Court found that Deputy Hastings observed a white Nissan Altima that "appeared to be speeding". The officer indicated the car was traveling approximately 60-70 mph at approximately 12:50 a.m. on a summer evening. There was no indication that the officer pulled behind the vehicle and that he used or attempted to use a method to verify the speed of the car. There was no indication that a radar or pacing of the vehicle was used. Furthermore, the Trial Court used the fact that the vehicle's breaks were applied as an indication of speeding. In reviewing each of these instances, it is common when the driver spots a police officer or law enforcement unit that he would apply breaks or tap the breaks in order to determine his own speed whether he is speeding or not. Use of breaks is not inherently an indication of speeding.

The testimony also makes factual finding of the Trial Court highly improbable. The testimony of the officer was "stationary", "five and ten feet from the side of the road". (JA 47)

The officers that were sitting together were sitting perpendicular to the highway. Officer Hastings was engaged primarily as part of an "interdiction team", and not traffic enforcement. He had no radar unit, no VASCAR, and was in a

position looking directly into traffic, watching north and southbound headlights from oncoming traffic.

Officer Hastings said he saw a vehicle which "appeared to be speeding". By necessity, the officer was looking directly into the Nissan's headlights, moving in his direction. Due to the directional lights, Officer Hastings would have been without a point of reference, and could not know what kind or make of vehicle it was until it reached him. Headlights are pointed, universally in all cars, to the right side of the road and into the officer's eyes. Officer Hastings would not be able to visibly know the type or size of the vehicle until it passed, and without comparison or clocking, he could not reliably estimate the speed. See United States v. Sowards, 690 F.3d 583, 592 (4th Cir. 2012). No other officer followed up to check the car and no other method was used to confirm that the speeding was from any other source. There was no reliable support or justification for the officer's conclusion and was merely relied on the officer's "taking a hunch".

"In the absence of sufficient additional indicia of reliability, an officer's visual approximation that a vehicle is traveling in slight excess of the legal speed limit is a guess that is rarely conclusory and which lacks the necessary factual foundation to provide an officer with reasonably trustworthy information to initiate a traffic stop." Sowards at 593.

The officer's actions were not that of a traffic officer, but were consistent with an interdiction team patrol, expanding the reason for a vehicle stop. (JA 60)

During the course of the stop of the vehicle, police officers found it suspicious that neither Mr. Elghossain nor Mr. McNeil would willingly cooperate with their investigation. The Supreme Court has held that refusal to cooperate is not inherently suspicious. Illinois v. Wardlow, 528 U.S. at 124. See also Florida v. Bostick, 501 U.S. 429, 437, 111 S. Ct. 2382, 115 L. Ed. 2d 389. (1991). In that occasion, individuals refused to cooperate, and without more, the Court held that this did not furnish a minimal level of objective justification needed for detention or seizure.

After stopping the Petitioner's vehicle in this case, the officers continued to investigate circumstances beyond that which is permitted under a Terry stop.

Deputy Hastings got close enough to the vehicle to see a registration sticker and thought it might be expired. It was not. The officer did not know from any source whether the car was expired, nor was there any indication of other illegal activity. The officer did not confirm that the car was previously speeding, nor was the car being operated in any unlawful fashion. His call into dispatch did not address any other reasons for a stop and search.

The Trial Court found that Officer Hastings got out of his patrol vehicle at approximately 12:51 a.m. and needed a flashlight with him to illuminate the inside of the vehicle he had stopped. Nothing that the driver did at that point was suspicious. The driver produced a license, and explained the registration was in his father's name.

Much of the investigation findings by officers that follows is incredulous. The fact that the driver's hand may have been shaking, a common occurrence in any occasion in which a police officer stops a vehicle, does not provide reasonable suspicion. See Bowman, 884 F.3d 200, 214 (4th Cir. 2018). Furthermore, the officer's observations are somewhat incredulous also, in that at 1:00 a.m., and with limited light and no knowledge of the defendant or his past, the officer determined that McNeil's "carotid artery was pulsating". The ability of an officer to see such information in the dark, with a person he does not know, is medically unsupportable. No medical foundation for officer observations was laid or offered for such abilities. It does not show any knowledge of the driver's previous activities, or whether the driver has anything to do with drugs. It would be more remarkable if the driver had "no pulse", in the course of a traffic stop. Bowman, 884 F.3d at 217.

Officer Hastings further testified as to "fresh track marks on Elghossain's right forearm". This does not indicate illegal drug activity, or the type of drugs that were ingested, or whether this was from a course of treatment or activities totally legal. There is no indication that the driver had recently taken drugs, what the drugs may have been, what the habit or history of the driver may have been, whether there were other medical uses for syringe use, and how this would be corroborated in a dark car on the side of the road at 1:00 a.m. Again, the officer found his ability to check McNeil's pulsing carotid artery instrumental, standing on the side of the road, when he stopped the vehicle.

The Trial Court, in the disposition Order, goes into a great discourse on "continuity" in that they stopped the car in which McNeil was a passenger. There was no identification of Mr. McNeil prior to the stop of the car or the seizure of the individuals on the side of the road. Furthermore, there was no indication that Mr. McNeil nor Mr. Elghossain were involved in any illegal activity, when stopped. Identification in this occasion and circumstance, or failure to observe ongoing illegal activity, ends the investigation. The search and seizure from the car was totally based on unexceptional events.

The Trial Court further relied on Deputy Hastings stating that he was briefed on information from an interdiction team. There is no information whether interdiction was based on an anonymous tip, information from unnamed sources, that the information was current, how such information was provided to the interdiction team, that the information was believable, or other indicia to indicate this was more than a tip. While the information was related to Mr. McNeil and his picture, there was no information to indicate that a warrant had been issued, whether the officer was instructed to detain McNeil, what the later charges may have entailed, and nothing more than "something to do with selling narcotics". The testimony of Officer McLamb, in trial testimony, indicates the police were making suspicious hunch about the passengers and the vehicle.

The legality of a vehicle stop under the Fourth Amendment is governed by the two-part inquiry set forth in Terry v. Ohio, Id. See United States v. Sharpe, 470 U.S. 675, 682-83, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985). Under Terry, the first

question is whether the stop was justified at the inception and the second is whether the "police officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop". United States v. Digiovanni, 650 F.3d 498, 504 (4th Cir. 2011), (abrogated in part on other grounds by Rodriguez v. United States, 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015)). Violation of those inquiry principles infringes the Fourth Amendment rights of the defendant, in a search of the vehicle.

Observing a true traffic violation provides sufficient justification for a police officer to detain the offending vehicle for as long as it takes to perform the traditional incidents of a routine traffic stop. United States v. Branch, 537 F.3d 328, 335 (4th Cir. 2008). That period ends the inquiry.

The second prong of Terry mandates that the scope and duration of the stop be reasonably related to addressing the violation that justified the stop. To extend the detention of a motorist, officers must possess either reasonable suspicion of separate crimes or receive the driver's consent. United States v. Williams, 808 F.3d 238, 245-46 (4th Cir. 2015).

This traffic stop may have just initially involved asking for license and registration, but quickly progressed beyond that. It did not proceed as an ordinary traffic stop and proceeded immediately to a drug investigation, consistent with the officer's assigned duties. After collecting the license and registration, there was no attempt to issue a ticket for speeding or determine the registration issue from a third-party owner. As a result, and prolonging the issue with a dog sniff, the officers

unlawfully extended the stop without consent or reasonable suspicion of ongoing or separate crimes. The officer indicated detention was ongoing.

Observing the totality of the circumstances, the Government has failed to articulate why Elghossain or McNeil, and their presence were indicative of some more sinister activity that may appear at first glance. See Bowman, at 218-19. Even viewing facts favorable to the prosecution, probable cause exists only when the known facts and circumstances are sufficient to warrant a man of reasonable prudence and the belief that contraband or evidence of a crime would be found. See United States v. Patiutcka, 804 F.3d 684, 690 (4th Cir. 2015).

Under Rodriguez v. U.S., 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015), the United States Supreme Court has spoken directly to the issue. Police may not extend an otherwise completed traffic stop, as a reasonable suspicion in order to conduct a dog sniff. Addressing a traffic infraction is the purpose of the traffic stop, and may last no longer than necessary to effectuate that purpose. Authority for the seizure ends when tasks tied to the traffic infraction have been reasonably completed. The officer gave a warning to Mr. Elghossain for his speeding and clarified the issue of inspection violation as it was registered to Mr. Elghossain's father. At that point, the traffic and speeding violation was concluded. The officer did not tell Elghossain that the speeding matter was concluded, or that he was free to leave, at any time.

Then the officer asked Mr. Elghossain for consent to search the vehicle. Mr. Elghossain indicated "that he'd rather not". He indicated he would rather have a

lawyer before a search was allowed. The officer indicated that he was not going to allow Mr. Elghossain to leave, and he was going to detain the occupants for further search of the car by means of a K-9. At that point, there was no criminal activity afoot. The parties had been identified, the traffic investigation had been completed, the car was otherwise compliant with all rules of the road, and the officer announced the investigation of the traffic and speeding was concluded.

After the officer had indicated the traffic matters were concluded, and lacking any reasonable suspicion to detain the occupants further, the officer independently decided to engage in further activity after the consent to search had been denied. The timeframe for a Rodriguez appropriate search had come and gone. After that point, the parties were seized, were detained, or arrested subject to the officer's unsupported determinations. This was not incident to a traffic stop. See Rodriguez, 575 U.S. at 356. The critical question then, is not whether the dog sniff occurs before or after the officer issues a ticket…but whether conducting the sniff prolongs the stop. See Rodriguez, 575 U.S. at 357.

In the case of Mr. McNeil, the Government seeks to build a probable cause case based on one faulty premise being used for another. Here there was no probable cause to believe that a traffic offense had occurred, and the lack of any verification leaves the Government standing without foundation. See Sowards, Id. Next, the Government makes an inquiry during the course of the traffic stop to determine any other illegal activity. None is seen, and none is disclosed. They are without foundation again.

The Government then seeks by means of an inquiry to search the car, which was denied. The Appellant asserts Rodriguez as a determining factor for any further issues regarding the search.

Only after the Government has been denied legal foundation three times, does the Government now claim rights to conduct a search of the vehicle based on a dog alert, conducted well after the traffic investigation has ended.

As a result, the Defendant contends that the stop and search and resulting investigation is legally inadmissible, and the resulting search and seizure, and information obtained as a result of the stop and detention of the Defendant should be considered "fruits of the poisonous tree". See Wong Sun v. United States, 371 U.S. 471 (1963).

CONCLUSION

The Petitioner contends that the Trial Court improperly allowed prejudicial evidence to be presented, and denied the Motion to Suppress, as a result of an unconstitutional search and seizure of the Petitioner's vehicle. This Court should find that the search and seizure of the vehicle was unconstitutionally allowed, and the Trial Court exceeded its authority in allowing the information into evidence. This Court should allow a Petition for Certiorari for review. The Petitioner contends this matter should be returned to the District Court with the Petitioner's Motion to Suppress allowed, and for retrial.

Respectfully submitted,

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4289

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAYSON MCNEIL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:19-cr-00120-D-1)

Submitted: December 29, 2021 Decided: January 13, 2022

Before WYNN and RUSHING, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert L. McClellan, IVEY, MCCLELLAN, GATTON & SIEGMUND, LLP, Greensboro, North Carolina, for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, David A. Bragdon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

PER CURIAM:

Jayson McNeil appeals from his convictions and resulting life sentence for distributing heroin resulting in death, in violation of 21 U.S.C. § 841(a)(1); conspiring to distribute one kilogram or more of heroin, in violation of 21 U.S.C. §§ 841(a)(1)(A), 846; possessing with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1); and possessing a firearm as a felon, in violation of 18 U.S.C. §§ 922(g)(1), 924. On appeal, McNeil challenges his convictions, arguing that the district court erred in denying his motion to suppress evidence derived from a traffic stop. McNeil also challenges his life sentence, arguing that the district court erred in applying sentencing enhancements for using or making a credible threat to use violence and McNeil's managerial or supervisory role in the criminal activity. We affirm.

Before trial, McNeil moved to suppress all evidence derived from a June 27, 2018, traffic stop of a Nissan Altima ("the Altima") driven by Antoine Elghossian and in which McNeil was a passenger. Deputy Justin Hastings of the Wake County Sheriff's Office interdiction team conducted the stop and Deputy Steven O'Byrne assisted. McNeil argued that the traffic stop and the extension of the stop for a dog sniff were not supported by reasonable suspicion. The district court denied McNeil's motion after a hearing.

"In reviewing the denial of a motion to suppress, we review legal conclusions de novo and factual findings for clear error [and] . . . consider the evidence in the light most favorable to the Government." *United States v. Pulley*, 987 F.3d 370, 376 (4th Cir. 2021) (cleaned up). "When reviewing factual findings for clear error, we particularly defer to a district court's credibility determinations, for it is the role of the district court to observe

witnesses and weigh their credibility during a pre-trial motion to suppress." *Id.* (internal quotation marks omitted).

"A traffic stop constitutes a seizure under the Fourth Amendment and is subject to review for reasonableness." *United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017) (internal quotation marks omitted). Because a traffic stop bears a closer resemblance to an investigative detention than a custodial arrest, we evaluate the legality of a traffic stop under the two-pronged inquiry announced in *Terry v. Ohio*, 392 U.S. 1 (1968). *See United States v. Williams*, 808 F.3d 238, 245 (4th Cir. 2015). Pursuant to this inquiry, we ask (1) whether the stop was justified at its inception, and (2) "whether the officer's actions during the seizure were reasonably related in scope to the basis for the traffic stop." *Id.* (internal quotation marks omitted).

"As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *United States v. Sowards*, 690 F.3d 583, 588 (4th Cir. 2012) (internal quotation marks omitted). "Probable cause exists if, given the totality of the circumstances, the officer had reasonably trustworthy information sufficient to warrant a prudent person in believing that the petitioner had committed or was committing an offense." *Id*. (cleaned up). Hastings conducted the traffic stop after observing the Altima traveling at an excessive rate of speed and heavily braking when its headlights illuminated the police vehicle, and after noting that the vehicle had an expired registration sticker.

First, even assuming that Hastings' visual speed estimate of the Altima was only in slight excess of the legal speed limit, Hastings reasonably stopped the Altima because his

estimate was supported by the "additional indicia of reliability" of the Altima's heavy braking, and his subsequent observation of the Altima's decreased speed. *Id.* at 591 (holding that "the reasonableness of an officer's visual speed estimate depends . . . on whether a vehicle's speed is estimated to be in significant excess or slight excess of the legal speed limit. If slight, then additional indicia of reliability are necessary to support the reasonableness of the officer's visual estimate."). Moreover, Hastings reasonably stopped the Altima for a registration violation when he observed the registration sticker—which had expired more than 15 days earlier. *See* N.C. Gen. Stat. Ann. § 20-66(g) (stating that it is lawful to drive a vehicle for the first 15 days of the month following the expiration of the vehicle's registration sticker under North Carolina law).

Under the second prong of *Terry*, an officer's actions must be "reasonably related in scope to the basis for the traffic stop." *Williams*, 808 F.3d at 245 (internal quotation marks omitted). "A seizure for a traffic violation justifies a police investigation of that violation." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). Such an investigation includes inspecting the driver's license, verifying the registration of the vehicle, and determining whether the driver has any outstanding arrest warrants. *Id.* at 355. "[A] legitimate traffic stop may become unlawful if it is prolonged beyond the time reasonably required to complete its initial objectives." *United States v. Palmer*, 820 F.3d 640, 649 (4th Cir. 2016) (internal quotation marks omitted). However, an officer may permissibly ask questions of the vehicle's occupants that are unrelated to the alleged traffic violations, provided the conversation does not prolong the detention. *See Rodriguez*, 575 U.S. at 354-55.

Here, as the district court determined, Hastings reasonably and diligently investigated the traffic violations. Hastings completed his investigation in approximately 11 minutes, and the investigation was reasonably related to the speeding and registration violations. *See Williams*, 808 F.3d at 245. During this time, Hastings and O'Byrne questioned Elghossian and McNeil about their personal backgrounds and travel plans without prolonging the stop. *See Rodriguez*, 575 U.S. at 355 ("The seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop." (cleaned up)).

An officer may extend the detention of a motorist beyond the time necessary to accomplish a traffic stop's purpose if the officer either possesses reasonable suspicion of criminal activity or receives the driver's consent. *See Williams*, 808 F.3d at 245-46; *see also Rodriguez*, 575 U.S. at 355 (holding that an officer may not conduct unrelated checks prolonging traffic stop absent reasonable suspicion). "Reasonable suspicion is a commonsense, nontechnical standard that relies on the judgment of experienced law enforcement officers," *Palmer*, 820 F.3d at 650 (internal quotation marks omitted), and is a less demanding standard than the probable cause or preponderance of evidence standard, *see Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). To determine whether reasonable suspicion existed, "we must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *Williams*, 808 F.3d at 246 (internal quotation marks omitted).

In *United States v. Bowman*, we concluded that the totality of the circumstances surrounding an officer's traffic stop, including the driver's initial nervousness; the

passenger avoiding eye contact with the officer; the presence of a suitcase, clothes, food, wrappers, and an energy drink in the car; the driver's inability to provide the address from which he picked up his passenger; and the driver's statements regarding his car purchases and his recent unemployment, did not amount to reasonable suspicion justifying prolonging the stop for a dog sniff. 884 F.3d 200, 214-19 (4th Cir. 2018). We determined that "[a]lthough the nature of the totality-of-the-circumstances test makes it possible for individually innocuous factors to add up to reasonable suspicion, it is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *Id.* at 219 (internal quotation marks omitted).

Unlike the officer in *Bowman*, here, Hastings and O'Byrne provided objective, articulable reasons justifying their reasonable suspicion to prolong the stop. These factors included: Elghossian and McNeil's conflicting stories regarding the length of their visit to New Jersey and how long they had known each other, *see United States v. Vaughan*, 700 F.3d 705, 712 (4th Cir. 2012) (noting that when a driver and passenger provide conflicting answers about their travels, this factor especially contributes to reasonable suspicion of criminal activity); McNeil breathing heavily, his carotid artery pulsating, and continuing to stare at his phone when approached by O'Byrne, which was abnormal and appeared evasive, *see Wardlow*, 528 U.S. at 124 (recognizing that "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion"); *cf. Bowman*, 884 F.3d at 215 (reasoning that officer's failure to explain why passenger avoiding eye contact was suggestive of criminal activity renders observation "not particularly probative of a

suspect's nervousness"); Elghossian's increasing nervousness, including his hand shaking when providing his license and beginning to sweat when Hastings asked for consent to search the Altima, *see United States v. Mason*, 628 F.3d 123, 129 (4th Cir. 2010) (finding support for reasonable suspicion based on testimony that driver "was sweating and unusually nervous when interacting with [law enforcement], and [driver's] nervousness did not subside, as occurs normally, but became more pronounced as the stop continued"); Elghossian's pinpoint pupils and fresh track marks on both arms, indicating recent drug use; Elghossian and McNeil's known involvement in narcotics trafficking that was the subject of an ongoing investigation; and McNeil's criminal history involving drugs. Based on the totality of the circumstances involving multiple indicators of criminal activity, we conclude that the district court did not err in finding that the officers had reasonable suspicion to extend the traffic stop for a dog sniff. We therefore affirm the convictions.

McNeil also challenges the district court's application of sentencing enhancements for using or making a credible threat to use violence under U.S. Sentencing Guidelines Manual (USSG) § 2D1.1(b)(2) (2018), and for being a manager or supervisor of criminal activity under USSG § 3B1.1(b). Rather than evaluating the merits of McNeil's challenge to the calculation of his Guidelines range, we "may proceed directly to an assumed error harmlessness inquiry." *United States v. Gomez-Jimenez*, 750 F.3d 370, 382 (4th Cir. 2014) (internal quotation marks omitted). In other words, we may assume that the Guidelines error occurred and "proceed to examine whether the error affected the sentence imposed." *United States v. McDonald*, 850 F.3d 640, 643 (4th Cir. 2017) (internal quotation marks omitted). Under the assumed error harmlessness inquiry,

> a Guidelines error is harmless and does not warrant vacating the defendant's sentence if the record shows that (1) the district court would have reached the same result even if it had decided the Guidelines issue the other way, and (2) the sentence would be reasonable even if the Guidelines issue had been decided in the defendant's favor.

United States v. Mills, 917 F.3d 324, 330 (4th Cir. 2019) (cleaned up). The error will be deemed harmless if we are "certain" that these requirements are satisfied. *United States v. Gomez*, 690 F.3d 194, 203 (4th Cir. 2012).

Here, "the district court made it abundantly clear that it would have imposed the same sentence . . . regardless of the advice of the Guidelines," *Gomez-Jimenez*, 750 F.3d at 382, thus satisfying the first prong of the assumed error harmlessness inquiry, *see id.* at 383. Under the second prong, when reviewing the substantive reasonableness of a sentence, "we must examine the totality of the circumstances . . . to see whether the sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in [18 U.S.C.] § 3553(a)." *Mills*, 917 F.3d at 331 (cleaned up). McNeil does not offer any specific challenge to the substantive reasonableness of his sentence. Because the district court provided a detailed explanation for the within-Guidelines sentence that was both rooted in the relevant 18 U.S.C. § 3553(a) factors and responsive to McNeil's argument for a lower sentence, we conclude that McNeil's sentence is substantively reasonable. Accordingly, the district court did not "abuse[] its discretion," *Mills*, 917 F.3d at 331 (internal quotation marks omitted), and therefore we affirm the sentence.

Finally, McNeil, who is represented by counsel, seeks to file a pro se supplemental brief. However, "an appellant who is represented by counsel has no right to file pro se

briefs or raise additional substantive issues in an appeal." *United States v. Cohen*, 888 F.3d 667, 682 (4th Cir. 2018). We therefore deny McNeil's motion to file a pro se supplemental brief.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: January 13, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4289
(5:19-cr-00120-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JAYSON MCNEIL

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

AO 245B (Rev. 09/17) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA
v.
JAYSON MCNEIL

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:19-CR-120-1-D

USM Number: 27831-057

Joseph E. Zeszotarski, Jr.
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) after a plea of not guilty. 1ss, 2ss, 3ss and 4ss of the Second Superseding Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C), 21 U.S.C. § 851	Distribution of a Quantity of Fentanyl and Heroin Resulting in Death From Use of Fentanyl and Heroin	7/5/2018	1ss

The defendant is sentenced as provided in pages 2 through 8 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) Original and superseding indictment ☑ 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.

4/29/2020
Date of Imposition of Judgment

Signature of Judge

James C. Dever III, United States District Judge
Name and Title of Judge

4/29/2020
Date

DEFENDANT: JAYSON MCNEIL
CASE NUMBER: 5:19-CR-120-1-D

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A), 21 U.S.C. § 841(a)(1)	Conspiracy to Distribute and Possess With Intent to Distribute 1 Kilogram or More of Heroin	7/5/2018	2ss
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C), 21 U.S.C. § 851	Possession With Intent to Distribute a Quantity of Heroin	7/5/2018	3ss
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(2)	Possession of a Firearm by a Felon	7/5/2018	4ss

DEFENDANT: JAYSON MCNEIL
CASE NUMBER: 5:19-CR-120-1-D

IMPRISONMENT

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

Counts 1ss and 2ss: Life per count, to run concurrently
Count 3ss: 360 months, to run concurrently
Count 4ss: 120 months, to run concurrently - (Total term: Life)

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ 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: JAYSON MCNEIL
CASE NUMBER: 5:19-CR-120-1-D

SUPERVISED RELEASE

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

Counts 1ss and 3ss: 6 years per count
Count 2ss: 5 years
Count 4ss: 3 years
All terms shall run concurrently - (Total term: 6 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 (42 U.S.C. § 16901, *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: JAYSON MCNEIL
CASE NUMBER: 5:19-CR-120-1-D

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: JAYSON MCNEIL
CASE NUMBER: 5:19-CR-120-1-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

DEFENDANT: JAYSON MCNEIL
CASE NUMBER: 5:19-CR-120-1-D

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 400.00	$	$	$ 20,826.64

☐ 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.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
William and Diane Stephenson	$20,826.64	$20,826.64	

TOTALS	$ 20,826.64	$ 20,826.64

☐ 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:

* 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: JAYSON MCNEIL
CASE NUMBER: 5:19-CR-120-1-D

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of $400.00 shall be due in full immediately. Payment of restitution shall be due in full immediately and shall not bear interest. However, if the defendant is unable to pay in full immediately, the special assessment and restitution may be paid through the Inmate Financial Responsibility Program (IFRP). The court orders that the defendant pay a minimum payment of $25 per quarter through the IFRP, if available.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
The defendant shall forfeit to the United States the defendant's interest in the property specified in the Order of Forfeiture entered on April 29, 2020.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.