

CRIMINAL CASE

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In The
SUPREME COURT OF THE UNITED STATES

Latoya Nicole Carter,
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 a law enforcement officer trespasses into a resident's home by shoving his foot into the doorway through the threshold of the home, does the Fourth Amendment forbid such conduct and allow the resident to lawfully expel the trespassing officer and further lawfully resist any unlawful arrest that may be effectuated by such officer?

II. Table of Contents

I.	Question Presented	2
II.	Table of Contents	3
III.	Table of Authorities	5
IV.	Petition for Writ of Certiorari	8
V.	Opinions Below	8
VI.	Jurisdiction	8
VII.	Constitutional Provisions Involved	8
VIII.	Statement of the Case	9
	1. The Substance of Ms. Carter's Arrest	10
	2. Direct appeal	12
IX.	Reasons for Granting the Writ	13
	A. The Fourth Amendment protects a citizen against an unlawful entry by a law enforcement officer, who resorts to trespassing and excessive force in order to assert his authority rather than peaceful investigation and enforcement of the law.	13
	B. Ms. Carter's actions constitute a legitimate exercise of her common law right to expel a trespasser, even if such trespasser is a law enforcement officer acting beyond the scope of his duties.	16
	C. The Virginia Supreme Court erred in finding that Officer Reed was engaged in the performance of his public duties at the time of the offense because of Reed's flippant violation of Ms. Carter's Constitutional Rights as well as the vindictive manner in which Reed carried out the seizure of Ms. Carter.	18
	i. <i>The officer was a trespasser in violation of the law when he put his foot in Carter's doorway.</i>	19
	ii. <i>The officer violated Ms. Carter's Fourth Amendment rights when he crossed the threshold of her home by placing his foot in her doorway.</i>	20

iii. <i>It is irrelevant if Ms. Carter was under investigative detention because a citizen cannot be detained within their own home.</i>	27
X. Conclusion	29

IV. Table of Authorities

Cases:

<i>Cady v. Dombrowski</i> , 419 U.S. 433, 441 (1973).	27
<i>Collins v. Virginia</i> , 584 U.S. ___, ___ (2018).	25
<i>Delaware v. Prouse</i> , 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).	9
<i>De Priest v. Commonwealth</i> , 4 Va. App. 577, 587, 359 S.E.2d 540, 545 (1987).	28
<i>Florida v. Jardines</i> , 569 U.S. 1, 6 (2013).	10
<i>Florida v. Royer</i> , 460 U.S. 491, 500 (1983).	28
<i>Foote v. Commonwealth</i> , 11 Va. App. 61, 69, 396 S.E.2d 851, 856 (1990).	17
<i>Gardner v. Neil</i> , 4 N.C. 104, 104 (1814).	21
<i>Graham v. Connor</i> , 490 U.S. 386, 397, 109 S. Ct. 1865, 1872 (1989).	14
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800, 818 (1982).	18
<i>Hayes v. Florida</i> , 470 U.S. 811, 815, 84 L. Ed. 2d 705, 105 S. Ct. 1643 (1985).	13
<i>Hunsberger v. Wood</i> , 570 F.3d 546 (4th Cir. 2009).	22
<i>Kaupp v. Texas</i> , 538 U.S. 626, 630 (2003).	13

<i>Kyllo v. United States</i> , 533 U.S. 27, 40 (2001).	21
<i>Lange v. California</i> , 594 U.S. ___, ___ (2021).	22
<i>Malley v. Briggs</i> , 475 U.S. 335, 341 (1986).	19
<i>Michigan v. Tyler</i> , 436 U.S. 499, 509 (1978).	22
<i>Minnesota v. Olson</i> , 495 U.S. 91, 100 (1984).	21
<i>Montgomery v. Commonwealth</i> , 99 Va. 833, 37 S.E. 841 (1901).	16
<i>Oulds v. Commonwealth</i> , 260 Va. 210, 214, 532 S.E.2d 33, 35 (2000).	18
<i>Payton v. New York</i> , 445 U.S. 573, 585 (1980).	21
<i>Pike v. Commonwealth</i> , 24 Va. App. 373, 375, 482 S.E.2d 839 (1997).	16
<i>Rogers v. Pendleton</i> , 249 F.3d 279, 285-86 (4th Cir. 2001).	19
<i>Scott v. United States</i> , 436 U.S. 128, 137-139 (1978).	14
<i>Smith v. Jacko</i> , Civil Action No. 2:16-655-BHH, 2019 U.S. Dist. LEXIS 149201, at *28-29 (D.S.C. Aug. 30, 2019).	28
<i>Steagald v. United States</i> , 451 U.S. 204, 211 (1981).	21
<i>Stanton v. Sims</i> , 571 U.S. 3, 6, 10 (2013).	23

<i>Stevenson v. Commonwealth,</i> 218 Va. 462, 237 S.E.2d 779 (1977).	16
<i>Terry v. Ohio,</i> 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968).	13
<i>Thomas v. Commonwealth,</i> 16 Va. App. 851, 857-858, 434 S.E.2d 319, 323 (1993).	28
<i>United States v. Martinez,</i> 406 F.3d 1160, 1165 (9th Cir. 2005).	28
<i>United States v. Robinson,</i> 414 U.S. 218 (1973).	14
<i>United States v. Rollins,</i> No. 4:18-01129-MGL, 2019 U.S. Dist. LEXIS 154677 (D.S.C. Sep. 11, 2019).	25
<i>Welsh v. Wisconsin,</i> 466 U.S. 740, 753 (1984).	24
<i>Wilson v. Layne,</i> 526 U.S. 603, 615 (1999).	19

Statutes:

28 U.S.C. § 1257	8
Va. Code Ann. § 15.2-1704 (A)	20
Va. Code Ann. § 18.2-57(C)	18
Va. Code Ann. § 18.2-119	16
Va. Code Ann. § 18.2-460(B)	23

Constitution:

United States Constitution, Amendment IV	8
United States Constitution, Amendment XIV	9

IV. Petition for Writ of Certiorari

Latoya Nicole Carter, an indigent defendant as well as a resident of the City of Lynchburg, Virginia, by and through her 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 Ms. Carter's direct appeal is styled as *Latoya Nicole Carter v. Commonwealth of Virginia*, Docket No. 201145 (January 12, 2022).

VI. Jurisdiction

Ms. Carter's direct appeal was decided and the trial court affirmed by the Virginia Supreme Court on January 12, 2022. 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 June 10, 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

Most Americans believe that organized law enforcement has been around since the founding of our republic; however, the modern, organized police force is a relatively modern development “sparked by notions of public order, driven in turn by economics and politics...”¹ This Honorable Court is charged with the task of ensuring such organized police power does not impinge upon the Constitutional Rights of the individual citizen and ensuring that such police power does not exceed the scope of its function within the executive branch of government. When such individual action by law enforcement exceeds the scope of appropriate action, the law enforcement officer effectively becomes judge, jury, and executioner. “The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of “reasonableness” upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions.” *Delaware v. Prouse*, 440 U.S. 648, 653-54, 99 S. Ct. 1391, 1396 (1979).

¹ Olivia B. Waxman, *How the U.S. Got Its Police Force*, <https://time.com/4779112/police-history-origins/>, (last updated May 18, 2017).

The scrutiny upon of the use of force when investigating and intruding upon individual citizen's rights is heightened when the intrusion is the citizen's person in their own home. As the late Justice Scalia pointed out, "[b]ut when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

This case presents the question of just how far the Fourth Amendment can stretch to accommodate an "investigation" and "arrest" by law enforcement. It is the Petitioner's contention that one the duties of a police officer are to deescalate an already heightened situation, not to use his badge as an operation of a personal vendetta to force the citizen to "do what he says." This is a matter that the Petitioner believes implicates the Constitution of the United States, and as such, was incorrectly decided by the Virginia Supreme Court.

1. The Substance of Ms. Carter's Arrest.

On January 24, 2018, Officer S.C. Reed ("Reed"), a Caucasian Police Officer with the City of Lynchburg, Virginia, responded to a service call at the home of Ms. Latoya Carter ("Carter"), an African American Woman and resident of the City of Lynchburg, Virginia, whose address was 419 Rivermont Avenue, Lynchburg, Virginia. App. at 40. Upon Reed's arrival, Reed encountered three individuals—two on the front porch and Carter who was inside her doorway. App. at 40, 47-48. Reed first initiated contact with an individual identified as "Penicks." App. at 41. Carter can be heard on the Reed's body worn camera repeatedly telling Penicks, "you not

coming in here!" Camera at 1:07-1:09. Carter further explains that Penicks has put "his hands" on her. Camera at 1:20-1:31. Penicks stated that he wanted to retrieve his belongings from inside the home. App. at 41. As Reed continued to speak with Penicks, Carter continued to exclaim from inside the doorway that [Penicks] was not allowed into her home, that he had "put his hands on [her]" so he "need[ed] to go." App. at 86. Reed demanded Carter to stop talking and told her that he "was only going to speak to one person at a time." Camera at 1:30; App. at 42. Reed then makes some statement about Carter going to jail, tells Carter "we're not done talking", and places his right foot into her doorway when Carter attempts to shut the door and go back into her home. Camera at 1:35-1:40. In the statements that continue, Carter makes clear to Reed and Penicks that neither are allowed into Carter's home.

As Carter continued to make it very apparent that Penicks, nor anyone for that matter, were allowed back in her home, Reed continued towards and through Carter's doorway. Camera 2:00-2:10; App. at 86. As Reed continued, Carter exclaimed that she did not want to speak with him any further and attempted to close the door to her home². App. at 49, 86. To prevent Carter from retreating into her home, safely, Reed continued with his foot in the doorway and told Carter that they were "not finished." App. at 42. Carter replied, "I don't give a fuck if you're done or not, [you] aren't coming in here because my son is in here, and he's [Penicks] showing off." App. at 42. Carter attempted to close the front door to her home again. App. at 42. Reed

² Stephanie Ford testified that Carter was the legal tenant of 419 Rivermont Ave., Lynchburg, on the date of this incident. App. at 54.

kept his foot in the threshold of Carter's doorway while she attempted to close the door one more time because he "was not finished investigating." App. at 45, 43, 49. Immediately thereafter, the officer pushed through the door and told Carter not to slam the door on him. Ms. Carter yelled, "or what, or what" and Officer Reed grabbed Carter's right arm, pushed Carter against the wall, and advised Carter to put her hands behind her back. App. at 43-44. Ms. Carter struggled to release herself from his control, telling Reed to "get the fuck off of [her]." App. at 44.

After placing handcuffs on Carter, Reed tells Carter, "you're not going to slam the door on me." Camera at 3:07. Reed never notifies Carter that Carter is under arrest or for what reason she would be arrested. Reed then goes on to tell Pennicks, "I can be the most relaxed and chill officer there is, but I'm not going to have people get in my face and start yelling and screaming at me." Camera at 5:40-5:46. Then, without ascertaining permission from the leaseholder, Carter, Reed once again enters the property and allows Pennicks to enter the property. Camera at 6:37. Reed goes on to continue in the trespassing with Pennicks, telling him, "I don't care what you get out of here." Camera at 6:41. Reed allows two other unidentified individuals to smoke on the porch of Carter's home, while telling them, "Like I was telling [Pennicks], I can be the most chill and relaxed cop out here, I'm not going to have a door slammed on my foot while I am trying to figure out what's going on...and when people aren't cooperative, that's where things go south." Camera at 7:22-7:42.

2. Direct appeal

On direct appeal to the Virginia Court of Appeals, Carter argued that her

arrest was unlawful given that Reed was trespassing at the time Reed crossed the threshold to Carter's home. Carter also argued that the evidence was insufficient to convict Carter of assault on a law enforcement officer. The Virginia Court of Appeals refused to rule on the legality of the arrest because such was not properly preserved. Further, the Virginia Court of Appeals ruled that the evidence was sufficient to convict Carter of assault and battery of a law enforcement officer, and Carter did not have a right to expel a trespasser from her property. However, Carter argued, through counsel, that if not for the egregious, unlawful conduct of law enforcement, the situation would not have occurred at all.

Carter appealed the Virginia Court of Appeals' decision to the Supreme Court of Virginia, where Carter's petition for appeal was granted, briefed, and the court ruled that Carter had not given Reed a command to leave, nor given him a reasonable time to leave in order to invoke law regarding trespassing.

IX. Reasons for Granting the Writ

A. The Fourth Amendment protects a citizen against an unlawful entry by a law enforcement officer, who resorts to trespassing and excessive force in order to assert his authority rather than peaceful investigation and enforcement of the law.

"Although certain seizures may be justified on something less than probable cause, see, *e.g.*, *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968), we have never "sustained against Fourth Amendment challenge the involuntary removal of a suspect from his home to a police station and his detention there for investigative purposes . . . absent probable cause or judicial authorization." *Kaupp v. Texas*, 538 U.S. 626, 630 (2003) quoting

Hayes v. Florida, 470 U.S. 811, 815, 84 L. Ed. 2d 705, 105 S. Ct. 1643 (1985).

"As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. See *Scott v. United States*, 436 U.S. 128, 137-139 (1978); see also *Terry v. Ohio*, *supra*, at 21 (in analyzing the reasonableness of a particular search or seizure, "it is imperative that the facts be judged against an objective standard"). An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional. See *Scott v. United States*, *supra*, at 138, citing *United States v. Robinson*, 414 U.S. 218 (1973)." *Graham v. Connor*, 490 U.S. 386, 397, 109 S. Ct. 1865, 1872 (1989).

As Carter continued to make it very apparent that Penicks, nor anyone for that matter, were allowed back in her home, Reed continued towards and through Carter's doorway. Camera 2:00-2:10; App. at 86. As Reed continued, Carter exclaimed that she did not want to speak with him any further and attempted to close the door to her home³. App. at 49, 86. To prevent Carter from retreating into her home, safely, Reed continued with his foot in the doorway and told Carter that they were "not finished." App. at 42. Carter replied, "I don't give a fuck if you're done or not, [you]

³ Stephanie Ford testified that Carter was the legal tenant of 419 Rivermont Ave., Lynchburg, on the date of this incident. App. at 54.

aren't coming in here because my son is in here, and he's [Pennicks] showing off." App. at 42. Carter attempted to close the front door to her home again. App. at 42. Reed kept his foot in the threshold of Carter's doorway while she attempted to close the door one more time because he "was not finished investigating." App. at 45, 43, 49. Immediately thereafter, the officer pushed through the door and told Carter not to slam the door on him. Ms. Carter yelled, "or what, or what" and Officer Reed grabbed Carter's right arm, pushed Carter against the wall, and advised Carter to put her hands behind her back. App. at 43-44. Ms. Carter struggled to release herself from his control, telling Reed to "get the fuck off of [her]." App. at 44.

After placing handcuffs on Carter, Reed tells Carter, "you're not going to slam the door on me." Camera at 3:07. Reed never notifies Carter that Carter is under arrest or for what reason she would be arrested. Reed then goes on to tell Pennicks, "I can be the most relaxed and chill officer there is, but I'm not going to have people get in my face and start yelling and screaming at me." Camera at 5:40-5:46. Then, without ascertaining permission from the leaseholder, Carter, Reed once again enters the property and allows Pennicks to enter the property. Camera at 6:37. Reed goes on to continue in the trespassing with Pennicks, telling him, "I don't care what you get out of here." Camera at 6:41. Reed allows two other unidentified individuals to smoke on the porch of Carter's home, while telling them, "Like I was telling [Pennicks], I can be the most chill and relaxed cop out here, I'm not going to have a door slammed on my foot while I am trying to figure out what's going on...and when people aren't cooperative, that's where things go south." Camera at 7:22-7:42.

This Honorable Court should grant this petition in order to make an affirmative statement of law as to the Fourth Amendment's prohibition on law enforcement's illegal entry into Carter's home. In addition, such entry was made to escalate a situation in which law enforcement should have been deescalating the same situation.

B. Ms. Carter's actions constitute a legitimate exercise of her common law right to expel a trespasser, even if such trespasser is a law enforcement officer acting beyond the scope of his duties.

Trespassing is defined under Va. Code Ann. § 18.2-119 when, without the authority of law, he goes upon the lands, buildings or premises of another after being forbidden to do so. "The common law in this state has long recognized the right of a landowner to order a trespasser to leave, and, if the trespasser refuses to go, to employ proper force to expel him, provided no breach of the peace is committed on the outset."

Pike v. Commonwealth, 24 Va. App. 373, 375, 482 S.E.2d 839 (1997).

This common law rule requires the landowner first order the trespasser to leave her property, and if that order is disregarded, then the landowner may use reasonable force to rid herself of the trespasser. *Montgomery v. Commonwealth*, 99 Va. 833, 37 S.E. 841 (1901) (*emphasis added*). In *Montgomery*, the landowner/tenant speaking to the trespasser said, "if you have transacted your business you must leave", and "motioned his hand to him to go." *Id.* The order from the landowner/tenant was a statement coupled with a non-verbal gesture.

Nonverbal conduct is often introduced as evidence to show the maker's intent and state of mind at the time it was made. Virginia distinguishes between nonverbal

assertions and conduct for hearsay purposes. *Stevenson v. Commonwealth*, 218 Va. 462, 237 S.E.2d 779 (1977). Thus, the Virginia Supreme Court recognizes the implicit value nonverbal statements have, and as such the Fourth Amendment as applied through the Fourteenth Amendment of the Constitution should give Ms. Carter the reasonable right to expel a law enforcement officer acting beyond the scope of his authority in a vindictive manner.

Here, the Court of Appeals of Virginia as well as the Virginia Supreme Court found that Carter failed to order the officer to leave her property before expelling him because she did not *tell* him to leave. App. at 93, *emphasis added*. However, her nonverbal statement of shutting her door was a clear order directed at the officer to leave her property, which he ignored when he put his foot in her doorway (such arguably violated her Fourth Amendment Rights against unwarranted entry, search, and seizure). Therefore, when Carter closed her door, and continued to close her door, her conduct was both: the order for the officer to leave her property and the reasonable force used to expel him when he chose to disregard her order.

When exercising the right to expel a trespasser, an individual “may not endanger human life or cause great bodily harm.” *Pike* at 376. When determining reasonableness, the court have employed the standard that “the amount of force used must be reasonable in relation to the harm threatened.” *Foote v. Commonwealth*, 11 Va. App. 61, 69, 396 S.E.2d 851, 856 (1990). When Carter shut her door, she was using the most reasonable amount of force available. There is no contention that Carter should have known where the officer’s foot was positioned or that it was

subject to being pinched in the door if she succeeded in closing it, but she did so with the reasonable expectation that doing so would not “endanger human life or cause great bodily harm.” *Pike* at 376. Finding otherwise would render the long-recognized right to expel trespassers virtually meaningless.

C. The Virginia Supreme Court erred in finding that Officer Reed was engaged in the performance of his public duties at the time of the offense because of Reed’s flippant violation of Ms. Carter’s Constitutional Rights as well as the vindictive manner in which Reed carried out the seizure of Ms. Carter.

Under Virginia Law, a person is guilty of assault or assault and battery of a law enforcement officer if the person “knows or has reason to know that such person is a . . . law enforcement officer . . . engaged in the performance of his public duties anywhere in the commonwealth.” Va. Code Ann. § 18.2-57(C). In order to sustain a felony conviction under the code, “the prosecution must prove a law enforcement officer is performing his public duties.” *Oulds v. Commonwealth*, 260 Va. 210, 214, 532 S.E.2d 33, 35 (2000). Thus far, Virginia courts have been quiet on when an officer is specifically “engaged in the performance of his public duties.” However, one line of case law that speaks to when officers *are* acting outside the scope of their duties are the civil cases that raise the issue of qualified immunity. This Honorable Court has given fairly straightforward guidance on such types of cases, which are instructive in this case.

This Court has held that “government officials performing discretionary functions generally are shielded [. . .] insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would

have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Furthermore, “a right can be deemed clearly established even if there is no prior decision addressing the precise conduct at issue, so long as its illegality would have been evident to a reasonable officer based on existing caselaw.” *Rogers v. Pendleton*, 249 F.3d 279, 285-86 (4th Cir. 2001); *citing Wilson v. Layne*, 526 U.S. 603, 615 (1999). Officers are therefore “not afforded protection when they are ‘plainly incompetent [. . .] or knowingly violate the law.’” *Rogers* at 286 (*emphasis added*), *quoting Malley v. Briggs*, 475 U.S. 335, 341 (1986). While the issue here is *not* whether the officer is civilly liable to Carter, the qualified immunity case law postulates that an officer is not engaged in his public duties when he is knowingly in violation of the law.

- i. *The officer was a trespasser in violation of the law when he put his foot in Carter’s doorway.*

Officer Reed was clearly in violation of Va. Code Ann. § 18.2-119 when he did not leave Carter’s home after she ordered him to do so, and instead breached the threshold of her home. As a reasonable officer, Reed should have known that he had no lawful basis to enter Carter’s residence, so as soon as he did, he was a trespasser in violation of the law, acting outside the scope of his public duties. Reed’s statements on his body worn camera capture a vindictive intent when Reed states to Ms. Carter, “you’re not going to slam the door on me.” Camera at 3:07.

Instead of looking to the officer’s conduct at the moment he crossed the threshold of Carter’s doorway, the Virginia Court of Appeals focused on the officer’s conduct in general by concluding that from the moment he arrived at her home every one of his actions was in furtherance of his investigation. App. at 94-95. However, it

is Counsel's argument that the reviewing court should look at each one of the officer's acts as separate and distinct conduct or else every time the police are acting under the guise of investigating, their conduct will always be found to be in accordance with the state statute, Va. Code Ann. § 15.2-1704 (A).⁴ The moment Officer Reed put his foot in Carter's doorway, he was no longer investigating but trespassing, knowingly in violation of the law.

- ii. *The officer violated Ms. Carter's Fourth Amendment rights when he crossed the threshold of her home by placing his foot in her doorway.*

The Court of Appeals of Virginia and the Virginia Supreme Court found that Carter had no right to contact (and arguably batter) the officer because Ms. Carter was not under arrest at the time she closed the door on his foot. App. at 95. However, at that moment in time, it did not matter whether Carter was under arrest because she was legally justified in using reasonable force to expel the trespassing officer from her home. Carter maintains that the assault and battery on the officer was justified because she was resisting an unlawful arrest; but this contention was grounded in events that happened later in time, not at the moment she closed her door. In that moment, not only was Officer Reed trespassing, but he entered Ms. Carter's home unlawfully.

At common law, and for decades after the Fourth Amendment was ratified, the only remedy for a violation of the Fourth Amendment was a tort suit against the

⁴ "The police force of a locality is . . . responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances."

agents for trespass. If the agents had no valid warrant and entered your house without permission, they were automatically deemed trespassers and could offer no defense. *Gardner v. Neil*, 4 N.C. 104, 104 (1814). The North Carolina Supreme Court held, “[e]very entry by one, into the dwelling-house of another, against the will of the occupant, is a trespass, unless warranted by such authority in law as will justify the entry.” *Id.* at 104.

This Honorable Court’s interpretation and application of the Fourth Amendment has expanded the tort of trespassing and found that any “physical invasion of the structure of the home, by even a fraction of an inch” is a constitutional violation. *Kyllo v. United States*, 533 U.S. 27, 40 (2001); and “the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Payton v. New York*, 445 U.S. 573, 585 (1980). “In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual’s home.” *Id.* at 589. Thus, the Fourth Amendment now affords protection against unnecessary intrusions into the private homes by means of the warrant requirement imposed on agents of the government who seek to enter a person’s home.

However, as with all bright line rules, there are exceptions. Warrantless intrusion may be justified by a showing of “consent or exigent circumstances.” *Steagald v. United States*, 451 U.S. 204, 211 (1981). Exigent circumstances exist amidst emergencies, they include the “hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect’s escape, or the risk of danger

to the police or to other persons inside or outside the dwelling.” *Minnesota v. Olson*, 495 U.S. 91, 100 (1984). In these emergency situations, there is a “compelling need for official action and no time to secure a warrant.” *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). In addition to emergency situations, there are circumstances where an officer can enter a home while performing “community caretaking functions.” *Hunsberger v. Wood*, 570 F.3d 546 (4th Cir. 2009). The community caretaking exception requires a court to “look at the *function* performed by a police officer”, while the exigent/emergency exception looks to the “*circumstances* to determine whether an emergency requiring immediate action existed.” *Id.* at 554.

In a June 2021, this Honorable Court addressed the issue of exigency in misdemeanor cases by answering the question of whether the court should continue to look at the “totality of the circumstances” confronting the officer as he decides to make a warrantless entry, or whether it should instead apply a “categorical warrant exception” when a suspected misdemeanant flees from law enforcement into her home. *Lange v. California*, 594 U.S. ___, ___ (2021) (slip op., at 5). In *Lange*, an officer started tailing a vehicle because the occupant was listening to loud music with his windows down and repeatedly honking his horn. The officer turned on his overhead lights to signal that Lange should pull over, but he was only a few hundred feet from his house, so Lange proceeded to drive into his driveway and park in his attached garage. *Id.* (slip op., at 1-2). The officer followed Lange into his garage, put him through field sobriety tests, and the State charged him with the misdemeanor of driving under the influence. The Court granted certiorari to determine whether the

Fourth Amendment always permits an officer to enter a home without a warrant in pursuit of a fleeing misdemeanor subject.

First, the Court identified the constitutional interest at stake: “the sanctity of a person’s living space.” *Id.* (slip op. at 5). The Court then addressed the exigent circumstance of a hot pursuit and maintains that if an officer “needs to act quickly” then a warrantless entry is permitted; but couples this rationale with the holding that “the act of retreating into her house could not defeat an arrest that had been set in motion in a public place.” *Id.* (slip op., at 7). Most of the lawful exigent circumstances cases involve fleeing felons, but “the law regarding warrantless entry in hot pursuit of a fleeing misdemeanant is not clearly established.” *Id.*, citing *Stanton v. Sims*, 571 U.S. 3, 6, 10 (2013).

Here, unlike in *Lange*, Carter was never in a public place.⁵ Carter was yelling at the individuals on her front porch, and then at the officer once he approached, and the Virginia Court of Appeals characterized her behavior as “disorderly.” App. at 94. Even if Carter’s behavior was disorderly, it does not rise to the level of conduct warranting a “hot pursuit” into Carter’s living space.

This Honorable Court drew a distinction between fleeing felons and fleeing misdemeanants by noting two facts about misdemeanors: “They vary widely, but they

⁵ Initially the officer charged Carter with the misdemeanor offense of obstruction of justice in violation of Va. Code Ann. § 18.2-460(B). The Commonwealth claimed that her refusal to answer his questions was grounds for probable cause to arrest Carter for impeding his investigation which therefore warranted him to lawfully enter her house and arrest her. Tr. 6/17/19 at 20. Such charge was ultimately dismissed by the trial court because the ruling was contrary to law.

may be (in a word) ‘minor.’” *Lange* (slip op., at 8). It further states that “application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense is involved.” *Id.* (slip op., at 9), *citing Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984). The Court again references its decision in *Welsh* when it states that there is “no evidence suggest[ing] that every case of misdemeanor flight poses such dangers” because “misdemeanors can target minor, non-violent conduct” and if that is the case then officers “can probably take the time to get a warrant.” *Id.* (slip op., at 10). In *Lange*, this Honorable Court ultimately held that:

The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do—even though the misdemeanant fled.

Id. (slip op., at 16).

Here, Carter hardly “fled” the officer as she was already standing inside her home and was simply trying to shut her door. Even if she was acting “disorderly” the officer was not presented with circumstances that warranted crossing the threshold of her home without a warrant. There was zero evidence of imminent harms of violence, destruction of evidence, or escape from her home. In fact, it was Officer Reed who escalated the violence towards Ms. Carter, by first and foremost, shoving his foot

into the doorway through the threshold of Ms. Reed's home, and second, by further forcing his way into her home and placing her in handcuffs without informing her that she was under arrest or even what she was under arrest for. This type of egregious behavior places Officer Reed firmly outside the bounds of acting in a lawful manner. Officer Reed was in violation of Ms. Carter's Fourth Amendment right to "retreat into her own home and be free from unreasonable government intrusion." *Lange* (slip op., at 5); *Collins v. Virginia*, 584 U.S. __, __ (2018) (slip op., at 5).

In a Fourth Circuit case, *United States v. Rollins*, No. 4:18-01129-MGL, 2019 U.S. Dist. LEXIS 154677 (D.S.C. Sep. 11, 2019), officers responded to a 911 call. During the call dispatch heard a male and female in the background, and heard the female say, "[g]et out of my house" several times. *Id.* at *3. When the officers arrived at the house, they observed that the side door was not latched, so an officer knocked once to no avail, and when he knocked the second time it was with "such force" that the door to the apartment opened at the same time that a female appeared. *Id.* at *4. The officers announced themselves and asked her to come outside and talk to them and asked if they could enter the residence. The female denied both officers' requests to come inside. One officer testified that at this point she "did not know if the female was the instigator or the victim, or anything else about what happened." *Id.* at *5. As that officer was speaking to the female, the other officer put his boot in the doorway to prevent the door from closing, and as he did it, he "crossed the threshold into the residence." *Id.* He then shined his flashlight in and observed a bullet laying on the floor. *Id.* at *4-*5. This observation led to the officer finding a firearm in the

apartment, and the defendant was ultimately charged with possession of a firearm by a convicted felon.

The Fourth Circuit's opinion relied on the same principles laid out in *Lange*, that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed", so "searches and seizures inside a home without a warrant are presumptively unreasonable." *Id.* at *6-*7, quoting *Payton*, 445 U.S. at 586. The Court further stated that the "presumption of unconstitutionality that accompanies 'the warrantless entry into a home to conduct a search or make an arrest' may be overcome only by showing 'consent or exigent circumstances.'" *Id.* at *7, quoting *Steagald*, 451 U.S. at 211. It found that no exigent circumstances existed. The Fourth Circuit also noted the other exception to the warrant requirement recognizing that "the police sometimes take actions not for any criminal law enforcement purpose but rather to protect members of the public." *Id.* at 8. The community caretaker exception was adopted by the Fourth Circuit in *Hunsberger v. Wood*, 570 F.3d 546, 553 (4th Cir. 2009).

Ultimately, the Court in *Rollins* found that when the officer pushed the door open, he went further than the Fourth Amendment allows. It reasoned that there was no evidence that anyone was in distress, or that the events giving rise to the phone call were anything more than an argument, and that "without the unlawful intrusion into the residence" there was no justification to enter the apartment. *Id.* at *9. Here, akin to the finding in *Rollins*, Officer Reed had no justification to enter Carter's home without the unlawful act of putting his foot in the doorjamb crossing the threshold

into her residence.

The Virginia Court of Appeals relied on the community caretaker exception to justify the officer's warrantless entry. App. at 9. However, this exception does not apply because it requires the officer to be "totally divorced from the detection, investigation, or acquisition of evidence relating to [a] violation of a criminal statute," *Cady v. Dombrowski*, 419 U.S. 433, 441 (1973). Here, Officer Reed testified that he entered Carter's house because he "wasn't finished investigating." App. at 43. Therefore, neither the function being performed by the officer, nor the circumstances of the incident presented the officer with emergency or exigent circumstances to justify a warrantless entry into Carter's home.

Here, because neither the exigent circumstances exception nor the community caretaker exception applies, Officer Reed was clearly violating Ms. Carter's Fourth Amendment rights; and in turn, in knowing violation of the law.

iii. *It is irrelevant if Ms. Carter was under investigative detention because a citizen cannot be detained within their own home.*

The Virginia Court of Appeals conflated two separate Fourth Amendment issues: the issue of whether Carter was seized with her right to be secure from government intrusion in her home. Instead of determining whether Carter was detained or arrested for purposes of finding whether she had the lawful right to resist, the Court of Appeals should have first done a Fourth Amendment analysis to determine whether the officer violated Ms. Carter's right to be safe and secure inside her home, followed by the question of whether he was permitted to detain her within her home.

The typical setting where an ‘investigative detention’ takes place is on the public streets, or in public places. *Terry v. Ohio*, 392 U.S. 1 (1968). The purpose of an investigative detention is to check for weapons or contraband, or “diligently pursue a means of investigation that [would] likely confirm or dispel [an officer’s] suspicions quickly.” *Thomas v. Commonwealth*, 16 Va. App. 851, 857-858, 434 S.E.2d 319, 323 (1993), quoting *De Priest v. Commonwealth*, 4 Va. App. 577, 587, 359 S.E.2d 540, 545 (1987). As the “investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time,” entry into one’s home is highly intrusive and therefore, the “usual rules pertaining to *Terry* stops do not apply in homes.” *Florida v. Royer*, 460 U.S. 491, 500 (1983); *Smith v. Jacko*, Civil Action No. 2:16-655-BHH, 2019 U.S. Dist. LEXIS 149201, at *28-29 (D.S.C. Aug. 30, 2019); citing *United States v. Martinez*, 406 F.3d 1160, 1165 (9th Cir. 2005).

The Virginia Court of Appeals found that Carter’s “unruly and belligerent” behavior, and her failure to “cooperate” with the officer barred her from executing her right to retreat into her home. App. at 95. It further found that when the officer placed his foot over the threshold of Carter’s home, he was detaining her for investigatory purposes, which was within the scope of his public duties. App. at 95. Relying on *Thomas*, 16 Va. App. at 434, the Virginia Court of Appeals held that when the officer briefly deprived Carter of her liberty (when he prevented her from shutting the door to her home), he was detaining her. Following that logic, it found that when Carter shut her door on the officer’s foot, she therefore battered him in violation of

Va. Code Ann. § 18.2-57(C) without legal justification. App. at 95-96. But what the Virginia Court of Appeals failed to address is that in *Thomas*, the officer detained the defendant after he observed him coming around from the backside of a motel, not when he was inside his home. *Id.* at 857. Thus, for the officer to be acting within the scope of his public duties, he would have had to detain Carter outside her home where she was not awarded her Fourth Amendment right to be free from government intrusion.

Officer Reed was a trespasser when he breached the threshold of Carter's home. The officer was in violation of Va. Code § 18.2-119, and he violated Carter's Fourth Amendment constitutional rights. Even if the Virginia Court of Appeals and the Supreme Court of Virginia were correct in finding that a trespass did not occur⁶, when the officer breached the threshold of Carter's home without a warrant, she was under arrest because one cannot be detained inside the privacy of their home. And, if she was under arrest when she shut the door on the officer's foot, she was resisting an unlawful arrest.

X. Conclusion

For the foregoing reasons, Latoya Nicole Carter, 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.

⁶ Appellant maintains that the officer was trespassing, as discussed above.

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Respectfully submitted,



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