NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

TERRELL ANDERSON, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

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

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I. QUESTION PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit erred when it affirmed the district court's denial of Terrell Anderson's pretrial motion to suppress?

II. PARTIES TO THE PROCEEDING

Mr. Terrell Anderson is the Petitioner. The United States of America is the Respondent in this matter.

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V. OPINIONS BELOW

The unpublished opinion by the United States Court of Appeal for the Fourth Circuit in this, *United States v. Terrell Anderson*, No. 21-4576, is attached to this Petition as Appendix A. The judgment of the United States Court of Appeals for the Fourth Circuit is attached as Appendix B. The final judgment order of the United States District Court for the Northern District of West Virginia is unreported and is attached to this Petition as Appendix C.

VI. JURISDICTION

This Petition seeks review of an unpublished opinion of the United States Court of Appeals for the Fourth Circuit, decided on January 4, 2023.

VII. CONSTITUTIONAL PROVISION INVOLVED

This case requires interpretation and application of the Fourth Amendment to the United States Constitution, which provides, "[t]he 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." U.S. Const., Amend. IV.

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction.

This is a single-defendant case involving one-count of simple possession of child pornography. The case arises out of Bridgeport, Harrison County, West Virginia, where police officers conducted an illegal search and seizure of the Petitioner, Terrell Anderson ("Anderson") in violation of the Fourth Amendment. After the illegal search and seizure, officers found sex videos an iPhone possessed by Anderson. Officers determined that the sex videos were made during consensual sex between Anderson and a minor female.

On August 5, 2020, a grand jury sitting in the Northern District of West Virginia returned a one-count indictment charging Anderson with possession of videos containing child pornography, from on or about January 3, 2020, to on or about January 4, 2020, in Harrison County, West Virginia, in violation of Title 18, United States Code Sections 2252A(a)(5)(B) and 2252A(b)(2).

Because the charge constituted an offense against the United States, the district court had jurisdiction pursuant to 18 U.S.C. § 3231. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

B. Factual Background.

Anderson is a young, African-American man from Virginia, currently serving a sentence of sixty months at FCI Petersburg, in Virginia. On January 3, 2020, Anderson and his friend, Samantha Hoover, from West Virginia, agreed to spend

the night at a hotel in Bridgeport, West Virginia. J.A. 16.[1] As they drove to the hotel, Anderson received a text message from another friend, identified as ANH[2], stating that ANH needed help, as she had been kicked out of a residence. J.A. 16. Hoover and Anderson retrieved ANH and arrived in Bridgeport, where they rented rooms 121 and 122 at the Super 8 Hotel. J.A. 16. Anderson and ANH stayed in room 122, and Hoover stayed in room 121 with another African-American man identified as Montrel Ray Vaughn. J.A. 16.

Around 10 a.m., on January 4, 2020, Anderson needed to retrieve his personal belongings from Hoover's vehicle. J.A. 16. Anderson walked to the adjacent hotel room and knocked on the door. J.A. 16. Despite Anderson's persistence in asking that Hoover unlock her car, she refused. J.A. 17. Hoover did not even open the door of her hotel room to discuss the matter with Anderson.

Anderson needed his personal belongings, including shoes, so that he could go to at work at the mall nearby; a consequence for being late to the shift or not having on the correct work attire is being fired from the job. J.A. 17. Anderson continued to ask Hoover to open her car, and the two continued to argue through the door of room 121. J.A. 17.

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[1] The reference to "J.A." and a number corresponds to the joint appendix filed by the parties in the underlying case before the Fourth Circuit.

[2] Pursuant to Rule 49.1 of the Federal Rules of Criminal Procedure, initials are being used in order to protect the identity of the minor child.

During the disagreement, the following 911 call was made by Vaughn, who dialed, and Hoover, who spoke, in response to Anderson's requests to retrieve his personal belongings:

911 Operator:	This is 911 do you have an emergency?
Hoover:	Yeah, there is somebody at my hotel room knocking on the…like banging on the door.
911 Operator:	What hotel are you in?
Hoover:	Super 8.
911 Operator:	Do you know who it might be?
Hoover:	Yeah, it is one of my friends.
911 Operator:	What room are you in?
Hoover:	121.
911 Operator:	So, one of your friends is banging on the door?
Hoover:	Yeah.
911 Operator:	***And you are afraid to open it?***
Hoover:	***I just want him away***.
911 Operator:	What is your friend's name?
Hoover:	Terrell.
911 Operator:	Terrell?
Hoover:	Yeah.
911 Operator:	Do you know Terrell's last name?
Hoover:	Anderson.
911 Operator:	Terrell Anderson?
Hoover:	Yeah.
911 Operator:	What is your name?
Hoover:	Samantha.
911 Operator:	Samantha what?
Hoover:	Hoover.

911 Operator:	Are you in the hotel room by yourself?
Hoover:	No.
911 Operator:	Ok do you know why he is banging on the door or are you like why are you afraid to open it? ***Has he threatened you …***?
Hoover:	***No, he has not threatened me*** he is just yelling because I won't give him a ride home.

J.A. 17-19 (emphasis added).

Multiple officers responded quickly to the call, which was identified by the 911 operator as a "general disturbance."[3] J.A. 76. The officers were in uniform, armed, and parked quickly and outside of any parking lot lines, treating the situation as an "emergency," even though it was not, based upon the call. J.A. 109-112.

Officer Aaron Lantz arrived first. Officer Lantz saw Anderson walking around outside the hotel rooms, near Hoover's car, speaking on his cellular device. J.A. 78-79. Anderson was described as upset "upset," "irate," and "very agitated" at the time Officer Lantz arrived. J.A. 78, 80-81. When Officer Lantz spoke with Anderson, Anderson explained that the reason he was angry was because his personal property was inside of Hoover's car, and Hoover refused to give him access to the car so that he could retrieve it. J.A. 78-80. Then, Anderson calmed down. J.A. 81.

[3] Three officers testified at the suppression hearing: Officer Aaron Lantz, Patrolman First Class for the Bridgeport Police Department and an Interdiction Specialist for the Mountaineer Highway Interdiction Team South, Officer Cameron C. Turner of the Bridgeport Police Department, and Sergeant Christopher Bart Sayers of the Bridgeport Police Department.

With the situation under control, and after seeing the officers, Hoover allowed Anderson to retrieve his personal property from her car. J.A. 83. Anderson walked to the then unlocked car to retrieve his belongings. J.A. 81. Unexpectedly, officers refused to permit Anderson to leave after retrieving his property from the car. J.A. 120. Officers were allegedly concerned that this situation would escalate to a domestic disturbance because Anderson and Hoover lived with one another. J.A. 120-121. However, no officer followed up with Hoover at the scene or after the incident to ensure her safety from domestic violence. J.A. 119-121.

In the process of observing Anderson while he was retrieving his personal property, the officers smelled the odor of marijuana coming from Hoover's car and obtained Hoover's written consent to search the car. J.A. 19. They discovered a marijuana pipe. J.A. 19. Despite that it was Hoover's car, not Anderson's, and that Anderson did not have prior access to the car -- which was the problem in the first place -- officers instructed Anderson to sit on the sidewalk and he remained detained outside of room 121 while officers conducted a drug investigation. J.A. 19.

Officers interviewed Hoover regarding the disagreement that prompted their intervention and the subsequent drug investigation. In regard to the incident at the Super 8, Hoover admitted that Anderson was screaming at her outside the door because she would not allow him to get his property from her car. J.A. 150-152. She admitted that she had her car's key fob in her room, which would have enabled her to unlock the vehicle from the room. J.A. 151-152.

Hoover admitted that she was the sole owner of the vehicle involved. Hoover also admitted to possessing the marijuana pipe, but she immediately deflected the blame to Anderson, alleging that he sold marijuana in the past and sold marijuana to her approximately four days prior to this incident. J.A. 19.

During the officers' investigation, hotel staff advised them that ANH was standing in a hallway. J.A. 19. Officers confronted ANH and noticed that she also smelled like marijuana. J.A. 19. When they asked her about the smell of marijuana, ANH stated that she was scared and admitted to possessing marijuana on her person. J.A. 19. ANH took a small bag of marijuana[4] from her bra. ANH stated that Anderson gave her the bag of marijuana and told officers that Anderson "might sell marijuana." J.A. 19.

Officer Cameron Turner testified that Anderson was detained at the time of the arrival of Officer Lantz due to the 911 call. J.A. 182-183. Although the situation de-escalated and the entire problem was solved after Anderson retrieved his property from the vehicle, the officers continued to detain Anderson due to the investigation into the smell of marijuana. J.A. 182-183. Before their search of Hoover's car, officers patted Anderson down for weapons and discovered none. J.A. 197. Anderson was cooperative with the officers while detained and while they checked his background for warrants and prior arrests. J.A. 199.

Officers noticed a bulge in Anderson's sock while he was detained. J.A. 130. Officers asked about the bulge, and Anderson admitted that it was cash. J.A. 130.

[4] Approximately 5.75 grams of marijuana.

Officers retrieved the cash from Anderson's person, J.A. 132, and the cash totaled approximately $3,210. J.A. 19. Officers placed the cash on Hoover's vehicle and directed Anderson not to touch it. J.A. 19.

Based upon the statements made by Hoover and ANH, the cash found on Anderson's person, and ANH's possession of a small amount of marijuana, the officers arrested Anderson for possession of a controlled substance with intent to deliver. J.A. 19-20. Upon searching Anderson, the officers found no drugs or evidence of drugs on him, but they did seize his iPhone incident to the arrest. J.A. 20.

Officers applied for a search warrant for the contents of Anderson's iPhone. J.A. 20. The affidavit for the search warrant summarized the incident on January 4, 2020, at the Super 8 in Bridgeport, West Virginia. J.A. 36. The affidavit alleged that ANH had marijuana on her person supplied by Anderson. J.A. 36. The affidavit stated that Hoover told the officers that Hoover and her family frequently purchased marijuana from Anderson, and that they had bought approximately $40.00 worth of Marijuana around New Years Eve, four days prior to the incident. J.A. 36. The affidavit acknowledged that a large sum of cash was found on Anderson's person which was made up of large bills such as 20 dollar bills and 100 dollar bills. J.A. 36.

The officers wanted to forensically examine Anderson's cell phone based upon the belief they would find communications on the phone related to the sale of controlled substances. J.A. 26, 36. A State Circuit Court Judge in Harrison

County, West Virginia, granted the search warrant for the contents of Anderson's iPhone. J.A. 20. On January 7, 2020, the iPhone was reviewed for illegal drug transactions. J.A. 20. Officers discovered materials depicting ANH naked on the iPhone. ANH, a minor at the time, advised that she recognized photos she sent to Anderson prior to January 4, 2020. J.A. 20. ANH advised that while she was aware of the photos, she claimed she was unaware of an alleged video taken of her during sex with Anderson at the Super 8 Hotel. J.A. 20.

C. Procedural History.

On August 5, 2020, the government sought an indictment against Anderson. A federal grand jury in the Northern District of West Virginia returned an indictment for the offense of one count of simple possession of child pornography from on or about January 3, 2020, to on or about January 4, 2020, in Harrison County, West Virginia, in violation of Title 18, United States Code Sections 2252A(a)(5)(B) and 225A(b)(2). J.A. 13-14. Anderson was arrested and released on bond. J.A. 3.

On October 9, 2020, Anderson filed a Motion to Suppress Physical Evidence including the cash and the iPhone which were obtained as the result of an unlawful seizure and arrest. J.A. 15-30. Anderson argued that the officers did not have reasonable suspicion to detain Anderson. Anderson contested the seizure of cash from his sock without a warrant and without his consent. Anderson argued that officers lacked probable cause to arrest Anderson, making the seizure of his iPhone incident to his arrest illegal. J.A. 20-23. Anderson reasoned that no marijuana was

found on his person and the entire issue stemmed from him being the victim of a theft offense. Anderson did not have access to his belongings inside another person's vehicle, which was where a marijuana pipe was found and where the officers first noticed the odor of marijuana. Lastly, he argued that the search warrant for the contents of the iPhone lacked probable cause, being based only on word of unreliable witnesses. J.A. 26-27.

The government filed a response to Anderson's Motion to Suppress on October 19, 2020, in which the government argued that the officers were justified in conducting an investigative detention of Anderson. Anderson was upset and loud and even made a comment in front of an officer along the lines of a brick would help him get his property back, but Anderson never brandished a brick and there was no brick taken as evidence. J.A. 42-43. Hyperbole and disorderly conduct are two different things.

Also, the government argued there was probable cause to arrest Anderson for the drug charge. J.A. 41-45. The government reasoned that the witnesses were credible, there were articulable facts stated in the warrant to show probable cause, and even if the warrant contained a defect, it was made in good faith and granted by a detached and neutral magistrate. J.A. 52-54.

United States Magistrate Judge Michael John Aloi conducted a hearing on the Motion to Suppress on January 13, 2021, in Clarksburg, West Virginia. J.A. 56. The Magistrate Judge heard Anderson's testimony. Regarding the incident at Super 8, Anderson testified that when officers arrived on January 4, 2020, he was

very upset because he wanted his stuff for work. J.A. 250. Anderson and Hoover had plans to get an apartment as roommates that day, which was going to be handled by Hoover while Anderson was at work. J.A. 251. Anderson testified that once he retrieved his property from Hoover's car, he believed the dispute with Hoover was settled and that he would be able to leave for work. J.A. 254. Despite Anderson's request to leave for work, he was detained by officers for the remainder of their investigation. J.A. 254-255.

Anderson testified that he was searched twice by officers. First, his entire body was searched near Hoover's vehicle, and second, an officer lifted his pant leg up, reached in his sock, and took his money. J.A. 256-257. Anderson testified that all of the sudden, officers walked up to him and arrested him for distributing and giving an illegal substance to a minor. J.A. 257.

The responding officers testified. First, Officer Aaron Lantz testified that he arrived at the Super 8 approximately four minutes after the 911 call came out. J.A. 76. Lantz testified that he arrived in a marked police vehicle and parked in the lane where cars travel though the hotel's parking lot. 110-112. Officer Lantz walked over to Anderson and made the initial contact with Anderson outside. J.A. 110-111. Officer Lantz was in uniform and armed. J.A. 111. Officer Lantz asked Anderson what Anderson was doing and what was going on there. J.A. 110. Officer Lantz detained Anderson upon arrival. J.A. 113. Officer Lantz tried to talk to Anderson and calm him down. J.A. 79. Officer Lantz admitted that, to his knowledge, no hotel guests or staff complained about the situation, and he

acknowledged that the activities of cursing in public and knocking on a door are not, by themselves, illegal activities. J.A. 108-109. Officer Lantz testified that once the incident turned into a drug investigation, after smelling marijuana odor emanating from Hoover's car, it was every responding officers' intention to detain all parties present. J.A. 114.

Officer Lantz further testified that although it is illegal for a juvenile to possess 5.75 grams of marijuana, no officers pursued charges against ANH and no protective or rehabilitative services were sought after to ensure her well-being. J.A. 123. Lastly, while Anderson's ID was in his bag, no evidence of marijuana or other illegal activity were connected to his bag, and the bag of marijuana retrieved from ANH's person was never tested to see if Anderson's DNA was present. J.A. 127.

Officer Cameron Turner was another officer that responded to the scene and arrived about three minutes after Officer Lantz. J.A. 111, 162. Officer Turner relieved Lantz of the responsibility of detaining Anderson. Turner testified that there were several times that Anderson asked if he could go over to the car, or other specific places near the hotel, throughout his detainment, and officers did not allow him to move freely. J.A. 182. Turner testified that Anderson was under the direction and control of the officers for the entirety of the episode. J.A. 184. The officer testified that he patted Anderson down for weapons before Hoover's car was searched, but he admitted he did not have a reason to believe Anderson was armed. J.A. 197.

Sergeant CD Sayers testified that the 911 call was relayed to officers as a general disturbance and there were no allegations of violence or weapons. J.A. 224. Sayers testified that the disturbance was over after Anderson got his property back. J.A. 228. Sayers made initial contact with ANH. J.A. 207. Sayers testified that ANH explained that she was sitting in the hallway alone because ANH was holding Anderson's bag. J.A. 208. Sayers testified they smelled an odor of marijuana coming from ANH's person, which led to the seizure of a small bag of marijuana from her person, which she explained belonged to Anderson. J.A. 209.

Sayers testified that after ANH told the officers the marijuana belonged to Anderson, they took her word for it, and she stated that she "didn't want to get in trouble." J.A. 234. He testified that he had no knowledge of ANH nor of her credibility nor whether she was on drugs at the time. J.A. 234. Sayers stated that there was no way to verify whether ANH was telling the truth. J.A. 235.

Hoover was a witness for the defense. J.A. 150. Hoover was not scared of Anderson. J.A. 153. Hoover did not want to call for police assistance. J.A. 152. Rather, Hoover testified that she was in the room with Vaughn. J.A. 151. Vaughn was upset with Anderson because Anderson was screaming outside the door, knocking on the door to her hotel room, and demanding the return of his property from Hoover. J.A. 151-153.

According to Hoover, Vaughn told Hoover that if Hoover left the room to return Anderson's property, Vaughn was going to "beat [Anderson's] ass" outside the door. J.A. 153. Vaughn dialed 911, not Hoover. J.A. 152. Hoover did not want

Vaughn to attack Anderson so she spoke to the 911 officer and explained part of the situation, omitting that she was committing the crime of theft, J.A. 185-186, and could have solved the situation by remotely opening the car, without even leaving the room. J.A. 153. Within minutes, Hoover testified the police arrived. J.A. 154.

Hoover testified that Anderson did not threaten her and that this was not a domestic disturbance, as Hoover and Anderson were not romantically involved and were merely roommates at the time of the incident. J.A. 153-158. Hoover testified that she was not free to leave once she gave officers permission to search her car and they smelled marijuana. J.A. 156.

Magistrate Judge Aloi entered a Report and Recommendation as to the disposition of the Motion to Suppress on April 14, 2021. J.A. 288. The report recommended that the motion be denied in full because officers were able to provide specific and articulable facts which supported Anderson's investigative detention and because the search which produced the bulge of cash on Anderson's person was reasonable and limited to confirming the contents of the unknown bulge. J.A. 319-318. The report further noted that even if the search that yielded the cash was found to be unreasonable, it could be established by a preponderance of the evidence that officers would have inevitably discovered the cash by lawful means during Anderson's search incident to arrest. J.A. 329. Lastly, the report determined that the facts and circumstances supported the belief that Anderson had committed the marijuana offense which justified his arrest and the seizure and search of his cellular device incident to such arrest. J.A. 331-337.

After considering Anderson's objections to the report and recommendations, the Honorable Irene M. Keeley, Senior United States District Judge, issued a Memorandum Opinion and Order adopting the report and recommendation, overruling Anderson's objection, and denying Anderson's motion to suppress ("Memorandum Opinion"). J.A. 364-374. The District Court determined that officers had reasonable suspicion to detain Anderson because officers observed articulable facts indicating criminal activity was occurring. J.A. 365-366. Specifically, Anderson's conduct and the information communicated in the 911 call justified the officers' questioning of Anderson and remaining with him until they could ensure the situation did not escalate further. J.A. 369.

The District Court also determined that officers had probable cause to arrest Anderson due to the sizeable amount of cash retrieved from his sock, the odor of marijuana in the car as he was retrieving his belongings, the statements of Hoover and ANH, and the presence of marijuana on ANH. J.A. 370-373. The Court noted that while Anderson did not have any contraband on his person, in his bag, or in his motel room, and that officers did not observe drug transactions involving Anderson, the circumstances taken together show a probability that Anderson was in possession with intent to deliver marijuana. J.A. 372-373. Following this reasoning, the Court concluded that the seizure and search of the iPhone incident to this valid arrest was justified. J.A. 372.

D. Anderson's Jury Trial and Sentencing.

Anderson maintained his innocence and pleaded not guilty to the one-count indictment of simple possession of child pornography. The matter was heard in a jury trial on June 21, 2021, before the Honorable Irene M. Keeley, in Clarksburg, West Virginia. J.A. 375-742. After the three-day trial, the jury returned a verdict finding Anderson guilty of the one-count indictment. J.A. 744.

On October 14, 2021, the District Court sentenced Anderson to sixty months in prison, followed by a term of supervision for ten years. J.A. 753. Anderson is to comply with the requirements of the Sex Offender Registration and Notification Act, 34 U.S.C. § 20901. J.A. 755. After the sentencing hearing, Anderson filed a timely notice of appeal to the United States Court of Appeals for the Fourth Circuit on October 26, 2021.

E. The United States Court of Appeals for the Fourth Circuit.

On appeal, Anderson challenged the district court's denial of the pretrial motion to suppress all the evidence seized from his phone. Anderson contended that the officers detained him without reasonable suspicion of criminal activity, and that the district court did not identify any criminal activity that was occurring or had occurred before his detention.

The government countered that the officers' initial interaction with Anderson was consensual, and that Anderson was not detained until Officer Turner told Anderson to sit on the walkway of the motel. The government also argued that, even if the officers detained Anderson at the beginning of the encounter, the officers

had reasonable suspicion that criminal activity was occurring or had occurred based on Anderson's loud behavior and "potential for domestic violence."

The Fourth Circuit agreed with the government. In its unpublished opinion, it held that officers did not immediately detain Anderson, and conclude that Officer Turner did not detain Anderson until the point that he prevented Anderson from approaching Hoover's car. Opinion at 6. It held that the detention was lawful because Officer Turner had reasonable suspicion that Anderson was engaging in criminal activity when Officer Turner detained him:

> [h]ere, Anderson was not immediately detained when the officers arrived. When Officer Lantz arrived at the motel, he parked in the middle of the parking lot, got out of his car, and asked Anderson "what was going on." Anderson responded and explained that he wanted to get his belongings from Hoover's car. During this initial interaction, Officer Lantz did not tell Anderson he was not free to leave, nor did Officer Lantz demonstrate an intent to restrain Anderson through physical force or show of authority. Although Officer Lantz arrived in his police car and was in uniform, the remaining evidence before us demonstrates that this initial encounter was consensual. See United States v. Jones, 678 F.3d 293, 302 (4th Cir. 2012).

Opinion at 7.

IX. REASONS FOR GRANTING THE WRIT

The writ should be granted to determine whether the district court properly denied Anderson's pretrial motion to suppress physical evidence seized after his encounter with law enforcement. In Anderson's view, he was seized immediately by responding officers this seizure was unlawful because the officers lacked the requisite reasonable articulable suspicion. **This was not a consensual encounter at any time**.

The Fourth Circuit's opinion makes a finding that there was reasonable suspicion to detain Anderson at some point **after** Anderson's initial contact with Officer Lantz. Since Anderson was detained immediately by Officer Lantz, the motion should have been granted by the district court.

The Fourth Circuit's unpublished opinion upholds the district court's decision to affirm the conviction and sentence of Anderson. However, Anderson avers that the Fourth Circuit's holding in this case conflicts with the Fourth Circuit's earlier, published decision in *United States v. Jones*, 678 F.3d 293 (4th Cir. 2012), as the facts of the instant case cannot be meaningfully distinguished from *Jones*. Anderson respectfully requests that this Honorable Court grant the writ to address the Fourth Circuit's decision here which conflicts with its earlier precedent.

ARGUMENT

The Fourth Amendment provides that "[t]he right of people to be secure in their persons houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. Amend. IV. The "temporary detention of individuals during [an investigative] stop . . . by the police . . . constitutes a 'seizure,'" according to the Supreme Court and the Fourth Circuit, "no matter how brief the stop or how limited its purpose." *Whren v. United States*, 517 U.S. 806, 809 (1996); *accord United States v. Digiovanni*, 650 F.3d 498, 506 (4 Cir. 2011); *United States v. Branch*, 537 F.3d 328, 335 (4th Cir. 2008).

A seizure exists when a reasonable person in the defendant's position would not feel free to leave. *See Michigan v. Chesternut*, 486 U.S. 567, 573 (1988); *United States v. Sullivan*, 38 F.3d 126, 133 (4th Cir. 1998). A person is seized if he or she is restrained in some manner, including by merely submitting to a show of police authority. *See Terry v. Ohio*, 393 U.S. 1, 16 (1968). Warrantless seizures are "per se unreasonable under the Fourth Amendment, subject to only a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967).

It is equally valid that the Fourth Amendment does not require officers to have probable cause in order to investigate whether criminal activity is afoot. "Reasonable suspicion" is enough. *Terry*, 393 U.S. at 25-26. In other words, if a law enforcement officer can point to "specific and articulable facts" reasonably supporting an inference that an individual may be engaged in, or about to engage

in, criminal conduct, it is reasonable within the meaning of the Fourth Amendment for the officer to approach and briefly detain that individual for questioning. *Id*. at 21; *United States v. Crittendon*, 883 F.2d 326, 328 (4th Cir. 1989). In determining the reasonableness of the seizure, courts must focus on the basis for the officer's actions. It is axiomatic that police cannot rely on mere "hunches" to justify an investigative stop and detention. *See United States v. Arvizu*, 534 U.S. 266, 274 (2002).

In *United States v. Jones*, 678 F.3d 293, 295 (4th Cir. 2012), the Fourth Circuit reviewed the denial of a motion to suppress made on the same grounds as the instant case, to wit, that officers unlawfully seized Jones after they parked behind Jones and approached his car on foot to conduct an investigation. Jones argued that this was not routine and did not amount to a mere consensual encounter.

Here, Officer Lantz was not on routine patrol. To the contrary, he arrived to investigate Anderson and he did so immediately upon arrival and upon seeing Anderson. In *Jones,* the Fourth Circuit reversed and found that a reasonable person in the Jones's position would not have felt free to leave given the totality of the circumstances. *Id.* at 304-305. A reasonable person in Anderson's position would not have felt free to leave either.

Anderson contends that *Jones*, a published opinion, is not meaningfully distinguishable from this case. In *Jones*, a car driven by an African-American male, Jones, along with three male passengers, traveled in a high-crime neighborhood in

downtown Richmond, Virginia, bearing New York tags. *Id.* Suspecting that the men were involved in drug trafficking, two police officers in a marked police vehicle followed Jones's car. *Id.* at 295-296.

In *Jones*, the officers found no traffic violation committed by Jones as a basis to stop the car. *Jones* at 295-296. However, Jones had turned into an apartment complex with signs at the entrance warning, "No Trespassing." *Id.* The officers, under the belief that the men were trespassing, followed Jones's car into the complex without activating their sirens or lights. *Id.*

Similarly, the officers in this case found no traffic violation committed by Anderson and observed no crimes as Anderson stood in the private hotel parking lot. Anderson was upset and agitated and he told the officers why: **Anderson was the victim of a crime.**

In *Jones*, the apartment complex had only one road for its residents to enter with diagonal parking spaces on either side. *Id.* at 297. Jones pulled into a parking space and two of the passengers exited the vehicle, while Jones and another passenger stood near the driver's side door. *Id.* The two officers then parked behind Jones's car rather than parking in the designated parking spaces. *Id.*

Here, the Super 8 hotel has a similar layout, with a rectangular parking lot with one entrance, serving as the only means of ingress and egress for its patrons. There is an unmarked lane in the middle of the parking lot for cars to travel through the parking lot with parking spaces on either side. J.A. 95. Officer Lantz pulled in behind parked cars in the parking lot in his police cruiser rather than in

one of the designated parking spaces. This was a demonstration of Officer Lantz's power and his haste. What's more, the location of his parked car made it difficult for anyone to pull out of the parking spaces in that area. J.A. 119. Like Jones, at the beginning of the encounter, Anderson remained where he was in the parking lot near Hoover's car as Officer Lantz approached on foot. J.A. 119, 124-125.

The officers in *Jones* exited their marked police vehicle and approached on foot, in uniform, while armed. *Jones* at 300. Similar here, Officer Lantz exited his marked police vehicle and approached on foot, in uniform, while armed. J.A. 115-116, 158, 358.

As the officers approached Jones and the passengers in Jones's car, one officer asked Jones if he lived in the apartments and Jones responded that he did. *Jones* at 297. Then, left with no suspicion of trespassing, the officers immediately requested that Jones and a passenger lift their shirts to make sure they were not carrying weapons. *Id.* Jones and the passenger complied. *Id.*

Here, upon approaching Anderson, Officer Lantz asked Anderson what was going on. Anderson explained that he was a victim of a crime involving the deprivation of his property by Hoover who had the ability to give it to Anderson and who refused to return it to Anderson without justification whatsoever. Officer Lantz could not have had a reason to be suspicion at that point and he should have released Anderson from detention.

In *Jones*, the officers requested that they conduct a pat down of Jones and the passenger. *Jones* at 297. Jones and the passenger complied. *Id.* Officers were

unable to find any weapons on the two men. *Id.* The officers finally asked for Jones's identification in which Jones stated that he had left it in his apartment. *Id.* The two officers then detained Jones on the violation of driving without a license. *Id.* Jones was arrested for driving on a revoked license and a search incident to arrest revealed a gun and a bag of marijuana on his person. *Id.*

Here, within minutes, other officers from the Bridgeport Police Department arrived as backup for Officer Lantz, including Officer Cameron C. Turner of the Bridgeport Police Department, and Sergeant Christopher Bart Sayers of the Bridgeport Police Department. This demonstrates, as in *Jones*, that the officers where not engaged in routine patrol and that there were all working together to investigate Anderson.

All panels are bound by prior panel decisions in the same circuit. *See Capital Produce Co. v. United States*, 930 F.2d 1077, 1078 (4th Cir. 1991). Given that the instant case cannot be distinguished meaningfully from *Jones,* an earlier, published decision, the Fourth Circuit should have reached a result similar to the *Jones* in the instant matter.

The Fourth Circuit's holding in the instant case muddies the waters of an important Fourth Amendment discussion for both police officers and members of the public, namely, an understanding of the difference between consensual encounters and custodial seizures that implicate the Fourth Amendment. Based on Officer Lantz's testimony at the suppression hearing in this matter, if the Appellant had attempted to leave the parking lot, would they not have been followed swiftly

by the officer for the attempt to evade him? The Fourth Circuit's decision here effectively removes one's agency to choose not to consensually encounter the police in a similar situation. This is not acceptable under the Fourth Amendment, and for this reason, this Court should review the decision below.

X. CONCLUSION

For these reasons, Anderson respectfully request that this Honorable Court grant a writ of certiorari and review the judgment of the Court of Appeals.

Respectfully submitted,

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