Docket No:

UNITED STATES SUPREME COURT

UNITED STATES,
Plaintiff-Respondent,

v.

YOLANDA HOWARD,
Defendant-Petitioner.

On Petition for Writ of Certiorari
TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ROBERT C. ANDREWS
Attorney for Yolanda Howard
First Circuit Bar Number 88418
91 Auburn Street Suite J PMB 1155
Portland, ME 04103
Tel. 207-879-9850
Fax 207-879-1883
E-mail rob.andrews.esq@gmail.com

STATEMENT OF THE QUESTIONS PRESENTED

1. Did the Maine State Trooper's hunch that "there were a lot of drugs in this car" based solely on his initial encounter with Ms. Howard justify delaying the conclusion of the accident investigation?

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JURISDICTIONAL STATEMENT

Review on Petition for Writ of Certiorari. The Petitioner makes this petition based on the jurisdiction conferred by Article III, Section 1 of the United States Constitution and Rule 10of the Supreme Court Rules. The Decision in the United States Court of Appeals for the First Circuit deals with an important federal question which conflicts with other decisions of the Supreme Court of the United States. This petition has been timely filed within 90 days from April 19, 2023.

Appellate Jurisdiction. The Petitioner takes this appeal as of right in a criminal prosecution under 28 U.S.C. § 1291 and the jurisdiction established by Federal Rule of Appellate Procedure 4. Pursuant to Fed. R. App. P. 4(b), the notice of appeal must be filed in the district court within 14 days after entry of the order or judgment appealed. The notice of appeal in this matter was timely filed on February 14, 2022.

Original Jurisdiction. The indictment in this matter resulted in a single conviction of the Defendant/Appellant with one count in violation of 21 U.S.C. § 841. District Courts of the United States have original jurisdiction of all offenses against the laws of the United States. See 18 U.S.C. § 3231.

PROVISIONS OF LAW

U.S. Constitution Amend. IV (West 2023)

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.

29-A M.R.S. § 2251 (west 2023)

Accident reports

1. Definition. As used in this section, "reportable accident" means an accident on a public way or a place where public traffic may reasonably be anticipated, resulting in bodily injury or death to a person or apparent property damage of $1,000 or more. Apparent property damage under this subsection must be based upon the market value of the necessary repairs and may not be limited to the current value of the vehicle or property.

2. Report required. A reportable accident must be reported immediately by the quickest means of communication to a state police officer, or to the nearest state police field office, or to the sheriff's office, or to a deputy sheriff, within the county in which the accident occurred, or to the office of the police department, or to an officer, of the municipality in which the accident occurred. The accident must be reported by:

A. The operator of an involved vehicle;

B. A person acting for the operator; or

C. If the operator is unknown, the owner of an involved vehicle having knowledge of the accident.

3. Form. The Chief of the State Police:

A. Shall prepare and supply forms and approve the format for electronic submission for reports that require sufficiently detailed information to disclose the cause, conditions, persons and vehicles involved, including information to permit the Secretary of State to determine whether the requirement for proof of financial responsibility is inapplicable;

B. Shall receive, tabulate and analyze accident reports

B-1. Shall send all accident reports to the Secretary of State;

C. May publish statistical information on the number, cause and location of accidents

4. Investigation. A law enforcement officer who investigates a reportable accident shall:

A. Interview participants and witnesses; and

B. Within 5 days from the time of notification of the accident, transmit an electronic report or the original written report containing all available information to the Chief of the State Police.

Every reported accident must be promptly investigated.

If the accident results in serious bodily injury or death of any person, the investigation must be conducted by an officer who has met the training standards of a full-time law enforcement officer. A law enforcement officer who investigates an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person shall request a certified accident reconstructionist and the Bureau of State Police Commercial Vehicle Enforcement Unit to assist in the investigation of the accident. The Attorney General shall designate an assistant attorney general familiar with federal commercial vehicle laws and regulations to serve as a resource to any district attorney

who initiates a prosecution arising from an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person.

5. Forty-eight-hour report.

6. Financial responsibility information. The owner or operator of a vehicle involved in an accident shall furnish additional relevant information as the Secretary of State requires to determine the applicability of the requirement of proof of financial responsibility.

The Secretary of State may rely on the accuracy of the information until there is reason to believe that the information is erroneous.

7. Report information. An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408-A.

7-A. Accident report database; public dissemination of accident report data. Data contained in an accident report database maintained, administered or contributed to by the Department of Public Safety,

Bureau of State Police must be treated as follows.

A. For purposes of this subsection, the following terms have the following meanings.

(1) "Data" means information existing in an electronic medium and contained in an accident report database.

(2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.

(3) "Personally identifying accident report data" means:

(a) An individual's name, residential and post office box mailing address, social security number, date of birth and driver's license number;

(b) A vehicle registration plate number;

(c) An insurance policy number;

(d) Information contained in any free text data field of an accident report; and

(e) Any other information contained in a data field of an accident report that may be used to identify a person.

B. Except as provided in paragraph B-1 and Title 16, section 805, subsection 6, the Department of Public Safety, Bureau of State Police may not publicly disseminate personally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13.

B-1. The Department of Public Safety, Bureau of State Police may disseminate a vehicle registration plate number contained in an accident report database maintained, administered or contributed to by the Bureau of State Police to a person only if that person provides the Bureau of State Police an affidavit stating that the person will not:

(1) Use a vehicle registration plate number to identify or contact a person; or

(2) Disseminate a vehicle registration plate number to another person.

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section 408-A.

8. Violation. A person commits a Class E crime if that person:

A. Is required to make an oral or written report and knowingly fails to do so within the time required;

B. Is an operator involved in a reportable accident and knowingly fails to give a correct name and address when requested by an officer at the scene;

C. Is the operator involved in a reportable accident or the owner of a vehicle involved in a reportable accident and knowingly fails to produce the vehicle or, if the vehicle is operational, return it to the scene when requested by the investigating officer; or

D. Obtains a vehicle registration plate number pursuant to subsection 7-A, paragraph B-1 and knowingly uses that vehicle registration plate number to identify or contact a person or knowingly disseminates that vehicle registration plate number to another person.

9. Prima facie evidence. The absence of notice to a law enforcement agency with jurisdiction where the accident occurred is prima facie evidence of failure to report an accident.

10. Suspension. The Secretary of State may suspend or revoke the motor vehicle driver's license and certificate of registration of a person who is required to make a report and fails to do so or who fails to provide the information required by the Secretary of State.

11. Exemption. The operator of a snowmobile or an all-terrain vehicle as defined by Title 12, section

13001, unless the all-terrain vehicle is registered for highway use by the Secretary of State under this Title, is exempt from the reporting requirements of subsection 2.

12. Vulnerable users. A law enforcement officer who investigates a reportable accident involving a vulnerable user or an incident resulting in bodily injury or death to a vulnerable user and who has probable cause to believe that a traffic infraction, civil violation or criminal violation is connected to that accident or incident shall inform a district attorney of relevant jurisdiction about the investigation within 5 days of initiating the investigation. The law enforcement officer shall submit a final accident report to that district attorney including any evidence relevant to the potential prosecution of an alleged criminal violation or civil violation resulting from the investigation as soon as is practicable and no later than 60 days after the accident or incident. A law enforcement officer may submit any additional evidence as soon as it becomes available after the submission of the final accident report. Nothing in this subsection precludes evidence submitted later than 60 days after the accident or incident from being used in the prosecution of a criminal violation or civil violation. Failure of a law enforcement officer to inform a district attorney in accordance with this subsection does not affect any authority of a district attorney to take any action or preclude a private citizen from notifying a district attorney about an accident or incident.

STATEMENT OF FACTS

On February 3, 2023, United States District Court Judge George Z. Singal sentenced Yolanda Howard to 24 months of imprisonment and 24 months of supervised release for her conviction of possession with intent to distribute in violation 21 U.S.C. § 841. During the trial phase, Ms. Howard filed a motion to suppress that was denied by the District Court. Ms. Howard entered a plea of guilty to the charges and reserved her right to appeal the decision on the motion to suppress. The United States Court of Appeals affirmed. Ms. Howard now seeks review in this Court.

The facts are from the decision of the United States Court of Appeals for the First Circuit reported at *United States v. Yolanda Howard*, 66 F.4th 33 (1st Cir. 2023). At approximately 7:01 a.m. on February 28, 2019, Maine State Police Trooper Lee Vanadestine ("Trooper Vanadestine") was working a patrol shift on the Maine Turnpike. While traveling northbound, he observed that a vehicle -- approximately 100 feet off the right side of the road -- had crashed into a snowbank and that four people were standing around it. The crash site was miles away from the nearest exit or service plaza. Trooper Vanadestine activated his emergency lights and pulled over to assess the scene and check whether anyone was hurt. Around this same time, he radioed dispatch about the crash and requested a tow truck. As he exited his vehicle, three individuals approached him, however, the fourth -- later identified as Howard -- walked through the snow in the opposite direction.

After speaking with the three individuals that approached him, Trooper Vanadestine learned that one was a witness, who observed the vehicle go off the road, and that the other two (a male and a female), along with Howard, were occupants of the crashed vehicle. Trooper

Vanadestine determined that the female, Jacqueline Paulson ("Paulson"), was the driver of the crashed vehicle and that the male, Beau Cornish ("Cornish"), was a passenger. Based on his initial conversation with Paulson and Cornish, Trooper Vanadestine believed that their stories about where they were coming from and heading to were not lining up and observed that they were acting like they did not know one another. While Trooper Vanadestine spoke with Paulson and Cornish, Howard avoided the group, remaining approximately fifty feet away from Trooper Vanadestine. She also never attempted to speak with him. Around 7:05 a.m., Howard, who was talking on her phone, walked into the roadway at least twice in what Trooper Vanadestine believed was an attempt to read the road signs. He instructed her to stay out of the roadway for her own safety.

At approximately 7:06 a.m., Trooper Anthony Keim ("Trooper Keim") arrived on scene to assist Trooper Vanadestine. The two troopers questioned and checked the identifications of the vehicle's occupants, as well as Paulson's registration and insurance information. Cornish told Trooper Vanadestine during their initial conversation that his name was Levi Veno but provided no identification. Around 7:07 a.m., the troopers spoke with Paulson, who produced a Maine driver's license but was unable to provide registration or insurance information for the vehicle. Paulson told the troopers that the group was on a trip, that she knew the passengers, that the female was her friend, and that the male's name was Levi. At around 7:08 a.m., Trooper Keim spoke with Howard, who produced a New York identification card and told him that the group was traveling from New York. She identified the driver of the vehicle as Casey and could not provide information about the male passenger other than telling Trooper Keim that he was the driver's boyfriend.

While Trooper Keim spoke with Howard, Trooper Vanadestine contacted Maine State Police Sergeant Thomas Pappas ("Sergeant Pappas") to inform him that he suspected the vehicle or its occupants carried drugs. During the call, Trooper Vanadestine explained that the occupants appeared to not know one another, where they were going, or where they were coming from. Trooper Keim approached Trooper Vanadestine while he was on the phone and expressed the same concern about the occupants not knowing one another. Trooper Vanadestine explained to Sergeant Pappas that the occupants claimed that they went to New York to pick up Howard, who had walked away in the snow when Trooper Vanadestine arrived and would not go near him. After the call concluded, at approximately 7:11 a.m., Trooper Keim ran the name Levi Veno and came back with a photograph and description that did not match the male passenger. Around 7:13 a.m., Trooper Keim confronted the male passenger, obtained his true name -- Beau Cornish -- and learned that Cornish potentially had warrants out for his arrest. At 7:14 a.m., Trooper Keim arrested Cornish, placed him in the front seat of his cruiser, and, at 7:20 a.m., confirmed that Cornish had outstanding warrants. During this same period of time, Trooper Vanadestine observed Howard and Paulson standing together, talking, and trading cell phones back and forth.

Around 7:23 a.m., Trooper Vanadestine allowed Paulson to sit in his cruiser to get warm while he interviewed her because it was eight degrees outside. Before Paulson entered his cruiser, Trooper Vanadestine patted down her outer clothing to ensure that she did not have weapons. By this time, the troopers were aware that Howard had no warrants out for her arrest. Shortly thereafter, at 7:30 a.m., Trooper George Loder ("Trooper Loder") arrived at the scene. Because it was cold and Trooper Keim and Trooper Vanadestine's cruisers were occupied by Cornish and Paulson respectively, Trooper Keim asked Trooper Loder if Howard could sit in his

cruiser to get warm. Trooper Loder agreed.

Unlike traditional police vehicles where the backseat is separated from the front seat by a cage or glass partition, the cruisers involved here are undivided. Per Maine State Police policy, troopers transport individuals in the front passenger seat of their cruisers. Anyone entering the front passenger seat area is patted down beforehand for officer safety, and individuals seated there may exit the cruiser through the front passenger side door, which has a functional interior handle.

At 7:33 a.m., as Trooper Loder cleared out his front seat, Trooper Keim beckoned over Howard, who was on the phone, to sit in the cruiser. At no point did the troopers tell Howard that she had to get into the cruiser or that she was not free to leave. Trooper Keim testified that Howard appeared eager to get out of the cold. Before allowing her to sit, Trooper Keim asked whether he needed to be concerned about anything in the cloth, open-top bag that she was carrying and asked that she hand it to him. She handed over the bag, and he placed it in the back seat of Trooper Loder's car. Then, Trooper Loder conducted a limited pat down of her jacket pockets for safety purposes. By 7:34 a.m., Howard was seated in the front passenger seat of Trooper Loder's cruiser.

Around the same time that Howard entered the cruiser, Sergeant Pappas arrived and requested that Howard exit the vehicle so that a female trooper could conduct a full pat down. According to Pappas, a full pat down is required before a person enters a cruiser, even if they are not suspected of committing a crime, to ensure officer safety. Howard complied. Around the time that Howard exited the cruiser -- at approximately 7:35 a.m. -- the tow truck that Trooper Vanadestine requested finally arrived.

By 7:38 a.m., Trooper Jodell Wilkinson ("Trooper Wilkinson"), a female K9 officer, had arrived on scene and conducted the more thorough pat down of Howard's outer clothing. At approximately the same time, Sergeant Pappas informed Trooper Loder that Howard's bag should not be searched without her consent. At 7:39 a.m., after Howard was patted down, Sergeant Pappas asked her if the items in the back seat of Trooper Loder's cruiser belonged to her and if troopers could go through the items quickly. Before she could reply, he asked, "Mind if we search those items?" Howard responded, "huh?" and Sergeant Pappas again asked, "Do you mind? Can we search the items?" Howard then responded affirmatively. The district court found that Trooper Loder and Sergeant Pappas testified credibly that Howard said "yes" in response to Sergeant Pappas's question and both understood that she had consented to a search of her bag.

Before the search began, Sergeant Pappas told Howard, who was standing unrestrained near Trooper Loder's cruiser, that she could sit inside. Howard got back into the front passenger seat at 7:39 a.m. Once inside, she sat facing the rear seat and talked with Trooper Loder as he searched her bag. At 7:40 a.m., Howard told Trooper Loder that she had someone who was willing to come pick her up and he responded, "We'll talk about that if we get to that point." Around 7:44 a.m., Trooper Loder found what he believed to be bundles of narcotics inside Howard's bag. He alerted Sergeant Pappas, asked Howard to step out of the cruiser, placed her under arrest and in handcuffs, and then returned her to the cruiser.

ARGUMENT

I. The First Circuit failed to recognize Maine law requires accidents like the one in this case to be investigated by the State Police and incorrectly applied the developing suspicion the analysis applied to so called Terry

stops.

The First Circuit Panel applied the incorrect legal analysis when it concluded that the stop here was not a seizure for Fourth Amendment purposes. This change in analysis was explicit in the opinion below:

> Howard assumes, without discussion, that a valid Fourth Amendment traffic stop occurred when troopers arrived on scene to investigate the accident and therefore asserts that the relevant inquiry here is whether troopers were justified in prolonging the traffic stop and expanding its mission to investigate drug trafficking per Rodriguez v. United States, 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). The district court used this analytical framework in deciding the motion to suppress, citing to Rodriguez and United States v. Orth, 873 F.3d 349 (1st Cir. 2017), both of which involved traffic stops. The government contends -- for the first time on appeal -- that Howard was not seized within the meaning of the Fourth Amendment when troopers responded to the crash because they did not conduct a traffic stop, and, in any event, the troopers were engaged in community caretaking. Howard left the government's argument uncontradicted when she failed to file a reply brief. Noting that "[w]e are not committed to the district court's reasoning" in affirming the motion to suppress, see United States v. Cabrera-Polo, 376 F.3d 29, 31 (1st Cir. 2004), we conclude based on the facts before us that the encounter was not a traffic stop.

Howard, at 41. The argument in this case had always accounted for the reality of Maine law. Specifically, in Maine accidents involving vehicle damage require the operator to remain at the scene of the accident. 29-A M.R.S. § 2251(4) provides in relevant part, "[e]very reported accident must be promptly investigated." (West 2023). Failure to report an accident is a crime under Maine law. Everything about this accident made it reportable: the vehicle was far off the highway up against a fence that separated private property in a field that was miles from the nearest highway exit. While the First Circuit Panel was not willing to conclude it was a vehicle seizure, the District Court clearly decided it was a seizure and Mr. Howard's reliance on the conclusion is justified.

The First Circuit Panel explained its decision in a way that ignored the reality of Maine Law with respect to the accident investigations. In the First Circuit Panel's view this was just a care taking function of a trooper who happened to come across an accident:

> For a traffic stop to have taken place, Trooper Vanadestine would have had to seize the vehicle (pull it over) for a traffic infraction, but the record is clear that that did not take

> place here. Cf. United States v. Harrington, 56 F.4th 195, 200 (1st Cir. 2022) (evaluating an investigatory police encounter with occupants of a vehicle as a Terry stop, as opposed to a traffic stop, where the automobile was already stopped and parked before police approached); Espinoza, 490 F.3d at 48-49 (using Terry framework to evaluate whether agent approaching a vehicle amounted to a seizure where the agent "played no part in bringing the van to a halt"). Rather, while traveling the Maine Turnpike at the end of his shift, Trooper Vanadestine came upon a recently crashed vehicle, surmised that the occupants needed help, and pulled over to assist. Because no traffic stop occurred here, we need not employ the Rodriguez framework utilized by the district court.

Id. This switch in analysis has two problem on these facts: Tile 29-A M.R.S. § 2251 requires the reporting and investigations of accidents involving $1000.00 or more of damage, and the vehicle in this case was inoperable on the side of the highway and had to be removed by a tow truck. Under Maine law it is not accurate to say this was just a straight caretaking effort by Trooper Vanadestine. Moreover, Maine law makes it a crime to leave the scene of accident under 29-A M.R.S. § 2251(8) which would have required the occupant to remain at the scene. If not for this Maine statute, none of the participants would have had any obligation to speak with the police at all. Even the Panel recognized this lack of obligation to speak with the police in its caretaking function in its analysis even if Trooper Vanadestine used it to justify his suspicion.

The First Circuit Panel was conscious of the effect of switching the analysis. Again, the Panel was explicit within its opinion:

> Turning back to the case before us, we conclude that, under the totality of the circumstances, the troopers' arrival on scene and initial accident response, which included speaking with the occupants about the crash and running identification checks, did not constitute a Terry stop. It is worth noting at the outset that Howard's presence on the highway "was restricted by a factor independent of police conduct" given that she was a passenger in a crashed vehicle. See Florida v. Bostick, 501 U.S. 429, 436, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991); United States v. Smith, 423 F.3d 25, 30 (1st Cir. 2005) ("[M]ere physical limitations on an individual's movement, not created by police, are insufficient to turn an encounter with police into a restraint of liberty.") The troopers did not put Howard on the highway or tell her that she could not leave. Thus, her presence on the highway was not on its own a seizure.

Id., at 42 the Panel's wholesale acceptance of the Government's suggestion results and inquiry

that should not have been applied. The Panel should have directly analyzed why Trooper Vanadestine was asking for troopers when there were already two at the scene for what was otherwise a common occurrence on a highway in Maine after a snow storm. While Ms. Howard disagrees with the ultimate conclusion of reasonable articulable suspicion under the totality of the circumstances, there really is no doubt this was a traditional traffic stop.

II. The First Circuit's holding conflicts with this Court's decision that limits the time an officer can prolong a traffic stop to develop probable cause articulated in *Rodriguez v. United States*, 575 U.S. 348 (2015).

The Fourth Amendment protects people from unreasonable searches and seizures during a traffic stop. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." *U.S. Constitution Amend. IV* (West 2022). The United States Supreme Court has for some decades now interpreted such investigatory detentions be based on at least reasonable articulable suspicion to justify the intrusion. See *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). In this case, the District Court's determination that reasonable articulable suspicion existed at the time the investigative detention was prolonged was a combination of legal and factual error.

The key element is a reasonable articulable suspicion of wrongdoing. The Supreme Court has turned the inquiry into a question of whether there is a reasonable suspicion that one was engaged in wrongdoing when they were encountered. Such wrongdoing requires more than a hunch:

> Our decision, then, turns on whether the agents had a reasonable suspicion that respondent was engaged in wrongdoing when they encountered him on the sidewalk. In *Terry v. Ohio*, 392 U.S. 1, 30 (1968), we held that the police can stop and briefly detain a person for investigative purposes if the officer has a

> reasonable suspicion supported by articulable facts that criminal activity "may be afoot," even if the officer lacks probable cause. The officer, of course, must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch.' " Id., at 27. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means "a fair probability that contraband or evidence of a crime will be found," *Illinois v. Gates*, 462 U.S. 213, 238 (1983), and the level of suspicion required for a Terry stop is obviously less demanding than that for probable cause, see *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).

U.S. v. Sokolow, 490 U.S. 1, 7 (1989). Trooper Vanadestine had nothing more than a hunch that criminal activity was afoot. Trooper Vanadastine's cruiser recorded what he told Sargent Papas, "hey, these guys are running drugs there is no doubt about it, I bet there is a considerable amount of drugs in this car, these people themselves or this car has a considerable amount of drugs I am 100 percent certain barely any of them know each other, the car is a 100 feet off the road, and um Tony is gonna handle the crash, but nobody knows nobody, outta the three none of them know each other, where they are going, where they are coming from, so I got one saying they have been to New York to pick up the black girl I got here on the side of the road, and the black girl won't come next to me, she is out walking around in the snow, if they haven't already dumped it in the snow..." Instead of taking Trooper Vanadstine's version of why the stop was being prolonged, the District Court focused on the drivers civil traffic infractions and the inconsistent stories of the people involved in the crash.

The reasonableness of investigative searches required the District Court to identify the reason for the encounter with law enforcement and justify any expansion from the original mission. The Supreme Court has specifically delineated the reason for the encounter as the mission in a traffic stop:

> Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." *Caballes,* 543 U.S., at 408, 125

> S.Ct. 834. Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. See *Delaware v. Prouse,* 440 U.S. 648, 658–660, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). See also 4 W. LaFave, Search and Seizure § 9.3(c), pp. 507–517 (5th ed. 2012). These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. See *Prouse,* 440 U.S., at 658–659, 99 S.Ct. 1391; LaFave, Search and Seizure § 9.3(c), at 516 (A "warrant check makes it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.").

Rodriguez v. United States, 575 U.S. 348, 355 (2015). In Ms. Howard's case, the mission for the stop was an accident investigation that was completed in the first few minutes of Trooper Vanadestine's presence at the scene. Trooper Vanadestine shifted his focus almost immediately to the possibility that drugs were being transported. In his reports, he described the operator as a drug addicted person and later changed that to his experience as police officer told him that drugs were involved in some way, which he characterized in his testimony as something he just knew based on his experience.

The District Court's focus was a substitution of deference to the police officer instead of an application of the totality of the circumstances through the lens of the objective standard of reasonable police officer's view. Adopting the subjective views of the law enforcement officers is abrogation of the District Court's discretion:

> The government also asserts that the district court erred in its "readiness to substitute its own judgment for that of two [experienced] police officers." Again, the district court articulated the correct legal standard, stating that it considered the totality of the circumstances "through the lens of a reasonable police officer." To the extent the government argues the district court needed to defer to these specific police officers' view of the situation, and cast aside its individual judgment about what an objective officer's view would be, that is not the law.

United States v. Dapolito, 713 F.3d 141, 149-50 (2013). While it is true that Trooper Vanadstine had some objective criteria like the traffic infractions, the occupants lack of familiarity with each other, their respective travel plans, and the consistency of their explanation, these problems are a long way from justifying the Trooper's initial conclusion that drug crimes where occurring. Moreover, these objective criteria were not particularized to Ms. Howard. The District Court simply deferred to the Trooper Vanadstine's judgment noting that a measurable amount of deference is afforded to trained police officers in footnote 5 of the District Court opinion.

There was obvious reason to discount Trooper Vanadstine's judgment, but the District Court declined to consider the role of race in his judgment. While the reasonableness of the stop is not affected by the subjective intent of the law enforcement officers involved, those cases say nothing about the deference afforded the officer's judgment:

> We think these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved. We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.

Whren v. United States, 517 U.S. 806, 813 (1996). The District Court declined to consider Trooper Vanadstine's reference to Ms. Howard's race as having any effect on the analysis because it considers the breadth of *When* to prohibit any consideration of race. This is at odds with the deference that should have been afforded to Trooper Vanadstine's judgment, because no objective standard viewed through the lens of a reasonable police officer could have included a prohibited factor such as race. The District Court should have concluded the only remaining

factor was Ms. Howard's lack of familiarity with her travel companions and that single factor did not justify a delay in detention.

Because there was no reasonable articulable suspicion justifying an expansion of the mission, the drug investigation was unreasonable. The First Circuit has adopted standards that limit the scope of an investigation at a traffic stop:

> (1) a police officer must have a reasonable, articulable suspicion of an individual's involvement in some criminal activity in order to make the initial stop, see Terry, 392 at 21; United States v. Ruidíaz, 529 F.3d 25, 28 (1st Cir. 2008); United States v. Chhien, 266 F.3d 1, 6 (1st Cir. 2001); and (2) any action undertaken with respect to the stop "must be reasonably related in scope to the stop itself 'unless the police have a basis for expanding their investigation,'" Ruidíaz, 529 F.3d at 28-29 (quoting United States v. Henderson, 463 F.3d 27, 45 (1st Cir. 2006)).

United States v. Dion, 859 F.3d 114, 124 (1st Cir. 2017). Within a few minutes,Trooper Vanadestine made a radio call requesting that Sergeant Pappas call him on his cell phone that would not be recorded by State Police Dispatch. Trooper Vanadestine and Trooper Keim characterized the people in the car as telling confused stories about their trip and how they knew each other but these characterizations are not validated by the recordings made by their body microphones and cruiser recording equipment. Trooper Vanadestine also referred to Ms. Howard's race more than once during this telephone call. When Sergeant Pappas arrived on scene, he did not regard this information as sufficient to justify searching Ms. Howard's bag and order Trooper Loder to search the bag after getting Ms. Howard's consent.

Observations like the kind observed by Trooper Vanadestine do not justify that additional intrusion. While this Court has never specifically addressed the difference between articulable suspicion and probable cause for detentions, the Court has rejected similar facts scenarios:

> Turning to the facts of Sibron's case, it is clear that the heroin was inadmissible in evidence against him. The prosecution has quite properly abandoned the notion that

> there was probable cause to arrest Sibron for any crime at the time Patrolman Martin accosted him in the restaurant, took him outside and searched him. The officer was not acquainted with Sibron and had no information concerning him. He merely saw Sibron talking to a number of known narcotics addicts over a period of eight hours. It must be emphasized that Patrolman Martin was completely ignorant regarding the content of these conversations, and that he saw nothing pass between Sibron and the addicts. So far as he knew, they might indeed 'have been talking about the World Series.' The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security. Nothing resembling probable cause existed until after the search had turned up the envelopes of heroin.

Sibron v. New York, 392 U.S. 40, 62-63 (1968). *Sibron* was decided the same day as *Terry* suggesting they should be read in conjunction with each other. If nothing justified the detention in *Sibron* that similar facts should not meet suspicion required by *Terry*. There seems little difference between an officer who approaches a man in a restaurant, takes him outside, and searches him with a Maine State Trooper approaching a woman on the side of the road and conditioning her ability to wait in the warmth of a police cruiser on a cold winter day on consenting to multiple searches. The Maine State Troopers should have been limited by the duration of the time it took to conduct the accident investigation because the was no probable cause or reasonable articulable suspicion until more than 30 minutes into the stop.

III. The United States Supreme Court should grant the Petition for a Writ of Certiorari to resolve the confusion amongst the Circuits as to the level of proof to extend a traffic stop.

The Court should take this opportunity to clarify the difference between Probable cause and reasonable articulable suspicion. *Terry* and *Sibron* do not provide sufficient guidance as to what facts are necessary for a finding of reasonable articulable suspicion sufficient to support extending the detention for a separate ancillary investigation of drugs. In this case, the

permissible factors do not amount to an indication of criminal activity.

The lack of clarity defining the reasonable articulable suspicion has led to a split amongst the Circuits of the United States Court of Appeals. The Fourth, Eighth and Tenth circuits have rules that conflict with the decision in this case. See *United States v. Williams*, 808 F.3d 238, (4th Cir. 2015) collecting cases about suspicious activity justifying prolonging a traffic stop into an investigative detention. In those cases, the travel plans of the suspects did not amount to reasonable articulable suspicion and are substantially similar to the reason articulated to Sergeant Papas by Trooper Vanadestine over the telephone.

CONCLUSION

The Supreme Court Should review the conclusion of the United States Court of Appealsfor the First Circuit and Grant this petition for writ of certiorari.

Dated at Portland, Maine this 17th day of July 2023.

Robert C. Andrews
Attorney for Yolanda Howard
Bar Number 88418
91 Auburn Street Suite J PMB 1155
Portland, ME 04103
(207) 879-9850