

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

**CARLOS GREEN,**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Fourth Circuit

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI**  
\_\_\_\_\_

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## **QUESTIONS PRESENTED**

- I. Whether the Trial Court Erred and Violated Petitioner's Fourth Amendment Rights in Summarily Denying Petitioner's Motion to Suppress Without an Evidentiary Hearing.
- II. Whether the Trial Court Erred and Violated Petitioner's Fourth Amendment Rights in Disregarding Privacy Interest When He was in the Process of Transferring His Leasehold Interest.
- III. Whether the Trial Court Erred and Violated Petitioner's Fourth Amendment Rights by Seizing Him Without Probable Cause and Driving Him to a Residence and Threatening to Arrest His Girlfriend if He Did Not Consent to a Search.

## LIST OF PARTIES

CARLOS GREEN, *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

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## **OPINION BELOW**

The order appealed from is the Judgment located at the CM/ECF Docket of the Fourth Circuit in United States v. Carlos Green, Case No. 22-4119, Docket Entry No. 58, entered on April 12, 2023. A copy of the unpublished per curiam opinion of the Fourth Circuit issued that date is attached.

## **JURISDICTIONAL STATEMENT**

This petition for writ of certiorari is from a final judgment by the Fourth Circuit Court of Appeals entered on April 12, 2023 on direct appeal of a conviction and sentence imposed against Petitioner Carlos Green in the United States District Court for the Eastern District of North Carolina E.D.N.C. No. 4:20-cr-0005-FL-1. Accordingly, this Court has jurisdiction over this petition for writ of certiorari and the matter referenced herein pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 2101.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

“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.” U.S. Const. amend. IV.

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

## STATEMENT OF THE CASE

### A. Procedural History.

After initially filing a Criminal Complaint in this case [JA20-23], on January 14, 2020 the Government filed a ten count Indictment against Mr. Green and one co-defendant, Jerrel Taylor. [JA24-30].<sup>1</sup>

Count One charged that Mr. Green and Jerrel Taylor conspired with each other and other persons in the Eastern District and elsewhere beginning on later than July 2019 and continuing to on or about December 10, 2019, to possess with the intent to distribute and distribute a mixture and substance containing a detectable amount of methamphetamine, a quantity of cocaine, and a quantity of cocaine base in violation of 21 U.S.C. § 841(a)(1). The Indictment alleged an amount attributable to Mr. Green of 500 grams or more of a mixture of substance containing a detectable amount of methamphetamine, two hundred-eight grams or more of cocaine base, and 500 grams or more of cocaine, in violation of 21 U.S.C. § 841(b)(1)(A).

Count Two charged that on or about July 17, 2019, in the Eastern District of North Carolina, Mr. Green knowingly and intentionally distributed a mixture of substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. § 841(a)(1).

Count Three charged that on or about July 24, 2019, in the Eastern District of North Carolina, Mr. Green knowingly and intentionally distributed a mixture of

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<sup>1</sup> The JA references in this Petition are to the Joint Appendix that was filed in the case below at the Fourth Circuit Court of Appeals.

substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. § 841(a)(1).

Count Five charged that on or about August 21, 2019, in the Eastern District of North Carolina, Mr. Green knowingly and intentionally possessed with the intent to distribute a quantity of cocaine and cocaine base, in violation of 21 U.S.C. § 841(a)(1).

Count Six charged that on or about August 21, 2019, in the Eastern District of North Carolina, Mr. Green knowingly possessed a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c).

Count Seven charged that on or about August 21, 2019, in the Eastern District of North Carolina, Mr. Green, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting commerce in violation of 18 U.S.C. § 922(g).

Count Eight charged that on or about December 10, 2019, in the Eastern District of North Carolina, Mr. Green knowingly and intentionally possessed with the intent to distribute a quantity of cocaine in violation of 21 U.S.C. § 841(a)(1).

Count Nine charged that on or about December 10, 2019, in the Eastern District of North Carolina, Mr. Green knowingly possessed a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c).

Count Ten charged that on or about December 10, 2019, in the Eastern District of North Carolina, Mr. Green, knowing he had previously been convicted of a crime

punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting commerce in violation of 18 U.S.C. § 922(g).

After a number of delays occasioned by changes in counsel and the effects of the COVID-19 pandemic, Mr. Green was arraigned on August 18, 2020. [JA31-59.] Prior to his arraignment, he filed a pro se motion to suppress. [JA59-87.]

Before and after his arraignment, Mr. Green filed motions for a new attorney. [JA88-97.] However, he withdrew his request for a new attorney in the pretrial conference the morning of the trial. [JA126.]

During the pretrial conference on September 9, 2020, the trial court denied Mr. Green's pro se motion to suppress without a formal evidentiary hearing. [JA114.] A jury was then selected, and the trial began later that day. [JA135-260.]

The trial continued through September 11, 2020, and resulted in a split jury verdict. Mr. Green was found guilty of Counts One, Two, Three, Five, Seven, and Eight. Mr. Green was found not guilty of Counts Six, Nine, and Ten. [JA728-730.]

A Presentence Investigation Report was filed, with a subsequent Revised Presentence Investigation Report being filed on February 14, 2022. [JA887.] On February 22, 2022, Mr. Green's sentencing hearing was conducted. [JA753-76.] He was sentenced to a total of 360 months on Counts 1 and 3, 240 months on Counts 2, 5, and 8, and 120 months on Count 7, all terms to be served concurrently. [JA777-785.]

On February 23, 2022, Mr. Green's trial counsel filed a notice of appeal on his behalf and moved to withdraw from further representation as Mr. Green's attorney of record. [JA786-787.]

The undersigned counsel represented Mr. Green on appeal in the Fourth Circuit Court of Appeals. Mr. Green raised three issues on appeal, arguing that the district court erred in denying his motion to suppress without an evidentiary hearing, that Counts One, Five, Seven, and Eight of his Indictment lacked sufficient evidence without evidence that was the fruit of the poisonous tree, and that his sentence was procedurally and substantively unreasonable.

On April 12, 2023, the Fourth Circuit Court of Appeals affirmed the decision below in an unpublished per curiam opinion. See Slip op. On May 5, 2023, Mr. Green filed a petition for rehearing and rehearing en banc, which was denied on its merits on May 31, 2023. This petition for certiorari follows.

**B. Statement of the Facts.**

Mr. Green's charges and convictions were primarily based upon four separate incidents, dated July 17, 2019, July 24, 2019, August 21, 2019, and December 10, 2019. [JA24-30.] Mr. Green's pro se motion to suppress primarily addressed the events of July 24, 2019, August 21, 2019 and their subsequent consequences. [JA59-87.] To best understand the sequence of events, this Statement of Facts will discuss the Government evidence presented at trial chronologically by these dates, rather than the order in which the evidence was presented at trial.

1. July 17, 2019 Controlled Buy.

Michael Horn testified that he was a special agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, based in Wilmington, North Carolina. [JA274.] He testified that he had been working with a confidential informant by the name of

Fred Perry in the Lenoir and Craven County area. [JA281.] Agent Horn testified that Fred Perry was paid up to \$200.00 per day to work as a confidential informant, for a total of \$13,500.00. [JA283.] Agent Horn testified that Fred Perry had called him about a sweepstakes business he was taking over from Carlos Green, stating that Mr. Green wanted to retrieve a firearm from the building. [JA285.] This was the beginning of his investigation of Mr. Green. [JA286.]

Mr. Horn testified he was aware of a controlled purchase conducted by the Kinston Police Department and the Craven County Sheriff's Office on July 17, 2019, but stated he did not take part in the controlled purchase. [JA286.]

Brandon Turner testified that he was a captain with the Kinston Police Department. [JA412.] Captain Turner testified that he had been using Fred Perry as an informant and that Mr. Perry, acting under his direction, had contacted him about Mr. Green as someone he could purchase methamphetamine from, and also possibly a firearm. [JA422.] Captain Turner testified he had met with Detective Hale and other members of the Craven County Sheriff's Office and Mr. Hale to plan a controlled purchase at a sweepstakes store located in Cove City on Old Highway 70. [JA417.]

On July 17, 2019, Captain Turner maintained surveillance of the building from the outside, while the confidential informant, Fred Perry, and Carlos Green went inside the building. [JA418-422.] Captain Turner and other law enforcement officers then met with Fred Perry, who passed over methamphetamine to them. [JA424.]

David Hale testified that he was an Investigator employed by the Craven County Sheriff's office. [JA541.] He testified he was assigned to be the case agent on July 17, 2019, in which Fred Perry, with the nickname of P., would be utilized as the confidential informant. [JA544.] Investigator Hale testified that he searched Mr. Perry and then gave him \$1700.00 in cash for potential purchases of two ounces of methamphetamine and a firearm. [JA545.] Mr. Perry then went to 10798 Old Highway 70 in Cove City, and Investigator Hale followed him to that location. [JA546.]

After Investigator Hale was informed by Captain Turner that the deal was done, he followed Mr. Perry back to the Craven County Sheriff's office, noting that Mr. Perry made no other stops before reaching the Sheriff's office, and then met with Mr. Perry there. Mr. Perry then provided Investigator Hale with a plastic bag which contained what he believed to be crystal methamphetamine and the remainder of the U.S. currency provided to Mr. Perry that he did not use. [JA549.] Investigator Hale then weighed it, photographed it, and placed it in an evidence bag and stored it in the evidence room of the Craven County Sheriff's office. [JA550.] Sometime in September of 2019 Investigator hale turned custody of the evidence over to ATF Special Agent Michael Horn. [JA552.]

Fredrick Maurice Perry testified that he had gone by the nickname "P" on the streets. [JA431-432.] Mr. Perry stated that in July of 2016, he was trying to get into the sweepstakes business on Old Highway 70 out in Cove City in Craven County.

[JA433.] Mr. Perry testified that Carlos Green was in the process of turning it over to him. [JA433-34.]

According to Mr. Perry, when he asked Mr. Green why he was giving up the sweepstakes business, Mr. Green pulled some methamphetamine out of his pocket and said: “because of this.” [JA435.] Mr. Green also told him that some additional packages of methamphetamine would be coming to the sweepstakes business. Mr. Perry also stated they talked about cocaine and purchasing guns. [JA440-441.]

After this conversation, Mr. Perry immediately contacted Mike Horn and subsequently attempted to make a controlled purchase with local law enforcement. [JA444.] Mr. Perry was provided with a recording device and money, and called Mr. Green to meet at the sweepstakes place. [JA446.] Mr. Perry stated that as of July 17, 2019 the transition of the sweepstakes business had been completed and he was the owner of it. [JA446-447.]<sup>2</sup> Mr. Perry testified that on July 17, 2019, he bought an ounce of methamphetamine from Mr. Green for \$450.00, and Mr. Green retrieved a firearm from the building. [JA447-448.]

After this transaction, Mr. Perry testified he met with Mr. Hale back at the sheriff’s office and gave Mr. Hale the methamphetamine. [JA449.]

2. July 24, 2019.

On the July 24, 2019 controlled purchase, Mr. Perry testified that he met Mr. Green again at the sweepstakes building. Mr. Perry said he and Mr. Green had discussed doing a deal, but Mr. Green had more than Mr. Perry ordered, and needed

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<sup>2</sup> This statement was in conflict with Mr. Green’s pro se motion to suppress. [JA66]



to leave and go get a scale to weigh out the actual amount Mr. Perry was purchasing. [JA452.] Mr. Perry also testified that Mr. Green also pulled out cocaine, but after discussing it with Mr. Perry, Mr. Green took the cocaine back and left, returning with the scales. [JA453.] At that point, Mr. Perry testified he purchased two ounces of methamphetamine at \$450.00 per ounce. [JA453.]

Mr. Perry was then played the beginning of the video and stated that at that time, the ATF agents were trying set up the camera system and lay down the rules for the buy he was going to do. [JA456.] Mr. Perry was played the rest of the video and asked to describe what was being said and done. [JA457-462.]

Antonio Brown testified that he was a special agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives since 2017. [JA471.] He stated that on July 24, 2019 he took part in a controlled purchase of narcotics using Fred Perry as a confidential informant. [JA472-473.] Agent Brown was responsible for the recording device in the sweepstakes itself, personally installing it on the premises. [JA474.] According to Agent Brown, Mr. Perry was not provided with a recording device for his person. [JA474.] Agent Brown stated he was watching what transpired on the hidden camera planted on the sweepstake premises. [JA475.] After the controlled purchase took place, the substance was field tested and his fellow AFT Agent Harris placed the evidence into an evidence bag, sealed it, and took it to the AFT office in Wilmington. [JA477.] Agent Brown then testified that he and Agent Horn sent it to the DEA lab to be tested. [JA479.]

Agent Horn testified that he participated in the controlled purchase on July 24, 2019 using Mr. Perry as a confidential informant. [JA288.] He stated he provided Mr. Perry \$1,000.00 to use in order to purchase two ounces of methamphetamine.

Agent Horn testified that he had reviewed the audio and video recording that he observed in real time on July 24, 2019. [JA295.] He testified that he observed Carlos Green coming to the sweepstake building and then began watching the video. [JA296.] The video was then played for jury, [JA296], and Mr. Horn was examined on the basis of the video, commenting on the clothing of Mr. Green and some of his words and phrases used in the video. [JA296-301.] After law enforcement watched Mr. Green leave the sweepstakes and travel out of the area, Agent Horn testified that Special Agents Antonio Brown and Matt Harris returned to the location to retrieve the items. [JA302.] Agent Horn then testified about two specific pictures that were taken from the video showing Mr. Green retrieving methamphetamine from his pocket and retrieving the U.S. currency from Fred Perry the Confidential Informant. [JA304-305.]

Agent Horn then testified, over the continued objection of Mr. Green's trial counsel, that Mr. Green's codefendant, Jerrel Taylor, was "involved with methamphetamine" and was getting shipments through the U.S. Postal Service of hundreds of pounds of methamphetamine shipped from California throughout the Eastern District of North Carolina. [JA313.]

3. August 21, 2019.

After the July 24, 2019 controlled purchase, Agent Horn testified that Fred Perry, the CI, gave him Mr. Green's phone number. This information was used to get a state pen number in order to track Mr. Green's cellular device. [JA315-316.]

As a result, on August 21, 2019, Agent Horn established surveillance of a location Mr. Green's cell phone was traced to at 1996 Mill Road in the area of Chocowinity, N.C. [JA316-317.] Mr. Green was observed coming and going, and at some point he left the residence in a white Nissan rental car. [JA317-318.]

First Sergeant Joshua Shiflett from the Beaufort Sheriff's Office testified that he was serving as a canine handler on August 21, 2019 with a Belgian Malinois named Bodi, who was trained in the detection of four specific controlled substances: cocaine, marijuana, methamphetamine, and heroin. First Sergeant Shiflett and Bodi had been together for three years. [JA164-166.]

First Sergeant Shiflett testified that his lieutenant "received information from ATF Agent Mike Horn about a suspect" that "caused him to take certain action." [JA168-169.] Specifically he was radioed information about witnessing Mr. Green coming and going from 1996 Mill Road to a white-in-color Nissan Versa that was parked in the yard in the driveway area." [JA171.] The surveillance team then radioed that they witnessed a black-in-color Acura vehicle drive to the residence, and Mr. Green interacting the driver at that vehicle. [JA171.] Mr. Green left this residence in the white Nissan Versa and First Sergeant Shiflett stopped Mr. Green about two to three miles away from his home. [JA172.] First Sergeant Shiflett

clarified on cross-examination that the reason for the stop was that Mr. Green was the target of a drug investigation, and that he had personally not ever met or seen Mr. Green previously. [JA203.]

First Sergeant Shiflett testified that Mr. Green did not have his driver's license on his person. He also testified that Mr. Green had an odor of marijuana emanating from his person. First Seargeant Shiflett stated that because Mr. Green was a target of a drug investigation, he ordered Mr. Green to exit the vehicle and obtained Mr. Green's consent to search his person. [JA173. Mr. Green was searched, but Mr. Shiflett did not locate any weapons or contraband on Mr. Green. [JA173-174.]

First Sergeant Shiflett asked Mr. Green what his current residence was and Mr. Green gave an address that was not 1996 Mill Road, but a separate address in another county. [JA174.] After that, another fellow officer arrived on the scene and First Sergeant Shiflett conducted a canine search around the vehicle. In that search, Bodi alerted for drugs. [JA175.] A search of the car was conducted, but no controlled substances were found in the vehicle. [JA176.] A money counter, however was found in the back seat. [JA177-78.]

Mr. Green was not arrested or read his Miranda rights at this point but was taken by First Sergeant Shiflett and driven to 1996 Mill Road. [JA179.]

According to Agent Horn, Mr. Green "was brought back to the residence" and "was detained for our narcotics investigation." Agent Horn sat down with Mr. Green and read him his Miranda rights. [JA318.] Agent Horn testified that after the interview in the vehicle, Mr. Green gave consent to search the residence and

persuaded Ms. Kanisha Taylor, to also give her consent. [JA326-328.] Agent Horn then testified about the details of the search and pictures of what was recovered. [JA329-340.]

Mr. Green then told Agent Horn about approximately five ounces of cocaine within the residence. [JA318.] He also told Agent Horn that he had a firearm, some dope, and approximately \$4,400.00 in currency within the house. Mr. Green also advised Mr. Horn that he had provided addresses to Strolley to have packages shipped to. [JA319.] Excerpts of the recording of this interview were then played for the jury. [JA320-325.]

During the search, First Sergeant Shiflett participated in the search of 1996 Mill Road and observed Mr. Green speaking with Special Agent Mike Horn and. [JA180.] First Sergeant Shiflett stated that Mr. Green was cooperating in the search and pointing out specific items in the kitchen and bedroom. [JA180-183, JA217]. First Sergeant Shiflett testified that powder cocaine, crack cocaine, baking soda, a digital scale, \$1900.00 of currency, a firearm, and other items were taken. Five members of the Beaufort County Sheriff's Office drug unit, two agents with the Craven County Sheriff's Office, and two special agents with the ATF were present at the 1996 Mill Road location on August 21, 2019 during the search. [JA213.] Mr. Green's girlfriend, Kamisha Taylor, was also present. [JA212.]

According to Agent Horn, after the search of the residence on August 21, 2019, Mr. Green agreed to speak with Agent Horn further about who he was sourcing drugs from. [JA340-342.] According to Agent Horn, Mr. Green then stated that he was

being fronted approximately nine ounces of powder cocaine by Alterick Boyd worth \$9,000 and this happened three times. Mr. Green also stated he would convert approximately four ounces to crack cocaine. [JA342-344.] Mr. Green also provided a good phone number for Alterick Boyd. [JA344.]

According to Agent Horn, Mr. Green also provided information about Jerrell Taylor and Jock Bowden, and Mr. Green stated that he had sent money on Mr. Taylor's behalf via Western Union via his girlfriend, Ms. Taylor. [JA345-347.]

Next, according to Agent Horn, Mr. Green spoke of "P," the street name of Mr. Perry, the CI that the government using against him, in a way that was consistent with what he knew. [JA347.]

Finally, Agent Horn testified that Mr. Green had spoken about facilitating transactions between Jerrell Taylor and Eric Best, [JA348-349], and selling approximately nine ounces of cocaine to Justin Oxner. [JA349.]

After this, portions of the recording of the interview were played for the jury, and Agent Horn was asked about several details of the interview and pictures of the individuals that Mr. Green had identified. [JA351-357.] Agent Horn then testified that Mr. Green had given him consent to search his phones, and provided the pass codes for them. According to Agent Horn, he found details thin the phones consistent with money transfers or wire transfers, addresses and names that were given to Mr. Taylor, and conversations between Mr. Taylor and Mr. Green. [JA357-363.]

4. December 10, 2019.

With respect to December 10, 2019, Agent Horn testified that he and other law enforcement officers were attempting to serve the warrant for arrest for Mr. Green for the previous incidents. [JA366.] Mr. Green was found at the residence of a Ms. Jackson at 1804 Durham Street, who gave law enforcement officers verbal and written consent to search her residence. [JA371.] At this residence, a blue bookbag sitting on the stove within the kitchen was found with a large amount of marijuana and approximately three to four ounces of powder cocaine. [JA379.] In addition, a Ruger pistol was found in between the mattress in the far left bedroom of the residence with 15 rounds of ammunition within its magazine. [JA383-384.]

Christopher Drake testified that he was a Sergeant with the Craven County Sheriff's Office. [JA486.] On December 10, 2019, he knocked on the front door of a residence at Durham Street. When there was no answer to his initial door, he knocked again and called out for Mr. Green to come to the door. [JA489-91.] At that time, Mr. Green came out dressed and the officers present removed him from the residence. They also searched his pockets and found what Sergeant Drake believed to crack cocaine, as well as a cell phone and \$100.00. [JA492.] Sergeant Drake did not take part in the ensuing search of the residence. [JA496.]

5. Mr. Green's *Pro Se* Motion to Suppress.

In his pro se motion to suppress, Mr. Green asked the district court to suppress "any and all alleged statements or confessions and evidence obtained illegally" and in violation of the 4th, 5th, 6th, and 14th Amendments on July 24, 2019, August 21,

2019, and December 10, 2019, including evidence that was fruit of a poisonous tree. [JA59-61.]

With respect to July 24th, 2019, Mr. Green wrote that as of that date, he was the tenant of the building at 10798 Old HWY 70 in Cove City, NC. [JA66.] He maintained that he maintained his office in the kitchen area of the building. [JA66.] At that point in time, the CI was a potential purchaser of the sweepstakes that had been given access to the building only in order for him to view the place. [JA66.] The CI allowed law enforcement to enter and search the building and install surveillance in the building without Mr. Green's permission, in violation of Mr. Green's Fourth Amendment rights. [JA66-67.] Because he was the lessor of the building with the water and lights in his name, Mr. Green alleged that he had the protection of privacy and for nothing to be added or taken away with the absence of his consent or permission. [JA67-68.]

With respect to the events of August 21, 2019, Mr. Green alleged that when he was pulled over at a Shell gas station in Chocowinity, North Carolina, he and his vehicle were repeatedly searched, and about 20 to 30 minutes of this searching, Officer Shifflett approached and put him in handcuffs, saying he was going to transport him back to his residence. [JA69-70.] Mr. Green was placed in the front passenger seat of his own vehicle in handcuffs, and an officer got into the front driver seat and drove Mr. Green to 1996 Mill Road, Chocowinity, North Carolina. [JA71.] Mr. Green wrote that he protested being handcuffed without his consent and driving him somewhere against his will, stating it was illegal. [JA71.]



Upon arriving at 1996 Mill Road, Mr. Green saw his fiancée on the front porch in handcuffs, eight or twelve officers, most in plain cloths, and a few sheriff's deputy, all of whom were armed. [JA71.] Agent Horn then came up and introduced himself. Mr. Green did not want to talk with him until Agent Horn assured him he would let Mr. Green's fiancée go. [JA72.] According to Mr. Green, Agent Horn told him he only would let her go if he didn't need to get a search warrant. [JA72.] Mr. Green alleged that the consents and confessions made on August 21, 2019 were involuntary due to coercion and duress. [JA72.]

With respect to the December 10, 2019 charges, Mr. Green acknowledged that he made a statement that everything in the blue bag found in the kitchen was his, but that he was being charged with a firearm that he had no knowledge of. [JA73.] Further, he did not give consent to search the blue bag.

The district court did not schedule a separate evidentiary hearing, but denied the motion to suppress the morning that the trial started after giving Mr. Green and the Government a chance to talk about it. [JA99-114.] Without any further details or explanation, the trial judge stated: "based upon the [Government's] proffer, and the Court's understanding of the law, I'm compelled to deny your motion." [JA114.]

On appeal, the Fourth Circuit Court of Appeals held that there was no basis to conclude that the district court abused its discretion in failing to hold an evidentiary hearing on Green's pre-trial motion to suppress, citing United States v. Cintron, 724 F.3d 32, 36 (1st Cir. 2013). Slip op. at 3. Despite Green's assertion of material fact to the contrary in his previous filings, the Fourth Circuit summarily held that "[t]he

record shows that Green lacked any basis to challenge the officers' entry into his former business because the new owner, who was also the confidential informant, had authorized the officers' entry into that business." Slip op. at 3 (citing United States v. Gray, 491 F.3d 138, 145-47 (4th Cir. 2007)).

With respect to the August 21, 2019 search of the residence, the Fourth Circuit stated that the "record shows that Green offered incriminating information to the officers free from duress or coercion, and that he voluntarily consented to the search of the residence." Id. at 4(citing United States v. Azua-Rinconada, 914 F.3d 319, 324 (4th Cir. 2019) (question whether consent is voluntary, and not a product of duress or coercion, must be answered in view of all the circumstances)).

Finally, reviewing the evidence in the light most favorable to the government, the Fourth Circuit concluded that it found no error in the court's summary denial of Mr. Green's motion to suppress. Id. Since Mr. Green's remaining arguments were based upon his suppression motion, the Fourth Circuit declined to reach them. Slip op. at 4 n.3.

## **REASONS CERTIORARI SHOULD BE GRANTED**

### **I. The Court Should Grant Certiorari to Clarify the Responsibilities of the Trial Court To Conduct an Evidentiary Hearing.**

Mr. Green's pro se motion to suppress, although obviously not the product of a trained attorney, nevertheless on its face raised arguments which should have resulted in the suppression of evidence if the trial court had held an evidentiary hearing and ruled in his favor on the factual underpinning of his arguments.

First, on July 24, 2019, Mr. Green argued that he had a reasonable expectation of privacy at the building at 10798 Old U.W. HWY 70 in Cove City, N.C. and specifically in the kitchen area where he kept his office. [JA77.] This privacy was violated by law enforcement when they entered that building without his permission and placed a recording device there without his knowledge and without a warrant or exigent circumstances. [JA66.]

Second, on August 24, 2019, Mr. Green argued that he was unconstitutionally seized in his vehicle and transported to 1996 Mill Road in Chocowinity, NC, where he saw multiple law enforcement agents and his fiancé sitting in handcuffs. When Mr. Green asked Agent Horn to let her go, he claims Agent Horn agreed to let her go if he did not have to go and get a warrant. [JA82-83.] Mr. Green alleged that the resulting consent and confessions were involuntary due to coercion and duress from the situation. [JA72, JA82-83.]

In this case, the trial court did elect to hear and rule on Mr. Green's motion. [JA100-115.] Having chosen to take up the motion and rule on it substantively, the trial court was then responsible to apply the law and follow the procedures set forth in the applicable statutes, rules, and precedents.

Notably, the affirmation by Mr. Green at the end of his pro se motion to suppress states "I hereby affirm that all of the foregoing information is true." [JA87.] This appears to be an attempt to affirm the factual statements in his motion pursuant to 28 U.S.C. § 1746. To the extent that Mr. Green's motion is pro se, it should have been construed liberally in this respect as well. Cf. Haines v. Kerner, 404 U.S. 519,

521, (1972) (stating that a pro se complaint should not be dismissed summarily unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief)(quotations and citations omitted); Rice v. Olsen, 324 U.S. 786, 791 (1945); Holiday v. Johnson, 313 U.S. 342, 350 (1941); Gordon v. Leeke, 574 2d. 1147 (4<sup>th</sup> Cir. 1978).

The Appellate Court notes that Mr. Green's trial counsel never re-raised the issue of his motion to suppress after the district judge denied it on the morning the trial began. However, this highlights part of the prejudice that is involved in not conducting an evidentiary hearing before a trial on a motion to suppress. A defendant may decide to plead guilty after an unsuccessful evidentiary hearing if he has testified in that hearing. However, if he is denied that opportunity, the first time he would have the chance to be able to testify about the factual basis for the motion to suppress would be at the trial itself.

To the extent that Mr. Green did not submit a formal signed affidavit, several other circuits require a formal signed verification or affidavit. See, e.g., United States v. Franklin, 650 F.App'x 391, 392-93 (9th Cir. 2016) (unpublished); United States v. Hall, 171 F.3d 1133, 1143-44 (8th Cir. 1999); United States v. Lewis, 40 F.3d 1325, 1332 (1st Cir. 1994); United States v. Phillipos, 849 F.3d 464, 486 (1st Cir. 2017). The undersigned, however, was not able to locate a controlling case from the Fourth Circuit or the Supreme Court on this point. Thus, the Court should also grant certiorari to clarify whether or not this requirement should extend to all federal courts.

The trial court should have made findings on the disputed points of fact and legal applications, including determining which subsequently developed evidence was the fruit of the poisonous tree. Where material facts are in conflict that affect the resolution of a motion to suppress, “the appropriate way to resolve the conflict is by holding an evidentiary hearing after which the district court will be in a position to make findings.” United States v. Taylor, 13 F.3d 786, 789 (4th Cir. 1994). This did not occur, and further, the trial court offered no explanation of its reasoning on the motion to suppress. As such, the district court erred in summarily denying the motion. The Court should grant certiorari to clarify the requirements of holding an evidentiary hearing for motions to suppress under the Fourth Amendment, and especially the type and level of legal formalities necessary to raise and preserve factual contentions.

## **II. The Court Should Grant Certiorari to Address Whether the Fourth Amendment’s Protections Apply to a Seller of a Real Estate Interest During A Transitional Period.**

The Fourth Amendment to the United States Constitution states:

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.

U.S. Const. amend. IV.

"[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." Wilson v. Arkansas, 514 U.S. 927, 931 (1995) (quoting New Jersey v. T.L.O., 469 U.S. 325, 337 (1985)). A search occurs for purposes of the

Fourth Amendment when the government invades an individual's reasonable expectation of privacy. See Smith v. Maryland, 442 U.S. 735, 739-40 (1979). The Fourth Amendment inquiry embraces two questions: "[t]he first is whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy," and the second is "whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable." Id. at 740 (quoting Katz v. United States, 389 U.S. 347, 361 (1967)) (internal quotation marks omitted).

[S]uppression of evidence obtained during illegal police conduct provides the usual remedy for Fourth Amendment violations." United States v. Oscar-Torres, 507 F.3d 224, 227 (4th Cir. 2007) (citing Mapp v. Ohio, 367 U.S. 643, 655 (1961). Moreover, "Courts will also suppress evidence that is the indirect product of the illegal police activity as 'fruit of the poisonous tree.'" Id. (quoting Wong Sun v. United States, 371 U.S. 471, 488 (1963)). Ultimately, "the critical inquiry is 'whether, granting establishment of the primary illegality, the evidence to which the instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" Id. (quoting Wong Sun v. United States, 371 U.S. 471, 488 (1963)).

The first and primary factual issue raised in Mr. Green's motion to suppress, which the district court failed to make any specific findings on, was whether or not Carlos Green as the record leaseholder of the building as of July 17, 2019 had his Fourth Amendment rights violated when the Government agents were allowed into

the building at 10798 Old Highway 70 in Cove City by Frederick Perry and installed a recording device there unbeknownst to Mr. Green.

The courts below did not give credence to Mr. Green's lease or the fact that he was at all relevant times still the lessee of record of the premises. Instead, despite the documentation stating otherwise, they negated without specific findings of fact Mr. Green's affirmed assertion in his pro se motion that he still had possessory control and therefore a reasonable expectation of privacy in the building itself. Further, the courts below failed to consider whether or not, even if he had lost a possessory control of the building, Mr. Green still had a reasonable expectation of privacy in the specific room where the surveillance was set up by Government agents.

If one person, even a member of the household, may on one occasion, without the knowledge or consent of the user, secrete a single object in one drawer of a bureau habitually and exclusively used by that person and thereby acquire the power to destroy the right of privacy secured to the user by the Fourth Amendment, then "the right of the people to be secure in their persons, houses, papers, and effects" becomes an illusory guarantee indeed.

Reeves v. Warden, Maryland Penitentiary, 346 F.2d 915 (4th Cir. 1965) (citing Stoner v. State of California, 376 U.S. 483, 488-490 (1964)).

In United States v. Jones, 565 U.S. 400 (2012), this Court held that the warrantless use of GPS tracking devices on a suspect's vehicle violates the Fourth Amendment. In its discussion of the Fourth Amendment principles involved, the Court stated:

Whatever new methods of investigation may be devised, our task, at a minimum, is to decide whether the action in question would have constituted a "search" within the original meaning of the Fourth Amendment. Where, as here, the Government obtains information by

physically intruding on a constitutionally protected area, such as search has undoubtedly occurred.

United States v. Jones, 565 U.S. 400, 405, 406 n.3 (2012).

Respectfully, this violation of Mr. Green's Fourth Amendment rights should have prevented any use of the recording at trial. A broader analysis would invalidate the entire subsequent investigatory activity of the Government on August 21, 2019 and December 10, 2019 as fruit of the poisonous tree.

The Court should grant certiorari to address the evidentiary significance of current lease documents in Fourth Amendment contexts and the ability of the lower courts to proceed on a prosecutor's (inaccurate and incomplete) proffer of evidence to overturn the significance of an extant lease.

**III. The Court Should Grant Certiorari to Address a Split Caused by the Opinion Below Between the Second and Fourth Circuit Court of Appeals as to the Legality of Seizing Him Without Probable Cause For the Purpose of Transporting Him to Another Location.**

With respect to law enforcement actions on August 24, 2019, there are two substantive constitutional violations, albeit interrelated.

First, without an arrest warrant or any indicia of ongoing criminal activity in or with the vehicle, First Sergeant Shiflett pulled over and detained Mr. Green with no other identified purpose other than seizing him. Law enforcement, however, did not find any drugs in the vehicle or on Mr. Green at that time. Without arresting him, or identifying any specific felony Mr. Green may have committed in his presence, First Sergeant Shiflett then transported Mr. Green against his will and over his



objections to an address where they had just determined that day Mr. Green had a connection to.

Second, after this experience, Mr. Green saw his fiancé in handcuffs when he arrived at 1996 Mill Road, Chocowinity. According to Mr. Green, at this point his consent and confessions of that date were obtained under duress.

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' under the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809 (1996). An automobile stop, therefore, is subject to the reasonableness requirement of the Fourth Amendment. See id. at 810 ("An automobile stop is ... subject to the constitutional imperative that it not be 'unreasonable' under the circumstances."). An automobile stop is "more akin to an investigative detention than a custodial arrest." United States v. Williams, 808 F.3d 238, 245. Accordingly, in determining whether a traffic stop is reasonable, courts apply the standard articulated in Terry v. Ohio, 392 U.S. 1 (1968). Williams, 808 F.3d at 245. Under the Terry standard, the court asks (1) if the stop was "legitimate at its inception," United States v. Hill, 852 F.3d 377, 381 (4th Cir. 2017), and (2) if "the officer's actions during the seizure were reasonably related in scope to the basis for the traffic stop," Williams, 808 F.3d at 245 (internal quotation marks omitted). An officer's initial "decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Whren, 517 U.S. at 810.

A lawful traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete [the] mission" of issuing a warning ticket. Illinois v. Caballes, 543 U.S. 405, 407 (2005). The permissible duration of a traffic stop "is determined by the seizure's mission—to address the traffic violation that warranted the stop," meaning that it may "last no longer than is necessary to effectuate that purpose." United States v. Rodriguez, 135 S. Ct. 1609, 1614 (2015) (alteration and internal quotation marks omitted). See also United States v. Babwah, 972 F.2d 30 (2d Cir. 1992). See also Dunaway v. New York, 442 U.S. 200, 212 (1979) (Petitioner was not questioned briefly where he was found, but was taken from a neighbor's home to a police car and transported to a police station, thus, Terry inapplicable).

Here, there was no arrest or search warrant outstanding at this time for Mr. Green or 1996 Mill Road in Chocowinity, N.C. Nor was there any reason testified to, pre-textual or otherwise, for pulling over Mr. Green other than to seize him and take him back to 1996 Mill Road. Furthermore, Mr. Green was not arrested or read his Miranda rights until he encountered Agent Horn at that residence. Thus, it appears that the purpose of the entire exercise was to secure Mr. Green, bring him to 1996 Mill Road, and obtain his consent and cooperation for searching it.

The facts of this case are very similar to those found in United States v. Babwah, 972 F.2d 30 (2d Cir. 1992). In that case, the Second Circuit held that after unsuccessfully searching the contents of a vehicle when they had probable cause to stop and arrest the two defendants in that case, transported them to their residence and obtained consent from one of them to search the premises. Id. at 29-33. The

Second Circuit found this to be an unlawful fishing expedition that violated their Fourth Amendment rights.

However, instead of terminating the seizure when their suspicions concerning contraband proved unfounded, the Agents continued to detain the defendants while they "embarked upon [an] expedition for evidence in the hope that something might turn up." Brown v. Illinois, 422 U.S. 590, 605, 95 S. Ct. 2254, 2262, 45 L.Ed.2d 416 (1975). The Agents already knew that Babwah had been in the 107th Street residence, and what showing it to him was going to accomplish is not readily apparent. This continued detention was nothing more than an unlawful fishing expedition. The fact that it happened to be successful does not, of course, make it lawful.

Id. at 34. Further, the Second Circuit held that because "the consent itself was tainted by the Government's unlawful conduct, it was ineffective to justify the search. Id.

Similarly, in this case Mr. Green's consent was obtained after law enforcement's seizure of his person and transporting him to a residence is also tainted by law enforcement's unlawful conduct. As such, Mr. Green's Fourth Amendment rights were violated at that point, and everything else that followed that day was a fruit of the poisonous tree. To the extent the Fourth Circuit has held otherwise, it has created a circuit conflict between it and the Second Circuit precedent in United States v. Babwah, 972 F.2d 30 (2d Cir. 1992).

Further, by conditioning release of his fiancé on whether or not Mr. Green would consent to a search of the house, Mr. Green contends that law enforcement placed him under significant duress in such a way that invalidated his consent and confessions.

"[I]f under all the circumstances it has appeared that the consent was not given voluntarily - that it was coerced by threats or force, or granted only in submission to a claim of lawful authority - then we have found the consent invalid and the search unreasonable." Schneckloth v. Bustamonte, 412 U.S. 218, 233 (1973).

Schneckloth v. Bustamonte is the Court's seminal case on whether an individual's consent was voluntary. 412 U.S. 218 (1973). The Schneckloth Court held, "when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied." 412 U.S. at 248.

Furthermore, "[v]oluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent." Id. at 248-49. The Court adopted a totality of the circumstances test to evaluate "whether a defendant's will was overborne in a particular case . . . ." Id. at 226. The Court also recognized that "two competing concerns must be accommodated in determining the meaning of a 'voluntary' consent—the legitimate need for such searches and the equally important requirement of assuring the absence of coercion." Id. at 227. Yet, the Court was clear about the importance of protecting individuals' Fourth Amendment rights:

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to

the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.

Id. at 228-29 (quoting Boyd v. United States, 116 U.S. 616, 635 (1886)).

"Coercion may involve psychological threats as well as physical threats. Specifically, threats to arrest members of a suspect's family may cause a confession to be involuntary." United States v. Finch, 998 F.2d 349, 355-56 (6th Cir. 1993) (citing Rogers v. Richmond, 365 U.S. 534 (1961)); see also Lynam v. Illinois, 372 U.S. 528 (1963) (discussing effects of coercion on voluntariness of confession).

Here, there was a threat or at a minimum an implied threat to arrest Mr. Green's fiancé and a statement conditioning her release on whether or not Mr. Green would consent to the search. Thus, Mr. Green's Fourth Amendment rights were violated.

All of the above Fourth Amendment violations greatly prejudiced Mr. Green at trial. Because the fruit of the poisonous tree from these violations was used in a very significant and material manner to support Mr. Green's conspiracy conviction and the specific crimes charged on July 24, 2019, August 21, 2019, December 10, 2019, Mr. Green's convictions should have been overturned.

Further, the use of fruit of the poisonous tree also tainted the jury trying all of the counts of the Indictment together and thus Mr. Green's conviction on Count Two of his Indictment should also be overturned. In addition, Mr. Green argued below n the alternative that a number of Counts would not be supported by sufficient evidence

without evidence that is the fruit of the poisonous tree that should have been excluded. Notably, Count One appears to lack specific co-conspirators that were testified about with non hearsay evidence. Thus, there was not sufficient evidence presented to establish a conspiracy, rather than specific buy/sell transactions without Mr. Green's confession. Similarly Counts Five and Six, and Eight have insufficient evidentiary support without the fruit of the poisonous tree.

The Court should grant Certiorari in order to address the above violations of its precedent as well as the circuit split caused by the opinion below.

### **CONCLUSION**

For the above stated reasons, Petitioner Carlos Green hereby requests that the Court grant a writ of Certiorari in this case, reverse the courts below, vacate his criminal judgment as to Counts One, Two, Three, Five, Six, and Eight of the Indictment, in the alternative, order a resentencing without consideration of evidence obtained in violation of the Fourth Amendment, and grant whatsoever other relief may be just and proper.

Respectfully submitted this the 29th day of August, 2023.

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