

23-5988

Case No.

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**IN THE SUPREME COURT OF THE UNITED STATES**

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ROBERT B. STOUT,

*Petitioner,*

v.

SGT. NOBLES,  
SGT. JOHNSON,

*Respondents.*

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SUPREME COURT, U.S.

**ORIGINAL**

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

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**PETITION FOR WRIT OF CERTIORARI**

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IN THE SUPREME COURT OF THE UNITED STATES

ROBERT B. STOUT,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.
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SGT. JOHNSON,	)	
SGT. NOBLES,	)	
	)	
Respondents.	)	
	)	

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**PETITION FOR WRIT OF CERTIORARI**

**I. Questions Presented**

Question #1: Are police, absent reasonable suspicion, permitted to conduct driver's license checkpoints, or roadway safety checkpoints requiring drivers to produce their driver's licenses to police?

Question #2: Are individuals required to produce their driver's licenses to the police, absent reasonable suspicion, during roadway safety checkpoints?

Question #3: Does a driver's refusal to provide a driver's license, refusal to roll down the windows, raised middle finger, "fuck you" statement, and refusal to answer questions during a license or roadway safety checkpoint conducted by police constitute obstruction of justice?

## **II. Parties**

All parties are named in the caption.

## **III. Corporate Disclosure Statement**

Robert Stout is an individual and not a corporation.

## **IV. Prior Proceedings**

### **A. Appellate**

United States Court of Appeals for the Fourth Circuit, *Stout v. Johnson*, No. 22-1957, judgment entered on August 26, 2022.

### **B. Original**

United States District Court, *Stout v. Johnson*, Case No. 3:22-cv-00287, judgment entered on June 9, 2023.

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## **VI. Table of Cited Authorities**

*Delaware v. Prouse*, 440 US 648 - Supreme Court 1979

## **VII. Citations to Reports**

The citation to the report of the Fourth Circuit's unpublished opinion is *Stout v. Johnson*, No. 22-1957 (4th Cir. June 9, 2023).

There is no official or unofficial report of the District Court's order.

## **VIII. Jurisdiction**

The date of the order sought to be reviewed is June 9, 2023.

There were no rehearings.

The statutory provision conferring jurisdiction on the Court is 28 U.S.C. §1254.

## **IX. Constitutional and Statutory Provisions**

### **A. Fourth Amendment, U.S. Constitution**

“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.”

### **B. Virginia Code § 18.2-460(A) (Obstruction of Justice)**

"If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555, he is guilty of a Class 1 misdemeanor."

## **X. Statement of Facts**

On July 11, 2020, Stout was stopped by Nobles and Johnson at a license checkpoint. Nobles and Johnson commanded Stout to produce his driver's license to them. Stout refused. After a twenty-minute stand-off, Johnson and Nobles arrested Stout for obstruction of justice for refusing to provide a driver's license. The entire incident was captured on audio-video recordings.

A King George, VA General District Court found that police checkpoints requiring drivers to produce their driver's licenses were unconstitutional. However, the General District Court found Stout guilty of obstruction of justice because Stout shined his flashlight at Nobles and Johnson.

Stout appealed to the Circuit Court. The Circuit Court stated that it would not decide whether or not license checkpoints were unconstitutional. However, the Circuit Court found that Stout's actions did not constitute obstruction of justice before the court found Stout not-guilty.

Stout filed a civil-rights action in federal District Court alleging that license checkpoints are unconstitutional and that Nobles and Johnson did not have probable cause to arrest Stout for obstruction of justice or for any other crime. The District Court dismissed Stout's complaint.

Appdx. pg. 20. Stout appealed to the Fourth Circuit before the Fourth Circuit affirmed the District Court's judgment. Appdx. pg. 3.

Stout filed a civil-rights action in District Court pursuant to 42 U.S.C. §1983. Pursuant to 28 U.S.C. §1331 the District Court has original jurisdiction over actions filed pursuant to federal law.

## **XI. Argument**

This Court clearly established in *Delaware v. Prouse*, 440 US 648 - Supreme Court 1979, that license checkpoints are unconstitutional. *Prouse* clearly establishes that police conducting roadway safety checkpoints can not compel drivers to produce their driver's licenses, but are limited to stopping, observing, and questioning drivers.<sup>1</sup>

However, the Fourth Circuit ruled in this case that "in dicta, the Supreme Court has suggested that checkpoints to inspect driver's licenses would be constitutional even in the absence of reasonable suspicion that a driver was unlicensed. *See Prouse*, 440 U.S. at 663 (suggesting that 'questioning of all oncoming traffic at roadblock-type stops' as 'one possible alternative' to the roving license spot-check that capriciously stopped vehicles without reasonable suspicion, which the Court found unreasonable)."<sup>2</sup> *Stout v. Johnson*, U.S. Dist., E.D.V.A., No. 3:22-cv-00287, Dkt. 10, pg. 8, (August 26, 2022).

The Fourth Circuit further ruled in *Stout v. Johnson* that "applying this principle, the Fourth Circuit has upheld such roadblock-type stops, stating that 'a brief stop at a checkpoint for

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<sup>1</sup> Stout hereby adopts by reference his arguments contained in his Fourth Circuit Informal Opening Brief, Appdx. pg. 36, and his arguments contained in his District Court Opposition to the Respondents' Motion to Dismiss, Appdx. pg. 44.

<sup>2</sup> While *Prouse* suggested roadway safety checkpoints as an alternative to spot-checks, *Prouse* establishes that police conducting roadway safety checkpoints are limited to *stopping*, *questioning*, and *observing* ("foremost among the alternative methods of enforcing traffic and vehicle safety regulations, according to the Court, is acting upon *observed* violations, for 'drivers without licenses are presumably the less safe drivers whose propensities may well exhibit themselves'"') (emphasis added). Stopping, questioning, and observing, does not include *requiring* or *compelling* drivers to produce driver's licenses.

the limited purpose of verifying a driver's license, vehicle registration, and proof of insurance is a reasonable intrusion into the lives of motorists and their passengers even in the absence of reasonable suspicion that a motorist or passenger is engaged in illegal activity.' *United States v. Brugal*, 209 F. 3d 353, 357 (4th Cir. 2000); *see also United States v. Price*, 164 F. App'x 404, 406 (4th Cir. 2006) (upholding license checkpoint that 'stopped every motorist approaching from either direction' was 'intended to be brief,' as drivers only had to present a valid license' and 'did not involve discretionary behavior on the part of police officers')." Dkt. 10, pg. 8.

The Fourth Circuit's rulings conflict with *Prouse*.

Whether or not drivers are required to produce their driver's licenses to police at roadway safety checkpoints is an important federal question. Firstly, driving is a staple of American travel and commerce. Everyone in America is either a driver, passenger, or both. License checkpoints are unique because the police have not discovered any crimes or developed any suspects prior to conducting the checkpoints, and this Court has clearly established that police must have reasonable suspicion of a roadway violation before compelling drivers to produce their driver's licenses, or reasonable suspicion of criminal activity before compelling an individual to produce identification. License checkpoints subject *all* individuals, not just individuals who are suspected of any roadway violations, or criminal activity, to that very suspicion. Secondly, license checkpoints are affecting so many unsuspecting American drivers so much now that individuals are seeking out license checkpoints *to* challenge them (an entire genre of license checkpoint videos has proliferated on Youtube).

Not only does the Fourth Circuit's ruling in this case conflict with *Prouse*, the ruling conflicts with Virginia Supreme Court precedent because the Fourth Circuit didn't just rule that license checkpoints are permissible, but that individuals who stop at the checkpoint, but who

otherwise refuse to provide a driver's license, refuse to roll down a window, raise a middle finger, state "fuck you," refuse to answer questions, and shine a flashlight, are violating Virginia's obstruction of justice statute.<sup>3</sup>

The Virginia Supreme Court has clearly established that "the fact that the accused sought to escape the officer by merely running away was not such an obstruction as the law contemplates. While it is the duty of every citizen to submit to lawful arrest, yet flight is not such an offense as will make a person amenable to the charge of resisting or obstructing an officer who is attempting to make an arrest, as there is a broad distinction between avoidance and resistance or obstruction." *Jones v. Commonwealth*, 141 Va. 471 - Va: Supreme Court 1925.

As the King George Circuit Court emphasized before finding Stout not-guilty, if Stout could have exited his vehicle into full, headlong flight without obstructing, then Stout's refusal to roll down his windows,<sup>4</sup> raised middle finger,<sup>5</sup> "fuck you" statement,<sup>6</sup> deployment of his

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<sup>3</sup> The Respondents never expressed to Stout at the checkpoint that Stout's conduct obstructed the Respondents' efforts. Stout's conduct observably never obstructed the Respondents and the Respondents never asked Stout to cease engaging in Stout's conduct.

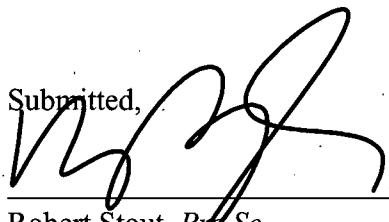
<sup>4</sup> *Cromartie v. Billings*, 837 SE 2d 247 - Va: Supreme Court 2020, clearly establishes that a driver's refusal to roll down the windows is not obstruction of justice. The court ruled that there was "no immediate threat to the safety of the officer or others" just because an individual's "window was rolled up, the individual "was seated inside the vehicle, and" the individual "was on the telephone. Her car engine was off, and she made no threatening actions or statements." "The facts in this case demonstrate that no reasonable officer could have concluded that her behavior constituted obstruction of justice."

<sup>5</sup> *Houston v. Hill*, 482 US 451 - Supreme Court 1987, clearly establishes that Stout's raised middle finger is protected free speech.

<sup>6</sup> *Houston v. Hill*, 482 US 451 - Supreme Court 1987, clearly establishes that Stout's "fuck you" statement is protected free speech.

flashlight,<sup>7</sup> and refusal to answer questions,<sup>8</sup> certainly weren't obstruction. The questions now become, are license checkpoints constitutional, and if so, does refusing to provide a driver's license, alone, at license checkpoints constitute obstruction of justice, and those are the questions before this Court.

Submitted,



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<sup>7</sup> Firstly, Stout recorded the entire encounter, and Stout's cell-phone camera light was brighter than Stout's flashlight, and at no point during Stout's criminal trial, criminal appeal, civil action, or civil appeal, did any party or court suggest that Stout's cell-phone camera light obstructed the Respondents. Secondly, police flashlights and police cruiser spotlights dwarf Stout's flashlight in lumens, but police flashlights and police cruiser spotlights do not obstruct police from performing their duties. Whether or not deploying a flashlight constitutes obstruction of justice is an important federal question that this Court has not decided. There has been a proliferation in America of individuals deploying their cell-phone cameras and camera lights to record their police encounters at night. Filming police encounters is becoming almost as common as driving.

<sup>8</sup> This Court has clearly established time and again that individuals detained by the police have a right to refuse to answer questions presented by the police.