Case No.

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT B. STOUT,

Petitioner,

v.

SGT. NOBLES,
SGT. JOHNSON,

Respondents.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1957

ROBERT BENJAMIN STOUT,

Plaintiff - Appellant,

v.

SERGEANT JOHNSON, Individually and in his/her official capacity; DEPUTY NOBLES, Individually and in his/her official capacity; KING GEORGE COUNTY SHERIFF, Official capacity,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. David J. Novak, District Judge. (3:22-cv-00287-DJN)

Submitted: May 19, 2023 Decided: June 9, 2023

Before AGEE and RICHARDSON, Circuit Judges, and MOTZ, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert Benjamin Stout, Appellant Pro Se. Peter Askin, John P. O'Herron, THOMPSON MCMULLAN PC, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Benjamin Stout appeals the district court's order denying relief on his 42 U.S.C. § 1983 complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Stout v. Johnson*, No. 3:22-cv-00287-DJN (E.D. Va. Aug. 26, 2022). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ROBERT BENJAMIN STOUT,
Plaintiff,

v. Civil No. 3:22cv287 (DJN)

SGT. JOHNSON, *et al.*,
Defendants.

MEMORANDUM ORDER
(Granting Motion and Dismissing Case)

Plaintiff Robert Benjamin Stout, proceeding *pro se*, brings this action against Defendants Sgt. Johnson, Deputy Nobles, and King George County Sheriff, alleging violations of the Fourth Amendment resulting from a license checkpoint traffic stop on July 11, 2022. This matter comes before the Court on Defendants' Motion to Dismiss (ECF No. 6), moving to dismiss Plaintiff's Complaint for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, the Court hereby GRANTS Defendants' Motion (ECF No. 6) and DISMISSES WITH PREJUDICE Plaintiff's Complaint (ECF No. 3).

I. BACKGROUND

At this stage, the Court must accept as true the facts set forth in the Complaint (ECF No. 3). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Against this backdrop, the Court accepts the following facts as alleged for purposes of resolving the instant motions.

A. Facts Alleged

On July 11, 2020, Plaintiff left Rick's on the River, a popular beachfront restaurant and bar in King George, Virginia with his four-year-old son. (Compl. ¶ 4.) Driving south on Route

218, Plaintiff stopped at a license checkpoint conducted by Sgt. Johnson and Deputy Nobles, among others.[1] (Compl. ¶ 5.) Defendants stopped every passing vehicle at the checkpoint to require the driver to produce their license. (Compl. ¶ 7.) Based on the video incorporated into the Complaint, the encounter took place at night.[2]

When Plaintiff reached the checkpoint, Deputy Nobles asked Plaintiff to provide his driver's license.[3] (Compl. ¶¶ 1, 8; Video at 0:10.) Thus began a twenty-minute standoff. Plaintiff responded by repeatedly asking if he was being detained and for what crime was he being detained. (*E.g.*, Compl. ¶¶ 9, 11, 13, 15.) Nobles repeatedly told Plaintiff to provide his driver's license, that it was a license checkpoint, that he could not leave without providing his license, and that he needed to roll down his window. (*E.g.*, Compl. ¶¶ 11-16; Video at 0:10-0:35.) Plaintiff refused to roll his window down and did not produce his license. (Compl. ¶ 24.)

After about thirty seconds had elapsed, Plaintiff said, "we done talking." (Video at 0:38.) Deputy Nobles again told Plaintiff that he needed to provide his driver's license to prove that he

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[1] Plaintiff also names "King George County Sheriff" to allege municipal liability, but does not aver that he or she participated in the checkpoint. (Compl. ¶¶ 127-31.)

[2] Plaintiff references and expressly incorporates a video of the encounter (the "Video") with his Complaint that is publicly available at the web address he provides. (Compl. ¶ 1.) Courts may consider documents incorporated into the Complaint by reference on a motion to dismiss, *see Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165-66 (4th Cir. 2016). This Court and the district court of Maryland have applied this rule to consider videos incorporated into the Complaint as well, so long as they are authentic and integral to the Complaint. *See Thompson v. Badjugar*, No. 20cv1272, 2021 WL 3472130, at *3-4 (D. Md. Aug. 6, 2021); *Stout v. Harris*, No. 3:21cv399, 2021 WL 5756382, *1 n.1 (citing *Thompson* and *Philips v. Pitt Cty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)). Here, Plaintiff asserts that the video is authentic, Defendants do not challenge it, and it is critical to his claims related to the encounter.

[3] Plaintiff alleges that the officer who first commanded him to produce his license was Deputy Nobles, but it appears to be a third officer who withdrew from Plaintiff's vehicle shortly thereafter and did not return to the encounter.

could drive "on the highway." (Video at 0:55.) Plaintiff replied "No, I don't," continued to ignore the command, and told the officers: "I don't answer questions." (Video at 0:56-1:56.) After about three minutes, Sgt. Johnson instructed Plaintiff to produce his license and told him to roll his window down. Plaintiff told Johnson that he would lose his qualified immunity, told him he was "done talking," and the "conversation [was] over." (Video at 3:00-4:00.) When Johnson asked Plaintiff if he would produce his license, Plaintiff said he would not answer questions. (Video at 4:40.) Johnson walked away, and Deputy Nobles remained at Plaintiff's window for the next several minutes. (Video at 5:30.) Plaintiff remained seated in his car, with his window rolled up, and did not produce his license. The officers began to allow vehicles to proceed through the checkpoint southbound on Route 218 around Plaintiff's vehicle. (Video at 6:15.)

Several minutes later, Deputy Nobles tried again, this time tapping on the window and again asking Plaintiff to produce his driver's license. (Video at 10:15.) Plaintiff responded by telling Nobles not to touch his car, asking him what crime he was being detained for, then raising his middle finger, saying "fuck you" to Nobles, and telling Nobles to "get the fuck outta here." (Video at 9:00-11:30.) When Plaintiff again asked Nobles if he was free to leave, Nobles confirmed that he could leave the checkpoint as soon as he provided his driver's license. (Video at 12:35.) After several more minutes, the video shows Plaintiff take a flash-light out of his glovebox, shine it in Nobles' eyes, and click the light intermittently for about thirty seconds to create a strobe-like effect. (Video at 16:15.)

The standoff continued for several more minutes, with Deputy Nobles continuing to tap on Plaintiff's window and commanding Plaintiff to roll his window down and produce his license. (Video at 16:30-19:00.) Plaintiff, meanwhile, continued to ignore him and shine the light in his eyes, and told Nobles that he was streaming the video live. (Video at 17:55.)

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Approximately nineteen minutes into the standoff, Sgt. Johnson returned to Plaintiff's closed car window, said that the Supreme Court requires a driver to provide his driver's license at a license checking detail, and again told Plaintiff to show his license. (Compl. ¶ 29; Video at 19:25.) Once again, Plaintiff refused to comply and shouted at Johnson through his closed window that he would not answer any questions. (Video at 19:35.) Johnson told Plaintiff that the Supreme Court "says we can bust the window out" then confirmed one final time that Plaintiff would not produce his license. (Compl. ¶ 32; Video at 19:40.) When Plaintiff again ignored him, Johnson told Nobles: "Bust his window out." (Compl. ¶¶ 31-32; Video at 19:55.)

Plaintiff then promptly opened his door, and Deputy Nobles demanded to see his license. (Compl. ¶¶ 35-36; Video at 19:57.) Plaintiff and the officers engaged in a short and heated discussion. When asked again to provide his license, Plaintiff refused and told Sgt. Johnson to "shut up." (Compl. ¶ 38; Video at 20:10.) At last, Johnson said a final time that Plaintiff was required to produce his identification, and Plaintiff shouted for the final time to ask what crime that he was suspected of committing. (Compl. ¶¶ 44-48; Video at 20:13.) At that point, Johnson ordered Plaintiff to get out of his vehicle and put his hands behind his back. (Compl. ¶¶ 49-60; Video at 20:22.) The video ends at this point, and Defendants then arrested Plaintiff. (Compl. ¶¶ 60-61; Video at 20:36.)

Defendants arrested Plaintiff for violating Virginia Code § 18.2-266 (driving while intoxicated), Virginia Code § 46.2-104 (failure to carry license), and Virginia Code § 18.2-460 (obstruction of justice). (Compl. ¶ 61.) After Plaintiff was arrested, Sgt. Johnson searched him and his vehicle and had his car towed. (Compl. ¶¶ 62-68.)

Defendants then transported Plaintiff to the police station where he performed a breathalyzer sobriety test. (Compl. ¶ 69.) Plaintiff passed the test as he was not intoxicated and

does not consume alcohol. (Compl. ¶¶ 62, 69.) Sgt. Johnson brought Plaintiff before the magistrate, who charged Plaintiff with driving while intoxicated, failure to carry a license, and obstruction of justice. (Compl. ¶ 70.)

At Plaintiff's arraignment, the prosecutor voluntarily dismissed the driving while intoxicated charge. (Compl. ¶ 72.) On August 11, 2021, Plaintiff was convicted in the General District Court of King George County of violating Virginia Code § 18.2-460 (obstruction of justice) and acquitted of violating Virginia Code § 46.2-104 (failing to carry license). (Compl. ¶¶ 75, 77.) Plaintiff alleges that, on February 3, 2022, the obstruction of justice charge was dismissed on a motion to strike during a subsequent *de novo* trial in the Circuit Court of King George County. (Compl. ¶¶ 86, 94.)

B. Procedural History

Plaintiff filed a Motion for Leave to Proceed *in forma pauperis* ("IFP") on April 22, 2022. (ECF No. 1.) On April 26, 2022, the Court granted Plaintiff IFP status and directed the Clerk to issue process and deliver the summonses to the United States Marshal for service. (ECF No. 2.)

Plaintiff raises eight counts for relief based on the above allegations. Counts One through Six raise Fourth Amendment claims for his unreasonable arrest (Count One), unreasonable traffic stop and detention (Count Two), search of his person and vehicle (Count Three and Four) and seizure of his license and vehicle (Counts Five and Six). (Compl. ¶¶ 96-119.) Count Seven raises a claim for malicious prosecution and Count Eight alleges municipal liability against King George County for the Sheriff's maintenance of the policy of conducting unconstitutional license checkpoints. (Compl. ¶¶ 120-31.) Based on these allegations, Plaintiff seeks general compensatory and punitive damages.

Defendants filed their Motion to Dismiss on May 25, 2022. (ECF No. 6.) Defendants argue that Plaintiff fails to state a claim, because the license checkpoint stop was constitutional, and Defendants had probable cause to arrest and search Plaintiff. (Defs.' Mem. in Supp. of Mot. to Dismiss ("Defs.' Mem.") at 7-14, 16 (ECF No. 7).) Alternatively, Defendants argue that their actions are protected by qualified immunity. (Defs.' Mem. at 14-16.) Plaintiff responded to the Motion on June 3, 2022, arguing that license checkpoints are unconstitutional, that Defendants did not have probable cause to arrest him and are not entitled to qualified immunity. (Pl.'s Resp. to Def.'s [sic] Mot. to Dismiss ("Pl.'s Resp.") at 1-10 (ECF No. 8).) Defendants filed their reply on June 8, 2022, rending the matter now ripe for review. (ECF No. 9.)

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6) tests the sufficiency of a complaint or counterclaim; it does not serve as the means by which a court will resolve contests surrounding the facts, determine the merits of a claim or address potential defenses. *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). In considering a motion to dismiss, the Court will accept a plaintiff's well-pleaded allegations as true and view the facts in a light most favorable to Plaintiff. *Mylan Lab'ys, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678.

Under the Federal Rules of Civil Procedure, a complaint or counterclaim must state facts sufficient to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests[.]'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). As the Supreme Court opined in *Twombly*, a complaint or counterclaim must state "more than labels and conclusions" or a "formulaic recitation of the elements of a

cause of action," though the law does not require "detailed factual allegations." *Id.* (citations omitted). Ultimately, the "[f]actual allegations must be enough to raise a right to relief above the speculative level," rendering the right "plausible on its face" rather than merely "conceivable." *Id.* at 555, 570. Thus, a complaint or counterclaim must assert facts that are more than "merely consistent with" the other party's liability. *Id.* at 557. And the facts alleged must be sufficient to "state all the elements of [any] claim[s]." *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002) and *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)).

III. ANALYSIS

The Court begins by considering the constitutionality of the initial traffic stop before examining the justification for the subsequent searches and seizures. Ultimately, the Fourth Circuit has long upheld license checkpoints, defeating Counts Two, Five and Eight. Additionally, the officers had probable cause to arrest Plaintiff for obstruction of justice, which, combined with the context of Plaintiff's actions, justified the subsequent searches and seizures and defeat the remaining claims. As such, Plaintiff's Complaint fails to state a claim.

A. Counts Two, Five, and Eight Fail, Because The License Checkpoint Did Not Violate the Fourth Amendment.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A police stop of a vehicle at a license checkpoint constitutes one such seizure that must prove reasonable to comport with this constitutional right. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). To evaluate a particular checkpoint seizure, the Court must "balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to

require a warrant or some level of individualized suspicion in the particular context." *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 449–50 (1990) (cleaned up). In dicta, the Supreme Court has suggested that checkpoints to inspect drivers' licenses would be constitutional even in the absence of reasonable articulable suspicion that a driver was unlicensed. *See Prouse*, 440 U.S. at 663 (suggesting that "[q]uestioning 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).[4] Applying this principle, the Fourth Circuit has upheld such roadblock-type stops, stating that "a brief stop at a checkpoint for 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").

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[4] This holding and dicta flatly contradict Plaintiff's mischaracterization of *Prouse* as "uphold[ing] roadway-safety checkpoints but ban[ning] roadway-safety checkpoints that require drivers to produce their driver's licenses." (Pl.'s Resp. at 2.) The Supreme Court acknowledged the State's interest in checking for licenses to preserve roadway safety, but found the burden on drivers of the arbitrary spot check method of enforcement to outweigh the state's interest. *Prouse*, 440 U.S. at 658, 661. The Court stated "[t]his holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion" and suggested the less intrusive method of a roadblock-style check. *Prouse*, 440 U.S. at 663. Moreover, Plaintiff's argument ignores that the Fourth Circuit has subsequently interpreted *Prouse* and upheld such license checkpoints, as described *infra*.

Here, Defendants' license checkpoint and stop of Plaintiff's vehicle prove reasonable. As alleged, Defendants set up a license checkpoint on Route 218 and "stopped every single vehicle that drove through the license checkpoint, commanded every single driver to produce a driver's license, and commanded every single passenger to produce identification." (Compl. ¶¶ 5, 7.) Defendants stopped Plaintiff in this manner when he arrived at the checkpoint and requested his license. (Compl. ¶¶ 5, 8.) Such a seizure proves reasonable under Fourth Circuit law.[5] *See, e.g.*, *Price*, 164 F. App'x at 406 (upholding license checkpoint that stopped all motorists, without exercise of police discretion, for a license check). As such, the checkpoint seizure at issue did not violate the Fourth Amendment. Therefore, Count Two, alleging that the checkpoint amounted to an unreasonable detention for want of reasonable suspicion, Count Five, alleging unreasonable seizure of driver's license, and Count Eight, alleging municipal liability based upon the unreasonableness of license checkpoints, must fail.

Nonetheless, "an initially permissible checkpoint seizure may transform into an impermissible one by further intrusions not based upon individualized suspicion or consent." *Brugal*, 209 F.3d at 357. As such, the Court must proceed to evaluate whether Defendants' conduct following the traffic stop was justified.

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[5] As Plaintiff notes in his response, Virginia Code § 46.2-104 also establishes Defendants' authority to compel his license. In passing, he argues that the statute proves unconstitutional, because "if it's unconstitutional for officers to conduct spot checks on one, it's unconstitutional for officers to conduct spot checks on everyone." (Pl.'s Resp. at 7.) Plaintiff may not amend his Complaint to challenge the constitutionality of this law via his response and the Court will not credit his fallacious drive-by argument. *See Campbell ex rel. Equity Units Holders v. Am. Int'l Grp., Inc.*, 86 F. Supp. 3d 464, 472 n.9, (E.D. Va. 2015) ("[I]t is 'axiomatic that a complaint may not be amended by the briefs in opposition to a motion to dismiss.") (cleaned up).

B. The Remaining Counts Fail, Because the Officers Had Probable Cause to Arrest Plaintiff.

"[W]hen an officer seeks to expand the investigation of a motorist beyond the reasons for the checkpoint, the officer must have a reasonable suspicion that the particular person seized is engaged in criminal activity, or obtain consent during the time period the defendant is lawfully seized." *Brugal*, 209 F.3d at 357 (cleaned up). As an initial matter, Defendants' continued detention of Plaintiff for approximately twenty-minutes up until his arrest was justified by Plaintiff's refusal to provide his driver's license. *See, e.g., Brugal*, 209 F.3d at 358 (noting "continuing seizure[s]" require continuing justification). As discussed *supra*, Defendants lawfully sought to inspect Plaintiff's license and his failure to provide it gave Defendants continuing reason to detain him.

However, an arrest, such as the one that terminated the stand-off at issue here, requires greater justification. An arrest complies with the Fourth Amendment "only if based on probable cause." *Wilson v. Kittoe*, 337 F.3d 392, 398 (4th Cir. 2003). "An officer has probable cause for arrest when the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Id.* (cleaned up). Here, Defendants contend that they had probable cause to believe that Plaintiff was committing, or about to commit, obstruction of justice under Virginia Code § 18.2-460(A).[6] (Defs.' Mem. at 10.)

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[6] Although Plaintiff alleges that the officers arrested him for failure to produce his license and driving while intoxicated, Defendants do not use these purported violations to advance their probable cause argument.

Virginia's obstruction of justice statute provides, in pertinent part:

> If any person without just cause knowingly obstructs . . . any law-enforcement officer . . . 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 . . . law-enforcement officer . . . he is guilty of a Class 1 misdemeanor.

Va. Code Ann. § 18.2-460(A). Virginia courts have long imposed a stringent interpretation of obstruction of justice: "[t]o constitute obstruction of an officer in the performance of his duty . . . there must be acts clearly indicating an intention on the part of the accused to prevent the officer from performing his duty[.]" *Jones v. Commonwealth*, 126 S.E. 74, 77 (Va. 1925). "[O]bstruction of justice does not occur when a person fails to cooperate fully with an officer or when the person's conduct merely renders the officer's task more difficult but does not impede or prevent the officer from performing that task." *Ruckman v. Commonwealth*, 505 S.E.2d 388, 389 (Va. Ct. App. 1998). Accordingly, for Defendants to have had probable cause to arrest Plaintiff for obstruction of justice, a reasonable person in their shoes must have believed that Plaintiff intended to prevent them from performing their duty, not just making their task more difficult.

Here, on the facts alleged and evidence contained in the undisputed video, Plaintiff clearly indicated his intent to prevent Defendants from performing their duties. That night, Defendants duties were to ensure that every driver passing through their checkpoint carried a valid driver's license. From the outset, Plaintiff refused to provide his license, instead challenging the Defendants' authority to stop him and seek his license. He communicated his intent to completely prevent the officers' from performing their duty by — over the course of *twenty* minutes — refusing to roll down his window, telling the officers the conversation was over, raising his middle finger and telling the officers "fuck you," pulsing a flashlight in one of

the officer's face, and refusing to answer questions. While "not just any refusal to obey an officer's order" amounts to obstruction of justice, *Wilson*, 337 F.3d at 400, Plaintiff's conduct here certainly did more than merely impede Defendants or make their duties more difficult. Indeed, for over twenty minutes, Plaintiff frustrated Defendants' sole purpose in conducting the license checkpoint.

Recent case law applying Virginia's obstruction statute assures the Court that Defendants had probable cause to arrest Plaintiff for its violation. In *Thorne v. Commonwealth*, the Virginia Court of Appeals upheld a conviction for obstruction of justice where the defendant prevented an officer from performing his duty of testing the legality of her window tint for nine minutes. 784 S.E.2d 304, 308-10 (Va. Ct. App. 2016). The officer had pulled the defendant over for a suspected window tint violation, but the defendant refused to roll her window down enough for the officer to perform the test, repeatedly telling him that she knew her rights and "[d]o what you gotta do!" *Id.* at 309. The court found that the defendant's verbal responses clearly indicated that she knew she was keeping the officer from performing his duty. *Id.* The court upheld this conviction even though the defendant complied after nine minutes when a second officer arrived on the scene, reasoning that the period of nine minutes sufficed to constitute obstruction. *Id.* In this case, Plaintiff prevented the officers from performing their duties for an even greater period of time. Moreover, his verbal responses and behavior clearly conveyed that he knew that he was preventing Defendants from completing their license check.

And in *Smith v. Tolley*, this Court found probable cause existed to arrest the plaintiff for obstruction of justice when he refused to allow the officer-defendant to enter his home even though the officer presented an arrest warrant for a third party whom the officer suspected to be inside. 960 F. Supp. 977, 995 (E.D. Va. 1997). The Court reasoned that the arrest warrant gave

the officer legal justification to enter the home that precluded the plaintiff from asserting his right to privacy in refusing entry to the officer. *Id.* Accordingly, the plaintiff's actions, "continually refus[ing] to answer questions . . . [while being] hostile and aggressive" by shutting the door in the officer's face, "clearly demonstrated an intention to prevent [the officer] from performing his duties," and gave the officer probable cause to arrest the plaintiff for obstruction. *Id.* Similarly, in this case, Plaintiff's persistent refusal to answer the officers' questions and his aggressive and hostile behavior clearly demonstrated his intent to prevent Defendants from completing their duties. Further, Defendants here had even greater justification than the officer in *Smith*, because, as the operator of a motor vehicle, Plaintiff was obligated to carry and produce his license and registration. Va. Code. Ann. § 46.2-104. This obligation contrasts with the *Smith* plaintiff's otherwise valid right to refuse entry to the officer, but for the warrant.

Although, on a previous occasion, in *Stout v. Harris*, this Court has held that "failing to identify does not violate Virginia law, nor does it violate the obstruction statute," this case significantly differs from the facts at issue there. 2021 WL 5756382, at *5 (E.D. Va. Dec. 3, 2021). There, the plaintiff stood on the side of the road outside of a sheriff's department security gate. *Id.* at *1. The defendant, a sheriff's deputy, approached on foot and asked for identification, which the plaintiff continually refused to provide over the course of four minutes. *Id.* at *1-2. The defendant arrested the plaintiff for failure to identify and charged him with obstruction of justice. *Id.* at *2. The Court found that the plaintiff had sufficiently alleged that the defendant had arrested him without probable cause, because failure to identify is not a crime in Virginia, nor does it amount to obstruction of justice. *Id.* at *5.

This case differs from *Stout v. Harris*, because of the context in which the interaction occurred. Here, Plaintiff — a lawfully-detained motorist — completely frustrated the officers'

ability to conduct a constitutional license checkpoint to ensure the safety of local roadways. There, the plaintiff — a pedestrian — generally declined to identify himself in a consensual roadside encounter. The officer sought identification as nothing more than an interim step in investigating apparently suspicious, disruptive or unsafe behavior. In that situation, failure to identify merely rendered the officer's task more difficult, because she could otherwise fulfill her duties of ensuring roadside safety. By contrast, in the instant case, the request for a driver's license at a license checkpoint was not an intermediate step — it was the purpose of the detention. As an operator of a motor vehicle, Plaintiff had a legal requirement to produce his driver's license, unlike a pedestrian who does not have an obligation to identify himself. Plaintiff flatly refused and by his conduct indicated that he intended to prevent the officers from completing their duties, thereby giving the officer's probable cause to arrest Plaintiff for obstruction of justice. As such, Count One, alleging unreasonable arrest without probable cause, and Count Seven, alleging malicious prosecution for lack of probable cause to institute a criminal proceeding against Plaintiff, must fail.

Finally, because Defendants lawfully arrested Plaintiff for obstruction of justice and driving under the influence, they did not violate the Fourth Amendment by searching his person, or searching and seizing his vehicle. *See United States v. Currence*, 446 F.3d 554, 556 (4th Cir. 2006) ("[W]hen law enforcement officers have probable cause to make a lawful custodial arrest, they may — incident to that arrest and without a warrant — search 'the arrestee's person and the area within his immediate control.'") (quoting *Chimel v. California*, 395 U.S. 752, 763 (1969); *Arizona v. Gant*, 556 U.S. 332, 343 (2009) ("[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.") (cleaned up); *Cabbler v. Superintendent,*

Virginia State Penitentiary, 528 F.2d 1142, 1146 (4th Cir. 1975) ("[P]olice do not violate the Fourth Amendment when they impound a vehicle to protect it or to remove a nuisance after arresting the driver away from his home, and he has no means immediately at hand for the safekeeping of the vehicle.") (cleaned up). Accordingly, Count Three, alleging unreasonable search of Plaintiff, Count Four, alleging unreasonable search of Plaintiff's vehicle, and Count Six, alleging unreasonable seizure of Plaintiff's vehicle, must fail as well.[7]

IV. CONCLUSION

For the reasons set forth above, the Court hereby GRANTS Defendants' Motion to Dismiss (ECF No. 6), and DISMISSES WITH PREJUDICE Plaintiff's Complaint (ECF No. 3).

The Court hereby notifies Plaintiff that should he wish to appeal this Order, written notice of the appeal must be filed within thirty (30) days of entry hereof. Failure to file a notice of appeal within the stated period may result in the loss of the right to appeal.

This case is now CLOSED.

Let the Clerk file a copy of this Memorandum Order electronically, notify all counsel of record and forward a copy to Plaintiff at his address of record.

It is so ORDERED.

/s/
David J. Novak
United States District Judge

Richmond, Virginia
Date: August 26, 2022

[7] Because the Court finds that Plaintiff's Complaint fails to state a claim, it need not reach Defendants alternative argument that, if any of their acts violated Plaintiff's rights, they are protected by qualified immunity. (Defs.' Mem. at 14-16.)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ROBERT BENJAMIN STOUT,
Plaintiff,

v. Civil No. 3:22cv287 (DJN)

SGT. JOHNSON, *et al.*,
Defendants.

MEMORANDUM ORDER
(Granting Motion and Dismissing Case)

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I. BACKGROUND

At this stage, the Court must accept as true the facts set forth in the Complaint (ECF No. 3). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Against this backdrop, the Court accepts the following facts as alleged for purposes of resolving the instant motions.

A. Facts Alleged

On July 11, 2020, Plaintiff left Rick's on the River, a popular beachfront restaurant and bar in King George, Virginia with his four-year-old son. (Compl. ¶ 4.) Driving south on Route

218, Plaintiff stopped at a license checkpoint conducted by Sgt. Johnson and Deputy Nobles, among others.[1] (Compl. ¶ 5.) Defendants stopped every passing vehicle at the checkpoint to require the driver to produce their license. (Compl. ¶ 7.) Based on the video incorporated into the Complaint, the encounter took place at night.[2]

When Plaintiff reached the checkpoint, Deputy Nobles asked Plaintiff to provide his driver's license.[3] (Compl. ¶¶ 1, 8; Video at 0:10.) Thus began a twenty-minute standoff. Plaintiff responded by repeatedly asking if he was being detained and for what crime was he being detained. (*E.g.*, Compl. ¶¶ 9, 11, 13, 15.) Nobles repeatedly told Plaintiff to provide his driver's license, that it was a license checkpoint, that he could not leave without providing his license, and that he needed to roll down his window. (*E.g.*, Compl. ¶¶ 11-16; Video at 0:10-0:35.) Plaintiff refused to roll his window down and did not produce his license. (Compl. ¶ 24.)

After about thirty seconds had elapsed, Plaintiff said, "we done talking." (Video at 0:38.) Deputy Nobles again told Plaintiff that he needed to provide his driver's license to prove that he

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[1] Plaintiff also names "King George County Sheriff" to allege municipal liability, but does not aver that he or she participated in the checkpoint. (Compl. ¶¶ 127-31.)

[2] Plaintiff references and expressly incorporates a video of the encounter (the "Video") with his Complaint that is publicly available at the web address he provides. (Compl. ¶ 1.) Courts may consider documents incorporated into the Complaint by reference on a motion to dismiss, *see Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165-66 (4th Cir. 2016). This Court and the district court of Maryland have applied this rule to consider videos incorporated into the Complaint as well, so long as they are authentic and integral to the Complaint. *See Thompson v. Badjugar*, No. 20cv1272, 2021 WL 3472130, at *3-4 (D. Md. Aug. 6, 2021); *Stout v. Harris*, No. 3:21cv399, 2021 WL 5756382, *1 n.1 (citing *Thompson* and *Philips v. Pitt Cty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)). Here, Plaintiff asserts that the video is authentic, Defendants do not challenge it, and it is critical to his claims related to the encounter.

[3] Plaintiff alleges that the officer who first commanded him to produce his license was Deputy Nobles, but it appears to be a third officer who withdrew from Plaintiff's vehicle shortly thereafter and did not return to the encounter.

could drive "on the highway." (Video at 0:55.) Plaintiff replied "No, I don't," continued to ignore the command, and told the officers: "I don't answer questions." (Video at 0:56-1:56.) After about three minutes, Sgt. Johnson instructed Plaintiff to produce his license and told him to roll his window down. Plaintiff told Johnson that he would lose his qualified immunity, told him he was "done talking," and the "conversation [was] over." (Video at 3:00-4:00.) When Johnson asked Plaintiff if he would produce his license, Plaintiff said he would not answer questions. (Video at 4:40.) Johnson walked away, and Deputy Nobles remained at Plaintiff's window for the next several minutes. (Video at 5:30.) Plaintiff remained seated in his car, with his window rolled up, and did not produce his license. The officers began to allow vehicles to proceed through the checkpoint southbound on Route 218 around Plaintiff's vehicle. (Video at 6:15.)

Several minutes later, Deputy Nobles tried again, this time tapping on the window and again asking Plaintiff to produce his driver's license. (Video at 10:15.) Plaintiff responded by telling Nobles not to touch his car, asking him what crime he was being detained for, then raising his middle finger, saying "fuck you" to Nobles, and telling Nobles to "get the fuck outta here." (Video at 9:00-11:30.) When Plaintiff again asked Nobles if he was free to leave, Nobles confirmed that he could leave the checkpoint as soon as he provided his driver's license. (Video at 12:35.) After several more minutes, the video shows Plaintiff take a flash-light out of his glovebox, shine it in Nobles' eyes, and click the light intermittently for about thirty seconds to create a strobe-like effect. (Video at 16:15.)

The standoff continued for several more minutes, with Deputy Nobles continuing to tap on Plaintiff's window and commanding Plaintiff to roll his window down and produce his license. (Video at 16:30-19:00.) Plaintiff, meanwhile, continued to ignore him and shine the light in his eyes, and told Nobles that he was streaming the video live. (Video at 17:55.)

Approximately nineteen minutes into the standoff, Sgt. Johnson returned to Plaintiff's closed car window, said that the Supreme Court requires a driver to provide his driver's license at a license checking detail, and again told Plaintiff to show his license. (Compl. ¶ 29; Video at 19:25.) Once again, Plaintiff refused to comply and shouted at Johnson through his closed window that he would not answer any questions. (Video at 19:35.) Johnson told Plaintiff that the Supreme Court "says we can bust the window out" then confirmed one final time that Plaintiff would not produce his license. (Compl. ¶ 32; Video at 19:40.) When Plaintiff again ignored him, Johnson told Nobles: "Bust his window out." (Compl. ¶¶ 31-32; Video at 19:55.)

Plaintiff then promptly opened his door, and Deputy Nobles demanded to see his license. (Compl. ¶¶ 35-36; Video at 19:57.) Plaintiff and the officers engaged in a short and heated discussion. When asked again to provide his license, Plaintiff refused and told Sgt. Johnson to "shut up." (Compl. ¶ 38; Video at 20:10.) At last, Johnson said a final time that Plaintiff was required to produce his identification, and Plaintiff shouted for the final time to ask what crime that he was suspected of committing. (Compl. ¶¶ 44-48; Video at 20:13.) At that point, Johnson ordered Plaintiff to get out of his vehicle and put his hands behind his back. (Compl. ¶¶ 49-60; Video at 20:22.) The video ends at this point, and Defendants then arrested Plaintiff. (Compl. ¶¶ 60-61; Video at 20:36.)

Defendants arrested Plaintiff for violating Virginia Code § 18.2-266 (driving while intoxicated), Virginia Code § 46.2-104 (failure to carry license), and Virginia Code § 18.2-460 (obstruction of justice). (Compl. ¶ 61.) After Plaintiff was arrested, Sgt. Johnson searched him and his vehicle and had his car towed. (Compl. ¶¶ 62-68.)

Defendants then transported Plaintiff to the police station where he performed a breathalyzer sobriety test. (Compl. ¶ 69.) Plaintiff passed the test as he was not intoxicated and

does not consume alcohol. (Compl. ¶¶ 62, 69.) Sgt. Johnson brought Plaintiff before the magistrate, who charged Plaintiff with driving while intoxicated, failure to carry a license, and obstruction of justice. (Compl. ¶ 70.)

At Plaintiff's arraignment, the prosecutor voluntarily dismissed the driving while intoxicated charge. (Compl. ¶ 72.) On August 11, 2021, Plaintiff was convicted in the General District Court of King George County of violating Virginia Code § 18.2-460 (obstruction of justice) and acquitted of violating Virginia Code § 46.2-104 (failing to carry license). (Compl. ¶¶ 75, 77.) Plaintiff alleges that, on February 3, 2022, the obstruction of justice charge was dismissed on a motion to strike during a subsequent *de novo* trial in the Circuit Court of King George County. (Compl. ¶¶ 86, 94.)

B. Procedural History

Plaintiff filed a Motion for Leave to Proceed *in forma pauperis* ("IFP") on April 22, 2022. (ECF No. 1.) On April 26, 2022, the Court granted Plaintiff IFP status and directed the Clerk to issue process and deliver the summonses to the United States Marshal for service. (ECF No. 2.)

Plaintiff raises eight counts for relief based on the above allegations. Counts One through Six raise Fourth Amendment claims for his unreasonable arrest (Count One), unreasonable traffic stop and detention (Count Two), search of his person and vehicle (Count Three and Four) and seizure of his license and vehicle (Counts Five and Six). (Compl. ¶¶ 96-119.) Count Seven raises a claim for malicious prosecution and Count Eight alleges municipal liability against King George County for the Sheriff's maintenance of the policy of conducting unconstitutional license checkpoints. (Compl. ¶¶ 120-31.) Based on these allegations, Plaintiff seeks general compensatory and punitive damages.

Defendants filed their Motion to Dismiss on May 25, 2022. (ECF No. 6.) Defendants argue that Plaintiff fails to state a claim, because the license checkpoint stop was constitutional, and Defendants had probable cause to arrest and search Plaintiff. (Defs.' Mem. in Supp. of Mot. to Dismiss ("Defs.' Mem.") at 7-14, 16 (ECF No. 7).) Alternatively, Defendants argue that their actions are protected by qualified immunity. (Defs.' Mem. at 14-16.) Plaintiff responded to the Motion on June 3, 2022, arguing that license checkpoints are unconstitutional, that Defendants did not have probable cause to arrest him and are not entitled to qualified immunity. (Pl.'s Resp. to Def.'s [sic] Mot. to Dismiss ("Pl.'s Resp.") at 1-10 (ECF No. 8).) Defendants filed their reply on June 8, 2022, rending the matter now ripe for review. (ECF No. 9.)

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6) tests the sufficiency of a complaint or counterclaim; it does not serve as the means by which a court will resolve contests surrounding the facts, determine the merits of a claim or address potential defenses. *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). In considering a motion to dismiss, the Court will accept a plaintiff's well-pleaded allegations as true and view the facts in a light most favorable to Plaintiff. *Mylan Lab'ys, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678.

Under the Federal Rules of Civil Procedure, a complaint or counterclaim must state facts sufficient to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests[.]'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). As the Supreme Court opined in *Twombly*, a complaint or counterclaim must state "more than labels and conclusions" or a "formulaic recitation of the elements of a

cause of action," though the law does not require "detailed factual allegations." *Id.* (citations omitted). Ultimately, the "[f]actual allegations must be enough to raise a right to relief above the speculative level," rendering the right "plausible on its face" rather than merely "conceivable." *Id.* at 555, 570. Thus, a complaint or counterclaim must assert facts that are more than "merely consistent with" the other party's liability. *Id.* at 557. And the facts alleged must be sufficient to "state all the elements of [any] claim[s]." *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002) and *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)).

III. ANALYSIS

The Court begins by considering the constitutionality of the initial traffic stop before examining the justification for the subsequent searches and seizures. Ultimately, the Fourth Circuit has long upheld license checkpoints, defeating Counts Two, Five and Eight. Additionally, the officers had probable cause to arrest Plaintiff for obstruction of justice, which, combined with the context of Plaintiff's actions, justified the subsequent searches and seizures and defeat the remaining claims. As such, Plaintiff's Complaint fails to state a claim.

A. Counts Two, Five, and Eight Fail, Because The License Checkpoint Did Not Violate the Fourth Amendment.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A police stop of a vehicle at a license checkpoint constitutes one such seizure that must prove reasonable to comport with this constitutional right. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). To evaluate a particular checkpoint seizure, the Court must "balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to

require a warrant or some level of individualized suspicion in the particular context." *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 449–50 (1990) (cleaned up). In dicta, the Supreme Court has suggested that checkpoints to inspect drivers' licenses would be constitutional even in the absence of reasonable articulable suspicion that a driver was unlicensed. *See Prouse*, 440 U.S. at 663 (suggesting that "[q]uestioning 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).[4] Applying this principle, the Fourth Circuit has upheld such roadblock-type stops, stating that "a brief stop at a checkpoint for 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").

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[4] This holding and dicta flatly contradict Plaintiff's mischaracterization of *Prouse* as "uphold[ing] roadway-safety checkpoints but ban[ning] roadway-safety checkpoints that require drivers to produce their driver's licenses." (Pl.'s Resp. at 2.) The Supreme Court acknowledged the State's interest in checking for licenses to preserve roadway safety, but found the burden on drivers of the arbitrary spot check method of enforcement to outweigh the state's interest. *Prouse*, 440 U.S. at 658, 661. The Court stated "[t]his holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion" and suggested the less intrusive method of a roadblock-style check. *Prouse*, 440 U.S. at 663. Moreover, Plaintiff's argument ignores that the Fourth Circuit has subsequently interpreted *Prouse* and upheld such license checkpoints, as described *infra*.

Here, Defendants' license checkpoint and stop of Plaintiff's vehicle prove reasonable. As alleged, Defendants set up a license checkpoint on Route 218 and "stopped every single vehicle that drove through the license checkpoint, commanded every single driver to produce a driver's license, and commanded every single passenger to produce identification." (Compl. ¶¶ 5, 7.) Defendants stopped Plaintiff in this manner when he arrived at the checkpoint and requested his license. (Compl. ¶¶ 5, 8.) Such a seizure proves reasonable under Fourth Circuit law.[5] *See, e.g.*, *Price*, 164 F. App'x at 406 (upholding license checkpoint that stopped all motorists, without exercise of police discretion, for a license check). As such, the checkpoint seizure at issue did not violate the Fourth Amendment. Therefore, Count Two, alleging that the checkpoint amounted to an unreasonable detention for want of reasonable suspicion, Count Five, alleging unreasonable seizure of driver's license, and Count Eight, alleging municipal liability based upon the unreasonableness of license checkpoints, must fail.

Nonetheless, "an initially permissible checkpoint seizure may transform into an impermissible one by further intrusions not based upon individualized suspicion or consent." *Brugal*, 209 F.3d at 357. As such, the Court must proceed to evaluate whether Defendants' conduct following the traffic stop was justified.

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[5] As Plaintiff notes in his response, Virginia Code § 46.2-104 also establishes Defendants' authority to compel his license. In passing, he argues that the statute proves unconstitutional, because "if it's unconstitutional for officers to conduct spot checks on one, it's unconstitutional for officers to conduct spot checks on everyone." (Pl.'s Resp. at 7.) Plaintiff may not amend his Complaint to challenge the constitutionality of this law via his response and the Court will not credit his fallacious drive-by argument. *See Campbell ex rel. Equity Units Holders v. Am. Int'l Grp., Inc.*, 86 F. Supp. 3d 464, 472 n.9, (E.D. Va. 2015) ("[I]t is 'axiomatic that a complaint may not be amended by the briefs in opposition to a motion to dismiss.") (cleaned up).

B. The Remaining Counts Fail, Because the Officers Had Probable Cause to Arrest Plaintiff.

"[W]hen an officer seeks to expand the investigation of a motorist beyond the reasons for the checkpoint, the officer must have a reasonable suspicion that the particular person seized is engaged in criminal activity, or obtain consent during the time period the defendant is lawfully seized." *Brugal*, 209 F.3d at 357 (cleaned up). As an initial matter, Defendants' continued detention of Plaintiff for approximately twenty-minutes up until his arrest was justified by Plaintiff's refusal to provide his driver's license. *See, e.g., Brugal*, 209 F.3d at 358 (noting "continuing seizure[s]" require continuing justification). As discussed *supra*, Defendants lawfully sought to inspect Plaintiff's license and his failure to provide it gave Defendants continuing reason to detain him.

However, an arrest, such as the one that terminated the stand-off at issue here, requires greater justification. An arrest complies with the Fourth Amendment "only if based on probable cause." *Wilson v. Kittoe*, 337 F.3d 392, 398 (4th Cir. 2003). "An officer has probable cause for arrest when the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Id.* (cleaned up). Here, Defendants contend that they had probable cause to believe that Plaintiff was committing, or about to commit, obstruction of justice under Virginia Code § 18.2-460(A).[6] (Defs.' Mem. at 10.)

[6] Although Plaintiff alleges that the officers arrested him for failure to produce his license and driving while intoxicated, Defendants do not use these purported violations to advance their probable cause argument.

Virginia's obstruction of justice statute provides, in pertinent part:

> If any person without just cause knowingly obstructs . . . any law-enforcement officer . . . 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 . . . law-enforcement officer . . . he is guilty of a Class 1 misdemeanor.

Va. Code Ann. § 18.2-460(A). Virginia courts have long imposed a stringent interpretation of obstruction of justice: "[t]o constitute obstruction of an officer in the performance of his duty . . . there must be acts clearly indicating an intention on the part of the accused to prevent the officer from performing his duty[.]" *Jones v. Commonwealth*, 126 S.E. 74, 77 (Va. 1925). "[O]bstruction of justice does not occur when a person fails to cooperate fully with an officer or when the person's conduct merely renders the officer's task more difficult but does not impede or prevent the officer from performing that task." *Ruckman v. Commonwealth*, 505 S.E.2d 388, 389 (Va. Ct. App. 1998). Accordingly, for Defendants to have had probable cause to arrest Plaintiff for obstruction of justice, a reasonable person in their shoes must have believed that Plaintiff intended to prevent them from performing their duty, not just making their task more difficult.

Here, on the facts alleged and evidence contained in the undisputed video, Plaintiff clearly indicated his intent to prevent Defendants from performing their duties. That night, Defendants duties were to ensure that every driver passing through their checkpoint carried a valid driver's license. From the outset, Plaintiff refused to provide his license, instead challenging the Defendants' authority to stop him and seek his license. He communicated his intent to completely prevent the officers' from performing their duty by — over the course of *twenty* minutes — refusing to roll down his window, telling the officers the conversation was over, raising his middle finger and telling the officers "fuck you," pulsing a flashlight in one of

the officer's face, and refusing to answer questions. While "not just any refusal to obey an officer's order" amounts to obstruction of justice, *Wilson*, 337 F.3d at 400, Plaintiff's conduct here certainly did more than merely impede Defendants or make their duties more difficult. Indeed, for over twenty minutes, Plaintiff frustrated Defendants' sole purpose in conducting the license checkpoint.

Recent case law applying Virginia's obstruction statute assures the Court that Defendants had probable cause to arrest Plaintiff for its violation. In *Thorne v. Commonwealth*, the Virginia Court of Appeals upheld a conviction for obstruction of justice where the defendant prevented an officer from performing his duty of testing the legality of her window tint for nine minutes. 784 S.E.2d 304, 308-10 (Va. Ct. App. 2016). The officer had pulled the defendant over for a suspected window tint violation, but the defendant refused to roll her window down enough for the officer to perform the test, repeatedly telling him that she knew her rights and "[d]o what you gotta do!" *Id.* at 309. The court found that the defendant's verbal responses clearly indicated that she knew she was keeping the officer from performing his duty. *Id.* The court upheld this conviction even though the defendant complied after nine minutes when a second officer arrived on the scene, reasoning that the period of nine minutes sufficed to constitute obstruction. *Id.* In this case, Plaintiff prevented the officers from performing their duties for an even greater period of time. Moreover, his verbal responses and behavior clearly conveyed that he knew that he was preventing Defendants from completing their license check.

And in *Smith v. Tolley*, this Court found probable cause existed to arrest the plaintiff for obstruction of justice when he refused to allow the officer-defendant to enter his home even though the officer presented an arrest warrant for a third party whom the officer suspected to be inside. 960 F. Supp. 977, 995 (E.D. Va. 1997). The Court reasoned that the arrest warrant gave

the officer legal justification to enter the home that precluded the plaintiff from asserting his right to privacy in refusing entry to the officer. *Id.* Accordingly, the plaintiff's actions, "continually refus[ing] to answer questions . . . [while being] hostile and aggressive" by shutting the door in the officer's face, "clearly demonstrated an intention to prevent [the officer] from performing his duties," and gave the officer probable cause to arrest the plaintiff for obstruction. *Id.* Similarly, in this case, Plaintiff's persistent refusal to answer the officers' questions and his aggressive and hostile behavior clearly demonstrated his intent to prevent Defendants from completing their duties. Further, Defendants here had even greater justification than the officer in *Smith*, because, as the operator of a motor vehicle, Plaintiff was obligated to carry and produce his license and registration. Va. Code. Ann. § 46.2-104. This obligation contrasts with the *Smith* plaintiff's otherwise valid right to refuse entry to the officer, but for the warrant.

Although, on a previous occasion, in *Stout v. Harris*, this Court has held that "failing to identify does not violate Virginia law, nor does it violate the obstruction statute," this case significantly differs from the facts at issue there. 2021 WL 5756382, at *5 (E.D. Va. Dec. 3, 2021). There, the plaintiff stood on the side of the road outside of a sheriff's department security gate. *Id.* at *1. The defendant, a sheriff's deputy, approached on foot and asked for identification, which the plaintiff continually refused to provide over the course of four minutes. *Id.* at *1-2. The defendant arrested the plaintiff for failure to identify and charged him with obstruction of justice. *Id.* at *2. The Court found that the plaintiff had sufficiently alleged that the defendant had arrested him without probable cause, because failure to identify is not a crime in Virginia, nor does it amount to obstruction of justice. *Id.* at *5.

This case differs from *Stout v. Harris*, because of the context in which the interaction occurred. Here, Plaintiff — a lawfully-detained motorist — completely frustrated the officers'

ability to conduct a constitutional license checkpoint to ensure the safety of local roadways. There, the plaintiff — a pedestrian — generally declined to identify himself in a consensual roadside encounter. The officer sought identification as nothing more than an interim step in investigating apparently suspicious, disruptive or unsafe behavior. In that situation, failure to identify merely rendered the officer's task more difficult, because she could otherwise fulfill her duties of ensuring roadside safety. By contrast, in the instant case, the request for a driver's license at a license checkpoint was not an intermediate step — it was the purpose of the detention. As an operator of a motor vehicle, Plaintiff had a legal requirement to produce his driver's license, unlike a pedestrian who does not have an obligation to identify himself. Plaintiff flatly refused and by his conduct indicated that he intended to prevent the officers from completing their duties, thereby giving the officer's probable cause to arrest Plaintiff for obstruction of justice. As such, Count One, alleging unreasonable arrest without probable cause, and Count Seven, alleging malicious prosecution for lack of probable cause to institute a criminal proceeding against Plaintiff, must fail.

Finally, because Defendants lawfully arrested Plaintiff for obstruction of justice and driving under the influence, they did not violate the Fourth Amendment by searching his person, or searching and seizing his vehicle. *See United States v. Currence*, 446 F.3d 554, 556 (4th Cir. 2006) ("[W]hen law enforcement officers have probable cause to make a lawful custodial arrest, they may — incident to that arrest and without a warrant — search 'the arrestee's person and the area within his immediate control.'") (quoting *Chimel v. California*, 395 U.S. 752, 763 (1969); *Arizona v. Gant*, 556 U.S. 332, 343 (2009) ("[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.") (cleaned up); *Cabbler v. Superintendent,*

Virginia State Penitentiary, 528 F.2d 1142, 1146 (4th Cir. 1975) ("[P]olice do not violate the Fourth Amendment when they impound a vehicle to protect it or to remove a nuisance after arresting the driver away from his home, and he has no means immediately at hand for the safekeeping of the vehicle.") (cleaned up). Accordingly, Count Three, alleging unreasonable search of Plaintiff, Count Four, alleging unreasonable search of Plaintiff's vehicle, and Count Six, alleging unreasonable seizure of Plaintiff's vehicle, must fail as well.[7]

IV. CONCLUSION

For the reasons set forth above, the Court hereby GRANTS Defendants' Motion to Dismiss (ECF No. 6), and DISMISSES WITH PREJUDICE Plaintiff's Complaint (ECF No. 3).

The Court hereby notifies Plaintiff that should he wish to appeal this Order, written notice of the appeal must be filed within thirty (30) days of entry hereof. Failure to file a notice of appeal within the stated period may result in the loss of the right to appeal.

This case is now CLOSED.

Let the Clerk file a copy of this Memorandum Order electronically, notify all counsel of record and forward a copy to Plaintiff at his address of record.

It is so ORDERED.

/s/
David J. Novak
United States District Judge

Richmond, Virginia
Date: August 26, 2022

[7] Because the Court finds that Plaintiff's Complaint fails to state a claim, it need not reach Defendants alternative argument that, if any of their acts violated Plaintiff's rights, they are protected by qualified immunity. (Defs.' Mem. at 14-16.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROBERT STOUT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Appeal No. 22-1957
	)	
SERGEANT JOHNSON, et. al.,	)	
	)	
Defendants.	)	
	)	

APPELLANT'S INFORMAL OPENING BRIEF

I. Jurisdiction

The Appellant is appealing from the United States District Court for the Eastern District of Virginia, Richmond Division. The Appellant is appealing the U.S. District Court's Order dated August 26, 2022, dismissing the Appellant's civil action.

II. Issues for Review

1. Whether or not law-enforcement authority to *question* and *observe* drivers at roadway safety checkpoints includes the authority to *compel* drivers to produce their driver's licenses.
2. Whether or not refusing to provide a driver's license to law-enforcement constitutes obstruction of justice.

A. Supporting Facts and Argument

1. Issue #1

This court in *US v. Brugal*, 209 F. 3d 353 - Court of Appeals, 4th Circuit 2000, ruled that "the Supreme Court has upheld the constitutionality of government checkpoints set up to detect drunken drivers, *see id.* at 454, 110 S.Ct. 2481, and illegal immigrants, *see Martinez-Fuerte*, 428

U.S. at 556-67, 96 S.Ct. 3074, so long as they involve no more than an 'initial stop . . . and the associated preliminary *questioning* and *observation* by checkpoint officers.' *Sitz*, 496 U.S. at 450-51, 110 S.Ct. 2481." *US v. Brugal*, 209 F. 3d 353 - Court of Appeals, 4th Circuit 2000, (emphasis added). "A brief stop at a checkpoint for 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." *US v. Brugal*, 209 F. 3d 353 - Court of Appeals, 4th Circuit 2000. (emphasis added).[1]

The *Brugal* court reasoned that "the Court suggested in *Prouse*, albeit in *dicta*, that checkpoints to check driver's licenses would be permissible even in the absence of articulable and reasonable suspicion that a driver was unlicensed." *US v. Brugal*, 209 F. 3d 353 - Court of Appeals, 4th Circuit 2000. In *Prouse*, the court's suggestion was this:

> "This holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve *less intrusion* or that do not involve the unconstrained exercise of discretion. *Questioning* of all oncoming traffic at roadblock-type stops is one possible alternative." (emphasis added).

[1] The Plaintiff concedes that in *Indianapolis v. Edmond*, 531 US 32 - Supreme Court 2000, the Court ruled that a "type of roadblock with the *purpose* of verifying drivers' licenses and vehicle registrations would be permissible." (emphasis added). However, the purpose of the roadblock in the Appellant's case was not to verify driver's licenses and vehicle registrations, but to, according to the Appellees' testimony throughout the Appellant's trial, the Appellees' checkpoint plan, and the Appellees' motion to dismiss, detect drunk drivers, even though the Appellees characterized the checkpoint as a license checkpoint to the Appellee during the stop. And at DUI checkpoints, drivers may be "diverted for a license and registration check" *only if* "motorists...exhibited signs of intoxication." To the extent that DUI checkpoints and license checkpoints are subsumed into roadway safety checkpoints, and are one and the same, law-enforcement's authority to verify driver's licenses and registrations authorizes law-enforcement to establish roadway safety checkpoints for the *purpose* of verifying, verifying by way of stopping, questioning and observing drivers, not by compelling drivers.

The *Prouse* court suggested that states may develop methods less intrusive than requiring drivers to produce driver's licenses, *or* may develop methods not requiring unconstrained discretion, if those methods are limited to questioning.

In fact, the Supreme Court sees "virtually no difference between the levels of intrusion...on motorists stopped briefly at sobriety checkpoints" and "on motorists subjected to a brief stop at a highway checkpoint for detecting illegal aliens. *See Martinez-Fuerte, supra,* at 558. We see virtually no difference between the levels of intrusion on law-abiding motorists from the brief stops necessary to the effectuation of these two types of checkpoints, which to the average motorist would seem identical save for the nature of the *questions* the checkpoint officers might ask." *Michigan Dept. of State Police v. Sitz*, 496 US 444 - Supreme Court 1990. (emphasis added).[2] Therefore, roadway safety checkpoints are governed by the same limitations governing illegal alien checkpoints, so we need look no further than *United States v. Martinez-Fuerte*, 428 US 543 - Supreme Court 1976, to explore those limitations.

An illegal alien checkpoint "involves only a brief *detention* of travelers," "neither the vehicle nor its occupants are searched, *visual inspection* of the vehicle is *limited* to what can be *seen* without a search," and "the stop itself, the *questioning*, and the visual inspection," are an "objective intrusion." *United States v. Martinez-Fuerte*, 428 US 543 - Supreme Court 1976. (emphasis added).[3] Roadway safety checkpoints are limited to "the initial *stop* of each motorist

[2] "The intrusion resulting from the brief stop at the sobriety checkpoint is for constitutional purposes indistinguishable from the checkpoint stops we upheld in *Martinez-Fuerte*." *Michigan Dept. of State Police v. Sitz*, 496 US 444 - Supreme Court 1990.

[3] The Plaintiff concedes that *Martinez-Fuerte* states that:

> " '[a]ll that is *required* of the vehicle's occupants is a *response* to a brief question or two and possibly the *production* of a document evidencing a right to be in the United States.' " *United States v. Brignoni-Ponce*, supra, at 880.

(emphasis added). However, illegal alien checkpoint "operations are conducted pursuant to statutory authorizations empowering Border Patrol agents to interrogate those believed to be aliens as to their right to be in the United States and to inspect vehicles for aliens. 8 U. S. C. §§ 1357 (a) (1), (a) (3). Under current regulations the authority

passing through a checkpoint and the associated preliminary *questioning* and *observation* by checkpoint officers." *Michigan Dept. of State Police v. Sitz*, 496 US 444 - Supreme Court 1990. *See Illinois v. Lidster*, 540 US 419 - Supreme Court 2004 ("The motorist stop will likely be brief. Any accompanying traffic delay should prove no more onerous than many that typically accompany normal traffic congestion. And the resulting *voluntary questioning* of a motorist is as likely to prove important for police investigation as is the questioning of a pedestrian") (emphasis added).

Further "detention of particular motorists...may require satisfaction of an individualized suspicion standard. Id., at 567." *Michigan Dept. of State Police v. Sitz*, 496 US 444 - Supreme Court 1990.

So, does law-enforcement's authority to stop, question, and observe drivers include the authority to compel drivers to produce their driver's licenses? The Supreme Court distinguishes between the authority to ask questions and the authority to issue commands. Questions are consensual in nature and designed to elicit voluntary answers while commands are shows of force designed to compel compliance.

"'There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets,' *id.*, at 34. Police officers enjoy 'the liberty (again, possessed by every citizen) to address questions to other persons,' *id.*, at 31, 32-33 (Harlan, J., concurring), although 'ordinarily the person addressed has an equal right to ignore his interrogator and walk away.' *Ibid.*" *United States v. Mendenhall*, 446 US 544 - Supreme Court 1980 ("As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty.") The Supreme Court has authorized

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conferred by § 1357 (a) (3) may be exercised anywhere within 100 air miles of the border. 8 CFR § 287.1 (a) (1976)." fn. 8. There is no statutory authorization and no illegal alien checkpoint in this case.

law-enforcement to question, not compel, at roadway safety checkpoints. The Appellant was not questioned by the Appellees, but was commanded and compelled to produce his driver's license, and was not free to disregard the Appellees' 'questions' and drive away.[4]

The *Prouse* Court has suggested that the permissible *level of intrusion* be limited to *questioning*, and that the permissible *level of unconstrained exercise of discretion* be limited to *all* oncoming traffic. Therefore, in this case, the Appellees satisfied the unconstrained exercise of discretion standard because the Appellees stopped *all* oncoming traffic, but the Appellees did not satisfy the level of intrusion standard because they did not *question* the Appellant, but commanded and compelled the Appellant.

The Appelles did not conduct a roadway safety checkpoint, but a spot check of all oncoming traffic, and the *Prouse* court banned spot checks. Law-enforcement may not convert spot checks into roadway safety checkpoints by spot checking everyone. The Supreme court distinguishes between roadway safety checkpoints and spot checks, upholding the former and prohibiting the latter.

The Appellees did not provide drivers with an alternative route to avoid the checkpoint and did not provide public notice of the checkpoint's existence.

2. Issue #2

[4] The Plaintiff concedes that in *Indianapolis v. Edmond*, 531 US 32 - Supreme Court 2000, the Court ruled that a "type of roadblock with the *purpose* of verifying drivers' licenses and vehicle registrations would be permissible." (emphasis added). However, the purpose of the roadblock in the Appellant's case was not to verify driver's licenses and vehicle registrations, but to, according to the Appellees' testimony throughout the Appellant's trial, the Appellees' checkpoint plan, and the Appellees' motion to dismiss, detect drunk drivers, even though the Appellees characterized the checkpoint as a license checkpoint to the Appellee during the stop. And at DUI checkpoints, drivers may be "diverted for a license and registration check" *only if* "motorists...exhibited signs of intoxication." To the extent that DUI checkpoints and license checkpoints are subsumed into roadway safety checkpoints, and are one and the same, law-enforcement's authority to verify driver's licenses and registrations authorizes law-enforcement to establish roadway safety checkpoints for the *purpose* of verifying, verifying by way of stopping, questioning and observing drivers, not by compelling drivers.

Refusing to provide a driver's license does not constitute obstruction of justice, constitutes failure to carry a license as prohibited by Virginia Code § 46.2-104 (The owner or operator of any motor vehicle, trailer, or semitrailer shall stop on the signal of any law-enforcement officer who is in uniform or shows his badge or other sign of authority and shall, on the officer's request, exhibit his registration card, driver's license, learner's permit, or temporary driver's permit and write his name in the presence of the officer, if so required, for the purpose of establishing his identity).

III. Relief Requested

The Appellant requests that this court reverse the District Court's decision and remand for further proceedings.

IV. Prior Appeals

The Appellant has no prior appeals in this court.

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The Plaintiff certifies that he did not receive assistance from an attorney in the preparation of this document.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ROBERT BENJAMIN STOUT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:22cv287-DJN
	)	
SGT. NOBLES, et. al.,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

The Plaintiff hereby responds to the Defendant's motion to dismiss the Plaintiff's complaint and requests that this court deny the Defendant's motion. The Plaintiff states as follows in support:

I. I.D. and License Checkpoints are Unconstitutional

There is no doubt that "the states have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed." *Delaware v. Prouse*, 440 US 648 - Supreme Court 1979. *See also Indianapolis v. Edmond*, 531 US 32 - Supreme Court 2000.

Prouse emphasized how the states can already achieve those highway-safety goals without establishing license checkpoints that require drivers to produce their driver's licenses. "The foremost method of enforcing traffic and vehicle safety regulations...is acting upon observed violations." *Id.* "Many violations of minimum vehicle-safety requirements are observable, and something can be done about them by the observing officer, directly and

immediately." *Id. See also Michigan Dept. of State Police v. Sitz*, 496 US 444 - Supreme Court 1990. "A police officer...can often tell merely by observing a vehicle's license plate and other outward markings whether the vehicle is currently in compliance with the requirements of state law." *United States v. Villamonte-Marquez*, 462 US 579 - Supreme Court 1983.

Prouse attributes the state's interest in apprehending unlicensed drivers to the state's interest in roadway safety. *See Indianapolis v. Edmond*, 531 US 32 - Supreme Court 2000 (the state's "interest in apprehending [unlicensed drivers is] subsumed by the [state's] interest in roadway safety").

Prouse upholds roadway-safety checkpoints but bans roadway-safety checkpoints that require drivers to produce their driver's licenses.

"An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation." *Delaware v. Prouse*, 440 US 648 - Supreme Court 1979. "It seems common sense that the...percentage of all drivers on the road who are driving without a license is very small and that the number of licensed drivers who will be stopped in order to find one unlicensed operator will be large indeed." Id. "Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment." *Id.* (emphasis added). *See also Dunaway v. New York*, 442 US 200 - Supreme Court 1979 ("checks for drivers' licenses and proper vehicle registration not permitted on less than articulable reasonable suspicion") (emphasis added); *Michigan Dept. of State Police v. Sitz*, 496

US 444 - Supreme Court 1990 ("detention of particular motorists for more extensive [intrusion] may require satisfaction of an individualized suspicion standard").

Prouse upholds roadway-safety checkpoints that don't require drivers to produce their driver's licenses.

"This holding does not preclude...states from developing methods...that involve less intrusion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative." *Delaware v. Prouse*, 440 US 648 - Supreme Court 1979 (emphasis added). *See also Indianapolis v. Edmond*, 531 US 32 - Supreme Court 2000 ("we suggested that 'questioning of all oncoming traffic at roadblock-type stops' would be a lawful means of serving this interest in highway safety") (emphasis added) ("we suggested that a similar type of roadblock with the purpose of verifying drivers' licenses and vehicle registrations would be permissible") (emphasis added); *United States v. Villamonte-Marquez*, 462 US 579 - Supreme Court 1983 ("alternative methods, such as spot checks that involve less intrusion, or questioning of all oncoming traffic at roadblock-type stops, would just as readily accomplish the state's objectives in furthering compliance with auto registration and safety laws") (emphasis added).

The U.S. Supreme Court has analogized roadway-safety checkpoints to border-area checkpoints.

"The constitutionality of stops by Border Patrol agents was...before the Court in *United States v. Martinez-Fuerte* [and *United States v. Brignoni-Ponce*, 422 US 873 - Supreme Court 1975], in which we addressed the permissibility of checkpoint operations. This practice involved slowing all oncoming traffic 'to a virtual, if not a complete, halt at a highway roadblock.'" *Delaware v. Prouse* (quoting *Martinez-Fuerte*). "Although not dispositive, these decisions

undoubtedly provide guidance in balancing the public interest against the individual's Fourth Amendment interest." *Delaware v. Prouse*.

"We see virtually no difference between the levels of intrusion on law-abiding motorists from the brief stops necessary to the effectuation of these two types of checkpoints, which to the average motorist would seem identical save for the nature of the questions the checkpoint officers might ask." *Michigan Dept. of State Police v. Sitz*, 496 US 444 - Supreme Court 1990.

"Most importantly, the stops interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect. Viewed objectively, each stop required only a brief wait in line. Contact with the police lasted only a few seconds. *Cf. Martinez-Fuerte*, 428 U. S., at 547 (upholding stops of three-to-five minutes); *Sitz*, 496 U. S., at 448 (upholding delays of 25 seconds). Police contact consisted simply of a request for information. *Martinez-Fuerte, supra*, at 546 (upholding inquiry as to motorists' citizenship and immigration status); *Sitz, supra*, at 447 (upholding examination of all drivers for signs of intoxication)." *Illinois v. Lidster*, 540 US 419 - Supreme Court 2004 (emphasis added).

Border-area checkpoints, like roadway-safety checkpoints, and ancestor thereto, are limited to briefly stopping, questioning, and observing or examining drivers, and are limited to "only the initial stop of each motorist passing through a checkpoint and the associated preliminary questioning and observation by checkpoint officers." *Sitz*.

"In *Martinez-Fuerte* we upheld the authority of the Border Patrol to maintain permanent checkpoints...at which a vehicle would be stopped for brief questioning of its occupants 'even though there is no reason to believe the particular vehicle' is engaged in illegal activity." *United States v. Villamonte-Marquez*, 462 US 579 - Supreme Court 1983 (emphasis added).

"We hold that stops for brief questioning routinely conducted at permanent checkpoints are consistent with the Fourth Amendment. '[A]ny further detention . . . must be based on consent or probable cause.' *United States v. Brignoni-Ponce, supra*, at 882." *Martinez-Fuerte. See also United States v. Ortiz*, 422 US 891 - Supreme Court 1975; *Bowen v. United States*, 422 US 916 - Supreme Court 1975 ("*United States v. Ortiz* forbids searching cars at traffic checkpoints in the absence of consent or probable cause").

"We agree" with "the validity of the officer's initial stop of appellant's vehicle as a part of a license check." *Texas v. Brown*, 460 US 730 - Supreme Court 1983. (emphasis added). "It is likewise beyond dispute that shining [a] flashlight to illuminate the interior of [a] car trenched upon no right secured to the latter by the Fourth Amendment." *Id.* "Likewise, the fact that [an officer] 'changed [his] position' and 'bent down at an angle so [he] could see what was inside' is irrelevant to Fourth Amendment analysis." *Id.* (quoting the record).

Virginia Supreme Court and Virginia Court of Appeals license-checkpoint case-law is consistent with *Prouse*, stopping just short of requiring drivers to produce their driver's licenses upon police command. "The statutory right of a law enforcement officer to stop a motor vehicle and the obligation of a motor vehicle operator to submit to such a stop for a license or registration inspection are circumscribed by the decision of the United States Supreme Court in *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)." *Sheppard v. Com.*, 489 SE 2d 714 - Va: Court of Appeals 1997 (emphasis added). *See also Wright v. Com.*, 663 SE 2d 108 - Va: Court of Appeals 2008 ("As a preliminary matter, checkpoints with the primary objective of enforcing safety requirements are constitutional. *Prouse*, 440 U.S. at 658, 99 S.Ct. at 1398 (finding a checkpoint for examining motorists' license and registration was valid due to States' vital interest in highway safety) [emphasis added]; *Palmer v. Commonwealth*, 36 Va.App.

169, 172, 549 S.E.2d 29, 30 (2001) (holding the purpose of a checkpoint was valid when officers stopped vehicles to look for "any violations on the vehicles, such as drivers' license, equipment, [or] inspection") [emphasis added]."

II. No Probable Cause to Arrest for Obstruction

Whether or not I.D. and license checkpoints are unconstitutional, failure to provide an I.D. or a driver's license to law-enforcement is *never* obstruction of justice in Virginia, and rightfully so.

In *Stout v. Harris*, Dist. Court, ED Virginia 2021, the court ruled that "Harris arrested Stout for failing to identify and succeeded in having the magistrate charge him with obstruction of justice. But failing to identify does not violate Virginia law, nor does it violate the obstruction statute, Va. Code Ann. § 18.2-460(A). See Crimes and Offenses Generally: Crimes Against the Administration of Justice, Op. Va. Atty's Gen. 02-082 (Oct. 10, 2002). '[O]bstruction of justice does not occur when a person fails to cooperate fully with an officer or when the person's conduct merely renders the officer's task more difficult.' *Ruckman v. Commonwealth*, 28 Va. App. 428, 429, 505 S.E.2d 388, 389 (1998). *See, e.g., Cary v. Commonwealth*, No. 2068-14-1, 2015 WL 6143660, at *3 n.1 (Va. Ct. App. Oct. 20, 2015) (explaining that a defendant's failure to identify "is not ... 'punishable under'" § 18.2-460)."

In *Stout v. Harris, Dist. Court*, ED Virginia 2022, "[n]either Virginia law nor a Spotsylvania County ordinance directly criminalizes a person's refusal to identify themselves to police officers. Such laws, otherwise known as 'stop and identify' statutes, exist in other states. 'The statutes vary from State to State, but all permit an officer to ask or require a suspect to disclose his identity.' *Hiibel*, 542 U.S. at 183. ...Virginia does not have a stop-and-identify

statute, and failing to identify does not violate Virginia's obstruction statute, Va. Code Ann. § 18.2-460(A)."

The Defendants contend that *Thorne v. Commonwealth*, 66 Va. App. 248 (2016), is controlling. *Thorne* is distinguishable from this case because the police in *Thorne* had reasonable suspicion to command Thorne to roll down her window because Thorne's vehicle windows were suspected of being illegally tinted. The Defendants in this case did not suspect the Plaintiff of engaging in any criminal activity. Illegal tints are prohibited by Virginia statute, refusing to provide I.D. or a driver's license to law-enforcement is not prohibited by Virginia's obstruction of justice statute. Furthermore, Thorne was charged with obstruction for not rolling her window down, not for refusing to provide I.D. or a driver's license, and the Plaintiff was charged with obstruction not for not rolling his window down, but for refusing to provide an I.D. or driver's license.

Not only is refusing to provide I.D. or a driver's license to law-enforcement not obstruction of justice, Va Code § 46.2-104 governs the Plaintiff's conduct in question: "The owner or operator of any motor vehicle, trailer, or semitrailer shall stop on the signal of any law-enforcement officer who is in uniform or shows his badge or other sign of authority and shall, on the officer's request, exhibit his registration card, driver's license, learner's permit, or temporary driver's permit and write his name in the presence of the officer, if so required, for the purpose of establishing his identity." Not only is the Plaintiff's conduct in question governed by Va Code § 46.2-104, Va Code § 46.2-104 is unconstitutional because the statute authorizes spot checks. Spot checks are unconstitutional according to *Prouse*. And if it's unconstitutional for officers to conduct spot checks on one, it's unconstitutional for officers to conduct spot checks on everyone.

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III. No Probable Cause to Search and Seize Vehicle

The Defendants did not have probable cause to search and seize the Plaintiff's vehicle because the Defendants did not have probable cause to arrest the Plaintiff.

IV. Malicious Prosecution

The Defendants maliciously prosecuted the Plaintiff. The Defendants did not have probable cause to arrest the Plaintiff.

V. Qualified Immunity

"The fact that an exact right allegedly violated has not earlier been specifically recognized by any court does not prevent a determination that it was nevertheless 'clearly established' for qualified immunity purposes. *See Anderson*, 483 U.S. at 640, 107 S.Ct. at 3039. 'Clearly established' in this context includes not only already specifically adjudicated rights, but those manifestly included within more general applications of the core constitutional principle invoked." *Pritchett v. Alford*, 973 F.2d 307 (4th Cir. 1992).

"Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, *Harlow*, 457 U. S., at 819, assessed in light of the legal rules that were 'clearly established' at the time it was taken, id., at 818." *Anderson v. Creighton*, 483 U.S. 635 (1987). "Our cases establish that the right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, *see Mitchell, supra*, at 535,

n. 12; but it is to say that in the light of pre-existing law the unlawfulness must be apparent. *See, e. g., Malley, supra,* at 344-345; *Mitchell, supra,* at 528; *Davis, supra,* at 191, 195." *Id.*

"We reiterated in *Owens v. Lott* that 'the qualified immunity 'determination "is an objective one, dependent not on the subjective beliefs of the particular officer at the scene, but instead on what a hypothetical, reasonable officer would have thought in those circumstances."' 372 F.3d 267, 279 (4th Cir.2004) (quoting *Wilson v. Kittoe*, 337 F.3d 392, 402 (4th Cir.2003))." *Henry v. Purnell*, 652 F.3d 524 (4th Cir. 2011).

"A constitutional right is clearly established when 'its contours [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.' *Hope*, 536 U.S. at 739, 122 S.Ct. 2508 (internal quotation marks omitted). That is, '"in the light of pre-existing law the unlawfulness must be apparent,"' *id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)), but 'the very action in question [need not have] previously been held unlawful,' *id.* (internal quotation marks omitted), because '"general statements of the law are not inherently incapable of giving fair and clear warning, and . . . a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question,"' *id.* at 741, 122 S.Ct. 2508 (quoting *United States v. Lanier*, 520 U.S. 259, 270-71, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997)). Thus, 'officials can still be on notice that their conduct violates established law even in novel factual circumstances.' *Id.* The 'salient question' is whether the state of the law at the time of the events in question gave the officials 'fair warning' that their conduct was unconstitutional. *Id.*" *Ridpath v. Board of Governors Marshall University*, 447 F.3d 292 (4th Cir. 2006).

"In the absence of controlling authority that specifically adjudicates the right in question, a right may still be clearly established in one of two ways. A right may be clearly established if

'a general constitutional rule already identified in the decisional law [] appl[ies] with obvious clarity to the specific conduct in question.' *Hope*, 536 U.S. at 741, 122 S.Ct. 2508 (quoting *United States v. Lanier*, 520 U.S. 259, 271, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997)); *see also Owens*, 372 F.3d at 279 (stating that a right may be clearly established if it is 'manifestly apparent from broader applications of the constitutional premise in question'). A right may also be clearly established based on a '"consensus of cases of persuasive authority"' from other jurisdictions.' *Owens*, 372 F.3d at 280 (quoting *Wilson*, 526 U.S. at 617, 119 S.Ct. 1692)." *Booker v. South Carolina Dept. of Corrections*, 855 F. 3d 533 - Court of Appeals, 4th Circuit 2017.

"To determine whether the individual defendants here are entitled to qualified immunity, we must make a two-step inquiry 'in proper sequence.' *Saucier v. Katz*, 533 U.S. 194, 200, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). As a threshold matter, we must determine whether, '[t]aken in the light most favorable to the party asserting the injury, ... the facts alleged show [that] the officer's conduct violated a constitutional right.' *Id.* at 201, 121 S.Ct. 2151. If the facts, so viewed, do not establish a violation of a constitutional right, the inquiry ends, and the plaintiff cannot prevail. Id. If the facts do establish such a violation, the next step is to determine whether the right violated was 'clearly established' at the time of the alleged offense." *Parrish ex rel Lee v. Cleveland*, 372 F.3d 294 (4th Cir. 2004).

"Before we apply these rules to the instant case, we must first define the right at the 'appropriate level of specificity.' *Wilson*, 526 U.S. at 615, 119 S.Ct. 1692." *Booker v. South Carolina Dept. of Corrections*, 855 F.3d 533 (4th Cir. 2017).

VI. Municipal Liability

Municipal liability attaches because I.D. and license checkpoints are unconstitutional.

VII. Conclusion

The Plaintiff requests that this court deny the Defendant's motion to dismiss and refer this case to ADR.

_____ _____

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