No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RUDOLPH DANIEL MIFFIN, JR.,

and

JERMAINE DARNELL JOHNSON,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The following questions are presented:

1) Where a state has decriminalized simple possession of marijuana, can state and local police, not acting in coordination with federal authorities but having probable cause to believe that some small amount of marijuana will be found in a vehicle, conduct a warrantless search of said vehicle pursuant to the automobile exception to the Fourth Amendment's warrant requirement?
2) Where a state has decriminalized simple possession of marijuana, does the presence of a *de minimis* amount of suspected marijuana on the driver of the vehicle, detained by local police for a traffic infraction, provide probable cause for local police (not acting in coordination with federal authorities) to conduct a warrantless search of a closed bag on a driver when the driver has been secured, is not in a position to access the vehicle nor the contents of the bag, and evidence of the traffic infraction is unlikely to be found within the bag?

RELATED PROCEEDINGS

Petitioners Miffin and Johnson were charged as co-defendants in the Richmond Division of the Eastern District of Virginia in Case No. 3:21-cr-00029. In an order dated February 24, 2023, the United States Court of Appeals for the Fourth Circuit consolidated Petitioners' cases: Case Nos. 23-4040 (Miffin) and 23-4105 (Johnson).

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PETITION FOR WRIT OF CERTIORARI

Rudolph D. Miffin, Jr. and Jermaine D. Johnson (collectively, the "Petitioners") respectfully request that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit") in their consolidated appeal.

OPINIONS BELOW

The Fourth Circuit's unpublished opinion is unreported and is attached, with the accompanying order, as Appendix 1. The district court's memorandum opinion and order denying Petitioners' motions to suppress are unreported and attached as Appendix 2.

JURISDICTION

The Fourth Circuit denied Petitioners' appeal on August 23, 2024. *See* Appendix 1. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves a violation of 18 U.S.C. § 922(g)(1) by Petitioner Johnson and violations of 21 U.S.C. 841(a)(1) and (b)(1)(C) by Petitioners Johnson and Miffin. The texts of these statutes are contained in Appendix 3. At the time of the offenses, Virginia law held that simple possession of marijuana was a civil offense, rather than a criminal offense. The relevant text of this statute, which has since been repealed, is contained in Appendix 4. § 15.2.1726 of the Code of Virginia ("Va.

Code") also states that, "no police officer of any locality shall have authority to enforce federal laws unless specifically empowered to do so by statute, and no federal law-enforcement officer shall have authority to enforce the laws of the Commonwealth unless specifically empowered to do so by statute." See Appendix 5.

STATEMENT OF THE CASE

This case arises out of a traffic stop in the early morning hours of September 1, 2020, in Henrico County, Virginia, in which Petitioner Johnson was the driver and Petitioner Miffin was the passenger. At the time of the stop, Virginia law specified that simple possession of marijuana was a civil violation, not a criminal offense.

The traffic stop was initiated after Henrico County police noticed an extinguished license plate reader light on the vehicle that Petitioners were driving. Police stopped the vehicle, ordered Petitioner Johnson out of the vehicle and began to pat him down. Johnson then withdrew his consent to the pat down, and, when he turned to face the police officer, the officer noticed a flake of suspected marijuana on Petitioner Johnson's shirt (the flake was never forensically confirmed to be marijuana). Police then detained Petitioner Johnson, placing his hands behind him in handcuffs and informing him that he was being detained because of the suspected marijuana. Several police officers then surrounded Petitioner Johnson, physically taking a hold of his arm. The

police officers then led Petitioner Johnson over to a nearby sidewalk, away from and behind his vehicle and then searched a cross-body bag located at the front of Petitioner Johnson's waist, finding a pistol inside. Police also, before issuing *Miranda* warnings, informed Petitioner Johnson that they intended to search the vehicle and asked whether there were additional drugs in the vehicle, to which Petitioner Johnson replied that there was a "blunt" in the center console. Upon searching the vehicle, police discovered several other controlled substances and another pistol under the passenger seat. Based on the evidence found in the vehicle, police arrested Petitioner Miffin and searched a bag on his person, finding additional controlled substances.

Petitioners were each charged in the United States District Court for the Eastern District of Virginia for violations of 18 U.S.C. § 922(g)(1), and 21 U.S.C. 841(a)(1) and (b)(1)(C). The district court granted a motion by Petitioner Johnson to suppress statements made after he was handcuffed but before he was *Mirandized*, which includes his statement about the presence of the "blunt" in the center console. Petitioners also moved to suppress the evidence found in the bag on Petitioner Johnson's person and the evidence found in the vehicle because the evidence was obtained in violation of the Fourth Amendment. Petitioner Miffin further moved to suppress the evidence found on his person as "fruit of the poisonous tree" of the unlawful search of the vehicle.

The district court denied the motions to suppress the physical evidence, finding that the search of the bag on Petitioner Johnson's person was, the statement of the searching officer notwithstanding, conducted as a lawful search incident to arrest because of the extinguished license plate reader light. With respect to the search of the vehicle and the subsequent arrest and search of Petitioner Miffin, the district court found that the evidence was admissible under the inevitable discovery doctrine, implying that the search of the vehicle was unlawful but the evidence was nevertheless admissible.

Petitioners entered conditional guilty pleas and appealed the denial of their motions to the Fourth Circuit.[1] The Fourth Circuit affirmed the district court's finding with respect to the search of Petitioner Johnson's bag but found that the inevitable discovery doctrine did not apply to the search of the vehicle or the search of Petitioner Miffin. The Fourth Circuit reasoned that the search of the vehicle was permissible under the automobile exception to the Fourth Amendment's warrant requirement because there was probable cause to believe there was marijuana in the vehicle. The Fourth Circuit found that although the simple possession of marijuana was not a crime under Virginia law at the time, the police were nevertheless justified in their search because marijuana was still "contraband" for purposes of the Fourth Amendment.

1 In Petitioner Miffin's case, the United States moved to dismiss the charged violation of 18 U.S.C. § 922(g)(1) pursuant to the terms of the conditional plea agreement.

REASONS FOR GRANTING THE WRIT

I. The Court Should Grant Certiorari to Clarify What Effect, if any, State Decriminalization of Marijuana Has on the Automobile Exception to the Fourth Amendment's Warrant Requirement.

The Fourth Circuit's decision rests on the premise that "while marijuana — decriminalized then by the Virginia legislature—might not be evidence of a *crime*, it could nonetheless qualify as *contraband*." Appendix 1 at 22 (emphasis in original). Virginia is one of many states that has either decriminalized possession of marijuana or legalized its recreational use.[2] Of course, under the Supremacy Clause, states cannot invalidate the federal prohibition of marijuana. U.S. CONST., ART. VI, CL. 2. However, the growing trend of decriminalization of marijuana at the state level, coupled with oscillating swings in federal law enforcement policy between administrations, has made the legal status of marijuana inscrutable and made enforcement of its prohibition arbitrary.

This Court has yet to opine as to what effect, if any, decriminalization of marijuana at the state level has on the automobile exception to the Fourth Amendment's warrant requirement. This case, involving state law enforcement officers conducting a warrantless search of a vehicle to find marijuana (a substance whose possession was *not* criminal under state law at the time but that the Fourth Circuit still found to be federal "contraband") offers an opportunity for this Court to revisit its automobile exception in this modern context. In reviewing the distinction

2 Kate Bryan, Cannabis Overview, Nat. Conference of State Legislatures (June 20, 2024), https://www.ncsl.org/civil-and-criminal-justice/cannabis-overview (summarizing the state of marijuana legalization and decriminalization efforts).

between "evidence of a crime" and the presence of "contraband," this Court should reinforce the distinction between state and federal authorities and conclude that, in those states where marijuana has been decriminalized and state law enforcement is not working in conjunction with federal authorities, probable cause to believe there is marijuana in a vehicle, by itself, is insufficient to justify a search under the automobile exception to the Fourth Amendment's warrant requirement.

A. State and Federal Courts Disagree on How to Apply the Automobile Exception in the Context of Decriminalized Marijuana

The automobile exception to the warrant requirement comes from the Prohibition-era case of *Carroll v. United States*, where this Court held that a police officer who has "probable cause for believing that [a] vehicle[is] carrying contraband" can conduct a search of a vehicle without a warrant. 267 U.S. 132, 154, 45 S. Ct. 280, 285, 69 L. Ed. 543 (1925). However, the increasing trend to decriminalize marijuana possession at the state level complicates the application of this doctrine.

In *Commonwealth v. Craan,* 469 Mass. 24, 33, 13 N.E.3d 569, 578 (Mass. 2014), the Supreme Judicial Court of Massachusetts held that the state's decriminalization of less than one ounce of marijuana "also must be read as curtailing police authority to enforce the Federal prohibition of possession of small amounts of marijuana." It then went on to hold that, where "State law expressly has decriminalized certain conduct, there is no extant joint investigation, and the Federal government has indicated that it will not prosecute certain conduct, the

fact that such conduct is technically subject to a Federal prohibition does not provide an independent justification for a warrantless search." *Id.* at 469 Mass. 35.[3]

Conversely, in *Pacheco v. State*, the Maryland Court of Appeals, when assessing the effect of marijuana decriminalization, found that while marijuana could not justify the arrest of a suspect, its presence still justifies search of a vehicle because "marijuana in any amount remains contraband[.]" 465 Md. 311, 330, 214 A.3d 505, 516 (2019) (citing *State v. Robinson*, 451 Md. At 124-33, 152 A. 3d 661 (Md. 2017). Other state and federal courts have similarly concluded that because marijuana remains illegal at the federal level, state law enforcement agents are authorized to enforce that law.[4] But, as discussed below, this is not a reasonable assumption.

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3 See, also, *Commonwealth v. Branch*, 2022 WL 2202895 (Va. App. unp., Record No. 0132-22-1, decided June 22, 2022), where police found a decriminalized amount of marijuana in the passenger's wallet. The Virginia Court of Appeals held that the presence of a decriminalized amount of marijuana, without more, did not provide probable cause to search the vehicle for evidence of other contraband or evidence of crime; *Lowe v. State*, 835 S.E.2d 301, 306 (Ga.Ct.App. 2019) (holding that illegal marijuana in a passenger's wallet alone does not provide probable cause to search the driver's car); *Commonwealth v. Rodriguez*, 472 Mass. 767, 37 N.E.3d 611 (2015) (possession of decriminalized amount of marijuana did not provide reasonable suspicion to justify a traffic stop); *State v. Clinton-Aimable*, 232 A.3d 1092, 1102 (Vt. 2019)(possession of small amount of marijuana, a civil infraction, did not establish probable cause to search vehicle,)

4 *See also United States v. Sanders*, 248 F. Supp. 3d 339, 347 (D.R.I. 2017) ("For better or worse, and regardless of what the R.I. General Assembly has declared, possession of marijuana is still unlawful under federal law." (citing 21 U.S.C. § 841 (2012))); *United States v. Eymann*, No. 15-cr-30021, 2016 WL 5842251, at *13 (C.D. Ill. Oct. 5, 2016) ("Illinois has recently taken steps on the road to marijuana legalization — the state has legalized medical marijuana and decriminalized possession of small amounts of non-medical marijuana — but marijuana possession remains a federal crime."). *United States v. Castillo Palacio*, 427 F. Supp. 3d 662, 672 (D. Md. 2019) (recognizing that "possession of marijuana in any amount remains illegal," even after its decriminalization in Maryland, such that marijuana constitutes contraband (quoting *Robinson v. State,* 152 A.3d 661, 680, 683 (Md. 2017))); *People v. Looby,* 68 V.I. 683, 698 (2018) (concluding that although decriminalized in the Virgin Islands, possession of marijuana remains unlawful and is considered contraband).

B. State law enforcement officers are not necessarily authorized to enforce federal laws.

The Fourth Circuit's opinion is seemingly based on a presumption that under the Supremacy Clause, courts should construe state laws that empower state law enforcement officials to enforce state laws and also implicitly allow those officers to enforce federal laws. This, however, is not a reasonable presumption where there is unclear federal enforcement policy (discussed below) and countervailing guidance under state law. In *Craan,* the Massachusetts court held that the decriminalization of marijuana in the state curtailed state police authority to enforce the Federal prohibition of small amounts of marijuana. *See also United States v. Di Re*, 332 U.S. 581, 589 (1948) (authority of state officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of state law).

The doctrine of one sovereign (here, the Commonwealth of Virginia) enforcing the laws of another sovereign (the federal government) is sometimes referred to as "cross-enforcement" and the applicability of "cross-enforcement" should not be presumed. *See* Orin S. Kerr, *Cross-Enforcement of the Fourth Amendment*, 132 Harv. L. Rev. 471 (Dec. 2018). Indeed, § 15.2.1726 of the Code of Virginia states that, "no police officer of any locality shall have authority to enforce federal laws unless specifically empowered to do so by statute, and no federal law-enforcement officer shall have authority to enforce the laws of the Commonwealth unless specifically empowered to do so by statute." *But see* Va. Att'y Gen. Op. (Oct.

15, 2007), 2007 WL 3120673, at *2 (citing *United States v. Janik*, 723 F.2d 537, 548 (7th Cir. 1983) (finding that federal courts "have recognized the states' authority to make federal arrests, generally" and concluding that Virginia law enforcement officers have authority to arrest individuals for violations of laws of the United States).

Virginia's laws in effect at the time of the traffic stop decriminalized the simple possession of marijuana. Petitioner Johnson was subjected to a traffic stop pursuant to Virginia law, being enforced by a local - Henrico County, Virginia - police officer. That local police officer then observed on Petitioner Johnson a single flake of marijuana, a quantity so small that it was never weighed nor tested. Even if police had proven the substance was, in fact, marijuana, Petitioner Johnson would have been subjected to no more than a Twenty-Five Dollar ($25.00) civil penalty. Yet, under the Fourth Circuit's reading, local police, acting entirely independently from federal authorities, are still entitled to search a vehicle for a substance that their state has decriminalized.

According to this reading, the effort to decriminalize marijuana by the Commonwealth of Virginia has no impact on the authority and behavior of their own law enforcement officers. Such a reading of the Supremacy Clause would subvert the most basic ability of the States to self-govern through the maintenance and management of their own laws and law enforcement. This is contrary to the opinion of the Massachusetts court in *Craan*, which suppressed evidence from such searches. Taken to its logical conclusion, the Fourth Circuit's finding results

in a kind of inversion of the "silver platter" doctrine because a search could be unlawful at a state level (there being no state crime for simple possession of marijuana) but still used to elicit evidence for a federal prosecution. *See Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960) (evidence obtained by state officers during a search which, if conducted by federal officers, would have violated the defendant's immunity from unreasonable searches and seizures under the Fourth Amendment is inadmissible over the defendant's timely objection in a federal criminal trial.).

This is further complicated by states crafting laws for the lawful transportation of marijuana in a vehicle. For example, New Hampshire recently passed a new statute scheduled to come into effect on January 1, 2025, specifying that, "no driver shall transport, carry, possess, or have any marijuana within the passenger area of any motor vehicle…upon any way in this state except in the original container and with the seal unbroken." N.H. Rev. Stat § 265-A:44 (to become effective January 1, 2025), included as Appendix 6. Montana law makes several exceptions to its general prohibition on the possession of marijuana in a motor vehicle, including exceptions for marijuana "purchased from a dispensary and that remains in its unopened, original packaging;" or "in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger." MCA 61-8-1027, included as Appendix 7. The Montana statute also specifies that a violation of the section, "is not a criminal offense" and "may not be recorded or charged against a driver's

record." *Ibid*. Citizens acting in accordance with such laws could reasonably believe themselves to be acting legally. The Fourth Circuit would disagree.

Congress doubtlessly has the power to preempt state law under the Supremacy Clause and this Court has held that such preemption can be express or implicit. See *Arizona v. United States,* 567 U.S. 387 (2012). Given the number of states where possession of marijuana remains a crime under state law, it is apparent that Congress has not entirely preempted state laws regarding marijuana.[5] Indeed, in 2015, the Government Accountability Office concluded that Department of Justice ("DOJ") has not historically targeted possession of small amounts of marijuana for personal use on private property, and has left lower-level marijuana activity to state and local law enforcement authorities through enforcement of their own drug laws. U.S. Government Accountability Office (GAO), *State Marijuana Legalization: DOJ Should Document Its Approach to Monitoring the Effects of Legalization*, GAO-16-1, December 2015, p. 9.

This Court, in *Moore v. Virginia*, 553 U.S. 164, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008), previously considered the tension between remedies for state law violations of Va. Code § 19.2-74 versus remedies for constitutional violations of the 4th Amendment, finding that, as long as probable cause existed to arrest Moore for driving on a suspended license, then the statutory violation complained of by Moore was functionally irrelevant. *Moore*, 553 U.S. at 175-177; *see also* Appendix 8 for the full text of Va. Code § 19.2-74 in effect at the time. This

5 *See supra* at note 2.

tension between state and federal criminal law protections has not been abated by *Moore*, and the facts and application of state and federal law in this case makes this continuing tension clear. What began as a state law case, dealing with state actors, on a state public highway, enforcing state law with state criminal procedures, nevertheless finds itself in a federal courthouse. But, here, the tension is not merely from a procedural protection, it is whether the state officer was empowered to enforce federal law in the face of countervailing state legislation.

Obviously when state and federal laws *conflict*, federal law prevails. But this is not a conflict of law question: petitioners do not contend that decriminalization of marijuana in Virginia somehow invalidates the federal prohibition. The question is one of authority: were Henrico County police empowered to conduct a warrantless search of the vehicle to search for *federal* "contraband" without probable cause to believe there was evidence of a *state* crime? Without an authorizing statute and without coordinating with federal authorities, the answer should be no.

C. Federal law enforcement policy regarding the prohibition of marijuana is inscrutable.

In *Gonzales v. Raich*, 545 U. S. 1, 24-27 (2005) this Court held that Congress' power to regulate interstate commerce authorized it to prohibit the local cultivation and use of marijuana because Congress had decided "to prohibit entirely the possession or use of [marijuana]" and had "designate[d] marijuana as contraband for any purpose." However, as Justice Thomas explained in his statement

accompanying the denial of a petition for certiorari in *Standing Akimbo, LLC* et al.*, v. United States*, 141 S.Ct. 2236, 2236-37 (2021), recent federal policies reflect a, "a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary." Since then, the strain on federalism has only worsened.

In 2009 and 2013, the DOJ issued memoranda outlining a policy against intruding on state marijuana legalization schemes. *See* J.M. Cole, Deputy Attorney General of the United States, Guidance Regarding Marijuana Enforcement (Aug. 29, 2013); D.W. Ogden, Deputy Attorney General of the United States, Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009). This policy was reversed for a time by a 2018 memorandum. *See* Jeffrey B. Sessions, Attorney General of the United States, Memorandum for All United States Attorneys Regarding Marijuana Enforcement (Jan. 4, 2018). But in 2024, the DOJ, acting through the Drug Enforcement Administration, issued a proposed rule to transfer marijuana from Schedule I of the Controlled Substances Act ("CSA") to Schedule III. 89 Fed. Reg. 44597 (May 21, 2024). Congress has passed appropriations with riders prohibiting the DOJ from spending funds to prevent states' implementation of medical marijuana laws. *See e.g.*, *United States v. McIntosh*, 833 F. 3d 1163, 1168, 1175–1177 (9th Cir., 2016) (interpreting a congressional appropriations rider to prevent Department of Justice expenditures on the prosecution of individuals who comply with state law). On

October 6, 2022, President Biden issued a presidential proclamation that pardoned many federal and D.C. offenders for simple marijuana possession offenses. Proclamation No. 10467, 87 Fed. Reg. 61441 (Oct. 6, 2022). On December 22, 2023, President Biden issued another proclamation that expanded the relief provided by the original proclamation. Proclamation 10688, 88 Fed. Reg. 90083 (Dec. 22, 2023).

Clearly, the federal government is uninterested in enforcing a blanket prohibition on the possession of marijuana, as is Virginia and many other states and territories. Yet, under the Fourth Circuit's reading below, state police officers in states where marijuana has been decriminalized are still entitled to conduct warrantless searches of vehicles at the sparest sign of marijuana, even though neither their state nor the federal government is interested in enforcing the prohibition on marijuana possession.[6] This practically begs for arbitrary application, with the search for marijuana serving merely as a pretext to search vehicles for evidence of other crimes.

The Supreme Judicial Court of Massachusetts order in *Craan* is again informative here:

> The Commonwealth appears to acknowledge that, after the 2008 [marijuana decriminalization] initiative, State and local police lack authority to make arrests under Federal law for possessing small amounts of marijuana, but claims nonetheless that police may simply investigate possible violations of Federal statutes and turn

[6] The Virginia Court of Appeals, in its unpublished in opinion in *Commonwealth v. Branch*, *supra*, has already found that, under Virginia law, a decriminalized amount of marijuana does not provide probable cause to search a vehicle. *See supra* at note 3. Yet, according to the Fourth Circuit's logic, a local police officer has probable cause to search a vehicle based on the presence of a decriminalized quantity of marijuana if a subsequent arrest is prosecuted in federal court. But that same police officer does not have probable cause to conduct that same search under state law, and thus cannot effect an arrest, and therefore may be liable for malfeasance in office for arresting a suspect for committing an act that is not a crime in state court.

> over any evidence obtained to Federal authorities. Even assuming that the power to investigate crimes and make arrests may be decoupled in such a way, the Federal government's current stance on prosecuting marijuana-related offenses significantly undercuts the strength of this argument.... The Department of Justice has recognized that, '[o]utside of these enforcement priorities, the federal government has traditionally relied on states and local enforcement agencies to address marijuana activity through enforcement of their own narcotics laws,' and will continue to do so where Federal priorities are not implicated. Therefore, given the clear preference expressed in the 2008 initiative that police focus their attention elsewhere, Federal law does not supply an alternative basis for investigating possession of one ounce or less of marijuana, especially where the Federal government has signaled a lessened interest in prosecuting such conduct. To be sure, examples of cooperation between Federal and State law enforcement authorities are legion in our case law. By concluding as we do, we do not intend to call into question the legitimacy of such joint efforts. We hold only that where, as here, State law expressly has decriminalized certain conduct, there is no extant joint investigation, and the Federal government has indicated that it will not prosecute certain conduct, the fact that such conduct is technically subject to a Federal prohibition does not provide an independent justification for a warrantless search.

Craan, 469 Mass. 24, 34-35 (Mass. 2014).

This Court should not let marijuana's foggy legal status continue. For the reasons explained above, the Fourth Circuit has decided an important federal question in a way that conflicts with a decision by at least one state court of last resort: the Massachusetts court in *Commonwealth v. Craan*. Moreover, the issue of what effect, if any, states' decriminalization or legalization of marijuana has on automobile exception to the Fourth Amendment's warrant requirement is an important question of federal law that has not been, but should be, settled by this Court. This Court should therefore grant certiorari pursuant to Supreme Court Rule 10 (a) and (c).

II. This Court Should Grant Certiorari to Extend its Holding in *Arizona v. Gant* to Include Containers on the Person of a Driver-Arrestee When the Driver-Arrestee is Secured and Unable to Access the Container and it is Unreasonable to Believe that Evidence of the Traffic Infraction Would Be Found in the Container.

The search-incident-to-arrest doctrine is an exception to the general requirement that an officer must obtain a judicial warrant supported by probable cause before conducting a search. See *Riley v. California*, 573 U.S. 373, 134 S.Ct. 2473 2482, 189 L.Ed.2d 430 (2014) (recognizing a search incident to an arrest as a "specific exception" to the Fourth Amendment's warrant requirement). It serves two interests: "protecting arresting officers and safeguarding any evidence **of the offense of arrest** that an arrestee might conceal or destroy." *Arizona v. Gant*, 556 U.S. 332, 339, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) (emphasis added). These interests are not evaluated on a case-by-case basis but are assumed to be present whenever an officer is justified in making an arrest. *Riley*, 134 S.Ct. at 2483. It makes no difference whether the search occurs before or after the arrest, so long as it is "substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest[.]" *Shipley v. California*, 395 U.S. 818, 819, 89 S.Ct. 2053, 23 L.Ed.2d 732 (1969) (internal quotation marks omitted); *Rawlings v. Kentucky*, 448 U.S. 98, 111, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980).

In *Arizona v. Gant,* 556 U.S. at 335, this Court held that:

> Under *Chimel*, police may search incident to arrest only the space within an arrestee's "'immediate control,'" meaning "the area from within which he might gain possession of a weapon or destructible evidence." 395 U.S., at 763, 89 S. Ct. 2034, 23 L. Ed. 2d 685. The safety and evidentiary justifications underlying *Chimel*'s reaching-distance rule

> determine Belton's scope. Accordingly, we hold that Belton does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle. Consistent with the holding in *Thornton v. United States*, 541 U.S. 615, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004), and following the suggestion in JUSTICE SCALIA's opinion concurring in the judgment in that case, id., at 632, 124 S. Ct. 2127, 158 L. Ed. 2d 905, we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.

The Fourth Circuit, in approving of the search of Petitioner Johnson's bag, gave its interpretation of *Gant*, stating:

> The Supreme Court narrowed this exception in Arizona v. Gant by holding that, in the vehicular context, police can "search a vehicle incident to a recent occupant's arrest *only* when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." 556 U.S. 332, 343 (2009).

Appendix 1 at 17 (emphasis added by the Fourth Circuit). Mysteriously, the Fourth Circuit then ignored the second prong of *Gant* that "circumstances 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.'" *Arizona v. Gant*, 556 U.S. at 343.

In the instant case, Petitioner Johnson was operating a motor vehicle on a public highway in Henrico County, Virginia, when he was stopped by local police because a license plate light was not working, a traffic infraction under Virginia law. The Fourth Circuit found that, after Petitioner Johnson exited the vehicle, he was lawfully searched incident to the arrest for a traffic infraction. Appendix 1 at 17. What was missing from the lower court's opinion was an explanation or

justification of how any evidence of that traffic infraction would have been found in the bag on Petitioner Johnson's person, evidentiary support mandated by the second prong of Gant.

This Court has previously had occasion to opine on a fact pattern similar to this one. In *Knowles v. Iowa*, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998), where this Court determined that a search of a driver-arrestee for a traffic infraction was not subject to a search incident to the arrest for the traffic infraction. While recognizing the concern for officer safety in a traffic enforcement setting is always "legitimate and weighty," the threat to officer safety in the issuance of a traffic citation was "a good deal less than in the case of a custodial arrest." *Id*., 525 U.S. at 117.

Here, the search of Petitioner Johnson's bag preceded the arrest. The Fourth Circuit found that his arrest was for a traffic violation and there is *no* indication that evidence of the offense of the arrest would likely be found in a bag on Petitioner Johnson's person.

Several Courts of Appeals have determined that, after *Knowles*, the important facet is the timing of the issuance of the citation or arrest as to whether or not Knowles applies. *United States v. Diaz*, from the Second Circuit, is one such case. 854 F.3d 197 (2nd Cir. 2017). In *Diaz*, the Second Circuit was faced with an argument that Circuit precedent in *United States v. Ricard*. 563 F.2d 45 (2d Cir. 1977) was no longer viable precedent. The facts in *Ricard* were eerily similar to *Knowles*, and *Diaz* argued that *Knowles* effectively overruled *Ricard*. Ricard had

been stopped for a traffic infraction, speeding, after which the officer searched a tin foil packet and found illegal drugs. The court in *Ricard* found the search lawful as a search incident to the arrest for speeding, irrespective of whether the officer, prior to the search, intended to effect an arrest for the speeding violation. *Ricard*, 563 F.2d at 48-49. The *Diaz* court distinguished *Ricard* from *Knowles* because of the fact that the citation in *Knowles* was issued after the completion of the traffic stop but before the search of Knowles' vehicle:

> ...critically, the search in *Knowles* occurred after the officer had completed the traffic stop by issuing a citation, whereas the search in *Ricard* (and the case at bar) occurred before any such event took place. It thus remained uncertain in *Ricard* (and here) whether the encounter would lead to an arrest; the dangers to the officer that accompany the prospect of arrest therefore remained present. See *Knowles*, 525 U.S. at 117, 119 S.Ct. 484 (explaining that "[t]he danger to the police officer flows from the fact of arrest, and its attendant proximity, stress, and uncertainty" (internal quotation marks omitted)). In *Knowles*, by contrast, those dangers had virtually vanished by the time the officer issued the citation, which extinguished the prospect of an arrest. We therefore do not understand *Knowles* to foreclose a search incident to an arrest in circumstances where, as in *Ricard* and the case before us, an officer has not yet issued a citation and ultimately makes a lawful arrest after conducting a search, regardless of whether or not the officer intended to do so prior to the search.

854 F.3d at 206-207.

Several other courts have followed the same logic as the *Diaz* court in skirting the holding of *Knowles*. *See, e.g.*, *United States v. Chauncey*, 420 F.3d 864, 872 (8th Cir. 2005) (rejecting the defendant's "attempt[ ] to liken his case to Knowles" because "[w]hatever the officer's subjective intention, [ ] the record does not show that the officer had completed the traffic stop by the time he made a formal arrest"); *United States v. Bookhardt*, 277 F.3d 558, 566 (D.C. Cir. 2002)

(limiting Knowles to circumstances where "[an] officer [with] probable cause to make an arrest ... issues a citation instead of arresting the defendant"); *see also United States v. Williams*, 170 Fed.Appx. 399, 405 (6th Cir. 2006) (unpublished opinion) (concluding that there is a "significant difference between *Knowles* and the present case" because "[i]n *Knowles*, the officers issued the defendant a citation before they searched the vehicle" (emphasis in original)).

But these cases misapply this Court's holding in *Knowles*, which found that the issuance of a citation is fundamentally different from the effectuation of an arrest. However, here, the local police officers, under Va. Code § 19.2-74, were required to issue Petitioner Johnson a summons to appear and "forthwith release him from custody" for the commission of the traffic infraction, a procedure that is distinct from an "arrest without warrant," which is governed by a separate statute, Va. Code § 19.2-82. Va. Code §§ 19.2-74 and 19.2-82 are included in their entirety as Appendices 8 and 9, respectively.

The instant case differs from both Knowles and the decisions of the Courts of Appeal in the Second, Sixth, Eighth and District of Columbia Circuit Courts of Appeal, in that in the instant case, at the time of the search, Johnson had not been issued a citation, and he had not been arrested, he was merely detained.

This case presents, in part, an opportunity for this Court to revisit *Knowles* and its progeny and correct the misapplication of *Knowles* and the distinctions between a search incident to an arrest and a search incident to a citation or where, as in the case at bar, neither a citation had been issued nor an arrest

effected, and to correct the faulty logic employed by the Fourth Circuit Court of Appeals.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, this Court should find that Petitioners have presented compelling questions that should be answered by this Court. Accordingly, this Court should exercise its discretion and grant this petition pursuant to Supreme Court Rule 10 (a) and (c).

APPENDIX

TABLE OF APPENDICES

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4040

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RUDOLPH DANIEL MIFFIN, JR.,

Defendant - Appellant.

No. 23-4105

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERMAINE DARNELL JOHNSON, a/k/a Jermaine Darrell Johnson, a/k/a Buck Johnson,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:21-cr-00029-MHL-2; 3:21-cr-00029-MHL-1)

Argued: March 5, 2024 Decided: August 23, 2024

Before DIAZ, Chief Judge, and RICHARDSON and RUSHING, Circuit Judges.

Affirmed by unpublished opinion. Chief Judge Diaz wrote the opinion, in which Judge Richardson and Judge Rushing joined.

ARGUED: I. Scott Pickus, LAW OFFICES OF I. SCOTT PICKUS, ESQUIRE, Glen Allen, Virginia; Timothy George McCormick, CHRISTIAN & BARTON LLP, Richmond, Virginia, for Appellants. Stephen Eugene Anthony, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. **ON BRIEF:** Jessica D. Aber, United States Attorney, Richmond, Virginia, Jacqueline Bechara, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

DIAZ, Chief Judge:

We consider on appeal the district court's denial of Jermaine Darnell Johnson's and Rudolph Miffin, Jr.'s motions to suppress certain evidence the police seized during a traffic stop.[1] Johnson and Miffin contend that police officers impermissibly prolonged the stop, in violation of the Fourth Amendment, by subjecting Johnson, the driver, to a pat down and search of a bag on his person, in which they found a handgun and drug paraphernalia. Johnson and Miffin also assert that the officers violated the Fourth Amendment by prolonging the traffic stop to search the vehicle, Miffin's person, and a similar bag on his person. During those searches, the officers found another handgun, an empty extended handgun magazine, drugs, and more drug paraphernalia.

After the district court denied their motions to suppress,[2] Johnson and Miffin entered conditional guilty pleas. Johnson pleaded guilty to being a felon in possession of a firearm, and possession with intent to distribute a controlled substance. Miffin pleaded guilty to possession with intent to distribute a controlled substance. Both, however, reserved the right to appeal the claims that they raised in their suppression motions. The defendants

[1] The district court also denied Miffin's motion to suppress certain incriminating statements he made to federal agents while he was being transferred from the county jail, where he was detained following the traffic stop, as moot. *United States v. Johnson*, No. 3:21-cr-29, 2022 WL 2373700, at *24–25 (E.D. Va. June 30, 2022). Miffin doesn't appeal that decision. In addition, the district court granted in part Johnson's motion to suppress certain statements he made to the officers after he was handcuffed and before he was read his *Miranda* warnings. *Id.* at *23. The government doesn't appeal that decision.

[2] Miffin moved to adopt Johnson's motion to suppress, which the district court granted. *Id.* at *8.

bring those appeals now, challenging the searches of Johnson's and Miffin's persons, their bags, and the vehicle. Relying mainly on the search incident to arrest and automobile exceptions to the Fourth Amendment, we affirm.

I.

Because, as relevant here, the district court denied Johnson's and Miffin's suppression motions, we recount the facts in the light most favorable to the government, the prevailing party below. *United States v. Slocumb*, 804 F.3d 677, 681 (4th Cir. 2015) (cleaned up).

A.

Officer O.T. Broaddus encountered Johnson and Miffin during two stops in the early morning hours of September 1, 2020. The first stop was generally routine: while patrolling an area of Henrico County following a string of "vandalization[s] and burglaries," Broaddus "came across a vehicle that was parked [in a dark area] . . . that had [its] lights on." *United States v. Johnson*, No. 3:21-cr-29, 2022 WL 2373700, at *2 (E.D. Va. June 30, 2022). The illuminated vehicle "stuck out to" Broaddus, prompting him to "conduct[] a records check of the vehicle's license plate." *Id.*

While the check revealed that the license plate was linked to a different color vehicle, it didn't indicate that any warrants were on file or contain any other information of concern. Still, Broaddus left his police cruiser and approached the vehicle, where he saw Miffin "sitting alone in the passenger seat with the door open." *Id.* Broaddus and Miffin talked about "criminal activity in the area" before Johnson "walked up to the car."

Id. Broaddus then had a similar conversation with Johnson. Once the conversations ended, Broaddus left Johnson and Miffin—who both struck Broaddus as "cooperative and cordial"—and continued his patrol. *Id.*

The second stop, occurring only a few minutes later, is the subject of this appeal. There, Broaddus "saw a car pass him with an unlit light above its rear license plate." *Id.* at *3. "Because the unlit light constituted an equipment violation," *id.*, Broaddus pursued the vehicle, activating his emergency blue lights once he caught up to it. The vehicle traveled another block before "stopping near an access road adjacent to [a] major intersection." *Id.* "[G]iven the time of day, cars passed only intermittently, and the area was dark." *Id.*

Broaddus once more approached the vehicle alone and observed Johnson sitting in the driver's seat with Miffin in the passenger's seat. He realized at this point "that this was the same car" and occupants he had encountered during the initial stop. *Id.* Broaddus acknowledged as much to Johnson before informing him of the traffic infraction. Johnson noted that he was aware of the unlit tag light but "expressed concern" to Broaddus about the stop because Johnson was "on federal papers, a euphemism for federal supervision." *Id.* (cleaned up). Broaddus assured Johnson "that he should not have much to be concerned about." *Id.* (cleaned up).

All the same, Broaddus asked Johnson and Miffin for identification, explaining, "When I stop a car, I need to identify both occupants." *Id.* Both men complied. Broaddus also requested the vehicle's registration, but "Johnson informed Officer Broaddus that he could not find [it] because the car belonged to someone else." *Id.* Instead, Johnson gave

Broaddus a vehicle inspection report, which Broaddus accepted because it "reprinted the car's vehicle identification number." *Id.*

With the paperwork in hand, Broaddus "returned to his police cruiser to check [the] records." *Id.* He confirmed that "Johnson was on federal supervision, although [the check] did not specify the nature of the underlying offense or provide any detail about Johnson's criminal history." *Id.* The check also instructed that Broaddus was "not to arrest [Johnson] unless a crime ha[d] occurred." *Id.* (cleaned up). As for Miffin, Broaddus "received an alert classifying Miffin as a known member of the Crips Southwest Virginia gang," which Broaddus knew, "based on his training and experience, . . . had a reputation for violence." *Id.* at *4. But this alert qualified that "[s]tanding alone," Miffin's gang affiliation "d[id] not furnish grounds for the search and seizure of any individual, vehicle, or dwelling." *Id.*

About five minutes into the stop, and as Broaddus was conducting the records check, Sergeant Patrick English "arrived on the scene." *Id.* Though English wasn't called to assist Broaddus, it "was normal procedure" for one officer to "check on" another officer during a traffic stop. *Id.* English, standing outside Broaddus's police cruiser, asked Broaddus about the stop. As Broaddus was responding, English "interrupted and stated, 'There's a lot of movement going around [in the car],'" *id.*, and began walking toward the vehicle. Though English didn't describe this movement any further, Broaddus "interpreted Sergeant English's reaction as 'unusual and suspicious because when Sergeant English said there was a lot of movement in that vehicle, and walked off, that meant that he observed something that may have been an officer safety issue.'" *Id.* (cleaned up).

English approached the passenger's window, and Johnson leaned across Miffin to "volunteer[] [to English] that he was putting on his 'slides,' or slip-on sandals." *Id.* English still noted "that there was reaching going on outside his view." *Id.* (cleaned up).

Broaddus, meanwhile, "continued to conduct the records check," *id.*, learning that the license plate on the vehicle was linked to a different vehicle. "This discovery gave Officer Broaddus some concerns that [the] vehicle may have been stolen," although he "recognized that the issue with the license plates may have been due to DMV issues or administrative issues related to the COVID-19 pandemic." *Id.* (cleaned up). Broaddus completed the records check and returned to the vehicle, "ask[ing] Johnson to exit the car so that they could speak privately about the issue with the license plates." *Id.* Though Johnson initially "voiced his desire to wait inside the car until his wife arrived," *id.*, he exited the car after Broaddus told Johnson that he could have the car towed if Johnson didn't comply.

Broaddus next asked Johnson if he had any weapons, and Johnson, after some back and forth, "indicated that he did not possess any weapons." *Id.* at *5. To confirm, Broaddus asked if he could pat Johnson down. Though Johnson at first raised his arms as if to comply, he quickly dropped them and stated, "'C'mon, bro, don't do me like that, bro.'" *Id.* Johnson then "squared up,"[3] *id.*, and told Broaddus that he didn't want Broaddus to search him.

[3] Broaddus testified that "it's more or less a danger sign," J.A. 133:21–22, to officers when a suspect "squares up"—"a form of aggression" where "someone [is] getting ready to make an action that potentially is dangerous," J.A. 134:4–7. Johnson and Miffin object

Broaddus removed his hands from Johnson but noticed what he suspected was a marijuana flake on Johnson's shirt. *Id.* He asked Johnson what the flake was, and Johnson replied, "That's a problem." Broaddus BWC 10:34.[4] Though Broaddus told Johnson that he wasn't "under arrest," he explained that he was "detaining" Johnson because he had "marijuana on [him]," which is "illegal, okay?" *Johnson*, 2022 WL 2373700, at *5. But "[m]oments later," Sergeant English handcuffed Johnson's hands behind his back. *Id.* As Broaddus then led Johnson away, he asked whether there was more marijuana on Johnson's person or in the car, and Johnson admitted that "the car's center console contained a 'blunt,' or a marijuana cigar." *Id.*

After learning that the car contained more marijuana (about thirteen minutes into the stop), Broaddus "asked Johnson for a second time whether Johnson possessed any weapons because he was concerned that Johnson was armed and dangerous and that he might have additional marijuana on his person." *Id.* Before waiting for Johnson's reply, but "because of those concerns," Broaddus "opened a zipped cross-body bag draped across one of Johnson's shoulders, resting flush against Johnson's stomach." *Id.* Broaddus shined his flashlight inside the bag "and discovered a Glock 19" and "individually packaged narcotics." *Id.*

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to this description, but we defer to the district court's factual determinations, *United States v. Palmer*, 820 F.3d 640, 653 (4th Cir. 2016) (cleaned up), which were based on both Broaddus's testimony and his body worn camera footage.

[4] Broaddus's body worn camera footage was entered into evidence and reviewed during the suppression hearings.

As the officers tried to remove the bag from Johnson's shoulder and maneuver it around his cuffed hands, J.A. 138:3–8, Johnson began calling out to Miffin, shouting, "Hey, Juvie, they goddamn got the Glick out the bag, bro,"[5] J.A. 138:18–23, 139:12–17; Broaddus BWC 14:29–14:50. This outburst prompted several responses. First, Broaddus cut the strap of the bag and walked away from Johnson to secure it in a police vehicle. Broaddus BWC 15:00–15:20. Broaddus then returned to Johnson, read him his *Miranda* warnings, and searched Johnson's person, including his pockets, finding cash and other drug paraphernalia.

Second, English instructed Officer Trevor Holmes, "who had arrived on the scene . . . and had been talking with Miffin, to 'detain' Miffin." *Johnson*, 2022 WL 2373700, at *6. Following Holmes's commands, Miffin exited the vehicle, and Holmes told him that he "was 'not under arrest,'" but "was simply 'being detained right now.'" *Id.* Still, "Holmes handcuffed Miffin, patted him down, and . . . read him his *Miranda* rights." *Id.*

With Johnson also secured, Broaddus approached Miffin and informed him "that they 'found some stuff in the car,'" *id.* (cleaned up), and asked him whether he had any drugs on his person, Broaddus BWC 22:25–23:08. Miffin, on whom Holmes had done a pat-down search, responded "that he did not have anything on his person, that he did not

[5] The district court explained that a "'Glick' refers to a Glock loaded with an extended magazine." *Johnson*, 2022 WL 2373700, at *6 n.4.

want to be searched, and that there was no reason to search him." *Johnson*, 2022 WL 2373700, at *6.

Without searching Miffin, Broaddus left him handcuffed with Holmes, and searched the defendants' vehicle with English. Broaddus found a Taurus 9mm pistol under Miffin's seat, while English "recovered the blunt from the car's center console, which also contained a digital scale and empty extended magazines for a handgun." *Id.* And "[i]n the front seat area, the officers discovered a large quantity of baking soda, a common cutting agent for narcotics, and several bags in the backseat that appeared to contain narcotics." *Id.* Broaddus then returned to Miffin, searching his person "and a cross-body bag strapped to his person similar to the one strapped to Johnson's." *Id.* at *7. During these searches, Broaddus found "additional individually packaged bags containing suspected narcotics." *Id.*

B.

Johnson and Miffin were each charged with a separate count of possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1), and with a combined count of possession with intent to distribute heroin and cocaine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). Johnson and Miffin moved to suppress evidence that they argued was obtained as the result of unreasonable warrantless searches incident to unreasonable warrantless seizures, in violation of the Fourth Amendment.

The district court held an evidentiary hearing on the defendants' motions, in which it heard testimony from Broaddus and English and reviewed several officers' body worn camera footage. The court then heard separate oral argument on the motions after a round

of supplemental briefing. It also allowed the parties to file a second round of supplemental briefing after the argument.

As relevant here, the district court denied Johnson's and Miffin's motions to suppress the evidence obtained during the searches of Johnson's crossbody bag and the vehicle.

To begin, the court found that the traffic stop was "lawful at its inception because Officer Broaddus witnessed a traffic violation, giving him probable cause to initiate the traffic stop." *Id.* at *8. And it held that Broaddus didn't impermissibly prolong the traffic stop given that he was "investigat[ing] the issues pertaining to the car's registration and license plates" and that "these actions did not extend the stop longer than reasonably necessary for Officer Broaddus to complete his initial objectives." *Id.* at *11. In so holding, the district court rejected the defendants' argument that Broaddus unreasonably extended the stop beyond those initial objectives by conducting the pat-down frisk of Johnson and by conducting the later searches because those were justified under several exceptions to the Fourth Amendment.

The district court, for example, determined that Broaddus had reasonable suspicion that Johnson was armed and dangerous, justifying his initial protective frisk under *Terry v. Ohio*, 392 U.S. 1 (1968). Then, as to the search of Johnson's crossbody bag, the district court found that it was justified as a search incident to Johnson's arrest for the traffic violation. Finally, as to the search of the vehicle, the district court found that the seized evidence would have been inevitably discovered because the vehicle—lacking proper license plates—was inoperable.

After the district court's decision, Johnson and Miffin waived indictment and entered conditional guilty pleas, while reserving the right to appeal the issues raised in their suppression motions. Johnson pleaded guilty to being a felon in possession of a firearm and to possession with intent to distribute a controlled substance, and the district court imposed a sentence of ninety-six months' imprisonment followed by three years' supervised release. Miffin pleaded guilty to possession with intent to distribute a controlled substance, and the district court imposed a sentence of eighty-five months' imprisonment, also followed by three years' supervised release.

This appeal followed.

II.

Before us, Johnson and Miffin bring two challenges. First, they argue that Broaddus unreasonably extended the traffic stop by patting Johnson down and searching his crossbody bag, so the district court erred by not suppressing the evidence seized during that search. They next contend that the officers unreasonably extended the stop by searching the defendants' vehicle, so the district court again erred by not suppressing the evidence seized during that search. We disagree on both fronts but will address each argument in turn.[6]

[6] Johnson and Miffin concede that Broaddus had probable cause to initiate the stop and don't challenge the length of the stop while Broaddus investigated the license plate issue.

A.

We'll begin with the defendants' challenge to the pat down of Johnson's person and search of Johnson's crossbody bag. In reviewing the district court's denial of a suppression motion, "we review legal conclusions de novo and factual findings for clear error." *United States v. Pulley*, 987 F.3d 370, 376 (4th Cir. 2021) (cleaned up). And we "evaluate[] the evidence in the light most favorable to the government." *United States v. Perry*, 92 F.4th 500, 509 (4th Cir. 2024) (cleaned up). We conclude that neither the pat down nor the search violated the defendants' Fourth Amendment rights because the former constituted a protective *Terry* frisk, and the latter constituted a permissible search incident to arrest.

1.

The Fourth Amendment guides our analysis. It protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *United States v. Gist-Davis*, 41 F.4th 259, 263 (4th Cir. 2022) (quoting U.S. Const. amend. IV). And the right extends to investigatory stops and associated protective frisks "that fail to comply with the criteria articulated in *Terry v. Ohio*." *Id.* (citation omitted).

An officer who has conducted a lawful traffic stop may conduct a protective frisk if he "has a reasonable suspicion that one of the automobile's occupants is armed" to ensure "the officer's protection and the safety of everyone on the scene." *United States v. Robinson*, 846 F.3d 694, 696 (4th Cir. 2017). Reasonable suspicion "is a less demanding standard than probable cause," and "considerably less [demanding] than a preponderance of the evidence." *Gist-Davis*, 41 F.4th at 264 (cleaned up).

Still, reasonable suspicion isn't toothless: It requires that an officer "be able to articulate more than an inchoate and unparticularized suspicion or hunch" that an individual is armed and dangerous. *Id.* (cleaned up). The officer may consider "a host of factors" in doing so, *United States v.* George, 732 F.3d 296, 299 (4th Cir. 2013), and we evaluate those factors under "the totality of the circumstances, giving due weight to common sense judgments reached by [the] officer[] in light of [his] experience and training," *Gist-Davis*, 41 F.4th at 264 (cleaned up).

The district court summarized the "host of factors" that it considered in its reasonable suspicion calculus and assigned weight to each. *Johnson*, 2022 WL 2373700, at *13 (citing factors and cases). It assigned, for example, "substantial weight" to "the information [Broaddus] received from the records check," as well as the movement English "observed . . . within the car." *Id.* at *15. The district court then assigned only "some weight" to the fact that (1) the stop occurred "in a high-crime area," *id.* at *14, (2) the stop occurred "at 1:25 a.m. in a dark location," *id.* at *15, and (3) Johnson was "unusual[ly]" nervous and "evasive," *id.* at *16. Viewing the facts in the light most favorable to the government and deferring to the district court's credibility determinations, we see no reason to disturb the district court's reasoning and agree that, taken in their totality, these circumstances allowed Broaddus to reasonably suspect that Johnson was armed and dangerous.

Turning first to the records check, Broaddus learned from the check that "Johnson was on federal supervision and that Miffin was a reported member of the Crips," a gang with "a reputation for violence." *Id.* at *15; *see also United States v. Holmes*, 376 F.3d

270, 278 (4th Cir. 2004) (crediting suspect's criminal history and violent gang affiliation as relevant factors in reasonable suspicion analysis). Broaddus, moreover, "reasonably suspected he was dealing with a possible stolen vehicle considering that the records check associated the license plates on [the d]efendants' car with another vehicle." *Johnson*, 2022 WL 2373700, at *15 (cleaned up).

As for the movement in the vehicle, English not only "abruptly interrupt[ed]" Broaddus to note the movement, but also "promptly approach[ed] the vehicle to get a better view" of the movement. *Id.* The district court credited Broaddus's testimony that English's behavior "possibly signal[ed] an officer safety issue," *id.* (cleaned up), given that "[s]uspicious movements such as [Johnson's] . . . 'can be taken to suggest that the suspect may have a weapon,'" *id.* (quoting *George*, 732 F.3d at 299) (cleaned up).

Finally, for the three other factors, the district court was right to acknowledge that, alone, they were "minimally probative," *id.* at *14; *see also id.* at*15–16, but that they could still be considered within the reasonable suspicion framework. This court has allowed the crime rate where the stop occurred, *United States v. Mitchell*, 963 F.3d 385, 391 (4th Cir. 2020), the early morning hours in which the stop occurred, and a suspect's demeanor to play some role within that framework, *George*, 732 F.3d at 299–300.

In this case, the stop occurred in a higher-crime area. Indeed, Broaddus was patrolling there because of recent criminal activity in the vicinity. And the stop occurred in the early hours of the morning, which "may alert a reasonable officer to the possibility of danger." *Id.* at 300. Then, Johnson became less compliant as Broaddus sought to clarify the records check—declining to exit the vehicle to discuss the license plate issue with

Broaddus, "squaring up" to Broaddus when he did exit the vehicle, and resisting Broaddus's questions about whether he possessed any weapons.[7]

Johnson and Miffin resist this conclusion, arguing that the officers and Johnson "were laughing about the situation," so "[c]learly," they weren't "in fear for [their] safety." Appellants' Br. at 16. And they contend that "[t]he stop was for a traffic infraction," during which Broaddus "never voiced any concern for his safety or that of the other police officers then present." *Id.* at 18.

But that Broaddus had cordial interactions with Johnson doesn't mean he didn't reasonably suspect that Johnson was armed. Nor does our standard require an outward expression of that suspicion. *See United States v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008) (explaining that "the lawfulness of a *Terry* stop turns not on the officer's actual state of mind at the time the challenged action was taken, but rather on an objective assessment of the officer's actions" (cleaned up)).

There's no question that Broaddus (1) initiated the stop in the early morning hours in a higher-crime area, (2) learned that Johnson was under federal supervision, that Miffin was in a violent gang, that the vehicle had mismatched plates, and that there was movement in the vehicle, and (3) observed Johnson become more agitated and less compliant as he

[7] The district court rightly identified "the complex reality of citizen-police relationships in many cities," including Richmond, Virginia, so that "Johnson's hesitations" (or evasive behavior) merited less weight in its reasonable suspicion analysis. *Johnson*, 2022 WL 2373700, at *16.

tried to unravel the plate issue. Under our standard, we're satisfied that reasonable suspicion existed, justifying Broaddus's protective frisk of Johnson.

2.

We address next Johnson and Miffin's argument that Broaddus impermissibly prolonged the stop by searching Johnson's crossbody bag. The district court held that the search was conducted as a valid search incident to arrest for the traffic infraction, even though the search preceded the arrest. *Johnson*, 2022 WL 2373700, at *17. We agree.

A search incident to arrest "is a traditional exception to the warrant requirement of the Fourth Amendment," in which "law enforcement officers [who] have probable cause to make a lawful custodial arrest . . . may—incident to that arrest and without a warrant—search the arrestee's person and the area within his immediate control." *United States v. Currence*, 446 F.3d 554, 556 (4th Cir. 2006) (cleaned up). An officer may do so, even before an official arrest is made, to "remove any weapons that [a suspect] might seek to use in order to resist arrest or effect his escape," and "to prevent the concealment or destruction of evidence." *Id.* But as with the reasonable suspicion standard, this exception isn't limitless.

The Supreme Court narrowed this exception in *Arizona v. Gant* by holding that, in the vehicular context, police can "search a vehicle incident to a recent occupant's arrest *only* when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." 556 U.S. 332, 343 (2009) (emphasis added). This court in *United States v. Davis* then extended that holding to reach "non-vehicular containers that were not on the arrestee's person." 997 F.3d 191, 197 (4th Cir. 2021).

Like this case, the "non-vehicular container[]" in *Davis* was a bag, so the main question was whether the suspect "could have accessed the backpack at the time of the search." *Id.* at 198 (cleaned up). The answer there was no, where the suspect had dropped his backpack and was laying on the ground with his handcuffed hands behind his back, and where the officer had just had "his service weapon drawn." *Id.* Under those circumstances, "there [was] no doubt that Davis was secured and not within reaching distance of his backpack," *id.*, when the officer searched it.

Johnson and Miffin would apply *Davis*'s holding here. Though the defendants don't dispute that Broaddus had probable cause to arrest Johnson for the traffic infraction,[8] *see* Reply Br. at 8, they argue that Johnson, like Davis, "had been placed in handcuffs with his hands behind him," Appellants' Br. at 20. They also repeat that "[a] threat to officers' safety Johnson was not." *Id.*

But the defendants overlook critical differences between *Davis* and this case. To begin, Broaddus had reasonably determined that Johnson *was* a threat to officer safety by the time he searched Johnson's crossbody bag. And Broaddus had also observed what he suspected was marijuana on Johnson's clothing after the initial pat down. Though

[8] Johnson and Miffin don't raise a temporal challenge to the search incident to arrest or otherwise argue that too much time elapsed between the traffic infraction and Broaddus's search of Johnson's crossbody bag. *See Currence*, 446 F.3d at 557 ("Temporally, searches incident to arrest must be substantially contemporaneous with the arrest, and although a search can occur before an arrest is made, a search may not precede an arrest and serve as part of its justification." (cleaned up)).

marijuana was decriminalized in Virginia at the time,[9] that state policy did not dispel the "indisputable nexus between drugs and guns," *United States v. Harris*, No. 21-4657, 2023 WL 5165273, at *1 (4th Cir. Aug. 11, 2023) (quoting *United States v. Sakyi*, 160 F.3d 164, 169 (4th Cir. 1998)), which "creates a reasonable suspicion of danger to the officer," *Sakyi*, 160 F.3d at 169.

Johnson and Miffin also gloss over that Johnson's bag, at the time it was searched, remained on his person and that Johnson himself, though handcuffed, "still could walk around somewhat freely," *United States v. Ferebee*, 957 F.3d 406, 419 (4th Cir. 2020). And with the crossbody bag "resting flush against Johnson's stomach," *Johnson*, 2022 WL 2373700, at *5, the officers could have "reasonably" believed that Johnson could access its contents, *Ferebee*, 957 F.3d at 419.

These facts contrast with those in *Davis*, where the arrestee was face-down on the ground with his hands handcuffed behind his back and where the arrestee's bag was no longer under his control. In *Davis*, we also acknowledged that "an arrest scene may be more fluid—and an arrestee less secure—when officers must not only maintain custody of the arrestee, but also stay vigilant of . . . any efforts by confederates to interfere." 997 F.3d at 200. Here, Miffin—a known member of a violent gang—was also on the scene, so the officers had to balance their awareness of him, and his access to the bag, as well.

Taking these circumstances together, we won't disturb the district court's conclusion that the search of Johnson's bag was a valid search incident to his arrest.

[9] Va. Code Ann. § 18.2-250.1(A) (repealed effective July 1, 2021).

B.

Johnson and Miffin's final argument is that the officers unconstitutionally prolonged the stop by conducting a warrantless search of the vehicle. Though the district court found that the officers would have inevitably discovered the evidence during an inventory search, we instead affirm because the officers could search the vehicle under the automobile exception to the Fourth Amendment.[10]

1.

The automobile exception to the Fourth Amendment's warrant requirement provides that "if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *United States v. Kelly*, 592 F.3d 586, 589 (4th Cir. 2010) (cleaned up).[11] "[O]nce police have [the requisite] probable cause, they may search every part of the vehicle and its contents that may conceal the object of the search." *Id.* at 590 (cleaned up). And we have recognized that "[a]n officer's detection of marijuana creates such probable cause." *United States v. Alston*, 941 F.3d 132, 138 (4th Cir. 2019) (cleaned up).

[10] Though the district court admitted the evidence under a different theory, we may "affirm [the district court's decision] on any ground supported by the record." *United States v. Perez*, 30 F.4th 369, 374 (4th Cir. 2022) (cleaned up).

[11] In *Kelly*, we explained that the automobile "exception applies as long as a car is 'readily mobile' in the sense that it is being used on the highways or is readily capable of such use." 592 F.3d at 591 (cleaned up). Thus, it's of no moment that Johnson and Miffin were handcuffed—and unable to drive the vehicle—at the time of the search because the vehicle itself could have been driven.

Broaddus had probable cause to search the vehicle. Before he conducted the search, Broaddus (1) saw a flake of marijuana on Johnson's shirt, (2) learned from Johnson that there was more marijuana in the vehicle, and (3) found a gun in Johnson's crossbody bag. What's more, Broaddus heard Johnson call out to Miffin that they had found the "Glick" in his bag, raising the possibility that there were other concealed firearms.

Johnson and Miffin challenge the application of the automobile exception on two grounds. First, they repeat that marijuana was decriminalized then in Virginia, so it couldn't be "contraband" for purposes of the exception. And second, they argue that because the district court suppressed some statements Johnson made to the police after he was handcuffed but before he was given his *Miranda* warnings (that there was a "blunt" in the vehicle's center console), the evidence seized based on those comments should also be suppressed as "fruit of the poisonous tree." Reply Br. at 14 (cleaned up). We're unmoved by either argument.

On the defendants' first point, they've provided no caselaw explaining why an illegal substance (even a decriminalized one) like marijuana doesn't still constitute contraband. While Virginia may have made marijuana possession a civil offense, the drug remains illegal under state law, and its possession is still a crime under federal law.[12] *See*

[12] We contrast the automobile exception with the search incident to arrest exception. The former requires only probable cause that the object of the search contain "contraband," *Kelly*, 592 F.3d at 589, while the latter requires a lawful arrest, which in turn must be supported by probable cause that an arrestee committed a "crime," *see Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (allowing for arrest if "an officer has probable cause to believe that an individual has committed even a very minor *criminal* offense" (emphasis added)). So, while marijuana—decriminalized then by the Virginia legislature—might not

United States v. Castillo Palacio, 427 F. Supp. 3d 662, 672 (D. Md. 2019) (recognizing that "possession of marijuana in any amount remains illegal," even after its decriminalization in Maryland, such that marijuana constitutes contraband (quoting *Robinson v. State*, 152 A.3d 661, 680, 683 (Md. 2017))); *People v. Looby*, 68 V.I. 683, 698 (2018) (concluding that although decriminalized in the Virgin Islands, possession of marijuana remains unlawful and is considered contraband). Because marijuana possession is still illegal, even if subject to only a civil penalty in Virginia, it remains "contraband" for purposes of the automobile exception.[13] *See Davis*, 997 F.3d at 201 (allowing search under automobile exception if probable cause exists that "contraband" *or* "evidence of a crime will be found" (cleaned up)).

On the defendants' second point, we've long recognized that physical or "derivative evidence obtained as a result of an unwarned statement that was voluntary under the Fifth Amendment is never fruit of the poisonous tree." *United States v. Sterling*, 283 F.3d 216, 219 (4th Cir. 2002) (cleaned up). That principle applies here, where officers obtained a

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be evidence of a *crime*, it could nonetheless qualify as *contraband*. *See, e.g.*, *United States v. Pascual*, 502 F. App'x 75, 78 n.3 (2d Cir. 2012) (explaining that "the 'scope of the search authorized [by the automobile exception] is broader' than that authorized in searches incident to arrest" (quoting *Gant*, 556 U.S. at 347)).

[13] The defendants' citation to *Commonwealth v. Branch*, No. 0132-22-1, 2022 WL 2202895, at *4 (Va. Ct. App. June 21, 2022), doesn't change our minds. The court merely "[a]ssum[ed] without deciding that decriminalized, unlawful marijuana" was "considered 'contraband' for purposes of the Fourth Amendment" before holding that "the circumstances [there] did not provide the officers with probable cause that other contraband or evidence of a crime would be found in the vehicle." *Id.* Such circumstances existed here, including evidence of additional marijuana.

voluntary statement, though it was "in technical violation of *Miranda*." *Correll v. Thompson*, 63 F.3d 1279, 1290 (4th Cir. 1995).

Such a technical—unlike a constitutional—violation doesn't inherently "taint," *id.*, the physical evidence that law enforcement seized, so it needn't be suppressed. And, in any event, Broaddus had other indicia of contraband, such as the marijuana flake and the unsuppressed statement about the gun, to justify searching the vehicle under the automobile exception.[14]

III.

For these reasons, the district court's judgment is

AFFIRMED.

[14] Because we affirm the district court's refusal to suppress the evidence seized in the vehicle under the automobile exception rather than the inevitable discovery doctrine, we don't address the defendants' argument that the doctrine wouldn't support the admissibility of evidence found on Miffin's person after the search of the vehicle. *See, e.g.*, Reply Br. at 19. If Miffin had argued that the search of his person was not lawful even in light of evidence discovered under the automobile exception, it would have been unavailing. Law enforcement officers lawfully detained Miffin and lawfully conducted the preceding searches, so they "inevitably would have searched the car and found the gun," *Alston*, 941 F.3d at 139.

FILED: August 23, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4040 (L)
(3:21-cr-00029-MHL-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RUDOLPH DANIEL MIFFIN, JR.

Defendant - Appellant

No. 23-4105
(3:21-cr-00029-MHL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JERMAINE DARNELL JOHNSON, a/k/a Jermaine Darrell Johnson, a/k/a Buck Johnson

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgments of the district court are affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

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

UNITED STATES OF AMERICA

v. **Criminal No. 3:21cr29**

JERMAINE DARNELL JOHNSON

and

RUDOLPH MIFFIN, JR.,

Defendants.

MEMORANDUM OPINION

This matter comes before the Court on four motions:

(1) Defendant Rudolph Miffin, Jr.'s Motion to Suppress Evidence Found in Violation of the Fourth Amendment ("Miffin's Motion to Suppress I"), (ECF No. 17);

(2) Miffin's Motion to Suppress Custodial Statements ("Miffin's Motion to Suppress II"), (ECF No. 18);

(3) Defendant Jermaine Darnell Johnson's Motion to Suppress Evidence and Statements ("Johnson's Motion to Suppress"), (ECF No. 31); and,

(4) Miffin's Motion to Adopt Defendant Johnson's Motion to Suppress Evidence ("Miffin's Motion to Adopt"), (ECF No. 32).

The United States responded, (ECF No. 34), and Defendants replied, (ECF Nos. 36, 37). The Court held two evidentiary hearings and ordered supplemental briefing on two occasions. (ECF No. 45, at 1.) The parties submitted their supplemental briefs. (ECF Nos. 48-1, 49, 50, 51-1.) The Court held a hearing to discuss relevant matters. Based on issues raised during that hearing, the Court ordered additional briefing for a second time. Each Defendant submitted a second supplemental brief, (ECF Nos. 54, 55), but the United States did not, and the time to do so has

expired. Thus, this matter is ripe for disposition. For the reasons articulated below, the Court will grant the Motion to Adopt, deny Miffin's Motion to Suppress II as moot, and grant in part and deny in part Miffiin's Motion to Suppress I and Johnson's Motion to Suppress.

I. Procedural History and Findings of Fact

A. Procedural History

A grand jury indicted Johnson and Miffin, charging: Johnson with Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. § 922(g)(1) ("Count One"); Miffin with the same offense ("Count Two"); and both Johnson and Miffin with Possession with Intent to Distribute Controlled Substances, in violation of 21 U.S.C. § 841(a)(1) ("Count Three"). (ECF No. 4, at 1–3.) Defendants appeared before this Court for Johnson's arraignment and a status conference. (ECF Nos. 26, 27.) During the status conference, the Court issued a scheduling order for motions and a date for a hearing.

Miffin timely filed his Motions to Suppress. (ECF Nos. 17 and 18.) Johnson also filed his Motion to Suppress. (ECF No. 31.) Miffin then filed his Motion to Adopt. (ECF No. 32.) The United States responded, (ECF No. 34), and Defendants replied, (ECF Nos. 36, 37). All papers were timely filed.

The Court held an evidentiary hearing. (*See generally* ECF No. 47.) At the hearing, the Court heard testimony from two of the police officers who conducted the traffic stop giving rise to the present Motions to Suppress, as well as a witness for Defendants. The Court also admitted into evidence twenty-one exhibits, including footage from the officers' body-worn cameras ("BWC").[1]

[1] The twenty-one exhibits entered into evidence do not appear on the Court's CM/ECF docket for this case. The Court has the paper exhibits on file. (*See* ECF No. 46.) The guns and duplicates of the video exhibits were returned to the parties. (*See id.*)

The next day, the Court ordered supplemental briefing. (ECF No. 45, at 1.) Pursuant to this Order, the United States filed its supplemental brief in response to the pending Motions to Suppress, (ECF No. 48-1), and Defendants filed their supplemental briefs in support, (ECF Nos. 49, 50). The United States replied. (ECF No. 51-1.)

The Court heard oral argument on the suppression motions a second time. The Court questioned the parties on several cases pertinent to the instant motions. The Court allowed the parties to file additional supplemental briefing to address the cases discussed during the hearing. Each Defendant filed a second supplemental brief. (ECF Nos. 54, 55.) The United States did not, however, and the time to file a second a supplemental brief has expired.

B. Findings of Fact

1. September 1, 2020 Traffic Stop Involving Johnson and Miffin

Early in the morning of September 1, 2020, around 1:00 a.m., Henrico Police Officer Orride Thomas Broaddus, Jr. was on patrol in the "65 service area" of Henrico County, which encompasses three apartment buildings: Fox Rest Apartments, Place One Apartments, and Abbington West Apartments. (*See* ECF No. 47, at 8:17–22, 51:2.) At that time, Officer Broaddus was a nine-year veteran of the police force, starting with the Virginia Commonwealth University Police Department in 2012. (ECF No. 47, at 7:20–25.) He had served in the Henrico County Police Department since 2017. (ECF No. 47, at 7:20–25.) As of September 2020, Officer Broaddus had patrolled the 65 service area for at least a year and a half. (ECF No. 47, at 9:6–8.) On the morning in question, Officer Broaddus focused his patrol on vandalization and burglaries in response to "reports of juveniles in that area, specifically from Place One Apartment and Abbington West Apartments, that were frequenting that area, going to clubhouses, going to vehicles, larcenies from autos, [etc.], [and] potential burglaries and

activities associated with vandalism." (ECF No. 47, at 9:21–10:2; *see also* Gov't Ex. 2 "September 1, 2020 E-Brief" 1.)

a. Officer Broaddus Encounters Defendants During His Patrol

During his patrol early that morning, Officer Broaddus "came across a vehicle that was parked [in a dark area] in the Place One Apartment community that had [its] lights on." (ECF No. 47, at 13:19–21, 16:19–20.) Because the car having its lights on in a dark area "stuck out to" him, Officer Broaddus stopped and conducted a records check of the vehicle's license plate. (ECF No. 47, at 16:21–17:1.) Although the records check produced information associating the license plates with a different color car, no warrants were on file, and Officer Broaddus did not receive "any[information] of concern" about the vehicle. (ECF No. 47, at 17:25–18:2.) Nonetheless, Officer Broaddus left his police cruiser and approached the parked car on foot. (ECF No. 47, at 18:11–14.)

Arriving at the car, Officer Broadus encountered a person later identified as Miffin sitting alone in the passenger seat with the door open. (ECF No. 47, at 19:4–9.) The two men spoke briefly about criminal activity in area. (ECF No. 47, at 19:12–20.) During their conversation, Defendant Johnson walked up to the car and asked "about what was going on." (ECF No. 47, at 19:25–20:5.) As he did with Miffin, Officer Broaddus engaged Johnson in a conversation about criminal activity in the area. (ECF No. 47, at 20:10–11.) Both men struck Officer Broaddus as "cooperative and cordial" during this initial encounter. (ECF No. 47, at 19:21–23, 20:14–16.) After the conversation ended, Officer Broaddus left, drove out of the Place One Apartment community, and traveled to the Fox Rest Apartment complex to continue his patrol. (ECF No. 47, at 21:17–20.)

b. Officer Broaddus Stops Defendants for a Defective Light

Later that morning, around 1:25 a.m., still during his patrol, Officer Broaddus saw a car pass him with an unlit light above its rear license plate. (ECF No. 47, at 29:1–3, 14–21, 38:3–4; *see also* Gov't Ex. 5 "Image of Defective License Plate Light" 1.) Because the unlit light constituted an equipment violation, Officer Broaddus decided it was a better use of police resources to follow that car than to continue his patrol of the 65 service area. (ECF No. 47, at 29:14, 25–30:2.) Officer Broaddus followed the car out of his service area onto Staples Mill Road. (ECF No. 47, at 29:22–34:10; *see also* Gov't Ex. 3 "Overhead Map of Place One Apartments to Staples Mill Road" 1.)

Once on Staples Mill Road in Henrico County, Officer Broaddus caught up to the vehicle and turned on his emergency blue lights near the intersection with Janway Road. (ECF No. 47, at 34:13–18, 36:8–12; Gov't Ex. 4 "Overhead Map of Traffic Stop Location" 1.) The car travelled about one block, stopping near an access road adjacent to the major intersection between Staples Mill Road and Parham Road. (ECF No. 47, at 36:25–37:9; Overhead Map of Traffic Stop Location 1.) This section of Staples Mill Road is a business area, located about a mile and a half from the Henrico Police Department and Henrico Courthouse. (ECF No. 47, at 37:16–17, 121:2–14.) It had just rained, so the road was wet. (ECF No. 47, at 37:13–14.) In addition, given the time of day, cars passed only intermittently, and the area was dark. (ECF No. 47, at 37:18–38:2.)

Proceeding alone, Officer Broaddus approached the driver's side window of the stopped car, which had two occupants. (ECF No. 47, at 41:14–21.) Once he had walked up to the driver's side window, Officer Broaddus realized that this was the same car he had approached during his patrol of the Place One Apartment complex. (ECF No. 47, at 41:17–42:3.) After

acknowledging the initial encounter, Officer Broaddus informed Johnson, the driver, that his car had an unlit tag light. (ECF No. 47, at 42:2–10; Gov't Ex. 16 "Broaddus BWC" 0:25–0:50.) Johnson noted his awareness of the defective light and then expressed concern to Officer Broaddus about the stop, informing Officer Broaddus that he (Johnson) was "on federal papers," a euphemism for federal supervision. (ECF No. 47, at 42:11–17; Broaddus BWC 0:45–1:15.) Officer Broaddus explained to Johnson that a defective tag light was beyond anyone's control, and that "he should[not] have much to be concerned about." (ECF No. 47, at 42:23–43:17; *accord* Broaddus BWC at 1:10–1:20.)

Officer Broaddus then asked Johnson and Miffin, who occupied the front passenger seat, for their identification, advising, "When I stop a car, I need to identify both occupants." (ECF No. 47, at 43:3–6, 18–24; Broaddus BWC 1:20–1:25.) Johnson and Miffin then handed over their papers. (Broaddus BWC 1:45–1:50.) When Officer Broaddus asked for the vehicle's registration, Johnson informed Officer Broaddus that he could not find the registration because the car belonged to someone else. (ECF No. 47, at 43:8–13; Broaddus BWC 2:10–2:20.) Johnson, however, did find a vehicle inspection report for the car, which Officer Broaddus accepted in lieu of the registration because the inspection report reprinted the car's vehicle identification number. (ECF No. 47, at 43:14–17; Broaddus BWC 2:30–2:55.)

After receiving Defendants' paperwork, Officer Broaddus returned to his police cruiser to check their records. (ECF No. 47, at 44:4–9; Broaddus BWC 2:50–3:00.) The records check confirmed that Johnson was on federal supervision, although it did not specify the nature of the underlying offense or provide any detail about Johnson's criminal history. (ECF No. 47, at 51:24–52:2, 112:10–23.) Officer Broaddus also received a "clear" message from person checks

on Johnson, as well as an automated instruction "not [to] arrest unless a crime has occurred." (Broaddus BWC 3:35–3:45.)

As to Miffin's records check, Officer Broaddus received an alert classifying Miffin as a known member of the Crips Southwest Virginia gang (the "Crips"), (ECF No. 47, at 55:17–23; Gov't Ex. 8 "Miffin NCIC Alert" 1), and based on his training and experience, Officer Broaddus knew that the Crips had a reputation for violence, (ECF No. 47, at 58:19–59:4). Nevertheless, the alert about Miffin's gang membership stated, "Warning—Standing alone, NCIC gang group and member file information does not furnish grounds for the search or seizure of any individual, vehicle, or dwelling." (Miffin NCIC Alert 1.)

c. Sergeant English Arrives on Scene and Sees Movement Inside the Car

While Officer Broadus conducted the records check, at 1:30 a.m., Henrico Police Officer Patrick English[2] arrived on the scene. (ECF No. 47, at 50:16–19.) Sergeant English was not called to the scene, but stopped to "check on" Officer Broaddus, which was normal procedure for officers "when [they saw] another officer on a traffic stop."[3] (ECF No. 47, at 183:11–13; *see* ECF No. 47, at 50:16–51:10.) He then asked Officer Broaddus about the stop. (ECF No. 47, at 50:16–21; Gov't Ex. 6 "English BWC" 0:00.) As Officer Broaddus responded, Sergeant English interrupted and stated, "There's a lot of movement going around." (Broaddus BWC 4:20–5:40.) Although Sergeant English did not describe what he saw, Officer Broaddus interpreted Sergeant English's reaction as "unusual and suspicious . . . [b]ecause when [Sergeant English] said there[

[2] Officer English has since been promoted to Sergeant. The Court will therefore refer to him as "Sergeant English."

[3] Sergeant English testified that this is "particularly normal to do when it's late at night and dark" because of the "the increased danger of traffic stops at night" and "decreased resources across the county," and because [there are] a lot of elements of the division that [are not] working at night." (ECF No. 47, at 183:14–21.)

was] a lot of movement in that vehicle, and walked off, that mean[t] . . . that he[] observ[ed] something that may [have] be[en] an officer safety issue." (ECF No. 47, at 60:25–61:12.)

To monitor the movement, Sergeant English approached the passenger's window of the car. (ECF No. 47, at 187:8–188:1.) Once Sergeant English arrived at the window, Johnson leaned across Miffin and volunteered that he was putting on his "slides," or slip-on sandals. (ECF No. 47, at 187:8–15; English BWC 0:45–0:55.) Sergeant English confirmed "what [he] had seen back at the vehicle, that there was reaching going on outside [his] view." (ECF No. 47, at 187:15–17.)

Meanwhile, Officer Broaddus continued to conduct the records check. (ECF No. 47, at 61:16–17.) During this time, Officer Broaddus received information associating the license plate on Defendants' car with a different vehicle. (ECF No. 47, at 62:5–8; Broaddus BWC 7:50–7:55.) This discovery gave Officer Broaddus "some concerns that [Defendants'] vehicle may have been stolen, but at the same time" Officer Broaddus recognized that the issue with the license plates may have been "due to DMV issues[or] administrative issues" related to the COVID-19 pandemic. (ECF No. 47, at 62:12–62:18.)

d. Officer Broaddus Directs Johnson to Exit the Vehicle and Pats Him Down

After concluding the records check, Officer Broaddus reapproached the stopped car and advised Johnson of the issue with the vehicle's license plates. (ECF No. 47, at 62:19–63:1; Broaddus BWC 8:25–8:40.) Officer Broaddus asked Johnson to exit the car so that they could speak privately about the issue with the license plates. (ECF No. 47, at 63:8–63:22; Broaddus BWC 8:35–8:45.) Johnson hesitated, (Broaddus BWC 9:00–9:05), and he voiced his desire to wait inside the car until his wife arrived on scene, (Broaddus BWC 9:20–30; *accord* ECF No. 47, at 63:22–23, 65:1–4). Officer Broaddus replied that he could order the car towed if Johnson

refused to exit the vehicle to discuss the license plate issue. (Broaddus BWC 9:35–9:40; *see also* ECF No. 47, at 67:12–20.) At that point, Johnson complied and began exiting the car. (ECF No. 47, at 67:12–21.)

As Johnson was stepping out of the car, Officer Broaddus asked, "Do you have any weapons on you?" (Broaddus BWC 9:55–10:01.) "This is a traffic stop," Johnson responded, "Why are you asking about weapons?" (Broaddus BWC 10:10–10:13.) Nevertheless, Johnson indicated that he did not possess any weapons. (Broaddus BWC 10:14–10:16.) Officer Broaddus sought confirmation and asked, "Can I pat you down to make sure you don't have any weapons?" (Broaddus BWC 10:17–10:19.) As Officer Broaddus delivered this question, Johnson slightly raised his arms, turning his back to Officer Broaddus. (Broaddus BWC 10:17–10:19; ECF No. 47, at 69:1–6.)

As Officer Broaddus started patting down his person, Johnson lowered his arms and stated, "C'mon, bro, don't do me like that, bro." (Broaddus BWC 10:20.) Officer Broaddus continued to pat Johnson's waist, prompting Johnson to turn and face Officer Broaddus. (Broaddus BWC 10:20–10:24.) As he "squared up" (as described by Officer Broaddus), Johnson voiced his non-consent more clearly: "No, I don't want you to search me." (Broaddus BWC 10:20–10:29; *see* ECF No. 47, at 74:15–75:15 (describing the meaning of "squared up"); *accord* ECF No. 47, at 69:12–22.)

e. Officer Broaddus Sees Marijuana on Johnson's Shirt, Places Him in Handcuffs, and Questions Him

Officer Broaddus removed his hands from Johnson's person and directed Johnson's attention to what Officer Broaddus suspected was marijuana. (Broaddus BWC 10:30–10:35; ECF No. 47, at 69:15–16, 70:1–2; Gov't Ex. 9 "Photo of Marijuana Flake from Johnson's Shirt" 1.) After Johnson looked down, Officer Broaddus asked, "What is that?" (Broaddus

BWC 10:30–10:33.) "That's a problem," Johnson answered. (Broaddus BWC 10:34.) Officer Broaddus ordered Johnson to "turn around" and put his hands behind back, but Johnson did not comply. (Broaddus BWC 10:35–11:00.) Then, Officer Broaddus ordered Johnson "to put [his wallet] on top of the car," which Johnson did. (Broaddus BWC 10:45–11:05.) Officer Broaddus said, "You're not under arrest. I'm detaining you because you got marijuana on you, man. It's illegal, okay?" (Broaddus BWC 11:05–11:08.) Moments later, Sergeant English handcuffed Johnson's hands behind his back. (Broaddus BWC 11:23–11:25.)

After escorting Johnson away from the car, Officer Broaddus started asking him questions. (Broaddus BWC 11:43–12:23; ECF No. 47, at 73:5–21.) Officer Broaddus specifically asked whether there was "any more weed in th[e] car or on [Johnson's person]." (Broaddus BWC 12:10–12:16; *accord* ECF No. 47, at 73:11–13.) Johnson initially shook his head no, (Broaddus BWC 12:16), but after Officer Broaddus indicated that he would search the car "to make sure there is no additional marijuana," Johnson informed Officer Broaddus that the car's center console contained a "blunt," or a marijuana cigar, (Broaddus BWC 12:16–12:35; ECF No. 47, at 73:14–21).

f. Officer Broaddus Searches a Bag on Johnson's Person

After hearing that the car contained a blunt, Officer Broaddus asked Johnson for a second time whether Johnson possessed any weapons because he was concerned that Johnson was armed and dangerous and that he might have additional marijuana on his person. (Broaddus BWC 12:35–12:40; *see* ECF No. 47, at 75:16–76:5.) Approximately thirteen minutes into the stop, without waiting for a response, and because of those concerns, Officer Broaddus opened a zipped cross-body bag draped across one of Johnson's shoulders, resting flush against Johnson's stomach. (Broaddus BWC 13:40–13:47; *see* ECF No. 47, at 76:6–20.) After unzipping the bag,

Officer Broaddus shined a flashlight inside and discovered a Glock 19, 9mm pistol and individually packaged narcotics. (Broaddus BWC 13:40–13:50; English BWC 8:29–8:51; ECF No. 47, at 76:17–25, 78:21–79:2; Gov't Ex. 10 "Glock 19 Pistol.")

Johnson immediately began yelling to get the attention of Miffin, who was still seated in the stopped car. (Broaddus BWC 14:29–32; ECF No. 47, at 79:21–25.) Eventually, Johnson shouted, "They Goddamn got the Glick[4] out the bag, bro." (Broaddus BWC 14:44–14:49; ECF No. 47, at 80:14–25.)

Johnson's statement about the gun prompted Officer English to instruct Henrico Police Officer Trevor Holmes, who had arrived on the scene at 1:36 a.m. and had been talking with Miffin, to "detain" Miffin. (English BWC 9:40; ECF No. 47, at 81:7–10; Gov't Ex. 17 "Holmes BWC" 0:00–4:13.) Once Miffin exited the car, Officer Holmes instructed Miffin that he was "not under arrest," but that he was simply "being detained right now." (Holmes BWC 4:25–30.) Officer Holmes handcuffed Miffin, patted him down, and, at 1:41 a.m., read him his *Miranda* rights. (Holmes BWC 4:13–6:03.)

At approximately the same time, 1:41 a.m., Officer Broaddus gave Johnson his *Miranda* warning. (Broaddus BWC 15:50–16:15; English BWC 10:40–11:09.) After searching Johnson's person (including his pockets) with Office Broaddus, Sergeant English secured Johnson in the front seat of Officer Broaddus's police cruiser, parked at least two car lengths behind the stopped car. (Broaddus BWC 16:37–22:20; 11:40–17:18; ECF No. 47, at 126:14–17.) Sergeant English then instructed another police officer to guard Johnson. (English BWC 17:18.)

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[4] "Glick" refers to a Glock loaded with an extended magazine. (ECF No. 47, at 80:18–81:1.)

g. Officer Broaddus and Sergeant English Search Defendants' Car and Then Miffin

After securing Johnson, Officer Broaddus approached Miffin, who was still standing next to Officer Holmes several yards from the car. (Broaddus BWC 22:25–22:30.) Officer Broaddus informed Miffin that they "f[ound] some stuff in the car ." (Broaddus BWC 22:25–30.) Miffin responded that he did not have anything on his person, that he did not want to be searched, and that there was no reason to search him. (Broaddus BWC 22:35–23:10; Holmes BWC 12:25–12:35.)

Without searching Miffin, Officer Broaddus left him with Officer Holmes. (Broaddus BWC 23:20; English BWC 12:30.) While Miffin stood handcuffed on the side of the road and Johnson sat handcuffed inside a police cruiser—both with police officers standing guard over them—and pursuant to Henrico County Police policy,[5] Officer Broaddus and Sergeant English searched Defendants' car. (Broaddus BWC 23:21–44:00; English BWC 18:38–48:00; ECF No. 47, at 83:20–84:1; *see* ECF No. 47, at 81:7–89:17.) Underneath Miffin's seat, Officer Broaddus found a Taurus 9mm pistol. (Broaddus BWC 27:15–27:25; ECF No. 47, at 84:9–14; Gov't Ex. 15 "Taurus Pistol.") Officer English recovered the blunt from the car's center console,

[5] Officer Broaddus credibly testified that he would have been required to tow the car. (*See* ECF No. 47, at 70:19–71:23.) He explained that he could not have allowed Johnson "to drive a vehicle unlicensed to operate on a highway" and that Johnson was "required by [Virginia] law to have two operating license plates . . . to operate [the] vehicle on the roadway." (ECF No. 47, at 71:12–16.) He further indicated that he would have been required to "take the plates off the vehicle because they [did not] match that vehicle" and then tow it. (ECF No 47, at 71:18–23.) Finally, Officer Broaddus testified that pursuant to Henrico County Police policy, he would have conducted an inventory search of the vehicle as part of the towing process. (*See* ECF No. 47, at 70:25–71:23.)

Officer Broaddus also testified about what an inventory search entails. For instance, he acknowledged that the search would involve "go[ing] through the vehicle to see [what is] in it," including searching under the seats, in compartments of the vehicle, and in containers or bags inside of the vehicle. (ECF No. 47, at 72:12–73:2.) Basically, during an inventory search of a vehicle, officers "look through the vehicle for anything of value or anything that [they] could be held liable for as an agency." (ECF No. 47, at 72:25–73:1.)

which also contained a digital scale and empty extended magazines for a handgun. (ECF No. 47, at 85:10–22; Gov't Ex. 13 "Photos of Items Found in Car and from Miffin" 1.) In the front seat area, the officers discovered a large quantity of baking soda, a common cutting agent for narcotics, and several bags in the backseat that appeared to contain narcotics. (ECF No. 47, at 85:23–25, 90:10–95:6; Gov't Ex. 14 "Photos of Items Found in Car" 1–13.)

After searching the car, Officer Broaddus conducted a search of Miffin and a cross-body bag strapped to his person similar to the one strapped to Johnson's. (ECF No. 47, at 95:10–23; Broaddus BWC 44:47–44:54.) This search yielded additional individually packaged bags containing suspected narcotics. (ECF No. 47, at 97:7–16; Photos of Items Found in Car and from Miffin 3–4.)

2. April 8, 2021 Trip with Federal Law Enforcement

After the traffic stop, Miffin was detained at the Henrico County East Jail Facility in New Kent, Virginia (the "County Jail"). (ECF No. 9, at 1.) Several months afterward, two special agents transported Miffin to the federally used Pamunkey Regional Jail, making two stops along the way. (ECF No. 18, at 1.) During that transport, Miffin made certain incriminating statements as part of a conversation with the federal agents.[6]

C. Summaries of the Present Suppression Motions

Three suppression motions pend before the Court, two brought by Miffin and one by Johnson. In his Motion to Suppress I, Miffin contends that Officer Broaddus unreasonably

[6] The United States does not contest the factual narrative Miffin presents about his April 8, 2021 car ride with federal agents from county jail to federal jail. The United States has informed the Court, through briefing, that it "does not intend to offer any of the statements Defendant made following his federal arrest in evidence." (ECF No. 34, at 19.) Accordingly, the Court will not consider those statements here, and the Court will deny as moot this aspect of Miffin's Motion to Suppress II.

prolonged the September 1, 2020 traffic stop to conduct an unlawful frisk of Johnson, and by unreasonably prolonging the traffic stop, Officer Broaddus violated Miffin's Fourth Amendment right against unreasonable seizures. (ECF No. 17 at 5–7.) This unreasonable seizure, Miffin argues, continued through the search of the car, his person, and his cross-body bag. (*Id.* 7; ECF No. 36, at 1.) To remedy these violations of his Fourth Amendment rights, Miffin seeks to exclude all evidence obtained during the unreasonable seizure, as well as any evidence derived therefrom. (ECF No. 17, at 1.)

In his Motion to Suppress II, Miffin challenges incriminating statements he made during the April 8, 2021 trip from the County Jail to the ATF Richmond III Field Office. (ECF No. 18, at 1.) Miffin maintains that he made the specific statement—"They found drugs on me, and I don't mind admitting to that, you feel me?"—during a custodial interrogation. (ECF No. 18, at 2.) Because this statement preceded a *Miranda* warning, Miffin submits that Special Agents Sessoms and Shauer violated his Fifth Amendment right against self-incrimination. (ECF No. 18, at 2.) Accordingly, Miffin moves to suppress. (ECF No. 18, at 3–4.)

In his Motion to Suppress, Johnson argues that Officer Broaddus unreasonably searched his person and cross-body bag during the September 1, 2020 traffic stop without reasonable suspicion that he was armed and dangerous, in violation of his Fourth Amendment right against unreasonable searches. (ECF No. 31, at 8–9.) Johnson seeks to suppress any evidence or statements deriving from the unlawful search of his person. (ECF No. 31, at 1.)

II. Analysis

The Court will grant Miffin's Motion to Adopt. (ECF No. 32.) However, the Court will deny Miffin's Motion to Suppress I, except as to some statements made, and deny Johnson's

Motion to Suppress, also except as to some statements made. (ECF Nos. 17, 18, and 31.) The Court will also deny as moot Miffin's Motion to Suppress II.

Officer Broaddus properly searched Johnson when he searched Johnson's person, including his cross-body bag, and Officer Broaddus and his colleagues would have inevitably discovered the evidence in the car. Thus, the Court cannot suppress it. Further, the Court will not suppress statements made by Johnson before he was handcuffed or after he was mirandized, but it will suppress statements that he made while in handcuffs but before receiving his *Miranda* warnings.

Moreover, because the officers would have inevitably searched the car, and because they could lawfully search Miffin's cross-body bag pursuant to a search of his person incident to arrest, the Court will not suppress evidence discovered during those searches.

Finally, pursuant to Miffin's Motion to Adopt and the Court's findings regarding Johnson's statements, the Court will not suppress statements made by Miffin before he was handcuffed or after he was mirandized. However, the Court will suppress statements made after he was handcuffed, but before he was mirandized.

A. <u>The Court Will Grant the Motion to Adopt</u>

Finding the motion unopposed, (*cf.* ECF No. 34), and pursuant to Local Criminal Rule 12(B), the Court will grant Miffin's Motion to Adopt. Under Local Rule 12(B), "[a] defendant may adopt a motion filed by another defendant only by filing a separate pleading for each motion that the defendant wishes to adopt." E.D. Va. Loc. Crim. R. 12(B). Miffin's Motion to Adopt complies with this local rule, as it seeks to adopt a single separate motion filed by another defendant, Johnson. "Accordingly, for simplicity and in the interests of judicial efficiency, the

[C]ourt deems [Johnson's Motion to Suppress] as if brought by" both Johnson and Miffin. *Dorsey v. Wallace*, 134 F. Supp. 2d 1364, 1366 n.1 (N.D. Ga. 2000).

B. The Court Will Deny in Part and Grant in Part Johnson's Motion to Suppress

The Court will deny in part and grant in part Johnson's Motion to Suppress. Officer Broaddus did not unconstitutionally search Johnson's cross-body bag, discovering evidence inside. Additionally, Officer Broaddus and his colleagues would have inevitably discovered the evidence in the car. Thus, the Court will deny the Motion to Suppress as to that evidence and the evidence discovered inside of Johnson's bag. The Court will also deny the Motion to Suppress as to statements Johnson made before being handcuffed and statements he made after being mirandized. Conversely, the Court will grant the Motion to Suppress as to statements Johnson made after being handcuffed but before being mirandized.

1. The Traffic Stop Was Legitimate at Its Inception Because Officer Broaddus Observed a Traffic Violation

At the outset, the Court finds the stop lawful at its inception because Officer Broaddus witnessed a traffic violation, giving him probable cause to initiate the traffic stop, even accounting for newly amended Virginia Code § 46.2-1003 (the "Amended Statute" or "Amended § 46.2-1003(C)").

a. Legal Framework: Initiating a Traffic Stop

The Fourth Amendment's "protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *United States v. Brown*, 652 F. App'x 200, 201 (4th Cir. 2016) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). "Brief investigatory stops" include traffic stops conducted by police officers. *Id.*; *see United States v. Bowman*, 884 F.3d 200, 209 (4th Cir. 2018) ("Temporary detention of individuals during the stop of an

automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure under the Fourth Amendment." (quoting *Whren v. United States*, 517 U.S. 806, 809 (1996)).

"A[police] officer's initial 'decision to stop an automobile is reasonable[—and thus does not violate the Fourth Amendment—]where the police have probable cause to believe that a traffic violation has occurred.'" *Id.* (quoting *Whren*, 517 U.S. at 810). Although "[t]he concept of probable cause is not subject to a precise definition," *United States v. Matthews*, 701 F. App'x 284, 285 (4th Cir. 2017) (Mem.) (citation omitted), the United States Court of Appeals for the Fourth Circuit has explained that "[p]robable cause exists if, given the totality of the circumstances, the officer 'had reasonably trustworthy information . . . sufficient to warrant a prudent [person] in believing that the [defendant] had committed or was committing an offense,'" *United States v. Sowards*, 690 F.3d 583, 588 (4th Cir. 2012) (first alteration in original) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964), and citing *Porterfield v. Lott*, 156 F.3d 563, 569 (4th Cir. 1998)).

b. The Court Will Not Apply Changes to Virginia Code § 46.2-1003 Retroactively

Virginia Code § 46.2-1003 provided at the time of the traffic stop that:

> It shall be unlawful for any person to use or have as equipment on a motor vehicle operated on a highway any device or equipment mentioned in § 46.2-1002 which is defective and in an unsafe condition.

Va. Code § 46.2-1003(A).

The Virginia General Assembly has since amended the statute, adding a provision that became effective on March 1, 2021, prohibiting a "law-enforcement officer" from stopping "a motor vehicle for a violation of this section [for defective equipment]." Va. Code § 46.2-

1003(C). The statute now also provides for the suppression of any evidence discovered during a stop for one of these nonmoving vehicle violations. *Id.*

In supplemental briefing, Johnson asserts that the change in the statute is "procedural[,] and therefore should be applied retroactively." (ECF No. 54 at 1 (citing *Commonwealth v. Woods*, No. CR20-847, 2021 WL 2818526 (Va. Cir. Ct. June 9, 2021).) In doing so, he necessarily invokes an exception to Virginia law's general presumption against retroactivity that the General Assembly has codified by statute. *See Woods*, 2021 WL 2818526, at *2 (describing the language of Virginia Code § 1-239 and its interpretation by the Virginia Supreme Court); Va. Code § 1-239. Pursuant to this exception, statutory changes that are "procedural" rather than "substantive" can apply retroactively. *See* Va. Code § 1-239; *Woods*, 2021 WL 2818526, at *2–3. Indeed, some Virginia circuit courts have found that the March 1, 2021 change to Virginia Code § 46.2-1003—and similar statutes—apply retroactively. *See Woods*, 2021 WL 2818526; *Commonwealth v. Allen*, No. CR-20-302-01, 108 Va. Cir. 193 (June 10, 2021); *Commonwealth v. Hardy*, No. CR21-338, 2021 WL 3127745 (Va. Cir. Ct. July 1, 2021).

However, these Virginia circuit court cases do not persuade this Court. This is especially so considering that different Virginia circuit courts have reached conclusions contrary to those above. *See Commonwealth v. Southerly*, No. CR21f00217-00, 2021 WL 5766748 (Va. Cir. Ct. Oct. 12, 2021) (concluding that a similar change in Virginia law *does not* apply retroactively); *Commonwealth v. Eberhardt*, Nos. 19-F-3402, 3042, 2021 Va. Cir. LEXIS 449 (Va. Cir. Ct. Sept. 16, 2021); *Commonwealth v. Cain*, No. CR20-646, 2021 Va. Cir. LEXIS 171 (Va. Cir. Ct. July 26, 2021); *Commonwealth v. Tarpley*, Nos. CR2 1000619-01, -02, -03, 2021 WL 3565508 (Va. Cir. Ct. July 7, 2021), and the Virginia Court of Appeals has yet to consider the issue.

To begin, "[t]he general rule[, under Virginia law, is] that statutes are prospective in the absence of an express provision by the legislature[] to the contrary." *Woods*, 2021 WL 2818526, at *1 (internal quotation marks omitted) (citation omitted); *see* Va. Code § 1-238; *Southerly*, 2021 WL 5766748, at *2 ("The legal standard on the general retroactivity of statutes enacted by our state legislature is clear and settled. Retroactivity is highly disfavored."). That is, under Virginia law, there is a presumption against retroactivity.

Moreover, the current version of Virginia Code § 46.2-1003 contains no express provision indicating that any changes that became effective on March 1, 2021, apply retroactively. *See Woods*, 2021 WL 2818526, at *1 (citation omitted); Va. Code § 1-238. This omission speaks volumes. Had the Virginia General Assembly intended to make the current version of § 46.2-1003 retroactive, it could have expressly included a provision in the statute to that effect. "A court should not second guess the legislature on matters that fall squarely within [the legislature's] enumerated powers, including, . . . public policy choices," and the Court will not do so here. *Allen*, 108 Va. Cir. 193, at *5 (citation omitted).

But the Court need not analyze whether the change to Virginia Code § 46.2-1003 is substantive or procedural because even if the change were procedural, it would nonetheless not apply retroactively. Critically, Virginia Code § 1-239—which codifies the exception as to procedural changes—limits the retroactivity of a procedural change, stating that the change "shall [apply] . . . so far as practicable." Va. Code § 1-239. To apply the change to Virginia Code § 46.2-1003 retroactively would contravene this caveat.

Rendering the Amended Statute retroactive would be unrealistic and impracticable because applying this change retroactively could open a pandora's box of confusion and delay. For instance, it would potentially enable anyone with a criminal record stemming from a traffic

stop (such as one resulting from an inoperable license plate light or a similar law) that would now violate Virginia Code § 46.2-1003 to seek redress. This likely would cause unmanageable strain on the federal and state judicial systems in Virginia. Especially given that the Virginia General Assembly declined to indicate that the change to Virginia Code § 46.2-1003 should apply retroactively, the Court will not presume retroactivity.

In sum, even considering that as of March 1, 2021, it became improper for a law enforcement officer to initiate a traffic stop for a violation of § 46.2-1003, the Court cannot apply the Amended Statute to the suppression motions stemming from this traffic stop that occurred prior to that date.

c. Officer Broaddus Had Probable Cause to Believe a Traffic Violation Occurred Because He Observed the Car Operating on a Public Road with an Unlit Light Above the License Plate

On September 1, 2020, the date of the traffic stop, Virginia law made it unlawful "for any person to use or have as equipment on a motor vehicle operated on a highway any [lighting device] which is defective and in an unsafe condition," Va. Code § 46.2-1003; *see* Va. Code § 46.2-1002.[7] Thus, upon observing the car Mr. Johnson was driving while the light above its rear license plate was unlit, Officer Broaddus had probable cause to stop the car because it was reasonable for him to believe a violation of Virginia law was occurring. *See Bowman*, 884 F.3d

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[7] That statute provided at the time of the traffic stop, and continues to provide, in pertinent part, that:

> It shall be unlawful for any person . . . to use or have as equipment on a motor vehicle operated on a highway any lighting device . . . for which approval is required by any provision of this chapter . . . unless of a type that has been submitted to and approved by the Superintendent or meets or exceeds the standards and specifications of the Society of Automotive Engineers, the American National Standards Institute, Incorporated or the federal Department of Transportation.

Va. Code § 46.2-1002.

at 209 (quoting *Whren*, 517 U.S. at 810); *Sowards*, 690 F.3d at 588 (alteration in original) (quoting *Beck*, 379 U.S. at 91, and citing *Porterfield*, 156 F.3d at 569).

2. The Traffic Stop Remained Reasonable While Officer Broaddus Reviewed Defendants' Information and Investigated the Issues with the Car's Registration and License Plates

The traffic stop did not become unconstitutional while Officer Broaddus reviewed Johnson and Miffin's information or when he investigated the issues pertaining to the car's registration and license plates because these actions did not extend the stop longer than reasonably necessary for Officer Broaddus to complete his initial objectives.

a. Legal Framework: Assessing the Constitutionality of the Length of a Traffic Stop

Probable cause to believe a traffic violation has occurred does not, by itself, enable an officer to keep an automobile and its passengers stopped indefinitely. Instead, "[o]bserving a traffic violation provides sufficient justification for a police officer to detain the offending vehicle for [only] as long as it takes to perform the traditional incidents of a routine traffic stop." *United States v. Branch*, 537 F.3d 328, 335 (4th Cir. 2008) (citations omitted). The "traditional incidents of a routine traffic stop" include tasks such as "inspecting a driver's identification and license to operate a vehicle, verifying the registration of a vehicle and existing insurance coverage, and determining whether the driver is subject to outstanding warrants.'" *Bowman*, 884 F.3d at 210.

"[A] legitimate traffic stop may 'become unlawful if it is prolonged beyond the time reasonably required' to complete its initial objectives." *United States v. Palmer*, 820 F.3d 640, 649 (4th Cir. 2016) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). "[I]n order 'to extend the detention of a motorist beyond the time necessary to accomplish a traffic stop's purpose, the authorities must either possess reasonable suspicion [of ongoing criminal activity]

or receive the driver's consent.'" *Bowman*, 884 F.3d at 210 (quoting *United States v. Williams*, 808 F.3d 238, 245–46 (4th Cir. 2015)); *see Palmer*, 820 F.3d at 649–50.

Similar to that of probable cause, the concept of "reasonable suspicion" does not lend itself to a precise definition. *See Bowman*, 884 F.3d at 213 (quoting *Ornelas v. United States*, 517 U.S. 690, 695 (1996)). However, "to show the existence of reasonable suspicion, a police officer must offer specific and articulable facts that demonstrate at least a minimal level of objective justification for the belief that criminal activity is afoot." *Id.* (internal quotation marks omitted) (quoting *Branch*, 537 F.3d at 337). This is a "commonsense, nontechnical standard . . . that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act." *Id.* (internal quotation marks omitted) (first alteration in original) (quoting *Palmer*, 820 F.3d at 650, and *Ornelas*, 517 U.S. at 695); *see also Wingate v. Fulford*, 987 F.3d 299, 305 (4th Cir. 2021) ("That this standard requires less than probable cause does not render its burden illusory."). It is an objective inquiry, and it does not consider the officer's subjective intent. *See United States v. Powell*, 666 F.3d 180, 186 n.7 (4th Cir. 2011). Moreover, "the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence[] and . . . less than is necessary for probable cause." *Brown*, 652 F. App'x at 201 (quoting *Navarette v. California*, 572 U.S. 393, 397 (2014)).

To determine whether or not a police officer had reasonable suspicion to justify extending the duration of a traffic stop, courts consider "the totality of the circumstances." *United States v. Villavicencio*, 825 F. App'x 88, 97 (4th Cir. 2020) (citing *Arvizu*, 534 U.S. at 274). Pursuant to that analysis, "multiple factors may be taken together to create a reasonable suspicion even where each factor, taken alone, would be insufficient." *Brown*, 652 F. App'x at

201 (quoting *United States v. George*, 732 F.3d 296, 300 (4th Cir. 2013)). Under this approach, reasonable suspicion may still exist even if some factors could have innocent explanations. *See Villavicencio*, 825 F. App'x at 97 (citing *Palmer*, 820 F.3d at 650).

Ultimately, to have reasonable suspicion sufficient to extend the duration of a traffic stop, "[a]n officer must have 'at least a minimal level of objective justification' and 'must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity.'" *United States v. McCauley*, 639 F. App'x 205, 206 (4th Cir. 2016) (Mem.) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123–24 (2000)). In doing so, police "officers may 'draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them.'" *Brown*, 652 F. App'x at 201 (quoting *Arvizu*, 534 U.S. at 273). The Fourth Circuit has instructed that in analyzing the existence of reasonable suspicion, courts may "credit[] the practical experience of officers who observe on a daily basis what transpires on the street." *Williams*, 808 F.3d at 253 (quoting *Branch*, 537 F.3d at 336–37).

Once a police officer has developed reasonable suspicion of ongoing criminal activity, *see Bowman*, 884 F.3d 200 (quoting *Williams*, 808 F.3d at 245–46); *Palmer*, 820 F.3d at 649–50, he or she may extend the investigatory stop for the period of time reasonably required to confirm or dispel his or her suspicions, *see United States v. Green*, 740 F.3d 275, 280 (4th Cir. 2014) (citing *United States v. Digiovanni*, 650 F.3d 498, 507 (4th Cir. 2011), *as amended* (Aug. 2, 2011), *abrogated on other grounds by Rodriguez v. United States*, 575 U.S. 348 (2015), and *Caballes*, 543 U.S. at 407).

b. Officer Broaddus Did Not Improperly Prolong the Traffic Stop

After pulling Johnson and Miffin over, Officer Broaddus retrieved personal-identification and vehicle-registration information from them and reviewed that information inside his police

cruiser. He then attempted to speak to Johnson about an issue with the car's registration and license plates. None of those activities unreasonably prolonged the traffic stop. *See Branch*, 537 F.3d at 335; *Bowman*, 884 F.3d at 210.

Nor did Officer Broaddus unreasonably prolong the stop by attempting to privately resolve with Johnson the car's license plate issue. Although this line of questioning did not relate to the original basis for the traffic stop, Officer Broaddus possessed reasonable suspicion "to extend the detention" beyond its original purpose, *Williams*, 808 F.3d at 245–46, because during Officer Broaddus's proper review of Defendants' vehicle- and personal-identification information, he discovered that neither Defendant owned the car. Importantly, he identified that the car bore license plates assigned to a different vehicle. During that review, he also learned that Johnson was completing a term of federal supervision, and that Miffin was a reported member of the Crips. Officer Broaddus knew that the Crips had a reputation for violence. (*See* ECF No. 47, at 55:17–58:18); *see also United States v. Sprinkle*, 106 F.3d 613, 617 (4th Cir. 1997) ("[A]n officer can couple knowledge of prior criminal involvement with more concrete factors in reaching a reasonable suspicion of current criminal activity." (citation omitted)). Taken together, even knowing that membership in a gang could not alone serve as a basis for a search or seizure, those facts known to Officer Broaddus as he continued the stop supported "more than an inchoate and unparticularized suspicion or hunch" of criminal activity. *United States v. McCauley*, 639 F. App'x at 206 (quoting *Wardlow*, 528 U.S. at 123–24).

Indeed, Officer Broaddus credibly testified that at this point in the stop he "had some concerns that [Defendants'] vehicle may have been stolen." (ECF No. 47, at 62:12–18.) Although Officer Broaddus acknowledged that innocent explanations for the license plate issue existed, the test for reasonable suspicion requires "considerably less than proof of wrongdoing by

a preponderance of the evidence." *Brown*, 652 F. App'x at 201 (quoting *Navarette*, 572 U.S. at 397). And Officer Broaddus's speculation at the evidentiary hearing that the license plate issue may have resulted from a DMV- or COVID-related administrative problem does not undermine his reasonable suspicion that he was "dealing with a possible stolen vehicle." (ECF No. 47, at 66:19–21); *see Villavicencio*, 825 F. App'x at 97 (citing *Palmer*, 820 F.3d at 650). Indeed, he had seen Johnson and Miffin in an area where vehicle burglaries were a law enforcement focus less than one hour earlier.

Because Officer Broaddus developed reasonable suspicion to investigate a possible stolen vehicle during a routine records check, he did not unreasonably prolong the traffic stop by attempting to speak with Johnson in private about the issue with the car's license plates. *See Williams*, 808 F.3d 238, 245–46.

3. Officer Broaddus Did Not Unreasonably Pat Down Johnson Prior to His Arrest Because Officer Broaddus Had Reasonable Suspicion to Believe that Johnson Was Armed and Dangerous

Because Officer Broaddus had reasonable suspicion to believe that Johnson was armed and dangerous, he did not violate Johnson's constitutional rights by initiating a protective frisk.

a. Legal Framework: Initiating a Protective Frisk

"[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *United States v. Price*, 717 F. App'x 241, 243 (4th Cir. 2018) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 111, n.6 (1977)). Further, "[o]fficers conducting traffic stops may frisk passengers 'upon reasonable suspicion that they

may be armed and dangerous.'"[8] *United States v. Meyers*, 760 F. App'x 181, 185 (4th Cir. 2019) (quoting *Arizona v. Johnson*, 555 U.S. 323, 332 (2009)).

The Fourth Circuit has recognized that police officers may consider "a host of factors" in developing reasonable suspicion that an individual is armed and dangerous, *United States v. George*, 732 F.3d at 299, including: the crime rate in the area of the investigatory stop, *id.* (citing *Wardlow*, 529 U.S. at 124); the individual's "nervous or evasive behavior," *id.*; the individual's prior involvement in criminal activity, *see Powell*, 666 F.3d at 188 (citing *United States v. Holmes*, 376 F.3d 270, 278 (4th Cir. 2004)); *Holmes*, 376 F.3d at 277; the lateness of the hour when the investigatory stop occurred, *George*, 732 F.3d at 300 (citing *United States v. Foster*, 634 F.3d 243, 247 (4th Cir. 2011)); the individual's "suspicious movements," *id.* at 299–300 (citing *United States v. Raymond*, 152 F.3d 309, 312 (4th Cir. 1998); the presence of illegal drugs, *see United States v. McCoy*, 773 F. App'x 164, 165 (4th Cir. 2019) (Mem.) (quoting *United States v. Sakyi*, 160 F.3d 164, 169 (4th Cir. 1998)) (stating that there is an "indisputable nexus between drugs and guns presumptively creates a reasonable suspicion of danger to the officer"); and, the individual's membership in a gang, *see Holmes*, 376 F.3d at 277. Ultimately, "[t]he [police] officer need not be absolutely certain that the individual is armed." *George*, 732 F.3d at 299 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). "[T]he issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger." *Id.* This is an objective test that considers only "the facts within the knowledge of [the officer] to determine the presence or nonexistence of reasonable

[8] The Supreme Court of the United States has "deliberately linked 'armed' and 'dangerous'" and indicated that the "risk of danger is created simply because the person, who was forcibly stopped, is armed." *United States v. Robinson*, 846 F.3d 694, 700 (4th Cir. 2017). Thus, police officers need not provide any additional showing of dangerousness if they have reasonable suspicion that an individual is armed.

suspicion." *United States v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004) (citing *United States v. Gray*, 137 F.3d 765, 769 (4th Cir. 1998)).

b. Reasonable Suspicion Existed to Justify the Initial Pat Down of Johnson's Person

After Johnson refused to step out of the car to discuss the issue with the license plates, Officer Broaddus lawfully ordered Johnson to exit the vehicle. *See Price*, 717 F. App'x at 243 (quoting *Mimms*, 434 U.S. at 111, n.6). Once Johnson was out of the car, Officer Broaddus conducted the first pat down of his person.[9] Consideration of "the evidence as a whole" reveals that Officer Broaddus had a reasonable suspicion that Johnson was armed and dangerous, which supported this initial pat down. *Bowman*, 884 F.3d at 213.

The United States suggests that Officer Broaddus had reasonable suspicion based on: (1) the high-crime area where the stop occurred; (2) the early morning hour and lack of lighting during the stop; (3) the information produced from the records check; (4) the movement inside the car; (5) Johnson's disposition; and, (6) Johnson's possession of marijuana on his person and inside the car. (ECF No. 48-1, at 20.) The Court will address each of these factors in turn.

i. High-Crime Area Merits Some Weight

The Court gives only some weight to the United States's first basis for reasonable suspicion: that the stop allegedly occurred in a high-crime area. The United States submits that

[9] To the extent the parties dispute whether Johnson consented to this initial pat down, (*compare* ECF No. 51-1, at 2 n.1 *with* ECF No. 50, at 15), the Court finds that he did not. Although Johnson slightly raised his arms and turned his back to Officer Broaddus upon exiting the vehicle, the intent of that gesture appears ambiguous on Officer Broaddus's BWC. (Broaddus BWC 10:17–10:19.) But even if Johnson's gesture implied his consent to the pat down, he unequivocally withdrew it by stating, "No, I don't want you to search me." (*Id.* 10:20–10:29; *accord* ECF No. 47, at 69:12–21.) And "once consent is withdrawn or its limits exceeded, the conduct of the officials must be measured against the Fourth Amendment principles." *United States v. McFarley*, 991 F.2d 1188, 1191 (4th Cir. 1993).

Officer Broaddus initiated contact with Defendants during his patrol of the 65 service area, a patrol focusing on vehicle burglaries and vandalism. While those are not violent crimes, the United States contends that "someone carrying burglarious tools . . . could certainly use those weapons to harm a person or officer during a traffic stop." (ECF No. 48-1, at 20–21.)

However, "simply being in an area where crime is prevalent is minimally probative in the reasonable suspicion analysis." *Wingate v. Fulford*, 987 F.3d 299, 306 (4th Cir. 2021), *as amended* (Feb. 5, 2021) (citing cases). Although Officer Broaddus first met Defendants in the 65 service area, the stop took place in a commercial area near the major intersection between Staples Mill Road and Parham Road, one and a half miles away from the Henrico Police Department. To be sure, Officer Broaddus testified to occurrences of drug trafficking along this stretch of Staples Mill Road; however, he never testified to crimes of violence happening there.

The fact the stop occurred in a high-crime area is therefore "insufficiently particular" as to these Defendants. *Id.* An officer could not reasonably infer that either Johnson or Miffin was armed and dangerous based on their presence in the 65 service area, a known area for vandalism but not violent crime, or the intersection of Staples Mill Road and Parham Road, an arguable drug thoroughfare but an area that no party contends bears a nexus to violent crime. But knowing the car had earlier been in an area where vehicle burglaries were a law enforcement focus and finding that the license plates did not correspond to the car driven by Johnson, a reasonable person would develop suspicion that criminal activity was afoot. Accordingly, the Court accords some weight to this proffered basis for Officer Broaddus's reasonable suspicion that Johnson was armed and dangerous. *See id.*

ii. Time of Stop Merits Some Weight

The Court also assigns some weight to the second basis for reasonable suspicion, that the stop occurred at 1:25 a.m. in a dark location. The United States argues that traffic stops become more dangerous "when it is late at night and dark 'due to . . . decreased [police] resources.'" (ECF No. 48-1, at 22 (quoting ECF No. 47, at 183:9–21).)

However, as a general rule, that a traffic stop occurred at night, without more, "does little to suggest criminal activity." *Wingate*, 987 F.3d at 306 (discussing traffic stop that occurred at 1:39 a.m.) Nevertheless, an early-morning stop could "alert a reasonable officer to the possibility of danger," entitling this factor to some weight under the totality of the circumstances. *George*, 732 F.3d at 300; (*see* ECF No. 47, at 183:18–19 (officer testimony stating that "when it's late at night and dark," there is an "the increased danger of traffic stops"). As for the dark location of the stop, this is a "mere prox[y] for the fact that it was, indeed, late at night," and this fact has no independent relevance under the totality of the circumstances. *Wingate*, 987 F.3d at 306.

iii. Information from the Records Check Merits Substantial Weight

The third factor, the information received from the records check, strongly supports Officer Broaddus's reasonable suspicion that Johnson could be armed and dangerous. Before Officer Broaddus first frisked Johnson, he knew that Johnson was on federal supervision and that Miffin was a reported member of the Crips. Further, Officer Broaddus reasonably suspected he "was dealing with a possible stolen vehicle" considering that the records check associated the license plates on Defendants' car with another vehicle. (ECF No. 47, at 66:19–21.)

Johnson submits two arguments for according little weight to this proffered basis for reasonable suspicion, but neither argument persuades.

First, Johnson contends that Officer Broaddus did not know the nature of the offense underlying Johnson's federal supervision, implying that it was unreasonable to infer a dangerous or violent criminal history. (ECF No. 50, at 13.) But an officer can couple knowledge of a suspect's criminal history "with more concrete factors" to create a reasonable suspicion of dangerousness. *Sprinkle*, 106 F.3d at 617.

Second, Johnson argues that an officer cannot rely on knowledge of a *passenger's* gang membership to infer that the *driver* was armed and dangerous. (ECF No. 50, at 14.) But, under the totality of the circumstances, knowledge "that one of the two occupants" of a car was "a member of a gang whose members had carried out numerous violent felonies while armed" can support a reasonable suspicion of dangerousness as to the other occupant. *Holmes*, 376 F.3d at 277. Here, Officer Broaddus testified that before he frisked Johnson, he knew Miffin was reported a member of the Crips, a gang that Officer Broaddus knew had a reputation for violence. (*See* ECF No. 47, at 55–57, 175.) As a result, the information Officer Broaddus received from the records check about Miffin's gang membership supplied a strong basis for reasonably suspecting that Johnson was armed and dangerous. *See id.*

iv. Movement in the Car Merits Substantial Weight

The fourth basis for reasonable suspicion, the movement inside the car, is entitled to substantial weight. Sergeant English observed this movement within the car, and he shared those observations with Officer Broaddus before the frisk. To be sure, Sergeant English did not elaborate on the nature of the movement to Officer Broaddus other than generically stating, "There's a lot of movement going around." (Broaddus BWC 5:35–5:40; *see* ECF No. 50, at 11.) But Sergeant English's reaction to the movement he observed—abruptly interrupting Officer Broaddus and promptly approaching the vehicle to get a better view—would reasonably alert an

officer in Officer Broaddus's position that the movement was suspicious. Indeed, Officer Broaddus himself credibly interpreted Sergeant English's behavior as "unusual and suspicious," possibly signaling "an officer safety issue." (ECF No. 47, at 60:25–61:13.) Suspicious movements such as these are particularly important, as they "can . . . be taken to suggest that the suspect may have a weapon." *George*, 732 F.3d at 299 (citation omitted); *see also id.* at 301 (describing suspicious movements as the "most important[]" factor at issue in that case).

To the extent Johnson argues that his innocent explanation for the movement that he was "putting on his slides" dissipated the movement's suspicious nature, (ECF No. 50, at 11), that argument does not persuade. Sergeant English did not relate Johnson's explanation to Officer Broaddus before Officer Broaddus conducted the initial pat down of Johnson, meaning a reasonable officer in Officer Broaddus's position could not have known this information at the time of the frisk. *See Foreman*, 369 F.3d at 781 (citation omitted) ("Because reasonable suspicion is an objective test, we examine the facts *within the knowledge* of [the officer] to determine the presence or nonexistence of reasonable suspicion." (emphasis added)). Even if Officer Broaddus knew of Johnson's innocent explanation, he need not accept it as true. A reasonable officer could interpret Johnson's unprompted explanation in the same way Sergeant English did: as "confirmation . . . that there was [furtive] reaching going on outside of [his] view." (ECF No. 47, at 187:15–17.)

v. Johnson's Disposition Merits Some Weight

The United States rests Officer Broaddus's reasonable suspicion, in part, on Johnson's unusual display of nervousness and agitation. (ECF No. 51-1, at 3; ECF No. 48-1, at 25.) Courts generally discount nervousness as a basis for reasonable suspicion because "[i]t is common for most people to exhibit signs of nervousness when confronted by a law enforcement officer whether or not the person is currently engaged in criminal activity." *Bowman*, 884 F.3d at 214

(quoting *United States v. Massenburg*, 654 F.3d 480, 490 (4th Cir. 2011)). But "nervousness beyond the norm" can help generate reasonable suspicion, and Johnson's nervousness and evasive behavior was indeed beyond the norm. *Id.* at 215.

When Officer Broaddus asked Johnson to exit the car so that the two of them could speak privately about the issue with the license plates, Johnson initially declined to comply with that request. (ECF No. 47, at 62:12–18, 62:24–25, 63:1; Broaddus BWC 8:35–8:45, 9:00–9:05, 9:25–30; *accord* ECF No. 47, at 63:22–24, 65:1–4); *see Price*, 717 F. App'x at 243 ("[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." (quoting *Mimms*, 434 U.S. at 111, n.6) (alteration in original)). Then, after Johnson began complying with the request and exiting the car, Officer Broaddus asked him if he had any weapons on him. (Broaddus BWC 9:55–10:00.) Again, Johnson initially resisted answering the question. (Broaddus BWC 10:10–10:12.) Instead, he asked why Officer Broaddus was asking about weapons. (Broaddus BWC 10:10–10:12.) This evasive behavior, at the very least, did not allay Officer Broaddus's suspicion that Johnson was armed and dangerous. Even though Johnson eventually indicated that he did not possess any weapons, Officer Broaddus was still justified in crediting, to a small degree, Johnson's demeanor as supporting a reasonable suspicion that Johnson did indeed have weapons on his person. (Broaddus BWC 10:14–10:16.)

The Court recognizes "the complex reality of citizen-police relationships in many cities," *Bowman*, 884 F.3d at 215 (quoting *Massenburg*, 654 F.3d at 489). Indeed, at the time of the stop, Richmond, Virginia, had been embroiled in protests over George Floyd's murder for months. (*See* ECF No. 47, at 209:12–211:8.) To be clear, Johnson's hesitations veered toward

invoking rights he thought he might have rather than toward full defiance. These circumstances mitigate the weight it gives to this fifth basis for reasonable suspicion. Accordingly, Johnson's demeanor during the stop merits only some weight in support of Officer Broaddus's reasonable suspicion that Johnson was armed and dangerous.

vi. Johnson's Possession of Marijuana Merits No Weight

The sixth and final proffered basis for reasonable suspicion, Johnson's possession of marijuana on his person and in the car, deserves no weight to the extent the United States attempts to use this as a basis to conduct the initial frisk of Johnson. Nothing in the record suggests that Officer Broaddus knew of Johnson's possession of marijuana before Officer Broaddus initially patted Johnson down. Because this information was not "within the knowledge" of Officer Broaddus at the time of the initial frisk, it cannot provide a basis for reasonable suspicion. *See Foreman*, 369 F.3d at 781 (4th Cir. 2004).

vii. The Totality of the Circumstances Gave Rise to Reasonable Suspicion that Johnson Was Armed and Dangerous

Under the totality of these circumstances, Officer Broaddus had reasonable suspicion that Johnson was armed and dangerous even though many factors merit only some weight. During a 1:25 a.m. stop, two officers observed suspicious movement by two people in a car after it was lawfully stopped. The driver was on federal supervision and the passenger was a known member of a violent gang. They were inside a car that neither owned and that bore license plates assigned to another vehicle. And, when confronted about the issue with the car's license plates, the driver seemed nervous, something that continued after an officer asked whether he had any weapons on him. These circumstances would justify an officer in Officer Broaddus's position to reasonably suspect that Johnson was armed and dangerous. *See Holmes*, 376 F.3d at 278. Accordingly, Officer Broaddus did not unreasonably prolong the traffic stop by initiating a frisk

of Johnson's person, *see Williams*, 808 F.3d at 245–46, nor did he otherwise violate Johnson's Fourth Amendment rights, *see Robinson*, 846 F.3d at 696.

4. Officer Broaddus Lawfully Searched Johnson

After Officer Broaddus conducted the pat down of Johnson's clothing and observed the flake of marijuana on Johnson's shirt, he handcuffed him and conducted a more invasive search as a search incident to arrest. In doing so, he searched Johnson's back pockets and the zipped cross-body bag draped across Johnson's stomach. This search led to the discovery of the loaded Glock 19 pistol and suspected narcotics.

a. Legal Framework: Initiating a Search Incident to Arrest Before an Arrest Occurs

The Fourth Amendment places limits on when police officers may conduct a search incident to arrest. *Cf. United States v. Currence*, 446 F.3d 554, 557 (4th Cir. 2006) (declaring that "[s]earches incident to arrest have a . . . temporal limitation" and later quoting *Stoner v. California*, 376 U.S. 483, 486 (1964), and citing *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980), to support that statement). Specifically, "temporally, searches incident to arrest must be 'substantially contemporaneous with the arrest.'" *Currence*, 446 F.3d at 557 (quoting *Stoner*, 376 U.S. at 486). However, this does not mean that a police officer may only begin a search incident to arrest after an individual has been arrested. Instead, a police officer's "search may begin prior to an arrest, and still be incident to that arrest," as long as the officer has "probable cause to arrest prior to beginning [the] search." *United States v. Patiutka*, 804 F.3d 684, 688 (4th Cir. 2015) (citing *Rawlings*, 448 U.S. at 111; *United States v. Miller*, 925 F.2d 695, 698 (4th Cir. 1991); and *United States v. Han*, 74 F.3d 537, 541 (4th Cir. 1996)). "[P]robable cause exists if, given the totality of the circumstances, the officer 'had reasonably trustworthy information . . . sufficient to warrant a prudent [person] in believing that the petitioner had committed or was

committing an offense,'" *Sowards*, 690 F.3d at 588 (second and third alterations in original) (quoting *Beck*, 379 U.S. at 91, and citing *Porterfield*, 156 F.3d at 569). Moreover, it is well-settled law that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his [or her] presence, he [or she] may, without violating the Fourth Amendment, arrest the offender." *United States v. Ruffin*, 814 F. App'x 741, 750 (4th Cir. 2020) (quoting *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001)).

Thus, the initial inquiry is this: Before the search began, did the police officer have probable cause to believe the individual "had committed or was committing an offense," even a very minor one?

b. Officer Broaddus Properly Initiated a Search Incident to Arrest, as He Could Have Arrested Johnson for Violating Virginia Law

Because Officer Broad had probable cause to believe a traffic violation occurred in violation of Virginia law, *see supra* Part II.B.1.b, he had probable cause to arrest Johnson, the driver,[10] *see Ruffin*, 814 F. App'x at 750 (quoting *Atwater*, 532 U.S. at 354). This is especially true given the fact that the license plates did not match the car. Therefore, he could, and did, lawfully initiate a search incident to arrest. *See Patiutka*, 804 F.3d at 688 (citing *Rawlings*, 448 U.S. at 111; *Miller*, 925 F.2d at 698; and, *Han*, 74 F.3d at 541).

c. Legal Framework: Scope of a Search Incident to Arrest

Searches incident to arrest constitute a longstanding exception to the Fourth Amendment warrant requirement in that they may be more extensive than a frisk and still stay within constitutional bounds. *See United States v. Davis*, 997 F.3d 191, 195–97 (4th Cir. 2021). Specifically, during a search incident to arrest, police officers may "search both 'the arrestee's

[10] The Code of Virginia affirmatively recognizes that police officers may arrest individuals for traffic infractions. *See* Va. Code § 46.2-937 (2021) ("For purposes of arrest, traffic infractions shall be treated as misdemeanors.").

person and the area within his [or her] immediate control.'" *Davis*, 997 F.3d at 195 (quoting *Davis v. United States*, 564 U.S. 229, 232 (2011)). "In articulating the limits of [a search incident to arrest], the Supreme Court [has] emphasized that it is 'reasonable' for arresting officers to search the person being arrested and the area within . . . reach (1) 'in order to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape[,]' and (2) 'in order to prevent [the] concealment or destruction' of evidence." *Davis*, 997 F.3d at 195 (internal quotation marks omitted) (final alteration in original) (quoting *Chimel v. California*, 395 U.S. 752, 763 (1969)).

As to searches of the person, "police may conduct a full search of an arrestee's person and personal items in his possession and control, without any additional justification." *United States v. Alston*, 494 F. App'x 408, 411 (4th Cir. 2012) (citing *United States v. Robinson*, 414 U.S. 218, 235 (1973)). This includes the arrestee's pockets and clothing. *United States v. Avagyan*, 164 F. Supp. 3d 864, 890 (E.D. Va. 2016) (citing *Robinson*, 414 U.S. 218).

Officers may also search "containers," or "object[s] capable of holding another object," *see Currence*, 446 F.3d at 558 (quoting *New York v. Belton*, 453 U.S. 454, 470 n.4 (1981)), incident to arrest. However, the Supreme Court and Fourth Circuit have placed significant limitations on searches incident to arrest of containers. Notably, in *Arizona v. Gant*, the Supreme Court held that that "police can 'search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.'" *Davis*, 997 F.3d at 196 (quoting *Arizona v. Gant*, 556 U.S. 336, 343 (2009)).

In *United States v. Davis*, the Fourth Circuit recently declared that this holding applies to searches of non-vehicular containers. 997 F.3d at 197. Specifically, the *Davis* court "conclude[d] that police officers can conduct warrantless searches of non-vehicular containers

incident to a lawful arrest 'only when the arrestee is unsecured and within reaching distance of the [container] at the time of the search.'" *Id.* (quoting *Gant*, 556 U.S. at 343). The Fourth Circuit added that a warrantless search of a non-vehicular container is "permissible as a search incident to arrest [only when] it [is] reasonable for" a police officer to believe that the individual being searched "could have accessed [the container] at the time of the search."[11] *Davis*, 997 F.3d at 198 (quoting *Gant*, 556 U.S. at 343).

d. Officer Broaddus Lawfully Searched Johnson's Pockets

Officer Broaddus conducted a reasonable search incident to arrest of Johnson's pockets. "When officers have probable cause to arrest, they may conduct a full-body search, including pockets and clothing." *Avagyan*, 164 F. Supp. 3d at 890 (citing *Robinson*, 414 U.S. 218); *see Alston*, 494 F. App'x at 411). Accordingly, Officer Broaddus did not violate Johnson's Fourth Amendment rights by searching this part of Johnson's person, and the Court will not suppress the evidence recovered from Johnson's pockets.

e. Officer Broaddus Did Not Unconstitutionally Search Johnson's Zipped Cross-Body Bag During a Search Incident to Arrest

On these particular facts, the Court must also find that Officer Broaddus properly searched the bag strapped to Johnson's stomach. Although Johnson was in handcuffs at the time of the search with his hands behind his back, and the bag was resting across his stomach, Officer Broaddus did not exceed the permissible scope of a search incident to arrest. He opened the bag and searched it as, under these facts, a search incident to arrest of Johnson's person.

[11] It remains unclear "whether the *Gant* inquiry (1) amounts to a two-factor test . . . (secureness and reaching distance), or (2) is more akin to a sliding scale with two dimensions for evaluating the reasonableness of the officer's belief that" that the individual being searched "could have accessed [the container] at the time of the search." *Davis*, 997 F.3d at 198 n.6.

First, Officer Broaddus conducted the search incident to arrest of the bag for officer safety reasons. He credibly testified that, just before he searched Johnson's bag, he had "want[ed] Johnson to exit the [car (to discuss the issue with the plates)]," but that after Johnson had exited the car, he "was still very concerned that [Johnson] was possibly armed and dangerous based on the furtive movements, [and then Johnson's] actions, and also" based on the fact that Johnson had called someone else to the scene, who Officer Broaddus thought might elevate tensions upon arrival. (ECF No. 47, at 64:12–13, 75:4–76:5.) Officer Broaddus thus decided to search Johnson's bag to "see if he had weapons on him" or more marijuana. (ECF No. 47, at 75:22–76:8.) Whether Johnson would have to be transported post-arrest, or released, the items in the bag would present a safety concern.

To begin, *Davis*'s holding about *containers* is inapplicable here. This case is distinguishable.[12] In *Davis*, the defendant was separated from the improperly searched bag at the time of the search: he had dropped the bag on the ground next to him and, at the time of the search, he "was face down on the ground and handcuffed with his hands behind his back." *See*

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[12] The facts of this case also differ from those of *United States v. Ferebee*, 957 F.3d 406 (4th Cir. 2020), and *United States v. Smith*, 994 F. Supp. 2d 758 (E.D. Va. 2013). In *Ferebee*, the defendant was standing outside of a house when his backpack—located inside—was searched, but he was unsecured and could have accessed the backpack inside within seconds. *See Ferebee*, 957 F.3d at 419; *see also id.* (affirming the district court's finding that the defendant had abandoned the bag, noting that he "had made a 'clear, unequivocal statement'" disavowing ownership of the backpack and that he abandoned the backpack at that point" (citation omitted)).

Likewise, in *Smith*, the bag was several feet away from the defendant at the time of the search, and the defendant had consented to a search of his bag before attempting to flee. *See Smith*, 994 F. Supp. 2d 760. The officers searched the bag after concluding that despite the defendant's momentary flight attempt, they still had his consent to search. Moreover, it is unclear that the reasoning in *Smith* is entirely consistent with the later-decided *Davis*. *Smith* seems to suggest that police officers may, in some circumstances, search an individual's bag pursuant to a *Terry* stop without first patting down the bag. *See id.* 763–68. Officers should not be more limited during a search incident to arrest under *Davis*, than during a *Terry* stop under *Smith*.

Davis, 997 F.3d at 198. The bag was not physically touching his person, unlike the facts here. Johnson's bag was draped across his stomach at the time of the search. The *Davis* defendant was physically separated from the searched bag. *See id.*

This is a key distinction, as the officers in *Davis* could have moved the defendant himself and left the bag alone. The same cannot be said here, where the cross-body bag rested across Johnson's body. Johnson himself could not move without the bag moving with him, and it could not be removed without the handcuffs being taken off. Even if Officer Broaddus cut the strap, the bag likely would have to remain in police custody or be searched for safety reasons once removed. For instance, it could have contained a gun or other weapon that capable of discharging or otherwise harming an officer if mishandled. This Court must find that, even if the bag were removed, a reasonable officer would have believed that it presented a threat to police officer safety. Thus, the search of the cross-body bag more closely mirrors a search of clothing, such as a sweatshirt with a pocket across the stomach or pants pockets. *See United States v. Kithcart*, 34 F. App'x 872, 873 (3d Cir. 2002) (characterizing a fanny pack as "outer clothing" that can be searched). In *United States v. Knapp*, the United States Court of Appeals for the Tenth Circuit emphasized that a key factor in determining whether a defendant's personal effects constitute their "person" is the ability "to separate the arrestee from [the item]." 917 F.3d 1161, 1166 (10th Cir. 2019) (concluding that a handheld purse was not part of the defendant's "person").

Perhaps *the* paramount consideration authorizing searches incident to arrests is the need to ensure that the arrestee maintains no access to a concealed weapon. When an arrestee clasps a purse, as was the case in *Knapp*, an officer may ensure their safety by simply removing the purse from the arrestee's possession. But as the instant case evinces, officers have no ready ability to

remove a bag draped around an arrestee's shoulder while the arrestee is handcuffed (without engaging in maneuvers that might injure the arrestee). The Court notes that ultimately, Officer Broaddus *did* remove the bag by cutting it off Johnson's chest. But the destruction of an arrestee's property can hardly be a workable solution to every search of a bag draped around one's shoulder. In any event, the bag likely would have to remain in police custody, even if cut off, further emphasizing the need to eventually search the bag for safety purposes. *Compare Stanek*, 536 F. Supp. 3d at 738 (explaining that "[c]ase authorities have tended not to focus on whether a bag that is worn by an arrestee should be treated the same way as a handheld bag" and describing several cases). Accordingly, this search must be analyzed as a search incident to arrest of Johnson's *person*, meaning *Davis* does not apply.

As a search incident to arrest of Johnson's person, Broaddus did not violate Johnson's Fourth Amendment rights when opening the bag. When searching an individual's person incident to arrest, "police may conduct a full search of an arrestee's person and personal items in his possession and control, without any additional justification." *Alston*, 494 F. App'x at 411 (citing *United States v. Robinson,* 414 U.S. at 235). Because Johnson wore the bag across his body so that it could not have been easily removed after he was handcuffed, nor could *he* be moved without it, the Court concludes that Officer Broaddus conducted a proper search incident to arrest.[13] *See id.* (citing *Robinson,* 414 U.S. at 235).

[13] It might have been better protocol and in the interest of positive community relations for Officer Broaddus to alert Johnson that he was going to open the bag before doing so.

5. Officer Broaddus and the Other Police Officers on the Scene Would Have Discovered the Evidence in the Car Through Inevitable Discovery

Even though Officer Broaddus could not, without a warrant, search the car as part of the search of Johnson incident to his arrest, *see Davis*, 997 F.3d at 193 (citing *Gant*, 556 U.S. at 344), he and the other officers would have discovered through inevitable discovery the evidence in the car that Johnson now seeks to suppress. Consequently, the Court will not suppress that evidence.

a. Legal Framework: Inevitable Discovery and Inventory Searches

"Generally, the government is prohibited from using evidence discovered in an unlawful search against the individual whose constitutional right was violated." *United States v. Seay*, 944 F.3d 220, 223 (4th Cir. 2019) (citing *United States v. Doyle*, 650 F.3d 460, 466 (4th Cir. 2011)). However, the inevitable discovery doctrine serves as an exception to this rule. *Id.* (citing *United States v. Bullette*, 854 F.3d 261, 265 (4th Cir. 2017)).

Pursuant to the inevitable discovery doctrine, "the government [may] use evidence gathered in an otherwise unreasonable search if it can prove by a preponderance of the evidence that law enforcement would have ultimately or inevitably discovered the evidence by lawful means." *Id.* (internal quotation marks omitted) (quoting *Bullette*, 854 F.3d at 265). In that context, "[t]he burden of showing something by a preponderance of the evidence . . . simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." *Salem v. Holder*, 647 F.3d 111, 116 (4th Cir. 2011) (internal quotation marks omitted) (quoting *United States v. Manigan*, 592 F.3d 621, 631 (4th Cir. 2010)). Further, "'[l]awful means' include searches that fall into an exception to the warrant requirement, 'such

as an inventory search[14] that would have inevitably uncovered the evidence in question.'" *Seay*, 944 F.3d at 223 (quoting *Bullette*, 854 F.3d at 265).

"For the inventory search exception to apply, the search must have be[en] conducted according to standardized criteria[—]such as a uniform police department policy[—]and performed in good faith." *Id.* (first alteration in original) (internal quotation marks omitted) (quoting *United States v. Matthews*, 591 F.3d 230, 235 (4th Cir. 2009)). "The government may demonstrate standardized criteria 'by reference to either written rules and regulations *or* testimony regarding standard practices.'" *Id.* (quoting *United States v. Clarke*, 842 F.3d 288, 294 (4th Cir. 2016)).

b. The Officers Would Have Inevitably Searched the Car Because It Was an Inoperable Vehicle, and They Would Have Inevitably Discovered the Evidence Located Inside

A preponderance of the evidence shows that Officer Broaddus and his colleagues would have inevitably conducted an inventory search of the car, and therefore, even in the absence of the above-described unconstitutional search of Johnson's bag, they would have discovered the evidence found in the car that Johnson seeks to suppress. Specifically, the officers would have towed the car because of its improper license plates. Prior to towing the vehicle, they would have conducted an inventory search that would have uncovered the evidence located inside of the vehicle: the Taurus 9mm pistol, the blunt from the car's center console, the digital scale, the empty extended magazines for a handgun, the large quantity of baking soda, and the bags that appeared to contain narcotics.

[14] "An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as might be kept in a towed car), and to protect against false claims of loss or damage." *United States v. Johnson*, 492 F. App'x 437, 440 (4th Cir. 2012) (quoting *Whren*, 517 U.S. at 811 n.1).

To begin, when this traffic stop occurred, the car was inoperable pursuant to Henrico County Code and in violation of Virginia state law because the license plates were invalid, as they were assigned to a different car. *See* Henrico County Code § 22-6 (defining the term "inoperable motor vehicle," in pertinent part, as "any motor vehicle . . . which . . . does not display valid license plates"); Virginia Code § 46.2-715 ("License plates assigned to a motor vehicle . . . shall be attached to the front and the rear of the vehicle."), § 46.2-613(A) ("No person shall . . . [o]perate, park, or permit the operation or parking of a motor vehicle . . . unless . . . it has displayed on it the license plate or plates . . . assigned to it"). Indeed, Officer Broaddus testified at the June 15, 2021 Hearing that he could not "allow [Johnson] to drive a vehicle unlicensed to operate on a highway" and that "you[are] required by law to have two operating license plates . . . to operate a vehicle on the roadway." (ECF No. 47, at 71:12–16.) Consideration of this testimony, along with Henrico County and Virginia state law, strongly indicates that Officer Broaddus would not have permitted anyone to drive the car away from the scene of the traffic stop, even in the absence of the unconstitutional search. *See Salem*, 647 F.3d at 116 ("The burden of showing something by a preponderance of the evidence . . . simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." (internal quotation marks omitted) (citation omitted)).

Officer Broaddus also credibly testified that because he could not allow Johnson to drive the car, he would have inevitably removed the license plates from the car and then towed it. (*See* ECF No. 47, at 71:17–23.) He further stated that as part of the towing process, pursuant to Henrico County Police policy, he would have conducted an inventory search of the vehicle (which would have uncovered the evidence located in the car). (*See* ECF No. 47, at 71:24–73:2.) Nothing on this records indicates that, had Officer Broaddus chosen to tow the car and conduct

an inventory search before searching Johnson, the inventory search would have been performed in less than good faith, *see Seay*, 944 F.3d at 223 (quoting *United States v. Matthews*, 591 F.3d 230, 235 (4th Cir. 2009)). This testimony supports a finding that the inventory search exception applies, *see id.* (quoting *Matthews*, 591 F.3d at 235, and *Clarke*, 842 F.3d at 294), and that the officers would have inevitably discovered the evidence Johnson now seeks to suppress, *see id.* (citations omitted).

Critically, based on testimony and other evidence provided at the Hearing, this Court concludes that Officer Broaddus and his colleagues would have inevitably discovered the evidence found in the car through an inventory search of that vehicle.[15] *See id.* (quoting *Bullette*, 854 F.3d at 265). Accordingly, the inevitable discovery doctrine applies, meaning that the Court need not suppress the evidence found in the car and that the United States may use that evidence in its prosecution of Johnson.

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[15] Johnson cites in-court testimony and a Henrico County Police policy document suggesting that Officer Broaddus and his team would *not* have inevitably towed the car and thus that they would *not* have inevitably conducted an inventory search that would have led to the discovery of the evidence Johnson now seeks to suppress. (*See, e.g.*, ECF No. 47, at 151:8–153:7.) For instance, during the Hearing, Officer Broaddus acknowledged "that at the point that [he] searched Mr. Johnson's person, [he] had not established that [he was] going to tow the vehicle." (ECF No. 47, at 151:8–12.) And he also testified that he "suspect[ed] . . . the [license plates] were improper based off information [he] ran in [his] computer," but he could not "confirm" that there was a problem with the license plates. (ECF No. 47, at 152:7–19.)

But the testimony during the Hearing firmly established otherwise. Officer Broaddus's fair consideration of scenarios posed by defense counsel does not convince the Court that Johnson's car likely would not have been towed.

6. The Court Will Deny Johnson's Motion to Suppress as to Any Adverse or Incriminating Statements That He Made Before Being Handcuffed, But the Court Will Grant the Motion to Suppress as to Any Adverse or Incriminating Statements Johnson Made After Being Handcuffed But Before Being Mirandized

In his Motion to Suppress, Johnson also asks this Court to suppress any adverse or incriminating statements made as a direct result of the seizure and ensuing searches at issue in the Motion. The Court will deny the Motion to Suppress as to statements Johnson made before being handcuffed. However, the Court will grant the Motion to Suppress as to statements Johnson made after being handcuffed but before he was given *Miranda* warnings.

a. Legal Framework: Traffic Stops and the Fifth Amendment's Protection Against Self-Incrimination

The Fifth Amendment assures that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. To protect this right against self-incrimination, the United States Supreme Court, in *Miranda v. Arizona*, 384 U.S. 436 (1966), "adopted prophylactic procedural rules that must be followed during custodial interrogations." *United States v. Parker*, 262 F.3d 415, 419 (4th Cir. 2001). To that end, generally, "any statements a suspect makes during custodial interrogation are inadmissible in the prosecution's case in chief unless *Miranda* warnings have been given." *United States v. Leshuk*, 65 F.3d 1105, 1108 (4th Cir. 1995) (citations omitted).

"Generally, no *Miranda* custody exists for a person detained as a result of a traffic stop because this type of detention fails to 'sufficiently impair [the detained person's] free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights.'" *Hill v. Clarke*, No. 3:12cv174, 2014 WL 6388431, at *3 (E.D. Va. Nov. 14, 2014) (alteration in original) (quoting *Howes v. Fields*, 565 U.S. 499, 510 (2012)); *see also United States v. Sullivan*,

138 F.3d 126, 130–31 (4th Cir. 1998) ("In short, while a motorist during a routine traffic stop is detained and not free to leave, the motorist is not 'in custody' for *Miranda* purposes."); *Thornton v. United States*, Nos. 2:05cv281, 2:01cr235, 2006 WL 940322, at *8 (E.D. Va. Apr. 10, 2006) (stating that during a traffic stop, "the officer may detain the motorist and conduct investigatory activities, such as requesting the motorist's driver's license and running a computer check" and that "[i]f the officer develops a reasonable suspicion of a crime other than the traffic violation, he may further detain the motorist to question him and investigate the circumstances that gave rise to his suspicion" (quoting *Sullivan,* 138 F.3d at 131)). "Rather, '*Miranda* warnings are required only when the motorist is detained to an extent analogous to an arrest.'" *Hill*, 2014 WL 6388431, at *3 (quoting *Sullivan,* 138 F.3d at 131).

This is a difficult standard for defendants to meet, as the Fourth Circuit has given police officers significant leeway as to conduct that does *not* amount to a detention "to an extent analogous to an arrest." *Hill*, 2014 WL 6388431, at *3 (quoting *Sullivan,* 138 F.3d at 131). Specifically, the Fourth Circuit has "concluded that drawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does *not* necessarily elevate a lawful [traffic] stop into a custodial arrest." *United States v. Stinson*, 468 F. App'x 285, 289 n.4 (4th Cir. 2012) (emphasis added) (quoting *Leshuk*, 65 F.3d at 1109–10).

b. The Court Will Not Suppress Johnson's Statements Made Before He Was Handcuffed

Officer Broaddus pulled Johnson over to conduct a routine traffic stop after he observed the car Johnson was driving in violation of Virginia law. *See* Va. Code §§ 46.2-1002, 46.2-1003; (ECF No. 47, at 29:1–3, 14–21, 34:13–18, 36:8–12, 38:3–4). This action did not trigger Johnson's Fifth Amendment protection against self-incrimination. *See Hill*, 2014 WL 6388431, at *3 (quoting *Howes v. Fields*, 565 U.S. 499, 510 (2012)); *Sullivan*, 138 F.3d at 130–31.

Nor did Officer Broaddus and his colleagues' behavior convert the stop into a custodial arrest before Johnson was handcuffed. *See Thornton*, 2006 WL 940322, at *8; *Stinson*, 468 F. App'x at 289 n.4 (citation omitted). The officers' behavior here was less severe than that which the Fourth Circuit has already determined need *not* trigger the Fifth Amendment's protection against self-incrimination. *See Stinson*, 468 F. App'x at 289 n.4 (citation omitted). Indeed, that court has specifically indicated that handcuffing a suspect does not automatically "elevate a lawful [traffic] stop into a custodial arrest." *Id.* (citation omitted). Nor does the officers' other conduct rise anything close to the level of "drawing weapons, . . . or using or threatening to use force"—conduct that *still* might not necessarily turn the traffic stop in this case into a custodial arrest. *Id.* (citation omitted). Accordingly, the Fifth Amendment's protection against self-incrimination does not apply to the statements made during the traffic stop before Johnson was handcuffed. As such, the Court will not suppress these statements.[16]

c. The Court Will Suppress Johnson's Statements Made After Being Handcuffed

Once Johnson had been handcuffed, however, Johnson's detention essentially became an arrest. *See Hill*, 2014 WL 6388431, at *3 (quoting *Sullivan,* 138 F.3d at 131). Officer Broaddus's search of Johnson's cross-body bag was, therefore, a search incident to arrest. *Cf. United States v. Alston*, 494 F. App'x 408, 411 (4th Cir. 2012) (stating that pursuant to a search incident to arrest, "police may conduct a full search of an arrestee's person and personal items in his possession and control, without any additional justification" (citing *United States v. Robinson,* 414 U.S. 218, 235 (1973))). The Court will suppress any statements Johnson made after he was handcuffed, but before he was mirandized.

[16] These include, for example, Johnson's spontaneous statement that he was on "federal papers." (*See* Broaddus BWC 0:45–1:15.)

d. The Court Will Not Suppress Johnson's Subsequent Statements

In briefing, Johnson appears to argue that this Court should suppress incriminating statements made during the traffic stop *and* during subsequent questioning. (*See* ECF No. 31, at 8.) The Court will not suppress statements made during subsequent questioning. Johnson was mirandized as part of his formal arrest at 1:41 a.m., so no Fifth Amendment violation occurred after that time. Indeed, it is unclear to the Court what later statements, if any, Johnson seeks to have suppressed. Consequently, absent additional argument regarding specific subsequent statements that Johnson seeks to have this Court suppress, the Court will deny his Motion to Suppress as to any subsequent statements.

C. The Court Will Deny Miffin's Motion to Suppress I

Having denied in part and granted in part Johnson's Motion to Suppress, the Court now addresses Miffin's Motion to Suppress I, which the Court will deny. In particular, the Court will deny the Motion to Suppress I as to the evidence discovered in the car and on Miffin's person, including inside of his cross-body bag.

1. As a Passenger, Miffin May Challenge the Constitutionality of Actions Taken During the Stop

As an initial matter, the Court concludes that Miffin may challenge the constitutionality of actions taken during the September 1, 2020 traffic stop. The United States asserts that Miffin has not met his burden of establishing standing to challenge the search of the car, (ECF No. 34, at 8 n.3), but this argument does not persuade because Miffin has cited clear authority establishing his right to contest the officers' actions during the stop, including the eventual search of his person and the car. (ECF No. 36 at 3 (citing *Soriano-Jarquin*, 492 F.3d 495, 500 (4th Cir. 2007); *Brendlin v. California*, 551 U.S. 249, 255–58 (2007).)

A traffic stop constitutes a Fourth Amendment seizure of the passenger. *See Soriano-Jarquin*, 492 F.3d at 500 (citing *Brendlin*, 551 U.S. at 256–57). Further, the Fourth Circuit has held that a passenger in a car stopped by police may "challenge the constitutionality of the actions taken during the stop." *Id.* (citing *Brendlin*, 551 U.S. at 255–58). Accordingly, Miffin's status as a passenger enables him to contest the lawfulness of the officers' actions during the stop, *id.*, and the Court will consider Miffin's challenge to his seizure, (ECF No. 17, at 7; ECF No. 36, at 1).

2. The Officers Would Have Inevitably Discovered the Evidence in the Vehicle Through an Inventory Search

As previously discussed, Officer Broaddus and his colleagues would have inevitably towed the car and conducted an inventory search as part of the towing process, leading to the discovery in the vehicle of the Taurus 9mm pistol, the blunt from the car's center console, the digital scale, the empty extended magazines for a handgun, the baking soda, the large quantity of baking soda, and the bags that appeared to contain narcotics. *See supra* Part II.B.5.b. Thus, the Court will deny Miffin's Motion to Suppress I as to the evidence discovered in the vehicle.

3. Officer Broaddus Properly Searched Miffin's Cross-Body Bag During a Search Incident to Arrest

Officer Holmes mirandized Miffin at 1:41 a.m., after which Officer Broaddus and Sergeant English searched the car. After searching the car, Officer Broaddus searched Miffin's person, including his cross-body bag. Like the evidence found in Johnson's cross-body bag, the Court will not suppress the evidence discovered in Miffin's bag. Similar to Johnson, Miffin had the cross-body bag strapped across his person, so the search is not unconstitutional for the same reasons the search of Johnson's bag was not. *See Avagyan*, 164 F. Supp. 3d at 890 (citing *Robinson*, 414 U.S. at 235); *Alston*, 494 F. App'x at 411 (citing *Robinson,* 414 U.S. at 235);

Kithcart, 34 F. App'x at 873 (characterizing a fanny pack as "outer clothing" that can be searched); *see Knapp*, 917 F.3d at 1166. Accordingly, the Court will not suppress the evidence discovered in Miffin's bag.

D. The Court Will Deny as Moot Miffin's Motion to Suppress II

The United States has informed the Court, through briefing, that it "does not intend to offer any of the statements Defendant made following his federal arrest in evidence." (ECF No. 34, at 19.) This includes the statements at issue in Miffin's Motion to Suppress II. Therefore, the Court will deny as moot Miffin's Motion to Suppress II.

E. The Court Will Not Suppress Other Statements Made by Miffin During the Traffic Stop or Afterward, Except Those He Made While Handcuffed Before Being Mirandized

Like Johnson, through the Motion to Adopt, Miffin also asks this Court to suppress any adverse or incriminating statements made as a direct result of the seizure and ensuing searches at issue in this matter. For the reasons previously stated as to Johnson, the Court will not suppress statements made before Miffin was handcuffed. *See supra* Part II.B.6. To begin, the officers' behavior over the course of the traffic stop did not transform the stop into a custodial arrest that would trigger the Fifth Amendment's protection against self-incrimination until Miffin was handcuffed, *see Hill*, 2014 WL 6388431, at *3 (quoting *Howes*, 565 U.S. at 510); *Sullivan*, 138 F.3d at 130–31; *Thornton*, 2006 WL 940322, at *8 (mentioning that although a detained individual did not feel free to leave a traffic stop, that "understanding . . . did not put him in custody").

As with Johnson, however, the Court will suppress any statements Miffin made while in handcuffs before being mirandized. Once in handcuffs, Miffin's detention transformed into one analogous to an arrest, especially given that his colleague, Johnson, had already been handcuffed

at that point. *See Hill*, 2014 WL 6388431, at *3 (quoting *Sullivan,* 138 F.3d at 131). Consequently, the Court will suppress statements made by Miffin between the time he was first handcuffed and the time he received his *Miranda* warnings.

However, the Government may utilize statements Miffin made at the scene of the stop after receiving his *Miranda* warnings. And further, it remains unclear to the Court what later statements—other than those discussed in his Motion to Suppress II—Miffin would like the Court to suppress. Without additional explanation as to subsequent statements Miffin would have this Court suppress, the Court will not suppress them.

Thus, the Court will not suppress any adverse or incriminating statements that Miffin made during the traffic stop or subsequent to it other than those addressed in Miffin's Motion to Suppress II and those he made during the traffic stop while in handcuffs but before being mirandized.

III. Conclusion

For the foregoing reasons, the Court denies in part and grants in part Miffin's Motion to Suppress I, denies Miffin's Motion to Suppress II as moot, and denies in part and grants in part Johnson's Motion to Suppress. The Court also grants Miffin's Motion to Adopt.

An appropriate Order shall issue.

Date: 6/30/2022
Richmond, Virginia

/s/
M. Hannah Lauck
United States District Judge

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

UNITED STATES OF AMERICA

v. **Criminal No. 3:21cr29**

JERMAINE DARNELL JOHNSON

and

RUDOLPH MIFFIN, JR.,

Defendants.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, the Court GRANTS: (1) Miffin's Motion to Adopt Defendant Johnson's Motion to Suppress Evidence. (ECF No. 32.)

Further, for the reasons stated in the accompanying Memorandum Opinion, the Court DENIES AS MOOT: (2) Miffin's Motion to Suppress Custodial Statements. (ECF No. 18.)

In addition, for the reasons stated in the accompanying Memorandum Opinion, the Court DENIES IN PART and GRANTS IN PART:

(3) Defendant Rudolph Miffin, Jr.'s Motion to Suppress Evidence Found in Violation of the Fourth Amendment, (ECF No. 17); and,

(4) Defendant Jermaine Darnell Johnson's Motion to Suppress Evidence, (ECF No. 31).

Specifically, as to Defendant Rudolph Miffin, Jr.'s Motion to Suppress Evidence Found in Violation of the Fourth Amendment, the Court DENIES the Motion as to the evidence discovered in the vehicle and the evidence discovered on Miffin's person (including inside of his cross-body bag) and as to any statements Miffin made during the traffic stop or subsequent to it, except for statements he made after being handcuffed but before being mirandized.

Similarly, with regard to Defendant Jermaine Darnell Johnson's Motion to Suppress Evidence, the Court DENIES the Motion as to the evidence discovered in the vehicle and on Johnson's person (including inside of his cross-body bag) and as to statements Johnson made before being handcuffed and after being mirandized. However, the Court GRANTS the Motion as to statements made after Johnson was handcuffed but before he was mirandized.

It is SO ORDERED.

Date: 6/30/2022
Richmond, Virginia

/s/
M. Hannah Lauck
United States District Judge

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)
Subchapter I. Control and Enforcement
Part D. Offenses and Penalties

This section has been updated. Click here for the updated version.

21 U.S.C.A. § 841

§ 841. Prohibited acts A

Effective: December 21, 2018 to December 1, 2022

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving--

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $20,000,000 if the defendant is an individual or $75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of Title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving--

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of

law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $500,000 if the defendant is an individual or $2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of Title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed--

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of Title 18;

(C) $500,000 if the defendant is an individual; or

(D) $1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use--

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with Title 18 or imprisoned not more than five years, or both.

(7) Penalties for distribution

(A) In general

Whoever, with intent to commit a crime of violence, as defined in section 16 of Title 18 (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with Title 18.

(B) Definition

For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally--

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with Title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under Title 18, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under Title 18, or both.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under Title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under Title 18 or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that--

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;

shall be fined under this subchapter or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term "date rape drug" means--

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of Title 5, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term "authorized purchaser" means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A "qualifying medical relationship" means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other heath [1] professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

(h) Offenses involving dispensing of controlled substances by means of the Internet

(1) In general

It shall be unlawful for any person to knowingly or intentionally--

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or

(B) aid or abet (as such terms are used in section 2 of Title 18) any activity described in subparagraph (A) that is not authorized by this subchapter.

(2) Examples

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally--

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 823(f) of this title (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 829(e) of this title;

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections [2] 823(f) or 829(e) of this title;

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 831 of this title.

(3) Inapplicability

(A) This subsection does not apply to--

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to--

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of Title 47); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of Title 47 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

CREDIT(S)

(Pub.L. 91-513, Title II, § 401, Oct. 27, 1970, 84 Stat. 1260; Pub.L. 95-633, Title II, § 201, Nov. 10, 1978, 92 Stat. 3774; Pub.L. 96-359, § 8(c), Sept. 26, 1980, 94 Stat. 1194; Pub.L. 98-473, Title II, §§ 224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub.L. 99-570, Title I, §§ 1002, 1003(a), 1004(a), 1005(a), 1103, Title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; Pub.L. 100-690, Title VI, §§ 6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4381; Pub.L. 101-647, Title X, § 1002(e), Title XII, § 1202, Title XXXV, § 3599K, Nov. 29, 1990, 104 Stat. 4828, 4830, 4932; Pub.L. 103-322, Title IX, § 90105(a), (c), Title XVIII, § 180201(b)(2)(A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; Pub.L. 104-237, Title II, § 206(a), Title III, § 302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; Pub.L. 104-305, § 2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; Pub.L. 105-277, Div. E, § 2(a), Oct. 21, 1998, 112 Stat. 2681-759; Pub.L. 106-172, §§ 3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; Pub.L. 107-273, Div. B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; Pub.L. 109-177, Title VII, §§ 711(f)(1)(B), 732, Mar. 9, 2006, 120 Stat. 262, 270; Pub.L. 109-248, Title II, § 201, July 27, 2006, 120 Stat. 611; Pub.L. 110-425, § 3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; Pub.L. 111-220, §§ 2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372; Pub.L. 115-391, Title IV, § 401(a)(2), Dec. 21, 2018, 132 Stat. 5220.)

Footnotes

1 So in original. Probably should be “health”.

2 So in original. Probably should be “section”.

21 U.S.C.A. § 841, 21 USCA § 841
Current through P.L. 118-106. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 44. Firearms (Refs & Annos)

This section has been updated. Click here for the updated version.

18 U.S.C.A. § 922

§ 922. Unlawful acts

Effective: December 4, 2015 to June 24, 2022

(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that--

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless--

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery--

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General; [1]

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if--

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are .....

Signature ..... Date ....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who [2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who

owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment--

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to--

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm--

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection--

(A) the term “firearm” does not include the frame or receiver of any such weapon;

(B) the term “major component” means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General, that is--

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which--

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that--

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the[3] House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves--even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm--

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to--

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless--

(A) after the most recent proposal of such transfer by the transferee--

(i) the transferor has--

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that--

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only--

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee--

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who--

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to--

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law--

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless--

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall--

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if--

(A)(i) such other person has presented to the licensee a permit that--

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v), (w) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to--

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile--

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except--

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term “juvenile” means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas.--

(1) Definitions.--In this subsection--

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions.--Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is--

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is--

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver.--

(A) Conditions for waiver.--Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if--

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition.--Each petition under subparagraph (B) shall--

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.--The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner--

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure gun storage or safety device.--

(1) In general.--Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) Exceptions.--Paragraph (1) shall not apply to--

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.--

(A) In general.--Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.--A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.--As used in this paragraph, the term "qualified civil liability action"--

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if--

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

[APPENDIX A Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

CREDIT(S)

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 228; amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1216; Pub.L. 97-377, Title I, § 165(a), Dec. 21, 1982, 96 Stat. 1923; Pub.L. 99-308, § 102, May 19, 1986, 100 Stat. 451; Pub.L. 99-408, § 2, Aug. 28, 1986, 100 Stat. 920; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 100-649, § 2(a), (f)(2)(A), Nov. 10, 1988, 102 Stat. 3816, 3818; Pub.L. 100-690, Title VII, § 7060(c), Nov. 18, 1988, 102 Stat. 4404; Pub.L. 101-647, Title XVII, § 1702(b)(1), Title XXII, §§ 2201, 2202, 2204(b), Title XXXV, § 3524, Nov. 29, 1990, 104 Stat. 4844, 4856, 4857, 4924; Pub.L. 103-159, Title I, § 102(a)(1), (b), Title III, § 302(a) to (c), Nov. 30, 1993, 107 Stat. 1536, 1539, 1545; Pub.L. 103-322, Title XI, §§ 110102(a), 110103(a), 110105(2), 110106, 110201(a), 110401(b), (c), 110511, 110514, Title XXXII, §§ 320904, 320927, Title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1996, 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, §§ 657, 658(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369,

3009-372; Pub.L. 104-294, Title VI, § 603(b), (c)(1), (d) to (f)(1), (g), Oct. 11, 1996, 110 Stat. 3503, 3504; Pub.L. 105-277, Div. A, § 101(b) [Title I, § 121], Oct. 21, 1998, 112 Stat. 2681-50, 2681-71; Pub.L. 107-273, Div. B, Title IV, § 4003(a)(1), Nov. 2, 2002, 116 Stat. 1811; Pub.L. 107-296, Title XI, § 1112(f)(4), (6), Nov. 25, 2002, 116 Stat. 2276; Pub.L. 109-92, §§ 5(c)(1), 6(a), Oct. 26, 2005, 119 Stat. 2099, 2101; Pub.L. 114-94, Div. A, Title XI, § 11412(c)(2), Dec. 4, 2015, 129 Stat. 1688.)

REPEAL OF SUBSEC. (P)

<Pub.L. 100-649, § 2(f)(2)(A), Nov. 10, 1988, 102 Stat. 3818, as amended Pub.L. 105-277, Div. A, § 101(h) [Title VI, § 649], Oct. 21, 1998, 112 Stat. 2681-528; Pub.L. 108-174, § 1(1), Dec. 9, 2003, 117 Stat. 2481; Pub.L. 113-57, § 1, Dec. 9, 2013, 127 Stat. 656, provided that, effective 35 years after the 30th day beginning after Nov. 10, 1988 [see section 2(f)(1) of Pub.L. 100-649, set out as a note under this section], subsec. (p) of this section is repealed.>

MEMORANDA OF PRESIDENT

PRESIDENTIAL MEMORANDUM

Memorandum of the President of the United States, dated January 16, 2013, 78 F.R. 4295, authorizing the Secretary of Health and Human Services to conduct or sponsor research on the causes and prevention of gun violence, is set out as a note under 42 U.S.C.A. § 241.

PRESIDENTIAL MEMORANDUM

Memorandum of the President of the United States, January 16, 2013, 78 F.R. 4301, directing the Heads of Executive Departments and Agencies to take steps to ensure that firearms recovered in the course of criminal investigations and taken into Federal custody are traced through ATF, is set out as a note under Chapter 44 of this title, see 18 U.S.C.A. prec. § 921.

Footnotes

1 So in original. Probably should be followed with “and”.

2 So in original. The word “who” probably should not appear.

3 So in original. Probably should be “of the”.

18 U.S.C.A. § 922, 18 USCA § 922
Current through P.L. 118-106. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated Code of Virginia
Title 18.2. Crimes and Offenses Generally (Refs & Annos)
Chapter 7. Crimes Involving Health and Safety (Refs & Annos)
Article 1. Drugs (Refs & Annos)

This section has been updated. Click here for the updated version.

VA Code Ann. § 18.2-250.1

§ 18.2-250.1. Possession of marijuana unlawful

Effective: July 1, 2020 to February 28, 2021

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.). The attorney for the Commonwealth or the county, city, or town attorney may prosecute such a case.

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section is subject to a civil penalty of no more than $25. A violation of this section is a civil offense. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02.

B. Any violation of this section shall be charged by summons. A summons for a violation of this section may be executed by a law-enforcement officer when such violation is observed by such officer. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. No court costs shall be assessed for violations of this section. A person's criminal history record information as defined in § 9.1-101 shall not include records of any charges or judgments for a violation of this section, and records of such charges or judgments shall not be reported to the Central Criminal Records Exchange. However, if a violation of this section occurs while an individual is operating a commercial motor vehicle as defined in § 46.2-341.4, such violation shall be reported to the Department of Motor Vehicles and shall be included on such individual's driving record.

C. The procedure for appeal and trial of any violation of this section shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

D. The provisions of this section shall not apply to members of state, federal, county, city, or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.

E. The provisions of this section involving marijuana in the form of cannabis oil as that term is defined in § 54.1-3408.3 shall not apply to any person who possesses such oil pursuant to a valid written certification issued by a practitioner in the course

of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms of (i) the person's diagnosed condition or disease, (ii) if such person is the parent or legal guardian of a minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease, or (iii) if such person has been designated as a registered agent pursuant to § 54.1-3408.3, the diagnosed condition or disease of his principal or, if the principal is the parent or legal guardian of a minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease.

Credits

Acts 1979, c. 435; Acts 1991, c. 649; Acts 1998, c. 116. Amended by Acts 2015, c. 7, eff. Feb. 26, 2015; Acts 2015, c. 8, eff. Feb. 26, 2015; Acts 2016, c. 577; Acts 2017, c. 613, eff. March 16, 2017; Acts 2018, c. 246, eff. March 9, 2018; Acts 2018, c. 809, eff. April 9, 2018; Acts 2019, c. 690; Acts 2020, c. 764; Acts 2020, c. 1285; Acts 2020, c. 1286.

VA Code Ann. § 18.2-250.1, VA ST § 18.2-250.1

The statutes and Constitution are current through the 2024 Regular Session and 2024 Special Session I.

End of Document

VA Code Ann. § 15.2-1726

§ 15.2-1726. Agreements for consolidation of police departments or for cooperation in furnishing police services

Effective: March 24, 2017
Currentness

Any locality may, in its discretion, enter into a reciprocal agreement with any other locality, any agency of the federal government exercising police powers, the police of any public institution of higher education in the Commonwealth appointed pursuant to subsection B of § 23.1-812, the Division of Capitol Police, any private police department certified by the Department of Criminal Justice Services, or any combination of the foregoing, for such periods and under such conditions as the contracting parties deem advisable, for cooperation in the furnishing of police services. Such agreements may include designation of mutually agreed-upon boundary lines between contiguous localities for purposes of organizing 911 dispatch and response and clarifying issues related to coverage under workers' compensation and risk management laws. Such agreements may also include provisions allowing for the loan of unmarked police vehicles. Such localities also may enter into an agreement for the cooperation in the furnishing of police services with the Department of State Police. The governing body of any locality also may, in its discretion, enter into a reciprocal agreement with any other locality, or combination thereof, for the consolidation of police departments or divisions or departments thereof. Subject to the conditions of the agreement, all police officers, officers, agents and other employees of such consolidated or cooperating police departments shall have the same powers, rights, benefits, privileges and immunities in every jurisdiction subscribing to such agreement, including the authority to make arrests in every such jurisdiction subscribing to the agreement; however, no police officer of any locality shall have authority to enforce federal laws unless specifically empowered to do so by statute, and no federal law-enforcement officer shall have authority to enforce the laws of the Commonwealth unless specifically empowered to do so by statute.

The governing body of a county also may enter into a tripartite contract with the governing body of any town, one or more, in such county and the sheriff for such county for the purpose of having the sheriff furnish law-enforcement services in the town. The contract shall be structured as a service contract and may have such other terms and conditions as the contracting parties deem advisable. The sheriff and any deputy sheriff serving as a town law-enforcement officer shall have authority to enforce such town's ordinances. Likewise, subject to the conditions of the contract, the sheriff and deputy sheriffs while serving as a town's law-enforcement officers shall have the same powers, rights, benefits, privileges and immunities as those of regular town police officers. The sheriff under any such contract shall be the town's chief of police.

Credits

Acts 1997, c. 587, eff. Dec. 1, 1997; Acts 2008, c. 437. Amended by Acts 2013, c. 250; Acts 2013, c. 472; Acts 2013, c. 594; Acts 2013, c. 775; Acts 2014, c. 581.

Notes of Decisions (11)

VA Code Ann. § 15.2-1726, VA ST § 15.2-1726

The statutes and Constitution are current through the 2024 Regular Session and 2024 Special Session I.

End of Document

TITLE XXI
MOTOR VEHICLES

CHAPTER 265-A
ALCOHOL OR DRUG IMPAIRMENT

Other Alcohol and Drug Offenses

Section 265-A:44

[RSA 265-A:44 effective until January 1, 2025; see also RSA 265-A:44 set out below.]

265-A:44 Transporting Alcoholic Beverages. –

I. The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 175:1.

II. Except as provided in paragraph V, no driver shall transport, carry, possess, or have any liquor or beverage within the passenger area of any motor vehicle or OHRV upon any way in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages shall be stored and transported in the trunk of the motor vehicle or OHRV. If the motor vehicle or OHRV does not have a trunk, such containers shall be stored and transported in that compartment or area of the vehicle or OHRV which is the least accessible to the driver.

III. Except as provided in paragraph V, no passenger shall carry, possess, or have any liquor or beverage within any passenger area of any motor vehicle or OHRV upon any way or in an area principally used for public parking in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages may be stored and transported in that compartment or area of the vehicle or OHRV which is the least accessible to the driver.

IV. A person who violates this section shall be guilty of a violation and shall be subject to a fine of $150. In addition, a person who violates paragraph II of this section may have his or her drivers' license, if a resident, or driving privilege, if a nonresident, suspended 60 days for a first offense and up to one year for a second or subsequent offense.

V. This section shall not apply to persons transporting, carrying, possessing, or having any liquor or beverage in a chartered bus, in a taxi, or in a limousine for hire; provided, however, that the driver of any of said vehicles is prohibited from having any liquor or beverage in or about the driver's area.

VI. For the purposes of this section only:

(a) "Passenger area of any motor vehicle or OHRV" shall not include any section of a motor vehicle or OHRV which has been designed or modified for the overnight accommodation of persons or as living quarters.

(b) "Way" shall mean the entire width between the boundary lines of any public highway, street, avenue, road, alley, park, or parkway, or any private way laid out under authority of statute, or any such way provided and maintained by a public institution to which state funds are appropriated for public use or any such way which has been used for public travel for 20 years.

[RSA 265-A:44 effective January 1, 2025; see also RSA 265-A:44 above.]

265-A:44 Transporting Alcoholic Beverages or Marijuana. –

I. (a) The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 175:1.

(b) The word "marijuana" as used in this section shall have the same meaning as defined in RSA 318-B and shall not include therapeutic cannabis as authorized under RSA 126-X.

II. Except as provided in paragraph V, no driver shall transport, carry, possess, or have any liquor or beverage within the passenger area of any motor vehicle or OHRV upon any way in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages shall be

stored and transported in the trunk of the motor vehicle or OHRV. If the motor vehicle or OHRV does not have a trunk, such containers shall be stored and transported in that compartment or area of the vehicle or OHRV which is the least accessible to the driver.
II-a. Except as provided in paragraph V, no driver shall transport, carry, possess, or have any marijuana within the passenger area of any motor vehicle or OHRV upon any way in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of marijuana, or marijuana in any other form of unsealed packaging, shall be stored and transported in the trunk of the motor vehicle or OHRV. If the motor vehicle or OHRV does not have a trunk, such containers shall be stored and transported in that compartment or area of the vehicle or OHRV which is the least accessible to the driver or in the glove compartment.
III. Except as provided in paragraph V, no passenger shall carry, possess, or have any liquor or beverage within any passenger area of any motor vehicle or OHRV upon any way or in an area principally used for public parking in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages may be stored and transported in that compartment or area of the vehicle or OHRV which is the least accessible to the driver.
III-a. Except as provided in paragraph V, no passenger shall carry, possess, or have any marijuana within any passenger area of any motor vehicle or OHRV upon any way or in an area principally used for public parking in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of marijuana, or marijuana in any other form of unsealed packaging, may be stored and transported in that compartment or area of the vehicle or OHRV which is the least accessible to the driver or in the glove compartment.
IV. A person who violates this section shall be guilty of a violation and shall be subject to a fine of $150. In addition, a person who violates paragraph II or II-a of this section may have his or her drivers' license, if a resident, or driving privilege, if a nonresident, suspended 60 days for a first offense and up to one year for a second or subsequent offense.
V. This section shall not apply to persons transporting, carrying, possessing, or having any liquor, beverage, or marijuana in a chartered bus, in a taxi, or in a limousine for hire; provided, however, that the driver of any of said vehicles is prohibited from having any liquor, beverage, or marijuana in or about the driver's area.
VI. For the purposes of this section only:
(a) "Passenger area of any motor vehicle or OHRV" shall not include any section of a motor vehicle or OHRV which has been designed or modified for the overnight accommodation of persons or as living quarters.
(b) "Way" shall mean the entire width between the boundary lines of any public highway, street, avenue, road, alley, park, or parkway, or any private way laid out under authority of statute, or any such way provided and maintained by a public institution to which state funds are appropriated for public use or any such way which has been used for public travel for 20 years.

Source. 2006, 260:1, eff. Jan. 1, 2007. 2019, 216:15, eff. Sept. 10, 2019. 2024, 159:1, eff. Jan. 1, 2025.

West's Montana Code Annotated
Title 61. Motor Vehicles (Refs & Annos)
Chapter 8. Traffic Regulation
Part 10. Driving Under Influence of Alcohol or Drugs

MCA 61-8-1027

61-8-1027. Unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in motor vehicle on highway

Effective: January 1, 2022
Currentness

<Section is subject to contingent voidness. See Historical and Statutory Notes for contingency provision.>

(1) Except as provided in subsection (2), a person commits the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in a motor vehicle if the person knowingly possesses marijuana, marijuana products, or marijuana paraphernalia, as those terms are defined in 16-12-102, within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to marijuana, marijuana products, or marijuana paraphernalia:

(a) purchased from a dispensary and that remains in its unopened, original packaging;

(b) in a locked glove compartment or storage compartment;

(c) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;

(d) behind the last upright seat of a motor vehicle that is not equipped with a trunk; or

(e) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger.

(3)(a) A person convicted of the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in a motor vehicle shall be fined an amount not to exceed $100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, or 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

Credits

Enacted by Laws 2021, ch. 576, § 8, eff. Jan. 1, 2022.

MCA 61-8-1027, MT ST 61-8-1027

Current through the end of the 2023 Session of the Montana Legislature.

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West's Annotated Code of Virginia
Title 19.2. Criminal Procedure (Refs & Annos)
Chapter 7. Arrest (Refs & Annos)

This section has been updated. Click here for the updated version.

VA Code Ann. § 19.2-74

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace

Effective: July 1, 2019 to June 30, 2021

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be made pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388.

Credits

Acts 1975, c. 495; Acts 1976, c. 753; Acts 1978, c. 500; Acts 1979, c. 679; Acts 1979, c. 680; Acts 1980, c. 492; Acts 1981, c. 382; Acts 1982, c. 485; Acts 1982, c. 500; Acts 1984, c. 24; Acts 1988, c. 455; Acts 1995, c. 471. Amended by Acts 2010, c. 840; Acts 2014, c. 543; Acts 2019, c. 782; Acts 2019, c. 783.

VA Code Ann. § 19.2-74, VA ST § 19.2-74

The statutes and Constitution are current through the 2024 Regular Session and 2024 Special Session I.

End of Document

West's Annotated Code of Virginia
Title 19.2. Criminal Procedure (Refs & Annos)
Chapter 7. Arrest (Refs & Annos)

VA Code Ann. § 19.2-82

§ 19.2-82. Procedure upon arrest without warrant

Effective: July 1, 2009
Currentness

A. A person arrested without a warrant shall be brought forthwith before a magistrate or other issuing authority having jurisdiction who shall proceed to examine the officer making the arrest under oath. If the magistrate or other issuing authority having jurisdiction has lawful probable cause upon which to believe that a criminal offense has been committed, and that the person arrested has committed such offense, he shall issue either a warrant under the provisions of § 19.2-72 or a summons under the provisions of § 19.2-73.

As used in this section the term "brought before a magistrate or other issuing authority having jurisdiction" shall include a personal appearance before such authority or any two-way electronic video and audio communication meeting the requirements of § 19.2-3.1, in order that the accused and the arresting officer may simultaneously see and speak to such magistrate or authority. If electronic means are used, any documents filed may be transmitted in accordance with § 19.2-3.1.

If a warrant is issued the case shall thereafter be disposed of under the provisions of §§ 19.2-183 through 19.2-190, if the issuing officer is a judge; under the provisions of §§ 19.2-119 through 19.2-134, if the issuing officer is a magistrate or other issuing officer having jurisdiction.

If such warrant or summons is not issued, the person so arrested shall be released.

B. A warrant may be issued pursuant to this section, where the person has been arrested in accordance with § 19.2-81.6, and the magistrate or other issuing authority examines the officer making the arrest under oath, and finds lawful probable cause to believe the arrested individual meets the conditions of clauses (i) and (ii) of § 19.2-81.6. If such warrant is issued, it shall recite § 19.2-81.6 and the applicable violation of federal criminal law previously confirmed with Immigration and Customs Enforcement. Upon the person being taken into federal custody, such state warrant shall be dismissed. Any warrant issued under this subsection shall expire within 72 hours, or when the person is taken into federal custody, whichever occurs first. Recurrent applications for a warrant under this subsection shall not be permitted within a six-month period except where confirmation has been received from Immigration and Customs Enforcement that the arrested person will be taken into federal custody.

Credits
Acts 1975, c. 495; Acts 1981, c. 382; Acts 1983, c. 564; Acts 1984, c. 766; Acts 1991, c. 41; Acts 2002, c. 310; Acts 2004, c. 360; Acts 2004, c. 412; Acts 2009, c. 669.

Notes of Decisions (16)

VA Code Ann. § 19.2-82, VA ST § 19.2-82
The statutes and Constitution are current through the 2024 Regular Session and 2024 Special Session I.

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