

No. 23-272

In The
Supreme Court of the United States

WINTERVILLE POLICE DEPARTMENT, ET AL.,
Petitioners,

v.

DIJON SHARPE,
Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

**BRIEF OF THE NATIONAL FRATERNAL ORDER
OF POLICE AS *AMICUS CURIAE* IN SUPPORT
OF WINTERVILLE POLICE DEPARTMENT AND
OFFICERS WILLIAM ELLIS AND MYERS HELMS**

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**STATEMENT OF INTEREST
OF *AMICUS CURIAE*¹**

We ask police officers to respond to tense, uncertain situations fraught with danger. Time and again they respond with unwavering commitment to public safety. After the fact, however, their actions are intensely scrutinized by the public and media, and sometimes the justice system. Officers have learned to overcome such scrutiny by taking solace in knowing that if their actions face assessment under the law, then the judges and juries will be guided by the Fourth Amendment's reasonableness standard. For example, when a police officer interferes with an individual's Second Amendment right by seizing a firearm during an investigative stop, the court conducts a Fourth Amendment analysis. Or when an officer infringes upon an individual's Fourth Amendment right by searching a detained individual and their belongings, the court conducts a Fourth Amendment analysis. So, why when Officers William Ellis and Myers Helms restricted Dijon Sharpe's use of his cellphone for livestreaming during a lawful traffic stop, did the Fourth Circuit *not* conduct a Fourth Amendment analysis?

¹ In accordance with Rule 37.6., the Office of General Counsel to the National Fraternal Order of Police authored this Brief in its entirety. There are no other entities which made monetary contributions to the preparation or submission of this Brief. Additionally, in accordance with Rule 37.2, the counsel of record received notice on October 9, 2023, of the NFOP's, as *amicus curiae*, notice of its intent to file its *Amicus* Brief.

The Fourth Amendment allows officers to intrude on the liberty interests of those who have been properly stopped, so long as the intrusion is *reasonable*. Was it reasonable to prohibit Sharpe from livestreaming during the traffic stop? Instead of answering this question, the Fourth Circuit focused on whether the alleged policy that restricts livestreaming violates protected speech under the First Amendment. This improper analysis concerns *amicus curiae*, the National Fraternal Order of Police (“NFOP”), because it affects its 374,000+ members’ ability to impose reasonable restrictions while performing their duties.

Indeed, police officers rely on the well-established Fourth Amendment jurisprudence – including guidance from this Court – which consistently provides officers with the ability and protection to take control of an investigative stop in the interest of safety. And the safety concerns of livestreaming a police encounter are apparent: exposing the officer and their location to be susceptible to violence themselves. With the Fourth Circuit’s decision, the Fourth Amendment’s protection is futile.

Here, the Fourth Circuit failed to acknowledge the Fourth Amendment in their analysis of this case and incorrectly applied the time, place, and manner analysis under the First Amendment for Sharpe’s 42 U.S.C. § 1983 claim for the alleged restriction of livestreaming. This analysis creates inconsistency. Police officers deserve clear and reliable guidelines on what steps they can take with detained individuals. This is especially true in situations where the actions of an

individual – like livestreaming – can create a genuine threat to officers’ safety. It must also be made clear that the First Amendment right to record or livestream is not absolute. Therefore, policies that allow reasonable restrictions are necessary when there is a sincere threat to safety.

The NFOP serves as the voice of those who dedicate their lives to protecting and serving our communities. The NFOP advocates that these officers, in turn, also deserve protection through consistently applied legal standards. As such, the NFOP submits its *Amicus* Brief requesting that the Court grant certiorari to clarify that the Fourth Amendment is the proper standard for restricting individual’s rights during lawful stops. It is the standard that should have been applied in this case. The NFOP further requests that if this Court remands this case for additional proceedings on the alleged policy, it also clarifies that policies can impose reasonable restrictions on livestreaming. Without clarification of these issues, the Fourth Circuit’s decision stands to jeopardize police officers’ protections under the Fourth Amendment.

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SUMMARY OF ARGUMENT

While the Fourth Circuit was the first court to hold that livestreaming is protected speech, the actual underlying issue of this case is far from novel: were the officer’s actions reasonable? Specifically, the issue in this case is whether law enforcement officers may

prohibit a lawfully detained person from livestreaming. The role of the Fourth Amendment during a lawful stop and its relationship to other constitutionally protected rights, including the First Amendment, is critical. This is because the restriction of livestreaming was an *aspect* of a lawful seizure under the Fourth Amendment. It is unnecessary then to determine whether livestreaming is protected speech or if the alleged policy even exists for the court to determine whether the officers acted reasonably. Accordingly, the Fourth Circuit should use the well-established reasonableness standard. The improper analysis is problematic for law enforcement and the reasons for this Court's review are twofold.

First, the Fourth Amendment is the appropriate standard for limiting individuals' rights during lawful stops. Failing to follow precedent has created inconsistency in the analysis of officers' actions during lawful encounters. Officers need clear guidance to set the expectations of their conduct and to ensure that they receive a fair application of constitutional protections. This Court can correct the Fourth Circuit's error.

Second, policies can be constitutional even if they limit an individual's protected right. Indeed, the First Amendment right is not absolute. Policies can impose reasonable restrictions when certain situations call for officers to take necessary steps to protect themselves or others. Here, a policy that restricts livestreaming is appropriate if there is a genuine threat of harm or if there is potential for the encounter to become

disruptive. This Court can clarify where the court of appeals created confusion.

Therefore, it is imperative that this Court corrects the inconsistency in the Fourth Circuit's decision and provide direct guidance for officers' conduct.

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ARGUMENT

When law enforcement officers conduct a stop, they are operating in unfamiliar areas with uncertain circumstances. They must assess danger in real time because situations can change in a split-second. For example, in Philadelphia, a motorist dragged a police officer for five blocks while attempting to flee after the officer spotted a gun in the car. Laura Ly, *A Philadelphia officer was dragged 5 blocks by a vehicle during a traffic stop, police say*, CNN (Jan. 27, 2022), <https://www.cnn.com/2022/01/26/us/philadelphia-police-officer-dragged-by-car/index.html>. In Houston, a man pulled over by a deputy shot the deputy to death. Paige Ellenberger, *Blue Alert: Suspect in Harris County deputy shooting arrested after hours-long standoff*, FOX4 (Aug. 17, 2023), <https://www.fox4news.com/news/blue-alert-suspects-wanted-for-shooting-harris-county-deputy>. In Milwaukee, a man emerged from a garbage can and shot a sheriff's deputy during a search for someone who fled a traffic stop. Angelica Sanchez, *Milwaukee County deputy shot following traffic stop; suspect dead*, FOX6 MILWAUKEE (Jan. 26, 2022), <https://www.fox6now.com/news/deputy-shot-milwaukee-foot-pursuit-suspect-sought>. In Georgia, a sheriff's deputy was shot in the

chest during a stop. Mark Price, *Body Camera video shows moment Georgia deputy is shot in chest on dark highway*, THE TELEGRAPH (Jan. 26, 2022, 11:42 AM), <https://www.macon.com/news/nation-world/national/article257731848.html>. And in California a deputy was shot and wounded by a passenger who had fled a traffic stop. Emma Tucker and Michelle Watson, *A sheriff's deputy is in the hospital following a shooting in Coachella, California*, CNN (Jan. 29, 2022), <https://www.cnn.com/2022/01/29/us/coachella-california-sheriff-deputy-shooting/index.html>. Sadly, these incidents are becoming more frequent and illustrate the real risks that officers face during public encounters. Indeed, a seemingly routine traffic stop can quickly escalate into a life-threatening situation. Thus, it is critical to allow officers the latitude to act reasonably when their safety or the safety of others is at stake – which the Fourth Amendment consistently provides.

The Fourth Amendment's reasonableness standard serves as the cornerstone of assessing law enforcement actions, and for good reason. It plays an indispensable role in preserving the safety of officers to carry out their duties without unnecessary impediments or undue risks. Meaning, it empowers officers to act when the circumstances genuinely warrant it. It is not a *carte blanche* for government intrusion but rather a measured approach that acknowledges, at times, restrictions on individual rights are necessary. Such times include situations where there is a genuine threat to public safety, there is a risk of destruction of evidence, or there is the potential for a suspect to

escape. And such is the case here. Thus, the Fourth Amendment reasonableness test is an essential instrument for striking a balance between ensuring individuals' constitutional rights while protecting officer and public safety.

I. THE FOURTH AMENDMENT REASONABLENESS STANDARD IS THE PROPER STANDARD THAT SHOULD HAVE BEEN APPLIED IN THIS CASE.

It is undisputed that the officers in the case *sub judice* conducted a proper traffic stop. It follows that during this traffic stop, everyone in the vehicle was seized within the meaning of the Fourth Amendment. *Brendlin v. California*, 551 U.S. 249, 255 (2007). Therefore, the restriction of livestreaming was an aspect of the seizure. This fact was overlooked by the Fourth Circuit and yet critical to the analysis.

As Judge Niemeyer points out in his concurrence, precedent allows for officers to take reasonable steps to protect themselves during traffic stops, even if such steps intrude on the liberty interests of those who have been stopped. Pet. App. 10a-17a, *Sharpe v. Winterville Police Dep't*, 59 F.4th 674 (4th Cir. 2023). This is specifically true in the context of traffic stops. The Supreme Court has emphasized that traffic stops are especially fraught with danger to police officers. *Michigan v. Long*, 463 U.S. 1032, 1047 (1983); *see also Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). This is because officers are often walking into unknown risks, i.e.,

having no idea the identity of the driver or passengers, or their mental and physical state. To mitigate such danger, officers rely on the Fourth Amendment's protection for the ability to maintain control of investigative stops. Here, it is the reasonable steps taken by Officers Ellis and Helms – even if they intruded upon Sharpe's speech – that the Fourth Circuit should have analyzed.

Instead, the Fourth Circuit determined an ancillary issue that livestreaming is protected speech under the First Amendment. Pet. App. 4a. Therefore, the Fourth Circuit held that maintaining a policy that prohibited livestreaming would be a violation of the First Amendment. *Id.* But these findings completely ignore the context of this case: a traffic stop.

Under the Fourth Amendment framework, *even if* Sharpe's First Amendment rights were involved, the officers are still able to take reasonable steps in protecting themselves and others. Thus, the Fourth Circuit's decision not only undercuts officers' power to impose restrictions during traffic stops, but it also raises a myriad of questions in the application of the decision:

- Does the Fourth Circuit's decision allow for an officer to restrict other constitutional rights, but not allow officers to restrict individual's First Amendment right?
- Does the Fourth Circuit's decision mean that if an officer places any restrictions on livestreaming with a detained individual,

then courts must conduct a time, place, and manner analysis instead of the traditional Fourth Amendment analysis?

- Are there any circumstances during a traffic stop that would make it reasonable for an officer to restrict livestreaming?

It is therefore imperative that this Court clarify that the proper analysis for an officer restricting a lawfully detained individual's rights is conducted under the Fourth Amendment. Officers deserve clear guidelines for the evaluation of their actions. Until this case, it has been the Fourth Amendment's reasonableness test that has determined whether the officers were justified in imposing limitations on *any* constitutional rights of a seized individual.

A. The Fourth Amendment Reasonableness Standard is Used to Determine Whether Restrictions of Other Constitutional Rights Were Necessary.

The Fourth Amendment reasonableness test recognizes that there are circumstances in which officers must take action to protect themselves and society. Indeed, the officer is authorized to "routinely exercise unquestioned command of the situation." *Maryland v. Wilson*, 519 U.S. 408, 414 (1997) (quoting *Michigan v. Summers*, 452 U.S. 692, 703 (1981)). To this end, there are instances when the preservation of public safety, officer well-being, and the integrity of criminal

investigations necessitates certain intrusions into various constitutional rights.

i. Courts Permit Officers to Intrude Upon Individual's Fourth Amendment Rights.

Officers are allowed to intrude upon an individual's Fourth Amendment right to be free from unreasonable searches and seizures. As mentioned above, when an officer conducts a traffic stop, everyone in the vehicle is seized within the meaning of the Fourth Amendment. *Brendlin*, 551 U.S. at 255 (2007) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)); *State v. Brown*, 2d Dist. Montgomery No. 20336, 2004-Ohio-4058, 2004 WL 1730132, ¶ 14 (“When a lawfully stopped vehicle contains passengers, the Fourth Amendment permits law enforcement officers to detain those passengers for the duration of the lawful detention of the driver.”). This Court has held that “as a matter of course,” an officer may order the driver and all passengers of a lawfully stopped vehicle “to get out of the car pending completion of the stop.” *Wilson*, 519 U.S. at 408.

Moreover, officers are permitted to search a vehicle's passenger compartment when the officer has reasonable suspicion that an individual is “‘dangerous’ and might access the vehicle to ‘gain immediate control of weapons.’” *Arizona v. Gant*, 556 U.S. 332, 346–47 (2009) (quoting *Long*, 463 U.S. at 1049). Similarly, officers are allowed to search *any* occupant of the stopped

vehicle whom the officer reasonably suspects of being armed and dangerous – simply because the vehicle’s occupants, unlike any nearby bystanders, are subject to “a lawful investigatory stop.” *Arizona v. Johnson*, 555 U.S. 323, 327 (2009); *see also United States v. Robinson*, 846 F.3d 694, 696 (4th Cir. 2017) (“[A]n officer who makes a lawful traffic stop and who has a reasonable suspicion that one of the automobile’s occupants is armed may frisk that individual for the officer’s protection and the safety of everyone on the scene.”).

These intrusions are justified by the Supreme Court because the government’s “legitimate and weighty” interest in “officer safety” outweighs the minimal additional intrusion that such an order imposes on the vehicle’s occupants. *Wilson*, 519 U.S. at 412; *see also Johnson*, 555 U.S. at 331–32.

ii. Courts Permit Officers to Intrude Upon Individual’s Second Amendment Rights.

Officers are permitted to temporarily restrict an individual’s Second Amendment right to keep and bear arms. Officers are allowed to seize a firearm during a lawful detention. *See Long*, 463 U.S. 1032 (1983). It is well-established that officers can conduct stop and frisks if they have a reasonable suspicion that the person may be *armed* and dangerous. (Emphasis added). *See Terry v. Ohio*, 392 U.S. 1 (1968). As mentioned above, it is also permissible to search an automobile in areas in which weapons may be placed or hidden if the

officer possesses a reasonable belief that the suspect is dangerous and the suspect may gain immediate control of weapons.” *Long*, 463 U.S. at 1049–50 (quoting *Terry*, 392 U.S. at 21).

Interfering with an individual’s Second Amendment right has been supported by courts because of the paramount concern for officer safety. *Long*, 463 U.S. at 1050. Courts note that the “key question is whether the officers were reasonable.” See *United States v. Correa*, 908 F.3d 208, 217 (7th Cir. 2018).

iii. Courts Permit Officer to Intrude Upon Individual’s First Amendment Rights.

Officers may restrict an individual’s right to free speech under the First Amendment. During a lawful seizure, an officer may obtain identification from the driver and a passenger. *Delaware v. Prouse*, 440 U.S. 648 (1979). The Supreme Court upheld the authority of an officer to ask for identification when they have a reasonable suspicion that an individual may be involved in criminal activity or is a potential threat, i.e., using drugs, hiding something, or pulling out a weapon. *Hiibel v. Sixth Judicial Dist. Court of Nevada*, 542 U.S. 177, 180 (2004).

Courts have also held that an individual’s First Amendment right to record police officers must not interfere with the officer’s legitimate law enforcement activities. See *Gericke v. Begin*, 752 F.3d 1, 8 (1st Cir. 2014) (finding that a police order that is specifically

directed at the First Amendment right to film police performing their duties in public may be constitutionally imposed if the officer can reasonably conclude that the filming is interfering, or is about to interfere, with his duties). Courts recognize that there may be circumstances where restrictions on recording are permissible if there is a compelling law enforcement interest, such as ensuring officer safety or protecting the privacy of individuals involved in a sensitive situation. *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).

* * *

As illustrated above, when there is a properly seized individual, officers may enact measures that temporarily impinge upon various constitutional rights, particularly when their safety or the safety of the public is at risk. These measures are subject to the Fourth Amendment reasonableness test – which has long served as the guiding principle for assessing the constitutionality of the restrictions. Whether officers are limiting an individual’s First Amendment right to free speech, their Second Amendment right to bear arms, or their Fourth Amendment right to be free from unreasonable searches and seizures, courts turn to the reasonableness standard to conduct their analysis. Here, the Fourth Circuit erroneously chose not to.

The Fourth Circuit’s departure from this well-established precedent is troubling for law enforcement officers. Failing to adhere to such precedent has created uncertainty and inconsistency in the analysis of officers’ actions during lawful encounters. But the

importance of maintaining a uniform approach cannot be understated. A consistent standard sets expectations on what measures an officer can take when handling tense and unpredictable encounters. And courts following the proper legal standard ensure that officers receive a fair application of constitutional protections.

B. There are Situations Where it May be Reasonable for Officers to Prohibit a Detained Individual from Livestreaming Their Encounter.

In recent years, the advancement of mobile technology has changed the way society generally interacts, especially with issues of public concern. Perhaps nowhere is this change more evident than with recording and documenting law enforcement encounters. See Leischen Stelter, *React without reaction: What cops should do when being recorded*, POLICE 1 (Feb. 27, 2018), <https://www.police1.com/patrol-issues/articles/react-without-reaction-what-cops-should-do-when-being-recorded-L0SpNNcNZ4mY2Dpd/>. Indeed, video recording and livestreaming has emerged as a tool for transparency and accountability, offering citizens the ability to share in real-time interactions between officers and the public. Livestreaming has “caught scenes of peaceful protest, police clashes and everything in between.” Richard Nieva, *‘I wanted everyone to see’: How livestreams change our view of protests*, CNET (June 11, 2020), <https://www.cnet.com/tech/mobile/i-wanted-everybody-to-see-how-livestreams-change-our-view-of-protests-facebook-twitter/>. With the capability for

anyone to livestream from their phones, these videos have become a means of power for individuals to hold officers accountable.

But with such power comes the potential for abuse. Livestreaming police interactions, without any restraints, can compromise officers' safety and expose them to unnecessary risks. These risks are not hypothetical, nor unrealistic. Moreover, officers should not have to wait until coordinated attacks or crowd forming are "trending" for the courts to implement measures to protect officer safety – especially when such protections are already sound in the Fourth Amendment. Thus, while livestreaming is a useful tool for transparency, there are legitimate concerns about how it might impact the dynamics of law enforcement encounters with the public.

Livestreaming compromises strategic and tactical information during police operations. Criminals and suspects can use the real-time information made available through livestreaming to gain insights into police positions – enabling them to create escapes, call for help or reinforcement, or plan an ambush. Yet, the risk of coordinated attacks is being called "speculative" and "hypothetical." Brief of National Press Photographers Association as *Amici Curiae* Supporting Respondent, *Sharpe v. Winterville Police Dept.*, 59 F.4th 674 (4th Cir. 2023). But how many of these attacks that invite participation from fellow accomplices, criminals, or gang members need to occur in order for this to be deemed a substantiated issue for officer safety?

Moreover, livestreaming has the potential to escalate confrontations. In addition to attracting crowds, it can create distractions and directly interfere with the officer's ability to exercise authority. It is crucial that an officer is able to assess the situation and determine how to maintain control. For example, in Moses Lake, Washington, the tactical response team was involved with a barricaded suspect and asked the news crew not to use Facebook Live to retain command. *See Joe Utter, GCSO: Live streaming tactical situations creates greater risk for officers, public*, SOURCE ONE (Aug. 17, 2018), https://www.yoursourceone.com/columbia_basin/gcso-live-streaming-tactical-situations-creates-greater-risk-for-officers-public/article_08a903a2-a25d-11e8-938b-eb24155f00a4.html/. The sheriff's office stated that in this situation,

[w]e want to bring the barricaded person safely out of the home, and everything negotiators and tactical team members are doing is geared toward that goal. If the barricaded person is watching the live stream, their attention is now diverted, they know where officers are setting up or when they are approaching, and that may cause the barricaded person to choose to become hostile rather than surrender.

The sheriff's officer further explained, "live streaming when police are trying to surround a house gives the person inside the house an opportunity to know where the police are and what they are doing or about to do . . . that type of information takes away the tactical advantage for police and places the lives of officers,

suspects and the public at greater risk.” *Id.* Thus, livestreaming directly affects an officer’s capacity to regulate the situation because they cannot control who views the stream, the audience that it reaches, the live responses, or the number of people that it attracts.

The facts of this case involve these real concerns. Sharpe’s livestream sparked live responses, including a viewer asking “Where y’all at?” The officers informed Sharpe that livestreaming is an “officer safety issue” because it “lets everybody y’all follow on Facebook [know] that we’re out here.” Yet, instead of turning to the Fourth Amendment and taking into consideration legitimate safety threats, the Fourth Circuit focused its entire analysis on the First Amendment. But even if this Court agrees with the Fourth Circuit’s findings, the underlying issue of this case remains unanswered. Given the particular circumstances, was prohibiting a seized individual from livestreaming – whether protected by the First Amendment – reasonable actions?

In sum, there are circumstances where it is entirely reasonable for police officers to restrict livestreaming. In unpredictable situations – where maintaining order is paramount – prohibiting livestreaming is a necessary course of action. In these cases, officers must be afforded the ability to protect themselves and the public – and it should be the Fourth Amendment that guides whether such actions are reasonable on a case-by-case basis. By granting certiorari, the Supreme Court can correct the Fourth Circuit’s errors and

provide officers with consistent standards for their conduct.

II. LIVESTREAMING POLICIES SHOULD ALLOW OFFICERS TO ACT REASONABLY IN THEIR GIVEN CIRCUMSTANCES.

The freedom of speech granted under the First Amendment is not absolute. *See Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002). Meaning, the right of free speech can be limited. Such limitations are found in policies to account for the genuine threat to officers' safety during unknown and unpredictable situations. There is "undoubtedly a strong government interest" in officer safety, particularly during traffic stops. *Riley v. California*, 573 U.S. 373, 387 (2014); *see also Wilson*, 519 U.S. at 414 (1997). But there must be a balanced approach to these policies. That balance here provides an individual with their purported First Amendment right to livestream while allowing officers to take necessary steps to maintain safety in their given circumstance.

This narrowed approach for such departmental policies is not a new concept. "Policies should explain the nature of the constitutional right at stake and provide officers with practical guidance on how they can effectively discharge their duties." Letter from Jonathan Smith to Mark Grimes and Mary Borja (May 14, 2012), *Re: Christopher Sharp v. Baltimore City Police Department, et al.*, Department of Justice, Civil Rights Division, JMS:TDM:RJO DJ 207-35-10, <https://www.justice.gov/sites/default/files/crt/legacy/>

2012/05/17/Sharp_ltr_5-14-12.pdf. For example, courts have made it clear that a policy restricting recording law enforcement encounters may be a violation of the First Amendment. Indeed, various circuit courts have held that there is a First Amendment right to film the police. See *Fields v. City of Philadelphia*, 862 F.3d 353, 355–56 (3d Cir. 2017); *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012); *Glik v. Cunniffe*, 655 F.3d 78, 82–83 (1st Cir. 2011); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995). Yet, these courts have agreed that there can be reasonable restrictions on that right. See, e.g., *Alvarez*, 679 F.3d at 607 (“Nothing we have said here immunizes behavior that obstructs or interferes with effective law enforcement or the protection of public safety.”). The DOJ recommends that policies should instruct officers that only in limited circumstances should they interfere with an individual recording. Letter from Jonathan Smith (May 14, 2012), JMS:TDM:RJO DJ 207-35-10, https://www.justice.gov/sites/default/files/crt/legacy/2012/05/17/Sharp_ltr_5-14-12.pdf. Various policies include limitations on when and how recordings can be made, such as:

- Crime Scenes and Active Investigations Policy: Police may restrict video recording near crime scenes or active investigations to maintain the integrity of evidence and protect the privacy of victims and witnesses.
- Unauthorized Drones or Surveillance Equipment Policy: Police may have policies to restrict the use of unauthorized drones or

surveillance equipment that could interfere with their operations or infringe on privacy.

- Interactions with Minors Policy: Police may restrict recording when dealing with minors, especially if it involves sensitive or traumatic situations, to protect the minor’s privacy and comply with child protection laws.
- Disruptive or Unsafe Behavior Policy: If video recording is causing a disturbance, becoming confrontational, or compromising the safety of officers or others, police may take measures to de-escalate the situation, which could include limiting recording.

These policies allow officers to place reasonable restrictions on recording encounters to protect the safety and privacy of individuals while also ensuring that officers can perform their duties.

Here, the Fourth Circuit found that Sharpe plausibly alleged the Winterville Police Department adopted a livestreaming policy that violates the First Amendment. Pet. App. 5a. They further found that “even though [the Winterville Police Department] has a strong interest in protecting its officers, Defendants have not done enough to show that this policy furthers or is tailored to that interest. Nor is the gap filled here by common sense or caselaw.” Pet. App. 10a-11a. However, the rights granted under the First Amendment can be – and have been – limited, and the potential for livestreaming to compromise safety or become disruptive is apparent.

In fact, what happens when an individual starts providing their audience with the location details or the police officer identification? What happens when live responses become threatening? Or what happens when livestreaming attracts a crowd that outnumbers the officers? A policy must protect its officers from these situations and allow them to take necessary steps to defend themselves and others. It would be appropriate to have a policy that explains the limited circumstances of interfering with an individual's right while also providing practical guidance for the officer on how to effectively perform their duties. In this case, that means implementing a policy that allows officers to restrict livestreaming when there is a sincere threat to safety.

Accordingly, this Court must clarify that policies can be constitutional even if it limits an individual's protected right. Policies for officer encounters are implemented to provide citizens their rights while providing practical steps for officers to perform their job. A balanced, narrow approach to these policies allows for officers to take necessary steps when there is a genuine threat of harm or there is the potential for the encounter to become disruptive.

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CONCLUSION

Whether it is the Second Amendment right to bear arms, the Fourth Amendment protection against unreasonable searches and seizures, or the First

Amendment freedom of speech, courts have used – and officers have come to rely upon – the Fourth Amendment’s reasonableness standard to provide officers the ability and protection to take control of an investigative stop. Yet, when Officers William Ellis and Myers Helms restricted Dijon Sharpe’s use of his cellphone for livestreaming during a lawful traffic stop, the Fourth Circuit ignored the Fourth Amendment. This oversight has potential consequences for every law enforcement interaction across the country. Indeed, it is the reasonableness standard that should be used to protect officer’s restrictions on livestreaming when there is a genuine threat of safety, or it becomes disruptive. And policies must be implemented that account for the real threats that officers face in unpredictable circumstances.

It is therefore imperative that this Court corrects the inconsistency in the Fourth Circuit’s decision: the Fourth Amendment is the proper standard for assessing and imposing reasonable restrictions during lawful stops, and lower courts must allow for narrowed policies that limit individual’s rights in volatile situations.

Respectfully submitted,

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