

No. 23-272

In the Supreme Court of the United States

WINTERVILLE POLICE DEPARTMENT, ET AL., PETITIONERS

v.

DIJON SHARPE

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

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

1. Should the constitutionality of a law enforcement officer's restriction of livestreaming by an occupant of a seized vehicle during a lawfully initiated traffic stop be analyzed under a Fourth Amendment framework as opposed to a First Amendment framework?

2. If the First Amendment analysis controls, is a policy which prohibits livestreaming by an occupant of a lawfully seized vehicle a reasonable time, place, and manner restriction?

PARTIES TO THE PROCEEDING

Petitioners are Winterville Police Department; William Blake Ellis, in his official capacity only; Myers Parker Helms, IV, in his individual and official capacity.

Respondent is Dijon Sharpe.

RELATED PROCEEDINGS

United States District Court (E.D. N.C.):

Sharpe v. Winterville Police Department,
4:19-cv-00157-D (July 9, 2021)

United States Court of Appeals (4th Cir.):

Sharpe v. Winterville Police Department,
21-01827 (Apr. 21, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 59 F.4th 674.¹ The opinion of the district court granting judgment on the pleadings on the *Monell* count, Count II in the Complaint (Pet. App. 27a-45a), is unreported but available at 2021 WL 2907883. The opinion of the district court dismissing the individual capacity count, Count I in the Complaint (Pet. App. 46a-68a), is reported at 480 F. Supp. 3d 689.

JURISDICTION

The judgment of the court of appeals was entered on February 7, 2023. Pet. App. 2a. The court of appeals denied timely petitions for rehearing en banc on April 21, 2023. Pet. App. 70a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

¹ Citations to the “Pet. App.” are citations to the petition appendix in *Winterville v. Sharpe*, No. 23-272 (U.S.). Citations to “Sharpe Pet. App.” are citations to the cross-petition appendix *Sharpe v. Winterville*, No. 23-276 (U.S.).

STATEMENT OF THE CASE

The petition presents two questions: first, whether the First Amendment protects the right of the occupant of a seized vehicle during a traffic stop to film that stop; and second, whether that right may be restricted only when the restriction is narrowly tailored to achieve a compelling government interest. Given the significance of those questions to the millions of police-citizen encounters that take place annually nationwide the Court should grant the petition.

1. The facts of this case are well presented in the petition for certiorari and in the cross-petition for certiorari. *See* Pet. 4-7; *see also* Petition for a Writ of Certiorari, *Sharpe v. Winterville Police Department*, No. 23-276, at 4-9 (“Sharpe Pet.”).

Respondent Dijon Sharpe was a passenger in a vehicle pulled over on October 9, 2018 by Winterville Police Officers William Blake Ellis and Myers Parker Helms, IV. Pet. App. 1a, 3a-4a, 19a. Respondent began filming the stop with his cellphone, using Facebook live, a Facebook feature that allows users to record and post videos to Facebook in real time.² Pet. App. 3a. Acting pursuant to Town of Winterville policy, the officers told respondent it was unlawful to livestream the stop. Pet. App. 1a-4a.

2. Respondent sued Officers Helms and Ellis in their official capacities and the Winterville Police Department under 42 U.S.C. § 1983, alleging that the Department had an unconstitutional policy of prohibiting citizens from recording and livestreaming law enforcement in the public performance of their duties. *See* Petition Appendix, *Sharpe v. Winterville Police Department*, No. 23-276, at 71a (“Sharpe Pet. App.”). Respondent sought one dollar in

² The full recording is available on Facebook. *See* <https://bit.ly/3pb5FGF>.

nominal damages and a declaratory judgment that citizens have a First Amendment right “to both (a) record police officers in the public performance of their duties and (b) broadcast such recording in real-time.” Sharpe Pet. App. 72a-73a.

The district court dismissed respondent’s claim, holding that the First Amendment does not protect the right of a passenger in a seized vehicle during a traffic stop to livestream the stop. Pet. App. 33a-43a.

The Fourth Circuit reversed. The panel held that livestreaming a traffic stop is speech protected by the First Amendment, and that respondent plausibly alleged a policy prohibiting the livestreaming of traffic stops. Pet. App. 4a, 9a. The panel remanded the case because there was no evidence that prohibiting respondent from livestreaming the stop was tailored to serve an interest in officer safety, the petitioners’ purported justification. Pet. App. 9a-13a.

In a concurring opinion, Judge Niemeyer agreed that remand was appropriate to determine the existence and constitutionality of the Town’s livestreaming policy. Pet. App. 18a. He nevertheless opined that because “the issues in this case arose in the context of a lawful Fourth Amendment seizure,” the prohibition on livestreaming was a part of the seizure, and therefore may have been a reasonable intrusion of liberty interests under a Fourth Amendment analysis. Pet. App. 18a-26a.

The Fourth Circuit denied timely petitions by both parties for rehearing en banc. Pet. App. 70a.

DISCUSSION

The court of appeals correctly held that the First Amendment protects the right of the occupant of a seized vehicle during a traffic stop to film that stop, including by livestreaming it. Pet. App. 8a-13a & n.9. Nonetheless as the petition (No. 23-272), the cross-petition (No. 23-276),

and the *amicus* briefs supporting each of the petitions all explain, this Court’s review is necessary to provide nationwide clarity to law enforcement and private citizens alike on this important issue. The questions presented are weighty and recurrent, and this case is an appropriate vehicle to address it. The petition for a writ of certiorari should be granted.

I. THE QUESTIONS PRESENTED ARE IMPORTANT AND RECURRING

1. Whether the First Amendment protects the right of the occupant of a seized vehicle during a traffic stop to film that stop is an important and recurring question. As petitioners observe, “the Fourth Circuit’s opinion” “will have far-reaching consequences for municipalities and police departments across the nation.” Pet. 8. And as petitioners note, “[t]he issue presented by this case will continue to arise until this Court definitively resolves it.” Pet. 15.

There are over 50,000 traffic stops every day in the United States and over 50 million every year. Sharpe Pet. 20. These stops generate millions of opportunities for individuals in lawfully seized vehicles to film. Sharpe Pet. 20. But the uncertainty regarding First Amendment protection exposes these civilians to potential retaliation and thus chills their speech, severely limiting the video record of these encounters.

2. Review here will clarify the contours of the general First Amendment right of citizens to film police carrying out their duties in public. As explained in the cross-petition (No. 23-276), that question—whether and to what extent individuals have a general First Amendment right to film police in the discharge of their duties in public—is a question of exceptional national significance, the parameters of which should be determined by this Court. *See* Sharpe Pet. 19-25.

a. Whether there is a First Amendment right to film police is a question of immense political, social, and practical importance. In recent years, filming police has “spurred action at all levels of government to address police misconduct and to protect civil rights.” *Fields v. City of Philadelphia*, 862 F.3d 353, 358, 360 (3d Cir. 2017). Civilian videos are an independent record of encounters that allow the public to fact-check police accounts, expose police misconduct, and exculpate wrongly accused officers. These videos thus protect civilians and police alike, while contributing to the national discourse on police accountability. As explained in the cross-petition, the Department of Justice has recognized the importance of the right to film police in numerous consent decrees and federal court filings. *See* Sharpe Pet. 24-25.

b. The questions presented are also legally significant. The First Amendment safeguards the generation and dissemination of information. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011). And “a major purpose of’ the First Amendment ‘[i]s to protect the free discussion of governmental affairs.” *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 755 (2011) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam)). As the Court has long held, “debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). The Fourth Circuit panel thus correctly recognized that livestreaming a police traffic stop is protected speech because it creates a record of “information that contributes to discussion about governmental affairs.” Pet. App. 9a; *see Roth v. United States*, 354 U.S. 476, 484 (1957).

II. THIS CASE IS AN APPROPRIATE VEHICLE TO ADDRESS THE QUESTIONS PRESENTED

This case is a suitable vehicle to address the questions presented. This case ended on a motion to dismiss, and

petitioners do not dispute that the complaint plausibly alleges that the Town of Winterville has a policy that bars passengers in stopped vehicles from livestreaming traffic stops. *See* Pet. 4-5. Nor do petitioners dispute that the complaint plausibly alleged that the officers acted pursuant to that policy in this case. *See* Pet. 4-5. Thus, there are no barriers to this Court’s determination whether the alleged policy warrants First Amendment scrutiny and, if so, whether the appropriate level of scrutiny is strict rather than intermediate.

This Court’s review is critical to eliminating “nationwide uncertainty” for law enforcement officers and citizens alike. Pet. 13, 15; Sharpe Pet. 20.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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