No. 25-____

In the Supreme Court of the United States

DONNA ELIZABETH SUMMERS, PETITIONER,

v.

STATE OF MONTANA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a driver who is lawfully stopped for a traffic infraction remains seized for Fourth Amendment purposes when the officer concludes the purpose of the traffic stop, but prolongs the stop by immediately questioning the driver on unrelated matters.

RELATED PROCEEDINGS

Supreme Court of the State of Montana

State of Montana v. *Donna Elizabeth Summers,* Case No. DA 23-0365 (June 17, 2025)

Supreme Court of the State of Montana

State of Montana v. *Donna Elizabeth Summers,* Case No. DA 23-0365 (May 27, 2025)

Montana Twenty-First Judicial District Court, Ravalli County

State of Montana v. *Donna Elizabeth Summers*, Case No. DC 22-103 (Sept. 12, 2022)

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INTRODUCTION

This case presents a Fourth Amendment problem that arises every day on our highways and streets and has long vexed courts and citizens: when officers conclude the purpose of a routine traffic stop, but immediately proceed to question the driver on unrelated matters, is the driver still seized? The police here pulled over Petitioner Donna Summers for speeding, asked her to exit her vehicle, "put [her] down for a warning," and returned her driver's license and proof of insurance. After discussing the speed limit, the officer then asked: "Since I got you here, do you mind if I ask you a couple of questions?" Summers responded "go ahead" and, under further questioning, agreed to a vehicle search that yielded drugs.

This is a commonplace scenario. As courts and commentators have noted, police often attempt to transition a traffic-stop seizure into a "consensual police-citizen encounter." Pet.App.21a. One frequent tactic is for the officer to return the driver's credentials and issue a warning or citation, then proceed seamlessly to question the driver on unrelated topics and obtain consent to search the vehicle. *See* 4 W.R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment*, § 9.3(h) (6th ed. 2024). Although the purpose of the traffic stop thus concludes before the officer transitions to unrelated questioning, "it may not be clear to the [driver] when the stop has ended" or whether "they are free to go." Pet.App.21a-22a. As the court below noted, "the prior seizure clouds a person's understanding of when they are no longer subject to the officer's authority." Pet.App.21a. If the driver actually remains seized because "a reasonable person"

would not have "fe[lt] free to decline the officers' requests or otherwise terminate the encounter," *Brendlin* v. *California*, 551 U.S. 249, 255 (2007), any consent given during the seizure will be "tainted" if it is "the product of the illegal detention and not the result of an independent act of free will," *Florida* v. *Royer*, 460 U.S. 491, 501, 507-508 (1983) (plurality opinion).

Thirty years ago, this Court reviewed the constitutionality of a traffic stop that transitioned to a consensual drug investigation in *Ohio* v. *Robinette*, 519 U.S. 33 (1996). But because the case came to the Court on the assumption that the driver was "lawfully seized" when he consented to the search, *id.* at 35, its opinion focused on the "voluntariness" of that consent apart from the detention itself, *id.* at 39-40. While rejecting a "bright-line" rule requiring "officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary," *Robinette* left a missing joist in the framework for analyzing traffic stops that evolve into consent requests. *Ibid.* As a leading commentator has explained, the decision "says *nothing whatsoever*" about "whether the prior, lawfully commenced seizure did not end when it should have." 4 LaFave, § 9.3(h).

That gap has not been filled by this Court's subsequent cases. The Court has said, on the one hand, that an officer may make "ordinary inquiries incident to [the traffic] stop," *Illinois* v. *Caballes*, 543 U.S. 405, 408 (2005), as well as "unrelated" inquiries that "do not measurably extend the duration of the stop," *Arizona* v. *Johnson*, 555 U.S. 323, 333 (2009). On the other hand, it has cautioned that a traffic stop "can become unlawful if it is prolonged beyond the time

reasonably required to complete that mission," *Caballes*, 543 U.S. at 407, and invalidated "investigation into other crimes" that prolongs the stop, *Rodriguez* v. *United States*, 575 U.S. 348, 356 (2015). But the Court has yet to explain how to assess Fourth Amendment detentions when, as in this case and many others, an officer transitions immediately from a traffic stop into unrelated questioning and a consent search.

That gap has led to persistent disagreement among lower courts—disagreement reflected in the divided, 4-3 Montana Supreme Court decision here. The majority upheld the officer's questioning and request for consent to search even though they immediately followed the completion of the purpose of the traffic stop. While recognizing that the driver had "just been immediately seized based on a traffic infraction," the majority held that Summers "gave voluntary consent to continue speaking" because the officer "asked no questions unrelated to the purpose of the stop until after he returned her papers and told her she would get a warning." Pet.App.19a-21a. In dissent, three justices criticized the majority for "insufficiently address[ing]" the stop's "coercive atmosphere," including the officer's "immediate[] transition[] into further questioning with the phrase: 'Since I got you here, do you mind if I ask you a couple questions?'" Pet.App.26a (Bidegaray, J.).

This division over whether Summers remained seized during that further questioning mirrors the faultline running through the courts. Several Circuits and state courts have held, like the majority here, that motorists are no longer seized when an officer immediately continues questioning after concluding the purpose of a traffic stop, treating the questioning as a

second, consensual encounter. These courts generally reason that even if an officer continues engaging a motorist immediately after resolving the traffic violation, "a reasonable person would have felt free to decline the officer['s] requests" because the officer "returned [his] driver's license." *United States* v. *Lattimore*, 87 F.3d 647, 653 (4th Cir. 1996) (en banc) (quoting *Florida* v. *Bostick*, 501 U.S. 429, 438 (1991)). At this point, the courts surmise, the officer has "indicat[ed] that all business with [the driver] was completed and that he was free to leave," making the questioning a "consensual" encounter. *Ibid.* These courts extend the principle "that mere police questioning does not constitute a seizure," *Bostick*, 501 U.S. at 434, to justify the *continued* seizure of a motorist after completion of a traffic stop's purpose.

Other courts, including the Sixth and Third Circuits and multiple states, follow the dissenters' approach here, recognizing that an officer's "continuation of questioning" necessarily "convey[s] ongoing investigative authority" and indicates the driver "was not truly free to leave." Pet.App.26a (Bidegaray, J., dissenting). "Once the purposes of the traffic stop [are] completed," these courts hold, "a motorist cannot be further detained" unless the officer has developed "reasonable, articulable suspicion [of] criminal activity." *United States* v. *Richardson*, 385 F.3d 625, 628-629 (6th Cir. 2004) (citation omitted). So when an officer proceeds to ask "a few more questions" after completing tasks tied to the traffic stop, he effects a Fourth Amendment seizure even if the driver "agreed." *Ibid.*

This case provides a good opportunity to provide a badly needed answer to the detention question left

open in *Robinette*. The disagreement between the majority and dissent cleanly present the issue, and one Justice separately concurred to underscore that the result "easily can go the other way" in cases like this. Pet.App.24a (Shea, J.). The facts were captured on video and are undisputed. Nor can there be any doubt about the question's importance; even the majority recognized that "[c]onsent searches are no longer an occasional event … but are now a wholesale activity accompanying a great many traffic stops, submitted to by most drivers, guilty or innocent, … a process which beyond question is highly invasive of the dignitary interests of individuals." Pet.App.21a (quoting 4 LaFave, § 9.3(e), at 547-548). The Court should use this case to clarify that a driver remains detained when an officer's transition from a traffic stop to unrelated questioning is "so seamless that a reasonable motorist would not have believed that the initial, valid seizure had concluded." *Ferris* v. *State*, 735 A.2d 491, 503 (Md. 1999).

OPINIONS BELOW

The opinion of the Supreme Court of Montana (Pet.App.1a-27a), is reported at 569 P.3d 542. The court's decision denying rehearing (Pet.App.28a-30a) is unreported.

JURISDICTION

The Montana Supreme Court entered judgment on May 27, 2025, and denied rehearing on June 17, 2025. On September 4, 2025, Justice Kagan extended the time to file this petition from September 15, 2025, to November 14, 2025. *See* 25A260. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

A. Factual background

The underlying criminal prosecution arose when a police officer searched Petitioner Donna Summers's car after concluding a traffic stop and found methamphetamine. The State prosecuted Summers for felony drug possession. Summers moved to suppress the evidence under the Fourth Amendment and Montana's parallel constitutional protections. After the trial court denied the motion, Summers entered a conditional no-contest plea and appealed to the Montana Supreme Court, which affirmed in a divided opinion. The salient facts are these:

Detective Nick Monaco stopped Summers for speeding. Pet.App.2a-3a; State.Br.5, 15. Summers was driving with a passenger, Benjamin Ryan, and her dogs. *Ibid.* Summers slowed her car down about 25 seconds after Detective Monaco turned on his lights, and pulled over 25 seconds later. Pet.App.3a. When Monaco asked Summers why it took her so long to stop, she explained that she had not been paying attention because she was dancing, singing, and talking to Ryan. *Ibid.*

As Summers looked for her registration and insurance, Detective Monaco remarked: "You seem really nervous[,] is everything okay?" *Ibid.* Summers said yes and explained that she was doing work at her house and had gone to get pizza. *Ibid.*; State.Br.9. Monaco asked Ryan for his identification. Pet.App.3a. Ryan did not have it with him, but gave his name and birthdate. *Ibid.* Monaco returned to his patrol car and called dispatch for information on Summers and Ryan. *Ibid.* Dispatch told Monaco that Summers had a valid driver's license and no warrants, but had an alert for a history of possession of drugs and drug paraphernalia. *Ibid.*

Detective Monaco asked Summers to get out of her car because he could not hear anything. *Ibid.* After Monaco remarked that Summers's insurance card was expired, she looked for a current card while Monaco confirmed with dispatch that her insurance was valid. *Ibid.* Monaco returned Summers's documents, admonished her, then began questioning her:

> MONACO: Here's everything that you gave me, okay, your license, registration, and insurance, okay. So I'm gonna put you down for a warning for the speed.
>
> SUMMERS: Okay.
>
> MONACO: Okay, just be mindful [it's] 60 top-end on Eastside Highway, okay? Um, do you have any—
>
> SUMMERS: Yeah, 'cause I had my cruise on, so, I was like sixty-five, or—
>
> MONACO: Okay, you were dip, you would go dip from 62 up to about 71, so—

> SUMMERS: Well, I was serious I had my cruise on so maybe there is something messed up with that.
>
> MONACO: Okay. So, um, since I got you here, do you mind if I ask you a couple of questions?
>
> SUMMERS: Go ahead.
>
> MONACO: Okay, is there anything illegal in the vehicle.
>
> SUMMERS: No.
>
> MONACO: Okay, nothing at all?
>
> SUMMERS: No, no, I just—like I said.
>
> MONACO: You see—just seem really nervous, very, very—
>
> SUMMERS: I've not been pulled over by the police for like, twenty years.

Pet.App.17a; State.Br.11-12. During this exchange, Summers was standing on the side of the roadway between her car and Monaco. *Ibid.*

In response to further questioning, Summers reiterated that they were returning from the hardware store and getting pizza, and that she had known Ryan for a couple weeks and had hired him to install a water heater. Pet.App.4a; State.Br.9-13. At that point, Monaco told Summers: "Okay, um, so just based on, on your behavior, and our contact here, and kind of the circumstances, it, it gives me some particularized suspicion that there might be some illegal drug activity going on here." State.Br.13. Monaco asked Summers if she was a drug user; she replied that she stopped a few years ago, but had last used them five months ago, when her husband died. *Ibid.*; Pet.App.4a.

Monaco again asked if there was any contraband or drugs in her car, and Summers again said no. State.Br.15. Detective Monaco then asked: "Would it be alright if I just took a quick search of your car?" *Ibid.* Summers responded: "[G]o ahead." *Ibid.*

Detective Monaco asked Ryan to get out of the car. *Ibid.* Summers noted she was on parole, so Monaco called the probation and parole office and obtained permission to search Summers's vehicle. Pet.App.4a He told Ryan that he was free to leave, but Ryan stayed. *Ibid*. Upon searching the car, Monaco found a methamphetamine pipe and a small bag of methamphetamine. *Ibid.* Summers admitted the pipe was hers. *Ibid.*

B. The prosecution, suppression ruling, and no-contest plea

The State charged Summers with felony possession of dangerous drugs and misdemeanor possession of drug paraphernalia. Pet.App.4a. Summers moved to suppress, arguing that Detective Monaco impermissibly prolonged the traffic stop into a drug investigation without particularized suspicion. *Ibid.* She argued that once Monaco gave her the speeding warning, he lacked authority to ask further questions. Pet.App.16a. The State countered that Monaco had particularized suspicion to expand the stop into a drug investigation. Pet.App.4a.

At the suppression hearing, the court admitted Detective Monaco's dashcam video. Pet.App.4a-5a. Monaco testified that Summers took longer than usual to pull over; that he saw erratic movements through the back window, though he acknowledged they were consistent with Summers's explanation that she had been

dancing; that Summers appeared more nervous than the "innocent motoring public"; that she had a history of illegal drug use; and that she was with an unfamiliar person. *Ibid.*

The district court denied Summers's suppression motion, concluding that Detective Monaco had particularized suspicion to prolong the traffic stop after he gave Summers a warning. Pet.App.5a, 8a; Op.Br.3. The court also found that Summers consented to answering Monaco's questions, and to his vehicle search. Pet.App.8a, 18a-19a.

Summers pleaded no contest to the charges, but reserved the right to appeal. Pet.App.5a.

C. The Montana Supreme Court's divided opinion

On appeal, Summers did not challenge the basis for the traffic stop (speeding), but maintained that Detective Monaco lacked particularized suspicion to prolong the stop to conduct a drug investigation. Pet.App.8a. She argued that the State waived any argument that she was not seized by, or had voluntarily consented to, Monaco's drug investigation, and that the record showed she remained seized when Monaco asked to question her. Pet.App.16a, 18a-19a n.1; Op.Br.22-25. Once Monaco "returned her driver's license and issued her a warning," Summers reasoned, Monaco "completed the purpose of the traffic stop," and thus seized her by "continu[ing] to question her after issuing her the warning." Pet.App.16a. Stressing the way Monaco framed his request—"since I got you here"—Summers argued that "the totality of the cir-

cumstances would not lead a reasonable person to believe they were free to go." Pet.App.16a, 18a-19a; Op.Br.26.

In response, the State abandoned its theory that Monaco had particularized suspicion to prolong the seizure. Pet.App.9a; State.Br.21-26. Instead, it argued that the traffic stop was proper, that Monaco did not unlawfully prolong the stop, and that Summers voluntarily consented both to answer more questions and to the vehicle search. *Ibid.*

In a 4-3 decision, the Montana Supreme Court upheld the suppression ruling. Pet.App.22a-23a. The majority reasoned that the trial court erred in finding particularized suspicion to expand the traffic stop into a drug investigation, but properly "determined that Summers consented to the additional questioning and the subsequent vehicle search." Pet.App.12a, 22a-23a.

Noting that the State did "not advance a particularized suspicion argument on appeal," the court concluded that "[a]t the time Detective Monaco completed the speeding warning, the information he had obtained from and about Summers did not give him objective indicators that she was 'immediately involved in, or about to be involved in, criminal activity.'" Pet.App.9a, 12a (citation omitted). The majority held, however, that "there was no prolonged expansion of the stop after it concluded" because "the detective asked Summers a single question—if she would 'mind' answering some questions—and she agreed." Pet.App.18a.

The majority acknowledged that "[c]ases where the traffic stop transitions into a drug investigation based on consent pose the risk that the prior seizure clouds

a person's understanding of when they are no longer subject to the officer's authority." Pet.App.21a. Because a "person is under police authority during a traffic stop, and it may not be clear to the person when the stop has ended," the majority suggested "good police practice" would be to "explicitly tell[] a motorist that the stop has concluded and they are free to go *before* requesting consent to additional questioning or a search." Pet.App.21a-22a. Yet, the majority treated Summers's consent as dispositive, emphasizing that "after Detective Monaco issued the warning and returned Summers's papers, she agreed to the detective's single request for further questioning," and thus "validly expand[ed] the stop." Pet.App.22a.[1]

In a concurrence, Justice Shea—a necessary vote for the majority—observed that "this case illustrates better than most that when the circumstances of a consent search [] are tenuous and subject to interpretation, things easily can go the other way." Pet.App.24a. He noted that "three of this Court's seven Justices—all of whom were experienced district judges from across the State … considered this same record in its entirety" and "concluded that Summers's consent was *not* voluntary." *Ibid.* For Justice Shea, the "clear error" standard of review was dispositive: he would have also affirmed had the trial court "found Summers's consent was *not* voluntary." *Ibid.*

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[1] The court rejected Summers's argument that the State waived any consent theory, reasoning that while Summers challenged Monaco's actions "once the citation [sic] was issued," Summers acknowledged "that she agreed to the additional questioning and consented to the vehicle search." Pet.App.18a-19a n.1.

Justice Bidegaray dissented, joined by two other Justices. They would have held "Summers's purported consent was not voluntary under the totality of the circumstances and reverse[d] the denial of her motion to suppress." Pet.App.27a. Noting that Detective Monaco had framed his request with the phrase "Since I got you here," Justice Bidegaray explained that this "phrase, coupled with the officer's immediate continuation of questioning, conveyed ongoing investigative authority rather than the conclusion of the stop." Pet.App.26a. Monaco "did not explicitly inform Summers that she was free to leave or clearly delineate that the traffic stop had concluded," and his "authoritative positioning and the roadside environment significantly contributed to the coercive atmosphere" and "inherently coercive context." *Ibid.* In the dissenters' view, the majority "insufficiently address[ed]" these factors and gave undue weight to Summers's "ambiguous statement," which was "precisely [how] a reasonable person under similar circumstances might [respond], believing compliance was obligatory rather than optional." *Ibid.*

Summers petitioned for rehearing, arguing that the majority failed to exercise de novo review over the trial court's detention and consent determinations. Pet.App.28a-30a; Rhg.Pet.5-11. The State insisted "[t]his Court applied a *de novo* review of whether the district [court] correctly applied the pertinent law to the facts." Rhg.Opp.2. The majority denied the petition, reasoning that it had "reviewed the record independently" and addressed Summers's argument "emphasiz[ng] that her consent was not voluntary because she was illegally detained." Pet.App.29a. The dissenters voted to grant the petition. Pet.App.30a.

REASONS FOR GRANTING THE PETITION

When an officer completes the purpose of a traffic stop and launches into immediate questioning, it implicates two related Fourth Amendment inquiries: the validity of the detention and the voluntariness of the driver's answers and any consent. "A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation." *Johnson*, 555 U.S. at 333. But a lawful stop "may 'last no longer than is necessary to effectuate th[at] purpose.'" *Rodriguez*, 575 U.S. at 354-355 (citation omitted). Because "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed," an officer may not prolong a stop and undertake further investigation "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Ibid*. At the same time, this Court has noted "that mere police questioning does not constitute a seizure" in situations where a person was *not* being detained before the questioning. *Bostick*, 501 U.S. at 434.

The interplay between these principles, and the line separating a traffic-stop seizure from consensual questioning, have long divided lower courts. Although this Court confronted a traffic stop that evolved into unrelated questioning in *Robinette*, the posture of the case prevented the Court from giving clear guidance on that issue.

In *Robinette,* a police officer pulled over a driver and, after giving him a warning and returning his license, asked: "One question before you get gone: [A]re you carrying any illegal contraband in your car?" 519 U.S. at 35-36. After the driver said "no," the officer asked to search his car, and the driver consented,

leading to the discovery of drugs. *Ibid.* The Ohio Supreme Court held that the driver's consent was the product of "an illegal seizure" because the officer continued to detain him without "suspicion of some separate illegal activity" after concluding the traffic stop. *State* v. *Robinette*, 653 N.E.2d 695, 698-699 (Ohio 1995) (*Robinette I*). That court then adopted a rule requiring that drivers "be clearly informed by the detaining officer when they are free to go after a valid detention, before an officer attempts to engage in a consensual interrogation." *Ibid*.

The question presented to, and resolved by, this Court in *Robinette* focused on this "bright-line" voluntariness rule, 519 U.S. at 36, and assumed the driver's seizure was valid: "whether the Fourth Amendment requires that a *lawfully seized* defendant must be advised that he is 'free to go' before his consent to search will be recognized as voluntary," *id.* at 35 (emphasis added). The Court rejected this "*per se*" voluntariness rule, *id.* at 39, pausing on the detention issue only to note that the Ohio Supreme Court had impermissibly relied on the "motivation behind" the "officer's continued detention" of the driver, *id.* at 37-38 (citing *Whren* v. *United States*, 517 U.S. 806 (1996)). Aside from this narrow "predicate" issue, *ibid.,* the Court did not review the court's holding that the officer seized the motorist by questioning him about unrelated matters following the traffic stop.

The doctrinal gap left by *Robinette*'s silence on whether motorists remain "lawfully seized" during such questioning has led to confusion among the lower courts—including, now, Montana. As one court explained, *Robinette* "is significant not only for what was stated but also for what was not," because "the Court

did not address the primary issue raised by the Ohio Supreme Court in *Robinette I*: the blurring of the transition from detention to consensual encounter." *State* v. *Thompson*, 166 P.3d 1015, 1035 (Kan. 2007); *accord* 4 LaFave, § 9.3(h) (noting that the Court "avoid[ed] entirely the important issue the state court *had* taken on: whether a traffic offender somehow becomes 'unseized' upon return of his license notwithstanding a continuation (albeit on a different subject) of police discussion with the stopped driver"). As a consequence, the Courts of Appeals and state courts are deeply divided over whether officers' immediate transition from a completed traffic stop to unrelated questioning results in an illegal detention or may instead be reframed as a consensual encounter.

On one side sit the Sixth and Third Circuits and many states that, like the dissent below, hold that when an officer concludes the purpose of the traffic stop, but "immediately transition[s] into further questioning" before seeking consent to search, he effects an illegal seizure. Pet.App.26a (Bidegaray, J., dissenting). These courts reject the notion that "following the conclusion of a lawful traffic stop, officers may detain a vehicle without reasonable suspicion of any illegal activity … , so long as they ultimately request and obtain permission to search the car." *People* v. *Brownlee*, 713 N.E.2d 556, 563 (Ill. 1999).

The decision below aligns Montana with the other side of the split, which includes the Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits, along with several states. Like the majority here, these courts hold that once an officer returns the driver's license and documents, "the encounter [ordinarily] bec[omes] nothing more than a consensual encounter,"

because the driver "ha[s] everything he need[s] to lawfully proceed on his journey," notwithstanding the officer's continued questioning. *United States* v. *White*, 81 F.3d 775, 778-779 (8th Cir. 1996).

The Court should use this case to resolve this split and hold that a driver remains seized if an officer immediately proceeds from a traffic stop into unrelated questioning. The majority and dissenting opinions here reflect the decisions on both sides of the detention faultline created by *Robinette*. The facts are undisputed, and whether Summers remained detained when she "consented to the additional questioning" (Pet.App.23a) is dispositive of both her Fourth Amendment challenge and the State's prosecution. Those facts implicate the risk highlighted by the majority about seizures that "cloud[] a person's understanding of when they are no longer subject to the officer's authority." Pet.App.21a. As the dissent stressed, Detective Monaco's "immediate[] transition[] into further questioning" would have suggested to any reasonable person that "Summers was not truly free to leave." Pet.App.26a (Bidegaray, J.).

Whether motorists remain seized in these circumstances is undoubtedly important—this is, after all, the most common interaction between citizens and law enforcement. Indeed, police departments nationwide train officers to convert traffic stops into consent searches for evidence of criminal activity. While the specific methods and statements may vary, the constitutional concern is the same: "A person is under police authority during a traffic stop, and it may not be clear to the person when the stop has ended." Pet.App.21a. Faced with this uncertainty, and in a situation "fraught with danger," *Barnes* v. *Felix*, 605 U.S. 73, 84

(2025) (Kavanaugh, J., concurring), motorists must choose between agreeing to a search or potentially escalating the encounter by either asking for clarification (suggesting they are still seized) or driving away. The liberty interests and safety concerns at stake demand further clarity.

I. Since *Robinette*, an entrenched split has developed over whether seamless traffic-stop questioning constitutes a detention.

A. Montana's decision conflicts with many courts holding that a driver remains seized when police proceed immediately to unrelated questioning after concluding a traffic stop.

1. The Sixth and Third Circuits hold that questioning a driver immediately after the purpose of the initial stop has concluded—especially without indicating the stop has concluded—does not convert a traffic stop into a consensual encounter. Instead, when an officer proceeds immediately to unrelated questioning upon concluding a traffic stop, it effects a detention requiring reasonable suspicion.

a. The Sixth Circuit holds that "[o]nce the purposes of the traffic stop [are] completed, a motorist cannot be further detained unless something that occurred during the stop caused the officer to have a reasonable, articulable suspicion that criminal activity was afoot." *Richardson*, 385 F.3d at 629-630. In assessing the ongoing detention, that court has recognized "words alone may be enough to make a reasonable person feel that he would not be free to leave." *Ibid.*

More recently, that court explained that "post-*Rodriguez*" even "a 'de minimis' intrusion or delay is [not]

permissible." *United States* v. *Whitley*, 34 F.4th 522, 529 (6th Cir. 2022). While ultimately upholding the search, *Whitley* stressed that the officer's "further questions of whether Whitley had anything illegal in the vehicle and where he was coming from [we]re permissible *only* because [the officer] asked these questions during the time that Whitley was retrieving his license and registration"—i.e., before the purpose of the initial traffic stop had concluded. 34 F.4th at 530 (emphasis added).

b. The Third Circuit agrees. As it explains, post-*Rodriguez*, "[t]here is no *de minimis* exception" to the rule that an officer may not prolong a stop after "the mission of the traffic stop" is completed, including by asking unrelated questions. *United States* v. *Clark*, 902 F.3d 404, 409-410 (3d Cir. 2018). In *Clark*, the officer's questions came after a "computerized check [had] confirmed [the driver's] authority to drive the vehicle," so that "the traffic stop was effectively completed." *Id.* at 411. At that point, the officer's additional "questions therefore impermissibly extended the stop." *Ibid.* That kind of seamless questioning is distinct from questioning where an officer first "told [the defendant] that he was free to leave." *United States* v. *Munoz-Villalba*, 251 F. App'x 90, 92 (3d Cir. 2007).

2. Several states also hold that when an officer transitions seamlessly from a completed traffic stop to questioning about unrelated matters, the driver is detained and the questioning constitutes a non-consensual encounter.

a. In *Ferris*, for example, the Maryland Supreme Court began with the blackletter rule "that the detention of a person 'must be temporary and last no longer

than is necessary to effectuate the purpose of the stop.'" 735 A.2d at 498-499 (quoting *Royer*, 460 U.S. at 500). "[C]ontinued detention, absent independent justification, constitutes an illegal seizure under the Fourth Amendment." *Ibid.* In weighing whether a driver remains seized, the court stressed the need, "[f]irst and foremost," to consider the "prior existence of the initial traffic seizure," because the "pre-existing seizure enhance[s] the coercive nature of the situation." *Id.* at 502 (citing George M. Dery III, "*When Will This Traffic Stop End?*": *The United States Supreme Court's Dodge of Every Detained Motorist's Central Concern*—Ohio v. Robinette, 25 Fla. St. U.L.Rev. 519, 555 (1998)).

Ferris reasoned that a traffic-stop encounter is "markedly different from that of a person passing by or approached by law enforcement officers on the street," because the individual has already been subordinated to officer authority. *Ibid.* The prior traffic stop is thus particularly "significant" when the officer "never told [the driver] he was free to leave," and his supposed "'request' … seamlessly followed the pre-existing lawful detention." *Id.* at 502-503. In such circumstances, "a reasonable person would not [feel] free to terminate the encounter." *Ibid.* Whether the officer returned the "driver's license and registration" is "not dispositive," the court explained, because the "moment at which a traffic stop concludes is often a difficult legal question, not readily discernible by a layperson." *Ibid.* Accordingly, it "is not sound to categorically impute to all drivers the constructive knowledge as to the precise moment at which, objectively, an initially lawful traffic stop terminates, *i.e.,* the time at which the driver may depart." *Ibid.*

The court held that the officer's "immediate transition into the inquiry" seized the driver there because it "was so seamless that a reasonable motorist would not have believed that the initial, valid seizure had concluded." *Ibid.* "Given the fact that [the driver] quite clearly had been seized when his car was pulled over, the return of [his] credentials hardly manifests a change in status when it was *immediately* followed by interrogation concerning other criminal activity." *Id.* at 505 (quoting 3 W.R. LaFave, *Search and Seizure, A Treatise on the Fourth Amendment*, § 9.3(a) at 112 (2d ed.1987)).

b. The Ohio Supreme Court embraced similar reasoning in *State* v. *Robinette*, 685 N.E.2d 762 (Ohio 1997) (*Robinette III*), the remand decision following this Court's *Robinette* decision. Employing a totality-of-the-circumstances approach, that court focused on the officer's questioning "*without any break in the conversation*" between the officer issuing a verbal warning, asking about contraband, and "immediately ask[ing] Robinette if he could search the car." *Robinette III*, 685 N.E.2d at 770-771. It deemed "troubling" the "timing of [the officer's] immediate transition from giving Robinette the warning for speeding into questioning regarding contraband and the request to search." *Ibid.* Such a transition "can be so seamless," the court explained, "that the untrained eye may not notice that it has occurred," an "undetectability [that] … may be used by police officers to coerce citizens into answering questions that they need not answer, or to allow a search of a vehicle that they are not legally obligated to allow." *Ibid.*

c. Missouri agrees. In *State* v. *Barks*, 128 S.W.3d 513 (Mo. 2004), the State tried to justify continued

questioning via testimony that the defendant "could have driven away after [the patrolman] issued the traffic citation and began asking questions." *Id.* at 517. But as the Missouri Supreme Court explained, "that option was not apparent from the circumstances," in part because "[t]he conversation the patrolman maintained with [the defendant] was constant," such that a "reasonable person" would "have understood the situation to be one of custody." *Ibid.*

d. Similarly, in *State* v. *Hansen*, 63 P.3d 650 (Utah 2002), the Utah Supreme Court held that a traffic stop does not evolve into a consensual encounter, even after the officer returns the driver's documents, if "the factual differences between the initial traffic stop and the additional questioning [a]re minimal." *Id.* at 662. The court explained that if the officer "did not tell [the driver] that he was free to leave," or clearly address the traffic violation "before he start[s] questioning [him] about contraband," a "reasonable person would not be able to discern that a seizure had de-escalated to a consensual encounter." *Ibid.*

e. Several intermediate state courts are in accord. For example, the South Carolina Court of Appeal has recognized that after "the purpose of [a] stop ha[d] been fulfilled," if the officer "asked for consent, he detained anew, triggering the Fourth Amendment." *State* v. *Pichardo*, 623 S.E.2d 840, 848, 851 (S.C. Ct. App. 2005). Likewise, in Georgia "[i]t is well settled that 'if the officer *continues to detain* the subject after the conclusion of the traffic stop and interrogates him or seeks consent to search without reasonable suspicion of criminal activity, the officer has exceeded the scope of a permissible investigation of the initial traffic stop.'" *Bennett* v. *State*, 648 S.E.2d 126, 128 (Ga.

Ct. App. 2007). Thus, a "request to search immediately follow[ing] the return of [the motorist's] license" is impermissible if there is no basis for concluding that "the encounter had become consensual." *Hill* v. *State*, 859 S.E.2d 891, 896-897 (Ga. Ct. App. 2021).

f. Other states endorse these core principles in related contexts. *E.g.*, *State* v. *Dominguez-Martinez*, 895 P.2d 306, 309 (Or. 1995) (en banc) (consent under Oregon statute not freely obtained where a "trooper immediately began to question defendant[s] about narcotics trafficking and illegal weapons … at the same time that the trooper was telling defendant[s] that they were free to go"); *People* v. *H.J.*, 931 P.2d 1177, 1180-1181 (Colo. 1997) (en banc) (agreeing that because potentially coercive "factors are generally present during a traffic stop," it "strains credulity to imagine that any citizen, directly on the heels of having been pulled over to the side of the road by armed and uniformed police officers in marked patrol cars, would ever feel 'free to leave' or 'at liberty to ignore the police presence and go about his business'").

B. Many jurisdictions allow immediate, follow-on questioning even where the questions prolong the initial traffic stop.

1. Montana joins other jurisdictions, including the Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits, that allow police to continue asking unrelated questions after the purpose of a traffic stop has concluded. Under their approach, even when officers concluding a traffic stop proceed immediately to unrelated questioning, they transition to a consensual encounter controlled by *Bostick*'s mere questioning rule.

a. In *Lattimore*, the Fourth Circuit held that the defendant was not detained when police asked unrelated questions after a traffic stop's purpose was completed—even while sitting inside the police car. 87 F.3d at 653. The officer had instructed Lattimore to enter the patrol car while the officer prepared traffic tickets. *Id.* at 649. After "issuing the citations and returning Lattimore's driver's license, and as Lattimore prepared to exit the patrol vehicle" the trooper then "asked him whether there were any narcotics or contraband in his automobile" and "requested and received Lattimore's oral consent to search the vehicle." *Ibid.*

Lattimore argued that the officer's questioning "exceeded the lawful scope of the traffic stop and thereby converted the encounter into an illegal detention that tainted the subsequent search." *Id.* at 652-653. The Fourth Circuit disagreed. Because "the officer had issued the citations and returned Lattimore's driver's license," the court reasoned, Lattimore should have known he "was free to leave" and could have "terminate[d] the encounter." *Ibid.* (quoting *Bostick*, 501 U.S. at 438).

b. The Seventh Circuit likewise permits additional questioning immediately after the completion of a lawful traffic stop. In *United States* v. *Brown*, 355 F. App'x 36 (7th Cir. 2009), the defendant "contend[ed] that the purpose of the stop was completed when [the trooper] issued the written warning" for his traffic infraction and returned his documents. *Id.* at 38-39. As a result, the defendant argued, he "was illegally detained when [the trooper] proceeded to comment on the unusual nature of his trip[,] … asked whether

there were any illegal narcotics in the car, and requested permission to conduct a dog sniff," all while he remained outside his vehicle. *Ibid.* Invoking its decision in *United States* v. *Childs*, 277 F.3d 947 (7th Cir. 2002) (en banc), the Seventh Circuit held that the additional questioning was permissible because it was "minimally (if at all) inconvenient and only briefly extended the length of the stop." *Ibid.*

c. The Eighth Circuit followed the same approach in *White*, 81 F.3d 775. Stressing that "not all personal contacts between law enforcement officers and citizens constitute 'seizures,'" *id.* at 778-779, that court held that an officer's additional questioning following a stop is not a seizure "provided the officer does not indicate that compliance with his request is required," *ibid.* (citing *Bostick*, 501 U.S. at 434-435). *White* reasoned that "after White's license and registration were returned and the warning was issued, the encounter became nothing more than a consensual encounter between a private citizen and a law enforcement officer." *Ibid.*

d. The Tenth Circuit also holds that immediate questioning without interruption is permissible "if the officer returns the license and registration and asks questions without further constraining the driver by an overbearing show of authority." *United States* v. *Bradford*, 423 F.3d 1149, 1158-1159 (10th Cir. 2005). The Tenth Circuit applied that rule even though the officer questioned the defendant immediately after returning her documents, while she remained inside the patrol car. *Ibid.* The court was "troubled" by those circumstances, noting that "Bradford, seated in the rear of a trooper's vehicle, after having been stopped for a perfectly legitimate reason, would not necessarily

view herself as free to exit the vehicle if [the officer] continued with a stream of questions." *Ibid.* Nonetheless, it upheld the questioning, deeming the encounter was "consensual" after the trooper "handed back the documents" because there was not an *additional* "coercive show of power." *Ibid.*; *see also United States* v. *Villegas*, 554 F.3d 894, 898-899 (10th Cir. 2009).

e. The Fifth Circuit agrees. That Court ordinarily holds that where police have "insufficient reason for suspicion to continue once" the purpose of the stop is over, "a constitutional violation occur[s] the *moment* the detention continue[s] past that point." *United States* v. *Jenson*, 462 F.3d 399, 406 n.7 (5th Cir. 2006). But when a motorist's documents are returned, that court holds that the stop necessarily "evolve[s] into a consensual encounter," despite further questioning. *United States* v. *Williams*, 784 F. App'x 876, 881 (5th Cir. 2019). So in *Williams*, the Court concluded the motorist "was no longer seized *at the moment* [the officer] returned his driver's license and asked if he would keep talking." *Ibid.* (emphasis added).

f. The Eleventh Circuit is in accord. In *United States* v. *Ramirez*, 476 F.3d 1231 (11th Cir. 2007), the officer admitted "the traffic stop had ended" after he handed the defendant "back his paperwork." *Id.* at 1234-1235. As the defendant remained standing along the roadside, however, the officer asked "if he was carrying anything illegal in the car." *Ibid.* That further question was "almost simultaneous" with the return of the defendant's paperwork. *Ibid.* Yet the Eleventh Circuit deemed the additional question a *second*, "consensual encounter," that did not "implicate Fourth Amendment scrutiny." *Id.* at 1237 (citing *Bostick*, 501 U.S. at 434).

2. Some state courts agree with that approach.

a. For example, Oklahoma follows the Tenth Circuit's rule that immediate, unrelated questioning may qualify as "a consensual encounter" even when the defendant remains "sitting in [the trooper's] patrol unit." *State* v. *Strawn*, 419 P.3d 249, 255-256 (Okla. Crim. App. 2018). *Strawn* upheld the officer's transition to asking "whether [the defendant] had anything illegal in his truck, [and] whether he would give permission to search the truck." *Ibid.* It was enough that the officer posed the questions "matter-of-factly" and was not "accusatory or overbearing." *Ibid.*

b. Nebraska likewise holds that additional, immediate questioning may qualify as a consensual encounter. In *State* v. *Ready*, 565 N.W.2d 728 (Neb. 1997), it deemed further questioning while the defendant was in the trooper's vehicle a consensual encounter by focusing on the lack of additional "evidence that [the officer] overtly or subtly coerced [the defendant] or offered her any inducements to submit to the search." *Id*. at 733.

c. The intermediate courts of Alabama, North Carolina, and Arizona also follow that approach. In *State* v. *Hale*, 990 So. 2d 450 (Ala. Crim. App. 2008), the court upheld further questioning on the ground that once the officer returned a motorist's license, he "had been released from custody," permitting "a mere request for consent to search." *Id.* at 455. In *State* v. *Outlaw*, 876 S.E.2d 915 (table), at *4 (N.C. Ct. App. 2022), the court reasoned that further questioning was permitted because "interaction between police and a motorist following the conclusion of a traffic stop can constitute a consensual encounter," and "[t]he officer does not lose the right to communicate with the

motorist." Finally, in *State* v. *Rodriguez*, 2019 WL 1785298, at *3 (Ariz. Ct. App. Apr. 23, 2019) (mem. decision), the court reasoned that "an officer's brief questioning after issuing a traffic violation warning can be a permissible consensual encounter if the driver agrees to answer questions."

C. The split is pervasive and confusion is endemic, requiring this Court's intervention.

1. The confusion over whether police may transition "seamlessly" to unrelated questioning "follow[ing] the pre-existing lawful detention" for a traffic stop has persisted since *Robinette*, and needs clarification. *See Ferris*, 735 A.2d at 503. Because *Robinette* stopped short of analyzing "the transition from detention to consensual encounter," *Thompson*, 166 P.3d at 1035, the lower courts have, for decades, taken fundamentally different approaches to that issue. If anything, the tide of confusion has been steadily *rising*, not receding, in the decades since *Robinette*. The divided opinion below illustrates that courts have become increasingly unsure about which line of precedent—the "no prolonging" rule from cases like *Rodriguez*, or the mere questioning rule from cases like *Bostick*—governs that issue.

2. The point is underscored by intra-jurisdictional disagreements among the lower courts, with several state courts veering from the approach of their coordinate federal Circuit.

Although the Fourth Circuit is one of the most permissive jurisdictions for further police questioning, Maryland and South Carolina recognize that such questions result in impermissible detentions. And

while Utah and Colorado acknowledge that a reasonable driver may not discern the transition from a valid stop to questioning that seamlessly follows, the Tenth Circuit allows immediate questioning so long as the officer does not escalate his show of authority. For millions of Americans, whether the police may ask them unrelated questions immediately following a traffic stop turns on whether their prosecution occurs in state or federal court.

II. This case presents the Court with a clean opportunity to resolve whether seamless traffic-stop questioning constitutes a detention.

This case is a good vehicle for resolving the persistent confusion over when an officer's immediate, unrelated questioning, upon a traffic stop's fruition, effects a seizure. The facts are undisputed and captured in dashcam footage. Whether Detective Monaco transitioned to a voluntary encounter when he asked to question Summers was the subject of express disagreement, and thorough analysis, in the opinions below. That disagreement mirrors the split across lower courts. The majority reasoned that "there was no prolonged expansion of the stop after it concluded" because "the detective asked Summers a single question—if she would 'mind' answering some questions—and she agreed." Pet.App.18a. The dissent, in contrast, saw Monaco's conduct as "suggesting Summers was not truly free to leave," because he "immediately transitioned into further questioning" with language "convey[ing] ongoing investigative authority rather than the conclusion of the stop." Pet.App.26a. The majority and dissent both applied *de novo* review on the controlling issue (Pet.App.28a-30a), parting ways with a concurring Justice who, framing the question

as purely one of voluntariness, believed the case "easily can go the other way" on clear error review (Pet.App.23a-25a).

This issue also grounds the constitutionality of Detective Monaco's vehicle search and Summers's prosecution. Because Montana abandoned its "particularized suspicion argument on appeal," the validity of Summers's consent to search rested on the premise that she "authorized the additional questioning by giving her consent" and thus "expand[ed] the stop." Pet.App.9a, 22a. If that holding is reversed, Summers's suppression motion must be granted and the evidence found in the vehicle search excluded.

III. Immediate, unrelated questioning following the completion of a traffic stop's purpose is a pervasive police tactic affecting the constitutional rights of millions of Americans.

Whether motorists remain seized when an officer completes the "tasks tied to the traffic infraction," *Rodriguez*, 575 U.S. at 354, but nevertheless continues questioning the motorist on unrelated topics, is an important and recurring issue. It implicates not just "the dignitary interests" of drivers, Pet.App.21a (quoting 4 LaFave, § 9.3(e), at 547-548), but also the safety interests of officers and motorists.

"[F]or the average citizen, traffic stops are by far the most common source of encounters with the police." Robert H. Whorf, *Consent Searches Following Routine Traffic Stops: The Troubled Jurisprudence of A Doomed Drug Interdiction Technique*, 28 Ohio N.U. L.Rev. 1, 20 (2001). As this case illustrates, officers frequently engage the motorist in "unrelated inquiries" after completing traffic stops. *Cf. Rodriguez*, 575 U.S.

at 355. One common tactic is to issue a warning or citation, then "ask[] if the vehicle contains anything illegal; and then, right on the heels of the inevitable denial … ask[] for permission to search the vehicle." Whorf, *Consent Searches*, at 3. While the specifics vary, such questioning is "part of the 'routine' of 'routine traffic stops,'" with many "cases contain[ing] acknowledgments by police about the frequency of th[e] tactic." 4 LaFave, § 9.3(e); *see also id.*, at nn.331, 332 (collecting cases). Even the majority below recognized that "traffic stop[s] transition[ing] into a drug investigation" are commonplace. Pet.App.21a-22a.

The frequency of this tactic is no coincidence—police are often trained to use it. As this Court has explained, consent searches "on the highway" "are part of the standard investigatory techniques of law enforcement agencies." *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 231-232 (1973). Because "the routine traffic stop turned consent search is a drug interdiction technique heavily favored by law enforcement," Whorf, *Consent Searches*, at 20, many police departments "instruct[] their officers to routinely ask for the consent of individuals stopped for traffic violations to search their vehicles … even when the officer has little or no suspicion" of "any criminal activity whatsoever." *State* v. *Retherford*, 639 N.E.2d 498, 503 (Ohio Ct. App. 1994).

This training has borne investigative fruit. Consent search requests in traffic stops "result in affirmative responses in the overwhelming majority of cases," 4 LaFave, § 9.3(e), with some studies reporting that "between 85 and 90% of drivers consent to searches of their vehicle," Roseanna Sommers & Vanessa K.

Bohns, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, 128 Yale L.J. 1962, 2007 (2019) (citation omitted). "[G]uilty or innocent, most motorists stopped and asked by police for consent to search their vehicles will expressly give permission to search their vehicles, resulting in thousands upon thousands of motor vehicle searches of innocent travelers each year." 4 LaFave, § 9.3(e) (citation omitted).

This pervasive police tactic carries a substantial risk of coercing drivers and burdening their Fourth Amendment liberty interests. In a traffic stop scenario, "a sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation." *Brendlin*, 551 U.S. at 257. And unless "a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter," the motorist remains seized without justification. *Id.* at 255. Yet, the approach of Montana and kindred courts permits officers to blur the line between the traffic stop, where the driver is unquestionably detained, and questioning that the state maintains is consensual. Despite recognizing that "it may not be clear to the person when the stop has ended" (Pet.App.21a), the majority permitted the officer to engage in a seamless and "immediate continuation of questioning" (Pet.App.26a (Bidegaray, J., dissenting)) that inevitably left Summers unsure if she was free to "ignore [Detective Monaco's] request" and drive off, *cf. Richardson*, 385 F.3d at 630.

The upshot is that Montana's rule leaves stopped motorists with no good options when the officer wants to "ask [them] a couple of questions" after the purpose

of a traffic stop is complete. Pet.App.17a. Most motorists, believing they are still detained, will give consent to search, *see* Sommers *et al.*, *Voluntariness*, at 2007, even though consent given during such an illegal detention *should* be "tainted by the illegality and [thus] ineffective to justify the search." *Royer*, 460 U.S. at 507-508. If, on the other hand, the motorist presses the officer to confirm the stop has ended, she may reasonably fear that her response may escalate or prolong the encounter. Indeed, the fact that a reasonable motorist feels unable to leave absent *confirmation* that the stop is over itself underscores that she remains seized. Finally, if the motorist misreads the officer's ambiguous cues and tries to drive off when the officer expects her to stay, she risks *greater* escalation.

The risk of misjudgments by motorists are palpable and severe. Traffic stops entail an inherent "risk of a violent encounter." *Johnson*, 555 U.S. at 331. Just last term, this Court decided a case where an officer shot and killed a motorist who tried to terminate a traffic stop. *Barnes*, 605 U.S. at 77. As Justice Kavanaugh noted, the risks inherent in a traffic stop "multiply" whenever a "driver suddenly pulls away in the midst of a stop," and "[t]here are no easy or risk-free answers" on how an officer responds. *Id.* at 86-89 (concurring). Whether the officer "let[s] the driver go," "get[s] back in his police car and give[s] chase," "shoot[s] out the tires of the fleeing car," or "attempt[s] to stop the fleeing driver at the outset by jumping on or reaching into the car," the response may pose a "danger to the community" or result in the death of "the officer, the driver," or "others on the road." *Ibid.* (Kavanaugh, J., concurring).

Both the Federal Reporter and news reports are filled with tragic stories similar to *Barnes*, where a motorist's attempt to end a traffic stop resulted in his or her death. *See, e.g.*, *McVae* v. *Perez*, 120 F.4th 487, 490 (5th Cir. 2024) (suspect killed after fleeing traffic stop); N.Y. State Att'y Gen., *Report on the Investigation into the Death of Daevon Roberts* 1 (August 27, 2025) (man killed after trying to drive away during traffic stop after Officer "grabbed and held onto the car's frame").[2] By suggesting that motorists should unilaterally gauge whether they are free to ignore ongoing police questioning and drive away, Montana's rule risks exacerbating that dangerous trend.

IV. The Court should reverse the Montana Supreme Court.

The Court should use this case to hold that a motorist remains seized when an officer immediately questions her on unrelated topics after concluding the purpose of a traffic stop.

Because "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed," any "traffic stop 'prolonged beyond' that point is 'unlawful.'" *Rodriguez*, 575 U.S. at 354, 357 (quoting *Caballes*, 543 U.S. at 407). Here, the majority recognized that "[t]he purpose of the traffic stop concluded when Detective Monaco issued her a warning and returned her driver's license, insurance, and registration." Pet.App.7a. Yet Detective Monaco continued to engage her, extending the stop by seamlessly asking:

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[2] https://ag.ny.gov/sites/default/files/reports/osi-daevon-roberts-report.pdf

"since I *got* you here, do you mind if I ask you a couple of questions?" Pet.App.17a (emphasis added).

Monaco's "immediate continuation of questioning, conveyed ongoing investigative authority rather than the conclusion of the stop" and "suggest[ed] Summers was not truly free to leave." Pet.App.26a (Bidegaray, J., dissenting). This "immediate transition" "was so seamless" that Summers could not reasonably "have believed that the initial, valid seizure had concluded," *Ferris*, 735 A.2d at 503, making *Bostick*'s "mere questioning" doctrine wholly inapplicable.

The premise grounding the majority's holding is that Summers could have said no and driven away. But "few motorists would feel free … to leave the scene of a traffic stop without being told they might do so," *Berkemer* v. *McCarty*, 468 U.S. 420, 436 (1984), particularly when it is unclear the stop has ended. "Under the law of most States, it is a crime" to "drive away without permission," *ibid.*, and a mistake would lead to escalation and the dangers noted above. Ironically, the majority acknowledged that "good police practice" is to "explicitly tell[] a motorist that the stop has concluded and they are free to go." Pet.App.22a.

While the Court has "eschewed bright-line rules" for disengagement, *Robinette*, 519 U.S. at 39, it has never suggested that officers may leave a motorist with "no easy or risk-free answers" by proceeding immediately to questioning without clearly indicating that the stop has ended. *Cf. Barnes,* 605 U.S. at 87 (Kavanaugh, J., concurring). It should hold that an officer's transition from a "detention [to] a consensual exchange" cannot be "so seamless" as to be undiscernible to a reasonable motorist's "untrained eye." *Robinette III*, 685 N.E.2d at 770. At a minimum, this Court

should make clear that statements like Monaco's "since I got you," objectively suggest that a motorist's detention is ongoing. "[W]ords alone may be enough to make a reasonable person feel that he would not be free to leave," *Richardson*, 385 F.3d at 629, and Monaco's words implied Summers "was *not* free to go," *cf. Robinette III*, 685 N.E.2d at 770-771 (focusing on officer's "One question before you get gone …" transition).

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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NOVEMBER 2025

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

DA 23-0365

IN THE SUPREME COURT OF THE STATE OF MONTANA

2025 MT 109

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DONNA ELIZABETH SUMMERS,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District, In and For the County of Ravalli, Cause No. DC-22-103 Honorable Howard F. Recht, Presiding Judge

COUNSEL OF RECORD:

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For Appellee:

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William E. Fulbright, Ravalli County Attorney, David Lakin, Deputy County Attorney, Hamilton, Montana

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Submitted on Briefs:
March 19, 2025

Decided: May 27, 2025

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Donna Elizabeth Summers appeals the Twenty-First Judicial District Court's denial of her motion to suppress evidence obtained during a traffic stop. We restate the issues on appeal:

1. *Whether the investigating officer had particularized suspicion to transition a valid traffic stop into a drug investigation.*
2. *Whether the officer's continued questioning was constitutional because Summers consented.*

We conclude that the officer lacked particularized suspicion for a drug investigation but, under this Court's precedent and the totality of circumstances, did not violate Summers's constitutional rights when she agreed to answer his questions and consented to a search of her vehicle. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Initial Investigatory Stop

¶2 Ravalli County Detective Nick Monaco stopped Summers for speeding in May 2022. Summers had one

passenger in the vehicle—Benjamin Ryan. Summers slowed her vehicle down about twenty-five seconds after Monaco activated his lights and pulled over about another twenty-five seconds later. Detective Monaco asked Summers why it took her so long to stop. Summers responded that she was not paying attention at first because she was singing and talking to Ryan, but then she was looking for a place to pull over. As Summers looked for her registration and insurance, Detective Monaco asked: "You seem really nervous[,] is everything okay?" Summers said yes and explained that she was doing a lot of work at her house. Detective Monaco requested Ryan's identification. Ryan responded that he did not have it with him but provided his full name and birthdate.

¶3 Detective Monaco returned to his vehicle and called for information on Summers and Ryan. Dispatch informed him that Summers had a valid driver's license and no warrants but did have an alert for history of possession of dangerous drugs and possession of drug paraphernalia. Detective Monaco asked Summers to get out of the car, explaining that he could not hear anything. As Summers looked for an unexpired insurance card, Detective Monaco confirmed through dispatch that her insurance policy was valid.

End of Traffic Stop and Further Questioning

¶4 Detective Monaco returned Summers's driver's license, registration, and insurance card, said that he would "put [her] down for a warning," and reminded Summers of the speed limit. Summers responded that she had her cruise control on, and Detective Monaco and Summers engaged in a brief exchange about her speed and cruise control. Detective Monaco then

stated: "Since I got you here, do you mind if I ask you a couple of questions?" Summers responded, "go ahead."

¶5 Detective Monaco continued to ask questions, in response to which Summers told him that she had known Ryan for just a couple of weeks and had hired him to install a water heater and that Summers had stopped using drugs a few years ago but had last used drugs about five months ago when her husband died. Detective Monaco asked if he could search the vehicle. Summers responded, "go ahead," and volunteered that she was on parole. Detective Monaco called probation and parole and obtained permission to search Summers's vehicle. He told Ryan that he was free to leave, but Ryan stayed. During the vehicle search, Detective Monaco found a methamphetamine pipe and a small bag of methamphetamine. Summers admitted that the pipe was hers.

¶6 The State charged Summers with felony possession of dangerous drugs and misdemeanor possession of drug paraphernalia. Summers filed a motion to suppress, arguing that Detective Monaco unlawfully prolonged the traffic stop into a drug investigation without the requisite particularized suspicion. The State responded that Detective Monaco had particularized suspicion to expand the stop into a drug investigation. Detective Monaco testified at the hearing that Summers took longer than typical to pull over; he observed erratic movements through the back window (he acknowledged that the movements could be consistent with her later explanation that she was dancing); Summers was more nervous than the "innocent motoring public" and engaged in jittery movements, rapid speech, and nonstop chatter; she had a history of illegal drug use; and she was with an

unfamiliar person. The court also admitted Detective Monaco's dashcam video.

¶7 The District Court denied Summers's motion to suppress evidence. Summers pleaded no contest to the charges but reserved the right to appeal the suppression ruling.

STANDARD OF REVIEW

¶8 When a district court denies a motion to suppress evidence, this Court reviews its findings of fact for clear error and determines as a matter of law whether the court applied the findings correctly. *State v. Panasuk*, 2024 MT 113, ¶ 10, 416 Mont. 430, 549 P.3d 432. "[F]indings of fact are clearly erroneous if not supported by substantial evidence, the court misapprehended the effect of the evidence, or upon our independent review of the record we are firmly convinced that the court was otherwise mistaken." *Panasuk*, ¶ 10 (quoting *State v. Noli*, 2023 MT 84, ¶24, 412 Mont. 170, 529 P.3d 813). "Whether a lower court correctly interpreted and applied the pertinent law to the facts at issue is a question of law subject to de novo review." *State v. Rymal*, 2024 MT 277, ¶ 9, 419 Mont. 144, 559 P.3d 839.

DISCUSSION

¶9 The Fourth Amendment to the United States Constitution and Article II, Section 11, of the Montana Constitution prohibit unreasonable searches and seizures. Subject to certain exceptions, the search or seizure must be "conducted in accordance with a judicial warrant issued on probable cause." *Panasuk*, ¶ 12 (citing *Noli*, ¶ 26). Evidence obtained from an illegal search or seizure "must be suppressed." *State*

v. McElroy, 2024 MT 133, ¶ 15, 417 Mont. 68, 551 P.3d 282.

¶10 A *Terry* stop is a recognized exception that allows police to briefly stop and detain someone (without a warrant or probable cause for an arrest) to "investigate a reasonable particularized suspicion that a person is immediately involved in, or about to be involved in, criminal activity." *Rymal*, ¶ 12.

¶11 "[O]n a valid traffic stop, the tolerable duration of police inquiry is limited to the time necessary to address the traffic violation and any related safety concerns[,] and authority for the seizure ends when tasks related to the traffic infraction reasonably should have been completed." *Panasuk*, ¶ 14; *see also* § 46-5-403, MCA. "Incidental police questioning of the driver or occupants to investigate other criminal activity of which there is no particularized suspicion cannot prolong the stop to any measurable degree beyond what is reasonably necessary to quickly accomplish the justified purpose of the stop." *Panasuk*, ¶ 14.

> "[F]urther questioning and the concomitant detention of a driver are permissible in only one of two circumstances: (1) during the course of the permissible scope of the traffic stop, the officer acquires an objectively reasonable and articulable suspicion that the driver is engaged in illegal activity, or (2) the driver voluntarily consents to the officer's additional questioning.

Panasuk, ¶ 15 (citing *Noli*, ¶¶ 33-35; *State v. Laster*, 2021 MT 269, ¶40, 406 Mont. 60, 497 P.3d 224). If

there is particularized suspicion, a Fourth Amendment seizure occurred but it is constitutional. *Panasuk*, ¶ 15. If the driver voluntarily consents, there is no seizure, and "the Fourth Amendment's strictures are not implicated." *Panasuk*, ¶ 15.

¶12 Because Detective Monaco stopped Summers for speeding, his inquiry was limited to the traffic-related infraction. The purpose of the traffic stop concluded when Detective Monaco issued her a warning and returned her driver's license, insurance, and registration. At this point, Summers had produced a valid driver's license and proof that she could operate the car, thus constitutionally requiring that she be allowed to proceed on her way without being subject to further delay by additional police questioning. *Panasuk*, ¶ 15; *accord Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 1614 (2015) ("Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed."). To continue asking questions, Detective Monaco needed either particularized suspicion of illegal drug activity or voluntary consent. *Panasuk*, ¶ 15.

¶13 *1. Whether Detective Monaco had particularized suspicion to transition a valid traffic stop into a drug investigation.*

¶14 "Police must act with reasonable diligence to quickly confirm or dispel the particularized suspicion . . . that justified the initial stop, and any subsequent expansion in duration or scope must be based on new or additional particularized suspicion developed *within the lawful scope or duration of the initial stop* and before it should have reasonably been completed." *Panasuk*, ¶ 14. Once the officer has accomplished the

justified purpose of the stop, "[p]articularized suspicion is required to expand a traffic stop into a drug investigation." *McElroy*, ¶ 14. Particularized suspicion is based on the totality of circumstances and requires "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Panasuk*, ¶¶ 12-13 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). If "the only basis for suspecting a specific person of wrongdoing is inferences that could be drawn from the conduct of virtually any law-abiding person, the resulting suspicion cannot, by definition, be particularized." *State v. Carrywater*, 2022 MT 131, ¶ 15, 409 Mont. 194, 512 P.3d 1180.

¶15 The District Court found particularized suspicion for Detective Monaco to prolong the traffic stop based on Summers's nervous behavior, failure to immediately stop, travel with an unknown person, and history of drug usage. The District Court also found that Summers consented to answering Detective Monaco's questions. The court concluded that the totality of the circumstances showed that Detective Monaco both relied upon objective observations to broaden the scope of his investigation and received consent from Summers—thus justifying the stop's expansion.

¶16 Summers concedes that Detective Monaco lawfully stopped her for speeding. She argues that Detective Monaco lacked particularized suspicion to expand the traffic stop and that the District Court improperly used facts discovered *after* he ended the traffic stop to conclude otherwise. Summers argues that the only facts the District Court could consider in determining whether Detective Monaco had

particularized suspicion to expand the traffic stop into a drug investigation were her failure to immediately stop; her nerves as evidenced by being jittery and slurring her speech; and her unspecified drug use history. She maintains that the District Court clearly erred when it found that Summers was nervous and failed to immediately stop. Even taking these facts as true, Summers argues that they do not amount to particularized suspicion. The State does not advance a particularized suspicion argument on appeal.

¶17 In determining whether an officer had particularized suspicion to expand a traffic stop into a drug investigation, a court's inquiry is limited to the facts that the officer had at that moment in time. *Panasuk*, ¶ 15 ("Everything that comes *after* what is necessary to resolve the initial traffic violation comes too late to support continued detention of the offender."). The officer may not use information gained after they prolonged the stop to supplement the particularized suspicion. *Noli*, ¶ 62 ("if constitutional justification for the search or seizure was lacking, no evidence discovered as a result of a search of defendant can be used to justify the [antecedent seizure or search]") (citations and quotations omitted). We therefore consider what Detective Monaco knew upon ending the traffic stop and issuing the warning: the Defendant's nervousness, her failure to pull over quickly, and her history of drug use.

¶18 We have discussed in several recent cases the behaviors of a motorist that are consistent with those of "virtually any law-abiding person" and therefore insufficient alone to prolong a stop. *Noli*, ¶ 32. For example, "without reasonable officer-articulated inferences of some *particular* criminal activity, . . .

nervous or defensive behavior when monitored or confronted by police, or the desire to avoid or evade oncoming police are insufficient to support a reasonable *particularized* suspicion of *any particular* criminal activity." *Panasuk*, ¶ 17 (citation omitted). "Nervous behavior during a traffic stop is not uncommon and does not establish particularized suspicion to extend a traffic stop into a drug investigation[.]" *State v. Harning*, 2022 MT 61, ¶ 24, 408 Mont. 140, 507 P.3d 145. Similarly, "knowledge of a person's prior criminal involvement" alone does not give rise to particularized suspicion. *Panasuk*, ¶ 22. A law holding otherwise would unreasonably allow any person with any sort of record to be subject to a *Terry* stop without the need for separate justification. *Panasuk*, ¶ 22. The record here does not show that, when the traffic stop concluded, Detective Monaco had any specific details about Summers's prior drug possession history, including the dates, convictions, if any, or type of drugs or paraphernalia.

¶19 In *Carrywater*, we held that the driver trading seats with the passenger, a lower protruding jaw (which the officer alleged could indicate methamphetamine use), failure to stop immediately upon activation of the car's lights, and the defendant's nervousness did not give the officer sufficient particularized suspicion of illegal drug activity; rather, they were "inferences based on inarticulable hunches attaching nefariousness to conduct entirely consistent with a law-abiding person." *Carrywater*, ¶¶ 5, 26. In *Wilson*, a messy vehicle, a nervous driver with an unlit cigarette, a borrowed vehicle, and unusual travel plans did not amount to particularized suspicion. *State v. Wilson*, 2018 MT 268, ¶ 34, 393 Mont. 238, 430 P.3d 77.

¶20 In other cases, we have noted additional factors that gave the officer particularized suspicion to expand the traffic stop into a drug investigation. For example, along with strewn clothing, luggage, and garbage, the heavy odor of vehicle deodorizer and corroborating information from an informant that the car carried a large amount of marijuana created a particularized suspicion. *State v. Roy*, 2013 MT 51, ¶ 17, 369 Mont. 173, 296 P.3d 1169. In *State v. Estes*, the officer had particularized suspicion of narcotics activity based on the two cell phones and cash in the console (despite the driver being alone); the driver's travel locations (Oregon and North Dakota, source destination areas for drug trafficking); the driver's nerves and shaking; food wrappers, garbage, energy drinks, and a sleeping bag; and an overwhelming odor from multiple air fresheners. *State v. Estes,* 2017 MT 226, ¶¶ 3, 18, 20, 388 Mont. 491, 403 P.3d 1249.

¶21 "[W]e have twice distinguished *Estes* as having at least two objective indicia of illegal drug activity" (a single driver with two cell phones and cash and an "uncommon number" of overwhelming air fresheners) "*in addition to* . . . otherwise innocuous and perfectly legal post-stop behavior" commonly asserted as "'indicators' of illegal drug trafficking activity (such as messy [or] 'hard travel,' extraordinary nervousness, eye contact avoidance, odd travel details, and other lawful behavior generally perceived as suspicious, deceptive, or evasive)." *Noli*, ¶ 54 (citing *Carrywater,* ¶¶ 20, 26; *Wilson*, ¶¶ 29-31, 35); *see also Loberg*, ¶¶ 18, 24 (holding that particularized suspicion did not exist and reasoning that the odor of a masking agent alone was distinguishable from the overwhelming odor of multiple fresheners in *Estes*). In other words, although innocuous behavior may be assessed in the

totality of the circumstances for particularized suspicion, there needs to be a least some objective indicia of illegal drug activity to justify expanding a traffic stop into a drug investigation. *Noli*, ¶ 62 ("[O]therwise perfectly legal or innocuous conduct or behavior may be a contributing factor in support of a particularized suspicion of criminal activity, but only in conjunction with other specific indicia of criminal activity.") (citation and internal quotations omitted).

¶22 These authorities lead to the conclusion that a driver's nervousness, an unspecified prior history of drug use, and the officer's assertion that the driver failed to pull over quickly enough do not alone combine to show particularized suspicion of illegal drug activity. With no specific indication of recent drug activity, the remaining observations are "inferences that could be drawn from the conduct of virtually any law-abiding person" and cannot by themselves create a particularized suspicion. *Carrywater*, ¶ 15. At the time Detective Monaco completed the speeding warning, the information he had obtained from and about Summers did not give him objective indicators that she was "immediately involved in, or about to be involved in, criminal activity." *Rymal*, ¶ 12. He failed to articulate "details that were objectively indicative of illegal drug activity" and instead acted on a generalized suspicion. *Wilson*, ¶¶ 28, 35; *accord Noli*, ¶ 62. The District Court erred when it held that Detective Monaco had particularized suspicion to expand the traffic stop into a drug investigation.

¶23 2. Whether Detective Monaco's continued questioning was constitutional because Summers consented.

¶24 "Voluntary consent to a government search or seizure is an independent exception to the warrant requirement of the Fourth Amendment and Article II, Section 11, of the Montana Constitution." *State v. Laster*, 2021 MT 269, ¶ 40, 406 Mont. 60, 497 P.3d 224. "[T]he standard of consent applicable under the Fourth Amendment and Article II, [Section] 11, protections against unreasonable searches and seizures is merely that a consent to a government search or seizure be voluntary in fact under the totality of the circumstances, *i.e.*, 'the product of an essentially free and unconstrained choice' not influenced by express or implied police coercion or duress, however subtle." *Laster*, ¶ 40 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-34, 247, 93 S. Ct. 2041, 2047-49, 2058 (1973)). This includes factors such as the person's age, education, and intelligence; misrepresentation of the law by the officer (indicating coerciveness); whether the person was in custody or under arrest; whether the person was informed of the right not to consent; whether they were threatened or coerced in any way; and whether the questioning was repeated and prolonged. *State v. Dupree*, 2015 MT 103, ¶ 19, 378 Mont. 499, 346 P.3d 1114. "[T]he determination of voluntariness of consent is dependent on the facts of each case, with no single fact being dispositive." *State v. Case*, 2007 MT 161, ¶ 20, 338 Mont. 87, 162 P.3d 849 (citation omitted).

¶25 If a person is illegally detained when they consent to a search, the consent is tainted by the illegality and is "ineffective to justify the search." *Fla. v. Royer*, 460 U.S. 491, 507-08, 103 S. Ct. 1319, 1329; *see also Case*, ¶ 32 (reasoning that the defendant was "not involved in a voluntary exchange but was" seized when he consented). A person is seized for

constitutional purposes when an officer "in some way restrains [the] person's liberty by means of physical force or otherwise by exercise or show of authority that, under the totality of the circumstances, would cause an objectively reasonable person to believe that the person is not free to leave the officer's presence." *Laster*, ¶ 11 (citations and internal quotations omitted). "In contrast a reasonable person would feel free to leave if an officer indicates, *expressly or impliedly*, that the stop is over and the person is free to go." *Case*, ¶ 26 (emphasis added).

¶26 In *State v. Merrill*, two officers stopped Merrill for an improper lane change. *State v. Merrill*, 2004 MT 169, ¶ 3, 322 Mont. 47, 93 P.3d 1227. Merrill consented to speak with the officers and to let them search her vehicle, where the officers found methamphetamine. *Merrill*, ¶ 4. This Court reasoned that although the investigatory stop had concluded, Merrill was not seized because the officer had stepped away from the vehicle after specifically telling her that she was free to go, and the subsequent interaction was a voluntary encounter. *Merrill*, ¶¶ 15, 17. We highlighted that the officer asked Merrill's permission three times: to talk to her, to search her car, and to search her person, and "Merrill's acquiescence to [the officer's] requests [was] not indicative of a person seized, but of a consenting individual." *Merrill*, ¶ 15.

¶27 In *State v. Hill*, following the officer's valid issuance of a traffic citation for speeding, he returned Hill's driver's license, said, "we're done," and then immediately "initiated small talk" and began to ask questions. *State v. Hill*, 2004 MT 184, ¶¶ 5-6, 322 Mont. 165, 94 P.3d 752. After that led to a search of the vehicle and Hill's charges for possession of

dangerous drugs with intent to distribute, he challenged the officer's continuation of the stop. We affirmed the denial of Hill's motion to suppress, concluding in part:

> Once [the officer] gave back Hill's license and indicated the matter was done, the investigatory stop concluded. A reasonable person under these circumstances would have believed he was free to leave, and therefore, the subsequent conversation which developed between the officers and Hill was a voluntary exchange.

Hill , ¶ 17.

¶28 In *State v. Snell*, an officer lawfully stopped the defendant and cited him for failure to carry proof of insurance. *State v. Snell*, 2004 MT 269, **3**, 323 Mont. 157, 99 P.3d 191. The officer issued the citation, returned Snell's license and registration and—while Snell remained seated in the back of the patrol car—asked if he could search the vehicle; Snell consented. *Snell*, ¶ 4. On appeal, Snell argued that he was illegally detained after the officer issued the citation, and the evidence should have been suppressed because the consent resulted from an illegal detention. *Snell*, ¶ 20. Although the officer did not expressly tell Snell that he was free to go (unlike in *Merrill* and *Hill),* nothing in the record indicated that the officer ordered Snell to stay, attempted to restrain him or prevented him from exiting the vehicle. *Snell*, ¶ 25. As such, the post-stop interaction was a voluntary exchange, and Snell was not illegally seized at the time he consented. *Snell*, ¶ 25.

¶29 In *State v. Case*, the officer issued Case a ticket and, as he returned his license and paperwork, stated, "I'm going to give you this back and I do have a question for you before you take off here." *Case*, ¶¶ 10-11. Case consented to the additional questions and vehicle search. *Case*, ¶¶ 11-13. We reasoned that "[w]hen a police officer states that he has a question before you take off, that means, to the reasonable person, you have to stay and answer the question before you are free to leave, especially when the officer's patrol car is parked directly behind your car." *Case*, ¶ 30. This statement, combined with the totality of circumstances—including that the officers first ordered Case to get back in his car, asked for his Social Security number and relation to another person named Case, and then directed him to step out of the car so they could verify whether Case had a tattoo on his arm, the position of the two officers, and their direction that Case could put his coat back on—led to our conclusion that Case was seized at the time he gave the consent. *Case*, ¶¶ 12, 29-32.

¶30 Summers argues that once Detective Monaco returned her driver's license and issued her a warning, he completed the purpose of the traffic stop. She contends that when Detective Monaco continued to question her after issuing her the warning, she was seized because Detective Monaco never informed her that the traffic stop was over or that she had permission to leave, and the totality of the circumstances would not lead a reasonable person to believe they were free to go. The State responds that Summers gave voluntary consent to answer more questions and to allow the search of her vehicle, as the District Court found.

¶31 The record shows the following pertinent exchange between Summers and Detective Monaco after he had confirmed the validity of her insurance:

> MONACO: Here's everything that you gave me, okay, your license, registration, and insurance, okay. So, I'm gonna put you down for a warning for the speed.
>
> SUMMERS: Okay.
>
> MONACO: Okay, just be mindful [it's] 60 top-end on Eastside Highway, okay? Um, do you have any—
>
> SUMMERS: Yeah, 'cause I had my cruise on, so, I was like sixty-five, or—
>
> MONACO: Okay, you were dip, you would go dip from 62 up to about 71, so—
>
> SUMMERS: Well, I was serious I had my cruise on so maybe there is something messed up with that.
>
> MONACO: Okay. So, um, since I got you here, do you mind if I ask you a couple of questions?
>
> SUMMERS: Go ahead.

During this interaction, Summers was standing on the side of the roadway between her car and the detective, whose patrol car was behind him. Summers was not, unlike *Snell*, ¶ 4, *in* the patrol car, nor was Detective Monaco's patrol vehicle—as in *Case*—"parked in such a way that it 'physically constrain[ed] [the defendant's] means and direction of travel[.]'" *Case*, ¶ 28 (quoting *State v. Roberts*, 1999 MT 59, ¶ 16, 293 Mont. 476, 977 P.2d 974). Detective Monaco, however—unlike the

officers in *Merrill* and *Hill*—did not expressly tell her that they were "done" or that she was free to leave. But nor did he—like the officer in *Case*—direct her not to "take off" before he asked her another question. *Case*, ¶ 11. Detective Monaco handed Summers her papers, told her she would get a warning, and followed with a single incidental question. *Compare Laster*, ¶ 49 (a single, incidental request for consent to search did not substantially prolong the duration of the stop); *with Noli*, ¶ 48 (an officer's "extensive questioning ... far exceeded in scope and duration the single incidental request for consent to search").

¶32 In *State v. Noli*, we concluded that the defendant's eventual, acquiescent consent was obtained only after a prolonged and an unlawful expansion of the scope and duration of the traffic stop without particularized suspicion. *Noli*, ¶¶ 23, 48; *see also State v. Clark*, 2008 MT 419, ¶ 25, 347 Mont. 354, 198 P.3d 809 ("Montana law does not require additional justification for requesting consent."); *Panasuk*, ¶ 15 (further questioning of driver once a traffic stop concludes is permissible if the driver voluntarily consents). Here, there was no prolonged expansion of the stop after it concluded; the detective asked Summers a single question—if she would "mind" answering some questions—and she agreed.

¶33 Summers contends that the District Court failed to employ a totality of the circumstances test, as required to determine voluntary consent. But this likely resulted from Summers's focus on particularized suspicion and her own acknowledgment that she had consented.[1] The court made a finding that Summers

[1] Relatedly, we do not accept Summers's argument that the State waived any argument on appeal that she was not "seized"

(continued...)

consented to Detective Monaco's request for additional questions and to his request to search her vehicle. "Because voluntariness of consent is a question of fact, the trial court's finding that consent was voluntary will not be reversed unless the finding is clearly erroneous." *City of Great Falls v. Allderdice*, 2017 MT 58, ¶ 12, 387 Mont. 47, 390 P.3d 954.

¶34 Summers urges us to hold that Detective Monaco's single phrase, "while I've got you here," turned his permissive question ("do you mind if I ask you a couple of questions?") into a directive that would lead a reasonable person to conclude they were not free to leave. But the voluntariness of her consent is not determined alone by the parsing of Detective Monaco's question; it "is dependent on the facts of each case, with no single fact being dispositive." *Case*, ¶ 20. Upon review of the circumstances of the entire interaction, and in light of our precedent, we conclude that Summers has not demonstrated clear error in the District Court's finding that she gave voluntary consent to continue speaking with Detective Monaco. From the beginning of the stop, Summers engaged in nearly constant conversation with the detective, even

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when Detective Monaco transitioned the stop into a drug investigation or that she voluntarily consented to his expansion of the traffic stop. The State never conceded that Summers did not consent but argued in the District Court that Summers agreed to answer Detective Monaco's additional questions and gave Detective Monaco permission to search her vehicle. Summers in fact stated in her own motion to suppress that she agreed to the additional questioning and consented to the vehicle search. During the suppression hearing, defense counsel argued that if her consent to search the vehicle had been obtained prior to issuing the citation it would be valid, but once the citation was issued, any information obtained was invalid.

interrupting him. He asked no questions unrelated to the purpose of the stop until after he returned her papers and told her she would get a warning for speeding.

¶35 We have not required that an officer explicitly tell a person that the stop has concluded and they are free to leave before asking whether they would agree to answer questions. *Snell*, ¶ 25 (totality of circumstances showed that individual was not seized and voluntarily consented despite officer not advising him that the stop had ended); *Laster*, ¶ 40 ("proof of a rights advisory by police is not necessarily essential or fatal to whether a consent to search or seize was voluntary in fact"). If the driver voluntarily consents, there is no seizure, and "the Fourth Amendment's strictures are not implicated." *Panasuk*, ¶ 15.[2]

¶36 The investigative technique employed under the circumstances here, however, points to a crucial difference between a purely voluntary encounter between citizens and law enforcement officers and questioning that follows a person's temporary detention after a *Terry* stop. We recently discussed at length the circumstances under which an "initially

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[2] Summers cites *State v. Bailey*, 2021 MT 157, ¶ 30,404 Mont. 384, 489 P.3d 889, for its statement that "[b]ecause a person is typically not free to leave until released by the investigating officer, a temporary investigative stop generally effects a Fourth Amendment seizure" (quoting *City of Missoula v. Kroschel*, 2018 MT 142, ¶ 25, 391 Mont. 457, 419 P.3d 1208). *Bailey* and *Kroschel*, however, involved the issue whether an officer's questioning during an investigative stop amounted to custodial interrogation requiring *Miranda* warnings. *Miranda v. Arizona*, 384 U.S. 436, 467-77, 86 S. Ct. 1602, 1624-29 (1966); *Bailey*, ¶ 27; *Kroschel*, ¶ 21. Neither case involved the question of consent to an officer's request to answer questions.

coincidental or consensual police-citizen encounter may later ripen into a constitutional seizure . . . when the subject police conduct and posture would have caused an objectively 'reasonable person' to feel not free to ignore or refuse to answer or otherwise cooperate with the police[] or disengage from any further interaction with them and move away." *Rymal*, ¶ 15. Summers's encounter with Detective Monaco was not, like in *Rymal*, "initially coincidental or consensual." *Rymal*, ¶ 15.

¶37 Traffic stops that lead to further questioning or searches based on consent present a different situation, as they are unlike interactions in which a person free of any prior seizure is initially approached by police. *E.g., Rymal*, ¶ 16 (illustrating cases where we held that a constitutional seizure had not occurred). Instead, a person subject to a traffic stop has just been immediately seized based on a traffic infraction or on particularized suspicion of other criminal activity. A person is under police authority during a traffic stop, and it may not be clear to the person when the stop has ended. Cases where the traffic stop transitions into a drug investigation based on consent pose the risk that the prior seizure clouds a person's understanding of when they are no longer subject to the officer's authority.

¶38 "Consent searches are no longer an occasional event . . . but are now a wholesale activity accompanying a great many traffic stops, submitted to by most drivers, guilty or innocent, and resulting in continued interruption of their travels ... a process which beyond question is highly invasive of the dignitary interests of individuals." 4 Wayne R. LaFave, *Search and Seizure* § 9.3(e), 547-48 (6th ed. 2020) (discussing how

obtaining consent to search has become a routine investigative technique during traffic stops) (internal quotations and citation omitted). An officer's clear communication with members of the public with whom the officer interacts, at minimum, is good police practice. Better yet, such clear communication—by explicitly telling a motorist that the stop has concluded and they are free to go *before* requesting consent to additional questioning or a search—will help avoid claims of "implied police coercion or duress, however subtle," *Laster*, ¶ 40, like the challenge that Summers raises here. *E.g. Hill*, ¶ 5 (officer issued warning and stated "we're done" before initiating subsequent conversation); *Merrill*, ¶ 15 (officer advised the person that they were free to leave); *see also Laster*, ¶ 40 (the person's awareness of their right to refuse is a factor in assessing voluntariness of consent); *Estes*, ¶ 21 ("A reasonable person would feel free to leave when an officer expressly indicates that the stop is over and the person is free to go.").

¶39 Considering the record as a whole, we cannot conclude that the District Court's factual finding that Summers authorized the additional questioning by giving her consent, thus validly expanding the stop, was clearly erroneous. The record reflects that after Detective Monaco issued the warning and returned Summers's papers, she agreed to the detective's single request for further questioning. Detective Monaco asked Summers's permission to search her vehicle, and she again consented.[3] We conclude that the

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[3] Finally, we do not agree with Summers that Detective Monaco exceeded the scope of her consent to answer additional questions. "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective'

(continued...)

District Court did not misapprehend the effect of the evidence when it determined that Summers consented to the additional questioning and the subsequent vehicle search.

CONCLUSION

¶40 The District Court's order denying Summers's motion to suppress is affirmed.

/S/ BETH BAKER

We Concur:

/S/ CORY J. SWANSON
/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE

Justice James Jeremiah Shea, concurring.

¶41 I concur with the Court's resolution of both issues. With respect to issue two, I concur because, as the Court ultimately concluded, "considering the record as a whole, we cannot conclude that the District Court's factual finding that Summers authorized the additional questioning by giving her consent, thus validly expanding the stop, was clearly erroneous."

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reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Fla. v. Jimeno*, 500 U.S. 248, 251, 111 S. Ct. 1801, 1803-04 (1991). The video shows that their exchange was just over three minutes before Detective Monaco requested permission to search Summers's car, which is not outside an objectively reasonable understanding. At no point did Summers "withdraw [her] apparent consent." *Rymal*, ¶ 19. Summers does not otherwise independently challenge the voluntariness of her consent to search the vehicle but contends that it followed from the same impermissible questioning after Detective Monaco issued the warning for speeding.

Opinion, ¶ 39. I write separately because I think this case illustrates better than most that when the circumstances of a consent search such are tenuous and subject to interpretation, things easily can go the other way. In that regard, it should not go unnoticed in this case that three of this Court's seven Justices—all of whom were experienced district court judges from across the State prior to their service on this Court—considered this same record in its entirety, concluded that Summers's consent was *not* voluntary, and would reverse the District Court's order denying Summers's motion to suppress. My takeaway from that is that I have little doubt that a number of current district court judges would view this same record and reach the same conclusion as Justices Bidegaray, McKinnon, and Gustafson—that Summers's motion to suppress should be granted.

¶42 If I had been the trial judge, I may very well have reached a different finding as to whether Summers consented to continued questioning. But whether or not my personal assessment of the record may differ from the District Court's assessment is not the issue on appeal. "It is not this Court's function on appeal to substitute its evaluation of the evidence for that of the district court." *State v. Fish*, 2009 MT 47, ¶ 29, 349 Mont. 286, 204 P.3d 681. "[V]oluntariness of consent is a question of fact, [and] the trial court's finding that consent was voluntary will not be reversed unless the finding is clearly erroneous." *Allderdice*, ¶ 12. Based on our standard of review on appeal, if the District Court reviewed this record and found Summers's consent was *not* voluntary, I would be hard-pressed to conclude such a finding to be clearly erroneous. However, the District Court reviewed this record, conducted a hearing at which it took testimony,

and found that Summers's consent *was* voluntary, and I agree with the Court that this finding was not clearly erroneous. On that basis—and only on that basis—I would affirm the District Court's denial of Summers's motion to suppress.

/S/ JAMES JEREMIAH SHEA

Justice Katherine Bidegaray, dissenting.

¶43 I respectfully dissent from the majority's conclusion regarding Issue 2. While I concur with the majority's thorough analysis that Detective Monaco lacked particularized suspicion to extend the traffic stop into a drug investigation, I disagree with the majority's determination that Summers voluntarily consented to further questioning and the vehicle search.

¶44 A citizen's consent must be unequivocally voluntary, free from any coercion—express or implied. *State v. Laster*, 2021 MT 269, ¶ 40, 406 Mont. 60, 497 P.3d 224 ("Upon challenge of the voluntariness of a consent to search, the State has the burden of making an evidentiary showing, by more than mere acquiescence to police authority, that the consent was voluntary as a matter of fact under the totality of the circumstances."). The voluntariness of consent is evaluated under the totality of circumstances, with special attention paid to subtle coercion that can arise in inherently authoritative encounters such as traffic stops. *Schneckloth v. Bustamonte,* 412 U.S. 218, 225-27, 93 S. Ct. 2041, 2047 (1973) (the test of voluntariness is that consent be the product of "an essentially

free and unconstrained choice"); *State v. Emerson*, 2015 MT 254, ¶¶ 16-22, 380 Mont. 487, 355 P.3d 763.

¶45 Here, after concluding the purpose of the stop by issuing a warning, Detective Monaco immediately transitioned into further questioning with the phrase: "Since I got you here, do you mind if I ask you a couple questions?" This phrase, coupled with the officer's immediate continuation of questioning, conveyed ongoing investigative authority rather than the conclusion of the stop, suggesting Summers was not truly free to leave. Unlike scenarios in *State v. Merrill*, 2004 MT 169, ¶¶ 15, 17, 322 Mont. 47, 93 P.3d 1227, and *State v. Hill*, 2004 MT 184, ¶ 17, 322 Mont. 165, 94 P.3d 752, Detective Monaco did not explicitly inform Summers that she was free to leave or clearly delineate that the traffic stop had concluded. Furthermore, Detective Monaco's authoritative positioning and the roadside environment significantly contributed to the coercive atmosphere, factors which the majority opinion insufficiently addresses.

¶46 Summers's acquiescence to Detective Monaco's questioning—"go ahead"—must be viewed within this inherently coercive context. Summers, who had not been explicitly released from the seizure and was not affirmatively informed of her right to refuse further questioning, responded precisely as a reasonable person under similar circumstances might, believing compliance was obligatory rather than optional.

¶47 The majority's reliance on Summers's brief and ambiguous statement ignores the subtle coercion present in the situation. Summers was on the roadside, previously detained in Monaco's opinion, but not given a clear indication the stop was complete. Moreover, Summers's general talkativeness does not

override the subtle coercion Detective Monaco created by his ambiguous language and posture, as conversational engagement alone is insufficient to demonstrate genuine voluntariness under these specific circumstances. Under these conditions, her consent was neither unequivocal nor voluntary.

¶48 Given these considerations, the record clearly demonstrates that Summers's consent was not the product of "an essentially free and unconstrained choice" and therefore not voluntary. Accordingly, I would hold Summers's purported consent was not voluntary under the totality of circumstances and reverse the denial of her motion to suppress.

¶49 For these reasons, I dissent.

/S/ KATHERINE M BIDEGARAY

Justices Laurie McKinnon and Ingrid Gustafson join in the dissenting Opinion of Justice Katherine Bidegaray.

/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0365

STATE OF MONTANA,

Plaintiff and Appellee,

v. ORDER

DONNA ELIZABETH SUMMERS,

Defendant and Appellant.

Donna Elizabeth Summers filed a Petition for Rehearing of this Court's May 27, 2025 Opinion affirming the District Court's order denying her motion to suppress. *State* v. *Summers,* 2025 MT 109. The State opposes the petition.

This Court will consider a petition for rehearing presented only upon the following grounds:

> (i) That it overlooked some fact material to the decision;
>
> (ii) That it overlooked some question presented by counsel that would have proven decisive to the case; or
>
> (iii) That its decision conflicts with a statute or controlling decision not addressed by the supreme court.

M. R. App. P. 20(l)(a).

Summers argues that we overlooked a material fact and a question presented by counsel that would prove

decisive to the case because the District Court never made a finding that her consent was voluntary. She also argues that we ignored controlling precedent by employing the wrong standard of review. The State responds that this Court applied the proper standard of review and addressed in its Opinion the arguments Summers makes in her petition, thus precluding a rehearing on the matter.

Having fully considered Summers's petition and the State's response, we conclude that rehearing is not warranted. We correctly articulated the standard of review. *Summers,* ¶8 (citing *State* v. *Rymal,* 2024 MT 277, ¶9, 419 Mont. 144, 559 P.3d 839, the same case cited in Summers's petition). Our analysis in the Opinion makes clear that we reviewed the record independently. *Summers,* ¶¶23-39. We considered and addressed Summers's argument that the District Court failed to employ a totality of the circumstances test. *Summers,* ¶33. Summers's arguments emphasized that her consent was not voluntary because she was illegally detained. Upon our independent review of the record, we determined that the District Court finding was not erroneous because the record showed there was not express or implied coercion. *Summers,* ¶¶24, 39. This addressed the arguments that Summers raised in her briefing.

The Court's Opinion was not unanimous, and the Dissent raised many of the same points Summers makes in her petition. Those arguments were considered and. after a thorough review of our case law, a majority of the Court was not persuaded. We do not find rehearing appropriate under the standards of Rule 20.

IT IS THEREFORE ORDERED that Summers's Petition for Rehearing is DENIED. Remittitur shall issue forthwith.

The Clerk is directed to provide a copy of this Order to all counsel of record.

DATED this 17th day of June, 2025.

_____
Chief Justice

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Justices

Justices Katherine Bidegaray, Laurie McKinnon, and Ingrid Gustafson would grant the Petition for Rehearing.