APPENDIX

Download original image (PDF)

159 F.4th 202
United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff – Appellee,
v.
Davonte J. COE, Defendant – Appellant.

No. 24-4111
|
Argued: September 10, 2025
|
Decided: November 12, 2025

Synopsis

Background: Following the denial of defendant's motion to suppress evidence, 2023 WL 5959421, and his motion to dismiss the indictment, 2023 WL 6282844, defendant pleaded guilty in the United States District Court for the Eastern District of Virginia, Roderick Charles Young, J., to being a felon in possession of a firearm and ammunition. Defendant appealed.

Holdings: The Court of Appeals, Toby Heytens, Circuit Judge, held that:

[1] defendant's Second Amendment challenge to indictment failed, and

[2] officer did not violate Fourth Amendment by drawing firearm before opening driver's side door of car in which he had observed defendant holding what appeared to be cocaine.

Affirmed.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

West Headnotes (7)

[1] **Weapons** Violation of right to bear arms
Weapons Possession After Conviction of Crime

Defendant's Second Amendment challenge to indictment charging him with being a felon in possession of a firearm and ammunition failed, in the absence of any assertion by defendant that the underlying conviction that prohibited him from possessing firearms had been pardoned or that the law defining the crime of conviction had been found unconstitutional or otherwise unlawful. U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(1).

[2] **Search, Seizure, and Arrest** Pointing, exhibiting, or brandishing

Officer's conduct in drawing his firearm before opening driver's side door of car in which he had observed defendant, who was sitting in driver's seat, holding plastic bags that appeared to contain cocaine was not an unreasonable use of force under Fourth Amendment, and thus, suppression was not warranted of firearm officer seized from defendant's waistband after defendant got out of the car, was grabbed and pinned to the car by officer, and the two struggled; although pointing firearm at someone could needlessly escalate a situation by making it more dangerous for everyone involved, officer was outnumbered, had probable cause to believe defendant was brazenly committing a serious drug offense in public, and drew his firearm for less than 30 seconds. U.S. Const. Amend. 4.

More cases on this issue

[3] **Criminal Law** Theory and Grounds of Decision in Lower Court

The Court of Appeals is not limited to the district court's reasoning in denying a motion to suppress and may affirm on any ground supported by the record.

[4] **Criminal Law** In general; complaint, warrant, and preliminary examination
Criminal Law Questions of Fact and Findings

Court of Appeals reviews a district court's factual findings for clear error and must view the record

on appeal in the light most favorable to the side that prevailed below.

[5] **Search, Seizure, and Arrest** Reasonableness in general; objective or subjective test

An officer's subjective motivations are not relevant to the Fourth Amendment question of whether the officer used constitutionally excessive force in effecting a seizure. U.S. Const. Amend. 4.

[6] **Search, Seizure, and Arrest** Use of lethal force in general

Unwarranted threats of deadly force by a police officer can violate the Fourth Amendment. U.S. Const. Amend. 4.

[7] **Search, Seizure, and Arrest** Pointing, exhibiting, or brandishing

Officers have no constitutional carte blanche under the Fourth Amendment to draw firearms on a suspect whenever any type of crime has been committed. U.S. Const. Amend. 4.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Roderick Charles Young, District Judge. (3:23-cr-00061-RCY-1)

Attorneys and Law Firms

ARGUED: Joseph S. Camden, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Richmond, Virginia, for Appellant. Daniel J. Honold, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee. ON BRIEF: Geremy C. Kamens, Federal Public Defender, Frances H. Pratt, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Ellen V. Hubbard, Special Assistant United States Attorney, Richmond, Virginia, Jacqueline R. Bechara, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Before WILKINSON, THACKER, and HEYTENS, Circuit Judges.

Opinion

Affirmed by published opinion. Judge Heytens wrote the opinion, in which Judge Wilkinson and Judge Thacker joined.

TOBY HEYTENS, Circuit Judge:

***204** Davonte J. Coe appeals the denials of motions to dismiss an indictment and to suppress evidence. We affirm.

We start with the facts, viewed "in the light most favorable to" the party that prevailed before the district court (here, the government). *United States v. Joseph*, 138 F.4th 797, 800, 802 (4th Cir. 2025). While patrolling alone at night, Officer Dquan Walker saw Coe sitting in the driver's seat of a car parked just outside the entrance to a convenience store known for "drug activity ... inside and outside of the store." JA 106. Coe was holding plastic baggies that appeared to contain cocaine. There were other people on the scene, including one in the front passenger seat of Coe's car. Walker drew his firearm and opened the driver's side door. As Coe started getting out, Walker grabbed Coe and pinned him to the car. Walker holstered his firearm and drew his taser. Coe began to struggle and threw the baggies in front of the car. As Coe and Walker struggled, Walker saw a firearm in Coe's waistband.

Coe was charged with violating 18 U.S.C. § 922(g)(1). He filed two relevant pretrial motions: (1) to dismiss the indictment because Section 922(g)(1) violates the Second Amendment; and (2) to suppress the firearm because Walker used constitutionally excessive force. The district court denied those motions, and Coe entered a conditional guilty plea.

[1] The district court correctly denied Coe's motion to dismiss the indictment. Coe does not assert that the conviction that prohibits him from possessing firearms has been "pardoned or [that] the law defining the crime of conviction [has been] found unconstitutional or otherwise unlawful." *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024) (quotation marks removed), cert. denied, —— U.S. ——, 145 S. Ct. 2756, —— L.Ed.2d —— (2025). His Second Amendment challenge thus fails. See *id.*; see also *United States v. Canada*, 123 F.4th 159, 161–62 (4th Cir. 2024).

[2] **[3]** The district court also correctly denied Coe's motion to suppress the firearm. The court assumed for purposes of its decision that Walker's conduct violated the Fourth Amendment and declined to suppress the firearm on other grounds. But this Court "is not limited to the district court's reasoning" and may "affirm on any ground supported by the record." *United States v. Brown*, 701 F.3d 120, 125 (4th Cir. 2012) (quotation marks removed). We conclude the "seizure[ ]" challenged here was not constitutionally "unreasonable" and thus reach no other questions. U.S. Const. amend. IV.

[4] The centerpiece of Coe's argument before us is that Walker violated the Fourth Amendment by "pointing his firearm, with no safety, with his finger on the trigger, into [ ] Coe's side and back as [Walker] held [Coe] against the car with his left elbow." Oral Arg. 6:36–:47. But the district court did not find that Walker pointed his firearm into Coe's side or back or that Walker had his finger on the trigger. (In fact, the latter issue was hotly contested at the suppression hearing.) As this Court has said many times, we review a district court's factual findings for clear error and must view the record on appeal in the light most favorable to the side that prevailed below. See, *e.g.*, *Joseph*, 138 F.4th at 800, 802. Coe's briefs do not assert—much less establish—that the district court committed clear error by *not* finding Walker had his finger on the trigger or pointed his firearm into Coe's side ***205** or back, and we cannot make such factual findings in the first instance.

****2** Based on the findings the district court did make, we hold Walker's conduct did not violate the Fourth Amendment. See generally *Graham v. Connor*, 490 U.S. 386, 396–97, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Walker was outnumbered, had probable cause to believe Coe was brazenly committing a serious drug offense in public, and drew his firearm for less than 30 seconds. "[J]udged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," we conclude it was not constitutionally unreasonable for Walker to briefly draw his firearm under the circumstances presented here. *Id.* at 396, 109 S.Ct. 1865.

[5] **[6]** **[7]** We close with one final point. At the suppression hearing, Walker testified he drew his firearm because, "[w]henever there's any type of crime that's committed, regardless of what type of crime it is, if you're going to encounter a person[,] ... obviously best to go with the firearm first because you never know what that person has." JA 119–20. To be sure, Walker's subjective motivations are not relevant to the Fourth Amendment question before us. See *Graham*, 490 U.S. at 397–99, 109 S.Ct. 1865. But Walker's declared philosophy about when to draw a weapon is not the law, and we denounce such views in the strongest possible terms. As this Court has explained, "unwarranted threat[s] of deadly force" can violate the Fourth Amendment. *Nazario v. Gutierrez*, 103 F.4th 213, 232 (4th Cir. 2024). And pointing a firearm at someone "is a threat with deadly force" that is "likely to instill fear" and can "needlessly escalate" a situation by "making it more dangerous for everyone involved." *Id.* Although we conclude—again, based on the facts found by the district court and given the applicable standards of appellate review—that Walker's conduct here was not constitutionally unreasonable, we emphasize that officers have no constitutional carte blanche to draw firearms "[w]henever there's any type of crime that's committed." JA 119.

* * *

The judgment is

AFFIRMED.

All Citations

159 F.4th 202, 2025 WL 3152894

FILED: December 12, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4111
(3:23-cr-00061-RCY-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DAVONTE J. COE

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Thacker, and Judge Heytens.

For the Court

/s/ Nwamaka Anowi, Clerk

No. 24-4111

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
***Plaintiff/Appellee*,**

v.

Davonte Coe,
Defendant/Appellant.

On Appeal From the United States District Court
for the Eastern District of Virginia
Richmond Division (The Hon. Roderick C. Young)

PETITION FOR PANEL REHEARING AND REHEARING *EN BANC*

GEREMY C. KAMENS
Federal Public Defender

Joseph S. Camden
Assistant Federal Public Defender
Counsel for Appellant
701 East Broad Street, Suite 3600
Richmond, VA 23219
(804) 565-0830
joseph_camden@fd.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Treatises

No. 24-4111

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

Davonte Coe,
Defendant/Appellant.

On Appeal From the United States District Court
for the Eastern District of Virginia
Richmond Division (The Hon. Roderick C. Young)

PETITION FOR REHEARING

Mr. Coe petitions, pursuant to Fed. R. App. P. 40, for panel rehearing and rehearing *en banc*.

STATEMENT OF PURPOSE

Mr. Coe requests rehearing because the published opinion, *United States v. Coe*, ___ F.4th ____, 2025 WL 3152894 (4th Cir. 2025) is in conflict with a decision of the United States Supreme Court and another court of appeals and the conflict is

not addressed in the opinion, and because the proceeding involves a question of exceptional importance. *See* Fourth Circuit Local Rule 40(b).

The issue is the proper standard of review. The panel opinion in this case applied the standard for challenging factual findings, clear error, to findings that the district court never made. This contradicts *Pullman-Standard v. Swint*, 456 U.S. 273, 291 (1982), prior published opinions from this court, *see United States v. Perez*, 150 F.4th 237, 253 (4th Cir. 2025), and opinions from every other circuit to consider the issue.

It is important because the opinion is published and creates an impossible standard for future appellants. Appellants cannot even coherently allege, let alone argue, that a district court made clearly erroneous factual findings when the district court didn't even *make* findings due to an antecedent legal error that prevented it from reaching the factual issue. The Court should therefore address the legal argument that Mr. Coe made – that the district court improperly conflated attenuation and inevitable discovery, *see* Appellant's Op. Br. 15-16 – and if it discerns such an error, "remand for further proceedings to permit the trial court to make the missing findings," rather than affirm on an incomplete record. *Perez*, 150 F.4th at 253 (quoting *United States v. Bailey*, 74 F.4th 151, 160 (4th Cir. 2023) (quoting *Pullman-Standard*, 456 U.S. at 291)). Or in the alternative, it could accept as true the facts reflected in the government's own unambiguous video exhibits.

ARGUMENT

Mr. Coe challenged on appeal the denial of a motion to suppress the evidence. He'd argued that Officer Walker's use of force was unreasonable, and the discovery of the firearm later in the same encounter initiated by force, was fruit of the Fourth Amendment violation. He argued on appeal that the district court had applied an incorrect legal standard for determining whether there was a causal nexus, confusing it with the inevitable discovery doctrine. Appellant's Op. Br. 15-16.

The panel affirmed, faulted Mr. Coe for failing, on appeal, to "assert – much less establish – that the district court committed clear error by *not* finding [Officer] Walker had his finger on the trigger or pointed his firearm into Coe's side or back[.]" 2025 WL 3152894 at *1 (emphasis in original). It therefore considered only the bare fact that Officer Walker "briefly dr[e]w his firearm," *id*. at *2 and affirmed the denial of the motion to suppress "based on the facts found by the district court and given the applicable standards of appellate review." *Id*.

No case, published or unpublished, in any court that the undersigned can locate, has ever required an appellant to argue that a trial court's *nonexistent* finding of fact was clearly erroneous. To the contrary, every court, including the Supreme Court and this Court in prior published cases, has found it proper to correct any legal error, and remand if further factual findings are required. The Court should grant rehearing to correct its misapplication of the standard of review.

In fact, even where the district court makes no factual findings, this Court's precedent allows it to rely on undisputed video evidence and discount contrary testimony. The government's own exhibits, consisting of body-worn camera and surveillance video, showed indisputably that Officer Walker's finger was on the trigger as he pointed the gun into Mr. Coe's back and side while pinning him to the car, and the government never argued to the contrary.

I. THE CLEAR ERROR STANDARD DOES NOT APPLY TO FACTS NEVER FOUND.

The published opinion in this case works an enormous and unprecedented change in the standard of review and forces an impossible dilemma on future appellants. Facts *found* by a district court are reviewed for clear error; facts *not* found due to a legal error require remand, not affirmance. Affirming on an incomplete record infringes on the factfinding role of district courts and contravenes established precedents.

A. When a Legal Error Prevents a District Court from Making Factual Findings, Remand is Required

The opinion in this case takes the novel position that an appellant urging an error of law must also "assert [and] establish – that the district court committed clear error by *not* finding" facts it avoided confronting due to a legal error. 2025 WL 3152894 at *1. That holding conflicts directly with an unbroken forty years of

precedent. A district court's failure to find material facts due to a legal error requires remand.

In *Pullman-Standard v. Swint*, 456 U.S. 273, 291 (1982), a civil case, the Supreme Court held that the "clearly erroneous" standard of review of factual findings "does not apply to conclusions of law." *Id*. at 287. Further, it held,

> When an appellate court discerns that a district court has failed to make a finding because of an erroneous view of the law, the usual rule is that there should be a remand for further proceedings to permit the trial court to make the missing findings:

Pullman-Standard v. Swint, 456 U.S. 273, 291-92 (1982); *id*. (quoting *DeMarco v. United States*, 415 U.S. 449, 450, n., 94 (1974)). Although *Pullman-Standard* was a civil case under Fed. R. Civ. P. 52, *Demarco* was a criminal case, and court have consistently applied its holding in the criminal context.

So, just months ago, this Court remanded for further findings in *United States v. Perez*:

> When "an appellate court discerns that a district court has failed to make a finding because of an erroneous view of the law, the usual rule is that there should be remand for further proceedings to permit the trial court to make the missing findings." . . . And remanding for further inquiry in a criminal case is a recognized remedy.

150 F.4th at 253 (quoting *United States v. Bailey*, 74 F.4th 151, 160 (4th Cir. 2023) (*quoting Pullman-Standard*, 456 U.S. at 291 (1982)). In *Bailey*, cited therein, the "district court left [the factual] question of breach open, and the parties contest[ed]

the answer." Instead of affirming on an incomplete record, this Court, following *Pullman-Standard*, remanded for further factual findings in the first instance by the district court. 74 F.4th at 160.

Every other circuit to consider the issue is in agreement. *See In re Sealed Case*, 552 F.3d 841, 845 (D.C. Cir. 2009) ("[W]hen a district judge altogether fails to make findings or fails to make findings with respect to a material issue, appellate courts normally vacate the judgment and remand for the judge to make those findings.") (quoting Harry Edwards & Linda Elliot, *Federal Standards of Review – Review of District Court and Agency Actions* 62 (2007) (citing *Pullman-Standard*, 456 U.S. at 291-292); *United States v. Cotto-Flores*, 970 F.3d 17, 48 (1st Cir. 2020) ("When a trial judge fails to make required factual findings or provide an adequate explanation for his decision, we "normally" remand for him to reconsider the evidence and make the appropriate findings, if warranted, or to reverse himself if not.") (citing *Pullman-Standard*, 456 U.S. at 292); *Florez v. CIA*, 829 F.3d 178, 189 (2d Cir. 2016) (citing *Pullman-Standard*, 456 U.S. at 292); *United States v. Jacobson*, 15 F.3d 19, 21-22 (2d Cir. 1994) (discussing remand for supplemental factual findings while retaining jurisdiction); *United States v. Wright*, 493 F. App'x. 265, 273 (3d Cir. 2012) (remanding where district court "conflat[ed] . . . the similar-but-separate good faith exception and exclusionary rule doctrines" and therefore did not "undertake a factual analysis" of police officer's culpability); *United States v.*

Elwood, 993 F.2d 1146, 1151 (5th Cir. 1993) (no deference to district court's factual findings where "influenced by an incorrect view of the law"); *United States v. Buchanan*, 933 F.3d 501, 518 (6th Cir. 2019) ("[I]f the district court failed to make a factual finding on a required element, we have no facts to review, and remand is the appropriate course of action.") (citing *Pullman-Standard*, 456 U.S. at 291-93); *United States v. Outland*, 993 F.3d 1017, 1023 (7th Cir. 2021) (remanding on limited record where "district court fail[ed] to make any assessment of whether [the defendant] was capable" of waiving *Miranda* rights) (citing *Pullman-Standard*, 456 U.S. at 291); *United States v. Delgado-Lopez*, 974 F.3d 1188, 1195 (10th Cir. 2020) (remanding for factual findings on minor role under Guidelines where "the district court did not address Delgado-Lopez's guilt relative to the other participants"); *id.* at 1198 (citing *Pullman-Standard*, 456 U.S. at 292); *United States v. Pacheco-Romero*, 2023 WL 3736877 (11th Cir. 2023) (remanding for district court to make factual findings on conflict-based ineffective assistance claim in support of withdrawal of plea) (citing *Pullman-Standard*, 456 U.S. at 291-92).

This Court, pursuant to *Pullman-Standard* and its numerous progeny, should therefore resolve the legal issue first, and if it concludes the district court erred, remand for further factual findings, unless (see below) it can make those findings itself on the government's own evidence.

An analogy to jury instructions and findings is useful. When an appellant challenges a jury's finding of guilt on the ground that the evidence was insufficient to convict, then courts construe the evidence in a light most favorable to the government, because the standard is whether *any* reasonable jury could find guilt on the facts presented, and the jury's verdict (absent special findings) is typically opaque as to specific facts it found. *See Jackson v. Virginia*, 443 U.S. 307 (1979).

But when a jury is incorrectly instructed on the *law*, courts to *not* construe the record in a light most favorable to the government, because the finding itself is infected by the prior legal error. *See Sullivan v. Louisiana,* 508 U.S. 275, 280–81 (1993) ("[T]o hypothesize a guilty verdict that was never in fact rendered—no matter how inescapable the findings to support that verdict might be—would violate the jury-trial guarantee."); *United States v. Aramony*, 88 F.3d 1369, 1387 (4th Cir. 1996) ("The fact that the jury was presented with evidence that" could satisfy the element on which there was erroneous instruction "is of no moment.") (citing *Sullivan*, 508 U.S. at 279-81). In such situations the Court will reverse a conviction even "despite overwhelming evidence[.]" *Id*. (citations omitted).

So, as another example, where the district court sits as factfinder at a bench trial and makes specific findings of fact under Fed. R. Crim. P. 23(c), an appellate court does not view the actual factual findings in a light most favorable to the government, but instead reviews the district court's actual factual findings for clear

error, and only if there is no clear error does it review the sufficiency of the evidence in a light most favorable to the prosecution. *United States v. Vance*, 956 F.3d 846, 853 (6th Cir. 2020).

These cases all reflect a settled general principle announced in *Pullman-Standard*: where a legal issue is causally upstream of factual findings or a failure to find facts, the Court must remand to correct the legal error before it can determine what the facts are and where the facts fit. Distilled, they establish an order of operations on appeal: (1) resolve disputed on matters of law; if there is no legal error, (2) review factual findings that were made for clear error, or remand if the court below failed to resolve material factual issues; if there is no clear error and the material facts were found, then, (3) review the sufficiency of the evidence in a light most favorable to the prevailing party below.

The opinion in this case, in disregard of *Pullman-Standard* and its progeny, disregarded the first step, and conflated the second and third.

B. The District Court Failed to Make Factual Findings Due to An Antecedent Legal Error in This Case

Mr. Coe's argument was that the district court made a *legal* error by conflating the causal nexus requirement for suppression (for which he bore the burden) with the inevitable discovery doctrine (on which the government bears the burden). Appellant's Op. Br. at 15-16 ("[T]he district court confused inevitable discovery with the causal nexus requirement"). It argued that this legal error led the district

court to "sidestep[]" whether the amount of force used was reasonable. *Id*. at 15. The government agreed this was the issue in dispute, noting in its response that "[t]he district court denied the motion to suppress on the ground that there was no causal connection between Officer Walker's alleged excessive use of force and the recovery of the firearm." Gov't. Br. 11.

The district court's order was explicit that it "need not reach" the issue of whether the "degree of force used by Officer Walker was reasonable in light of the circumstances" because it found no causal connection between the alleged use of force and discovery of the firearm. J.A. 142.

But in deciding this threshold legal issue, it held that there was no causal connection because Officer Walker "would have discovered the firearm" pursuant to a *Terry* frisk or search incident to arrest – thus confusing the *legal* standards for a causal nexus and inevitable discovery. J.A. 145. And in so holding it noted its conclusion applies regardless of the facts relating to the use of force – "even if one accepts that the seizure in question was unreasonable[.]" J.A. 146.

If, as Mr. Coe urged, Appellant's Op. Br. at 15-16, the district court's holding on the threshold legal standard for a causal nexus was incorrect and confused with the similar-but-distinct inevitable discovery standards, then it is the government's

burden to prove, and the district court's job to determine,[1] the facts material to whether the seizure was reasonable. Factfinding on an incomplete record is not this Court's domain.

C. The Panel Opinion's *Sua Sponte* Announcement of a Rule Neither Party Requested Violates the Party Presentation Rule

The issue on which the opinion resolved Mr. Coe's claim was raised and decided *sua sponte*. The government agreed in its brief that this Court reviews "factual conclusions" under the clear error standard – not a *failure* to find facts.[2] Instead, the government's arguments, in order, were that (A) Officer Walker's use of "force that risks serious injury" was reasonable even though the basis of probable cause was "non-violent" on its own, Gov't Br. 16; (B) there was no legal error in the causal nexus analysis, Gov't. Br. 17; (C) inevitable discovery applies, Gov't. Br. 21; (D) the exclusionary rule does not apply to excessive force claims. Gov't Br. 25.

The opinion's extension of the clear error standard of review to facts the district court *avoided* was not urged as a rule by either party. Under the party

[1] Unless, as noted below, there is only one reasonable interpretation of the facts as depicted in the video exhibits submitted by the government, in which case this court may rely on those facts. And the video clearly shows Officer Walker's finger bent, inserted between the trigger and the trigger guard of his firearm, pointing it into Mr. Coe's back while pinning him to the car with his other arm.

[2] And it only invoked that standard with regard to whether Officer Walker tased Mr. Coe before or after Officer Walker saw the firearm. Gov't Br. 19-20. But Mr. Coe never argued to the contrary, he only argued that the use of the taser followed immediately from the use of the *firearm*, which was unreasonable. Appellant's Reply at 3-4.

presentation rule, the court is supposed to "rely on the parties to frame the issues for decision" and to "decide only questions presented by the parties." *United States v. Sineneng-Smith*, 590 U.S. 371, 375-76 (2020) (citations omitted). That is, "courts call balls and strikes; they don't get a turn at bat." *Clark v. Sweeney*, 607 U.S. ____, 2025 WL 3260170 (Nov. 24, 2025). The panel's novel extension of the clear error standard of review, not advanced or advocated by either party, and not in any way jurisdictional, should wait for a case where it's argued and briefed. The opinion itself illustrates the danger, by announcing the rule without considering the unanimity of contradictory authority from both the Supreme Court, this Court, and every other circuit to consider it.

D. Under *Scott v. Harris*, The Court Should Not Ignore Undisputed Video That Clearly Depicts Officer Walker's Finger On the Trigger While Pointing the Gun at Mr. Coe and Pinning Him to the Car

The request for a remand is modest compared to what the Court could, and should, do when comparing Officer Walker's testimony with the undisputed video evidence presented by the government. This Court's review *en banc* is warranted to address situations such as this where a law enforcement officer's testimony is inconsistent with undisputed video evidence that the government itself presented.

The panel opinion claimed, without citation to the record, that the factual question of whether "Walker had his finger on the trigger . . . was hotly contested at

the suppression hearing." 2025 WL 3152894 at *2. It was not.[3] The government never disputed that Officer Walker's finger was on the trigger, even while addressing this same exhibit, J.A. 074. Its only criticism was to note that Officer Walker holstered his firearm soon after. *Id*. The government *itself* introduced the video showing Officer Walker's finger on the trigger, and prudently never relied on Officer Walker's denials.

From the suppression hearing:

Q Okay. And in your right hand is your firearm?

A Yes.

Q And your finger is on the trigger?

A No, my finger is not on the trigger.

J.A. 111.

Q Is your right index finger straight or bent?

A It looks like it's bent.

. . .

[3] Nor was it contested on appeal. The government's brief simply ignores whether Officer Walker had his finger on the trigger or pointed the gun into Mr. Coe's back; its brief does not even contain the words "finger" or "back" and its two instances of "trigger" come in the phrases "trigger the application of the exclusionary rule" and "triggering the prohibition." Gov't Br. 28, 51

Q So if you're not planning on shooting, you're supposed to keep your finger outside of the trigger guard, right?

A No.

Q Okay. So you can put your finger in the trigger guard even if you're not planning to shoot somebody?

A You never know when you're going to have to shoot somebody.

J.A. 113-114; Gov't Exh. 1.

Q [. . .] Now I want you to look at your shadow on the car door. Do you see it?

A Yes.

Q That is you holding the gun in your right hand and pointing it towards your left, towards Mr. Coe, right?

J.A. 112.

The government also introduced surveillance video, which unambiguously shows Officer Walker pointing the gun into Mr. Coe's back:

Gov't. Exh. 2 at timestamp 10:27:11. Treating this evidence and testimony as disputed or ambiguous is wrong.

As it has in other Fourth Amendment cases, and as the Supreme Court has directed, the Court should *not* view the evidence in a light most favorable to the government where there is clear, uncontradicted video evidence, but rather "in the light depicted by the videotape." *United States v. Kehoe*, 893 F.3d 232, 237 (4th Cir. 2018) (quoting *Scott v. Harris*, 550 U.S. 372, 378-81 (2007)); Here, like in *Scott*, "videotape quite clearly contradicts the version of the story" given by Officer Walker. *Id.*; *see also United States v. Miller*, 54 F.4th 219, 229 (4th Cir. 2022) ("[W]hen an officer's testimony is clearly contradicted by video evidence, the court should normally discount the testimonial statements."). The Court therefore need not even remand; it can, and should, address whether Officer Walker's pointing the

firearm into Mr. Coe's back with his finger on the trigger, was a reasonable use of force under the Fourth Amendment.

Avoiding credibility determinations for police officers whose careers may be affected is a temptation. But ignoring it when it happens teaches the officers and government to stretch the bounds of fair advocacy and undermines respect for the rule of law. The abuse of the "clear error" standard of review here provides the government and courts an escape valve for uncomfortable but necessary evaluations of officers' use of force and honesty when it happens. Indulging law enforcement and the government in this way, for long enough, even if not in this case, will eventually bear fruit. It is far better to address the issue through an anodyne argument involving the standard of review, now, than to wait for an "incipient crisis." *Abrego Garcia v. Noem*, 2025 WL 1135112 (4th Cir. 2025) (unpublished).

CONCLUSION

The panel opinion in this case sends two messages. On the surface, it condemns the idea that officers can draw and point their firearms without regard to whether the use of force is justified. But in *effect*, it conveys that the government and courts can avoid uncomfortable legal and factual disputes, even where officers who use force appear in court under oath and obstinately deny it in the face of unequivocal and objective video evidence. There is no escape valve to avoid a credibility finding or legal consequence to the prosecution.

Respectfully submitted,

GEREMY C. KAMENS
Federal Public Defender
for the Eastern District of Virginia

s/ Joseph S. Camden

Joseph S. Camden
Assistant Federal Public Defender
Counsel for Appellant
701 East Broad Street, Suite 3600
Richmond, VA 23219
(804) 565-0830
joseph_camden@fd.org

Dated November 26, 2025

CERTIFICATE OF COMPLIANCE

1. This Brief of the Appellant has been prepared using Microsoft Word 365 software, Times New Roman font, 14-point proportional type size.

2. EXCLUSIVE of the corporate disclosure statement, table of contents, table of authorities, statement with respect to oral argument, any addendum containing statutes, rules, or regulations, and the certificate of service, this brief contains no more than 3,900 words, specifically 3,538 words.

I understand that a material misrepresentation can result in the Court's striking the brief and imposing sanctions. If the Court so requests, I will provide an electronic version of the brief and/or a copy of the word or line print-out.

November 26, 2025
Date

s/ Joseph S. Camden
Joseph S. Camden
Assistant Federal Public Defender