

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TECQUIN DARKEEM MOORE

-- PETITIONER

vs.

VIRGINIA

-- RESPONDENT.

On Petition for a Writ of Certiorari to
The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI
Corrected Version

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QUESTION PRESENTED

This Court, in *Florida v. Harris*, 568 U.S. 237 (2013), established the standard of reliability for drug dog cases – focusing on the standard for the dog’s reliability and the establishment thereof by the dog’s training records, but apparently assumed under that case’s facts that an alert had actually occurred. The question presented is:

Where a properly trained drug dog, who was handled by a properly qualified trainer, failed to alert to drugs in a dog sniff of a vehicle, but merely engaged in “casting” about and allegedly exhibited untrained behavioral responses short of what the trainer deems to be an alert, did the overruling of a Motion to Suppress and the admission of evidence stemming therefrom violate the Fourth and Fourteenth amendments to the Constitution of the United States as fruit of the poisonous tree due to an unreasonable search and seizure.

LIST OF PARTIES TO THE PROCEEDING

The Petitioner (the defendant below) is Tecquin Darkeem Moore.

The Respondent (the plaintiff below) is the Commonwealth of Virginia.

RELATED PROCEEDINGS

Tecquin Darkeem Moore v. Commonwealth of Virginia, Supreme Court of Virginia Rec. No. 250891 (Order Refusing Petition for Appeal) (March 6, 2026) (unpublished).

Commonwealth of Virginia v. Tecquin Darkeem Moore, Circuit Court of Danville Nos. CR22-940 through CR22-944, Order denying Motion to Suppress (November 2, 2023) (unpublished).

Commonwealth of Virginia v. Tecquin Darkeem Moore, Circuit Court of Danville Nos. CR22-940 through CR22-944, Adjudication Order for Conditional Guilty Plea (January 29, 2024) (unpublished).

Commonwealth of Virginia v. Tecquin Darkeem Moore, Circuit Court of Danville Nos. CR22-940 through CR22-944, Sentencing Order (February 27, 2024) (unpublished).

Tecquin Darkeem Moore v. Commonwealth of Virginia, Court of Appeals of Virginia Rec. No. 0715-24-3 (Order Affirming Convictions) (August 26, 2025) (published at 85 Va. App. 634).

Tecquin Darkeem Moore v. Commonwealth of Virginia, Supreme Court of Virginia Rec. No. 250891 (Order Refusing Petition for Rehearing) (April 16, 2026) (unpublished).

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**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES:**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia in this case.

OPINIONS / ORDERS BELOW

The Order of the highest state court to deny discretionary review of this case, the Supreme Court of Virginia, appears in the Appendix to the petition at page A1 and is unpublished.

The Order of the Circuit Court of Danville, Virginia in which the Motion to Suppress was overruled appears in the Appendix to the petition at page A2 and is unpublished.

The Adjudication Order of the Circuit Court of Danville, Virginia appears in the Appendix to the petition at pages A3 through A4 and is unpublished.

The final Sentencing Order of the Circuit Court of Danville, Virginia appears in the Appendix to the petition at pages A5 through A7 and is unpublished.

The Order of a panel of the Court of Appeals of Virginia appears in the Appendix to the petition at pages A8 through A23 and is published at 85 Va. App. 634.

The Order of the Supreme Court of Virginia denying Rehearing appears in the Appendix to the petition at page A24 and is unpublished.

JURISDICTION

The date on which the highest state court decided this case, the Supreme Court of Virginia, was April 16, 2026.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the Constitution provides that “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.”

The Due Process Clause of the Fourteenth Amendment to the Constitution, in Section 1, which incorporates the Fourth Amendment and applies it to the states, provides that “All persons born or naturalized in the

United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

This is an appeal of the decision of the Circuit Court of the City of Danville, Virginia which was handed down by the Honorable James J. Reynolds, Judge, who overruled a Motion to Suppress in the case on October 27, 2023 (entered November 2, 2023). After the Defendant, Tecquin Darkeem Moore (hereinafter “Moore”) entered a conditional guilty plea under Va. Code § 19.2-254 to convictions for second-offense distribution of a schedule I or II substance (3 charges), possession of a schedule IV substance, and misdemeanor obstruction of justice, pending appellate resolution of a Motion to Suppress stemming from a faulty “alert” of a drug dog in which the dog did not actually alert as trained.

The lower court decision was affirmed by Court of Appeals of Virginia on August 26, 2025 in a published opinion written by the Honorable Marla Graff Decker, Chief Judge, and joined by the Honorable Richard Y. AtLee, Jr., Judge, and the Honorable Robert J. Humphreys, Senior Judge.

The Supreme Court of Virginia denied discretionary review on March 6, 2026 (petition for appeal) and again on April 16, 2026 (petition for rehearing).

The facts regarding the Motion to Suppress indicated that Investigator Derrick Lancaster of the Danville Police Department was on duty on April 29, 2022 and was conducting surveillance on a potential drug trafficker target. Other investigators called his attention to a 2007 black Dodge Charger with Virginia tags, and he spotted this vehicle in the Arnett Boulevard area of Danville. He ran the tag and determined that the vehicle belonged to Moore, who had a criminal history. After following the vehicle down several roads and observing two proper stops at intersections, Lancaster finally found a violation in that it left a Valero parking lot without coming to what he considered to be a complete stop.¹ He then notified Officer Ferguson, who was in a marked police car nearby, of this alleged violation.

Officer Ferguson stopped the vehicle at 1:20 p.m. and determined Moore to be the driver.

Deputy Reynolds of the Pittsylvania County Sheriff's Office ² also pulled up to the scene as Moore was stopped, and ran his trained ³ and

¹ See Va. Code § 46.2-826. Moore was not charged with this traffic offense.

² Deputy Reynolds qualified as a dog handler expert without objection.

³ Caroline is only certified and trained in methamphetamine, cocaine and heroin.

certified drug dog Caroline, an English Pointer, around the vehicle within minutes after the stop.⁴

Deputy Reynolds testified that Caroline is trained to freeze, point or sit as final responses to a drug odor.

When asked by the prosecutor if there were any types of responses other than final responses, Reynolds stated that “non-trained behavioral changes”, including breathing changes, the intensity of a search when her head turns, changing postures, jumping up, intense tail wags, and trying to check underneath the vehicle were “all based on when the dog enters that odor.” Reynolds uses these “non-trained behavioral responses” rather than “alerts” or “indications” of drugs.

In the case at bar, Deputy Reynolds claimed that Caroline, during two passes around the vehicle, exhibited two breathing changes plus a head turn which in his opinion was sufficient to qualify as “untrained behavioral responses” which showed that she detected the odor of narcotics.

A DVD video excerpt of Caroline’s sniff of the vehicle in question was played in court and became a Commonwealth’s exhibit.

Deputy Reynolds acknowledged that Caroline has sometimes had false responses under certain circumstances.

⁴ Officer Ferguson said the dog’s involvement began 3 to 3.5 minutes after the stop, whereas Deputy Reynolds said it was 1.5 minutes after.

Documents showing the dog's history – including this case – were admitted as defense exhibits at the suppression hearing, without objection.

On cross-examination, Deputy Reynolds acknowledged that in other particular sniffs in Caroline's history, she had exhibited breathing changes, but these were not considered to be her final response – and in fact that breathing is never a final response.

When asked if it was true that Caroline had not been trained to breathe as any kind of alert or as leading to an alert, Deputy Reynolds responded, "So those non-trained behavioral changes, there's nothing I've trained into the dog. It's nothing....".

Deputy Reynolds acknowledged that heavy dog breathing could possibly result from heat, excitement or any number of other factors.

Deputy Reynolds also acknowledged that during the film, it appeared at various points that Caroline jumped: a) away from the vehicle, or b) onto Reynolds, but he stated that these actions were not unusual and did not indicate an alert.

Upon being confronted with the term "casting", Deputy Reynolds seemed unfamiliar with it being used to refer to "untrained behavioral responses", but he did use that to refer to sending an animal to locate a person by scent, which is not done in vehicle sniffs.

After the non-final “untrained behavioral responses” of Caroline, the vehicle was searched and drugs ⁵ were found in locations incriminating to Moore.

Moore also testified at suppression hearing, stating that he observed what the dog did, that he observed no breathing changes, that the dog seemed untrained, and that the dog was not even paying attention to the vehicle, but to “everything else” and was jumping on the officer. He pointed out that his own non-odor-trained dogs exhibit breathing changes regularly.

At the conclusion of the evidence on the Motion to Suppress, the defense argued that all the evidence flowing from the dog sniff should be suppressed, based on the same arguments being made in the present petition. After the suppression motion was overruled, and the with the consent of the Commonwealth, Moore entered a conditional guilty plea to the charges against him, and was sentenced to 15 years active incarceration.

REASONS FOR GRANTING THE PETITION

This case involves a Motion to Suppress which was filed September 18, 2023 and heard on September 20, 2023, moving to suppress evidence stemming from the dog sniff which violates the Fourth and Fourteenth Amendments to the Constitution of the United States because of an unreasonable search and seizure, in that a vehicle Moore was driving was

⁵ The drugs found were fentanyl, methamphetamine, alprazolam, cocaine and flurofentanyl.

stopped ⁶, and then searched without actual and continuing probable cause or reasonable suspicion in that the drug dog did not in fact alert to drugs and there was thus no reason to search further; that no valid consent was obtained for any such search; and that any statements, whether oral, written, or taped, and likewise any evidence obtained or derived from said statements, including evidence which may have been taken from Moore which was obtained in a manner which violated the Fifth and Fourteenth Amendments to the Constitution of the United States, *cf. Miranda v. Arizona*, 384 U.S. 486 (1966) and subsequent case law, should likewise have been suppressed.

The drug dog documents received in discovery indicated that the dog (“Caroline”) is trained only in cocaine, heroin and methamphetamines (apparently not fentanyl), and that although she sometimes exhibits breathing changes, her trained “final response” upon finding drugs is to freeze, point or sit – none of which occurred in the case at bar, but only the supposed “untrained behavioral response” of two breathing changes and a head turn – neither of which are final responses, and neither of which are sufficient to indicate that the dog is alerting to the presence of drugs. Without evidence that the dog alerted as she was trained to do, the resulting search is clearly unconstitutional and this requires reversal.

In *United States v. Wilson*, 995 F.Supp.2d 455 (W.D.N.C. 2014), suppression was granted in the context of a dog breathing change which was

⁶ The validity of the stop was not assigned as error.

held not to be a full alert. *Wilson* discusses the difference between “alerts” and mere “casting”:

[T]he Court finds that [the dog] was trained to sit and stare when he found the source of odors emanating from three specific drugs: heroin, cocaine and marijuana.... The record evidence is uncontroverted (and in the video evidence it is obvious) that that [the dog] did not alert in this manner. A detection dog will, in some instances, perform something less than an alert when encountering certain stimuli. This is sometimes referred to as “casting.”

Id. at 473-74.

Wilson goes on to discuss the similar case of *United States v. Rivas*, 157 F.3d 364 (5th Cir. 1998), in which the court also suppressed due to mere “casting” rather than alerting.

Drug dog search law traces back at least to the case of *Florida v. Harris*, 568 U.S. 237 (2013), in which this Court established the standard of reliability for drug dog cases – focusing on the standard for the dog’s reliability and the establishment thereof by the dog’s training records, but apparently assuming under that case’s facts that an alert had actually occurred.

In the case at bar, the officer’s expertise is uncontested, and Caroline’s ability to alert to the stated drugs is also not contested. What is at issue is here is whether the dog in fact alerted to drugs in this case. No doubt this is to a great extent a factual issue, but it is actually a mixed issue of law and fact in that the law must have some legal standard to make this

determination – which is a reasonable person standard and not some kind of private hunch of the officer that the dog is about to alert.

In *United States v. Peterson*, No. 3:18-cr-00090-JAG-1 (E.D. Va. Apr. 24, 2019), it was held that a dog’s weak responses – stopping, pausing and looking back at the officer rather than the strong response of sitting – were not an alert and did not constitute probable cause (albeit the conviction was affirmed because of other evidence).

Suppression was also granted in *United States v. Diaz*, No. 2:16-cr-00055-DCN (D.S.C. Apr. 6, 2018), on the ground that the dog’s rapid respiration and change of body posture was not shown to be an alert (rather than a mere “indication”) and that the dashcam video did not show these actions to be an alert. *Id* at 32.

In the case at bar, the drug dog documents and the video all indicate a clear differentiation between “non-trained behavioral changes” a/k/a “casting” or weak “indications” as opposed to an actual alert or “final response.”

Several of the dog’s training records are instructive as to what an alert is supposed to be, and the fact that the officer (mistakenly) believed he could rely on “non-trained behavioral changes” such as breathing which he acknowledged were not an alert, as apparent alternatives to the obviously distinct actions of freezing, pointing or sitting which were trained final alerts.

For example:

4/29/22 non-trained behavioral changes like breathing relied on

7/20/21 at 8:30 dog was learning behavioral changes *and* alert
(emphasis added)

7/20/21 at 10:30 she showed fast breathing changes and *would point*
for her final response (emphasis added)

7/20/21 at 11:00 ... breathing change would point for final response

12/29/21 at 9:20 “K9 located all finds with non trained behavioral responses
and then her final response”

12/29/21 at 10:00 “Caroline showed head turns, breathing change, quick
change in direction and her final response”

1/26/22 at 1050 “Since this was inside I let Caroline work off lead. She
would check the entire room and once she hit odor I could hear her have a
breathing change. She would then work side to side until she located source
and the give her final response.”

The film in the case at bar actually shows very little, certainly at best
only a weak indication of a possible future alert. This is insufficient factually
and problematic legally.

Hunches of an officer who may sense an incommunicable likelihood
that the dog is “getting ready to alert” cannot be sufficient for the courts
which can only rely on objective communicable proof. People have hunches
on the weather, politics, their spouse’s impending behavior and numerous
other subjects, but only those which are objectively quantifiable can be
analyzed by courts.

The breathing seen in the video was at most one of the so-called “non-
trained behavioral responses” which could indicate any number of other

things, such as the dog being overheated from being in a police car. It was a weak indication of a future possibility, was not an alert according to Caroline's training, and was thus inadequate to show that she was alerting to the presence of drugs.

To rule otherwise would invite hunches and other supposed indications of untrained behavior to be dragged into the constitutional inquiry that must be conducted by the courts. This would either result in a murky swamp of inexactitude or a complex two-tiered system of trained behavior and untrained behavior that would make it quite difficult to resolve these cases in a consistent manner.

Both as a matter of general constitutional law and with respect to the particular facts of this case, the better and more objectively reasonable case law indicates that the Motion to Suppress in this case should have been sustained.

Thus the ruling in this case should be based on the principles contained in cases such as *Rivas* and *Wilson*, *supra*, which the defense submits is the better case law on this situation.

There is apparently no ruling from this Honorable Court, from the Fourth Circuit, or from the Supreme Court of Virginia on what constitutes a "drug dog alert" in a probable-cause-to-search context, or whether anything less than what the handler deems to be an alert is acceptable. Rather,

What constitutes an “alert” is not clear from the caselaw. Some courts have adopted the view that an alert is trained behavior that can be either aggressive, such as biting or scratching, or passive, *See United States v. Johnson*, 323 F.3d 566, 567 (7th Cir. 2003).[7] By contrast, others have determined that a change in behavior is insufficient to constitute an alert and instead that the drug dog must perform the full indication that it is trained to do before it constitutes an alert such that the officers have probable cause to search the vehicle. *See United States v. Rivas* [*supra*] ...

Diaz, supra.

Thus a ruling from this Honorable Court is of the utmost importance.

The Commonwealth’s brief in the Virginia Court of Appeals at mentions *Rivas* in a “*but see*” reference: “(noting that ‘no federal court has ever confronted a situation ... where a [dog’s] “weak alert” on its own triggers a search’), but makes no attempt to explain or distinguish *Wilson*.”

Only the rule of *Rivas* and *Wilson* can meet the demands of constitutional scrutiny. Standing alone, as in the case at bar, anything less than the full alert for which the dog was trained cannot be sufficient to provide probable cause for the search of a vehicle.

The practice of “casting”, as discussed in both *Rivas* and *Wilson*, and/or “untrained responses” such as breathing changes, are inherently problematical in that they are too dependent on the subjective perceptions of the officer and are often difficult to convey to a court. Thus, in *Diaz*, the

⁷ Although the *Johnson* case was an appellate reversal of a trial court decision to suppress, the court noted that non-dog evidence supported probable cause and that the dog alert was “just the icing on the cake.” *Johnson, supra.*

court noted that “what concerns the court is that it had only the law enforcement officers’ testimony to consider in evaluating whether [the dog] did in fact alert.” *Diaz, supra* at 32-33.

In *Wilson*, where the dog was trained to “sit and stare” but instead only gave weaker indications, the court properly ruled that:

To allow a search predicated upon an officer’s interpretation of the utterly minimalist lesser showing exhibited by the dog in this case would be tantamount to permitting law enforcement officers to issue their own search warrants based upon their own subjective analysis, something the Framers explicitly prohibited.

Wilson at 475 (quoted in *Diaz* at 34-35).

Similarly, in *Rivas*, the court properly ruled that the “casting” there was not an alert and was “too distantly related to an alert to create reasonable suspicion on its own as a matter of law.” *Rivas* at 368.

Even assuming *arguendo*, without conceding, that there can be no *per se* rule to cover all cases which mandates that there are no circumstances in which a partial or weak dog alert – perhaps in combination with other evidence – could constitute probable cause to search, the Court should rule in this case that the weak “casting” or “semi-alert” of the dog was insufficient to establish probable cause to search the vehicle. Here, the alleged alert was unsupported by any other factors pointing towards probable cause to search.

The search in the case at bar, which was supported only by rather subjective conclusions based on the experience of the dog handler rather reasonable conclusions based on established facts gleaned from the dog’s

training, violates by the letter and spirit of the Fourth Amendment guarantee that:

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.

It is respectfully submitted that Honorable Court should rule that the Motion to Suppress should have been sustained by the lower courts, since the search of the vehicle was done in violation of the Fourth Amendment to the Constitution of the United States, as incorporated by the Fourteenth Amendment.

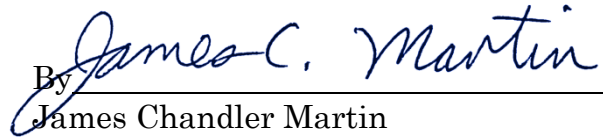
Therefore the evidence obtained in the continued search for drugs as a result of the alleged alert was unconstitutional under the Fourth and Fourteenth Amendments to the Constitution of the United States and should have been suppressed. The trial court's failure to do so was reversible error.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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