IN THE SUPREME COURT OF APPEAL OF WEST VIRGINIA

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No. 25-_____

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,
***Petitioner*,**

v.

THE HONORABLE TIMOTHY L. SWEENEY,
Circuit Court Judge of the Circuit Court of
Ritchie County, West Virginia,
and **EARNEST LEE OWENS,**
defendant below,
***Respondents*.**

PETITION FOR A WRIT OF PROHIBITION

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INTRODUCTION

When police officers found Respondent Earnest Owens sitting alone in his truck near an apartment building where he was reported to have committed an assault, the officer had a reasonable, articulable suspicion that he had just committed a crime. He was, consequently, fulfilling his duty when he asked Respondent Owens to speak with him about the incident. The circuit court failed to recognize that the law expressly permits this brief, safety-focused encounter. Instead, the circuit court granted Respondent Owens' petition for writ of prohibition based on factual determinations that it applied to an errant understanding of the law. The circuit court disregarded *Pennsylvania v. Mimms, Muscatell v. Cline, State v. Stuart*, and other legal precedent, which resulted in clear errors of law regarding reasonable suspicion to detain a vehicle to investigate. The court also misapplied the law establishing the type of conduct that constitutes obstructing an officer. It thus exceeded its authority and committed clear legal error that deprived the State of its right to prosecute Respondent Owens for the offense of obstructing an officer as charged in the criminal complaint. The Court should issue a writ of prohibition to prevent the circuit court from enforcing its order.

QUESTION PRESENTED

Should this Court issue a writ of prohibition to prohibit the Circuit Court of Ritchie County, West Virginia, from enforcing its order prohibiting the State from prosecuting Respondent Owens on the charge of obstruction and dismissing it from the criminal complaint in Case No. 24-P-10, because it misapplied both state and federal law?

STATEMENT OF THE CASE

In August 2023, Ritchie County Sheriff's Department deputies responded to a 911 call about an altercation in progress. App. 2, 74. The caller reported that Earnest Lee Owens, a maintenance employee at the Cardinal Apartment Complex in Pennsboro, West Virginia, fought

with the caller, a tenant of the apartments. App. 2, 74-75. The tenant reported that Respondent Owens "chest bumped and was threatening [him with] bodily harm." App. 2, 75. Deputy J.C. Egan heard "some of the altercation" "over the 911 dispatch" and responded to the call. App. 75-76. The tenant advised the 911 operator that Respondent Owens left the apartment complex, entered a black Dodge Ram pickup truck, and pulled into the nearby Save A Lot parking. App. 2, 75-76.

Deputy Egan drove toward the apartments, where he observed a black Dodge Ram pickup truck, occupied by a male matching the tenant's description, parked in the Save A Lot.[1] App. 2, 76-77. He saw the pickup truck move forward as he approached. App. 2, 77. Deputy Egan activated his emergency lights, the truck stopped, and the officer pulled his cruiser in front of the pickup truck. App. 2, 78.

Deputy Egan approached the driver side door and attempted to speak with Respondent Owens through the closed window. App. 2, 78; *see* BodyCam 0:01-6:00. Respondent Owens told the deputy to wait until he finished his phone call. App. 2, 59, 79. The deputy told Respondent Owens he was investigating a 911 call regarding physical contact against the caller and instructed Respondent Owens to get out of his truck for officer safety. App. 2, 59-61, 78-80. Respondent Owens refused to exit the vehicle and instead locked the doors. App. 2, 59, 81-83. Respondent Owens was "agitated and yelling during the interaction" and disregarded the deputy's repeated instructions to exit the truck and to speak with him about the 911 complaint. App. 2, 59-60; BodyCam 0:35-4:30. Respondent Owens stated he would speak with the deputy through the closed window. App. 62.

[1] The Save A Lot parking lot was approximately forty yards from the Cardinal Apartment Complex. App. 102.

Deputy Egan emphasized that he did not know whether Respondent Owens had any weapons in the vehicle, that he was investigating an altercation involving Respondent Owens, and Owens had been yelling, noncomplying, and hindering Deputy Egan's performance of his duties. App. 60, 62, 80, 97. Respondent Owens, barricaded inside the vehicle, continued to yell while Deputy Egan persisted in his efforts to communicate with Respondent Owens, directed him to exit the vehicle, and conveyed that he needed to ascertain whether Respondent Owens was armed. App. 2, 59; BodyCam 1:37-4:14. Although Respondent Owens said he was going to speak with Deputy Egan, he failed to do so. App. 2; BodyCam 4:14-4:34. The deputy repeatedly informed Respondent Owens that he was the subject of a 911 complaint of an altercation that Deputy Egan was investigating. App. 59, 60, 63, 64. Respondent Owens' behavior, coupled with him being the reported aggressor in an altercation, concerned Deputy Egan for his safety. App. 83-84. He was concerned Respondent Owens had weapons in the vehicle and advised 911 Central Communications that he would wait for backup to arrive. App. 2, 61, 84.

Deputy B.K. Casto arrived to assist Deputy Egan. App. 2, 64; BodyCam 4:59. Respondent Owens continued to refuse to speak with the officers about the investigation and refused to exit the vehicle. App. 2, 64; BodyCam 4:59-5:54. Neither the deputy's warning to Respondent Owens that he would face criminal charges for obstructing an officer nor the deputy's warning that he would be forced to break the window induced Respondent Owens to comply. App. 2, 60, 64-65. Respondent Owens told the deputy to "[b]reak the damn window . . . . Break it!" App. 2, 65; BodyCam 5:58-6:07.

Deputy Casto broke the driver's side window, unlocked the doors, and, with assistance, pulled Respondent Owens from the truck. App. 2, 65; BodyCam 5:58-6:25. Respondent Owens "struggled during the entire movement" and "resisted the movement of his arms and pulled away." App. 2, 65; BodyCam 5:58-6:43. Deputy Casto saw a handgun (for which Respondent Owens had

a permit) tucked into the back of Respondent Owens' waistband, and yelled, "Pistol! Pistol!" as both officers struggled to restrain Respondent Owens. App. 2, 65; BodyCam 6:25-6:40.

Respondent Owens was charged in a magistrate court criminal complaint with obstructing an officer under West Virginia Code § 61-5-17(a)[2] and assault under West Virginia Code § 61-2-9(b) for his altercation with the apartment tenant. App. 1-4. Petitioner filed a motion to dismiss the criminal complaint, asserting that law enforcement "had no legal authority to arrest the Defendant for obstructing an officer . . . or battery." App. 37-38. The magistrate court denied his motion. App. 37.

In September 2024, Respondent Owens filed in the circuit court an amended petition for a writ of prohibition[3] of further prosecution on either charge, on the grounds that (1) he had the right to remain silent and not cooperate with officers, and failure to cooperate does not constitute obstruction, and (2) that Respondent Owens' alleged assault of the apartment tenant did not occur in the officers' presence, so the officers could not detain Respondent Owens for that crime. App. 39-43.

The circuit court conducted an evidentiary hearing on December 6, 2024. App. 70-110. At the outset of the hearing, the assistant prosecuting attorney stated that he "wanted to make a motion to dismiss based upon the subject matter at hand." App. 72. He explained, "I don't believe that this, this writ is appropriate given the subject matter. It is not a jurisdictional question and

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[2] "A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer . . . acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined."

[3] Petitioner filed the initial petition for writ of prohibition without the requisite verification on June 25, 2024. App. 116. The Amended Petition for Writ of Prohibition includes the verification page that the original petition lacked. App. 43.

something that can be cured on appeal." App. 72. The court did not rule on this motion at the hearing or in its written order granting the writ of prohibition. *See* App. 48-57, 72-110.

The only testimony was given by Deputy Egan. App. 73-107. The deputy's testimony generally supported the information in the criminal complaint, described above. App. 73-107. He agreed that there was no warrant for Respondent Owens' arrest, Respondent Owens did not commit a crime in his presence, Respondent Owens was not "in custody," and officers had not given Respondent Owens a *Miranda* warning when they approached him in his truck. App. 79-80. The officer testified that "[i]t was not the talking" that led him to conclude that Respondent Owens was uncooperative, but instead "the failure to get out so I could check for weapons and then continue my investigation." App. 83-84. The officer testified that he was "scared and concerned" given Respondent Owens' behavior and that he was the aggressor in the 911 complaint. App. 82-84. The officer further testified, "[M]y concern was safety at that time for myself and the proximity to the victim of the alleged crime." App. 86. He testified that when he asked Respondent Owens to exit the truck, "I told him 'I don't know if you have any weapons on you or not[. T]hat is why I want you to come out of the vehicle.'" App. 106.

By order entered on February 12, 2025, the circuit court granted the petition for writ of prohibition as to the obstruction charge. App. 48-57. The court specifically found that Deputy Egan saw a truck matching the description and location of the truck reported in the 911 call, engaged his emergency lights, and approached the vehicle that "was stopped and lawfully parked on the [Save A Lot] premises." App. 49. The court also found that when the deputy approached Respondent Owens' truck he "informed the male occupant he was investigating a 9-1-1 call regarding physical contact made against the caller and he, the male occupant, was named the aggressor." App. 50. The court also found that when Respondent Owens told the officer "I can talk through the window" the officer responded, "I have no idea if you have any weapons."

App. 50-51. Nevertheless, the court distinguished the situation from the "stop" of a vehicle because the deputy "was simply interviewing [Respondent Owens] as part of an investigation," App. 54, and it found that when officers asked about a firearm, the question was out of "general concern" rather than "a particular suspicion," App. 56. Therefore, it found, "Petitioner would continue to be imbued with the right to remain silent" and "there is no factual basis for an obstruction charge." App. 54. It concluded that the magistrate court judge "exceeded her legitimate powers" because her order "denying the . . . motion to dismiss manifests clear error as a matter of substantive law. Specifically, there is no factual basis for an obstruction charge." App. 54.

The court's order granting a writ of prohibition and dismissing the obstruction of law enforcement charge against Respondent Owens remains in full force and effect. The State thus files this petition to prohibit the order's enforcement.

SUMMARY OF ARGUMENT

Law enforcement lawfully detained Respondent Owens in his vehicle based on a reasonable, articulable suspicion that he was the named aggressor in a possible assault and battery that had just happened. Respondent Owens matched the description of the aggressor and was the sole occupant in a pickup truck matching the color, make, and model of the vehicle the victim described, and he was parked in the location the victim reported. The stop thus satisfied Fourth Amendment protections.

West Virginia law aligns with the United States Supreme Court's pronouncement that law enforcement may "as a matter of course" order the driver of a lawfully stopped vehicle to exit the vehicle, without violating the Fourth Amendment. The circuit court mistakenly relied on caselaw for warrantless searches of a home to justify its ruling that the officer violated the Fourth

Amendment by directing the "agitated and yelling" Respondent Owens out of the vehicle for officer safety because the officer "d[idn]'t know if [he] ha[d] any weapons on [him]."

Finally, the court wholly missed the distinction drawn by both this Court and federal courts as to conduct that constitutes obstructing an officer. Obstruction does not occur when a person "remains silent" or asks questions when an officer requests identifying information. Obstruction occurs when a person refuses to communicate after an officer enunciates the 'link' between the request and the officer's official duties. As a result of each of these clear errors as a matter of law, the court deprived the State of its right to prosecute Respondent Owens for obstructing Deputy Egan in the performance of his official duties.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The State does not request oral argument. This case can be disposed of by memorandum decision under Rule 18 of the West Virginia Rules of Appellate Procedure. Oral argument is unnecessary to aid this Court in its consideration of the question presented, and a writ should issue preventing enforcement of the lower court's order.

ARGUMENT

I. Standard of Review

The State may seek a writ of prohibition in a criminal case "where the trial court has exceeded or acted outside of its jurisdiction." Syl. pt. 3, *State ex rel. State v. Gwaltney* (*Gwaltney II*), 250 W. Va. 695, 908 S.E.2d 192 (2024) (citation omitted); syl. pt. 1, *State ex rel. State v. Gwaltney* (*Gwaltney I*), 249 W. Va. 706, 901 S.E.2d 70 (2024) (citation omitted). "Where the State claims that the trial court abused its legitimate powers, the State must demonstrate that the court's action was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction." Syl. pt. 3, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192 (citation omitted); syl. pt. 1,

Gwaltney I, 249 W. Va. 706, 901 S.E.2d 70 (citation omitted). This Court considers five "general guidelines" when determining whether a writ should issue:

> (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression.

Syl. pt. 2, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192 (quoting syl. pt. 4, *State ex rel. Hoover v. Berger,* 199 W. Va. 12, 483 S.E.2d 12 (1996)); syl. pt. 2, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70 (quoting syl. pt. 4, *Hoover*, 199 W. Va. 12, 483 S.E.2d 12).

II. The lower court clearly erred as a matter of law and exceeded its power when it issued a writ of prohibition[4] and dismissed the criminal charge against Respondent Owens for obstructing an officer.

"Although all five [*Hoover*] factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." *Id.* This factor weighs heavily in Petitioner's favor. State and federal law authorizes law enforcement to stop an individual to investigate a crime based upon a reasonable, articulable suspicion that the person has committed, is committing, or is about to commit a crime. Deputy Egan initiated a lawful encounter with Respondent Owens based on the tenant's report to 911 that Respondent Owens had physically assaulted and threatened him. Deputy Egan lawfully detained Respondent Owens, told him he was the subject of a criminal investigation, and issued a lawful command to Respondent Owens to exit the vehicle. Respondent Owens refused to exit the vehicle and effectively refused to communicate with the officer, thereby preventing Deputy Egan from performing his official duties.

[4] Although the lower court granted the petition for a writ of prohibition, it did not examine any of the *Hoover* factors either in its Order or on the record.

The circuit court fundamentally misapplied well-established law and reached a decision contrary to the clear legal authority.

A. Law enforcement lawfully detained Respondent Owens based on a reasonable, articulable suspicion that Respondent Owens had committed a crime.

The circuit court erred in finding that law enforcement had no authority to stop Respondent Owens' vehicle. It is well-established that the constitution does not prohibit all seizures but only those that are unreasonable. *See State v. Lacy,* 196 W. Va. 104, 111-12, 468 S.E.2d 719, 726-27 (1996). And nothing in this fact pattern suggests that the officers acted unreasonably. Law enforcement officers "may stop a vehicle to investigate if they have a reasonable, articulable suspicion that the vehicle is subject to seizure or a person in the vehicle has committed, is committing, or is about to commit a crime." *Muscatell v. Cline*, 196 W. Va. 588, 596, 474 S.E.2d 518, 526 (1996) (quoting syl. pt. 1, *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994)); *see also Pennsylvania v. Mimms,* 434 U.S. 106 (1977) (finding that a vehicular stop and frisk of car's occupant is governed by reasonable suspicion set forth in *Terry v. Ohio,* 392 U.S. 1 (1968)).

"Although '[reasonable] suspicion is considerably less than . . . preponderance of the evidence,' the Fourth Amendment to the United States Constitution and Section 6 of Article III of the West Virginia Constitution nevertheless require that the police articulate facts which provide some minimal, objective justification for the stop." *Muscatell*, 196 W. Va. at 596, 474 S.E.2d at 526 (internal citation omitted) (citing *Stuart*, 192 W. Va. at 433 n.10, 452 S.E.2d at 891 n.10). That is, "[t]he officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion or "hunch"' . . . . The Fourth Amendment requires some minimal level of objective justification for making the stop." *Id.* (citation omitted). The Court likened the criteria for

reasonable suspicion to stop a vehicle to a street stop under *Terry*.[5] *Id.* (citing *Stuart*, 192 W. Va. at 433 n.10, 452 S.E.2d at 891 n.10). An investigative "stop and frisk" under *Terry,* similar to *Muscatell* and *Stuart*, requires an officer's action to be supported by a reasonable, articulable suspicion that a person has engaged in criminal activity. *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (applying *Terry v. Ohio*); *see also Muscatell*, 196 W. Va. at 601 n.4, 474 S.E.2d at 531 n.4 (Workman, J., dissenting) (expressing that an investigative stop under *Terry* is a seizure within the federal and West Virginia Constitution but it requires only that the officers have specific and articulable facts that give rise to a reasonable suspicion that a person has committed or is committing a crime).[6] The touchstone of analysis under the Fourth Amendment is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry,* 392 U.S. at 19.

Notably, information from a known caller can support an officer's reasonable articulable suspicion to justify a stop when the call bears "sufficient indicia of reliability." *Florida v. J.L.*, 529 U.S. 266 (2000). For example and similar to the instant case, an officer may rely on

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[5] The Supreme Court held in *Terry*, 392 U.S. at 30-31, that

> where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment.

[6] The court, without explanation, concluded that no "stop" occurred in this case, rendering *Muscatell* and *Stuart* inapplicable. App. 54. The court, however, is silent as to what alternative authority it claims governs whether the officer lawfully detained Respondent Owens. Regardless, the same "reasonable suspicion" standard applies regardless of whether a person is detained in a vehicle or on the sidewalk.

information from a witness who calls 911 with a contemporaneous report of a crime and gives their name. *Navarette v. California*, 572 U.S. 393, 397 (2014). Following suit, the Eighth Circuit found that an investigatory stop of the defendant's vehicle was supported by reasonable articulable suspicion because it was close to the scene of a crime shortly after it occurred and a named 911 caller reported it. *United States v. Mosley*, 878 F.3d 246, 252 (8th Cir. 2017); *see also, e.g.*, *United States v. Juvenile T.K.*, 134 F.3d 899, 903 (8th Cir. 1998) ("We focus our analysis on the temporal and geographic proximity of the car to the scene of the crime, the matching description of the vehicle, and the time of the stop."); *United States v. Fogle,* 515 F. Supp. 2d 474, 489 (D.N.J. 2007) (finding reasonable articulable suspicion on similar facts). Like the present case, these cases each involved a known caller about recent criminal activity that lead to the suspect being found near the scene. This Court has also upheld investigatory stops based on an anonymous call where the details were corroborated by the officers' observations. *See, e.g.*, *Stuart*, 192 W. Va. at 432, 452 S.E.2d at 890 (finding the reasonable suspicion standard satisfied where an anonymous caller provided the specific time and address from which Stuart would leave and described the vehicle Stuart would drive to a specific destination, all of which the police observed to be true before initiating the stop). In any case, "[w]hen evaluating whether or not particular facts establish reasonable suspicion, one must examine the totality of the circumstances, which includes both the quantity and quality of the information known by the police." *Muscatell*, 196 W. Va. at 596, 474 S.E.2d at 526 (citing syl. pt. 2, *Stuart*, 192 W. Va. 428, 452 S.E.2d 886).

Deputy Egan lawfully stopped Respondent Owens under both the State and federal constitutions because he possessed a reasonable, articulable suspicion that the person in the vehicle (Respondent Owens) had committed a crime. Deputy Egan heard "some of the altercation" "over the 911 dispatch" as he responded to the 911 call from the Cardinal Apartment Complex tenant. App. 2, 75-76. That is, like *Navarette*, the report of altercation was occurring contemporaneously with the

911 call. The tenant reported that Respondent Owens had "chest bumped" him and threatened him with physical harm—a potential assault and battery under West Virginia Code § 61-2-9[7]—then drove into the nearby Save A Lot parking lot in a black Dodge Ram pickup truck. App. 2, 75-76. Deputy Egan thus knew who the caller was and he knew the name and gender of the reported assailant, a detailed description of the assailant's vehicle, and the location where the assailant drove. Upon approaching the apartments and Save A Lot, Deputy Egan observed a black Dodge Ram pickup truck with a male driver parked in the Save A Lot parking area and drove toward it. *Id.* When the pickup truck began to move, Deputy Egan activated his emergency lights and pulled his cruiser in front of the vehicle. *Id.* at 2, 78. The "totality of the circumstances" led Deputy Egan to detain the pickup truck and its driver based on the articulatable reasonable suspicion that Respondent Owens had committed an assault or battery of a tenant at the Cardinal Apartment Complex. The stop, therefore, was lawful.

Correspondingly, it was also clear error for the circuit court to rule that Deputy Egan had no authority to detain Respondent Owens because "the sole occupant, [Respondent Owens,] was not committing or was about to commit a crime." App. 55. This ruling wholly forgets that an investigatory stop passes constitutional muster when an officer has a reasonable, articulable suspicion that the "person in the vehicle *has committed* . . . a crime" or "engaged in criminal activity." *Mimms,* 434 U.S. 106; *Muscatell*, 196 W. Va. at 596, 474 S.E.2d at 526; syl. pt. 1, *Stuart*, 192 W. Va. 428, 452 S.E.2d 886; *Sokolow*, 490 U.S. at 7 (applying *Terry*). Deputy Egan had direct information connecting

[7] An assault occurs where a person "unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act that places another in reasonable apprehension of immediately receiving a violent injury." W. Va. Code § 61-2-9(b). A battery occurs where a person "unlawfully and intentionally makes physical contact of an insulting or provoking nature to the person of another or unlawfully and intentionally causes physical harm to another person." W. Va. Code § 61-2-9(c).

the driver of the vehicle to a possible assault and battery that had just occurred at the Cardinal Apartment Complex. The circuit court clearly erred as a matter of law in ruling that the officer lacked authority to detain Respondent Owens.

B. Law enforcement may "as a matter of course" order the driver of a lawfully stopped vehicle to exit his vehicle.

The circuit court also clearly erred when it ruled that Deputy Egan lacked authority to require Respondent Owens to step out of the lawfully stopped vehicle. The Supreme Court has specifically held that an order by law enforcement to get out of the car, issued after the driver was lawfully detained, was reasonable and thus permissible under the Fourth Amendment. *Mimms*, 434 U.S. at 109. It is. The *Mimms* Court weighed the incremental intrusion into the driver's personal liberty resulting from the order to exit a lawfully stopped vehicle and found the additional intrusion to be "*de minimis*":

> The driver is being asked to expose to view very little more of his person than is already exposed. The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it. Not only is the insistence of the police on the latter choice not a serious intrusion upon the sanctity of the person, but it hardly rises to the level of a "'petty indignity.'" *Terry v. Ohio, supra,* 392 U.S. at 17[ ].

Id. at 109-11. The Fourth Circuit, following *Mimms*, has also stated as much. For example, in *Nazario v. Gutierrez*, the Fourth Circuit found that law enforcements' orders to Nazario to step out of the vehicle were lawful because the officers had probable cause to stop Nazario's vehicle for failure to clearly display a license plate. 103 F.4th 213, 229 (4th Cir. 2024) ("[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment" (citing *Mimms*, 434 U.S. 106, 111 n.6)).

Guided by *Mimms*, this Court likewise has expressed that an officer may "'as a matter of course order the driver[8] of a lawfully stopped car to exit his vehicle.'" *Brock*, 235 W. Va. at 406, 774 S.E.2d at 72 (footnote omitted) (quoting *United States v. Vaughan,* 700 F.3d 705, 710 (4th Cir. 2012) (quoting *Wilson,* 519 U.S. at 410) (citing *Mimms*, 434 U.S. 106)). The circuit court, therefore, was flatly incorrect when it ruled that Deputy Egan lacked authority to "demand [Respondent Owens] speak with him and get out of his truck." App. 55

The circuit court's misunderstanding of *State v. Lacy* and *State v. Ward*, App. 55-56, compounds its misapplication of *Mimms* and West Virginia law. *Lacy* involved the legality and scope of a search for weapons *inside a home* during the execution of search warrant for other items, *not* a request to exit a vehicle, for officer safety, to speak with law enforcement. 196 W. Va. 104, 468 S.E.2d 719. There, while executing a search warrant, officers saw bullets laying on a dresser, conducted a search for weapons "for safety," and located a stolen firearm hidden under a mattress. *Id.* at 108, 468 S. E. 2d 723. In *Lacy*, there is no indication that Lacy was present, that Lacy behaved in a manner causing concern for officer safety, or that a complaint had been made against Lacy for assault or battery.

Lacy is fundamentally distinguishable from the present case. In the present case, Deputy Egan—a lone officer—heard the altercation between Respondent Owens and the tenant over the radio and arrived at the Save A Lot shortly thereafter. App. 75-76. Respondent Owens remained "agitated and yelling" as the officer tried to speak to him, and he continued to disregard the deputy's repeated instructions to exit the truck for officer safety and to speak with the officer about the 911 complaint against him. App. 2, 59-60; BodyCam 0:35-4:30. Respondent Owens was, in

[8] The *Brock* Court relied on *Maryland v. Wilson,* 519 U.S. 408, 414-15 (1997), and noted that because the justification for having the driver exit a vehicle is grounded in officer safety, it extends to passengers. *State v. Brock*, 235 W. Va. 394, 406 n.14, 774 S.E.2d 60, 72 n.14 (2015).

fact, armed with a pistol. App. 2, 65. These facts present a much different scenario than *Lacy* and they also present "specific articulable facts indicating danger to officers or others and the suspicion of danger is plausible," a danger Deputy Egan voiced to Respondent Owens. App. 51, 56; syl. pt. 6, *Lacy,* 196 W. Va. 104, 468 S.E.2d 719.

The same facts differentiating *Lacy* from the present case are the same facts that also differentiate *State v. Ward,* 249 W. Va. 347, 895 S.E.2d 202 (2023). Law enforcement arrived at Ward's mother's house in response to a call about his verbal altercation with a neighbor. *Id.* at 352, 895 S.E.2d at 207. While partially inside the downstairs "shop" with Ward, an officer saw a firearm, asked permission to enter, and seized it for officer safety. *Id.* Ward, a felon, was charged and convicted of being a felon in possession with a firearm. *Id.* at 351, 895 S.E.2 and 206. On appeal, the Court addressed the plain view warrantless seizure exception to the Fourth Amendment and limited its analysis to whether the officer was legally justified in entering Ward's home up to the place where he saw the firearm from the doorway. *Id.* at 357, 895 S.E.2d at 212. The Court said that although there was testimony that Ward was "agitated" by his encounter with his neighbor, the officer generally alleged that "Ward was agitated without elaborating on any particular fact or specific behavior," *id.* at 358, 895 S.E.2d at 213, and there was "no testimony that [ ] Ward was yelling, threatening, or acting erratically," *id.* at 359, 895 S.E.2d at 214. In fact, the officer described Ward as "compliant with law enforcement." *Id.* at 358-59, 895 S.E.2d at 213-14. The Court, therefore, concluded that the officer safety exception did not apply and the State failed to satisfy the first prong of the plain view analysis. *Id.*

Unlike *Ward*, Respondent Owens' altercation involved physical contact, the officer described Respondent Owens' conduct as "yelling and aggressive" and noncompliant (conduct captured on the BodyCam footage) and the officer voiced his concern to Respondent Owens about being armed—a concern proven to be accurate—and asked Respondent Owens to exit the vehicle.

So even if the framework from *Lacy* and *Ward* applied, the circuit court's ruling would still be wrong.

The circuit court also erred in its fundamental misapplication of West Virginia law. The court analogized (by reference only) Respondent Owens' refusal to speak with Deputy Egan with *State v. Srnsky,* 213 W. Va. 412, 582 S.E.2d 859 (2003). App. 55.[9] In *Srnsky,* the Court iterated that "not every act of questioning the authority of a police officer constitutes obstruction." *Srnsky,* 213 W. Va. at 421, 582 S.E.2d at 868 (citation omitted). The Court made clear that "[r]efusal to identify oneself to a law enforcement officer does not, standing alone, form the basis for a charge of obstructing a law enforcement officer in performing official duties." *Id.* at syl. pt. 4; App. 55 (citing *Srnsky*). The circuit court thus declared that under *Srnsky* Respondent Owens has a constitutional right to remain silent, and his "exercise of [that] right does not constitute an obstruction of justice." App. 55.

Although that is true to the extent that, *standing alone* and "when done in an orderly manner, merely questioning or remonstrating with an officer while he or she is performing his or her duty, does not ordinarily constitute the offense of obstructing an officer." *Srnsky*, 213 W. Va. at 420, 582 S.E.2d at 867 (quoting *State ex rel. Wilmoth v. Gustke,* 179 W. Va. 771, 773, 373 S.E.2d 484, 486 (1988)). But the circuit court disregarded what *else Srnsky* says: that when there is a connection between the officer's duties and the request for a person's information, obstructing an officer may occur when that person refuses to engage after the "officer has communicated the reason why the citizen's name is being sought in relation to the officer's official duties." *Id.* at syl. pt. 4; *Tartt v. Martin*, No. 1:22-00327, 2024 WL 3166953, at *9 (S.D. W. Va., June 25, 2024) (reiterating that *Snrsky* requires a link between an individual and the officer's duties before a person must supply identification). The officers in *Srnsky* ventured into the woods owned by the Srnsky brothers to serve

[9] The circuit court mistakenly identified the case as "*State v. Sinsky*" rather than *State v. Srnsky*.

arrest warrants and happened upon four men. *Srnsky*, 213 W. Va. at 415, 582 S.E.2d at 862. The officers asked each person to identify himself and to explain what he was doing on the property. *Id.* Ultimately, the officers learned who three of the four men were. *Id.* The fourth refused to identify himself, even after being arrested for obstruction. *Id.* at 415-16, 582 S.E.2d at 862-63. The Court may have reversed Srnsky's conviction, but this is because Srnsky lacked the critical 'connection' that is present in the case at bar.

C. Unlawful interference with an officer's discharge of his official duties occurs once an officer requests information from a person and explains the link between the need for that information in relation to his official duties.

Although the circuit court recognized that Deputy Egan detained Respondent Owens and relayed to him that he was investigating Respondent Owens' altercation with a tenant of the Cardinal Apartment Complex, directed Respondent Owens to exit the vehicle for officer safety, and, in response, Respondent Owens locked his vehicle doors instead of complying with the officer's instruction, the court ignored both the facts and the law. The *Srnsky* Court assessed the meaning of the obstruction statute and articulated that the obstruction statute targets "any unlawful interference with the officer in the discharge of his official duties."[10] *Id.* at 420, 582 S.E.2d at 867 (quoting *State v. Johnson*, 134 W. Va. 357, 360, 59 S.E.2d 485, 487 (1950)). In arriving at this conclusion, it explained that "[t]o 'interfere'" in an officer's official duties "'is to check or hamper the action of the officer, or to do something which hinders or prevents or tends to prevent the performance of his legal duty; and to 'obstruct' signifies direct or indirect opposition or resistance to the lawful discharge of his official duty.'" *Johnson*, 134 W. Va. at 360, 59 S.E.2d at 487) (quoting *State v. Estes,* 117 S.E.

[10] West Virginia Code § 61-5-17(a) states that obstruction occurs where "a person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer . . . acting in his or her official capacity."

581, 583 (N.C. 1923)); *see also City of Saint Albans v. Botkins*, 228 W. Va. 393, 402, 719 S.E.2d 863, 872 (2011) ("Once Appellee refused to comply [with the officer's order], a reasonable officer may have believed the refusal to be an attempt to obstruct the officer.").

The Court blended these criteria with the recognition that there must be a link between the request for information and the officers' official duties. Syl. pt. 4, *Srnsky*, 213 W. Va. 412, 582 S.E.2d 859. This Court reversed Srnsky's conviction of obstruction because the officers did not communicate the reason why his name was being sought in relation to their duties. *Id.* at 421-22, 582 S.E.2d at 868-69. That is, the officers did not communicate a link between their request for information and the execution of their duties. *This* is the line between a person's lawful conduct and conduct that obstructs an officer in the line of duty. *This* is the line Respondent Owens crossed. *This* is the line the circuit court in the present case ignored. Deputy Egan directly communicated to Respondent Owens that he was investigating a complaint naming Owens as the assailant. Respondent Owens, however, continued to hinder the officer in the performance of his official duties by refusing to communicate with the officer and exit the vehicle after being told it was for officer safety, all of which prevented the officer from investigating the 911 complaint against Respondent Owens.

Federal courts observe a similar line distinguishing conduct like questioning an officer or refusing to identify oneself from criminal obstruction. For example, in a civil suit arising from an obstruction charge, the District Court for the Southern District of West Virginia squarely addressed the bounds of an obstruction charge. *Tartt*, 2024 WL 3166953, at *6-11; *see also Pegg v. Klempa*, 651 F. App'x 207, 211 (4th Cir. 2016) (finding that "[w]hen Mr. Pegg refused the lawful command given by the officers, they had probable cause to believe that Mr. Pegg was obstructing an officer," rendering his arrest lawful). Tartt owned and rented out two homes near an area law enforcement was investigating based on a complaint about a marijuana crop. *Tartt*, 2024 WL 3166953, at *1. The complainant provided directions and specified that the area in question was behind a church. *Id.* On

the way to the church, the officers passed the two homes Tartt rented out and spoke with the tenants who occupied one of the homes. *Id.* at *2. The officers were accusatory and confrontational. *Id.* One of the tenants called Tartt, and Tartt arrived at the home to assist them. *Id.* Tartt provided his name to the officers when initially requested, but after the officers became increasingly hostile, he refused to capitulate to their demands that he provide his birthdate. *Id.* at *2-3. Tartt asked why the officers needed his information and the justification they gave was that the home was near the area they were investigating. *Id.* at *2-3. The officers arrested him and charged him with obstruction for refusing to provide his birthdate. *Id.* at *3-4. The magistrate found probable cause to support the charge, but the circuit court later dismissed it. *Id.* at *4.

Guided by this Court, the district court emphasized "[t]he law requires only that a person 'supply identification' after officers explain why his 'name' is being sought in connection with official police duties." *Id.* at *10 (referencing syl. pt. 4, *Srnsky*, 213 W. V. 412, 582 S.E.2d 859). "[T]here must be a link between an individual and officers' duties before a person must supply identification," because "[a]n obstruction charge requires forcible or illegal conduct that "interferes with a police officer's discharge of official duties." *Id.* at *9 (emphasis in original) (citing *Jafary v. City of Beckley*, No. 5:20-cv-00647, 2021 WL 6125831, at *4 (S.D. W. Va., Dec. 28, 2021)). Absent that link, an obstruction charge may not stand. That link was fatally absent in *Tartt,* as Tartt provided his name several times, there was no link between the officers' request for additional information and their official duties; thus, Tartt's failure to provide his birthdate did not interfere with or prevent the deputies from performing their legal duties. *Id.* at *10. Consequently, the officers lacked probable cause to arrest Tartt for obstruction.

Unlike *Tartt*, Deputy Egan repeatedly told Respondent Owens why he needed to speak with him, that reason was directly related to Deputy Egan's performance of his official duty, and

Respondent Owens prevented Deputy Egan from investigating the 911 complaint against Respondent Owens.

The Fourth Circuit tracks a similar line between one's right to peacefully oppose police authority without thereby risking arrest and clarifies the type of conduct that crosses that line. In *Nazario v. Gutierrez*, motorist Nazario filed a civil action against two police officers who conducted a traffic stop after the officer who initiated the stop did not see the temporary license plate inside the tinted rear window of Nazario's newly-leased vehicle. 103 F.4th 213. In the course of the traffic stop, the officers sprayed Nazario with pepper spray, forcibly removed him from his vehicle, forced him onto the ground, and handcuffed him before ultimately releasing him. *Id.* at 222. The Fourth Circuit affirmed the district court's ruling that probable cause existed to arrest Nazario for obstruction of justice because he refused to exit the vehicle when commanded to do so, stated that he did not need to exit the vehicle, and used his arm to close the vehicle's door as the officers sought to open it. *Id.* at 229.

Similar to *Nazario*, law enforcement detained Respondent Owens based on a belief that he had committed a crime (his gender, vehicle, and location matched the description of the assailant named in a 911 call), and the officer told Respondent Owens why he was being detained. Respondent Owens refused to exit the vehicle after being instructed to do so, stated that he could talk through the closed window, and locked his door to prevent the officer from opening it. This conduct constitutes obstruction under both State and federal law.

The circuit court misapplied West Virginia law, and not in a debatable way. It ignored the line defined by both state and federal precedent and thereby deprived the State of its right to prosecute Respondent Owens for obstructing law enforcement in the performance of their official duties. The State was entitled to proceed to trial and a writ should issue to correct the circuit court's clear error.

D. The circuit court clearly erred and directly contravened *Gwaltney I* and *Gwaltney II* when it granted Respondent Owens' pretrial motion to dismiss on the basis of the sufficiency of the evidence.

This Court has made clear that at the pretrial motions stage, a court has no authority to examine a criminal charge to appraise the legality or sufficiency of the evidence considered by the body that found probable cause, in the absence of willful, intentional fraud. *See* syl. pt. 1, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192 (quoting syl. pt. 3, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70). Here, Magistrate Haugh found probable cause to criminally charge Respondent Owens with obstruction and battery, App. 1, and Magistrate Snodgrass properly denied Respondent Owens' pretrial motion to dismiss those charges, App. 37. The circuit court, on the other hand, grossly overstepped its authority when it conducted an evidentiary hearing, assessed the sufficiency of the evidence underlying the magistrate's finding of probable cause, and substituted its judgment for that of the magistrate. Just as this Court issued a writ of prohibition to correct the circuit court's overstepping in *Gwaltney I* and *Gwaltney II*, so, too, should the Court issue a writ of prohibition to cure the error here.

III. The remaining *Hoover* factors support issuance of a writ.

The other *Hoover* factors also weigh in Petitioner's favor. The State has no other means to obtain relief, and the circuit court's error cannot be corrected on appeal because direct appeal is unavailable. *See, e.g.*, syllabus, *State v. Walters*, 186 W. Va. 169, 411 S.E.2d 688 (1991) (holding that the State lacks authority to appeal to this Court from final order of circuit court dismissing a criminal complaint filed initially in magistrate court). A writ of prohibition, therefore, is the appropriate method for the State to challenge the circuit court's dismissal of the criminal charge of obstruction filed in magistrate court. *State ex rel. Clifford v. Stucky*, 212 W. Va. 599, 575 S.E.2d 209 (2002) (finding that, absent a writ of prohibition, the State has no other adequate means to obtain relief from an alleged legal error of the lower court in dismissing the criminal appeal of a

magistrate court conviction on the ground that the magistrate failed to mark a box on a criminal complaint).

Second, the State would be damaged without relief because it is prohibited from prosecuting Respondent Owens for obstruction. Third, although Petitioner does not assert that the specific issue at hand is an oft-repeated error, the decision below represents another court exceeding its jurisdiction and fundamentally misapplying the law in dismissing an indictment based on an appraisal of the sufficiency of the evidence. Only by drawing a clear line in the sand through the issuance of appropriate writs will this trend begin to abate.

Fourth, and finally, it appears this Court has addressed on only two occasions (and more than twenty years ago) a circuit court's dismissal of a criminal complaint filed in magistrate court. Accordingly, relief in prohibition is appropriate.

CONCLUSION

The State respectfully requests the Court issue a writ of prohibition preventing the lower court from enforcing its February 12, 2025, order and permit the State to proceed with the prosecution of Respondent Owens for obstruction.

Respectfully submitted,

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VERIFICATION

State of West Virginia, Kanawha County, to-wit:

I, Holly M. Mestemacher, Assistant Attorney General and counsel for Petitioner named in the foregoing Petition for Writ of Prohibition, being duly sworn, state that the facts and allegations contained in the Petition for Writ of Prohibition are true, except insofar as they are stated to be on information, and that, insofar as they are stated to be on information, I believe them to be true.

Holly Mestemacher

Holly Mestemacher (WVSB # 7996)
Assistant Attorney General

Taken, sworn to, and subscribed before me this 28th day of March, 2025.

[SEAL]

Lynn R. Deardorff
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
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Lynn R. Deardorff
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My Commission Expires November 12, 2025

IN THE SUPREME COURT OF APPEAL OF WEST VIRGINIA

No. 25-_____

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,
Petitioner,

v.

THE HONORABLE TIMOTHY L. SWEENEY,
Circuit Court Judge of the Circuit Court of
Ritchie County, West Virginia,
and **EARNEST LEE OWENS,**
defendant below,
Respondents.

CERTIFICATE OF SERVICE

I, Holly M. Mestemacher, do hereby certify that on the 28th day of March, 2025, I served a true and accurate copy of the foregoing **Petition for Writ of Prohibition** upon the below-listed individual via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

George J. Cosenza, Esq.
George J. Cosenza, PLLC
P.O. Box 4
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Parkersburg, WV 26102

And via first-class mail, postage prepaid, addressed as follows, to the non-e filing Respondent:

Honorable Timothy L. Sweeney, Judge
Pleasants County Courthouse
301 Court Lane, Suite 202
St. Marys, WV 26170

Holly Mestemacher

Holly Mestemacher (WVSB # 7996)
Assistant Attorney General