

SC22-524

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**In the Supreme Court of Florida**

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STATE OF FLORIDA,  
*Petitioner,*

*v.*

JOSHUA LYLE CRELLER,  
*Respondent.*

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On Petition for Discretionary Review from the  
Second District Court of Appeal  
DCA No. 2D19-3085

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**INITIAL BRIEF ON THE MERITS**

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## **STATEMENT OF THE ISSUE**

The United States Supreme Court has held that the Fourth Amendment allows a police officer conducting a lawful traffic stop to command a driver and any passengers to exit the car. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); *Maryland v. Wilson*, 519 U.S. 408 (1997). That action is constitutionally reasonable when balancing the need for officer safety against the *de minimis* nature of the intrusion on a citizen already detained at a lawful traffic stop. The Court has also held that officers may conduct a dog sniff of a stopped vehicle so long as the sniff does not extend the traffic stop. *Rodriguez v. United States*, 575 U.S. 348 (2015).

Here, Respondent was lawfully stopped for a traffic infraction. A few minutes into the stop, and while police were still writing the ticket, a K-9 unit arrived and ordered Respondent to exit his vehicle before conducting a dog sniff. The issue is:

Whether the exit order was reasonable under the Fourth Amendment.

**TABLE OF CONTENTS**

Statement of the Issue..... i

Table of Authorities ..... iii

Statement of the Case and Facts ..... 1

Summary of Argument ..... 7

Standard of Review..... 8

Argument ..... 9

    Police lawfully ordered Respondent to exit his car during  
    the traffic stop..... 9

    A. *Mimms* establishes a “bright-line rule” that a lawful  
    traffic stop justifies removing the driver and any  
    passengers from a vehicle ..... 9

    B. The exit order here was lawful because it was issued  
    during a lawful traffic stop ..... 13

    C. The Second District’s reasoning is flawed..... 15

Conclusion..... 24

Certificate of Compliance..... 26

Certificate of Service..... 26

## TABLE OF AUTHORITIES

### Cases

<i>Arizona v. Gant</i> , 556 U.S. 332 (2009).....	11
<i>Arizona v. Johnson</i> , 555 U.S. 323 (2009).....	18
<i>Atwater v. City of Lago Vista</i> , 532 U.S. 318 (2001).....	10
<i>Carter v. State</i> , 182 A.3d 236 (Md. Ct. Spec. App. 2018) .....	24
<i>Chimel v. California</i> , 395 U.S. 752 (1969).....	11
<i>Delhall v. State</i> , 95 So. 3d 134 (Fla. 2012) .....	8, 9
<i>Graham v. Connor</i> , 490 U.S. 386 (1989).....	20
<i>Hoskins v. State</i> , 75 So. 3d 250 (Fla. 2011) .....	14
<i>Illinois v. Caballes</i> , 543 U.S. 405 (2005).....	14
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983).....	10
<i>Maryland v. King</i> , 569 U.S. 435 (2013).....	11
<i>Maryland v. Wilson</i> , 519 U.S. 408 (1997).....	passim
<i>Mich. Dep’t of State Police v. Sitz</i> , 496 U.S. 444 (1990).....	11
<i>Michigan v. Summers</i> , 452 U.S. 692 (1981).....	11, 14
<i>New York v. Belton</i> , 453 U.S. 454 (1981).....	17
<i>Pennsylvania v. Mimms</i> , 434 U.S. 106 (1977).....	passim
<i>People v. Goree</i> , No. 357302, 2022 WL 4390524 (Mich. Ct. App. Sept. 22, 2022)	24

<i>Presley v. State</i> , 227 So. 3d 95 (Fla. 2017) .....	8, 9, 13, 15
<i>Riley v. California</i> , 573 U.S. 373 (2014).....	17
<i>Rodriguez v. United States</i> , 575 U.S. 348 (2015).....	passim
<i>Stanwood v. Stolts</i> , No. 3:17-cv-529, 2018 WL 5833061 (D. Nev. Nov. 7, 2018).....	24
<i>State v. Benjamin</i> , 229 So. 3d 442 (Fla. 5th DCA 2017) .....	7, 15, 16, 24
<i>State v. Brock</i> , 774 S.E.2d 60 (W. Va. 2015).....	23, 24
<i>State v. Brown</i> , 945 N.W.2d 584 (Wisc. 2020).....	18, 24
<i>State v. Pylican</i> , 477 P.3d 180 (Idaho 2020) .....	23, 24
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968) .....	8, 10, 12
<i>United States v. Robinson</i> , 414 U.S. 218 (1973).....	1, 18
<i>Whren v. United States</i> , 517 U.S. 806 (1996).....	20, 21
<i>Wyoming v. Houghton</i> , 526 U.S. 295 (1999).....	10, 17

**Statutes**

Amend. IV, U.S. Const.....	9
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**Rules**

Fla. R. App. P. 9.210(f) .....	14
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## STATEMENT OF THE CASE AND FACTS

1. Nationwide, law enforcement officers conduct roughly 18,600,000 traffic stops each year—over 50,000 per day.<sup>1</sup> In Tampa, where this case arose, the Tampa Police Department alone conducts an average of 5,000 traffic stops per month.<sup>2</sup> Those officers confront an “inordinate risk” when they interact with drivers and passengers. *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). One study credited by the United States Supreme Court reported that approximately 30% of all police shootings occurred when an officer approached a suspect seated in a vehicle. *E.g., id.* Indeed, “a significant percentage of murders of police officers occur when the officers are making traffic stops.” *Id.* (quoting *United States v. Robinson*, 414 U.S. 218, 234 n.5 (1973)); *see also Maryland v. Wilson*, 519 U.S. 408, 413 (1997) (citing the 5,762 officer assaults and 11 officers killed during traffic stops in

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<sup>1</sup> See Erika Harrell & Elizabeth Davis, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Contacts Between Police and the Public, 2018 – Statistical Tables* (2020), <https://bjs.ojp.gov/content/pub/pdf/cbpp18st.pdf>.

<sup>2</sup> See Tampa Police Dep’t, *Traffic Stops Dashboard* (last visited Oct. 18, 2022), <https://www.tampa.gov/police/transparency/traffic-stops> (detailing traffic stop data for stops conducted from July 1, 2022, to October 18, 2022, and showing a total of 18,536 stops)

1994). In 2018 alone, 4,809 assaults against law enforcement officers occurred during traffic stops, 241 of which involved firearms.<sup>3</sup> And 48.5% of the officers murdered during traffic-related incidents in 2018 were killed by an occupant seated in a stopped vehicle.<sup>4</sup>

This case is about the precautions that law enforcement may take during a lawful traffic stop.

2. Respondent Joshua Lyle Creller was convicted of possessing methamphetamine and resisting an officer without violence. App'x 3, 7. In late 2018, undercover Officer Gustavo Diaz and another officer pulled Respondent over for an illegal traffic maneuver in Tampa. Tr. 35–41. Within one minute, Officer Diaz obtained Respondent's license and registration. Tr. 131–32, 149. Because he was undercover, Officer Diaz lacked the computer software to write the ticket and requested backup to help him do so. Tr. 37–38. Officer Robert Norman arrived one minute later and started writing Respondent's ticket. Tr. 65. Officer Norman testified at a pretrial suppression hearing that it

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<sup>3</sup> See Law Enforcement Officers Killed & Assaulted, Fed. Bureau of Investigation, U.S. Dep't of Justice tbls. 83, 88 (2018), <https://ucr.fbi.gov/leoka/2018/resource-pages/tables-by-title> (“LEOKA 2018”).

<sup>4</sup> See *id.* tbl. 27.

takes an average of “five minutes or so” for him to issue a citation. Tr. 184–85.

Five minutes into the stop, and while Officer Norman worked on the citation, K-9 Officer Bradley Simmonds arrived. Tr. 54. Officer Simmonds went directly to Respondent. Tr. 48. In preparation for a dog sniff, which involves the K-9 officer walking his dog around a vehicle several times to see if the dog alerts to the presence of drugs, Officer Simmonds asked Respondent to “exit the vehicle so [he] could safely do a vehicle sweep . . . with [his] K-9 partner.” Tr. 167.

Officer Simmonds ordered Respondent out of his vehicle to ensure the safety of himself and his dog. Tr. 168. “I don’t know what’s in the vehicle,” he explained, and leaving the driver in the car risked injury if the driver “put [the car] in drive” while the officer and K-9 were in front of it. *Id.* He also explained that when he conducts the dog sniff, his focus is on “watch[ing]” and “read[ing]” the dog, and “I can’t be distracted with what the defendant was doing inside the vehicle.” *Id.*

Respondent refused. Tr. 49–50. Over the next two minutes, Of-

ficer Simmonds asked Respondent several more times to exit his vehicle. *Id.* The officer explained that if he did not comply, Respondent would be arrested for refusing a lawful command. *Id.* Roughly seven minutes into the stop, a struggle ensued between Respondent and the officers. Tr. 169. When Officer Norman saw this, he was still completing the ticket. Tr. 63, 185–86. Officer Norman then dropped his laptop and went to assist the other officers. *Id.* Respondent was arrested. Tr. 169–71. While searching Respondent incident to the arrest, the officers discovered a bag of methamphetamine. *Id.*

Respondent asked the trial court to suppress the drugs on the ground that the officers violated the Fourth Amendment by ordering him out of his vehicle. *See* App'x 8; R. 29 (citing the federal and Florida constitutions). The trial court denied the motion, a jury convicted Respondent, and he appealed. App'x 3, 8–9.

3. The Second District Court of Appeal reversed. App'x 21. It began by observing that both the initial traffic stop and the attempted dog sniff were lawful. App'x 10–12. The district court agreed with the trial court that the dog sniff was lawful under *Rodriguez v. United States*, 575 U.S. 348 (2015), because it did not prolong the stop.

App'x 11–12. Under the *Rodriguez* framework, a traffic stop becomes unlawful if it is prolonged beyond the time reasonably necessary to accomplish the mission of the traffic stop and address related safety concerns. 575 U.S. at 354–55. Unrelated actions—like dog sniffs or questioning unrelated to the stop—are lawful if they do not add time to the stop. *See id.* Because Officer Norman was still writing Respondent's ticket when the struggle broke out, the attempted dog sniff did not prolong the traffic stop. App'x 11–12.

The Second District nevertheless concluded that the order to exit the car was unlawful. App'x 12–21. It began by distinguishing *Mimms* and *Wilson* because the exit order here occurred midway through the stop, rather than at the beginning of the stop, and because the K-9 officer testified that he removed Respondent to protect himself and his K-9 partner. App'x 14 (“The first point in time at which an officer asked Creller to exit the vehicle was when the K-9 officer asked him to do so out of concern for the officer's safety and that of his dog so that he could conduct the vehicle sweep.”). “[T]hat chronology,” the district court believed, showed that “the safety issue was not related to the issuance of the traffic citation but rather to the

vehicle sweep.” *Id.*

The State’s position, the Second District wrote, “essentially stack[ed] the holdings in *Rodriguez* and *Mimms*” in a way that it deemed improper: “(1) vehicle sweeps are permissible when they do not prolong a valid traffic investigation; (2) officers may ask drivers to exit their vehicles during a valid traffic investigation; (3) therefore, as long as it does not prolong the traffic investigation, officers may order drivers to exit their vehicles for the vehicle sweep.” App’x 16.

Because it found *Mimms* and *Wilson* inapplicable, the district court asked whether the exit order could be justified on some independent basis. In finding no independent justification, it quoted *Rodriguez*’s statement that “‘the government’s officer safety interest’ recognized in *Mimms* ‘stems from the mission of the [traffic] stop itself’ whereas ‘[o]n-scene investigation into other crimes . . . detours from that mission’” and thus “[can]not be justified on the same basis.” App’x 14–15 (quoting *Rodriguez*, 575 U.S. at 356–57). As the Second District saw it, the exit order was therefore reasonable only if the State could show “probable cause” for a criminal investigation or “evidence that such seizure is necessary to ensure officer safety during

issuance of a traffic citation.” App’x 19–20. The State had not done so here, and thus the district court reversed Respondent’s conviction and sentence. App’x 20–21.

Since the Fifth District reached the opposite result on nearly identical facts in *State v. Benjamin*, 229 So. 3d 442, 444 (Fla. 5th DCA 2017), the Second District certified conflict. App’x 21.

### **SUMMARY OF ARGUMENT**

This Court should quash the Second District’s decision. In *Mimms*, the United States Supreme Court drew a “bright-line rule[]”: Because of the officer-safety concerns inherent in every traffic stop, police may order a driver to exit the car. *Maryland v. Wilson*, 519 U.S. 408, 413 n.1 (1997). That rule follows from a straightforward balancing of public and private interests. On one hand, the State’s interests are substantial, as leaving a driver unattended in the car increases the risk that the driver will produce a hidden weapon or use the car as a battering ram. On the other, the driver’s liberty interests are minimal—he is detained for the duration of the traffic stop either way, and it matters little whether he waits in the car or on the roadside.

That principle resolves this case. *Mimms* does not cease to apply merely because an officer does not remove the driver from the car at

the beginning of a traffic stop or does so contemporaneously with a dog sniff. The same officer-safety concerns that animated *Mimms*' holding persist for the duration of the stop, and under settled law, an officer's subjective motivations for the exit order are irrelevant. All that matters is whether an officer had lawful authority to take the action. It was not the *dog sniff* that authorized the exit order; under *Mimms*, the *traffic stop* authorized that basic safety precaution.

In short, the Second District's decision "unreasonabl[y] . . . require[s] that police officers take unnecessary risks in the performance of their duties." *Mimms*, 434 U.S. at 110 (quoting *Terry v. Ohio*, 392 U.S. 1, 23 (1968)). It should be rejected.

### **STANDARD OF REVIEW**

A trial court's ruling on a motion to suppress is presumptively correct and both the evidence and reasonable inferences must be considered in the light most favorable to the trial court's ruling. *Delhall v. State*, 95 So. 3d 134, 150 (Fla. 2012). Reasonableness balancing under the Fourth Amendment, however, has the characteristics of a pure question of law. *See Presley v. State*, 227 So. 3d 95, 99 (Fla. 2017); *Delhall*, 95 So. 3d at 150. Accordingly, a lower court's balancing is reviewed *de novo*. *See Presley*, 227 So. 3d at 99.

## ARGUMENT

### **Police lawfully ordered Respondent to exit his car during the traffic stop.**

*Mimms*' "bright-line rule[]" controls here: During a lawful traffic stop, police may order the driver and passengers out of the vehicle. That rule follows from the *de minimis* nature of the intrusion on an occupant's privacy and liberty interests, balanced against the State's weighty interest in protecting officers from the dangers inherent in every traffic stop. Contrary to the Second District's view, nothing in *Rodriguez* or the facts of this case altered that straightforward balance. This Court should quash the decision below.

#### **A. *Mimms* establishes a "bright-line rule" that a lawful traffic stop justifies removing the driver and any passengers from a vehicle.**

The Fourth Amendment protects "against *unreasonable* searches and seizures." Amend. IV, U.S. Const. (emphasis added). As a result, the touchstone of the Fourth Amendment "is always 'the reasonableness . . . of the particular governmental invasion of a citizen's personal security.'" *Mimms*, 434 U.S. at 108–09 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). Reasonableness in turn "depends on a balance between the public interest and the individual's right to

personal security free from arbitrary interference by law officers.” *Id.* at 109 (quotation omitted). In this arena, to avoid bright-line rules “disappear[ing] in a sea of ever finer distinctions,” *Illinois v. Gates*, 462 U.S. 213, 265 (1983) (White, J., concurring), the Supreme Court has developed a “preference for categorical treatment” of Fourth Amendment issues, *Atwater v. City of Lago Vista*, 532 U.S. 318, 352 (2001). The Court achieves that preference by balancing the private and public interests that arise in broadly defined fact patterns, rather than relying on case-sensitive facts. *Wyoming v. Houghton*, 526 U.S. 295, 305 (1999) (“To be sure, these factors favoring a search will not always be present, but the balancing of interests must be conducted with an eye to the generality of cases.”).

In applying this test, the Supreme Court has regularly crafted categorical rules. The public interest in officer safety, for example, allows officers to conduct searches incident to arrest of areas “within [the arrestee’s] immediate control,” *Chimel v. California*, 395 U.S. 752, 763 (1969); to search vehicles if there is a possibility that an arrestee will gain access to or tamper with evidence in a vehicle, *Arizona v. Gant*, 556 U.S. 332, 347 (2009); and to detain occupants of a

building during the execution of a search warrant, *Michigan v. Summers*, 452 U.S. 692, 705 (1981). Likewise, weighing the interest in eradicating drunk driving against the “slight” intrusion on motorists’ privacy interests from a brief stop, the Supreme Court has permitted sobriety checkpoints without individualized suspicion. *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 451 (1990). And the interest in processing and identifying arrestees as well as the safety of jail staff justifies collecting DNA from arrestees, when weighed against the minimal intrusion involved. *Maryland v. King*, 569 U.S. 435, 449–62 (2013).

This familiar balancing test likewise controls whether an officer may order the driver of a lawfully stopped vehicle to exit. In *Mimms*, the Supreme Court adopted a bright-line rule: A police officer may “routinely exercise unquestioned command of the situation” by “order[ing] the driver of a lawfully stopped car to exit.” *Wilson*, 519 U.S. at 410, 413 n.1, 414 (quotation omitted) (extending the “bright-line” *Mimms* rule to passengers). As in other Fourth Amendment contexts, that result follows from the weighing of private and public interests.

On one side of the ledger, the intrusion into the citizen’s liberty

“can only be described as *de minimis*”—one that “hardly rises to the level of a ‘petty indignity.’” *Mimms*, 434 U.S. at 111 (quoting *Terry*, 392 U.S. at 17). When compelled to step out of the car during a traffic stop, the citizen is “asked to expose to view very little more of his person than is already exposed,” and so no significant privacy invasion results. *Id.* Nor does the order result in an invasion of the citizen’s freedom of movement, as the citizen is *already* detained by virtue of the traffic stop. *Id.* “[T]he only question,” the Supreme Court explained in *Mimms*, “is whether [the citizen] shall spend that period sitting in the driver’s seat of his car or standing alongside it.” *Id.*; see also *Wilson*, 519 U.S. at 414 (“The only change in their circumstances . . . is that they will be outside of, rather than inside of, the stopped car.”).

On the other side of the ledger, the “safety of the officer” during a traffic stop is a “legitimate and weighty” interest—one “too plain for argument.” *Mimms*, 434 U.S. at 110. By ordering a driver out of the car, the officer “[e]stablish[es] a face-to-face confrontation [that] diminishes the possibility, otherwise substantial, that the driver can make unobserved movements.” *Id.* That “reduces the likelihood that

the officer will be the victim of an assault.” *Id.*; see also *Wilson*, 519 U.S. at 414 (“Outside the car, the [citizen] will be denied access to any possible weapon that might be concealed in the interior of the passenger compartment.”). This is true even where, as in *Mimms*, an “officer ha[s] no reason to suspect foul play” or there is “nothing unusual or suspicious about [an occupant’s] behavior.” 434 U.S. at 109.

Weighing those interests, what is “at most a mere inconvenience” to the citizen “cannot prevail when balanced against legitimate concerns for the officer’s safety.” *Id.* at 111. And so the Supreme Court and this Court have acknowledged that *Mimms* drew a “bright-line rule[]” when it comes to an officer’s ability to order drivers and passengers out of a vehicle during a lawful traffic stop. *Wilson*, 519 U.S. at 413 & n.1; *Presley*, 227 So. 3d at 101.

In sum, officers lawfully present at a traffic stop can order an occupant out of a vehicle.

**B. The exit order here was lawful because it was issued during a lawful traffic stop.**

Under the clear framework laid out in *Mimms*, officers properly ordered Respondent to exit his car. For starters, the Second District concluded—and Respondent does not dispute here—that the traffic

stop and dog sniff were lawful.<sup>5</sup> See App'x 10–12; *Illinois v. Caballes*, 543 U.S. 405, 408 (2005) (holding that a traffic stop is constitutional if it “is lawful at its inception and otherwise executed in a reasonable manner”). Respondent instead argues one point: The K-9 officer’s order for him to exit his vehicle, made a few minutes into the traffic stop, was unlawful. Resp. Jur. Br. 7–14. It was not.

The exit order was reasonable as a straightforward application of *Mimms*’ “bright-line” rule giving officers “unquestioned command” of a traffic stop, including the ability to order a driver out of a vehicle. *Wilson*, 519 U.S. at 413 n.1, 414 (quoting *Summers*, 452 U.S. at 702–703); *Presley*, 227 So. 3d at 101. During a traffic stop, the officers’ need to exercise control of the scene ceases only when the “stop ends . . . and [officers] inform the driver and passengers they are free to leave.” See *Presley*, 227 So. 3d at 101; *Wilson*, 519 U.S. at 415 (stating that officers “may order [occupants] to get out of the car *pending*

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<sup>5</sup> In his jurisdictional brief, Respondent declined to identify any issue other than the police’s order for him to exit his car. Resp. Jur. Br. 7–14. Respondent has therefore abandoned a challenge to the lawfulness of the traffic stop and dog sniff. See Fla. R. App. P. 9.210(f) (requiring respondents to alert the Court in their jurisdictional briefs to additional issues that will be raised if the Court grants review); cf. *Hoskins v. State*, 75 So. 3d 250, 257 (Fla. 2011).

*completion of the stop*” (emphasis added)). Because a lawful traffic stop was ongoing, officers could order Respondent to step out of his car.

In *Benjamin*, the Fifth District correctly reached that result where an officer ordered a driver out of his vehicle before conducting a dog sniff. *Benjamin v. State*, 229 So. 3d 442, 442–44 (Fla. 5th DCA 2017) (stating that because the defendant “was lawfully detained,” the command to exit was lawful “even if the officer did not have a particularized basis to believe that [he] was a threat to the officer’s safety”). Like here, the defendant in *Benjamin* was lawfully stopped, an officer began writing a ticket, and while the ticket was being written, a K-9 unit arrived to perform a dog sniff. *Id.* at 442. There, as here, the defendant was asked to step out by an officer midway through the stop. *Id.* And just like here, the order to exit in *Benjamin* was lawful even with no particularized concern for officer safety. *Id.* at 444.

Thus, Respondent had no Fourth Amendment right to remain in his car during the traffic stop.

**C. The Second District’s reasoning is flawed.**

The Second District nevertheless found the exit order illegal for

three reasons: First, the exit order occurred during the middle of the stop, not at its commencement; second, an officer testified that he removed Respondent from the vehicle to protect the safety of the K-9 unit; and third, dicta in *Rodriguez v. United States* suggests that precautions for the safety of a K-9 unit cannot be justified on the same basis as the traffic stop itself. As a result, the Second District required the State to prove either probable cause of a crime or individualized suspicion that Respondent was dangerous. App'x 19–20. None of that, however, alters the conclusion that *Mimms* controls here.

1. Begin with the timing of the exit order. The Second District emphasized that “[t]he first point in time at which an officer asked [Respondent] to exit the vehicle was when the K-9 unit officer asked him to do so.” App'x 14. That mattered, the court reasoned, because “it is clear that the safety issue was not related to the issuance of the traffic citation but rather to the vehicle sweep.” *Id.* But the Second District overlooked that *Mimms* drew a “bright line,” *Wilson*, 519 U.S. at 413 n.1: When police lawfully pull over a vehicle, they may order the driver and passengers out of the car. Nothing in *Mimms* or its

progeny implies that the timing of the exit order matters.

Indeed, hinging the analysis on when during the traffic stop an exit order occurs defies ordinary Fourth Amendment principles. The Supreme Court has said that courts should not probe the particularized facts of cases to add qualifications to bright-line rules like *Mimms. Houghton*, 526 U.S. at 304 (“[T]he balancing of interests [under the Fourth Amendment] must be conducted with an eye to the generality of cases.”); *New York v. Belton*, 453 U.S. 454, 458 (1981) (stating that Fourth Amendment rules “ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged” and not “qualified by all sorts of ifs, ands, and buts” (citation omitted)). An important purpose of Fourth Amendment jurisprudence, after all, is to provide “clear guidance to law enforcement.” *Riley v. California*, 573 U.S. 373, 398 (2014). *Mimms* does that by enshrining the categorical rule that a lawful traffic stop justifies an exit order; the Second District’s approach, by contrast, would force officers to make split-second judgments about whether the exit order comes early enough in the stop.

And whether the exit order occurs at the start or the middle of the stop, *Mimms*' balancing approach applies with equal force. All the same officer-safety concerns persist for the duration of the stop. See *State v. Brown*, 945 N.W.2d 584, 592 (Wisc. 2020) ("Because the mission of the stop continued, officer safety remained a viable concern and the per se rule of *Mimms* fully applies."). In 2018 alone, 4,809 officers were assaulted during traffic pursuits or stops, 241 of which were assaulted with a firearm.<sup>6</sup> And a "significant percentage of murders of police officers occur[] when the officers are making traffic stops." *Mimms*, 434 U.S. at 119 (quoting *United States v. Robinson*, 414 U.S. 218, 234 n.5 (1973)); see also *Arizona v. Johnson*, 555 U.S. 323, 330 (2009) (describing traffic stops as "especially fraught with danger" (citation omitted)). "[T]he possibility of a violent encounter," moreover, "stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop." *Wilson*, 519 U.S. at 414. That risk is not unique to the start of a traffic stop. If any-

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<sup>6</sup> LEOKA 2018, *supra*, tbl. 88.

thing, events occurring during a traffic stop may heighten the potential for danger. A driver previously otherwise willing to comply, for example, may nonetheless elect to ambush the officer if he suddenly recalls that he has an open warrant or realizes that a dog may alert to his vehicle.

Compared to the State's weighty interests, a driver's liberty interests remain minimal: He is already seized by virtue of the traffic stop, and the "only question," as *Mimms* recognizes, is whether that time is spent in the car or waiting by the side of the road. 434 U.S. at 111. *Mimms*' core reasoning, in other words, applies no matter when the exit order occurs.

The Second District's rule also ignores the practical realities of traffic stops. An officer may have any number of reasons for removing the occupants only later in a stop. Consider a stop that begins on a crowded highway with cars streaming by, where the most reasonable choice may be to permit the occupants to remain in the vehicle. If traffic later slows, presenting less of a hazard, the officer may revisit that calculus and conclude that removing the occupants is justified.

Or a driver may become nervous, irritable, or hostile, or make suspicious movements as a stop progresses. Those highly fluid circumstances, which police are trained to confront, may lead the officer to remove the driver or passenger later in the stop. An officer does not forfeit *Mimms*' protections by waiting to remove the occupants.

2. Next, the Second District distinguished *Mimms* because the K-9 officer testified that he issued the exit order “out of concern for th[at] officer’s safety and that of his dog”—not necessarily for the safety of the ticketing officer. App’x 14; *id.* at 19 n.3 (“[T]he only safety concerns asserted by the State were those described by the K-9 officer as necessary to perform the random narcotics sweep that was not supported by probable cause.”). To the extent the district court believed the officer’s “subjective intentions” were relevant, it committed legal error. *Whren v. United States*, 517 U.S. 806, 813 (1996); *Graham v. Connor*, 490 U.S. 386, 397 (1989). Under settled doctrine, the question is instead whether the “circumstances, viewed objectively, justify that action.” *Whren*, 517 U.S. at 813 (citation omitted); see also *id.* at 814 (“[T]he Fourth Amendment’s concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances,

*whatever* the subjective intent.”). So long as the officers had lawful authority to remove Respondent from his vehicle under *Mimms*—which they did—the order was lawful.

And to the extent the Second District relied on the K-9 officer’s testimony as corroboration that the stop itself posed no threat to officer safety, that was similarly incorrect. The State need not offer “evidence that such seizure is necessary to ensure officer safety,” App’x 20, because *Mimms* already concluded—as a matter of law—that officer-safety concerns inhere in every traffic stop. In *Mimms* itself, for example, the Court approved the exit order even in the absence of “objective observable facts” that the driver “posed a threat to officer safety.” 434 U.S. at 108. Based on empirical studies, the Supreme Court rightly concluded that the fact of the stop alone creates an “inordinate risk” to officers. *Id.* at 110. That conclusion was based on the collective experience of law enforcement over many decades of traffic stops, not the facts of any individual case.

And nowhere in *Mimms* did the Court suggest that the officer-safety concern it identified was limited to just the ticketing officer; instead, the “*officers*” lawfully present at a traffic stop must be free

to exercise “unquestioned command” of the scene. *Wilson*, 519 U.S. at 414 (emphasis added and citation omitted).

3. Finally, the district court pointed to dicta in *Rodriguez* stating that “safety precautions taken in order to facilitate [] detours” during a traffic stop “cannot ‘be justified on the same basis’ as those taken to ensure officer safety for the purpose of conducting the traffic stop itself.” App’x 16–17 (quoting *Rodriguez v. United States*, 575 U.S. 348, 356–57 (2015)). That reasoning was misplaced. In *Rodriguez*, the Supreme Court grappled with the legality of extending a traffic stop for the purpose of conducting a dog sniff. 575 U.S. at 353. There, officers had completed the mission of the traffic stop—writing the ticket—yet continued to detain the driver to perform a dog sniff. *Id.* at 351–52. On those facts, the Supreme Court held that the continued detention was permissible only if officers independently possessed reasonable suspicion for a criminal investigation. *Id.* at 357–58. Once the mission of the traffic stop has ended, the Court reasoned, “[o]n-scene investigation into other crimes” constitutes a “detour[] from that mission,” and prolonging the stop in that way thus requires a separate

constitutional justification. *Id.* at 356. And, in dicta, the Court observed that “[s]o too do safety precautions taken in order to facilitate such detours.” *Id.*

*Rodriguez* is simply not implicated here. This is not a case, like *Rodriguez*, about the legality of the defendant’s continued detention after the mission of a traffic stop has ended. See *State v. Pylican*, 477 P.3d 180, 189 (Idaho 2020) (recognizing that *Rodriguez*’s holding dealt only with prolongation of traffic stops); *State v. Brock*, 774 S.E.2d 60, 73 (W. Va. 2015) (same). As the Second District acknowledged, the traffic stop was ongoing, and Respondent’s seizure was otherwise lawful. App’x 10–12. At issue here, rather, is the legality of the exit order. And under *Mimms*, that order was justified by the *traffic stop*, not by the *dog sniff*. Though the two occurred close in time, their justifications flowed from different Fourth Amendment precepts.

Given all this, it is unsurprising that every court to expressly consider the lawfulness of an exit order made mid-stop, even those involving a dog sniff, has found the police action reasonable. See, e.g., *Brown*, 945 N.W.2d at 592; *Pylican*, 477 P.3d at 189; *Brock*, 774

S.E.2d at 73; *Carter v. State*, 182 A.3d 236, 245 (Md. Ct. Spec. App. 2018); *People v. Goree*, No. 357302, 2022 WL 4390524, at \*4–5 (Mich. Ct. App. Sept. 22, 2022) (without dog sniff); *Stanwood v. Stolts*, No. 3:17-cv-529, 2018 WL 5833061, at \*6–7 (D. Nev. Nov. 7, 2018); *Benjamin*, 229 So. 3d at 442–44. Against those decisions, the Second District’s decision stands as a clear outlier.

### **CONCLUSION**

The Second District’s decision makes it harder for police officers to protect themselves. But Fourth Amendment jurisprudence has always promoted, not hindered, such reasonable precautions. This Court should quash the decision below and remand with instructions to affirm Respondent’s conviction and sentence.

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Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that this brief was prepared in 14-point Bookman font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2) and contains 4852 words.

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished via the e-Filing Portal on this **seventh** day of November 2022, to the following:

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