NO. 16-1225

In the
Supreme Court of the United States

JACQUELINE HEAVEN,
Petitioner,
v.

COLORADO,
Respondent.

On Petition for Writ of Certiorari to the Colorado Court of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

A police officer detained Petitioner for shoplifting at a Wal-Mart and took her to an isolated room separated from the rest of the store. In the back room, the officer searched Petitioner and found drugs and drug paraphernalia in her purse. Petitioner claims that the search was unconstitutional.

The trial court concluded, based on an objective review of the facts, that Petitioner was under arrest at the time her purse was searched. The court of appeals affirmed that conclusion, and Petitioner does not seek to overturn it here. Both courts also concluded that the search was valid under the search-incident-to-arrest doctrine.

The question presented is as follows:

In light of the finding below that Petitioner was under arrest at the time of the search, was the search constitutional under the search-incident-to-arrest doctrine?

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STATEMENT OF THE CASE

A jury convicted Petitioner of possession of drugs and drug paraphernalia. Before trial, Petitioner moved to suppress evidence found during a warrantless search of her purse. The lower courts concluded that (1) Petitioner was under arrest at the time of the search, (2) the arrest was supported by probable cause, and (3) the search was performed incident to Petitioner's lawful arrest. Petitioner does not seek review of the conclusion that she was under arrest at the time of the search. And nowhere in her Petition does she claim that the arrest here was unsupported by probable cause or that her search could not have been performed incident to a lawful arrest. She nonetheless asks this Court to reverse the lower courts' decisions.

1. Background. A security guard at a Wal-Mart in Colorado Springs saw Petitioner concealing merchandise in her purse and in a separate bag in her shopping cart. Pet. App. 2a, 12a. He detained her and called the police. *Id*. at 12a. When a police officer arrived, the security guard informed him about Petitioner's suspected criminal conduct. *Id*. at 2a, 12a. The officer took Petitioner to a small room separated from the rest of the store, sat her down, and searched her purse and person. *Id.* at 2a. He found drug paraphernalia inside the purse, including a syringe loaded with methamphetamine. He then formalized her arrest. *Id*. at 2a, 12a–13a.

The officer testified that Petitioner was upset about being taken to the back room and was argumentative about the purse, telling him that the purse was not hers. R. Tr. pp. 6, 10 (Feb. 24, 2014).

The officer did not recall if he told Petitioner she was under arrest before searching her purse, but he did recall that he never told her she was free to leave. Pet. App. 2a, 13a. Had she asked to leave, the officer would have told her she was not free to go. R. Tr. p. 10 (Feb. 24, 2014). He searched the purse for evidence of shoplifting as soon as he brought Petitioner into the back room because, in his view, she was under arrest. *Id*. at 6, 11. When asked if he was concerned about the possibility that Petitioner had a weapon, the officer testified that he is "always concerned about that." Pet. App. 3a.

2. The Trial Court's Denial of the Motion to Suppress. Before trial, Petitioner moved to suppress the fruits of the officer's search. The trial court denied Petitioner's motion based on three conclusions.

First, the court made a factual finding that Petitioner was under arrest at the time of the search. "[T]he basic facts [did] not appear to be in dispute." Pet. App. 12a. Petitioner had already been "detained … by the store security" by the time the officer arrived, and the officer "transport[ed] her from one place to another," to a "more isolated area." *Id*. at 13a. Additionally, "[t]he officer did not tell [Petitioner], you are free to leave, which [police] fairly routinely do when they are not going to arrest somebody." *Id*. at 12a–13a. Based on those facts, "under [an] objective standard [Petitioner] was under arrest." *Id*. at 13a.

Second, the trial court concluded that the arrest was supported by probable cause. The court "f[ound] that the evidence presented to the officer from the

store security was sufficient to be probable cause for an arrest on a shoplifting charge." *Id.* at 13a.

Third, the trial court held that the officer's search did not "exceed[ ] the scope of a search incident to a lawful arrest," because the purse was "within [Petitioner's] grasp" and could have contained "contraband" or "weapons." *Id.* at 13a–14a.

3. Affirmance by the Colorado Court of Appeals. The Colorado Court of Appeals affirmed Petitioner's conviction, rejecting her claims that (1) the trial court applied the wrong legal standard when it found that she was under arrest at the time of the search and (2) the search could not be justified by the search-incident-to-arrest exception to the warrant requirement.

As to the first argument, the court of appeals explained that a seizure amounts to an arrest "if under the totality of the circumstances a reasonable person in the situation of the defendant would have believed that [s]he was being arrested, rather than merely temporarily detained for a brief investigation." Pet. App. 4a–5a (quoting *People v. Tottenhoff*, 691 P.2d 340, 344 (Colo. 1984)). Although the trial court "did not clearly articulate the legal standard for arrest," it appropriately weighed the factual circumstances and, ultimately, did not err in concluding that Petitioner was under arrest at the time of the search. *Id.* at 5a–6a.

Second, the court held that the search of Petitioner's purse was justified by the search-incident-to-arrest exception to the warrant requirement. The search was not unreasonable merely because it was conducted during the arrest

and before Petitioner's arrest was formalized. The officer "had probable cause to arrest [Petitioner] and search her, incident to the lawful arrest, for the stolen items." *Id.* at 8a. "That [the officer]'s search preceded his *formal arrest* of [Petitioner] is not determinative of the lawfulness of the search, where the two were substantially contemporaneous and probable cause to arrest was clear." *Id.* (emphasis added).

The Colorado Supreme Court denied Petitioner's request for discretionary review. *Id.* at 15a.

REASONS FOR DENYING THE PETITION

A police officer who lawfully arrests a suspect may search the suspect, and the area within his or her immediate reach, without a search warrant. This rule is called the "search incident to arrest" exception to the warrant requirement. The rationale for the rule is that, once a suspect is aware that an arrest is likely to occur, the suspect is more likely to try to destroy evidence or use a weapon. *United States v. Robinson*, 414 U.S. 218, 234–35 (1973).

Of course, an officer may not conduct a search incident to arrest if no lawful arrest is made. *Knowles v. Iowa*, 525 U.S. 113 (1998). But this does not mean officers are required to delay a search until after a lawful arrest is formalized. It is not "particularly important that the search preceded the arrest rather than vice versa" where "the formal arrest followed quickly on the heels of the challenged search." *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980).

Here, Petitioner claims that lower courts are "deeply divided" in their application of *Rawlings* and its statement regarding the timing of a search

relative to when an arrest is formalized. She asserts that, in some jurisdictions, courts have empowered police officers to conduct pretextual searches before arrests occur, and then use the fruits of those searches to decide whether to arrest their targets. Pet. 17, 24. For two reasons, the Court should deny certiorari.

First, Petitioner's alleged "see what they find" scenario, in which officers allegedly search suspects in order to decide whether and on what charges to arrest them, Pet. 17, might well raise significant legal questions. But that scenario did not arise here. Petitioner was under arrest at the time of the search. This case does not present the constitutional question Petitioner seeks to raise.

Second and separately, the cases Petitioner cites do not bear out the "deep divide" she alleges. Jurisdictions are not struggling with the *Rawlings* rule. With only one exception, lower courts are upholding searches incident to arrests only where the recognized justifications for those searches are present.

I. This case does not provide the opportunity to address the question presented because both courts below determined that Petitioner was under arrest at the time the search occurred.

The Petition is premised on the assumption that Petitioner was not under arrest at the time her purse was searched. The Question Presented asks only "[w]hether a warrantless search incident to arrest may *precede* the arrest." Pet. i (emphasis added). And Petitioner agrees that "a warrantless search incident

to arrest" is valid if it takes place "*during*[1] *or after* the arrest." *Id.* at 1–2 (emphasis in original); *Id.* at 5 ("[T]he Court has made clear that the search must be during or shortly after the arrest.").

The problem for Petitioner is that, according to the two courts below, at the time of the search Petitioner was *under arrest*. Pet. App. 4a–6a, 12a–13a. Petitioner does not challenge those conclusions; she instead assumes them away. For example, she incorrectly claims that the court of appeals affirmed "on a ground different from that of the trial court" while failing to mention that the court of appeals in fact explicitly affirmed the trial court's finding that Petitioner was under arrest at the time of the search. Pet. 3; *contra* Pet. App. 4a–6a.

In the court of appeals, Petitioner argued that "the trial court applied an erroneous legal standard in determining that she was under arrest when the search occurred." *Id.* at 3a. The court of appeals

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[1] Petitioner does not explain what it means for a search to occur "during" an arrest. But based on the cases favorably cited in the Petition, "a suspect is under arrest when a reasonable person in the suspect's position would have understood the situation to constitute a restraint on freedom of movement of the degree which the law associates with formal arrest." *Ochana v. Flores*, 347 F.3d 266, 270 (7th Cir. 2003) (internal quotations omitted). Below, the court of appeals used that same standard to affirm the trial court's conclusion that Petitioner was under arrest at the time of the search. Pet. App. 4a-5a (citing *People v. Begay*, 2014 CO 41, ¶ 14; *Tottenhoff*, 691 P.2d at 344). Petitioner does not challenge the standard the court of appeals used to determine whether she was under arrest at the time of her search, nor does she challenge the court of appeals' application of that standard.

rejected that argument, *id.* at 6a, and Petitioner does not raise it again here. She thus implicitly concedes that the court of appeals' conclusion on that point was correct (or, at minimum, is not appropriate for certiorari).

Given the record in this case, and the narrowness of the only claim Petitioner has chosen to raise here, the Petition does not present the opportunity to address whether it is permissible for a search incident to arrest to *precede* the arrest.

II. There is no "deep divide" among lower courts on the meaning or application of *Rawlings*.

Even putting aside the unsuitability of this case as a vehicle to address the question presented, certiorari is unwarranted because there is no split in authority worthy of this Court's review.

In *Rawlings*, this Court upheld the search of a suspect where the police had probable cause for an arrest and the arrest was formalized immediately after the search. The Court had "no difficulty upholding this search." 448 U.S. at 110–11. Because "the formal arrest followed quickly on the heels of the challenged search," the Court did "not believe it particularly important that the search preceded the arrest rather than vice versa." *Id.* at 111. The Court's only caveat was that the fruits of the search could not be used to support probable cause for the arrest. *Id.* at 111 n.6.

The court of appeals decision here correctly applied *Rawlings*. The officer had probable cause to arrest Petitioner for shoplifting. Pet. App. 2a–3a. The officer detained Petitioner and then searched her,

and she was under arrest at the time of the search. *Id*. at 2a–3a, 4a–6a. The evidence obtained from the search was not necessary to establish probable cause for the arrest. *Id*. at 2a–3a. And the arrest was *formalized*—not initiated—quickly after the search. *Id*. at 7a (explaining, consistent with *Rawlings*, that "a search does not become unreasonable merely because it is conducted before a suspect is actually placed under *formal arrest*" (emphasis added)); *id*. at 8a (noting, again consistent with *Rawlings*, that the officer's search here "preceded his *formal arrest*," but that this was "not determinative of the lawfulness of the search, where the two were substantially contemporaneous and probable cause to arrest was clear").

Petitioner nonetheless asserts that *Rawlings* has spawned confusion and divergent approaches in the lower courts, and that some courts are allowing officers to conduct searches and only then decide whether to make arrests. Pet. 23-24. This characterization is largely unfounded.

A. With only one exception, Petitioner's disfavored jurisdictions uphold searches incident to arrest only where they are justified by the search-incident-to-arrest doctrine's rationales.

Petitioner claims that five federal circuits and fourteen States allow officers to search suspects and "only then decide" whether to make arrests. Pet. 14. In this scenario, Petitioner claims, the justifications for the search-incident-to-arrest rule—preservation of evidence and officer safety—"are not present." *Id*. at 24–25.

Petitioner's characterization of these jurisdictions is inaccurate, with one exception. The only case cited by Petitioner that appears to support her argument is *State v. Sherman*, 931 So. 2d 286 (La. 2006). In *Sherman*, officers searched the defendant even though they had no intent to arrest for the offense for which probable cause existed. *Id.* at 288. Officers on a narcotics interdiction patrol saw the defendant standing next to his parked motorcycle along a roadway, talking on his cell phone. When asked what he was doing, defendant told the officers that he had run out of gas. *Id*. One officer asked him if he had a driver's license, and he said he did not. *Id*. But the officer did not confirm whether defendant entirely lacked a license or, instead, simply did not have his license with him at the time. *Id*. The officer then searched defendant, found a bag of crack cocaine, and arrested him for a drug offense. *Id*.

Although "the officers had no intent to arrest for the traffic offense [i.e., driving without a license]"—and the reviewing court identified no facts suggesting defendant had reason to think an arrest was occurring—the Louisiana Supreme Court upheld the search. *Id*. at 291–92, 297. The Louisiana Supreme Court therefore appears to have explicitly endorsed the approach that Petitioner disfavors. The only apparent justification for the search was the later arrest, which was for an offense related solely to the fruits of the search itself.[2]

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[2] Petitioner appears to base her proposed rule in part on the subjective motivations of arresting officers, arguing that officers should not be able to conduct a search incident to arrest and

No other case cited in the Petition, however, raises a similar set of facts. Instead, their facts consistently implicate the accepted justifications for the search-incident-to-arrest rule: evidence preservation and officer safety.

For example, in *United States v. Powell*, 483 F.3d 836 (D.C. Cir. 2007), after observing defendant and another man "standing and urinating to the rear of and a 'few feet from' a parked car," officers detained the two men because "they were going to be placed under arrest" for urinating in public. *Id.* at 837. A passenger was still in the car and could have destroyed evidence or reached for a weapon. An officer "directed the passenger to get out of the car

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"only then decide" whether to actually make an arrest. Pet. 14. The subjective decision to arrest, Petitioner implies, should be made before the search.

Courts often reject invitations to base Fourth Amendment inquiries on subjective standards. *See, e.g.*, *United States v. Lewis*, 147 A.3d 236, 243 (D.C. App. 2016) (in a search-incident-to-arrest case, stating that "[t]he Supreme Court's 'Fourth Amendment cases have repeatedly rejected a subjective approach …'"). Putting that aside, however, this case is a poor vehicle to address Petitioner's argument, because the search here satisfies the subjective aspect of Petitioner's proposed rule. Testimony shows that the officer intended to arrest Petitioner before he conducted his search. *See, e.g.*, R. Tr. pp. 6, 11 (Feb. 24, 2014). This was not a case in which an officer used pretext to justify rummaging around a defendant's belongings for evidence of a more serious crime, and only then decide whether to make an arrest. A case like the Louisiana Supreme Court's decision in *Sherman* would perhaps provide a more appropriate vehicle to address Petitioners' arguments, and any assessment of Petitioner's proposed rule should await such a case.

with the intention of arresting him for possession of an open container of alcohol in a vehicle"; in the vehicle, officers found open alcohol containers and a "semi-automatic pistol with 23 rounds in the magazine and one round in the chamber." *Id.*

In *State v. Freiburger*, 620 S.E.2d 737 (S.C. 2005), the officer stopped a hitchhiker on the road and searched him for weapons because "[i]t would simply be unreasonable to expect a police officer, out on a deserted road at 11:00 p.m., to transport a suspect to the jail without first conducting a pat down search for weapons." *Id.* at 741. The officer found a gun on the hitchhiker that, years later, connected him to a murder. *Id.*

And in *State v. Conn*, 99 P.3d 1108 (Kan. 2004), the officer told the defendant, *before the search*, "that he was under arrest for driving without a license and having no proof of insurance." *Id.* at 1110. Then, when the officer attempted to conduct the search, a passenger in the car "pushed the trooper aside and grabbed a box that was situated between the driver's and passenger's seats" and "tried to throw the box into the back of the vehicle." *Id.* at 1111. The box contained drugs and drug paraphernalia. *Id.*

Among cases cited in the Petition, facts like these are not outliers. In the remaining cases from Petitioner's disfavored jurisdictions, the rationales for the search-incident-to-arrest rule were clearly present:[3]

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[3] In one case, the court did not even apply the search-incident-to-arrest rule. *United States v. Torres-Castro*, 470 F.3d 992, 995,

- *United States v. Currence*, 446 F.3d 554, 555–56 (4th Cir. 2006) (before his bicycle was searched, defendant was frisked, handcuffed, and placed under arrest pending confirmation of an outstanding warrant);
- *United States v. Smith*, 389 F.3d 944, 947 (9th Cir. 2004) (during a lawful traffic stop, defendant was ordered out of his car and gave officers an apparently phony or stolen social security number; after an officer told defendant his social security number appeared false, the officer patted defendant down to search for a wallet while another searched defendant's car);
- *United States v. Montgomery*, 377 F.3d 582, 584, 586–88 (6th Cir. 2004) (defendant was read his *Miranda* rights, patted down, and placed in a patrol car before officers searched his shoes and found drugs; the trial court found that defendant was under arrest at the time of the search);
- *Adams v. State*, 815 So. 2d 578, 579–80 (Ala. 2001) (defendant was riding in a car whose driver admitted to smoking marijuana; the police ordered the driver out of the car and,

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999 (10th Cir. 2006) (three officers entered a house with defendant's consent, questioned defendant, and conducted a protective sweep before obtaining consent for a further search; the court of appeals explicitly declined to determine whether the protective sweep was incident to the arrest and, in upholding the search, explicitly assumed that the sweep "was *not* incident to the arrest" (emphasis added)).

when defendant also stepped out of the car, an officer patted him down and then formally arrested him);

- *United States v. Lewis*, 147 A.3d 236, 238, 250 (D.C. App. 2016) (defendant was seized and placed in handcuffs before the search was conducted and the arrest was formalized; the court concluded that "the search was very closely tethered to [defendant's] arrest");
- *Jenkins v. State*, 978 So.2d 116, 118 (Fla. 2008) (a confidential informant set up a drug transaction with the defendant; after the informant identified the defendant at the scene, the defendant was ordered out of his car at gunpoint and placed in handcuffs before he and his car were searched);
- *State v. Horton*, 625 N.W.2d 362, 363 (Iowa 2001) (the driver of a car admitted to smoking marijuana cigarettes and officers saw "marijuana butts in plain view in the ashtray"; defendant, who was the only passenger, was ordered out of car and was asked to empty her pockets, which contained unsmoked marijuana);
- *Williams v. Commonwealth*, 147 S.W.3d 1, 4 (Ky. 2004) (after receiving a tip from a confidential informant that defendant was selling drugs, officers surrounded defendant's car, handcuffed him, and took him to a friend's apartment where they searched his person);
- *State v. O'Neal*, 921 A.2d 1079, 1082–83 (N.J. 2007) (police officers observed defendant sell

drugs to a buyer; after the buyer fled behind a locked door, police detained defendant and patted him down; defendant admitted he had cocaine in his sock and the officers searched him);

- *State v. Overby*, 590 N.W.2d 703, 704 (N.D. 1999) (after stopping defendant for driving with a broken taillight and smelling marijuana coming from his car, an officer ordered defendant out of the car and then performed a pat-down search);
- *State v. Smith*, 851 N.W.2d 719, 722 (S.D. 2014) (after claiming that his wallet and identification had been stolen and admitting that marijuana was in the car he was riding in, defendant was told he was being detained and was placed in handcuffs before being searched);
- *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999) (a squad car pursued defendant's truck for a mile; after the officer stopped defendant, he ordered defendant to walk to the back of the truck; defendant was obviously impaired and was placed into a squad car while the truck was searched);
- *State v. Sykes*, 695 N.W.2d 277, 280–82 (Wis. 2005) (officers learned that trespassers were staying in an apartment without the lessee's permission and engaging in suspicious activity; after the trespassers attempted to exclude the officers from the apartment, the officers forced their way in; the officers ordered defendant and other trespassers to sit down

and demanded identification; they found drugs in defendant's wallet).

Quoted out of context, language in some of these cases might suggest that courts are allowing officers to search a person and "only then decide" whether to make an arrest. Pet. 14. But only the Louisiana case actually appeared to involve that scenario. Thus, while there might be some minor discrepancies in the case law, they do not justify certiorari, and certainly not on the facts and record of this case.

B. Except where the supporting rationales are absent, Petitioner's favored jurisdictions allow a search incident to arrest to precede a formal arrest.

According to Petitioner, the jurisdictions she favors—the Seventh Circuit, and the States of California, Maryland, Massachusetts, Tennessee, and Virginia—hold that a search incident to arrest "must take place during or after the arrest, not before." Pet. 18. But the cases from those jurisdictions arise in circumstances where the justifications for the search-incident-to-arrest rule are absent. And some of the cases explicitly state that a search incident to arrest may in fact occur before an arrest is formalized.[4]

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[4] In a footnote, Petitioner cites two New York cases that she says take an intermediate approach. Pet. 21 n.2. But those cases explicitly recognize that a search incident to arrest can occur before the arrest. *People v. Reid*, 26 N.E. 3d 237, 239 (N.Y. 2014) ("it is clear that the search was not unlawful solely because it preceded the arrest, since the two events were substantially contemporaneous"); *People v. Evans*, 371 N.E.2d 528, 531 (N.Y. 1977) ("The fact that the search precedes the

In the Seventh Circuit case, *Ochana v. Flores*, 347 F.3d 266 (7th Cir. 2003), officers carried a man from his car after finding him asleep at the wheel stopped at an intersection. Before their search of the car the man "had no reason to believe that he was under custodial arrest for any offense." *Id.* at 270. The car search was deemed unjustifiable as a search incident to arrest because such searches "turn on the objective belief of a reasonable person in the suspect's position," and there was no indication, before the search, that the man would be arrested and thus no reason for him to conceal evidence or use a weapon. *Id.*

In the California case, *People v. Macabeo*, 384 P.3d 1189 (Cal. 2016), officers stopped a man on a bicycle who had rolled through a stop sign. Prosecutors tried to justify a warrantless search of the man's cell phone as a search incident to arrest even though an arrest was not authorized by state law and the officers never made an arrest. The facts were therefore akin to *Knowles*, which held that officers cannot conduct a search incident to a minor traffic violation without ever making an arrest. *Id.* at 1197.

In one of the Maryland cases, *Bailey v. State*, 987 A.2d 72 (Md. 2010), the search incident to arrest was deemed invalid for the sole reason that the officers lacked probable cause for the arrest. *Id.* at 94–95. In another Maryland case, *Belote v. State*, 981 A.2d

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formal arrest is irrelevant as long as the search and arrest are nearly simultaneous so as to constitute one event").

1247 (Md. 2009), the search could not be justified as being incident to arrest because the officer did not arrest the man until two months later; at the time of the search, "neither Officer Russell's objective conduct nor his subjective intent manifested an intention to effect a custodial arrest." *Id.* at 1250, 1262. The final Maryland case, *State v. Funkhouser*, 782 A.2d 387 (Md. Ct. Spec. App. 2001), acknowledged that a search incident to arrest "need not literally follow the arrest," and "may even precede it by a moment or two," *id.* at 407, but deemed the search of the defendant invalid because, at the time of the search, "it is clear" no decision to arrest had been made. *Id.* at 408.

The Massachusetts case, *Commonwealth v. Craan*, 13 N.E.3d 569 (Mass. 2014), rejected an attempt to justify a vehicle search as a search incident to arrest because the officers lacked probable cause for arrest and neither the defendant nor his passenger were ever arrested. *Id.* Yet the case recognizes that a search incident to arrest, if close in time, can occur before a formal arrest: "Although a search may precede a formal arrest, the search and the arrest must be roughly contemporaneous." *Id.* at 575 (internal quotations and citations omitted).

In the Tennessee case, *State v. Crutcher*, 989 S.W.2d 295 (Tenn. 1999), an officer arrived at an accident scene intending to arrest a motorcyclist for driving recklessly, but instead called for an ambulance when the motorcyclist complained of injuries. After the man was in the ambulance, another officer searched his belongings. *Id.* at 298. That search could not be justified as a search

incident to arrest because it was clear that the officer did not believe he had arrested the man, *id*. at 302 n. 11, and the man had no reason to think arrest was occurring: "If law enforcement officers intend to justify a search as incident to an arrest, it is incumbent upon them to take some action that would indicate to a reasonable person that he or she is under arrest." *Id*. at 302.

In the Virginia case, *Lovelace v. Commonwealth*, 522 S.E.2d 856 (Va. 1999), an officer saw a man drinking an alcoholic beverage in public in violation of state law, ordered the man to the ground, and pulled a bag of crack cocaine out of his pocket. *Id*. at 857. The officer acknowledged that, at the time of the search, he had not arrested the man, and under state law the officer could not have arrested the man for the alcoholic beverage violation. *Id*. at 857, 860. The search was deemed invalid because the facts were analogous to *Knowles*. *Id.* at 860.

None of these cases are similar to the present one—where Petitioner was under arrest at the time the search occurred. Nor are these cases similar to those from Petitioner's disfavored jurisdictions, which presented circumstances that fall within the rule's justifications. There is no "deep divide" among jurisdictions and no need for this Court's review.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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