

COURT OF APPEALS OF VIRGINIA

Record No. 0598-26-2

COMMONWEALTH OF VIRGINIA

v.

JAMES ANTOINE MURROW, SR.

Present: Judges Friedman, White and Frucci

Argued by videoconference

Opinion Issued September 1, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND

Jacqueline S. McClenney, Judge

Tanner M. Russo, Assistant Attorney General (Jay Jones, Attorney General, on briefs), for appellant.

Monica Tuck, Assistant Public Defender (Virginia Indigent Defense Commission, on brief), for appellee.

MEMORANDUM OPINION BY JUDGE KIMBERLEY SLAYTON WHITE

INTRODUCTION

The appellee, James Antoine Murrow Sr., was sitting in the passenger seat of a vehicle that officers found illegally parked in a handicapped space outside a convenience store in Richmond, Virginia. The officers, investigating the parking violation, eventually ordered Murrow out of the vehicle. After officers forcibly removed him, Murrow resisted arrest, and a subsequent pat-down revealed illegal drugs on his person. Murrow was charged with possession with intent to distribute a Schedule I or II controlled substance under Code § 18.2-248(C). He moved to suppress the evidence found on his person, arguing that the search violated his Fourth

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

Amendment rights. The trial court granted the motion, finding that the officers lacked reasonable, articulable suspicion of criminal activity to seize Murrow and order him to exit the vehicle. However, we disagree and reverse.

BACKGROUND

On July 25, 2025, at approximately 9:50 p.m., Officer Dquan Walker and Detectives Christopher Brown and Lloyd Sinclair of the Richmond Police Department observed the appellee, James Antoine Murrow Sr., sitting in the passenger seat of an SUV.¹ The vehicle was running while parked in a handicapped parking space outside a convenience store in an area known for high crime where police frequently received calls involving firearms. The officers did not observe who parked the vehicle in the handicapped space or see anyone in the driver's seat. After examining the vehicle, the officers noticed that it displayed neither a handicapped parking placard nor a handicapped license plate. Thus, the officers believed that a parking violation had occurred and warranted further investigation.²

Before approaching the vehicle, Walker recognized Murrow from a previous encounter about a year earlier near the same convenience store. During that encounter, Walker saw Murrow leave the passenger seat of another vehicle, from which officers subsequently recovered firearms and drugs. Although Murrow was not charged with any offense related to that incident, Walker later investigated his background because of his presence at the scene. Before encountering Murrow at the convenience store on July 25, 2025, Walker had learned that

¹ Sergeant Cody Adams was also present at the scene and accompanied the other three officers when they approached the vehicle.

² Code § 46.2-1242(A) prohibits vehicles “other than those displaying disabled parking license plates” or qualifying placards from parking in spaces “reserved for persons with disabilities.” A violation is punishable by a fine of \$100 to \$500. Code § 46.2-1242(A)(5). Code § 46.2-1250 provides that a person who parks in a space “reserved for persons with disabilities” and “is not transporting a person with a disability” that limits or impairs the person's ability to walk “shall be guilty of a Class 2 misdemeanor.”

Murrow had recently served time in state prison, had prior narcotics offenses, and was a violent felon.

The officers, investigating the apparent parking violation, approached the vehicle. The officers were wearing tactical vests that said "POLICE" on the front and back, along with duty belts that included firearms and tasers. Walker and Brown shined their flashlights directly inside, while Adams and Sinclair stood five to ten feet in front of the vehicle on opposite sides, facing Murrow. They observed Murrow resting his chin on his left hand, with his left elbow on the center console, and holding his phone in his right hand near his lap. After failing to see any drugs or firearms, Walker approached the passenger's side door.

As Walker approached the passenger's side door, he ordered Murrow to roll down his window, and Murrow complied. Walker asked Murrow why he was parked in a handicapped space. Murrow replied, "I'm not driving," and informed him that the driver, Destiny, was inside the store. Walker then asked whether Murrow remembered him from their previous encounter, but Murrow said he did not.

Immediately afterward, Walker ordered Murrow to "step out the car," but Murrow told him, "I'm not doing that," before rolling up his window and locking the passenger's side door. Walker repeatedly ordered Murrow to "get out of the car" as Murrow lunged across the driver's seat to lock the driver's side door and roll up the window. However, before Murrow could reach the driver's side door, Detective Brown "snatched the [driver's] door open" and moved it away from Murrow. Brown aimed his firearm at Murrow, told him "don't move," and instructed him to exit the vehicle. Murrow replied, "for what?" and Brown responded, telling him "cause [Walker] asked you." Detective Sinclair approached the driver's side door, pointed his weapon at Murrow, and yelled, along with Brown, to "stop reaching" or he "will be tazed."

Detective Brown saw Murrow move his left hand between the center console and the passenger's side door several times but testified that he could not see where Murrow's hand went. During this time, Sinclair also saw Murrow reaching between the center console and the passenger's seat and was concerned that he was "reaching for a firearm." When the officers told Murrow to stop reaching, he raised his hands and responded, "I'm not reaching," explaining that he was just "grabbing [his] phone." Once Brown unlocked the driver's side door, Walker opened the passenger's side door, and he and Adams removed Murrow from the vehicle. Shortly afterward, a woman exited the store and informed the officers that she was the driver. Walker, Adams, and Sinclair then attempted to handcuff Murrow, who pulled away multiple times and resisted before the officers secured him in handcuffs.

Walker then conducted a pat-down of Murrow and "felt a hard, metal object" in the front pocket of Murrow's pants. Concerned that the object could be a handgun magazine, Walker removed it from Murrow's pocket and discovered a cylindrical metal grinder.³ Murrow confirmed that the object was a grinder and told Walker that he used it for marijuana. When Walker opened the grinder, however, he discovered cocaine inside.

Murrow was charged with possession with intent to distribute a Schedule I or II controlled substance under Code § 18.2-248(C). Murrow moved to suppress the drugs recovered from his person, arguing that the officers violated his Fourth Amendment rights.

SUPPRESSION HEARING

At the suppression hearing, the trial court granted Murrow's suppression motion, finding that officers lacked reasonable, articulable suspicion of criminal activity to seize Murrow and

³ We only discuss these facts to provide necessary context for the reader. Because the trial court did not reach whether the officers had reasonable suspicion to frisk Murrow or whether removing the object from his pocket exceeded the permissible scope of the frisk, we express no opinion on either issue.

order him to exit the vehicle.⁴ The trial court ruled that when the officers surrounded the vehicle, investigated the parking violation, and subsequently questioned Murrow regarding it, the encounter was non-consensual. In doing so, the trial court reasoned that it constituted a seizure when officers surrounded the vehicle because “no reasonable person surrounded by four law enforcement officers would perceive they were free to leave.”

According to the trial court, before detaining and removing Murrow from the vehicle, the Fourth Amendment required the officers to have reasonable, articulable suspicion based on objective facts that he was engaged in or attempting criminal activity. Although the trial court recognized that the officers were investigating a nighttime parking violation under Code §§ 46.2-1242(A) and 46.2-1250, it concluded that they lacked reasonable suspicion. The trial court reasoned that Murrow was merely a passenger, the alleged driver was only feet away inside the convenience store, and the officers made no attempt to locate her or issue her a parking citation.

Moreover, the trial court found that Murrow was responsive to Officer Walker’s questions and that his hands remained “visible and stationary.” However, the trial court acknowledged that Murrow “made several hand gestures” between his left thigh area and the center console before being forcibly removed from the vehicle. Nevertheless, the trial court

⁴ Murrow raised three additional grounds for suppression: (1) the officers lacked reasonable, articulable suspicion that he was armed and dangerous to justify a protective frisk; (2) even if the frisk was lawful, the officers exceeded the permissible scope of a pat-down by removing the object from his pocket and searching its contents; and (3) the search of his person was not justified as incident to arrest because the officers lacked probable cause to arrest him for obstruction or any other offense. Because the trial court granted Murrow’s motion based solely on its conclusion that the officers lacked reasonable suspicion to seize him and order him from the vehicle, it did not reach these alternative grounds or make the factual findings necessary to resolve them. Accordingly, we do not address those issues for the first time on appeal. See *Scialdone v. Commonwealth*, 279 Va. 422, 437 (2010) (explaining that “[a]n appellate court can only ‘determine whether or not the rulings and judgment of the court below . . . were correct’” (second alteration in original) (quoting *Jackson v. Chesapeake & Ohio Ry. Co.*, 179 Va. 642, 651 (1942))).

found that “there was no legitimate concern for officer safety.” As such, the trial court concluded that when Murrow rolled up his window and refused Walker’s command to exit the vehicle, the officers had no “legal justification” to remove and subsequently detain him. Thus, the trial court ruled that the officers lacked reasonable, articulable suspicion under the Fourth Amendment and granted his motion to suppress. The Commonwealth now appeals that ruling.

ANALYSIS

A. Standard of Review

Whether a defendant was seized in violation of the Fourth Amendment “presents a mixed question of law and fact that we review de novo on appeal.” *Harris v. Commonwealth*, 276 Va. 689, 694 (2008). Likewise, our review of a trial court’s ruling on a motion to suppress is de novo when the defendant claims that the evidence “was seized in violation of the Fourth Amendment.” *Glenn v. Commonwealth*, 275 Va. 123, 130 (2008). Nevertheless, “[i]n an appeal by the Commonwealth of an order of the trial court suppressing evidence, the evidence must be viewed in the light most favorable to the defendant and findings of fact are entitled to a presumption of correctness unless they are plainly wrong or without evidence to support them.” *Commonwealth v. Peterson*, 15 Va. App. 486, 487 (1992).⁵

⁵ The trial court found that the encounter was non-consensual and that Murrow was seized when the four officers surrounded the vehicle. The Commonwealth argues that the seizure did not occur until the officers drew their weapons and forcibly removed Murrow. We need not resolve this dispute because, even assuming the seizure occurred when the officers surrounded the vehicle, the officers had lawful authority to detain Murrow and order him from the vehicle. Accordingly, we assume without deciding that it was a non-consensual encounter and Murrow was seized when officers surrounded his vehicle. *See Henderson v. Cook*, 297 Va. 699, 710 (2019) (explaining that the Court “need only address” the issue necessary to resolve the appeal because “[t]he doctrine of judicial restraint dictates that we decide cases “on the best and narrowest grounds available”” (alteration in original) (quoting *Commonwealth v. Swann*, 290 Va. 194, 196 (2015))).

B. The Officers Had Legal Authority to Remove and Detain Murrow Without Individualized Reasonable Suspicion of Criminal Activity

The Commonwealth contends that the officers had lawful authority to remove and detain Murrow from the vehicle regardless of whether they had reasonable suspicion that he was engaged in criminal activity. We agree.

The trial court erred in ruling that the officers needed reasonable, articulable suspicion that Murrow was engaged in criminal activity before removing and detaining him. Rather, officers may order passengers out of the vehicle and detain them without individualized reasonable suspicion of criminal activity during a lawful traffic stop.⁶ Ever since *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977), the United States Supreme Court has made clear that “once 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’s proscription of unreasonable searches and seizures.” Two decades later, the Court extended the *Mimms* holding to passengers, thus allowing officers to order passengers out of the vehicle while conducting a lawful traffic stop. *See Maryland v. Wilson*, 519 U.S. 408, 415 (1997) (recognizing that an “officer making a traffic stop may order passengers to get out of the car pending completion of the stop”); *see also Commonwealth v. Smith*, 281 Va. 582, 590 (2011). The Supreme Court has also recognized that “during a traffic stop an officer seizes everyone in the vehicle, not just the driver.” *Brendlin v. California*, 551 U.S. 249, 255 (2007). Accordingly,

⁶ Although officers may order an occupant out of a vehicle and detain him during a lawful traffic stop without individualized reasonable suspicion, a protective frisk requires reasonable suspicion that the person is armed and dangerous. *See Terry v. Ohio*, 392 U.S. 1, 27 (1968). As explained *supra* in note 4, we do not address whether Walker’s subsequent frisk of Murrow satisfied that standard.

officers may order passengers out of a vehicle and briefly detain them for the duration of a lawful traffic stop without individualized reasonable suspicion of criminal activity.⁷

The Supreme Court’s underlying purpose for permitting officers to order occupants out of vehicles and briefly detain them during lawful traffic stops is officer safety. The Virginia Supreme Court has recognized that these safety concerns are “‘legitimate and weighty’” and “‘cannot be ignored given ‘the inordinate risk confronting an officer as he approaches a person seated in an automobile.’” *Hill v. Commonwealth*, 297 Va. 804, 817 (2019) (quoting *Mimms*, 434 U.S. at 110). That risk “is present regardless of whether the occupant of the stopped car is a driver or passenger.” *Wilson*, 519 U.S. at 413. Indeed, removing a passenger from the vehicle reduces the risk that the passenger could access a weapon concealed inside or employ violence to conceal a more serious crime. *Id.* at 414. Thus, permitting officers to remove and briefly detain occupants during a lawful traffic stop minimizes the danger to both the officers and the occupants. *Id.*; see *Michigan v. Summers*, 452 U.S. 692, 702-03 (1981).

Here, Murrow argues that the officers lacked authority to order him from the vehicle and detain him because the officers were investigating a parking violation rather than a moving violation. However, “[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810 (1996). Relying on *Whren*, federal circuit courts addressing the

⁷ The dissent argues that “because Murrow was in the passenger seat, the police did not have reasonable suspicion that he had committed the parking violation.” *Infra* at 16. Indeed, *Wilson* explicitly recognized that although “[t]here is probable cause to believe that the driver has committed a minor vehicular offense,” there ordinarily “is no such reason to stop or detain the passengers.” 519 U.S. at 413. Despite this, the Court held that an officer conducting a lawful traffic stop may order passengers out of the vehicle pending completion of the stop. *Id.* at 415. And, as explained in *Brendlin*, a passenger is seized during a lawful traffic stop even though the passenger is not suspected of committing the traffic violation. See *Brendlin*, 551 U.S. at 257-58. Thus, the absence of individualized reasonable suspicion that Murrow personally committed the parking violation did not preclude officers from ordering him out of the vehicle and detaining him during the lawful traffic stop.

issue have unanimously rejected a categorical distinction between moving and parking violations. *See United States v. Johnson*, 874 F.3d 571, 574 (7th Cir. 2017) (recognizing that “*Whren* applies to parked as well as moving vehicles, and to parking violations as well as moving violations”); *United States v. Copeland*, 321 F.3d 582, 593 (6th Cir. 2003) (holding that “the probable cause standard of *Whren* is satisfied where an officer observes a vehicle, either in motion or while stopped, that does not comply with the [applicable traffic laws]”); *United States v. Warren*, 984 F.3d 1301, 1304 (8th Cir. 2021) (rejecting the argument that “the analysis is different because the vehicle was already parked”); *United States v. Choudhry*, 461 F.3d 1097, 1102 (9th Cir. 2006) (concluding that *Whren* applies to parking violations because the Supreme Court’s reasoning applies generally to traffic-code violations). We likewise see no basis for distinguishing between moving and parking violations when officers have probable cause to believe that a traffic violation has occurred.⁸

Because there is no distinction between moving and parking violations in determining whether officers have probable cause to believe that a traffic violation has occurred, we find *McCain v. Commonwealth*, 275 Va. 546, 553 (2008), controlling. In *McCain*, the Virginia Supreme Court found that officers did not have reasonable suspicion that the defendant was engaged in criminal activity during the early morning hours in a high crime area. *Id.* Nevertheless, the Court found that it was constitutional to stop the vehicle in which the defendant

⁸ The dissent reasons that a lawful traffic stop requires reasonable suspicion that someone inside the vehicle committed the traffic offense. *Infra* at 18. However, *Johnson* undermines that premise. There, as here, when officers approached the illegally parked vehicle, “no one was in the driver’s seat” because “[t]he driver was inside a liquor store making a purchase.” 874 F.3d at 574. Nevertheless, the Seventh Circuit treated the officers’ show of authority toward the passengers remaining inside the vehicle as a seizure and upheld that seizure based on probable cause to investigate the parking violation. *Id.* Thus, *Johnson* demonstrates that officers investigating an observed parking violation need not have individualized suspicion that someone then inside the vehicle committed the violation before briefly detaining its occupants during that investigation.

was traveling as a passenger because the officers had probable cause to believe the driver committed a traffic violation. *Id.* Most relevant here, the Court recognized that the “authority to order an occupant from a vehicle during a traffic stop is justified by the potential risks associated with traffic investigation that implicate safety concerns.” *Id.*; *see also Commonwealth v. Knight-Walker*, ___ Va. ___, ___ (Apr. 16, 2026) (“Permissible inquiries relating to officer safety include . . . asking a driver to step out of the vehicle.”). The Court further held that “officers may also detain passengers beside an automobile until the completion of a lawful traffic stop.” *McCain*, 275 Va. at 553 (quoting *Harris v. Commonwealth*, 27 Va. App. 554, 562 (1998)).

Similarly, here, the officers did not need reasonable suspicion that Murrow was personally engaged in criminal activity before ordering him out of the vehicle and detaining him during the traffic investigation. Because the officers had probable cause to believe that a parking violation had occurred, they could order Murrow, a passenger, out of the vehicle and detain him for the duration of the traffic investigation. Hence, officers were not required to establish an individualized safety concern before ordering Murrow out of the vehicle and detaining him during the lawful traffic investigation. The authority recognized in *Mimms*, *Wilson*, and *McCain* rests on the safety risks inherent in traffic stops.

Nevertheless, we find that the record demonstrates that officers had substantial safety concerns and thus find plainly wrong the trial court’s determination that officers had “no legitimate concern for [their] safety.” Officers located the vehicle late at night in a high crime area where police routinely received calls involving firearms. Moreover, before the officers’ encounter with Murrow, Officer Walker knew he was a violent felon, had been convicted of narcotics offenses, and from a previous encounter, had seen him exit a vehicle that contained firearms and narcotics. Additionally, when officers told Murrow to put his hands up, he “made several hand gestures” between the center console and the passenger’s seat. Neither Sinclair nor

Brown could see Murrow's hand while it was between the center console and the passenger seat, and Sinclair was concerned that Murrow might be reaching for a firearm.

These circumstances gave the officers legitimate reason to fear that Murrow could retrieve a weapon and shoot them from inside the vehicle. *See Hill*, 297 Va. at 817 (finding officers had legitimate safety concerns in a high crime area when the defendant repeatedly reached between the vehicle's seats despite commands to show his hands, creating the risk that he could draw a weapon and shoot the officers at point-blank range). Murrow's conduct illustrates precisely the officer safety concerns that permit officers to remove and detain passengers during a lawful traffic stop. As the United States Supreme Court recognized, because "evidence of a more serious crime might be uncovered during the stop," a passenger may "employ violence to prevent apprehension of such a crime." *Wilson*, 519 U.S. at 414. That rationale applies with particular force here.⁹ Although the officers initially approached the vehicle to investigate a parking violation, Murrow possessed cocaine on his person and resisted the officers' efforts to remove him before they discovered that more serious offense.

Therefore, we find plainly wrong the trial court's finding that there was no legitimate concern for officer safety. More importantly, the trial court erred in concluding that the officers needed individualized reasonable suspicion that Murrow was engaged in criminal activity before they could order him out of the vehicle and detain him during the lawful traffic stop. Accordingly, we reverse the order granting Murrow's motion to suppress.

⁹ To be clear, we do not rely on the officers' subsequent discovery of cocaine to justify their earlier decision to remove and detain Murrow. Rather, we note these circumstances only because they illustrate the officer safety rationale underlying the rule in *Wilson* that an occupant may pose a danger to officers during an otherwise routine traffic stop because the stop could uncover evidence of a more serious crime. *See Wilson*, 519 U.S. at 414.

CONCLUSION

For these reasons, we reverse the trial court's judgment and remand the case for further proceedings.

Reversed and remanded.

Friedman, J., dissenting.

James Murrow was sitting in the passenger seat of an illegally parked car, looking at his phone, when four police officers wearing tactical vests, armed with guns and tasers, surrounded the vehicle. I agree with the trial court's finding, and the majority's assumption, that he was seized at that moment. I also agree that the investigation of a parking violation is a traffic stop. But I respectfully disagree with the remainder of the majority's analysis.

In my view, the majority misapplies *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), and *Maryland v. Wilson*, 519 U.S. 408 (1997). Under that line of cases—as the majority recognizes—police may order “passengers out of [a] vehicle and detain them without individualized reasonable suspicion of criminal activity during a *lawful* traffic stop.” *Supra* at 7 (emphasis added). But because the officers here lacked reasonable and particularized suspicion that anyone in the car committed a crime, the traffic stop was not lawful, and the police had no authority to order Murrow out of the car. I would therefore hold that Murrow's seizure was unlawful and affirm the trial court's order suppressing the evidence because it was fruit of the poisonous tree.

A. The Majority Misapplies Our Standard of Review

At the outset, I have a fundamental disagreement with the majority's factual analysis—and its finding that the trial court was plainly wrong in ruling that there was no legitimate concern for officer safety when Murrow was seized. “In an appeal by the Commonwealth of an order of the trial court suppressing evidence, the evidence must be viewed in the light most favorable to the defendant and findings of fact are entitled to a presumption of correctness unless they are plainly wrong or without evidence to support them.” *Commonwealth v. Peterson*, 15 Va. App. 486, 487 (1992). We review “a lower court's findings of fact ‘with the highest degree of appellate deference.’” *Commonwealth v. Wilkerson*, 304 Va. 92, 100 (2025) (quoting

Commonwealth v. Barney, 302 Va. 84, 96 (2023)). And as we said in *Meade v. Commonwealth*, 74 Va. App. 796 (2022),

We owe deference to the trial court’s interpretation of all of the evidence, including video evidence that we are able to observe much as the trial court did. Such deference stems not from the trial court being in a superior position to view the video evidence but from the difference in our respective roles. As factfinder, a trial court views video and other evidence to determine what it believes happened; we, on appellate review, view video evidence not to determine what we think happened, but for the limited purpose of determining whether any rational factfinder could have viewed it as the trial court did.

Id. at 806.

Here, the majority rejects the trial court’s specific finding that there was no legitimate concern for officer safety by relying largely on the officers’ version of events and the video evidence from the officers’ body-worn cameras. But under *Meade*, we are not asked to review the multiple videos of the seizure in this case and make new factual findings. We view the videos to see if *any* rational factfinder could reach the result adopted below. Here, a reasonable factfinder could *easily* conclude that Murrow, after calmly answering questions and then declining to leave the vehicle, neither represented a threat to the officers’ safety nor provided them with a basis for aiming multiple weapons at him, yelling at him, forcibly removing him from the car, and searching him against his will. *See Wilkerson*, 304 Va. at 100 (noting that a factfinder’s reasonable inferences can be upended on appeal only if they are “so attenuated that they push into the realm of *non sequitur*”).

Similarly, there is a factual dispute as to the nature of Murrow’s movements after he refuses to exit the vehicle. He does attempt, unsuccessfully, to lock the driver’s side door and to access his phone. While the Commonwealth characterizes his initial movement as a “lunge” and suggests that he might have been seeking to arm himself, the trial court expressly found that Murrow merely “moved” to lock the door. Nothing in the record contradicts that finding or

renders it plainly wrong. Then, when the officers told Murrow to stop reaching, he raised his hands and responded, “I’m not reaching,” explaining that he was just “grabbing [his] phone.” The factfinder was free to—and did—accept Murrow’s version of the incident. *See Hill v. Commonwealth*, 297 Va. 804, 808 (2019) (explaining that when the trial court makes no specific finding on an issue, we presume that it “resolved all factual ambiguities or inconsistencies in the evidence in favor of the prevailing party and gave that party the benefit of all reasonably debatable inferences from the evidence”). It was left to the factfinder to determine the gravity of Murrow’s movements—and its findings were amply supported by the video evidence.

B. Mimms and Wilson Require a Lawful Traffic Stop

Moving to the legal issue, the majority and the Commonwealth rely on a line of cases beginning with *Pennsylvania v. Mimms*, 434 U.S. 106, in which the U.S. Supreme Court held that “once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle.” *Id.* at 111 n.6. The Court explained that once a vehicle has been lawfully stopped, the “additional intrusion” of being ordered to exit the vehicle is *de minimis*, “at most a mere inconvenience.” *Id.* at 111. “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.” *Id.*

Twenty years later, in *Maryland v. Wilson*, 519 U.S. 408, the Court extended this rule to passengers. It held that the “danger to an officer from a traffic stop is likely to be greater when there are passengers” in the car. *Id.* at 414. It explained that “[w]hile there is not the same basis for ordering the passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal.” *Id.* at 414-15.

Mimms and *Wilson* made crystal clear that a lawful traffic stop—that is, one based on reasonable suspicion—is a condition precedent to the lawful removal of a driver or passenger

from a car. *Mimms*, 434 U.S. at 111 n.6 (“We hold only that *once 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’s proscription of unreasonable searches and seizures.” (emphasis added)). Indeed, the whole rule in those cases is premised on the idea that being ordered out of a vehicle after having already been lawfully detained is no more than a “mere inconvenience.” *Id.* at 111; *see Wilson*, 519 U.S. at 413-14 (“[A]s a practical matter, the passengers are already stopped by virtue of the stop of the vehicle. The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car.”).

The difference between being detained inside your car and being detained outside of your car may be minimal. *Wilson*, 519 U.S. at 415. The difference between not being detained at all and being detained outside of your car is far greater. So the question here is whether the traffic stop was lawful at its inception. If it was not, then the police had no authority to order Murrow out of the car, and his seizure was unlawful.

C. This Traffic Stop Was Unlawful

The U.S. Supreme Court has repeatedly held that to conduct an investigatory stop of a person or a vehicle, the detaining officers must have “a *particularized* and objective basis for suspecting *the particular person stopped* of criminal activity.” *Kansas v. Glover*, 589 U.S. 376, 380 (2020) (emphases added) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)); *see, e.g., Navarette v. California*, 572 U.S. 393, 396 (2014) (same). The Supreme Court of Virginia has said the same thing. *E.g., McCain v. Commonwealth*, 275 Va. 546, 552 (2008). And so have we. *E.g., McCumber v. Commonwealth*, 88 Va. App. 169, 176 (2026); *Washington v. Commonwealth*, 87 Va. App. 349, 359 (2026).

Here, because Murrow was in the passenger seat, the police did not have reasonable suspicion that he had committed the parking violation that they were investigating. The Commonwealth openly admits in its brief that “the officers ‘[did] not know how the vehicle’ came to be parked in the disabled parking spot and did ‘not know if [Murrow] happened to be the driver and was just hanging out in the parking lot in the passenger seat.’”¹⁰ In fact, Murrow told the officers where they could find the driver; they showed no interest in walking inside the store to speak with her. With no evidence that Murrow had parked the car, the officers had no particularized reasonable suspicion that he had committed any crime.

The majority suggests that the police did not need reasonable suspicion and that this traffic stop was lawful because the police saw that the vehicle was illegally parked in a handicap spot. *See supra* at 2, 10. But at the risk of stating the obvious, vehicles do not commit parking violations—people do.¹¹ And because there was only one person in the car here (Murrow), the police were required to have reasonable suspicion that he was involved in criminal activity when they initiated the traffic stop. *See United States v. Hensley*, 469 U.S. 221, 226 (1985) (holding that law enforcement officers may stop an automobile “to investigate a reasonable suspicion that *its occupants* are involved in criminal activity” (emphasis added)).

¹⁰ The Commonwealth’s theory that Murrow may have illegally parked the vehicle, left the engine running, and then decided to “hang[] out in the parking lot in the passenger seat” seems speculative at best, and, in any event, is flatly contrary to the standard of review here. *See Peterson*, 15 Va. App. at 487 (explaining that on appeal of a lower court’s decision granting a defendant’s motion to suppress, we view the facts in the light most favorable to the defendant and draw all reasonable inferences in his favor).

¹¹ Indeed, as the majority notes, Code § 46.2-1250 provides that any *person* who parks in a space “reserved for persons with disabilities” and “is not transporting a person with a disability” that limits or impairs the person’s ability to walk “shall be guilty of a Class 2 misdemeanor.” *Supra* at 2 n.2. And Code § 46.2-1242(A)(5) states that “[p]arking a vehicle in a space reserved for persons with disabilities . . . shall be punishable by a fine of not less than \$100 nor more than \$500.” It is reasonable to assume that the General Assembly assumed that a person would be doing that “parking.”

In short, to conduct a lawful traffic stop, police do not need reasonable suspicion that *everyone* in the car committed a crime—but they do need reasonable suspicion that *someone* in the car did.¹² See *Navarette*, 572 U.S. at 404 (holding that the seizure of a driver and passenger was legal because police had reasonable suspicion that the driver was intoxicated); *Freeman v. Commonwealth*, 20 Va. App. 658, 660-61 (1995) (“A police officer may stop the driver or occupants of an automobile for investigatory purposes if the officer has ‘a reasonable articulable suspicion, based upon objective facts, that *the individual* is involved in criminal activity.’” (emphasis added) (quoting *Jacques v. Commonwealth*, 12 Va. App. 591, 593 (1991))). In the vast majority of traffic stops for moving or parking violations, that person will be the driver. See *Wilson*, 519 U.S. at 413 (taking for granted that in a traffic stop, “[t]here is probable cause to believe that the driver has committed a minor vehicular offense”); *Mitchell v. Commonwealth*, 73 Va. App. 234, 250 (2021) (holding that police could lawfully seize driver and passenger because they had reasonable suspicion that there was an outstanding warrant for the driver). But see *Alston v. Commonwealth*, 40 Va. App. 728, 740 (2003) (holding that police could have stopped a

¹² Contrary to the majority’s assertion, *supra* at 9 n.8, *United States v. Johnson*, 874 F.3d 571 (7th Cir. 2017), does not undermine this principle. The court there held that the seizure was lawful “[b]ecause the police approached Johnson’s car with probable cause to believe that *the driver* was violating a traffic law.” *Johnson*, 874 F.3d at 574 (emphasis added). And nothing in that case suggests that the police already knew that the driver was in the liquor store when they seized the passengers; indeed, it was “after 7 P.M. in January” and the officers had to “bathe[] the parked car in bright light” to see the occupants inside. *Id.* at 572, 574. Here, on the other hand, as the majority notes, the police observed that there was no one in the driver’s seat before they surrounded the vehicle and seized Murrow. *Supra* at 2. Officers may perhaps presume that the driver is present when they approach an illegally parked car, but if, as here, that presumption has already been rebutted, then they have no justification for seizing the passenger by initiating a traffic stop—they lack “a particularized and objective basis for suspecting the *particular person stopped* of criminal activity.” *Navarette*, 572 U.S. at 396 (emphasis added).

The majority’s reliance on *McCain* is similarly misplaced. The Court there found that it was constitutional to stop the vehicle in which the defendant was traveling as a passenger because the officers had probable cause to believe that the driver—who was in the car—committed a moving violation. *McCain*, 275 Va. at 550. Here, unlike in *McCain*, there was no driver present in the car whose conduct provided a basis for initiating a traffic stop and seizing a passenger.

car without reasonable suspicion of the driver because they already had reasonable suspicion that the passenger had recently trespassed). But if the driver is not there, and the police have no reason to believe that the sole occupant of the car committed the parking violation (or any other crime), then they lack the reasonable, particularized suspicion necessary to justify a traffic stop.¹³

At the moment Murrow was seized, the police knew only that a traffic violation had occurred and that Murrow was in the car. That is to say, a crime was committed and Murrow was near it. Proximity to the scene of a crime, however, does not by itself give rise to reasonable suspicion. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000); *Turay v. Commonwealth*, 79 Va. App. 286, 299 (2023) (en banc).

To be sure, the police had both the right and the responsibility to investigate this parking violation. But until they developed reasonable and particularized suspicion that Murrow had committed or was committing a crime, the officers' investigative authority extended only to engaging in a consensual encounter with Murrow and looking for the driver. Because they instead surrounded the car and seized Murrow before developing any reasonable suspicion that he had done anything illegal, they violated Murrow's rights under the Fourth Amendment. Any

¹³ The other factors on which the Commonwealth relies—it was nighttime, it was a high-crime area, and Murrow is a “violent felon” whom Officer Walker saw about a year earlier leaving a car that had drugs and guns in it—provide little, if any, support. While “the location and the time at which a person is observed” may be relevant, “they do not supply a particularized and objective basis for suspecting criminal activity on the part of the particular person stopped.” *McCain*, 275 Va. at 552. “A person’s Fourth Amendment rights are not lessened simply because he or she happens to live or travel in a ‘high crime’ area.” *Id.* at 553. Moreover, although a suspect’s criminal history can be relevant to the reasonable suspicion analysis, the “remoteness of arrests” weakens this factor. *Commonwealth v. Smith*, 281 Va. 582, 593 (2011). Unlike the defendant in *Smith*, who had been charged with drug and firearm offenses multiple times throughout the 11 months prior to the arrest at issue, Murrow had merely been seen leaving a car with drugs and firearms in it one time nearly a year prior, and *no charges were brought* in connection with that incident. In best light to Murrow, that sighting does not justify a seizure.

evidence obtained as a result of this unlawful seizure is fruit of the poisonous tree and should be suppressed.

I respectfully dissent.