the alert was grounded on prior arrest warrants that were "stale" and "nonspecific." [1]

Additionally, while characterizing reliance on the PISTOL alert by Richmond Police as an "honest, but erroneous legal conclusion," the Court of Appeals further concluded that "despite the breadth" of some of the United States Supreme Court's language in Herring v. United States, 129 S. Ct. 695 (2009), the good faith exception did not apply "beyond the bounds previously defined." Smith, 55 Va. App. at 52, 683 S.E.2d at 327. Thus, under the exclusionary rule, the Court held that suppression of the firearm recovered from Smith's pocket was necessary to deter future police misconduct. Id.

This Court awarded an appeal on July 27, 2010.

ASSIGNMENTS OF ERROR

I. IN RULING THAT POLICE MUST HAVE A "CONTEMPORANEOUS INDICATION" SMITH WAS ARMED AND DANGEROUS IN ADDITION TO THE DATABASE ALERT BASED ON TWO EARLIER ARREST WARRANTS FOR FELON FIREARM POSSESSION AND DISTRIBUTION OF CRACK COCAINE, THE COURT OF

[1] The Commonwealth also relied on these convictions in this case to prove Smith's prior felony. (App. 55-57).

APPEALS MISAPPLIED THE TEST OF SUFFICIENT SUSPICION TO FRISK REQUIRED UNDER TERRY v. OHIO, 392 U.S. 1 (1968).

II. IN EVALUATING THE REASONABLENESS OF SMITH'S TERRY FRISK, THE COURT OF APPEALS FAILED TO BALANCE THE PUBLIC'S INTEREST IN OFFICER SAFETY AGAINST SMITH'S RIGHT TO BE PROTECTED FROM AN UNWARRANTED FRISK.

III. THE COURT OF APPEALS ERRED BY FAILING TO GIVE DEFERENCE TO THE TRIAL COURT'S FINDING THAT THE DATABASE INFORMATION WAS RELIABLE AND THAT POLICE COULD VALIDLY RELY UPON IT FOR OFFICER SAFETY.

IV. IN HOLDING THAT TRESPASSING IS A MINOR OFFENSE AND TRESPASSERS ARE UNLIKELY TO BE ARMED, THE COURT OF APPEALS CONDUCTED A TOTALITY OF THE CIRCUMSTANCES ANALYSIS WITHOUT EVALUATING A PROPER BALANCE BETWEEN THE DANGER TO POLICE AND THE INTRUSION UPON SMITH.

V. THE COURT OF APPEALS ERRED BY LIMITING IMPUTATION OF COLLECTIVE KNOWLEDGE PRINCIPLES UNDER UNITED STATES v. HENSLEY, 469 U.S. 221 (1985) TO THE INFORMATION KNOWN TO THE POLICE OFFICER ENTERING THE INFORMATION INTO THE POLICE DATABASE.

VI. THE COURT OF APPEALS ERRED BY RULING THAT AN ELEVEN-MONTH-OLD OFFENSE DATE FOR FELON FIREARM POSSESSION COUPLED WITH A SIX-MONTH-OLD OFFENSE DATE FOR POSSESSING COCAINE WITH INTENT TO DISTRIBUTE WAS TOO STALE TO JUSTIFY A PROTECTIVE FRISK BY POLICE.

VII. THE COURT OF APPEALS ERRED BY RULING THAT PRINCIPLES CONCERNING THE EXCLUSIONARY RULE UNDER HERRING v. UNITED STATES, 129 S.CT. 695 (2009) DO NOT APPLY IN A PROTECTIVE FRISK CONTEXT.

STATEMENT OF FACTS

On September 18, 2007, Richmond Police Officers Robert Hedman and Steven Moore were on duty patrolling Hillside Court, a public housing property owned by the Richmond Redevelopment and Housing Authority. The officers were assigned to the RRHA property to "enforce trespassing laws." (App. 13).

The officers pulled over a black Chevy Impala without a brake light. (App. 45). At the time of the stop, there were "several passengers in the car." (App. 45). Corey Tayvon Smith, the defendant, was the back seat passenger on the driver's side. (App. 12).

At the suppression hearing on February 21, 2008, Officer Hedman testified that police collected identification from everyone in the car, including Smith, and ran it through the Richmond police database, PISTOL. (App. 14). Accessed from a Richmond police patrol car, the PISTOL