

IN THE SUPREME COURT OF THE UNITED STATES

JAMES W. CAMPBELL, SR.

Petitioner

V.

Commonwealth of Virginia

Respondent

PETITION FOR REHEARING

18-5718

James W. Campbell, Sr.
Deerfield Correctional Center
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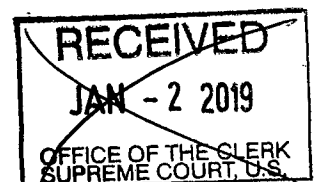
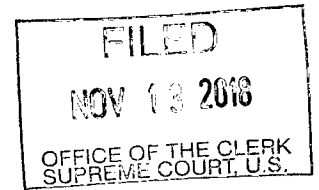


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IN THE SUPREME COURT OF THE UNITED STATES

JAMES W. CAMPBELL, SR.

Pettitioner

V.

COMMONWEALTH OF VIRGINIA

Respondent

CASE NO. 18-5748
18-16-76

PETITION FOR REHEARING

COMES NOW, Petitioner, James W. Campbell, Sr. (Campbell), Pro Se, and prays this Court to grant Rehearing pursuant to Rule 44, and thereafter, grant him any other relief. In support of prtition, Mr. Campbell states the following.

STATEMENT OF THE CASE

The Virginia Supreme Court overturned the Court of Appeals of Va.. The trial court errored in not allowing Campbell Motion to Suppress the evid.. The Court of Appeals correctly held that Va. Code Ann. § 19.2-54 required suppression. The purpose of 19.2-54 is to give the defendant reasonable opportunity to determine that the affidavit on file is the same one upon which the determination of probable cause was based. The Supreme Court took away Campbell constitutional rights to due process.

STATEMENT OF FACTS

This is a case where a magistrate failed to fax the complete affidavit that supported a search warrant to the circuit court clerk's office. The affidavit as filed did not contain statements constituting probable cause, nexus, or a basis for the affiant's knowledge. As such, the affidavit was not the "Required Affidavit" under Va. Code Ann. 19.2-54. A search warrant was then issued and executed, and a return was made under the search warrant. As part of the execution of the warrant, Campbell was

arrested and evid. that led to his conviction was recovered. The trial court ultimately ruled that the warrant was defective because the required affidavit was not filed within thirty(30) days, but that the search justified by "Exigent Circumstances"(EC). The Court of Appeals of Va. reversed the trial court and correctly ruled that Code 19.2-54 imposes a higher standard for admissibility of evid. made under a search warrant. Specifically, the Court of Appeals held that when the required affidavit is not filed within thirty(30) days after the issuance of the warrant, the evid. obtained in the search is inadmissible. This suppression remedy is one supplied by 19.2-54, not the Fourth Amendment to the United States Constitution. Therefore, the existence of EC is irrelevant because of the heightened standard provided by statute. Additionally, EC should not validate a search made under a defective warrant regardless of whether the suppression remedy is supplied by statute or the Fourth Amendment's exclusionary rule. Searches without warrants are pre se unreasonable. Judge Humphreys, of the Va. Court of Appeals raised several concerns one concern is that our Supreme Court of Va. has concluded that it is fundamentally unfair to bar the use of evid. due to an apparent mechanical failure of a fax machine when police have acted responsibly and appropriately in securing a search warrant and gathered the evid. Campbell sought to suppress in total conformity with the 4th Amendment. Another concern However, as much i, or any judge, might personally agree with that conclusion, it has no place in any legal analysis.

ASSIGNMENT OF ERROR

1. The Supreme Court of Va. error in not ruling according to the General Assembly and made Campbell statute used nullity.
2. The Supreme Court of Va. error in not ruling that the evidence was to be suppress.

QUESTIONS PRESENTED

1. Did the Supreme Court of Va. error and abuse its dicretion in overturning the Va. Court of Appeals decision.
2. Did the Supreme Court of Va. error and abuse its discretion in allowing false warrant to be admissible.

ARGUMENT

1. The Supreme Court of Virginia error and abuse its discretion in denying Campbell statute rights. The Court error not knowing that any document sented electronically must be certified because the receiving party may find such document inadequate, either because they lack possibly relevant information contained in the original. The question was never raised about the hardware and software used by fax. Was the fax using the correct hardware and software to except the document from the sender. It is fundamentally unfair to bar the use of evid. due to an apparent mechanical failure of a fax machine. The fax machine was never seized to verify that the affidavit was true and no just hearsay. By the Court abuse which comes from ignoring the basic constitutional tenet that the 4th Amendment of the U.S. Constitution is a floor, not a ceiling. See case law *Laouini v. CLM Freight lines, Inc.*, 586 F.3d 473 (7th Cir. 2009) vacate and remanding. Filing of petitions, Rule 5005-1 (Va. Rules Annotated). *Trinity Homes, L.L.C. v. Fang*, 63 Va. Cir. 409 (2003) court found in favor of the sellers. The Supreme Court did not met the burden of proving why the case or verdict was overturn.

2. The Supreme Court error in allowing invalid search warrant. The error in denying a motion to suppress evid. obtained from police entry and search of Campbell's property and outbuilding where the affidavit for search warrant was constitutionally insufficient, the resulting search warrant was invalid, and the good faith exception to the exclusionary rule did not apply because of EC. Also Court error in denying a motion to suppress evid. by holding that EC were to justify the entry and search of Campbell's property by police without a valid search warrant. The bottom line is the Supreme Court of Virginia error because Va. Code Ann. § 19.2-54 clearly provides a statutory right of suppression. See *Freeman v. Commonwealth*, 65 Va. App. 407 (2015). The Supreme Court of the U.S. has "established a rule that forbids the government from using improperly obtained evid. at trial". The Affidavit, as it was maintained in the office of the Circuit Court Clerk, was "so lacking in indicia of probable cause" as to render official belief in its existence unreasonable. In this case, the affidavit on file contained no information that would constitute probable cause. In the absence of probable cause for the search, a search preceding the arrest cannot furnish probable cause for the arrest, *Smith v. Ohio*, 494 U.S. 541 (1990).

WHEREFORE, for these reasons, and for any reason as may appear to the Court. Campbell requests that this court grant the present Petition for Rehearing and enter an order permitting Campbell to pursue Rehearing and any other relief the court deems proper and fit, under the circumstances of the case now before this court.

Respectfully Submitted

James W. Campbell
James W. Campbell

DOC#1123807

17 this day of Dec, 2018.

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V.

COMMONWEALTH OF VIRGINIA
Respondent

Certificate of Good Faith

COME NOW, James W. Campbell, Sr., and makes certification that his petition for Rehearing is presented to this Court in Good Faith pursuant to Rule 44. Mr. Campbell further states the following:

1. The Supreme Court of Virginia reversed the Virginia Court of Appeals. The petitioner Writ of Certiorari was denied on October 29, 2018. Petitioner believes that he presents this court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay.

Furthermore, petitioner believes that based upon the law of this court and facts of this case, Campbell is entitled to relief which has been unjustly denied him. He further believes that if the Supreme Court of Virginia continually allowed to apply standard improperly, a number of people will be denied their constitutional right to due process.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 17 day of Dec, 2018.

