

18-9082

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

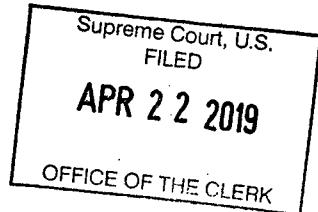
October Term, 2018

ORIGINAL

ARION ANDREWS, *Petitioner*

v.

STATE OF OHIO, *Respondent*



On Petition for a Writ of Certiorari to the

Eighth District Court of Appeals of Ohio

**PETITION FOR A WRIT OF CERTIORARI**

ARION ANDREWS  
Ohio Inmate #A 701755  
Lebanon Correctional Institution  
3791 State Route 63  
Lebanon, Ohio 45036  
*Petitioner*

## **QUESTION PRESENTED FOR REVIEW**

**Can a search warrant properly issue under the Fourth Amendment when the police-officer-affiant states that the address to be searched is the residence of a subject of an investigation without providing any independent evidence upon which a judicial officer can reach that conclusion when reviewing the warrant application?**

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*PETITION FOR A WRIT OF CERTIORARI TO THE  
EIGHTH DISTRICT COURT OF APPEALS OF OHIO*

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Arion Andrews, pro se, respectfully petitions for a writ of certiorari to review the judgment of the Eighth District Court of Appeals of Ohio, which the Ohio Supreme Court subsequently declined to review.

**OPINIONS BELOW**

The Ohio Eighth District entered its opinion and judgment on August 2, 2018 in Eighth District Case No. 106283; that opinion is electronically reported as 2018-Ohio-3050. The Eighth District's opinion is appended hereto as Appendix A. There was no trial court opinion that preceded the Eighth District's opinion.

The Ohio Supreme Court entered a final judgment on November 21, 2018, declining to exercise jurisdiction to review the Eighth District's opinion. This judgment is reported at 154 Ohio St.3d 1431, 111 N.E.3d 1192 (Table), 2018-Ohio-4670. The Ohio Supreme Court's opinion is appended hereto as Appendix B.

By order of Justice Sotomayor, the time limit to file a writ of certiorari was extended to Monday, April 22, 2019. See Order No. 18A870.

## **JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourth Amendment to the United States Constitution provides in pertinent part that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides in pertinent part that:

No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

## **STATEMENT**

On March 8, 2016, three unidentified males fired multiple shots into the Addison Townhomes in Cleveland, a public housing project. A Cleveland Metropolitan Housing Authority(CMHA) video depicted the shooters and indicated that at least some of the shots traversed a public road. Bullets entered multiple vehicles as well as at least two residences. The video depicted three men shooting in the general direction of the townhomes, as opposed to aiming their weapons at a particular target. In the words of the investigating detective, the three men were "shooting blindly."

For reasons not apparent in the record, Petitioner Arion Andrews became a suspect in the case. On March 12, 2016, he voluntarily provided a buccal swab. At the time of his March 12<sup>th</sup> meeting with the police, Mr. Andrews told them that his house [which was not in the Addison complex] had been fired upon and his mother had been injured. Mr. Andrews also said that Saquan Johnson was a Hough Harlem gang member who spent time at the Addison housing complex.

Following the March 12, 2016, meeting, the buccal swab was analyzed for DNA. That swab provided DNA which matched DNA extracted from some of the shell casings found at the scene.

On March 17, 2016, the police sought a search warrant for what was purportedly Mr. Andrews' residence. The affidavit in support of the warrant application for the residence was prepared on March 17, 2016, nine days after the shooting. The affidavit stated that police were investigating a March 8, 2016, shooting into the Addison Townhomes, a CMHA property with video surveillance. Witnesses reported that Arion Andrews was seen in the area. Mr. Andrews' DNA was found on shell casings recovered at the scene. The affidavit stated that "Affiant avers that he learned the residence of Arion Andrews, located at 1386 Russell Road, City of Cleveland, Cuyahoga County, Ohio (the premises to be searched) had been shot into earlier in the same day of March 8, 2016." No further information was provided in the affidavit as to how the affiant had concluded that 1386 Russell Road was Mr. Andrews' residence. The affidavit also stated that the affiant reviewed a video of the shooting and saw three males firing shots and then departing in the direction of 1386 Russell Road.

Based on this information, a warrant was issued to search 1386 Russell Road for firearms and ammunition. An ammunition magazine was found in the home. Subsequent to the search

and the discovery of the ammunition magazine, Mr. Andrews was interviewed a second time. At that time, he stated that he suspected Saquan Johnson may have been responsible for the shooting into Mr. Andrews' home. Mr. Andrews stated that, after the shooting into his home, he had loaded a clip and given it to friends who told Andrews that they were going to "ride for him" with respect to his home having been fired upon and his mother having been shot. Mr. Andrews stated that he did not know what his friends were going to do but found out afterward that they had shot up the Addison complex.

Mr. Andrews was indicted for multiple offenses arising from two separate shooting incidents, occurring on March 8, 2016 and April 27, 2016, respectively. After trial, Mr. Andrews was convicted as follows of crimes relating to the March 8, 2016 incident only:

- Count 1: Discharge of firearm on/near prohibited premises. 3<sup>rd</sup> degree felony. O.R.C. 2923.162(A)(3), with 3-year firearm specification.
- Count 2: Discharge of firearm at/into habitation. 2<sup>nd</sup> degree felony. O.R.C. 2923.161(A), with 1-year firearm specification.
- Count 3: Discharge of firearm at/into habitation. 2<sup>nd</sup> degree felony. O.R.C. 2923.161(A), with 1-year firearm specification.
- Count 4: Felonious assault. 2<sup>nd</sup> degree felony. O.R.C. 2903.11(A)(2), with 1-year firearm specification.
- Count 9: Criminal damaging. 1<sup>st</sup> degree misdemeanor. O.R.C. 2909.06.
- Count 11: Criminal damaging. 1<sup>st</sup> degree misdemeanor. O.R.C. 2909.06.

A motion to suppress was filed, seeking suppression of evidence found in the defendant's vehicle and at his residence, respectively. The motion to suppress evidence found in the vehicle was granted. The motion to suppress evidence found in the residence was denied. The motion to suppress was premised upon what the defense maintained was an inadequate search warrant

application that failed to establish probable cause to believe firearms and ammunition would be found in the residence.

The defendant waived trial by jury. The defendant was found guilty of the offenses outlined above. The remaining counts were all nolled, were dismissed pursuant to Ohio Crim. R. 29 (directed acquittal) or were the subject of not guilty verdicts.

The defendant was sentenced to a total of seven years imprisonment.

### **REASONS FOR GRANTING THE PETITION**

This case presents an important constitutional issues for this Court's consideration:

**Can a search warrant properly issue under the Fourth Amendment when the police-officer-affiant states that the address to be searched is the residence of a subject of an investigation without providing any independent evidence upon which a judicial officer can reach that conclusion when reviewing the warrant application?**

Here, the search warrant was premised upon a warrant application that had a glaring deficiency under the Fourth Amendment: the warrant application never established probable cause to believe that the premises being searched was the residence of Mr. Andrews – the affiant simply said this was so. It is axiomatic that a warrant will not issue except upon a showing of probable cause, made to a neutral and detached judicial officer. U.S. Const. Amend. IV. “The protections of personal privacy and property embodied in the amendment require that probable cause ‘be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime’” *United States v. Weaver*, 99 F.3d 1372, 1377 (6th Cir. 1998), quoting *Johnson v. United States*, 333 U.S. 10, 14 (1947). “In order for a magistrate to be able to perform his official function, the affidavit must contain adequate supporting facts about the underlying circumstances to show that probable cause exists for the issuance of the warrant.” *United States v. Smith*, 182 F.3d 473, 477 (6th Cir. 1999).

The issue presented in this case is a recurring one. Law enforcement agents, particularly state law enforcement agents, frequently write affidavits that are replete with conclusions, as opposed to facts. Moreover, even when the agents remember to provide a factual basis for their conclusions in an affidavit, they oftentimes fail to do so on the issue of the ownership/residency of the premises to be searched. It is as if this critical fact is an afterthought.

The continuing problem of conclusory affidavits has caused Sixth Circuit Judge Alice Batchelder to write for the court that:

It is not enough that the police officer have probable cause to believe that the things to be seized may be found in the premises to be searched, or that the police officer present to the magistrate a conclusory statement that probable cause exists; the officer must present to a neutral magistrate sufficient facts to permit the magistrate to make his own independent judgment that there is probable cause.

*United States v. Gaston*, 16 Fed. Appx. 375 (6th Cir. 2001).

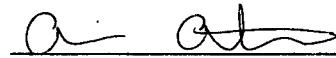
*Gaston* dealt with a situation that has become even more prevalent recently – conclusory affidavits from state law enforcement officers presented to state judicial officers which result in the issuance of state search warrants but then become part of a larger federal case. This occurs when federal-state-local task forces work together and when lax standards among state judicial officers then infect the federal criminal process. *Gaston* refused to apply the good faith exception in such a situation, finding the conclusory nature of the affidavit was so egregious as to undermine good faith reliance.

By accepting this case, this Court will speak to this important issue and impress upon law enforcement and the judiciary the need to make sure that an independent basis is provided so that search warrants are the product of judicial decision-making.

## CONCLUSION

Wherefore, Petitioner prays that this Court grant his petition for a writ of certiorari.

Respectfully Submitted,



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*Petitioner*