

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SYLVESTER EKWUNIFWE,
PETITIONER

VS.

CITY OF PHILADELPHIA; DISTRICT ATTORNEY PHILADELPHIA;
HEBA GORE, INDIVIDUALLY AND AS AN OFFICIAL;
LAURA HAMMOND, INDIVIDUALLY AND AS AN OFFICIAL;
JOSEPH T. CARTER, INDIVIDUALLY AND AS AN OFFICER,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SYLVESTER EKWUNIFE
57 N. 57TH STREET
PHILADELPHIA, PA 19139
(267) 266-5895

QUESTION(S) PRESENTED

1. Whether the dictates of *Groh v. Ramirez* were violated when the Detective in this case did not have all the correct facts when preparing a probable cause affidavit and warrant for Petitioner's arrest.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page.

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A : DECEMBER 17, 2017, DISTRICT COURT RULING

APPENDIX B : APRIL 28, 2008, THIRD CIRCUIT RULING

APPENDIX C : FEBRUARY 5, 2019 THIRD CIRCUIT REHEARING DENIAL

TABLE OF AUTHORITIES CITED

CASES

GROM V. RAMIREZ,

PAGE NUMBER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix **B** to the petition and is

[] reported at NOT REPORTED ; or,

[] has been designated for publication but is not yet reported; or, [] is unpublished.

The opinion of the United States district court appears at Appendix **A**
_____ to the petition and is

[X] reported at Ekwunife v. City of Philadelphia, 245 F. Supp. 3d 660 - ... - Dist. Court, ED; or,

[] has been designated for publication but is not yet reported; or, [] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported _____ at ; or,

[] has been designated for publication but is not yet reported; or, [] is unpublished.

The opinion of the _____
 court appears _____ to the petition and is _____ at
 Appendix _____; or,

[] reported at

[] has been designated for publication but is not yet reported; or, [] is unpublished.

1. JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was
DECEMBER 7, 2018

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: , and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____ .
A copy of that decision appears at Appendix _____ .

☐ A timely petition for rehearing was thereafter denied on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____ .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

STATEMENT OF THE CASE

Petitioner filed a Section 1983 suit against all the above-named defendants. After about two district court hearings, a deposition of the Petitioner, an adverse ruling was rendered by the district court. An appeal was taken to the Court of Appeals for the Third Circuit who affirmed by a per curium order. The petitioner filed a motion with the Court of Appeals for the Third Circuit for a recall of mandate because the Court's initial Per Curium order of denial never got to the Petitioner. Such motion for recall of mandate was granted by the Court of Appeals for the Third Circuit and when a sua sponte re-hearing call was made, only one judge voted to rehear the case.

Petitioner now brings this petition for certiorari because this matter is not frivolous and a judge in the Third Circuit Court has shown that there is a violation of ***Groh v. Ramirez*, 540 U.S. 551(2004)**. in Petitioner's case, and the matter should be revisited in the lower courts for justice to be done.

REASONS FOR GRANTING THE PETITION

The District Court should not have granted summary judgment for Detective Hammond for her transgressions. Viewing the facts of the case as this Court of Appeals for the Third Circuit accepted them, there definitely were issues of material facts that would have made the district court to deny summary judgment.

First, there is the issue of erroneous information Detective Hammond placed in the affidavit of probable cause, which also was placed as such in the warrant (“Detective Hammond wrote an affidavit of probable cause containing Ekwunife’s correct name, social security number, and date of birth, but his *race and gender* were entered incorrectly. This error was repeated on his arrest warrant. Detective Hammond appended text to his arrest report, noting the typographical error in his arrest report and requesting a correction.”) (See **this Court’s Per Curium Opinion, Appendix B.**)

In the opening brief of Appellant in the Third Circuit, he mentioned that even the District Court itself expressed that it was not sure when the alleged correction of the probable cause error was made (“*It is unclear from the record whether Detective Hammond’s correction to the arrest report was made before or after Plaintiff’s arrest.*” See Factual Background Rendition, Para. 6 of the District Court, December 11, 2017 Order); **Appendix A1**. Appellant expressed that since no one was sure, it could have been after the Magistrate Judge had acted on the warrant, at which time it would mean that the Magistrate Judge acted on an erroneous probable cause affidavit which would render the warrant invalid under *Groh v. Ramirez*, 540 U.S. 551(2004). Because such evidence was not before the district judge, a jury should have been made to hear evidence on it. Even here where the Court of Appeals for the Third Circuit stated that Detective Hammond “request[ed] a correction,” shows no clear proof that if she did request a correction, that it was corrected *before* the Magistrate Judge acted on her error ridden affidavit.

This would have required that a jury hear evidence on when the so-called correction was done. As such summary judgment would have been precluded. This is true, especially since there was another person who had admittedly raped K.R. and whose race was different from Appellant's race.

2. The district court also should have denied summary judgment because there was probability that a jury could have found that Detective Hammond knew or should have known that K.R. was not credible. Even though K.R.'s recantation finally came during the first day of trial. There were signs that she was not credible that Detective Hammond should have noticed if she was interested in being diligent in her investigation. There was evidence before her from K.R. family members (including her father), that K.R. likes to fabricate stories. If that wasn't enough, there was also evidence which even the Third Circuit acknowledged, that "[a]ccording to a report by the Department of Human Services, stated that her mother had told her to conflate Ekwunife's actions with the actions of another relative who had raped her on several occasions and to say that Ekwunife had committed all of the abuse against her because she did not want to ruin the other perpetrator's life." *Id.*, Order of December 7, 2018. When these two facts, combined with the fact that Detective Hammond did not even bother to interview the Petitioner at all, there is enough to show a jury that she was indifferent about the real truth. This would have warranted a denial of summary judgment.

Based on the foregoing, and because one of the judges would have wanted the case to be reheard and reversed, a writ of certiorari should be granted to correct this constitutional error.