

19-8069

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC Samuel Newton Jr. — PETITIONER, pro se
(Your Name)

vs.

STATE OF OHIO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE Supreme Court Of Ohio

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

PETITION FOR WRIT OF CERTIORARI

Eric Samuel Newton Jr. 750-935

(Your Name)

NCCI P.O. Box 1812

(Address)

Marion Ohio 43302

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Was the Ohio Supreme Court in error when it refused to accept jurisdiction over a matter that, like the instant petition, involves a substantial Constitutional question, to wit, violation of the petitioner's clearly established Fourth Amendment rights, when police officials deliberately misidentified the cell phone's owner as belonging to someone else because they knew that there was no probable cause to warrant a search of petitioner's phone under his own name?
2. Was the Eighth District Court in error when it upheld the trial court's ruling that the mere presence of a cell phone in the vehicle at the time of the applicant's arrest constituted in itself and alone probable cause to search the cell phone's contents?
3. Did the Eighth District err when it held that probable cause to search the applicant's phone did not require showing individual ownership of the cellphone and so that applicant's counsel's failure to introduce the body cam evidence to support his theory that law enforcement knew the phone was the applicant's was not deficient and would not have by itself been sufficient reason for the trial court to deny the petitioner's motion to suppress?
4. If a police officer intentionally or with reckless disregard for the truth makes a false statement in an affidavit to obtain a search warrant, is it permissible that the search warrant issue notwithstanding that other statements in that same affidavit standing alone may establish probable cause for the warrant to issue?

Question(s) Presented [continued]

5. Did the 8th District Court of Appeals err when it let stand the trial court's overruling of the appellant's Motion to Suppress where Cleveland Police officers knowingly misidentified the applicant's cellphone as Jose Rivera's in a warrant affidavit related to a burglary investigation 6 months later and then used the evidence obtained from that cellphone to link the applicant to the completely unrelated case for the pandering, which the FBI, a completely different police agency, had already been independently investigating during that prior 6 months and which the Cleveland Police had known nothing about until they had searched the applicant's phone with the warrant naming Rivera as the phone's owner?

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:

RELATED CASES

1. Cuyahoga County Of Common Pleas [REDACTED] CR-16-605078-B
2. Cuyahoga County Of Appeals, Eight District Court CA: [REDACTED] NO. 107195
3. The Supreme Court Of Ohio CA: [REDACTED] 2019-1417

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Franks v. Delaware	438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)
Kentucky v. King	563 U.S. 452, 459, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011)
Payton v. New York	445 U.S. 573, 584, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980)
Riley v. California	573 U.S. 373, 393, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014)
State v. Castagnola	145 Ohio St. 3d 1, 2015 – Ohio 1565 46 N.E. 3d 638
State v. Smith	124 Ohio St. 3d 163, 2009 – Ohio – 6426, 920 N.E. 2d 949

STATUTES AND RULES

Ohio, Criminal Rule 41, Sets out that a Search Warrant:

Shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant *** [T]he affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located.

OTHER

Fourth Amendment of the United States Constitution

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

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is

reported at N/A; 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 N/A to the petition and is

reported at N/A; 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 C to the petition and is

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

The opinion of the Eighth District of Appeals (Ohio) court appears at Appendix A to the petition and is

reported at 110 NE 3d 816 (Eighth District); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/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 Jan 21, 2020. A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Proposition of Law I: It is reckless disregard for the truth to affirmatively name the owner of property in a warrant affidavit when, in fact, the owner is unknown.

In this case, Sergeant Lally affirmatively stated in his warrant affidavit that a cell phone belonged to Jose Rivera when, in fact, Lally would later testify that he did not know who owned the phone. Notwithstanding the Eighth District's attempt to characterize Lally's statement as speculative, Lally named the owner of the phone as a fact. As argued below, the police should have known that the phone belonged to Newton. However, even if Lally was unaware of the phone's true owner, he should have stated that he was did not know who owned the phone. Either way, Lally's sworn statement was false.

Newton argued before the trial court and the appellate court that *Franks v. Delaware* applied. The Eighth District overruled his assignment of error and included as part of its analysis that Sergeant Lally's misstatement was permissible because the naming the phone's owner was "inherently speculative or preliminary." *Newton* at ¶36. The Eighth District's decision is incorrect in two ways. One, it is "reckless disregard for the truth" to affirmatively name the owner of the phone if, in fact, the owner was unknown or if the police knew it belonged to someone else. See *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). And, two, the Eighth District's decision ignores this Court's holding in *State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, because it allows an affiant to make guesses, or inferences, or speculate and usurp the role of the issuing judge or magistrate.

In *Franks v. Delaware*, the United States Supreme Court said:

[W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is

established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Id. at 155-6.

In Newton's case, the Eighth District recognized that "the statement as to the phone's ownership is demonstrably false" and that, in fact, the phone belonged to Newton when the affidavit said it belonged to Jose Rivera. *Newton* at ¶36. Newton maintains that the police knew the phone was actually his and points to the body cam footage to demonstrate that point. The police saw him attempting to leave the vehicle with the phone and he twice identified it as his. But, the Eighth District correctly pointed out that "Sergeant Lally, the affiant, was not present when the individuals were arrested." *Newton* at ¶36. That may be so but Sergeant Lally also averred to the following:

Amanda Rivera has told investigating officers that she has previously used a scanner app on her cellular telephone. In particular, on October 25th, Amanda Rivera heard [SIC] using the police scanner app that officers were investigating the users of the above-described Ford Explorer in a connection with a burglary and break-in of Roses [SIC] Discount Store at 3250 W. 65th Street.

(Affidavit at ¶8.) If Amanda was cooperating with the police, she could have – and likely did – identify the phones.² Further, ¶9 of the warrant affidavit states that: "Jose Rivera has indicated that he was involved in the October 25th burglary of Roses [SIC] Discount Store ..." Again, Sergeant Lally averred this clear indication that Jose was cooperating with the police. If they had Jose's cooperation, they would have known the phone in question was not Jose's.

Newton argues that law enforcement knew perfectly well that the phone identified as

² In addition, it should be noted that Rose's Discount Store was not broken into until *after* the police detained Amanda et al. on October 25. The content of ¶8 clearly leads the reader to believe that the police were investigating the Rose's break-in when the police detained them which was not possible.

Jose Rivera's in the warrant affidavit was, in fact, Newton's. But, setting that aside, Sergeant Lally testified that law enforcement determined ownership of the phone based on the contents of the phone obtained via the warrant. That means that, by Lally's own testimony, when he swore that the phone belonged to Jose Rivera, the truth was, at best, that he did not know owned the phone. And, as argued below, naming Jose Rivera as the owner of the phone – as opposed to any other statement about the ownership of the phone – could shore up otherwise insufficient probable cause.

The Eighth District seized on Lally's explanation and said, "Because law enforcement is not permitted to search a phone's contents without a warrant to determine whose phone it is, any references to ownership of a phone in a search warrant are inherently speculative or preliminary." *Newton* at ¶36. And, the Eighth District concluded that "Newton has not pointed to anything that would indicate that Sergeant Lally made the false statement intentionally or with a reckless disregard for the truth."

But, surely, to make an affirmative statement when the information is unknown, is reckless disregard for the truth. In ruling as it has, like something out of Alice in Wonderland, the Eighth District has left us with the unworkable rule that police may include misinformation in their warrant affidavits so long as they do not really mean it. And, moreover, the decision leaves open the possibility that law enforcement can simply use place holders in warrant affidavits rather than be forthright with the issuing magistrate or judge about what they actually know or do not know when seeking a warrant – the outcome that *Castagnola* tells us that law enforcement must avoid.

Proposition of Law II: The mere presence of a cell phone at the time crimes are believed to have been committed or at the time suspects are taken into custody does not automatically establish probable cause to search the contents of the phone. ,

There is a false statement in the warrant affidavit the police used to gain access to the contents of Eric Newton's phone. As argued above, the offending fact should be struck from the warrant affidavit and what remains in the affidavit does not establish probable cause.

The Fourth Amendment provides:

'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 text of the Amendment thus expressly imposes two requirements. First, all searches and seizures must be reasonable. Second, a warrant may not be issued unless probable cause is properly established and the scope of the authorized search is set out with particularity. See *Payton v. New York*, 445 U.S. 573, 584, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980).

Kentucky v. King, 563 U.S. 452, 459, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011).

And, in Ohio, Criminal Rule 41 sets out that a warrant:

shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant. * * * [T]he affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located.

In the instant case, the Eighth District held, even if a false statement was included in the warrant, the remainder of the affidavit established sufficient probable cause to search the contents of the phone. The Eighth District offered this reason:

The affidavit stated that the affiant believed that both cell phones contained evidence of burglary crimes. The affidavit stated that the affiant based this statement on the fact that the phones were seized during a search of the vehicle that police was used by the suspects in these burglary crimes following the arrest of those suspects: namely, Amanda, Jose, Anthony Palmentara, and Eric Newton. Because of the circumstances in which the phones were obtained, probable cause existed to search the phones, regardless of which of the aforementioned individuals owned the phones.

In fact, the warrant affidavit was very light on details and did not make a clear connection between what may be on the phone and the burglary crimes being investigated. Among other things, Sergeant Lally averred that, “based on his training and experience it is common for criminals to develop and implement criminal plans using cellular phones ...” And, further, “that in his training and experience, cell phones are capable of capturing, creating, retaining, transmitting and storing photographs, visual tape recordings, personal communications, and maintaining call logs of incoming, outgoing, and missed calls” (affidavit at ¶13) and that cell phones are capable of “GPS data” (affidavit at ¶14).

The trial court and the Eighth District have ignored a simple truth about this case: the police said that Newton’s phone belonged to Jose Rivera because they needed to. Otherwise, it was an ownerless phone merely present at the time of the arrests and there would be no probable cause to search its contents. Why not say the phone’s owner was “unknown,” if in fact it was? Why not assign Anthony Palmentera or Eric Newton -- other people arrested that night -- as the owner of the phone? Because, for probable cause, it needed to be Jose Rivera’s phone – owner of the detained vehicle and husband to Amanda, and who had already admitted to involvement in the burglary crimes. Without labeling the phone as Jose’s, all the warrant affidavit contains as it relates to searching a phone are the assertions that criminals use phones and the phones are technologically capable of certain things. The fact that law enforcement selected Jose Rivera, of all the options, to be the owner of the phone demonstrates the lack of probable cause in the remainder of the warrant affidavit.

Under the Eighth District’s reasoning, if what remains in the warrant in this case establishes probable case, then the contents of any phone found on any suspect at or near the time of the commission of a suspected crime can be searched. Under this decision, there no longer has to be any “factual basis” for law enforcement’s belief. Instead, it can be anything that law enforcement is capable of imagining.

Statement of the Case

Eric Newton was convicted in two unrelated cases. While the charges in these cases were entirely different, Newton filed a Suppression Motion which would impact evidence relevant to both cases: (CR-16-605078 & CR-17-62043). Newton asserted that law enforcement illegally gained access to the contents of his cellphone and that the state would use evidence obtained from the phone against him in both prosecutions. The trial court denied the Motion to Suppress before the start of the instant case and “incorporate (d) the entire transcript of the suppression hearing” into the record of the start of the other trial (Case # CR-17-62043). Newton noted timely appeals in both cases and this court sua sponte order that the cases be treated as companion appeals and be briefed, argued and disposed of separately by the same merit panel.

Between September 17, 2015 and October 28, 2015, there were break-ins at a number of businesses. It was after dark, the buildings were unoccupied and were entered in unusual ways. Activities were caught on surveillance video, but no one’s identity could be determined. There was no DNA, fingerprints, or any other physical evidence that linked anyone to the crimes.

On October 25, 2015, (Case # CR-15-60069 dismissed) (CR-16-605078—found guilty) (Case CR-17-620243 suppression motion incorporated—found guilty). The police responded to an “open” 9-1-1 Call. In the general area of the call, they observed people appearing to check the tires of a white SUV. The officers stopped to make sure that everyone was alright. The officers then left to continue to check the area. When the officers came back, the SUV pulled out; the police found this, in combination with the earlier interaction to be suspicious and stopped the SUV. The police wanted to confirm that everyone was in the SUV willingly. Police drew suspicion about items observed in the vehicle. The police requested identification from everyone: Jose Rivera Sr., Jose Rivera Jr., Anthony Palmentera, and

Eric Newton Jr.. Officers searched the vehicle with the consent from the owner of the vehicle, "Jose Rivera Jr." With nothing more to go on, the police let them go.

Hours later that same night, there was a break-in at Rose's discount store and the four became suspects in that break-in.

On October 28, 2015, defendant Eric Newton was arrested along with several other individuals after police stopped a white SUV vehicle being driven by Amanda Rivera; the police were responding to a radio broadcast for an alarm that triggered at Dollar Mart located at 3041 Clark Avenue. The police were traveling on West 30th and Walton Ave., a 'residential area", located behind Dollar Mart, where they observed a white SUV. Officer David Gallagher testified that "the white SUV started driving, and they stopped, they started driving again, and they stopped, so we performed a traffic stop". During that traffic stop, officers requested identities of the individuals. Officers then arrested everyone in the vehicle. The details of Newton's arrest were caught on Officer Gallagher's body cam. Newton was a passenger in the SUV and exiting the vehicle, Newton had his cellphone in his hand. (Black Verison LG model number – US – 985). Officer David Gallagher told Newton to leave the phone in the vehicle. Newton said, "This is my phone". Officer Gallagher stated to leave the phone in the vehicle. So, Newton did so. After Newton was placed in handcuffs, Newton asked Officer David Gallagher if he could get his phone. Officer Gallagher told him, "Not right now", and shut the vehicle door with Newton's phone inside. Then the officers proceeded to 3041 Clark Avenue at the Dollar Mart to respond to the alarm radio broadcast call.

Later, two cellphones were seized from the white SUV by Officer Tom Holders. One of the phones that was seized belonged to Newton (Black Verison LG with model number LG-US-985). Two months later, on December 30, 2015, the investigating officer on the case, Detective John Lally, obtained a search warrant for two cellular phones that he claimed to say belonged to: (1) black Verison LG

cellphone with model number LG-US-985 belonging to Jose Rivera, Jr., and (2) white Samsung Galaxy S-5 with model number SM-G 900T belonging to Amanda Rivera. In Newton's trial for unrelated crimes, Officer David Gallagher's testimony described the bodycam footage that was being played in the court. In his testimony, Officer Gallagher confirmed that the footage showed that Newton identified the cellphone as his.

The warrant was based on suspicion that the "cell phones contain evidence of burglary crimes" and that Amanda Rivera told investigating officers that she uses a "scanner app on her cellular phone" (Emphasis added) and that the app had been overheard during the earlier October 25, 2015 stop. The warrant did not request to search the contents of any phones belonging to Newton nor did the warrant indicate that any phones were taken from Newton.

On April 14, 2016, the Cuyahoga County Grand Jury issued a 50-Count indictment against Anthony Palmentera, Eric Newton, Amanda Rivera, and Jose Rivera, Jr.

Ultimately, Newton faced charges in the instant case in a separate matter for unrelated crime allegations both of which stemmed from evidence taken from his cell-phone. Prior to both of the trials, he moved to suppress the evidence from his cellphone on the theories that: (1) the initial stop was illegal, and (2) that the affidavit supporting the warrant for the contents of his cellphone contained a false statement regarding the ownership of the cellphone.

A jury found Mr. Newton guilty on 23 of the counts in the instant case. He was sentenced to a total of 22 years. The trial court arrived at the sentence by imposing a maximum term of eleven years on the count of engaging in a pattern of corrupt activity and running ten of the other counts consecutive to that.

Mr. Newton noted a timely appeal to the Eighth District Court of Appeals and raised eight assignments of error. Mr. Newton only raised one Assignment of Error in the Supreme Court of Ohio—that was, that the trial court erred when it overruled Eric Newton's motion to suppress when: (1) the initial stop was improper, and (2) the warrant affidavit used to search the contents of Mr. Newton's cellphone contained false information. On September 5, 2019, the Eighth District issued its decision and affirmed the lower court. On January 21, 2020, The Ohio Supreme Court declined to accept Jurisdiction of the appeal pursuant to S. Ct. Prac. R. 7.08 (B) (4) .

Reasons for Granting the Petition

The Court of Ohio recognized early the unique nature of a cellphone and found that a search warrant is required to search its contents State v. Smith, 124 Ohio St.3rd 163 2009-Ohio-6426, 920 N.E. 2nd 949. In 2014, in the United States Supreme Court followed suit in Riley V. California, 573 U.S. 373, 393, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014). In reaching its decision, the Court explained:

Cellphones differ in both a quantitative and a qualitative sense from other objects that might be

Kept on an arrestee's person. The term "cell phone" is itself misleading shorthand; many of

These devices are in fact minicomputers that also happen to have the capacity to be used as a

telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape

Recorders, libraries, diaries, albums, televisions, maps, or newspapers. (Id. at 393).

There, the court also observed that cell phones are ubiquitous in the modern world and that ([n]ow it is the person who is not carrying a cell phone, with all that it contains, who is the exception". (Id. At 395)

The high court's observation from 2014 holds truer every day. When the police pull over a car, chances are there will be a cellphone inside. And, when someone is arrested, it is likely that the suspect will have a cellphone. The issue this case presents is whether the mere suspicion of a crime and mere presence of a cell phone at the time of an arrest is enough to justify a search of the contents of the phone. With its decision in this case, the court of appeals of Ohio Eighth Appellate District, County of Cuyahoga, says the answer is yes. And, if that answer remains, it will essentially eviscerate the warrant requirement as

required by Riley V. California, and the court's decision in Ohio, State V. Smith, 124 Ohio St. 3rd 163, 2009-Ohio-6426, 920 NE 2nd 949.

In Newton's case, the police obtained a warrant to search a cell phone that was found in a vehicle in which burglary suspects were traveling. In the warrant affidavit, the affiant (Detective John Lally) named Jose Rivera Jr. as the owner of the phone, which was not true. And, later the affiant (Detective John Lally) testified at trial that the owner of the phone was unknown at the time he was obtaining the warrant. Law enforcement attempted to shore up the otherwise insufficient probable cause by intentionally including misinformation in the warrant affidavit regarding the cell phone's owner. Newton argued before the trial court and the appellate court that *Franks v. Delaware* applied. The Eighth District overruled his assignment of error and included as part of its analysis that Detective Lally's misstatement was permissible because the naming of the phone's owner was "inherently speculative or preliminary" (Newton 36).

The Eighth District's decision is incorrect in two ways: **(1) It is "reckless disregard for the truth to affirmatively name the owner of the phone if, in fact, the owner was unknown, or if the police knew it belongs to someone else (See *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 {1978}); and (2) the Eighth District's decision ignores the Ohio Court's holding in *State v. Castagnola*, 145 Ohio St. 3d 1, 2015-Ohio-1565, 46 N.E. 3d 638, because in contradiction to that holding, it allows an affiant to make guesses, or inferences, or speculate and usurp the rule of the issuing Judge or Magistrate.**

The affidavit stated that the affiant (Detective John Lally) believed that both cell phones contained evidence of burglary crimes. The affidavit stated the affiant based this statement on the fact that the phones were seized during a search of the vehicle that police believed was used by the suspects in these burglary crimes following the arrest of those suspects, namely: Amanda, Jose, Anthony Palmentera, and Eric Newton. Because of the circumstances in which the phones were obtained, probable

cause existed to search the phones, regardless of which of the aforementioned individuals owned the phones. [Id. At 37]

In deciding as it did, the Eighth District of Appeals in Ohio first allows law enforcement to knowingly speculate in a warrant affidavit—without admitting to speculation—in direct contravention of the State Court’s ruling in *State v. Castagnola*, 145 Ohio St. 3rd 1, 2015-Ohio-1565, 46 N.E. 3rd 638, which does not permit even so much as speculation in a warrant affidavit, much less outright lying in the affidavit. The petitioner, when he was arrested, in fact told the arresting officer, David Gallagher, on body cam video, that the phone was his (the petitioner’s), and insisted on taking the phone with him, since the vehicle in which he was a passenger was not his own. Gallagher, however, told the petitioner, “No, not right now”, and ordered the petitioner to leave the phone in the vehicle; Gallagher then shut the door and took the petitioner to the county jail.

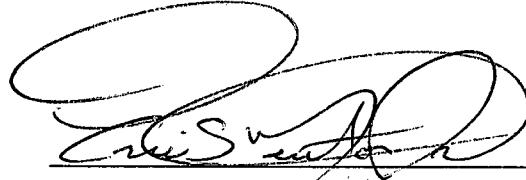
The court’s decision reduces probable cause to the mere presence of a phone at the time of suspected criminal activity or when suspects are being detained. Under the Eighth District’s reasoning, if what remains in the warrant in this case establishes probable cause, then **the contents of any phone found on any suspect at or near the time of the commission of a suspected crime can be searched.** Under this decision, there no longer has to be any “factual basis” for law enforcement’s belief. Instead, it can be anything that the law enforcement is capable of imagining

Mr. Newton submits that if that holding stands, it violates the 4th Amendment of the United States Constitution, and it will lower the standard of probable cause for the contents of cellphones, and it will essentially eviscerate the warrant requirements as required by *State v. Smith*, 124 Ohio St. 3rd 163, 2009-Ohio 6426, 920 N.E.2d 949., and this court’s decision in *Riley v. California*, 573 U.S. 373, 393, 134 S. Ct. 2473, 189 L. Ed. 2d – 430 (2014).

CONCLUSION

For the foregoing reasons, the applicant respectfully asks this court to grant the prayed writ of certiorari.

Respectfully Submitted,



Eric Samuel Newton, Jr. 3-10-20

Eric Samuel Newton, Jr.

#A750-935

North Central Correctional Complex

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