

No. 19-_____

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN REMILLARD,

Petitioner,

v.

STATE OF OHIO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

John P. Parker (0041243)*
Attorney at Law
988 E. 185th Street
Cleveland, Ohio 44119
216-881-0900
advocateparker@gmail.com

*Counsel of Record, Pro Bono
Petitioner Kevin Remillard

QUESTION PRESENTED

The Police entered Mr. Remillard's locked home and bedroom without a search warrant. The Police had reason to believe Mr. Remillard may have committed suicide so they entered the locked home through an unlocked window to determine Mr. Remillard's welfare.

A search of the first floor of his small home revealed no dead or wounded person; a search of his second floor bedroom revealed no dead or wounded person.

While in the bedroom, an officer decided to seize and read several pages of handwritten personal papers. Eventually it was determined the handwritten documents were Mr. Remillard's. After reading these personal papers, the officer decided everything changed "drastically" and this welfare check turned into a homicide investigation based solely on the contents of the Mr. Remillard's handwritten personal papers. The warrantless search justified by a welfare check was not *strictly circumscribed* as required by law. Law enforcement did not have a blank check to read the personal papers found in Mr. Remillard's bedroom.

Does the Fourth and Fourteenth Amendment of the federal Constitution require the Police to obtain a search warrant or otherwise have probable cause of a crime to seize and search the personal handwritten papers found in one's bedroom when it is conducting a welfare check?

If so, does the Sixth and Fourteenth Amendment require defense counsel to challenge by a Motion to Suppress Evidence the warrantless seizure and search of the personal papers?

LIST OF RELATED CASES

1. State v. Remillard, Supreme Court of Ohio, Jurisdiction declined, Case No. 2019-1395, 12- 31-19
2. State v. Remillard, Ohio Fifth District, 2019 Ohio 3545, Case No. 18 CA 16

TABLE OF CONTENTS

QUESTION PRESENTED.....	2
LIST OF RELATED CASES.....	3
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
PETITION FOR A WRIT OF CERTIORARI.....	6
OPINION BELOW.....	6
JURISDICTIONAL STATEMENT.....	6
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	6
SUMMARY OF ARGUMENT.....	7
STATEMENT OF THE CASE.....	10
PROCEEDINGS BELOW.....	10
REASONS FOR GRANTING THE WRIT.....	11

I. Does the Fourth and Fourteenth Amendment of the federal Constitution require the Police to obtain a search warrant or otherwise have probable cause of a crime to seize and search the personal handwritten papers found in one's bedroom when it conducts a welfare check? If so, does the Sixth and Fourteenth Amendment require defense counsel to challenge by a Motion to Suppress Evidence the warrantless seizure and search of the personal papers?

CONCLUSION.....	15
PROOF OF SERVICE.....	17

APPENDIX

APPENDIX A, Supreme Court of Ohio denial of jurisdiction.....	A-1
APPENDIX B, Fifth District Ohio Court of Appeals Opinion.....	B-1

TABLE OF AUTHORITIES

Cases	Page
<u>Arizona v. Hicks</u> , 480 U.S. 321 (1987).....	passim
<u>Boyd v. United States</u> , 116 U.S. 616 (1886).....	8
<u>Coolidge v. New Hampshire</u> , 403 U.S. 443 (1971).....	8
<u>Grumbley v. Burt</u> , 591 Fed. Appx. 488 (6 th Cir. 2015).....	15
<u>Illinois v. Andreas</u> , 463 U.S. 765 (1983).....	9
<u>Katz v. United States</u> , 389 U.S. 347 (1967).....	11
<u>Kimmelman v. Morrison</u> , 477 U.S. 365 (1986).....	15
<u>Marron v. United States</u> , 275 U.S. 192 (1927).....	8
<u>Mapp v. Ohio</u> , 367 U.S. 643(1961).....	passim
<u>Mincey v. Arizona</u> , 437 U.S. 385 (1978).....	11
<u>Minnesota v. Olsen</u> , 495 U.S. 91 (1990).....	12

<u>Nardone v. United States</u> , 308 U.S. 338 (1939).....	12
<u>Payton v. New York</u> , 445 U.S. 573 (1980).....	8, 11
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984).....	14
<u>Texas v. Brown</u> , 460 U.S. 730 (1983).....	8
<u>Terry v. Ohio</u> , 392 U.S. 1 (1968).....	12
<u>United States v. United States District Court</u> , 407 U.S. (1972).....	11
<u>Weeks v. United States</u> , 232 U.S. 383 (1914).....	8
<u>Welsh v. Wisconsin</u> , 466 U.S. 740 (1984).....	11
<u>Wolf v. Colorado</u> , 338 U.S. 25 (1949).....	14

PETITION FOR WRIT OF CERTIORARI

Petitioner Kevin Remillard respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Supreme Court of Ohio.

OPINION BELOW

The order declining jurisdiction by the Supreme Court of Ohio is *State v. Remillard*, Case No. 2019-1395, and is reproduced at Pet. App. A-1. The Fifth District, Knox County, opinion denying relief is reported at *State v. Remillard*, 2019 Ohio 3545, 18 C.A. 16 and is reproduced at Pet. App. B-1.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Ohio was entered December 31, 2019 and this Court's jurisdiction is invoked pursuant to 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment

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.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause

of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment: Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges 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 the laws.

SUMMARY OF THE ARGUMENT

The Police reasonably believed Mr. Remillard may have committed suicide. Without a search warrant, the Police entered Mr. Remillard's locked home through an unlocked window looking for a dead or wounded person. No person was found, dead or wounded, in the home.

However, one law enforcement officer decided to seize and read 8 pages of handwritten notes found in the bedroom. The prosecutor used these notes (which he called a confession) in its case in chief in this homicide trial. Before reading this handwritten notes, the police were not aware a homicide or any crime had been committed.

Can this warrantless seizure and search of personal papers be allowed? A warrantless welfare check turned into a "warrantless" homicide investigation inside a home based on the contents of these handwritten personal papers found in the bedroom.

An officer may seize an item without a warrant if the initial intrusion leading to the item's discovery was lawful and it was "immediately apparent" that the item was incriminating.

Coolidge v. New Hampshire (1971), 403 U.S. 443, 466; Arizona v. Hicks, 480 U.S. 321, 323 (1987)(probable cause of crime or contraband necessary).

Suicide is not a crime in Ohio.

There was nothing "incriminating" about the handwritten personal papers in the bedroom until the officer seized them and read them without a warrant.. "The 'immediately apparent' requirement * * * is satisfied when police have probable cause to associate an object with criminal activity." Payton v. New York(1980), 445 U.S. 573; Texas v. Brown (1983), 460 U.S. 730. There was no known criminal activity here until the papers were seized and understood. The papers did not resemble a kilo of cocaine or any other illegal item. Arizona v. Hicks, supra.

General and exploratory searches are prohibited as an evidence gathering tool. Boyd v. United States (1886), 116 U.S. 616; Marron v. United States (1927), 275 U.S. 192. Both state and federal courts are empowered, indeed required, to exclude evidence obtained by means of searches found violative of the Fourth Amendment. Weeks v. United States (1914), 232 U.S. 383, made applicable to states in Mapp v. Ohio (1961), 367 U.S. 643.

The Ohio courts mistakenly relied on the plain view doctrine to justify the warrantless seizure of the handwritten personal papers during a welfare when there was not probable cause of a crime and the papers themselves were not contraband. See Arizona v. Hicks, supra.

The plain view doctrine allows police officers, under particular circumstances, to seize an "article of incriminating character" which is not described in their search warrant. The doctrine "is grounded on the proposition that once police are lawfully in a position to observe an item

first-hand, its owner's privacy interest in that item is lost * * *." Illinois v. Andreas (1983), 463 U.S. 765, 771.

In Ohio, suicide is not a crime. There was no search warrant here but the police were conducting a lawful "welfare check" to see if Mr. Remillard had committed suicide. The contents of the seized and searched personal papers found in the bedroom were not immediately apparent; nor were the papers contraband. If the police wanted to seize and read the personal papers, it had to obtain a search warrant supported by probable cause that a crime had been committed.

The contents of the personal papers seized/searched without a warrant were the foundation of this homicide prosecution and were considered to be a "confession." The prosecutor used the papers in opening statement and in its case in chief. Unfortunately, defense counsel did not challenge the lawfulness of the warrantless seizure and search.

Defense counsel's failure to file a motion to suppress evidence violated the Sixth and Fourteenth Amendments. Counsel's performance was deficient and prejudicial since the entire homicide investigation stemmed from the contents of the personal papers seized without a warrant in Mr. Remillard's bedroom.

The papers were considered to be a "confession" to the homicide and were read to the jury in opening statements and entered as an exhibit.

STATEMENT OF THE CASE

Mr. Remillard was convicted of one count of Murder and one count of Tampering with Evidence. A life sentence was imposed.

Mr. Remillard testified that he was suicidal but decided to not kill himself. He was explaining and demonstrating to his cousin how he was going to kill himself when the firearm in question accidentally discharged and killed his cousin inside the home they shared. The cousin's body was eventually found submerged in a dirty and partially filled swimming pool behind the house.

Mr. Remillard's testimony was contradicted by 8 pages of handwritten notes seized by the police in his bedroom without a warrant and without any evidence a crime had been committed. The prosecution used this handwritten personal paper as the foundation of its prosecution. The personal papers were read to the jury in opening statement and admitted into evidence during the state's case. Defense counsel never challenged the warrantless seizure of these handwritten personal papers of Mr. Remillard.

PROCEEDINGS BELOW

Mr. Remillard had a jury trial and was convicted of Murder with a firearm and Tampering with Evidence. He testified that he accidentally shot his cousin and house mate as he was showing him a handgun and demonstrating how he planned to commit suicide. The personal papers seized from his bedroom without a warrant were used by the State in opening statements, its case in chief and to contradict Remillard's testimony.

After the jury convicted Mr. Remillard, the trial judge imposed a life sentence.

A timely direct appeal was perfected to the Ohio Fifth District Court of Appeals; the convictions were affirmed and the Court applied the “plain view” doctrine to justify the warrantless seizure and search of the personal papers. The Supreme Court of Ohio declined jurisdiction in a timely appeal as involving no substantial constitutional question on December 31, 2019. This Petition follows:

REASONS FOR GRANTING THE WRIT

The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. United States v. United States Dist. Court, 407 U.S. 297, 313 (1972). Searches and seizures inside a home without a warrant are presumptively unreasonable. Payton v. New York, 445 U.S. 573, 586-587 (1980). Consequently, the Fourth Amendment prohibits police from making a warrantless and nonconsensual entry into a suspect’s home to make a routine felony arrest. Payton at 576.

An exception to the warrant requirement permits an entry into a private residence if exigent circumstances exist. Katz v. United States, 389 U.S. 347, 357 (1967). The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Mincey v. Arizona, 437 U.S. 385, 392-93 (1978)(no homicide crime scene exception to the warrant requirement to search in suspect’s home).

The scope of this exception must be *strictly circumscribed* by the exigencies that justify the entry and the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests. Welsh v. Wisconsin, 466 U.S. 740, 749-750 (1984).

A warrantless search is strictly circumscribed by the exigencies which justify its initiation. Terry v. Ohio, 392 U.S. 1 (1968).

As a tenant of the house in question, Mr. Remillard had a legitimate expectation of privacy in the contents of the entire home and certainly in his bedroom on the second floor. See Minnesota v. Olsen, 495 U.S. 91 (1990)(invited guest of tenant had expectation of privacy).

Evidence obtained as a result of the illegal seizure/search after the warrantless entry must be suppressed. Nardone v. United States, 308 U.S. 338 (1939); Mapp v. Ohio, supra.

Evidence obtained as a result of the illegal entry or evidence seized which went beyond the scope of the exigency that justified the initial warrantless entry must be suppressed. Here, the evidence that must be suppressed is at least the personal papers of Kevin Remillard.

In this case, counsel had a duty to challenge the warrantless seizure of the personal papers inside the Mr. Remillard's bedroom.

Did law enforcement's warrantless search and seizure Mr. Remillard's personal papers from Remillard's bedroom go beyond the scope of a welfare check?

A neighbor found a note outside his home on the day in question which he interpreted to be a suicide note of Mr. Remillard. The neighbor was concerned. See Exhibit 5, the note, which states:

Nothing in the world makes sense. Lack of sleep, constant pain, who knows, but I snapped. These things are yours, Kevin. (TR 267)

The neighbor then discovered his gun was missing; he knew Remillard was “fairly depressed” and walked to Remillard’s house and knocked on the door. There was no answer but several dogs inside “got rowdy.” (TR 273-279)

About one hour later the neighbor called 911 and explained the situation to law enforcement. (TR 281) One officer *entered the locked home* through a window and opened a locked door so the other officer could enter. *At no time did law enforcement have a search warrant.*

The officers searched the first floor for Remillard’s body thinking he may have committed suicide. Remillard was not found.

Then, Officer Baker went to the second floor and entered the bedroom. Remillard was not found there either.

But Officer Baker found handwritten personal papers in Remillard’s bedroom on a table. Officer Baker *seized* these papers. Officer Baker *read* these papers. The papers were seized and searched without a warrant. The papers were marked as Exhibit 7 at the trial. The papers consisted of 8 pages of handwriting; after reading the 8 pages, Officer Baker testified that the situation changed “drastically.” (TR 225) All of this law enforcement activity took place *without a search warrant.*

Officer Baker testified about the content of the papers which mention several times that Remillard shot the victim. (TR 225) *Based on reading these papers seized without a warrant*, the officers searched the first floor more carefully and found blood. The initial concern about Remillard’s potential suicide turned into a Murder investigation. No search warrant had yet been obtained. Eventually, the police found the victim’s body submerged in a dirty and partially filled

swimming pool behind the home.

Counsel should have litigated whether the search and seizure of the personal papers of Mr. Remillard violated the Fourth Amendment. See Arizona v. Hicks, supra. Violations of the Fourth Amendment require a court to suppress any evidence that was illegally obtained. Mapp v. Ohio, 367 U.S. 643 (1961).

The warrant requirement functions to set limits on police discretion. The search and seizure of the personal papers without a warrant and taken from Remillard's bedroom violates the Fourth and Fourteenth Amendments. Mapp; Wolf v. Colorado, 338 U.S. 25 (1949).

If counsel had filed a motion to suppress the personal papers, then there is a reasonable probability that the motion would have been granted. See Strickland v. Washington, 466 U.S. 668 (1984); Arizona v. Hicks, supra.

Further, the fruit of this illegal seizure would have to be determined. In this case, the illegal seizure and search of the personal papers was the key to this entire homicide investigation.

The prosecution admitted in opening statements that a search warrant was not obtained until the late afternoon hours after the personal papers had been seized and searched. (TR 191).

The lower Court ignored the case law mentioned above and simply decided that the papers were in "plain view" and thus the police could seize and read them without any warrant.

The warrantless search inside a home for a dead or wounded Kevin Remillard was not *strictly circumscribed* as required by the law. Law enforcement did not have a blank check to read the personal papers found in Remillard's bedroom

Furthermore, if counsel had filed a Motion to Suppress Evidence, then there is a reasonable probability that the trial court would have granted such motion and Exhibit 7/personal papers of Kevin Remillard would have been suppressed and excluded from the State's evidence.

Every criminal defendant is entitled to the effective assistance of counsel under the Sixth and Fourteenth Amendments of the U.S. Constitution. Strickland v. Washington, 466 U.S. 668 (1984). The right to the effective assistance of counsel includes pretrial motions to suppress. Kimmelman v. Morrison, 477 U.S. 365 (1986). See Grumbley v. Burt, 591 Fed. Appx. 488 (6th Cir. 2015)(granting habeas relief for counsel's failure to file motion to suppress evidence).

Counsel had a duty to challenge the warrantless seizure and search of the papers found in Remillard's bedroom. The papers amounted to a confession of Murder which the police did not know had occurred. The papers were the cornerstone of the State's case which the prosecutor effectively used in opening statement, his case in chief and in cross examination of Remillard to discredit his testimony of an accidental shooting. Prejudice is self evident.

Conclusion

For the foregoing reasons and pursuant to Sup Ct. R. 10(c), the petition for writ of certiorari should be granted.

Respectfully submitted,

/s/John P. Parker *

Counsel of Record

988 E. 185th Street
Cleveland, OH 44119
216-881-0900

No. 19-_____

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN REMILLARD,

Petitioner,

v.

STATE OF OHIO,

Respondent.

PROOF OF SERVICE

PETITION FOR WRIT OF CERTIORARI

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari was served by regular U.S. Mail postage prepaid to Charles T. McConvile, Knox County Prosecutor, 117 E High St., Ste 234, Mount Vernon, OH 43050 this 19th Day of May 2020.

/s/John P. Parker
Counsel for Petitioner