

No. 19-8651

IN THE SUPREME COURT OF THE UNITED STATES

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KEVIN REMILLARD,

Petitioner,

v.

STATE OF OHIO,

Respondent.

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

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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## Table of Authorities

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## Argument

### A welfare check is not a blank check

Mr. Remillard has not contested in his Petition that the entry into the home was unlawful. A welfare check was being conducted by law enforcement due to a suspected suicide. The question is whether law enforcement strictly circumscribed the search for a dead or wounded person when at least one officer, in Mr. Remillard's bedroom, seized without a warrant 8 pages of handwritten personal papers and read all 8 pages when law enforcement had no suspicion that a crime had been committed. Only after seizing and searching the hand written papers did law enforcement learn of a possible crime.

Suicide is not a crime in Ohio.

In Ohio, five people die by suicide every day according to a new report released by the Ohio Department of Health (ODH). Suicide Deaths Increased by 45% Among All Ohioans and by 56% Among Youth Ages 10-24 From 2007-2018

<https://odh.ohio.gov/wps/portal/gov/odh/media-center/ODH-News-Releases/Ohio-Suicide-Demo-graphics-Trends-Report>

Suicide is the nation's tenth leading cause of death. In 2017, 1.4 million people attempted suicide. <https://www.cdc.gov/violenceprevention/suicide/fastfact.html>

There was no indication, let alone probable cause of criminal activity, associated with these hand written papers until they were seized and read. It was not "immediately apparent" that the hand written papers contained any indication or association of criminal activity. Indeed, law enforcement was not investigating criminal activity but conducting a welfare check.

The mere fact that an item came lawfully into plain view of a law enforcement officer is not the test set forth by this Court in Arizona v. Hicks, 480 U.S. 321, 327 (1987). Rather, there must also be “probable cause” of a crime or the item must be contraband. The Ohio courts thus wrongly applied the plain view doctrine as clearly stated by this Court.

The hand written papers are not contraband. Further, there is not “probable cause” of a crime until after the papers have been seized and then read.

In Arizona v. Hicks, the expensive stereo equipment looked out of place according to one officer as the police were lawfully in an apartment investigating a crime. The officer moved the stereo equipment, read the serial number and discovered the stereo equipment was stolen. The Court decided this conduct violated the Fourth Amendment.

Mr. Remillard had an expectation of privacy in his hand written papers left in his bedroom. The Fourth Amendment specifically protects one’s “papers.”

Law enforcement went too far and beyond the lawful reason (the welfare check) which allowed them into Mr. Remillard’s bedroom without a warrant. At the time law enforcement entered the home there was no probable cause and not even a reasonable suspicion that a crime had been committed. By way of comparison, at least the police in Arizona v. Hicks were investigating a crime.

Defense counsel had a duty to file a Motion to Suppress Evidence and there is a reasonable probability that it would have been granted because law enforcement was not investigating a crime and there was nothing “immediately apparent” connecting the papers with criminal activity.

The Respondent *concedes* that the incriminating nature of the papers was apparent “to a reader” of the 8 pages of handwritten papers. Respondent’s Brief in Opposition at page 10.

It is hard to imagine how any set of handwritten papers could be “immediately” incriminating unless they were seized and read. The specific privacy protection provided for of one’s personal papers in the Fourth Amendment must be scrupulously protected.

Suicides are increasingly common in Ohio. Law enforcement must often conduct welfare checks in a home without a warrant as was done in this case. However, law enforcement has no authority under these circumstances to seize and read the personal papers found in the home while conducting a welfare check. Law enforcement does not have a blank check to search through one’s personal handwritten papers when conducting a welfare check.

Only if there is probable cause that an item is contraband or associated with criminal activity may that item be seized. Such is not the case here. Arizona v. Hicks, supra.

Defense counsel had a duty to file a Motion to Suppress. There is at least a reasonable probability of the Motion being granted under Arizona v. Hicks. The prejudice suffered by Mr. Remillard is apparent when one reads the content of the papers. See pages 1 and 10 of Respondent’s Brief in Opposition.

The prosecutor read the entire 8 pages in opening statements. The papers were incriminating. In fact, the prosecutor labeled the papers a “confession.”

Confessions are always prejudicial. The evidentiary value of a confession cannot be underestimated. See Bruton v. United States, 391 U.S. 123 (1968); see also Fahy v. Connecticut, 375 U.S. 85 (1963).

A confession alone is enough evidence to convict. McCormick on Evidence (1972)(page 316)(the introduction of a confession makes the other aspects of a trial in court superfluous); Wigmore Evidence (1970)(confessions rank as the highest in the scale of evidence).

In fact, the prosecutor argued successfully that the statements contained in the illegally seized and searched papers contradicted Mr. Remillard's testimony that this was an accidental shooting. What other proof of prejudice is required?

The papers were marked and entered as evidence in the State's case in chief. There is no serious argument that the papers seized were not prejudicial to Mr. Remillard's defense of an accidental shooting.

The entire criminal investigation stems from the illegally seized papers. Mr. Remillard has clearly been prejudiced by the use of these papers during the investigation of the Murder and at his trial.

### Conclusion

Law enforcement must be allowed to conduct a welfare check when suicide is reasonably suspected. However, an individual's right to privacy in his papers in his bedroom is not overcome by a welfare check. It must be "immediately apparent" that the papers are contraband or there must be probable cause that the papers are connected with a crime. Neither circumstance is present in this case. Arizona v. Hicks, supra.

This Court must grant the Petition and order further briefing or summarily reverse and grant Mr. Remillard relief.

Respectfully submitted,

/s/John P. Parker

Counsel for Mr. Remillard

Service

A copy of the foregoing document was served this 14th day of July 2020 on counsel for the Respondent, Charles T. McConville, Knox County Prosecutor, 117 E. High Street, Suite 234, Mt. Vernon, OH 43050 via U.S. Mail postage prepaid.

/s/John P. Parker