IN THE
SUPREME COURT OF THE UNITED STATES

No. 20-6262

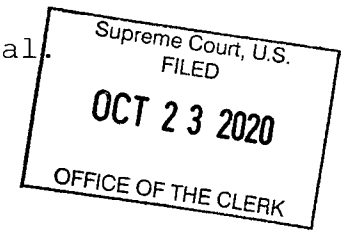
DANIEL TWIAN BROWN

Petitioner,

VS.

ADMINISTRATOR NEW JERSEY STATE PRISON, et al.

Respondent.



PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SUBMITTED BY:

Daniel Twian Brown #563081/979139B
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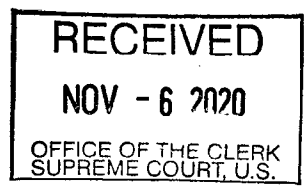

QUESTIONS PRESENTED

1.) Whether the Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that His Warrantless Arrest was not Unlawful and Illegal and in Violation of the New Jersey and the United States Constitution.

2.) Whether the Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that His Statements should not Have been Suppressed as His Arrest was Illegal given the Lack of Both an Arrest and Search Warrant in Violation of the New Jersey Constitution Article I, Para. 7 and the United States Constitution, IV Amendment, V Amendment and Fourteenth Amendment.

3.) Whether the Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that He was not Denied Effective Assistance of Trial Counsel.

4.) Whether the Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that He was not Denied Effective Assistance of Appellate Counsel.

5.) Whether the Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that the Refusal of the New Jersey Supreme Court to Extend Their Ruling in State v. W.A. which Violated His Fundamental Right to a Fair Trial in Violation of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

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LIST OF PARTIES

The Petitioner is Mr. Daniel Twian Brown, acting pro se, and is a prisoner presently confined at New Jersey State Prison in Trenton, New Jersey.

The Respondents are Steven Johnson former Administrator of New Jersey State Prison, and the Bergen County Prosecutor's Office.

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The United States District Court for the District of New Jersey denied petitioner's petition for a writ of habeas corpus in an opinion on August 6, 2019. **(See Appendix - Ex-1)**

The United States Court Of Appeals for the Third Circuit filed an order on January 28, 2020, denying petitioner's petition for a Certificate of Appealability. **(See Appendix - Ex-51)**

The United States Court Of Appeals for the Third Circuit filed an order on July 27, 2020, denying Petitioner's petition for a rehearing En Banc. **(See Appendix - Ex-52)**

STATEMENT OF JURISDICTION

The United States District Court For the District Of New Jersey denied petitioner's petition for writ of habeas corpus on August 6, 2019, and on the United States Court of Appeals for the Third Circuit filed an order on January 28, 2020, denying petitioner's petition for a Certificate of Appealability and a petition for a rehearing En Banc were denied on July 29, 2020.

This Court has jurisdiction under 28 U.S.C. §1254(1) to review the circuit court's decisions on a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The **IV Amendment** which states, "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 **V Amendment** which states, "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The **VI Amendment** which states, "that 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 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."

The **XIV Amendment** which states, "that 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 abridges 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."

STATEMENT OF THE CASE

On April 29, 2005, A grand jury in Bergen County returned a forty-three count indictment against Brown and others alleging multiple counts of first and second-degree armed robbery, third-degree theft, weapons offenses, second-degree armed burglary, third-degree aggravated assault, second-degree eluding, and fourth-degree resisting arrest. The Petitioner was not charged in every count of the of forty-three (43) Count indictment.

The jury, found Petitioner guilty of thirty-four (34) of the charged offenses. Thereafter on September 29, 2006, Petitioner was sentenced to an aggregate sentence of life plus forty-one (41) years with an 93 years parole ineligibility, pursuant to N.E.R.A.

On September 29, 2016, the Petitioner filed a petition for a writ of habeas corpus. The petition raised seven grounds: **GROUND ONE:** Petitioner's Warrantless Arrest was Unlawful and Illegal and in Violation of the New Jersey Constitution and the United States Constitution; **GROUND TWO:** Petitioner's Statements should have been Suppressed as His Arrest was Illegal given the lack of both an Arrest and Search Warrant in Violation of the United States Constitution, IV Amendment, V Amendment and Fourteenth Amendment and New Jersey Constitution Article I, Paragraph 7; **GROUND THREE:** Ineffective Assistance of Counsel, (a) Opening the Door, (b) Failure to Investigate; **GROUND FOUR:** Petitioner's Appellate Counsel Provided Ineffective Assistance of Counsel, in Violation of the United States Constitution Amendment VI, XIV and New Jersey Constitution (1947) Article I, Paragraph 10; **GROUND**

FIVE: The Imposition of a Sentence consisting of a Life term with a Consecutive Forty-One-Year term, all subject to 85% Parole Ineligibility, is Cruel and Unusual Punishment in Violation of the Eighth Amendment of the United States Constitution; **GROUND SIX**: The Refusal of the New Jersey Supreme Court to Extend their Ruling in State v. W.A., Violated the Petitioner's Fundamental Right to a Fair Trial in Violation of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution; **GROUND SEVEN**: The Petition should be Granted Due to the Cumulative Errors.

The district court denied the petition for a writ of habeas corpus. Brown v. Johnson, No. 16-6066 (JMV), slip opinion (D.N.J. August 6, 2019). Petitioner filed a timely notice of appeal and a petition for a certificate of appealability (COA). On January 28, 2020, the Third Circuit denied the petition for a COA. On July 27, 2020, the Third Circuit denied a petition for rehearing and rehearing en banc.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Point I

> The Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that His Warrantless Arrest was not Unlawful and Illegal and in Violation of the New Jersey and the United States Constitution.

Pursuant to the Fourth Amendment to the United States Constitution:

> "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 State of New Jersey has a tantamount provision which parallels the 4th Amendment. According to the New Jersey Constitution, Article I, Paragraph 7.

Therefore, the Federal and State Constitutions declares that arrest warrants must be supported by probable cause. A warrantless arrest in a public place must satisfy the same standard. Maryland v. Pringle, 540 U.S. 366, 370 (2003); State v. Basil, 202 N.J. 570, 584 (2010).

Absent exigent circumstances or an officer's witnessing a crime, before arresting a suspect, police must obtain an arrest warrant issued by a judicial officer on a finding of probable cause that the suspect committed the alleged crime. See Steagald v. United States, 451 U.S. 204 (1981); State v. Cleveland, 371 N.J. Super 286, 294, 852 A.2d 1150 (App. Div.), certif. denied,

182 N.J. 148, 862 A.2d 57 (2004). Warrantless arrests that are based on exigent circumstances or on an officer's witnessing a crime are presumptively unreasonable, and violate the right to be free from unreasonable seizure. See Payton v. New York, 445 U.S. 573 (1980); State v. Henry, 133 N.J. 104, 110, 627 A.2d 125, cert. denied, 510 U.S. 984 (1993). Without a warrant, the State has the burden of proving the overall reasonableness of an arrest. Payton v. New York, 445 U.S. 585 (1980); State v. Mann, 203 N.J. 328, 337-38, 2 A.3d 379 (2010).

The remedy for an unlawful arrest is not dismissal of the complaint or charges against the defendant, but rather suppression of the evidence obtained as a result of the unlawful arrest. Cleveland, 371 N.J. Super at 299.

In the case at bar, the Petitioner challenged before the trial court, the Appellate Division and the New Jersey Supreme Court whether the police obtained a valid warrant before effectuating his arrest. The Petitioner contends the police had no warrant, let alone a valid warrant. Axiomatically, all of the charges which were lodged against Him were indictable offenses. With respect to indictable offenses, the process of bringing charges involves the filing of a Complaint to R.3:2-1, which states:

> The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. All complaints except complaints for traffic offenses, as defined in R. 7:2-1 where made on Uniform Traffic Tickets and Complaints for non-indictable offenses made on the Special Form of Complaint and Summons, shall be by

> certification or an oath before a judge or other person authorized by N.J.S.A. 2B:12-21 to take complaints. The clerk or deputy clerk, municipal court administrator or deputy court administrator shall accept for filing any complaint made by any person.

Along with the complaint, the law enforcement officer files a warrant, or a complaint-warrant form. R. 3:2-3. "An arrest warrant shall be made on a Complaint-Warrant (CDR2) form. The warrant shall contain the defendant's name or if that is unknown, any name or description that identifies the defendant with reasonable certainty, and shall be directed to any officer authorized to execute it, ordering that the defendant be arrested and brought before the court that issued the warrant. Except as provided in paragraph (b), the warrant shall be signed by the judge, clerk, deputy clerk, municipal court administrator, or deputy court administrator." R. 3:2-3(a). No arrest warrant may be issued on a complaint unless:

> a judge, clerk, deputy clerk, municipal court administrator. or deputy municipal court administrator finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the warrant....

R. 3:3-1(a)(1). Upon arrest, a law enforcement officer need not show the defendant a copy of the warrant, but the officer must inform the defendant that a warrant has issued for the defendant's arrest, and the officer must notify the defendant of the charges. R. 3:2-3(c).

In the Petitioner's case at bar, Detective Patrick Coffey of the Hackensack Police Department testified at the suppression hearing before Judge Conte. Detective Coffey's testimony was that on January 1, 2005, he drafted and signed four complaints against the Petitioner charging him with burglary, theft, robbery, possession of a firearm by a convicted person, possession of a weapon for unlawful use, unlawful possession of a weapon, and possession of burglary tools. The fifth complaint charged the Petitioner with resisting arrest by using and threatening violence.

According to Coffey's testimony, he spoke with an individual [Clarke] who was arrested on Decemeber 31, 2004. That person did not give Detective Coffey any indication that the Petitioner was involved in any of these crimes. Detective Coffey went on to further testify that the individual he spoke to [Clarke], later spoke to Detective Finley and gave her a statement "which implicated the Petitioner." It was Coffey's testimony that the second, the person's second statement implicated the Petitioner. Finally, the detective testified that the he was unaware of the existence of a third statement.

Of the five (5) complaints drafted against the Petitioner, four (4) complaints listed the Petitioner's address as "406 Prospect." The fifth complaint listed the Petitioner's address as "45 Linden Street #7." The Petitioner testified that "his address was 406 Prospect Street. His girlfriend and her minor daughter lived at 45 Linden Street." Detective Coffey was the only

individual who drafted any of the Complaints against the Petitioner.

At the suppression hearing, Detective Coffey testified that upon drafting the complaints, he "wasn't a hundred percent sure" where the Petitioner lived, but he did not believe the Petitioner lived with his girlfriend. Detective Coffey listed "45 Linden Street" as the Petitioner's address on one of the complaints because according to him "[s]omeone may have advised me" Coffey later testified that Tori Parham [one of the co-defendants] had told Captain Lomia, of the Hackensack Police Department, that the Petitioner was at his girlfriend's apartment at 45 Linden Street.

After Detective Coffey drafted the complaint, he gave them to his supervisor for review. Captain Lomia testified that he did not (Lomia) reviewed the complaints, but he was aware that Coffey had drafted them. After Coffey's supervisor reviewed them, Coffey took the complaints to the "front desk." From this point, Coffey does not know what happened to the complaints. It is undisputed that at the time of the Petitioner's arrest on January 1, 2005, no judicial officer had yet reviewed the complaints or authorized the Petitioner's arrest.

On January 1, at around 10:30 p.m. about ten officers went Connor's address to arrest the Petitioner. Around that time, the Petitioner's mother called Connor's apartment and told her the police were outside the buiding. Connor testified that she relayed that information to the Petitioner. Shortly after, Detective Coffey and five officers entered the apartment building, and the remaining officers stayed outside and secured

the area. An officer knocked on the door. The door opened by a female [Connor]. The officer asked if Danny Brown was there, at which time the Petitioner jumped out a window on to the roof of an adjacent building. Coffey testified that he heard a large crash, and another officer said, "He went out the window." The Petitioner landed on the roof of McManus Tool Rental, located next door at 41-43 Linden Street. Following a twenty-minute standoff, Captain Frank Lomia convinced the Petitioner to come off the roof. The police then arrested the Petitioner and took him headquarters.

The face of the warrants showed that they were issued on January 3, 2005, two days after the Petitioner's actual arrest on January 1, 2005. In addition to the delay, the complaints did not contain any information about the Petitioner that justified his arrest. The police reports attached to the complaints, which purportedly set forth probable cause for the Petitioner's arrest for robbery, car theft, and gun offenses, did not even mention the Petitioner by name. Only the resisting charge, which recounted events that occurred at the scene of the arrest, referred to the Petitioner's conduct.

It is exceeding clear that the police lacked the authority to arrest the Petitioner on January 1, 2005. Under the facts presented above. a neutral and detached magistrate was the only constitutional officer authorized to determine whether probable cause existed, and if so, to issue a proper warrant authorizing the police to execute it. Wong Sun v. United States, 371 U.S. 471, 482-83 (1963); State v. Bobo, 222 N.J. Super 30, 34, 535

A.2d 983 (App. Div. 1987); R. 3:3-1(a). Therefore, the Petitioner's arrest on January 1, 2005 was unlawful.

The Petitioner further dispute that there was probable cause to arrest him. Based on the fact, in order to arrest him there must be probable cause to believe that a crime has been committed and that the person sought to be arrested committed the offense. State v. Chippero, 201 N.J. 14, 28, 987 A.2d 555 (2009). Probable cause requires "more than a mere suspicion of guilt" but less evidence than needed to convict at trial. Basil, 202 N.J. 585, 998 A.2d 472. The Petitioner disputed the fact there were statements of Petitioner's co-defendants implicating him in armed robberies.

Probable cause exists where the facts and circumstances within [the officers] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed. Schneider v. Simonini, 163 N.J. 336, 361 (2000), cert. denied 531 U.S. 1146 (2001).

Importantly, Detective Coffey's testimony was incorrect in that the second statement to which he referred given by Kenyatta Clarke was taken by Detective Finley. In fact, there was no mention of the Petitioner in the second statement. This information was material to the defective warrants, illegal arrest, Miranda warnings and the hearing on the motion to suppress the evidence which the Petitioner submitted was illegally obtained. In addition, on re-direct Detective Coffey

continued that "Durant and Sibdhannie", prior to the Petitioner's arrest, implicated him. Which was not true either.

The Petitioner contends that absent exigent circumstances or consent, the police must obtain a warrant to conduct an arrest inside a home. Payton, 445 U.S. at 589-90 (1989). An arrest warrant "implicitly carries with it the limited authority to enter a dwelling" where the suspect lives when there is reason to believe the suspect is inside. Id. at 603. To search for the suspect of an arrest warrant in the home of a third party, the police must also obtain a search warrant -- once again, absent exigent circumstances or consent. Steagald v. United States, 451 U.S. 204, 216 (1981).

Despite the important benefits offered by arrest warrants, they are not required in all cases. For example, felony arrests made in public places and supported by probable cause can be valid without a warrant. United States v. Watson, 423 U.S. 411, 417 (1976), quoting Carroll v. United States, 267 U.S. 132, 156 (1925). **IT SHOULD NOTED:** that the unlawful and un-warranted arrest of the Petitioner in this case, neither occurred in a public place nor was there probable cause for it.

In addition, under N.J.S.A. 40A:14-152, full-time police officers "have full power of arrest for any crime committed in [the] officer's presence and committed anywhere within the territorial limits of the State of New Jersey. Which was not circumstances in the Petitioner's case.

With respect to the resisting arrest charge, this would not invalidate an otherwise illegal arrest, nor break the causal

connection between the challenged evidence. The Petitioner was charged and convicted under N.J.S.A. 2C:29-2(a)(2), which states in relevant part:

> Except as provided in paragraph (3), a person is guilty of a disorderly persons offense if he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (2) Except as provided in paragraph (3), a person is guilty of a crime of the fourth degree if he, by flight, purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (3) An offense under paragraph (1) or (2) of subsection a. is a crime of the third degree if the person:
>
> **(a)** Uses or threatens to use physical force or violence against the law enforcement officer or another; or
>
> **(b)** Uses any other means to create a substantial risk of causing physical injury to the public servant or another.
>
> It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance.

According to State v. Branch, 301 N.J. Super 307, 321 (App. Div. 1997) rev'd in part on other grounds, 155 N.J. 317 (1998). The State must prove its burden by showing that the defendant knows of his arrest and that he nevertheless resisted the arrest, also the police must announce their intentions to arrest, citing State v. Murphy, 185 N.J. Super 72, 447, A.2d 219 (Law Div. 1982) See also State v. Kane, 303 N.J. Super 167 182 (App. Div. 1997). The Court held that the State failed to prove the defendant

resisted arrest, also that the police had not announced their intention to arrest the Petitioner.

The Petitioner asserts there was no testimony on record by Detective Patrick Coffey, or any other law enforcement officer that prior to the Petitioner jumping out of the window, they had announced their intentions to arrest him. Furthermore, the Petitioner came down off the roof on his own as testified by Captain Lomia.

Everyone in this case agreed the arrest of the Petitioner was unlawful as there was no warrant to arrest him, no search warrant to search and no probable cause to believe he committed any of the crimes alleged by Detective Coffey.

In addition there was no exigency to enter Ms. Connor's home either to search for the Petitioner or search the premises for fruits of illegal crimes.

Point II

The Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that His Statements should not have been Suppressed as His Arrest was Illegal given the Lack of Both an Arrest and Search Warrant in Violation of the New Jersey Constitution Article I, Para. 7 and the United States Constitution, IV Amendment, V Amendment and Fourteenth Amendment.

The Petitioner were arrested on January 1, 2005, at his girlfriend, Chasity Connor's apartment. Equally unequivocal is that no valid arrest or search warrant was procured prior to the Petitioner's arrest. According to the record, Detective Patrick Coffey, of the Hackensack Police Department signed five complaints against the Petitioner for robbery, burglary and various weapons charges.

The Detectives took no further action on these complaints, except to turn them over to the desk sergeant assuming they would be properly "jurated", given to the appropriate officer of the court for a finding of probable cause. As pointed out by defense counsel, these complaints were "jurated" but not until January 3, 2005, two days after the Petitioner's arrest and the obtaining of incriminating statements from him. The Detectives had no explanation for this discrepancy, except to say that he "just gave them to our front desk" and had no idea what happened to the complaints thereafter.

Captain Frank Lomia, the commanding officer at the time and the one who ordered the Petitioner's arrest, claimed there was an arrest warrant for the Petitioner, who could possibly be found at his girlfriend's apartment. However, Captain Lomia conceded he

never actually saw the complaints (nor any warrants) and was operating pursuant to what he had been told by Detective Coffey.

No validly "jurated" arrest or search warrants were provided by the State. All that was apparently done was Detective Coffey's signing of the complaints and then passing them onto the next link in the chain, in this case, the desk sergeant. They were not actually evaluated by a neutral and detached magistrate until January 3, 2005, two days after the actual arrest and interrogation.

The first issue to be decided is whether the arrest was valid, given the absence of signed warrants. N.J.S.A. 40A:14-152.1 empowers "any full-time, permanently appointed municipal police officer ... [to] arrest for any crime committed in said officer's presence and committed anywhere within the territorial limits of the State of New Jersey. In addition, under common law, a police officer could make an arrest without a warrant if the crime was committed in his or her presence or if he or she had probable cause to believe a felony had been committed. State v. Henry, 133 N.J. 104, 128 (1993), cert denied 510 U.S. 984 (1993). A failure to obtain an arrest warrant, even if practicable, does not invalidate an arrest in a public place as long as there is probable cause. State v. Doyle, 42 N.J. 334, 343 (1964). In fact, the United States Supreme Court has noted, with regard to arrests made outside a home, that "the Court has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant. Gerstein v. Pugh, 420 U.S. 103, 113 (1975). This general historical provision has been followed in New

Jersey. Doyle, 42 N.J. at 345-46. However, there was no probable cause in the Petitioner's case.

However, if the police choose to obtain an arrest warrant, there are procedures which must be followed. R. 3:2-1 dictates what a complaint must include, basically a recitation of the facts of the offense. In addition, all complaints must be done by certification or an oath before the proper authority. R. 3:3-1(a)(1) describes how a warrant is to be processed. Basically, a "judge, clerk, deputy clerk, municipal court administrator or deputy municipal court administrator" must find that there is probable cause to believe the defendant committed an offense.

The analysis changes drastically when the invasion of a home is involved during the process of making an arrest. In those situations, the police must have probable cause to believe the defendant committed the crime and an arrest warrant (absent exigent circumstances or consent). Payton v. New York, 445 U.S. 573 (1980). If the defendant is to be seized in someone else's home, a separate search warrant must also be obtained. Steagald v. United States, 451 U.S. 204. In short, before a defendant may be legally arrested in a home, the police must have probable cause, an arrest warrant, and where applicable, a search warrant. When probable cause exists and the police know it and nonetheless fail to obtain a warrant to enter a home and make the arrest, the constitution is violated.

Detective Coffey felt confident about having probable cause, based on the statements of the three co-defendants. He also knew at some level that, in addition to probable cause, he would need a

warrant to enter the home. His effort consisted of filing out a complaint and giving it to the desk sergeant. No effort was apparently made thereafter to obtain an actual warrant. Instead, ten officers responded to Ms. Connor's apartment, specifically to arrest the Petitioner.

The Petitioner maintained that the two warrants were required before the police could actually enter Ms. O'Connor's apartment" a search warrant and an arrest warrant. If the suspect is thought to be at third party's home, a separate search warrant must be obtained before the home can be legally entered and the suspect arrested.

The New Jersey Appellate Division did find that the arrest herein was unlawful because no arrest warrant was ever procured. The Court held:

> However, because the face of the warrant shows that it was issued on January 3, 2005, two days after defendant's actual arrest, we are compelled to find that the police lacked the lawful authority to arrest defendant on January 1, 2005. Under the circumstances presented here, a neutral magistrate was the only constitutional officer authorized to determine whether probable cause existed, and if so, to issue a proper warrant authorizing the police to execute it.

State v. Brown, 2009 N.J. Super Unpub. Lexis 2181, *37 (App. Div. August 7, 2009). The Petitioner maintained that, with this issue, the Court was correct. However, he disagrees primarily with the finding that no remedy was required.

An entry into a home to arrest a suspect must ordinary be accompanied by a valid arrest warrant. The State bears the burden of proving that the failure to obtain such a warrant falls within

a recognized exception to this Rule. See State v. Frankel, 179 N.J. 586 (2004), cert. denied, 543 U.S. 876 (2004). The leading case on this issue is Payton v. New York, 445 U.S. 573, 586 (1980). In that case, the police went to the home of a suspect to effectuate an arrest, one clearly based on probable cause. They had neither an arrest warrant nor the consent of anyone to enter the home. A gun was found and seized.

The United States Supreme Court held that a valid arrest warrant must be obtained before the police can enter a home to effectuate an arrest and that any evidence found after such an entry would be suppressed.

An unsigned warrant, however, is not a warrant within the meaning of the Fourth Amendment. An unsigned warrant is a blank paper and officers cannot reasonably rely on such a glaring deficiency as authorization for search. " United State v. Evans, 469 F.Supp.2d 893 (D. Mo. 2007). This axiom is hardly a new one. See Davis v. Sanders, 19 S.E. 138 (S.C. 1894).

In New Jersey, the law is also that unsigned warrants are the equivalent of no warrant. In State v. Bobo, 222 N.J. Super 30, 34 (App. Div. 1987), The Appellate Division ordered suppression of evidence seized pursuant to a search warrant, but a warrant improperly obtained. In Bobo, he officer prepared a complaint / warrant form (the same form used in the case at bar), then brought the form to the actual home of the deputy court clerk, who signed the warrant. Bobo, 222 N.J. Super at 32.

The problem in Bobo was that the victim, a Mr. Gonzalez signed the complaint, but not in the presence of the deputy clerk.

The police officer was the one who witnessed Gonzalez sign the complaint, making him, in essence, the magistrate, in violation of constitutional law and our courts rules. The Appellate Division, citing Wong Sun v. United States, 371 U.S. 471 (1963) emphasized that the determination of probable cause, for warrant purposes, "can only be made by a neutral and detached judicial official." Bobo, 222 N.J. Super at 34.

> When a warrant is issued for a person's arrest, it is of course necessary for a judge, clerk or deputy clerk to determine if there is probable cause that the particular suspect has committed the offense.

State v. Gonzalez, 114 N.J. 592, 605 (1989), In the Petitioner's case, the clerk did sign the arrest warrant, but only after the arrest had already been completed and statements obtained.

The other warrant which should have been obtained in the Petitioner's case as noted by trial counsel in his argument before the trial court. It was uncontroverted that the Petitioner was arrested at his girlfriend's apartment. Detective Coffey conceded that 45 Linden Street was not where the Petitioner resided, but was where his girlfriend lived. Detective Lomia who knew the Petitioner and his family, referred to the peace as "his girlfriend's apartment. " The Detective believed the Petitioner might have been visiting the apartment. Detective Coffey stated that the officers "had information" that the Petitioner was in the apartment, but did not elaborate. In fact, the officer admitted the Petitioner's last known address was 406 Prospect Street and that only one of the complaints prepared referred to Ms. Connor's

apartment. Ms. Connor affirmed this belief, testifying that the Petitioner did not live with her and was only visiting. The Petitioner also testified he never lived at O'Connor's apartment.

In State v. Miller, 342 N.J. Super 474 (App. Div. 2001), the Appellate Division, for the first time addressed the issue of what a police officer must do when he or she goes to the home of a third party to arrest someone who is visiting, but not living there. In Miller, the police had an arrest warrant for the suspect, but no search warrant for the house in which he was located. Relying on State constitutional grounds:

> As a matter of State law, therefore, we adopt a two-part standard governing the execution of an arrest warrant in circumstances such as those at hand: in the absence of consent or exigency, an arrest warrant is not lawfully executed in a dwelling unless the officers executing the warrant have objectively reasonably bases for believing that the person named in the warrant both resides in the dwelling and is within the dwelling at the time.

A separate search warrant for the home, in addition to the arrest warrant for the suspect, therefore, is required. Steagald v. United States, 451 U.S. 204, 217-20 (1981)

In the Petitioner's case, the officers neither obtained an arrest warrant nor a search warrant. There was no suggestion that Ms. Connor gave her consent or that an emergency existed. Ten police officers responded to Ms. Connor's apartment, intending to arrest the Petitioner. Ms. Connor opened the door. It is somewhat unclear exactly what happened next, though, for purposes of the Fourth Amendment and its New Jersey counterpart, it does not

matter, since whatever happened was a direct result of police misconduct and flouting of procedure.

The officers were clearly intending to enter the apartment. The door was opened and a crash was heard. According to Detective Coffey, one of the officers knocked on the door which was opened by a female. The officers asked for the Petitioner, at which point the Petitioner jumped out of the bedroom window, the first officer entered the apartment and chased him.

The officers clearly intended to enter Ms. Connor's apartment without obtaining a valid arrest warrant or search warrant. There were ten officers, all armed and prepared to enter the premises. The flight of the Petitioner is a direct consequence of this constitutional violation. The police cannot claim that some sort of emergent circumstance, such as the Petitioner's jumping out the window, forced them to enter a home without a warrant when they themselves created the exigency by not bothering to secure a warrant before they entered the home.

A similar situation occurred in State v. Tucker, 136 N.J. 158 (1984), the suspect, during an improper police chase, threw away the drugs in his possession. The State claimed abandonment. However, the New Jersey Supreme Court held that the throwing away of the drugs was a response to an unlawful police pursuit and attempted seizure. A similar situation occurred here. The Petitioner flight or "abandonment" of the apartment was caused entirely by a illegal entry into Ms. Connor's apartment. See also State v. Hutchins, 116 N.J. 457, 476 (1989) (courts should be wary of exigencies created by the police in an effort to avoid the

warrant requirement). The police may not act illegally and thereby create an exigency that allows them to flout the constitution.

If this court determines that the Petitioner's arrest was unlawful, the issue of remedy remains.

The Petitioner contends that the exclusion of these statements is the only effective remedy to deter the constitutional violation that occurred in this case. The rationale behind this sometimes extreme remedy is "to compel respect for the constitutional guarantee is the only effective way "by removing the incentive to disregard it. " United States v. Calendra, 414 U.S. 3338 (1974).

In sum, the lack of both an arrest warrant and search warrant in the Petitioner's case requires under the United States Constitution and New Jersey Constitution, suppression of the statements made by the Petitioner, statements obtained in violation of his federal and New Jersey right to free from unreasonable searches and seizures. The State provided nothing to show that this connection has been broken. Brown v. Illinois, 422 U.S. 590 (1975).

In looking at the "fruit of the poisonous tree" test to the statements made by the Petitioner suppression would be mandated. Three factors are considered to be key in the analysis: (1) the temporal proximity between the arrest and the confession; (2) the presence of any intervening circumstances; and (3) the flagrancy of the official misconduct. Brown v. Illinois, 422 U.S. at 603-04. The prosecution bears the burden of providing admissibility. Each

situation must be evaluated based on the individual facts of the case.

The first part of the test, temporal proximity between the illegality and the statement has been held to be the least important factor. See State v. Johnson, 118 N.J. 639, 654 (1990).

In the case at bar, the Petitioner was arrest at 10:30 p.m., on January 1, 2005. The first attempt at interrogation began at midnight but was suspended because of the Petitioner's allegedly belligerent attitude. The Petitioner was taken back to his cellblock at approximately 1:00 a.m. He was not brought back for further questioning until approximately 12:30 p.m., some twelve hours after his arrest.

The second part of the test, the appearance of intervening circumstances significant enough to break the chain between illegality and the confession militates in favor of suppression. It has been deemed the most important factor in the analysis. The only intervening factor cited by the detectives was the fact that Miranda warnings were given before the statement was extracted. As the Court noted in State v. Barry, 86 N.J. 80, 87 (1981), cert denied, 454 U.S. 1017 (1981), the giving of such warnings, without more, is not enough to break the causal chain. In Brown v. Illinois, 422 U.S. at 603:

> Although Miranda warnings, such as those administered to defendant, are "important ... in determining whether the confession is obtained by exploitation of an illegal arrest," such warnings are not always sufficient to "break ... the causal connection between the illegality and the confession. "

There were otherwise no such factors alleged by the State. Where, as here, there was egregious conduct on the part of the police, the State should show some demonstrably effective break in the chain of events leading from the illegal arrest to the statement, such as actual consultation with counsel or the accused's presentation before a magistrate for a determination of probable cause.

Therefore, the district court erred in not granting the Petitioner a Certificate of Appealability, because the State's court ruling was contrary to Federal law.

Point III

The Third Circuit Court of Appeals Erred in Denying Petitioner a Certificate of Appealability on His Claim that He was not Denied Effective Assistance of Trial Counsel.

In order to obtain a certificate of appealability (COA), a petitioner need only demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2). A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 478, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

The well-known standard of Strickland v. Washington governs this claim. 466 U.S 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under this standard, petitioner must show that trial counsel's performance was deficient and the deficient performance prejudiced the defense.

In Strickland v. Washington, 466 U.S. 668, (1986), and adopted by the Supreme Court of New Jersey in State v. Fritz, 105 N.J. 42 (1987).

The two-prong test of Strickland, and Fritz is (1) whether counsel's performance was deficient, and (2) whether there exist "a reasonable probability that, but counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694.

(a) Trial Counsel Provided Ineffective Assistance when He Opened the Door during Cross-examination of His Witness.

The Petitioner contends his trial counsel made serious error at the time of trial, which rises to the level of a constitutional violation.

Trial counsel conducted an examination of his own witness, Lieutenant Frank Novak, in such a way that he opened the door to admission of evidence that co-defendants gave statements inculpating the Petitioner. The jury was told that 'another person', who was not subject to cross-examination, told the police that the Petitioner committed the robberies. The actions of trial counsel were not a strategic miscalculation or trial mistake, rather a complete failure on the part of trial counsel to become familiar with the law regarding such examination and evidence and constitutionally deprived the Petitioner of a fair trial.

During trial Lieutenant Novak was questioned at the importuning of counsel about the dates contained in the complaint which charged the Petitioner with a robbery in Teterboro. Lieutenant Novak agreed that the Petitioner was not arrested on the date contained in the complaint. After receiving this admission from Lieutenant Novak, counsel continued to question him about the "lack of identification" of the Petitioner by the alleged victim of the Teterboro Robbery and the fact that the Petitioner did not give a statement about the Teterboro Robbery.

In fact, counsel went forward with his examination by stating:

> And nobody ever told you that Daniel Brown made that statement. Nobody ever said to you, okay - well, the victim didn't say to you that Mr. Brown made that statement, correct?"

The question was clarified by counsel and related as follows:

> "[t]he victim, Mr. Toronto, never said to you that Daniel Brown was armed with a handgun, correct?" The response was "[h]e never said Mr. Brown was armed with a handgun, no. He didn't know -- Mr. Brown at that time."

Counsel then went forward to question the Lieutenant regarding the fact that the complaint for said Teterboro robbery was signed two (2) days before the Petitioner was in custody. In response, the assistant prosecutor informed the Court, as follows:

> Judge, I'm just alerting the Court of this. Mr. Kittner [trial counsel] showed the witness here the complaint identified as D-32. He made an issue as to when the complaint was signed and how it could have been signed prior to the arrest of the defendant and lack of statement, et cetera, et cetera, et cetera. I have every intention now that the area was broached by Mr. Kittner [trial counsel] that he opened the door to it, that Winston Durant [co-defendant], who was interviewed by this detective [sic] on that date identified Daniel Brown as the man with the gun in his hand during the robbery in Teterboro.

The doctrine of opening the door allows a party to elicit otherwise inadmissible evidence when the opposing party has made unfair prejudicial use of related evidence. United States v. Lum, 466 F.Supp 328 (D. Del), aff'd 605 F.2d 1198 (3d Cir. 1979).

Accordingly, the State was permitted to introduce testimony that co-defendant, Winston Durant gave a statement to Lieutenant Novak telling him what happened in the case. It was then based upon this statement and conversations "with other people involved" that the complaint against the Petitioner for the Teterboro robbery was signed.

The Petitioner contends this error by trial counsel essentially eviscerated His defense to the robbery and the jury put great weight on that testimony.

The underlying theory of the defense was that aside from the confessions later obtained by various police departments, there was absolutely no evidence to link the Petitioner to any of these robberies. In fact, trial counsel for the Petitioner informed the jury, in his opening statements that:

> And my question to you is who says that Daniel Brown stole the car? Who says it? He [Daniel Brown] says it. The victims don't say it. Eyewitnesses don't say it. Scientific evidence doesn't say it. Forensic evidence doesn't say it.

In his opening trial counsel also informed the jury that no one would identify the Petitioner as one of the robbers for any of the robberies. Furthermore, trial counsel continued that there was no forensic evidence linking the Petitioner to any of the robberies. Finally, trial counsel finished his opening statement with:

> That's what this case is about. That's all of the facts. So who says Daniel Brown did it? Who says? Did any of the victim say? No. Does any of the forensic evidence say it. No. Does any of the visual evidence that you're going to see say that Daniel Brown was involved? No.

This strategy continues even after the constitutional blunder by trial counsel where he, himself opened the door to the Petitioner's co-defendant's statements. In his examination of Novak, he noted there was "no forensic evidence. " There were "no fingerprints matches". There were "no shoeprint matches" and there were "no identifications by victims. " He failed to address the proof that he elicited at trial regarding the co-defendants' statements, which evidence was previously ruled inadmissible by the Court but admitted after trial counsel opened the door to it.

After this damming admission, the State successfully argued that trial counsel opened the door to such evidence, trial counsel further compounded this error by failing to seek from the court a limiting instruction as to the admission of this evidence. For example, evidence is still subject to exclusion where a court finds that the probative value of the otherwise inadmissible responsive evidence "is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury ..." New Jersey Rules of Evidence 403. Introduction of otherwise inadmissible evidence under the shield of [those] doctrines is permitted "only to the extent necessary to remove any unfair prejudice which might otherwise have ensued from the originals evidence." United States v. Winston, 447 F.2d 1236, 1240 (D.C. 1971).

Therefore, the Petitioner contends trial counsel failed to recognize the applicability of Rule 403 of the Rules of Evidence. Instead, he chose to allow unfairly prejudicial evidence to be presented to the jury and made a motion for a mistrial.

This argument was as followed

> It's the issue that we've been sort of avoiding this entire trial. And to say that by my question asking the Lieutenant about dates and the manner in which he prepared the Complaint, to say that that opened the door to a constitutional violation I think is overstating the situation.

The trial court denied the Motion for a Mistrial and stated that "[y]ou can't get into certain areas and then elicit certain information and then indicate, well, you had no information from anyone and you went ahead and you prepared these complaints." The Court stated "[y]ou can't have it both ways." The Petitioner contends that the trial court erred in denying the Motion for mistrial as well.

However, trial counsel failed to argue that any prejudice to the State was minimal and could be cured by sanitized evidence, for example a stipulation. In State of New Jersey v. Vanderweaghe, 351 N,J. Super 467, 484 (App. Div.), aff'd 177 N.J. 229 (2003) the Court specifically recognized the role of sanitized evidence, when evidence was held admissible, but potentially excludable as unduly prejudicial.

Therefore, the District Court erred in not granting a certificate of appealability on the issue that the Petitioner was not denied effective assistance of trial counsel.

s such, the State Court's and the District Court's rulings was contrary to well established law and reasonable jurists could disagree with the district court's decision.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Superior Court of New Jersey, Appellate Division.

Respectfully submitted,

Dated: October 23, 2020

Daniel Twian Brown