

20-8349

No. _____

Supreme Court, U.S.
FILED

MAY 15 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Thomas Gordon — PETITIONER
(Your Name)

vs.

State of Delaware — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Thomas Gordon - SBI #455684
(Your Name)

1181 Paddock Road
(Address)

Smyston, DC 19977
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

Question(s) Presented

- ① Are Courts obligated to uphold the principles of "stare decisis" when in such precedent case(s) there is no indication that such precedent is unconstitutional and there are no "special justifications" to justify departing from precedent?
- ② Are Courts allowed to depart from the principles of stare decisis simply because they believe that, "the precedent was wrongly decided", without more?
- ③ Does the "Four-Corners test" apply to warrantless arrests when an officer applies for and is granted a contemporaneous arrest warrant based on a sworn to Affidavit of Probable Cause and that officer continues to support that sworn to information in testimony given under oath at a Preliminary Hearing and that same information is then used and is the sole information used in a Grand Jury proceeding to indict the Defendant?

Is the Court bound to this Four-

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

N/A

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	10
CONCLUSION.....	37

INDEX TO APPENDICES

APPENDIX A: Delaware Supreme Court Decision

APPENDIX A2: Order Denying Rehearing

APPENDIX B: ~~Travis~~ ^{Travis} Hall's Affidavit for Arrest Warrant & Search Warrant; Police Report; and other Affidavits

APPENDIX C: Preliminary Hearing Transcripts

APPENDIX D: Motion To Suppress (Co-Defendant)

APPENDIX D2: Motion To Suppress (Rehearing)

APPENDIX E: State's Response To Motions To Suppress

APPENDIX E2: Motion to File Motion Response Out of Time / Addendum - (State)

APPENDIX F: ~~Travis~~ ^{Travis} Hall's Suppression Hearing Testimony

APPENDIX G: Court's Ruling on Motion To Suppress

APPENDIX H: Opening Brief

APPENDIX I: Answering Brief

APPENDIX J: Reply Brief

Table of Authorities Cited

Cases

State of Delaware v. Bannock, 116 A.3d 883, 891 (Del. 2015) pg. 14

McDonald v. State of Delaware, 947 A.2d 1073 pgs. 9, 10, 11, 12, 13, 18, 19, 28, 30

Gordon v. State of Delaware, 2021 WL 48208 pg. 13

White v. Liberty Ind. Corp., 975 A.2d 786, 790-91 (Del. 2009) pg. 15

Dolan v. United States, 560 U.S. 605, 619 (2010) pg. 15

Dickerson v. United States, 530 U.S. 428, 443-444 (2000) pgs. 15, 16, 17, 18

Miranda v. Arizona, 384 U.S. 436 (1966) pgs. 15, 16

Alleyne v. United States, Jun 17, 2013, 570 U.S. 99 pgs. 16, 19

Hohn v. United States, 524 U.S. 236, 251, 118 S.Ct. 1969, 141 L.Ed. 242 (1998) pg. 17

Patterson v. McLean Credit Union, 491 U.S. 164, 172, 109 S.Ct. 2363, 105 L.Ed. 2d 132 (1989) pg. 17

Payne v. Tennessee, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed. 2d 720 (1991) pg. 17

Morales v. State of Delaware, 133 A.3d 527, 532 (Del. 2016) pg. 19

Pierzon v. State of Delaware, 338 A.2d 579 (Del. 1975) pg. 29

Gardner v. State of Delaware, 567 A.2d 404 (Del. 1989) pg. 30

State of Delaware v. Givlis, 1990 Del. Super. LEXIS 61 (Del. Super. Ct. Feb 16, 1990) pg. 30

United States v. Castillo, 866 F.2d 1071, 1076 (9th Cir. 1988) pg. 30

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 _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; 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 A to the petition and is

- ☒ reported at Gordon v. State of Delaware, No. 461, 2019 JAG, 2021; or, WL 48208
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was January 6, 2021.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 01/21/2021, and a copy of the order denying rehearing appears at Appendix A2.

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

See Court Order Dated March 19, 2020 U.S. Supreme Court
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- ① 4th Amendment of The United States Constitution
- ② Article 1 § 6 of the Delaware Constitution
- ③ 14th Amendment of The United States Constitution
- ④ State Decisis

Statement Of The Case

4

I, Petitioner, Thomas Gordon along with co-defendant Jarmon Smith was arrested on July 15, 2018 and charged with "Drug Possession", Conspiracy 2nd and a host of other charges following what Trooper Hall stated on his sworn to Affidavit of Probable Cause as a "routine traffic stop" for failing to have "headlamps activated in inclement weather". Based on this, the driver of the vehicle of which I was a passenger was charged with violating Title 21, Section 4331(a). During the course of this traffic stop, the officer observed a small amount of marijuana once the driver opened up the glove box. The discovery of this marijuana lead to the arrest and eventual strip search of the petitioner, during which additional contraband was found. It is clear that had it not been for the stop of the vehicle the marijuana would have never been detected and the search of the petitioner would have never took place (See Appendix B)

On September 14, 2018 at the petitioner's Preliminary Hearing, Trooper Hall while under oath was asked about the basis for the traffic stop of the vehicle. In

Which the defendant was a passenger.

Trooper Hall testified consistently that it was a routine traffic stop for a violation of Title 21, Section 4331(a) and he offered no other reason for the stop of the vehicle on that day. Trooper Hall also testified that he did not know that the defendant was in the motor vehicle prior to the stop. (See Appendix C)

Trooper Hall while under oath at the Preliminary Hearing continued to testify consistent with his duty to Arrest or of Probable Cause for an Arrest Warrant.

That is: ④ He was on a routine patrol when he observed the vehicle commit a traffic offense by failing to have its headlights activated in inclement weather; ⑤ that based upon this he conducted a routine traffic stop during which he observed Marijuana in the glove compartment which then lead to the arrest and search of the defendant and his co-defendant which then lead to the discovery of additional Contraband. He testified further that he did not know that the defendant was in the vehicle prior to the stop.

6

and he did not state any other reason for the stop of the vehicle outside of the "routine traffic stop" (See Appendix B & C)

After routine discovery and the review of the MVR footage, both the petitioner and the petitioner's co-defendant filed a Motion to Suppress, stating that there was no basis for the traffic stop based on a violation of Title 21, Section 4331(a) since the evidence showed that it was not actively raining and therefore no traffic violation which could justify the stop. Since Trooper Hall's sworn to Affidavit and Preliminary Hearing testimony cited this as the sole reason for the stop and the petitioner and his co-defendant were both indicted by a Grand Jury based solely upon this information, both Defendants moved for the suppression of the contraband discovered solely due to a search and arrest following this illegal traffic stop (See Appendix D & D2). The State responded to these motions by both to their initial response and only focused on the traffic stop as presented by Trooper Hall's sworn to Affidavit and supported by his testimony given under oath at the Preliminary Hearing (and which

Was the sole information presented to the Grand Jury). See Appendix E

Months later after switching Deputy Attorneys General, the State after multiple continuances then filed an extremely addendum which was ultimately granted by the Superior Court Judge Noel Eason Primor (See Appendix EQ). In this addendum the State claimed that Trooper Hall knew about a wiretap drug investigation and that he was aware that the ~~driver~~ possessed contraband and thereby the State invoked in a "Collective Knowledge doctrine" basis for the stop (See Appendix EQ). At the Suppression Hearing Trooper Hall testified however that he was aware that the ~~passenger~~ (not the driver) possessed contraband and was in the vehicle. This testimony was completely opposite to and inconsistent to his previous sworn to testimony in front of Court Tribunals, in which he stated under oath that he did ~~not~~ know that the ~~passenger~~ was in the vehicle and that it was a routine traffic stop for a violation of Title 21, Section 4331(a) (See Appendix B & C)

8

At the conclusion of the suppression hearing, the Superior Court ruled that ~~no~~ traffic offense occurred justifying the stop. However, the court found based on Trooper Hall's additional extra-affidavit testimony, that Trooper Hall had reasonable suspicion to stop the vehicle based upon an alleged drug investigation and once the marijuana was discovered, he had probable cause to arrest and search the petitioner and his co-defendant, which eventually lead to the discovery of the additional contraband. See Appendix G

After losing trial, the Petitioner filed an appeal to the Delaware Supreme Court stating in part, that the Superior Court erred by considering facts ~~not~~ contained within the "Four Corners" of Trooper Hall's arrest warrant affidavit nor within his sworn testimony given at the Preliminary Hearing (testimony that was the sole information used to indict the Petitioner by the Grand Jury).

The Delaware Supreme Court held that, "had the Superior Court applied our holding in *McDonald v. State*, 947 A.2d 1073... Gordon would have prevailed below." However, the Delaware Supreme Court then stated, "however, we believe that *McDonald* was wrongly decided, and we therefore overrule it." See Appendix H; I; J & A

10 Reasons For Granting The Petition For Questions Presented 1 & 2

On appeal, Gordon argued, among other things, that the trial court's denial of his suppression motion was erroneous because the arresting officer failed to provide, in the affidavit of probable cause offered in support of Gordon's arrest warrant, any justification for the search and seizure conducted in his case. Pursuant to the "fair notice test," as explained by the Delaware Supreme Court in the 2008 decision set forth in *McDonald v. State*, 949 A.2d 1073, 1078 (Del. 2008), "substantial facts must appear on the face of the arrest affidavit such that a reviewing court can ascertain from that document alone the factual basis for a determination that probable cause exists." Even when the sworn affidavit is executed after a warrantless arrest, it "has demonstrative probative value because it is the only contemporaneous evidence of why [the officer] stopped the motor vehicle [.]" (949 A.2d 1073). Here, just as in *McDonald*, the affidavit described only a traffic violation as the cause of the seizure and arrest. And here, just as in

McDonald, the trial Court found that there was ~~not~~ probable cause to seize the vehicle and arrest the defendant based on the alleged traffic violation.

The importance of the affidavit in this case was heightened by the fact that, two months after the arrest, the officer gave sworn testimony at a preliminary hearing that the only basis for Gordon's arrest was the headlight violation. Further, all parties (Gordon, his co-defendant AND the prosecutors) relied on the affidavit and preliminary hearing testimony in the filings on the suppression hearing issue and focused on the headlight violation. (The record supports the conclusion that prosecutors were unaware of any other basis for the stop other than that in the affidavit until after the suppression hearing was scheduled. The State did not contest this point when it was made at oral argument.) At the suppression hearing the State presented facts that went well beyond the "fact corners" of the affidavit. The trial Court ruled

Immediately following the hearing and found that the headlights violation did not justify the stop. Instead, it upheld the stop solely on the extra affidavit circumstances related to Gordon only ~~after~~ the suppression hearing was initially scheduled.

Gordon raised the McDonald argument for the first time in his opening brief on appeal. While the State did not argue waiver in its answer brief, it did mention it at oral argument. At oral argument, the Court asked the State whether McDonald needed to be overruled for Gordon's conviction to be upheld. The State repeatedly responded that McDonald need not be overturned. Gordon argued that McDonald should not be overturned, particularly under the circumstances in this case. In other words, neither party urged the Court to depart from precedent.

In its January 6th decision, the Court found that the "interest of justice" required it to consider Gordon's McDonald argument under the plain error doctrine because

"had the Superior Court applied [the Delaware Supreme Court's] holding in *McDonald v. State* — the sole precedent upon which Gordon now relies — Gordon would have prevailed below" (Gordon, 2023 WL 48208, at *10). In other words, the Delaware Supreme Court found that, proper reliance by the trial court on well-settled Delaware law would have required suppression in this case (*Id.*).

The well-established holding in *McDonald* was that the trial court's reliance upon extra-official affidavits, even when the affidavit is drafted after the arrest, would comport to the purpose of the "Sovt Gordon" test, which is to ensure that the reviewing court determined "whether the constitutional requirements [of probable cause] have been met without reliance upon faded and often confused memories (947A.22 at 1078)." In our case, without considering the doctrine of stare decisis, the Court "concluded," based on its own review of the law, "that the dissent was correct" in *McDonald* (Gordon, 2023 WL 48208, at *11) and decided to overturn *McDonald*.

In doing so, it erased ~~any~~ requirement for an officer to include an accurate

Statement of Facts asserting the basis for a defendant's arrest when that affidavit is drafted after the arrest. It also raises any requirement for an officer to testify truthfully while under oath at a preliminary hearing when asserting the basis for a defendant's arrest and arrest when that testimony is given pertaining to an arrest that involved an arrest affidavit drafted after the arrest.

Generally, "when a court has laid down a principle of law as applying to a certain set of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same" (20 Am. Jur. 2d Courts §125). "State decides is the preferred course because it promoted evenhanded, predictable, and consistent development of legal principles, fostered reliance on judicial decisions, and contributed to the actual and perceived integrity of the judicial process" (Id. See State v. Barnes, 116 A.3d 883, 891 (Del. 2015) (State decides exists to protect settled expectations of citizens)).

In Delaware, once an issue of law has been settled by a decision of the Delaware Supreme Court, "it forms a precedent which is not afterwards to be departed from or lightly overruled or set aside... and [it] should be followed except for urgent reasons and upon clear manifestation of error" (*White v. Liberty Ins. Corp.*, 975 A.2d 786, 790-91 (Del. 2009) (internal citations and quotation marks omitted) (adhering to state decision because party failed to identify "urgent reasons" to depart). This is especially true when the Court has ~~explicitly~~ overruled its own case law (See *Dolan v. United States*, 566 U.S. 603, 619 (2010) (refusing to depart from state decision "when this case does not require," "the issue had not been adequately briefed" and lower courts "had no opportunity to consider the argument").

Our case is similar to that in *Dickerson v. United States*, 530 U.S. 428, 443-444 (2000), where the Court was faced with the option of overruling *Miranda v. Arizona*, 384 U.S. 436 (1966) and its requirements of interrogation warnings in favor of

an approach that looks to the administration of such warnings as only one factor in determining the voluntariness of a suspect's confession. The Court noted that "the disadvantage of the Miranda rule is that statements which may be by no means involuntary, made by a defendant who is aware of his rights, may nonetheless be excluded and a guilty defendant go free as a result" (Dickerson, 530 U.S. at 444). Nonetheless, writing for the majority, Chief Justice Rehnquist concluded that, "[w]hether or not we would agree with Miranda's reasoning and its resulting rule, ... the principles of stare decisis weigh heavily against overruling it now" (Id. at 443). That is because, "special justification," and "not just an argument that the precedent was wrongly decided" is required to overturn precedent (Id.). In *Allyne v. United States*, June 17, 2013, 570 U.S. 99, Justice Sotomayor, with whom Justice Ginsburg and Justice Kagan join, concurring, stated, "Of course, under our doctrine of stare decisis, establishing that a decision was wrong does not, without more, justify overruling it. While stare

decided to not an "inexorable command," (*Horn v. United States*, 524 U.S. 236, 251, 118 S. Ct. 1969, 141 L. Ed. 2d 242 (1998)) (internal quotation marks omitted), it is 'a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a federal judicial system that is not based upon an arbitrary discretion,' (*Patterson v. McLean Credit Union*, 491 U.S. 164, 172, 109 S. Ct. 2363, 105 L. Ed. 2d 132 (1989)) (quoting *The Federalist* No. 78, p. 490 (H. Lodge ed. 1888)) (A. Hamilton)). We generally adhere to our prior decisions, even if we question their soundness, because doing so 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process' (*Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)). To protect these important values, we require a 'special justification' 'when departing from precedent' (*Dickerson v. United States*, 530 U.S. 428, 443, 120 S. Ct. 2336, 147 L. Ed. 2d 405 (2000))."

To the extent that the Court believed that *McDonald* was wrongly decided, "the

principles of state decided weigh heavily against overruling it now" (Id.). This is so even if, as the Court appeared to view it, McDonald allows otherwise lawfully seized evidence to "nonetheless be excluded" because the officer did not accurately complete the affidavit after the arrest.

The lower Court did not consider the issue. There was no briefing or argument for the Delaware Supreme Court to consider when it departed from state decided. Consequently, there is no assessment for the decision of any special justification or urgent reason to depart from state decided.

The circumstances in this case also call for the adherence to state decided. The credibility of the officer was brought into question for various reasons. Thus, upholding precedent in this case supports the purpose of state decided of protecting the integrity of the judicial process.

There is no indication that McDonald is Unconstitutional. In fact, it is consistent with the objective reasonableness standard. Since ~~the~~ Delaware Supreme Court concluded that proper application of McDonald would have required Gordon to prevail ~~on~~ the Delaware Superior Court, it necessarily found the trial court's error to be plain as that error affected the outcome of his trial (*Morales v. State*, 133 A.3d 527, 532 (Del. 2016)) (to be plain, the error "must have affected the outcome of the trial").

Thus, departure from *State decided* is not warranted in this case and the Delaware Supreme Court's refusal to adhere to the principles of *State decided* violated Gordon's right to due process under the law and Gordon's convictions should be reversed.

"No doubt it would be illegitimate to overrule a precedent simply because the Court's current membership disagreed with it." (Quoting Justice Sotomayor, *Alkyne v. United States*, 2013 570 U.S. 122).

20 Reasons For Granting The Petition For

Quotations Presented 3 & 4

Although both the Appellant's Co-defendant and himself were arrested without a warrant, Detective Trooper Hall subsequently executed two subsequent affidavits of probable cause in this case in support of an arrest warrant and one affidavit of probable cause in support of a search warrant. These affidavits have determinative probative value because it is the only contemporaneous evidence of why he stopped the motor vehicle a few hours earlier that day. The only reason cited in the affidavits for stopping the vehicle was the alleged failure to display lighted lamps in rainy weather. Trooper Hall's testimony at the suppression hearing confirmed that fact.

Defense Counsel: Now, you did an affidavit of probable cause in con-

Decision with this case? Do you recall that?

Trooper Hall: Yes.

Defense Counsel: And you swore that you were telling the truth?

Trooper Hall: Yes.

Defense Counsel: Is that correct?

Trooper Hall: Yes, Ma'am.

Defense Counsel: Okay. And you said, "I observed the vehicle not having its headlamps activated and there was inclement weather. It was raining." Do you recall that?

Trooper Hall: Yes, it was.

Defense Counsel: Okay. And I'm telling you know that I'm reading directly from your Probable Cause Sheet.

Trooper Hall: Thank you.

Defense Counsel: Just for your information. Okay. At that rule, you "positioned your divisional - Traffic Patrol vehicle behind that vehicle and conducted a traffic stop?"

Trooper Hall: Yes.

Defense Counsel: Correct?

Trooper Hall: Yes.

Defense Counsel: You don't say anything about any other reason for conducting that stop, correct?

Trooper Hall: Yes.

Defense Counsel: Okay. Not only that, but subsequent to that, you filled out an affidavit Probable Cause sheet for a complaint seeking a search warrant in this case?

Trooper Hall: Yes.

Defense Counsel: And are you aware that you did not make any mention

of any other reason to stop this vehicle except that it was raining and you said it didn't have its headlights on?

Trooper Hall: That was the probable cause I developed, yes.

Defense Counsel: Right. Because it was raining?

Trooper Hall: Yes, it was.

Defense Counsel: You said over and over on your testimony it was raining, it was raining, it was raining?

Trooper Hall: Yes, it was.

See: Suppression Hearing Transcripts Pg. B80: 3-10; Pg B86: 17-23; Pg B81: 1-23. Also, see Preliminary Hearing Transcripts Pg. 6: 12-15; Pg 15: 13, 16-20; Pg 21: 5-18.

Based on these affidavits and Trooper Hall's testimony at both the Preliminary Hearing and the Suppression Hearing,

I am attempting to argue that the only issue that the Court decided to decide was whether there was a traffic violation for failure to display lighted lamps on rainy weather that satisfied the probable cause requirement. In denying the motion to suppress, the Court relied on additional factors such as ^① a wiretap investigation pertaining to phone calls that were not admitted, ^② an alleged drug transaction between Kree WRC and the Appellant that "possibly might have" occurred (~~occurred~~) but clearly never occurred for the video submitted into evidence that is over 30 minutes long and Trooper Hall did not personally view and ^③ statements that all of this was relayed to Trooper Hall by Detective Thomas Macawley who did not personally observe the alleged drug transaction (Suppression Hearing Transcript pg. C11: 12-13) or directly monitor the alleged call (Suppression Hearing Transcript pg. C17: 9-11 and 13-16) instead relying on information given to him by Detective Michael Macawley who testified to telling Trooper Hall that, "we possibly

Observed him conduct a drug transaction up in New Castle County" (Suppression Hearing Transcript pg A59:8-9 and pg A57:19-20). A drug transaction that Detective Michael Macarvey was not even certain occurred at the time (Suppression Hearing Transcript pg. A65:1-7).

Those factors, however, were based upon additional testimony at the suppression. They were not included in the affidavit of probable cause in support of the search warrant, the affidavit of probable cause in support of the arrest warrant or given in Trooper Hollis' testimony at the Preliminary Hearing as reasons for stopping the vehicle. The Court's reliance upon those extra affidavits considerations ran counter to the purpose of the "four corners" test, which is to ensure that the reviewing Court determines "whether the Constitutional requirements of probable cause have been met without reliance upon faded and often confused memories."

The only issue identified by Trooper Hall over and over again for stopping the motor vehicle within the Affidavit of Probable Cause to Arrest, the Affidavit of Probable Cause to Search, and his sworn testimony at both the Preliminary Hearing and the Suppression Hearing, was the alleged headlamp violation. The affidavits did not contain any reference to the alleged drug transaction or the warrant. Accordingly, the Court should have looked solely to the validity of the traffic violation to determine whether there was sufficient probable cause to stop the vehicle.

As recited in his affidavits, the alleged traffic violation that Trooper Hall observed was the driver's failure to have headlamps activated when required reference inclement rainy weather. A violation of Title 21, section 4331(a). Trooper Hall's contemporaneous affidavits state that he stopped the motor vehicle for the alleged failure to display lighted lamps during inclement rainy weather. This was also the only reason for the motor vehicle stop that Trooper Hall gave at both the

Preliminary Hearing and the Suppression Hearing (Preliminary Hearing Transcripts pg 6:12-15; pg 15:13, 16-20; pg 21:5-18 and Suppression Hearing Transcripts pg B56:1-12; pg B75:1-9; pg B80:3 - pg B81:23, and pg B100:1 - pg B101:6). Trooper Hall testified repeatedly that he "initiated a motor vehicle stop after observing the vehicle not having its headlights activated whereas sufficient weather force at that time it was actively raining."

Since the Superior Court has determined and the record reflects no factual basis to establish probable cause to stop the motor vehicle for a traffic violation of Title 21, Section 4331(a), the stop was unreasonable and in violation of the Appellant's rights. Therefore, all evidence obtained against the Appellant as a result of this improper stop/seizure should not have been allowed against him at his trial. The Superior Court erred as a matter of law by denying the Motion to Suppress.

The Superior Court's reliance upon these extra affidavit considerations was correct.

to the purport of the "Four Corners test." In *McDonald v. State*, 2003 Del. LEXIS 205, the Higher Court stated, "In the context of a motion to suppress, the doctrine of deference on appeal to a finding of historical fact has no application when that additional factual finding is not supported by and is inconsistent with the sole fact identified by an arresting officer in his contemporaneous testimony at the suppression hearing and contemporaneous affidavit to support of an arrest warrant." The state's highest court has limited probable cause review of a challenged vehicle stop to the four corners of the arrest warrant affidavit (*McDonald*, Id at 1078).

The Four Corners test appears frequently in case law to support the principle that reviewing courts should consider only that information contained in the underlying affidavit in their probable cause review.

The state's highest court has limited probable cause review of a challenged search to the four corners of the search warrant affidavit. The Delaware Criminal Code contemplates a Four-Corners test for probable cause; sufficient facts must appear on the

face of the affidavit so that a magistrate's personal knowledge notwithstanding, a reviewing Court can verify the existence of probable cause. The Court has cautioned that in applying the test, one looks only to the facts recited in the complaint (See *Pecson v. State*, 338 A.2d 571 (Pa. 1975)).

The state's highest Court has reiterated the four corners test as a guiding principle for probable cause review and has clarified when the test is applied. The Court has explained that the test for determining the establishment of probable cause is applied when the evidence seized under the warrant is subject to a motion to suppress. The Supreme Court has further refined the boundaries of the four corners test. The Gallas Court has emphasized that the sufficiency of probable cause must be determined solely from the information contained within the four corners of the affidavit itself. Oral statements by the requesting officer not contained in the affidavit may not be considered in the determination of probable cause. The four corners test has broad application. The test applies to the suppression of evidence obtained pursuant to a warrant based on

probable cause. The test determines whether an affidavit demonstrated probable cause to issue either an arrest warrant or a search warrant (see *Gardner v. State*, 567 A.2d 404 (Del. 1989); and *State v. Gillis*, 1990 Del. Super. LEXIS 61 (Del. Supr. Ct. Feb. 16, 1990)). Also, see *United States v. Castillo*, 866 F.2d 1071, 1076 (9th Cir. 1988) (~~applying four corners test to arrest warrants as well as search warrants~~). Delaware case law supports the contention that the Superior Court should first test the sufficiency of probable cause to arrest to the four corners of the affidavit (*State v. McGlothen*, 2015), Del. Super. LEXIS 176 (Del. Supr. Ct. Mar. 13, 2015).

See Appendix B; C; D; D2; E; E2; F; H & J.

Not allowing Courts to rely on "extra-affidavit" considerations when such affidavit is backed up through sworn testimony in a Preliminary Hearing and/or challenged in a Motion To Suppress, protects both the process and the integrity of the judicial process and it protects the State / government

31

From performing a "bait and switch".
It may be legal to deceive a
criminal defendant but under no
circumstances is it ever permissible
to purposefully lie and/or omit to
deceive the Courts. The law should
never be enforced by deliberately
disobeying the law. Officers take
oaths in every Court proceeding and
~~say~~ misrepresentation does purposefully
violate a citizens constitutional rights.
So, a remedy to that citizen is
required per ex Chief Justice John
Marshall in *Marbury v. Madison*, 5 U.S.
137, 163, 2 L.Ed 60 (1803) holding:
"The government of the United States
has been emphatically termed a govern-
ment of laws, and not of men. It
will certainly cease to deserve this
high appellation, if the laws furnish
no remedy for a violation of a
vested legal right."

This Court should establish a
bright line rule that no Court
can consider anything outside
of a sworn affidavit in a

finding of probable cause. This will serve to protect the fairness and integrity of the justice system and not let that be an addition to to "create" probable cause. It will prevent "bait and switch" and would make the state / government commit to the course of action that they choose at inception.

Officers have an entire day to file an arrest warrant. To allow them to put misleading information, omit pertinent information or allow a judge to consider information not contained within the four corners of the arrest affidavit would by default compromise the fairness and integrity of the entire judicial process. Known perjury by a law enforcement official violates due process. The Eleventh Circuit in *United States v. Sanchez*, 813 F. Supp. 241; 1993 U.S. Dist. LEXIS 1299. District Judge Honorable John J. Martin, Jr.'s opinion states: "I can think of few

things more threatening to the liberty of our citizens than to have a Court system which tolerated forgery by Government agents in a criminal trial..." He went on "... those charged with enforcing our laws must act in full compliance with the Constitution and laws of the United States whether they agree with them or not..." Again, "Law Enforcement officers must learn to accept that fact and should never be permitted to think that the Courts will allow them to avoid full compliance with the mandates of the Constitution by the simple expedient of lying about their actions."

U.S. Supreme Court Justice Brennan with Justice Thurgood Marshall dissented in *United States v. Leon*, 468 U.S. 897 (1984), "The Fourth Amendment became part of the Nation's fundamental law in 1791, what the Framers understood then remains true today -- that the task of combating crime and convicting the guilty will in every era be beset of such critical and pressing concerns that we may be lured by the temptations

of expediency into forsaking our commitment to protecting individual liberty and privacy. It was for that very reason that the Framers of the Bill of Rights insisted that law enforcement efforts be resolutely and unambiguously restricted in order to preserve freedom."

James Madison in his address to the First Congress on June 8, 1798: "If [Courts] lose their resolve... and give way to the seductive call of expediency, the vital guarantees of the Fourth Amendment are reduced to nothing more than a form of words." Ex Chief Justice Burger wrote, "Who Will Watch The Watchmen?" 14 Am. V.L. Rev. 1, 14 (1964): "Since the Police is Society's servant, his actions in executions of his duty are attributable to the master employer. Society as a whole is thus responsible and society is penalized by relying at the benefit of evidence secured by the illegal action. This satisfied me more than the other explanations because it seems to me that Society in a country like ours is involved and is responsible for what

is done in its name by its agents. Unlike the Germans of the 1930's and early 1940's, we cannot say it is all the leader's doing. I am not responsible.

In a representative democracy we are responsible, whether we like it or not. And each of us is involved, and each of us is in this sense responsible when a police officer breaks the rules of law established for our common protection."

A law enforcement officer must never be allowed to benefit in any way due to perjury. Two diametrically opposed statements from the same person under oath about the exact same subject constitutes clear perjury. When this happens due process is always violated and the case must be dismissed. At the very least, that officer's testimony and affidavit should be stricken from the record and that officer should be prohibited from testifying any further in that court proceeding. To allow a violated constitutional right to be violated and provide no remedy is a form of tyranny. Thomas Jefferson has

the inscription on his tombstone at the Jefferson Memorial: "I have sworn upon the altar of GOD, eternal hostility toward all forms of tyranny over the mind of man." This Court is our protection from tyranny. To reverse "illegal Police Conduct" and uphold Constitutional violations are both forms of tyranny.

There is a clear existence of conflict between the Delaware Supreme Court's opinion on the application of the four-cornered test standard when applied to arrest warrants and all other appellate courts, including the U.S. Supreme Court. There is also an existence of conflict when it comes to deciding when and how to depart from state decisions. The Delaware Supreme Court is on the opinion that this can be done whenever they disagree or dislike a prior precedent. This is in direct conflict with the U.S. Supreme Court and all other appellate courts.

37

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric M. Murphy", written over a horizontal line.

Date: May 14, 2021