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No. 22-505

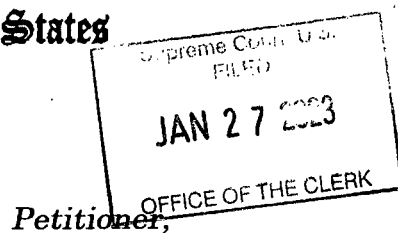
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**In the Supreme Court of the United States**



**TAMIKA J. PLEDGER**



vs.

**GLORIA GEITHER**

*Respondent.*

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On a Petition for a Writ of Certiorari  
to the United States District Court of Kansas

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**PETITION FOR A REHEARING EN BANC**

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## PETITION FOR REHEARING

Rule 44 Rehearing allows a petitioner a hearing of any judgment or decision of the Court on the merits. It shall be filed in 25 days after entry of the judgment or decision, unless the Court or Justice shortens or extends the time.<sup>1</sup>

In rehearing the case, Pledger humbly requests all Honorable Judges to first read all the appendixes attached starting at Appendix A page 1a of her filed Writ of Certiorari. Rehearing is requested based on the lower court's decision which conflicts with a decision of the Supreme Court in *Frank v. Delaware* and *Terry v. Ohio*.<sup>2</sup> This case is involved a question of exceptional importance as to having a car accident and convicted on a crime for the same occurrences, same parties and same claims paid out by Pledger's insurance company Liberty Mutual. Reviewing this case is vital as it concerns constitutional and procedural laws where others like Pledger will be convicted of a crime with no drugs nor alcohol lacking probable cause.

## GROUND FOR REHEARING

The Court should order a GVR in this case as Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial or controlling effect." S. Ct. R. 44.2. In the present case of *Frank vs. Delaware*, the Supreme Court of Delaware held, as a matter of first impression for it, that a defendant under no circumstances may so challenge the veracity of a sworn statement used by police to procure a search warrant. Supreme Court reversed and we held that, where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was [438 U.S. 154, 156]

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<sup>1</sup> Supreme Court Rule 44. rehearing

<sup>2</sup> *Frank v. Delaware*, 438 U.S. at 171-172; *Terry v. Ohio*, 392 U.S. 1 (1968)

included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. That defendant; Ms. Pledger has challenged the veracity prior to trial and beyond praying for a chance to be heard under false accusations made in the sworn warrant affidavit created by the police. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause would be lacking on the face of the affidavit.

Insufficient evidence is the evidence which fails to meet the burden of proof and is inadequate to prove a fact. Refusing to acknowledge the facts in a probable cause hearing negative toxicology based on [T]he statements made in the sworn affidavit, invites a Supreme Court discussion on the elements of probable cause where none was neither presented nor present.

**I. Grounds for rehearing is appropriate in this case because Frank v. Delaware challenged the truthfulness of certain factual statements made in the police affidavit applied by the Fourth Amendment.**

It is outside of procedure to charge, convict and sentence a driving lacking probable cause of drugs or alcohol; which is what transpired in this case. Due process became a major issue when Pledger was charged on February 2, 2015 holding preliminary hearing October 29, 2015 nearly nine months later. Shortly after charges were filed, all parties of Counts I, II, III and IV settled with Pledger's insurance company Liberty Mutual under Kansas no-fault personal injury auto accident.

May 25, 2017, Pledger was convicted of three counts of Reckless, Aggravated Battery and one count of Reckless Involuntary Manslaughter. Consistent with Frank

v. Delaware, trial court here erred in refusing to examine the adequacy of petitioner's proffer of misrepresentation in the warrant affidavit; better known as insufficient evidence.

“(a) To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. The allegation of deliberate falsehood or of reckless disregard must point out specifically with supporting reasons the portion of the warrant affidavit that is claimed to be false. It also must be accompanied by an offer of proof, including affidavits or sworn or otherwise reliable statements of witnesses, or a satisfactory explanation of their absence.<sup>3</sup>”

(b) If these requirements as to allegations and offer of proof are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required, but if the remaining content is insufficient, the defendant is entitled under the Fourth and Fourteenth Amendments to a hearing.<sup>4</sup>

(c) If, after a hearing, a defendant establishes by a preponderance of the evidence that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless disregard for the truth, and the false statement was necessary to the finding of probable cause, then the search warrant must be voided and the fruits of the search excluded from the trial to the same extent as if probable cause was lacking on the face of the affidavit.<sup>5</sup>

August 23, 2017, Pledger was sentenced to six years serving four at Topeka Correctional Facility and registering as a violent offender for fifteen years for a car

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<sup>3</sup> *Frank v. Delaware*, 438 U.S. at P. 171.

<sup>4</sup> *Frank v. Delaware*, 438 U.S. at Pp. 171-172. [438 U.S. 154, 155]

<sup>5</sup> *Frank v. Delaware*, 438 U.S. at Pp. 155-156; *Frank v. Delaware*, 438 U.S. at 373 A. 2d 578, reversed and remanded

accident with no traffic infraction cited nor the probability that drug and or alcohol was a factor (See Appendix K 76a).

The majority opinion in this case hold that probable cause was “found” by a judge and a jury convicted as such. In “finding” probable cause for traffic accidents, evidence must be relevant to the toxicology results of “while” driving<sup>6</sup>. Finding of probable cause lies in the complaint under oath by the acting officer, signed, sealed and delivered by the prosecutor, then signed by a judge for a warrant. “An anticipatory warrant is ‘a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of a crime will be located at a specified place.’”<sup>7</sup> “In determining what is probable cause . . . [w]e are concerned only with the question whether the affiant had reasonable grounds at the time of his affidavit . . . for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant.”<sup>8</sup>

Plaintiff is challenging the presumption of validity afforded a warrant the affiant provided an affidavit, under oath sworn to or affirmed are essentially a verification, which is a written statement given under oath [or affirmation] where the declaration must not only refrain from making a knowingly false statement, but must also have affirmation knowledge of the statement’s truthfulness. Affidavit for Arrest Warrant (App D 8-11) under oath falsely alleged driving under in influence of alcohol and drugs. However, a plaintiff may challenge the presumption of validity afforded a warrant where the magistrate was misled by information contained in the affidavit that the affiant either (1) knew was false of (2) would have known was false had he not recklessly disregarded the truth consistent with (Frank v. Delaware 438 U.S. 154

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<sup>6</sup> 1 Defense of Drunk Driving cases: Criminal, Civil § 1.05 [c] Blood-Alcohol Concentration [g] Element of “while”; See Appendix I 70a

<sup>7</sup> *United States v. Grubbs*, 547 U.S. at 94

<sup>8</sup> *Dumbra v. United States*, 268 U.S. 435, 439, 441 (1925). “[T]he term ‘probable cause’. . . means less than evidence which would justify condemnation.”

(1978)). Pledger's KU Medical Center toxicology results are exculpatory evidence proving that drugs nor alcohol was involved on her person nor in her property. Fourth Amendment being violation is up for discussion to determine the finding of probable cause. Pledger too has the right 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."*<sup>9</sup> Procedural standards rest within the Affidavit alleging "presence of drugs and alcohol" and the actual negative toxicology results taken by KU Medical Center escorted by Detective K.T. Garrett in opposition to their finding of probable cause.

If this case is not decided with imperative public importance, more drivers with no drugs, alcohol, no contraband, and car insurance compensation would clearly state all drivers of an accident will face prison time. It presents a new question of can injured parties settle with an insurance claim and receive some social idea of criminal justice for the same conduct, the same injuries, same time and same day; which has not been, but should be settle by this Court.

### CONCLUSION

For the reasons set forth above, we respectfully request that the Court grant this petition for rehearing en banc.

Dated: February 14, 2023

Respectfully Presented,

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<sup>9</sup> United States Constitution Amendment IV