23-5112

No.

IN THE

Supreme Court of the United States

KASHIF M. ROBERTSON- PETITIONER

v.

COMMONWEALTH OF PENNSYLVANIA- RESPONDENT

On Petition For Writ of Certiorari

To The Pennsylvaina Court's non-precedential decision, entered August 16, 2022, reconsideration denied October 26, 2022, docketed at 1161 MDA 2021 which affirmed the judgment of sentence entered August 25, 2021 in the Dauphin County Court of Common Pleas at CP-22-CR-0002292-2019.

PETITION FOR WRIT OF CERTIORARI

/S/ Kashif M. Robertson
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QUESTION(S) PRESENTED

1. Whether the State Court's of Pennsylvania Committed Reversible Error by Lowering the Fourth Amendment Standard that Reviewing Court's Must Look at the Whole Picture and the Requisite that an Officer Must Articulate ("Specific and Articulable Fact's) to Reach a Particular Quantum of Cause to Permit a Traffic Stop for a Motor Vehicle Code Violation Pursuant to State Statute. Did the State Court of Appeals Err by Finding the Officer in Question Testimony Established Probable Cause to Support the Stop?

2. Whether the Unrelated Questioning of Petitioner Concerning his Status of Supervision by the Officer Deviate from the Seizure's Mission of the Traffic Stop, and Unreasonably Prolong the Stop of Petitioner Beyond the Time Necessary to Advise Petitioner he was Free to Leave the stop without a Warning, and Then Seized Again by the Probation Partner's of the Officer for the Same Facts Presented to the Officer. Did the Extension of the Traffic Stop Violate Petitioner's Fourth Amendment Right's Under This Court's Holding in Rodriguez, and in the Alternative was the Seizure by Probation a Continuation of the Traffic Stop, although Police Advised him he was Free to Leave, and if so Did the Seizure Violate the Fourth Amendment?

3. Whether the Probation Partner's of the Police Unit Lacked Reasonable Suspicion to Seize Petitioner, After he was Released from the Traffic Stop Without a Warning. Probation was Not Familiar with Petitioner or his Particular Case for the Probation. Did the State Court's Violate Petitioner's Fourth Amendment Right's in Finding Reasonable Suspicion Existed to Seize and Search him and his Property, for the same Facts available to Police Whom Did Not Believe they Possessed Reasonable Suspicion to Continue the Stop?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

There are no criminal related cases, only civil matters pending in the Middle District of Pennsylvania.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided this case was August 16, 2022. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on October 26, 2022, and a copy of the order denying rehearing appears at Appendix A.

Petitioner's, Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court on May 9, 2023, making this Petition requesting a writ of ceritorari due on or before August 7, 2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amend.

Article 1 § of the Pennsylvania Constitution.

United States Constitution Fourth Amendment.

Pennsylvania Statutory Provision(s)

Title 42 Pennsylvania Consolidated Statute § 9754(b); See App'x I

42 Pa.C.S. § 9763; See App'x I

42 Pa.C.S. § 9776; See App'x I

42 Pa.C.S. § 9912; See App'x I

67 Pa.Code § 175.67(d)(4); See App'x I

67 Pa.Code § 175.265; See App'x I

67 Pa.Code § Table X; See App'x I

75 Pa.C.S.A. § 4107 (b)(2); See App'x I

75 Pa.C.S.A. § 4524(e)(1)-(2)(i)(ii); See App'x I

75 Pa.C.S.A. § 6308(b);

Rule(s)

Pennsylvania Rule of Appellate Procedure 126(b)(1)-(2); See App'x I

Pennsylvania Rule of Criminal Procedure 581 (H); See App'x I

STATEMENT OF THE CASE

Petitioner, was arrested on February 2, 2019, by Officer Chad McGowan of the Harrisburg City Police Department for drug offenses. On August 1, 2019, Petitioner filed an all en-compassing Omnibus Pre-Trial Motion ('OPTM'), "raising his Fourth Amendment claims raised herein requesting the suppression of all evidence seized as a result of the illegal searches and seizure." "A Supplemental OPTM was filed on October 28, 2019, asserting additional grounds for suppression of the evidence pursuant to the Fourth Amendment." A hearing was held on these motions on February25, 2020, thereafter, the parties filing of briefs, Robertson's OPTM was denied on August 11, 2020.

Robertson, proceeded to a jury trial on March 10, 2021 and found guilty at count 1, 2, and 9 and was ultimately sentenced o 2 1/2 to 5 years at count 1; 5 years consecutive probation at count 2, and no further penalty at count 9. A timely Post-Sentence Motion was filed on June 7, 2021, "challenging the constitutionality of the stop and subsequent seizures of Robertson arguing that the officer failed to articulate a reasonable suspicion to support the traffic stop," and "probation lacked reasonable suspicion to seize him as well since he was never sentenced to any conditions by his sentencing judge for the probation." A hearing was scheduled for August 25, 2021, Robertson, was present for the hearing to address his post-sentence claims. Robertson's "suppression issues were again denied without elaboration." A timely notice of appeal was filed on September 1, 2021, thereafter, Robertson was directed to file a concise statement of his issues "which he timely complied on September 28, 2021". Robertson timely filed his brief's with the Superior Court of Pennsylvania, "fully addressing the issues concerning reasonable suspicion to support the traffic stop," "the 'unrelated questioning' unlawfully extending the traffic stop where the stop was prolonged due to the 'off-mission inquiry, and the legality of the seizure and searches of his person and property by probation." Robertson addressed that probation lacked the requisite conditionsto search him or his property, having never received any conditions by his sentencing judge. In particular, a search condition so any conditions presumed to exist by probation were null and void since by statute only the sentencing judge can issue said conditions not any probation offices or individual officer". Additionally, "case-law required additional factors than exist in this case to authorize either the seizure or searches of Robertson by probation." That Court issued its opinion affirming the denial of suppression and remanded the case to the Court of Common Pleas. Appendix A. Petitioner, filed an Application for Reargument on August 30, 2022, the application was denied on October 26, 2022. Id. Petitioner, filed a Petition for Allowance of Appeal on November 28, 2022, which was denied on May 9, 2023. Appendix D.

REASONS FOR GRANTING THE PETITION

Robertson, asserts Rule 10(a),(c), for consideration governing review for certiorari by This Honorable Court. Specifically, the Pennsylvania Superior Court has sanctioned a decision in contrast with other opinions of the United States Appeal's Court's, as well as This Court on the same important issues of the United States Constitution's 4th Amendment. In doing so, the court has departed from the established norms, and usual course of judicial precedent of this Learned Court's standard in Rodriguez v. United States, 575 U.S. 348 (2015) expressed, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. The Superior Court have decided an important Federal question in a fashion that conflicts with long standing principal's of this court. Not only is the opinion of the state court in contravention with the precedent of this Court, but the Third Circuit Court of Appeal's, and other Circuit Court's of Appeals on the same relevant matter. The National importance for each issue is compelling since the state court's decision reduces the standard to establish reasonable suspicion, and probable cause to conduct a traffic stop, as well as lowering the requisite standard that an officer must articulate specific facts to setforth a reasonable suspicion for any form of a seizure. This matter is important to all American's as it pertains to the 4th Amendment expectation of privacy, involving the stop of a motor vehicle, and extension of that traffic stop. Further, a matter regarding the rights of American citizens who may be serving a probationary sentence, without conditions imposed by the state court, whether it would be lawful for a probation officer to presume a violation of a condition without any familiarity of that officer with the probationer's specific conditions? Particularly, is there a Fourth Amendment violation of a motorist who's told their free to leave, then immediately seized again by a probation partner of the investigative team, for the same factors presented to police prior to bidding the driver fairwell? Overall, the state court's opinion's are an embarrassing portrayal of upholding the interest of justice by subjectively rather than objectively applying the law to an incident involving a lower class citizen wiht the limited ability to retain more formidable representation, to adequately argue in his/her behalf. The following identifies issues worthy of this Court to exercise its discretionary jurisdiction:

I. Whether the State Court's of Pennsylvania Committed Reversible Error by Lowering the Fourth Amendment Standard that Reviewing Court's Must Look at the Whole Picture and the Requisite that an Officer Must Articulate ("Specific and Articulable Fact's") to Reach a Particular Quantum of Cause to Permit a Traffic Stop for a Motor Vehicle Code Violation Pursuant to State Statute. Did The State Court of Appeals Err by Finding the Officer in Question Testimony Established Probable Cause to Support the Traffic Stop?

The Fourth Amendment protects the public from "unreasonable searches and seizures," U.S. Const. Amend. IV. "A traffic stop is a 'seizure' within the meaning of the Fourth Amendment, 'even though the purpose of the stop is limited and the resulting detention quite brief." Delaware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed. 2d 660 (1979). "Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause." United States v. Robertson, 305 F.3d 164, 167 (3d Cir. 2002)(citation omitted). "A well-established exception to the 4th Amendment's warrant requirement permits an officer to conduct a brief, investigatory stop when the officer has a reasonable articulable suspicion that criminal activity is afoot." United States v. Lewis, 672 F.3d 232, 237 (3d Cir. 2012)(quoting Illinois v. Wardlow, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)(citing Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); see Lewis, 672 F.3d at 237 ("The requirement of reasonable suspicion for a Terry stop-and-frisk applies with equal force to a traffic stop of a vehicle."). The government bears the burden of showing that the requirement of reasonable suspicion has been met. United States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995) ("As a general rule, the burden of proof is on the defendant who seeks to

suppress evidence. However, once the defendant has established a basis for his motion, i.e., the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable."). This Court [has] established a bright-line rule that any technical violation of a traffic code legitimizes a stop, even if the stop is merely pretext for an investigation of some other crime." United States v. Mosley, 454 F.3d 249, 252 (3d Cir. 2006)(citing Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

Here, both the the trial court and State Court of Appeals reached nearly identical conclusions only differing on the requisite cause met by Officer McGowan to support the traffic stop. The trial court's analysis is premised on a belief a reasonable suspicion was satisfied, and the latter holding the higher quantum of probable cause being met. See Appendix A, at 10-11; Appendix B, at 3. Both the state court's erroneously rely on the officer's bare bones statement that "Petitioner's front driver's window was covered with an illegal aftermarket window tint," and his purported testing of the window tint revealing that it registered 17% light transmission, which is well below the 70% allowed by state law. id. at 15. Id. This finding however pertaining to when or if the officer in fact tested the window tint is unsupported by the record. See Appendix E, at 15-16; see Commonwealth v. Neysmith, 192 A.3d 184, 187-88 (Pa.Super.2018); citing Ornelas v. United States, 517 U.S. 690, 699-704 (1996). In fact, McGowan openly concedes he could not confirm at which point, if at all, when he could have tested the window, either on his initial approach, second approach, or when Robertson

was taken into custody, which could not establish either quantum of cause. Id. Irregardless, a Panel of the Superior Court of Pennsylvania issued a conflicting opinion on this exact same scenario in an unpublished opinion in Commonwealth v. Khan, 2021 Pa.Super.Unpub.LEXIS 1186 *6-7 (Pa.Super.2021), where it found that neither reasonable suspicion or probable cause could be established by the testing of the window tint. Id. Particularly, the Panel stated by the time the officer could have measured the window tint, a seizure had already occurred. Id. In determining whether this seizure was supported by reasonable suspicion, the court's must consider only the facts known to the officer prior to effectuating the traffic stop. Id.; see Pa.R.A.P. 126(b)(stating that unpublished non precedential decisions of the Superior Court filed after May 1, 2019, may be cited for persuasive value).

Additionally, the suppression court did not credit the testimony of McGowan or any witness for that matter, and even if it had, when the testng of the window actually occurred is unsupported by the record and irrelevant to the purpose for the stop. Ornelas, 517 U.S. at 699-704; App'x E, at 15-16. Petitioner, asserts he was subjected to an unlawful traffic stop pursuant to the 4th Amendment, since McGowan lacked the requisite reasonable suspicion, because he failed to articulate specific facts which led him to suspect in light of his training and experience that a particular motor vehicle code ('MVC') was violated. See Lewis, 672 F.3d at 237; Johnson, 63 F.3d at 245; United States v. Arizu, 534 U.S. 266, 273, 102 S.Ct. 744, 151 L.Ed.2d 740 (2002). At no time in McGowan's testimony on direct examination does

he specify any factors which led him to believe the window tint on the front driver's window was unlawful, nor does he specify any specific MVC statute which he believed to be violated due to his training and experience with other traffic stops involving illegal window tint. Id.; App'x E, at 5-20. More importantly, McGowan never attests to being unable to see within the vehicle, or assert any particularized explanation which met the requisite reasonable suspicion to stop Petitioner's SUV. Id. The only way for a reviewing court to determine the specific statute McGowan believed supported the traffic stop the court would have to look to the Criminal Complaint to this necessary fact since he never articulates a specific MVC violation for the stop, and originally freed Robertson from the stop absent any warning or citation. Id. at 9-11, 15-16, 19-22.

In Pennsylvania title 75 Pa.C.S.A. § 6308 pursuant to the Vehicle Code states:

> "Whenever a police officer is engaged in systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the drivers license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title."

McGowan, initiated the stop due to the presumption Robertson's vehicle violated the Department of Transportation inspection manual. See 75 Pa.C.S.A. § 4107(b)(2). This section of the MVC operates as a catchall prohibiting an individual from operating a motor vehicle that is in violation of

the Pennsylvania Department of Transportation ('PennDOT') regulations. Id.; Khan, 2021 LEXIS 1186*5. Although, this particular regulation references 67 Pa.Code. § 175.67(d)(4), as it relates to window glazing. Section 175.67(d)(4) subject to certain exceptions and specific requirements, provides that:

> "A sun screening device or other material which does not permit a person to see or view the inside of the vehicle is prohibited, unless otherwise permitted by FMVSS No. 205, or a certificate of exemption has been issued in compliance with § 175.265 (relating to exemption provisions). See Table X for specific requirements for vehicles subject to this subchapter. Passenger car requirements relating to the rear window are delineated by vehicle model year in Table X.

The regulation refers to yet another section at 67 Pa.Code Table X, which requires that windows in Trucks & Multi Purpose Passenger vehicles front side windows/wings, and windshield meet at least a 70% light transmittance level, however, the rearside windows/wings, and rear window have no such requirement. 67 Pa.Code § 175 Table X. Due to the very definition of the specific code, reasonable suspicion was required to validate the traffic stop. See 75 Pa.C.S. § 4107 (b)(2); 67 Pa. Code § 175.67(d)(4), 175 Table X.

Petitioner, would like to point out to this most Learned Court, that the State Court of Appeals never identifies this particular section of the inspection manual in concluding McGowan possessed probable cause, by simply stating he observed "Appellant's front driver's window was covered with an illegal aftermarket window tint." See App'x A, at 10-11. The additional finding that McGowan tested the window and it coming back lower than the required standard as shown above is both

irrelevant and in conflict with another opinion in the same court as to whether that finding alone amounts to probable cause or reasonable suspicion. Khan, 2021 LEXIS *6-7. Undoubtedly, Khan, supra refutes the finding in this case probable cause was met by the testing of the window which is after the seizure had occurred. Id.; Lewis, 672 F.3d at 237.

Furthermore, in a published opinion from the Pennsylvania Superior Court in Commonwealth v. Prizzia, 260 A.3d 263, 269-70 & fn.2 (Pa.Super.2021), that panel expressed a clearer view, although, for a different regulation for window tint pursuant to 75 Pa.C.S. § 4524 (e)(1), where it held: "Under section 4524 (e)(1), "[t]int is illegal if, from the point of view of the officer, he or she is unable to see inside of a vehicle through the windshield, side wing, or side window." Cartagena, 62 A.3d at 305 (citations omitted). Section 4524 (e)(2) sets forth exceptions, or affirmative defenses, to criminal culpability for a violation of (e)(1), which are the defendant's burden to prove. Thus, an officer who observes a window tint violation under section 4524(e)(1) has no burden to confirm that an (e)(2) exception does not apply before he or she has probable cause to stop the vehicle. Rather, to possess probable cause that a vehicle is in violation of section 4524(e)(1), an officer must only observe that the tint on the vehicle's windows is so dark that it prohibits the officer from seeing inside the car." Id. 260 A.3d at 269-70.

With this in mind, although the MVC and inspection manual when

dealing with window tint are similar they have distinct definitions. Specifically, Section 175.67(d)(4), encompassed within the definition are exceptions which would require further investigation of the officer before initiating the stop, such as knowing the vehicle does not have a certificate of exemption or at the least cause to believe it does not. Also, the officer must know the vehicle type and the requisite light transmittance levels for each particular class of vehicle. See 75 Pa.C.S. § 4107(b)(2); 67 Pa. Code § 175.67(d)(4), § 175.265(exemption provisions), § 175 Table X. Thus, by definition as stated in Khan, supra "because the offense of unlawful activities based on window tint required additional investigation for McGowan to determine whether Petitioner's vehicle complied with the light transmittance requirements of the Vehicle Code, reasonable suspicion was required to support the traffic stop." Khan, 2021 LEXIS *6. Based on the facts of this case an application of the standard of reasonable suspicion was required by the state court's which did not happen, and the presumed establishment of probable cause permitted the Court of Appeals to forego the rightful examination of this Fourth Amendment seizure. App'x E, at 5-20; Lewis, 672 F.3d at 237; Johnson, 63 F.3d at 245.

Surely, McGowan initiated an unlawful traffic stop of Petitioner as a pretext to investigate the potentiality that another crime or probation or parole violation may exist, with him being partnered with both County and State probation and parole. App'x E, 4-22. Essentially, a violation of the

traffic code was not setforth by McGowan by articulating any specific facts to believe the specific section of the inspection manual was violated. Arizu, 534 U.S. at 273; Mosley, 454 F.3d at 252. Due to the make, model and year of the vehicle ('Mercedes, ML350, 2008'), the inspection manual permits the rear side windows/wings, and rear window to be as dark as desired. 67 Pa. Code § 175 Table X(Multi-Purpose Passenger Vehicles).

Particularly, McGowan made no mention of being unable to see inside the vehicle through the front driver window or windshield. App'x E, at 5-20. This however, is exactly what the inspection manual states is unlawful. 67 Pa. Code § 175.67(d)(4). McGowan, makes no reference to his training and experience with similar vehicles possessing illegal window tint which enabled him to suspect the window tint on the front driver's window was unlawful. App'x E, 4-22. Moreover, McGowan never actually investigated the 'seizures mission' to dispel his suspicion that the front driver window possessed unlawful window tint, but instead immediately investigated unrelated matters. Id. In fact, he did not even claim to have conducted any previous traffic stops for window tint to compare. Id. When asked if he were aware if the vehicle possessed a medical exemption he was not sure if he made such an inquiry, or if Robertson volunteered that information. Id. at 16; 67 Pa. Code § 175.265. McGowan's claim that Robertson's vehicle possessed aftermarket and illegal window tint on the front window was nothing more than an unparticularized hunch, and conjecture as it lacks supporting

evidence, such as an explanation as to how he drew such a conclusion with a reviewing court being unable to see the vehicle to confirm. United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989); United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981) ("An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity."). This level of suspicion is "less than proof of wrongdoing by a preponderance of the evidence [and]... less demanding than that for probable cause. Sokolow, 490 U.S. at 7(internal citations omitted); see also Commonwealth v. Holmes, 14 A.3d 89, 95-97 (Pa.2011); Prizzia, 260 A.3d at 269-70. It is evident by both the inspection manual and the MVC that there is no such thing as illegal aftermarket window tint. The law in Pennsylvania when dealing with motor vehicles and window tint is dictated by visibility light transparency specifications alone. Window glazing itself is not unlawful. It was the duty of the reviewing court to independently evaluate whether, under the particular facts of this case, an objectively reasonable police officer would have suspected criminal activity was afoot. Holmes, 14 A.3d at 96. This evaluation was not administered by the court's in particular the Court of Appeals. In Holmes, the State Supreme Court recognized the concerns expressed by this Learned Court in Terry v. Ohio, noting that, "before the government may single out one automobile to stop, there must be specific facts justifying this." Id. 14 A.3d at 96. "To otherwise would be to

give police absolute, unreviewable discretion and authority to intrude into an individual's life for no cause whatsoever." Id. Indeed, the Pennsylvania Supreme Court in this case ignored this very mandate of its own authority by denying discretionary review, in an act of collusion with the state court of appeals.

In accord, with the holding in Holmes, the testimony at the suppression hearing in this case was insufficient to support an independent evaluation of the trial court that McGowan had reasonable suspicion to stop Petitioner for a suspected violation of 75 Pa.C.S. § 4107 (b)(2). As noted abovve, McGowan failed to assert any specific-articulate facts, for example, providing a photo or video recording of the window which in conjunction with reasonable inferencesof his training and experience with similar stops led to his belief that criminal activity was afoot, especially since he took the vehicle into police custody after Petitioner's arrest. App'x E, at 24; Arizu, 534 U.S. at 273; Cortez, 449 U.S. at 417-18; Prizzia, 260 A.3d at 269-70. The state court's failed to perform a legitimate evaluation whether the officer had at least a reasonable suspicion to justify a vehicle stop. Holmes,14 A.3d at 97-98; Lewis, 672 F.3d at 237; citing United States v. Johnson, 592 F.3d 442, 447 (3d Cir.2010).

The State appeals court did precisely what the Holmes court instructed the state courts not to do, which is obviate the suppression court's role in ensuring there is an objectively reasonable basis for the vehicle stop, and

expose every law abiding motorist who places window glazing on their vehicle to an unwarranted intrusion. Holmes, 14 A.3d at 99; citing Terry, 392 U.S. at 21-22. In sum, the opinion of the appeals court in this case is in conflict with another unpublished opinion in the same court on the basis that the testing of a windows light transmittance levels establishes probable cause or not. Khan, 2021 LEXIS 1186* 5-7. There are no other published or precedential opinions in the state of Pennsylvania discussing title 75 Pa.C.S. § 4107 (b)(2); referencing 67 Pa.Code § 175.67(d)(4); 67 Pa.Code § 175 Table X. This case is worthy of this Honorable Court's attention which effects any and all motorist (citizens of the United States), traveling through Pennsylvania with window tint to be subject to unlawful traffic stops when the standard to engage in traffic stops for window tint is not sufficientyly upheld in the state and the state has lowered the standard of reasonable suspicion required to satisfy traffic stops for window tint, according to the required amount of evidence the government must produce in order to meet its burden as demonstrated supra. Johnson, 63 F.3d at 245.

II. Whether the Unrelated Questioning of Petitioner Concerning his Status of Supervision by the Officer Deviated from the Seizure's Mission of the Traffic Stop and Unreasonably Prolonged the Stop of Petitioner Beyond the Time Necessary to Advise Petitioner he Was Free to Leave the Stop without A Warning and Then Seized Again by the Probation Partners of the Officer for the Same Facts Presented to the Officer. Did the Extension of the Traffic Stop Violate Petitioner's Fourth Amendment Right's Under This Court's Holding in Rodriguez?

Alternatively, Petitioner further argues to this Learned Court that his Fourth Amendment rights were violated due to the unrelated inquiry of McGowan pertaining to whether he were on any supervision. App'x E, at 8-10. Again, during a traffic stop, the Fourth Amendment allows officers to conduct an investigation unrelated to the reason for the stop, so long as that unrelated investigation does not lengthen the roadside detention. Arizona v. Johnson, 555 U.S. 323, 333, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009). If the unrelated investigation 'measurably extend[s] the duration of the stop,' then the seizure is unlawful unless the officer possesses another basis of reasonable suspicion or probable cause. Id. at 333. The lawful seizure "ends when tasks tied to the traffic infraction are-or reasonably should have been-completed." Rodriguez v. United States, 575 U.S. 348, 354 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015)(citing United States v. Sharpe, 470 U.S. 675, 686, 105 S.Ct. 1568, 84 L.Ed.2d 605. Notably, the Court of Appeals across the United States all are in unison in following the mandate of this Honorable Court that an officer may freely make unrelated inquiries of a driver and his passenger(s) as long as the 'unrelated inquiry' does not measurably prolong the traffic stop.

Additionally, the Court of Appeals application of Rodriguez across the United States are in agreeance that unrelated mission inquiries can violate the Fourth Amendment if it unreasonably extends a traffic stop absent the requisite establishment of an independent basis for reasonable suspicion

other than the original purpose for the stop. However, the Pennsylvania Court's opinion in the case sub judice does not comport with this dictate and has instead applied an erroneous standard to the facts, in doing so, have impermissibly taken away the force of this Court's ruling in Rodriguez and ultimately rendered an opinion which conflicts with Rodriguez, and which violated Robertson's Fourth Amendment right to be free from unreasonable seizures and searches. See App'x A, at 11-12; App'x B, at 4; Rodriguez, 575 U.S. at 350.

Rodriguez, provides the basis for Robertson's challenge to the unreasonable extension of the traffic stop. In Rodriguez, a police officer assigned to a K9 unit stopped the defendant for unsafe driving. 575 U.S. at 351. After checking the defendants's license and registration, the officer returned to the defendant's vehicle to ask for the passenger's license and question the occupants about their travel plans. Id. The officer checked for outstanding warrants on the passenger but found none. Id. Despite this, the officer summoned backup. Id. The officer then returned the defendant and the passenger's identification and issued the driver a written warning-thus completing the traffic stop. Yet instead of allowing the defendant to drive away, the officer asked for consent to walk his K9 dog around the vehicle. Id. at 352. The defendant declined so the officer ordered him and the passenger out of the vehicle. Once backup arrived, the officer searched the car, and the K9 dog alerted to the presence of drugs. Id. The defendant

argued that the officer's conduct conflicted with the Fourth Amendment. This Court agreed, holding that a "police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitutions shield against unreasonable seizures." Id. at 350. In the context of a dog sniff, This Court observed that the "critical question is whether conducting the sniff prolongs-i.e., adds time to the stop." Id. at 357. This Court noted that an officer's "mission" during a traffic stop includes determining "whether to issue a traffic ticket" and making "ordinary inquiries incident to the traffic stop." Id. at 355(quoting Illinois v. Caballes, 543 U.S. 405, 408, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). And a dog sniff to "detect evidence of ordinary criminal wrongdoing" completely unrelated to the alleged traffic violation "is not fairly characterized as part of the officer's traffic mission." Id. at 355-56.

Furthermore, questions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop as well. United States v. Givan, 320 F.3d 452, 459 (3d Cir. 2003). Inquiries and delays incident to an officer's safety also fall within the permissible scope of a traffic stop because the government's officer safety interest stems from the mission of the stop itself. Rodriguez, 575 U.S. at 356-57. "Traffic stops are especially fraught with danger to the police officer's, so an officer may need to take certain negligibly burdensome precuations in order to complete his mission safely. Id.; (quoting Johnson, 555 U.S. at 330). However, ordinary inquiries do not include "measure[s] aimed at detecting evidence of ordinary criminal

wrongdoing." Rodriguez, 575 U.S. at 356. "On-scene investigation into other crimes" "detours" from the mission of enforcing the traffic laws and ensuring officer safety inherent in each traffic stop. Id. 575 U.S. at 356-57.

The contours of "reasonable suspicion" have been thoroughly outlined by this Court and the Third Circuit Court which covers Pennsylvania. "An inchoate hunch does not satisfy the standard of reasonable suspicion; rather, the Fourth Amendment requires that law enforcement have some minimal level of objective justification for making the stop." Sokolow, 490 U.S. at 7; Cortez, 449 U.S. at 417 (When determining whether there was a basis for reasonable suspicion, a court must consider the totality of the circumstances, in light of the officer's experience." Givan, 320 F.3d at 458. The totality of the circumstances standard enables officers to draw on their own experience and specialized training to make inferences from deductions about the cumulative information available to them that might well elude an untrained person." Id). Thus, courts are not permitted to analyze factors individually, as innocent factors taken together may appear suspicious to an experienced officer." Terry, 392 U.S. at 22-23.

Importantly, "where reasonable suspicion for the traffic stop" or, the extension of the stop to include investigation beyond the ordinary inquiries incident to the traffic stop, "is lacking, the evidentiary fruits of the traffic stop must be suppressed." Lewis, 672 F.3d at 237 (citing Johnson, 592 F.3d at 447).

Instantly, the facts of this case departed from these standards as it relates to Rodriguez. Where the 'unrelated inquiry,' and "alleged" response to that inquiry extended the overall duration of the stop. Specifically, after being advised by McGowan he was free to leave the traffic stop, Robertson was seized by his probation partners, where both his person and property were searched for an additional hour and thirty-four minutes until evidence in which to arrest him was finally located. At that point, police dispatch is contacted for the first time by McGowan. App'x F, Dispatch Report; App'x G, Police Report; see App'x E, 9-11, 18-23, 39-49.

Here, neither the trial court or the state court of appeals, made any analyses or finding that an independent reasonable suspicion existed to support the off-mission task, which prolonged the seizure of Petitioner beyond the time the traffic stop should have reasonably ceased. Johnson, 555 U.S. at 327-28; Caballes, 543 U.S. at 407; Rodriguez, 575 U.S. at 355-57; see App'x A, 11-12; App'x B, 4. In fact, the state court of appeals merely reitterated the rationale setforth by the lower court in its decision, which focused on the testimony of McGowan at the evidentiary hearing that vaguely addressed the length of time he believed it took to advise Petitioner he were free from his part in the stop, absent issuing any warning for traffic infraction. Id.; App'x E, 8-10, 19-21, 41-42. Indeed, what is overlooked here as stated supra, is the additional hour and 34 minutes that elapsed before dispatch is first contacted without Robertson being stop in a different traffic

stop. Robertson, was then cited for the traffic infraction, after the struggle, and subsequent searches by probation once it was certain he would be arrested. However, he was originally freed from this stop by police from the traffic stop addressed ad nausea, yet is then being cited for an unestablished traffic offense, since if McGowan had the cause to cite him initially he would have without being able to articulate the purpose for the stop. App'x E, 8-11, 17-23. Notably, Probation acted on an inchoate hunch, assuming Robertson was subject to conditions, let alone a search condition. Id. at 39-49; Sokolow, 490 U.S. at 7; Cortez, 449 U.S. at 417-18. The traffic mission was never investigated by McGowan, being the 'window tint violation' which he admits. Id. at 8-10, 15-19. Instead, McGowan used the traffic stop as a pretext, to conduct 'unrelated criminal checks' to then tag in his probation and parole partners into the stop, which unreasonably prolonged the traffic stop. Johnson, 555 U.S. at 333; United States v. Clark, 902 F.3d 404, 410 & n.4 (3d Cir. 2018).

Surely, what the state court's ignore is the fact the authority for the seizure of Robertson reasonably should have ended once the tasks tied to the infraction were completed, after McGowan conducted the permissible mission related inquiries. Caballes, 543 U.S. at 407; Rodriguez, 575 U.S. at 354-56; Sharp, 470 U.S. at 686 (in determining a reasonable duration of a stop, "it [is] appropriate to examine whether the police diligently pursued [the] investigation."). McGowan openly concedes that he did not even advise

Robertson why he stopped him, or possess an independent reasonable suspicion to further the detention, but believed his probation partners did based on the 'alleged' lie to him that Robertson was not being supervised. App'x E, 8-10, 17-24, 27-31, 39-45, 47-49.

Nonetheless, the unrelated inquiry certainly prolonged the seizure by Probation, because of the information purportedly gained from the inquiry, and for the same traffic stop he was freed from, probation felt was enough to continue the stop, and search Robertson and his property. Id. at 9-10, 17-22, 27-31, 39-45. Undoubtedly, the record is clear the state court's avoid factors which are highly relevant to this Fourth Amendment analysis. First, the state court's fail to analyze the entire picture, and limit its review as to whether the stop was prolonged to McGowan's initiation of the traffic stop and advisement to Petitioner he were free to leave, which believed lasted no longer than 15 minutes. Id. at 10; Arizu, 534 U.S. at 237; Cortez, 449 U.S. at 417-18. Next, the court's overlook the time which elapsed all while probation conducted several searches of his person and property until backup is summoned from dispatch to arrest Robertson. App'x F; App'x G; Rodriguez, 575 U.S. at 354-56; Clark, 902 F.3d at 410 & n.4; Givan, 320 F.3d at 458. Subsequently, the rule under Rodriguez was not appropriately applied to the facts in this case. App'x A, 11-12; App'x B, 4.

Therefore, Petitioner has yet to receive an adequate review as to whether the traffic stop was unreasonably prolonged by the 'unrelated

inquiry' in violation of his Fourth Amendment right's. Whereas here, an reasonable suspicion aside from the traffic stop did not exist to warrant the off mission investigation into Petitioner's supervision status, which was not pursuant to any safety concern or travel itenerary. Rodriguez, 575 U.S. at 355-57; Johnson, 555 U.S. at 330; Givan, 320 F.3d at 458-59. Absent this inquiry, the information gained therefrom, probation would not have had reason to address Robertson or conduct another seizure prolonging the stop. No factors in the totality of the circumstances exist to justify the prolonged detention once McGowan went off-mission from the mission related inquiries, thereafter advising him he was free to leave. Id.; see Clark, 902 F.3d at 410 & n.4; In Re A.A., 195 A.3d 896, 910 (Pa.2018); App'x E, 8-10, 13-21.

In toto, a full and fair review of this Fourth Amendment claim has yet to occur here, and the state appeals court's have misapplied the progeny of Rodriguez, Johnson, Caballes, and Sharp to this matter. The actions of the investigative unit has been disregarded to the detriment of Robertson's constitutional right he still possessed.

The Third Circuit has issued four precedential decisions interpreting Rodriguez - two prior to Robertson's arrest and two released prior to his appeal of his suppression motion. They say the following:

In United States v. Clark, the Third Circuit held that an officer unlawfully extended a traffic stop by unreasonably questioning the driver about his criminal history after tasks tied to the mission of the stop "reasonably should

have been completed." 902 F.3d 404. While the criminal history questioning lasted only 20 seconds, the Third Circuit stated that brevity does not control whether an officer's question was "off-mission". See id. at 410 & n.4.

The Third Circuit also decided United States v. Green, 897 F.3d 173 (3d Cir.2018). There the Court of Appeals observed that " the Rodriguez rule is far easier to articulate than to apply." Id. at 179. That is because "pin-pointing the so-called Rodriguez moment"-the moment when tasks tied to the traffic stop are completed or reasonably should have been is more art than science. Id. The Court acknowledged that the Rodriguez moment possibly occurs once the officer stops conducting tasks tied to the traffic stop even though the officer reasonably could have continued with on-mission tasks. Id. at 182(citing Rodriguez, 575 U.S. at 355). Green also suggested that, in appropriate cases, district court's might sidestep the difficult task of pinpointing the actual Rodriguez moment by simply assuming the defendant's proposed potential Rodriguez moment. Id. at 179. There, the Court of Appeals concluded the earliest the Rodriguez moment occurred was when the officer pursued an off-mission task by making a call related to drug trafficking and was "no longer concerned with the moving violation." Id. at 182. In Green, even when the Court assumed the earliest Rodriguez moment, it still held that the seizure was lawful because the officer possessed reasonable suspicion of illegal activity when the Rodriguez moment arrived. Id. Importantly, the defendant's claim that the traffic

infraction was merely a pretext to stop his vehicle did not alter the Third Circuits application of Rodriguez. Id. at 178 n.3, 181-87.

The Third Circuit next decided two additional Rodriguez-related decisions, the first being United States v. Garner, 961 F.3d 264 (3d Cir. 2020). There an officer stopped a speeding vehicle. Id. at 269. Before making the stop, the officer ran a license plate check on the vehicle and learned it was a rental car. Id. at 267-68. As the officer approached the vehicle, he could see the driver and passenger in the front seats. And he noticed that the bar code sticker typically found on rental car windshields was missing. Id. The officer then smelled a strong air freshener odor coming from the vehicle and saw air fresheners clipped to each vent. Id. During his initial conversation with the driver, he learned that the two men were "traveling along I-81 between New York City and Hagerstown, which [he] knew to be a drug trafficking corridor." Id. at 272. The officer further learned the rental agreement for the vehicle appeared to have expired. Id. Then, before returning to his vehicle to run the driver's license, the officer asked "a series of questions about [the driver's] employment, prior traffic tickets, and criminal history." Id. at 268. The officer continued the roadside detention, asking additional questions before eventually seeking consent to search the vehicle. Id. at 268-69. The driver declined, so [the officer] called in a k-9 unit, which uncovered cocaine and heroin in the trunk. Id. The Third Circuit upheld the legality of the seizure in Garner. The Court noted that checking the driver's license,

searching for outstanding warrants against the driver, and the vehicle's registration and proof of insurance were "tasks ordinarily... tied to the mission of a traffic stop." Id. at 271 (citing Rodriguez, 575 U.S. at 355). The Court reiterated that some questioning relating to a driver's travel plans ordinarily fall within the scope of a traffic stop." Id. (first citing Givan, 320 F.3d at 459; and citing Clark, 902 F.3d at 410). The Court "concluded the earliest the Rodriguez-moment occurred was when [the officer] began asking the driver of his employment, family, criminal history, and other conduct unrelated to the traffic stop." id.

The Third Circuit held the officer did not unlawfully extend the stop, because his aggregate knowledge at the Rodriguez moment equates to reasonable suspicion. Id. at 271-72. In particular, they held that 1) the missing windshield sticker; 2) the air fresheners attached to every vent; 3) travel on I-81, a known drug corridor; 4) the expired rental agreement, and 5) exteme nervousness on the part of the driver, considered in total, were "sufficient to show [the officer's] suspicion of illegal activity was objectively reasonable." Id. at 272. So the Court surmised an unlawful extension of the traffic stop never occurred." Id. at 271.

Next, the Third Circuit decided United States v. Wilson, 960 F.3d 136 (3d Cir.2020). There, an officer stopped a vehicle for tailgating and changing lanes without signaling. Id. at 145. Like most cases applying Rodriguez, the traffic stop concluded with the defendant arrested for a non-traffic offense.

Id. at 144-46. Unlike Garner and Green, the Circuit Court did not pinpoint the Rodriguez moment in Wilson. Instead, the Court concluded that "within minutes, [the officer] acquired suspicious facts to give him cause to investigate further." Id. at 145. Consistent with Green, the defendant's argument that the traffic stop was pretextual did not impact the Court's Rodriguez application. Id. at 144-46 ("pretext is irrelevant" when asking whether the officer had reasonable suspicion to extend the stop beyond the traffic infraction.). In Wilson, the officer called dispatch for a license check, but because he already developed reasonable suspicion, the Third Circuit concluded there was no need to wait for the results from dispatch before investigating non-traffic crimes. Id. at 145-46. The Third Circuit pointed to four facts that provided reasonable suspicion of drug trafficking. First, the defendants were driving through North Carolina in a rental car they picked up the day before in Philadelphia, but the person named in the rental agreement was not present. Id. at 146. Second, the defendant's claimed they were headed to Georgia for a week, yet the car was rented for a month, and they had no luggage. Id. Third, when questioned by the officer about the reason for the trip, the defendant's gave conflicting stories. Id. Finall, one of the defendant's admitted having $20,000 in cash in the rental car. Id. The Third Circuit, noting the officer's extensive experience interdicting drugs, held that his suspicion was objectively reasonable; thus, the officer lawfully shifted from investigating the traffic violation to investigating other illegal

activity. Id. Taken together, Rodriguez and its line of cases provide the Court's with a few important guideposts for determining the lawfulness of an officer's extension of a traffic stop as a result of off-mission inquiries. First, Rodriguez clarified that the duration of a stop is circumscribed by the reason for the stop. Second, the best practice is for the Court to identify the off-mission-inquiry (Rodriguez moment), but as the Third Circuit stated this may be a tricky task, the Court Can, thus, assume the earliest possible Rodriguez moment and proceed from there. Third, asking a driver for his identification, mission related inquiry, or his travel plans during a traffic stop is typically not off-mission. Fourth, the court's focus must then be on whether off-mission questioning added time to the traffic stop, regardless of the brevity of that added questioning, to conclude whether a traffic stop has been unreasonably extended according to the precedent of the Third Circuit shown supra. Rodriguez, 575 U.S. at 356-57; Clark, 902 F.3d 410 n.4; Green, 897 F.3d at 181-87(same); United States v. Whitley, 34 F.4th 522, 529 (6th Cir. 2022)(same); United States v. Campbell, 970 F.3d at 1352, 1355 (11th Cir.2021)(same).

Furthermore, in Pennsylvania the Court of Appeals and the State Suprem Court have each issued opinions addressing Rodriguez in the respective court's prior to the instant direct appeal. Petitioner, only brushes over the state court of appeals published opinion which is factually analogous, although, contrary to the finding in the case sub judice.

Commonwwealth v. Malloy, 257 A.3d 142, 149-55 (Pa.Super.2021).

The Pennsylvania Supreme Court addressed Rodriguez in In Re A.A.. Id. 195 A.3d at 905. The A.A. Court reiterated the progeny of Rodriguez but ultimately concluded Rodriguez did not expressly address the situation present therein; (being the detention of a driver following an officer's indication the driver was free to leave). Id. The Court then turned to Pennsylvania jurisprudence more indistinct, applying its own precedent in Commonwealth v. Freeman, 757 A.2d 903 (Pa. 2000). The A.A. Court, while analyzing Freeman stated the following:

> "The Freeman Court recognized that, in order to be a valid investigative detention during which consent to search might be properly obtained, "the seizure must be justified by an articulable, reasonable suspicion that Freeman may have been engaged in criminal activity **independent of that supporting her initial detention**" (the reason she was pulled over in the first place) and this question must be answered by examining the totality of the circumstances[.]" Freeman, 757 A.2d at 908 (emphasis added). It is clear the Court considered Freeman's concealment of the fact she was traveling with the other vehicle to be inadequate to provide reasonable suspicion for a second detention and there were no other facts to support any such suspicion, beyond the initial observations which led to the traffic stop in the first place. Id. "In particular, there was no testimony that the actions of Freeman and her companions were consistent with those of drug dealers or criminals of any other type; that their route was heavily traveled by drug dealers; or indeed, that the trooper suspected Freeman of drug dealing or any other specific crime." Id. Such information would have contributed to reasonable suspicion clearly based on the totality of the circumstances, including any information gleaned during the initial traffic stop. However, in the absence of such information, Freeman's consent was given during an illegal detention and suppression was warranted. Most importantly, and contrary to appellant's argument, Freeman does not stand for the proposition that information lawfully obtained during an initial traffic stop cannot be

> used to support the requisite suspicion for a second detention after a "break" in contact, simply because such information was not present in that case. Furthermore, our reading of Freeman comports with, and is supported by, the Rodriguez decision. See Rodriguez, 135 S.Ct. at 1615 (officer may prolong traffic stop so long as "reasonable suspicion ordinarily demanded to justify detaining an individual" is present)." Id. 195 a.3d at 910.

Instantly, the line of cases in the Federal Court's comporting with Rodriguez, would warrant the suppression of all evidence, since the seizure of Robertson by probation extended the traffic stop, because of the off-mission inquiry of McGowan, which lacked reasonable suspicion at the 'Rodriguez moment.' Rodriguez, 575 U.S. at 354-57; Clark, 902 F.3d at 410 n.4; Green, 897 F.3d at 179-87; Whitley, 34 F.4th at 529; Campbell, 970 F.3d at 1352, 1355. Robertson, was seized immediately as soon as probation opened the door compelling him to alight for suspicions he was already released for by police. App'x E, 19-22, 27-31, 36-44; Rodriguez, 575 U.S. at 355-57 ("detecting evidence of ordinary criminal wrongdoing" unrelated to the stop "is not fairly characterized as part of the officer's traffic mission".).

Applying Green, the Rodriguez moment occurred precisely when McGowan inquired into Robertson's supervision status, nolonger investigating the traffic stop, which he admits he did not possess an independent reasonable suspicion to do, but was a custom for his unit to do. App'x E, 17-20; Green, 897 F.3d at 179-183. Subsequently, since reasonable suspicion was not articulated to prolong the stop, the evidentiary fruits of the seizure should have been suppressed. Lewis, 672 F.3d at 237.

Likewise, applying state court precedent should achieved the same results which warranted suppression. Pursuant to Freeman, supra, in order for a second seizure to be valid the suspicion must be independent of the reason Robertson was pulled over. In Re A.A., 195 A.3d at 910; citing Freeman, 757 A.2d at 908-09. One of the factors probation asserted established reasonable suspicion for the seizure was the traffic stop Robertson did not receive a warning for. Under Freeman, this could not be used as a factor. Id.; App'x A, 11-16; App'x B, 4-5; App'x E, 27-31, 36-44. The other factor probation indicated was the 'alleged' lie that Robertson denied being on supervision to McGowan. Again, the Freeman Court, found lying to be essentially evasive behavior and it held that absent some additional indicators did not meet a reasonable suspicion alone. Id. 757 A.2d at 908-09.

Consequently, the Superior Court's conclusion's on this issue are absurd and unsupported by the record, particularly, when McGowan never advised Robertson he were giving him a warning, and overall its finding is contrary to both Rodriguez's standard as well as Freeman, in addition to the fact there is no de minimis exception to the rule in Rodriguez. App'x A, 12, 16; App'x E, 8-10, 19-20, 38-42; Rodriguez, 575 U.S. at 355-57; Clark, 902 F.3d at 410 n.4; Whitley, 34 F.4th at 529; Campbell, 970 F.3d at 1352, 1355.

Accordingly, simply applying state jurisprudence to the facts of this case, the factors used to prolong the traffic stop, and conduct the proceeding

searches, particularly, violated both Article 1 § 8 of the state constitution, as well as the 4th Amendment of the Federal constitution. But because of the collusion of the state court's to deny Robertson his constitutional freedoms from unreasonable searches and seizures the above precedents were deliberately ignored. Since this Honorable Court's decision in Rodriguez did not deal with a driver who was told he was free to leave by police, but then again seized for the very same facts by another member of the investigative unit. It is worthy of this Honorable Court to exercise its supervisory power due to the national importance to determine if it's a violation of the Fourth Amendment to seize a driver after he was already freed by another member of the investigative unit for the same cause.

> III. Whether the Probation Partner's of the Police Unit Lacked Reasonable Suspicion to seize Petitioner, After he was Released from the Traffic Stop Without a Warning. Probation was Not Familiar with Petitioner or his Particular Case or Conditions, and Were Unaware his Sentencing Judge for the Probation Did Not Issue Conditions for the Probation. Did the State Court's Violate Petitioner's Fourth Amendment Right's in Finding Reasonable Suspicion Existed to Seize and Search him and his Property, for the same Facts Available to Police whom Did Not Believe he Possessed Reasonable Suspicion to Continue the Stop?

On this final issue, the state court's simply presumed the commonwealth met its rule based burden in presenting sufficient evidence to rebut the fact Robertson's constitutional rights were not violated by the seizure and searches of probation. The court's found because Robertson was on probation he violated his conditions. App'x

A, 13-16; App'x B, 4-5; see Pa.R.Crim.P. 581(H); Commonwealth v. Enimpah, 106 a.3d 695, 701 (Pa.2014). Contrarily, the only evidence in which the prosecution presented in support of this presumption is the hearsay testimony of PO Kinsinger who did not supervise Robertson, was not personally familiar with him or his specific conditions, all facts he conceded to on record. App'x E, 27-31, 38-48. Importantly, the government never admitted any written evidence of the sentencing order imposing conditions on the probation by the sentencing judge, because no such order exists, and the state court's merely ignored this fact in order to affirm the decision. This failure alone should have resulted in the suppression of the evidence involved in this case. Particularly, the state Supreme Court in Commonwealth v. Williams, 692 A.2d 1031, 1036-37 (Pa.1997), found that a signed parole agreement comports with the Fourth Amendment protection afforded to parolees by this Learned Court's decision in Wisconsin v. Griffin. "This approach also accomodates the parolee because it protects the parolee by providing a check against encroachment upon the parolees limited 4th Amendment right to be free from unreasonable searches." Id. In Pennsylvania, the state Supreme Court has long held that "the legislature [in the sentencing code] has specifically empowered the court, not the probation offices and not any individual probation officers, to impose the terms of supervision."

Commonwealth v. Elliott, 50 A.3d 1284, 1288, 1290-92 (Pa.Super. 2012); 42 Pa.C.S. § 9754(b); § 9763. Moreover, the Superior court reemphasized this mandate when it held "a sentencing court may not delegate its statutorily proscribed duties to probation and parole offices, and is required to communicate any conditions of probation and parole as a prerequisite to violating any such conditions". See Commonwealth v. Koger, 255 A.3d 1285, 1290-91 (Pa.Super.2021).

Petitioner, asserted throughout his quest for relief that he never received any conditions at sentencing or in his sentencing order by the sentencing judge (William T. Tully), for the probation docket at CP-22-CR-0002594-2016, out of Dauphin County, Pa. Robertson admitted into evidence in his Post-Sentencing Motion an excerpt from the trial/sentencing transcript confirming the fact he never was given any conditions for supervision. See App'x H, Transcript of Jury Trial dated August 16, 2017, at 141-146. Instead, the Superior Court intentionally ignored this fact in order to affirm the ruling of the trial court. App'x A, 13-16; App'x B, 4-5. The state trial court made no mention to this fact because its rule based opinion on this claim was issued prior to being presented with any evidence of the sentencing order, and just presumed based on the testimony conditions existed and were violated. App'x B, 1-5. The trial court's final opinion did not later address this claim, but rather referenced its initial opinon on the issue's without addressing Petitioner's questions appropriately for appellate review.

App'x C, 4, 6.

However, in a long list of cases Pennsylvania court's continually have held that:

> "Absent statutory or regulatory guidance, or an agreement by the parolee consenting to the search, the 4th Amendment does not permit the determination to conduct a search of a probationer or parolee to be left to the unfettered discretion of the individual officer. Rather, some systemic procedural safeguard must be in place to guarantee those limited 4th Amendment rights. Williams, 692 A.2d 1035-38; citing Commonwealth v. Pickron, 634 A.2d 1093, 1096, 1098 (Pa.1993); Commonwealth v. Wilson, 67 A.3d 736, 740-42, 745 (Pa.2013)(same); Commonwealth v. Chambers, 55 A.3d 1208, 1212-1214 (Pa.Super.2012)(same). Notably, in Chambers, the court of appeals rejected the notion that reasonable suspicion is assented to as a condition for any probation officer to speak with any probationer in public at any time for any reason absent cause. Id. 55 A.3d at 1211-12, 1216-17.

Thus, Robertson was not compelled to speak with probation, whom neither were supervising him, or privy to his specific case. Id. 55 A.3d at 1216-17; App'x E, 27-31, 38-48. Importantly, not only were there no conditions attached to the probation order in which Robertson could violate, the conditions could only come from the sentencing judge pursuant to state law, and none were applied to the probation. App'x G, at 141-146; Elliott, 50 A.3d at 1290-92; Koger, 255 A.3d at 1290-91; 42 Pa.C.S. § 9754; § 9763.

This Court has dealt with cases addressing whether searches prompted by probation orders violate the subjects Fourth Amendment right's. See Wisconsin v. Griffin, 483 U.S. 866, 870, 97 L.Ed.2d 709, 107 S.Ct. 3164 (1987); United States v. Knights, 534 U.S. 112, 114, 122 S.Ct. 587, 151

L.Ed.2d 497 (2001). Normally, in probation cases dealing with a 4th Amendment search and seizure almost alway's entails evidence of the probation and parole order which the searches were predicated (via) the sentencing order. This Court discussed in Griffin, the law in Wisconsin which regulated the conditions imposed by the court, and rules and regulations established by the department. Griffin, 483 U.S. at 870-71, 873-74. Moreover, in Griffin this Court setforth that it is bound by the state court's interpretation of the search regulation applicable to the "special needs" of its probation system. 483 U.S. at 875.

Surely, applying these standard's to the facts of this case the State Supreme Court's rulings in Elliott, Pickron, and Williams must be applied here which was intentionally overlooked to affirm the trial court's order because the probation order did not entail any specific conditions to allow any individual probation offices, or officers to implement any rules or terms of Robertson's probation for him to violate. App'x B, 1-4; Elliott, 50 A.3d at 1290-92; Koger, 255 A.3d at 1290-91; Williams, 692 A.2d at 1035-38; Chambers, 55 A.3d 1211-1214. Unlike, in Griffin where this Court found the "Wisconsin regulation applied to all probationer's with no need for a judge to make an individualized determination for the warrantless search condition". Griffin, 483 U.S. at 875. In Pennsylvania, the state's regulation requires the Judge to make individualized determinations for any specific conditions of that supervision, particularly, a warrantless search condition. Id.; Elliott, 50

A.3de at 1290-92; Koger, 255 A.3d at 1290-91; 42 Pa.C.S. § 9754(b)-(c); § 9763; App'x H, 141-46. Such a condition is not applicable here. Id. 483 U.S. at 874. Subsequently, Kinsinger could not have presumed that Robertson violated his supervision for an unverified condition, when he has no clue what such a probation order entails or allows. Id.; App'x A, 11-16; App'x B, 4-5. Therefore, the opinion of the state court's are legally flawed according to state law and purely bias. Id.

This was not the case in Knights, where the judge sentenced him to the specific search condition where he was unambiguously informed of the condition, thereafter, significantly diminishing his reasonable expectation of privacy. Knights, 534 U.S. at 119.

Judge Tully who sentenced Robertson did not find it necessary to condition the probation unlike in Knights, or Morrissey v. Brewer, 408 U.S. 471, 480, 33 L.Ed.2d 484, 92 S.Ct. 2593 (1972), thus, no search condition existed to permit the searches by probation and Robertson never consented to the searches or seizure. As such his reasonable expectation of privacy was not legally diminished by any conditions of probation other than the commission of a new crime which is assented to by the probation itself. Koger, 255 A.3d at 1290-91; citing Commonwealth v. Foster 214 A.3d 1240, 1250 (Pa.2019); Knights, 534 U.S. at 119, 121-22; Williams, 692 A.2d at 1035-38.

Consequently, the finding of the state court's are in error for several

reasons on the seizure & search of Petitioner, the first being the factors indicated by Kinsinger and the trial court to establish a reasonable suspicion to seize and search him, and his property, are contrary to the opinion of the court in Freeman addressed supra. Freeman, 757 A.2d at 908-09. In sum, under the controlling authority of Freeman, the stop itself cannot be cause to conduct a second seizure. Id. Also, the belief that Robertson violated a state, federal, or local penal law for window tint, cannot be characterized as a violation of a penal law, especially when he did not receive so much as a warning for such preceeding the seizure of probation. App'x E, 30-31, 39-42, 47. Irregardless, pursuant to Freeman "the lying which was considered to be evasive behavior the Freeman Court ruled that the fact alone could not establish a reasonable suspicion. Id. 757 A.2d 908-09. Indeed, even if conditions did exist and were admitted as evidence these factors asserted by Kinsinger did not support a reasonable suspicion. Id.; App'x A, 11-16; App'x B, 4-5.

Finally, the appeals court referenced 42 Pa.C.S. § 9912(d)(6), but omits the most binding language from the subpart which controls reasonable suspicion analysis's pursuant to statute. Such as "to meet reasonable suspcion based on probation and parole statutes, cases must be determined in accordance with constitutional search and seizure provisions as applied by judicial decisions. In accordance with-such 'case-law,' then the following factors where applicable may be taken into account." Id. § 9912(d)(6)(i)-

(viii); App'x A, 14-15. Ironically, Freeman, is a judicial decision, ('case-law'), which was indistinct to the instant factual circumstances and, thus, controlled the determination, but this fact was intentionally ignored by the state court's to affirm the lower court by any means deviating form the interest of justice, and disregard of Robertson's constitutional rights.

In toto, pursuant to state statute Robertson did not possess court ordered conditions for his probation sentence, for 42 Pa.C.S. § 9912, to apply for any probation officer to conduct warrantless searches or seizures of him or his property. 42 Pa.C.S. §§9776(d); § 9754; Koger, 255 A.3d at 1290-91; Foster, 214 A.3d at 1244 n.5, 1248-50; Williams, 692 A.2d at 1036-38. Additionally, the factors enunciated by the Commonwealth were inadequate alone pursuant to citations of authority from the state Supreme Court in Freeman. Id. 757 A.2d at 908-09. State law at a minimum should have warranted the suppression of all evidence in this case, to deter the clear police misconduct. But was covered up and ignored at the cost of the loss of Petitioner's liberty for the next 10 years of his life.

CONCLUSION

Petitioner, forever prays this petition for a writ of certiorari be granted for each of the foregoing reasons addressed herein.

Respectfully Submitted,

Date: July 7th, 2023

Kashif M. Robertson, Pro Se