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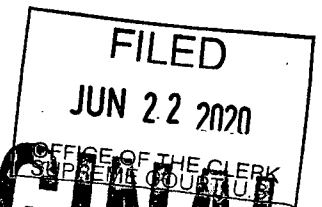
NO.:

IN THE
SUPREME COURT OF THE UNITED STATES

OMAR A. RAHMAN,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA
Respondent



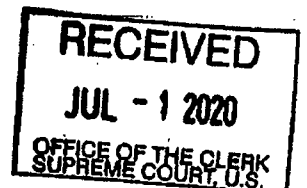
ORIGINAL

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Pennsylvania Superior Court's decision, affirming the denial of Petitioner's suppression of physical evidence claim, conflicts with the decision of the United States Court of Appeals and other Pennsylvania Superior Court decisions?

Suggested Answer: Yes.

Whether the Pennsylvania Superior Court's decision, tacitly affirming the denial of Petitioner's unlawful arrest claim, conflicts with the decisions of the United States Court of Appeals and other Pennsylvania Superior Court decisions?

Suggested Answer: Yes.

Whether the Pennsylvania Superior Court's decision, affirming the denial of Petitioner's right to call witnesses in his defense and to present evidence material to his defense, conflicts with the decisions of the United States Court of Appeals and other Pennsylvania Superior Court decisions?

Suggested Answer: Yes.

LIST OF PARTIES

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

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OPINIONS BELOW

1. The opinion of the Pennsylvania Superior Court is an unreported memorandum attached to this petition at Appendix A.
2. The opinion of the Pennsylvania Court of Common Pleas of Philadelphia County is attached to this petition at Appendix B.
3. The Pennsylvania Supreme Court decision denying allocatur is attached to this petition at Appendix C.

Jurisdiction

The Pennsylvania Supreme Court denied Petitioner's petition for allowance of appeal on March 24, 2020. A copy of that decision appears at Appendix C.

No timely petition for rehearing or re-argument was filed.

The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS AND STATUTES

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution Amendment IV.

In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution Amendment VI.

STATEMENT OF THE CASE

On July 21, 2013 at 1:20 a.m. Petitioner was arrested by Police Officers Donnyule Williams and Ronald Gilbert on the 1500 block of West Allegheny Avenue in Philadelphia, Pennsylvania and charged with robbery, firearms not to be carried without a license, and cognate offences.

At 2:39 a.m. Detective Joseph Cremen interviewed the Complainant Kyle Stanley at the Northwest Detectives Division in regards to the robbery that occurred earlier at 1:20 a.m. on the 1500 block of Allegheny Avenue. Based on the observations of Officers Williams and Gilbert, and the interview of Kyle Stanley, Detective Cremen requested and obtained a warrant to search Petitioner's vehicle, a black 2013 Hyundai Elantra, that was on the scene at the time of Petitioner's arrest. The search of the vehicle allegedly resulted in the seizure of eleven cell phones,

an Apple iPad Mini, and numerous assorted paperwork. In addition to the robbery arrest pertaining to the Complainant Kyle Stanley, Petitioner was also arrested on July 21, 2013 for the robbery of Krystal Cruz that occurred on the 3100 block of Emerald Street on June 26, 2013 at 9:35 p.m., and the robbery of Everal Laing that occurred on the 6000 block of Jefferson Street at 2:20 p.m. in Philadelphia, Pennsylvania.

Detective Cremen determined that one of the cell phones was taken from Jarret Natson during a robbery that occurred on June 27, 2013 at 6:45 p.m. on the 5800 block of Washington Avenue in Philadelphia, Pennsylvania. Detective Cremen began searching through criminal complaints filed between late June up until July 20, 2013 involving instances of robbery by a male with dread locks and a silver revolver. Detective Cremen came across a complaint filed by Aaron Slaughter and Raheem Baynes regarding a robbery that occurred on the 1200 block of South 58th Street on July 19, 2013 at 3:53 a.m. in Philadelphia, Pennsylvania. Detective Cremen obtained an arrest warrant for Petitioner on September 3, 2013 charging him with the robberies of Jarret Natson, Aaron Slaughter and Raheem Baynes.

Petitioner filed several pretrial motions including a motion to suppress physical evidence and a motion to suppress the out-of-court identification evidence of Krystal Cruz and Everal Laing which were denied by the Honorable Judge Giovanni Campbell.

At trial, Petitioner was precluded by the court from presenting evidence material to his defense and from calling, to

the witness stand, witnesses that were material to his defense.

On appeal, the Pennsylvania Superior Court disregarded the previous rulings of the Pennsylvania Supreme Court, and the United States Court of Appeals, when it held that the search warrant was neither overbroad nor lacking in particularity. The Superior Court did not address the legality of Petitioner's arrest when it held that Petitioner's motion to suppress identification evidence was properly denied. The Superior Court did not address Petitioner's claims that the trial court precluded him from presenting relevant and exculpatory evidence from Complainant Kyle Stanley's parole file and precluded him from calling Joseph Kmetz and Maurine Treston to the witness stand. The Superior Court disregarded the previous rulings of the Pennsylvania Supreme Court and in doing so erroneously held that the testimony of Aerni Dunlap, Kevin Boston, and Detective Murawski was properly excluded as cumulative.

The Pennsylvania Supreme Court denied allocatur on March 24, 2020. Petitioner now petitions the United States Supreme Court for a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

A. Petitioner was denied review of his fourth amendment claim in state court.

The Superior Court employed the "totality of the circumstances" analysis to determine for what items probable cause exist to search. Appendix A at 17. The totality of the circumstances test is to be employed when reviewing whether a search warrant was supported by probable cause. In order to determine for which items probable cause exist to search, the court must review the description of the item[s] known to the Affiant and then measure the sufficiency of the description of the item[s] in the warrant against those item[s] for which there was probable cause. Any unreasonable discrepancy between the items for which there was probable cause and the description in the warrant requires suppression. Commonwealth v. Grossman, 555 A.2d 900 (1989).

The Complainant informed the Affiant that a T Mobile Galaxy S4 cell phone, a watch, and \$2,600.00 were taken from him. The Affiant sought to search for the following items:

Proof of Ownership, rental agreement, USC, cell phones, Apple iPad Mini, watch, and any other evidence pertinent to this investigation.

The Affiant omitted the description of the Complainant's cell phone and sought to search for and seize "cell phones" because he wanted to investigate any cell phone he came across inside of the vehicle.

In reaching its decision, the Superior Court held that the Affiant was only required to list the general class of the item

he was seeking, erroneously relying on the Pennsylvania Supreme Court's decision in *Commonwealth v. Matthews* where it was held: "where the items to be seized are as precisely identified as the nature of the activity permits and an exact description is virtually impossible, the searching officer is only required to describe the general class of the items he is seeking.

Commonwealth v. Matthews, 285 A.2d 513 (1973). Here, the Affiant was given information specifically describing the items to be sought that he [Affiant] conceded to omitting in the warrant in order to conduct a general search and seizure unrelated to the robbery of Kyle Stanley. The significance of this concession cannot be down played as the United States Supreme Court emphasized the significance of the particularity requirement as it stands as a guard against the type of general searches that the Affiant executed. See *Marron v. United States*, 275 U.S. 196, 48 S. Ct. 76 (1927) (citations omitted).

In support of his effort to conduct a general search and seizure the Affiant included the phrase "any other evidence pertinent to this investigation" which the Affiant also admitted to including in the warrant in order to justify seizing any item he came across inside of the vehicle, such as mail. At the time that the Affiant applied for the search warrant he was only investigating the robbery of Kyle Stanley. None of Kyle Stanley's property was recovered as a result of this search. Indeed, the Superior Court previously held that "use of the phrase 'any other contraband or evidence related to this crime' turns a warrant into a general investigatory tool in violation

of the United States Constitution Amendment 4..." See Commonwealth v. McEnany, 667 A.2d 1148 (1995) and Commonwealth v. Bagley, 596 A.2d 811 (1991).

The warrant authorizing the seizure of "cell phones and any other evidence pertinent to this investigation" was unconstitutionally overbroad in its failure to describe with particularity the three items described in the affidavit for which there was probable cause.

B. Petitioner was denied review of his unlawful arrest claim in state court.

Detective Joseph Cremen stated that Petitioner's arrest for the robberies of Everal Laing and Krystal Cruz were sight arrests and no warrants were necessary because Petitioner had already been arrested for the robbery of Kyle Stanley. Detective Cremen testified to the following:

- Q. Okay. Were there any arrest warrants issued in that matter then?
- A. For those robberies?
- Q. Yes.
- A. No, there did not need to be.
- Q. There did not need to be?
- A. That is correct.
- Q. Can you explain why not?
- A. Because it's a felony. It's a sight arrest.
- Q. So it was a sight arrest.
- A. After evidence is uncovered that a felony was committed and we have that person in custody, no arrest warrant needs to be done.

Notes of testimony December 6, 2016 at 145-146.

In Commonwealth v. Richman, the Pennsylvania Supreme Court held that warrantless arrests are justified only when faced with compelling exigent circumstances that preclude police from going before a detached magistrate. Commonwealth v. Richman, 320 A.2d

(1974).

The third circuit district court has previously held that the determination that probable cause exists for a warrantless arrest is fundamentally a factual analysis that must be performed by the officers at the scene. It is the function of court to determine whether the objective facts available to the officers at the time of arrest were sufficient to justify a reasonable belief that an offence was being committed. United States v. Glasser, 750 F.2d 1197, 1206 (3rd Cir. 1984).

Petitioner established that he was arrested for the robberies of Kyle Stanley, Krystal Cruz, and Everal Laing by Officers Ronald Gilbert and Donyule Williams on July 21, 2013 at 1:20 a.m. as indicated by the arrest reports prepared by Detective Cremen, page 1 of the Court of Common Pleas docket sheet, and the testimony of Detective Cremen. The Superior Court disregarded clear and competent evidence that Petitioners' arrests for the robberies of Krystal Cruz and Everal Laing were unlawful and did not address the legality of his arrests.

C. Petitioner was denied review of his 6th amendment claim in state court.

When an Appellate preserves a claim of error, he is entitled to a review of the claim on appeal. Commonwealth v. Clair, 326 A.2d 272 (1974). The Superior Court evaded a review of Petitioner's claim of error under the pretext that Petitioner failed to preserve the claim for review. See Appendix A at 31.

Contrary to the Superior Court's decision, page 220, in relevant part, reads as follows:

The Defendant: All right. Now, Your Honor, based on the documents being irrelevant, the Court denied the motion. Is that what happened?

The Court: I denied that motion, yes.

The Defendant: I take exceptions, Your Honor, and I ask you to reconsider. I mean, this is crucial to my entire defense. I mean, the whole thing is this, he's lying, and it's obvious he's lying. I went from there to 30 feet and nothing was ever recovered. And Officer Williams said, "Why would he just yell you robbed him for no reason?" I mean --

The Court: I understand that. I heard your argument. I considered the best part of it and it's denied.

Notes of testimony December 12, 2016 at 220.

Petitioner sought to call Joseph Kmetz to establish that Kyle Stanley was unemployed in July of 2013, to show that Stanley had an unpaid debt owed to Chester County of approximately \$2,600.00, and that Stanley was in the process of being reincarcerated for failing to make payments toward his debt. Petitioner sought to call Maurine Treston in order to show the jury that Stanley was reincarcerated in November of 2016 for failing to make payments toward his unpaid debt and that his debt had accumulated to approximately \$2,900.00.

Petitioner was not denied his right to present the above mentioned evidence pursuant to any evidentiary or procedural rule. In *Government of the Virgin Islands v. Mills*, the United States Court of Appeals for the third circuit held that the compulsory process clause protects the presentation of the defendant's case from unwarranted interference by the government, be it in the form of an unnecessary evidentiary rule, a prosecutor's misconduct, or an arbitrary ruling by the trial judge. See *Government of the Virgin Islands v. Mills*, 956 F.2d

445 (1992).

D. The Superior Court erroneously affirmed the exclusion of exculpatory evidence.

Detective Michael Cannon recovered Cruz's cell phone and recorded it on property receipt no. 3116316. Detective Cannon noted that Cruz's cell phone was recovered as a result of a robbery arrest made in case no. 13-39-050566.

Petitioner sought to compel the attendance of Aerni Dunlap and Kevin Boston, the victims in the robbery that occurred in case no. 13-39-050566, as witnesses to show the jury that both were robbed by two males with black guns on July 21, 2013 at 3:17 a.m. and that one of the two males, that Dunlap and Boston described, matched the description that Cruz gave of her assailant.

Detective Muraski's testimony was sought to; show the jury that Cruz did not initially state that the firearm her assailant used was a revolver instead she stated that it was a black gun, to learn the method that was used to select the photos that were shown to Cruz and why he did not preserve the photo array and, to show the jury that his failure to conduct a thorough investigation is the reason why video surveillance from local businesses at Emerald Street and Allagheny Avenue was not obtained which could have led to the real culprits being apprehended, which were the same individuals that robbed Dunlap and Boston.

The Superior Court erroneously concluded that Petitioner sought to call the above witnesses to impeach Cruz and that the trial court did not abuse its discretion by denying such

testimony as being cumulative. Appendix A at 33. Pursuant to Commonwealth v. McGowan, Evidence which tends to show that the crime for which the accused stands trial was committed by someone else is relevant and admissible. Commonwealth v. McGowan, 635 A.2d 115 (1993). Petitioner should have been able to call the above witnesses to present the above evidence to the jury as it tended to show that someone else robbed Krystal Cruz.

CONCLUSION

For the foregoing reasons, Petitioner prays the United States Supreme Court grants the instant Petition for Writ of Certiorari.



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