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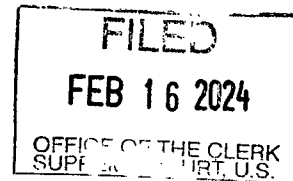
THE SUPREME COURT
FOR THE UNITED STATES

ORIGINAL

Jeremy Lee Koons,
Petitioner,

v,

David Shim, et al.,
Respondents.



Appeal from denial of
certificate of appealability

Petition for writ of certiorari

Questions presented for review

- 1.) when law enforcement applied for the search warrant to place a GPS tracking device on a vehicle driven by Petitioner, does the warrant clause of the fourth Amendment require probable cause that demonstrates a nexus between the tracked vehicle in the warrant and the criminal activity alleged in the affidavit for a warrant to issue. does a violation of the warrant clause by law enforcement trigger the exclusionary rule and warrant suppression.
- 2.) should the U.S. court of appeals for the ninth circuit have granted a C.O.A. when petitioners claim presented in the state and federal courts relies on a decision that is yet to be settled by the United States Supreme court, and when petitioner has, at least, met the standard set forth in *Slack v. McDaniel*.
- 3.) under the doctrine of *Stone v. Powell*, was petitioner afforded a "full and fair opportunity to litigate" his 4th amendment claim in the Arizona courts, in which the probable cause argument is unsettled by the United States Supreme court and the lack of particularity issue was not addressed to settle litigation between petitioner and the state. If the *Stone* bar is surmounted, does the unsworn affidavit, and reckless omission of facts argument against the good faith exception warrant federal Habeas corpus review as well.

1.) Pima county superior court
CR-20143960-002
State V. Koons
Oct 19, 2015

7.) Arizona Supreme court
No. CR-20-0143-PR
State V. Koons
Jan. 8, 2021

2.) Pima county superior court
CR-20143960-002
State V. Koons
May 18, 2016

8.) Arizona District court
Koons V. Shinn et al.
CV-21-00172-Tuc-RM (JR)
Mar. 9, 2023

3.) Arizona court of Appeals Div. two
No. 2CA-CR2016-0270
State V. Koons
Aug 7, 2017

9.) U.S.C.A. 9th Circuit
Koons V. Shinn et al.
No. 23-15517
Nov. 20, 2023

4.) Arizona supreme court
No. CR-17-0401-PR
State V. Koons
Jan 9, 2018

5.) Pima county superior court
CR:20143960-002
State V. Koons
Sept 13, 2019

6.) Arizona court of Appeals Div. two
No. 2CA-CR2019-0249-PR
State V. Koons
APR. 9, 2020

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18 U.S.C. § 2518(3)(a)(d)

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A.R.C.A.P. Rule 13.1(a)

Statement of Jurisdiction

The Arizona District Court order, March 10, 2023, was appealed to the United States Court of Appeals for the Ninth Circuit which denied a certificate of appealability on November 1, 2023. The United States Supreme Court therefore has jurisdiction to review (U.S.C.A. 9th Cir. No. 23-15517 Koons v. Shinn et al.) under 28 U.S.C. § 2101(c); 5, Ct. Rule 10(c)

Statement of the case

From January 2014 through September 2014, law enforcement agencies in the greater Tucson, AZ. area began investigating a series of commercial burglaries targeting the business's safe and/or ATM machine.

On June 23, 2014 a burglary occurred at a Tucson area restaurant, crime scene specialists swabbed for DNA around a hole cut through a public co-ed restroom wall into a freezer. The DNA swab generated a hit through CODIS, (Dept. of public safety DNA database) That report stated Jeremy Koons could not be excluded as a possible investigative lead related to a casework specimen number. On August 26, 2014 law enforcement obtained a telephonic warrant to place a GPS tracking device on a vehicle petitioner was seen driving the morning the warrant was requested. Petitioner filed a motion to suppress evidence obtained as a result of the tracking device, arguing, the telephonic search warrant was unsworn, lacked probable cause, omitted material facts necessary to probable cause, lacked particularity, and was executed at night without good cause being shown in the application.

2. The trial court expressed a genuine concern

between the nexus of the vehicle to the crime, but nevertheless, the court denied the motion. Petitioner went to trial and was found guilty on all remaining counts and was sentenced to a consecutive 19.25 yrs in state prison.

The Div. two Arizona court of appeals affirmed the trial courts ruling holding "although the supreme court decision in Jones recognized the nonconsensual placement of a gps tracking device as a fourth amendment search" it omitted reference to the warrant clause and provided little guidance for lower courts on the issue of when such searches are reasonable.

Petitioner filed a petition for writ of Habeas corpus 28 U.S.C. § 2254 by a prisoner in state custody in the Arizona District court, which held in its march 10, 2023 order, petitioner was afforded a full and fair opportunity to litigate the Fourth amendment claim in state court, therefore was "stone barred" from raising the claim on Federal Habeas.

Petitioner appealed the District court ruling to the United States court of appeals for the Ninth circuit, filing a request for certificate of appealability, which was denied on November 20, 2023. Petitioner argues 5. ct. Rule 10 (c) requires this court to grant certiorari as the Arizona courts

have decided there is a difference between probable cause to continue an investigation and place a GPS tracking device on a vehicle and probable cause to search a vehicle, concluding no nexus between the vehicle and criminal activity is needed, a question yet to be decided by this court, and the Federal courts have found Petitioner has had a full and fair opportunity to litigate the fourth amendment exclusionary rule claim, when the question before the state and federal courts regarding the claim has not been decided by the Supreme court but should be, because the principles of the case are of extreme importance to the public as opposed purely to petitioner.

On November 20, 2023 the United States Court of Appeals for the 9th Circuit denied petitioners Request for a certificate of appealability, holding, "appellant has not shown that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. Madaniel*, 529 U.S. 473, 484, 200 ; see also 28 U.S.C. § 2253(c)(2)

This court held that "when a district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a C.O.A. should issue if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and whether jurists of reason would find it debatable whether the district court was correct in its procedural ruling. at 478, 484-85

In the 9th circuit ("the standard for granting a C.O.A. is low, all that's required is that reasonable jurists could debate whether the petition states a

valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling") Frost v. Gilbert, 835 F.3d 883, 888-89 (9th Cir. 2016)

Petitioner asserts that reasonable jurists will debate whether the district court erred in its ruling that Stone v. Powell bars Federal Habeas review of petitioner's Fourth amendment exclusionary rule claim.

For the Stone bar to prevent a Federal court from reviewing an allegation of a violation of petitioner's Fourth amendment rights in the Arizona courts, petitioner must have been found by the district court to have had a full and fair opportunity to litigate the 4th amendment claim, Stone, 428 U.S. and as explained by Justice Stevens in the Stone decision, "Stone requires a full and fair opportunity to litigate at trial and on direct review." Stone, 428 U.S. at 494-95 n.37 96 S. Ct. 3037 49 L. ed. 2d 1067,

The District court erred in its procedural ruling by their own admission ("although the Arizona court of appeals failed to specifically address petitioner's warrant particularity claim") Doc. 28 at 26-28, matter of factly finding the Arizona court

OF Appeals did not address the claim, allowing Reasonable Jurists to debate whether petitioner was afforded a Full and Fair opportunity to litigate his fourth amendment claim at trial and on direct review. The District court then Found the "omission appears to have stemmed from petitioner's failure to clearly raise the claim in his opening brief on appeal" in which the correctness of The Arizona District courts ruling can also be debated by Jurists of Reason as petitioner's opening brief on appeal was Filed electronically by counsel as required by The Arizona court of Appeals Division two "e-Filed system" which included an electronic link to the motion to suppress telephonic search warrant which clearly raised the particularity claim.

A.R.C.A.P. 13.1(a) "an e-Filed brief in D.V. two must include electronic links when citing to the record on appeal or to other items, and the brief must not include an appendix." In the Arizona courts, attaching an electronic link to an e-Filed opening brief, the motion to suppress telephonic search warrant that clearly raises the particularity claim is procedurally equivalent to attaching the motion to suppress in the appendix of a paper brief. This court has held in *Baldwin v. Reese*, 541 U.S. 27, 32 (2004) ("a state prisoner

does not fairly present a claim to a state court if that court must read beyond a petition or brief that does not alert it to the presence of a federal claim in order to find material that does so.") Reasonable Jurists will debate the district courts ruling as the Arizona Court of Appeals was alerted to petitioner's fourth amendment claim stating in the opening brief on appeal "the search warrant erroneously describes the GPS tracking device as a fruit or instrumentality of a crime" and attaching the motion to suppress telephonic search warrant to the opening brief.

The question presented to the Arizona Court of Appeals was, as pronounced by Chief Judge Eckerstrom ("on appeal, Koons argues the court abused its discretion in denying his motion to suppress evidence resulting from a search warrant that authorized placement of a GPS device on his vehicle.") Reasonable Jurists will debate whether the Arizona Court of Appeals didn't read the motion to suppress telephonic search warrant which alerted them to the clearly raised lack of particularity claim in deciding whether the trial court abused its discretion in denying that motion to suppress, especially since the Arizona District Court found ("the trial court addressed petitioner's warrant

Particularity claim") (Doc. 25-1 at 48-49) in the District courts ruling.

The Ninth circuit has long held, attaching a document to the brief is sufficient to present the issues in the document in a full and fair manner to the Arizona courts, *Gallegos v. Ryan*, 820 F.3d 1013, 1026 (9th Cir. 2016); *Scott v. Shriro*, 567 F.3d 573, 582-83 (9th Cir. 2009) affording them an opportunity to review the federal constitutional nature of petitioners fourth amendment claim.

The ninth circuit should have granted petitioner a certificate of appealability as fairminded Jurists will debate The Arizona District courts procedural ruling whether the District court was correct in finding Petitioner did in fact have a full and fair opportunity to litigate his fourth amendment exclusionary rule claim in the Arizona trial and appellate courts, as the trial court only found "that the inartful drafting of the search warrant did not necessarily render it deficient" during the hearing on the motion to suppress telephonic search warrant in response to defense counsel noting the differences between the federal district court tracking device warrant form and the form used by the state, with the trial court never speaking to the fourth amendments

requirement of a warrant being sufficiently particular. In conjunction with the Arizona court of Appeals failing to address the particularity issue altogether, the Fourth Amendment claim was not fully and fairly considered within the meaning of *Stone v. Powell*, *Tukey v. Dugger*, 911 F.2d at 513-14 & n. 6, 7

Petitioners particularity claim fell on deaf ears in the Arizona courts and they provided no "reasoned method of inquiry in relevant questions of fact and law" *United States ex Rel. Conroy v. Bombard*, 426 F. Supp. 97, 109 (SDNY 1976) (quoting Paul M. Bator, *Finality in criminal law and Federal Habeas corpus Review for state prisoners*, 76 HARV. L. REV. 441, 455 (1963))

Courts generally agree that a full and fair opportunity was not afforded, and that *Stone v. Powell* therefore does not bar federal habeas review of the claim.

Petitioner contends it is impossible to conclude he was given a full and fair opportunity to litigate at trial and on direct review under *Stone*, barring federal habeas review as the Arizona courts affirmed their lack of guidance to fully and fairly litigate the claim. The holding (in *Stone*) is

grounded in the courts conclusion that in cases where a petitioners Fourth amendment claim has been adequately litigated in state courts, enforcing the exclusionary rule through writs of Habeas corpus would not further the deterrent and educative purposes of the rule. *Wollery v. Arave*, 8 F.3d 1325, 1326 (9th Cir. 1993) The claim presented in this petition for writ of Habeas corpus by a person in state custody (28 U.S.C. § 2254) has not yet begun to be adequately litigated in the state or federal court system and will further the deterrent and educative purposes of the rule once a decision is reached. Petitioner has firmly surpassed the stone bar and "succeeded in arguing stones general prohibition doesn't apply"; *Wallace v. Kato*

At a minimum, petitioner has shown, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, since the claim presented to the federal courts has yet to be answered, and raises the question, if law enforcement requests a search warrant to place a GPS tracking device on a vehicle by providing unsworn oral testimony to a magistrate

Judge, that lacks any probable cause linking the vehicle to any criminal activity alleged, that doesn't state how long the vehicle is to be tracked, that doesn't state who owns the vehicle to be tracked, that omitted multiple facts material to finding probable cause to believe petitioner was involved in the criminal activity alleged in the application, as well as the document being insufficiently particular, is that document a "warrant" within the meaning of the Fourth Amendment's requirement for a warrant to issue. Petitioner contends all evidence seized pursuant to the state's document should be considered fruit of the poisonous tree that should have been suppressed as the exclusionary rule should apply since the United States Supreme Court has not squarely addressed the issue.

(U.S.C.A. 41) The Fourth Amendment's touchstone is reasonableness. As a general matter, "the reasonableness of a search depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable expectations of privacy." *Grady*, 135 S.Ct. at 1371. The only remaining issue

is whether the exclusionary rule applies, focusing on whether law enforcement acted with an objective reasonable reliance on a facially valid warrant, United States v. Leon,

The document issued for the "2004 Nissan Armada SUV, license number APV-8934 lacked any probable cause to believe the object described (the vehicle listed on the document) has been involved in, and, likely will continue to be involved in the criminal activity identified in the application (Form A0104-Rev, 11/13 United States district court tracking warrant form) In the wake of Jones which created precedent on 4th amendment "search" implications in placing GPS tracking devices on vehicles, as well as 18 U.S.C. § 3117 effective October 21, 1986 giving guidance to law enforcement applying for GPS tracking warrants and authority under Federal law to Judges issuing those warrants since Federal law controlled in 2014 in the State of Arizona as the state had no tracking device search warrant law in place during the time petitioner was tracked or during the motion to suppress the search warrant.

In 1967 the Supreme Court clarified

in two cases that wiretapping and electronic surveillance are subject to the Fourth Amendment's limitations, *Berger v. N.Y.*, 388 U.S. 41, 63 (1967); *Katz v. U.S.*, 389, 347, 353 (1967) affirming the Fourth Amendment applies to law enforcement use of modern electronic surveillance devices like g.p.s. tracking devices, *U.S. v. Jones*, 132 S. Ct. 945 (2012). To satisfy the "nexus requirement" as the United States Court of Appeals for the 6th Circuit has explained, "to establish an adequate nexus, the connection to criminal activity must be specific and concrete and not vague or generalized" *Brown*, 828 F.3d at 382. In *U.S. v. Powell*, the court held to satisfy probable cause to obtain a warrant to track the phone "the government should have to demonstrate a nexus between a suspect and the phone, the phone and the criminal activity, as well as the criminal activity and the suspect's location in protected areas, rather than merely probable cause the person is engaged in criminal activity." *Powell*, 945 F. Supp. 2d at 779.

The Supreme Court's decision in *Jones*, a warrantless search, satisfied the nexus requirement although the court declined

to address the warrant clause issue law enforcement did witness defendant using the vehicle for criminal activity creating a nexus, as opposed to, merely defendant was under investigation.

In Riley the cellphone/CSLI was linked to criminal activity creating a nexus, Riley v. California, 573 U.S. 34 S.Ct. 2473 189 L. ed. 2d 430, 442; Carpenter v. United States, 138 S. Ct. 2206, 201 L. ed. 2d 507 (2018) CSLI created nexus to criminal activity being investigated; United States v. Henderson, suspects computer/IP address created nexus to illegal porn website.

18 U.S.C. § 2518: Interception of wire, oral, or electronic communications requires not only § 2518(3)(a) "Probable cause for belief that an individual is, has been, or is about to commit an offense under investigation", but also § 2518(3)(d) "probable cause the facility or place where interception will happen is, has been, or is about to be used in connection with criminal activity under investigation".

The aforementioned cases and statutes although neither controlling or authoritative to petitioners question of the probable cause required to place a GPS tracking device

on a vehicle, it does signal the Supreme Court's interpretation of Congress's intent in safeguarding citizens' reasonable expectation of privacy from prolonged electronic surveillance by the government, see *Jones*, which also tracks with language in Arizona's A.R.S. Const. ART. II § 8 Right to Privacy law, holding, "no person shall be disturbed in his private affairs, or his home invaded, without authority of law" granting state citizens even greater privacy protections from being disturbed in your private affairs than the Fourth Amendment.

The commonality between the array of electronic surveillance cases before the United States Supreme Court, when a 4th Amendment search occurs during the course of an investigation, the person's effects listed on the warrant for electronic surveillance whether, Intercept, trap and trace, pen register, cellphone/CSIT, computer harddrive / IP address / air card information, GPS tracking devices on vehicles require a nexus between those effects (the vehicle in petitioner's case) and the criminal activity being investigated to show probable cause for a warrant to issue.

The unsworn telephonic probable cause affidavit

in support of the document the state of Arizona calls a warrant in no way describes a nexus between the vehicle listed on the document to the criminal activity being investigated, It does not state how long the vehicle will be tracked or who owns the tracked vehicle, In fact, the only information provided in the application pertaining to the vehicle at all was that law enforcement "Saw" petitioner driving the vehicle to work lawfully, one time, the morning they requested the warrant,

Petitioner requests The United States Supreme court grant certiorari pursuant to s. ct. R10(c) since a state court or U.S. court of appeals has decided an important question of Federal law that has not been but should be decided by this court.

The question, does the Fourth amendments warrant clause require probable cause the vehicle on a warrant is, was, or will be used for criminal activity being investigated before a warrant can issue is of great public importance as the issue of GPS tracking is undecided and routinely used by law enforcement because GPS monitoring, like CSLI "is cheap in

comparison to conventional surveillance techniques and evades the ordinary checks that constrain abusive law enforcement practices," Jones, 565 U.S. at 429

The Arizona Court of Appeals Division Two held, "The Supreme Court has provided little guidance for lower courts on the issue of when such searches are reasonable," mirroring findings in the trial court (R.T. 10/19/15 P. 16 at 25) (P. 17 at 1-3) "it does seem to me there is a lack of a nexus of the vehicle to the crimes, but I don't necessarily know that on a tracking device they have to connect it to the crimes" which makes the Stone test inapplicable and is fundamentally incorrect and inconsistent with the Federal tracking device warrant form language requirements and the U.S. Supreme Court's decisions related to electronic surveillance through statute, S.C.A., pen register/trap and trace, Intercept, and Title 3. If all that is necessary during the course of a criminal investigation to secure a warrant to place a GPS tracking device on a vehicle with no nexus to the criminal activity being investigated is probable cause the

suspect is involved in the criminal activity, then this allows law enforcement an unfettered ability to secure gps tracking warrants during the course of any investigation to monitor, track, surveil, and investigate a potential suspects family, friends, sexual partners, co workers, and acquaintances then, in turn, their vehicles and precise movements every minute of the day under the guise that law enforcement only "saw" them with the subject of an investigation during the course of daily life. This notion invades the entire countries reasonable expectation of privacy and chills the associational and expressive freedom, the sheer fear that the government may be watching.

The C.D. recording of the phone call of the actual warrant application, and the transcript of that conversation given by the state during initial disclosure does not contain the administration of an oath by the magistrate or a request to be placed under oath by the affiant. At no time in the Arizona courts was the Detective found under oath.

The text of the Fourth amendment requires probable cause be supported by an oath. *United States v. Shaffer*, 600 F.2d 585 (6th Cir. 1979) (Failure to place government agent under oath before he testified in support of application for search warrant renders warrant invalid) A.R.S. § 13-3914 (c), Fed. R. Crim. P. rule 41(b)(1)(2) Formerly rule 41 requires a judge to place an affiant under oath telephonically. *United States v. Elliot*, 210 F. Supp. 357, 1962 (affidavit not sworn to before judge or magistrate as required by rule 41 makes warrant invalid)

The recording requirement that probable cause be taken under oath has been established to withstand judicial scrutiny should aspects of the warrant be challenged. The Arizona courts suggestion that the judges agreement to have the affiant detective attach her signature to a standard Arizona duplicate original search warrant does not satisfy the Fourth amendments warrant clause. A.R.S. § 13-3915 (B) is only a statutory provision and not proof the Fourth amendment oath requirement was followed.

Under Federal Rules "a magistrate judge would be required to place officer under oath, and acknowledge his attestation on affidavit, based on record, procedures required under Federal law were actually satisfied" state

V. Boyse (2013 N.M.) 303 ¶ 3d. 830, noting the separate statutory (attachment of signature) and constitutional (placing affiant under oath) requirements creating a sworn affidavit satisfying the warrant clause.

The judges agreement to allow her signature to be attached to the warrant telephonically does not alleviate her constitutional duty to place an affiant under oath or allow an officer to give testimony when he knows he hasn't been placed under oath.

This is a 4th amendment violation and not a hypertechnical harmless statutory error, any suggestion by the state that an oath was "obviously administered before the recording began" upon Judge Berninis agreement to have her signature attached to the detectives affidavit has no legal merit, If anything the arizona courts imply the oath is unimportant, save for a mere procedural requirement of attaching a signature to a document. The arizona courts are not allowed to go beyond the four corners of the document which does not contain an oath. A point conceded by the trial court (R.T. 10/19/15 P.7 at 17-21) and appellate decision (P.7 ¶ 12) The record establishes a prima facie showing the detective was

not under oath when giving oral testimony over the telephone, overcoming the presumption the warrant was valid, making the unsworn testimony unreasonable and all evidence obtained as a result of the warrant fruit of the poisonous tree that should've been suppressed.

The search warrant lacks particularity describing the tracking GPS as being concealed or possessed in the vehicle as a fruit or instrumentality of a crime. The warrant should describe places to be searched and objects to be seized with sufficient particularity so as to leave "nothing to the discretion of the officer executing the search warrant" *Anderson*, 4127 U.S. at 480 (quoting *Marron*, 275 U.S. at 196). The auto theft task force officer executing the warrant had no knowledge from the document that an investigation was ongoing and no search of the vehicle was needed for a tracking GPS that was a fruit or instrumentality of a crime, also the document is devoid of any language as to "placement" of a device or "investigation" of criminal activity. *U.S. v. Bridges*, 344 F.3d 1010, 1016-19 (9th Cir. 2003) (warrant insufficiently particular because it did not describe criminal

activity under investigation) The court in *Groh v. Ramirez*, 540 U.S. 551, 558-63 (2004) held "affidavit did not cure overbroad warrant because it did not describe items to be seized at all, and warrant neither incorporated affidavit nor was affidavit present at search". The record does not reflect the executing officer ever heard the telephonic affidavit the detective made to Judge Bernini, nor was he present during the request or involved in the case in any capacity prior to executing the search. The proper remedy is suppression U.S. v. ~~Kow~~ *Kow*, 58 F.3d 423, 428 (9th Cir. 1995) (all evidence seized pursuant to warrant suppressed because no substantial part of warrant sufficiently particular) and the state record shows petitioner brought the lack of particularity issue before all levels of the Arizona courts without a merits decision being made.

Given the potential abuse of the ex parte procedure by which warrants are issued, the defendant may challenge a search warrant based upon false or incomplete information. *Franks v. Delaware*, 438 U.S. 154, 168-69, 98 S. Ct. 2674, 57 L. Ed. 2d 671 (1978) with the 9th circuit holding, a defendant prevails

at a Franks hearing if (1) the affiant intentionally or with reckless disregard for the truth included a misleading statement or an omission in the application, and (2) without this information in the application there is no longer probable cause. U.S. v. Perkins, 850 F.3d 1109, 1116 (9th Cir. 2017) At the hearing on the motion to suppress the trial court denied petitioner a Franks hearing.

The affiant's statement "a DNA hit through CODIS" the states DNA database "connects Jeremy Koons to a burglary" intentionally and recklessly omitted the fact that the "DNA hit" could only not exclude petitioner as a possible investigative lead related to a casework sample that must be reexamined by the Arizona D.P.S. crime lab and retested against an offender sample for verification that never happened. The affiant also intentionally omitted with reckless disregard for the truth that the D.N.A. hit came from a swab in a public co-ed restroom of a business that did not match petitioners dna at trial.

The only statement regarding the vehicle in the application "he has been observed driving the vehicle to work this morning" recklessly omitted that in over sixty commercial

burglaries where a vehicle was identified by witnesses or security camera footage a truck was identified as the vehicle always involved in the crimes, which the detective testified to at the Grand Jury Indictment, not a sport utility vehicle law enforcement "saw" petitioner driving to work. The affiant recklessly omitted the fact that tire tracks were found at multiple burglaries without being a match to petitioner's vehicle.

The affiant detectives statement "Kang has been convicted of burglaries in the past" intentionally and recklessly omitted the fact that these burglaries were two single residential burglaries, one from 1993 when petitioner was a juvenile over 20 years prior and unrelated to the highly sophisticated commercial burglary ring being investigated (as stated by police to local news media) and the other residential burglary conviction in 2002, over twelve years prior making the information stale. Petitioner asserts including the material omissions regarding the DNA hit and public restroom swab along with removing the stale misleading burglary convictions in formation there would not have been probable cause to believe petitioner was involved in the

criminal activity alleged in the application, let alone the vehicle was being used for the criminal activity alleged, giving rise to the unsworn testimony being not in good faith, which produced an unreasonable search.

It's inconsistent with the Federal constitution's Fourth amendment to justify any search to generate evidence for use by police in enforcing general criminal laws. *Ferguson v. City of Charleston*, 532 U.S. 67, 121 S. Ct. 1291, 149 L. Ed. 2d 205 (2001). The point of the Fourth amendment is that probable cause "be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 353 U.S. 10, 13-14 (1948). The detective was not under oath and therefore needed to take no responsibility for his misleading statements, stale information, reckless omissions in effect hijacking the warrant process from a neutral and detached magistrate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 15, 2024

