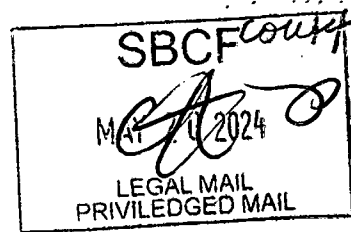
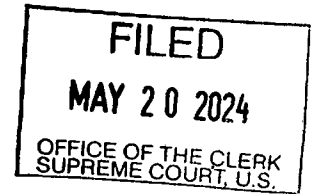


No. 23 - 7713



IN THE
SUPREME COURT OF THE UNITED STATES



CALVIN K. WILSON-PETITIONER

VS.

STATE OF FLORIDA-RESEPPONDENT[S]

ON PETITION FOR WRIT OF CERTIORARI

SECOND DISTRICT APPEALS COURT, STATE OF FLORIDA

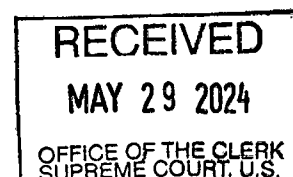
PETITION FOR WRIT OF CERTIORARI

CALVIN K. WILSON

SOUTH BAY CORRECTIONAL FACILITY

600 U.S. HIGHWAY 27 SOUTH

SOUTH BAY, FLORIDA 33493



QUESTION[S] PRESENTED

The Fourth Amendment exclusionary Rule serves another vital function- the imperative of judicial integrity. In *Franks v. Delaware*, 438 U.S. at 186, 57 L.Ed 667, 98 S.Ct. 2674 (1978) the rules prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable search and seizure. *United States v. Calandra*, 414 U.S. at 347-348, 38 L.Ed. 2d 561, 94 S.Ct. 613 (1974).

Law enforcement officials violate the constitution if, in order to obtain a warrant, he perjures himself or testifies in reckless disregard of the truth, as the Franks court explained, when the 4th Amendment demands a factual showing sufficient to compromise "probable cause", the obvious assumption is that there will be a truthful showing. See, *Kelly v. Curtis*, 21 F.3d 1544, 1555 (11th Cir. 1994), quoting *Franks*, 438 U.S. at 165-66, 98 S.Ct. 2674, 2681 57 L.Ed. 2d 667 (1978), U.S.C.A. 4 and 14.

once evidence obtained by unlawful police conduct in violation of the Fourth and Fourteenth Amendment pursuant to an illegal warrant is by hypothesis relevant and admissible on the issue of guilt, the only purpose served as between the parties any judgment or order procured from any court by the practice of fraud or deception may, in appropriate proceedings, be set aside at any time. *Franks*, at 186, 57 L.Ed. 2d 667, 98 S.Ct. 2674 (1978) quoting *Calandra* at 347 -348, 38 L.Ed. 2d. 561, 94 S.Ct. 613 (1974) U.S.C.A. 4 and 14.

Thus, U.S. Constitution prohibits law enforcement officials from making perjurous or reckless false statements in support of a warrant. *Kelly v. Curtis*, 21 F. 3d. 1544, 1555 (11th cir. 1994) quoting *Franks v. Delaware*, 438 U.S. at 156, 57 L.Ed. 2d 667, 98 S.Ct. 2674 (1978).

Information obtained in violation of the Fourth Amendment would invalidate search warrant if it proved critical to establishing probable cause. *United States v. Karo*, 468 U.S. 705, 719, 104 S.Ct. 3296, 82 L.Ed. 2d 530 (1984).

Information illegally obtained must be excised from warrant affidavit. *United States v. Gillenwaters*, 890 F.2d 679, 681-82 (4th Cir. 1989).

LIST OF PARTIES

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

 All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of the petition is as follows:

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

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

OPINIONS BELOW

☐ For cases from the **federal courts**:

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

☐ reported at _____, or

☐ has not been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States District Court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from the **State Courts**:

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

☐ reported at _____; or,

☐ Has been designated for publication but is not yet reported; or

☐ is unpublished.

The opinion of the Second District Court of Appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☒ Has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from the **federal courts**:

The date on which the United States Court of Appeals decided my case was

_____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 2-7-2024. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: 3-6-2024, and a copy of the order denying rehearing appears at Appendix B.

[] An extension of time to file the petition for a writ of certiorari was granted to and including none (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions and regulation involved in this case is the Fourth and Fourteenth Amendment wrongfully breached. The exclusionary rule was adopted to effectuate the Fourth Amendment of all citizens "to be secure in their persons, house, papers and effects, against unreasonable search and seizure..." under this rule, evidence obtained in violation of the fourth amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure, this prohibition applies as well to the fruits of the illegal seized evidence U.S.C.A. 4 and 14.

Since the evidence obtained pursuant to the warrant in violation of the Fourth and Fourteenth Amendments is by hypothesis relevant and admissible on the issue of Petitioner's guilt, the rules prime purposes is to deter future unlawful police conduct and thereby effectuate the guaranty of the Fourth Amendment against unreasonable search and seizures.

"The rule is calculated to prevent, not to repair... its purpose is to deter-to compel respect for the constitutional guaranty in the only effectively available way-by removing the incentive to disregard it." U.S.C.A. 4 and 14.

STATEMENT OF THE CASE AND FACTS

On May 25th, 2003, the Petitioner was arrested, and the arrest, search and seizure were illegal. This arrest occurred after being detained at Petitioner's own private business at International Auto Body Repair- 1609 East Columbus Drive, Tampa, Florida 33605. "See, Teco electric bill to verify the address above in the record."

The search warrant had been issued without probable cause and that the search had exceeded the scope of the warrant in violation of U.S. Constitution, U.S.C.A. 4 and 14. "See, warrant-1601 East Columbus Drive, address in the record." No probable cause on grounds upon which the warrant issued. The very face of the search warrant shows with crystal clarity that only two (2) items were listed to be seized cocaine and heroin, and during the search, "no drugs found on Petitioner Wilson's premises", when execution of the warrant at 1601 East Columbus Drive addresses. "See, Inventory and receipt of property seized under the within, search warrant in the record..." No warrant shall issue, but upon probable cause. U.S.C.A. 4. *Franks v. Delaware*, 438 U.S. 154, 165 -66, 98 S.Ct. 2674, 2681, 57 L.Ed. 2d. 667 (1978), affiant Charles J. Massucci violates U.S. Constitution Amendment 4 and 14.

The Court's reliance on *Johnson v. United States*, 333, U.S. 10, 13-14, 92 L.Ed. 436, 68 S.Ct. 367 (1948), for the proposition that a determination by a neutral magistrate is a prerequisite to the sufficiency of an application for a warrant is obviously correct. Id. at 13-14, 93 L.Ed. 436, 6 S.Ct. 367. "See, affidavit 1601 East Columbus Drive address, in the record." *And at Page 4, number 10.*

Here, the warrant "must" be based on affidavit relating facts as they exist at time of issuance of warrant. Because, no warrant shall issue, but upon probable cause U.S.C.A. 4. "See affidavit in support of search warrant at page 4 number 10". Affiant perjures himself, he violates U.S.C.A., 4, the statement made by affiant Charles J. Massucci, were "false", that the law enforcement has reason to believe and does believe that there are currently quantities of the controlled substances, cocaine and heroin on Petitioner premises. *Id.* 438 U.S. at 165-66, 98 S.Ct. 2674, 2681, 57 L.Ed. 2d 667, and see *Kelly v. Curtis*, 21 F.3d 1544, at 1555 (11th Cir. 1994). The false statement above has been knowingly and intentionally made by affiant Massucci, with reckless disregard for the truth, no drugs were found on Petitioner Wilson's premises and the false statement were material to the issue of probable cause in violation of U.S. Constitution, U.S.C.A. 4 and 14, which prohibits law enforcement officials from making perjurous or reckless false statements in support of warrant. U.S.C.A., 4. *Id.*, at 155-56, 57 L.Ed. 2d 667, 98 S.Ct. 2674. See, *Kelly v. Curtis*, 21 F.3d 1544, 1555 (11th Cir. 1994). As the *Kelly* Court explained, affiant Massucci violated a clearly established duty not to seek a warrant on the basis of perjured testimony. See, *Hervy v. Estes*, 65 F.3d 784, 788 (9th Cir. 1995).

The affidavit purged of its falsities would not be sufficient to support a finding of probable cause because, "no" evidentiary value recovered under execution of the warrant at 1601 East Columbus Drive address. "See, Sgt. Morman trial transcript at page 343, at line 4 -13, in the record." And See, lead detective Jose. A. Feliciano deposition on page 55, at lines 4-8, in record." See, *United States v. Karo*,

468 U.S. 705, 719, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984) (information obtained in violation of the Fourth Amendment would invalidate search warrant if it proved critical to establishing probable cause). See, *United States v. Gillenwaters*, 890 F.2d. 679, 681-82 (4th Cir. 1989) (information illegally obtained must be excised from warrant arrest affidavit). The search carried out by Massucci yielded no drugs and thus violates U.S.C.A. Constitution Amendment 4 and 14. *Id.* 438 U.S. at 165-66, 98 S.Ct. 2674, 2681, 57 L.Ed. 2d 667.

The Petitioner took his case to trial and was found guilty on March 4, 2005, and was sentenced to the Department of Corrections in custody for a term of 30 years.

The Second District Court of Appeals reversed this present case with respect to Petitioner Wilson on (2) two separate occasions on collateral attack on his conviction. See, *Wilson v. State*, 924 So.2d 969 (Fla. 2nd DCA 2006). The last time the Second District Court of Appeal reversed and remanded this present case; *Wilson v. State*, 957 So.2d 1264 (Fla. 2nd DCA 2007)) the post-conviction court subsequently issued an order denying Petitioner's motion without prejudice to his right to seek relief due to fraud on the court. "See, order February 14, 2008, in the record." The Petitioner continued to exhaust all of his state and federal remedies until February 27, 2023.

The exclusionary rule has been confined to situations here in this case where the governments use of such evidence to incriminate the victim Petitioner Wilson of the unlawful search and seizure. See, *Franks v. Delaware*, *supra*, the court's

reliance on *United States v. Calandra*, 414 U.S. 338, 348, 38 L.ed.2d 561, 94 S.Ct. 613 (1974) “standing to invoke the exclusionary rule is premised on a recognition that the need for deterrence and hence the rationale for excluding the evidence are strongest where government’s unlawful conduct would result in imposition of a criminal sanction on the victim Petitioner Wilson’s of search and seizure. Id. 414 U.S. at 347-348, 38 L.Ed. 2d 561, 94 S.Ct. 613.”

On June 7, 2023, the Petitioner then filed a Motion for *Franks* hearing due to fraud on trial court, and on June 29, 2023 it was denied. (See, order June 29, 2023, attached as Appendix C).

On July 17, 2023, Petitioner filed a motion for rehearing that was denied on August 24, 2023. (See, order Appendix D).

Here, the trial court Judge based the reason for denying relief is that she felt this claim against the affiant Charles J. Massucci should have been raised prior to trial, the court ruling is without merits and is in conflict with relevant decisions of this court, as the *Franks* court explained the exclusionary rule serves a vital function the imperative of judicial integrity, *Franks*, at 186, 57 L.Ed. 2d 677, 98 S.Ct. 2674 (1978) quoting *United States v Calandra*, supra at 347-48 and *United States v. Peltier*, at 359, 45 L.Ed. 2d. 374, 95 S.Ct 2313 (1975) “Thus fraud on the court’s on the part of affiant Charles J. Massucci, can be raised at any time, the due process clause U.S.C.A. 4 and 14, afford Petitioner an opportunity to expose the fraud at any time and obtain relief from it”. Id.

The exclusionary rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable search and seizures. 414 U.S. 347-348, the rule is calculated to prevent, not to repair. Its purpose is to deter-to compel respect for the Constitutional guaranty in the only effectively available way-by removing the incentive to disregard it. See, *Elkins v. United States*, 364 U.S. 206, 217, L.Ed. 2d 1669, 80 S.Ct. 1437 (1960).

On September 15, 2023, Petitioner appealed his case to the Second District Court of Appeal, State of Florida, and it was denied on February 7, 2024. (See, per curiam affirmed, opinion, Appendix A).

On February 20, 2024, Petitioner filed a Motion for rehearing that was also denied on March 6, 2024. (See, order, Appendix B).

The Court of Appeals violates *Franks* Court, the rule is not to redress the injury of the privacy of the search victim: The ruptured privacy of the victim's homes and effects cannot be restored. Reparations come too late. See, *Linkletter v. Walker*, 381 U.S. 618, 637, 14 L.Ed. 601, 85 S.Ct. 1731 (1965)

Instead, "the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable search and seizures. See, *Franks*, at 186, 57 L.Ed. 2d 667, 98 S.Ct. 2674, quoting *Calandra*, supra and *Peltier*, supra, as the *Franks* Court explained the rule is calculated to prevent, not to repair, since once the warrant is issued and the search is made, the privacy interest protected by the Fourth and Fourteenth

Amendment is wrongfully breached cannot possibly restore the privacy interests, since the evidence obtained pursuant to the warrant is by hypothesis relevant and admissible on the issue of guilt, the due process clause U.S.C.A. Const. Amend. 14., afford the Petitioner Wilson an opportunity to expose the fraud at any time and obtain relief from it. 438 U.S. at 186, 57 L.Ed. 2d 667, 98 S. Ct. 2674. The Court of Appeals decision is in conflict with relevant decisions with the *Franks* court and in violation of U.S.C.A. 4 and 14, because "under this rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure," The "prohibition applies as well to the fruits of the illegal seized evidence." Id. 438 U.S. at 186, and see cases cited, *Calandra*, 414 U.S. 338, 347-348, and *Peltier*, 442 U.S. 531, 539.

REASON FOR GRANTING PETITION

It is likewise imperative to have a practical procedure by which courts can review alleged violations of Constitution rights and articulate the meaning of those rights and...it gives credibility to the constitution guarantees. The importance of the case not only to Petitioner Wilson but to others similarly situated:

The Fourth Amendment exclusionary rule serves another vital function-the imperative of judicial integrity in *Franks* at 186, 57 L.Ed. 2d. 667, 98 S.Ct. 2674, holding: "since the warrant is issued and the search is made, the Petitioner's privacy interest protected by the 4th and 14th Amendments was wrongfully breached cannot possibly restore the privacy interests, since the evidence obtained ,pursuant to warrant is by hypothesis relevant and admissible on the issue of Petitioner's guilt

the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the 4th Amendment against unreasonable search and seizure. *Calandra*, 414 U.S. at 347-348, and *Peltier*, 422 U.S. at 539.

Thus, fraud on the court on the part of the affiant, Charles J. Massucci, can be raised at any time, the due process clause U.S.C.A. const. Amend. 4 and 14, afford the Petitioner *Wilson* an opportunity to expose the fraud at any time and obtain relief it. "The Court of Appeal and- the trial court decision is in conflict with the decision of the United States Supreme Court precedent controlling cases. See, *Franks v. Delaware*, 438 U.S. at 186, 57 L.Ed 667, 98 S.Ct. 2674 (1978) quoting *United States v. Calandra*, 414 U.S. at 347-48, 38 L.Ed. 2d 561, 94 S. Ct. 613 (1974) and *United States v. Peltier*, 422 U.S. at 539, 45 L.Ed.2d 374, 95 S.Ct. 2313 (1975) See, also *Mapp v. Ohio*, 367 U.S. at 656, 6 L.Ed. 2d. 1081, 81 S.Ct. 1684 (1961).

The national importance of having the Supreme Court decide the question involved here because, the purpose of the exclusionary rule is not to redress the injury to the privacy of the victim: "the ruptured privacy of the victims" homes and effects cannot be restored. Reparation comes too late." See, *Linkletter v. Walker* 381 U.S. at 637, 14 L.Ed. 2d 601, 85 S.Ct. 1731 (1965)

Instead, the rules prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the 4th Amendment against unreasonable searches and seizures: "The rule is calculated to prevent, not to repair. Its purpose is to deter-to compel respect for the Constitutional guaranty in the only ineffectively

available way by removing the incentive to disregard it. *Elkins v. United States*, 364 U.S. at 217, 4 L.Ed. 2d 1669, 80 S.Ct. 1437 (1960).

Any judgment or ordered procured from any court by the practice of fraud or deception may, in appropriate proceedings, be set aside at any time. *Franks*, 438 U.S. at 186, quoting *Calandara*, 414 U.S. at 347-348.

Therefore, the trial court Judge Michelle Cisco has made a contradicted ruling to the United States Supreme Court holding case, *Franks, supra*. (See, order June 29, 2023, attached as Appendix C). The supremacy clause of our constitution Art. 6, Sect. 2 and 3, provide laws of the land, no state court, may serve as an accomplice in the willful transgression “of the laws of the United States”, laws by which “the judges in every state are bound”. See, *Peltier*, 422 U.S. at 537-539, 45 L.Ed. 2d 374, 95 S.Ct. 2313, quoting *Elkins*, 364 U.S., at 222, 4 L.Ed. 2d 1669, 80 S.Ct. 1437, and *Lee v. Florida*, 393 U.S. 378, 385-386, 20 L.Ed. 2d 1166, 88 S.Ct. 2096 (1968).

The Petitioner prays-fully requests that this Honorable Court grant the petition.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Calvin K. Wilson
Calvin K. Wilson # 524576

CERTIFICATE OF MAILING

I certify that I, Calvin K. Wilson, DC # 524576 placed this petition for a writ of certiorari in the hands of South Bay Officials for mailing to: Office of Attorney General, concourse Center, 3507 E. Frontage road, suite 200, Tampa, Florida 33607 on this 20 day of May, 2024.

Calvin K. Wilson
Calvin K. Wilson # 524576