24-5174

ORIGINAL

IN THE SUPREME COURT

OF THE UNITED STATES

MICHAEL D. CARVER

Petitioner,

V

CITY OF KALAMAZOO

Respondent,

On Petition For A Writ Of Certiorari

The United States Court Of Appeals

For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After Petitioner's criminal sexual misconduct conviction was reversed because of a Ginther hearing in which his counsel Becket Jones was founded guilty of ineffective assistance of counsel for not consulting with an expert in the field of suggestibility and false memory. Expert at hearing testified too victim was coerced to testify falsely at preliminary examination and trial.

Expert testified "the mother stated one thing and the victim stated another, which mean both can't be right". Or did any statement go with initial police report from officer Veltman or from the doctor exam, or from Higby police report requesting for warrant.

Federal District Court for Western Michigan imposed absolute immunity for all defendant and dismissed Petitioner's claims of Intentional Malicious Persecution by using Fabricated Evidence and reports, False Arrest, gathering other to collaborate with the fabricated police report, (Westfall, Gurhurst, CPS Lady) to receive probable cause.

Petitioner relied on Buckley v Fitzsimmons 509 U.S. 259 (1993) and Cousin v Small 325 F.3d 627 (5th Cir. 2003), both of which require a "functional approach" under which absolute immunity applies to conduct that Is "intimately associated with the judicial phase of the criminal process" that includes "initiating a prosecution and in presenting the State's." Buckley 509 U.S. at 270 (quoting limber v Pachtman 424 U.S. 409, 430-31.

Petitioner Nevertheless deemed the conduct to be "investigative" and not subject to absolute immunity without probable cause. Pursuant to Frank v Delaware 438 U.S. 154 (1978), the Fouth Amendment is violated where law enforcement intentionally or recklessly includes false

information or misrepresentations in an affidavit for a Search Warrant and probable cause is vitiated when the false information or misrepresentations are excised from the affidavit. This Court however, did not specifically address whether Franks applies to evidence that is material to probable cause which is recklessly or intentionally omitted from a search warrant affidavit. Detective Higby and her collaborators violated **Police Misconduct: Law and Litigation** § 2:12 **Duty to investigate. Cortez v McCauley 478 F.3d 1108 (10th Cir. 2007), Wilson v Morgan 477 F.3d 326, 67 Fed. R. Serv. 3d 283, 2007 FED App. 0050P (6th Cir. 2007), Kuehl v Burtis 173 F.3d 646 (8th Cir. 1999), Searcey v Dean 139 S.Ct. 1291 203 L. Ed. 2d 414 (2019), Provience v City of Detroit 529 Fed. Appx. 661 (6th Cir. 2013), stoot v. City of Everett 582 F.3d 910 (9th Cir. 2009), Gardenhire v Schubert, 205 F.3d 303, 318, 2000 FED App. 0075P (6th Cir. 2013) and Spiegel v Cortese 196 F.3d 717 (7th Cir. 1999).**

The questions presented, "all of which are matters of first impression, are."

1. Whether Franks applies to material omissions, and assuming that the customary practice of lower courts that apply that rule is correct:
    a. Whether probable cause is vitiated for a particular offense where the omitted information is exculpatory evidence related to that offense.
    b. Whether after material omissions based on exculpatory evidence for one class of offenses are considered and probable cause is negated for that class of offenses, the entire affidavit and search warrant are invalid under Franks and suppression is warranted.
2. Whether, Detective Higby had probable cause to request for arrest warrant after collecting all evidence or did Detective Higby fabricate her police report to bolster non-

existing evidence intended for use at the criminal preliminary exam, and at trial, to support her fabricated probable cause.

3. Does the absolute immunity that applies to prosecutors for conduct under the "functional approach" embraced in Malley v Briggs, 457 U.S. 335 (1986) extend to law enforcement officers performing investigative conduct while requesting for arrest warrant for criminal charge.

4. Whether Detective Higby and prosecutor Stein violates Petitioner's Fourth Amendment before any court's hearing while investigating criminal charge against Petitioner's instead of advocacy it was investigative roll fabricating police report and forensic interview and that the law were "clear established (Police Misconduct Law and Litigation § 2:12) "statutory or constitutional rights, when either one (Higby or Stein) had evidence for probable cause.

5. Does prosecutor Mike Stein receive absolute immunity for his bad acts before requesting warrant, before preliminary exam, and the fraudulent investigation Mr. Stein did into Petitioner interview when Mr. Stein lied and mislead the preliminary examiner judge and trial judge concerning Petitioner's interview with officer Veltman that Jennifer destroyed which was exculpatory evidence that was favorable to the Petitioner.

6. Respondents are not entitled to absolute immunity. Buckley v Fitzsimmons, 509 U.S. 259 (1993) but are entitle to qualified immunity if the constitutional wrong is complete before the case begins. On remand from this Court, it found that nothing in Burn v Reed 500 U.S. 478 in which the Court held that prosecutors had absolute immunity for their actions in participating in a probable-cause hearing but not in giving advice to the police-undermined its initial holding. Pp. 267-278.

PARTIES TO PROCEEDING

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EXHIBIT 1. Sixth Circuit Requested For Petitioner To Write "A brief In his own words in" November 15,2023. Then in December Sixth Circuit withdrew the request right before the deadline December 27, 2023. Sixth Circuit denied Petitioner his right to file a brief in his own words to support his claim of no probable cause from the beginning, and how detective and prosecutor collaborated with other government officials to fabricate a police report to support the fabricate probable cause arrest warrant they requested. There wasn't any evidence of a crime ever happen or any evidence to support criminal sexual misconduct in the first degree under the age 13. Sixth Circuit requested brief after Petitioner paid 550. 00 to appeal his denial from Western District of Michigan Southern.

EXHIBIT 2. Retaliation From Kalamazoo Police And Kalamazoo Court System, Police Retaliated By Refusing To Come To A Call From Petitioner Carver When A Person Pull A Gun On Petitioner, When Petitioner Storage Got Broken-In Police Refused To Come Even When Petitioner's Called Over Five Times 911. Petitioner Has Case No. Of The Crime Committed Against Petitioner Carver. Petitioner Was Assaulted By Two People And Police Refused To Arrest The Perpetrator After They Found Out The Circumstances And Facts Of The Case. The Police Allow A Woman To Try To Assault Petitioner With A Knife And When Petitioner Call Police They Refused To Charge Her With A Crime Because Of My Lawsuit Against Kalamazoo Police Department. Petitioner Has To Endure These Harassment And Discrimination Against Him For Filing This Lawsuit Against Kalamazoo Police Department. This Is Relevant To This Case And Has Been Difficult For The Petitioner To Focus On This Lawsuit With All This Discrimination And Harassment By Kalamazoo Government Officials (Judges,Polices, Prosecutors, and Court Clerks) For Filing This Lawsuit. This

Is Retaliation And Is Forbitten By Any United States Courts. If This Happen To Your Child, Would That Be Justice Or is this type Of Actions exceptional?

EXHIBIT 3. Where Kalamazoo Police Department Blocked Carver From Receiving Document Of Continuous Retaliation From This Lawsuit. Then After Sixth Circuit Makes it's Decision Kalamazoo Police Department Claim They Will Send A COPY Of Petitioner Request To Sixth Circuit Keeping Supported Evidence That Show How Abusive The Kalamazoo Police Department Are And How Far They Will Go To Keep Petitioner Carver From Having Supporting Evidence of Their Malicious Persecution Their Fabricated Charges And Their Discrimination/Harassment Tactic Towards Mr. Carver.

EXHIBIT 4. Where Police Retaliated Against Carver By Falsely Arrested Him In March Of 2024. No. Charges Was brought Against Mr. Carver. Mr. Carver Had Called Police (911) On The Person Whom They Arrested Carver For. It Was A Racist Act And Retaliation From Lawsuit, Because A White Woman Gave Them A False Accusation And Without Any Evidence They Arrested Carver Even After Carver Told Them He Called Them And They Refused To Come. Video From Downtown Clear Carver From Charge Of Assault. This was retaliation from Lawsuit.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner's Michael D. Carver respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit

OPINIONS BELOW

The Sixth Circuit issued its judgment February 14, 2024 See exhibit 4.

The District Court's Order issued _____. See exhibit 5.

JURISDICTION

The District Court had jurisdiction pursuant to 28 U.S.C. § 1331, as Carver case presented Federal Questions. The judgment of the Court of Appeals was entered on February 14, 2024.

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

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment provides:

The right of the people to be secure in their persons, homes, papers and effects, Against unreasonable searches and seizures, 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.

The Fifth Amendment Provides:

In pertinent part: "No person shall... be deprived of life, liberty, or property, without due process of law." The Torture Victim Protection Act of 1991 (TVPA), Pub. L.102-256, 106 Stat. 73 (28 U.S.C. § 1350 note), provides in pertinent part that "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation...subjects an individual to torture shall, in a civil action, be liable for damages to that individual." The TVPA is reproduced at App. D. 427a-430a. The Foreign reform and are structuring Act of 1998, Pub.L. 105-277, § 2242,

codified at 112 Stat. 2681, 822-23 (8 U.S.C. § 1231), is reproduced at App.E, 431a-433a. Relevant portions of the convention Against Torture and Other Forms of Cruel, Inhuman and degrading Treatment or punishment (CAT), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 1(1987), are reproduced at App. E, 434a-437a.

The Fourteenth Amendment Provides:

14th Amendment to the U.S. Constitution: Civil Rights (1868)

No State shall make or enforce any law which shall abridge the Privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due Process of law; nor deny to any person within its jurisdiction the Equal protection of the laws. March 6, 2024.

INTRODUCTION

This case concerns the Fourth, Fifth, Fourteenth Amendment and Franks v Delaware, 438 U.S. (1978), and important unanswered federal question related to Franks challenges based on material omissions couched in bad faith because the affiant either recklessly or intentionally omitted the evidence from the search warrant affidavit. This case also raises compelling federal questions that impact all reviewing courts in terms of the proper scope of appellant review.

Case involving novel Fourth Amendment issues, particularly those implicated by the realities of the digital age, have been at the forefront of this Court's contemporary agenda. Carpenter v United States, 585 U.S. (2018); Riley v California, 134 S.Ct. 2473 (2014); United States v Jones, 132 S.Ct. 945 (2012).

Years ago, this Court granted certiorari in Franks to decide whether the Fourth Amendment and the exclusionary rule guarantees criminal defendants right to challenge the veracity of search

warrant affidavits that are based on intentional or reckless falsehoods. In answering yes to that question, this Court made clear that the Warrant Clause requires a factual showing sufficient to compromise probable cause and that the "obvious assumption" is that there will be a "truthful" showing. ("In Petitioner's case Truthful showing is, Det. Higby falsified her report when she stated I'm not talking about March 1, 2014 I'm talking about other date. March 1, is the only date reported to police. There isn't another date because victim claim it happen only once and it was reported only once March 1,2014." Any other police reports is false and without any support.). Franks has only been tangentially referenced by this Court on a handful of occasions. See, e.g., United States v Leon, 468 U.S. 897 (1984); Herring v United States, 555 U.S. 13(2009).

The Franks doctrine that governs material misstatements is now a longstanding principle embraced by both federal and state courts. Yet, since 1978, this Court has not issued any substantive opinion expanding on or explaining critical issues related to Franks. For that reason, lower courts have been forced to create their own substantive and procedural rules which has created confusion and disparity in the application of the law in this context. For instance, although a trend has evolved over time where court apply the Frank doctrine to cases involving material omissions as opposed to affirmative misstatements, this Court never actually established that rule and accordingly this majority approach is not employed by all courts.

Over the years, for instance, a bright line rule has been created by some courts that material omission fall under the purview of Franks. Ironically, considering the issues at play in this case, one of the seminal decisions holding that material omissions will complicate Franks was issued by the Tenth Circuit in Stewart v Donges, 915 F.2d. 572 (10th Cir. 1990). Other courts, however,

Have not specifically adopted that rule, refused to answer the question or have rejected the rule. There is also currently a split in circuits regarding the standard of review that applies to the denial of a Franks hearing. Accordingly, a divisive landscape has developed over decades where different courts have created different rules and there is little to no uniformity in the application of this important federal constitutional question.

This case presents this Court with the perfect opportunity to revisit Franks, to remedy decades of confusion, and to ensure uniform application of the law in the future when courts are presented with Franks challenges.

This case involves important questions of federal constitutional law that have been undecided for decades, but should now be decided, about Franks and its application to cases involving material omissions to search warrant affidavits.

Finally, this case also presents important federal questions that apply across the board to all appellate courts in terms of jurisdiction and the proper scope of appellate review based on the interplay of the party presentation doctrine and principle of waiver. As such, the issues in this case are ripe for consideration and this Court should grant certiorari review.

STATEMENT OF THE CASE

The government's investigation of Michael D. Carver was force on the suspected of criminal sexual conduct under the of 13. The primary reason the government obtained an arrest warrant was Detective Higby falsifying documents to obtained warrant. Detective stated in her police report "I'm not talking about March 1, 2014" there is no other reason to look for another date because it was told to detective Higby "Petitioner's did not go up stairs on March 1, 2014." Or

did the victim come down stairs on March 1, 2014. These statements came from the victim family which cleared Petitioner from any criminal acts. Before detective requested for arrest warrant. No evidence to support a request for arrest warrant, none at all!

The government execution of the warrant on March 28, 2014. Did not yield evidence of criminal sexual conduct, contrary to what it asserted it would find in the officer Veltman police report in support of the warrant. Instead, government charged Carver with first degree criminal sexual conduct under the age of 13.

The defense moved to suppress all evidence seized after and before Carver arrest. After a hearing on that motion, the court still allowed government to use false evidence and statements. In Franks, the court determine that the government had omitted material information from the affidavit submitted in support of the warrant "with the intent to mislead-or, at the very least, with a reckless disregard of whether it would mislead-the magistrate judge." In Cortez v Mccauley 478 F. 3d 1108 (10th Cir. 2007) **Standard of review**: The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation..." The supreme Court has explained that "officials can still be on notice that their conduct violates established law even in novel factual circumstances." Hope v Pelzer 536 U.S. 730, 741, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).

Failure of officer to interview readily available witnesses, to examine physical evidence and to wait for medical report that was forthcoming before taking plaintiff into custody based solely

upon uncorroborated allegation by child's mother that she had been abused would violates plaintiff's rights; officer where not entitle to qualified immunity.

Detective Higby was informed by the doctor who conducted the examination that "no evidence of penetration was present." So were the victim stated "Plaintiff put his finger up inside her vaginal was uncorroborated with medical exam.

In Franks the court stated "the magistrate judge would not have issued the warrant had the government "faithfully represented the facts in [the] affidavit" insofar as the warrant's healthcare fraud allegations were concerned.

Tenth Circuit, to determine whether the valid portions of the warrant could be severed from the invalid portions, and applying that test, the Court concluded that the government failed to demonstrate that severability was appropriate and suppressed al of the evidence in this case for that reason.

Petitioner's Carver paid Sixth Circuit $550.00 to allow his appeal to be heard. Then Sixth Circuit requested Petitioner to write in his own words what he was appealing. Sixth Circuit gave a deadline of December 27, 2023 to have petitioner brief in. Right before deadline (aroundbout December 15 Sixth Circuit sent Petitioner a letter stating "they will used petitioner's amended brief.") Sixth Circuit denied Petitioner his opportunity to stated in his own words how the city of Kalamazoo violated petitioner constitutional rights and also, and how defendants are not entitled to absolute immunity.

Sixth Circuit did not use Petitioner amended brief which that brief showed how government intentional falsified documents to obtain a false arrest warrant and false probable cause. Petitioner was denied his right to respond to court request.

The Sixth Circuit erroneous decision not to all Petitioner to file his own words after requesting Petitioner's to file brief, this violates Title VII- General provisions. Rule 47. Local Rules by Courts of Appeals (2) Petitioner equal rights to appeal and respond to court request and given the same opportunity as a lawyer has. Petitioner did not get this opportunity to explain in his own words what happen before requesting for arrest warrant.

The United States Court of Appeals For The Sixth Circuit affirm the District Court's judgment. Dismissed Petitioner's complaint because he failed to state a claim on which relief could be granted and sought monetary relief from a defendant who was immune from such relief. (All Defendants are not immune from such relief!). Neither is the prosecutor when there is no evidence of probable cause.

In Petitioner's claims, he also expressed in his amended brief Gross Negligent, With the Intention to Harassment and With the Intention to Use false Statements to support arrest warrant and probable cause and by destroying favorable evidence that would exonerate the charge of criminal sexual conduct.

In Court of Appeals Sixth Circuit, its decision claims, Petitioner stated Veltman violated fourth amendment by obtaining a arrest warrant without establishing probable cause.

Petitioner's never accused officer Veltman of falsifying anything, only Detective Higby.

This is a wrong factual statement and is not in Petitioner's brief. The initial police report from Veltman does not state what Detective put in her report requesting for arrest warrant.

THE WRONG FACTUAL STATEMENTS BY DETECTIVE HIGBY TO OBTAIN WARRANT

1. There no mention of victim coming downstairs getting into bed with Petitioner were prosecutor argued at trial misleading the jury and giving false facts from Detective Higby report.
2. There no mention the crime happened downstairs in the basement where prosecutor argue at trial misleading the jury giving false facts from Detective Higby report.
3. There no mention in Veltman report of victim taking nap with petitioner where prosecutor argue at trial misleading the jury giving false facts from Detective Higby report.
4. Prosecutor argued all these false facts that wasn't in the initial police report by Veltman misleading the jury and magistrate judge.

Detective Higby changed the whole scenario of the facts in order to obtain probable cause and to misled magistrate to sign warrant.

In Court of Appeals for sixth Circuit decision, it claim Petitioner did not allege specific facts showing (1) what false information the defendants relied on or what material information they omitted, (2) why the warrant application lacked probable cause, or (3) that the defendants knew he was innocent despite the victim's allegations.

If Sixth Circuit would had allowed Petitioner to respond to their request (in your own words) they would have received supporting facts that detective Higby did not have probable cause

And that she knew the Petitioner was innocent after the victim mother told Det. Higby that Petitioner did not go upstairs on March 1, 2014 where they claim the assault took place in initial police report. This was before petitioner interview with Det. Higby on March 14, 2014. So, Det. Higby knew that petitioner could not have done what officer Veltman reported and there no other date was reported too officer Veltman that sexual crime happened before that date or to Det. Higby of a crime ever happen. Any ordinary officer or reasonable officer would have known no crime has been committed with the evidence collected by initial officer Veltman and doctor report of no penetration. It was intentional when she said "she not talking about March 1,2014 and then get other to collaborate her false report (Westfall, Gurhurst and Patrick) to mislead the court and jury. Her action was malicious and reckless and fall beneath of the police misconduct Law and Litigation § 2:12 **Duty To Investigate** and violated the Fourth & Fourteenth Amendment.

The initial police report from officer Veltman report states, "on March 1, 2014 Petitioner went upstairs got into bed with the victim and molest her. In officer Higby report it say "round about March 1, 2014 the victim went down to basement to take a nap with the Petitioner and while she took a nap Petitioner molested her. This statement is not in police report by officer Veltman, also in Higby report she report it happen in the day time, but in initial report its night time, every scenario officer reported was fabricated and coerced. Jury relied on these false statements and this was prejudice against petitioner right to a fair trial and not to be seized for fabricated crime.

If they had allowed Petitioner to respond to their request in his own words, The court would have evidence that expressed or given specific facts showing what false information the

defendants relied on to receive false arrest warrant or what material information they omitted, but if the Sixth Circuit wanted information of the omitted information they should have allow petitioner to file own word brief, but Court denied that and the amended brief did not and did not explain what facts wasn't strong enough in brief or amended brief. The Sixth Circuit could not see the wrongful actions by government officials.

Petitioner states there is sufficient facts that Detective Higby falsified her police report and collaborated with other government officials to receive a false warrant and they all knew what they testified was falsely and they all knew their testimony did not support or go with the facts collected. Petitioner would have shown this in his own words brief as the court of appeals asked Petitioner too do, but rescind the request and then denied brief for not having sufficient facts.

In Court of Appeals decision it claim Petitioner cannot establish a claim of supervisory or municipal liability without establishing an underlying constitutional violation. Petitioner stated when detective falsified her police report, she violated constitution of the United States when she stated I'm not talking about March 1, 2014, I'm talking about another time, (This statement shows detective motive and her intention to "fabricate, falsify, collaborate with others to obtain a false arrest warrant and false probable cause, and she also refused to investigate what was told to her concerning what happen to the victim before victim said petitioner or if her brother kick her in her vaginal area. After being told by Petitioner and his mother Mary Carver at petitioner interview with Det. Higby.

In a statement from Petitioner's brother Joseph Carver Stating "My daughter Samona Allen said, she never accused Petitioner of anything it was police and prosecutor. They told them what to say." See Exhibit 4.

There was no other time reported to police or prosecutor of a sexual assault of than March 1, 2014 between 2-7 in the morning. There is, no other allegations in any other police reports but Detective Higby. Everything used is fabricated and false. By implying another date Det. Higby indicated she would be falsifying documents or reports to establish probable cause to request an arrest warrant without any supporting evidence to support the elements of the charge of criminal sexual conduct.

This was **Intentional, Gross Negligent, Discrimination, and Reckless Intention** by Detective Higby requesting for an arrest warrant. Her oath to uphold the United States Constitution, and to protect and serve was violated and the **Equal Protection Clause of the United States Constitution**.

Finally, the petitioner's wanted to add allegation of retaliation by Kalamazoo Police Department and other government official by not coming to any calls petitioner makes to the police.

Petitioner called for help because a person pulled a gun on Petitioner while he was feeding the homeless, police refused to come and did not come. See Exhibit 2.

Another call Petitioner made about a white lady pulled a knife out and tried to stab Petitioner and other around and when the police came, she still had the knife in her hand chasing people around and was on the street the next morning with no charges brought against her. See exhibit 5.

Also, the police refused to come to Petitioner call when his storage got broken-into. Petitioner called five times and no police came. Petitioner recorded this incident. See exhibit 3.

On August 7, 2023 Petitioner was assaulted by two person and the police refused to arrest them because it happened to Petitioner and his lawsuit against the city. Which is retaliation from lawsuit against Kalamazoo Police Department for their reckless actions and continuous reckless behavior. See exhibit 6. This, type of actions is harassing, discriminatory, Abusive and retaliation for exercising Petitioner's constitutional rights not to be subject to any kind of unlawful acts that "diminished" the constitution.

STATEMENT

1. This petition seeks review of a Denial en banc decision of the sixth Circuit, affirming the dismissal on the pleading of a suit brought by petitioner Michael D. Carver an America citizen, which sought damage from State Officials for purposes of subjecting him to torture and detention, false arrest and detain him without evidence and with false accusations from Kalamazoo Police department. The majority's legal reasoning and result, which left carver without any remedy for his claims, the Appellate Court's wrongfully objected absolute immunity to officials who are not protected by absolute immunity because there is no probable cause evidence to support a charge for criminal sexual conduct under the age 13 or any age or person.

The Underlying Criminal Sexual Conduct Under Age of 13 Investigation

Petitioner's Michael D. Carver was a resident of City of Kalamazoo Michigan. Detective Higby executed an arrest warrant for Petitioner's Michael Carver and arrested Petitioner on March 28, 2014.

The origins of the investigation where a crime investigation that happen on March 1, 2014. This accusation was supposed to happen only once as reported in initial police report officer Veltman.

When Det. Higby received the information from officer Veltman it did not express roundabout March 1, 2014 it expressed Petitioner assaulted the victim "on" March 1, 2014 by entering into her sister bedroom. Petitioner never went upstairs on March 1, 2014.

With only one exception, all of the criminal sexual conduct allegations contained in the affidavit came from the Kalamazoo Police Department, Det. Higby police report and not from any other independent source except Child Protective Service (CPS), which hospital informed officer Veltman "no penetration".

The Det. Higby affidavit (police report) was 9-12 pages long and sought to establish probable cause without supporting evidence and the police report contained lots of false statements which Det. Higby coordinated at the forensic interview on March 7, 2014, and had the victim make false statement in her interview to establish probable cause.

The investigation from their alleged allegations, supported the Petitioner claim of innocent, "The doctor report, ""No penetration", "No marks of penetration", "No Eye Witness", "No Evidence of Crime of Criminal Sexual Conduct ever happen."

Petitioner was arrested March 28, 2014. The force of the affidavit for arrest was, a roundabout March1, 2014 Petitioner sexually assaulted his great niece.

At Petitioner's evidentiary hearing Dr. Sweed-low an expert in the field of **suggestibility and false memory**, testified that the victim was coerce when she made a statement. She was coerced at preliminary exam. and trial.

In Gehrman Carlson v United States of America: The court then found that Agent Rutkowski misrepresented the healthcare fraud allegation as though they had not yet been resolved and omitted the admonition letter and its finding intentionally, or at the very least recklessly.

In terms of probable cause, after adding the omitted facts and reviewing the affidavit in its entirety, the District Court ruled that had the affidavit included the omitted evidence and the fact that DORA did not sustain the healthcare fraud charges, probable cause to search for that crime would have been vitiated.

§ 2:12. Duty to Investigate

Cortez v McCauley 478 F.3d 1108 (10th Cir. 2007): (failure of officers to interview readily available witnesses, to examine physical evidence and to wait for medical report that was forthcoming before taking plaintiff into custody based solely upon uncorroborated allegation by child's mother that she had been abused would violate Plaintiff's rights; officers were not entitled to qualified immunity).

(in assessing probable cause officer must consider totality of the circumstances, including both inculpatory and exculpatory evidence known to him; "offiucers initially assessing probable cause to arrest may not off-handedly disregard potentially

exculpatory information made readily available by witnesses on the scence"); Wilson v. Morgan 477 F.3d 326, 67 Fed. R. Serv. 3d 283, 2007 FED App. 0050P (6th Cir. 2007).

("an officer may not choose to ignore information that has been offered to him or her...Nor may the officer conduct an investigation in a biased fashion or elect not to obtain easily discoverable facts...") Kuehl v Burtis, 173 F.3d 646 (8th Cir. 1999) (officer may not ignore exculpatory evidence and is required to conduct a reasonably thorough investigation prior to arrest where there is no exigency and law enforcement will not be unduly hampered).

Here, Det. Higby ignore information that could have exonerated Petitioner Carver such as: (a) refused to interview the potential perpetrator victim brother, even after getting information victim stated his name first at Petitioner interview on March 14, 2014 before requesting arrest warrant, but mother refused to believe that information her daughter told her, (b) also, Det. Higby refused the Doctor report of no sign of penetration, no sign of marks on victim concerning molestation, (c) Det. Higby refused to believe it only happen one time and then fabricated a report without any evidence to support claim but her falsified documents and collaborated with other government officials to support her fabricated charge of criminal sexual conduct in the first degree under the age of 13, (d) when Det. Higby stated she not talking about March. 1, 2014 shows her intention to seek false information to support her false claim of criminal sexual conduct charge. There no suggestion that it happen another time in any police reports or child protection service. (e) Provience v City of Detroit, 529 Fed.Appx 661 (6th Cir. 2013); officer did not have probable cause based on purported eyewitness testimony where discrepancies in available evidence undercut eyewitness); Stoot v City of Everett 582 F.3d 910 (th Cir. 2009) (officer could not rely solely on uncorroborated, inconsistent statements of four-

year-old to seize alleged sexual abuser). (f) Gardenhire v. Schubert, 205 F.3d 303, 318, 2000 FED App. 0075P (6th Cir. 2000) (officer could not ignore exculpatory evidence he had at time of arrest; taking it into account he did not have probable cause and further investigation was required); Spiegel v Cortese 196 F. 3d 717 (7th Cir. 1999), as amended, (Jan. 2000).

Also, in Gehrmann, Carlson v United States of America; the Court also concluded that, to the extent the valid and invalid categories of evidence to be seized were distinguishable from one another, the valid portions did not constitute "the greater part of the warrant." Having found that the valid portions of the warrant could not be severed from the invalid portions, the Court ruled that all of the evidence seized pursuant to the warrant had to be suppressed.

The Court erred when it did not consider the arrest warrant after court overturned conviction because of false statements made before requesting for arrest warrant.

Evidence shows how Det. Higby fabricated her report, how she collaborated with others to have supported evidence to her fabricated charge she had plan for Petitioner. This violated the Fourth Amendment by falsifying documents to support probable cause, Petitioner Due Process was violated Deprivation Of Rights Under Color Of Law § 242 of Title 18; **Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.**

REASON FOR GRANTING THE PETITION

This case involves several significant first impression issues that implicated the constitutional rights of criminal defendants and civil Plaintiff's in federal and state matters. This case also involves issues that implicate rules that apply to the authority of federal and state appellate courts and rules that should govern the scope of their review.

Challenges to search warrants based on Franks involve important Fourth Amendment issues that are litigated in federal and state trial courts all over the country in both civil and criminal cases. Without this court's guidance, lower courts will continue to create and apply their own unique standards to legal issues under Franks, particularly regarding cases that involve material omissions, and the law will continue to be applied in a disparate manner. Because of the frequency in which Franks cases are heard in trial courts, the practical issues presented in this case have nationwide significance, even though Dr. Gehrman and Carlson stand in a small category of defendants who actually prevailed in a Franks challenge and obtained the suppression of evidence.

This case presents this Court with the opportunity to interpret the Constitution and the Court's precedents, for the first time, regarding procedural and substantive law related to material omissions under Franks because the Tenth Circuit erroneously ruled that the omitted information was "not so probative," or material, to negate probable cause, even though it found the omitted information was relevant, exculpatory and "should have been included" in the affidavit at issue. This holding overlooks the exculpatory nature of the omitted evidence and whether a warrant remains valid if probable cause is negated regarding one class of offenses in an affidavit, which is the class of offenses that is the main crux of the government's investigation an is the focus of the affidavit for search warrant.

The Court focused its entire consideration of this case on the ground of absolute immunity issue and ignored the main issue presented by Petitioner which involved the application of probable cause doctrine to request for an arrest warrant, and whether state government violated Petitioner **Fourth and Fourteenth Amendment of United States Constitution**; ("each man's home is his castle", secure from unreasonable searches and seizures of property by the ...") (No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of Life, Liberty, or Property, without due process of law, no deny to any person within its jurisdiction the equal protect of the laws.").

The question of governmental fabrication here, and whether the Sixth Circuit violated Petitioner's Carver rights to presentation doctrine implicated rules that apply across the broad to the power of reviewing courts and limitations that apply to their scope of review.

This case presents compelling issues that impact litigants. Accordingly, this Court should grant review.

1. **The Longstanding Unanswered Questions Regarding Material Omissions Under Franks Mandate Review Now After Decades Of Uncertainty And A Disparate Application If The Law.**
2. **False Arrest:** A warrantless arrest without probable cause violates the Constitution and provides a basis for a section 1983 **claim. Marx v Gumbinner, 905 F.2d 1503, 1505 (11th Cir.1990):** Probable cause to arrest exists when an arrest is objectively reasonable based on the totality of the circumstances. Rankin v Evans 133 F.3d. 1425, 1435 (11th Cir.

1998). "This standard is met when 'the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would caused a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.' (quoting Williamson v Mills 65 F.3d 155, 158 (11th Cir. 1995).

3. **False Arrest:** "Plainly, an arrest without probable cause violates the right to be free from an unreasonable search under the Fourth Amendment." Durruthy v. Paster, 351 F.3d 1080, 1088 (11th Cir. 2003) (citing Redd v City of Enterprise, 140 F.3d 1378, 1382 (11th Cir.1998)).

Qualified immunity is, as the term implies, qualified. It is not absolute. It contemplates instances in which a public official's actions are not protected. See Madison v Gerstein, 440 F.2d 338, 341 (5th Cir. 1971) (As a law enforcement officer, defendant...does not enjoy the cloak of immunity of the quasi-judicial prosecuting attorney."); see also Butz v Economou 438 U.S. 478, 506-07, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978) ([I]t is not fair to hold liable the official who knows or should know he is acting outside the law, and that insisting on an awareness of clearly established constitutional limits will not unduly interfere with the exercise of official judgment." Viewing in the light most favorable to Kingsland, the evidence shows that the arresting officer in this case behaved in an objectively unreasonable fashion and were therefore not entitled to qualified immunity. REVERSED AND REMANDED. Any reasonable Officers and Prosecutors Would have Known fabricating is acting outside of the law and forbidden by the Fourth Amendment and Fourteenth Amendment United States

Constitution! Detective Higby and Prosecutor Stein Knew What They Was Doing violates the constitution by Petitioner Informing Court at all hearing.

Unlike other types of challenges to warrants pursuant to the Fourth Amendment, an attack based on Franks Stands in a class of its own because of the allegations of bad faith on the part f law enforcement that are part and parcel of a Franks challenge. The bad faith factor is what motivated this Court to hold that defendants are entitle to a veracity hearing in the first place because, as the Court stated, "it would be an unthinkable imposition" on a magistrate's authority if a warrant affidavit containing deliberate or reckless falsehood stood beyond impeachment. Frans, 438 U.S. at 165. Bad faith is certainly implicated when an affiant intentionally or recklessly omits exculpatory information and presented an inaccurate and skewed portrayal of facts relevant to probable cause in the affidavit presented to the magistrate, as was the case here. For that reason, the exclusion of relevant and exculpatory evidence falls squarely within the type of conduct that franks sought to deter.

In Kingsland v City of Miami No. 03-13331 May 11, 2004: Malicious Prosecution

Plaintiff Kingsland also asserts a § 1983 claim for malicious prosecution based on the defendants' alleged fabrication of evidence against her, their alleged failure to consider potentially exculpatory information, and their alleged refusal to investigate impartially. Kingsland maintains that, due to the officer's improper actions, the prosecutor was presented with false and misleading information. She avers that criminal prosecution was a natural consequence of the defendants purportedly deceptive account of the accident and its surrounding circumstances.

Yet, this Court has never addressed any issues related to the interplay of material omissions under Franks. Thus, for years now, lower courts have had no guidance as to whether Franks applies to material omissions in the first place, and if so, whether a court must consider the exculpatory value of any omitted evidence in making determinations about materiality and probable cause. Lower courts are equally lacking guidance regarding how material omissions based on exculpatory evidence that relate to one class of offenses impacts the overall validity of a warrant under Franks, where probable cause is negated for those offenses.

This case presents this Court with the ideal vehicle to answer important unsettled questions regarding franks, that should finally be answered, particularly where the Tenth Circuit established first impression rules that violate the very purpose of the Franks doctrine.

2. This court Should Finally Address Whether Material Omissions That Constitution Exculpatory Evidence Vitiates Probable Cause And Whether A Warrant Remains Valid Under Franks If Probable Cause Is Negated For The Offenses That Relate To The Majority Of The Warrant.

Relatedly, this Court should grant review in order to decide whether the omission of exculpatory evidence vitiates probable cause under Franks for the offenses it relates to due to the fact that exculpatory evidence establishes a less than "fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v Gates, 462 U.S. 213, 238 (1983). Further, if such is the case, this court should grant review to

decide whether a warrant remains valid under Franks if probable cause for offenses that relate to a majority of the warrant is negated by exculpatory evidence.

Exculpatory evidence is evidence favorable to the accused. Brady v Maryland 373, U.S. 832 (1963). In this case, the Admonition Letter and the Findings of DORA were exculpatory and established that the probability that law enforcement would find evidence of criminal sexual misconduct was **de minimis.** This evidence showed that, not even in an administrative capacity, could the allegations of criminal sexual misconduct against Carver be sustained, yet, Det.Higby deprived the Magistrate of this significant information of the facts of the case.

The criminal sexual conduct offense where the driving force of the State investigations, and constituted the overwhelming majority of the affidavit discussion of its probable cause. In the end, Petitioner Carver has been vindicated from the charge of criminal sexual conduct after expert testified victim was coerced. "See Ginther Hearing for support." And the only time the victim made a statement was at the March 7, 2014 at the forensic interview which Det. Higby conducted interview.

Which is before she talked with Petitioner and before requesting an arrest warrant. This type of action is not advocacy, its intentional abuse of power to fabricate probable cause and violates the Fourth and Fourteenth Amendments. In Sevigny v Dicksey 846 F.2d 953 (4th Cir. 1988), the Fourth Circuit stated: {A qualified immunity analysis} must charge {the officer} with possession of all the information reasonably discoverable by an officer acting reasonably under the circumstances... {A} police officer may not close his or her eyes to facts that would help clarify the circumstances of an arrest." BeVier v

Hucal, 806 F.2d 123, 128 (7th Cir. 1986) (officer must be held to knowledge of reasonably discoverable information bearing upon probable cause to arrest for child neglect).

The Sixth Circuit erroneously overlooked all of these factors and that the exculpatory nature of evidence is a factor that weights in favor of carver and of materiality under Frank because exculpatory evidence is proof of a lack of criminal activity, and is not the type of information that bolters probable cause to believe criminal activity is afoot.

To the contrary, exculpatory evidence does the exact opposite and this is particularly true in investigation into any type of conspiracy, where two or more people are alleged to have actually reached an agreement to violate the law, which was the case here.

It is time for this Court to create a rule so that lower courts are instructed that omissions based on exculpatory evidence are, by their very nature, material to a **lack** of probable cause as opposed to the other way around. Likewise, this Court should create a rule that requires lower courts to construe omissions to an affidavit which are based on exculpatory evidence as material omissions that do not support probable cause. "None of the evidence collect supported criminal sexual conduct first degree under age 13."

Further, it is time for this Court to decide whether a warrant remains valid under Franks where material omissions vitiate probable cause for a majority of the offenses focused on in an affidavit for arrest warrant.

This question is critical because of the unique role that franks challenges play due to the inherent bad faith on the part of government actors that exists when Franks is violated. If an affiant acts in bad faith to deceive a judicial officer into issuing a arrest warrant, why would any

part of that warrant remain valid after a sufficient showing of proof that is indeed the case? Franks involves a deterrent component, which is rendered meaningless if a warrant still stands after probable cause is destroyed by material omissions that relate to one class of offenses that were the main target of the investigation and subsequent affidavit and arrest warrant.

Accordingly, this Court should grant review to uphold the purpose and spirit and spirit of Franks to prevent bad faith behavior on the part of **law enforcement** and should determine whether a warrant remains valid under Franks after it has been established that material omissions negate probable cause for offenses that form the main basis of an affidavit for arrest warrant.

II. As A Matter Of First Impression The Sixth Circuit Erroneously Applied Absolute Immunity Review Too A Factual Determination Of Materiality Under Franks and Falsifying Affidavit Too Support Probable Cause And Arrest Warrant.

As a matter if first impression, the Sixth Circuit created an erroneous rule when they did not apply the Franks rules in holding that the absoluter immunity standard applies to all defendants to a review of the determination of materiality under Franks. This holding is simply wrong, and stand in direct conflict with the precedent of this Court, because materiality determinations necessarily require trial courts to engage in fact-finding.

The question of whether evidence is material to a probable cause determination is a factual question, even though the ultimate probable cause determination is a question of law. It goes without question that trial courts must assess facts to classify the significance of information that is omitted from an arrest warrant affidavit.

This Court has, however, made very clear that the clear error standard of review applies to questions of fact, whereas de novo review applies to questions of law. **Anderson v Bessemer City, 470 U.S. 564 (1985) De novo review is favor only** "where this a need for appellate court to

control and clarify the development of legal principles, and where considered, collective judgment is especially important." **Ornelas v United States, 517 U.S. 690, 697 (1996).**

Indeed, this Court again recently reinforced the rule that clear error applies to findings of fact in **Teva Pharmaceuticals v Sabdoz, 135 S.Ct. 831 (2015)** Specifically, in reviewing the meaning of "clear error" for purposes of Rule 52 of the Civil Rules of Procedure, this Court has held that a reviewing court will overstep its bound if it undertakes to duplicate the role of lower court, even when the lower court's finding rest on physical or documentary evidence or inferences from facts, in additional to just credibility determinations. **Anderson, 470 U.S. at 575.**

That is exactly what occurred in this case. The District Court and Sixth Circuit applied absolute immunity without considering the "no probable cause rule in Franks which violates Fourth Amendment" and does not give absolute immunity to the defendants where defendants fabricated probable cause, fabricated evidence, and fabricated statements from the victim to obtain a false arrest warrant.

In the end, the court's found facts, that the evidence at preliminary exam., was coerced and statements wasn't truthful.

At Petitioner Ginther Hearing Dr. Sworldlow-Free Testified that "the victim made difference statement which could not be true, her statement was inconsistent with her mother statements of events that supposed to happen.

Kalamazoo Circuit Court agreed with the expert testimony and granted petitioner a new trial and Both Michigan Appellate Court's agreed with Kalamazoo Circuit finding.

All actions before preliminary exam. is investigative and clearly before the stage of requesting arrest warrant, and clearly the law was established concerning fabricating reports in

investigative stage violates the **Fourth Amendment** and **Fourteenth Amendment Due Process Clause.** These type of actions does not fall under absolute immunity.

Accordingly, there is no question here that clear error applied to this determination on appeal, that the Sixth Circuit applied the wrong standard of review and violated this Court's decision in **Anderson** because "a reviewing court may not substitute its view for that of the district court." **Anderson 470U.S. at 573-74.**

The standard of review that applies to materiality determinations under Franks is an important question of federal constitutional law, and this Court should exercise review to correct the erroneous first impression rule created by the Tenth Circuit. The Tenth Circuit's holding present a significant problem that must be corrected since it will certainly have precedential value in the future since that court is the first circuit to address this important issue. Denying review will open the door for appellate courts to engage in their own facts-finding and usurp the role of trial court whenever a case involving material omissions is reviewed on appeal.

Further, just like they impact judicial economy, standards of review also impact the time and resources of the parties to litigation. For instance, a party may choose to forego dedicating time and resources to raising a certain claim on appeal due to any [p]articular standard of review that may be disadvantageous or potentially lethal to that claim. As noted by the Seventh Circuit, the applicable standard of review is a factor that a competent appellate lawyer will consider when determining whether to raise any particular issue on appeal because issues governed by doctrines like harmless error or the standard of review of jury verdicts have "no chance" on appeal. **Howard v Gramley 225 F.3d 784, 791 (7th Cir. 2000).**

Therefore, for many reasons, it is crucial that appellate courts conduct their business accordingly and employ the appropriate standard of review in all cases. Because the Tenth Circuit clearly did not do this here, this Court should exercise review now in order to prevent other courts from relying upon this erroneous first impression rules, to uphold the administration of justice and to keep appellate courts in check and on the right track.

III. The Sixth Circuit Decided This Case Based On An Issue That Violates United States Constitution. The Government Ignored The Main Issue On Appeal That Were Present by Petitioner's Carver.

Finally, this Court should also grant review because the Sixth Circuit departed from the accepted and usual course of judicial proceedings when it decided the important Fourth Amendment issue based on issues, argument and a rationale that was not presented by the parties.

According to judge Lipsey opinion and order granting Carver a new trial, because the victim was subject to child suggestibility and false memory, which means; "someone else suggested things to the victim to say which never happen.

Dr. Swerldlow-Freed testified "Mr. Science study found that 42% of children memories were tainted due to misinformation provided to them in a story. "Det. Higby did not know of this study but was supposed to be an expert in child abuse at trial." This study shows how easy false memories can develop and those false memories can include memories of being touched by someone even though it never actually happened, this goes with wht Petitioner Carver stated in both appealed brief to United States District Court for Western District of Michigan Southern Division and the sixth Circuit Court Of Appeals.

Dr. Swerdlow-Freed further testified that there were many concerning factors present in this case that indicated Complainant's memory could have been tainted. Such as, untrained individuals repeated questioning of Complaint.

Judge Lipsey stated: "This case turned solely on credibility; the ultimate question at trial, in the face of no physical evidence, was whether the Complaint's allegations of sexual abuse were truthful or, conversely, if her allegation were the result of taint and suggestibility leading to the development of a false memory.

Dr. Swerdlow-Freed testified that the main risk factors is the age of the child; the younger the greater the risk. Now the prosecutor knew this factor because 8 months earlier Dr. Swerdlow-Freed testified at Brandon Smith trial to the same information concerning Mr. Science and Mousetrap studies.

This is Carver opinion; "The prosecutor knew the risk of taking the victim statement as truthful before Petitioner's Carver was charged or preliminary exam. Prosecutor continue to violate carver Constitutional rights even after carver informed prosecutor and the court of their violation of Fourth Amendment Carver right not to be subject to undermined tactics by government officials to introduce false evidence to obtain a false arrest and false trial.

Judge Lipsey stated: "In this case, the key evidence that the prosecution asserted against Carver was the Complaint's accusations supported by the implication that Complainant had no reason to lie; therefore, the credibility of Complainant in favor of the Defendant Carver was undermined by trial counsel's failure to introduce evidence of false memories and the risk factors associated with the creation of them.

Police department and prosecution coerced the victim to say false thing for they could put them in Det. Higby falsified report. The Only people that talk with the victim were, Det. Higby, Prosecutor Stein, Child protection service Patrick, and Westfall al Kalamazoo Government officials were the only people who had a conversation with the victim. Her statement came from Government Officials coercing.

CONCLUSION

As, such this Court should grant review and reverse the sixth Circuit in order to clarify the bounds of prosecutorial immunity without probable cause and the clarity of falsifying documents to obtain a false arrest warrant for other appellate courts allover the country that they must uphold the party presentation document as established by this Court, principles, and the overall administration of justice. Accordingly, the Petition for a writ of certiorari should be granted.

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Respectfully Submitted,

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