

24-5955

No. _____

ORIGINAL

FILED

OCT 31 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN C. COLEMAN — PETITIONER
(Your Name)

VS.

MICHAEL SWARTZ, WARDEN, T.O.C.I. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

OHIO SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN C. COLEMAN
(Your Name)

2001 E. Central Ave
(Address)

Toledo, Oh 43608
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether COLEMAN was tried, convicted, and sentenced on burglary B.C. 2911.12 (1)(2), behind unconstitutional evidence in violation of the 4th and 14th Amendment to the U.S. Const., and the Ohio Const. Art. I § 14?
- 2) whether there was probable cause to support the warrant issued on January 29, 2018; which created March 14, 2018 B.C.I. test result used during trial to convict COLEMAN?
- 3) Was March 14, 2018's B.C.I. test result used during trial to convict COLEMAN a violation of the 4th, 14th Amendment to the United States Constitution and the Ohio Constitution Art. I § 14?
- 4) After setting the false statements aside in the sworn affidavit used to support January 29th, 2018's forcefully taking of COLEMAN's DNA, would there have been sufficient evidence to had supported the search warrant?
- 5) Was March 14, 2018's B.C.I. test result used during trial "fruit-of-the-~~poisonous~~ tree?

6) Whether the DNA obtained from COLEMAN should have been excluded from evidence as the produce of a detention which was illegal under the 4th and 14th Amendment?

7) Did the police involuntarily take COLEMAN to the police station, placed him in an interrogation room, handcuffed him to a table, and forcefully took his DNA without probable cause?

8) Did the issuing judge have a substantial basis for concluding that probable cause existed?

9) How did COLEMAN become a suspect to have been arrested, charged, and prosecuted?

10) Was probable cause lacking on the face of the affidavit?

11) Did Detective Tanisha Stewart knowingly and deliberately, with reckless disregard for the truth, make false statements in her sworn affidavit to create probable cause?

LIST OF PARTIES

- ☒ 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 this petition is as follows:

RELATED CASES

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed 2d 1081, 86 Ohio Law Abs. 513

Wong Sun v. United States, 371 U.S. 471 (1963)

Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.3d 652 T.D. 1964

Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed 2d 576 (1967)

Frank v. Delaware, 438 U.S. 154 (1978)

Davis v. United States, 564 U.S. 229 (2011)

Elkins v. United States, 364 U.S. 206 (1960)

United States v. Barone, 584 F.2d 118, 121 (6th Cir. 1978)

United States v. Bennett, 905 F.2d 931

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OTHER

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 **federal courts**:

The opinion of the United States court of appeals 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 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 **state courts**:

The opinion of the highest state court to review the merits 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.

The opinion of the _____ court appears at Appendix B 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 **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 July 23, 2024.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution says:
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, a particularly describing the ~~place~~ to be searched, and the person or things to be seized. This amendment was adopted in response to the English practice of conducting arbitrary searches under general warrants to uncover seditious libels. This was deemed by the Founding Fathers an essential element of the U.S. Constitution.

The Constitutional prohibition on seizure without probable cause, sometimes called "false arrest". A person's 4th Amendment rights are violated when he or she is seized without probable cause premised on an officer's material misrepresentation to the court. *Gregory v. City of Louisville*, 444 F.3d 725, 758 (6th Cir. 2006).

It is the duty of the court to ensure that the judge that issued the warrant had substantial basis for finding the existence of probable cause. *Illinois v. Gates* (1983), 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed. 2d 527,

To safeguard the rights protected in the 4th Amendment, the United States Supreme Court has created the exclusionary rule, which precludes the use in a criminal proceeding of

The exclusionary rule operates to exclude evidence obtained by the government in violation of the United States Constitution. The purpose of this rule is to deter police misconduct. The exclusionary rule reaches not only

the finding of probable cause.

(2) prove the allegedly false statement was necessary to or with reckless disregard for the truth and, additionally, that the affiant made a false statement either knowingly or with reckless disregard for the truth and, additionally, defendant: (i) must make a "substantial" preliminary showing of probable cause. This creates a two-part test the defendant's request. The 4th Amendment requires that a hearing be held at the

Falsifying facts to establish probable cause to arrest and prosecute an innocent person is of course patently unconstitutional. *Hinchman v. Moore*, 312 F.3d 198, 265-6 (6th Cir. 2002).

The fruit-of-the-poisonous-tree doctrine requires that evidence derived from an illegal search, arrest, or interrogation is inadmissible because the evidence (the "fruit") was tainted by the illegality (the "poisonous tree").

evidence obtained in violation of the 4th Amendment. *Davis v. United States*, 564 U.S. 229, 236, 131 S.Ct. 2419, 180 L.Ed. 2d 285 (2011). Evidence obtained as the result of an unconstitutional stop, arrest, and/or search must be excluded at trial as "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 484-88, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963).

primary evidence obtained as a direct result of an illegal search or seizure, but also evidence that is subsequently discovered and derivative of that prior illegality. Consequently, the derivative - evidence rule, or fruit-of-the-poisonous-tree doctrine as it is widely known, requires suppression of evidence that was seized in a seemingly lawful manner but about which police learned because of a prior constitutional violation such as an illegal search and seizure.

The 4th Amendment of the United States Constitution, applied to the States through the 14th Amendment, and Ohio Constitution art. I § 14, guarantees the right of the people to be free from unreasonable searches and seizures by government. A valid search must be supported by a warrant or based on a recognized exception to the warrant requirement. Although the 4th Amendment does not explicitly provide that violations of its provisions will result in suppression of evidence obtained as a result of any violation, the United States Supreme Court has held that the exclusion of that evidence is an essential part of the 4th Amendment. This is known as the exclusionary rule, *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed 652, T.D. 1964 (1914); *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed 2d 1081, 86 Ohio Law Abs. 513 (1961).

It is axiomatic that a proper finding of probable cause requires the affidavit to show not only the affiant's knowledge but also that the affiant has sufficient basis for the knowledge. A judicial officer's job is to determine whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis

of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. An affidavit is bare bones when it fails to establish a minimally sufficient nexus between the item or place to be searched and the underlying illegal activity.

The Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit. "Franks v. Delaware, 438 U.S. 154, 155-56, 98 S.Ct. 2674, 57 L.Ed. 2d 667 (1978).

All evidence obtained by search and seizures in violation of the Constitution is by that same authority, inadmissible in a state court. Mapp v. Ohio, 367 U.S. 643. DNA evidence is no exception to this comprehensive rule.

STATEMENT OF THE CASE

On March 8th, 2019, Petitioner JOHN C. COLEMAN was convicted after a jury trial in the Summit County Court of Common Pleas of Burglary R.C. 2911.12(A)(2), and was sentenced to eight years of imprisonment. On October 17, 2023, COLEMAN filed for a new trial on the ground illegal evidence was used during trial to convict him, in violation of the 4th and 14th Amendment to the United States Constitution. On November 9th, 2023, the Summit County Court of Common Pleas denied COLEMAN's motion for a new trial. On December 4th, 2023, COLEMAN timely filed his notice of appeal from the Summit County Court of Common Pleas November 9th, 2023, judgment, in the 9th District Court of Appeals Summit County, Ohio. On April 18th, 2024, COLEMAN placed his appeal brief in the prison's mailbox. On April 24, 2024, the 9th District Court of Appeals dismissed COLEMAN's appeal on the ground the Court had not received COLEMAN's appeal brief. On June 3rd, 2024, COLEMAN timely filed his Notice of Appeal from the 9th District Court of Appeals April 24, 2024, judgment, in the Ohio Supreme Court. On July 23, 2024, the Ohio Supreme Court declined jurisdiction. On August 6, 2024, COLEMAN timely filed his Writ of Certiorari.

STATEMENT OF THE FACTS

On September 25, 2017, a lady named Tanisha Bowen made a police report stating that when she pulled into her driveway she saw someone behind her house but once they came into eye contact the person ran. Ms. Bowen stated in the report that she did not see the person's face, that the person was a skinny black male, that her back window was broken out, that all her home

doors were open, and that nothing was missing from her home. A speck of blood was found and taken from the outside windowframe of the home and sent to the B.C.I. See Exh. 1, 2, 3, 12 Appx. C

On October 24, 2017; the B.C.I. test result for the speck of blood found on the outside windowframe came back as unknown once it was ran through a database system COLEMAN's DNA profile was in from past offense history. See Exh. 4 Appx. C

On November 23, 2017; Ms. Bowen and her son's father went to the Akron Police Department and made another statement stating that some items were missing from her home the night she made the first report that nothing was missing and that COLEMAN was the one that broke into her home. See Exh. 12 Appx. C

On November 24, 2017; the next day after Ms. Bowen and her son's father made the second statement, detective Tanisha Stewart for the Akron Police Department made several false statements in a sworn affidavit to create probable cause. In her sworn affidavit she stated that COLEMAN committed several acts of Burglary, that he took some items from inside Ms. Bowen's home, and that COLEMAN was identified by his DNA profile on November 24, 2017. A warrant was issued for COLEMAN's arrest behind detective Stewart's sworn affidavit. See Exh 7 Appx. C

On January 26, 2018; COLEMAN was arrested on a capias and an APA warrant, and placed in the Summit County Jail.

On January 27, 2018; COLEMAN received a complaint stating that he was being charged on felony Two Burglary for the home of Tanisha Bowen.

On January 29th, 2018; COLEMAN was taken to the Akron Police Department where detective Stewart and detective Sutton forcefully took COLEMAN's DNA by swab under the authority of a search warrant and sent to the B.C.L. See Exh. 8, 9, 13 Appx. c

On February 14th, 2018; COLEMAN was indicted by the grand jury before the return of the B.C.L. result from the swab forcefully taken on January 29, 2018; which supported the State's accusation that COLEMAN was the suspect. See Exh. 10 Appx. c

On March 14, 2018; the B.C.L. result came back for the one swab forcefully taken by the two detectives stating that COLEMAN's DNA matched the DNA found on the outside windowframe of the alleged crime scene. See Exh. 11 Appx. c

On September 26, 2018; file a motion for a suppression hearing. On October 3, 2018; COLEMAN's attorney entered an Oral motion for a suppression hearing, the trial court set a hearing for November 2, 2018. On November 2, 2018; COLEMAN's attorney withdrew COLEMAN's suppression hearing without COLEMAN's consent.

On March 5, 2019; COLEMAN's trial started where the State used March 14, 2018's B.C.L. test result to prove to the members of the jury COLEMAN committed burglary.

Summit County

The members of the jury questioned several times "How did COLEMAN become a suspect before performing the DNA swab on January 29, 2018?", which the State stated to the court on the record "that it was a CODIS hit that brought the authorities to COLEMAN's arrest, which interfered with the court presenting the jury's question to the witness. See Exh. 14 Appx. c

On March 8, 2019, the members of the jury entered a guilty verdict behind illegal evidence, and COLEMAN was

sentence to eight years in prison. See Exh. 15 Appx. c

During trial, the State's witness detective Tanisha Stewart testified that a "tip" lead her to COLEMAN, not his DNA profile. See Exh. 12, 7 Appx. c

The State's witness Ms. Dennis from the B.C.I. testified that the speck of blood found on the outside window frame, once ran through the DNA database, that COLEMAN's DNA profile was in; came back unknown because there was no match in the system. See Exh. 4, 5, 6, 11 Appx. c

While on the stand, the State's witness Tanisha Bowen testified that she did not see who was behind her house the night she made the report, and that she told the police nothing was missing from her home. See Exh. 1, 2, 12 Appx. c

REASONS FOR GRANTING THE PETITION

"All evidence that has been illegally obtained in violation of the 4th Amendment is barred by the Exclusionary Rule". *Mapp v. Ohio*, 367 U.S. 643, 654, 81 S.Ct. 1684, 6 L.Ed. 2d 1081, 86 Ohio Law Abs. 513 (1961). Detective Stewart made several false statements in her sworn affidavit; which was used to create probable cause to issue the search warrant for the forceful taking of the swab that created March 14, 2018, B.C.I. test result, which the State used to convict COLEMAN. March 14, 2018, B.C.I. test result should have been excluded from trial as fruit - of - the - poisonous - tree.

The United States Supreme Court has held that evidence seized during an unlawful search could not constitute proof against the victim of the search. The exclusionary prohibition extends as well to the indirect as the direct products of such invasions, *Wong Sun v. United States*, 371 U.S. 471, citing *Weeks v. United States*, 232 U.S. 383.

Detective Stewart made several false statements in her sworn affidavit to create probable cause to support the search warrant issued on January 29, 2018, to forcefully take COLEMAN's DNA by swab and sent to the B.C.I.; which made a report stating that COLEMAN's DNA matched the DNA found on the crime scene, which the State used during trial to convict COLEMAN. Without the B.C.I. test result created from the illegal search, the State had "no evidence" supporting their accusation COLEMAN committed burglary. Without the false statements in the affidavit detective Stewart's affidavit failed to establish that probable cause existed for the search and seizure making the fruit therefrom

illegal as "fruit-of-the-poisonous-tree, inadmissible. Illegally-obtained evidence cannot be used in the prosecution of any criminal case in the United States. Mapp v. Ohio, 367 U.S. 643. The evidence was illegally obtained in violation of the 4th and 14th Amendment of the United States Constitution, and the Ohio Constitution art. 1 § 14 which guarantees the right of the people to be free from unreasonable searches and seizures by government. For the above reasons the Court should grant COLEMAN's petitions; his trial was unfair which resulted in the conviction of an Actual Innocent Man.

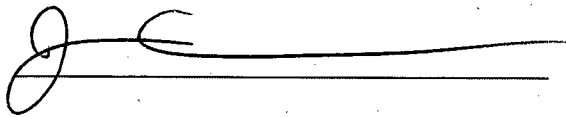
"Falsifying facts to establish probable cause to arrest and prosecute an innocent person is of course patently unconstitutional." Hinchman v. Moore, 312 F.3d 198, 205-6 (6th Cir. 2002). Detective Stewart's statements in the sworn affidavit were made intentionally and recklessly disregarding the truth and without her statements there was insufficient content in the affidavit to support a finding of probable cause. There is "no evidence" supporting COLEMAN's conviction, his sentence must be vacated.

Any reasonable jury examining all the evidence could find that the authorities lacked probable cause supporting the search warrant supporting the forceful taking of swab making it "fruit of the poisonous tree".

CONCLUSION

Based upon the foregoing, there must be a new trial held excluding March 14th, 2018^s B.C.I. test result as "fruit of the poisonous tree"; Illegally obtained evidence can not be used in the prosecution of any criminal case in the United States. Mapp v. Ohio, 367 U.S. 643.
The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature, possibly "J. E.", is written over two horizontal lines.

Date: 10-18-24