No. _____

In the Supreme Court of the United States

DAVID A. MCMASTER, JR.,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for a Writ of Certiorari to the Pennsylvania Superior Court, Middle District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fourth Amendment prohibits warrantless entry and searches of homes absent limited exceptions. The "protective sweep doctrine" is not one such exception, but instead permits a limited search of rooms in a home where law enforcement are already lawfully present based on reasonable suspicion that another individual posing a danger might be present. *Maryland v. Buie*, 494 U.S. 325 (1990). In contrast, the "emergency aid exception" authorizes warrantless entry "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Mincey v. Arizona*, 437 U.S. 385, 392 (1978); *Brigham City v. Stuart*, 547 U.S. 398 (2006).

Petitioner was detained outside of his home, naked, and under the influence of a controlled substance. He advised police that he lived alone. Nevertheless, an officer entered and searched Petitioner's home to conduct a "protective sweep" and/or determine whether there could be someone inside of the home suffering from a potential overdose or medical emergency. The Pennsylvania Superior Court, in a published decision, conflated these two doctrines and ruled the entry and search was a lawful limited protective sweep. The Question Presented is:

Whether it is an improper expansion of the "emergency aid exception" and/or "protective sweep doctrine" to authorize a warrantless entry into a home without any objective evidence that anyone was in the home and needed aid, where an officer is concerned, based on his experiences involving individuals under the influence of controlled substances, that there could be a person in the home suffering from a potential overdose or medical emergency?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellee below

David A. McMaster, Jr.

Respondent and Prosecutor-Appellant below

Commonwealth of Pennsylvania

LIST OF PROCEEDINGS

Supreme Court of Pennsylvania, Middle District

No. 478 MAL 2024

Commonwealth of Pennsylvania, *Respondent,* v. David A. McMaster, Jr., *Petitioner.*

Date of Final Order: March 5, 2025

Superior Court of Pennsylvania

No. 1354 MDA 2023

Commonwealth of Pennsylvania, *Appellant,* v. David A. McMaster, Jr.

Date of Final Opinion: June 25, 2024

Date of Rehearing Denial: July 8, 2024

Court of Common Pleas of Adams County, Pennsylvania

No. CP-01-CR-266-2023

Commonwealth of Pennsylvania v. David A. McMaster, Jr.

Date of Final Order: August 17, 2023

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PETITION FOR A WRIT OF CERTIORARI

David A. McMaster, Jr. respectfully petitions for a writ of certiorari to review the judgment of the Pennsylvania Superior Court, Middle District.

OPINIONS BELOW

The Pennsylvania Superior Court Opinion filed on June 25, 2024 is attached in the Appendix ("App.") at 2a and can be found at *Commonwealth v. McMaster*, 320 A.3d 85 (Pa. Super. 2024). The Court of Common Pleas of Adams County Trial Court Opinion, dated August 17, 2023, is attached at App.18a. The Pennsylvania Supreme Court's denial of allowance of appeal, dated March 5, 2025, is attached at App.1a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

The Fourth Amendment, as applied to the States via the Fourteenth Amendment, provides:

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

U.S. Const. amend. XIV

The Fourteenth Amendment provides in relevant part:

> 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. . . .

INTRODUCTION

McMaster successfully challenged a warrantless entry and search of his home before the Pennsylvania trial court after police entered his home for the purported purpose of conducting a "protective sweep" and/or to determine if anyone was inside his home in need of medical assistance. The Pennsylvania Superior Court, in a published opinion, reversed on the basis that the entry and search was a lawful "minimally intrusive protective sweep[.]" (App.14a; *McMaster*, *supra* at 91).

The Pennsylvania Superior Court's published decision creates a new rule of law by unreasonably expanding the exceptions to the warrant requirement, thus violating the Fourth Amendment in two ways. First, it creates a never before adopted exception to the warrant requirement unrecognized at the time of the founding or anytime thereafter. Such an exception, without any historical support, presents an important question of federal constitutional law where it authorizes warrantless entry of a home virtually any time law enforcement encounters an individual who appears to be under the influence of drugs or alcohol — a regular and often times routine occurrence in the field of law enforcement. Second, the Superior Court's published decision conflates the "emergency aid" and the "protective sweep" warrant requirement exceptions. In doing so, it directly conflicts with established precedent of this Court and improperly expands these two doctrines.

STATEMENT OF THE CASE

A. Factual Background

Officer Cory Ammerman (hereinafter, "Ammerman") of the Conewago Township Police Department was dispatched to Hanover Pike, Conewago Township, Adams County, Pennsylvania at approximately 3:00 p.m. on December 7, 2022, for a report of a naked male screaming in the backyard of a neighbor. (App.19a; App.39a). The naked male in question was Petitioner, David A. McMaster, Jr. (hereinafter, "McMaster"). While en route, Ammerman was advised that McMaster had moved to the front of the 2982 Hanover Pike residence and was now in the roadway. (*Id.*).

By the time Ammerman arrived on the scene, McMaster was in front of his own residence on Hanover Pike. McMaster was completely nude. (App.19a; App.39a; App.46a). According to Ammerman, when he approached McMaster, McMaster was excited, incoherent, naked, and appeared to be under the influence of a controlled substance. (App.40a). McMaster did not have any cuts, scratches, blood or anything that indicated that he had been in an altercation. (App.47a; App.59a).

Ammerman handcuffed McMaster and began to question him regarding controlled substances that McMaster had ingested. (App.40a). At some point, McMaster told Ammerman that he had consumed Ketamine and huffed butane gas. (App.41a). Ammerman also asked McMaster whether anyone was inside McMaster's residence. (App.49a). McMaster told

Ammerman he lived alone; nevertheless, police entered McMaster's house. (App.49a).

Approximately three minutes after Ammerman encountered McMaster, Detective Burnell Bevenour of the Conewago Township Police arrived. (App.52a). When Bevenour arrived, McMaster was already in custody. (App.52a). Officers Larry Kitzmiller and Officer Travis Smith of the McSherrystown Borough also responded. (App.41a-42a).

Bevenour, knowing that McMaster was in custody, proceeded to the rear of McMaster's home and noticed that an exterior porch door and doorway into the residence were both open. (App.53a). He also saw a butane lighter on the ground outside of the rear of the residence. (App.54a). Bevenour did not hear anyone inside or observe anyone inside. (App.60a). Instead, Bevenour noticed that there was trash everywhere inside the kitchen and items thrown on the kitchen floor. (App.55a). Bevenour did not take McMaster's "word that nobody else was in the residence." (App.68a). Bevenour maintained that he intended to enter to do a "protective sweep." (App.56a; App.67a-68a; App.69a).

Bevenour announced his presence as a police officer and heard no response. (App.57a). He then entered the residence to purportedly determine if anyone was inside that needed medical attention. (App.56a). Officer Smith also entered with Bevenour. (App.57a). The two men searched the interior of the home. Bevenour and Smith entered the rear kitchen area and observed a white powder on the floor and burnt vegetation on the stovetop. (App.56a). They proceeded to enter the living room, before entering a front room or the basement. (App.56a). After entering the basement area, police observed neon lights and vegetation on tables. (App.56a). Police also

entered the upstairs second floor and checked the bedrooms. (App.56a). According to police, the vegetation appeared to be a controlled substance. (App.57a). Based on the observations after entering and searching the residence, police obtained a search warrant. (App.5a). Police recovered psilocybin "mushrooms," a small amount of marijuana, fifteen packs of rolling papers, two food dehydrators, a vacuum sealer, a silver tin, a glass smoking device, glass jars, UV lights, grinders, spoons, skillets, gardening tools and fertilizer.

B. Procedural History

1. Proceedings in the State Trial Court.

The Commonwealth charged McMaster with Possession with Intent to Deliver Controlled Substance (Psilocybin), Simple Possession (Psilocybin), Possession of a Small Amount of Marijuana, Possession of Drug Paraphernalia, Disorderly Conduct, Indecent Exposure and Public Drunkenness on March 22, 2023. McMaster filed an Omnibus Pre-Trial Motion for Suppression of Evidence on April 19, 2023. (App.75a-83a). Therein, McMaster sought suppression of all items seized from his residence as the result of the warrantless entry and search of his home, as well as statements he made to police. The Trial Court conducted a Suppression Hearing on July 20, 2023. (App.35a-74a). The Commonwealth presented the testimony of Officer Ammerman and Detective Bevenour.

Following the Suppression Hearing and the submission of trial court briefs, the Trial Court granted McMaster's Suppression Motion in part. (App.16a). Specifically, it concluded that police unlawfully entered McMaster's home and that the entry and search was not a valid protective sweep or justified under the emer-

gency aid doctrine. The Commonwealth filed a timely appeal to the Pennsylvania Superior Court on September 12, 2023.

2. Proceedings in the Pennsylvania Appellate Courts.

On appeal, the Commonwealth argued that the warrantless entry into McMaster's home "was justified under the protective sweep and exigent circumstances doctrines[.]" (App.7a). In a published opinion, the Pennsylvania Superior Court reversed the Trial Court's grant of McMaster's Suppression Motion. (App.2a). The Superior Court held that the entry and search was a lawful "minimally intrusive protective sweep[.]" (App.14a; *McMaster*, *supra*, at 91). McMaster timely filed a Petition for Reargument with the Superior Court on June 25, 2024. The Pennsylvania Superior Court denied McMaster's Petition for Reargument on July 8, 2024. (App.34a). Thereafter, McMaster timely sought a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on September 25, 2024. The Pennsylvania Supreme Court denied allowance of appeal on March 5, 2025. (App.1a). This timely Petition for Writ of Certiorari followed.

REASONS FOR GRANTING THE PETITION

In a Published, Precedential Appellate Opinion, the Superior Court's Decision and Analysis of the Fourth Amendment Creates a New Rule of Law That Has Never Been Recognized by This Court and Which Has No Historical Underpinnings Within Fourth Amendment Jurisprudence, and Directly Conflicts with Relevant Decisions of This Court.

The Pennsylvania Superior Court's published opinion presents an important issue of federal law which, if uncorrected, permits law enforcement to conduct warrantless searches of homes where police encounter an individual outside of their home and under the influence of a controlled substance. Without any textual or historical support, the Superior Court's decision creates a new rule of law by confusing and conflating the "protective sweep" and "emergency aid" doctrines. In doing so, it unreasonably expanded the exceptions to the warrant requirement and directly conflicts with this Court's precedents on both the "protective sweep" and "emergency aid" doctrines. The published decision distorts and expands the emergency aid exception beyond its breaking point and is without any historical antecedents.

At the time of the Fourth Amendment's ratification, there was no common law exception to the warrant requirement that would authorize such an entry and search of a home, and such an entry and search would have been "unreasonable." Nothing in this Court's pre-

cedents interpreting the Fourth Amendment altered that landscape.

A. Absent a Clearly Established Exception, the Fourth Amendment Requires a Warrant to Search a Home.

"[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). The Amendment "protects the people from 'unreasonable searches' of 'their . . . houses.'" *Collins v. Virginia*, 584 U.S. 586, 602, (2018) (Thomas, J. concurring). "In determining whether a particular governmental action violates [the Fourth Amendment], we inquire first whether the action was regarded as an unlawful search or seizure under the common law when the Amendment was framed." *Wyoming v. Houghton*, 526 U.S. 295, 299 (1999). Discussing the historical significance of the warrant requirement, this Court observed:

> "The zealous and frequent repetition of the adage that a 'man's house is his castle' made it abundantly clear that both in England and in the Colonies 'the freedom of one's house' was one of the most vital elements of English liberty." *Id*., at 596-597, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (footnote omitted); see *Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K. B. 1604) ("[T]he house of every one is as to him as his castle and fortress, as well for his defen[s]e against injury and violence, as for his repose" (footnote omitted)); 3 W. Blackstone, Commentaries on the Laws of England 288 (1768) ("[E]very man's house is

> looked upon by the law to be his castle of defen[s]e and asylum").

Lange v. California, 594 U.S. 295, 309-310 (2021).

Thus, warrantless searches were considered "unreasonable" after the ratification of the Fourth Amendment. *Brigham*, *supra* at 403 ("searches and seizures inside a home without a warrant are presumptively unreasonable."). That is, "warrants are generally required to search a person's home. . . . unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey*, *supra* at 393-394.

One exception to the warrant requirement allows law enforcement to enter a residence to "render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Kentucky v. King*, 563 U.S. 452, 460 (2011); *Brigham*, *supra* at 403. It is this exception, along with the "protective sweep doctrine," that the Commonwealth and the Pennsylvania Superior Court muddled together to create a new rule of law that authorizes warrantless entry into a home based solely on coming into contact with a person outside of their home and under the influence of a controlled substance. This Court, however, "has declined to expand the scope of other exceptions to the warrant requirement to permit warrantless entry into the home." *Collins*, *supra* at 595-596; 598 (declining to extend "the automobile exception to permit a warrantless intrusion on a home or its curtilage.") This Court should grant certiorari and do the same here.

In light of the sheer number of everyday encounters that law enforcement have with individuals that

may be under the influence, this Court should grant this Petition and clarify that the "emergency aid exception," the "protective sweep doctrine," or any amalgamation of the two like that created by the Pennsylvania Superior Court, do not render nugatory the Fourth Amendment when law enforcement encounter a person under the influence of drugs or alcohol outside their home, and one room in the home appears in disarray.

B. The "Emergency Aid Doctrine" and *Brigham* Do Not Extend to the Search of the Home Where Police Encounter an Individual Outside of Their Home and Under the Influence of a Controlled Substance.

In *Brigham*, *supra*, this Court granted certiorari to clarify the standard for warrantless entry into a residence by police in emergency situations. Therein, this Court noted that, "[o]ne exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Id.* at 403. The *Brigham* Court applied an objective standard in determining if an officer's action and entry into a residence was reasonable. It concluded that the officers' entry into the home in that case was objectively reasonable where police were responding to a complaint of a loud party at 3:00 a.m., could hear a fight occurring inside the residence, and saw a juvenile being held back by several adults before breaking free and striking one of the adults in the face, causing the adult to spit blood into the kitchen sink.

Brigham does not support the amalgamation of the emergency aid and protective sweep doctrines created by the Pennsylvania Superior Court here. Pointedly,

there was no objective basis to conclude that another person was inside McMaster's house, let alone someone in danger.

C. The "Protective Sweep Doctrine" and *Buie* Do Not Extend to the Search of the Home Where Police Encounter an Individual Outside of Their Home and Under the Influence of a Controlled Substance.

In *Maryland v. Buie*, 494 U.S. 325 (1990), this Court set forth that, "[a] 'protective sweep' is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others." *Id.* at 327. In *Buie*, police had an arrest warrant for the defendant. While effectuating that arrest warrant at his home, after arresting the defendant, police conducted a sweep of the home and discovered in plain view a red running suit in the basement that matched that of a person who had committed an armed robbery of a pizza restaurant. The Court of Appeals of Maryland suppressed that evidence.

This Court vacated the judgment and remanded. In doing so, the *Buie* Court held that a protective sweep is permissible under the Fourth Amendment, "if the searching officer 'possessed a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted' the officer in believing,' that the area swept harbored an individual posing a danger to the officer or others." *Id.* at 327 (internal citations omitted). Thus, the searching officer was already lawfully present in the house to effectuate the arrest warrant — when he entered the basement to determine if any other person was present and saw the red running

suit. It should be clear that the "protective sweep doctrine" has no applicability whatsoever to the situation encountered by police here.[1]

D. The Pennsylvania Superior Court's Expansion of the "Emergency Aid Doctrine" and Conflation with the "Protective Sweep Doctrine" Renders the Fourth Amendment's Warrant Requirement Hollow Given the Vast Number of Police Encounters with Individuals Under the Influence of a Controlled Substance Outside of Their Home.

Instantly, the Pennsylvania Superior Court and the Commonwealth repeatedly conflate the emergency aid doctrine with the protective sweep doctrine. For example, the Superior Court began by noting that the "Commonwealth asserted the police entry into McMaster's residence was permitted under the protective sweep doctrine." (App.8a; *McMaster*, *supra* at 89). It then cited and discussed Pennsylvania case law applying

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[1] Similar to the instant case, state and federal courts previously conflated the distinction between the community care-taking doctrine and the emergency aid doctrine, something this Court attempted to rectify in *Caniglia v. Strom*, 593 U.S. 194 (2021). Indeed, before *Caniglia*, the Pennsylvania Supreme Court erroneously suggested that the emergency aid doctrine is a subset of the community care-taking exception and admitted to this error. *See Commonwealth v. Livingstone*, 174 A.3d 609, 627 n.12 (Pa. 2017) (admitting to conflating exigent circumstances exception with community care-taking function and erroneously claiming that the emergency aid exception is part of the community care-taking function). A similar correction and clarification of the scope of the emergency aid exception is warranted here in light of the frequency in which law enforcement encounter individuals under the influence of drugs or alcohol.

the emergency aid doctrine: *Commonwealth v. Davido*, 106 A.3d 611 (Pa. 2014), and *Commonwealth v. Caple*, 121 A.3d 511 (Pa. Super. 2015). But the two doctrines are not the same.

The Superior Court held that, "the suppression court erred when it found Detective Bevenour's minimally invasive protective sweep to confirm that no one was injured or overdosing, was improper." (App.11a; *McMaster*, *supra* at 90) (emphasis added). The Superior Court outlined, "Based on his experience with overdoses and medical emergency situations, Detective Bevenour was concerned there may have been somebody else inside the house. Detective Bevenour decided to make a protective sweep of the residence to ensure that nobody else needed medical attention or help." (App.13a-14a; *McMaster*, *supra* at 91) (emphasis added). The panel then concluded that the suppression court erred, "when it determined the detective's minimally intrusive protective sweep violated McMaster's constitutional rights." (App.14a; *McMaster*, *supra* at 91) (emphasis added).

In conflating two separate and unrelated doctrines, the Superior Court, in a precedential, published opinion, established a new rule of law allowing the warrantless entry into a home by law enforcement to determine whether someone might be in the home who might be in need of aid based on nothing but an encounter outside the home with its resident, where that resident is visibly under the influence of a controlled substance. This Court has never recognized this exception to the Fourth Amendment's warrant requirement. Moreover, it has no support in Fourth Amendment jurisprudence. *See e.g.*, *Lange v. California*, 594 U.S. 295, 301-302 (2021) (Referencing cases decided

"[o]ver the years" where the Court found that the exigencies made the needs of law enforcement "'so compelling that [a] warrantless search is objectively reasonable[,]'" none of which are analogous to McMasters' case); *Brigham*, 547 U.S. at 403 (same).

Indeed, neither *Brigham* (nor any other decision) support the expansion of the emergency aid doctrine to authorize warrantless entry into a home based on encountering a person outside of his home, under the influence of drugs and observing that his or her house is in disarray. Such an exception to the warrant requirement would authorize untold warrantless entries into homes virtually every time law enforcement comes into contact with an intoxicated individual immediately outside his or her residence. Simply put, evidence that a person is under the influence of drugs combined with an observation that his residence is in disarray does not provide an objectively reasonable basis that another person is inside and is in imminent danger or seriously injured.

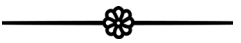
This situation is also unlike the multiple examples provided by Justice Kavanaugh in his concurring opinion in *Caniglia v. Strom*, 593 U.S. 194 (2021), discussing situations in which police would be justified in entering a home without a warrant based on the emergency aid doctrine. For example, this case does not involve an elderly person who fails to respond to calls and is uncharacteristically absent from a routine endeavor, nor does it involve a report that a person is suicidal. Nor is this case akin to the facts in *Michigan v. Fisher*, 558 U.S. 45 (2009), where police responded to a man "going crazy" and saw a smashed pick-up truck in the driveway, damaged fenceposts along the property, three broken windows with glass on the

outside, bloodstained clothes inside the truck and blood on the hood of a truck. Indeed, police entered the home in that case after seeing Fisher inside the residence with a cut on his hand and asked if he needed medical assistance.

Instantly, police did not receive a report of an altercation or receive a report of another individual screaming. When police arrived, they did not observe anyone inside, hear anyone inside or observe anything that might indicate that someone else was injured or even present and they had already placed McMaster in custody. This was not even a call related to a domestic situation.

In fact, there were no specific facts that anyone was inside the home or in need of aid that could justify finding an objective basis that someone might be in danger. If police can enter a home because they supposedly fear an overdose of someone else, exclusively on the basis of encountering an erratic person outside, the Fourth Amendment's protections are significantly gutted in common-place police encounters.

Understandably, many emergency aid situations will be factually intensive, but the contours of how far the doctrine reaches should be clarified before the exception swallows the Fourth Amendment's warrant requirement — and this case presents that opportunity. As this Court stated over a century ago, "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." *Boyd v. United States*, 116 U.S. 616, 635 (1886). A person under the influence outside of their home does not warrant establishing a new rule of law that expands the exceptions to the Fourth Amendment's warrant requirement.



CONCLUSION

For the aforementioned reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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