

No.

IN THE SUPREME COURT OF THE UNITED STATES

ANDRE BRIAN MCGRIFF, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The crime scene was a residence. DNA was located at the scene. The DNA was run through a Combined Data Index System (“CODIS”). There was a DNA hit, but the hit was not confirmed as required by the NDIS CODIS manual. This DNA result was used as the sole basis for probable cause for a warrantless arrest of Petitioner. The question is:

Whether Petitioner was deprived of his rights under the Fourth and Fourteenth Amendments, where he was arrested and taken into custody without a warrant and where probable cause for the arrest was based on an unconfirmed CODIS hit?

RELATED PROCEEDINGS

The proceeding listed below is directly related to the above-captioned case in this Court: *McGriff v. State*, 423 So. 3d 879 (Fla. 4th DCA 2025) (mem.).

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ANDRE BRIAN MCGRIFF respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal is reported as *McGriff v. State*, 423 So. 3d 879 (Fla. 4th DCA 2025) (mem.). It is reprinted in the appendix. A2.

JURISDICTION

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences on October 1, 2025. A2. The court denied Petitioner's motion for Rehearing, Rehearing En Banc, Issuance of a Written Opinion, and Certification on December 1, 2025. A3.

The Florida Supreme Court is "a court of limited jurisdiction," *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (citation omitted). Specifically, it has no jurisdiction to review district court of appeal decisions entered without written opinion. *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). Hence, Petitioner could not seek review in that court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Fourth 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.

Section 1 of the Fourteenth Amendment of the United States

Constitution provides:

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.

STATEMENT OF THE CASE

The State charged Petitioner with: kidnapping, burglary of a dwelling with a battery; lewd or lascivious molestation; and lewd or lascivious conduct R44-46.

Petitioner moved to suppress evidence based on an illegal arrest and illegal searches and seizures.¹

A hearing was held on the motion. The hearing centered on whether a Combined Data Index System ("CODIS") hit gave probable cause to arrest Petitioner.

Detective Eric Alfonso testified that on January 24, 2018 he

¹ The evidence to suppress included: Nike Shoes, Defendant's DNA, Statements made by Defendant on recorded jail calls, cell phones, Thumb drives, any and all cellular phone data for the Defendant's phone, including historical call information, cell site information, text message content, internet search history, any and all biological evidence, including DNA compared to the Defendant's standards R503.

was informed of a DNA hit from the Sheriff's Office laboratory R1006. Based on the hit, Petitioner was put under surveillance R1006. Alfonso had begun preparing an arrest warrant but never sought an arrest warrant for Appellant R1006,1036-37. There was no warrant for Appellant's DNA prior to his arrest R1037. Alfonso was familiar with a communication with the Florida Department of Law Enforcement which reads:

“The laboratory must inform the submitting the law enforcement agency of the need for a known biological sample from the subject and this sample must be analyzed as the final step in the conformation step process.”

R1038 lines 19-23.

Aida Ortiz Neveraz is the designated CODIS administrator for the Broward County Sheriff's Laboratory and determines whether there is a DNA CODIS match R1044. In this case there were four hits R1046-47. One known offender came back as Tony McGriff R1047.

Tiffany Roy is an forensic DNA expert and reviews the work of private and public laboratories R1065. Roy testified that a sample outside of CODIS is required for the CODIS confirmation R1068. The confirmation is needed to check that what is in the

database has been entered correctly R1068. Sometimes mistakes occur and different names get uploaded with different profiles R1068. Page 50 of the NDIS manual states:

... a candidate match is not a confirmed match. And the personally identifiable information relating to candidate match shall not be released until the laboratory has confirmed the match.

R1069,A67. There has to be a confirmation for there to be a hit R1070. The sample for confirmation in this case was submitted on February 13, 2018 which was after the arrest R1071. Roy has seen hits reported in CODIS and later it was discovered there was problem with the upload T1072. Sometimes hits occur without sufficient information R1074. FBI CODIS requires acquisition of a new sample to confirm the match R1075-1077.

The trial court denied the motion as to the claim that the CODIS hit did not provide probable cause by ruling a CODIS hit is confirmed when it aids in further investigation of unsolved crimes A12.

At trial, the victim testified the perpetrator entered the residence and: abused her, took a photo of her from his cell phone, and took a number of items from the residence. It was not disputed

that these crimes occurred. The issue at trial was who committed the crimes. Petitioner was never found in possession of the items taken from the scene. A photo of the victim was not found on Petitioner's cell phone. The victim was able to give a generic description of the perpetrator but was not able to identify Petitioner by matching him to the description. DNA was found at the crime scene. Petitioner could not be eliminated as being the contributor of the DNA. Petitioner was convicted of the crimes charged and sentenced to life in prison.

Petitioner timely filed a notice of appeal.

Petitioner filed his brief in the appellate court-the Fourth District Court of Appeal. Among other issues, he argued that trial court erred in denying his motion to suppress evidence which was the fruit of a warrantless arrest which was made without probable cause in violation of the Fourth and Fourteenth Amendments to the United States Constitution. A114-118, 123-124.

The court affirmed Petitioner's convictions and sentences. A2. Petitioner filed a motion for Rehearing, Rehearing En Banc, Issuance of a Written Opinion, and Certification on October 15, 2025. On December 1, 2025, the appellate court denied Petitioner's

motion. A3.

REASONS FOR GRANTING THE PETITION

PETITIONER WAS DEPRIVED OF HIS RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHERE HE WAS ARRESTED AND TAKEN INTO CUSTODY WITHOUT A WARRANT BASED ON AN UNCONFIRMED CODIS HIT

Petitioner moved to suppress evidence which was the fruit of a warrantless arrest without probable cause. Petitioner claimed a CODIS hit, without confirmation, by itself was not sufficient for probable cause for a warrantless arrest. The trial court disagreed and the appellate court affirmed. This Court has not addressed whether a CODIS hit, without confirmation, provides probable cause to arrest without a warrant.

In this case CODIS provided four hits R1046-47. The hits certainly were not probable cause for a warrantless arrest of four individuals.

The witnesses at the suppression hearing testified that CODIS is an investigative lead T1053, 1058. This it is not sufficient for probable cause. In this case, Law enforcement initially used the CODIS hit to justify subsequent investigation by putting Petitioner

under surveillance. However, they then went further by using the CODIS hit as probable cause to arrest Petitioner without a warrant. An investigative lead is not the same as probable cause to arrest.

The most convincing evidence, that a CODIS hit by itself does not provide probable cause, is the NDIS manual, the FBI Operational Procedural Manual for CODIS, A15-113, which requires that the laboratory not even release the CODIS result until after there has been confirmation of the match:

An Offender Candidate Match occurs when a DNA profile developed from crime scene evidence by a Casework Laboratory matches an offender's DNA profile developed by an Offender Laboratory. **A Candidate match is not a Confirmed Match. And the personally identifiable information relating to Candidate Match shall not be released until the laboratory has confirmed the Match.**

A67, R573 (italicized emphasis added).

In this case there was no DNA sample taken from Petitioner until after the warrantless arrest.

Further, the letter from the State CODIS Administrator of FDLE requires CODIS confirmation with a **known biological sample** of the suspect:

The laboratory must inform the law enforcement agency of the need for a known biological sample from the

subject and this sample must be analyzed as the final step in the confirmation step process.

R620,1038.

At the suppression hearing, Tiffany Roy, a forensic DNA expert who reviews the work of private and public laboratories R1065, helped explain the logic for confirmation. Roy testified that a sample is required for the CODIS confirmation to check what in the database has been entered in correctly as sometimes mistakes occur and different names get uploaded with different profiles R1068. Roy has seen hits reported and later it was discovered there was problem with the upload T1072. Sometimes hit occur without sufficient information R1074. FBI requires for CODIS acquiring a sample from the candidate to confirm the match R1075-1077.

In addition, the very nature of DNA analysis requires more than an unconfirmed CODIS hit. Laboratories do not match the entire DNA. Only portions of the DNA are matched. Thus, to understand the significance of matching a portion of the DNA some type of statistical frequency of the match needs to be demonstrated. *See e.g. Brim v. State*, 695 So. 2d 268, 271 (Fla. 1997) (“It is important to recognize, though, that DNA testing is a two-step

process. The fact that a match is found in the first step of the DNA testing process may be 'meaningless' without qualitative or quantitative estimates demonstrating the significance of the match."). The CODIS hit does not provide any such frequency analysis.

In *Murray v. State*, 692 So. 2d 157, 162 (Fla. 1997)(emphasis added), the National Research Council's finding was relied on "to say that two patterns match, without providing any scientifically valid estimate (or, at least, an upper bound) of the frequency with which such matches might occur by chance, **is meaningless.**" This was in the context of using a DNA comparison as evidence. Certainly, evidence that is meaningless is not probable cause to arrest someone without a warrant.

Of course, a CODIS hit without confirmation is not meaningless because it provides an investigative lead. However, as explained above, a CODIS hit without a confirmation does not yield probable cause.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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