IN THE

Supreme Court of the United States

FRANK S. EVANSON, individually and in his official capacity as a police officer of the Township of Cranberry,

Petitioner,

v.

SARA R. REEDY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Is the existence of probable cause in, and qualified immunity for, an arrest warrant under the Fourth Amendment to be determined on the arresting officer's motion for summary judgment by viewing the historical facts of the warrant's affidavit from the perspective of an objectively reasonable police officer or from the contrary view most favorable to the arrestee, after the historical facts have been established by adjusting the warrant's affidavit for misstatements and omissions based on a review of the evidence in the light most favorable to the arrestee?

(2) Should qualified immunity be restricted primarily to situations requiring difficult, split-second decisions, and denied for a mistaken arrest when there was an objectively reasonable basis for the arresting officer to believe that probable cause existed under the Fourth Amendment to make the arrest?

(3) Does a police officer, who reasonably suspects a complainant's criminal behavior, credibility, and recent drug use, violate the Fourth Amendment by requesting a hospital to test for drug use the blood sample that the complainant provided to the police as part of a rape kit, when the complainant voluntarily signed written consents that authorized not only the collection and testing of the blood, but also providing the blood sample and the test results to the police?

LIST OF PARTIES

In the Court of Appeals, respondent Sara Reedy was the appellant, and petitioner Frank Evanson was an appellee. Steve Mannell, individually and in his official capacity as the Public Safety Director of the Township of Cranberry, and Kevin Meyer, individually and in his official capacity as a police officer of the Township of Cranberry, were also appellees, but the Court of Appeals affirmed the summary judgment that the District Court had entered in their favor.

In addition, 39 organizations filed a brief as *amici curiae* in support of respondent Sara Reedy. Led by the Women's Law Project, the organizations included: A Woman's Place Civil Legal Assistance Program; Alle-Kiski Area HOPE Center, Inc.; Alice Paul House; American Civil Liberties Union and American Civil Liberties Union of Pennsylvania; Berks Women in Crisis; California Women's Law Center; Citizens Against Physical, Sexual & Emotional Abuse, Inc.; Connecticut Women's Education and Legal Fund; Crime Victim Center of Erie County; Crime Victims' Center of Chester County, Inc.; Day One; End Violence Against Women International; Feminist Majority Foundation and the National Center for Women and Policing; HAVIN, Inc. (Helping All Victims In Need); Hawaii State Coalition Against Domestic Violence; Huntingdon House; Legal Momentum; Legal Voice; National Center for Victims of Crime; National Crime Victim Law Institute; National Women's Law Center; Passages Inc.; Pennsylvania Coalition Against Domestic Violence; Pennsylvania Coalition Against Rape; Pennsylvania NOW; Pittsburgh Action Against Rape; Southwest Women's Law Center;

Victim Rights Law Center; Victims' Intervention Program; Victims Resource Center; Women Against Abuse; Women Organized Against Rape; Women's Center, Inc.; Women's Law Center of Maryland, Inc.; Women's Way; and YWCA of Lancaster.

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OPINIONS BELOW

The precedential opinion of the Court of Appeals has been officially reported at *Reedy v. Evanson*, 615 F.3d 197 (3d Cir. 2010). See Appendix A.

The District Court's opinion has not been officially reported, but it has been unofficially reported at *Reedy v. Evanson*, 2009 U.S. Dist. LEXIS 33319 (W.D. Pa., Apr. 20, 2009). See Appendix C.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Court of Appeals filed its opinion and judgment on August 2, 2010. See Appendix A at 2a. Petitioner filed a timely petition for rehearing with the Court of Appeals on August 16, 2010, which the Court of Appeals denied on August 30, 2010. See Appendix D. Petitioner filed this petition for a writ of certiorari within the 90-day time frame established by 28 U.S.C. § 2101(c) and this Court's Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the Constitution of the United States

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.

Title 42 United States Code, Section 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

1. Respondent Sara Reedy sued petitioner Frank Evanson to obtain damages for two alleged violations of her civil rights under the Fourth Amendment and for associated state-law tort claims.[1]

1. Reedy sued others, but those defendants were either dismissed or obtained summary judgment that was affirmed by the Court of Appeals.

The District Court had jurisdiction over Reedy's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, and it had supplemental jurisdiction over her state law claims pursuant to 28 U.S.C. § 1367.

2. Reedy's principal claims related to whether the affidavit on which Evanson obtained a warrant for Reedy's arrest established probable cause to reasonably suspect that (1) Reedy had stolen money from her employer's gas station convenience store when, among other facts, she had the apparent opportunity and motive to take the money, there was no tangible evidence that someone else took the money and sexually assaulted her, and the power to the store's security system had been disabled 20 minutes before Reedy said the robbery and assault occurred; (2) Reedy retained or disposed of the money in part by putting it toward the rental of a mobile home with her boyfriend, shortly after the money had been taken, so that they could move out of the car in which they had been living; or (3) Reedy filed a false sexual assault report to cover up the theft, when there was no corroborative evidence for the sexual assault claim, as there was for the theft charge.[2]

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2. Under the Pennsylvania Crimes Code, "[a] person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with intent to deprive him thereof." 18 Pa.C.S. § 3921(a). A person commits the crime of receiving stolen property "if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen ... unless the property is received, retained, or disposed with intent to restore it to the owner." *Id.* § 3925(a). A person commits the crime of false reporting if he "reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur[.]" *Id.* § 4906(b)(1).

Eventually, those charges were dropped several months later when the perpetrator of the robbery and the sexual assault of Reedy and of others across Pennsylvania was caught, in a state-wide investigation that Evanson had initiated with the Pennsylvania State Police, and confessed.

However, as Evanson contended and the District Court held, once the arrest warrant affidavit was reconstructed to cure the omissions and misstatements that Reedy contended had to be resolved in her favor on Evanson's motion for summary judgment, including the addition of another robbery/sexual assault under Evanson's jurisdiction and investigation known as the "Landmark attack," the core historical facts of the reconstructed affidavit established that probable cause and qualified immunity existed for Reedy's arrest when those facts were considered from the viewpoint of an objectively reasonable police officer, even if other officers of reasonable competence could disagree as to whether there was probable cause. Appendix C at 78a-79a, 81a-134a.

3. Reedy's other claims related to Evanson's requesting that the hospital, to which Reedy had been taken for medical examination in connection with her sexual assault claim, perform a drug-use screen of the blood sample that Reedy provided for police use as part of the rape kit for that claim. Evanson had probable cause to believe that the blood test would reveal that Reedy had used a controlled substance contrary to her denial of such use. In addition, Reedy had signed consent forms that not only allowed her blood to be drawn and tested by the hospital, but also allowed the blood sample and test results to be furnished to the police.

Reedy did not question the legality of the drawing of her blood sample or the legality of the warrant under which Evanson obtained the test results along with Reedy's other hospital records. Reedy did, however, challenge the sufficiency of the consent forms, and the testing of her blood without a warrant.

The "CONSENT FOR RAPE EXAMINATION" form that Reedy voluntarily signed expressly authorized Dr. Jones to perform a medical examination on her, to record "for the proper law enforcement agency" his findings, and further specifically authorized "the collection of necessary specimens for laboratory tests as related to my case." That consent also stated that any questions that Reedy "had regarding the procedure(s) have been answered to my satisfaction."

The "AUTHORIZATION FOR COLLECTION AND RELEASE OF EVIDENCE AND INFORMATION" form that Reedy also voluntarily signed expressly authorized Dr. Jones and "his medical and nursing assistants and associates" to do various things, including "the collection of other specimens and blood samples for laboratory analysis." Additionally, that form reflected that Reedy chose to "authorize the hospital and its agents to release the laboratory specimens, medical records and other information pertinent to this incident, including any photographs, to the appropriate law enforcement officials...."

Evanson argued and the District Court held that Reedy consented to have her blood drawn, tested, and given to the police. Additionally, once her blood was drawn for testing and police use, Reedy lost any

reasonable expectation of privacy in that blood sample. Furthermore, the requested screening fell within the scope of the authorization, and the tests were reasonable and conducted within a reasonable amount of time. Appendix C at 78a-79a, 135a-139a.

4. After the District Court granted Evanson's motion for summary judgment on all of Reedy's claims, Reedy appealed. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291, and reversed, except for the judgment entered on Reedy's intentional infliction of emotional distress claim, which it affirmed. Appendix A. Subsequently, the Court of Appeals denied Evanson's timely petition for rehearing. Appendix D.

5. In its analysis of the arrest warrant claim, the Court of Appeals further readjusted the historical facts of the warrant's affidavit. However, instead of viewing those facts from the objective perspective of a reasonable police officer, the Court of Appeals first chided the District Court for having "wrongly applied the summary judgment lens of 'all inferences in favor of the non-moving party,'" an approach that the Court of Appeals acknowledged was "deliberately slanted," instead of determining "with scrupulous neutrality" whether the warrant affidavit was false or misleading. Appendix A at 31a n. 24.

Nonetheless, the Court of Appeals then declared, with no supporting citation, that, once the review and correction process established the affidavit's historical facts, the corrected affidavit "simply becomes one more set of factual assertions that must then be viewed in the light most favorable to the non-movant, in the same

manner as all of the other evidence is to be considered at the summary judgment stage. The existence of a factual assertion in the corrected affidavit of course does not preclude other evidence pertaining to the same topic covered by that assertion from also being considered in the summary judgment process." Appendix A at 32a n. 24.

Consistent with that approach, but contrary to the established cases discussed below, the Court of Appeals proceeded with its own probable cause analysis, holding that the District Court's conclusion that probable cause existed under the reconstructed affidavit was mistaken, principally because the District Court "failed to consistently interpret the record in the light most favorable to Reedy and instead, contrary to the summary judgment standard, occasionally adopted interpretations that were the least favorable to Reedy." Appendix A at 36a.

Continuing from its principal thesis that every aspect of the case had to be viewed most favorably to Reedy, the Court of Appeals held that the District Court also erred by citing allegedly unsupported inculpatory facts; failed to include all omissions in the reconstructed affidavit; "erred in deciding that certain facts were inculpatory when they were either irrelevant or exculpatory" and by giving "little weight to the highly significant exculpatory facts" of some similarities between the Reedy attack and the subsequent Landmark and Evanson's responsibility for the investigation of both incidents. *Id.*

In addition to dissecting and rejecting the grounds for probable cause by reviewing them in the light most

favorable to Reedy rather than from the objective perspective of a reasonable investigating police officer, Appendix A at 36a-54a, the Court of Appeals neutralized its nod to that perspective in its truncated qualified immunity analysis by holding that, for the reasons described in its probable cause analysis, "viewing the evidence from Reedy's perspective, 'no reasonably competent officer would have concluded that a warrant should issue' when it did for her arrest for making a false report, for theft, and for receiving stolen property" *Id.* at 55a-56a.

In addition, the Court of Appeals imposed its unique view that qualified immunity was unavailable to Evanson, because "qualified immunity exists, in part, to protect police officers in situations where they are forced to make difficult, split-second decisions," and no such situation existed in this case. Appendix A at 56a n. 37.

After ridiculing Evanson for "cluelessness," (*id.* at 51a), and a "closed mind," (*id.* at 52a n. 34), the Court of Appeals reversed the grant of summary judgment on Reedy's arrest claims. *Id* at 54a, 56a.

6. The Court of Appeals also reversed the grant of summary judgment on Reedy's blood test claims. Appendix A at 57a-71a.

The Court of Appeals constricted the broad consent forms that Reedy willingly signed without question or reservation before she provided the blood sample that was given to the police. Appendix A at 57a-64a. Even though the Court of Appeals recognized that Evanson

had probable cause to believe that the blood would reveal that Reedy used a controlled substance (*id.* at 57a n. 39), and even though the consent forms specifically allowed testing of the blood for the police (*id.* at 59a-61a), the Court of Appeals held that the consent forms were ineffective to allow Evanson to ask that the blood be tested for drugs. *Id.* at 62a-64a.

The Court of Appeals also held that the testing violated Reedy's expectation of privacy under *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), and *Ferguson v. City of Charleston*, 308 F.3d 380 (4th Cir. 2002). Appendix A at 64a-71a. Those cases, however, did not involve fluid samples given to the police and consent forms broadly authorizing testing of those samples as may be related to the complainant's case.

REASONS FOR ALLOWANCE OF THE PETITION

The precedential opinion of the Court of Appeals in this case departs so far from the controlling precedents of this Court and so conflicts with other controlling decisions as to require the exercise of this Court's supervisory powers to maintain uniformity of decisions on federal law.

I. THE COURT OF APPEALS' DEPARTURE FROM ESTABLISHED LAW IN THE DETERMINATION OF PROBABLE CAUSE AND QUALIFIED IMMUNITY

How the facts are viewed in determining probable cause and qualified immunity for an arrest or for an arrest warrant affidavit is critical, as this case sharply demonstrates.

Viewed from the perspective of an objectively reasonable police officer, the core facts of this case established probable cause and qualified immunity, because those facts indicated, among other things, that Reedy had the motive and the opportunity to take her employer's money; that she apparently used the money; that there was no tangible evidence to support her sexual assault claim; that the power to the alarm system was disabled 20 minutes before the incident described by Reedy took place and when Reedy was the only person on site; and that Reedy may have made up the sexual assault claim to cover up her theft of the money.

Viewed from the "deliberately slanted" perspective most favorable to Reedy, as the Court of Appeals' opinion demonstrates, evidence providing probable cause to an objective and reasonable police officer disappears in a fog of presumptions and rationalizations.

The controlling decisions followed by the District Court but completely ignored by the Court of Appeals hold that the facts are to be assessed from the viewpoint of an objectively reasonable police officer, who can consider the inculpatory aspects of otherwise neutral, innocent, or explainable circumstances; who has no obligation to seek exculpatory evidence once probable cause is found; and who will be immune from liability even if mistaken, and even if other reasonable officers could disagree about the existence of probable cause.

Those decisions include:

- *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (existence of probable cause is determined by

viewing the facts "from the standpoint of an objectively reasonable police officer.");

- *Malley v. Briggs*, 475 U.S. 335, 344-345 (1986) (objective reasonableness defines the qualified immunity accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest: immunity will be lost only where the warrant application is so lacking in indicia of probable cause that no officer of reasonable competence would have requested the warrant);

- *Anderson v. Creighton*, 483 U.S. 635, 641 (1987); *Saucier v. Katz*, 533 U.S. 194, 206 (2001), *Carswell v. Borough of Homestead*, 381 F.3d 235, 241-242 (3d Cir. 2004); *Paff v. Kaltenbach*, 204 F.3d 425, 436, 437 (3d Cir. 2000) (Qualified immunity applies to an officer who may have violated an individual's constitutional right if he reasonably but mistakenly believed that his conduct was lawful);

- *Bartholomew v. Commonwealth of Pennsylvania*, 221 F.3d 425, 428 (3d Cir. Pa. 2000) (The question is "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.");

- *Franks v. Delaware*, 438 U.S. 154, 172 (1978); *Malley*, 475 U.S. at 341; *Wilson v. Russo*, 212 F.3d 781, 790 (3d Cir. 2000); *Orsatti v. New Jersey State Police*, 71 F.3d 480, 484 (3d Cir. 1995) (If probable cause existed, or if reasonably competent police officers could disagree whether probable cause existed, the police are immune from liability.);

- *Hill v. California*, 401 U.S. 797, 804 (1971), *Baker v. McCollan*, 443 U.S. 137, 145 (1979), *Wright v. City of Philadelphia*, 409 F.3d 595, 601-602 (3d Cir. 2004), 409 F.3d at 601-602; *Wilson*, 212 F.3d at 789; *Johnson v. Campbell*, 332 F.3d 199, 211 (3d Cir. 2003) (Probable cause requires a belief of guilt that is reasonable, as opposed to certain, and does not depend on whether the suspect actually committed any crime.);

- *Baker*, 443 U.S. at 145, *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000); *United States v. Arvizu*, 534 U.S. 266, 277 (2002) (The arrestee's innocence is irrelevant. Probable cause can include factors that might have an innocent explanation when viewed separately or from a perspective other than the police officer's. Conversely, a determination that reasonable suspicion exists need not rule out the possibility of innocent conduct.);

- *Baker*, 443 U.S. at 145-46, *Merkle v. Upper Dublin Sch. Dist.*, 211 F.3d 782, 790 n. 8 (3d Cir. 2000) (An officer is not required to undertake an exhaustive investigation in order to validate the probable cause that, in his mind, already existed. Additionally, once probable cause exists, an officer has no duty to investigate further or to look for exculpatory evidence.);

- *Franks*, 438 U.S. at 171; *Wilson*, 212 F.3d at 789 n. 5, *Orsatti*, 71 F.3d at 484, *Malley*, 475 U.S. at 341 (When a police officer acted in an objectively

> reasonable manner, allegations of negligence, mistake, or even malice on the part of the officer are insufficient.)

None of those cases indicates that the historical facts for the arrest or for the arrest warrant affidavit are to be viewed in a light most favorable to the arrestee to determine probable cause and qualified immunity.

Significantly, the Court of Appeals provided no supporting authority for its contrary views that, once the review and correction process established the affidavit's historical facts, the corrected affidavit "simply becomes one more set of factual assertions that must then be viewed in the light most favorable to the non-movant, in the same manner as all of the other evidence is to be considered at the summary judgment stage," and that "[t]he existence of a factual assertion in the corrected affidavit of course does not preclude other evidence pertaining to the same topic covered by that assertion from also being considered in the summary judgment process." Appendix A at 32a n. 24.

In addition, the Court of Appeals offered no acceptable justification for its unique view that qualified immunity was unavailable to Evanson, because "qualified immunity exists, in part, to protect police officers in situations where they are forced to make difficult, split-second decisions," and no such situation existed in this case. *Id* at 56a n. 37.

Under the Court of Appeals' approach, no police officer can reasonably expect to obtain summary judgment on probable cause or on qualified immunity

absent an unconditional and incontestable confession by the suspect.

However, had the Court of Appeals not departed from established law and instead viewed the historical facts from the objective perspective of a reasonable police officer with Evanson's knowledge of those facts, the District Court's decision should have been affirmed.

Because the Court of Appeals accorded determinative significance to the Landmark incident and Cronin's testimony, the correct analysis begins with those aspects of the case.

The Court of Appeals noted that there were differences between the Reedy and the Landmark incidents, but it identified only one difference, the lack of physical evidence. Appendix A at 15a n. 14. Significantly, however, physical evidence established a positive and definite DNA link between the Landmark attack and others. No such link could be established in the Reedy case. Nevertheless, the Court of Appeals ridiculed Evanson for "cluelessness" (*id.* at 51a) and a "closed mind" (*id.* at 52a n. 34) in wanting a positive DNA link with the Reedy incident as well.

The Court of Appeals provided a prominent listing of similarities between the Landmark and the Reedy incidents (*id.* at 15a-16a), but it ignored the significant distinctions between those incidents provided in Cronin's deposition, which the Court of Appeals found "[p]articularly telling" in comparing the two incidents (*id.* at 52a).

The Court of Appeals also ignored the fact that, in late January of 2005, after laboratory tests indicated a match between the semen in the Landmark incident and the semen in another incident, Evanson contacted the Pennsylvania State Police and requested assistance in establishing an investigative task force to further examine similarities between those cases and others, and that Cronin headed that task force.

Cronin recognized several significant differences between the Reedy and the Landmark cases:

- the Landmark incident included physical corroborative evidence in the form of semen on the victim's shirt that eventually led to DNA matches with other incidents, but there was no such evidence in the Reedy incident (A. 506a, 627a);[3]

- Landmark involved a victim accompanied by a small child, but Reedy was alone (A. 617a-618a);

- Landmark involved a woman who was 11 years older than Reedy (A. 619a);

- there was a difference in the reported ages of the perpetrators (A. 621a);

- the perpetrators' footwear differed (A. 621a);

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3. The "A" pages refer to the Appendix that is part of the Court of Appeals' electronic file for this case at docket No. 09-2210.

- Landmark involved a taking of only $20 to $25, initially offered by the victim, but the Reedy incident involved more than $600 taken by the perpetrator from a cash register (A. 506a, 623a).

Additionally, the Landmark attack occurred in a dark, secluded parking lot outside of a building that was closed for business, but Reedy reported an attack which occurred inside a lighted store that was open for business and where anyone entering the store could easily have seen what was occurring. (A. 335a/663a, ¶ 146.)

The Court of Appeals noted that, after the State Police linked the Landmark attack to other attacks, "Evanson gave details about the Reedy attack during a teleconference conducted by the State Police task force [headed by Cronin] organized to catch that serial rapist," and Reedy advised the State Police through a tip line that she had been charged with making a false sexual assault report. Appendix A at 18a. However, the Court of Appeals completely ignored the powerfully revealing facts that Cronin obtained a complete copy of the Reedy police report from Evanson after Reedy's tip line call, had "concerns" when he read the Reedy police report, but yet never advised Evanson or anyone at Cranberry that the Reedy incident should be connected to the Landmark incident or to any other incident involved in Cronin's state-wide investigation, or otherwise overtly made any such connection between the Reedy incident and the Landmark incident or any other incident until after the perpetrator was captured and admitted to committing those crimes. (A. 149a, ¶s 17-18, 20-21, 219a, 590a, 626a, 629a; Appellant's Opening Brief, p. 11-12.)

In the overall context presented by the historical facts, an objective police investigator could have reasonably, even if mistakenly, treated the Landmark and the Reedy cases differently and found probable cause for Reedy's arrest.

As originally drafted, as revised in response to ADA Fullerton's advice to trim the original draft of the affidavit (which included virtually all of the information contained in the extensive police report), as revised by the District Court, and as further revised by the Court of Appeals, the affidavit's uncontested material facts, viewed objectively from the perspective of a reasonably competent police officer, as the law requires, show probable cause that Reedy may have been involved in the theft of her employer's cash which was used five days later as part of the down payment on a rental mobile home that she and her boyfriend had been asking about shortly before the theft, and that her claim of a sexual assault was false:

- money that Reedy had no right to was taken from premises that Reedy did not own or possess;

- the amount taken was $606.73;

- the theft occurred while Reedy was the sole employee in control of the premises, and there was no physical evidence of another's presence with her;

- Reedy's manager reported that the cash register tape showed that the "no sale" key had been pushed at the same time that Reedy had stated as the time of the occurrence;

- power to the alarm system was disabled about twenty minutes before the theft occurred;

- shortly after the incident, Reedy's manager was alerted by the alarm company that the power to the alarm system had been interrupted;

- the manager also learned that the alarm company had tried to telephone the store, but there was no answer;

- upon her return to the store, the manager discovered that the power cord to the alarm system had been unplugged from its socket behind a desk in the premises' back room;

- Reedy stated that the alleged perpetrator was not behind the desk where the plug to the alarm system was located;

- when confronted with the information about the unplugged alarm system, Reedy stated that she did not know how that happened and that she wanted to drop the whole thing and wanted it to go away;

- five days after the incident, Reedy's boyfriend made a cash deposit for the rental of a mobile home that he and Reedy had been looking at just a few days before the incident and had agreed to rent for a $365 security deposit and monthly rental, with Catholic Charities contributing $200 towards the security deposit.

The details added by the revised affidavits simply do not remove the probable cause inherent in the affidavit. For example, when Reedy promised to provide a written statement, the exact date when she provided that statement, whether or not Evanson had difficulty in contacting Reedy, and Reedy's providing a written statement are not essential facts, since Reedy was not charged with failure to cooperate or a like charge.

Despite the Court of Appeals' criticism, Reedy certainly appeared to Evanson that she was reluctant to give her written statement. Reedy did not respond to Evanson's phone call. Evanson had to make arrangements through her mother, and Reedy admitted that her mother threatened not to cash her paycheck unless she gave the statement. Even if Reedy's apparent reluctance had innocent roots, her apparent reluctance could be viewed by an objectively reasonable police officer in Evanson's position and with his knowledge to support probable cause.

That Evanson used the post-incident meeting at the police station to express his thoughts or hunches about the case to Reedy's parents or even to seek a confession was not unusual or improper police behavior. Changing the affidavit to include Evanson's, the parents', and Reedy's views on those points does not remove the probable cause inherent in the affidavit.

Similarly, adding each and every detail of Reedy's then alleged, but yet uncorroborated and unproven sexual assault; adding each and every word recorded about her repeated descriptions of the assault or about her being molested as a child; adding that she submitted

to a rape examination, which provided no evidence in support of her story, and that she received medical care for sexual assault; and adding that she complained to hospital personnel that the police were calling her a liar do not materially change the existence of probable cause.

Neither the rape examination nor the crime scene investigation revealed any physical evidence of the sexual assault. Additionally, suspects often consistently repeat a version of events, but that does not establish factual innocence, and suspects need not be believed when, as in this case, there was reason for disbelief; there was no physical evidence of the then alleged sexual assault; and additional facts known to the police reasonably supported a different scenario.

Moreover, the failure to connect the dots between the Landmark and the Reedy incidents in January of 2005 as *Cronin* later did in 20/20 hindsight only after the perpetrator confessed, amounts to no more than a *possible negligence claim, not the lack of probable cause* for Reedy's arrest.

The Court of Appeals' criticisms of the alarm system's role in establishing probable cause cannot be accepted. The Court of Appeals asserted that "Reedy never admitted that her attacker did not disable the alarm system," Appendix A at 44a, but the record shows that Reedy replied "no" when asked "if the suspect disabled any line for electricity or the alarm" (A. 352a).

Power to the alarm system was disrupted 20 minutes before the assault occurred, a point in time when Reedy was alone and before the time she stated that the

assailant entered the premises. The inference naturally flows that Reedy unplugged the power cord, and the unplugging of the power cord prior to the robbery was apparently intentional and highly suspicious under the circumstances.

As to the panic button, Reedy did tell officers that she did not press the panic button because she thought that it did not work. (R. 207a.) Knowing that (A. 271a), Evanson certainly could have reasonably believed that Reedy had not pressed the panic button because she thought that it did not work. However, why Reedy may not have pressed the panic button was simply immaterial, because her not pressing that button played no role in the affidavit that Evanson presented to the magistrate.

The Court of Appeals' view that inculpatory factors were not inculpatory information or could be explained fails to appreciate that innocent or explainable factors can still be included in the probable cause matrix. Viewed from the objective perspective of a reasonable police officer, as the law requires, the facts presented in the submitted and the revised affidavits established probable cause.

The Court of Appeals should have followed established law and affirmed the summary judgment that the District Court granted to Evanson. This Court should grant review, vacate the Court of Appeals' decision, and reverse the Court of Appeals' judgment.

II. THE COURT OF APPEALS' DEPARTURE FROM ESTABLISHED LAW ON THE BLOOD TEST CLAIM

On Reedy's blood test claim, the Court of Appeals' decision is contrary to the decisions in: *Schmerber v. California* 384 U.S. 757 (1966), and *Hedges v. Musco,* 204 F.3d 109, 120 (3d Cir. 2000) (upholding warrantless collection and testing of blood samples where the tests are reasonable and conducted within a reasonable amount of time).

The collection and use of blood samples by the police without a warrant has been upheld for decades. *Schmerber, supra*; *Hedges, supra.* The tests must be reasonable and conducted within a reasonable amount of time. Here, there is no question that those elements were satisfied. The tests were simple screens; they did not involve additional bodily invasion; and, they were conducted shortly after the incident on a blood sample that Reedy consensually acknowledged would be provided to the police.

Moreover, the consent forms that Reedy voluntarily signed were broad enough to permit Evanson to ask for additional testing of the blood sample that was given to the police.

The Court of Appeals' reliance on the *Ferguson* cases is misplaced. Those cases did not involve fluid samples given to the police and consent forms broadly authorizing testing of those samples as may be related to the complainant's case. The Court of Appeals should have affirmed the summary judgment in favor of

Evanson on Reedy's blood test claim. This Court should grant review and reverse the Court of Appeals' decision.

CONCLUSION

This Court should grant the writ, vacate the Court of Appeals' decision, and reverse the Court of Appeals' judgment.

Respectfully submitted,

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