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IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES DAVID BLACK and ELISABETH V. BLACK, Petitioners Below - Appellants, v. **JUSTICE OF THE PEACE COURT 13 and PAUL D. TAYLOR,** Respondents Below - Appellees.	No. 86, 2014 APPEAL FROM THE JANUARY 23, 2014 ORDER OF THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY IN C.A. N14A-01-006 CEB

APPELLANTS' OPENING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

Justice of the Peace Court 13 improperly expedited summary possession proceedings against James David Black, a disabled veteran, and Elisabeth V. Black (the "Blacks") denying them their guaranteed tenant rights under 25 *Del. C.* § 5101, *et seq*., and their due process rights under the United States and Delaware Constitutions. The Blacks filed a Petition for Writ of *Certiorari* (the "Blacks' Petition") with the Delaware Superior Court seeking review of the Justice of the Peace's decision. A004-028. Though the Blacks' Petition sought review appropriate on *certiorari*, the Superior Court denied and dismissed the Blacks' Petition without conducting the analysis this Court's *Maddrey v. Justice of the Peace Court 13* decision requires. 956 A.2d 1204, 1213 (Del. 2008).

The Blacks hereby request that this Court reverse the decision of the Superior Court denying the Blacks'Petition, direct the Superior Court to issue the writ of *certiorari* to Justice of the Peace Court 13, and remand this matter to the Superior Court to hear the Blacks' *certiorari* review on its merits. Alternatively, the Blacks request that this Court exercise its original jurisdiction, issue the writ of *certiorari* to Justice of the Peace Court 13, and vacate the Justice of the Peace's November 27, 2013, and January 14, 2014, eviction orders. A119-122.

The matter before this Court began on November 21, 2013, when Paul D. Taylor ("Taylor"), the Blacks' landlord, filed a complaint seeking back rent and

possession of a home he had rented to the Blacks. A011-A016. Taylor requested an expedited summary possession trial under 25 *Del. C.* § 5115, which grants Justice of the Peace Court 13 the authority to issue a "forthwith summons" in very limited circumstances (A016) such as when "the landlord alleges and by **substantial evidence** demonstrates to the Court that a tenant **has caused substantial or irreparable harm** to landlord's person or property." 25 *Del. C.* § 5115 (emphasis added). Taylor submitted no evidence in support of the forthwith summons. A016. Instead, Taylor's attorney submitted a letter, separate from the original complaint, merely stating that certain hypothetical or prospective harm might occur to Taylor's home at some unspecified future date. *Id.* There was no statement in the letter that the Blacks had caused substantial or irreparable harm.

Notwithstanding that Taylor provided no evidence, Justice of the Peace Court 13 issued the § 5115 forthwith summons and scheduled trial for the next day, November 22, 2013. A011. The Blacks objected to the expedited proceedings at the November 22 hearing, but Justice of the Peace Court 13 overruled this objection and proceeded with the eviction trial immediately. A046, ¶ 4. At trial, Justice of the Peace Court 13 found for Taylor and ordered back rent and possession of the Blacks' home. *Taylor v. Black*, Del. J.P., C.A. No. JP-13-13-015262, Ross, J. (Nov. 27, 2013); A119; A021. The Blacks appealed this decision to a three-judge panel of Justice of the Peace Court 13. A006 ¶ 13; A021. At the

hearing on the appeal, the Blacks objected again to the Justice of the Peace's issuance of the forthwith summons (A046, ¶ 4), but the three-judge panel overruled the objection, found in favor of Taylor, and ordered the Blacks to pay back rent and granted possession of the Blacks' home to Taylor. *Taylor v. Black*, Del. J.P., C.A. No. JP-13-13-015262, Lee, J., Page, J., Tull, J. (Jan. 14, 2013); A120-122.

The Blacks filed a petition for writ of *certiorari* in the Delaware Superior Court seeking review of Justice of the Peace Court 13's erroneous decision. The Blacks' Petition pled that Justice of the Peace Court 13 erred as a matter of law when it issued the forthwith summons without the prerequisite proof required under 25 *Del. C.* § 5115. The Blacks further alleged that they were denied due process of law. Despite the Blacks' well-pleaded allegations, the Superior Court denied and dismissed the Blacks' Petition.

SUMMARY OF ARGUMENT

The Superior Court erred as a matter of law when it did not grant the Blacks' Petition because the petition satisfied the relevant standard justifying issuance. First, it met the threshold requirement of a final judgment for which there is no other available basis for review. *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1213 (Del. 2008). Having met this requirement, the Superior Court "does not consider the merits of the case[]"; rather, "[i]t considers only those issues historically considered at common law[.]" *Id.* These issues are whether the lower court (i) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly. *Id.* As *Maddrey* explains,

> [a] decision will be reversed for an error of law committed by the lower tribunal when the record affirmatively shows that the lower tribunal has 'proceeded illegally or manifestly contrary to law.' Reversal on jurisdictional grounds is appropriate 'only if the record fails to show that the matter was within the lower tribunal's personal and subject matter jurisdiction.' Reversal for irregularities of proceedings occurs 'if the lower tribunal failed to create an adequate record for review.'

956 A.2d at 1214 (citing *Christiana Town Ctr., LLC v. New Castle County*, 2004 WL 2921830, at *2 (Del. Dec. 16, 2004)).

Here, the Superior Court erred under two of the three *Maddrey* prongs for the following reasons:

1. The record shows, and the Blacks pled, that Justice of the Peace Court 13 proceeded manifestly contrary to law and denied the Blacks due process of law when it issued a forthwith summons under 25 *Del C.* § 5115 absent satisfaction of the statutory requirements for issuance of that summons; and
2. The record shows that Justice of the Peace Court 13 proceeded irregularly because it created no record regarding its issuance of the forthwith summons.

In light of these errors, this Court should remand this matter to the Superior Court to permit the Superior Court to grant the writ of *certiorari* and consider the substance of the matter. In the alternative, this Court may exercise its original jurisdiction, issue the writ of *certiorari* to Justice of the Peace Court 13, review the Justice of the Peace record, and render judgment in favor of the Blacks on the strength of their petition and the briefing on this appeal. *See* Supr. Ct. R. 43(b)(vi); *see also* Del. Const. art. IV, § 11(5).

STATEMENT OF FACTS

A. Justice of the Peace Court 13 Expedites Taylor's Summary Possession Proceedings.

The Blacks rented a house located in Bear, Delaware from Taylor. A004, ¶¶ 1, 3. The Blacks paid rent until Mr. Black experienced debilitating health issues and was unable to continue working. A033; A060-061. On November 21, 2013, Taylor filed a complaint with Justice of the Peace Court 13, seeking possession and back rent. A005, ¶ 4.

Taylor sought an expedited summary possession hearing under 25 *Del C.* § 5115, which authorizes a Justice of the Peace Court to issue a forthwith summons under limited circumstances. *Id.* at ¶ 5; A011-016. In support of this request, Taylor's counsel submitted a letter, claiming:

> The rental unit, a single family home, has no electricity and no heat. There are minor children residing in the residence. The temperature on Sunday is scheduled to drop into the low 20's [sic], thereby jeopardizing my client's property. The defendants have previously refused my client access. He was unable to close the pool due to the lack of electricity. The pool and equipment may freeze, costing my client thousands of dollars, not to mention pipes in the home.

A005, ¶ 5; A016. Taylor neither alleged these facts in his complaint nor submitted any evidence or affidavits in support thereof and instead stated prospective, hypothetical damages: "[t]he pool and equipment *may* freeze." A005, ¶¶ 5, 7; A011-016 (emphasis added).

Notwithstanding that Taylor submitted no evidence and otherwise failed to comply with 25 *Del. C.* § 5115, Justice of the Peace Court 13 issued the forthwith summons at 11:49 a.m. on November 21, 2013 – the same day – and scheduled trial for 1:00 p.m. on November 22, 2013 – the very next day. A005, ¶ 8; A020. The Blacks had less than 24 hours to prepare for trial as the Constable did not return service until 3:17 p.m. A020. Justice of the Peace Court 13 docketed that it granted the forthwith summons but did not record what standard it applied or what evidence it considered. *Id.* The docket entry merely stated, in relevant part: "PER JUDGE ROBERTS: GRANTED. SCHEDULE FORTHWITH." *Id.*

B. Justice of the Peace Court 13 Holds Trial One Day After Taylor Filed the Complaint.

Justice of the Peace Court 13 held trial, as scheduled, one day after the Complaint was filed. A005, ¶ 10. The Blacks attempted but failed to secure counsel on short notice. A006, ¶ 11. At trial, the Blacks objected to the forthwith summons and the expedited proceedings. A005, ¶ 10. The Court found against the Blacks and orally entered a judgment of possession and back rent. A006, ¶ 12.

The Court entered a "Notice of Judgment/Order" on November 27, 2013 (the "November Judgment"). *Taylor v. Black*, Del. J.P., C.A. No. JP-13-13-015262, Ross, J. (Nov. 27, 2013); A119. In the November Judgment, the Court did not state what standard it applied or what evidence it relied upon in granting the forthwith summons. Additionally, the Court neither held any evidentiary hearing

regarding nor provided the Blacks an opportunity to rebut Taylor's claims in support of the forthwith summons.[1] *Id.* The docket entry for the November Judgment is similarly void of discussion regarding the forthwith summons: "JUDGMENT ARGUMENT / POSSESSION / PLTF MUST PUT ALL UTILITIES IN HIS NAME." A021.

C. The Blacks Appeal the November Judgment.

The Blacks timely appealed the November Judgment. A006, ¶ 13. A three-judge panel of Justice of the Peace Court 13 presided over the appeal on January 2, 2014. *Id.*; A022-023. At the hearing on their appeal, the Blacks objected and argued the November Judgment should be vacated because the forthwith summons issued in error. A006, ¶ 14. The three-judge panel overruled the Blacks' objection and ruled in Taylor's favor for possession and back rent. *Id.*

On January 14, 2014, Justice of the Peace Court 13 entered a non-reviewable, non-appealable final judgment against the Blacks (the "January Judgment"). *Taylor v. Black*, Del. J.P., C.A. No. JP-13-13-015262, Lee, J., Page,

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[1] The substance of the November Judgment is:

> November 22, 2013. After hearing the testimony of the parties, the Court awards judgment to Plaintiff Paul Taylor against Defendants James and Elisabeth Black in the amount of $5463.33 plus $40.00 court costs, possession, $53.33 per diem until vacated and 5.75% post judgment interest per annum. The Defendants are financially unable to pay the utility bills. The Plaintiff will need to get them turned on in his name. **Plaintiff has 30 days from this signed Order to file the Writ of Possession.**

Taylor v. Black, Del. J.P., C.A. No. JP-13-13-015262, Ross, J. (Nov. 27, 2013) (emphasis in original); A119.

J., Tull, J. (Jan. 14, 2013); A120-122. According to the January Judgment, the three-judge panel did not consider whether Taylor offered any evidence - because he did not - in support of the forthwith summons and did not apply the standards of 25 *Del. C.* § 5115. A120-122. Instead, the three-judge panel presumed that the justice of the peace that issued the forthwith summons did so properly.[2] *Id.*

D. The Blacks File a Petition for Writ of *Certiorari* with the Delaware Superior Court Alleging Justice of the Peace Court 13 Erred as a Matter of Law When It Issued the Forthwith Summons.

On January 15, 2014, the Blacks filed a Petition for Writ of *Certiorari* with the Delaware Superior Court seeking review of Justice of the Peace Court 13's decisions. A004-028. The Blacks alleged that Justice of the Peace Court 13 erred as a matter of law by issuing the forthwith summons without any evidence, without applying the proper standard of review, and without applying that evidence to the standard. A007-008, ¶¶ 19-27. The Blacks further alleged that, as a result of Justice of the Peace Court 13's error, they were denied due process and were prejudiced by the expedited proceedings. A008, ¶ 28.

On January 16, 2014, the Superior Court ordered that Taylor respond to the Black's Petition on January 20, 2014, and ordered argument later that week. A109-110.

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[2] "The Court rejected [the argument that the forthwith summons issued in error], finding that a judicial officer reviewed and approved the application for a forthwith summons. Having found sufficient grounds, a forthwith summons was issued and a trial was held." *Taylor v. Black*, Del. J.P., C.A. No. JP-13-13-015262, Lee, J., Page, J., Tull, J. (Jan. 14, 2014); A120-122.

Taylor submitted his Response to Writ of *Certiorari* (the "Response") and Motion for Plaintiffs to Post Bond on January 20, 2014. A111-118.

E. The Superior Court Holds Argument on the Blacks' Petition.

The Superior Court held argument on the Blacks' Petition on January 23, 2014. *See* Ex. A. At argument, the Blacks reiterated their basis for *certiorari*:

> MR. MARTIN: I'm asking for the Court to grant a writ of certiorari to establish the initial evidentiary requirement under 5115 for the issuance of a forthwith summons to ensure that the evidentiary standard is met, satisfied, before the due-process rights that tenants normally have under the Landlord Tenant Code is truncated from five, ten, 15 days to a single day.

Ex. A, 9:13-19. The Blacks further argued that the record would show that Justice of the Peace Court 13 did not review any evidence and did not apply the proper standard. *Id.* at 6:16-7:20 ("MR. MARTIN: [The judgment] doesn't speak to whether the evidence was sufficient, insufficient, what the evidence was."). Put simply, the Justice of the Peace Court must comply with the statute before it issues a forthwith summons, and it failed to do so here. *Id.* at 24:17-20.

In response, Taylor argued that the Superior Court cannot review Justice of the Peace Court 13's decision to issue a forthwith summons on *certiorari* because that is not part of the complaint. *Id.* at 12:8-10 ("It's a separate request, separate document"). The Court questioned Taylor's position: "So, are you saying that the J.P. Court . . . that a party would get a forthwith summons just willy-nilly

whenever they asked for it and there would be no review of that, that that practice would be unreviewable by any other court?" *Id.* at 12:14-20.

The Blacks closed their portion of the argument by alerting the Superior Court to the dangers of denying *certiorari* review of forthwith summonses *per se*:

> But to the extent that the conclusion of today's argument is that J.P. can do this with or without evidence on whatever basis they want and, even if it's completely flawed, I can't review it, I have a very hard time accepting it. . . . [J]ust because the Court of Chancery doesn't frequently issue TROs doesn't mean that, when they do issue them and when they're faced with them, that they don't have to comply with the various procedures and standards set forth by the Legislature and the Supreme Court and the standards for applying it.

Id. at 27:5-16.

F. The Superior Court Denies the Blacks' Petition and Refuses to Issue the Writ of *Certiorari*.

In an oral ruling, the Court denied the Blacks' petition to review Justice of the Peace Court 13's decisions, thereby refusing to issue the writ of *certiorari*. Ex. A, 28:5-13, 29:1-30:3, 31:1-3. The Court found that the Blacks' argument required the Court to review and evaluate evidence, which is inappropriate on *certiorari* review. *Id.* at 29:10-16. The Court reasoned that the Blacks' argument would require the Court to evaluate the substantiality of evidence:

> I am directed to review a letter by counsel. I am told that they're not granted very often, I'm told this and that, all of which it seems to me are invitations or requests that I go beyond the limited scope of the review available to the Court today.

Id. at 29:22-30:3.

Prior to concluding argument, the Court found it "troubling" that the Justices of the Peace may be able to issue these forthwith summons illegally without Superior Court oversight: "If the J.P. Court were to adopt a procedure that eliminated the requirement that a landlord show substantial or irreparable harm before a forthwith summons issued, that would be a cause for concern." *Id.* 30:4-12. Oddly, however, even though that is exactly what happened in this matter, the Superior Court nonetheless denied the Blacks' Petition, suggesting that there may be ways to challenge such a ruling, but *certiorari* review was not one. *Id.* at 30:4-23. In other words, the courts would have a right to issue a writ if there was a systemic and widespread abuse of the forthwith summons; but, where errors and abuses merely violate a single individual's right, Delaware law will not act to protect that individual's rights, and the error and harm visited upon that person as a result of a court's failure to comply with statutory and constitutional mandates will stand.

G. The Blacks Appeal the Superior Court's Ruling.

On February 20, 2014, the Blacks filed a timely notice of appeal with the Delaware Supreme Court challenging the Superior Court's decision dismissing the Blacks' Petition. *Black v. Taylor*, Del. Supr., No. 86,2014, Trans. ID 55030824 (Del. Feb. 20, 2014).

ARGUMENT

I. THE SUPERIOR COURT ERRED WHEN IT DISMISSED THE BLACKS' PETITION BECAUSE JUSTICE OF THE PEACE COURT 13 COMMITTED ERRORS OF LAW

A. Question Presented

The Blacks' Petition alleged that Justice of the Peace Court 13 erred as a matter of law by granting the forthwith summons even though Taylor failed to provide evidence meeting the requirements of 25 *Del. C.* § 5115. The Blacks' Petition further alleged that this error would be clear on the face of the record. The Blacks' Petition, thus, satisfied the substantive basis for issuance of a writ of *certiorari* petition. The first question presented then is, did the Superior Court err by dismissing the Blacks' Petition, refusing to issue the writ of *certiorari*, and refusing to hear the appeal on its merits when the petition satisfied *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008)?

This argument was preserved in the Blacks' Petition (A007-008, ¶¶ 19-28) and at oral argument (Ex. A, 6:20-7:6).

B. Scope of Review

Review of the Superior Court's decision dismissing a petition for writ of *certiorari* is reviewed *de novo*. *American Funding Svcs. v. State*, 41 A.3d 711, 713 (Del. 2012); *Schweizer v. Board of Adjustment of City of Newark*, 930 A.2d 929, at *2 (Del. June 26, 2007) (TABLE).

C. <u>Merits of the Argument</u>

Justice of the Peace Court 13 committed errors of law and denied the Blacks due process of law. The Superior Court's decision should, thus, be reversed and the writ should be granted so the appeal can be decided on the merits.

1. Under *Maddrey*, Errors of Law Justify *Certiorari* Review.

This Court has held that the Superior Court can issue writs of *certiorari* to a Justice of the Peace to review summary possession proceedings for errors of law. *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1212 (Del. 2008). Such errors of law include the Justice's statutory and constitutional violations. *Id.*; *Shoemaker v. State*, 375 A.2d 431, 437-438 (Del. 1977) (reviewing an alleged Fourteenth Amendment violation as though on *certiorari*); *Reise v. Board of Bldg. Appeals of City of Newark*, 746 A.2d 271, 274 (Del. 2000).

As a threshold matter, the Superior Court has the power to issue a writ of *certiorari* to review a Justice of the Peace summary possession judgment. *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008); *see also Howell v. Justice of the Peace Court No. 16*, 2007 WL 2319147, at *4 (Del. Super. Ct. July 10, 2007). The Superior Court derives the authority to issue common law writs of *certiorari* to inferior tribunals, such as the Justice of the Peace courts, from the Delaware Constitution. Del. Const. art. IV, § 7; *Maddrey*, 956 A.2d at 1209-1210, quoting *Rash v. Allen*, 76 A. 370, 376 (Del. Super. Ct. 1910) ("it is manifest

that since 1831, the power of the Superior Court to issue writs of *certiorari*, and hear causes thereon has been and is constitutional."). As part of this constitutional authority, the Superior Court's grant of a common law writ of *certiorari* is one of right, not discretion. 10 *Del. C.* § 562 ("The Superior Court may frame and issue all remedial writs, including . . . certiorari, or other process, necessary for bringing the actions in that Court to trial and for carrying the judgments of the Court into execution. All writs shall be granted of course."); *Castner v. State*, 311 A.2d 858, 858 (Del. 1973); *see also* 10 *Del. C.* § 142 ("Writs of *certiorari*, issuable out of the Supreme Court, shall be writs of right and not of grace.");

Certiorari review is "on the record and the reviewing court may not weigh evidence or review the lower tribunal's factual findings." *Maddrey*, 956 A.2d at 1213 (quoting *Christiana Town Ctr., LLC v. New Castle County*, 2004 WL 2921830, at *2 (Del. Dec. 16, 2004)). Because of its limitations, *certiorari* review is only appropriate when two threshold requirements are met. *Maddrey*, 956 A.2d at 1209-1210. The Blacks' Petition meets both requirements.

The first threshold requirement for *certiorari* review is that "the judgment must be final and there can be no other available basis for review." *Maddrey*, 956 A.2d at 1213. There is no dispute that the decision by the three-judge panel of Justice of the Peace Court 13 is a final, non-appealable judgment. A111-118; 25 *Del. C.* § 5717; *see also Maddrey*, 956 A.2d at 1213.

Second, the petition must raise the type of claim reviewable on *certiorari*, namely "whether the lower tribunal (1) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly." *Maddrey*, 956 A.2d at 1214; *see also* 1 Victor B. Woolley, *Practice in Civil Actions and Proceedings in the law Courts of the State of Delaware,* §§ 896-897. "'A decision will be reversed for an error of law committed by the lower tribunal when the record affirmatively shows that the lower tribunal has 'proceeded illegally or manifestly contrary to law.'" *Maddrey*, 956 A.2d at 1214 (quoting *Christiana Town Center LLC*, 2004 WL 2921830, at *2). "Reversal on jurisdictional grounds is appropriate 'only if the record fails to show that the matter was within the lower tribunal's personal and subject matter jurisdiction.'" *Id.* "Reversal for irregularities of proceedings occurs 'if the lower tribunal failed to create an adequate record for review.'" *Id.*

The Superior Court can dismiss a petition *sua sponte* only when it "manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail." Del. Super. Ct. R. Civ. P. 41(f). Dismissal may thus be appropriate when the petition would require the Court to "weigh and evaluate evidence," *Castner*, 311 A.2d at 858, or review the "factual and legal conclusions." *901 Market, L.L.C. v. City of Wilmington*, 2011 WL 4017520, at *1 (Del. Sept. 12, 2011) (affirming the Superior

Court's denial of petition for writ of *certiorari*); *but see American Funding Svcs., Inc. v. State*, 41 A.3d 711, 714 (Del. 2012) (stating dismissal is inappropriate when the petitioner can recover "under ***any reasonably conceivable set of circumstances within the three-part framework set forth in*** **Maddrey**") (emphasis added).

2. Justice of the Peace Court 13 Acted Illegally and Manifestly Contrary to the Law.

The Blacks alleged that Justice of the Peace Court 13 committed an error of law because it issued the forthwith summons without complying with the statutory requirements of 25 *Del. C.* § 5115. The Court did not consider any evidence – much less substantial evidence – because Taylor did not provide any in support of his application for the forthwith summons. Moreover, to the extent he supplied any facts, he only alleged future, hypothetical harms, not past harm as is required by the statute. Hence, the Court issued the forthwith summons erroneously.

The Justice of the Peace Courts may issue a "forthwith summons" only when "the landlord alleges and by **substantial evidence** demonstrates to the Court that a tenant **has caused substantial or irreparable harm** to landlord's person or property." 25 *Del. C.* § 5115 (emphasis added).

Justice of the Peace Court 13 disregarded § 5115 in two key respects. First, Taylor provided no evidence, and the Justice of the Peace record discloses no evidence – let alone, substantial evidence – in support of his request. A011-016. There was no dispute on this point below as the Superior Court pressed counsel on

the deficiencies of the complaint, and Taylor's counsel conceded there was no affidavit submitted in support of the complaint that would satisfy § 5115. Ex. A, 11:17-22.[3] Taylor supported his application only with a letter from counsel, but an attorney's letter is not "substantial evidence." *See Rollins Broadcasting of Del., Inc. v. Hollingsworth*, 248 A.2d 143, 145 (Del. 1968) (stating that under a zoning board statute requiring "substantial evidence," that "[a]ttorneys' letters . . . do not constitute [substantial] evidence"). Indeed, Justice of the Peace Court 13, in its docket entries and orders, failed to state whether it reviewed ***any evidence*** (because Taylor provided none), whether it applied the "substantial evidence" standard in 25 *Del. C.* § 5115 (because it did not), and whether the evidence it reviewed (of which Taylor provided none) met that standard. A018-023; A119-122. This point alone justifies this Court finding in the Blacks' favor.

Second, assuming, *arguendo*, that Justice of the Peace Court 13 considered the lawyer's letter as "evidence" in support of the forthwith summons, Taylor's request failed to allege any past substantial or irreparable harm caused by the Blacks. Taylor's counsel's letter theorized that possible or hypothetical damages "may" occur at some point in the future. A011-016. The statute is unambiguously written in the past tense and thus allegations of speculative future harm do not meet § 5115's requirement to justify issuance of a forthwith summons. *Clark v.*

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[3] "The Court: Would it have killed you to attach an affidavit to your complaint? Mr Gouge: It probably would not have, your Honor."

State, 65 A.3d 571, 577-578 (Del. 2013) (stating that statutory language, when unambiguous, should be given its plain meaning).

The Superior Court can review this error of law on *certiorari* because the error is based on the absence of evidence, not on the sufficiency of evidence. Indeed, the Blacks appropriately requested that the Superior Court simply review the record to determine whether Taylor had offered, and Justice of the Peace Court 13 had considered, any evidence in requesting, and issuing, the forthwith summons. Ex. A, 8:2-7.

3. The Justice of the Peace Court's Errors of Law Are Clear on the Face of the Record.

Taylor's complaint did not allege that the Blacks had caused "substantial or irreparable harm." A013. His lawyer's November 21, 2013, letter to Justice of the Peace Court 13 noted the possibility of future, hypothetical - not past - substantial or irreparable harm. A016. The docket shows that the Court did not receive any authenticated documents, testimony, affidavits, or other evidentiary support on this point. A018-023. The Court's docket entries and written judgments do not disclose any evidence – let alone substantial evidence – that substantiated a finding of substantial or irreparable harm.

To avoid review, Taylor argued below that the record is so limited that the Superior Court could only review the complaint, the answer, and the docket entries. Taylor's argument, though, is untenable because the record on *certiorari*

review traditionally included more. For instance, the record may include the opinions or orders of the Court from which the appellant appeals. *See Matter of Butler*, 609 A.2d 1080, 1082 (Del. 1992) (reviewing a Superior Court criminal contempt order as the record on *certiorari* review). Moreover, historical practice shows that, in limited circumstances, Delaware Courts have reviewed transcripts of evidentiary hearings so long as the transcript is not offered for the purpose of weighing evidence. *See Shoemaker*, 375 A.2d at 443 (requiring Justices of the Peace to transcribe criminal proceedings in which the defendant waived certain rights and include with the *certiorari* record); *Matter of Lynch*, 571 A.2d 787, at *2 n. 1 (Del. 1990) (TABLE) (discussing that the petition attached pertinent portions of the trial transcript as well as the lower court's order certifying the contempt and that this constituted the same record as would appear if the common law writ of *certiorari* had in fact issued); *see also* 1 Woolley, *supra*, § 899 (stating that if the matter warranted reviewing matters outside the record that "[t]he mode of taking the proof depended largely upon convenience or consent in each case"). In fact, under certain circumstances, the Superior Court could even hear evidence on *certiorari*. 1 Woolley, *supra*, § 899 ("[T]he most usual way [to hear evidence on *certiorari*] was to apply for a rule commission and take depositions upon interrogatories."); *Cullen v. Lowery*, 2 Harr. 292 (Del. Super. Ct. Fall Session,

1837) (discussing Delaware practice whereby the appellate court on *certiorari* took depositions to prove facts not appearing on the record).

It bears noting that Taylor's reading of the *Maddrey* decision suggests this Court has departed from the long history of common law *certiorari* cases and barred the Superior Court from reviewing anything beyond the complaint, answer, and docket entries on *certiorari*. 956 A.2d at 1216. The Blacks submit, however, that *Maddrey*'s statement limiting the record to the complaint, answer, and docket entries is based on the unique facts of that case or is *dicta* and, thus, does not reflect this Court's departure from hundreds of years of Delaware practice. 956 A.2d at 1216. *Maddrey* stands, instead, for the proposition that the Superior Court cannot, in the normal course, review evidence below unless such evidence is necessary to complete or explain an otherwise incomplete record. *See* 956 A.2d at 1216 ("The Justice of the Peace Court must not send evidentiary hearing transcripts to the Superior Court, because the Superior Court may not properly consider hearing transcripts in performing its limited duty on common law *certiorari*); *cf.* 1 Woolley, *supra*, §§ 898 (discussing that Delaware courts, on *certiorari*, were not confined to the record where evidence from elsewhere was necessary to complete or explain an otherwise incomplete or doubtful record).

In any event, this Court need not determine what the *certiorari* record includes. Accepting, *arguendo*, that the record includes only the complaint, the

answer, and the docket entries, the record still shows that Justice of the Peace Court 13 erred as a matter of law. The docket shows that Justice of the Peace Court 13 never analyzed any evidence and never applied § 5115. Without having completed this analysis, Justice of the Peace Court 13 erred as a matter of law.

4. Twenty-five *Del. C.* § 5115 Denied the Blacks Due Process.

As the record shows, Justice of the Peace Court 13 expedited the Blacks' eviction proceedings thus denying them a meaningful opportunity to be heard. The Blacks were thus denied the due process that they are guaranteed by the United States and Delaware Constitutions.

Procedural due process is guaranteed by both the United States and Delaware Constitutions. U.S. Const. amend. XIV, § 1 ("nor shall any state deprive any person of life, liberty, or property, without due process of law"); Del. Const. art. I, § 4 (jury trial), § 9 (due process); *see also Orville v. Div. of Family Svcs.*, 759 A.2d 595, 597-598 (Del. 2000) ("A party is entitled to due process prior to the termination of a right protected by the Fourteenth Amendment to the United States Constitution."); *Moore v. Hall*, 62 A.3d 1203, 1208 (Del. 2013) ("[A]lthough the flexible concept of due process is only implicit in the United States Constitution, the framer of Delaware's Constitution explicitly guaranteed fundamental fairness in the administration of justice for the citizens of Delaware.").

A Court can review a procedural due process claim on *certiorari* when the due process violation is clear on the face of the record. *Reise v. Board of Bldg. Appeals of City of Newark*, 746 A.2d 271, 274 (Del. 2000) (reversing the Superior Court's dismissal of a petition for a common law writ of *certiorari* because the petition raised several grounds for review including due process violations). "Procedural due process extends to anything to which a person may assert a legitimate claim of entitlement." *Slawik v. State*, 480 A.2d 636, 645 (Del. 1984). In reviewing procedural due process, a Delaware court traditionally considers the so-called *Eldridge* factors:

> *[F]irst*, the private interest that will be affected; *second*, the risk of an erroneous deprivation of such interest and the probative value, if any, of additional or substitute procedural safeguards; and *finally*, the State interest, including the function involved, and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Slawik, 480 A.2d at 645-646 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335-36 (1976)) (italics in original). The test for procedural due process is therefore necessarily "'flexible and calls for such procedural protections as the particular situation demands.'" *Slawik*, 480 A.2d at 645.

A statute can be challenged on due process grounds both facially and as applied. *U.S. v. Salerno*, 481 U.S. 739, 745 (1987); 16 C.J.S. Constitutional Law § 187 (2014). "'[A] facial challenge asserts that the statute is void for every purpose and cannot be constitutionally applied to any set of facts.'" *War Eagle Vill.*

Apartments v. Plummer, 775 N.W.2d 714, 722 (Iowa 2009). An "as applied" challenge asserts that the operation of a statute in a particular case was unconstitutional. *Boilermakers Local 154 Ret. Fund v. Chevron, Corp.*, 73 A.3d 934, 948-949, n. 55 (Del. Super. Ct. 1975); *see also* 16 C.J.S. Constitutional Law § 187 (2014).

Notice and opportunity to prepare one's case are hallmarks of procedural due process. *See Lindsey v. Normet*, 405 U.S. 56, 66 (1972) ("Due process requires that there be an opportunity to present every available defense."); *see also Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) ("'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"). Due process, therefore, necessarily requires adequate time to consult legal counsel, prepare a defense, request a jury trial, and be meaningfully heard on the issues. *See Lindsey*, 405 U.S. at 85 (Douglas, J., dissenting).

In *Lindsey v. Nomet*, the United States Supreme Court considered whether between two and six days' notice was adequate for eviction proceedings. 405 U.S. at 63-64. The statute at issue provided for an expedited trial within two to six after service of the complaint and limited the issues at trial to whether the tenant has paid rent or held over. *Id.* at 64-65. Because the trial was limited to a few

discrete issues, the majority reasoned that it could not find that six days' notice, on its face, was not enough notice. *Id.* But, Justice Douglas dissented and argued that, especially for indigent tenants, "this kind of summary procedure usually ***will mean in actuality no opportunity to be heard***." *Id.* at 85 (emphasis added).

In *War Eagle Vill. Apartments*, the Supreme Court of Iowa found a forcible detainer and entry statute ("FED") facially unconstitutional because it failed to provide adequate notice. 775 N.W.2d at 721-722. The Iowa statute required that: (i) the court schedule an FED hearing 7 days after the landlord filed the complaint; and (ii) the landlord, upon filing the complaint, serve the tenant by registered mail. *Id.* at 721. The Court reasoned that scheduling a hearing in seven days and placing the tenant at the mercy of the speedy delivery of registered mail "makes it less likely that timely notice will be received," if notice were received at all. *Id.* The Court found, thus, there was "no set of facts under which the FED statutory notice scheme could be found to provide adequate notice." *Id.* at 722.

Section 5115 permits the Justices of the Peace to schedule eviction proceedings on less than twenty-four hours' notice and, thus, is even more restrictive than the statutes that Justice Douglas railed against in *Lindsey* and that the Iowa Supreme Court struck down in *War Eagle Vill. Apartments.* The Justice of the Peace Court is permitted by the statute to schedule trial for the very next day, as it did here, regardless of whether the tenant receives actual notice. 25 *Del.*

C. § 5115. This scheme, at best, provides a tenant a few days to prepare for trial, seek counsel, gather witnesses and documents, and request a jury trial. *Id.*

Applying the *Eldridge* factors, it is clear that 25 *Del. C.* § 5115 violates due process on its face. While it is undeniable that the State has an interest in litigating landlord-tenant disputes quickly and with minimal cost, the private interest – one's home and shelter – is of paramount importance. When the Justice of the Peace expedites the eviction proceedings such that the tenant has little time to consider whether to demand a jury, seek counsel, prepare for trial, and meaningfully be heard, the risk of erroneously depriving the tenant of his property creates an impermissible denial of due process.

At the very least, the statute denied due process as applied to the Blacks. Assuming that Justice of the Peace Court 13 complied with § 5115 – which it did not – the Court summoned the Blacks in the afternoon on November 21, 2013, to appear the next day at 1:00 pm "to present evidence and give testimony regarding the claims stated in the attached Complaint." A011. The Blacks, who would typically have at least 10 days to demand a jury trial and 30 days to prepare for a summary possession trial (Ex. A, 15:20-23), were forced into trial about five business hours after the complaint was filed.

Justice of the Peace Court 13, in effect, denied the Blacks two protected procedural due process rights. First, the Blacks were, in effect, denied their right to

request a jury trial, a right protected by 25 *Del. C.* § 5713 and Del. Const. art. I, §§ 4, 9. *See Hopkins v. Justice of the Peace Court No. 1*, 342 A.2d 243, 243 (Del. Super. Ct. 1975); *see also McCool v. Gehret*, 657 A.2d 269, 283 (Del. 1995) (discussing Delaware's long history and "commitment to trial by jury in civil actions"). Second, Justice of the Peace Court 13 denied the Blacks their constitutional right to seek competent legal counsel. *See In re Asbestos Litigation*, 492 A.2d 256, 258 (Del. Super. Ct. 1985) (recognizing a civil litigant's Fourteenth Amendment due process right to the assistance of counsel).

These are not harmless errors. The unrepresented and impoverished Blacks were rushed into expedited proceedings and denied a meaningful opportunity to be heard. If the Blacks had been permitted time to consult with counsel, request a jury trial, and prepare defenses and counterclaims, the Blacks may have prevailed at trial. But, that is not the point. The point is that due process required that they at least be given a meaningful chance to defend themselves. Unless this case is remanded to the Justice of the Peace to hear the case in the due course, one will never know whether the Blacks could have prevailed. Because 25 *Del. C.* § 5115 on its face does not provide a tenant adequate notice, the statute should be struck down; but, at the very least, the statute as applied denied the Blacks a meaningful opportunity to be heard before being stripped of their property.

II. THE SUPERIOR COURT ERRED WHEN IT DISMISSED THE BLACKS' PETITION BECAUSE JUSTICE OF THE PEACE COURT 13 PROCEEDED IRREGULARLY

A. Question Presented

Justice of the Peace Court 13 proceeded irregularly because it created no record regarding its issuance of the forthwith summons. 25 *Del. C.* § 5115. *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008), sets forth that the Superior Court can review the Justice of the Peace's summary possession record for irregular proceedings on *certiorari*. Did the Superior Court err by dismissing the Blacks' Petition, refusing to issue the writ of *certiorari*, and refusing to hear the appeal on its merits when the record shows that Justice of the Peace 13 proceeded irregularly?

This argument was preserved in the Blacks' Petition (A007-008, ¶¶ 19-28) and at oral argument (Ex. A, 6:20-7:6).

B. Scope of Review

Review of the Superior Court's decision dismissing a petition for writ of *certiorari* is reviewed *de novo*. *American Funding Svcs. v. State*, 41 A.3d 711, 713 (Del. 2012); *Schweizer v. Board of Adjustment of City of Newark*, 930 A.2d 929, at *2 (Del. June 26, 2007) (TABLE).

C. Merits of the Argument

As set forth above, *Maddrey* establishes that a party aggrieved by a final, unappealable Justice of the Peace summary possession judgment may petition the

Superior Court for *certiorari* review on the grounds that the Justice of the Peace proceeded irregularly. *Maddrey*, 956 A.2d at 1214; *see also* 1 Victor B. Woolley, *Practice in Civil Actions and Proceedings in the law Courts of the State of Delaware*, §§ 896-7 (1906). "Reversal for irregularities of proceedings occurs 'if the lower tribunal failed to create an adequate record for review.'" *Id.* (quoting *Christiana Town Center LLC*, 2004 WL 29211830, at *2).

Justice of the Peace Court 13 proceeded irregularly by insufficiently docketing its decision to issue the forthwith summons. *See Maddrey,* 956 A.2d at 1214. The only docket entry that addressed the forthwith summons cursorily stated, with no explanation: "PER JUDGE ROBERTS: GRANTED. SCHEDULE FORTHWITH." The docket entry fails to demonstrate what evidence was considered, what standard applied, and whether the evidence met that standard,

This error is reviewable on *certiorari* according to *Maddrey*:

> As an example of an error properly reviewable on a writ of certiorari, the Superior Court can **consider irregularities shown in the docket entries**. . . . Justices of the Peace should, in every case insure that the docket sheet, in order to create a reviewable record, reflects a short statement of the decision (as was done here) that explains who *prevailed* and the burden of proof applied.

956 A.2d at 1215 (bold emphasis added). Because, the November Judgment and the January Judgment both ignore the requirements of 25 *Del. C.* § 5115, the Superior Court should have vacated the Justice of the Peace Court's decision.

The Superior Court's inference that the Justices of the Peace considered the forthwith summons issue at both trials misses the point. Ex. A, 29:10-16. Just because a decision must have been made does not mean that the decision was made correctly, and definitely does not mean that the decision is insulated from review. The Justice of the Peace Court must create an adequate record subject to review, and a failure to do so is reversible error. *Maddrey*, 956 A.2d at 1215. The Superior Court cannot presume without resort to the record – as it did here – that because the Justices of the Peace issued a forthwith summons, that they must have properly weighed evidence and applied the requirements of § 5115. Such review by an appellate court cannot stand.

Even Taylor acknowledges that Justice of the Peace Court 13 failed to create an adequate record for review. Taylor argued that the record is limited to the complaint, the answer, and the docket entries, and that the request for a forthwith summons is a wholly separate document that is not part of the record. Ex. A, 21:14-18. Under the logic of this argument, nothing that *Maddrey* permits the Superior Court to consider serves to justify the issuance of a forthwith summons, which means the Blacks' Petition should have been granted. This logical absurdity demonstrates that *Maddrey* should be applied as suggested by the Blacks' Petition and this Opening Brief.

Because the Superior Court failed to review the record below and assess whether Justice of the Peace Court 13 proceeded irregularly – which it did – the Superior Court's decision should be reversed and remanded for further consideration.

III. THIS COURT COULD EXERCISE ITS ORIGINAL JURIDICTION, ISSUE THE WRIT OF *CERTIORARI* TO JUSTICE OF THE PEACE COURT 13, AND HEAR THIS APPEAL AS THOUGH ON *CERTIORARI*

The Delaware Supreme Court has original jurisdiction to issue writs of *certiorari* to lower courts, but this Court will not accept a petition to issue a writ of *certiorari* to a Justice of the Peace Court unless the petition was first presented to and denied by the Superior Court. Del. Const. art. IV, § 11(5); Supr. Ct. R. 43(b)(vi). Since the Superior Court dismissed the Blacks' Petition, the Supreme Court can exercise its original jurisdiction, issue the writ of *certiorari* to Justice of the Peace Court 13, and grant this appeal?

The Supreme Court has original jurisdiction to issue writs of *certiorari* to lower tribunals, including the Justices of the Peace. Del. Const. art. IV, § 11(5) ("The Supreme Court shall have jurisdiction . . . to issue writs of . . . certiorari to the Superior Court, and the Court of Chancery; or any of the Judges of the said courts and also to any inferior court or courts established or to be established by law and to any of the Judges thereof and to issue all orders, rules, and processes proper to give effect to same."). The Supreme Court Rules, though, require that a party seeking writ of *certiorari* to the Justices of the Peace must first file a *certiorari* petition with the Superior Court. Supr. Ct. R. 43(b)(vi).

The Blacks have two possible remedies before this Court. On one hand, this Court can review the Superior Court's dismissal on appeal. Del. Const. art. IV, §

11(1)(a); Supr. Ct. R. 7(a). On the other hand, this Court could exercise its original jurisdiction, issue a writ of *certiorari* to Justice of the Peace Court 13, and directly review the proceedings below, rendering judgment in the Blacks' favor. Del. Const. Art. IV, § 11(5); Supr. Ct. R. 43(b)(vi). The Blacks appealed in advance of any petition for writ of *certiorari* because an appeal is subject to the mandatory 30-day deadline for notices of appeal while a petition for a writ invoking this Court's original jurisdiction is not subject to that mandatory deadline. *See* Supr. Ct. R. 6(a); *see also* 1 Woolley, *supra*, § 900 ("it almost uniformly happens that when both remedies[, certiorari and appeal] are sought, the remedy by *certiorari* follows that of appeal.").

Though the Blacks chose to pursue an appeal instead of *certiorari*, this Court has the power to construe this appeal as a request for it to exercise its original jurisdiction to issue the writ of *certiorari* to Justice of the Peace Court 13, and grant this appeal "as though on certiorari, that is from affirmance by the Superior Court of the Justice of the Peace conviction." *Shoemaker v. State*, 375 A.2d 431, 438 (Del. 1977). Judicial economy suggests that this Court should render a final decision on this matter as though the matter were before the Court on a writ of *certiorari* that this Court has the power to grant, invoking its original jurisdiction.

CONCLUSION

For the reasons set forth above, the decision of the Superior Court of the State of Delaware dismissing the Blacks' Petition should be reversed and the case remanded for further proceedings. In the alternative, this Court should exercise its original jurisdiction, review this matter as on *certiorari*, and vacate the judgments against the Blacks.

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