

In the
Supreme Court of the United States

ROBERT ALAN RIES,

Petitioner,

v.

STATE OF OREGON,

Respondent.

On Petition for Writ of Certiorari to the
Oregon Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fourth Amendment to the Constitution provides, in part, that “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.” Does a warrant commanding the police to seize a blood sample from a person with an entirely different name than the defendant violate the Fourth Amendment’s particularity requirement, even if the warrant is based on an affidavit that correctly names the defendant?

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PETITION FOR A WRIT OF CERTIORARI

Robert Alan Ries respectfully petitions for a writ of certiorari to review the decision of the Oregon Court of Appeals affirming his convictions without opinion.



OPINIONS BELOW

The order of the Oregon Supreme Court denying petitioner's petition for review and the order of the Oregon Court of Appeals affirming petitioner's convictions without opinion are unpublished. The Supreme Court's order is attached to this petition at App.1a. The Court of Appeals's order is attached at App.2a.



JURISDICTION

The Oregon Supreme Court denied petitioner's petition for review on November 8, 2018. App.1a. This court has jurisdiction under 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. IV

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.



STATEMENT OF THE CASE

On the night of May 8, 2016, Washington County, Oregon Sheriff's Deputy Maribel Camas was patrolling the city of Cornelius when she was asked to follow up on a phone report of a suspected impaired driver in a certain model of SUV with a certain license plate number. Deputy Camas located the specified SUV, which did not stop when she activated her lights and siren. A low-speed pursuit by multiple law enforcement agencies and officers ensued, ending when Deputy Camas successfully stopped the SUV in downtown Hillsboro (which adjoins Cornelius) by using a tactical driving maneuver. App.16a; Tr.4-5, 31.¹

The officers arrested petitioner, who was the driver and sole occupant of the SUV save for his dog, immedi-

¹ All transcript citations are to the transcript of the hearing on petitioner's motion to suppress evidence.

ately after the end of the pursuit. They read petitioner his *Miranda* rights on the scene. Deputy Camas then asked petitioner several standard driving under the influence investigation questions. Petitioner both admitted to drinking some alcohol before driving and appeared to display several of the common effects of alcohol intoxication. App.17a-18a; Tr.5-9, 32-35.

Deputy Daniel Hall transported petitioner to the Washington County Jail. There, Deputy Camas took petitioner to the Intoxilyzer room. She asked petitioner if he would consent to perform field sobriety tests. Petitioner declined, so Deputy Camas read him an admonishment required under the Oregon Constitution and asked again. Petitioner, who appeared quite sleepy, declined a second time to perform the tests. App.18a-19a; Tr.9-11, 35-36.

Deputy Camas then began a 15-minute observation period, during which she read petitioner the rights and consequences section of a standard Implied Consent Combined Report form. She asked petitioner if he would take a breath test. Petitioner refused to take the breath test. App.19a; Tr.11-12.

Because she was unable to obtain a sample of petitioner's breath, Deputy Camas decided to seek a search warrant that would permit her to seize blood samples from petitioner for alcohol testing. Deputy Camas had never written an affidavit for such a search warrant before. She borrowed a fillable template from another deputy. This template contained both a form of affidavit and a form of warrant. The template had previously been used to obtain a warrant for both blood and urine samples in a combined alcohol and controlled substances DUII case of a man named Cameron

James Wilson, from Wolf City, Texas. App.13a-27a; Tr. 12-13, 24-25.

Deputy Camas customized the template for petitioner's case in some regards, but failed to do so in others. The resulting affidavit accurately tracked Deputy Camas's investigation as summarized above, although it bore the footer "Wilson DUII search warrant," with an incorrect case number, on every page. App.13a-27a.

The form of warrant, however, remained as it had in the template. It named Wilson, rather than petitioner. It gave identifying and contact information for Wilson, not petitioner. And it commanded the officer executing it to seize both blood and urine samples from Wilson, not a blood sample alone from petitioner as Deputy Camas had requested.² App.13a-27a.

Deputy Camas called Washington County Circuit Court Judge Andrew Erwin, who requested that she email him the affidavit and form of warrant. The deputy did so. Judge Erwin, after reviewing the documents, called Deputy Camas back and swore her to the accuracy of the information in the affidavit. Judge Erwin then signed the warrant without making any corrections other than crossing out the incorrect case number that appeared in the footer. The warrant as executed thus only named Wilson, not petitioner. App.13a-27a; Tr.13-17.

² Deputy Camas testified that she did not need a urine sample because she did not have probable cause to believe that petitioner was under the influence of anything other than alcohol at the time she wrote the affidavit. Tr.27-28.

Deputy Hall transported petitioner to a hospital, where Deputy Camas joined them. Deputy Camas testified that they would not have taken petitioner to the hospital but for the search warrant. Tr.24, 37-40.

At the hospital, Trinity Herr, a lab assistant, extracted two samples of petitioner's blood after being presented with the warrant naming Wilson. Before doing so, Herr had petitioner sign a hospital consent form. Deputy Camas testified that Herr "basically said, 'I normally ask people, even if there's a warrant, for their consent to draw their blood prior to having to resort to the warrant.'" Tr.17-20. Petitioner testified that he believed the hospital form was required by health care privacy laws. He did not believe that by signing the form he was relinquishing any rights as against the police. Tr.48.

Petitioner did not actively manifest consent to the blood draw other than by signing the hospital form. Deputy Camas testified that once petitioner refused the blood draw, her protocol was to seek a warrant regardless of any purported consent on petitioner's part to the seizure of blood samples. Tr.25-26.

The hospital form is titled "Bodily Substance/Medical Examination Seizure." It contains the following text immediately above petitioner's signature: "I voluntarily consent to the above-indicated examination and the release of the results or substances to the above-indicated police officer." The form accurately names petitioner and Deputy Camas. It states that the "item of seizure" is a "blood draw to test for intoxicants: alcohol." App.31a.

After the blood draw, the deputies returned petitioner to the jail for booking. Petitioner gave further

self-incriminating answers to Deputy Camas's questions at the jail. Upon being searched by a jail deputy, petitioner turned out to have a diazepam tablet in his pocket, for which he lacked a prescription. Tr.20-23.

Petitioner was charged by indictment with fleeing or attempting to elude a police officer, felony driving under the influence of intoxicants, and unlawful possession of a controlled substance in Schedule IV. Before trial, petitioner moved to suppress the samples of his blood, the laboratory analysis of those samples, all statements obtained during his custodial interrogation, and all derivative evidence. App.3a-12a. The court held an evidentiary hearing on petitioner's motion. Tr.3-50. The court denied petitioner's motion in a ruling from the bench. App.28a-30a. Petitioner was subsequently convicted in a stipulated facts trial.

Petitioner appealed to the Oregon Court of Appeals, which affirmed his convictions without opinion. App.2a. He Sought Review in the Oregon Supreme Court, but that court denied his petition. App.1a.



REASONS FOR GRANTING THE PETITION

This case merits review because it presents a novel and important issue of constitutional law that should be decided by this Court in order to draw a bright line, applicable nationwide, regarding the scope and enduring force of the particularity requirement found in the Fourth Amendment to the United States

Constitution.³ If the resolution of this issue embodied by the decisions below in petitioner’s case were allowed to stand, that could mean a substantial weakening of important constitutional protections that could then be misapplied in other contexts. Although the consent to search issue addressed in the trial court’s oral ruling admittedly presents a small impediment to the direct resolution of the particularity issue in petitioner’s case, neither preservation nor any other collateral matter impedes that resolution any further. In any event, the courts below were, with respect, in error as they decided the consent issue also.

In petitioner’s case, the search warrant described above facially and flagrantly violates the particularity requirement. Because there was no valid warrant authorizing the seizure of blood samples from petitioner’s person and no warrant exception authorizes the seizure of such blood samples, the trial court should have granted petitioner’s motion to suppress. Specifically, the court should have suppressed the blood samples and all evidence derived from them, including both the laboratory analysis of the samples and any statements by petitioner that the deputies would not have been in a position to receive but for the means by which they served the warrant. Its decision not to, and the ensuing affirmance by the Oregon Court of Appeals, creates a constitutional injury that only this Court can heal, in derogation of multiple decisions on other particularity issues previously decided by, *inter alia*, the United States Court of Appeals for the Ninth Circuit.

³ The Fourteenth Amendment makes the Fourth Amendment applicable to the States. *Mapp v. Ohio*, 367 U.S. 643 (1961).

The Fourth Amendment's particularity requirement is strong. As the Ninth Circuit has approvingly quoted, “[t]he particularity requirement of the fourth amendment prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” *United States v. Sedaghaty*, 728 F.3d 885, 913 (9th Cir. 2013), quoting *United States v. Heldt*, 668 F.2d 1238, 1266 (D.C. Cir. 1981); *see also Sedaghaty*, 728 F.3d at 926 (Tallman, J., concurring in part and dissenting in part) (“A particularized location is a requisite element for a reasonable search”). A reviewing court is to evaluate a search warrant under the Fourth Amendment’s particularity requirement by determining “whether the warrant describes the place to be searched with ‘sufficient particularity to enable law enforcement officers to locate and identify the premises with reasonable effort,’ and whether any reasonable probability exists that the officers may mistakenly search another premise. *United States v. Turner*, 770 F.2d 1508, 1510 (9th Cir. 1985).” *United States v. Mann*, 389 F.3d 869, 876 (9th Cir. 2004).

The warrant in this case fell short of that requirement as a matter of federal law. The warrant named a completely different person and did not name petitioner. It also commanded the searching officers to perform an additional task, *viz.*, to take a urine sample, which impermissibly left to the officers’ discretion the task of discerning how to properly execute the warrant. It is a well-established constitutional principle that exceedingly high degrees of justification and procedural caution are required before a court can order the violation of a person’s bodily integrity in search of evidence. *See Missouri v. McNeely*, 569 U.S. 141 (2013). Addition-

ally, it bears noting that without a valid search warrant or an applicable warrant exception (such as consent), the mere fact of petitioner's warrantless DUII arrest is not enough to save the search as a matter of federal law. *Birchfield v. North Dakota*, 579 U.S.____, 136 S.Ct 2160, 2173-2186 (2016). On this record, then, the trial court should have suppressed the blood samples and their analysis under the Fourth Amendment.



CONCLUSION

Petitioner's body was invasively searched pursuant to a warrant that named someone else altogether. This makes a mockery of the Fourth Amendment's particularity requirement. The petition for a writ of certiorari should be granted to correct this egregious error and to make the applicable law plain nationwide.

Respectfully submitted,

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