

No. 18-1410

**In The
Supreme Court of the United States**

—◆—
JAMES A. JACKSON,

Petitioner,

v.

THOMAS LAWSON,
in his official and individual capacity,

Respondent.

—◆—
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

—◆—
**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

—◆—
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QUESTION PRESENTED

Is consideration of whether an individual protested his innocence when arrested as one factor in deciding whether an officer acted deliberately indifferent in a civil unlawful detention claim at odds with a criminal defendant's Fifth Amendment right to remain silent?

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INTRODUCTION

Jackson seeks review based on his specious interpretation of the District Court's award of summary judgment as well as the Sixth Circuit Court of Appeals' determination that summary judgment was properly granted. Jackson contends that the lower Courts' findings require an affirmative protest of innocence in violation of the Fifth Amendment's right against self-incrimination in order to later maintain a civil action for wrongful detention. In actuality, the Sixth Circuit does not have a *requirement* that an individual protest his innocence. The extent to which an individual protests his innocence is simply one factor considered by Courts within the Sixth Circuit when determining if an officer acted with deliberate indifference with respect to wrongful arrest claims.

If, after consideration of the factors established within the Sixth Circuit, it is determined that a police officer acted with deliberate indifference, an individual claiming to have been wrongfully arrested due to mistaken identity may be entitled to maintain a civil action for false arrest. One factor considered in determining if an officer acted deliberately indifferent is whether and to what extent the individual arrested protested his innocence, thereby alerting the officer to the potential mistake. *See Gray v. Cuyahoga Cty. Sheriff's Dep't*, 150 F.3d 579, 582-583 (6th Cir. 1998). Jackson erroneously raises the question, "whether the United States Court of Appeals for the Sixth Circuit may condition enforcement of a citizen's right against unlawful detention guaranteed by U.S. Const. amend.

IV and U.S. Const. amend. XIV, §1, upon waiver of the right against self-incrimination guaranteed by the U.S. Const. amend. V.” *See Petition for Writ of Certiorari, Question Presented.*

Jackson asks this Court to review a question that this case simply does not present. Protestation of innocence is only one factor considered by Courts in the Sixth Circuit when deciding whether an officer who arrested the wrong person based on a mistaken identification acted with deliberate indifference. Protestation of innocence is not a necessary factor, the absence of which is fatal to a claim of wrongful detention. Therefore, the question Jackson is really raising is whether any consideration of the protestation of innocence as a factor, even as it pertains to the police officer’s knowledge and not guilt of the arrestee, creates a requirement in the criminal context that a criminal defendant forego his right against self-incrimination in order to claim his innocence. The answer is clearly, no.

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STATEMENT OF THE CASE

The record is clear that Petitioner, James Jackson, was taken into custody on December 16, 2015 when Officer Thomas Lawson responded to a call about a man injecting heroin in an alley in Louisville, Kentucky and found Jackson unconscious in an alley with a loaded syringe. While still at the scene, Lawson ran Jackson for warrants and found several outstanding warrants

for Jackson's arrest. Lawson then legally arrested Jackson.

At Louisville Metro Department of Corrections (LMDC), during the booking process, Lawson printed three Jefferson County Bench Warrants and a Grant County Arrest Warrant. Jackson never challenged the validity of the Jefferson County Warrants. The Grant County arrest warrant related to a criminal charge of felony non-support stemming from a prior child support judgment entered against James A. Jackson. The Grant County Grand Jury indicted James Jackson, and a warrant for his arrest was issued. The address on the warrant was different from Jackson's address at the time of his arrest by Lawson and the height listed was incorrect. Otherwise, the identifying information contained on the warrant was identical to Jackson's, including the name, date of birth, and last four digits of his social security number. Lawson bore no responsibility for any clerical error that may have resulted in an arrest warrant mistakenly being issued for Jackson.

After Jackson was released from custody on his drug related charges, he remained at LMDC until he was picked up by Grant County authorities on the Grant County warrant. There he remained in custody until he was released by Grant County Authorities on February 24, 2016 on a surety bond. On March 15, 2016, the Grant County Indictment was dismissed following a paternity test proving that he was not the father of the child in question.

Jackson filed a civil lawsuit against several defendants. The District Court initially granted motions to dismiss all defendants except for Lawson. Following the close of discovery, the District Court properly granted Lawson's motion for summary judgment. That order was upheld throughout the Sixth Circuit appeal filed by Jackson.



REASONS FOR DENYING CERTIORARI

I. The Sixth Circuit does not require protestations of innocence in wrongful detention cases

Jackson's primary question in his Petition for Writ of Certiorari is whether the Sixth Circuit may condition an individual's enforcement of his right to be free from unlawful detention upon waiver of the right to be silent. However, in order to ask this question, it must first be concluded that the Sixth Circuit *requires* individuals to protest their innocence when being arrested due to mistaken identity. There is no requirement that such protestation be made. The fact is that whether and to what extent such protestation occurred is simply one factor that Courts in the Sixth Circuit consider to determine whether an arresting officer acted with deliberate indifference in wrongfully detaining someone.

The Sixth Circuit's decision upholding the District Court's award of Summary Judgment in favor of Lawson was based on "the totality of the circumstances"

with consideration, but not a sole focus on, Jackson's scarce protests that the warrant was for the wrong person. *See Appendix A, App.4 to Petitioner's Petition for Writ of Certiorari*. Jackson's Petition for Writ of Certiorari reads as if the main focus of the Sixth Circuit is on whether an individual protests his innocence to the point that such protestation is essentially *required* to maintain a wrongful detention claim. However, it is very clear from the case law within the Sixth Circuit that this is simply one factor borne from this Court's decision in *Baker v. McCollan*, 443 U.S. 137, 144 (1979), wherein it was found that imprisonment based on a mistaken identity pursuant to a facially valid warrant is not necessarily violative of constitutional protections even where the individual claims his innocence.

The analysis performed by the Sixth Circuit in cases of wrongful detention begins with whether the law enforcement officer, "act[s] with something akin to deliberate indifference in failing to ascertain that the [person] they had in custody was not the person wanted . . . on the outstanding . . . warrant." *Gray*, 150 F.3d at 582. In analyzing whether the officer acted with deliberate indifference the Sixth Circuit considers *three factors*: "(1) the detention's length of time; (2) the extent to which the plaintiff protested his innocence; and (3) the availability of exculpatory evidence to the government official at the time of the detention." *Id.* at 582-583. When reviewing the Sixth Circuit's decision with respect to this case, it is clear that while the Court considered Jackson's lack of significant protests of

innocence the more determinative factor was the lack of exculpatory evidence available to Lawson.

Jackson takes the position that criminal defendants are required to protest their innocence when arrested based on a mistaken identity because the Sixth Circuit includes this as a consideration among other factors in determining if an arresting officer acted with deliberate indifference. This position is flawed. There remain two other factors that may weigh in an individual's favor in maintaining a wrongful detention lawsuit even absent any mention of innocence to the arresting officer. Protestation of innocence is simply one measure of what is known to an officer and whether the officer ignores facts that may tend to indicate that he is arresting the wrong person. The officer may potentially be acting with deliberate indifference to that individual's rights by failing to investigate further if the individual claims that he is innocent, particularly if such claims are made repeatedly.

In this case, the District Court and the Sixth Circuit discussed all three factors. The Court of Appeals noted that the length of incarceration was in Jackson's favor, but the remaining factors worked against him. The Sixth Circuit noted that, "at best, Jackson raised his innocence once in passing." *See Appendix A, App.7 to Jackson's Petition for Writ of Certiorari*. The Court of Appeals went on to discuss at length the lack of exculpatory evidence available to Lawson at the time in which he executed the Arrest Warrant. In fact, the record was clear that Jackson actually was the individual sought by the Grant County Arrest Warrant.

Lawson took steps to investigate whether he was arresting the right person by verifying Jackson's date of birth and social security number. *See Appendix A App.9*. All factors were weighed in order to conclude that Lawson did not act with deliberate indifference in executing the Grant County Arrest Warrant. The fact that Jackson did not repeatedly alert Lawson to his belief that the Grant County warrant was not for him was considered but not determinative. The level of weight given to that factor in this case was certainly not significant enough to be considered to have created a requirement that Jackson have protested his innocence when being served with the arrest warrant.

II. Consideration of the extent to which an individual protests his innocence as a factor in determining whether a police officer acted with deliberate indifference is not at odds with this Court's decisions in *Miranda v. Arizona* and *United States v. Hale*

Jackson nonsensically argues that, "the Fifth Amendment right against self-incrimination weighs very heavily against any requirement that would condition a constitutional claim for wrongful detention upon affirmative evidence that the detainee waived his constitutional right to remain silent by declaring his innocence." *See Petition for Writ of Certiorari p. 12*. As discussed in detail above, there is no requirement that an individual declare his innocence. In a last-ditch effort to keep his case alive, Jackson raises this meritless argument.

Consideration of whether an individual protested his innocence at the time of arrest, in the context of a later civil suit is: (1) not a requirement that a defendant waive his constitutional right to be silent; (2) not the sole determining factor that is considered by the Sixth Circuit in a wrongful detention case; and (3) not essential to the maintenance of a wrongful detention lawsuit. The factor is considered so that in a case where an individual repeatedly alerts an arresting officer to the mistake, that officer may be found to have acted with deliberate indifference in failing to take investigatory steps to ensure that the correct person was being arrested. Here, Lawson was not repeatedly alerted to a mistake. Most importantly, Lawson was not in possession of any other exculpatory evidence beyond a possible wrong address and a height difference.

Contrary to his belief, Jackson has no viable false arrest claim where the arrest warrant listed his name, date of birth, and last four digits of his social security number. Lawson had no reason to believe that the warrant was invalid. As such, Lawson cannot be held liable for Jackson's false arrest or wrongful detention. Jackson was not required to verbally state his innocence. However, in order to maintain a claim of false arrest there must be some showing that Lawson ignored evidence that Jackson was not the person sought by the warrant, thereby acting deliberately indifferent to his rights.

Miranda v. Arizona, 384 U.S. 436 (1966), *United States v. Hale*, 422 U.S. 171 (1975), and *Minor v. Black*, 527 F.2d 1 (6th Cir. 1975) cited by Jackson all deal

exclusively with the right of a criminal defendant to remain silent. This line of cases concludes only that, in the context of criminal law, a criminal defendant's silence cannot be used against him to establish his guilt. The extent to which a police officer may be on notice that he is arresting the wrong individual and therefore may be considered to act with deliberate indifference in the arrest, is not in conflict with the criminal defendant's right to remain silent.

Courts must be able to examine the record and make determinations regarding whether an officer was on notice that the person being arrested may not be the person sought by a facially valid arrest warrant. If an individual being arrested repeatedly tells the arresting officer that he is not the person listed in the warrant, this is one way in which the officer may be alerted to a mistake. If the officer goes on to ignore repeated protests of innocence without investigating whether any other exculpatory evidence exists, he may be found to have acted deliberately indifferent and subject to civil liability. Examination of the information available to the officer for determination of his civil liability creates no requirement that a criminal defendant forego his constitutional right to remain silent and proclaim his innocence. Accordingly, this factor as applied to the deliberate indifference analysis utilized by the Sixth Circuit is not at odds with the *Miranda* line of cases as Jackson imprudently argues.



CONCLUSION

The Sixth Circuit District Court and Sixth Circuit Court of Appeals correctly applied the *Gray* factors to determine that Lawson did not act with deliberate indifference and therefore no claim of wrongful detention could be maintained. The consideration of Jackson's lack of repeated assertions of innocence, taken with the other evidence showing his date of birth and last four digits of his social security number on the warrant on which Lawson relied, is not at odds with any existing law and is certainly not violative of Jackson's constitutional rights. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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