

No.
IN THE
SUPREME COURT OF THE UNITED STATES

LADINA SYKES, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether on-duty police officers are state actors for Fourth Amendment purposes when they assist a private individual in searching a suspect in police custody at the private individual's request?

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The petitioner, Ladina Sykes, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Appellate Court of Illinois (Appendix A) is reported at 2017 IL App (1st) 150023, and is published. A copy of order denying rehearing (Appendix B) is not reported. The order of the Illinois Supreme Court denying leave to appeal (Appendix C) is reported at 98 N.E.3d 44 (Ill. 2018).

JURISDICTION

On December 26, 2017, the Appellate Court of Illinois issued its decision. Ms. Sykes timely filed a petition for rehearing, which was denied on January 25, 2018. The Illinois Supreme Court denied her timely filed petition for leave to appeal on May 30, 2018. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment to the United States Constitution

The right of the people to be secure in their person, 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

Introduction

The trial court found Ms. Sykes guilty of driving under the influence of cannabis and child endangerment. (R. 293, 311). Her convictions were based in large part on the urinalysis results that were the direct product of an involuntary, forcible, urinary catheterization. (R. 115-45; 195 C. 6, 8, 38). At a nurse's request, the arresting officers physically pinned Ms. Sykes to a bed so the nurse could insert a catheter into Ms. Sykes' urethra against her will. (R. 49-51, 97-98). Ms. Sykes asked to have the results of the urinalysis suppressed at trial, arguing that the police had violated her Fourth Amendment rights by participating in the catheterization. (Supp. C. A. 1-3). Ms. Sykes later argued on appeal that the trial court had erred in denying her suppression motion. (Supp. C. A. 1-3; Def. Br. 12-20). The Appellate Court of Illinois affirmed Ms. Sykes' convictions in a published decision, holding that the Fourth Amendment did not apply because "mere police participation" in an action with non-state actors, "absent the private actors acting as an agent or instrumentality of the State, is not state action." (Appendix A); *People v. Sykes*, 2017 IL App (1st) 150023, ¶ 10. The Appellate Court of Illinois subsequently denied Ms. Sykes' petition for rehearing, and the Illinois Supreme Court denied her petition for leave to appeal. (Appendices B and C).

Trial Facts

On August 19, 2013, Ms. Sykes took her two children swimming at Lighthouse Beach in Evanston, Illinois. (R. 175-77, 182). After the kids finished swimming, Ms. Sykes and her children hiked up the hill to reach their car in the parking lot. (E. 14-15). During that hike, Ms. Sykes became short of breath. (R. 182; E. 5). The three of

them climbed in to their car. (R. 177). Suddenly, bystanders heard a loud screeching sound and Ms. Sykes' car lurched forward into a stone wall in the parking lot. (R. 176, 178).

One of the bystanders, high school senior Matthew Chapelle, ran to the car to see what had happened. (R. 175, 178). The children were able to climb out, but Ms. Sykes remained in the car. (R. 178-79). Chapelle took the keys out of the ignition, made sure the kids were okay, and called 9-1-1. (R. 178-79). Evanston police officer Michael Pratt responded to the 9-1-1 call. (R. 251-52). He spoke briefly with Ms. Sykes, and she told him she was not injured. (R. 260).

Evanston firefighter and paramedic Denis Jean-Pierre also responded to the 9-1-1 call. (R. 239-40). When he arrived, Ms. Sykes was conscious but confused. (R. 242). She did not have any visible injuries. (R. 246). She tried to get out of the car. (R. 242). Ms. Sykes knew who she was and where she was, but she could not say what the date was or what time it was in the evening. (R. 247). The paramedics took Ms. Sykes to Evanston Hospital, where Colleen Costello was the charge nurse. (R. 38-40, 188). Ms. Sykes arrived at the hospital at 10:23 p.m. (R. 44). At approximately 10:30 p.m. Officer Pratt asked Ms. Sykes if she would give blood and urine samples for DUI purposes, and she declined to do so. (R. 95, 262-63).

Officer Pratt heard Ms. Sykes tell one of the nurses that she had consumed one margarita as he listened in from outside Ms. Sykes' hospital room. (R. 91-93). After that conversation, Officer Pratt placed Ms. Sykes under arrest based on the slight odor of alcohol on her breath, along with her slurred speech, bloodshot eyes, and demeanor. (R. 87, 92). He believed Ms. Sykes to be under the influence of drugs, and he told the

medical professionals as much. (274-75). Officer Pratt would later acknowledge that he knew the only way he could be certain would be with a blood or urine test. (R. 275).

Ms. Sykes saw Dr. Patel at 11:06 p.m. (R. 189; E. 6). He knew that the police suspected Ms. Sykes of having committed a DUI. (E. 7). Ms. Sykes was admitted for drug intoxication. (E. 4). Dr. Patel ordered a head CT and blood and urine samples. (R. 190; E. 7).

Nurse Costello asked Ms. Sykes to provide a urine sample. (R. 192). Ms. Sykes refused. (R. 192). Costello then decided to catheterize Ms. Sykes to force her to give a urine sample against her will. (R. 192). The urine test was only being conducted to test for drugs. (R. 208). Ms. Sykes swung her arms, tried to get out of bed, bucked her hips, and kicked at Costello and other staff to try to prevent the unwanted catheterization. (R. 193). Costello then asked the police officers, who were standing right outside Ms. Sykes' room, to hold Ms. Sykes down so she could insert the catheter. (R. 193).

According to Costello's notes in Ms. Sykes' chart, five police officers and four staff members were involved in the forcible catheterization. (E. 6). She recalls nine people total being involved in the forced catheterization. (R. 194). Officer Pratt remembers physically pinning Ms. Sykes to the bed with the assistance of his partner, Officer Mangas, and three security guards from Evanston hospital. (R. 97). Ms. Sykes was naked from the waist down. (R. 97). Ms. Sykes struggled against the catheter, moving her hips back and forth. (R. 98-99). As she fought, Officers Pratt and Mangas pinned her upper body down on the bed. (R. 99). They obtained a urine sample and it was sent to two laboratories for testing. (R. 194-95; E 10-12).

The presumptive results for the urine tests were charted at 12:46 a.m. (E. 11-

12). The test indicated a presumptive positive for marijuana and PCP. (E. 11-12). The lab results for these presumptive positives both said, “This is an unconfirmed positive and may only be used for medical purposes.” (E. 11-12). The results were confirmed days later by an out-of-state laboratory. (E. 10). A blood test showed that Ms. Sykes had an extremely low blood alcohol content of only 5 mg/deciliter. (R. 62). For reference, the common legal limit breath alcohol content of 0.08 is the equivalent of a blood alcohol content of 80 mg/deciliter. (R. 62).

Initially police charged Ms. Sykes with two misdemeanors and one ordinance violation. (C. 6-7). The charges were for endangering the life of a child, driving under the influence of alcohol, and damaging city property. (C. 6-7). Two additional charges, driving under the influence of cannabis and driving under the influence of drugs, were not charged until April 4, 2014. (Supp. R. 6, 8; C. 8).

The defense filed a motion to suppress the urine test results on Fourth Amendment grounds. (Supp. C. A. 1-3). The trial court conducted an evidentiary hearing. (R. 37). Nurse Costello, Paramedic Jean-Pierre, and Officer Pratt testified at the hearing. (R. 38, R. 71, 84). The trial court denied the motion. (R. 145).

Ms. Sykes waived her right to a jury trial and proceeded to a bench trial. (R. 173). The State called four witnesses at trial: Costello, Jean-Pierre, Pratt, and bystander Matthew Chapelle. (R. 174, 187, 239, 251). The State also introduced Ms. Sykes’ medical records, over the defense’s objection. (R. 236-38). The trial court acquitted Ms. Sykes of DUI-alcohol, DUI-drugs, and damaging city property. (R. 292-93). It convicted her of DUI-cannabis and child endangerment. (R. 293). It then sentenced her to a term of court supervision. (R. 311). Ms. Sykes appealed. (C. 60;

Supp. C. B. 2-3).

Appellate Proceedings

On appeal, Ms. Sykes argued, amongst other things, that the police had violated her Fourth Amendment rights when they held her down while a nurse forcibly inserted a urinary catheter against her will. (Def. Br. 12). The Appellate Court of Illinois affirmed Ms. Sykes' convictions in a published decision, holding that the Fourth Amendment did not apply because "mere police participation" in an action with non-state actors, "absent the private actors acting as an agent or instrumentality of the State, is not state action." (Appendix A); *People v. Sykes*, 2017 IL App (1st) 150023, ¶ 10. The Appellate Court subsequently denied Ms. Sykes' petition for rehearing, and the Illinois Supreme Court denied her petition for leave to appeal. (Appendix B, Appendix C).

Ms. Sykes now petitions this Court for review. This Court has yet to answer the important constitutional question of whether on-duty police officers are state actors for Fourth Amendment purposes when they assist a private individual in searching a suspect in police custody at the private individual's request? This constitutional claim regarding the denial of Ms. Sykes' rights was properly raised below.

REASON FOR GRANTING CERTIORARI

This Court should grant this petition to answer an important question of constitutional law not yet addressed by this Court: whether on-duty police officers are state actors for Fourth Amendment purposes when they assist a private individual in searching a suspect in police custody at the private individual's request?

The question presented by Ms. Sykes' case has not been answered by this Court. In *United States v. Jacobsen*, 466 U.S. 103, 113 (1984), this Court held that the Fourth Amendment does not apply "to a search or seizure, *even an unreasonable one*, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any government official." However, this Court has not addressed the inverse question: whether police officers are state actors for Fourth Amendment purposes when they participate in a search of a suspect in their custody at the request of a private individual?

A. The lower courts need this Court's guidance in answering this important constitutional question.

It is well-settled both that the compulsory withdrawal of fluids from inside a person's body is a "search" under the Fourth Amendment, and that the Fourth Amendment's warrant requirement applies to police officers seeking to conduct such a search. *Schmerber v. California*, 384 U.S. 757, 767 (1966); *Missouri v. McNeely*, 569 U.S. 141, 145 (2013). It is similarly well-settled that the Fourth Amendment's prohibition against unreasonable searches and seizures does not apply to searches or seizures conducted exclusively by private individuals. *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921). Yet the question of when the Fourth Amendment's warrant requirement applies to actions taken jointly by private actors and police officers

remains unsettled.

There are at least two ways this question has been answered. In Illinois, the courts have held that “mere police participation” in this kind of search with private actors, “absent the private actors acting as an agent or instrumentality of the State, is not state action” and thus the Fourth Amendment does not apply. *People v. Sykes*, 2017 IL App (1st) 150023, ¶ 10. In contrast, other courts have held that police officers’ participation in what would otherwise be a private action renders that action “state action” if the police officer aids in achieving the goal of the private action. *E.g. Marcus v. McCollum*, 394 F.3d 813 (10th Cir. 2004).

In Ms. Sykes’ case, the Appellate Court of Illinois held that police participation in concert with private actors is not state action unless the private actors are acting agents or instrumentalities of the State. *Sykes*, 2017 IL App (1st) 150023, ¶ 10. In doing so, it relied on the Illinois Supreme Court’s holding in *People v. Brooks*, 2017 IL 121413, ¶ 29, that participation by the police in a search, in and of itself, does not invoke the application of the Fourth Amendment. *Sykes*, 2017 IL App (1st) 150023, ¶ ¶ 28-30. However, other courts have held that, for a private search to be considered state action, the police need only instigate, orchestrate, or encourage the search. *E.g., United States v. Smythe*, 84 F.3d 1240, 1243 (10th Cir. 1996). In Ms. Sykes’ case, the police officers’ holding her down so the nurse could insert the catheter certainly “encouraged” the nurse’s private search. So, under the “instigate, orchestrate, or encourage” approach, Ms. Sykes’ Fourth Amendment rights were implicated. Conversely, under the approach that Illinois adopted, which requires that the private actors involved in the search be acting as agents of the government, the Fourth

Amendment was not implicated. As such, this Court should resolve this split and provide guidance regarding the appropriate test for when a police officer's participation in an otherwise private action constitutes state action.

B. The question presented is of substantial and recurring importance.

Police officers and private personnel regularly work together. This is particularly true in the drunk and intoxicated driving context, in which both suspects and victims often find themselves in the hospital. Over a quarter-century ago, this Court recognized how common these intoxicated-driving investigations are:

No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion. The anecdotal is confirmed by the statistical. "Drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage." For decades, this Court has "repeatedly lamented the tragedy." "The increasing slaughter on our highways . . . now reaches the astounding figures only heard of on the battlefield."

Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (citations omitted). This epidemic has not been eliminated. According to the Centers for Disease Control and Prevention, over one million drivers were arrested for driving under the influence of alcohol or narcotics in 2016 alone. *Impaired Driving: Get the Facts*, Centers for Disease Control and Prevention website, https://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired-driv_factsheet.html (last visited July 30, 2018). Any time one of these drivers is taken to the emergency room for treatment, a medical professional could ask the arresting officer to assist with a medical procedure. Police officers need to know if they can comply with these requests, and hospital staff need to know whether they can count on police officers to do so.

A reality of drunk and drugged driving cases is that the results of tests of a suspect's blood or urine can be critical in obtaining convictions. This Court decided in *Missouri v. McNeely*, 569 U.S. 141, 145 (2013) that the natural metabolization of alcohol in the bloodstream does not present a *per se* exigency justifying an exception to the Fourth Amendment's warrant requirement for invasive searches like blood tests. As a result of that decision, police officers cannot order hospital personnel to do such a test without either a warrant or some additional showing of exigent circumstances. This means that, if a police officer does not obtain a warrant for such a test, prosecutors ultimately can only hope that medical personnel conducted the testing for medical purposes, and that those results can be obtained through a subpoena.

This type of scenario is likely to recur again and again. When hospital personnel tried to conduct the catheterization for medical purposes against Ms. Sykes' will, she understandably physically fought against the intrusion. This was, after all, an incredibly invasive test that involved an intrusion into the most intimate part of Ms. Sykes' body. When she physically resisted this intimate intrusion, the nurse understandably sought assistance of nearby police officers. It likely did not seem unreasonable to the nurse that she would ask the police for assistance with a combative patient.

This meant the police officers were faced with a difficult decision. The police knew they could not order the test themselves without obtaining a warrant. And yet, the results of the test would be admissible in court if medical personnel alone ordered and conducted the test. But Ms. Sykes' situation fell into a murky middle ground. While the test was ordered by a private actor for medical purposes, that private actor

specifically asked police officers—the quintessential state actors—to help her perform the test. On one hand, a police officer’s natural instinct would be to help a nurse who is asking for assistance with a combative patient. But on the other hand, the officers’ doing so may well have violated the Fourth Amendment, meaning that the results of the test should have been suppressed in any subsequent prosecution. Police officers in this position deserve guidance to know when they can and cannot help, and nurses deserve guidance to understand when they can and cannot reasonably expect to receive that help. This Court should issue a writ of certiorari to answer this question and provide much-needed Fourth Amendment guidance.

CONCLUSION

For the foregoing reasons, Ladina Sykes respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Roxanna A. Mason', is written over a horizontal line.

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