

No. 18-6715

IN THE
SUPREME COURT OF THE UNITED STATES

CORTNEY JOHN EDSTROM,
Petitioner,

vs.

STATE OF MINNESOTA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
MINNESOTA SUPREME COURT

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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QUESTION PRESENTED

Does this Court have jurisdiction over an opinion – without a final judgment – issued by the Minnesota Supreme Court, which ruled a narcotics-dog sniff in an apartment building hallway was not a search under the Fourth Amendment, but also remanded issues to the Minnesota Court of Appeals for resolution?

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LIST OF PARTIES

The parties to this action are listed on the cover page of this response.

JURISDICTION

Petitioner challenges an opinion from the Minnesota Supreme Court issued on August 15, 2018. Petitioner's App. ("Pet. App.") at A. Petitioner cites 28 U.S.C. § 1257(a) to invoke this Court's jurisdiction, but the Minnesota Supreme Court's opinion did not result in a final judgment. With no "final judgment" entered in this case, the Court lacks jurisdiction to consider this Petition.

CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides:

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.

SUMMARY OF ARGUMENT

Although Petitioner Cortney John Edstrom correctly identifies a split in the Circuit and State courts of last resort, Petitioner has not demonstrated this Court has jurisdiction over his Petition for a Writ of Certiorari. At this stage, the Petition should be denied.

STATEMENT OF THE CASE

Petitioner was convicted by a jury of first-degree possession of a controlled substance (methamphetamine), Minn. Stat. § 152.021, subd. 2(a)(1) (2014), fifth-degree possession of a controlled substance (methamphetamine), Minn. Stat. § 152.025, subd. 2(a)(1) (2014), and possession of a firearm by a prohibited person, Minn. Stat. § 624.713, subd. 1(2) (2014). The jury acquitted Petitioner of first-degree sale of methamphetamine, Minn. Stat. § 152.021, subd. 1(1) (2014). The Minnesota district court sentenced Petitioner to 134 months in prison.

The police investigation and dog sniff

In October 2015, the Hopkins, Minnesota Police Department investigated information from a confidential informant (CI) that Petitioner “was selling a substantial amount of methamphetamine out of an apartment in Brooklyn Park.” Pet. App. at D.2. The CI had also personally seen Petitioner, a convicted felon, in possession of a pistol. *Id.* The CI noted Petitioner “lived on the third floor of the apartment building” and “drives a black Cadillac Deville sedan.” *Id.* The police officer located a photo of Petitioner from the Minnesota Department of Vehicle Services’ website and the CI positively identified Petitioner as the person selling methamphetamine. *Id.* From the vehicle services’ website, the officer further confirmed Petitioner was the registered owner of a black Cadillac Deville and obtained the vehicle’s license number. *Id.*

Police corroborated the CI’s information by locating Petitioner’s vehicle in the apartment building’s parking lot. *Id.* The officer also obtained a list of all

residents on the third floor, and—through additional investigation—determined the listed resident of unit #305 was Petitioner’s emergency contact while he was previously in custody. *Id.*

The police entered the apartment building with a narcotics detection dog. Pet. App. at E.7, E.12. The police gained access to the building through a Knox box – a secured metal box containing a key to the building’s entryway. *Id.* at E.7-9. The majority, but not all, of apartment building owners in this suburban city had installed Knox boxes to allow police access to the buildings. *Id.* at E.8-10, E.14-16.

The police dog that entered the building was “trained to positively indicate to the odor of various narcotics[.]” Pet. App. at D.3. The dog sniffed several doors from the apartment building hallway, providing a positive alert for narcotics after sniffing “at the door seam of apartment #305.” *Id.*; Pet. App. at E.10-15.

Following the dog’s positive alert, police left the building. Pet. App. at E.11. Based upon the CI’s information, the investigation, corroboration of the tip, and the dog’s positive alert, police obtained a search warrant for unit #305. *Id.* at E.11; Pet. App. at D. Given Petitioner’s past criminal history, prior convictions for possession of firearms by a prohibited person, and the CI’s tip about Petitioner possessing guns, the state judge issued a warrant for a nighttime, unannounced search. Pet. App. at D.4. A SWAT team would execute the warrant “[d]ue to the threat of a firearm and the close proximity of neighbors[.]” *Id.* at D.5.

Warrant executed, Petitioner arrested

Police, including a SWAT team, executed the search warrant. Pet. App. at A.2. Petitioner was in the apartment at the time and arrested. *Id.* Police recovered several firearms, ammunition, marijuana, scales with methamphetamine residue, and approximately 226 grams of methamphetamine. *Id.*

Pre-trial ruling, trial, and sentencing

In denying the pre-trial motion to suppress, the district court found the Knox box was made available to law enforcement and police used it for an appropriate purpose. Pet. App. at C.1. The court noted “the common areas of multifamily residences are not areas in which any individual resident has a reasonable expectation of privacy.” *Id.* at C.2. The court held the police “had not violated any area in which Mr. Edstrom had a reasonable expectation of privacy.” *Id.*

The district court held the curtilage analysis in *Florida v. Jardines*¹ was inapplicable because a residence’s front porch is “not an area open to the public generally or even to a large number ... of the public as would be true with an apartment building[.]” *Id.* at C.2-3. In contrast, the court found the “common area” of this apartment hallway is “accessible to all of the residents, all of their guests, and anyone else who has entered the building legitimately, including in this case law enforcement.” *Id.* at C.3. The court denied the motion to suppress. *Id.*

¹ 569 U.S. 1 (2013).

After a trial, the jury found Petitioner guilty of first-degree and fifth-degree possession of a controlled substance, and guilty of possession of a firearm by an ineligible person. Pet. App. at A.2-3. The jury acquitted on the first-degree sale of methamphetamine charge. *Id.* at A.3 n.4. The district court sentenced Petitioner to 134 months in prison. *Id.* at A.3.

The Minnesota Court of Appeals reversed the pre-trial ruling

The Minnesota Court of Appeals reversed the conviction based upon the pre-trial ruling. Pet. App. at B. The intermediate appellate court held “the use of a narcotics-detection dog at an apartment door inside a secured apartment building implicates legitimate expectation of privacy that constitutes a search requiring a warrant” under both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the Minnesota Constitution. *Id.* at B.1.

The court of appeals first rejected Petitioner’s property-rights argument, which asserted the area outside of his apartment door constituted “curtilage” for purposes of finding a physical intrusion into a constitutionally protected area. *Id.* at B.3-4. The appellate court agreed with the district court that a resident’s door in a secured, multi-unit apartment building did not constitute curtilage because the area was not enclosed and was visible to anyone who might walk by. *Id.*

The appellate court, however, used the *Jardines* concurrence as “guidance” to hold the “warrantless intrusion into the apartment violated Edstrom’s legitimate expectation of privacy.” *Id.* at B.4-5. Relying on the concurrence in *Jardines*, the

appellate court further rejected the State’s argument that Petitioner had no legitimate expectation of privacy in contraband. *Id.* at B.5.

The court further held the warrantless use of a narcotics-detection dog at an apartment door violated Minnesota’s Constitution. *Id.* at B.5-7. The appellate court distinguished a binding Minnesota Supreme Court decision, concluding the concurring opinion in *Jardines* “altered the relevant Fourth Amendment analysis ... than was prevalent at the time” of the prior Minnesota decision. *Id.* at B.6.

With the dog’s warrantless sniff suppressed, the court of appeals concluded that evidence from the search must also be suppressed because the dog’s alert was essential to the warrant’s probable cause finding. *Id.* at B.7. Given the dispositive ruling reversing the motion to suppress order, the appellate court declined to address the other issues Petitioner raised on appeal. *Id.* at n.4.

The Minnesota Supreme Court reversed the court of appeals and remanded

The Minnesota Supreme Court granted the State’s Petition for Review and reversed the court of appeals’ holding related to Petitioner’s privacy rights. Pet. App. A. The court concluded “the police did not intrude upon the curtilage of [Petitioner’s] apartment or violate [his] reasonable expectation of privacy,” as the “narcotics-dog sniff did not constitute a search under the Fourth Amendment.” *Id.* at A.1-2, A.3-7. The state high court further concluded the dog sniff did not violate Minnesota’s Constitution. *Id.* at A.2., A.7-8.

The dissent contended the warrantless use of a narcotics-dog in the apartment hallway violated Petitioner’s curtilage rights because the sniff intruded upon the

area immediately surrounding Petitioner's home. *Id.* at A.8-11. The dissent did not address Petitioner's privacy rights argument (*id.*), which was the basis of the court of appeals' decision. Pet. App. at B.

Given the Minnesota Supreme Court's affirmance in part (curtilage), and reversal in part (privacy), the court remanded the case "to the court of appeals for further proceedings." Pet. App. at A.8. Specifically, the Minnesota Court of Appeals was instructed to address the "alternative arguments [Petitioner] made in support of his appeal of his convictions." *Id.* at n.12.

Petitioner filed his petition for writ of certiorari

After the Minnesota Supreme Court issued its decision and remanded to the court of appeals, Petitioner filed the instant petition for a writ of certiorari. *See* Docket No. 18-6715. The Petition invoked this Court's jurisdiction under 28 U.S.C. § 1257(a), even though no final judgment had entered. *See* Pet. The Petition also appears to give no mention of the Minnesota Supreme Court's remand of the case to the court of appeals. *Id.*

The Minnesota Court of Appeals affirmed the remaining issues on remand

On remand, the Minnesota Court of Appeals rejected Petitioner's remaining appellate arguments. *See State v. Edstrom*, No. A16-1382, 2019 WL 178448 (Minn. App. Jan. 14, 2019). The appellate court affirmed Petitioner's conviction. *Id.* at *6.

Final judgment has not yet entered

Under Minnesota's appellate Rules, Petitioner has 30 days to petition the Minnesota Supreme Court to review the court of appeals' decision. Minn. R. App. P. 117, subd. 1.² If a petition is filed, the State of Minnesota will have 20 days to respond. *Id.* at subd. 4. The Minnesota Supreme Court will then decide whether to grant review or deny the petition.

If review is granted, the Minnesota high court has no time restriction in which to render an opinion. After any decision from the Minnesota Supreme Court – whether on the merits or a denial of the Petition for Review – a final judgment will enter no “less than 30 days after the filing of the decision or order.” Minn. R. App. P. 136.02. Until that time, no final judgment will enter. *Id.*

² As of the filing of this Response, Petitioner has not yet filed a Petition for Review to the Minnesota Supreme Court.

REASONS WHY THE PETITION SHOULD NOT BE GRANTED

Until the Minnesota Supreme Court enters a final judgment, this Court lacks jurisdiction over this Petition. At this stage, the Petition should be denied.

I. To obtain review, a final judgment is necessary

This Court's jurisdiction is limited to review of "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had[.]" 28 U.S.C. § 1257(a). "Compliance with the provisions of § 1257 is an essential prerequisite to [this Court] deciding the merits of a case" invoking jurisdiction under that section. *Johnson v. California*, 541 U.S. 428, 431 (2004).

The final-judgment rule precludes reviewability "where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945); *see also Flynt v. Ohio*, 451 U.S. 619, 620 (1981). An important purpose of this rule "is to prevent [this Court's] interference with state proceedings when the underlying dispute may be otherwise resolved." *Costarelli v. Massachusetts*, 421 U.S. 193, 196 (1975).

For this Court to review a state court judgment, "it must be subject to no further review or correction in any other state tribunal[.]" *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997). The judgment "must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein." *Id.* In short, "[i]t must be the final word of a final court." *Id.*

II. Without a final judgment, the petition should be denied at this time

No final judgment has issued from the Minnesota Supreme Court. Instead, the opinion remanded issues to the State court of appeals for further consideration. Pet. App. at A.8 n.12. Although the Minnesota Court of Appeals has recently rejected those issues and affirmed the conviction,³ the Minnesota Supreme Court has yet to either deny review or grant review in order to address the merits of the remaining issues. If the Minnesota high court denies review, a final judgment will enter no later than 30 days later. Minn. R. App. P. 136.02. The same is true if the Minnesota Supreme Court grants review and affirms. *Id.*

If, however, the State Supreme Court grants review and reverses, Petitioner may be granted a new trial. *See* Pet. App. at A.8 n.12 (noting issues related to alleged trial errors). At the state district court, Petitioner could be acquitted or he may decide to plead guilty, which would “effectively moot the federal-law question raised” in this Petition. *Jefferson*, 522 U.S. at 82. Like in *Jefferson*, the lack of a final judgment leaves the current Petition wanting for jurisdiction.

The current status of this case is remarkably similar to *Johnson v. California*, wherein this Court dismissed the case for a lack of jurisdiction because the California Supreme Court had remanded for further proceedings. 541 U.S. at 429, 432. California’s high court reversed the state court of appeals, which had reversed petitioner’s conviction. *Id.* at 429. Although the State Supreme Court reversed on

³ *Edstrom*, 2019 WL 178448, at *6.

the federal issue, it remanded separate evidentiary and prosecutorial misconduct claims for consideration. *Id.*

Despite the remand, the *Johnson* petitioner sought this Court's review, claiming 28 U.S.C. § 1257 afforded jurisdiction. *Id.* at 430. This Court disagreed and dismissed the case. *Id.* at 432.

Johnson is on all fours with this Petition. The Minnesota Supreme Court reversed on the federal issue, but separate state issues were remanded for further consideration. Pet. App. A. Although the state intermediate appellate court has since resolved those issues against the Petitioner, a final judgment has still not entered in Minnesota. Until that happens, like in *Johnson*, section 1257 does not afford this Court jurisdiction. *Johnson*, 541 U.S. at 432.

In addition, this Petition “fits within no exceptional category” in which review may be had despite no final state judgment. *Jefferson*, 522 U.S. at 84. *See also Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480 (1975) (recognizing four exceptional categories of cases to be regarded as “final” on the federal issue despite further proceedings in the lower state courts). Instead, the Petition “presents the typical situation in which the state courts have resolved some but not all of [Petitioner's] claims.” *Jefferson*, 522 U.S. at 84.

Ultimately, the state court's decision is “not final unless and until it has effectively determined the entire litigation.” *Id.* Since that has yet to happen, the Petition should be denied as prematurely filed.

CONCLUSION

No final judgment has entered from the Minnesota courts. At this stage in the proceedings, the Petition does not present the appropriate vehicle to decide the issues raised or to resolve the split among the United States Courts of Appeals and the State courts of last resort.

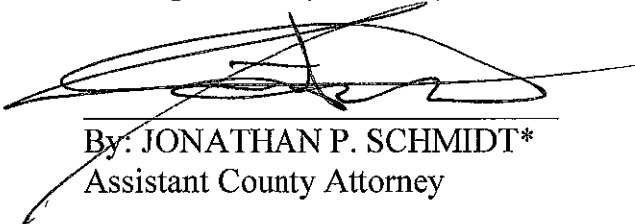
Once a final judgment is entered in Minnesota, Petitioner can re-file his Petition at that time (if appropriate). But, at this time and for these reasons, the Petition should be denied.

DATED: January 18, 2019

Respectfully submitted,

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