No. 18-8597

IN THE

Supreme Court of the United States

BARBARA BROWN,

Petitioner,

vs.

SCOTT BURTON, DEPUTY SHERIFF, IN HIS INDIVIDUAL CAPACITY; TRAVIS WIJNHAMER, DEPUTY SHERIFF, IN HIS INDIVIDUAL CAPACITY; TOM HOLLENBAUGH, DEPUTY SHERIFF, IN HIS INDIVIDUAL CAPACITY,

Respondents.

On Petition for Writ of Certiorari to the Ninth Circuit Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

DENNIS E. WAGNER, ESQ. (SBN: 99190)
WAGNER & PELAYES, LLP
1325 SPRUCE STREET, SUITE 200
RIVERSIDE, CA 92507
TEL: (951) 686-4800
FAX: (951) 686-4801
DEW@WAGNER-PELAYES.COM
Counsel for Respondents

QUESTIONS PRESENTED

Among Petitioner's list of 17 separate questions, only two are capable of determination of meaning and the remainder are frivolous or are otherwise improper and review should not be granted.[1]

The first question (gleaned from Brown's Question Nos. 7, 12, and 15, collectively), is did the Ninth Circuit err in affirming summary judgment in favor of Respondents because Petitioner's arrest was based upon probable cause.

The second question, (Question 16, restated) is whether the Ninth Circuit erred in finding as meritless the petitioner's accusation that the District Court and magistrate judges were biased against her and should therefore have recused themselves.

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[1] Only Questions 7, 12, & 15 collectively, and Question 16, are addressed in this BOI. Question No. 1 asks whether District Judge Carney obstructed justice under the definition of Title 18 U.S.C. §1503, which concerns the crime of unduly influencing a juror or officer of the court and is not an issue in this case. No. 2, asks whether the lower courts erred in holding Petitioner to a more stringent pleading standard, which was not raised on appeal to the 9th Circuit. No. 3, whether Petitioner's right to redress was violated by Carney, the Ninth Circuit and the U.S. Supreme Court, is incomplete or too vague to state a legal question. Nos. 4, 5, and 6 are accusatory in nature: No. 4 asks whether a reasonable judge can practice law and aid & abet lawyers and police; No. 5 accuses Carney and the 9th Circuit of violating their oaths of office to defend the Constitution; and No. 6 accuses Carney of conspiring with Respondents by ordering Petitioner's arrest. No. 8 is frivolous in that neither Carney, nor the 9th Circuit stated that Petitioner has "no right" to assert her rights. Nos. 9 and 10 are accusatory: No. 9 accuses Carney and the 9th Circuit of allowing police to break the law under *Schmerber v. CA*, 384 U.S. 757 (1966); and No. 10, is an outrageous accusation that Judge Carney operates his court under the "Black Code." No. 11 asks whether Carney erred in naming all four of Petitioner's cases "related" which has no relevancy to this appeal. Nos. 13 and 14 concern the lawfulness of California Penal Code §148, which was never alleged nor raised on appeal to the 9th Circuit. No. 17 asks whether 28 U.S.C. § 455 (a) includes any justice, judge or magistrate of the U.S. It does not state a legal question for this Court.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions involved in case are the Fourth Amendment; 42 U.S.C.§ 1983, California Penal Code § 148(a)(1); California Penal Code section 602(o), and California Welfare and Institutions Code section 5150.[2]

STATEMENT OF THE CASE

In this case Petitioner Barbara Brown delayed and obstructed Respondents Deputy Sheriffs Scott Burton, and Tom Hollenbaugh in the discharge of their duties as they were attempting to investigate a 911 call reporting a domestic disturbance at the home of Jonathan Sprecher. The District Court and the Ninth Circuit properly granted and affirmed, respectively, summary judgment in favor of Respondents on Petitioner's Fourth Amendment claim alleging unlawful arrest without probable cause.[3, 4]

"A warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence." *Dist. Of Columbia v. Wesby* 138 S.Ct. 577, 586 (2018)

To determine whether an officer has probable cause for an arrest the court examines the events leading up to the arrest and decides whether those facts, when viewed from the standpoint of an objectively reasonable officer, amount to probable cause. *Id.*

Under California law, any person who willfully resists, delays, or obstructs a peace officer in the discharge or attempt discharge of his duty, under Penal Code § 148(a)(1) shall be punished by a fine, not to exceed $1,000, or by imprisonment in a County jail, not to exceed one year, or by both a fine and imprisonment.

A. Relevant Facts

On February 16, 2013, at about 9:46 pm, Sheriff's Deputies Burton and Hollenbaugh responded to a 911 call reporting a domestic disturbance at a residence in Sugarloaf, California. As he approached the residence Burton heard a male and female arguing inside. As he got

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[2] Petitioner purports several constitutional and statutory provisions which are wholly inapplicable to her lawsuit and appeal, for example, she inexplicably and erroneously claims that the 13th Amendment and slavery, and 18 U.S.C. § 1203, and kidnapping, are involved in her case.

[3] Petitioner also claimed that she was taken to jail and kept tied to a chair naked all night and drugged without her consent and then placed in a mental ward without her consent. Summary Judgment was granted as to this claim as well. Petitioner has not raised that issue in her present Writ for Certiorari.

[4] Respondent Deputy Travis Wijnhamer arrived *after* Petitioner was arrested and he was soon thereafter pre-empted to another call for service and left. *Brown v. County of San Bernardino*, 250 F.Supp.3d 568, 581 (C.D. Cal. 2017)

closer he saw through the slightly-opened door Petitioner, Barbara Brown, standing over the male with whom she was arguing, Jonathan Sprecher, seated on the couch. *Brown v. County of San Bernardino*, 250 F.Supp.3d 568, 574 (C.D. Cal. 2017)

Burton entered and asked, "What's going on you guys?" Brown responded that Sprecher had beat her up a few months prior and that she had done nothing wrong. Burton told Brown to go outside so he could get her story. Brown said she was not going to jail. Burton responded, "I'm not saying you're going to jail." Brown told Burton, "Fuck you. He's gonna give me a ride home right now." Burton again asked Brown to step outside so he could talk to Sprecher and Burton's partner, Hollenbaugh, could talk to Brown. Burton told Brown he was giving her one more chance. Brown responded that she wasn't going anywhere, that Sprecher had not asked her to leave. Sprecher immediately refuted this by saying, "I was asking you to leave. I wish you'd have left sooner." *Id.* at 578 (*Burton's belt recording*). [5]

When Burton asked for her name, Brown answered with responses such as, "I'm fine" and "I'm okay." Brown continued to ignore commands to step outside, to give her name, and to put out her cigarette which she was waiving dangerously close to the deputies' faces. *Id.* at 574-575 (*Burton's Declaration*), and 578 (*Burton's belt recording*).

After Brown's continued refusal to obey lawful commands, Burton placed his hand on Brown's shoulder to direct her outside. Brown pulled away. Burton told Brown she needed to go outside, but Brown refused to leave the residence unless Sprecher gave her a ride home. *Id.* at 575 (*Burton's Declaration*).

Brown again asked Sprecher for a ride home and he told her to "chill out" and said it was up to the officers. Brown told the deputies, "Don't arrest me." Burton responded, "We aren't arresting you." Brown became increasingly agitated. *Id.* at 578 (*Burton's belt recording*).

Burton placed Brown in a rear wrist lock to take her outside so he could speak to Sprecher alone. Burton placed Brown in handcuffs and told her she was not under arrest, but she was being handcuffed because she was not cooperating. Brown sat down on a retaining wall just outside the house and Burton went inside to speak to Sprecher. *Id.* at 575 (*Burton's Declaration*).

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[5] Burton and Hollenbaugh captured the incident on their digital recorders. A CD of the recordings, as well as transcripts were provided to the District Court and Ninth Circuit. The statement of facts in the BOI is taken from those recordings, transcripts, and the Declarations of the deputies and witnesses as referenced in *Brown v. County of San Bernardino*, 250 F.Supp.3d 568 (C.D. Cal. 2017.)

As Burton began speaking to Sprecher, Brown was heard screaming at Deputy Hollenbaugh outside. Sprecher told Burton that Brown had had too much to drink and when she drinks too much, "she goes like this." Sprecher said, "It's just bi-polar or fucking schizo I don't know, but it has to do with booze, but it wasn't with me...." Burton asked if it had gotten physical, and Sprecher replied, "Oh Jesus Christ." Burton said that they (deputies) couldn't even talk to her and Brown was "gonna make us arrest her." Sprecher told Burton that Brown had been slapping him and Sprecher's roommate Rodger who had already left, was trying to stop Brown from slapping him. *Id.* at 578-579 (*Burton's belt recording*).

Meanwhile, Deputy Hollenbaugh was outside trying to talk with Brown. Hollenbaugh asked for her name and Brown told him it was none of his damn business. Hollenbaugh asked again and Brown responded, "None of your Goddamn business. I'm not driving, Asshole." *Id.* at 577, and 578 (*Hollenbaugh's Declaration and Burton's belt recording, respectively*).[6]

Hollenbaugh continued to try to speak to Brown, but she yelled, "Fuck you" and "Leave me alone, need a Goddamn ride home!" Hollenbaugh asked Brown how much she had to drink, to which Brown yelled, "None." Hollenbaugh asked, "Are you sure about that?" Brown yelled, "Fuck you!" Hollenbaugh told her she was not cooperating or giving her name and she responded, "I'm gonna tell you the whole Goddamn truth real soon bitch so SHUT UP!" Hollenbaugh said, "Okay," Plaintiff said, "Fucking shut up... Fucking shut up motherfucker." Then Brown whispered to Hollenbaugh, "Goddamn fucker I hate you; I hate you Bitch, I'll kill you." Hollenbaugh began to ask questions again and Brown responded by yelling "FUCK YOU!" and "Okay, shut up then Bitch!" *Id.* at 580 (*Hollenbaugh's belt recording*).

Burton came outside to assist Hollenbaugh with Brown. Burton, Hollenbaugh, and Sprecher tried to coax Brown to calm down. Brown screamed that Respondents had killed [Christopher] Dorner and she was "not gonna go down like he did." Brown screamed, "BEFORE THEY KILL ME JONATHAN! GIVE ME A RIDE HOME!" Brown repeated paranoid statements about Dorner and accused the deputies of intending to kill her. *Id.* at 579 (*Burton's belt recording*) (*and see Id. 596, fn 2).*

Sprecher told Brown he would take her home if she would "shut up" but Brown continued to yell that the officers would kill her. Hollenbaugh and Burton both tried to reassure Brown that they were

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[6] Sprecher eventually told the deputies Brown's name because Brown refused to give it to them. *Brown v. County,* 250 F.Supp.3d, at 575 (*Burton Decl.*)

not going to hurt her. Respondents stressed to Brown that she just needed to calm down. *Id.* at 579.

Brown continued to demand a ride home from Sprecher. She insisted she had broken no law. Burton said, "It's either gonna be drunk in public or it's gonna be a 5150." Brown argued that she was not in public, she was in a man's house. Sprecher asked if he could take Brown home so she could "sleep it off" but he had also told Respondents that there was no one at her house (except her cat). Sprecher also told Respondents that when Brown gets like this she goes out into the street and yells. Burton and Hollenbaugh said they couldn't leave Brown alone at her house by herself in her present condition. *Id.* at 576 (*Burton Decl.*) and 579 (*Burton's recording*).

Burton asked Sprecher if he could talk some sense into her. Sprecher told Brown he could drive her home, but she had to "stop with all the noise." Brown continued obsessing about Dorner saying, they killed Dorner and would kill her also. Burton asked Brown if she was "okay in the head" or "suicidal." Brown continued accusing the deputies of intending to kill her. Burton tried to reassure Brown that they were not going to hurt her. *Id.* at 579 (*Burton recording*).

Deputy Burton arrested Brown under California Penal Code §148(a), delaying or obstructing an officer. As the deputies tried to get Brown into the patrol car, she continued arguing and resisting and accusing the deputies of planning to kill her. The deputies repeatedly directed her to get into the patrol car. Brown finally complied and Burton transported her to jail where he left her in the custody of jail staff. It was now close to midnight. *Id.* at 576 (*Burton Decl.*) and 579-581 (*Burton recording, Hollenbaugh recording, and Livingston Decl., respectively*).

At the jail Brown was uncooperative and belligerent. She cursed and screamed at the jail staff and physically refused to cooperate with booking. Brown exhibited symptoms of delusional behavior and appeared unable to calm down. She screamed, "Kill them" and "Dorner kill them all." Due to her behavior, Brown was placed in a "specialty cell" which had large windows through which jail personnel could observe her. However, Brown continued screaming and started to bang on the windows. The blows to the windows became so violent the jail staff feared Brown would hurt herself, so they contacted the jail nurse. It was now about 1:00 a.m. The jail nurse ordered Brown to be placed in a restraint chair to prevent her from injuring herself. In the chair Brown screamed "Kill them." *Id.* at 581-582 (*Livingston Decl.*)

The on-call physician's assistant was contacted and ordered a calming medication for Brown to be given by injection. Despite the injection, Brown continued screaming, cursing and yelling threats until approximately 3:00 a.m. While in the chair, jail staff offered Brown

water and exercised her limbs. Once Brown was finally calm, she was placed back into the specialty cell. Brown finally cooperated with booking at about 6:30 a.m. Though she was more cooperative, the jail medical staff was still concerned for Brown's safety due to her mental state and behavior. The nurse requested an evaluation be conducted pursuant to Welfare and Institutions Code section 5150 and prepared an application for a 72–hour detention for evaluation. The nurse arranged for a jail transportation unit to take Brown to Arrowhead Regional Medical Center for an evaluation. *Brown v. County*, 250 F.Supp.3d 568, at 582.

At the hospital Dr. Mailan Pham, evaluated Brown and determined she was suffering from bi-polar disorder manifesting as psychosis. Dr. Pham made the determination that Brown should be held pursuant to section 5150 and attempted to prescribe an antipsychotic medication for Brown, but Brown refused to take the medication. Dr. Pham extended the hold beyond the initial 72 hours because Brown wasn't making progress. After a few days Brown began taking her medication and made enough progress to be released on February 21, 2013. *Id.* at 583.

B. Procedural Facts

Brown brought her initial Complaint as a pro se plaintiff on February 19, 2015, pursuant to 42 U.S.C. § 1983, against the individual Respondents as well as the County of San Bernardino, its Sheriff's Department, and the Big Bear Lake Station. On March 9, 2015, the District Court dismissed the Complaint with leave to amend, on March 9, 2015. *Id.* at 571.

Brown filed a First Amended Complaint on April 8, 2015. On April 16, 2015, the District Court dismissed certain claims from the Amended Complaint, including Brown's *Monell* claim against the County and Sheriff's Department and Big Bear Station as well as the official capacity claims against the individual respondents. *Id.* at 571.

Thus, the only remaining defendants were the respondent deputies Burton, Hollenbaugh, and Wijnhamer, in their individual capacities.

On June 29, 2015, Respondents moved to dismiss the Amended Complaint. On August 25, 2015, the motion was granted with leave to amend. Brown filed her Second Amended Complaint on September 24, 2015. Respondents moved to dismiss on October 7, 2015. On December 26, 2015, the District Court granted the motion with leave to amend. On January 25, 2016, Brown filed her Third Amended Complaint and Respondents answered on February 17, 2016. *Id.* at 572.

On October 31, 2016, Respondents filed their Motion for Summary Judgment and attendant documents and evidence. Brown

filed her Opposition and attendant documents and evidence on November 30, 2016. On December 14, 2016, Respondents filed their Reply. On January 3, 2017, Brown filed a "Corrected Opposition." About a week later Brown filed a "Submission of Evidence in Support of Plaintiff's Corrected Opposition." Respondents filed an objection to Brown's "corrected" filings. *Id.* at 572.

On March 10, 2017, Magistrate Judge Charles F. Eick, filed a 60 page Report and Recommendation wherein he recommended granting summary judgment as to the entire Third Amended Complaint. *Id.* at 596.

Judge Eick found that Brown's detention and arrest were lawful. Eick found that under the totality of the circumstances the deputies had probable cause to arrest Brown for California Penal Code § 148(a) for delaying and obstructing an officer; and for trespass under California Penal Code § 602(o).

The District Court also found that probable cause existed to detain Brown pursuant to California Welfare and Institutions Code section 5150. *Id.* at 588-593.

On April 17, 2017, District Court Judge Cormac J. Carney, signed the Order adopting the Magistrate Judge's report and recommendation. *Id.* at 571.

Brown filed her appeal to the Ninth Circuit who affirmed the decision of the District Court. *Brown v. Burton*, 745 Fed.Appx. 53 (2018)

GROUNDS FOR DENIAL OF THE WRIT

A. No Compelling Reason Exists to Grant the Writ

Rule 10 of the Rules of the Supreme Court requires a compelling reason for review. Brown lists 19 separate reasons why she believes the court should grant the review. None of them are compelling. For example, Reason No. 5 is that her twin sister has had three cases denied by the court. No. 6 is that she has a right to redress according to the First Amendment. No. 8 is that the District Attorney for the County of San Bernardino is a well-known sexist and racist. Nos. 12 and 13 relate to her opinion that the problem of government intrusion is nationwide, even in Alaska.[7]

[7] No. 2 on Brown's list is that the District Court deemed her action "non-frivolous and has merit" however, she failed to cite where or when the court said this or in what context it was said. There certainly is no evidence or indication that the District Court made this statement after reviewing the evidence presented in support of, or opposition to, the motion for summary judgment.

None of her listed reasons are what she purports her basis for review to be under Rule 10 (a) and (c) (*Petition, pg. 7*). In other words, none of her reasons indicate or argue how the Ninth Circuit in this case, issued a decision in conflict with any other court, nor do any of her reasons show or argue any departure by the Ninth Circuit, from the accepted and usual course of judicial proceedings. Nor do her purported reasons address what important question of federal law has not been, but should be, settled by this Court, as it concerns her lawsuit.

Instead, Brown wants the court to review the facts of her case as *she* has described them at pg. 8 of her writ, and find that the Respondents did not have probable cause to arrest her and thus, summary judgment should have been denied. She indicates the reason the District Court judges ruled against her is because they are biased against her due to her race and ethnicity, and thus, the judges should have recused or disqualified themselves. (*Petition, pg. 2, under Question(s) Presented, Questions 10, and 16*)

There is no indicia that either Magistrate Judge Eick, or District Judge Carney had or demonstrated any bias against Brown for any reason. To the contrary as shown by the Report and Recommendation prepared by Magistrate Judge Eick, in considering Respondents' Motion for Summary Judgment the District Court carefully and meticulously examined all of the moving and opposition papers and the evidence presented by the parties, even Brown's untimely "corrected" documents and evidence, which she filed *after* Respondents had already filed their Reply. *Brown,* 250 F.Supp.3d, at 574-586.[8]

The submitted recordings of the incident were exceedingly dispositive in that they patently refuted most of Brown's allegations in the vein of *Scott v. Harris*, 550 U.S. 372, 380 (2007). The recordings so contradict Brown's version of events that no reasonable jury could believe it, thus neither the District Court nor the Ninth Circuit were required to adopted Brown's version of events. See *Brown v. County of San Bernardino*, 250 F.Supp.3d 568, at 587, and *Brown v. Burton* 745 Fed.Appx 53, at 53-54.

In fact, under such circumstances the courts are instructed *not* to do so. *Scott*, supra, at 389.

B. The Evidence Established that Petitioner's Detention and Arrest were Lawful

In her Petition, Brown contends that on February 16, 2013 she was visiting with her (then) boyfriend Jonathan Sprecher as a welcomed guest at his home. An argument between Brown and her ex-boyfriend,

[8] Judge Eick limited consideration of Brown's evidence only to the extent she relied on allegations in her unverified Third Amended Complaint, and unsupported conclusory statements. Brown, 250 F.Supp.3d, at 586-587.

Roger Tierce, who was Sprecher's roommate, ensued and Sprecher called the 911 to maintain the peace. Brown contends Sprecher did not call the police for the purpose of having Brown arrested, nor to have Brown escorted from his property. (Petition, pg. 8.)

Brown contends that Deputy Wijnhamer arrived first and she and Sprecher told Wijnhamer that the person causing the disturbance (Tierce) had left and everything was okay. Then Wijnhamer left. Additional deputies arrived and proceeded to arrest Brown immediately on "drunk in public" due to the fact that only her cat was at her house. (*Id.*)[9]

In her Third Amended Complaint, however Brown alleged that the respondent deputies all arrived at 10:15 p.m. and she and Sprecher explained to them that the man who had been causing the problems had left and there was no more problem. Burton then grabbed her by the right arm and he, Hollenbaugh and Wijnhamer forcibly dragged her outside and placed her under arrest without her consent or Sprecher's command and without a search warrant or court order. *Brown v. County*, supra at 572.

Brown alleged Burton then drove her to the main jail where she was stripped naked and strapped to a low chair and injected with an unknown drug and left alone all night. The next morning a deputy whom she believes was Burton, drove her to Arrowhead Regional Medical Center mental ward and she was held there until February 21, 2013 without need or consent. *Brown v. County*, at 572-73.

Respondents filed for summary judgment and submitted declarations of Burton, Wijnhamer, Hollenbaugh, Nurse Livingston, Dr. Mailan Pham, and Burton's and Hollenbaugh's belt recordings of the incident and concomitant written transcripts. This evidence established that the deputies were polite and patient with Brown and made numerous attempts to calm her down so that she could be driven home, as opposed to being arrested. *Brown v. County*, at 574-582.

Brown opposed the motion, arguing she will prove that the deputies' acts were "illegal, malicious, immoral, unjust and possible sexual offenses during the drugging" at the jail. She argued she was the victim of mental taunts, torture and possibly sexual abuse and a hate crime based on her gender and race. *Id.* at 583.

Brown relied on her own declaration wherein she represented that on the night of the incident she had been invited to Sprecher's home to talk things over about her ex-boyfriend Rodger. The discussion escalated into shouting and pushing and Sprecher called 911 because he

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[9] Brown's Third Amended Complaint alleged that Sprecher had called the Sheriff's Department to have her ex-boyfriend escorted from the home. *Brown v. County*, supra at 572.

feared that Brown and Roger would kill each other. Brown stated that the deputies arrived and "immediately" arrested her. She feared for her life because she had a prior incident with California Highway Patrol and Big Bear Sheriff's in 2011, which involved a "bloodletting" and a breathalyzer test. Brown stated in her declaration that she wasn't arguing with Sprecher when the deputies arrived and she was not screaming. *Brown v. County*, at 583.

After Respondents filed and served their Reply documents, Brown submitted a "corrected" opposition. In her corrected opposition she claimed she could now recall the face of a man who she was left alone with at the jail, while naked, drugged, and strapped to the restraint chair. She also claimed she was never asked to leave Sprecher's house. *Id.*

Brown also relied upon various submitted documents, many of which were completely immaterial, including her birth certificate, driver's license, auto insurance documents, an application for social services, medical records, mental health records as well as a police report that was consistent with Burton's belt recording and Burton's declaration. *Id.* at 585.

Brown also submitted what she asserted to be a dispatch log which showed that a domestic disturbance dispatch went out and the caller, named Jonathan stated he was trying to get "subjs" to leave the "loc." (location). Brown is identified by Sprecher as the subject "subj." *Id.* at 585.

Brown also submitted log records which are consistent with Burton's declaration, and jail documents, including the application for the 5150 hold, and specialty cell log, which are consistent with Livingston's Declaration. *Id.* at 586.

The District Court found that the audio recordings on the incident "clearly refuted by blatant contradiction" many of Brown's assertions, including that she was not screaming during the incident. *Id.* at 587. The District Court found that the recordings revealed that Brown had been abusive, irrational and out of control during the encounter with the deputies, while the deputies had remained calm at all times. *Id.* at 578.

Contrary to Brown's assertions, Brown was not a "welcomed guest." She had arrived at Sprecher's house, after drinking too much with a friend. (*Brown v. County*, at 578, *Burton's belt recording.*) Brown had physically assaulted Sprecher, and Sprecher's roommate Roger was trying to stop Brown from slapping him. (*Id.* at 579, *Burton belt recording.*) Brown and Roger then engaged in shouting and pushing at Sprecher's house. (*Id.* at 583, *Brown's Declaration.*) Sprecher wanted both of them to leave and tried to get them to leave, but mostly he

wanted Brown to leave so he called 911 for assistance. (*Id.* at 585, *Brown's documentary evidence.*)

1. The Detention

The District Court found that the evidence showed that the initial detention of Brown at the residence was lawful. In responding to the 911 call, the deputies knew that the call concerned a domestic disturbance involving Sprecher and Brown. As Burton entered, he heard them arguing and saw Brown standing over Sprecher yelling at him. Brown's own declaration is consistent with Brown being the very subject of the 911 call. She admitted that the discussion between herself and Roger escalated into shouting and pushing and Sprecher had called 911 because he feared Brown and Roger would "kill each other." *Id.* at 588.

The main components of the detention, the intrusiveness of the stop and the "justification for the use of such tactics" were carefully reviewed. Brown refused Burton's order to come outside to get her story separately from Sprecher and told Burton, "I'm not going to jail. Fuck you." Brown repeatedly used profanity and refused several orders and made paranoid statements concerning Christopher Dorner and the deputies' intention to kill her. When Burton put his hand on her arm to move Brown outside, she pulled away. Brown refused to heed the deputies (and Sprecher's) requests to stop screaming and to calm down. *Id.* at 589.

The handcuffing was minimally intrusive under the circumstances. Brown was screaming, flailing her arms, disobeying orders, and acting out of control. The deputies had reason to fear for Brown's and their own safety. They had repeatedly told her to calm down so they could do their investigation and they had told her they were not arresting her. Still Brown would not or could not calm down and continued her belligerent behavior. *Id.* at 589-590.

2. The Arrest

Respondent Burton arrested Brown for a violation of California Penal Code § 148(a) for delaying or obstructing an officer. The District Court carefully analyzed the arrest under the Fourth Amendment's reasonableness standard, noting an arrest is lawful under the Fourth Amendment "when an officer has probable cause to believe a person committed even a minor crime in his presence. *Id.* at 590 (citing *Virginia v. Moore* 553 U.S. 164, 171 (2008).

The District Court noted that "[b]ecause the probable cause standard is objective, probable cause supports an arrest so long as the arresting officers had probable cause to arrest the suspect for any criminal offense, regardless of their stated reason for the arrest." *Id.* at 590 (citations omitted).

The District Court went through the evidence and analyzed the issue of whether the deputies had probable cause to arrest Brown. The District Court rightfully found that Respondents had probable cause to arrest Brown for the crime of trespass under California Penal Code section 602(o); and for delaying or obstructing an officer, in violation of California Penal Code section 148(a), that that probable cause also existed to detain Brown pursuant to Welfare and Institutions Code section 5150. *Id.*

3. Probable Cause to Arrest for Trespass

Respondents had probable cause to arrest Brown for trespassing under California Penal Code 602(o), which makes it unlawful to refuse or fail to leave property lawfully occupied by another and not open to the general public, upon the request of a peace officer acting at the request of the owner, or the owner or the owner's agent.

Respondents had knowledge that Sprecher had called in a domestic disturbance and that Sprecher had asked Brown to leave and she refused. Brown's own evidence showed Sprecher told the 911 dispatcher that he was trying to get subjects to leave. *Id.* at 590-91. The District Court noted that when Brown told Burton and Hollenbaugh that Sprecher hadn't asked her to leave, he immediately refuted her by saying he was asking her to leave and he wished she had left sooner. *Id.* at 588.

4. Probable Cause to Arrest for Delaying or Obstructing an Officer

The District Court found that Respondents also had probable cause to arrest Brown for willfully resisting, delaying or obstructing an officer in the discharge of his duty, under California Penal Code § 148(a)(1).

Brown willfully refused to follow lawful orders to exit Sprecher's residence, to provide her name, to put out her cigarette, and to calm down, so they could investigate the domestic disturbance and possible trespass call. *Id.* at 591.

The District Court considered Brown's evidence, her statements that she was a welcomed guest in Sprecher's home and was not screaming during the incident. However, the recordings blatantly contradicted Brown's assertion. The undisputed material evidence established that Sprecher had called 911 indicating he wanted her to leave and was trying to get her to leave, and he stated he had wanted her to leave. *Id.* at 591-592.

The District Court ruled consistently with the instruction of *Scott v. Harris* 550 U.S. 372, 380, and did not adopt Brown's contradictory evidence (her statements) because the evidence in the record "blatantly

contradicted" it "so that no reasonable jury could believe it. " *Id*, at 591-592.

The District Court noted that the evidence also blatantly contradicted Brown's assertions that she was not resisting, delaying or evading them. Here Brown was not merely verbally challenging the respondents in the exercise of her First Amendment rights. Rather, Brown's actions went beyond words of criticism and into the realm of interference with the officers' duties. She refused to follow lawful commands; she screamed and cursed at Respondents instead of following commands and answering questions that were asked in furtherance of the investigation; she physically pulled away from Burton when he attempted to escort her out of the residence; she threatened to kill Deputy Hollenbaugh. The evidence showed as a matter of law that Respondents had probable cause to arrest her for a violation of section 148(a)(1). *Brown v. County* at 592-93.

5. Probable Cause to Detain Pursuant to a 5150 Hold

The District Court properly found that Brown's conduct and behavior demonstrated she may have been suffering from a mental disorder. She was screaming and wailing inappropriately, verbalizing severe paranoid thoughts (believing the deputies would kill her) obsessing over Christopher Dorner; threatened to kill Deputy Hollenbaugh. The recordings demonstrated that Brown was mentally disordered and posed a danger to herself and others. *Id.* at 593.

The District Court found that Brown's conduct provided probable cause to Respondents to detain Brown pursuant to California Welfare and Institutions Code section 5150.

The statute authorizes a peace officer to take a person who suffers from a mental disorder, into custody for up to 72 hours for assessment and evaluation if the person is a danger to him or herself, or others, or is gravely disabled. The court said that an officer has probable cause to effect such a detention "if the facts are known to the officer that would lead a person of ordinary care and prudence to believe or entertain a strong suspicion that the person to be detained is mentally disordered and is a danger to him or herself. *Id.* at 593. (Citing *Bias v. Moynihan* 508 F.3d 1212, 1220 (9th Cir. 2007).

In finding that probable cause existed to arrest Brown and/or detain Brown under these three sections, the District Court granted summary judgment in favor of Respondents.

C. The Ninth Circuit's Decision is Consistent with this Court's Precedents

On appeal the Ninth Circuit conducted a de novo review. *Brown v. Burton* 745 Fed.Appx. 53 (9th Cir. 2018).

This case was decided on the evidence, not upon legal doctrine that conflicts with this Court's precedents. The Ninth Circuit found that the District Court property granted summary judgment on Brown's Fourth Amendment claim because Brown failed to raise a genuine dispute as to whether Respondents had a reasonable suspicion to detain her while investigating the 911 call; and whether there was probable cause to arrest her for Penal Code 148(a)(1).

The Ninth Circuit agreed with the District Court that the recordings offered by Respondents "refute by blatant contradiction most of Brown's assertions." *Id.* at 53-54. This is consistent this Court's instruction in *Scott v. Harris*, 550 U.S. 372, 380 (2007).

The Ninth Circuit also found that the District Court properly dismissed Brown's claims against unnamed John Doe defendants because Brown failed to make any factual allegations as to these claims. *Id.* at 54.

The Ninth Circuit rightfully rejected as meritless, Brown's contentions that the District Court was biased against her or improperly transferred her case to Los Angeles and denied her appointment of counsel. *Id.*

In her Writ Petition, Brown failed to cite to any evidence in the record, or any erroneous finding by either the Ninth Circuit or the District Court. She failed to identify any controlling case that is in conflict with the decisions of either of the lower courts.

D. Petitioner has Shown no Basis for Why the District Court Judges Should have Disqualified or Recused Themselves

As to her second question, Brown offers no explanation for why the district court judges should have disqualified or recused themselves. Brown presented no facts or argument as to why she believes these judges were biased against her.

The Ninth Circuit properly found her claim on this issue was meritless.

E. Petitioner's Cited Legal Authority Offers No Support for Granting her Writ Petition

Finally, none of the cases cited by Brown offers support for her request to have her writ granted and her case reviewed by this Court.

Brown cited to *Schmerber v. CA* 384 U.S. 757 (1966), to say that the Fourth Amendment protects personal privacy and dignity against unwarranted intrusion by the state. (*Writ Petition, pg. 7*)

Schmerber isn't helpful to Brown. *Schmerber* concerned whether a blood sample from an arrestee to test for intoxication over the arrestee's objection, was inadmissible under the Fifth Amendment's

protection against self-incrimination and violated the arrestee's Fourth Amendment right to be free from unreasonable searches and seizures. Schmerber was convicted and the Appellate Department of the California Superior Court affirmed the conviction. This Court affirmed and found the blood draw for testing purposes did not violate the Fifth Amendment and the extraction of the blood did not violate the Fourth Amendment in that case. *Id.* at 760-768.

Brown failed to show in her petition how *Schmerber* applies to the specific facts of her case, or how the Ninth Circuit in her case erred in affirming summary judgment in favor of Respondents by finding there was probable cause to detain and arrest her.

Next, Brown cites *Griswold v. Connecticut* 381 U.S. 479 (1965), in stating the Supreme Court ruled there that the bill of rights implies a fundamental right to privacy and protection from government intrusion. (*Brown's Writ Petition, at pg. 7.*)

Griswold did not address any issue similar to the issues presented in Brown's case. *Griswold* addressed the lawfulness of a state's law forbidding citizens from buying and using contraceptives for birth control and whether physicians may lawfully be convicted for educating and prescribing couples regarding contraceptives. *Id.* at 480-483.

Brown next cites *Katz v. United States* 389 U.S. 347 (1967) to say that Justice Harlan, in his concurring opinion, said that an expectation of privacy requires first there be an actual subjection expectation of privacy and second, that the expectation be one that society is prepared to recognize as reasonable. (*Writ Petition at pg. 7.*)

Katz does not contain any similar fact pattern to Brown's case. The portion to which Brown cites, the concurring opinion of Justice Harlan, addresses whether a person has an expectation to privacy from government intrusion of communications made in specific places. *Id.* at 361.

As applied to her own case *Katz* offers no support because there can be no reasonable expectation of privacy for a guest in someone's home who asked to leave the home after the guest slaps the owner and then engages in a shouting and pushing match with the owner's roommate, creating a situation where the owner is compelled to call the police for assistance. Brown has offered no legal authority to stand for her proposition that she had a right to privacy in this situation.

More significantly, Brown thereafter engaged in unlawful conduct in Respondents' presence by delaying and obstructing Respondents who had arrived at the express request of Sprecher who called for assistance.

Next, Brown cites to the dissent of Justice Marshall in the case *Smith v. Maryland*, 442 U.S. 735 (1979), to say that "privacy is not a discrete commodity, possessed absolutely or not at all". *Smith*, at 749. (*See Writ Petition, pg. 7*)

This citation is not helpful to Brown's petition. The issue was whether persons who voluntarily disclose information to third parties because they are required to so, have lost their right to privacy for the information disclosed. Brown offers no explanation as to how this case or this dissenting opinion supports her petition.

Brown cites *Terry v. Ohio* 392 U.S. 1 (1968), arguing that this Court said "the protections of the Fourth Amendment are not subject to verbal manipulation. It is the reasonableness of the officer's conduct, not what the state chooses to call it, that counts." (*Writ Petition, pg. 7.*)

This reference was not found in the case of *Terry*, supra, however *Terry* does address the Fourth Amendment's protection against unreasonable search and seizure. Brown doesn't say how *Terry* applies to her case or how it supports her. The District Court however, in analyzing Respondents' motion for summary judgment did review the Fourth Amendment analysis to her case.

The District Court noted that the Fourth Amendment permits brief investigative stops where the officer has a "particularized and objective basis" for suspecting the person he is stopping has engaged in criminal activity. The officer must have a reasonable suspicion in order to justify the stop. The reasonable suspicion is dependent upon the information known to the officer and the degree of reliability. The standard takes into account the totality of the circumstances. Though a mere hunch will not suffice, the standard is less than what is necessary for probable cause. *Brown v. County*, supra, at 588, citing *Navarette v. California* 134 S.Ct. 1683, 1687 (2014); and *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)

The District Court said that in the present case the undisputed facts showed that the initial detention of Brown was lawful. The deputies knew that Sprecher called 911 to report a domestic disturbance involving Brown and Sprecher and when Burton approached the door he heard Brown arguing loudly with Sprecher. Brown's own declaration said that she and Roger had been shouting and pushing each other and Sprecher was afraid they would kill each other. Roger told Brown in front of the deputies that he had been asking to leave and wanted her to leave sooner. Roger also told Burton that Brown had been slapping him. Brown's own demonstrated behavior provided further reliability to Sprecher's statements.

Brown lastly argues that she has the inherent right to life, liberty, and the pursuit of happiness. She argues this extends to the right to eat,

drink, or smoke anything, provided the user take responsibility for the effects. (*Writ Petition, pg. 7.*)

Brown fails to accept that she was not a welcomed guest in Sprecher's home. If she had been initially, the situation changed and Sprecher wanted her to leave and asked her to leave. Ultimately, the police came to assist him in that effort. Respondents endeavored to assist Sprecher and Brown in the least restrictive way possible, but Brown was either unwilling or unable to confine her actions within the law. The detention and arrest were reasonable under the totality of the circumstances.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Dated: April 24, 2019

Respectfully submitted,

DENNIS E. WAGNER, Esq.
WAGNER & PELAYES, LLP
Attorneys for Defendant,
DEPUTY SCOTT BURTON;
DEPUTY TRAVIS
WIJNHAMER; and DEPUTY
TOM HOLLENBAUGH