No. _____

In the
SUPREME COURT OF THE UNITED STATES

John L. Corrigan, Jr.

Petitioner,

v.

City of Savage, a municipal entity; Police Officer Gabe Kerkaert, Police Officer Edward Culbreth, Police Officer Kyle Klapperick; Police Officer Alexandria Marklowitz; Police Officer Ashley Uthe, Amber Bernier, a private individual; Assistant Scott County Attorney Nelson Rhodus; Judge Christian Wilton; Scott County Sheriff Luke Hennen; Probation Officer Lynn Hanson; and Scott County, a municipality,

Respondents.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals For The
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court held in *Heck v. Humphrey,* 512 US 477 (1994) that an individual cannot bring a § 1983 claim based on "actions whose unlawfulness would render a [prior] conviction or sentence invalid" unless he can "prove that the conviction or sentence has been reversed" or otherwise invalidated. In *Spencer v. Kemna,* 523 U.S. 1 (1998) five justices endorsed in dictum the view that Heck does not bar an individual not "in custody," and therefore ineligible for habeas relief, from seeking damages under § 1983. The question presented is:

Whether the court below erroneously held, in conflict with the decisions of seven other circuits, that the favorable termination rule applies even if an individual is no longer incarcerated, and therefore ineligible for habeas relief.

RELATED PROCEEDINGS

Corrigan v. City of Savage, et. al., No. 19-1920 (8th Cir. Dec. 02, 2019) (affirming).

Corrigan v. City of Savage, et. al., No. 19-1920 (8th Cir. Dec. 02, 2019) (final judgment).

Corrigan v. City of Savage, et. al., No. 18-2257 (MN District Court Apr. 4, 2019) (memorandum opinion and order dismissing)

Corrigan v. City of Savage, et. al., No. 18-2257 (MN District Court Apr. 5, 2019) (judgment)

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OPINIONS BELOW

The opinion of the court of appeals (App. 1a) is unreported. The opinion of the district court (App. 2a) based on the Magistrate's report and recommendation (App. 13a) is unreported.

The court of appeals affirmed the district court's decision on December 2, 2019 (App. 1a) and issued judgment the same day.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

42 U.S.C. §1983 – Civil Action for Deprivation of Rights, provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

Corrigan Is Given A Ticket For 5th Degree Battery For Following Someone 15 Minutes To The Police Station.

John Corrigan followed Bernier for 15 minutes after a questionable highway lane change by Bernier. At the end of the 15 minutes, Bernier stopped in the Savage City Police Department Parking Lot. Within minutes police officers arrived. Bernier gave a sworn statement. Corrigan was interrogated but remained relatively silent throughout the interrogation. He was cited for 5th Degree Battery, given back his passport, and after approximately 40 minutes under police supervision, left the scene shortly after Bernier.

At arraignment Corrigan requested a verified complaint. The verified complaint changed the charge from misdemeanor 5th Degree Battery to a gross misdemeanor charge of stalking.

Corrigan was tried, convicted and sentenced to 120 days in jail for stalking. His appeal was denied. His petition for review filed in the Minnesota Supreme Court was also denied.

Corrigan Brings A Civil Rights Action, The District Court Holds His Claims To Be Barred By Heck, And The Eighth Circuit Affirms.

This is a civil rights action brought under 42 U.S.C. § 1983 and raising supplemental state-law claims concerning the actions of five defendant police officers; Bernier, a private individual; Scott County - Judge Wilton, Assistant Prosecutor Rhodus; Sheriff Hennen, and Probation Officer Hanson; also Scott County and City of Savage for:

- false arrest;
- malicious prosecution;
- denial of due process;
- prosecutorial misconduct;
- conviction under an unconstitutional statute;
- denial of access to the courts;
- municipal liability; and
- cruel and unusual punishment.

The Magistrate filed a 38-page Report and Recommendation on January 14, 2019. The report recommended that Defendants motion to dismiss and motions on the pleadings be granted. Corrigan's objection to the Report and Recommendation was overruled, and the Report was adopted by U.S. District Judge, Ann D. Montgomery on April 4, 2019. Judgment followed on April 5, 2019.

Judge Montgomery determined among other things that the:

- unlawful arrest;
- constitutional issue; and
- Savage City Defendants (the five police officers)

are barred by *Heck*.

Corrigan appealed the U.S. District Court for the Eighth Circuit. He petitioned the court that the appeal be heard *en banc* to address the circuit split on the *Heck* issue. However, the panel review summarily affirmed the District Court on December 2, 2019. Judgment followed on the same day.

This Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

In *Heck v. Humphrey*, the Supreme Court held that a state prisoner cannot bring a § 1983 suit for damages where a judgment in favor of the prisoner would "necessarily imply the invalidity of his conviction or sentence." . . .

Four areas of tricky *Heck* application commonly arise in police misconduct litigation.

1. First and most generally, there is a substantial body of doctrine grappling with the question of what types of claim "necessarily impl[y]" the invalidity of an existing conviction or sentence—an inquiry that *Heck* itself suggested would require close examination of the precise allegations of the § 1983 claim and its factual and legal relationship to the plaintiff's conviction or sentence.
2. Second and relatedly, there are special concerns that arise in application of the *Heck* rule to Fourth Amendment claims, including the interplay between *Heck* and the Supreme Court's later holding in *Wallace v. Kato* that Fourth Amendment claims sounding in false arrest accrue when the "claimant becomes detained pursuant to legal process."
3. Third, the Supreme Court and lower courts have struggled mightily with is the question of when the rule precludes a § 1983 action that concerns the conditions or fact of confinement but does not challenge the facts underlying the conviction.

4. Finally, courts continue to be split over the question of how *Heck* applies to claims brought by individuals who are no longer incarcerated and therefore are ineligible to challenge their convictions or sentences via habeas corpus. [Citations omitted][1]

THE DECISION BELOW CONFLICTS WITH SEVEN OTHER CIRCUITS ON THE PROPER APPLICATION OF THE HECK BAR WHEN HABEAS IS NO LONGER AVAILABLE

In 2010 there were seven circuits (Second, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh) that determined that a prisoner unable to pursue habeas was not barred by *Heck*. Four circuits (First, Third, Fifth, and Eighth) remained steadfast waiting for clear direction from this Court.[2]

This split has been ongoing since it was started when the First Circuit (1998) determined that *Heck did not* bar when habeas was not available and the Seventh Circuit determined that *Heck did* bar even when habeas was not available (1998).[3] It is now 2020 and this Court has not healed the conflict for over twenty years – to the ever growing *Heck* body of case controversy.

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[1] Police Misconduct, Law and Litigation, 3rd Edition, © 2015 Thomson Reuters, October 2018 Update, § 1:6.
[2] Cohen v. Longshore, 621 F.3d 1311, 1315-1317 (10th Cir. 2010)
[3] *Id.*, at 1315-1316.

Other Authorities Addressing Heck.

Other authorities also address concerns about the conflicts and the appropriate disposition of actions post-Heck.

- Defining The Reach Of *Heck V. Humphrey*: Should The Favorable Termination Rule Apply To Individuals Who Lack Access To Habeas Corpus? (This Note argues that the favorable termination requirement should not apply to individuals who are ineligible for habeas but seek to challenge the constitutionality of their criminal conviction or sentence.)[4]
- A Prisoner's Dilemma: The Eighth Circuit's Application of Heck v. Humphrey to Released Prisoners. (This Note argues that neither § 1983 nor the Federal Habeas Corpus Statute supports the favorable termination rule to claims for released prisoner's,)[5]
- The Heck Conundrum: Why Federal Courts Should Not Overextend the Heck v. Humphrey Preclusion Doctrine. (This Note argues that Heck should not bar a § 1983 petitioner who is not at the habeas intersection which would stretch Heck beyond what it was intended to avoid.[6]
- Favorable Termination After Freedom: Why Heck's Rule Should Reign, Within Reason (This Note argues the favorable termination requirement should apply except when the state

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[4] Harvard Law Review, January 2008, Vol. 121, Issue 3, p. 868.
[5] Mitchell Hamline Law Review: Vol. 42: Iss. 2, Article 5. Tyler Eubank (2016)
[6] BYU L. Rev. 185, Lyndon Bradshaw, (2014).

> did not provide the plaintiff a full and fair chance to litigate his claim in state criminal court proceedings.)[7]

These other authorities also recognize the split between the circuits and the need for this Court to address this divisive issue.

Even now, this Court is asked to resolve another *Heck* conflict between the Sixth, Tenth, and Eleventh Circuits and the contrary position of the Second, Third, and Fifth Circuits.[8]

> This case presents an important and recurring question on which the courts of appeals are sharply divided: . . . . This Court's intervention is sorely needed: The question presented arises frequently, in courts of all levels across the country. And this case presents an ideal vehicle for resolving this important question.[9]

Early Heck Differences Within the Eighth Circuit

Even the Eighth Circuit is not free from *Heck* conflicts. Three circuit judges agreed that because plaintiff was no longer in custody there was likely no *Heck* bar.[10]

Also in a concurring decision, one circuit judge wrote separately expressing his concern that the Eighth Circuit's approach "needlessly place[s] at risk

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[7] Louisiana L. Rev Thomas Stephen Schneidau, 70 (2010).
[8] Morris v. Mekdessie, No. 19-266, Petition for Writ of Certiorari, filed August 26, 2019.
[9] *Id.*, at 10, Reasons for Granting the Petition.
[10] Hanks v. Prachar, 457 F.3d 774, 776 (8th Cir. 2006) (we agree with Hanks that *Heck* likely did not apply because he was no longer in custody).

the rights of those outside the intersection of § 1983 and the habeas statute, individuals not 'in custody' for habeas purposes."[11]

ERROR OF THE COURT BELOW.

Unconstitutional Statute –

- Corrigan followed Bernier for 15 minutes in a non-aggressive, non-threatening manner;
- all 50 states have stalking laws – Minnesota is the only state that can convict an individual for one instance of the unlawful act – the other 49 states require at least 2 instances of the unlawful act;
- exceptions to the Minnesota Stalking Statute include: a) free speech (protesting Bernier's reckless driving falls under that); and b. citizen's arrest;[12]

Minnesota's stalking law is unconstitutional as applied to Corrigan, void-for-vagueness, and permits "a standardless sweep [that] allows policemen prosecutors, and juries to pursue their personal predilections.[13]

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[11] Newmy v. Johnson, 758 F.3d 1008, 1014 (8th Cir. 2014), quoting J. Souter in *Heck.*

[12] MN 609.749 Subd. 7. Exception. . . . protected by state, federal or tribal law or the state, federal, or tribal constitutions. . . .

[13] Kolender, v. Lawson, 461 U.S. 352, 357-358, (1983) [Citations omitted].

Unlawful Arrest –

- The state claims that Corrigan was involved in a *Terry Stop* and therefore was never arrested.
- A *Terry Stop* is a brief arrest and when not brief changes the encounter into one requiring probable cause;[14]
- "Purpose of requirement that an officer may make a warrantless misdemeanor arrest only if the offense is attempted or committed in his presence is to prevent warrantless misdemeanor arrest based on information from third parties (which is exactly what happened to Corrigan).[15]
- If police officer did not see a misdemeanor committed in his presence, his duty is to go before a magistrate and obtain a warrant for arrest of the person;[16]

Corrigan was arrested, without a warrant based on a third party where the misdemeanor was not committed in police presence.

Prosecutorial Misconduct –

- The prosecutor introduced at trial the police video that showed Corrigan refusing to answer questions put to him by the police – improperly using Corrigan's silence to impeach;
- The prosecutor was aware of Bernier's testimony about her reckless driving. However, it was only introduced for the first time at trial – this denied Corrigan a fair trial (Corrigan was prevented

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[14] Id., at 364-365.
[15] State v. Jensen, 351 N.W.2d, 29 (App. 1984)
[16] City of St. Paul v. Webb, 97 N.W.2d 638 (1959)

from effectively presenting his case both for pre-trial motions and for trial;[17]

- Deliberately eliciting inadmissible and prejudicial evidence relating to Corrigan's following – trying to encourage claims of aggressive driving which were not true and claims that Bernier was "scared" and "very scared" which she was not;

When dealing with Bernier, the prosecutor was acting in both an investigatory role (not absolute immune) and an advocative role (absolute immunity). Corrigan is only challenging prosecutor's investigatory role;[18]

Bernier's False Statements -

- Bernier's original statement to the police omitted her reckless driving – this only came out during the trial;
- Bernier's statements relating to Corrigan's aggressive driving and being "scared" and "very scared" were fabrications designed by the prosecutor to justify the stalking charge – these statements were not part of her sworn statement to the police;

Bernier was acting as a state pawn by first the police (coercing her to make a statement) and then the prosecutor (coercing her to show aggressive driving

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[17] Prosecutorial Misconduct, 2nd Edition, 2015-2016, © 2015 Thomson Reuters, p. 274, § 5:16 – Nature and limitations of *Brady* – Time of disclosure-Post-conviction disclosure ("The *Brady* rule protects a criminal defendant's right to a fair trial, and extends to all stages of the judicial process").

[18] Imbler v. Pachtman, 424 U.S. 409, (1976)

and coercing her to claim she was scared) – therefore she was acting for the state;[19]

Magistrate's Biased Report and Recommendation

- The *Heck Bar* is a legitimate argument given this circuit's position on *Heck*. But that would not preclude an action for unlawful arrest if that would not invalidate the conviction.[20]
- There is no heightened pleading requirement for civil rights cases;[21]
- When a claim is challenged under Rule 12(b)(6), the court presumes that all well-pleaded allegations are true, resolves all reasonable doubts and inferences in the pleader's favor, and views the pleading in the light most favorable to the non-moving party.[22]

The Report did not view the pleadings in the light most favorable to the non-moving party as pointed out in Corrigan's spirited objection to the Report. The Report was extremely biased in favor of the defendants.

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[19] Focus on the Family v. PSTA, 344 F.3d 1263 (11th Cir. 2003) (test to determine if actions by private entity are properly attributed to the state where the government "has coerced or at least significantly encouraged the action alleged to violate the Constitution." NOTE: Had Bernier made a full and voluntary statement to the police she would not be acting as a state actor.

[20] Laurino v. Tate, 220 F.3d 1213 (10th Cir. 2000) (suspect's proof that police lacked probable cause to arrest does not necessarily imply invalidity of conviction).

[21] Police Misconduct, p. 684.

[22] Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 249 (2009)

CONCLUSION

For the foregoing reasons the petition for writ of certiorari should be granted.

Respectfully submitted,

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February 26, 2020

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
No. 19-1920

John L. Corrigan, Jr.
Plaintiff – Appellant,
v.
City of Savage, et.al.
Defendants – Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: November 25, 2019
Filed: December 2, 2019
[Unpublished]

Before COLLOTON, BENTON, AND GRASZ, Circuit Judges.

PER CURIAM.

John Corrigan appeals the district court's[1] dismissal of his pro se action asserting claims under 42 U.S.C. § 1983 against the City of Savage and several of its police officers, Scott County and several of its employees, the trial court judge who presided over his criminal trial, and the victim of the underlying criminal charge. After careful de novo review, we conclude that the district court did not err in dismissing the case. See Kelly v. City of Omaha, 813 F.3d 1070, 1075 (8th Cir. 2016) (de novo review of grant of Rule 12(b)(6) motion); Saterdalen v. Spencer, 725 F.3d 838, 840-41 (8th Cir. 2013) (de novo review of district court's grant of judgment on the pleadings). Accordingly, we affirm. See 8th Cir. R. 47B.

[1] The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Becky R. Thorson, United States Magistrate Judge for the District of Minnesota.