

19-8728
No. _____

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

Joshua Neil Harrell — PETITIONER
(Your Name)

The People of the State of California ^{vs.} — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of California
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Neil Harrell, CDCR# BH7394
(Your Name)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether the unreasonable search and seizure prejudicially violated the Fourth and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Superior Court of California, County of Solano Case No. FCR336761
Entitled: "The People v. Harrell"

State of California, Court of Appeal, First Appellate District, Division Four
Case No. A156017 Entitled: "The People v. Harrell"

Supreme Court of California Case No. S259968
Entitled: "The People v. Harrell"

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People v. Douglas, *supra*, 240 Cal. App. 4th at p. 872.

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Chapman v. California (1967) 386 U.S. 18, 24.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Division Four, First Appellate District, Appeals court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 02/11/2020.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment that prohibits unreasonable searches and seizures.
(Appendix A, pg. 1 Paragraph 2; pg. 2 Paragraphs 1, 3; pg. 3 Paragraphs 1, 2, 3, 4, 5; pg. 4; pg. 5; pg. 6 top Paragraph.)

Fourteenth Amendment that prohibits states from denying due process and equal protection. (Appendix A, pg. 1 Paragraph 2; pg. 2 Paragraphs 1, 3; pg. 3 Paragraphs 1, 2, 3, 4, 5; pg. 4; pg. 5; pg. 6 top Paragraph.)

Cal. Pen. Code, § 530.5, subd. (c)(2) - Possession of identifying information.
(Appendix A, pg. 1 Paragraph 1; pg. 2 Paragraph 2; pg. 3 Paragraph 3; Appendix B, pg. 1, 3)

Cal. Pen. Code, § 1473.6 Officer Anderson's false testimony
(Appendix A, pg. 2 Paragraphs 2, 3; pg. 4 Paragraph 3; pg. 5 Paragraphs 1, 2, 4; pg. 6 top Paragraph)

Cal. Pen. Code, § 1538.5 - Motion to suppress evidence
(Appendix A, pg. 2 Paragraph 1; pg. 1 Paragraph 2; pg. 3 Paragraphs 2, 3, 4, 5)

Cal. Pen. Code, § 3067, subd. (d) that prohibits "law enforcement officers to conduct searches for the sole purpose of harassment." (Appendix A, pg. 2 Paragraphs 2, 3; pg. 5 Paragraph 3)

Cal. Veh. Code, § 52006 "When only one license plate is issued for use upon a vehicle, it shall be attached to the rear thereof" (Appendix A, pg. 2 Paragraph 2; pg. 4 Paragraph 3; pg. 5 Paragraph 4)

Federal Rules of Evidence 903(7) - Negative nonexistant evidence.
(Appendix A, pg. 2 Paragraph 2; pg. 4 Paragraph 3; pg. 5 Paragraph 4)

STATEMENT OF THE CASE

On November 24, 2017, the defendant Joshua Neil Hassell was arrested and charged with Possession of identifying information (Pen. Code, § 530.5 (c)(2), (c)(3)).

A March 26, 2018 motion to suppress evidence was granted on March 28, 2018, before the Honorable E. Bradley Nelson because the People failed to present competent evidence that Officer Anderson was informed by the dispatcher that the defendant "Hassell" was on PRCs before the illegal detention, search, and seizure. Officer Anderson's body camera recordings proved to the Court that the illegal detention, search and seizure was conducted before the dispatcher informed him of "Hassell's" PRC status. The search and seizure without a warrant was unreasonable (Pen. Code, § 1538.5(a)(1)(A)). The illegal detention, search and seizure resulted in cases dismissal. (CT 74.)

On March 29, 2018, the Prosecution refiled the first amended Solano County Information No. FCR336781 charged defendant "Hassell" with: three counts of acquiring and retaining Personal identifying information with a prior conviction. Pen. Code, § 530.5(c)(2); further alleging one Prior Prior Strike § 667, subd. (d), (b)-(j), § 1170.12, subd. (b)), and four Prior term Priors § 667.5, subd. (b)). (CT 57-59; 108-116.)

The defense's July 30, 2018 section 1538.5 motion to suppress evidence was denied on August 13, 2018 (CT 72-80; 83-91; 96.)

Jury trial ensued before the Superior Court judge Michael Smith. Guilty verdicts resulted. (CT 166-167; 169.) The trial judge found true the Prior Strike and Prison terms in a bifurcated court trial. (CT 169.)

A defense motion to dismiss the Prior Strike was denied. (Appendix B, CT 193-201; 205-220.) On October 25, 2018, an aggregate sentence of 12 years, 8 months was imposed: Count one, upper three years doubled

to six years; counts two and three, consecutive sixteen-month terms; Prior Prison terms, consecutive four years. (CT 257-259.)

On December 11, 2018, a timely notice of appeal was filed. (CT 260)

On appeal, "Harrell" contended: (1) the judgment must be reversed because of the erroneous denial of the motion to suppress evidence; (2) the convictions must be reclassified as misdemeanors under section 490.2; and (3) the four Prison term enhancements must be stricken due to an amendment to section 667.5, subdivision (b) (section 667.5 (b) that became effective January 2020).

The Court of Appeal rejected the first contention on appeal but agreed that the convictions must be reclassified as misdemeanors and that the section 667.5 (b) enhancements must be stricken. (Appendix A, Typed Opn. 6, 7, 8.)

The defendant "Harrell" Petitioned For Review in the California Supreme Court, the erroneous denial of his motion to suppress evidence alone, and, the People Petitioned For Review the Court of Appeals decision to reclassify the felonies to misdemeanors alone. Neither Party sought for review the Court of Appeals decision to strike the section 667.5 (b) enhancements.

Harrell timely filed an answer to the People's Petition For Review Pursuant to Cal. Rules of Ct., rule 8.500 (e)(4). The People never filed an answer to Harrell's Petition For Review, nor did the People file a Reply to Harrell's answer.

The California Supreme Court granted the People's Petition For Review and denied Harrell's Petition For Review on February 11, 2020. (Appendix C)

REASONS FOR GRANTING THE PETITION

The Unreasonable Search And Seizure Prejudicially Violated The Fourth And Fourteenth Amendments.

The Procedural and Factual background.

A March 26, 2018 motion to suppress evidence was granted on March 28, 2018 before the Honorable E. Bradley Nelson the People failed to present competent evidence that officer Anderson was informed by the dispatcher of the defendant Harrell's PRCS status before the detention, search, and seizure initiated. Officer Anderson's body camera recordings of the incident proved that the illegal detention, search, and seizure was conducted before the dispatcher informed him of defendant Harrell's active PRCS status. The warrantless detention, search, and seizure resulted in the cases dismissal. (CT 74.)

On March 29, 2018, the prosecution refiled. On June 18, 2018, judge David E. Power denied defendant Harrell's June 18, 2018, suppression motion based solely on Anderson's false testimony in conjunction with a Preliminary hearing and holding to answer (CT 74-75.)

The defense moved in Superior Court to suppress illegally seized evidence (CT 72-80) Pursuant to a warrantless search because Anderson's false testimony that he was told by dispatch was not competent evidence to establish defendant Harrell was in fact on PRCS during the

warrantless detention and search. This was false testimony. The body camera recording proved that the information transmitted by the dispatcher was transmitted a "couple of minutes" after officer Anderson initiated the illegal detention, search, and seizure. (PHT 14, 25.) De novo review of the preliminary hearing transcript (PHT 1-40) with an independent determination of the law applied to the facts failed to present and meet the Prosecution's burden of competent evidence that established defendant Harrell's PRCS status (CT 77-79.) The *Harvey-Madden*² rule required independent evidence of reliability which was never supplied. Hence, there was no competent evidence of the search's reasonableness (CT 78-79.)

The Prosecution's opposition (CT 83-91) argued that a *Harvey-Madden* objection could be variously refuted sufficiently by presenting the information or a copy of the arrest warrant or its abstract, or circumstantial evidence verifying that Probable Cause had not been manufactured (CT 87-89.) Sufficient evidence of reliability had been presented because Anderson received from defendant Harrell, the name, Joshua Harrell and on October 11, 1976 date of birth, which Anderson provided to Police dispatch for a record check and received back information a "couple of minutes" after the illegal detention, search, and seizure initiated, that the defendant Harrell was in fact on PRCS actively through 2020 (CT 90; PHT 14, 25, 35.) Additionally, the court took judicial notice of defendant Harrell's PRCS case FCR329394 filed against Joshua Harrell and listing birth date which corroborated Anderson's information received from dispatch that defendant Harrell was in fact on PRCS (CT 90; PHT 36.)

² *People v. Harvey* (1958) 156 Cal. App. 2d 156; *People v. Madden* (1970) 2 Cal. 3d 1017.

At the August 13, 2018 suppression motion before Judge Smith, the defense noted and objected that the prosecution's judicial notice request was of the PRCs case, FCR329394, not any specific record within the case, such as when defendant Harrell was placed on PRCs at the time of the search to justify the vehicle's warrantless search. (1 RT; PHT 36.)

Judge Smith denied the suppression motion as follows: "Applying the standard that is to be applied when the Court is basically reviewing what the magistrate did at the Preliminary hearing, I concluded... that there is a sufficient factual basis for what the magistrate did in denying the motion to suppress. [Paragraph]. And based upon that, I will deny the renewed motion to suppress that's been brought here in the Superior Court in that case." (1 RT 37-38; CT 96.)

Officer Anderson's false testimony is fundamentally unfair and has created a manifest injustice.

The Court of Appeal based its decision to reject the contention the judgment must be reversed because of the erroneous denial of the motion to suppress evidence relying on Officer Anderson's testimony that was false. De novo review of Anderson's body camera recording of the incident of the illegal detention, search and seizure provides facts that prove his testimony proving it to be false.

Anderson testified that he used information provided by defendant Harrell to run a record check through Police dispatch and was advised that defendant Harrell was on active PRCs prior to the search and seizure, then Anderson "removed Harrell from the car to conduct a PRCs compliance check of the vehicle." (CT 75, 76.)

This was false testimony. Anderson's body camera recording of this incident proved this was false testimony. Proof of this exists in the transcripts. The information transmitted by the dispatcher was transmitted a "couple of minutes" after he initiated the illegal detention, search and seizure (PHT 14, 25)

The Court of Appeal erred in relying on officer Anderson's false testimony that the vehicle the defendant Harrell was in did not have a license plate. The vehicle had a dealers plate in the rear of the vehicle. It was legally parked on the side of the road. (See Cal. Veh. Code, § 5200(b))

Anderson initially testified that he stopped near the vehicle because the "windows were foggy." (CT 64-74) There was never a citation of a traffic violation issued and non-existent evidence, absent of a record of an event which would ordinarily be recorded, gives rise to a legitimate negative inference that the event did not occur. See Fed. R. Evid. 803(7); *AZ v. Shinseki*, 731 F.3d 1303 (Fed. Cir. 2013).

The Supreme Court has consistently held that a conviction obtained by the knowing use of false testimony is fundamentally unfair. It has caused a manifest injustice. The Petition for writ of certiorari should be granted because there is a reasonable likelihood that Anderson's false testimony effected the judgment. e.g. *United States v. Agurs*, 427 U.S. 97, 103, 76 S.Ct. 2392, 49 L. Ed. 2d 342 (1976).

The Unreasonable Search And Seizure Violated The Fourth And Fourteenth Amendments to the United States Constitution

It was close to 3:00 a.m. and the defendant Joshua Neil Harrell was sleeping in the driver's side of the car. The vehicle was legally parked on the side of the road. The keys were not in the ignition and the defendant Harrell was not the Legal or Registered Owner of the vehicle. Officer Anderson testified that he stopped near the vehicle because it was the only vehicle on the block with "foggy windows" and noticed there was no license plate on the front of the vehicle. Anderson noticed the defendant Harrell sleeping in the car. He had every right to do a welfare check on Harrell and to check if the vehicle was registered or stolen, but any more than that was harassment § 3067, sub.(d); *People v. Reyes*, (1998) 19 Cal. 4th 743, 753-754. The vehicle not stolen, with current registration. Anderson knocked several times with his flashlight on the window to wake up Harrell. Before the Police dispatcher could confirm Harrell's PRC status the illegal detention, search, and seizure began.

The Fourth Amendment to the United States Constitution guarantees: "The right of the People to be secure in their Persons, ... Papers, and effects, against unreasonable searches and seizures, shall not be violated..." The Amendment's Purpose is to safeguard the individual's privacy and security against arbitrary invasions by governmental officials. *Camara v. Municipal Court* (1967) 387 U.S. 523, 528. A state court must provide a person with the minimum constitutional protection accorded by the United States Supreme Court. *Oregon v. Hass* (1975)

420 U.S. 714, 719. A presumption exists that a warrantless search is unreasonable unless it falls within a specifically delineated exception to the warrant requirement. *Coolidge v. New Hampshire* (1971) 403 U.S. 443, 454-455. "[A] search is not made legal by what it turns up." *United States v. D. Re* (1948) 332 U.S. 581, 595, fn. omitted. The Fourth Amendment is enforceable against the States through the Fourteenth Amendment. *Ker v. California* (1963) 374 U.S. 23, 33. Evidence obtained through a search and seizure violative of the Fourth Amendment must generally be excluded in the criminal prosecution. *Mapp v. Ohio* (1961) 367 U.S. 643, 655.

The Legislature has not intended to authorize law enforcement officers to conduct searches for the sole purpose of harassment (§ 3067, subd. (d)). Statutory searches prohibit arbitrary, capricious, or harassing searches. *People v. Douglas* (2015) 240 Cal. 4th 955, 861, 863; *Samson v. California* (2006) 547 U.S. 843, 856. The officer's knowledge based upon the objectively reasonable belief standard is required. *People v. Douglas*, supra, 240 Cal. 4th at pp. 862, 865, 868. Rarely historical facts, such as what facts the officer knew and whether he subjectively believed defendant was on PRCS, are reviewed for substantial evidence. (Id. at p. 869.)

When an officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. *Terry v. Ohio* (1968) 392 U.S. 1, 16. An officer may detain or arrest a suspect based on information received through official channels. *People v. Brown* (2015) 61 Cal. 4th 968, 983; *People v. Madden*, supra, 2 Cal. 3d at p. 1021; *United States v. Hensley* (1985) 469 U.S. 221, 231-233. *Honey-Madden* maintains continuing vitality. *People v. Romeo* (2015) 240 Cal. App. 4th 931, 945. This Court independently applies law to the facts. (Id. at pp. 941-942.)

The Prosecution's showing is insufficient when no basis is adduced *People v. Madden*, *supra*, 2 Cal. 4th at p. 1021, or the related evidence is of "a very vague nature" *People v. Harvey*, *supra*, 156 Cal. 2d at p. 521, or "was wholly insufficient to justify a detention." *In Re Eskiell S.* (1993) 15 Cal. App. 4th 1638, 1644. Here, the related evidence was insufficient to justify a detention. (*Ibid.*) Stated differently, even if the defendant Harrell was subject to a statutory PRCs search, and his expectation of privacy was "slight" *People v. Douglas*, *supra*, 240 Cal. App. 4th at p. 872, Anderson was not authorized to search defendant Harrell for the purpose of harassment (§ 3067, subd. (d)) when Harrell was asleep at 3:00 a.m. (PHT 10-12) he did not have the capacity to form the intent necessary for committing the crime alleged.

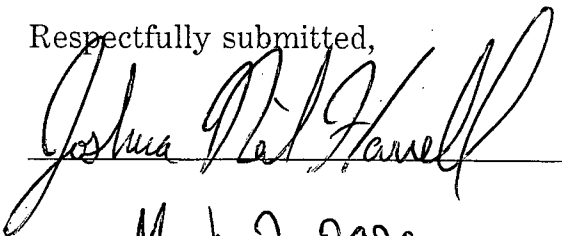
The Prejudicial error contributed to the verdicts obtained.

The Prejudicial error contributed to the verdicts obtained. *Chapman v. California* (1967) 396 U.S. 18, 24. The illegally seized evidence comprised the offenses' personal identifying information in all three counts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: March 2, 2020