

OCT 19 2020

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No. 19-8728

In The Supreme Court Of The United States

JOSHUA NEIL HARRELL,
Petitioner,

VS

California,
Respondent.On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit
Petition For RehearingJoshua Neil Harrell, MCRA BH7394
Folsom State Prison, 5-B1-22
P.O. Box 950
Folsom, CA 95763
(916) 985-8610 (Ext. 4444)

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OCT 28 2020

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SUPREME COURT, U.S.

Sup. Ct. R. 44(2)

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interest of justice because: The trial court's prejudicial error overruling Petitioner's Harvey-Madden objection contributed to the verdict obtained. There was an unreasonable detention and search that violated the Fourth and Fourteenth Amendments to the United States Constitution.

1. On October 5th, 2020, this court denied the petition for a writ of certiorari.

2. The principal ground cited in the court's per curiam opinion cited 2019 WL 6338463, was based on officer Anderson's false testimony about how the incident-related occurred. The petitioner petitioned for review the crucial issue and assumed it had been fully and completely determined by its denial in the Supreme Court of California case No. S959768.

3. The August 10, 2020, Court of Appeal for the First Appellate District of California's Opinion for Partial Publication came as a surprise to petitioner because it redresses the erroneous denial of the Suppression Motion. Petitioner had to brief this issue again in this case by another Review Petition in the California Supreme Court, and was unaware that this crucial issue would still be pending. The petitioner expected this opinion on the issue of whether the felonies should be reclassified as misdemeanors.

1 alone and not on the issue of the warrantless detention and search.

2
3 4. Petitioner was not granted any opportunity by the Court to review the officer
4 involved ("Anderson's") body camera recording of the arrest to distinguish the
5 facts in this case on how the Harvey-Madden objection should have been
6 sustained and how it was in Court's error to overrule it. People v. Harvey
7 (1958) 156 Cal. App.2d 156; People v. Madden (1970) 2 Cal.3d 1017.

8
9 5. This case contains several crucial factual and procedural errors that warrant
10 its determination by a different or at least altered rule.

11 a. The Procedural and Factual background

12
13 A March 26, 2018, motion to suppress evidence was granted on March
14 28, 2018, by the Honorable E. Bradley Nelson. The People failed to present
15 competent evidence. Anderson testified the reason he stopped near the vehicle
16 is because it was the only car on the block where "all the windows were
17 fogged." His body camera recording of the arrest showed that the
18 warrantless detention and search initiated before the dispatcher
19 transmitted the information about Petitioner's active PRCS status. The
20 warrantless detention and search resulted in the cases dismissed (CT 74).

21 On March 29, 2018, the prosecution refiled. On June 18, 2018, Judge
22 David E. Power denied the Petitioner's June 18, 2018, suppression motion
23 based solely on Anderson's testimony that was false and in conjunction
24 with a preliminary hearings standards on holding to answer. (CT 74-75)

25 The defense moved in Superior Court to suppress illegally seized evidence
26 (CT 72-80) pursuant to a warrantless detention and search. Because
27 Anderson's testimony was not competent evidence to establish Petitioner
28

was in fact on active PRCs prior to the initiation of the warrantless detention and search. The fact is that the information transmitted by the dispatcher was transmitted a "couple of minutes" after Anderson initiated the illegal detention and search. (PHT 14, 25)

De novo review of Anderson's body camera recordings of the incident and the preliminary hearing transcript (PHT 1-40) with an independent determination of the law applied to the facts failed to present and meet the prosecutors burden of competent evidence that established Anderson's knowledge from credible sources of petitioner's PRC status prior to the illegal detention and search. (CT 77-79) Besides differently, Anderson indicated the warrantless detention and search when petitioner informed him of his PRC status. Before the dispatcher transmitted the information, petitioner's Hayes-Madden objection was the proper objection that should have been sustained. It was the trial court's error to overrule this objection. The Hayes-Madden case^① required independent evidence of reliability which was never supplied. Hence, there was no competent evidence of the searches reasonableness.

(CT 78-79)

The court erred in concluding the Hayes-Madden objection allowing insufficient evidence and the reliability of how it was presented. Anderson received the information from the petitioner that he was on active PRCs and the warrantless detention and search initiated based on this information alone. After a "couple of minutes" into the warrantless detention and search, the dispatcher transmitted the information that petitioner was on PRCs actively through 202D. (CT 90; PHT 14, 25, 35)

At the August 13th 2018 suppression motion before Judge Smith, the defense noted and objected that the prosecutors judicial notice request was of the PRCs case number FPR329394, not any specific record within the case. Such as when officer Anderson's knowledge was confirmed from

^① People v. Hayes (1989) 156 Cal. App. 2d 156; People v. Madden (1970) 2 Cal. 3d 107.

1 reliable sources of Petitioner's PRCs at the time of the warrantless detention and
2 search to justify it. (1 RT; PHT 36.)

3 Judge Smith denied the suppression motion as follows: "Applying the standard
4 that is to be applied when the Court is basically reviewing what the magistrate
5 did at the preliminary hearing. I conclude... that there is sufficient factual
6 basis for what the magistrate did in denying the renewed motion to suppress
7 that's been brought here in the Superior Court in that case." (1 RT 37-38;
8 CT 96.)

9 The Court of Appeal in case number A156017 based its determination
10 on Anderson's false testimony of how the events occurred that the suppression
11 motion's denial was not in error.

12 The Petitioner Petitioned For Review in California Supreme Court case
13 number S259468 on the erroneous denial of the motion to suppress
14 evidence done and it was denied.

15 California Petitioned For Review of the decision by the Court of Appeal
16 For the First Appellate District, Division Four unpublished opinion 2019 WL
17 6338463. to reclassify the felonies as misdemeanors. Review was
18 granted and deferred pending resolution of *People v. Jimenez* (2018) 22 Cal.
19 App. 5th 1282. The "Jimenez" case was decided and the Supreme Court
20 vacated the Court of Appeals opinion to reclassify the felonies as misdemeanors
21 applying the "Jimenez" case.

22 On August 10, 2020 the Court of Appeal For the First Appellate District,
23 Division Four issued a Partial Publication Certified opinion that addresses
24 the issue of Petitioner's denied Suppression Motion, the Prior Prison-term
25 enhancements, and the felony convictions reclassification as Misdemeanor
26 offenses.

27 The Petitioner Petitioned For Review the felony convictions reclassif-
28 ication as misdemeanors and the erroneous denial of the suppression

1 motion that is now still pending before the California Supreme Court

2
3 b. Officer Anderson's false testimony is fundamentally unfair.

4
5 Officer Anderson's testimony changed throughout the proceedings and
6 based on the initial Police report he made on November 24th 2017. In this
7 Police report has states: "All of the windows were fogged as if somebody
8 was inside" and further states: "Violation of VR 5200 both plates required."

9 Anderson stopped near the vehicle because the windows were fogged and
10 noticed there wasn't a license plate on the front of the vehicle. None
11 of these reasons offer any objectively reasonable Probable Cause. His
12 testimony of how the events occurred changed.

13 At the hearing on March 26, 2018, Anderson testified that he stopped
14 near the vehicle because it was the only car on the block with "all
15 the windows fogged". On this same day of the hearing, the court's
16 review of Anderson's body camera recording determined that there
17 was a warrantless detention and search conducted before the dispatcher
18 transmitted the information of Petitioner's PRCS status.

19 In the following proceedings Anderson's testimony contradicts the events
20 of how they actually occurred. He later testifies that the vehicle did
21 not have any license plates at all and this was his reason to stop
22 near the vehicle and that the Police dispatcher transmitted the information
23 of Petitioner's PRCS status prior to his illegal detention and search
24 stating he "removed Harrell from the car to conduct a PRCS compliance
25 check of the vehicle." (PT 75, 76) This was all false testimony. Anderson
26 stopped near the vehicle because "all of the windows were fogged". The
27 vehicle was legally parked on the side of the road with a dealers plate
28 on the rear in compliance with Cal. Veh. Code section 5200(b) that permits

1 a vehicle to have only one license plate at the rear of the vehicle. The
2 language in Anderson's Police report "both plates required" insinuates the fact
3 that there was at least one license plate on the vehicle. On March 26th,
4 2018, Anderson testified he stopped near the vehicle because it was the
5 only vehicle on the block with "fogged windows" and this is not a vehicle
6 code violation.

7 There is no traffic citation for a vehicle code violation ever issued
8 and non-existent evidence absent of a record of an event which would
9 ordinarily be recorded. Gives rise to a legitimate negative inference that
10 the event did not occur. Fed. R. Evid. 903(7); AZ v. Shinseki, 731 F.3d
11 1303 (Fed. Cir. 2013).

12 The Court of Appeal erred in its opinion that was based solely on
13 Anderson's false testimony. The Supreme Court has consistently held that
14 a conviction obtained by the knowing use of false testimony is funda-
15 mentally unfair. Officer Anderson's false testimony manifest injustice.
16 This Petition for the rehearing should be granted because there is a
17 reasonable likelihood that Anderson's false testimony contributed to the
18 verdict obtained and it is fundamentally unfair. e.g. United States v.
19 Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

20 c. The warrantless detention and search was unreasonable, violating
21 the Fourth and Fourteenth Amendments.
22

23 It was close to 3:00 a.m. in the morning. The petitioner was sleeping
24 in a car that he was not the Legal or Registered owner of. It was
25 legally parked on the side of the road with the keys in the center
26 console. Anderson testified that he stopped near the vehicle because it
27 was the only car on the block with "fogged windows". As he passed
28

1 By the vehicle he noticed a person sleeping in it and that there wasn't any
2 license plate on the front of the vehicle. In Anderson's Police report he
3 stated "both plates required" but Cal. Veh. Code section 52000(b) allows a vehicle
4 to have a license plate at the rear of the vehicle.

5 Anderson had the right to do a welfare check on the petitioners, and
6 to make sure the vehicle was registered or stolen but no more than that
7 was harassment. e.g. Section 3067(a). People v. Reyes (1998) 19 Cal. 4th 743,
8 753-754. The vehicle was not stolen with current registration. Anderson
9 knocked on the window several times with his flashlight to wake the
10 petitioners up before the dispatcher could confirm petitioners' PRCs
11 status, the illegal detention and search initiated.

12 The Fourth Amendment to the United States Constitution guarantees "The
13 right of the people to be secure in their persons, ... papers and effects,
14 against unreasonable searches and seizures, shall not be violated...
15 the Amendment's purpose is to safeguard the individual's privacy and
16 security against arbitrary incursions by governmental officials. Camara
17 v. Municipal Court (1967) 387 U.S. 523, 528. A state court must provide
18 a person with the minimum constitutional protection accorded by the
19 United States Supreme Court. Oregon v. Hass (1975) 420 U.S. 714, 719. A
20 presumption exists that a warrantless search is unreasonable unless it
21 falls within a specifically delineated exception to the warrant requirement.

22 Coolidge v. New Hampshire (1971) 403 U.S. 443, 454-455. [A search is not
23 made legal by what it turns up. United States v. D. R. (1948) 332 U.S. 581
24 595, fn. omitted. The Fourth Amendment is enforceable against the state
25 through the Fourteenth Amendment. Ker v. California (1963) 374 U.S. 23, 33.
26 Evidence obtained through a search and seizure violative of the Fourth
27 Amendment must generally be excluded in the criminal prosecution. Mapp

28 v. Ohio (1961) 367 U.S. 643, 655.

1 The Legislature has not intended to authorize law enforcement officers to conduct
2 searches for the sole purpose of harassment (Section 2067(d)). Statutory searches
3 prohibit arbitrary, capricious, or harassing searches. *People v. Douglas* (2015)
4 240 Cal. 4th 855, 861, 863; *Samson v. California* (2006) 547 U.S. 843, 856.
5 The officer's knowledge based upon the objectively reasonable belief standard
6 is required. *People v. Douglas*, supra, 240 Cal. 4th at pp. 862, 865, 868. "Relevant"
7 historical facts, such as what facts the officer knew, and whether he
8 subjectively believed petitioner was on PRCS, from a reliable source, are
9 reviewed for substantial evidence. (Id. at p. 869.)

10 When an officer accosts an individual and restrains his freedom to walk
11 away, he has "seized" that person. *Terry v. Ohio* (1968) 392 U.S. 1, 16.
12 An officer may detain or arrest a suspect based on information received
13 through official channels. *People v. Brown* (2015) 61 Cal. 4th 969, 983; *People*
14 *v. Madden*, supra, 2 Cal. 3d at p. 1021; *United States v. Hensley* (1985) 469
15 U.S. 221, 231-233. *Harvey-Madden* maintains continuing vitality. *People v.*
16 *Romero* (2015) 240 Cal. App. 4th 931, 945. This court independently applies
17 law to the facts. (Id. at pp. 941-942.)

18 The prosecution's showing is insufficient when no basis is adduced.
19 *People v. Madden*, supra, 2 Cal. 4th at p. 1021, or the related evidence is of
20 "a very vague nature." *People v. Harvey*, supra, 156 Cal. 2d at p. 521, or
21 "was wholly insufficient to justify a detention." *In re Eschiel S.* (1993) 15 Cal.
22 App. 4th 1638, 1644. Here, the related evidence was insufficient to justify
23 a detention. (Id.) Even if the petitioner was subject to a statutory
24 PRCS search and his expectation of privacy was "slight." *People v.*
25 *Douglas*, supra, 240 Cal. App. 4th at p. 872, Anderson was not authorized
26 to search the petitioner for the purpose of harassment (Section 2067(d)).
27 When he was asleep at 3:00 a.m., in the morning, he did not have
28 the capacity to form the intent necessary for committing the crime alleged.

1 The detention and search was unreasonable.

2
3 d. The Prejudicial errors contributed to the verdicts obtained.

4 All the prejudicial errors described contributed to the verdicts obtained.
5 Chapman v. California (1967) 386 U.S. 18, 24. The illegally seized evidence
6 comprised the offenses Personal identifying information in all three counts.
7

8
9 6. In an earlier decision, People v. Harrell, Solano County Superior Court Case
10 No. PPR336781, the court erred in overruling the Petitioner's Harvey-
11 Madden objection that should have been sustained

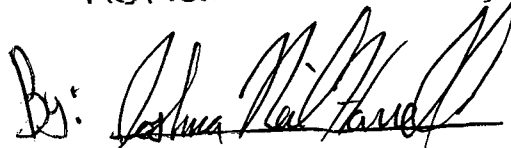
12
13 7. A rehearing tightly and squarely focused on the Harvey-Madden
14 objection that was overruled when it should have been sustained
15 is a matter of fundamental fairness to the Petitioner and would not
16 unduly burden the Court.

17 Conclusion

18
19 For the reasons just stated, Joshua Neil Harrell, urges that this Petition
20 for a rehearing be granted, and that, on further consideration, a de novo
21 review of Anderson's body camera recording of the illegal detention and
22 search to conclude the Harvey-Madden objection be sustained and it
23 was a court error to overrule it.

24 Dated: October 12th, 2020

Respectfully Submitted,

25
26 By: 
27 Joshua Neil Harrell
28 In Pro se

Certificate Of Good Faith By Counsel

I, Joshua Neil Hassell, in pro se, certify that this Petition for Rehearing is Presented in good Faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44(2) of the Rules of this Court.

By: Joshua Neil Hassell

Joshua Neil Hassell
In Pro se

Certification Of Compliance With Word Limits

As required by Supreme Court Rule 33.1(h), I certify that the document contains 2,028 words excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing information is true and correct. Executed at Sacramento County, Represa, California on the 12th day of October 2020.

By: Joshua Neil Hassell

Joshua Neil Hassell
In Pro se