

No. 20-1771

IN THE
Supreme Court of the United States

Charles Simonson,

Petitioner

-v-

Borough of Taylor, Pennsylvania, *et al.*,

Respondents

On Petition For Writ of Certiorari
To the Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

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ARGUMENT

- I. There was no independent collaborative evidence, and the court below did not require the same to make a warrantless arrest; however, the Seventh and Ninth Circuits require more than just a motivated victim statement to make an arrest, which is the correct standard in determining probable cause**

With the growing number of exonerations and police killings, the courts can no longer turn a blind eye to law enforcement's arrests or pursuits. No longer can society rely on the word of a law enforcement officer since some have dishonored their oath to serve and protect and uphold the Constitution of the United States. There must be evidence independent of a motivated victim's allegations before an arrest can be made for a crime, especially for the heinous accusation of attempted murder from an estranged spouse without a judge ensuring the evidence supports such a charge since the price tag of that arrest was almost a million dollars' bail. (App, B at 13).

One and half hours after five days is insufficient time for an attempted murder investigation when the police did not interview one single witness, one single neighbor who may have heard the gunfire to ensure they were not making a mistake that had profound effects on a citizen. With an arrest, a citizen loses his liberty and most likely his

family, his property and his job. All of which is necessary to fight a bad arrest; and once imprisoned, there is no hope from inside the prison walls to fight injustice.

Respondents minimize what happened to Charles Simonson since they mention only at the end of the summary of facts that Loretta Simonson recanted and not that she was arrested and pled guilty for providing false statements to authorities. Respondents diminish the effects of the false arrest by emphasizing that Charles Simonson was set free from prison the next day. However, Respondents fail to appreciate what harm they caused, the fear they instilled, and the severity of the injustice that could have occurred had a good neighbor not come forward and reported what she knew and heard the night of the alleged attempted murder six days earlier. (App, A. at 3).

A trained police officer should have ensured he had collaborative evidence before he relied solely on the word of a woman who was divorcing her husband and had many different divorce motivations for wanting to send her husband to prison. If that occurred, this Petition for Writ of Certiorari would not need to be filed. But it did not; and neither of the courts below saw the need for collaborative evidence, which is

necessary to help society swing the pendulum back to an equal balance of power between law enforcement and society in which law enforcement is not more important than everyday citizens.

The Seventh and Ninth Circuit require more than just a victim's statement to establish probable cause, which is the correct standard since it requires the necessary collaborative evidence before making an arrest that changes a man's life forever. BeVier v. Hucal, 806 F.2d 123, 128 (7th Cir. 1986); Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001). The Seventh and Ninth cases discuss the totality of circumstances, but they also require collaborative evidence, which should be the normal standard in all circuits to establish probable cause for a warrantless arrest.

Respondents argue that there is a difference in the level of crime in the Ninth Circuit case; however, the more severe of a crime, the more demanding the assessment of probable cause should be since there is a high probability that the suspect will not be able to make bond, as was the case for Charles Simonson, and he could have languished in prison had a neighbor not come forward the next day.

The fact that the police did not interview anyone is the problem, and this Court has the opportunity to correct that problem and ensure that less false arrests are made since the motive to lie is always present with witnesses, especially someone who has something to gain from an arrest like Loretta Simonson had in this case. Law enforcement needs collaborative evidence to ensure that they are making a good arrest since their actions can destroy lives.

Erroneously, Respondents state that a trauma psychologist was involved, but there was no such person who assessed the state of the alleged victim. And it would not matter anyway because that person is for the alleged victim and not an independent trained assessor of behavior. The victim advocate was not a psychologist, and her position was to support the victim as an arm of the police and not a trained law enforcement officer who gathers independent proof, not mere speculation, that a crime occurred.

Loretta Simonson was not credible since she never called the police on the night of the alleged events, which is remarkable since such a tale she told would have made any normal, rational victim call 911. The fact that Loretta Simonson did not call 911 proves that anything she said was

questionable at best since none of police officers involved asked her that simple question.

As noted by the Seventh Circuit, “Hucal's mistake was failing to question the parents, the Red Cross Center personnel, or the teen-ager watching the children. This mistake was unreasonable. A few questions would have given defendant some important information.” BeVier v. Hucal, 806 F.2d 123, 127 (7th Cir. 1986). As the Seventh Circuit explained had the police officer asked questions,

[h]e would have discovered that Robert and Annette had instructed each of the babysitters to keep the children in the shade and their diapers dry, sanitation facilities were nearby, Annette gave the boys daily showers, Clifford's diaper rash had been seen by a doctor, and Robert and Annette were treating it with the proper medication. Once this information surfaced, Hucal would have known that the BeViers were not neglecting their children. BeVier v. Hucal, 806 F.2d 123, 127 (7th Cir. 1986).

Respondent Roche did not even talk to Loretta Simonson before he arrested Charles Simonson, so how could he, the arresting officer, assess her credibility, which the entire 1 ½ hour case was built and dependent on Loretta Simonson. Just as the Seventh Circuit concluded, “... Hucal was unreasonable in not making those inquiries”, Respondent Roche was unreasonable in failing to ask the neighbors what they saw and heard.

Under that standard, Petitioner requests that this Court grant his Petition and find that collaborate evidence is always necessary before a warrantless arrest can be made regardless of the level of offense since that requirement ensures that society is protected from law enforcement.

II. There is a circuit split since collaborative evidence is necessary besides the victim-complainant allegations in the Seventh and Ninth Circuits but not in the Third Circuit

Respondents argue that probable cause is fluid; however, it is not as fluid as Respondents' desire since the Seventh and Ninth Circuits require more than just the victim's allegations to find probable cause. Consequently, there is a circuit split since the Third Circuit has held that a victim-complainant is sufficient to establish probable cause.

Respondents continue to claim that the evidence in this case involved more than just estranged, divorcing wife, Loretta Simonson's version of events. However, that is not the case. Everything relied upon by the Respondents comes from Loretta Simonson's mouth. There is no other evidence or witness statement that collaborated her grandiose version of events of what allegedly occurred five days earlier.

Those allegations did not prompt Loretta Simonson to call 911. Any reasonable police officer would question why since her husband just tried

to kill her while she was in bed and she did not call the police when she suffered an injury. Had Respondents asked that question even to themselves, the answer would have led them to interview the neighbors about what they saw or heard since Loretta Simonson's actions, or more importantly her inactions on the night in question make no sense.

Just as the Seventh and Ninth Circuits require, Respondents were required to investigate further before taking the drastic step of arresting a man for attempted murder. Had the Respondents taken more time and interviewed the neighbors, they would have learned that it was Loretta Simonson who had the shotgun in her possession and she caused injury to herself when the gun recoiled after it went off.

III. The lower court erred in affirming summary judgment since a reasonable jury could find that Respondents did not have probable cause to arrest Charles Simonson since more than his divorcing wife's proven false allegations were needed

The evidence shows that Respondents were more concerned about the news media coming to a small borough and gaining television attention for their efforts in catching an attempted murderer, than upholding their obligation and duty to arrest a person who actual committed a crime. (App. B, at 33).

Here, there is no question that a reasonable jury could conclude that Respondents did not have probable cause to arrest Charles Simonson for attempted murder since Loretta Simonson's wild allegations made no sense and were proven false. Had Respondents interviewed just one neighbor of Loretta Simonson, Leilani Raguckas, they would have concluded they did not have probable cause to arrest a man for attempted murder and change his life forever since Loretta Simonson was lying. Consequently, the Third Circuit erred in affirming summary judgment to Respondents.

The standard of probable cause to make a warrantless arrest required independent evidence besides a victim's allegations since innocent citizens should not spend one night in jail for a crime they did not commit. It is the police who initiate arrests, and if an arrest is not going to be reviewed by a neutral magistrate, law enforcement has a duty to society to ensure they have sufficient independent evidence to corroborate a victim's story since she may have a motive to lie. In adopting the standard held in the Seventh and Ninth Circuits, this Court is ensuring that innocent people are not falsely arrested and prosecuted for crimes they did not commit.

CONCLUSION

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

Respectfully submitted,

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