

Supreme Court, U.S.
FILED

DEC 03 2020

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No. 20-6873

IN THE
SUPREME COURT OF THE UNITED STATES

JOSHUA NEIL HARRELL — PETITIONER
(Your Name)

VS.

California — 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 HURRELL, 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?

Whether the Unreasonable Search an Seizure 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

Case No. FCR#36781, Solano County Superior Court "People v. Harrell"
Case No. A156017, First Appellate Court of Appeal "
Case No. S259968, California Supreme Court " "
Case No. A159923, First Appellate Court of Appeal " "
Case No. S254030, California Supreme Court " "
Case No. 19-8728, U.S. Supreme Court "Harrell v. California"
Case No. A159923, First Appellate Court of Appeal "People v. Harrell"
Case No. FCR#55488, Solano County Superior Court "In re JOSHUA HARRELL"

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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 is unpublished.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 is unpublished.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 B 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 is unpublished.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 First Appellate District, Appeals court appears at Appendix A to the petition and is

reported at Unknown (Partial Publication); 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).

[X] For cases from state courts:

The date on which the highest state court decided my case was 6/17/2020. A copy of that decision appears at Appendix E .

[X] A timely petition for rehearing was thereafter denied on the following date: 10/21/2020, and a copy of the order denying rehearing appears at Appendix B .

[] 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

The Fourth Amendment to the United States Constitution that prohibits unreasonable searches and seizures. (Appendix A, pg. 4; Appendix C, pg. 1)

The Fourteenth Amendment to the United States Constitution that prohibits states from denying due process and equal protection of the laws.

Cal. Pen. Code, § 1473.6 False testimony. Officer Anderson gave false testimony about certain facts throughout the proceedings.

Cal. Pen. Code, § 1538.5 Suppression of illegally seized evidence.
(Appendix A, pg. 2; Appendix C, pg. 2; Appendix F, pg. 9)

Cal. Pen. Code, § 3067, subd. (a) Prohibiting "law enforcement officers to conduct searches for the sole purpose of harassment." (Appendix A, pg. 6; Appendix C, pg. 5)

Cal. Veh. Code, § 5200, subd. (b) There was a dealer's plate on the rear of the vehicle that was legally parked on the side of the road at the time of the arrest. "When only one license plate is issued for use upon a vehicle, it shall be attached to the rear thereof."

STATEMENT OF THE CASE

On November 24, 2017, at approximately 3:00 a.m., the petitioner was sleeping in a car that was legally parked on the side of the road he was not the legal or registered owner of. The keys were in the center console and not in the ignition. There was a dealer's plate attached to the rear of the vehicle.

Officer Anderson was patrolling the area and noticed the vehicle the petitioner was in the windows "were forged." He also noticed the petitioner sleeping on the driver's side and that there wasn't any license plate on the front. Anderson stopped near the vehicle and knocked several times with his flashlight on the window to wake up the petitioner. Once the petitioner was awake, he asked for his name and date of birth, which was provided. Anderson also asked the petitioner if he was on PRCS and the petitioner admitted he was and a warrantless detention and search was initiated before proper channels could provide the information. It was a "couple of minutes" into the warrantless detention and search when the dispatcher transmitted the information of petitioner's active PRCS status. The search of the vehicle produced a few notebooks and a phone that contained personal identifying information. The petitioner was arrested and charged with three counts of possession of identifying information.

A March 26, 2018 motion to suppress evidence was granted and on March 28, 2018, the Honorable E. Bradley Nelson dismissed the case because the People failed to present competent evidence that officer Anderson knew of the petitioner's PRCS status through proper channels, prior to the illegal detention and search. The video that was submitted at the hearing of Anderson's body camera recording of the incident showed the warrantless detention and search was conducted before the dispatcher transmitted the information. The illegal detention, search and seizure resulted in the cases dismissal.

On March 29, 2018, the prosecution refiled, the first amended complaint case number FCR336781 charged petitioner with three counts of fraudulent possession of identifying information with a prior conviction. Pen. Code, § 530.5(c)(2); further alleging one prior strike § 667, subd. (d), (b)-(j), § 1170.12, subd. (b); and four prison term priors § 667.5, subd. (b). (CT 57-59; 108-116)

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

Jury trial ensued before the Solano County Superior Court judge Michael Smith, guilty verdicts resulted. (CT 16-167; 169) The trial judge found true the prior strike and prior prison terms in a bifurcated court trial. (CT 169) Petitioner's motion to dismiss the prior strike was denied. (CT 193-201; 205-220) On October 25, 2018, an aggregate sentence of 12 years, 8 months was imposed, to wit: count one, upper three years doubled to six years; counts two and three, consecutive sixteen month terms; four consecutive years for prior prison terms. (CT 257-259)

On December 11, 2018, a timely notice of appeal was filed. (CT 260) On appeal, petitioner 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 § 490.2, and (3) the four prior prison term enhancements must be stricken due to an amendment to § 667.5, subd. (b) (that became effective January 1, 2020)

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

The petitioner petitioned for review in the California Supreme Court the erroneous denial of the motion to suppress evidence alone. The People

petitioned for review the court of appeals decision to reclassify the felonies to misdemeanors.

The petitioner timely filed an answer to the People's petition for review. The People never filed an answer to the petitioner's petition, nor did the People file a reply to the petitioner's answer.

The California Supreme Court granted the People's petition for review and denied the petitioner's on February 11, 2020. (Appendix D) The California Supreme Court vacated the court of appeals decision to reconsider in light of People v. Jimenez (2020) 9 Cal.5th 53. (Appendix E)

The petitioner petitioned for a writ of certiorari in the United States Supreme Court, case number 19-8728.

On August 10, 2020, the court of appeal issued it's opinion that was partially published. The published portion rejects the contention that the convictions must be reclassified as misdemeanors and the unpublished portion affirms the denial of the suppression motion and concludes the prior prison term enhancements must be stricken. (Appendix A)

The petitioner then petitioned for review of the California Supreme Court in two seperate petitions: (1) the convictions must be reclassified as misdemeanors, and (2) the erroneous denial of the suppression motion.

The United States Supreme Court denied the petition for a writ of certiorari on October 5, 2020 (Appendix G) and the petitioner petitioned for the rehearing.

The California Supreme Court denied both of the petitions for review on October 21, 2020. (Appendix B)

REASONS FOR GRANTING THE PETITION

THE UNREASONABLE SEARCH AND SEIZURE PREJUDICIALLY VIOLATED THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

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 knew of the petitioner's PRCS status through official channels before the detention, search and seizure initiated. The video of Anderson's body camera recording of the incident showed that the warrantless detention and search was conducted before the dispatcher transmitted the information of petitioner's PRCS status. The illegal detention, search and seizure resulted in the cases dismissal. (CT 74)

On March 29, 2018, the prosecution refiled the charges. On June 18, 2018, judge David E. Power denied the petitioner's June 18, 2018 suppression motion based solely on Anderson's testimony in conjunction with the standards of probable cause at a preliminary hearing and holding to answer. (CT 74-75)

There wasn't any competent evidence to justify an objectively reasonable search or to establish the officer's knowledge of petitioner's PRCS status, through official channels, prior to the warrantless detention and search. The fact was the information transmitted by the dispatcher of petitioner's PRCS status was transmitted a "couple of minutes" after the officer initiated the illegal detention and search. (PHT 14, 25) De novo review of the preliminary transcripts (Appendix F) with an independent determination of the law applied to the facts failed to present and meet the prosecution's burden of competent evidence of the searches reasonableness. Anderson testified "I do not" remember that there was a dealer's plate on the

rear of the vehicle. (See Appendix F, PHT pg. 28, line 4) Cal. Veh. Code, § 5200(b) permits a vehicle to have only one license plate on the rear. Thus, there wasn't any vehicle code violation or objectively reasonable search.

The trial court erred in overruling petitioner's Harvey-Madden objection when it was the proper objection. The Harvey-Madden¹ rule required independent evidence of reliability which was never supplied. Hence, there was no competent evidence of the search's reasonableness. (CT 78-79) There wasn't any probable cause for the officer to stop the petitioner and Anderson did not learn through official channels of his active PRCS status. The petitioner admitted to Anderson he was on PRCS and that's when the illegal detention and search initiated. If Anderson had any valid probable cause to stop the petitioner who was sleeping in a car at 3:00 a.m., it was not presented. The Harvey-Madden objection should have been sustained but it wasn't.

At the August 13, 2018 suppression motion before Judge Smith, the petitioner objected the prosecution's judicial notice request of the PRCS case number FCR329394 because it did not justify the illegal detention and search and the officer did not have any knowledge of its existence prior to it. (1 RT; PHT 36)

The trial court judge erred in allowing the lower standard of evidence in a preliminary hearing to be presented in a trial by denying the suppression motion as follows: " Applying the standards that is to be applied when the court is basically reviewing what magistrate did at the preliminary hearing, I conclude... that there is a sufficient factual basis for what the magistrate did in denying the motion to suppress that's been brought here in the Superior Court in that case." (1 RT 37-38; CT 96) This is where the prejudicial determination violated the Fourth and Fourteenth Amendments to the United States Constitution. The evidence presented

was based on the lower standards of a preliminary hearing and not that is allowed in a trial. Thus, there was a prejudicial error. The Court of Appeal's Opinion that the denial of the suppression motion was not in error is wrong. There wasn't any vehicle code violation at all and officer Anderson did not have any knowledge of petitioner's PRCS status prior to the illegal search and seizure. At 3:00 a.m., in the morning sleeping in a legally parked car, what was he harassing the petitioner for? The prejudicial errors contributed to the verdicts obtained. Chapman v. California (1967) 386 U.S. 18, 24. The illegally seized evidence comprised the offenses' fraudulent possession of identifying information in all three counts, creating a manifest injustice on appeal. A writ of certiorari must be granted for the prejudicial error.

THE UNREASONABLE SEARCH AND SEIZURE VIOLATED THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

It is fundamentally unfair how certain facts were falsified or left out of the record in the proceedings.

On November 24, 2017, at approximately 3:00 a.m., the petitioner was sleeping in a car that was legally parked on the side of the road he was not the Legal or Registered owner of. The vehicle had a dealer's plate attached to the rear of it. The keys weren't in the ignition, they were in the center console. Anderson, who was patrolling the area that morning, attention was brought to the vehicle because it was the only car on the block with fogged windows. As Anderson drove by the vehicle, he noticed a person (the petitioner) sleeping on the driver's side. He also noticed that there wasn't any license plate on the front end of the vehicle is when he decided to stop near the vehicle. Anderson testified later that the vehicle was in violation of the vehicle code. (See Appendix F PHT pg. 11, line 4) Later Anderson testified "I do not" remember that there was a dealer's plate attached to the rear of the vehicle. (See Appendix F PHT pg. 28, line 4) Cal. Veh. Code, § 5200(b) permits a vehicle to have only one license plate attached to the rear of it. This fact was never mentioned and absent in the record.

Anderson testified that he used information provided by the petitioner to run a record check through police dispatch and was advised that petitioner was on active PRCS prior to the search and seizure. (CT 75,76) This was also false testimony. The truth is the information transmitted by the dispatcher was transmitted a "couple of minutes" after Anderson initiated the illegal detention, search and seizure. (See Appendix F PHT 14, 25)

The Supreme Court has consistently held that a conviction obtained by false information or information left out of the record is fundamentally

unfair. e.g. *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

There was no objectively reasonable search.

It was 3:00 a.m., and the petitioner was sleeping in a legally parked car. What was officer Anderson harassing the petitioner for? The car was not in any vehicle code violation. There was a dealer's plate attached to the rear of the vehicle permitted by Cal. Veh. Code, § 5200(b). The vehicle not stolen with current registration. Anderson may have had the right to do a welfare check on the petitioner, but anymore than that was harassment. See § 3067, subd. (d); *People v. Reyes* (1998) 19 Cal.4th 743, 753-754.

Anderson had to knock several times with his flashlight to wake the petitioner up. Once awake, the petitioner provided Anderson with true and correct information. Before Anderson could verify through official sources the petitioner's FRCS status, there was an illegal detention and search without valid reason.

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. Di 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. (See § 3057, subd. (d)) Statutory searches prohibit arbitrary, capricious, or harassing searches. *People v. Douglas* (2015) 240 Cal.4th 855, 861, 863; *Samson v. California* (2006) 547 U.S. 843, 856. The officer's knowledge based upon the objectively reasonable standard is required. *People v. Douglas*, supra, 240 Cal.4th at pp. 862, 865, 868. Purely historical facts, such as what the officer knew and whether he subjectively believed 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 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. *Harvey-Madden* maintains continuing vitality. *People v. Romeo* (2015) 240 Cal.4th pp. 931, 945. The court independantly applies law to the facts. (*Id.* at pp. 941-942)

The prosecutions 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 detention." *In re Eskiel* (1993) 15 Cal.App.4th 1638, 1644. Here, there is no evidence to justify a detention. (*Ibid.*) Stated differently, even if the petitioner was subject to a statutory PRCS search and his expectation of privacy was "slight"

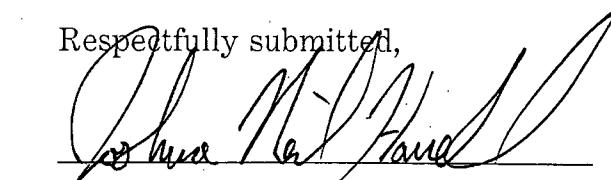
People v. Douglas, supra, 240 Cal.App.4th at p. 872, Anderson was not authorized to search petitioner for the purpose of harassment. (See § 3067, subd. (d)), it was 3:00 a.m. and the petitioner was sleeping in a legally parked car. (PHT 10-12) What was officer Anderson messing with the petitioner for?

The Court of Appeal is wrong in its opinion that the denial of the suppression motion was not in error because it was. The court should grant this petition for a writ of certiorari because the detention, search and seizure was unreasonable.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



John M. Harlan

Date: December 2nd, 2020