

22-6490 ORIGINAL
SUPREME COURT OF THE UNITED STATES

Wayne Johnson,

Petitioner,

vs.

State of California,

Respondent.

On Petition for a Writ of Certiorari to the California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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I. Questions Presented

Can it ever be harmless error for a State to force a Defendant to stand trial on multiple felonies while admitting into evidence as the foundation of the prosecution a **void restraining order**, one that was subsequently declared void by a separate panel of the Court of Appeal because it was issued without notice or opportunity to be heard, and once having done so is it Constitutional for the Appellate Court to **fabricate facts** that do not exist in the record to support an otherwise unconstitutional conviction thereby falsely suggesting the introduction of the void restraining order was not **harmful prejudicial error or a miscarriage of justice?**

Whether it is Constitutional for a State to circumvent a person's right to justice and possible Supreme Court review in a criminal case by burying an otherwise significant unconstitutional ruling in an **unpublished appellate opinion**.

II. List of Parties and Related Cases

Wayne Johnson vs. State of California (S276932) (Supreme Court of California Order Entered November 22, 2022

People vs. Wayne Johnson (A159389) (California Court of Appeal - Opinion Entered May 26, 2022)

Related Cases

Wayne Johnson v. Superior Court of California (A161862) (Petition For Writ of Habeas Corpus -California Court of Appeal - Order Entered May 26, 2022)

Wayne Johnson v. Superior Court of California (S258995) (Supreme Court of California Order March 11, 2020)

Cindy M. v. Wayne Johnson (A156750) (California Court of Appeal - Opinion Entered January 3, 2020 – No appearance by Opposing side – Complaining Party in Criminal Case, Address unknown)

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VI. Petition for Writ Of Certiorari

Wayne Johnson, a former inmate in the CDCR, father, grandfather, and member of the State Bar with no past discipline or criminal convictions, respectfully petitions this court for a writ of certiorari to review the California Supreme Court's Decision to deny his Petition For Writ Of Mandamus in Johnson v. California, Case Number S276932, denied en banc November 22, 2022.

In bringing this action, Petitioner hopes to avert what Justice Thomas referred to as a "High Tech Lynching."

The United States Supreme Court formulates its own rules for hearing cases, and in order to curtail the floodgates of litigation it usually considers cases decided by the highest court. That is a rule to promote judicial efficiency. It is not supposed to promote subversion of Constitutional rights.

However, California and some of the other states have created a policy of subverting the law by allowing Courts of Appeal to refuse to publish some cases for the sole purpose of denying certain citizens' rights guaranteed by the United States Constitution. That is what they have done in Mr. Johnson's case. That policy is arbitrary and capricious because there are not any rules for determining whether an opinion is to be published and therefore eligible for appeal. That policy is repugnant to the United States Constitution. State Justices can simply refuse to publish an opinion out of hatred, spite, racism, or just to avoid scrutiny of a higher court and the aggrieved person has no remedy.

Petitioner asked that the California Supreme Court overturn a clearly unconstitutional decision of the California Court of Appeal in People v. Johnson Case Number A159389, and related Petition for Habeas Corpus in A161862 stemming from Petitioner's unfair conviction in California Superior Court- Case Number 05-190590-0. The Court of Appeal upheld the conviction by misinterpreting and misapplying a rule of law set forth in an entirely different kind of case that is not even remotely related or on point.

Petitioner asks the Court to intervene because the State of California violated every conceivable constitutional right Petitioner had so it could convict him of crimes that never took place.

This a real case and controversy that impacts real people and all too often state court judges and justices bury unconstitutional decisions in unpublished opinions leaving aggrieved persons without any legal recourse. Petitioner challenges that practice because this is exactly the kind of issues the founders faced when they envisioned the Declaration of Independence. The founders faced trumped up charges and biased judges representing the crown who refused give the founders fair trials.

California Courts of Appeal have a long history of punishing political undesirables and persons of color by denying them fair trials and subsequent appeals by refusing to publish decisions, thus preventing those people from challenging their unconstitutional decisions.

Before trial, and before his arrest on an arrest warrant, the Superior Court of Contra Costa County in California issued a void restraining order that Petitioner had effective opportunity to challenge before trial.

The Superior Court Judge issued a 5- year restraining order without giving Petitioner notice or an opportunity to be heard. She did not feel it was important that anyone serve Mr. Johnson with the TRO. Prosecutors then charged Petitioner with committing criminal acts one of which was stalking while the erroneously issued order was in effect. That unconstitutional act created a presumption for the jury Mr. Johnson had committed all of the other acts he was accused of committed in the criminal case.

They arrested Petitioner and they ordered an excessive bail in the amount of \$255,000. When he posted bail and appeared in court, they revoked his bail and refused to release him so he could participate in his defense.

The court allowed the Prosecutors to introduce the void order along with all the other evidence, which was entirely speculative and circumstantial. Even the alleged victim could not describe with certainty anything the prosecution alleged Petitioner had done.

Mr. Johnson denies any involvement in any criminal activity. There were no witnesses to any of the acts and not one of the surveillance camera's captures Mr. Johnson on any of the crime scenes. No witness claimed to witness any criminal acts and no witness claimed to see pellet or a pellet gun on any crime scene. Alleged victim's medical records do not record any acute injuries or the recovery of any objects.

None of the criminal acts are supported by objective evidence. The December 2018 – January 2019 stalking allegations consist of victim's claims she briefly saw Mr. Johnson twice at a ballroom. On the first occasion he allegedly pointed at her and left. On the second, he peered through the front window. The September 2018 stalking allegations consist of victim's claims on one occasion Mr. Johnson posted her earrings on her front window, and on a separate occasion he posed a vague rhetorical question to her on a poster board she said covered her video ringer.

The original complaint charged Petitioner with two great bodily injuries. However, the Court dismissed both great bodily injury enhancements because they were **unfounded**. There was no fractured nose and there was no evidence of a wound from a pellet gun. Alleged victim visited the hospital following each alleged injury and both times her medical records disproved she suffered any visible or acute injuries.

Petitioner **appealed** the void restraining order months before the criminal trial; however, the Court of Appeal did not overturn that order after the criminal trial.

Although Petitioner posted an excessive bail in the amount of \$255,000, the court remanded him into custody and forced him to face trial in custody.

During the course of the criminal proceedings, Petitioner filed numerous writs challenging the void order and protesting his custodial status. The judge who presided over the criminal trial erroneously ruled Petitioner had waived his right to challenge the void restraining order in an informal bail hearing.

Nonetheless, the State of California forced Petitioner to stand trial with the jury being falsely and erroneously told Petitioner committed wrongful acts against alleged

victim while a valid restraining order was in place. That void restraining order was an **element** of one of the stalking offenses and it was an **exhibit** at the trial.

Realizing the void restraining order was improperly admitted into evidence, the Court of Appeal declared the error to be inconsequential and upheld the unlawful conviction by erroneously stating other evidence existed to support the verdict.

But for the **void restraining order**, the **dismissed claims of great bodily injuries**, and the **wrongful revocation of bail** the prosecution had no case.

VII. Opinions Below

On October 19, 2022, Mr. Johnson filed a Petition for Writ of Mandate because the Court of Appeal grossly misstated the law and the facts in order to uphold the conviction. On November 22, 2022, the California Supreme Court denied Mr. Johnson's petition for Writ of Mandamus. On May 26, 2022, the Court of Appeal issued its opinion. That Court of Appeal Decision, the Petition For Writ of Mandate, and the Supreme Court Denial are attached at Appendix C-D. ("App.") at 1-99.

VIII. Jurisdiction

Title 28 U.S.C. § 1257 (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Mr. Johnson believes Rule 10 of the Supreme Court applies because the Supreme Court may grant a Writ of Certiorari if a lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review.

Petitioner seeks Supreme Court review following the State of California's denial of his Petition for Writ of Mandamus impacting his rights and privileges claimed under the United States Constitution, particularly his right to due process. The State tried Petitioner under the false premise he engaged in behavior with a valid restraining order in place and that created a presumption everything he did was unlawful, which prevented him from receiving a fair trial.

Mr. Johnson invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Supreme Court's wrongful denial of his Writ of Petition For Habeas Corpus.

DIRECT APPEAL

There are no rules requiring a Court of Appeal to articulate any reasons for refusing to publish its opinion and thereby making the opinion eligible for Supreme Court consideration. Often times Courts misapply the rule so they can avoid important due process and other Constitutional rights and thus avoid higher court scrutiny. The publication rule was created to allow the courts to highlight important questions of law. It was not designed to deny appellate review to litigants with legitimate rights.

The California State Courts have been denying justice to mostly indigent litigants for generations by refusing to publish horrible unconstitutional decisions that distort the laws and facts by refusing to publish them, giving the impression that the issues involved are not cases and controversies or otherwise important enough to warrant review. That denies justice to millions who have rights and privileges guaranteed them under the Constitution. Many of those rights and privileges are just as important as, or more important, than those the Court of Appeal decides to interpret.

Petitioner is a law abiding, taxpaying citizen with no previous convictions and he feels he is entitled to be heard. Petitioner has rights and privileges that need protection and recognition just as most American Citizens.

The decision by the California Court of Appeal denying Mr. Johnson's direct appeal is unreported. California v. Johnson, Case No. A159389. Mr. Johnson made an unsuccessful attempt at a Petition For Writ of Mandamus in Johnson v. California

October 19, 2022, Johnson v. California S276932. The Supreme Court denied his Petition November 22, 2022. Petitioner asserts the State of California has a ministerial duty to recognize Petitioner's rights and privileges. The State of California has an obligation to not introduce unfairly prejudicial evidence in the form of unconstitutionally issued restraining orders to a jury falsely telling them Petitioner had an obligation to obey them.

IX. Constitutional Provisions Involved

United States Constitution, Amendment V:

The Fifth Amendment reads in part as follows: "No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment VI:

The Sixth Amendment reads in part "In all criminal prosecutions, the accused shall enjoy an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance ..."

The Fifth and Sixth Amendments are applicable to the States through the Fourteenth Amendment.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

X. Statement of the Case

Alleged victim alleged she was in a short-term tumultuous relationship with Mr. Johnson. She alleged when she terminated the entanglement Mr. Johnson stalked her. The primary stalking allegations were as follows: Alleged victim alleged on September 1 or 2, 2018, some unknown person tampered with her home locks. She alleged on September 4, 2018 Mr. Johnson entered her home garage and somehow fractured her nose. Her surveillance video did not support her claim any intruder was on her property. The medical evidence disproved she suffered any acute injuries.

She alleged on December 1, 2018 after 2 A.M. something struck her from behind as she exited a nightclub. She alleged a vehicle resembling a vehicle she believed Mr. Johnson owned exited a driveway behind her around that time. None of the numerous surveillance cameras captured the alleged attack. Alleged victim's medical records do not confirm any acute injuries or the recovery of any objects.

Mr. Johnson denied all the above allegations and he alleged the relationship was only a friendship. Alleged victim had a host of problems and she was subject to a **criminal protective order** for battery on her elderly mother. The trial judge would not allow Mr. Johnson to introduce evidence of alleged victim's mental state including her conviction for assaulting her mother and her husband who were protecting her children during one of her violent episodes. The court would not allow Mr. Johnson to question her estranged husband about irrational and violent things she'd consistently done which would have explained why she testified falsely and why she was paranoid, hostile, and volatile. That testimony which would have explained Mr. Johnson's sympathy and tolerance for her.

The prosecution introduced mostly fabricated accusations to convict Mr. Johnson. The trial judge even told the court reporter to violate the law and not to record certain objections so that his misconduct would not appear on the record. The Court Reporter has a ministerial duty to record all objections. (See *Imbler v. Pachtman*, (1976) 424 U.S. 409, 423, n. 20. Pp. 432-438. In particular, Mr. Johnson objected to the introduction of a photograph of an alleged pellet in lieu of the actual

pellet that alleged victim claimed someone at the hospital had given her. Alleged victim never showed the actual pellet to the police or the prosecutors and her medical records do not reflect medical staff claiming to recover a pellet at the hospital.

Void evidence is evidence that has no legal effect or relevance at all. They convicted Petitioner on the strength of subjective unsupported hearsay, innuendos and accusations that conflicted with the objective material medical and scientific evidence. Even more, the Court of Appeal misstated the trial evidence in order to avoid reversing the unlawful verdict.

There is not one piece of solid substantial evidence Mr. Johnson did any of the alleged criminal acts. And despite surveillance cameras being on the scene of every criminal act, not one of them captures Mr. Johnson or any other person committing any criminal acts.

The Framers drafted the Constitution to prohibit citizens from being tried without due process or forced to stand trial based upon irrelevant unfair or unduly prejudicial evidence.

*The rule set forth in **Old Chief v. United States**, 519 U.S. 172 (1997) is irrelevant prejudicial evidence should not be introduced at trial and especially used to convict a person in a criminal trial. (See **People v. Allen** (1978) 77 Cal.App.3d 924,934-935 [judgment reversed where witness inadvertently let slip that the defendant was on parole].*

Even marginally relevant evidence is unduly prejudicial and could result in confusion from litigation of collateral matters. (See **Daubert v. Merrell Dow Pharmaceuticals, Inc.**, 509 U.S. 579 (1993), and its progeny the use of marginally relevant evidence.) (See **Godwin v. Davey**, 139 S.Ct. 2703 (2019) Cert. Denied Petitioner moved to exclude evidence of the facts underlying the conviction because they were unduly remote, highly inflammatory, and more pre-judicial than probative.)

“Relevant evidence” means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

Only relevant evidence is admissible. Evidence, which is void at law, is void from its inception, and is irrelevant and should never be admitted. This is a rule of law that goes back over 150 years. (See *Stringer v. Lessee of Young*, 28 U.S. 320 (1830); *Crawford v. United States*, 198 F.2d 976 (D.C. Cir. 1952).) It is embodied in the California and Federal Evidence Codes. (See Federal Rules of Evidence 403 and California Evidence Code §350.) Irrelevant evidence is inadmissible. See Rule 402 Federal Rules of Evidence. (See California Evidence Code Section 210.)

A restraining order is a significant piece of evidence. It is a declaration by a judge of the court that the subject of the restraining order either engaged in the prohibited behavior, or once he learned of the accusations failed to contest them.

In this case, none of that was true because a Superior Court judge, who swore to uphold the law, decided to ignore Petitioner's Constitutional rights and she issued a 5-year restraining order against him based solely upon unsupported hearsay. Even worse, the court allowed that void order to be introduced in Mr. Johnson's criminal trial to create an inference he committed all the other alleged acts.

The Court of Appeal realizing the introduction of the void restraining order mandated a reversal, declared the restraining order to be irrelevant by erroneously and falsely writing the prosecutor did not rely heavily upon it when obviously it did because there was no other evidence. The Court then fabricated false facts to support the modified verdict and uphold the otherwise unconstitutional conviction.

The State of California issued a void restraining order against Petitioner October 4, 2018, and then proceeded to use that void restraining order as evidence to convict Petitioner of related and unrelated crimes based solely upon hearsay, speculation, and conjecture September 30, 2019.

The restraining order was declared void by a separate court of appeal January 3, 2020 in Cindy M. v. Johnson A156075 because the Court of Appeal found that no one served Mr. Johnson before issuing the restraining order. Moreover, the most severe allegations that were the basis for the restraining order were disproven at trial.

It was unfair to allege Mr. Johnson played any role in any alleged criminal activity. No witness claimed to see a weapon or any other suspect on December 1, 2018, the night alleged victim reported she was attacked from behind.

There were two other incidents alleged associated with that stalking charge. The second and third were alleged victim's claim she briefly saw Mr. Johnson over the course of a month and a half at a public ballroom. Even if that were true Mr. Johnson had frequented that location for over twenty years and was well known to the staff and patrons. Moreover, other than her false claim Mr. Johnson pointed at her after she followed him outside there was nothing unlawful about his presence.

Petitioner complained that the jury had access to that void restraining order and used it to determine he committed all the other alleged unlawful and questionable acts.

Despite there being witnesses and surveillance videos at all the alleged crime scenes, not one of them captures any unlawful activity or captures Petitioner's image.

XI. The Unlawful Use of the Void 5-year Restraining Order

The use of the void 5-year restraining order was a clear violation of Petitioner's due process rights. There is no way anyone can have a fair trial with a jury falsely believing he or she was subject to a restraining order. The fact that a judge even signed a restraining order without a hearing is a violation of Mr. Johnson's rights.

On appeal, Petitioner vehemently contested the use of the restraining order and he argued it was improper to mention the void restraining order because it was both harmful and irrelevant. The void order created an inference Petitioner is a bad person and was likely to have committed all the other acts of which he was charged.

On Appeal, Court of Appeal realized the void restraining order denied Mr. Johnson a fair trial. Nonetheless the Court supported upheld a modified conviction by citing facts that are not found anywhere in the record. The Court even went so far as to misquote the law. It misapplied the ruling in *People v. Muhammad* (2007) 57 Cal.App.4th 484 to find that a Penal Code Section 646.9(a) can be substituted for a Penal Code Section 646.9(b) regardless of the prejudicial effect of the order on the

other charges in the case. That is not the rule in the *Muhammad* case. The ruling in the *Muhammad* did not involve ignoring the impact of prejudicial evidence. That case related solely to whether a defendant could be sentenced multiple times for the same conduct under separate subdivisions of the same statute.

Mr. Johnson is not attacking whether he should be charged with subsection a or b. That is totally irrelevant. He is arguing the use of the void restraining order was unfairly prejudicial and the introduction of that order denied him a right to a fair trial.

First, it is unrealistic for a court to infer a jury has sufficient restraint to ignore the introduction of a previously issued restraining order.

Second, there was no admonition limiting how a jury could consider the restraining order. It could use the restraining order to infer Mr. Johnson committed other crimes or acts.

Third, the restraining order presupposes Petitioner committed the alleged September 4, 2018 attack in the garage so the jury was led to believe a judge had already found he committed the garage attack and broke alleged victim's nose even though the great bodily injury enhancement was discarded based upon insufficient evidence.

Ultimately, the Court of Appeal distorted the record by changing the testimony and the evidence resulting and "arbitrary and capricious" ruling that had no relevance to the true facts in the case. (See *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).) Moreover, fabricated evidence is evidence that is not supported by "substantial evidence." Uncorroborated hearsay is not substantial evidence. That is not a fair and impartial hearing. (See *Consolidated Edison Co. v. NLRB*, 305 U.S.197 (1938).) Because the Court of Appeal altered the findings it erroneously decided that there was substantial evidence to convict Petitioner of the other offenses even without the introduction of the void restraining order and it went on to state facts that were either not criminal in nature or not otherwise found in the record to support that view.

XII. REASONS FOR GRANTING THE WRIT OF CERTIORARI

The State of California's conduct is repugnant to the United States Constitution because it denied Mr. Johnson a fair trial.

The State of California should not escape appellate view by refusing to publish the unconstitutional decision because the State of California too often uses that practice to avoid appellate scrutiny. Besides, Mr. Johnson has no other available remedy. No person or group of persons should have the power to deny a person due process or by fabricating facts, or changing evidence to make it appear a crime occurred.

Contrary to the Court of Appeal opinion there is no video evidence of Mr. Johnson on any of the alleged crime scenes. Alleged victim testified she did not identify her residential lock problem and she never showed her locks to the police. Alleged victim testified she in December 2018 she traveled to the Allegro Ballroom knowing Mr. Johnson was present and she testified she followed him outside, not the other way around. Alleged victim's medical records are void of recovering any metallic objects and the notation of a "streak artifact" in the radiation beam does not contradict that. The most ridiculous of the allegations is on some unspecified date Mr. Johnson passed alleged victim's parked car at an unknown rate of speed and came within three feet of it.

There is no evidence of an assault with a deadly or otherwise.

This is high tech lynching because there is no credible evidence any crimes took place. Historically, courts have not required evidence of crimes when accusations are leveled at Black men. The accusation Mr. Johnson's vehicle came within three feet of alleged victim's parked car is an example of pure racism.

Those are just a few of the exaggerations falsely cited by the Court of Appeal so it could claim the void restraining order did not operate as a miscarriage of justice.

After Petitioner applied for a rehearing based upon the false recitation of the facts from the record and the erroneous Muhammad analysis, and made a motion to recall the remittitur that the Court of Appeal denied, but failed to file, Petitioner filed a

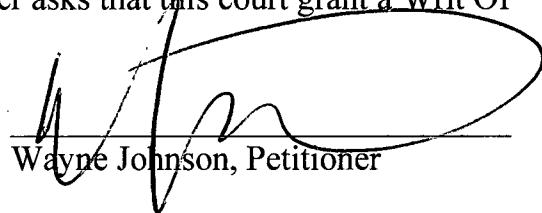
Petition for Writ of Mandamus based upon pure Constitutional grounds that was also improperly denied.

The California Supreme Court wrongfully denied Mr. Johnson's petition for Writ of Mandamus on November 22, 2022. According to California law, a higher court should issue a writ of mandamus to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no other adequate remedy by law. There is no possible way that a jury could learn Petitioner acted while subject to a 5-year restraining order and ignore it and it does not matter if they heard about it once or multiple times. The Court of Appeal committed too many clear errors and it misapplied the law so as to purposely deny Petitioner his Constitutional rights and Mr. Johnson had no other legal remedy at law.

CONCLUSION

For the forgoing reasons, Petitioner asks that this court grant a Writ Of Certiorari.

Respectfully submitted,



Wayne Johnson, Petitioner