NO. _____

In the Supreme Court of the United States

JOAN GHOUGOIAN, BARBARA SIMON, CHARLES BRAXTON, AND VINCENT CROCKET,

Petitioners,

v.

LAMARR MONSON,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Reverse conviction cases are overwhelming headlines and local governmental entities.[1] Courts are grappling with the significant issues arising in these cases, including the application of the appropriate constitutional standards and the boundaries of a testimonial oath, both pillars of our justice system. This case provides a vehicle for the Court to provide guidance in reverse conviction cases on these core issues and align the Court's prior holdings in *Devenpeck, Manuel*, and *Thompson*. In *Devenpeck v. Alford*, 543 U.S. 146, 148 (2004), the Court held that an arrest is reasonable in the face of probable cause for *any* crime. In *Manuel v. City of Joliet*, 580 U.S. 357 (2017), the Court then extend Fourth Amendment protections to all pre-trial detentions. And in *Thompson v. Clark*, 596 U.S. 36 (2022), the Court accepted that malicious prosecution is a valid Fourth Amendment claim. Relying on *Thompson*, and throwing *Devenpeck* aside, the Sixth Circuit now requires that officers have probable cause for the specific crime for which a prosecutor elects to issue charges. These holdings are irreconcilable. To address these trembling pillars of American justice, Petitioners present the following questions:

1. Whether the Fourth Amendment's objective standard applies to all claims arising thereunder, such that there is no violation so long as probable cause exists to believe that an individual has committed any crime?

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[1] Lartey, J., *In 2022, Exonerations Hit a Record High in the U.S.*, https://www.themarshallproject.org/2023/05/20/wrongful-conviction-exoneration-2022-record-kim-foxx (last accessed April 3, 2024).

2. Whether an individual can challenge the voluntariness of a statement in a suit brought under Section 1983 after being given the opportunity to challenge it and testifying under oath that it was voluntary in state court?

PARTIES TO THE PETITION

Petitioners and Defendants-Appellants below

- Joan Ghougoian
- Barbara Simon
- Charles Braxton, and
- Vincent Crocket

Respondent and Plaintiff-Appellee below

- Lamarr Monson

LIST OF PROCEEDINGS

Direct Proceedings below

United States Court of Appeals (Sixth Circuit)
Nos. 22-2050/22-2122
Lamar Monson v. Joan Ghougoian, et al.
Date of Final Opinion: January 8, 2024

United States District Court (E.D. Mich.)
No. 18-cv-10638
Lamar Monson v. Joan Ghougoian, et al.
Summary Judgement Opinion: November 9, 2022
Supplemental Summary Judgment Opinion:
December 6, 2022

Related Proceedings

Criminal Case
Wayne County Circuit Court
No. 96-001138-01-FC
State of Michigan v. Lamar Monson
Dismissal without Prejudice: August 25, 2017

Habeas Petition
United States District Court (E.D. Mich.)
No. 08-cv-13275
Lamar Monson v. Debra Scutt
Order Staying and Closing Case: January 25, 2013

Wrongful Imprisonment Compensation Act (WICA) Case
Michigan Court of Claims
No. 20-000144-MZ
Monson v. State of Michigan
Stipulated Order of Judgment: January 21, 2017

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Joan Ghougoian, Barbara Simon, Charles Braxton, and Vincent Crockett, respectively petition for a writ of certiorari to review portions of the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra.*, 1a-28a) is unreported but available at 2024 WL 84093. The district court issued two opinions on Petitioners' Motion for Summary Judgment (App., *infra.*, 31a-38a, and 39a-65a), both of which were appealed to the Sixth Circuit, are available at 2022 WL 17477140 and 2022 WL 16836332, respectively. However, only the district court's first decision (App., *infra.*, 39a-65a), discusses the issues relevant to this petition.

JURISDICTION

The judgement of the court of appeals was entered on January 8, 2024. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

The court of appeals had jurisdiction to hear this appeal as it involved legal issues concerning qualified immunity. *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985). The district court had jurisdiction to address

this case because it raises questions arising under the Constitution. 28 U.S.C. § 1331.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

Reverse conviction cases are currently challenging and twisting long-standing legal concepts like probable cause and sworn oaths. These cases present unique challenges given the passage of time between conviction and reversal. When faced with these cases, courts, like the Sixth Circuit, are struggling to reconcile the threshold constitutional principles spanning the Court's Fourth Amendment jurisprudence. This has resulted in opinions wherein Fourth Amendment claims are allowed to proceed despite clear conflicts with the Court's prior opinions on the Fourth Amendment's objective analysis in cases like *Devenpeck* and *Graham*.

The Court has consistently held that the Fourth Amendment requires an objective analysis of one thing: whether an invasion of liberty, *i.e.*, a search or seizure, is reasonable. But since the release of the *Thompson* opinion, malicious prosecutions claims have blossomed into creatures foreign to the Fourth Amendment. Lowers courts are emboldened by *Thompson* to define the contours of such claims, diverging from the plain text of the Amendment in the process. The Sixth Circuit did so in this case when it required that police officers ensure that probable cause exists for the exact charge the prosecution files.

The Court should address whether this holding conflicts with the objective analysis required under the Fourth Amendment, and define the contours of a Fourth Amendment claim, *i.e.*, whether there can be various iterations of a Fourth Amendment claim.

The Court should also address the bounds of sworn testimony, including the ability of a party to recant sworn statements. The Court has previously recognized that the importance of sworn testimony in our criminal justice system. *United States v. Dunnigan*, 507 U.S. 87, 97 (1993). Such that it should now address whether that very testimony can later be recanted to provide a basis for a Section 1983 claim for damages.

STATEMENT OF THE CASE

Lamar Monson, Respondent, was convicted by a jury of murdering a twelve-year-old girl in 1997. It is undisputed that Monson had acknowledged knowing the victim and that she held drugs for him. These facts alone established probable cause that Monson committed numerous drug and related crimes. Yet, Monson was only charged by prosecutors with murder, following confessions by Monson that he now claims were coerced. These confessions though, would have no impact on the existence of probable cause as to the drug crimes.

Monson's motion for a new trial was granted in 2017 based on previously identified, but untested print evidence, and testimony of a witness that came forward many years after the conviction. Monson was released from prison and filed suit against the City of Detroit (now dismissed) and several of the police officers involved in the murder investigation. Petitioners are those officers and, relevant to this petition, Plaintiff alleges that they maliciously prosecuted him by fabricating evidence and coercing statements from him and others. Petitioners contend that there can be no Fourth Amendment violation because, objectively, there was probable cause to believe Monson committed the drug crimes.

REASONS FOR GRANTING THE PETITION

I. The Court Should Define the Proper Fourth Amendment Analysis for All Claims That Arise Under It.

The plain text of Fourth Amendment reads:

> The right of the people to be secure in their persons, houses, papers, and effects, *against unreasonable searches and seizures*, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV (emphasis added). The amendment provides only one right: to be free from unreasonable searches and seizures. *Id.* It further permits an intrusion to his protected liberty only when a warrant supported by probable cause is issued. *Id.* The Court has defined what constitutes an unreasonable intrusion to this liberty, *i.e.*, a search or seizure through its decisions. *See Terry v. Ohio*, 392 U.S. 1 (1968) (defining when a brief search for weapons is reasonable); *Graham v. Connor*, 490 U.S. 386, 397 (1989) (defining seizures using excessive force as unreasonable).

Given the single right conferred by the Fourth Amendment, one would then assume that all causes of action brought pursuant to 42 U.S.C. § 1983 for a violation of the Fourth Amendment must arise out of an unreasonable search or seizure. One would further

assume that all such claims would be adjudicated under the same principles. This case proves that not all Circuits make such logical assumptions when it comes to so called "malicious prosecution" claims.

Respondent Lamar Monson brought a claim for malicious prosecution against Petitioners and alleged that it arises under, and the lower courts have treated it as arising under, the Fourth Amendment. (App., *infra.*, 16a) The Sixth Circuit relied on *Thompson v. Clark*, to conclude that a malicious prosecution claim exists under the Fourth Amendment. The Sixth Circuit then held that to avoid a malicious prosecution claim, all of the police officers involved in the underlying investigation (Petitioners) had to have probable cause to support the specific charge brought against Monson, which in this case was murder. (App., *infra.*, 16a citing *Sykes v. Anderson*, 625 F.3d 294, 311 (6th Cir. 2010)). In doing so, it rejected Petitioners' argument that they only needed probable cause that Monson committed *any* criminal violation, as previously required in other Fourth Amendment contexts. *See Devenpeck v. Alford*, 543 U.S. 146, 148 (2004).

Petitioners now urge the Court to address whether probable cause for any criminal violation negates any alleged violations of the Fourth Amendment. Petitioners posit that the Fourth Amendment's objective standard, as previously defined by the Court on several occasions, should apply equally to all Fourth Amendment claims. Such an application is guided by the plain text of the amendment and precedent.

Under the Fourth Amendment, and in the context of an arrest, the Court's precedent holds that an objective standard applies such that an officer is not required to identify the correct reason for the arrest

so long as there is probable cause for any arrest. *Devenpeck v. Alford*, 543 U.S. 146, 148 (2004). In *Devenpeck*, the Court considered a "closely related" requirement that looked at whether the stated offense and the offense for which probable cause actually exists were closely related. *Id.* at 152. The Court rejected the rule, explaining that it would result in situations where "[a]n arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in precisely the same circumstances* would not." *Id.* (emphasis original).

The Court has also repeatedly stressed that the Fourth Amendment applies an objective standard based on the facts available to an officer. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968); *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (holding that court must look at "historical facts, viewed from the standpoint of an objectively reasonable police officer" to assess probable cause; *Graham v Connor*, 490 U.S. 386, 397 (1989) (applying objective standard to use of force scenarios); *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (applying objective standard to warrantless searches); *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011) (holding that there are only two exceptions to objectivity in Fourth Amendment analysis, for special-needs and administrative-searches, in both situations evidentiary bar is lower or non-existent, and rejecting any suggestion to the contrary).

In 2017, the Court held that pretrial detentions without probable cause violate the Fourth Amendment, regardless of the initiation of legal process, because the initial arrest violation (one without probable cause) is one continuing violation. *Manuel v. City of Joliet*, 580 U.S. 357, 368-69 (2017).

In deciding *Manuel*, the Court ignored the question it initially had agreed to review: whether the Fourth Amendment houses a malicious prosecution claim. *Manuel*, 580 U.S. at 377-78 (J. Alito dissenting). The Court circled back to that issue in 2022's *Thompson v. Clark* opinion. 596 U.S. 36 (2022). In *Thompson*, the Court assumed, without deciding, that the Fourth Amendment does house a malicious prosecution claim when it defined an element of such a claim. *Thompson*, 596 U.S. at 39. In the process, the Court added an element beyond those associated with the Fourth Amendment, *i.e.*, more than just an unreasonable restraint on liberty. *Id.* at 44.

In both *Manuel* and *Thompson*, Justice Alito cautioned against the recognition of a malicious prosecution claim under the Fourth Amendment. *Manuel*, 580 U.S. at 378-79; *Thompson*, 596 U.S. at 51. The dissents highlighted the differences between malicious prosecution claims and the Fourth Amendment. *Id.* In *Manuel*, the dissent discussed the practical problem of Fourth Amendment malicious prosecution claims being raised against police officers: prosecutors, not police officers, make the decision about what charges to pursue. *Manuel*, 580 U.S. at 378.

The dissents also explained why the essence of a 'malicious' prosecution claim violates the core objectivity of the Fourth Amendment. *Id.* at 379; *Thompson*, 596 U.S. at 52.

Just as Justice Alito cautioned, the Court's adoption of "a novel hybrid claim" for malicious prosecution under the Fourth Amendment has bred confusion and is being applied inconsistent with the principles of the Fourth Amendment. *Id.* at 50 (J. Alito dissenting); *Armstrong v. Ashley*, 60 F.4th 262, 279 (5th Cir. 2023);

Morales v. Carrillo, 625 F. Supp. 3d 587, 609 (W.D. Tex. 2022), *appeal dismissed sub nom. Morales v. Cardenas*, No. 22-50836, 2023 WL 6442593 (5th Cir. Oct. 3, 2023); *Fatai v. Ramos*, No. 19-CV-603-DKW-WRP, 2023 WL 2392707, at *14 (D. Haw. Mar. 7, 2023), *appeal dismissed*, No. 23-15354, 2024 WL 863360 (9th Cir. Feb. 29, 2024); *Sneed v. Vill. of Lynwood*, No. 22-CV-00266, 2022 WL 5116464, at *2 (N.D. Ill. Oct. 4, 2022). Justice Alito touched on these inconsistencies in his dissent, noting how the elements of prosecution, malice, and outcome of a prosecution, are inconsistent with the unreasonable seizure elements of a Fourth Amendment claim. *Id.* at 51-53.

The Sixth Circuit in this case applied a standard for malicious prosecution that is inconsistent with the Fourth Amendment's objective standard and highlights the issues with the unintentional path of *Thompson*. The Sixth Circuit ruled that Petitioners did not have probable cause "to charge him with murder" because they did not know any the evidence that supported Monson as the murderer at the time Monson was charged. This ruling required the officers to have probable cause for the specific crime charged, as opposed to any crime. This is a distortion of the Court's prior holdings requiring an objective Fourth Amendment analysis.

The Sixth Circuit rejected Petitioners argument that they had probable cause to hold him on other charges (not murder), such that the arrest was constitutional. Petitioners further argued that they continually had grounds to hold him and infringe on his liberty when he was charged based on these other crimes, such that Monson's malicious prosecution claim failed for the same reason.

The Sixth Circuit's holding is inconsistent with *Devenpeck* and impractical. First, *Devenpeck* requires only probable cause of any crime to support an arrest, but the Sixth Circuit then raises that standard when the prosecution initiates process. Second, it places an evidentiary burden on police officers that should belong to the prosecutor, given that the prosecutor is the person that actually makes the decision about what charges to bring. It is akin to elevating the prosecutor to the 'veteran officer' in the *Devenpeck* analogy. It is even more egregious than that analogy though, because the prosecutor is the one that makes the decision about what to charge, whereas the officers do not have such authority, but will be the only ones to answer for such decisions since prosecutors are absolutely immune for their charging decisions.

Third, the Sixth Circuit's standard also requires the officer to know everything that the prosecutor knows and to draw the same conclusions from the evidence. This is impractical and illogical when each is meant to serve a different purpose. The officer is responsible for fact gathering, while the prosecutor is responsible for developing and presenting a legal theory.

By requiring officers to know facts supporting probable cause of the specific crime charged by prosecutors, the Sixth Circuit imposed a higher, more exacting standard than required by the Fourth Amendment. This case provides the Court with the vehicle to address whether this higher standard is appropriate under the Fourth Amendment. This case further provides the opportunity for the Court to tie up any loose ends that exist following the opinions in *Manuel* and *Thompson*. Petitioner urges this Court

to address whether probable cause that an accused committed any crime is sufficient to justify a detention at any stage of the proceedings, thereby aligning its holdings in *Devenpeck*, *Manuel*, and *Thompson*.

II. The Court Should Hold That a Party Cannot Challenge a Confession When That Party Previously Swore Under Oath That the Confession Was True and Voluntary.

"All testimony, from third-party witnesses and the accused, has greater value because of the witness' oath and the obligations or penalties attendant to it." *United States v. Dunnigan*, 507 U.S. 87, 97 (1993) (citations omitted). Petitioners now ask the Court to address an issue concerning the value of testimony, and when that value can be undermined by later testimony that contradicts the initial testimony.

As is not uncommon in reverse conviction cases, the Respondent in this case has denied that his previous testimony, about the accuracy of his confession, was truthful. The lower courts refused to bind Monson to his previous testimony. Such holdings are inconsistent with stability an oath is intended to provide and several other accepted doctrines. Thus, for the reasons explained below, Petitioners urge this Court to prohibit individuals from challenging the voluntary nature of their statements if they have already been given the opportunity to do so and have sworn under oath that the statement was given freely and voluntarily.

During the underlying criminal investigation, Monson gave two statements to police officers. In his criminal proceedings, Monson availed himself of a process available under Michigan law that allows

individuals to challenge the constitutional voluntariness of their statements. *People v. Walker*, 132 N.W.2d 87, 91 (Mich. 1965). At his *Walker* hearing, Monson challenged the voluntariness of his second statement, but not the first. (App., *infra.*, 57a-58a) The judge ruled that Monson's statement was admissible. (App., *infra.*, 58a) Now, in this case, he says both statements were actually coerced from him by police, contrary to his testimony at the *Walker* hearing.

The Sixth Circuit held that because no Court "accepted or relied upon" on Monson's statement about the first statement, he was not now bound by it. (App, *infra.*, 18a) This holding should be reversed because it undermines the testimonial oath.

Petitioners urge this Court to hold that such a challenge is not permissible when 1) the party had an opportunity to challenge the voluntariness of a statement; and 2) swore, under oath, that it was voluntary. This proposed rule is not without roots in our jurisprudence.

It has long been held that a party cannot a take a position in a legal proceeding, then later assume a contrary position. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). The "sham affidavit doctrine" also prohibits litigants from contradicting their earlier testimony to avoid summary judgment. *Reid v. Sears, Roebuck and Co.*, 790 F.2d 453, 460 (6th Cir. 1986). Both of these doctrines are rooted in principles of finality and instilling integrity in testimony such that it has value in our legal process. These principles also extend to the circumstances at hand, *i.e.*, whether Monson should be permitted to undermine his previous testimony.

The Court should grant certiorari to address whether an individual should be permitted to now challenge a statement that he previously swore, under oath, was voluntary.

Respectfully submitted,

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