

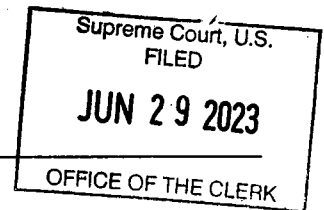
No. 23-5040

**ORIGINAL**

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SUPREME COURT OF THE UNITED STATES

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Brala Beverly,

*Petitioner*

vs .

Newport Beach Police Department Does 1-1000

*Respondent.*

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On Petition for a Writ of Certiorari to  
California Court of Appeals Fourth District, Division Three  
After California Supreme Court Denial of Review

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PETITION FOR A WRIT OF CERTIORARI

Brala Beverly

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Pro Se, Plaintiff, Petitioner

## **I. Questions Presented**

1. Is it a violation of due process under the fourteenth amendment of the U.S. Constitution for courts to dismiss a civil rights lawsuit by demurrer based on police report hearsay alone?
2. Can probable cause for arrests by police under the fourth amendment of the U.S. Constitution and the right to be secure in one's person under the fourth amendment of the U.S. Constitution be separated from acts and statements of discrimination during those arrests by police?
3. Can probable cause for arrests by police under the fourth amendment of the U.S. Constitution and the right to be secure in one's person under the fourth amendment of the U.S. Constitution be separated from statements regarding a non related pre existing relationship between police and the suspect made by police during and surrounding the arrest?
4. Is the seventh amendment of the U.S. Constitution violated when a California resident, where a right to a jury exists in the state constitution (Article 1, Section 16), is preempted from pursuing a civil rights lawsuit against police upon demurrer based solely on a hearsay police report?
- 5 . Can any State Government Code allow for the violation of U.S. Constitutional Rights?
- 6 . Does California Government Code 821.6 allowing police to maliciously prosecute citizens violate the U.S. Constitution?
7. Can a State Court ignore the U.S. constitutional basis cited within State causes of action simply because U.S. Constitutional Rights Causes of action are not independently cited in the action?
8. Is discrimination against a transgender person by police in order to procure an arrest a

violation of that person's first amendment right to be transgender?

9. Is refusal to allow a Plaintiff to prosecute a civil rights lawsuit against police based on a State statute of limitations argument that the civil case must be filed before the criminal charge is dropped a violation of U.S. Constitution 14<sup>th</sup> amendment due process rights?

10. Is it a U.S. Constitutional fifth amendment rights violation for police to coerce a person to admit guilt during an arrest based upon another unrelated case?

11. Is it a U.S. Constitutional sixth amendment rights violation for police to demand testimony from a person as to their guilt or innocence during arrest without reading Miranda Rights or being able to being able to exercise the right to counsel?

12. Is it a U.S Constitution sixth amendment rights violation to the right for a speedy and unprejudiced criminal trial when police attempt to enforce an 8 year old minor misdemeanor warrant?

13. Where disproportionate use of police resources is deployed to target an individual for being transgender in order to procure an arrest based on that person's gender, is that a violation of the U.S. Constitution fourteenth amendment equal protection under the law?

14. Can a State court allow for violations of U.S. Constitutional rights violations within the elements of a cause of action? This lawsuit includes state causes of action for the Bane Act, Ralph Act, False Imprisonment, Assault and Battery, Negligence and Malicious Prosecution.

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#### **IV . Petition for Writ of Certiorari**

Petitioner Brala Beverly respectfully petitions this court for a writ of certiorari, primarily to review the constitutionality of the judgment of the California Supreme Court and the California Court of Appeals after the appeals court essentially made the claim that a civil rights lawsuit against police must be filed before the criminal charge in question has been dropped. The courts also upheld the ruling that a civil rights lawsuit against police can be dismissed without a trial of facts based on the police report alone in violation of the fourteenth amendment of the U.S Constitutional right to due process. The courts further ruled that an 8 year old minor misdemeanor warrant being enforced with no evidence available to prosecute is not a violation of due process or rights to a fair and speedy trial under the Sixth Amendment. The courts upheld a ruling that police in California police can maliciously prosecute citizens and that is not a constitutional rights violation because California Government Code 821.6 allows for it. The courts upheld police conduct targeting an individual for arrests for being transgender as not a violation of the equal protection clause of the fourteenth amendment of the U.S. Constitution. The courts upheld rulings ignoring claims of prejudicial discrimination and of a suspect's unrelated pre existing relationship with police in codifying false arrests, instead favoring probable cause without a trial of the facts in violations of the Fourth Amendment rights to probable cause and to be secure in ones person as well as the right to a jury under the seventh amendment. Fifth and sixth amendment rights violations were also upheld by the courts when saying police can falsely coerce and demand testimony of a suspect during an arrest without counsel or the reading of Miranda rights. Ongoing discrimination by police against transgender citizens remains an unmonitored reality. The Complaint was dismissed without prejudice but dismissed nevertheless on these grounds by a California superior court judge under California Code of Civil Procedure 581 d after the sustaining of a demurrer.

## **V. Opinions Below**

The proceedings related to this case include that of the United States Central District Court of California, case numbers 8:20-cv-01006 and 8:21-CV-01277, the United States Court of Appeals Ninth Circuit Court case number 20-55690, California Superior Court of Orange County case number 30-2020-01153964 , the California Court of Appeals case number G061261 and the California Supreme Court S278707.

The Order of the District Court, Central District of California ruling without prejudice on the merits while issuing a remand to the California Superior Court appears at Appendix A to the petition and is unpublished.

The Order of the United States Court of Appeals Ninth Circuit appears at Appendix B to the petition and is unpublished.

The minute order and dismissal of the California Superior Court County of Orange without prejudice appears at Appendix C.

The California Court of Appeals Fourth Appellate District, Division Three opinion appears at Appendix D.

The California Court of Appeals Fourth Appellate District, Division Three Denial for rehearing appears at Appendix E.

The California Supreme Court Denial to review the Petition for Review appears at Appendix F.

## **VI. Jurisdiction**

The date on which the California state appeals court decided this case was on 1/23/23. This was the opinion of the Fourth District Court of Appeals, Division Three after the timely filing of an appeal from the California Superior Court after its ruling on 4/1/22. A copy of this decision is attached at Appendix D.



A timely petition for rehearing to the California Court of Appeals, Fourth Appellate District, Division Three was filed on 1/30/23 and denied on 2/17/2023. The denial of this petition for rehearing is attached at Appendix E.

A timely petition of review in the California Supreme Court filed on 2/27/23 was thereafter denied on 4/26/23. A copy of the order denying the petition appears at Appendix F.

Brala Beverly thereby and hereby requests and invokes this court's jurisdiction under Article III Section II of the United States Constitution, Supreme Court Rules 10 and 13.1, 28 U.S.C. 1254 and 28 U.S.C. 1257 now, within 90 days of the denial of the petition for review by the California Supreme Court in this case.

## **VII. Constitutional Provisions Involved**

### **A. Brala's Constitutional Assertions**

Brala Beverly is a transgender woman who has faced a lack of equal protection under the law according to the premise of the fourteenth amendment of the U.S. Constitution. This lawsuit outlines this reality in the show of disproportionate use of police force to search for by aircraft and bring "sex assault investigators," in unmarked vehicles and plain clothes after Brala Beverly after a merchant who slurred her gender said she stole groceries. Police eventually caught up with Brala Beverly when they discussed transgender issues with her, and her sex assault case as a victim. They demanded a guilty testimony as to the groceries or they would change their statement Brala was a victim in the sex assault case, but they did not find groceries. They found a bag of clothing instead, save one milk carton. Police were denied the notion they could prosecute this case by the Orange County District Attorney. Consequently, they refiled this case with the same video and other evidence and did not provide Brala a valid notice to appear at an address for notice. They thereby produced a failure to appear warrant instead. Many years later police from Newport Beach rearrested Brala on this same failed

charge. They also lost that proceeding in criminal court after a guilty plea forced on Brala for being in a life threatening situation placed in a jail where inmates constantly attacked her over her gender was withdrawn after her jail stay under California law. The lawsuit asserts this police conduct violated her first amendment right to be transgender, her fourth amendment rights to probable cause and to be secure in her person and belongings, her fifth amendment right against self incrimination, her sixth amendment right to counsel and a speedy and fair trial, her eighth amendment right against cruel and unusual punishment , her fourteenth amendment rights to due process and equal protection. Brala also charges the underlying courts for denying her California Constitutional right to a jury under Article 1 Section 16 and thereby her seventh amendment constitutional right by denying a jury a right to hear this case.

This lawsuit also involves an additional arrest where another merchant slurred the gender of Brala when contacting police and despite the facts of the case, the courts ruled police only needed a bare accusation against Brala and to speak with the merchant to establish probable cause, regardless what the further details of the arrest were. In this instance, the merchant directed Brala to the front of the store where another employee was making appointments to exchange products. Brala was then arrested for going to the front door with a product visible in her hand while asking staff about it. This arrest involved charges of petty theft and assault, with a claim Brala somehow assaulted security when handcuffed. No discussion of the assault charge was even mentioned by any of the underlying courts in giving a free pass to police to arrest Brala based on mere naked allegations made by a gender slurring merchant.

The lawsuit also asserts constitutional rights violations in the creation and enforcement of a warrant for non appearance after the original drink arrest and dropped charge, when the case was refiled by police and notice of a new hearing sent to an invalid address. Brala argues disproportionate use of police force due to her being transgender and a victim of sex assault in a high profile Hollywood director case Newport Beach police disregarded DNA evidence under her dress during a platonic arrangement in. The warrant was made out to her prior legal name

even at the time of its issuance as well. Brala alleged a lack of due process and a violation of her sixth amendment and California Constitution Article 1 Section 15 right to a speedy and fair trial when the minor misdemeanor warrant was enforced 8 years later. Brala also argued excessive bail under the Eighth Amendment of the US Constitution given the false nature of the charges and warrant, as well as the momentary status of guilty while in jail on the charge before that plea was withdrawn and innocent was the ultimate verdict.

Brala's assertion in this lawsuit is that police are being given a free pass to arrest her for anything as long as a gender slurring merchant makes a naked allegation. Brala asserts this is simply not an adequate standard under the U.S. Constitution.

## **B. The California Court of Appeals and Defendant Constitutional Assertions**

The defendant in this case claims that the California Government Codes including 821.6 for malicious prosecution and 815-815.2 for negligence protects the police from liability even where constitutional rights are violated within those causes of action. The codes supersede the U.S. Constitution regardless what Article 6 Paragraph 2 of the Supremacy Clause in the U.S. Constitution claims. They also state that Brala is not entitled to claim constitutional rights violations in this lawsuit because it was remanded from the district court as to all constitutional arguments without prejudice. The state lawsuit was required to plead constitutional rights violations within the state causes of action, but that does not preempt the state court from honoring the constitutional rights of citizens pled within those state causes of action. The underlying courts also claim that the standard for probable cause for arrest under the fourth amendment is basically merchants making naked allegations, and whatever the police report says happened in the case. All claims of lack of due process and unequal protection under the law, as well as all the additional constitutional rights allegations set out in the Complaint as outlined in constitutional allegations by Plaintiff in this action were deemed

insufficient because a police report attached to the Complaint said they were, regardless of laws on the hearsay of police reports (California Evidence Codes 1200, 1280 et al). Brala requests her case be sent back to the district court where it was dismissed without prejudice including for the claim of 42 U.S.C 1983 if the state court is not required to adhere to constitutional rights within the state causes of action.

### **VIII. Statement of the Case**

This civil case regards false and discriminatory misdemeanor harassment arrests against Brala Beverly by the Newport Beach Police Department after a sex assault police report was filed with them by Brala, an award winning transgender woman singer in the music business under the singing name Bralalalala. The report was made against the supervising art director of many films including Charlie's Angels, Amazing Spider Man and Iron Man named David Klassen. The incident and police report occurred in 2010, before the metoo movement and much transgender in media had occurred. The case generated media attention and likely changed many things in society, but still, as yet, clearly not enough so when it comes to police departments. This case outlines how police disregarded the DNA found at the crime lab under Brala's dress from the director, and instead gossiped about and targeted Brala within the department for many years after media interest in the sex assault case to their stated chagrin, also illustrated by statements made by police in their reports, at the scenes of the arrests and during jaywalking tickets and random public detentions beyond the 3 key arrests outlined in the case, which included a 9 year long witch hunt to arrest and re-arrest Brala allegedly over a \$4

stolen drink from a grocery store and another arrest where Brala was charged with a felony assault of a security guard merely for being handcuffed and arrested for exchanging a store product under warranty with a local merchant. The rapist director who lost the civil trials against Brala for millions and is on the run was deemed too innocent by police to make an arrest depriving Brala of victims compensation programs during the time of the initial arrest in this lawsuit. Newport police likely had never defended a transgender woman in a rape case not requiring hospitalization before and they were not going to let that streak come to an end here. Their efforts to criminalize Brala and delay prosecution of the director during the first arrest was done to negatively impact any criminal prosecution by the DA in the sex assault case of the director. Newport police even contacted the founder of the Los Angeles Music Awards when locating the DNA in the sex assault case, Brala's one time music publicist, in an attempt to assassinate her character. Brala never had a sex assault case against her publicist, but instead a discrimination case where the publicist placed Brala on court television to be harassed about her gender while being in the music business by Larry Elder at a time when transgender artists were unheard of.

At the time of the initial arrest in this case, director Klassen spoke with Newport police and initiated a lawsuit against Brala for extortion after she filed a sex assault civil suit against him and filed the police report. Klassen ended up losing the lawsuits and currently owes Brala millions of dollars as he evades asset hearings (*Skiles v. Klassen Orange County case 30-2014-00735864*). Police pursued the thought process of Klassen in their actions, also noting Klassen's internet websites about the singer calling her an extortionist and criminal to cover up

his act of rape. Police disregarded DNA found under Brala's dress according to police reports, concluding the platonic meetup arranged by Klassen's girlfriend Marsili should naturally result in Klassen being under Brala's dress. Police were later informed of Klassen's written allegations to judges Brala was in the mob and had killed many, but that did not persuade police to refile charges with the DA due to the director's lack of believable statements. The director had also sued others in the sex assault cross complaint alleging a pastor and faith healer were directing Brala in the "extortion plot." This all made sense to the Newport Beach Police Department.

Police were offered an opportunity to fulfill their prejudices during a phone call from a Bristol Farms grocery store employee in 2011 who slurred the gender of Brala calling her "a guy in woman's clothes" according to the police report and claimed Brala was taking groceries from the store and putting them in her bag as she was leaving the store (if these were only "items" not "groceries" as the appeals opinion page 14 says, then there was no need for arrest). Customers regularly place items in their bags when leaving stores after paying for them, just to be clear. The merchant claims he was changing shifts and could not see Brala well and could not catch up with her as he was out of shape and she had already left the store when he noticed her doing something with her bag according to the police report. Police are shown in the report attached to the complaint discussing prior knowledge of Brala from June 2010, the time of the sex assault police report was created and continuing the slurring of her gender as a trans women and being the only trans women Newport Police had encountered during that time in this 2011 call, so the call made them think of her. Brala however was not at the grocery store when arrested and claimed no interaction with the accusing party other than to say she was at

the store earlier buying a drink. Police sent the "sex assault investigators," Sergeant Sherwood and detective Syvack in plain clothes and unmarked cars along with other police cars and with aircraft assistance looking throughout the city for Brala regarding this alleged grocery heist. They expressed frustration in the police report they could not find Brala but after further efforts discussed success in doing so with the aircraft assistance. Police however did not find a bag of groceries, but a bag of clothing instead. They did find one drink of soy or almond milk according to the police report which Brala told the officer she did not steal. Officer Sherwood then told Brala she would change her testimony if called upon in any criminal or civil proceeding about Brala being a victim of sex assault if she did not say she took the drink. Brala states this demand violated her fifth and sixth amendment constitutional rights. Brala was then booked supposedly "for stealing the drink," although police discarded the drink carton at the scene of the arrest according to the police report. Sherwood filed a supplemental report outlining her interactions with Brala while omitting her overt discussion of the sex assault case she had with Brala at the scene of the arrest even though the appeals opinion claims otherwise. The police report discussed the clothing Brala wore not only that day but on other days as a show of prejudice.

The drink charge was dropped by the DA for lack of evidence, but the case was refiled as police conducted an intentional tort abuse of process and pursued Brala further without her knowledge in order to generate a failure to appear warrant on this same failed charge. Police alleged grocery store video footage of Brala in their report, but the DA found it unavailing on the first try. Brala describes consequently being unlawfully detained twice in her Complaint by the Newport police in 2012 who alleged a warrant on Brala for "grand theft." Police could not

find the warrant and appeared disoriented when unable to make the re-arrest of Brala they sought to make on these two consecutive days in 2012. The Complaint makes all these facts clear in her case, in her appeals briefs and in her petition for rehearing, regardless what the Court of Appeals opinion claims.

Amazingly, fast forwarding all the way to the year of 2019, another merchant decided it was a good day to slur Brala while calling police in Newport Beach. This time the merchant was an Apple store security guard who referred to Brala as a "he-she" in contacting police after seeing her female state identification and person. The security guard alleged that Brala stole a phone cord and battered him as she was being handcuffed. Brala stated that she was exchanging her phone cords which she had with her in her bag under warranty for a new cord and an Apple employee directed her to the front door of the store where another employee was making genius bar appointments. Brala thereby contends she never left the store at all but only went to make this appointment for exchange with the new phone cord visibly in her hand. Brala contends she did not assault and batter the security guard while being handcuffed and talking with the Apple employee at the front door. That is not even something that is possible to do when being handcuffed. Brala was the one who was assaulted and battered. The security guard alleges his hand was scratched while handcuffing Brala, therefore he concluded assault and battery in his prejudice. The police report says that Brala was handcuffed within a matter of seconds and does not actually describe an assault and battery other than to say Brala was charged with one. The Court of Appeals decision in this case skips over this entire California Penal Codes 211 and 242 criminal charges in its ruling thereby supposedly supporting probable cause for the arrest under the charges in any case based on the Superior Court ruling which also



didn't address facts surrounding the charge. The other charges in the case were under California Penal Codes 459.5 and 484-488 for petty theft.

Newport police officer Biagi then appeared at the scene in 2019 claiming Brala "changed names to avoid prosecution of crimes!" He claimed prior knowledge of Brala, who Brala never met personally. None of this memory of Brala phased the Court of Appeals as any show of prejudice by police, only proof they knew who she was for no apparent reason, (page 15 opinion). As to the Newport Beach Police Department, Brala had not interacted with them in over 5 years by then, last regarding the sex assault case when drink/sex assault investigator detective Syvack made disparaging remarks to Brala about Klassen's civil deposition, falsely saying the director admitted nothing therein.

Brala is someone with no criminal record other than false arrests. Brala changed her legal name from Brooke Skiles in 2011 to change her legal name and gender on her ID although she has been openly transgender since 1989. This legal name and gender change was not a crime on her part or at attempt to flee from one as the officer alleged. The police report concluded Brala stole the phone cord because she was going outside the front door where a line of customers were speaking with Apple employees about appointments. The police ignored Brala's explanation of events of being directed to the front door by staff to make a genius bar appointment for the phone cord exchange and cords to exchange with her receipts with her for the exchange. Newport police instead concluded this was probable cause for an arrest, including for assault and theft. Again, with video evidence, as with the drink case video evidence, the DA said no to the police effort to prosecute Brala. Police would not normally arrest a customer following instructions of merchant staff to make an appointment for a

product exchange but they did here because Brala is transgender and was a sex assault victim in a prior case purposefully mismanaged by the police department.

The police conducted an additional arrest at this time in 2019 as Officer Biagi, based on the years of gossip about Brala within the Newport police department and prejudice of the officers, located an old drink "theft" arrest warrant made out to her prior legal name from 2011. Apparently, police cannot locate arrest warrants if a legal name has been changed, so only due to the police prejudicial gossip over many years of Brala due to being transgender and a sex assault victim was this warrant even located. The Complaint raises other objections to the warrant as well, including that by the time the minor misdemeanor warrant was enforced it was over 8 years old in 2019 and that the notice to reappear for a new hearing in 2012 was served and created improperly and for an improper purpose and the Newport police had zero chance of winning the case at a criminal trial when the warrant was finally enforced. The Court of Appeals opinion ignores these facts. In fact, in 2020 Brala spent 3 wrongful days in a jail on the drink charge where her legal gender of female was disrespected by police and her life was threatened with rape and murder by violent inmates for being a trans woman put in a men's jail in violation of California Senate Bill 132 and her constitutional rights (something Newport Police could easily foresee and could care less about *Beverly v. OC Sheriff U.S. 22-6366 (2022)*). The judge in the criminal drink case told the DA he could not prosecute a case with no facts presented in support. The charge on the \$4 drink case was then officially dismissed in 2020, 9 years after the original arrest on the charge. Regardless what the Court of Appeals claims, no cause of action in this case could have been past the statute of limitations when this case was filed in 2020.

### **VIII. Reasons for Granting the Writ**

#### **A . Police Reports Cannot Dismiss a Trial of Facts Upon Demurrer**

The California Court of Appeals adopts new standards for Plaintiffs in California suing police for causes of action including False Arrest, Assault and Battery, the Bane Act, the Ralph Act, Intentional Tort, Malicious Prosecution and Negligence which simply do not comport with established standards of U.S. Constitutional law, overtly stating its reliance on a police report attached to the Complaint to demur to the civil rights action and establish the police version of probable cause for arrests, despite the Complaint contradiction of those claims made in the report. Discriminatory conduct by police in evaluating facts of criminal cases causing false arrests is always a police liability under the laws of California and of the United States Constitution and cannot be demurred to by assuming the allegations are not true. Here, the Superior Court minute order (Appendix C page 2) claims upon demurrer that petitioner imagined her claims that police were discriminatory and prejudicial despite the face of the Complaint asserting facts directly quoting police to that end in their police reports and statements they made at the scenes of the arrests. The minute order does not go into detail about the facts of the arrests, only stating that police spoke to witnesses who made contradictory statements from what Brala Beverly asserts, and that was good enough to establish probable cause regardless of the details of the allegations.

#### **B . Citizen Arrests do not Immunize Police from Evaluating Facts Before Making an Arrest.**

##### **Probable Cause for Arrest Impact Amid Discrimination and Pre Existing Relationship Standards not Clear in Underlying Court Rulings.**

The Court of Appeal opinion requested for review in this matter creates biased standards of probable cause for arrests, including such standards directed at transgender people where discriminatory conduct is cited as well as misconduct regarding an irrelevant to the incident at hand pre existing relationship. This Court of Appeal decision establishes a new standard of

probable cause for arrests without citations of facts surrounding those arrests by upholding a Superior Court order that made no mention of the scene of arrests facts other than to say merchants made police phone calls making accusations while slurring the gender of appellant and that met the satisfactory standard for probable cause to arrest appellant standing alone, regardless also of prejudicial and discriminatory comments by police at the scenes of arrest. The appeals court opinion however made slight mentions of some facts at the scenes of the arrests while misstating those facts, ignoring others and making irrelevant distinctions of facts while stating it favored the police report rendition of the facts of the arrests stated in the attachment to the Complaint which disputed those facts of the Complaint subject to the demurrer. The court stated Brala's statement the police report did not establish probable cause was conclusory, but the court itself had no problem making a conclusory statement the police reports established probable cause. A petition for rehearing correcting the appeal opinion misstatement of facts was filed to no avail in the court of appeals.

### **C . State Government Laws and Codes do not Supersede U.S. Constitution**

The Court of Appeals further upholds a Superior Court ruling that states that physical force including police beatings should be included in addition to discrimination to qualify for many State causes of action in order to establish a violation of Constitutional rights. These causes of action include the Bane Act and Ralph Act of California. This standard is incorrect. The allegations of discriminatory false arrests under the California causes of action for assault and battery and false imprisonment were also deemed to not impact probable cause standards by default. The Court of Appeals claims that the recent US Supreme Court case of *Thompson v. Clark* cannot force states to hold police accountable for malicious prosecutions of citizens because that case only pertained to 42 U.S.C 1983, a claim dismissed without prejudice in the federal court in this action when the case was remanded to state court.

**The court states that California State Government Code 821.6 allows police to**

**maliciously prosecute anyone they like regardless of constitutional violations therein.** Brala Beverly asserts she has repeatedly been targeted in arrests in Newport Beach for being transgender and the victim of sex assault in the case drawing media attention versus the Iron Man supervising art director after Brala filed a police report on that director in 2010. Police ignored the DNA under Brala's dress in that case from the director, citing disdain for media calls and overt desire to not assist Brala due to her being in the music business promoting a product for sale and for being transgender. Police thus claimed lack of probable cause to arrest the director who met with Brala through his girlfriend under a written platonic pretense the same day of the sex assault. Instead, the police sided with the director's point of view to frame Brala for crimes and state that Brala was a criminal trying to extort the director, without factual basis. The allegation of discrimination and malicious prosecution in arrests and detentions described in the Complaint (3 arrests and numerous separate detentions) were made in the Complaint based on police disproportionate use of department resources to procure these arrests as well as rearrests amid minor misdemeanor allegations, lack of probable cause at the scenes of the arrests for police who ignored facts submitted to them by Brala Beverly, discussion of prior knowledge and the sex assault case during the arrests, misgendering Brala in police reports and through the jail system, and falsely saying she changed her legal name and gender at the scene of the 2019 arrest to avoid prosecution of crimes. Police later submitted, over a year after the incident, a "detention not arrested" document as to the 2019 Apple arrest claiming lack of probable cause for the arrest, under 849 (b) (1) California Penal Code but the Complaint insists an arrest and jail stay occurred on this charge nevertheless. Brala asserts that malicious prosecution by police not only violates 42 U.S. 1983 but also the U.S. Constitution fourth and fourteenth amendments and therefore the state causes of action wherein these constitutional violations where these facts were pled. **The defendant insists that once remanded from federal court to the state court, the constitution should no longer be relevant to this case (an actual statement made in their demurrer to the state case).**

Standards for other state causes of action also neglected constitutional standards in the dismissal of this case by the court. As to the state cause of action for negligence, the defendant insisted California Government Codes 815-815.2 allow for police to ignore the facts in criminal investigations. **The appeals court even said in its opinion that the police do not have a duty of care to uphold constitutional standards when discussing the negligence cause of action.**

Brala instead asserts rights to due process and equal protection under the law under the fourth and fourteenth amendments of the U.S. Constitution. As to the cause of action for intentional infliction of emotional distress wherein police targeted Brala for being a transgender sex assault victim and did not evaluate accuser facts impartially and treat Brala as any other citizen would be treated in the same situation, Brala asserted a lack of fourteenth amendment rights to equal protection and due process, a lack of fourth amendment standards for probable cause, and an unjust effort to force Brala into self incrimination testimony without counsel in violation of her fifth and sixth amendment rights, as well as a general disrespect for Brala's first amendment right to be transgender without enduring these other rights violations also causing an eighth amendment rights violation for excessive bail and cruel and unusual punishment.

#### **D . Due Process Required on Arrest Warrants**

The appeals opinion states no ample authorities justifying its positions. The appeal Opinion requested for review creates a good faith standard toward police for all police misconduct, including for a defunct 8 year old minor misdemeanor warrant made out to the wrong name, sent to an invalid address for notice of a hearing before creating the warrant, using abuse of process methods in seeking the warrant in a transgender discrimination by police case and enforcing the warrant at a date so delayed and so unable to prosecute in fairness it should be seen as a violation of sixth amendment rights. Yet the courts threw out this police misconduct lawsuit upon demurrer by merely citing police reports as its reference in

violation of California Evidence Codes relating to hearsay including codes 1200 and 1280 and basically in violation of any civil rights a person in California could hope to have when suing police for misconduct, including a federal right to a jury under the Seventh amendment and to due process under the fourteenth amendment. The Superior Court minute order said it was good enough police knew Brala changed her name and was the same person on the warrant, even though police only knew who she was because she is transgender and was a victim of sex assault who they were wrongfully targeting and gossiping about for years in their police department, to the point that an officer who never even met Brala before, many years after the sex assault case, claimed he heard about her during the 2019 Apple arrest.

#### **E. Article Two Paragraph Six of the U.S. Constitution Supremacy Clause**

##### **Must be Acknowledged in State Cause of Action Standards**

The appeals court has created a standard for suing police that is simply insurmountable upon demurrer given that this false arrests lawsuit includes many allegations of discrimination by police where all the criminal cases against appellant were thrown out of criminal courts with zero evidence presented by police to any criminal court other than mere police reports, yet this appeals court wants a dismissal of this civil rights lawsuit upon demurrer anyway based on its own openly stated bias toward those same police reports. A California Jury was entitled to hear this case under the seventh amendment of the U.S. Constitution and Article 1 Section 16 of the California Constitution in their combined meaning. The Appeals Court heeded no notice of prejudice in patterns of behavior of police repeatedly arresting appellant with zero results in criminal courts, charges generally dropped by the DA routinely. If that sounds like probable cause for arrests, anything could.

The Court of Appeals did not respect equal protection under the law standards in this case under the fourteenth amendment of the U.S. Constitution, refused to address police misgendering appellant during criminal case evaluations of facts, accusers calling the police

doing the same and police discussing a prior existing knowledge and doubts of appellant during arrests not related to the current allegations of those arrests but related to her being transgender and her filing a police report as a victim of sex assault, a case she proved and won in civil courts. The sex assault case had the same presiding appeals court judge as this case Judge Bedsworth , who in the earlier case misgendered Brala, known as openly transgender Brooke Skiles at the time, in his ruling and claimed Brala could be sued for filing a sex assault lawsuit during a writ proceeding where the rapist sought to overturn Brala's demurrer to his suit against her for extortion *Klassen v. Skiles* 4<sup>TH</sup> District court of Appeals case G045852. This presiding judge found no probable cause to sustain the demurrer against the rapist but found all sorts of probable cause for police to target and arrest Brala as the rape victim in this case. The rapist ultimately lost the suits to Brala for millions, millions which are still unpaid to this date. The Court of Appeals certified this police discrimination and misconduct as the probable cause standard for arrests in this case. The Appeals court ignores lack of physical evidence and testimony at the scenes of the crimes, ignores disproportionate use of police force given the nature of the accusations amid other irregularities stated in the arrests, instead favoring the principle of probable cause without contextual justification and usurping the role of a jury in having a right to see this case in the process.

The Appeals Court ruling also creates a standard for creation, service and enforcement of a defunct misdemeanor arrest warrant made out to the wrong name as being valid regardless of alleged bad faith of the law enforcement officer, once again assuming the allegations of the Complaint are untrue upon demurrer.

The following federal cases and related cases were mentioned in the underlying court documents in the District Court of California, the California Superior Court and the California Court of Appeals including the California Supreme Court: *Beck v. Ohio* 379 U.S. 89 (1964), *Thompson v. Clark S. Ct.* 20-659 (2022), *Doggett v. United States*, 505 U.S. 647 (1992), *Serna v. Sup. Ct* (1985) 40 Cal. 3d 239, 219 Cal Rptr 420: 707 P. 2d 793, *Barker V. Wingo* 407



*U.S. 514, 530. Franks v. Delaware 438 U.S. 154-155, 56, 98 S. Ct. 2674, 2676, 57, L. Ed. 667 (1978) and Terry v. Ohio, 392 U.S. 1 (1968).* These cases cover police probable cause or lack thereof in making arrests under the guidelines of the U.S Constitution, due process rights for criminal defendants, including for fair and speedy trials and the handling of malicious prosecutions by police where constitutional rights are violated. The additional cases mentioned included *Klassen v. Skiles 4<sup>TH</sup> District court of Appeals case G045852, Skiles v. Klassen Orange County case 30-2014-00735864 and Brala Beverly v. OC Sheriff U.S. 22-6366 (2022).* These referred to events surrounding the false arrests described in this case with different defendants involved. This lawsuit seeks justice for the lack of responsibilities for false arrests held directly by the City of Newport Beach and the Newport Beach Police Department only.

#### **F. A Right to a Jury under the Seventh Amendment is a Crucial Right**

Judges across California have routinely taken liberties in preempting the U.S. Constitution Seventh Amendment right to a jury in civil cases, instead inserting their prejudicial opinions into cases long before the trial of facts stage. The California Constitution makes clear that a right to a jury in a civil case is real under Chapter 1 Section 16 of the California Constitution, which activates the promise to a jury in the Seventh amendment in civil proceedings where state law requires it. The facts of the arrests in this case as pled in the Complaint were disputed by court judges upon motion to dismiss (Federal Rule of Civil Procedure, 12, 12 (b) (6) and demurrer (California Code of Civil Procedure 430.30). These disputes were done by misstating facts pled in the case as well as omitting them entirely. The courts were given an opportunity to rehear the case upon petition for rehearing and declined. Many judges have a tendency to wish facts into a case that simply are not there in order to create the case result they seek. They do this most often in cases with unfamiliar case scenarios and facts. In this case of transgender discrimination by police, it is likely most judges have rarely if ever encountered a case quite like this. This is not grounds for dismissal.

It is very unlikely a jury would view the facts in this case and believe police violated no constitutional rights of Brala Beverly. They would most likely conclude lack of probable cause for arrests, lack of due process and lack of equal protection under the law along with other rights violations. The appeals court in this case lists citations around probable cause standards for arrests by police but those don't apply to what they did here. Here the court simply misstated, omitted and disagreed with the facts pled in the Complaint and dismissed it all without a trial of those facts. The facts of these arrests as pled on their face is that police would not have arrested the average citizen under the same circumstances nor would they have continued to try to prosecute the cases with the DA with the camera evidence proving Brala did nothing wrong at the scenes of these incidents. A person exchanging a product under warranty visible in her hand speaking with staff about the exchange after being directed to that staff which chose to do business outside its front door is not a theft or an assault. A regular citizen also does not get met with aircraft and unmarked police vehicles relating to a sex assault case over an alleged grocery theft heist. These are just basic facts of life the underlying courts are in denial of in dismissing this case against the police.. They ignored Brala's statement of facts and evidence at the scenes of the arrests because they are prejudice, the same police who misgendered Brala and put her in a men's jail although legally female. These allegations can not be demurred. Brala is entitled to due process and equal protection under the law regardless of being transgender. A jury would have agreed with Brala on this case.

In another section of the appeals court opinion, **the court states that an arrest against a person for being transgender in violation of their constitutional equal protection and due process rights cannot be a violation of a state cause of action for the Ralph Act, Bane Act or apparently any other.** When the district court remanded the case back to the state court it specifically said in its remand order that state causes of action would be pled consistent with constitutional standards and that the constitutional rights violations pled therein would need to be respected. However that is not the the appeals court did. As a result, Brala's constitutional

rights claims made in the district court were effectively dismissed with prejudice by the state court when it made its ruling.

#### **G. The Appeals Court Statement on Statute of Limitations is a Due Process Violation**

In the appeals court opinion the court differed from the superior court on the statute of limitations topic. The superior court correctly stated that part of a cause of action cannot demur under the statute of limitations citing *Phii v. Superior Court 33 Cal. App. 4<sup>th</sup> 1680 (1995)*. However, the appeals court disagreed stating that Brala needed to file her first false arrest action on the 2011 drink charge within two years even though the case remained open until 2020.

#### **H. The California Appeals Court Ignored the District Court Remand Order to Respect Constitutional Rights within State Causes of Action**

The California appeals court focused its opinion entirely on what it believed was police probable cause for arrests based only on statements made in the police reports upon demurrer, ignoring Complaint allegations of discriminatory conduct and comments made by police and merchants as irrelevant. At one point the opinion openly states that such discrimination would not suffice as any element of a state cause of action because the court believed the discrimination element would be a stand alone fact that did not impact the making of the arrests despite the Complaint claims to the contrary. The reality remains that the average citizen would not have endured these arrests and this level of pursuit to obtain them. As a result, these arrests represent lack of equal protection under the law and cannot be held as upholding a defense to the state causes of action in this case, let alone the dismissal of the federal causes of action which were only dismissed without prejudice by the federal court upon remand.

#### **X . Conclusion**

Police in many cities and towns across the US are conducting witch hunts against

specific individuals due to a general dislike of the individual or prejudice due to the individual's physical characteristics, or in this case gender identity. Judges often take the rubber stamp approach to this behavior when confronted with civil rights lawsuits from otherwise helpless citizens to this police misconduct, in part probably due to police power to influence elections on reappointing judges during elections. In this case, judges overtly used police reports to dismiss a lawsuit upon demurrer. This constitutes hearsay testimony, a lack of due process under the fourteenth amendment and a violation of seventh amendment rights to a jury given that California insures that right in civil suits as well. If all police need to do to win a lawsuit is say whatever they want in a police report without witness testimony or discovery of fact in the lawsuit, Plaintiffs stand no chance in efforts to protect their constitutional rights when falsely arrested by police in the civil court process.

The facts in this case are clear. Police have a pattern of arresting Plaintiff on charges whenever a third party calls police while slurring her gender and making naked accusations. Courts essentially said the naked allegations were enough to establish probable cause under the fourth amendment and that prejudicial conduct would not be considered as a factor in establishing whether there was probable cause. Brala's gender being misrepresented and her previous sex assault victim case mentioned by police during the arrests was of no concern to the appeals courts in claiming probable cause for the arrests. It was good enough that allegations were made against Brala by merchants and that despite the contradictory physical and testimonial evidence at the scenes, police thereby received the go ahead from the accusers to make the arrests, accusers who also signed citizen arrest forms accepting liability for their independent role in the misconduct.. This lawsuit has demanded that police conduct their investigation of the facts without prejudice before making an arrest, regardless whether a citizen is signing a citizen arrest document. When the charges were repeatedly dropped by the District Attorney, police were free to refile and continue to prosecute but not appear in criminal Courts, as they had no evidence that was convincing (yes they had video evidence in the

arrests unlike what the appeal opinion claims) without consequence of malicious prosecutions and false arrests according to this nefarious standard of probable cause set out by virtue of this ruling. Nine years spent to prosecute an initially failed the refiled allegedly \$4 drink theft case is a witch hunt against a transgender woman, not equal protection under the law. Being criminally charged for theft and assault for exchanging a product under warranty with the product visible in hand while speaking with staff is a witch hunt not more.

The judicial conduct dismissing this lawsuit by demurrer is a constitutional violation of a citizen trying to enforce civil rights in the courts by jury. Brala Beverly has endured one false arrest after another being targeted for being transgender and she has a right to demand that it stop. Brala has a right to prove her case before a jury.

6.29.23

Date



\_\_\_\_\_  
Brala Beverly