

No. **24-5830**

ORIGINAL

FILED

OCT 10 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Derek Tyler Horton — PETITIONER
(Your Name)

vs.

State of Alabama — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Alabama Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Derek Tyler Horton A.I.S. 315342
(Your Name)

1000 Saint Clair Rd.
(Address)

Springville, AL, 35146
(City, State, Zip Code)

251-202-3684 (6 a.m. - 2 p.m.) (K. Horton)
(Phone Number)
Spouse

QUESTION(S) PRESENTED

- 1.) Whether a police officer's reason for acting, in at least some circumstances, should factor into the Fourth Amendment inquiry?*
- 2.) Whether the State of Alabama erred in adopting and applying what is known as the "could have" test to evidence that was seized as a part of a pretextual arrest?
- 3.) Whether an officer has a duty to investigate further when circumstances suggest that probable cause may, in fact, not even exist contrary to first impressions?
- 4.) Whether an arrest can still be considered "lawful" if there are circumstances that vitiate the probable cause used to obtain the warrant?

* This central question is asked verbatim by Justice Ginsburg in *WESBY*, *infra*, and she specifically suggest that this question should be addressed by the Court.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Horton v. State, 217 So.3d 27 (Ala. Crim. App. 2016)

Horton v. Stewart, No. 1:2019cv00229 - Document 8 (S.D. Ala. 2019)

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1.) The Element in the Room: Requiring Probable Cause of Every Element of a Crime, Kimberly la Fronz (NYU Law Article)	App.E
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Alabama Supreme Court court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

March 15th 2024 (ACCA)
July 12th 2024 (ASC Cert.)

The date on which the highest state court decided my case was Denied_____.
A copy of that decision appears at Appendix ____A____.

☒ A timely petition for rehearing was thereafter denied on the following date: April 12th 2024_____, and a copy of the order denying rehearing appears at Appendix ____C____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th Amendment to the United States Constitution

14th Amendment to the United States Constitution

STATEMENT OF THE CASE

On March 19th 2010 the police were called to the residence of the petitioner concerning an alleged domestic violence. Upon arriving at the scene the officer was informed that petitioner was not present but that he had been involved in a physical conflict with his mother who had been the one to call the police. The officer asked the petitioner's mother to fill out an, unsworn, affidavit saying what had occurred. No one was arrested at the scene and no witnesses were present. The officer did not identify the predominant aggressor and the victim's affidavit was ambiguous as to whether the petitioner acted in self-defense. Also no photographs were taken.

1 week later (March 25th) the officer, Det. Welch, in charge of doing follow-up reports and investigations interviewed the petitioners mother (by phone) and determined that she did not wish to pursue charges. Detective Welch marked the case "exceptionally cleared" (Apparently a good faith determination that there was not probable cause to pursue an arrest warrant).

3 weeks later (On April 14th) and after the Mobile Police Department had completely ceased to investigate this misdemeanor crime, the detective over the case (Welch) received a call from the Mobile County Sheriffs Department homicide division - something he said was unusual at a later hearing - and on the phone was Detective Tunink the lead detective in a case where the suspect happened to be the same suspect in the closed domestic violence investigation i.e. the petitioner. Detective Tunink asked Detective Welch to "look back into" the domestic violence case and based on that request (and whatever else was said in that phone call), the petitioner was arrested on Domestic Violence 3rd after Detective Welch swore out a warrant on the petitioners mothers' behalf. Detective Welch did not perform any sort of basic investigation before seeking the arrest warrant and did not attempt to interview the petitioner, his mother, or the officer that responded to the scene on March 19th. His "probable cause" was based on the same unverified, unsworn statement by petitioner's mother that he had already reviewed before deciding to close the investigation on March 25th.

While in jail on this pretextual arrest the petitioner was unable to make bond and subsequently was questioned about the aforementioned homicide and gave an incriminating statement regarding his whereabouts to the Sheriff's Office. Along with the statement, the petitioners fingerprints and DNA were taken and a search was performed at his residence. The DNA was a match for DNA found on the steering wheel of the victims stolen car. Finally there was a very damaging statement made by the defendant that if suppressed would have likely resulted in the dismissal of the indictment for murder. So taken together, the evidence gained as a result of the pretextual arrest formed the foundation for a subsequent conviction for murder in a separate unrelated case. After the petitioner was charged with murder on April 26th the city moved to dismiss the Domestic Violence III charge on June 10th. Petitioner never received a full and fair FRANKS hearing to determine if there was, in fact, probable cause for the pretextual arrest itself. The 4th amendment was circumvented successfully and without the pretextual misdemeanor arrest, there would have been no murder conviction.

REASONS FOR GRANTING THE PETITION

1.) The Circuit Judge determined that the arrest for domestic violence was, in fact, a pretext after hearing pretrial testimony from the officer who obtained the warrant. He also agreed that Ex Parte SCARBROUGH was the correct case law to apply when determining whether to suppress the evidence. The problem is that the "could have" test adopted in SCARBROUGH does not sufficiently account for circumstances other than probable cause. The motivation of the officer is quite obvious and when taken into account sheds light on his decision not to investigate further by taking such steps as 1.) reinterviewing the victim to determine if she still stuck by her original statement - which was used as the core of the evidence to obtain an arrest warrant on the "victims behalf". 2.) interviewing (by phone or in person) the suspect i.e. the petitioner 3.) interviewing the officer that responded to the scene to determine how visible the "scratch marks" were and why he didn't take photos 4.) determining if the petitioner was the suspect involved in the prior incidents where the police were called to his residence.

These are just examples of a basic investigation you would expect to happen on a month old incident alleging a misdemeanor where the victim is, herself, not even interested in pursuing charges. These things did not happen because we know this was a pretext. The officer believed he had probable cause so long as he turned a blind eye to the obvious fact that this may be a lie and he did not do anything to investigate further because of the danger of losing his pretext for arresting the petitioner. And according to 173 F.3d 646 (8th Cir. 1999) probable cause does not exist under these circumstances.

2.) Even if the domestic violence arrest was not a pretext, it was still illegal and completely arbitrary. If it had not been used as a "stalking horse" to gain the evidence for a murder charge it would still have been an egregious violation of petitioners right to due process because this broke standard protocol and procedures in arresting a suspect on a domestic violence and was illegal for other reasons stated above. See 438 U.S. 154 (1978) for why it is an issue to have such a reckless disregard for the truth when seeking arrest warrants. The officer should not be using the power of making an arrest on behalf of an uncooperative victim in a domestic violence case to arrest a suspect for an entirely different crime when it is clear that those aren't the facts alleged in the complaint and the fact that the victim is unwilling to support her own affidavit tends to vitiate it and the probable cause founded on it. That is a circumstance that should be considered when deciding whether or not the arrest was "lawful".¹

3.) Detective Welch has a duty to disclose to the Judge issuing the warrant that there were facts not in the complaint that tended to vitiate the probable cause such as the victim not wishing to prosecute and the case being closed for 2 weeks without incident. Also it would have shown good faith if he had revealed the call from the homicide investigator. 787 F.3d 44 (2015)

4.) This was a bad faith arrest for a domestic violence that was effectively a sham, that no one had any real interest in prosecuting, and that would not even have happened at all and yet it was the principal tool for circumventing the petitioners 4th amendment rights and the evidence seized as a result is directly responsible for petitioners conviction in a completely separate crime, namely the murder conviction.

5.) For the reasons stated above it is clear that without the evidence seized as a result of the bad faith, unlawful, pretextual misdemeanor arrest - the petitioner would not have been convicted of murder and had the Alabama Supreme Court properly adopted the 11th Circuit Test for determining whether to suppress evidence gained from a pretext arrest (known as the "would have" test), he would likewise not have been convicted. This Court should set the standard for test to be used in these situations and settle the split in authority and alternatively use this case as an example of an exception that can be made to the "objective test" as it shows that probable cause determination does not account for every circumstance surrounding the decision to arrest especially when it is objectively known that this is a pretext and that the actual truth of the claims made in the pretext offense has become irrelevant to the arresting officer as it would get in the way of the "greater good" he is trying to do the community by arresting a murder suspect even if it means circumventing and violating his Fourth amendment rights.

[See Page 7 for More Reasons]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10-10-24 (Placed in prison mailbox)

Endnotes

- 1.) See *Wilson v. Russo*, 212 F.3d 781 (3d Cir.2000) ("omissions are made with reckless disregard if an officer withholds a fact in his ken that 'any reasonable person would have known ... was the kind of thing the judge would wish to know'"); *Rivera v. United States*, 928 F.2d 592 (2d Cir.1991) ("recklessness may be inferred where the omitted information was 'clearly critical' to the probable cause determination")
- 2.) Professor LaFave: The Court's analysis in *Whren* is, to put it mildly, quite disappointing. By misstating its own precedents and mischaracterizing the petitioners' central claim, the Court managed to trivialize what in fact is an exceedingly important issue regarding a pervasive law enforcement practice. "...since *WHREN* involved a traffic stop made on probable cause...it might be questioned whether the same result should obtain in a case involving a custodial arrest made on probable cause." [Search & Seizure § 1.4(f)]

John Owens 10-10-24 7-5-28 Notary com apine

More Reasons for Granting Cert.

- The subjective intent of Officer Welch shows there was an "absence of mistake" and that it was no accident in arresting petitioner without probable cause (or in this case vitiated probable cause). It was a deliberate circumvention of petitioner's 4th amendment right.
- The affidavit from the victim in the DMV III case was an objectively untrustworthy document to base probable cause on.
- Justice Ginsburg dicta in WESBY, supra, that there may be "some circumstances" where probable cause would not be the only factor in deciding whether or not there is a 4th amendment violation in pretext situations.
- The officer should have at least determined why the victim did not want to pursue charges before determining that there was probable cause based on her affidavit.
- A quote from EIRAS, supra: "In making an arrest affidavit or seeking an arrest warrant, "[a]n arresting officer is required to conduct a reasonable investigation to establish probable cause." Rankin v. Evans, 133 F.3d 1425, 1435 (11th Cir. 1998). An officer may not "choose to ignore information that has been offered to him or her . . . [or] conduct an investigation in a biased fashion or elect not to obtain easily discoverable facts. . . ." Kingsland, 382 F.3d at 1229. Indeed, "[a] police officer may not close her or his eyes to facts that would help clarify the circumstances of an arrest. Reasonable avenues of investigation must be pursued especially when, . . . it is unclear whether a crime [has] even taken place." See BeVier v. Hucal, 806 F.2d 123, 128 (7th Cir. 1986) (alterations added); see also Ahlers v. Schebil, 188 F.3d 365, 372 (6th Cir. 1999) ("[O]fficers, in the process of determining whether probable cause exists, cannot simply turn a blind eye toward potentially exculpatory evidence known to them in an effort to pin a crime on someone."). Although officers "need not conduct a 'mini-trial' before making an arrest, . . . probable cause does not exist when a 'minimal further investigation' would have exonerated the suspect." Kuehl v. Burtis, 173 F.3d 646, 650 (8th Cir. 1999) (internal citations omitted)"
- Ex Parte Scarborough, supra, does not solve the pretext problem in Alabama because it does not elaborate on any

- circumstance that could vitiate probable cause and the facts of the case are not even on point with a case like petitioner's where **the officer had to first obtain the warrant for arrest**. There was a pre-existing warrant in Ex Parte Scarborough — so this is a material distinction.
- Franks v. Delaware, supra, held: "Where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with **reckless disregard for the truth**, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment, as incorporated in the Fourteenth Amendment, requires that a hearing be held at the defendant's request." Therefore Judge Youngpeter should not only have given petitioner a hearing to determine whether the arrest was pretextual but after petitioner offered to prove that there was reason to doubt the officers sworn complaint, there should have also been a hearing to determine if the so called "probable cause" could have been vitiated at the time the officer made the complaint. In other words, petitioner should have had a hearing to argue that there was no probable cause.
 - This Court has already granted Cert. to a prior case (Missouri v. Blair, supra) in the past that dealt directly with this issue and only because of the facts of that particular case, the Court decided that Cert. was improvidently granted. It is time for the court to directly address suppression issues in cases that are more akin to "pretextual arrest" than in cases like WHREN, supra, that are more akin to a "pretextual stop". There are key differences between a case like BLAIR, supra, where the **warrant process is involved** and a case like WHREN, supra, that involves an officer's own observations.
 - The Circuit Judge incorrectly applied SCARBROUGH which is based on CAUSEY, supra. **CAUSEY states that the pretextual arrest warrant must be valid.** Petitioner specifically disputed the validity of the warrant and the probable cause it was based on.
 - Furthermore Judge Higinbotham in his concurrence in CAUSEY specifically stated that: "An issued warrant ordinarily lies within the circle of objective reasonableness because probable cause for arrest has been found by a neutral magistrate. However, this is not always the case."

Objective facts extrinsic to those of the particular offense for which a warrant is issued may alter the conclusion of reasonableness"

- The dissent in CAUSEY pointed out the flaws in the majority's reasoning.
- "A judicial officer would be expected to want to know this information[about the victim not wanting to pursue charges, the fact that the investigation had been closed, the fact that the responding officer did not take photos of any injuries, and the fact that the reopening of the investigation was prompted by a homicide investigator's request] largely because such information at least had the potential to make a difference in the determination of the existence of probable cause." RUSSO, supra.
- The Alabama Domestic Violence statute, supra, is written too broadly if it allows officers to make arrest on behalf of victims even if the arrest has nothing to do with the alleged domestic violence and the victim doesn't want to pursue charges. It gives police too much power. This was the law cited by Detective Tunink in the homicide report when giving justification for why petitioner could be arrested for domestic violence instead.
- The Law article, Appendix E, makes clear why the officer did not have probable cause to arrest for domestic violence and why any *potential* probable cause was vitiated by the surrounding circumstances.

End