

No. 25-7060

FILED
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SUPREME COURT, U.S.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Elizabeth NELSON
Albert THROWER — PETITIONER
(Your Name)

vs.

Robert Scott et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

6th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Elizabeth NELSON
Albert THROWER
(Your Name)

PO Box 6702
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Cleveland, OH 44101
(City, State, Zip Code)

216856626
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Does pro'se appellant state a cause of action under 4,5,14th Amendment US Constitution, 42 USC Section 1983 for illegal search and seizure and Due Process violations when a city property and maintenance employee does admitted "citizens' arrest" on appellant Thrower as found by the magistrate-judge ?

Do private parties Service Towing Inc employees, act in conspiracy for Section 42 USC 1983 purposes when pro'se litigant alleges private party towing company employees stalled the appellant in a pre-arranged plan and called property and maintenance employee to do a citizen's arrest?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

ROBERT SCOTT; SERVICE TOWING, INC.; ABLE TOWING, LLC; EDWARD D. HERTZ; BRUCE HERTZ; SANDRA A. HERTZ; RANDY HERTZ; DENNIS HERTZ; JOHN DOE, City of Warren Property Maintenance Division Employees; JAMES CUMMINS, Building Department Director; CITY OF WARREN, MI ZONING DEPARTMENT EMPLOYEES; CURTIS GAUSS, City of Warren Department of Maintenance; FRANK BADALAMENTE; MARY MICHAELS; BRIAN KIJEWski; MARILYN TREMBATH; JOHN DOE, City of Warren Police Officer; JOHN DOE, 1-2; CITY OF WARREN, MI; WILLIAM DWYER, Warren Police Commissioner; WILLIAM REICHLING, Captain; JAMES R. FOUTS, Mayor; KIMBERLY ELIZABETH BRANSON; JOHN DOE, Warren Policemen (4); EVERETT MURPHY, City of Warren Field Inspector; PETE WARACK; ANNETTE GATTARI-ROSS; R. LIPA, City of Warren Rental Inspector; RANDALL SULLIVAN

Defendants - Appellees

RELATED CASES

*Nelson et al v Scott et al. No. ^{2:23-cv-11597} ~~24-2095~~ (RT) (EW)
U.S. District Court for the
E.D. Michigan (ED) Judgment Entered
11/20/24*

*Nelson et al v Scott et al., No. 23-11597
United States District Court for the
Eastern District of MI Judgment Entered
4-9-24*

*Nelson et al v Scott et al US Court of Appeals
for the Sixth Circuit Judgment Entered
10-6-25*

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Judgment entered 10-6-25

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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 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 United States district 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.

Appendix C - Magistrate Opinion
 For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10-6-25.

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**:

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

A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th, 5th, 14th Amendment
Due Process Clause, United
States Constitution

42 USC § 1983

STATEMENT OF THE CASE

The Magistrate Appendix C, ECF 46, correctly stated the facts in re the allegations of the complaint, which “must be accepted as true” (citation omitted) including that that the defendant appellee -city property and maintenance employee ROBERT SCOTT performed a “citizens arrest”, as appellee SCOTT did not deny in the filings as found by the magistrate but magistrate cited the wrong case law to support that appellant (Thrower) did not argue that appellee Scott lacked “probable cause” to do a “citizens arrest” when per Michigan Code “probable cause”, to do a “citizen’s arrest” is not an element that needs to be considered or alleged as a defense.

Per the facts of the complaint, employees of Service Towing Inc. conspired with city employee, property and maintenance worker Scott, to stall appellant Thrower at the tow yard, call appellee Scot, who rushed over and performed the “citizen’s arrest”.

REASONS FOR GRANTING THE PETITION

It is well-settled law that only law enforcement can perfect an arrest. Citizens can only perform an arrest in a limited case under Michigan law. The facts of this case do not allow a city of Warren Mi property and maintenance individual to perform and arrest. A city employee doing a "citizens' arrest" falls under the 4, 14th Amendment of the United States Constitution. 42 USC Section 1983 is the statute to provide redress for the facts of the complaint.

It is of great constitutional importance to address this issue to provide guidance under well-settled law. The magistrate per Appendix C stated the facts correctly that city property and maintenance person appellee Scott performed a "citizen's arrest" but cited *Devenpeck v Alford*, 543 US 146, 153, 155 for the provision "The officer's subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause", which is not on point since appellee Scott is a city of Warren MI property and maintenance employee.

Further, appellee Scott conspired with appellee Service Towing Inc., as to contacting appellee Scott and stall appellant Thrower at place of business to allow appellee Scott to race over to perform "citizen's arrest".

See *Graham v Connor*, 490 US 386, 395 (1989), "because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physical intrusive governmental conduct, that Amendment ...must be guide for analyzing these claims. See *Tsao v Desert Palace Inc.*, 698 F3d 1128, 1142 "evaluating claim of unlawful citizen's arrest under framework for Fourth Amendment false arrest after finding citizen arrester to be state actor" Appendix C ECF 46.

Michigan Code states- Ex A

“THE CODE OF CRIMINAL PROCEDURE (EXCERPT) Act 175 of 1927 764.16 Arrest by private person; situations. Sec. 16. A private person may make an arrest—in the following situations: (a) For a felony committed in the private person's presence. (b) If the person to be arrested has committed a *felony* although not in the private person's presence. (c) If the private person is summoned by a peace officer to assist the officer in making an arrest. (d) If the private person is a merchant, an agent of a merchant, an employee of a merchant, or an independent contractor providing security for a merchant of a store and has reasonable cause to believe that the person to be arrested has violated section 356c or 356d of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.356c and 750.356d of the Michigan Compiled Laws, in that store, regardless of whether the violation was committed in the presence of the private person. History: 1927, Act 175, Eff. Sept. 5, 1927; □CL 1929, 17150; □CL 1948, 764.16; □Am. 1988, Act 19, Eff. June 1, 1988”

Appellee (EE) Scott—an employee of (EE) city of Warren MI, Property & Maintenance Dept, did not have authority to do a “citizens arrest” on (ANT) Thrower. (EE) Hertz Bros., employee (EE) Sullivan working at (EE) STI Towing Inc., facilitated this “citizens arrest” acting in agreement and/or conspiracy per facts in complaint by employees (EE) Hertz Bros., (EE) Sullivan notifying (EE) Scott when (ANT) Thrower arrived at (EE) Service Towing Inc., and “stalling” same for over 30 minutes. Per *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1142 (9th Cir. 2012) held in re appellee (EE) STI Towing Inc (STI) could be liable as a “state actor” acting in conspiracy: or “joint action”. *Laurie Tsao v. Desert Palace, Inc.* 698 F.3d 1128 (9th Cir) cited by the Magistrate Judge: “i. Color of state law “Desert Palace is a private corporation. Although § 1983 makes liable only those who act “under color of” state law, “even a private entity can, in certain circumstances, be subject to liability under section 1983.” *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 954 (9th Cir.2008) (en banc). Specifically, a plaintiff must show that “the conduct allegedly causing the deprivation of a federal right [was] fairly attributable to the State.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982). “The Supreme Court has articulated four tests for determining whether a private [party's] actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test.” *Franklin v. Fox*, 312

F.3d 423, 444–45 (9th Cir.2002). We hold that Desert Palace's actions are “fairly attributable to the state” under the joint action test....”

Likewise, (EE) STI Towing Inc, Hertz Bros “is a private corporation.... Act ‘under color of law’, ‘even a private entity can, ... be subject to liability under section 1983’ *Id.*, ‘the conduct allegedly causing the deprivation of a federal right (was) fairly attributable to the State.’” *Lugar v Edmondson Oil Co.*, 457 U.S. 922, 937. Per complaint “which must be accepted as true” appellees Hertz Bros., (EE) employee Sullivan, “stalled” (ANT) Thrower for over 30 minutes, while (EE) Scott was contacted by (EES’) STI, Hertz Bros., and (EE) Sullivan and raced over to do “citizens’ arrest” “assault” on (ANT) Thrower, search his “Aldi’s bag”, “knock phone out of his hand when he called 911”, as set forth in the complaint. (EES’) STI Towing, Hertz Bros., and Sullivan claim they were acting pursuant to a contract with (EE) City of Warren. Like the appellant in *Laurie Tsao v. Desert Palace, Inc.* 698 F.3d 1128, appellants’ aver that the towing of the 2 vehicles, and the “joint action.”, and the “citizen’s arrest” the next day by (EE) STI employees-(EES) Hertz Bros., and (EE) employee Sullivan, Scott acting in concert with (EES’) STI Inc and Hertz Bros. and employee Sullivan fit the criteria of “the joint action test.... State officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights” *Id.* 455. The “citizens arrest” could not have been effected without the collusion of appellees’ Hertz Bros., and employee of (EE) STI Towing (EE) Sullivan. Hence, that “the conduct allegedly causing the deprivation of a federal right [was] fairly attributable to the State.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S.Ct. 2744.

“The joint action test asks “ ‘whether state officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights.’ ” *Id.* at 445 (quoting *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1453 (10th Cir.1995)). This requirement can be satisfied either “by proving the existence of a conspiracy or by showing that the private party was ‘a willful participant in joint action with the State or its agents.’ ” *Id.* (quoting *Collins v. Womancare*, 878 F.2d 1145, 1154 (9th Cir.1989)). Ultimately, joint action exists when the state has “ ‘so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity.’ ” *Gorenc v. Salt River Project Agric.*

Improvement & Power Dist., 869 F.2d 503, 507 (9th Cir.1989) (alteration in original) (quoting Burton v. Wilmington Parking Auth., 365 U.S. 715, 725, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961)). Particularly relevant here is the maxim that “if the state ‘knowingly accepts the benefits derived from unconstitutional behavior,’ ... then the conduct can be treated as state action.” *Id.* (quoting Nat’l Collegiate Athletic Ass’n v. Tarkanian, 488 U.S. 179, 192, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988)). The (EES’) city of Warren, Scott, et al., obtained the benefit of the “citizens arrest” of (ANT) Thrower, via the agreement to detain him with private parties. Further, the 2 cars towed without search warrant off “private property” (EE) city Warren again derived a benefit. (EES) STI Towing, Hertz Bros obtained “benefit” by collecting storage fees for days more—for tipping off (EE) Scott- and to obtain titles of cars had (ANT) Thrower not bonded out.

“Desert Palace’s behavior qualifies as state action under the joint action test thanks to its system of cooperation and interdependence with the LVMPD. First,....” “clothed with the authority of state law,” Williams v. United States, 341 U.S. 97, 99, 71 S.Ct. 576, 95 L.Ed. 774 (1951).under the...”. (EES) STI Towing, employee city Scott et al., “qualifies as state action under the joint action test thanks to the system of cooperation” with (EE) city of Warren, (EE) Scott.

“Just as in *Lusby*, Makeley did more than effectuate a citizen’s arrest—he purported to act on behalf of the state from the outset of the encounter. That pretense, although not conclusive, supports Tsao’s contention that Makeley was a state actor for purposes of § 1983. See Griffin v. Maryland, 378 U.S. 130, 135, 84 S.Ct. 1770, 12 L.Ed.2d 754 (1964) (“If an individual is possessed of state authority and purports to act under that authority, his action is state action. It is irrelevant that he might have taken the same action had he acted in a purely private capacity....”); see also Flagg Bros., 436 U.S. at 163 n. 14, 98 S.Ct. 1729; Traver v. Meshriy, 627 F.2d 934, 938 (9th Cir.1980) (holding that an off-duty police officer employed as a bank security guard acted under color of law when he identified himself as a police officer to a bank robbery suspect); United States v. Temple, 447 F.3d 130, 139 (2d Cir.2006).”

“those that result in the municipality itself violating someone’s constitutional rights or instructing its employees to do so, and those that result, through omission, in municipal responsibility “for a constitutional violation committed by one of its employees, even though the municipality’s policies were facially constitutional, the municipality did not direct the employee to take the unconstitutional action, and the municipality did not have the state of mind required to prove the

underlying violation.” 290 F.3d at 1185–86 (citing *City of Canton v. Harris*, 489 U.S. 378, 387–89, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989))”

“As the Supreme Court has also observed, however, such concerns are not present “[w]here a plaintiff claims that a particular municipal action *itself* violates federal law, or directs an employee to do so.” *Id.* Under this “direct path” to municipal liability, a plaintiff must “prove that the municipality acted with ‘the state of mind required to prove the underlying violation,’ just as a plaintiff does when he or she alleges that a natural person has violated his federal rights.” *Gibson*, 290 F.3d at 1185 (quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 405, 117 S.Ct. 1382).”

Michigan case law shows under the facts of the complaint that appellees were acting in violation of state law.

People v Meyer, 424 Mich 143 (1985) – In this case, the Michigan Supreme Court held that police officers who make an arrest outside of their jurisdictions are considered private persons and are only able to make arrests under the citizen’s arrest law.

• *People v Hamilton*, 465 Mich 526 (2002) – In this case, the Michigan Supreme Court held that police officers who made an arrest outside of their jurisdiction for an operating while intoxicated charge were subject to criminal charges and civil liability.

Citizen’s Arrest Laws and Responsibilities in Michigan [LegalClarity Michigan](#) Published Jan 16, 2025

“Citizen’s arrest laws in Michigan empower individuals to detain someone they believe has committed a crime, reflecting a broader principle found in many jurisdictions. This concept involves balancing the rights of private citizens with legal responsibilities and potential liabilities.

Understanding these laws is crucial, given the complex legal landscape surrounding citizen’s arrests. Examining the criteria, conditions, and repercussions involved provides clarity on what is legally permissible and the risks entailed.

Legal Basis for Citizen's Arrest in Michigan

The legal foundation for citizen's arrest in Michigan is rooted in common law principles, adapted and interpreted through various court rulings. Michigan law permits a private individual to arrest another person if they have *committed a felony* in the arrestor's presence or if the arrestor has reasonable cause to believe the person has *committed a felony*. This principle is recognized through judicial interpretation and historical precedent.

Michigan courts have clarified the circumstances under which such an arrest is permissible. In *People v. Goecke*, the Michigan Supreme Court highlighted the necessity for the arresting citizen to have a reasonable belief that a *felony has occurred*. This requirement underscores the importance of the arrestor's perception and judgment, which must be grounded in observable facts rather than mere suspicion.

The absence of a statutory framework means that Michigan relies heavily on case law to delineate the boundaries of citizen's arrest. This reliance on judicial decisions creates a dynamic legal environment where interpretations can evolve. The courts emphasize the need for the arresting party to act within the confines of reasonableness and necessity, ensuring that the arrest is not arbitrary or unjustified.

Criteria and Conditions for Arrest

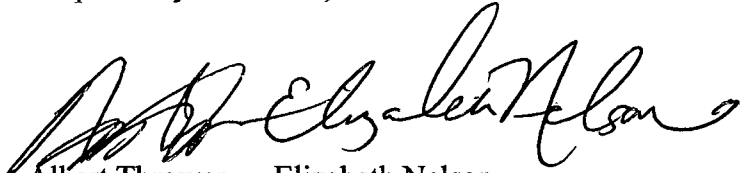
In Michigan, the criteria and conditions for conducting a citizen's arrest are informed by a combination of common law principles and judicial interpretations. The primary criterion is that the arrest must *pertain to a felony*, as opposed to a misdemeanor, which restricts the circumstances under which a private individual can intervene.

The arresting citizen must have a reasonable belief that *a felony has occurred*, a standard that necessitates more than mere suspicion. This belief must be based on observable and credible facts that would lead a prudent person to conclude that *a felony has been committed*. Michigan courts have examined this aspect, emphasizing that the arrestor's perception should be informed by tangible evidence or direct observation." (EE) Scott actions as set forth in the complaint and not denied by appellee Scott do not apply because a "felony has (NOT) occurred".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Handwritten signatures of Albert Thrower and Elizabeth Nelson in cursive script.

Albert Thrower Elizabeth Nelson

Date: January 4, 2026