

**In The
Supreme Court of the United States**

EDWARD KRAMER,

Petitioner,

v.

ANTONIO VITTI and STEPHEN STAUROVSKY,

Respondents.

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

**BRIEF IN OPPOSITION TO PETITION FOR
A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Should the Court entertain the Petitioner's newfound contention that the Second Circuit Court of Appeals erred in making a factual finding such that the affirmance of the district court ruling granting Respondents' motion for summary judgment purportedly violated his Seventh Amendment rights.

OPINIONS BELOW

The challenged opinion of the United States Court of Appeals for the Second Circuit affirming summary judgment for Respondents was rendered November 14, 2018; it is not published but is reproduced at Pet. App. 1-12. The Judgment of the United States District Court for the District of Connecticut was July 14, 2017 and is reproduced at Pet. App. 13. The opinion of the United States District Court for the District of Connecticut granting Respondents' motion for summary judgment, from which Petitioner appealed to the Second Circuit, was rendered orally on July 13, 2017; it is not published but is reproduced at Pet. App. 14-18. The Order of the Second Circuit denying Petitioner's motion for rehearing was issued February 1, 2019, and is reproduced at Pet. App. 19..

JURISDICTION

The United States Court of Appeals for the Second Circuit rendered its final decision on the

Petitioner's appeal on February 1, 2019. Petitioner filed the instant petition for writ of certiorari on April 25, 2019. Jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

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

U.S. CONST. AMEND. IV.

42 U.S.C. § 1983 provides, in relevant part:

“Every person who, under color of any statute, ordinance, regulations, custom, or usage of any State.... subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law...

STATEMENT OF THE CASE

Respondents Antonio Vitti (“Detective Vitti”) and Stephen Staurovsky were employed and working as detectives in the Milford Police Department (MPD) at all times relevant. Edward Kramer (“Kramer”) brought this suit in connection with his arrest by non-party MPD officers in Milford on September 13, 2011.

A. FACTUAL BACKGROUND

In 2003, Kramer was indicted on several felony child molestation charges by a Georgia grand jury. Pet. App. 3. As a result of that indictment, and at all times relevant to this action, Kramer was subject to a bond order which prohibited him from, among other things, having unsupervised contact with anyone under the age of sixteen (16). Id. In September 2011, Kramer violated that bond order by staying in a motel room with a fourteen-year old, Trevor, in Milford, Connecticut. Id. On September 13, 2011, a Georgia district attorney, Daniel Porter, advised Detective Vitti of this ongoing violation of a valid court order, a copy of which he forwarded to Vitti. Id. Detective Vitti subsequently obtained sworn statements from multiple witnesses about Kramer’s contact with Trevor; one witness reported observing plaintiff engaged in “weird and creepy” behavior toward Trevor, and both witnesses confirmed that the two were staying in the motel room without a third-party present. Pet. App. 3-4.

Based on Kramer's ongoing violation of the bond order, other verified information provided by Attorney Porter, and the concerning sworn witness statements, non-party Officers in the MPD were dispatched to the motel in question. There they found Kramer alone in a room with Trevor, and arrested him on a charge of Risk of Injury in violation of § 53-21 of the Connecticut General Statutes. Pet. App. 4. That charge was ultimately *nolled* after (and because) Kramer was extradited to Georgia, based on his violation of the bond order. To resolve that criminal case, he ultimately pled guilty to felony child molestation, and registered as a sex offender. Id.

B. PROCEDURAL BACKGROUND

Plaintiff commenced this action in the United States District Court for the District of Connecticut on August 17, 2015; the only claim that survived dismissal under Rule 12(b)(6) was a § 1983 malicious prosecution claim against the Respondents. On February 15, 2017, Respondents moved for summary judgment on that claim. The district court (Underhill, J.) granted that motion on several grounds, including the existence of probable cause for plaintiff's subject arrest and prosecution. Pet. App. 13-18. Plaintiff appealed from that decision, and the Second Circuit affirmed it, having concluded that, "on undisputed facts, no reasonable juror could find in Kramer's favor on probable cause." Pet. App. 11-12.

REASONS FOR DENYING PETITION

I. The Second Circuit's Contested Factual Finding Was Not Erroneous

The basis for this improper petition is a claimed error with respect to a single factual finding. Plaintiff apparently contends that the Second Circuit missed a genuine factual dispute as to whether the bond order, and its prohibition against his undisputed, unsupervised contact with Trevor, was rescinded before his arrest. Pet. App. 5. It was not. The Second Circuit garnered this established fact directly from Connecticut Appellate Court decision in Kramer v. Comm'r of Corr., 56 A.3d 956, 961-962 (Conn. App. Ct. 2012), which concerned his related habeas petition.¹

II. Plaintiff's Petition Does Not Meet Rule 10 Standards

Plaintiff's petition should also be denied based on the absence of a "compelling" reason to grant it under Rule 10. The petition does not raise a legitimate legal issue at all, let alone one over which circuit courts are split, or which constitutes an "important federal question..." Sup. Ct. Rule 10. Nor does the petition bear in any way upon any

¹ Judge Chin noted during oral argument that, in addition to the Connecticut Appellate Court's opinion, the record evidence on appeal also showed that "there was a pending order." Oral Argument at 6:57, Kramer v. Vitti (No. 17-2467), <http://www.ca2.uscourts.gov/decisions/isysquery/2f032014-4d33-445a-9125-656d78b2f3b8/141/doc/17-2467.mp3>.

decision of “a state court of last resort...” Id. Instead, it presents precisely that which Rule 10 warns against: a completely unsupported contention that the district court and the Second Circuit made an “erroneous factual finding []” about a material fact. Rule 10. This petition merely repeats a factual argument the Second Circuit deemed “frivolous.” Pet. App. 11. It should thus be denied.

CONCLUSION

For the foregoing reasons, the defendants respectfully urge the Court to affirm the district court’s summary judgment ruling in their favor.

Dated: May 23, 2019

Respectfully Submitted,

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