

No. _____

In The
Supreme Court of the United States

EDWARD KRAMER,

Petitioner;

vs.

ANTONIO VITTI and STEPHEN STAUROVSKY,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Petitioner's Seventh Amendment right to a jury determination of the material disputed facts in his case was violated when the Court of Appeals granted the Respondents' motion for summary judgment despite the existence of a material factual dispute.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Edward Kramer, petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit was rendered on February 1, 2019, and on November 14, 2018, and was not published. It is printed as Appendix 1-12 to this petition. The Judgment of the United States District Court for the District of Connecticut is printed as Appendix 13 to this petition. The opinion of the United States District Court for the District of Connecticut upon which the Court of Appeals based its ruling was rendered orally on July 17, 2017. It also was not published. It is printed as Appendix 14-18 to this petition. The ruling of the Court of Appeals denying rehearing is printed as Appendix 19-20 to this petition.

JURISDICTION

The United States Court of Appeals for the Second Circuit rendered its final decision on the petitioner's appeal on February 1, 2019. The jurisdiction of this Court 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."

The Seventh Amendment to the United States Constitution provides, in pertinent part: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ."

42 U.S.C. § 1983 provides, in pertinent part: "Every person who, under color of any statute, ordinance, regulation, 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, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

The Respondents are Connecticut police officers. They caused other police officers to arrest the Petitioner without a warrant on September 13, 2011. They charged him with violating a Connecticut statute making it a felony for any person to “cause[] or permit[] any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired. . . .”

An unconditional *nolle prosequi* entered in the criminal case on March 14, 2013.

On August 17, 2015, the plaintiff sued the Respondents in the United States District Court for the District of Connecticut, for malicious prosecution in violation of the Fourth Amendment as enforced through 42 U.S.C. § 1983 by participating in initiating or pursuing the Petitioner’s prosecution following his arrest. *Manuel v. City of Joliet, Illinois*, ___ U.S. ___, 137 S. Ct. 911 (2017). The Respondents requested a trial by jury. After discovery, they moved for summary judgment on the ground, among other things, that they had probable cause to arrest and prosecute the Petitioner.

Taken in the light most favorable to the nonmoving party, *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000); the evidence showed that the Petitioner had been charged in the State of Georgia with child molestation and aggravated child molestation and had been released on bond permitting him

to travel to Connecticut. At the time of his arrest those charges remained pending against him. In 2011, the Georgia District Attorney discovered that the Petitioner was staying at a Connecticut motel with a fourteen-year-old child actor. He contacted the Respondent Vitti and told him that a condition of the Petitioner's bond prohibited him from having unsupervised contact with minors. Vitti then contacted a person who was working with the Petitioner and the actor on a film project in Connecticut. She told Vitti that the actor's mother had informed her that the Petitioner was her son's guardian and that her son was in his sole custody. She also told him that one of her co-workers had informed her that he had seen the Petitioner alone in a motel room with the actor, who was wearing only a towel, and that he considered the Petitioner to be "weird and creepy" and that he was uncomfortable leaving them alone together. Shortly after the Petitioner was arrested, he informed the Respondents that there was no longer any "no contact" provision in his Georgia bond and offered to provide them with a copy of the current bond, which had no conditions. The fourteen-year-old actor further informed the Respondents that nothing inappropriate ever had taken place between him and the Petitioner.

The District Court granted summary judgment in favor of the Respondents in an oral bench ruling on July 13, 2017. On appeal, the United States Court of Appeals for the Second Circuit affirmed in a summary order issued on November 14, 2018. A Petition for Re-hearing was denied on February 1, 2019.

REASONS FOR GRANTING THE WRIT

While a court considering a summary judgment motion is not required to accept an opposing party's version of the facts if that version "is blatantly contradicted by the record, so that no reasonable jury could believe it," *Scott v. Harris*, 550 U.S. 372, 380 (2007); Rule 56(c), Fed. Rule Civ. Proc., does require courts considering summary judgment motions in all other circumstances to accept the nonmoving party's version of the facts. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-56 (1986); *Adickes v. S. H. Kress & Company*, 398 U.S. 144, 157-59 (1970); *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (*per curiam*). That Rule enforces the Seventh Amendment right of every litigant in the federal courts to have his cause decided by a jury.

The Court of Appeals in this case deviated from the mandate of Rule 56(c) by finding as a material fact that "it cannot be genuinely disputed that Kramer violated the terms of his Georgia pretrial release and that, accordingly, the information provided by Porter and relied on by the defendants was true and accurate in all relevant respects." (App. 8) The Court of Appeals held that the Petitioner's "argument that the warrant should have included Kramer's contentions after his arrest that 'the Georgia order prohibiting his contact with juveniles had been rescinded' . . . is frivolous. . . . [because] the Georgia order had not been rescinded, *Kramer v. Comm'r of Corr.*, 56 A.3d at 961-62. (App. 11) That was a plain misreading of the state court decision, which held only that the criminal charges against the Petitioner remained pending in Georgia at the time of

his arrest in Connecticut and did not address at all the issue of whether there was a bail condition of no contact with minors. Far from being frivolous, the Petitioner's argument in that respect was supported by the record sufficiently to make it a genuinely disputed material fact.

The Court of Appeals expressly held that "Kramer's violation of the modified Georgia bond order prohibiting unsupervised contact with minors" was a material fact in determining that probable cause existed to believe that Petitioner had violated Connecticut's "risk of injury" statute. (App. 11) By the court's own reasoning, therefore, that material fact was genuinely in dispute in this case. In denying the Petitioner the right to have a jury determine that issue, the Court of Appeals violated Rule 56(c) and deprived Petitioner of his Seventh Amendment right to a jury trial.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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