

No. 18-9627

ORIGINAL

Supreme Court, U.S.
FILED

MAY 07 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Jeffery Tucker — PETITIONER
(Your Name)

vs.

U.S. Government — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

4th circuit court of appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeffery Tucker 0412832
(Your Name)

mountainview Prison
545 Amity Park Rd
(Address)

Spruce Pine N.C. 28777
(City, State, Zip Code)

NA
(Phone Number)

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MAY 14 2019

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SUPREME COURT, U.S.

Federal Questions

1. Is it due Process to Convict a North Carolina State Citizen Pursuant to a General Warrant?
2. Is it a Violation under the 5th Amendment to the U.S. Const. to Subject a North Carolina State Citizen to a denial of due Process using Suspicion, Belief or Rumor?
2255, Appendix F
3. How is it that a North Carolina State Citizen can be arrested on evidence from persons not located in the same County who saw nor heard any direct evidence?
2255, Appendix A
4. Is it a Violation under the 8th Amendment to the U.S. Const. to arrest & detain a North Carolina State Citizen who committed No Felony?
5. Do U.S. courts that try Felony Cases have Subject Matter Jurisdiction over North Carolina State Citizens who have not committed A Felony in that instant?

2255 petition

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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☒ is unpublished.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☒ is unpublished.

☐ 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☐ is unpublished.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 April 10th 2019

☒ 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

Due process violated

NO Probable cause

I only have 10th grade education

"Statement of case"

• MEMORANDA OF LAW

A Fundamental Miscarriage of Justice, Clear and Plain Error violating Constitutional due process creating a lack of Subject Matter Jurisdiction is apparent from review of the events outlined below: A warrant must be properly constituted; This cannot be abrogated or changed by the legislature. Ex parte McGovern, 4 W.S. 157, 142 N.W. 595, 625 (1913).

I FACTS:

1. on 10-09-2014, Plaintiff was traveling in his automobile on a public road called Southview Hwy. 16 between Newton a Town and Denver a Town and after pulling into the Yard of his temporary living location then rented by his significant other he was attacked by several unknown persons and as a result ran and hid for safety, was afterward tased, handcuffed, searched, while the surrounding property was also searched then transported when the searches were over.

2. Comes Now the Plaintiff Jeffrey D. Tucker, a free Citizen of the State of North Carolina, who respectfully presents and submits this Motion as evidence and proof of the prevailing and controlling law regarding the matter now before the Court.

At common law, and under the provisions of Due Process of Law, such an arrest without a warrant can not be made.

Since the arrest deprived the Plaintiff of his liberty by an act not pursuant to due process of law, the arrest is unlawful. Due Process is not determined by the legislature. Murray's Lessee v. Hoboken Imp. Co., 18 How. (59 U.S.) 272, 276 (1855).

3. The Defendant never asked the Plaintiff for ID or who he was. The Plaintiff states for the record he is not a licensee under any board or commission and is not required to be a licensee.

4. The Defendant arrested, searched and handcuffed the Plaintiff, without warrant, and over his objections that Defendant's acts were in violation of Plaintiff's rights and the constitutional provisions of due process of law. As stated by Justice Platt: — All persons whatever, who are present when a felony is committed, or a dangerous wound is given, are bound to apprehend the offenders. (3 Hawkins, P. C. 157, Arrest, S.D)

II DENIAL OF DUE PROCESS

Note: Here in after Jeffery D. Tucker is mentioned as Defendant.

5. Once the Defendant was removed from the Property All Control of the area was under the officers who had 1. already Searched to no avail 2. removed the Defendant.

(See Appendix H and Compare to Appendix C-D 2255)

Here the Defendant contends the officers should have obtained a warrant to Search the Property after the Defendant was removed. Next after a HORD of officers Search to no avail a Gun was Some how found. Defendant contends this is Planted evidence drawn from Michelle Vaughns home (Appendix C) 2255

6. The Gun in Question was by Picture evidence found in the floor board of an officers car and nowhere in the Control of the Defendant; Then the Gun was given to Michelle Vaughn and then taken into evidence

thus custody of the Gun was last Prior to being Sent into Court evidence. Also the underlying charge of D.W.I. and Driving while licence revoked were dismissed; And so the Gun evidence and intinal charge with the following Searches are invalid and inadmissible; an entire 3 weeks passed from 1. giving the Gun to Michelle Vaughn and 2. the officers taking the Gun into evidence from Michelle Vaughn C.F. Appendix C and J An-entire 3-three weeks!

(See Ekern V. McGovern Supra.)

7. During the Proceedings there were various Facts used to give the arrest the appearance of having probable cause the Defendant contends these facts did not exist at the time of arrest To wit: SS: Viz: Namely;

The Bouncers Gun evidence (Appendix F Also B)

Evidence of the Defendant going to kill Michelle or Andy who was not even Present at the Property (C.F. Appendix A and G)

Colby V. Jackson, 12 U.H. 5261530 C1842

Evidence of Tucker having a Gun and ill intent from a Person who was not within sight or direct knowledge of such (Appendix A) And so According to the Evidence the Gun is pictured and Found in

R

(5)

(5)

in Officers Car [Appendix C], and out of All the Pictures taken by officers shown in Appendix C none of them show a Gun on the Ground in the Yard: Simply because the Gun was never in the Yard. The Officers were looking in the Yard to picture a Gun and they failed.

More over when the Defendant was taken, the Defendant was taken to a Magistrate. There Defendant contends the officers could have obtained a Search Warrant then, and here what must be remembered is the Conditions for a felony arrest never existed so taking the Defendant anywhere for the imposed offence of traveling is false arrest.

8. And so it appears on record the arrest was false and all evidence going forward was unlawfully obtained. The "invalidity of the arrest" will render "the search invalid" and the evidence obtained inadmissible. State v. Mastrian, 285 Minn. 51, 56-57, 171 N.W. 2d 695 (1969); Butler v. State, 212 So. 2d 573, 577 (Miss.) (1968). Also see: Testolin v. State, 205 N.W. 825 (Wis. 1925).

9. Now the only indication of some Gun evidence came from ("Andy") who started the officers off on their quest to arrest with a statement saying the Defendant had a Gun - or at least that is what Andy thought because this statement came from Andy when he was nowhere near the Defendant and could not view the Defendant at all. (See Appendix A) So statements from Andy - Michelle Vaughn - The Bouncer do not justify arrest and the arrest is prima facie unlawful. Evans v. Jorgenson, 182 Minn. 282, 234 N.W. 292, 293 (1931). Cases cited.

10. So there was no breach of peace. When the Defendant pulled in to the property the Officers who laid and waited and the Defendant were the only persons present. Phillips against Trull, 21 Johnson Rep. 486, 487 (N.Y. 1814). See also, 64 C. 35. "Arrest," §13.

P.

(6)

(10)

11. Defendant's blood was in fact drawn when at the "Newton Justice Center" against Defendant's Objections.

The Defendant was then brought to the County Jail where the Officers knew that the Plaintiff would be subject to "booking," which included finger printing, photographing, and confinement for an indefinite period of time, and possibly be subject to other types of assaults and batteries.

12. Further evidence if warranted of a break from the Most Basic due Process:

Michelle Vaughn was in an altered state of mind. i.e. "drunk"

Any statements from her at that time are under duress & judicial official has confirmed.

(See Appendix H) 2255

According to Published Law the U.C. General Statutes nor The U.S. Codes for the crimes said to have been committed have any enacting clauses.

Crimes and Criminal Procedure Title 18 of U.S.C. show no enacting clauses for the crimes charged against the Aggrieved.

REASONS FOR GRANTING THE PETITION

- ① Government was listening to my calls to my Atty, while I was in Jail.

- ② complete miscarriage
of
Justice

- ③ The law is suppose to protect
our liberty not deprive us of it!

- 3½ Ineffective assistance of counsel

- ④ Belief, suspicion + rumor have
no place in the law.

- ⑤ My 2255 petition is on file. I hope
the court will read it.
I feel like justice Cavannal must of felt!
Lies + rumors

- ⑥ I asked for Fed. grand jury transcripts ⑧ ⑨
never got them.
Who testified??

⑧ The only person who says I had a gun is the bouncer, who by his own testimony proves he is a liar.

⑨ They found Michelle's gun in our yard & if probable cause even existed, it left with me when they took me to jail.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffery Tucker

Date: 5/6/2019