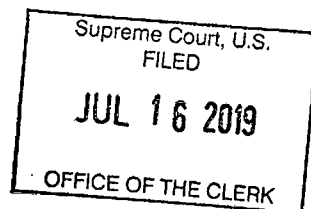


No. 19-5337

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Arthur Shermaine Bussey — PETITIONER
(Your Name)



vs.

Marty Allen, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court Of Appeals For The Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Arthur Shermaine Bussey #1121185
(Your Name)

P.O. Box 5368
(Address)

Valdosta, GA 31601
(City, State, Zip Code)

N/A
(Phone Number)

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:

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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☒ is unpublished.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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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 4-11-2019.

☐ 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: 6-28-2019, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

- 1) Fourth Amendment: 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.
- 2) FED. R. CRIM. P. 41(d): A sworn affidavit, usually completed by an investigating police officer, must establish grounds for issuance of a search or arrest warrant.
- 3) FED. R. CRIM. P. 4(a): Arrest warrant issued if affidavit shows probable cause to believe offense was committed and defendant committed it.
- 4) FED. R. CRIM. P. 3.3, at 140 (2d ed. 1992): Probable cause - under the Fourth Amendment, probable cause - which amounts to more than a bare suspicion but less than evidence that would justify a conviction - must be shown before an arrest warrant or search warrant may be issued.
- 5) Admissibility of evidence obtained by illegal search and seizure 6 L Ed 2d 1544; 84 ALR 2d 959
See: Classified to U.S. Supreme Court Digest Lawyers' Edition.

Criminal Law § 55; Search and Seizure § 27-

Warrant - probable cause 1. Before a warrant for

either arrest or Search can issue, the judicial Officer issuing Such a Warrant must be supplied with Sufficient information to Support an independent judgment that Probable Cause exists for the Warrant. 2. A Complaint by a Sheriff is insufficient to Support a magistrate's finding < pg. 3087 of Probable Cause for the issuance of an arrest Warrant, where (1) the Complaint consists of nothing more than the Sheriff's conclusion that the individuals named therein perpetrated the offense described in the Complaint, and (2) although the actual basis for the Sheriff's conclusion was an informer's tip, that fact, as well as every other operative fact, is omitted from the Complaint.

STATEMENT OF THE CASE

Petitioner is currently incarcerated pursuant to his August 4, 2015 Meriwether County guilty plea convictions and sentences for two counts of aggravated assault. On March 15th, 2016 Petitioner Bussey filed habeas corpus petition within the Superior Court of Howards County. On August 23rd, 2016 the Court denied relief. On August 29th, 2016 Petitioner Bussey filed Application For Certificate Of Probable Cause Case No. S17H0257. Application For Certificate Of Probable Cause was later denied. Petitioner Bussey filed a timely § 2254 Petition in the United States District Court For The Middle District Of Georgia, Valdosta Division, Case No. 7:18-cv-00004-WLS-TQL. On June 4th, 2018 the case was transferred to the Newnan Division Of the Northern District Of Georgia. On November 20th, 2018 Petitioner Bussey filed certificate of appealability within the United States Court Of Appeals For The Eleventh Circuit. On April 11th, 2019 the Court denied COA. Petitioner Bussey filed timely Motion To Reconsider. On June 28th, 2019 the Court denied motion.

REASONS FOR GRANTING THE PETITION (1)
CLEARLY ESTABLISHED FEDERAL LAW:

FED. R. CRIM. P. 3.3, at 140 (2d ed. 1992) "Probable Cause - under the Fourth Amendment, probable cause - which amounts to more than a bare suspicion but less than evidence that would justify a conviction - must be shown before an arrest warrant or search warrant may be issued."

Admissibility of evidence obtained by illegal search and seizure. 64 Ed 2d 1544; 84 ALR 2d 959

See: Classified to U.S. Supreme Court Digest Lawyers' Edition.

Criminal law § 55; Search and Seizure § 27-

Warrant - Probable Cause "1. Before a warrant for either arrest or search can issue, the judicial officer issuing such a warrant must be supplied with sufficient information to support an independent judgment that Probable Cause exists for the warrant. 2. A complaint by a Sheriff is insufficient to support a magistrate's finding < pg. 3087 of Probable Cause for the issuance of an arrest warrant, where (1) the complaint consists of nothing more than the Sheriff's conclusion that the individuals named therein perpetrated the offense described in the complaint, and (2) although the actual basis for the Sheriff's conclusion was an informer's tip, that fact, as well as every other operative fact, is omitted from the complaint."

ISSUE AT HAND: "When the Validity of the issuance of the Arrest Warrants is at issue, a issue of arrest, do the guilty plea Waive Petitioner Bussey's Constitutional right to raise an 4th Amendment Claim of "Arrest Warrants issued Without Probable Cause?"

In the case at issue, Arrest Warrant Affidavit 15-000051 Simply State "For that Said defendant did upon the person of Deric Denson make an assault with a certain, A deadly Weapon, To-wit: A large Knife."

See: R-Page 26-43, Exhibit-A

Arrest Warrant Affidavit 15-000052 Simply State "For that the Said defendant did unlawfully Possess a certain Knife during the Commission of a Crime, To-wit:

Aggravated Assault?"

See: R-Page 26-43, Exhibit-B

A Sworn affidavit, usually completed by an investigating police officer, must establish grounds for issuance of a Search or Arrest Warrant. See: FED. R. CRIM. P. 41(d)

See FED. R. CRIM. P. 4(a) (arrest warrant issued if affidavit shows probable cause to believe offense was committed and defendant committed it); See also Payton v. N.Y., 445 U.S. 573, 602-03 (1980) (arrest warrant requires evidence of participation in crime and "interpose[s] the magistrate's determination of probable cause between the zealous officer and the citizen").

If a warrant is conditioned upon the happening of a certain event, the 4th Amendment does not require that the warrant itself describe the triggering event as long as the triggering event is described in the supporting affidavit.

See: U.S. v. Grubbs, 547 U.S. 90, 98 (2006)

Reasonable jurists would find that in the case at issue the triggering event is not described in the supporting affidavit.

See: R-Page 26-43, Exhibits-A and B

The affidavits contain neither information providing the basis for the officer's belief nor any affirmative allegation that the officer had personal knowledge of the circumstances { 878 F.2d 1409 } surrounding the alleged commission of the crime. The magistrate nevertheless issued the warrants on the stated basis of "Sufficient causes made known to me in the above affidavits." (Emphasis added).

Because the affidavits contained nothing but the Officer's Conclusion that Defendant Bussey had committed the crimes, the magistrate could not possibly have conducted the independent assessment required by the Fourth Amendment of the probability that Defendant Bussey committed the crimes charged.

See: *Giordenello v. United States*, 357 U.S. 480, 486, 78 S. Ct. 1245, 1250, 2 L. Ed. 2d 1503 (1958) (magistrate "should not accept without question the complainant's mere conclusion that the person whose arrest is sought has committed a crime"); *Johnson v. United States*, 333 U.S. 10, 14, 68 S. Ct. 367, 369, 92 L. Ed. 436 (1948)

(Protection afforded by the Fourth Amendment consists of requiring that inferences from facts leading to the complaint "be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime").

Reasonable jurists would find that in the case at issue the issuance of the arrest warrants therefore was not supported by probable cause.

When the warrant(s) issues and the arrest occurs before an indictment is handed down, however, the question whether probable cause existed for the arrest must be answered by reviewing the facts that were before the magistrate. Accordingly, support in this case for a finding of probable cause must be found in the affidavit accompanying the application for the warrant(s).

Cf. *Giordenello*, 357 U.S. at 487, 78 S. Ct. at 1250.

In *Whiteley v. Warden of Wyoming State Penitentiary*, the Complaint Submitted to the justice of the peace simply stated that the defendant broke into a specified building on a specified date. No other evidence was submitted. The Court held that the affidavit's conclusion that the defendant committed the offense was insufficient to justify the issuance of a warrant.

See: *Whiteley v. Warden of Wyoming State Penitentiary*, 401 U.S. 560, 564, 91 S. Ct. 1031, 28 L. Ed. 2d 306 (1971)

2.

THE STATE HABEAS CORPUS COURT RULED, "Ground 1 and 6 clearly challenge Petitioner's arrest and, as such, were waived by entry of the guilty plea."

Petitioner Bussey agree with the Court in part, "Grounds 1 and 6 clearly challenge Petitioner's arrest."

Petitioner Bussey disagree in part, "Such, were waived by entry of the guilty plea," Petitioner Disagree.

The State Habeas Corpus Court's decision of "By entry of the guilty plea Petitioner Bussey waived his right to challenge Fourth Amendment issues related to his arrest," was contrary to clearly established federal law, as determined by the United States Supreme Court.

See: *Menna*, 423 U.S. at 63 n.2 ("[P]lea of guilty to a charge does not waive a claim that - judged on its face - the charge is one which the State may not constitutionally prosecute.")

Ground One, Petitioner Bussey raised the claim of "Arrest Warrant's issued without probable cause, in violation of the Fourth Amendment" an issue that affected the Personal

Jurisdiction Of the trial Court to Prosecute the defendant.

CLEARLY ESTABLISHED SUPREME COURT LAW: In Menna v.

N.Y., the Menna Court held that a double jeopardy claim was distinguishable from the Constitutional claims that would be waived under Tollett v. Henderson. In Tollett, the Court reasoned that because a guilty plea is an admission of factual guilt, the defendant may not subsequently raise "independent claims relating to the deprivation of Constitutional rights that occurred prior to the entry of the guilty plea." A double jeopardy claim, however, prohibits the government from convicting the defendant regardless of the defendant's factual guilt because it concerns the government's power to bring the defendant into Court.

See: Menna v. N.Y., 423 U.S. 61, 62-63 and n.2 (1975)

Reasonable jurists would find that in the case at issue a "Arrest Warrants issued without Probable Cause, in Violation of the 4th Amendment" claim, however, prohibits the trial Court from convicting defendant Bussey regardless of the defendant's factual guilt because it concerns the trial Court's power to bring the defendant into Court.

See: Menna v. N.Y., 423 U.S. 61, 62-63 and n.2 (1975), also

See: R-Page 26-43, Exhibits-A and B.

In the case at issue, guilty plea happened after arrest.

CLEARLY ESTABLISHED SUPREME COURT LAW: In Rios v.

United States, the Court emphasized that nothing which happened after an arrest could make the arrest lawful.

See: Rios v. United States, 364 U.S. 253, 41 Ed. 2d 1688, 80 S. Ct. 1431 (1960)

CLEARLY ESTABLISHED SUPREME COURT LAW: In *Whiteley v. Warden of Wyoming State Penitentiary*, it was recognized that the discoveries of a search conducted after an arrest could not be used to validate the probable cause judgment upon which the legality of the search as an incident to a valid arrest depended.

See: *Whiteley v. Warden of Wyoming State Penitentiary*, 401 U.S. 560, 28 L. Ed. 2d 306, 91 S. Ct. 1031 (1971)

Reasonable jurists would find that in the case at issue discoveries ("Guilty Plea") made after an arrest can not be used to validate the probable cause judgment upon which the legality of the issuance of arrest warrants, as an incident to a valid arrest depend.

See: *Whiteley v. Warden of Wyoming State Penitentiary*, 401 U.S. 560, 28 L. Ed. 2d 306, 91 S. Ct. 1031 (1971), also see:

B-Page 26-43 Exhibits-A and B, 70-74, 101-106, and 3-12

BY FACTS OF THE RECORD AND THE ABOVE CLEARLY ESTABLISHED SUPREME COURT LAW: Reasonable jurists would find that Petitioner BUSSEY have challenged his "Arrest Warrants," an issue of Arrest; See: Ground one, a claim that - judged on its face - the charge is one which the State trial court may not constitutionally prosecute, as an incident to a valid arrest depend, guilty plea do not waive Petitioner BUSSEY's right to challenge the validity of his Arrest, proving by clearly established Supreme Court law that the State Habeas Corpus Court's decision was contrary to clearly established federal law, as determined by the United States Supreme Court.

(3)

The United States Court of appeals for the eleventh Circuit decision of "However, reasonable jurists would not debate whether the State Court reasonably determined that these claims were waived because Bussey entered an Alford plea.

See Chandler v. United States, 413 F.2d 1018, 1019 (5th Cir. 1969) (holding that a petitioner's claim that he was arrested without probable cause was waived by his guilty plea); Blohm v. C.I.R., 994 F.2d 1542, 1554 (11th Cir. 1993) ("[T]he collateral consequences flowing from an Alford plea are the same as those flowing from an ordinary plea of guilt." So long as "the guilty plea represents a voluntary and intelligent choice among alternative courses of action open to the defendant and a sufficient factual basis exists to support the plea of guilt.") (Citations omitted).

Although Bussey asserted that the insufficiency of the warrant meant that the district court lacked jurisdiction over him, that argument is foreclosed by precedent. See United States v. Stuart, 689 F.2d 759, 762 (11th Cir. 1982) ("It is well established that irregularities in the manner in which a defendant is brought into custody does not deprive the court of personal jurisdiction in a criminal case.")

Accordingly, no COA is warranted on either of these claims."

Conflict with the decision of the United States

Supreme Court, in *Rios v. United States*, the Court emphasized that nothing which happened after an arrest could make the arrest lawful.

See *Rios v. United States*, 364 U.S. 253, 4 L. Ed. 2d 1688, 80 S. Ct. 1431 (1960).

In the case at issue, guilty plea happened after arrest therefor can not be used to validate the probable cause judgment upon which the legality of the issuance of arrest warrants, as an incident to a valid arrest depend. Also See: *Whiteley v. Warden of Wyoming State Penitentiary*, 401 U.S. 560, 28 L. Ed. 2d 306, 91 S. Ct. 1031 (1971)

The State Habeas Court, and the United States Court of appeals for the eleventh Circuit has departed from the accepted, and usual course of judicial proceedings of ruling on the constitutionality of the issuance of arrest warrants, when an incident to a valid arrest depend, such a departure, as to call for an exercise of this Court's supervisory power.

CONCLUSION

In Order for the guilty plea to have any merit (been valid) in the case at issue the arrest must have been legal. The obtaining of the guilty plea was tainted by the illegal arrest. Petitioner have the Fourth Amendment rights, including his right to be released from unlawful custody following an arrest without probable cause.

The petition for a writ of certiorari should be granted.

Respectfully Submitted

Arthur Burgess

Date: 7/15/19