

No. 19-6768

ORIGINAL

Supreme Court, U.S.  
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

Cary VanDerMeulen — PETITIONER  
(Your Name)

vs.

State of Arizona, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth District Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cary VanDerMeulen  
(Your Name)

4621 E. Villa Rita Dr.  
(Address)

Phoenix, Arizona 85032  
(City, State, Zip Code)

(602) 283-4646  
(Phone Number)

QUESTION(S) PRESENTED

When are the Federal Courts going to take-up the cause concerning the violation(s) of Constitutional Law and abuse(s) of authority by the States of this Union (and their political subdivisions) in the matter of Civil Asset Forfeiture?

## 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 partition is as follows:

In addition to the mainstay of the suit being brought against the State of Arizona for violation of a citizen's Constitutionally protected right to property and its unlawful conversion (under the auspices of one Judge LeClaire), the following parties are named for their participation in acts/actions responsible for this deprivation done under "Color of Law".

[Police] Officers Walter, Tucker, and Mendoza  
Prosecutors for the State [County or City] - John Eric Brinker, Gary L. Shupe  
Judge LeClaire  
Judges Paul J. McMurdie, Peter B. Swann, Patricia A. Orozco

In additional to the 'overview' of unlawful acts presented in the statement of the case, as to the individual responsibility for these acts, the following specifics are provided:

### Officer Walter

- 1) Participated in a false arrest and made accusations of a supposed crime – to which he later testified in court, did not occur.
- 2) Made attestation in order to obtain a search warrant under false pretense – the issuance of which, given the facts, is precluded under law.
- 3) Use of warrant obtained under false pretense to conduct a "fishing expedition" – unlawful search of the complainant's premises and unlawful seizure of the complainant's property.
- 4) Made false statement and representations in an official police report.

Before a Grand Jury:

- 5) Presenting false testimony – represented firsthand knowledge which he did not have; nor could he, as he was not present at the events to which he testified.
- 6) Made statement to the Grand Jury as part of a 'picture he painted' of the complainant as a 'lawbreaker' when the Officer knew for a fact that the complainant had been exonerated in a court of law of any such charges, the officer being present for that hearing...

Nonetheless, he made representation that the complainant was 'speeding' at the time of his arrest – the 'excuse' used by the police to make a traffic stop of the complainant.

(The very definition of perjury - making statement or representation when the person knows it to

be untrue.)

7) Made statements concerning the law which were both

- a. factually false as to what transpired
- b. untrue as a basis of law

At a forfeiture hearing:

8) Despite his standing as a 'professional' witness, would not provide 'straight' answers to questions put to him, making a mockery and grossly disrespecting the legal process and proceedings of the court – for most of the duration of his testimony (which amounted to hours), although

a. He did testify that the basis for which forfeiture was sought was untrue - no transaction / exchange ever took place; nor could it have, as "we never met".

b. He finally 'fessed-up' to the fact that statements were made in the police report for which there was no basis in fact nor did he have any knowledge upon which to base such statements; i.e. that the complainant was "unemployed" (became significant in the verdict)

which he did expressly state as much in his testimony, effectively recanting any such contention as to what he had reported or any [previous] assertion made.

John Eric Brinker - Deputy County Attorney (Prosecutor at Grand Jury Hearing)

1) Did not meet his obligation to correct mis-statement concerning the law made by Officer Walter.

2) When apprised that some jurors did not have copy of the law upon which to make reference, did not see to it that they were provided reference or copy thereof.

3) When specifically questioned concerning the law (by a juror) did not provide any of the requisite information upon which the Grand Jury could make deliberation. Instead, he deferred to Officer Walter who had mis-stated a number of legal issues [previously], who then provided more misinformation.

In other words, the prosecutor willfully evaded meeting his obligations in the legal process when it could have adversely affected the 'desired' outcome of the hearing.

A recorded transcript of the proceedings supports these contentions – that is how the complainant in this case became aware of these issues, once the transcript was received (by him)

In short, the independent Grand Jury process was usurped and the intended protections of such a process were circumvented – in denial of the complainant's lawful rights.

### Officer Tucker

- 1) Made arrest of complainant contrary to State law and charged complainant with crimes that he did not commit.
- 1) Made a number false statements in a police report he produced.
- 2) Instituted a (an unlawful) search of premises before a warrant was issued.
- 3) Perjured himself in a forfeiture hearing, and (unlike Office Walter) refused to recant his false statements.

Not only did the officers involved in this case make false and fictitious statements in order to incriminate, any factual matters that would have been of an exonerating nature were conspicuously absent from the reporting.

### Judge LeClaire

- 1) Denied [through non-response] claimant the right of discovery in the conduct of a legal case – equal access to witnesses and evidence; did not respond to multiple requests for continuance knowing full well that the claimant was not presently available to conduct such discovery. (The claimant being forced by operation of the State to conduct his own legal work or to give-up any claim to his property.)
- 2) Was biased in the conduct of the legal proceedings, both before and during the hearing in that he
  - a. Allowed the City Prosecutor continuance when they made [scheduled] appearance without any witnesses on their behalf, while
  - b. Not responding to, denying any continuance on the part of the complainant who had requested such (twice over) in order to be able to conduct the process of discovery.
  - c. Did not provide a "level playing field" in the conduct of the hearing – failed to admonish witnesses (primary Officer Walter) that they were obliged to answer the questions put to them...

In fact, the complainant was disadvantaged from the start, the police having unlawfully seized all of the complainant's assets of value, the complainant being left to fend for himself (or forego any legal remedy to reclaim possessions), having been put in a position where he could no longer afford to obtain legal assistance in the matter.

- 3) Did not dismiss the case when prejudiced and severely damaged by the unlawful destruction of the complainant's property (at the hands of the police) when
  - a. The police had been approached concerning the evidentiary value of the property and knew full

well of its value in this regard

- b. Did respond that it was "subject" to forfeiture – indicating that they knew full well of the ongoing litigation (refers to Officer Mendoza)
- c. Were mandated State by law and order of the Court (judge who signed the search warrant) to return the claimant's property when it was no longer required by them – representations having been made by the police and prosecution of how valuable it was to them, yet it was still destroyed
- d. The judge in this case had ordered that the phone containing the contact information of witnesses who could appear on the claimant's behalf be turned over – response was had that it had been destroyed on the heels of the request that had been made for it, when it's evidentiary value to the claimant became known to the police.

In fact, during the course of this court action and subsequent appeal, the unlawful actions of the police were ignored and excuses made despite all evidence of the willful destruction of the property and obstruction of the judicial process.

4) Rendering of a verdict that was contrary to the evidence presented in the hearing, and was so blatantly in contradiction thereof, that

a. A dissertation by the judge of his rendering illuminated these logical defects – in particular, the judge 'tripped' over statements made by himself that were the very reason the claimant's property could not be lawfully subject to forfeiture and had to intentionally restate (mis-state) as an untruth in order to support his rendering.

b. Contradicted not only the evidence, but based on all evidence presented, the ruling was in contradiction of State law that would permit the lawful forfeiture of property – in particular, all testimony as to the time-frame and funds used to acquire the property would place it outside of any questionable activity relating to the property.

In other words, it was not possible to tie the property to any illegal activity (and that was in addition to the police testimony that the alleged 'illegal' activity did not take place).

c. An attempt to make such a correlation to any illicit activity was so contrived as a means of supporting the verdict rendered that it "flew in the face" of the testimony had – in this case, despite it being on the record that a police officer involved had recanted his position that the claimant was "unemployed" (while ignoring the time-frame involved as to the acquisition of the property, which didn't jive), the judge specifically stated, "Didn't Officer Walter say that..." , and then proceeded to use such a false claim to support his verdict.

And that was the gist of the ruling, completely arbitrary, in contradiction to the factual evidence provided and direct testimony had, and in violation of State law which allows for a legal forfeiture of property – in so doing, such a rendering lies outside of the law and violates the claimant's Constitutional Protection of Property.

5) Subsequently, attempted to impede Due Process of Law in denying the request for a transcript of the proceedings before him, in an effort to block the ability to file an appeal, and prevent the

questioning of his ruling.

Gary L. Shupe - Assistant City Prosecutor

- 1) Pursued and/or continued to pursue a forfeiture of the claimant's property despite it becoming evident that its seizure and attempted forfeiture were unlawful.
- 2) Did join the judge in the fiction proposed (in direct contradiction to the testimony of the police that day in court), "Didn't Officer Walter say...", to which Mr. Shupe responded, "Yes, your honor", we were going to raise the point that, "Mr. VanDerMeulen was unemployed" therefore the only means of acquiring the property had to be...

Once again, ignoring the time-frame in which the property was acquired and the funds used to acquire, as was provided by direct testimony in court that day.

All this, despite the fact that Mr. Shupe was right there in court that day, knew full well that any [original] contention by the officer that Mr. VanDerMeulen was unemployed was unfounded, contrary to [all] the other evidence and testimony had that day, and knowing that the officer in question had admitted to [previously] making such a statement in a further attempt to incriminate without having knowledge of any such thing or there being any basis in fact for making such statement.

The idea that Mr. Shupe would collaborate in such a fiction knowing it to be untrue, in order to deprive the claimant of his property and unjustly enrich the City of Phoenix / Phoenix Police Department through unlawful acts is unconscionable.

Officer Mendoza - the party responsible for the safe keeping of seized property, upon whom request was made for the property, who became aware of its evidentiary value and, although no one has claimed responsibility for its unlawful destruction, is believed to be the responsible party.

Justices of the State's Appellate Division who condoned the unlawful activities of the authorities under its jurisdiction and supported the arbitrary ruling (abuse of discretion) by a subordinate court, in contradiction of a number of State laws and in violation of the claimant's Constitutional rights.

Paul J. McMurdie  
Peter B. Swann  
Patricia A. Orozco

These justices also refused to hear a Motion for Reconsideration of that ruling which addressed the fallacies of their rendering (as did the justices for the Supreme Court of the State of Arizona)

The actions of the State, from beginning to end, the habitual violation of State (and Federal) laws,

disregard of any protection of the claimant's rights that could be afforded under the law, ignoring of any wrong-doing by authorities, all contribute to a case which pretty much "stinks to high heaven".

Throw in the instances of false statements made in official reports, false and misleading testimony by officers (as well as perjured testimony), and it becomes clear that if any citizen is to be protected from the rapacious activities of government conducted under the "Color of Law", this case, and cases like it, need to be heard.

*Our government teaches the whole people by its example. If the government becomes the lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.*

*Louis D. Brandeis*



## **TABLE OF AUTHORITIES CITED**

### **CASES**

### **PAGE NUMBER**

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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 \_\_\_\_\_.

☐ 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 November 16, 2019 (date) on October 28th, 2019 (date) in Application No. 19 A 452.

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

### Constitutional Provisions – Due Process Clause

Fifth Amendment – *No person shall* be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor *be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation.

### Fourteenth Amendment – Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws.

### Applicability:

*The Due Process Clause prohibits state and local government officials from depriving persons of life, liberty, or property **without legislative authorization**.*

*Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government **outside the sanction of law**. (i.e. not complying with legal sanctions)*

### Federal Law

#### Title 18, U.S.C., Section 242 Deprivation of Rights Under Color of Law

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those

rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

*Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties.* This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

### State Statute

Arizona Revised Statute 13-4305. Seizure of property

E. In establishing a preponderance of the evidence and in determining probable cause for seizure and for forfeiture, a rebuttable presumption exists that the property of any person is subject to forfeiture **if the state establishes all of the following** by the standard of proof applicable to that proceeding:

1. Conduct giving rise to forfeiture occurred.
2. The person acquired the property during the period of the conduct giving rise to forfeiture or within a reasonable time after that period.
3. There is no likely source for the property other than the conduct giving rise to forfeiture.

F. In establishing a preponderance of the evidence and in determining probable cause for seizure and for forfeiture, the fact that money or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money or instrument was the proceeds of contraband or was used or intended to be used to facilitate commission of the offense.

**(emphasis provided)**

## STATEMENT OF THE CASE

It wasn't just a matter of prejudice. How the judge had allowed the prosecution to continue its case when they had over a year to prepare and showed on the scheduled date without any witnesses. While the complainant who was unavailable, was not allowed a matter of months in which to prepare for a case that had taken years to be brought to court. Not even as much as a response by the judge to either of the two letters sent requesting such, not as much as a leave to perform discovery to which the complainant was legally entitled. And, when questioned about the lack of response, telephonically as the complainant was "sequestered" (in the full meaning of the word), all he had to say is, "I'm not a correspondent." I liked it even more as he "read into the record that, "You've had your turn, now they get theirs." (Really, and just when did that happen?)

No, it wasn't just a matter of prejudice that the forfeiture hearing was conducted without the complainant being present, save for a telephonic connection, and that the hearing was allowed to continue despite the fact that the mainstay of evidence for the complainant, a mobile phone that contained the contact information of witnesses who could appear on his behalf had been destroyed by the police while it was held in 'evidence'; had been ordered by the judge to be turned over when the police had previously refused to do so, saying that it was "subject to forfeiture". And, knowing full well the value of the contents, having been apprised of them when the request was made and the fact that it was subject to ongoing litigation, did make sure its contents "never saw the light of day". It was destroyed by the police, the only piece of property of the many in their possession subject to the proceedings to suffer such a fate. And, yet, the 'sham' of a hearing proceeded (despite the motion for dismissal).

It wasn't just a matter of prejudice, although the prejudice was certainly evident by the 'stilted' manner in which the hearing was conducted... a proffer of evidence that was ignored, the balance of which was "cut-off" by the judge's further questioning of the [irrelevant] background of the complainant. The failure on the part of the judge to make any admonishment to a witness, a witness who had taken the stand many a time before, a police officer who testified<sup>1</sup>, but for hours on end, refused to give a straight answer to direct questioning. And, despite the judge's lack of admonishment, did make it a point to remind the questioner (a layperson who rarely saw the inside of a

court room, let alone ever conducted his own case<sup>2</sup>) of the "proper format" of questioning. (Quite a "level playing field")

It's not a matter of prejudice that denied a citizen the rights of property protected under the Constitution (of these United States and the State of Arizona), it was a violation of the law and gross "abuse of judicial discretion" exhibited by the court that has denied a citizen these rights.

The law which forms a basis for the complaint before the court; law which has been violated, ignored, and evaded...

Starting with the [many] violations of law and the abuses (judicial discretion, cited) which took place in the County of Maricopa, State of Arizona.  
(ALL AS A MATTER OF COURT RECORD.)

A citizen's property being UNLAWFULLY seized and converted by the State; such actions not in keeping with the laws enacted that would permit it as a lawful action.

The law being VIOLATED and a rendering which did not conform with the evidence that was presented before the court does not comport with Due Process of Law and is in violation of the rights accorded a citizen under the Constitution concerning his property, i.e.

*The Due Process Clause prohibits state and local government officials from depriving persons of life, liberty, or property **without legislative authorization.***

*Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government **outside the sanction of law.***

"Outside the sanction of law" would include the deprival of life, liberty, or property in CONTRADICTION to the law [legislative authorization] which was not adhered to, or violated, on more than one occasion, including the arbitrary and capricious\* ruling of the court concerning forfeiture; ruling in contraction to the evidence and in VIOLATION of the law.

\*arbitrary and capricious – one of the basic standards for review of appeals. Under the "arbitrary and capricious" standard, the finding of a lower court will not be disturbed unless it has no reasonable basis. When a judge makes a decision without reasonable grounds or adequate consideration of the circumstances, it is said to be arbitrary and capricious and *can be invalidated by an appellate court on*



*that ground.* In other words, there should be absence of a rational connection between the facts found and the choice made. There should be a clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law or if it was taken without observance of procedure required by law.

[Natural Resources Defense Council, Inc. v. United States EPA, 966 F.2d 1292, 1297 (9th Cir. 1992)]

Not in keeping with the duty of exercising judicial discretion would be an understatement in this case as it can be shown as a matter of court record that the judge, lacking a substantive basis for his ruling, did make a 'contrivance' to support such ruling. The prosecutor was enjoining in this 'fiction'; all of which was in direct contradiction to the testimony of a government witness (an involved police officer) that was had that day.

The conclusions of the court were not supported by a preponderance of the evidence presented, in instances was in direct contention with the evidence presented, and such rendering was not in keeping with the laws for forfeiture.

Arizona Revised Statute 13-4305. Seizure of property

E. In establishing a preponderance of the evidence and in determining probable cause for seizure and for forfeiture, a rebuttable presumption exists that the property of any person is subject to forfeiture **if the state establishes all of the following** by the standard of proof applicable to that proceeding:

1. Conduct giving rise to forfeiture occurred.
2. The person acquired the property during the period of the conduct giving rise to forfeiture or within a reasonable time after that period.
3. There is no likely source for the property other than the conduct giving rise to forfeiture.

F. In establishing a preponderance of the evidence and in determining probable cause for seizure and for forfeiture, the fact that money or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money or instrument was the proceeds of contraband or was used or intended to be used to facilitate commission of the offense.

**(emphasis provided)**

As was specifically stated in the Complaint, based on direct testimony presented in a civil forfeiture hearing conducted by Judge LeClaire,  
(as pertains to the conditions of the law, cited above)

1. In the words of an officer involved (Officer Walter) – no crime occurred, nor could it have as, “We never met.”
2. Testimony included the source of funds used to acquire the assets in question and the time-frame of the acquisition of the assets placing them outside of any supposed activity.
3. An attempt was made in this regard, but [on the stand] Office Walter recanted statements (made in official reports) that the Complainant was “unemployed”. Judge LeClaire used such statement (that was recanted in court that day) in his rendering...

A rather ridiculous contention given the failure of meeting the other legal requirements, but then Judge LeClaire did not let the lack of evidence in this regard [or the Officer having recanted such statement] dissuade him from such a ruling.

In other words, the State did not meet the criteria required to provide for LAWFUL forfeiture;

ALL criteria being necessary (ALL three of them) to make for a lawful act of forfeiture. Rendering the seizure and forfeiture of the Complainant’s property UNLAWFUL and in VIOLATION of the complainant’s rights under the Constitution.

F. The judge in this case used “proximity” of articles other than money or negotiable instruments as a basis for forfeiture, once again, not supported by the law.

What is just as amazing is that the Federal District Court and Court of Appeals would choose to ignore such a blatant violation of the law and flagrant abuse of authority exhibited by the State [County and City] through its legal representatives and judicial system.

IGNORING AND FAILING TO ADDRESS THESE ISSUES AND THE CONSTITUTIONAL VIOLATIONS RESULTANT THEREFROM.

The 'second' portion of the suit being brought pertains to the manner in which the complainant's assets were seized and converted (in violation of the law, as cited in Notations) and the numerous felonious acts by officials made in pursuit thereof, in violation of

Title 18, U.S.C., Section 242 Deprivation of Rights Under Color of Law

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

*Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties.* This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

which is ultimately what these acts led to...

A recitation of these issues (the manner of pursuit) is outlined herein, to wit,

1) Obtaining a warrant under a false pretense – attesting to the occurrence of a crime that by the very testimony of the person who made affirmations to obtain that warrant, no crime could have been committed\*.

In fact, a search of the premises was instituted prior to the issuance of the warrant.

\*At the civil hearing in which the judge decided to [unlawfully] convert the private property of a citizen, this same officer admitted on the stand that a crime could not have taken place.

He further testified that statements were made in official reports that were unfounded and for which the reporting officer(s) had no basis of knowledge...

Along those lines, attempts were made to incriminate, not only as to false statement being made in official reports, but also the distinct *absence* of any information that might tend to exonerate.

2) False testimony before a Grand Jury – attesting to "facts" of which the officer could not testify as he was not even present at the time when such occurrence supposedly took place.

Misdirection of the Grand Jury through [multiple] misstatements and 'interpretations' of the law (of which the officer was apparently not conversant).

3) Failure on the part of the County Prosecutor to correct these misstatements of law for which he is legally obliged – to the point of failing to answer a direct question asked of him by a juror as to legal implications, something he "chose" to defer to the officer who, once again, made misstatement concerning legal issue.

In short, the usurping of the Grand Jury process between these two parties. An independent process that is designed in keeping with the rights and protections afforded a citizen; a process that was abused and circumvented through multiple instances of unlawful activity – false testimony before a Grand Jury and the willful avoidance of meeting with a legal obligation.

4) Perjured testimony on the part of one of the officers involved who refused to recant such statement. A felony under law, committed in an attempt to incriminate... the officer failing in this regard, making unsupported statement contradicted by his own contemporaneous "official" report which contained nothing of the sort, to which he attempted to testify months (amounting to years) later as to occurrence.

5) Destruction of property in the possession of the police – knowing full well of the ongoing litigation, the very excuse used by the impound officer for not returning the property (which he was obligated to do under the law). And then, having been apprised of its evidentiary value and being ordered by the judge to return the property, submitted forms to the court stating that it was destroyed on the heels of the original demand for its return. Once again, unlawful activity by an officer to prevent the introduction of evidence in a court proceeding.

Interestingly enough, up to the point of becoming aware of the evidentiary value of the item (a cell phone), the prosecution had contended that it was of value to them. But once apprised of the [irreplaceable] contact information that it contained of witnesses who could appear to testify, it was destroyed by

the police... the one and only piece of property [of many] in their possession to meet such a fate.

#### 6) Conduct of hearing did not comply with the legal requirements of Due Process

At the outset, the right of discovery was denied by the judge who failed to respond to multiple requests for a continuance in order to have [equal] access to witnesses.

(Yet, allowed the prosecution a continuance when appeared at the scheduled hearing without any witnesses.)

Dismissal of the case was refused despite the destruction of evidence by the government (police).

The hearing itself did not comport with legal requirements – witnesses were allowed to avoid/evade the answering of questions put to them. In particular, an officer who routinely appears in court, spent the better part of his time on the stand not providing a straight answer to any questions posed him; yet, at no time did the judge admonish any witness that they are required to answer questioning.

The ruling by the judge was not in keeping with the evidence presented that day, the basis of which either contradicted the evidence or was the product of a 'contrivance' made by the judge opposed by the evidence presented. Did not meet with the legal standard of complying with the preponderance of evidence and was in violation of State laws allowing for civil asset forfeiture. In short, the ruling lacked judicial discretion (as provable by record of the court).

As to these matters, the response from the District Court was "non-committal" and without justifiable basis for its dismissal; while that of Court of Appeals is attached (as required).

The objections thereto were raised in a Request for Review, most notably the failure to address the primary issue of the Complaint (unlawful conversion of property lacking Due Process of Law), and is detailed as to what response was had in the "Notations" section following.

## Notations and Basis of Action

<sup>1</sup> When the officer did get 'around' to answering any questioning, it was disclosed by the officer that in fact, statement(s) were made in "official" police reports for which he had no "basis of knowledge". Additionally, he did testify to the fact that [all of] the charges levied against the complainant as a basis for the forfeiture were *untrue*. The charge upon which the proceeding relied could not have taken place (a supposed conveyance) as "we never met".

The law is very clear in this matter, that action must have taken place or no unlawful act occurred.

(As well as the fact that other rights accrue due to the charges being *false*. Rights encoded in State law which the judge chose to ignore and went so far as to make excuses as to why they didn't apply in this case, only underlining the extent of the "abuse of discretion" taking place.)

This became significant in the rendering by the judge. As he had no substantive basis for the forfeiture of the claimant's property by the clear and uncontested evidence presented, he resorted to the "fiction" of the *false* statements made in the police report. The statement(s) to which the officer recanted on the stand. Yet, this was used as a basis for the ruling, in contradiction to the very evidence presented before him that day.

The judge's ruling not only contradicted the evidence, but *violated the laws enacted that allow for a lawful forfeiture of property*. (as previously cited)

THIS IS THE BASIS FOR THE COMPLAINT IN FEDERAL COURT.

The laws that allow for the lawful forfeiture of property were violated in this proceeding.

Actions that were not in keeping with Due Process of Law as a result thereof the claimant's property being unlawfully converted in violation of the law and his CONSTITUTIONAL RIGHTS.

Note: A Request for Review was filed with the Court of Appeals outlining the fact that this basis of the suit brought before the court was ignored!

The district judge for the case dismissing it without rhyme or reason, saying only that is "it did not state a claim".

**The Court of Appeals ONLY focused on the second part of the case brought before them, a citizen being deprived of their Constitution rights under "Color of Law" and was remiss in addressing the mainstay of the Complaint, the violation of Constitutional Law itself.**

The court only provided reasoning that innocence would have to be [have been] established *before* raising such an issue...

(Deprivation under Color of Law)

That would be despite the fact that innocence of the charges levied was PROVEN as a matter of RECORD (before the court) in a hearing held regarding forfeiture... from the very lips of a police officer involved as he testified on the stand.

Am I now to await [formal] exoneration from the very system which so condemns for the purpose of depriving its citizen in the unlawful manner of its pursuits? (while the matter of any formal exoneration is a lawsuit in itself)

As if my status has anything to do with the actions of State authorities or in any way relieves them from the violations of law they perpetuated; *the very laws by which they are obliged to operate.*

This was expressed in the Request for Review which states that the Court made no response in this regard and has the ability to overturn the judge's ruling, it being rendered contrary to the evidence and the judge's duty to exercise proper judicial discretion.

(Court of Appeals response included, as required, although the Request has yet to be acted upon.)

Note: During the course of producing this Writ of Certiorari, a response was had from the Court of Appeals refusing review (denying Petition for Review) of the case submitted; failing to take action regarding the glaring omission of response as to the basis of the suit, the violation of law providing for lawful forfeiture and the resultant deprivation, in violation of a citizen's Constitutional Rights to their property.

In this, the District Court was also remiss and could have curtailed the issue as not only were the unlawful acts of the State in violation of Constitutional Rights brought to the court's attention, but a request was made for injunctive relief so as to mitigate the loss (the sale of largely 'irreplaceable' assets which had yet to take place).

What the response from the Court of Appeals *did* address was a dismissal of the action for those parties who operated under "Color of Law", stating that these parties had "absolute immunity" in the pursuit of their professional activities...

Quite an interesting response, if applicable, when these parties *operated outside* of their professional capacities as evidenced by the [many] laws that were violated (while *operating under pretense*) and the evidence of *misconduct* in their official capacities, neglectful of the ethical and legal obligations of their offices. (as detailed in the body of the Writ)

That and the obvious contradiction in terms when a law protecting citizens from being deprived of their Constitutional rights exists... just who is it that operates "under Color of Law" to deprive a citizen, if not those parties in a position that they would be granted such "immunity"?

(as contended by the Court of Appeals)

Would it not be those very parties named who did so operate to deprive?

(While breaching all manner of moral, ethical, and legal considerations in the process.)

### Misconduct

*Misconduct* - any unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of parties or to the right determination of the cause. The term is also used to express a dereliction from duty, injurious to another, on the part of one employed in a professional capacity.

Willfulness - intentional but not necessary malicious law violation or dereliction of duty.

Malfeasance – Black's Law Dictionary as taken from underlying case law

Malfeasance in office, or official misconduct, is the commission of an unlawful act, done in an official capacity, which affects the performance of official duties.

Is committed when the office holder acts (or neglects to act) in a way that constitutes a breach of the duties of that office.

The wrongful or unjust doing of some act which the doer has no right to perform, or which he has stipulated by contract not to do. It differs from "misfeasance" and "nonfeasance,"

A misdeed or trespass. The doing what a party ought to do improperly. The improper performance of some act which a man may lawfully do.



**Misfeasance, strictly, is not doing a lawful act in a proper manner, omitting to do it as it should be done; while malfeasance is the doing an act wholly wrongful; and nonfeasance is an omission to perform a duty, or a total neglect of duty.**

<sup>2</sup> Having been 'raped' of every possession of value by the police, the claimant was left to fend for himself, no longer having the means to pay for legal assistance. These possessions included:

The vehicle which the claimant used to support himself in his profession, as computer consultant, it being the means by which to visit clients for the repair and maintenance of their computerized systems and networks. Of which, the police were (or should have been) fully aware as one of the pieces of information taken "under warrant" was a letter from the Corporate Commission addressed to the claimant.

(As contained in the police's list of seized items.)

As well as finding a number of disassembled computer systems at the residence, to which the officer testified, as far as he knew, it was a "hobby"...

(This pertains to the *fiction* concocted that the claimant was "unemployed". see #1 above)

The claimant had in fact been self-employed in all manner of technology support since 1994, having been employed as a computer programmer since 1979. The business was incorporated in year 2000, hence the letter from the Corporate Commission.

And, all other items of any significant value that could readily be used in the pursuit of legal endeavors; all that was left the claimant after a lifetime of work and the financial debacle of '08, which cost us all dearly. It was a collection of valuable and in most cases, rare (out-of-production and largely irreplaceable firearms), acquired in immaculate and nearly pristine condition which contributed greatly to the value thereof.

(All contained within a "fireproof" safe which had to be 'cracked' in order to take its contents.)

So much for a lifetime of hard, honest work.

## REASONS FOR GRANTING THE PETITION

Granted, this is an outline of but a single case that exemplifies a situation, in this case on a stage set in the State of Arizona, yet it does exemplify the abuses that take place in the name of "civil forfeiture" from one end of this country to another. One of the most abused laws on the 'books' imaginable, carried out due to the prodigious amounts of revenue raised by the perpetrators which under 'normal' circumstances would be considered criminal. But, because it is contrived under the guise of "law", it has continued, unabated, in essence because the very system that allows for its pursuit not only condones it (by failure to act), but in many ways, actively participates in the "charade"<sup>1</sup>.

Isn't it about time to put an end to the "policing for profit" activities by authorities operating under the Color of Law? Hasn't the 'feeding' upon its own citizenry by the very authorities to whom its citizens rely to derive a sense of social structure and any semblance of justice been perverted enough by these activities? Activities that not only violate any sense of justice, but the many laws that stand between these activities and the objective of profiteering. Laws that have been ignored and violated "'til Hell won't have it", including the very essence of the foundations of this country<sup>2</sup>. Activities taking place from one end of this nation to the other, in the name of "the Law".

*It is the worst oppression that is done by colour of justice.*

*Sir Edmond Coke*

And, perhaps this begs the question.

Why has this been allowed to continue unabated?

Why has civil asset forfeiture has become the single most abused law in this country?

Perhaps it this has occurred because the corrupt acts of government have been 'incentivized' to prey upon its own citizens in the acquisition of ill-gotten gain. The police who are guaranteed the "lion's share" of the booty have certainly stooped to such measures.<sup>3</sup> But, rather than the problem lying solely with abuse of the law and its corrupt application, it lies as well with the judiciary whose job it is to see that such abuses do not take place, and if they do, that they are rectified.

In what manner would such a situation be alleviated otherwise?

In this, there seems to be a distinct lack of appropriate action, or even a matter of conflict on the issue.

What is ignored as to the reality of these matters is the fact that, in general, a legal analysis of the procedures used in forfeitures can be summed-up in a statement made pertaining to it, that civil asset forfeiture is where "due process goes to die".<sup>4</sup>

So, the question is posed... Will the judiciary of this country condone such activities and become a part of that process, or will justice be done?

As to this issue, perhaps the cue should be taken from Chief Justice Thomas who stated, "The fact that the practice is a longstanding one does not mean that it is a constitutional one."<sup>5</sup>

And perhaps, the time has come when this case, like so many others which exemplify the abuses taking place, where substantiation exists for all of the claims raised in the form of COURT RECORDS AND TRANSCRIPTS, more than sufficient to prevail in a court of law, is finally heard.

### Notations

<sup>1</sup> Activities pursued under the "Color of Law" for which there are many participants in a number of capacities; the definition of "charade" being "an absurd pretense intended to create a pleasant or respectable appearance."  
(Dictionary definition as provided by "Google".)

Such endeavors comprising the *additional* claim of depriving a citizen of his Constitutional rights under "Color of Law".

<sup>2</sup> That would be the ideals as enshrined in the Constitution of the United States. The violation of which gives rise to an actionable cause; the problem here being that a citizen is not being allowed bring a valid case before the court (i.e. exercise their rights), in effect being denied any rights as bestowed by the Constitution.

(In violation of the "contract" between these United States and its citizens as sworn to be upheld by every official who takes an oath of office.)

*A Constitution is not the act of a government, but of a people constituting a government; and government without a constitution, is power without a right.*

*Thomas Paine*

*A Constitution without enforcement is no constitution at all.*

*Cary VanDerMeulen*

<sup>3</sup> The matter of abuses taking place with civil asset forfeiture has become such common knowledge in this jurisdiction (the State of Arizona), legislation has been enacted in an attempt to curtail such abuses - Arizona House Bill 2477. And, more recently a bill has been introduced, Arizona House Bill 2072.

<sup>4</sup> Based on an article by National Review

<sup>5</sup> Statement by Justice Thomas on *Leonard v. Texas*

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cory K. Underhill

Date: November 15th, 2019