

No. 19-7592

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES.

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John D. McAllister – PETITIONER

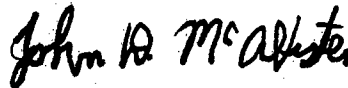
VS.

Tim Malfitano J.P.D.

Steven A. Selogy, J.P.D. –RESPONDANT (S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CURCUT  
PETITION FOR WRIT OF CERTIORI

John D. McAllister



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### **QUESTION (S) PRESENTED**

1). Is it legal for the Jacksonville Police Department to falsify warrants and forge a magistrate name to illegally arrest a man for 25 year old warrants with absolutely no evidence or written statements to show probable cause.

2). If a crime was committed in Jones county, after a run of the serial number the gun comes back reported stolen from Jones county N.C., How does Onslow County have jurisdiction to issue arrest warrants and hold for prosecution in Onslow County.

3). Isn't it a violation of the forth Amendment to search seize a person, no warrants shall issue but upon pabable cause support by Oath or Affirmation.

**List of Parties and Related Cases.**

- (1). John D. McAllister v. Tim Malfitano J.P.D. Steven A. Selogy. J.P.D. No. 7:17-cv-66-D. The United States District Court for The Eastern District of North Carolina Southern Division. Judgment entered February 8<sup>th</sup>, 2019
- (2). John D. McAllister v. Tim Malfitano J.P.D. Steven A. Selogy J.P.D. No. 19-1176 United States Court of Appeals. Judgment entered September 3<sup>rd</sup>, 2019.
- (3). John D. McAllister v. Tim Malfitano J.P.D. Steven A. Selogy J.P.D. No. 19-1176 (7:17-cv-0000-66-D) Rehearing, Rehearing en banc United States Court of Appeals. Order entered November 5<sup>th</sup>, 2019.

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- APPENDIX E. A dismissal of the charges with no other charges pending. or unserved warrant.
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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. Roseboro v. Gaarrison, 528 F.2d 309, 310 (4th Cir. 1975) (per curiam)	8.
2. Davis v. Williams, 242 N.C. App. 262, 774, S.E. 2d, 889, 2015 N.C. App LEXIS 625 (2015)	9.
3. Anderson v. Librty Lobby, Inc. 477 U.S. 242, 247-48 (1986)	9.
4. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)	9.
5. Anderson, 477 U.S. at 249	10.
6. Matsushita Elec. Indus Co. v. Zenith Radio Corp. 475, U.S. 574, 587 (1986) (Emphasis and quotation omitted)	10.
7. Scott v. Harris, 550, U.S. 372, 378, (2007)	10.
8. Brooks v. City of Winston-Salem, 85 F.3d 178, 182 (4 <sup>th</sup> Cir. 1996)	10.
9. Humbert v. City Council of Balt. City, 866 F.3d 546, 555, (4 <sup>th</sup> Cir. 2017) (quotations and alteration omitted), cert denied, 138 S. Ct. 2602 (2018)	10.

## STATUTES AND RULES

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**

[1 ] For cases from **Federal Courts.**

The order denying rehearing and rehearing en banc appears at Appendix A to this Petition.

The opinion of the United States Court of Appeals appears in Appendix B to the petition and is unpublished.

The opinion of the United States Districts Court appears at Appendix C to this Petition is unpublished.

**JURISDICTION**

[1 ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was September 3<sup>rd</sup>, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals

On the following date: November 5<sup>th</sup>, 2019. and a copy of the order denying

Rehearing appears at Appendix A

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1)..

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. Amendment 4. The right of the people to be secure in their persons, houses, 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. Amendment 14, 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 States where in 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 law.

## STATEMENT OF THE CASE

On April 3<sup>rd</sup>, 2017, Petitioner John D. McAllister, proceeding pro se, filed a complaint pursuant to 42 U.S.C. 1983. McAllister named two detectives as defendants of the Jacksonville Police Department. Petitioner John D. McAllister alleges Fourth, Sixth and Fourteenth Amendment violations arising out of his January 5<sup>th</sup>, 2016 arrest. John D. McAllister seeks declaratory relief, injunctive relief, compensatory damages, and punitive damages.

On July 12, 2018,, Petitioner (McAllister) moved for summary judgment because the Respondent fail to comply with a scheduling order or present any evidence to support their claims or to dispute McAllister's claims. On July 27, 2018. the J.P.D. Respondents moved for summary judgment pursuant to *Roseboro v. Garrison*, 528 F.2d 309, 310 (4<sup>th</sup> Cir. 1975) (per curiam), the court notified McAllister about defendants' motion, the consequences of failing to respond. McAllister responded in opposition to defendants' motion. In McAllister's motion, he presented factual evidence to show there is a genuine issue of facts for trial; the respondents presented absolutely no evidence to prove there is no genuine issue of material fact. Is it legal for the Jacksonville Police Department to willfully and intentionally falsify warrants with no written statements or evidence to support their claims and the Jacksonville Police Department has no jurisdiction to seek warrants to prosecute a crime they say was committed in Jone County (see Respondents motion for summary judgment Exhibit (1) page (2) paragraph (15), they lack probable cause to issue warrants to arrest and prosecute in Onslow County..

Respondents motion for summary judgment exhibit (1) page (2) paragraph (15). Paragraph (16) show Mr. Danley was a convicted felon. Onslow County lacks



jurisdiction. Amendment IV. 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 person or things to be seized.

McAllister presented factual evidence to support his claim, Petition for writ of certiorari Appendices A-F. The Jacksonville Police Department has no written statements or reports to show probable cause or support their claim. They say in their motion for summary judgment Exhibit (1) that after a N.C.I.C. page(2) paragraph (15), the gun was determined to be stolen from Jones County. Onslow County lacks jurisdiction and has no evidence to prosecute Mr. McAllister (Subject Matter Jurisdiction Held Lacking) Davis v. Williams, N.C. App 262,774, S.E. 2d. 889,2015 N.C. App. LEXIS 625 (215).

From 1992 until 2016( see the backside of warrants in the Appendix G & H ) the warrants have never been signed and return to the clerks office. After reviewing the record the lower Courts can see Petitioner has done everything according to the law, and the Respondents have completely failed to follow rules of the law.

Respondents failed to defend against the Petitioners' claims and to this day have not presented any evidence to support their claims. Summary Judgment is appropriate when, after reviewing the record as a whole, the Court determines that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby Inc, 477 U.S. 242,247-48 (1986). The party seeking summary judgment initially must demonstrate the absence of a genuine issue of material fact or the absence of evidence to support the nonmoving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The Petitioner presented factual evidence

supported by the Onslow County Sheriff Department, Onslow County Superior Courthouse and a sitting Judge Grady Ruff in Hopkinsville, Kentucky. Once the moving party has met its burden, the nonmoving party may not rest on allegations or denials in its pleading. *Anderson*, 477 U.S. at 248-49, but “must come forward with specific facts showing that there is a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* 475 U.S. 574, 587 (1986). (emphasis and quotation omitted). The nonmoving party “Respondents” has no specific facts to support their claim. A trial court reviewing a motion for summary judgment should determine whether a genuine issue of material fact exists for trial. *Anderson*, 477 U.S. at 249. In making this determination, the court must view the evidence and the inferences drawn there from in the light most favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

Petitioner (McAllister) presented evidence of a malicious prosecution. “Allegations that an arrest made pursuant to a warrant was not supported by probable cause or claims seeking damages for the period after legal process issue”- e.g., post-indictment or arraignment – are considered a section 1983 malicious prosecution claim, *Brooks v. City of Winston Salem*, 85 F.3d 178, 182(4<sup>th</sup> Cir 1996). Such a claim “is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of common law tort.” To succeed, a plaintiff must show that the defendants (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in the plaintiffs’ favor.” *Humbert v. Mayor & City Counsel of Balt. City*, 866 F.3d 546 555 (4<sup>th</sup> Cir. 2017). All the information for the arrest warrants was “knowingly and intentionally and recklessly disregarded of the truth making false statements and with holding fact of the

truth in their affidavits. in support of their warrants. The information was misleading to get the warrants.

### **REASON FOR GRANTING THE PETITION.**

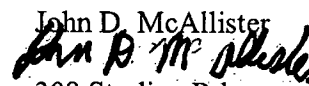
Petitioner "John D. McAllister respectfully Petition this Court for Petition For Certiorari. Certiorari should be granted because the lower Courts have ruled against the rules of the Court Of Appeals and the Supreme Courts on cases like this. They have also made rulings that break the U.S. Constitution 4, 14 Amendment. The petitioner presented factual evidence in all of his affidavits from the onslow county sheriff department, the onslow county courthouse and a sitting judge from Hopkinsville, Kentucky. The Jacksonville Police Department has presented no evidence to dispute any evidence of the petitioner "John D. McAllister". The petitioner has never giving any stolen gun to a Mr. Danley or possessing any stolen guns. It's not common law for the onslow county magistrates to issue warrants for a person on word of month with no statements or written reports and cases out of their jurisdiction. Onslow County has no jurisdiction over Jones County. 1<sup>st</sup> of all, if this was a true case they should have contacted Jones County to inform them they had Mr. Danley in their possession with the stolen handgun from their county. 2. Mr. Dandley does not exist because if you check the Jones County Courthouse records and the Onslow County Courthouse records you will find no records of a Mr. Henry Lee Danley. The law is not supposed to be breaking the law to put innocent people in jail. It's not police practice and procedure to arrest without probable cause and a supposed crime was committed in Jones county. Magistrates does not issue warrants off word of mouth without supported by oath or affirmation being alone. There are laws the

police must follow to be able to arrest someone on warrants if they are not caught in the act. John D. McAllister has never possessed any stolen guns and or had any in his possession if so N.C.I.C. would have presented it on march 1993 when the stolen car come up (see Defendants motion for summary judgment, statement of undisputed facts page 3 paragraph 14-15). Those charges were dismissed. Detective Tim Malfitano and Detective Steven Selogy presented no evidence to support this claim. It's wrong for the Jacksonville Police Department to give false information to a magistrate to obtain arrest warrants. Word of mouth being alone without oath or affirmation is not enough.

**CONCLUSION.**

The petition for writ of certiorari should be granted

Respectfully submitted,

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