

No. 20-1766

Supreme Court, U.S.

FILED

JUN 12 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In re JOHN H. TODD - PETITIONER

vs.

THE STATE OF OREGON - RESPONDENT

ON PETITION FOR WRIT OF MANDAMUS

KLAMATH COUNTY CIRCUIT COURT Case No. 15CR60238

JOHN H. TODD

P.O. BOX 608

CHILOQUIN, OR. 97624

541-591-9009

QUESTION(S) PRESENTED

1. Does Oregon's conflicting statutes on search warrants that exist between ORS 133.545(5) which requires a fully trained police officer and ORS 167.345 which allows non-police officers provide the same level of constitutional safeguards for suspects in a criminal investigation?
2. If a "confession" can be excluded for lack of "voluntariness" (*Culombe v. Connecticut*, 367 U.S. 568) or "unlawful police conduct" (*Lynumn v. Illinois* 372 U.S. 528), then can blank surrender forms with coerced signatures for personal property obtained by law enforcement during the execution of a search warrant during a criminal investigation be excluded as evidence as well?
3. Can statements made while being deposed by an officer's attorney in which the officer is being sued in federal court for civil rights violations be used as evidence by that officer and his attorney, if the plaintiff in that suit was not informed prior to questioning that the attorney's clients, the officer and the county he was employed by, had obtained an Indictment and Arrest Warrant in state court five months earlier for the plaintiff in the federal case and the plaintiff was not informed of the Indictment until another year had gone by and the federal case was dismissed and the plaintiff was arrested.

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:

KLAMATH COUNTY CIRCUIT COURT and
DANIEL BUNCH, KLAMATH COUNTY CIRCUIT COURT JUDGE

RELATED CASES

KLAMATH COUNTY CIRCUIT COURT Case No. 15CR60238

State of Oregon v. John H. Todd

KLAMATH COUNTY CIRCUIT COURT Case No. 19CN00212

John H. Todd v. State of Oregon

OREGON COURT OF APPEALS Case No. A171256 (KC 15CR60238)

State of Oregon v. John H. Todd

OREGON SUPREME COURT Case No. S068122 (KC 15CR60238)

State of Oregon v. John H. Todd

U.S. DISTRICT COURT FOR OREGON Case No. 1:15-CV-1091-MC

John H. Todd v. Gale A. McMahon, Klamath County et al.

9th U.S. COURT OF APPEALS Case No. 16-36022 (USDC 1:15-CV-1091)

John H. Todd v. Gale A. McMahon, Klamath County et al.

U.S. DISTRICT COURT FOR OREGON Case No. 3:19-CV-2029-HZ

John H. Todd v. Donnie Boyd, et al.

9th U.S. COURT OF APPEALS Case No. 21-35243 (USDC 3:19-CV-2029)

John H. Todd v. Donnie Boyd, et al.

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UNITED STATES CONSTITUTION

Amendment IV Search Warrants

Amendment V Due Process

Amendment VI Criminal Prosecutions

Amendment XIV State Shall Not Deprive Due Process

Or Equal Protection of the Law

JURISDICTION

The jurisdiction of this Court is invoked under the All Writs Act, 28 U.S.C. § 1651, 28 U.S.C. § 1257 and the courts appellate jurisdiction over lower court and state court cases involving U.S. Constitutional issues.

OPINIONS BELOW

Klamath County Cir. Ct. Case No. 15CR60238 Rulings inconclusive

Oregon Court Of Appeals Case No. A171256 Dismissed without review

Oregon Supreme Ct. Case No. S068122 Petition Denied, no comment.

STATEMENT OF THE CASE

1. Petitioner, a disabled army Vietnam veteran retired and relocated from Sacramento, CA. to Klamath County, OR. in 2009 with his pets where he purchased a home on 3 1/2 acres.
2. On June 15, 2015 two individuals dressed as sheriff deputies, but with no written markings identifying them, demanded entry to the petitioner's property explaining they had a search warrant and produced a document which was a search warrant authorizing "any Police Officer in the State of Oregon" to search the petitioner's home and to seize property.
3. During the search of the petitioner's home, personal property was seized that was particularly described as things to be seized. However, a similar number of things were seized that were not particularly described as things to be seized by Klamath County employee Gale A. McMahon. Petitioner received no receipts for the seized property and none of the property was reported to the court as having been seized by McMahon.

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4. Gale A. McMahon was later identified as a dog control officer with no police powers as explained by the Oregon Attorney General's Office and the Oregon Department of Public Safety, Standards and Training.
5. On June 17, 2015 petitioner filed a federal civil rights complaint in U.S. District Court for Oregon against Gale A. McMahon and Klamath County, Oregon U.S.D.C. Case No. 1:15-CV-1091-MC.
6. On December 31, 2015 the Klamath County District Attorney's Office obtained a "Secret Indictment and Arrest Warrant" for the petitioner based on Officer McMahon's testimony. The Arrest Warrant was not executed until June 9, 2017, 18 months later.
7. On May 8, 2016, Officer Gale McMahon's attorney deposed petitioner during a Deposition in petitioner's federal law suit, U.S. District Court for Oregon Case No. 1:15-CV-1091-MC extensively concerning the events of June 15, 2015 and used the results of that questioning of the petitioner in the federal case against the petitioner.

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8. Petitioner was not informed by authorities of the Indictment and Arrest Warrant obtained on December 31, 2015 until June 9, 2017 nor did Officer McMahon through his attorney inform the petitioner and his limited scope attorney for the deposition prior to questioning on May 8, 2016 that there existed an arrest warrant of which Officer McMahon and his attorney Gerald Warren were fully aware of.
9. As the petitioner had not been arrested on June 15, 2015 nor was there any record of court proceedings against the petitioner, petitioner filed several law suits in state and federal court attempting to locate and recover the personal property officer McMahon had seized which was later acknowledged by the Klamath County District Attorney that McMahon had disposed of the property seized without court authority, orders or due process.
10. During the 2 years following the execution of the search warrant which included the 18 months in which there existed an Indictment and Arrest Warrant for the petitioner, petitioner was in the area, appeared in several civil courts including federal and state, and was

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in communication with law enforcement departments across the State of Oregon requesting assistance in locating his personal property and an investigation of Officer McMahon for failing to comply with Oregon Statutory Law relating to Search and Seizures in Oregon.

11. On April 20, 2017 the petitioner was allowed to depose Officer McMahon by Multnomah County Circuit Court Judge Jerry Hodson at the Klamath County Government Building, across the street from the Klamath County Court House and offices of the Klamath County District Attorney where there existed an active Indictment and Arrest Warrant for the petitioner.
12. On June 5, 2017 the petitioner and a friend met with with an investigator with the Oregon Department of Public Safety following conversations with an investigator with the Oregon Department of Justice over the contents of McMahon's Deposition and in which they received copies.
13. Following those meetings in which a suggestion was made that copies of McMahon's deposition and Declarations in state and federal court along with a request for an

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investigation of McMahon be forwarded to the Klamath County District Attorney which was served on June 9, 2017 by U.S.P.S. Certified Mail, the petitioner was placed under arrest by a Klamath County Circuit Judge on June 9, 2017.

14. Petitioner retained an attorney from the Portland, Oregon area with excellent trial experience who then filed Motions including a Motion to Suppress Evidence with a request for an Evidentiary Hearing. The Klamath County Circuit Court scheduled several Evidentiary Hearings but then canceled them. As a result the court never held the hearing or ruled on the Motion to Suppress Evidence.
15. On Monday, October 22, 2018 petitioner appeared in court at the Klamath County Court House for a trial readiness hearing with defense attorney appearing by phone. The court room was packed, noisy and the petitioner who had a diagnosed hearing loss by the Veterans Administration couldn't hear or understand the contents of the conversations. At some point there was an indication that the petitioner could leave with a comment that its "like a traffic ticket" by the judge.

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16. Following the hearing on October 22, 2018 in which it appears all the criminal charges against the petitioner had been dismissed, petitioner's attorney filed a Motion for Return of things seized specifically describing the personal property that McMahon had seized that were not described by the court as things to be seized.
17. Following the filing of the Motion to Return Property by petitioner's attorney, there was no opposition filed by the state or hearing set by the court and on December 18, 2018 Klamath County Circuit Judge Dan Bunch signed an Order to Return those things to the petitioner.
18. Following attempts by the petitioner and petitioner's attorney to collect from the state those things seized which resulted in failure, on January 7, 2019 a Motion for Show Cause and a Motion for Sanctions/Contempt against the State of Oregon was filed on behalf of the petitioner.
19. On January 17, 2019, petitioner's attorney filed a second Motion for the Return of Things Seized which described the personal property which the search warrant

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had actually described as things to be seized and a combined hearing was held before Circuit Judge Bunch on May 9, 2019.

20. On May 9, 2019 Judge Bunch heard arguments from the state's attorney, Klamath County District Attorney in which she accused petitioner and his attorney of filing a false motion to obtain the return of property that never existed and then offered to the court surrender forms for the things seized that were addressed on the Second Motion to Return Things.
21. The district attorney then had Gale McMahon sworn and who then testified that he had not seized any of the things Ordered returned, and as for the second motion, he had obtained surrender forms for all of those things.
22. Petitioner's attorney then argued that those surrender forms at issue were covered by the Motion to Suppress which he had filed and which the state had filed no response to, and second his client had witnessed those things being seized.

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23. Judge Bunch issued an Opinion Letter the next day DENYING the Motion for Sanctions as there was no record of the things Order Returned and did not address the second Motion to Return Things, the surrender forms or the Motion to Suppress which Judge Bunch had never addressed.
24. An Appeal was filed with the Oregon Court of Appeals which was Dismissed as the Oregon Supreme Court had ruled in similar cases Opinion Letters were not final Orders.
25. A complaint was filed with the Oregon State Bar against the Klamath County District Attorney for making false statements, entering false evidence and having a witness testify that she knew or should have known was going to commit perjury based on her office's possession of Gale McMahon's Deposition since June 9, 2017 in which he had admitted to seizing the property ordered returned.
26. The Klamath County District Attorney submitted a response to the Oregon State Bar on July 23, 2019 in which she admitted when confronted with Gale McMahon's Deposition that her witness had made several "misstatements of material facts" during the hearing of May 9, 2019.

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27. The district attorney further claimed she had never seen the Deposition before the hearing on May 9, 2019. She did admit that there were "inconsistencies" with McMahon's testimony which contained "misstatements of material facts" which he clearly knew were not true. She further admitted that her statements in court were not truthful but only because she had relied on her witness and his statements and that the property ordered returned did exist and that McMahon had seized it and that his statements concerning the surrender forms were not truthful as well.

27. A Motion before the court for a new hearing had been filed by petitioner on June 6, 2019 but was never addressed by Judge Bunch who quietly closed the case in September 2019 without notice to the petitioner.

28. Petitioner filed a federal civil rights claim in U.S. District Court for Oregon on December 19, 2019 concerning the due process violations and the deprivation of property along with a Notice of Removal. The case was dismissed March 29, 2021 and appealed to the 9th Circuit Court of Appeals on March 31, 2021

STATEMENT OF THE CASE

29. A Petition for a Writ of Mandamus was filed in the Oregon Supreme Court on November 23, 2020 for an Order to compel the Klamath County Circuit Court to address the unresolved motions. The Supreme Court Denied the petition on January 21, 2021.

30. At this time, 6 years after the petitioner's personal property had been seized by "special deputy" McMahon, none has been returned or accounted for. Many of the legal remedies and due process procedures that the petitioner should have been entitled to have been denied by the State of Oregon without explanation or recourse.

REASONS FOR GRANTING THE PETITION

A petition for Writ of Mandamus has been submitted to the court based on the petitioner's clear right to relief, the State of Oregon's failure to perform duties or acts which it has a clear duty to provide or perform and by the state's highest court's failure to act, the petitioner has no other remedy available.

In 2015, the State of Oregon commenced a criminal action against the petitioner and his property. There were and are specific requirements as set forth in the U.S. Constitution, Oregon Statutory Law and U.S. Supreme Court rulings that governed the actions of the law enforcement officers, the prosecutors and the state courts.

The State of Oregon, by intentionally depriving the petitioner of those constitutional and statutory rights which included depriving the petitioner of property without due process and the state courts refusal to provide those constitutional rights which the petitioner has a clear right to, the petitioner has no other remedy available.

Thereby, the petitioner prays that the court will grant the relief sought in an Order to the State of Oregon to provide those constitutional rights the petitioner is entitled to.

CONCLUSION

For all the reasons set forth in the foregoing Statement of the Case, the petition for writ of mandamus should be granted.

Respectfully submitted,



Date: June 12, 2021