

20-6207

Case No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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STEVEN COOPER

Petitioner,

v.

**ORIGINAL**

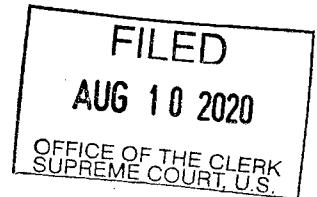
BAY COUNTY FLORIDA

BAY COUNTY SHERIFF'S OFFICE

DEPUTY NICHOLAS MACIAS

CODE ENFORCEMENT OFFICER KATHI ASHMAN

SHARON M. WOOSLEY



Respondents,

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PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA  
FIRST DISTRICT COURT OF APPEALS, 1DCA NO.- 1D19-165

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/s/Steven Cooper, Pro Se

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## QUESTION PRESENTED

1. Whether the Florida Statute for Adverse Possession without Color of Title section 95.18 is unconstitutionally vague on its face and as applied because it has encouraged arbitrary enforcement in failing to describe with sufficient particularity what an individual must do in order to satisfy the statute.
2. Whether an adverse possessor - while satisfying the statute of limitations of actions holding period - has a right to bring an action in the nature of mandamus to compel a law enforcement officer, governmental agency or employee thereof to perform its ministerial, non discretionary duty owed with respect to its enforcement and adherence to Florida Statute 95.18.
3. Whether expiration of the limitation of actions holding period serves to escheat a new title converting possession to ownership or the right then to adverse possession as declared and affirmed by the lower and district courts.
4. Whether an Adverse Possessor has the right to obtain construction building permits in order to cultivate, maintain, and/or improve the possessed property in a usual manner as required by state statute.
5. Whether it is unconstitutional for a citizen to be arrested for trespass or theft when adversely possessing real property despite Florida Statute 95.18(9) and (10) explaining they only apply when one fails to make the required return.
6. Whether a per curiam “affirmed” decision without opinion or reason provided by a Court of Appeal is unconstitutional.

## LIST OF RELATED CASES

1. Civil Mandamus Case No. 18000518CA is the originating action
2. First District Court of Appeal Case No. 1D-19-165 is the appeal
3. Criminal Circuit Case No. 19000866CFMA was initiated by the respondent in retaliation to a written complaint submitted to the agency and is ongoing
4. Florida Supreme Court Case No. SC20-99 is comprised of an extraordinary petition requesting relief which was denied according to the Supreme Courts “Logan Rule” refusing pleadings from pro se petitioners when “represented”
5. Florida Supreme Court Case No. SC20-752 is comprised of an extraordinary petition requesting relief from a writ of habeas corpus issued by the criminal court after refusing to acknowledge the Notice of Waiver of Presence filed to which was denied according to the Supreme Courts “Logan Rule” despite petitioner seeking to discharge counsel and proceed pro se

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Petitioner, Steven Cooper, humbly and respectfully asks that a writ of certiorari issue to review the judgment and opinion of the Florida First District Court of Appeal, 1DCA# 1D19-165, filed on March 27, 2020, and Rehearing Motion denial filed on May 12, 2020, regarding the trespassing and arrest of an adverse possessor after establishing his right to adversely possess real property in compliance with the statutory right provided by Florida Statute 95.18.

## **OPINION BELOW**

The per curiam affirmed decision without opinion by the First District Court of Appeal was issued on March 27, 2020. An April 13, 2020, “Motion for Rehearing/Rehearing En Banc, Motion for Written Opinion and Clarification and Alternative Motion for Certification” was denied on May 12, 2020 followed by the Mandate and West Publishing filed on June 2, 2020. An appeal to The Florida Supreme Court was not submitted given it does not have jurisdiction to review one word per curiam affirmed decisions without opinion.

## **JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision for which petitioner seeks review was issued on March 27, 2020. This petition is filed within 90 days of the Florida First District Court of Appeal denying the Rehearing Motion on May 12, 2020, for discretionary review under Rules 13.1 and 29.2 of this Court.

## **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

- *United States Constitution, Amendment 5* provides, in pertinent part: No person shall... be deprived of life, liberty, or *property* without due process of law ....
- *United States Constitution, Amendment 7* provides, in pertinent part: Where the value in controversy shall exceed twenty dollars, the right of trial

by jury shall be preserved, and no fact tried by a jury... shall be reexamined in any court, than according to the rules of the common law.

- *United States Constitution, Amendment 14 Section 1* provides, in relevant part:

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.
- *United States Code 28 USC1361: Action to compel an officer* provides, in relevant part: Courts shall have original jurisdiction of any action in the nature of mandamus to *compel an officer* or employee or any agency to perform a duty owed...
- *Florida Statute for Adverse Possession without Color of Title section 95.18* provides, in relevant part: (9) A person who occupies... solely by claim of adverse possession... *prior to making a return* as required under subsection (3), commits trespass.

### **STATEMENT OF CASE**

An adverse possessor, after lawfully establishing adverse possession, was trespassed then later arrested by the Bay County Sheriff's Office. Mandamus was sought to compel the Sheriff's Office to perform its duty to enforce and comply with the laws of Florida of which provide the statutory right to adversely possess

real property, additionally specifying trespass is only applicable when the required notice form is not submitted and theft is only applicable if the property is leased to another, again prior to submitting the required form.

The circuit court denied mandamus claiming a clear legal right to compel law enforcement to enforce the laws of Florida does not exists for a citizen seeking adherence to a law, despite the existence of FS 95.18 which affords the right, “because he has not adversely possessed the subject property for the seven-year period”. Thus, the trial court opined that an adverse possessor does not have the right through mandamus to compel law enforcement to perform its duty as prescribed by State Law until ownership is obtained at the end of the statute of limitations holding period.

The First District Court of Appeals summarily affirmed the lower courts position without opinion therefore it is impossible to know if they agree with the rationale provided or, simply the end result that a citizen seeking to apply the laws of the state for adverse possession does not have a right to do so through mandamus until his possession ripens to ownership.

Emboldened by this erroneous ruling, and in retaliation to the petitioners legal action and a written complaint to the agency, the Bay County Sheriff’s Office sought, obtained an arrest warrant, and arrested the petitioner for grand theft and criminal mischief simply for exercising his statutory right to adversely possesses

real property and exercising his constitutional rights to petition the government for redress of grievances. This charade has morphed into a sham prosecution by the State Attorney filing information prosecuting the petitioner in conjunction with a judge and Public Defender all working together to unconstitutionally deprive the petitioner of his right to adequate assistance of counsel and a fair and unbiased trial.

### **REASONS FOR GRANTING THE PETITION**

The trial court erred in denying Mandamus relief requested stating, “Petitioner fails to make a *prima facie* case that he has a clear legal right to relief sought” (despite the statutory right as provided by Florida Statute 95.18) because “adverse possession without color of title requires seven years of open, continuous, actual possession”. This statement alone contradicts the Courts decision and reasoning for denying relief requested. Actual possession is a requirement. The right to actual possession is what’s at stake here and is the relief requested. The Court sites Candler Holdings Ltd. I v. Watch Omega Holdings which, in fact, actually originates “As stated in *Meyer v. Law*, 287 So.2d 37, 40-41 (Fla.1973):” and the Court fails to include the most important words in this case law which is “there are only two ways to ACQUIRE LAND by adverse possession” followed by the exact reason mandamus was requested as “the claimant must show seven years of open, continuous actual possession”. Mandamus was requested to direct the

respondents to “enforce a clear legal right to the performance of a clear legal duty” which in this case, was to comply with FS 95.18 and correct its improper doing of criminally trespassing an adverse possessor when the correct action is for the owner of record to seek civil ejection or civil trespass in order to quiet title and remove the cloud of adverse possession.

The trial courts August 13, 2018 Order Denying Mandamus failed to address the relief sought in the original petition as it erred in its understanding and application of the *actual possessory* requirement of FS. 95.18 adverse possession which requires actual possession, for the statute of limitation seven year period, of which serves to expire ones right to commence an action to recover real property. Upon expiration of the seven year holding period, the result is the transfer of title from the owner of record, to the adverse possessor; NOT the establishment of the right to then possess the property. In doing so, the trial court directly prejudiced the petitioners right to possess property under a claim of title exclusive of any other right in accordance with Florida Statutes §95.18- *Adverse Possession without Color of Title* and his ability to satisfy the statute of limitations seven year holding period requirement of hostile, open, continuous, and *actual possession*.

The trial court error has led to the petitioner suffering irreparable harm to include demolition of all structures by the county and theft of the petitioners real and personal property situated on the adversely possessed property. An adverse

possessor must provide clear and convincing positive proof that the land adversely possessed has been continuous, open, exclusive, and notoriously possessed for an uninterrupted period of 7 years. Such possession may ripen into title by adverse possession. In Florida, it is *lawful to acquire land by adverse possession* without color of title when the occupant or possessor is an actual, continued the occupation of real property under claim of title, exclusive of any other right, even though not founded on a written instrument. Property is deemed possessed when it has been usually cultivated or improved or it has been protected by substantial enclosure. Furthermore, property is deemed possessed when it has been used for the ordinary use of the occupant, construed to mean a use appropriate to the character and location of the property.

The actions of the Sheriff's Office supported by the opinion of the Florida Courts are depriving the petitioner not only of his statutory right to adverse possession, he is being deprived of his constitutional right to life, liberty, or *property* without due process of law, and he is being deprived of his constitutional right to due process according to the rules of the common law and the equal protection of these laws.

### **CONCLUSION**

The simple mandamus petition to affirm an adverse possessor's rights and requirements should not have been treated like a standard, quiet title action. The petitioner was unlawfully criminally trespassed from the property in his adverse

possession and the trial court was asked to, and should have, declared it wrong given the appropriate remedy is an civil action trough judicial procedure in order for all parties claiming an interest to have their day in court to declare and assert their interest for a decision based upon the merits in accordance with state and case law. The decision is not a discretionary one the Sheriff's Office is authorized nor tasked to decide irrationally in the field. The action of criminally trespassing a civil adverse possessor directly infringes upon his constitutional rights to possess property and due process to assert his interests.

For the foregoing reasons, petitioner respectfully preys this Honorable Court grant the petition for certiorari to review both the civil and criminal atrocities being committed against him, reverse the Order Denying Mandamus or issue the Writ of Mandamus on its own to instruct the respondent Bay County Sheriff's Office to perform its duty of enforcing the law as mandated, and discharge him from the criminal sham prosecution. The simple rule should be that if a law enforcement agency refuses to comply and enforce the law in fulfillment of its duties, a citizen has the clear legal right to obtain mandamus from the courts to compel proper performance of the duty owed. Petitioner urges this Court to take review in order to delineate and clearly advise all the land of the rights of a citizen in adverse possession of real property and duty owed to them by law enforcement.

Respectfully submitted,  
/s/Steven Cooper, Pro Se