No. 21-5033 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RELONZO PHILLIPS, PROSE — PETITIONER
(Your Name)

DEKALB COUNTY vs.
SHERIFF MELODY MADDOX — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Relonzo Phillips, PRO SE
(Your Name)

4425 Memorial Drive
(Address)

DECATUR, Georgia 30032
(City, State, Zip Code)

N/A
(Phone Number)

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TABLE OF CITATIONS OF AUTHORITY

11) McCLURE v HOPPER, 234 GA. 45, 48, 214 S.E. 2d 503 (1975)

12) SMITH v NICHOLS, 270 GA 550, 512 S.E. 2d 279 (1999)

13) UNITED STATES v HILL, 500 F.2d 315, 320-21 (5th CIR. 1974)

14) WHITELEY v WARDEN, 401 U.S. 560, 564, 91 S.Ct. 1031, 1035, 28 L.Ed. 2d 306 (1971)

15) WOLFF v McDONNELL, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed. 2d 935 (1974)

16) BOWEN v JOHNSTON, 306 U.S. 19, 26, 59 S.Ct. 442, 446, 83 L.Ed. 455 (1939)

17) SMITH v BENNETT, 365 U.S. 708, 713, 81 S.Ct. 895, 898, 6 L.Ed. 2d 39 (1961)

[12] [13] We may, in our discretion, exercise pendent appellate jurisdiction over an otherwise nonappealable district court decision, if we already have jurisdiction over another issue in the same case. *Swint v. City of Wadley,* 5 F.3d 1435, 1449 (11th Cir.1993), *modified,* 11 F.3d 1030 (11th Cir.1994), *petition for cert. filed,* 62 U.S.L.W. 3707 (U.S. Apr. 18, 1994) (Nos. 93–1636, 93–1638). We choose to exercise pendent jurisdiction over those state law claims against detectives Curtis and Moore that we can decide on the basis of the record and briefs before us. "If [Curtis and Moore are] correct about the merits in [their] appeal, reviewing the district court's order [will] put an end to the entire case against [them] ...." ***1556** *Id.* at 1450. That is the judicial economy reason for exercising pendent appellate jurisdiction, but there is another important consideration that calls for reviewing the denial of summary judgment as to other claims against these two defendants. We have already held that they, unlike Gibson, are entitled to summary judgment on qualified immunity grounds as to each of the federal claims against them. All that remain pending against them are the state law claims.[9] If we were to refuse to exercise pendent jurisdiction over those state law claims, our refusal could result in a situation much like that which the qualified immunity doctrine is designed to prevent. A principal purpose of qualified immunity is to protect officials from needless litigation, which diverts official energies, deters able citizens from public service, and " 'dampen[s] the ardor of all but the most resolute, or the most irresponsible [public officials] from the unflinching discharge of their duties.' " *Harlow v. Fitzgerald,* 457 U.S. 800, 814, 102 S.Ct. 2727, 2736, 73 L.Ed.2d 396 (1982) (quoting *Gregoire v. Biddle,* 177 F.2d 579, 581 (2d Cir.1949), *cert. denied,* 339 U.S. 949, 70 S.Ct. 803, 94 L.Ed. 1363 (1950)) (second brackets in original).

Detectives Curtis and Moore were brought into federal court on the basis of federal claims, which we have held are now out of the case insofar as Curtis and Moore are concerned. If these two defendants are also entitled to summary judgment on the state law claims, then by declining to exercise our discretionary pendent appellate jurisdiction, we might undermine the purpose of permitting an interlocutory appeal from the denial of summary judgment on qualified immunity grounds. *See Mitchell v. Forsyth,* 472 U.S. 511, 526, 105 S.Ct. 2806, 2815, 86 L.Ed.2d 411 (1985) ("The entitlement is an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if the case is erroneously permitted to go to trial."). We do not hold that a court of appeals should always exercise pendent appellate jurisdiction over the state law claims against a defendant once it has held that that defendant is entitled to summary judgment on qualified immunity grounds as to all the federal claims. We do, however, recognize such a situation as a special one that may warrant the exercise of our discretion to review.

1. Malicious Prosecution

[14] Kelly contends that Curtis and Moore maliciously prosecuted him under Georgia law. The Georgia tort of malicious prosecution has the following elements: (1) prosecution for a criminal offense; (2) under a valid warrant or accusation or summons; (3) termination of the prosecution in favor of the plaintiff; (4) malice in the institution and maintenance of the proceedings; (5) lack of probable cause for the proceedings; and (6) damage to the plaintiff. *Commercial Plastics & Supply Corp. v. Molen,* 355 S.E.2d 86, 87 (Ga.App.1987). The district court found that Kelly had presented enough evidence to survive summary judgment on the *federal* malicious prosecution claim, and "[t]he same legal analysis applies to the claims under state tort law."

[15] Curtis and Moore contend that Kelly failed to introduce any evidence that they acted with malice or without probable cause. Kelly does not specifically respond to this argument, but relies on the district court's terse reasoning, which is flawed. As previously discussed, Kelly introduced no evidence that Curtis and Moore ever learned of the exculpatory lab report. Therefore, Kelly has introduced no evidence from which a jury could infer that Curtis and Moore acted with malice; summary judgment should have been granted to Curtis and Moore on Kelly's state law malicious prosecution claim.

2. False Imprisonment

[16] Under Georgia law, "[f]alse imprisonment is the

OPINIONS BELOW

1) THE OPINION OF THE SUPREME COURT OF GEORGIA TO REVIEW THE MERITS APPEARS AT APPENDIX A TO THE PETITION AND IS UNPUBLISHED.

2) THE OPINION OF THE SUPERIOR COURT OF DEKALB COUNTY APPEARS AT APPENDIX B2 TO THE PETITION AND IS UNPUBLISHED

JURISDICTION

THE DATE ON WHICH THE SUPREME COURT OF GEORGIA DECIDED MY CASE WAS MAY 3, 2021. A COPY OF THAT DECISION APPEARS AT APPENDIX A-4. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. SECTION 1257 (A) - STATE COURTS; CERTIORARI: FINAL JUDGEMENTS OR DECREES RENDERED BY THE HIGHEST COURT OF A STATE IN WHICH A DECISION COULD BE HAD, MAY BE REVIEWED BY THE SUPREME COURT BY WRIT OF CERTIORARI WHERE THE VALIDITY OF A TREATY OR STATUTE OF THE UNITED STATES IS DRAWN IN QUESTION OR WHERE THE VAUDITY OF A STATUTE OF ANY STATE IS DRAWN IN QUESTION ON THE GROUND OF IT BEING REPUGNANT TO THE CONSTITUTION, TREATIES, OR LAWS OF THE UNITED STATES, OR WHERE ANY TITLE, RIGHT, PRIVILEGE, OR IMMUNITY IS SPECIALLY SET UP OR CLAIMED UNDER THE CONSTITUTION OR THE TREATIES OR STATUTES OF, OR ANY COMMISSION HELD OR AUTHORITY EXERCISED UNDER, THE UNITED STATES

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTON AMENDMENT IV. SEARCH AND SEIZURE;

GEORGIA CONSTITUTION OF 1983 ART. I, SEC. I, PAR. XIII SEARCHES, SEIZURES, AND WARRANTS : 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, EXCEPT 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.

- GEORGIA STATUTES O.C.G.A. SECTION 17-4-26 : DUTY TO BRING PERSONS ARRESTED BEFORE JUDICIAL OFFICER WITHIN 72 HOURS; NOTICE TO ACCUSED OF TIME AND PLACE OF COMMITMENT HEARING; EFFECT OF FAILURE TO NOTIFY
- GEORGIA STATUTES O.C.G.A. SECTION 17-7-24 : TIME GRANTED PARTIES TO PREPARE CASE AND TO SECURE COUNSEL; GRANTING OF BAIL WHERE HEARING

DELAYED.

- GEORGIA STATUTES O.C.G.A. SECTION 17-7-25: POWER OF THE COURT TO COMPEL ATTENDANCE OF WITNESSES

- GEORGIA STATUTES O.C.G.A. SECTION 17-7-28: HEARING OF EVIDENCE BY COURT OF INQUIRY; RIGHT OF ACCUSED TO TESTIFY; APPLICATION OF RULES OF EVIDENCE; EFFECT OF FAILURE OF ACCUSED TO TESTIFY

- UNITED STATES CONSTITUTION AMENDMENTS V AND XIV; ART. I, SEC. i, PAR. I OF THE GEORGIA CONSTITUTION OF 1983 DUE PROCESS: NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW

- UNITED STATES CONSTITUTION AMENDMENT XIV AND ART. I, SEC. I, PAR. II OF THE GEORGIA CONSTITUTION OF 1983 EQUAL PROTECTION: NO STATE SHALL DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS

- GEORGIA STATUTES O.C.G.A. SECTION 9-14-1: WHO MAY SUE OUT WRIT

- GEORGIA STATUTES O.C.G.A. SECTION 9-14-5: WHEN WRIT MUST BE

GRANTED

right to effective assistance of counsel in pursuing advice from legal counsel regarding prison grievances. U.S.C.A. Const.Amend. 6.

2 Cases that cite this headnote

[5] **Prisons**⚖Right of action; restrictions

Meaningful "access to the courts" for prisoners is the capability to bring actions seeking new trials, release from confinement, or vindication of fundamental civil rights.

15 Cases that cite this headnote

[6] **Prisons**⚖Disclosure and discovery
Prisons⚖Right of action; restrictions

The state has no obligation to enable prisoners to discover grievances or to litigate effectively once in court. U.S.C.A. Const.Amend. 6.

4 Cases that cite this headnote

[7] **Constitutional Law**⚖Prisoners and pretrial detainees
Prisons⚖Legal Assistance; Right to Counsel

Pro se state prisoner was not actually injured by prison officials' policy of not allowing contract attorneys to do legal research for inmates in appropriate cases, as required to establish violation of his constitutional right to meaningful access to courts; although prisoner claimed that the policy resulted in the loss of his post-conviction claim and § 1983 claim based on his alleged invalid extradition to Iowa state court, the invalid extradition was not a ground for post-conviction relief, and the § 1983 claim was barred as untimely. 42 U.S.C.A. § 1983.

10 Cases that cite this headnote

[8] **Prisons**⚖Right of action; restrictions
Prisons⚖Frivolous claims; screening

To prove a violation of the right of meaningful access to the courts, a prisoner must establish the state has not provided an opportunity to litigate a claim challenging the prisoner's sentence or conditions of confinement in a court of law, which resulted in actual injury, that is, the hindrance of a nonfrivolous and arguably meritorious underlying legal claim.

164 Cases that cite this headnote

[9] **Prisons**⚖Right of action; restrictions

The actual injury requirement concerns the prisoner's standing to bring a claim for violation of the right of meaningful access to the courts, and thus the district court's jurisdiction to decide the claim.

64 Cases that cite this headnote

[10] **Prisons**⚖Frivolous claims; screening

To prove actual injury, a prisoner claiming the violation of his right to meaningful access to the courts must demonstrate that a nonfrivolous legal claim had been frustrated or was being impeded.

186 Cases that cite this headnote

QUESTION(S) PRESENTED

QUESTION ONE: WHETHER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION REQUIRES THAT "THE JUDICIAL OFFICER . . . . BE SUPPLIED" WITH SUFFICIENT INFORMATION TO SUPPORT HIS INDEPENDENT JUDGEMENT THAT PROBABLE CAUSE EXISTS FOR ISSUANCE OF AN ARREST WARRANT.

QUESTION TWO: WHETHER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION REQUIRE A JUDICAL DETERMINATION OF PROBABLE CAUSE AS A PREREQUISITE TO EXTENDED RESTRAINT ON LIBERTY FOLLOWING ARREST AND/OR DURING PRETRIAL CUSTODY PRIOR TO INDICTMENT.

QUESTION THREE: WHETHER THE DUE PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION MANDATE THAT "NO STATE SHALL . . . . DEPRIVE ANY PERSON OF LIBERTY WITHOUT DUE

PROCESS OF LAW.

QUESTION FOUR: WHETHER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION MANDATE THAT "NO STATE SHALL DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS AND THAT ALL PERSONS SIMILARLY SITUATED SHOULD BE TREATED ALIKE."

DEKALB COUNTY SHERIFF'S OFFICE
JAIL OPERATIONS
INMATE REQUEST FORM
DO NOT USE FOR A MEDICAL REQUEST

From: RELONZO PHILLIPS **Cell:** 5/NE/504/1

SPN#: X0151569 **Date:**_____

TYPE OF REQUEST

Commissary: ☐
Request Property Disposition: ☐
G.E.D. Program: ☐
Inmate Worker: ☐
Maintenance: ☐

Inmate Services: ☐
To See Chaplain: ☐
Mail Room: ☐
Law Library: ☑
Reading Library: ☐
Visitation/PIN#: ☐

Open Records Act Request: You are authorized to deduct the cost from my inmate account, if funds are available.
By checking this box, I agree to pay all copying and/or administration costs incurred in fulfilling my Open Records Act request.: ☐
Other:_____

REMARKS - MUST BE LEGIBLY PRINTED
Request:
06/13/2021 19:17:39
i would like copies of the following.....jones v ray, 279 f.3d 944, 946-47(11th cir. 2001)....lindquist v city of pasedena, 656 f.supp. 2d 662(s.d.tex. 2009).....E & T realty v strickland,830 f.2d 1107(11th cir. 1987)

DO NOT WRITE BELOW THIS LINE --- DEPARTMENT USE ONLY:
06/15/2021 10:28:14
This is Only case .jones v ray, 279 f.3d 944, 946-47(11th cir. 2001 that relate to charge that you here for, and it will be send to you Thanks.

06/15/21

Date

STATEMENT OF FACTS

ON OR ABOUT MARCH 12, 2020, THE PETITIONER WAS ARRESTED WITHOUT AN ARREST WARRANT AND WITHOUT PROBABLE CAUSE FOR THE OFFENSE OF ROBBERY PURSUANT TO GEORGIA CODE SECTION O.C.G.A. 16-8-40. ON MARCH 13, 2020, CITY OF DORAVILLE POLICE OFFICER ANTHONY APONTE APPLIED FOR AND ACQUIRED AN ARREST WARRANT, WARRANT NO. 20-W-004387 WHICH WAS ERRONEOUSLY ISSUED BY DEKALB COUNTY MAGISTRATE JUDGE J. HADDAD BECAUSE OFFICER APONTE FAILED TO SUPPLY THE JUDICIAL OFFICER WITH SUFFICIENT INFORMATION TO SUPPORT HIS INDEPENDENT JUDGEMENT THAT PROBABLE CAUSE EXISTS FOR THE ISSUANCE OF THE ARREST WARRANT. ON MARCH 14, 2020, THE PETITIONER ATTENDED A FIRST APPEARANCE HEARING WHERE HIS THEN COUNT APPOINTED COUNSEL ACQUIESCED TO THE ISSUANCE OF ARREST WARRANT NO. 20-W-004387. BOND WAS SET AT $ 20,000^{00} AND A PROBABLE CAUSE

HEARING WAS SCHEDULED FOR APRIL 14, 2020. THE SCHEDULED PROBABLE CAUSE HEARING WAS UNLAWFULLY WAIVED WITHOUT A LAWFUL WAIVER GIVEN BY THE PETITIONER AND THE PETITIONER WAS BOUND OVER TO THE OFFICE OF THE DEKALB COUNTY DISTRICT ATTORNEY AND DEKALB COUNTY SUPERIOR COURT. ON OCTOBER 2, 2020, THE PETITIONER FILED A PRO SE WRIT OF HABEAS CORPUS CONTESTING THE LEGALITY OF HIS CURRENT UNCONSTITUTIONAL INCARCERATION IN THE DEKALB COUNTY SUPERIOR COURT. ON JANUARY 26, 2021 (DOCKETED ON FEBRUARY 8, 2021), THE PETITIONER'S PRO SE PETITION FOR HABEAS CORPUS WAS DISMISSED WITHOUT A HEARING. THE PETITIONER TIMELY FILED FOR NOTICE OF APPEAL WITH THE DEKALB COUNTY SUPERIOR COURT TO THE SUPREME COURT OF GEORGIA SEEKING AN APPLICATION FOR DISCRETIONARY REVIEW ON FEBRUARY 19, 2021 (DOCKETED ON MARCH 8, 2021). THE SUPREME COURT OF GEORGIA DOCKETED THE APPLICATION FOR DISCRETIONARY APPEAL ON FEBRUARY 19, 2021, CASE NO. S21D0772.

FOLLOWING THE DOCKETING OF THE PETITIONER'S APPLICATION FOR DISCRETIONARY

APPEAL IN THE SUPREME COURT OF GEORGIA, THE SUPREME COURT OF GEORGIA SUBSEQUENTLY NOTIFIED THE PETITIONER OF THE DOCKETING OF AN APPEAL ON APRIL 8, 2021, CASE NO. S21A0938. ON MAY 3, 2021, THE SUPREME COURT OF GEORGIA MET PURSUANT TO ADJOURNMENT AND PASSED AN ORDER STATING THAT "THE PETITIONER'S APPEAL IS DISMISSED DUE TO PRIOR DISMISSAL OF THE PETITIONER'S APPLICATION FOR DISCRETIONARY APPEAL ON MARCH 9, 2021." THE SUPREME COURT OF GEORGIA NEVER SENT NOTIFICATION OF THIS DISMISSAL. IN FACT, NOTICE OF DISMISSAL OF THE PETITIONER'S APPLICATION FOR DISCRETIONARY APPEAL WASN'T RECIEVED BY THE PETITIONER UNTIL JUNE 9, 2021 (SEE APPENDIX FOR NOTICE/ RECIEPT). FOLLOWING THE MAY 3, 2021 ORDER FROM THE SUPREME COURT OF GEORGIA, THE PETITIONER FILED NOTICE OF APPEAL IN THE DEKALB COUNTY SUPERIOR COURT ON MAY 26, 2021 FOR A WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT. HENCE, THIS WRIT OF CERTIORARI ENSUES AND IS PETITIONED TO THE UNITED STATES SUPREME COURT.

ARGUMENT AND CITATION OF AUTHORITY

PURSUANT TO THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ART. I, SEC. I, PAR. XIII OF THE GEORGIA CONSTITUTION OF 1983, IT IS PROVIDED THAT: 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 AND AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED. SUPREME COURT PRECEDENT REQUIRE THAT "BEFORE A WARRANT FOR EITHER ARREST OR SEARCH CAN ISSUE. . . . THE JUDICIAL OFFICER ISSUING SUCH A WARRANT BE SUPPLIED WITH SUFFICIENT INFORMATION TO SUPPORT AN INDEPENDENT JUDGEMENT THAT PROBABLE CAUSE EXISTS FOR THE WARRANT. WHITELEY v WARDEN, 401 U.S. 560, 564, 91 S.Ct. 1031, 1035, 28

L.Ed. 2d 306 (1971). THE STATE OF GEORGIA CODE SECTION O.C.G.A. 17-4-41 DOES NOT CONTAIN THIS REQUIREMENT AND TO THAT EXTENT, IT IS DEFICIENT. THE BETTER PRACTICE CLEARLY WOULD BE FOR THE INCORPORATED AFFIDAVIT TO SHOW PROBABLE CAUSE. HOWEVER, THE FOURTH AMENDMENT DOES NOT BY ITS TERMS REQUIRE THAT PROBABLE CAUSE BE SHOWN BY THE AFFIDAVIT, BUT THAT " THE JUDICIAL OFFICER . . . . . BE SUPPLIED" WITH SUFFICIENT INFORMATION TO SUPPORT HIS INDEPENDENT JUDGEMENT THAT PROBABLE CAUSE EXISTS FOR THE WARRANT. WHITELEY V WARDEN, SUPRA, 401 U.S. 564, 91 S.Ct. @ 1035. FROM THE FACE OF ARREST WARRANT NO. 20-W-004387, IT IS EVIDENT THAT IT WAS ISSUED WITHOUT PROBABLE CAUSE. THE INCORPORATED AFFIDAVIT SUPPORTING THE WARRANT, STATES ONLY THAT THE AFFIANT, CITY OF DORAVILLE POLICE OFFICER ANTHONY APONTE, STATES ONLY THAT HE SWORE " TO THE BEST OF HIS KNOWLEDGE AND BELIEF THE PETITIONER, RELONZO PHILLIPS DID . . . . . COMMIT THE OFFENSE OF

ROBBERY." SUCH A CONCLUSORY ASSERTION IS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE. SEE BYARS V UNITED STATES, 273 U.S. 28, 29, 47 S.Ct. 248, 249, 71 L.Ed. 520 (1927). THE AFFIDAVIT CONTAINS NEITHER INFORMATION PROVIDING THE BASIS FOR THE AFFIANT'S BELIEF NOR ANY AFFIRMATIVE ALLEGATION THAT THE AFFIANT HAD PERSONAL KNOWLEDGE OF THE CIRCUMSTANCES SURROUNDING THE ALLEGED COMMISSION OF THE CRIME. IN THE PETITIONER'S CASE, THE MAGISTRATE NEVERTHELESS ISSUED THE WARRANT ON THE STATED BASIS OF EXISTENCE OF PROBABLE CAUSE: "VICTIM RAN TO AN OFFICER AND INFORMED HIM THAT SHE WAS ROBBED JUST AS SHE WAS GETTING CASH FROM ATM." SWORN TO AND SUBSCRIBED BEFORE ME THIS 3|13|2020 9:33:29 PM, THE MAGISTRATE COULD NOT POSSIBLY HAVE CONDUCTED THE INDEPENDENT ASSESSMENT REQUIRED BY THE FOURTH AMENDMENT OF THE PROBABILITY THAT THE PETITIONER COMMITTED THE CRIME CHARGED. SEE GIORDENELLO V UNITED STATES,

357 U.S. 480, 486, 78 S.Ct. 1245, 1250, 2 L.Ed. 2d 1503 (1958) (MAGISTRATE "SHOULD NOT ACCEPT WITHOUT QUESTION THE COMPLAINANT'S MERE CONCLUSION THAT THE PERSON WHOSE ARREST IS SOUGHT HAS COMMITTED A CRIME") JOHNSON v UNITED STATES, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed 436 (1948) (PROTECTION AFFORDED BY THE FOURTH AMENDMENT CONSISTS OF REQUIRING THAT INFERENCES FROM FACTS LEADING TO THE COMPLAINT "BE DRAWN BY A NEUTRAL AND DETACHED MAGISTRATE INSTEAD OF BEING JUDGED BY THE OFFICER ENGAGED IN THE OFTEN COMPETITIVE ENTERPRISE OF FERRETING OUT CRIME") FURTHERMORE, THE MAGISTRATE'S PROBABLE CAUSE ASSESSMENT CONTAINED NO PARTICULARIZATION TO THE PETITIONER AND IT OTHERWISE, IS OBVIOUS THAT OFFICER APONTE'S ORAL STATEMENT OF FACTS WERE INSUFFICIENT TO ESTABLISH PROBABLE CAUSE. THE ISSUANCE OF THE ARREST WARRANT THEREFORE WAS NOT SUPPORTED BY PROBABLE CAUSE.. GARMON v LUMPKIN CO. GA., 878 F. 2d @ 1408, 1409 (1989)

UNDER THE PRINCIPLES SET FORTH, A POLICEMAN'S ON-THE-

SCENE ASSESSMENT OF PROBABLE CAUSE PROVIDES LEGAL JUSTIFICATION FOR ARRESTING A PERSON SUSPECTED OF A CRIME, AND FOR A BRIEF PERIOD OF DETENTION TO TAKE THE ADMINISTRATIVE STEPS INCIDENT TO ARREST. ONCE THE PETITIONER WAS IN CUSTODY, HOWEVER THE REASONS THAT JUSTIFY DISPENSING WITH THE MAGISTRATE'S NEUTRAL JUDGEMENT EVAPORATED. THERE NO LONGER WAS ANY DANGER THAT THE PETITIONER WOULD ESCAPE OR COMMIT FURTHER ALLEGED CRIMES WHILE OFFICER APONTE SUBMITTED HIS EVIDENCE TO MAGISTRATE HADDAD. AND WHILE THE STATE'S REASONS FOR TAKING SUMMARY ACTION SUBSIDE, THE PETITIONER'S NEED FOR A NEUTRAL DETERMINATION OF PROBABLE CAUSE INCREASED SIGNIFICANTLY. WHEN THE STAKES ARE THIS HIGH, THE DETACHED JUDGEMENT OF A NEUTRAL MAGISTRATE IS ESSENTIAL IF THE FOURTH AMENDMENT IS TO FURNISH MEANINGFUL PROTECTION FROM UNFOUNDED INTERFERENCE WITH LIBERTY. UNDER GERSTEIN v PUGH, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed 2d 54 (1975) A CONSTITUTIONALLY SUFFICIENT NEUTRAL

DETERMINATION OF PROBABLE CAUSE TO ARREST MAY BE MADE IN ANY OF THREE WAYS: BY ISSUANCE OF A WARRANT, SEE 420 U.S. @ 113, 95 S.Ct. @ 862; BY POST ARREST HEARING BEFORE A MAGISTRATE, SEE Id. @ 119, 95 S.Ct. @ 865; OR BY AN INDICTMENT "FAIR ON ITS FACE" AND RETURNED "BEFORE A PROPERLY CONSTITUTED GRAND JURY," Id. @ 117, n.19, 95 S.Ct. @ 865, n.19. WHILE IT ALREADY BEING ESTABLISHED THAT ARREST WARRANT NO. 20-W-004387 WAS NOT PROPERLY SUPPORTED BY SUFFICIENT PROBABLE CAUSE, THE PETITIONER HAD A GEORGIA STATUTORY RIGHT AS REQUESTED AND SCHEDULED PURSUANT TO GEORGIA CODE SECTION O.C.G.A. 17-4-20 TO A PROBABLE CAUSE HEARING WHICH WAS UNLAWFULLY WAIVED WITH NO VALID WAIVER FROM THE PETITIONER. IT DOES NOT AVAIL THE STATE TO ARGUE THAT BECAUSE A WARRANT OF ARREST MAY BE ISSUED AS OF COURSE UPON AN INDICTMENT, THAT ARREST WARRANT NO. 20-W-004387 IS ADEQUATE SINCE ITS ALLEGATIONS WOULD SUFFICE FOR AN INDICTMENT PURSUANT TO GEORGIA LAW. A WARRANT OF ARREST CAN BE BASED

UPON AN INDICTMENT BECAUSE THE GRAND JURY'S DETERMINATION THAT PROBABLE CAUSE EXISTED FOR THE INDICTMENT ALSO ESTABLISHES THE ELEMENT FOR PURPOSE OF ISSUING A WARRANT FOR THE APPREHENSION OF THE PERSON SO CHARGED. HERE, IN THE ABSENCE OF AN INDICTMENT AT THE TIME OF INITAL ARREST, THE ISSUE OF PROBABLE CAUSE HAD TO BE DETERMINED BY AN APPROPRIATE MAGISTRATE, AND AN ADEQUATE BASIS FOR SUCH A FINDING HAD TO APPEAR DURING THE WARRANT APPLICATION PROCEEDINGS, GIORDENELLO, 357 U.S.@ 487, 78 S.Ct. 1245 (1958) OR THE REQUESTED PROBABLE CAUSE HEARING BY THE PETITIONER PURSUANT TO GEORGIA CODE SECTION O.C.G.A. 17-4-26.

IN EFFORTS TO REMEDY AND/OR SEEK REDRESS FOR THE UNCONSTITUTIONAL ISSUANCE OF ARREST WARRANT NO. 20-W-004387 AND THE UNLAWFUL WAIVER OF THE PETITIONER'S PROBABLE CAUSE HEARING, THE PETITIONER SOUGHT ISSUANCE OF A WRIT OF HABEAS CORPUS ON OCTOBER 2, 2020 IN THE DEKALB COUNTY SUPERIOR COURT. PURSUANT TO GEORGIA CODE SECTION O.C.G.A.

9-14-1 (A): ANY PERSON RESTRAINED OF HIS LIBERTY UNDER ANY PRETEXT WHATSOEVER, EXCEPT UNDER SENTENCE OF A STATE COURT OF RECORD, MAY SEEK A WRIT OF HABEAS CORPUS TO INQUIRE INTO THE LEGALITY OF THE RESTRAINT. AS NOTED IN APPENDIX B2, THE DEKALB COUNTY SUPERIOR COURT ERRONEOUSLY DISMISSED THE PETITIONER'S WRIT OF HABEAS CORPUS WITHOUT A HEARING UPON THE ERRONEOUS FINDING THAT "THE PETITIONER IS IMPRISONED UNDER LAWFUL PROCESS ISSUED FROM A COURT OF COMPETENT JURISDICTION." PURSUANT TO GEORGIA CODE SECTION O.C.G.A. 9-14-5, A WRIT OF HABEAS CORPUS MUST BE GRANTED: WHEN UPON EXAMINATION OF THE PETITION FOR A WRIT OF HABEAS CORPUS IT APPEARS TO THE JUDGE THAT THE RESTRAINT OF LIBERTY IS ILLEGAL, HE SHALL GRANT THE WRIT, REQUIRING THE PERSON RESTRAINING THE LIBERTY OF ANOTHER OR ILLEGALLY DETAINING SUCH PERSON IN HIS CUSTODY TO BRING THE PERSON BEFORE HIM AT A TIME AND PLACE TO BE SPECIFIED IN THE WRIT FOR THE PURPOSE OF AN EXAMINATION INTO THE CAUSE OF THE DETENTION, THUS,

IT WAS THE DUTY OF THE COURT AND IN THE INTEREST OF JUSTICE TO TURN TO THE TESTIMONY OF OFFICER APONTE WHO OBTAINED THE WARRANT NOW IN QUESTION TO DETERMINE AS TO WHAT ADDITIONAL INFORMATION SHOWING PROBABLE CAUSE HE DISCLOSED TO THE OFFICER ISSUING THE WARRANT. UNITED STATES V HILL, 500 F. 2d 315, 320 - 321 (5th CIR. 1974); SEE AGUILAR V TEXAS, 378 U.S. 108, 109, n.1, 84 S.Ct. 1509, 1511 n.1, 12 L.Ed 2d 723 (1964); JOHNSON V STATE, 111 GA. APP. 298, 302 - 303, 141 S.E. 2d 574 (1965)

WHILE IT BEING PREDETERMINED IN SUPREME COURT OF GEORGIA PRECEDENT, SMITH V NICHOLS, 270 GA. 550, 512 S.E. 2d 279 (1999), THAT THE FILING OF A PRE-TRIAL HABEAS CORPUS PETITION IS ANALOGOUS TO A CRIMINAL DEFENDANT'S FILING OF A DEMAND FOR SPEEDY TRIAL. GEORGIA CODE SECTIONS O.C.G.A. 17-7-170 AND 17-7-171. IN BOTH SITUATIONS THE PETITIONER PUTS THE STATE ON NOTICE THAT HE IS EXERCISING A STATUTORY RIGHT WHICH REQUIRES THE STATE TO ACT PROMPTLY. LIKEWISE, PURSUANT TO GEORGIA

CODE SECTION O.C.G.A. 17-4-26, IT STATES: EVERY LAW ENFORCEMENT OFFICER ARRESTING UNDER A WARRANT SHALL EXERCISE REASONABLE DILIGENCE IN BRINGING THE PERSON ARRESTED BEFORE THE JUDICIAL OFFICER AUTHORIZED TO EXAMINE, COMMIT, OR RECIEVE BAIL AND IN ANY EVENT TO PRESENT THE PERSON ARRESTED BEFORE A COMMITTING JUDICIAL OFFICER WITHIN 72 HOURS AFTER ARREST. THE ACCUSED SHALL BE NOTIFIED AS TO WHEN AND WHERE THE COMMITMENT HEARING IS TO BE HELD. AN ARRESTED PERSON WHO IS NOT NOTIFIED BEFORE THE HEARING OF THE TIME AND PLACE OF COMMITMENT HEARING SHALL BE RELEASED. A PERSON ACCUSED WHO IS NOT AFFORDED A COMMITMENT HEARING RECIEVES NO NOTICE OF THE TIME AND PLACE THEREOF. HENCE, THE PROVISION REQUIRING RELEASE APPLIES EQUALLY TO ONE WHO RECIEVES NO COMMITMENT HEARING AS WELL AS TO ONE WHO RECIEVES NO ADVANCE NOTICE OF THE TIME AND PLACE THEREOF. McCLURE V HOPPER, 234 GA. 45, 48, 214 S.E. 2d 503 (1975). BECAUSE THE PETITIONER HAS BEEN REFUSED RELEASE

FROM HIS CURRENT UNLAWFUL AND UNCONSTITUTIONAL DETENTION AND/OR INCARCERATION, THE PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS HAVE BEEN COMPROMISED. THE FOURTEENTH AMENDMENT'S EQUAL PROTECTION CLAUSE PROVIDES THAT NO STATE SHALL" DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS." THE MANDATE OF THE EQUAL PROTECTION CLAUSE ESSENTIALLY IS "THAT ALL PERSONS SIMILARLY SITUATED SHOULD BE TREATED ALIKE." CLEBURNE v CLEBURNE LIVING CTR., 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed. 2d 313 (1985). THE PETITIONER CONTENDS THAT HIS EQUAL PROTECTION THEORY IS THAT THE STATE OF GEORGIA HAS UNEQUALLY ADMINISTERED THE MANDATE OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION ; ART. I, SEC. I, PAR. I, II, AND XIII OF THE GEORGIA CONSTITUTION OF 1983 ; GEORGIA CODE SECTIONS O.C.G.A. 17-4-26, O.C.G.A. 17-7-24, O.C.G.A. 17-7-25, O.C.G.A. 17-7-28, O.C.G.A. 9-14-1, AND O.C.G.A. 9-14-5 AND IS ENTITLED TO REDRESS ON HIS SUBSTANTIVE EQUAL PROTECTION RIGHTS. THE

Attorneys and Law Firms

*422 Griffin Sikes, Jr., Montgomery, Ala., for plaintiff-appellant.

David Christy, Asst. Atty. Gen., Ronald G. Davenport, Montgomery, Ala., for defendants-appellees.

Appeal from the United States District Court for the Middle District of Alabama.

Before JOHNSON, Circuit Judge, HENDERSON*, Senior Circuit Judge, and PITTMAN**, Senior District Judge.

Opinion

PER CURIAM:

Martha and William Strength appeal from an order of the United States District Court for the Middle District of Alabama granting summary judgment in favor of the defendants, Charles Carroll and W.L. Hubert, in this action brought pursuant to the provisions of 42 U.S.C. § 1983. We affirm in part and reverse in part.

In July, 1981, William Strength and Hubert formed Autauga Transport, Inc. ("ATI"), a trucking business. Martha Strength, who was then married to William Strength, became the bookkeeper for ATI. The business dissolved in January, 1983 because of operating losses.

At the time relevant to this litigation, Carroll was an investigator for the Office of the Attorney General for the State of Alabama. In August, 1984, after receiving a telephone call from Hubert, Carroll met with Hubert and Samuel Moore, a former truck driver for ATI. During this meeting, Hubert showed Carroll cancelled checks drawn on ATI's account with the Bank of Prattville. These checks were payable to Moore and other ATI drivers. Each check bore both the payee's endorsement and the endorsement of William or Martha Strength. It is undisputed that on each check the payee's endorsement actually was made by either William or Martha Strength without the express permission of the payee. In addition, Hubert provided Carroll with ATI's corporate records which allegedly revealed discrepancies in the amounts of checks, the amounts of receipts and the dates of each.

After conferring with his supervisor, Corky Pugh, Carroll began an investigation of the alleged forgeries by the Strengths. In January, 1985, at the conclusion of his investigation, Carroll submitted his findings to the District Attorney of Autauga County, Alabama, Glen Curlee. Later that month, Carroll testified before the Autauga County Grand Jury concerning the activities of the Strengths. He was the sole witness before the grand jury, which eventually returned a multiple count forgery indictment against both of the Strengths.

In March, 1986, District Attorney Janice Williams, Curlee's successor, moved to dismiss the indictments. She explained her reasons for dismissal in a sworn affidavit that the Strengths attached to their response to the defendants' motions for summary judgment:

> When I reviewed [ATI's business records] ... I was 'floored.' After reviewing these records it was apparent that the endorsements were not criminally made. To the extent that the records were produced, they completely exonerated the Strengths. None of the records *423 produced indicated any criminal activity, but completely accounted for the money to which they related. I felt at the time and still feel that our office had been used and that we had been duped into indicting the Strengths.

The criminal charges against the Strengths subsequently were *nol prossed* on the motion of District Attorney Williams.

The Strengths then filed this complaint against Carroll and Hubert alleging that the defendants conspired, under color of state law, to cause their wrongful indictment and prosecution in deprivation of their rights under the fourth and fourteenth amendments.[1] The complaint also alleged pendent state causes of action. Both defendants moved for summary judgment. The district court granted the motions concluding that Carroll had absolute immunity for his testimony before the grand jury and, given that immunity, Hubert was not acting under color of state law. 660 F.Supp. 878 (M.D.Ala.1987). The plaintiffs filed a motion to reconsider. The district court then issued another memorandum opinion and order again granting the defendants' motions for summary judgment. In that memorandum opinion, however, the district court amended its prior ruling and held that Hubert was a state actor. 670 F.Supp. 322, 329 (M.D.Ala.1987).

DUE PROCESS CLAUSE ENCOMPASSES TWO DISTINCT FORMS OF PROTECTION:

(1) PROCEDURAL DUE PROCESS, WHICH REQUIRES A STATE TO EMPLOY FAIR PROCEDURES WHEN DEPRIVING A PERSON OF A PROTECTED INTEREST; AND (2) SUBSTANTIVE DUE PROCESS, WHICH GUARANTEES THAT A STATE CANNOT DEPRIVE A PERSON OF A PROTECTED INTEREST FOR CERTAIN REASONS. SEE, E.G. CITY OF SACRAMENTO V. LEWIS, 523 U.S. 833, 845-46, 118 S.Ct. 1708, 140 L.Ed 2d 1043 (1998). "UNDER EITHER FORM OF PROTECTION, HOWEVER, A PERSON MUST HAVE A PROTECTED INTEREST IN LIFE, LIBERTY, OR PROPERTY." HERE, THE PLAINTIFF'S LIBERTY INTEREST IS AT STAKE AND THE STATE OF GEORGIA HAS NOT EMPLOYED FAIR PROCEDURES IN THE PETITIONER'S SUIT OF HABEAS CORPUS AND PRESENT CRIMINAL PROSECUTION FOR THE OBVIOUS REASONS. ARREST WARRANT NO. 20-W-004387 WAS ERRONEOUSLY ISSUED, THE PETITIONER'S SCHEDULED PROBABLE CAUSE HEARING WAS UNLAWFULLY WAIVED AND UPON THE STATE OF GEORGIA BEING MADE ABREAST OF THESE ERRORS BY THE PETITIONER, THE

[11] **Federal Civil Procedure**⚿Pro Se or Lay Pleadings

A court liberally construes pro se complaints.

11 Cases that cite this headnote

[12] **Criminal Law**⚿Mode of acquiring jurisdiction

The power of a court to try a person for crime is not impaired by the fact that he was brought within the court's jurisdiction by reason of a forcible abduction.

[13] **Criminal Law**⚿Preliminary proceedings in general

Improper extradition is not a ground for post-conviction relief pursuant to Iowa law.

[14] **Civil Rights**⚿Police, Investigative, or Law Enforcement Activities

Section 1983 provides a remedy for improper extradition in violation of the extradition clause and statute. U.S.C.A. Const. Art. 4, § 2, cl. 2; 42 U.S.C.A. § 1983.

1 Cases that cite this headnote

Attorneys and Law Firms

*678 Counsel who presented argument on behalf of the appellant was William A. Hill, AAG, Des Moines, Iowa.

Counsel who presented argument on behalf of the appellee was Patrick E. Ingram, Iowa City, Iowa.

Before RILEY, BOWMAN, and ARNOLD, Circuit Judges.

Opinion

RILEY, Circuit Judge.

W.L. Kautzky and John F. Ault (collectively, the defendants) appeal the district court's judgment holding the defendants liable for denying Duane C. White (White) meaningful access to the courts. White cross-appeals the district court's nominal damages award. Finding no actual injury, we reverse the finding of liability and vacate the district court's judgment.

I. BACKGROUND

On June 25, 1999, White was arrested in Iowa for violating Iowa law and also on an outstanding South Dakota arrest warrant. White was detained in the Woodbury County Jail, near Sioux City, Iowa. White was later transferred from Iowa to South Dakota and back without formal extradition. White pled guilty in Iowa and South Dakota. The Iowa plea agreement allowed the State of Iowa to pursue additional charges if White filed an application for post-conviction relief. White was incarcerated in the Anamosa State Penitentiary (Anamosa) in Iowa from December 16, 1999, to July 25, 2002, when White was transferred to the South Dakota State Penitentiary where he presently is incarcerated.

*679 Before White arrived at Anamosa on December 16, 1999, Anamosa discontinued its prison library. In place of the prison library, Anamosa hired contract attorneys in 2000 who came to the prison several days each month, met with inmates individually for approximately fifteen minutes, answered simple legal questions, and dispensed legal forms. Although the policy in effect at Anamosa would not compensate contract

STATE IS RELUCTANT IN GRANTING RELIEF. THE PETITIONER HAS ASSERTED THE FOREGOING DESPARITIES AND ARBITRARY DEPRIVATION OF HIS UNITED STATES AND GEORGIA CONSTITUTIONAL, GEORGIA STATUTORY, AND/OR CIVIL RIGHTS IN THE APPROPRIATE GEORGIA JUDICIAL TRIBUNALS IN ATTEMPTS TO OBTAIN REDRESS AND REMEDIAL SOLUTIONS BUT TO NO AVAIL HAS JUSTICE BEEN AFFORDED THE PETITIONER AS JUSTICE SO REQUIRES AND MANDATES. THEREFORE, WITHOUT RECTIFYING THE AFOREMENTIONED VIOLATIONS, ANYTHING FURTHER WOULD BE A CONTINUING VIOLATION OF CONSTITUTIONAL AND STATUTORY RIGHTS THAT IN TURN WOULD AMOUNT TO DUE PROCESS AND EQUAL PROTECTION VIOLATIONS THAT WOULD INFECT ANY SUBSEQUENT INDICTMENT, PROCEEDINGS, TRIAL, AND RENDER ANY CONVICTION UNCONSTITUTIONAL. THE SUPREME COURT OF THE UNITED STATES HAS EMPHASIZED THAT THE WRIT OF HABEAS CORPUS IS OF FUNDAMENTAL IMPORTANCE IN THE CONSTITUTIONAL SCHEME, AND SINCE THE BASIC PURPOSE OF THE WRIT "IS TO ENABLE THOSE UNLAWFULLY INCARCERATED TO OBTAIN THEIR FREEDOM, IT

address on the day before Kelly's arrest.

On August 16, 1989, the morning following Kelly's arrest, Kelly was taken before a magistrate. Detective Moore read the charges against Kelly. However, evidence of probable cause was not presented. The magistrate neither scheduled a commitment hearing nor set bail. (Under Georgia law, only a superior court judge may set bail for someone accused of selling cocaine. *See* O.C.G.A. § 17–6–1(a)(8) (Michie 1990 & Supp.1993)). There is no evidence to suggest what else, if anything, happened at the August 16, 1989, proceeding.

On August 17, 1989, two days after Kelly's arrest, detective Gibson took the rock-like substance that had been found in Kelly's home to the state crime lab for testing. On August 24, the state crime lab issued a written report stating that the substance found in Kelly's house on August 15 was "negative for common drugs of abuse." (A separate written report issued on the same date stated that the substance sold to detective Curtis on August 14 *was* cocaine.) The state crime laboratory *generally* sends a copy of its reports to the district attorney and the police ***1548** department at the same time.[2] On each report is a listing of who receives a copy of the report; the report in this case listed detective Gibson, the Metro Drug Squad, and the district attorney's office. Despite all of this, the district attorney's office did *not* receive the exculpatory report until months later. There is no evidence that any of the detectives had reason to know of this lapse, however.

The police department received the negative lab report on August 24, 1989. Although Kelly contends that detectives Curtis or Moore may have then seen that report, he has introduced no evidence to support his hypothesis. Gibson, however, did receive a copy of the report on August 25, 1989.[3]

The same day that the state crime lab released its negative drug report, a superior court judge set Kelly's bail on the cocaine possession and cocaine distribution charges at $5000. The record does not indicate what if any testimony or evidence was introduced when the judge set bail. Kelly did not make his bail.

On September 12, 1989—a month after Kelly's arrest and while he was still incarcerated—Gibson applied to a magistrate for arrest warrants against Kelly on both the possession and distribution charges. No evidence of probable cause was presented at the warrant hearing. Instead, in support of the cocaine possession arrest warrant, Gibson swore out a conclusory affidavit stating: "John Kelly, Jr., did commit the offense of Possession of Controlled Substance (Cocaine), in violation of Georgia State Code 16–13–39(b) at 4108 Boyd St., Savannah, Chatham County, GA in said county on or about 15th day of August, 1989." Gibson failed to disclose to anyone that the state crime lab had determined that the substance she charged Kelly with possessing on August 15 was not cocaine. Based on Gibson's affidavit,[4] the judge issued arrest warrants against Kelly on both the possession and distribution charges.[5]

On October 5, 1989, Kelly finally received a probable cause hearing, at which only detective Moore testified. Moore did not disclose the exculpatory crime lab results but instead stated that no lab report had been received. In addition, Moore failed to point out the discrepancies between Kelly's physical characteristics ***1549** and the description that detective Curtis had given of the person from whom Curtis had bought cocaine. At the conclusion of the probable cause hearing, Kelly was held for trial on both the possession and distribution charges.

On November 1, 1989, a grand jury indicted Kelly for distribution of cocaine. Detective Curtis testified against Kelly before the grand jury, but the record does not otherwise reveal what his testimony was. Kelly was not indicted on the possession charge, although that charge was not dismissed until the following year. Instead, Kelly remained in jail awaiting trial, apparently on both of the charges, until August 1990. At that time, Kelly's court-appointed attorney filed a discovery motion and the County produced the state lab's exculpatory report. Two weeks later, the district attorney dropped all charges against Kelly and, one year after his arrest, Kelly was released. The district attorney's records list the following reasons for dropping charges:

> Conflict with witnesses. Defendant has been in jail for one year. Unavailability of other witnesses. Possibility of re-indictment on other charges. The case was Dead Docketed in open court on 8/27/90. Request dismissal of the above-cited warrant. The defendant was charged with possession of controlled substance. The

IS FUNDAMENTAL THAT ACCESS OF PRISONERS TO THE COURTS FOR THE PURPOSE OF PRESENTING THEIR COMPLAINTS MAY NOT BE DENIED OR OBSTRUCTED." JOHNSON v AVERY, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed. 2d 718 (1969); WOLFF v McDONNELL, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed. 2d 935 (1974) "THERE IS NO HIGHER DUTY THAN TO MAINTAIN IT UNIMPAIRED, BOWEN v JOHNSTON, 306 U.S. 19, 26, 59 S.Ct. 442, 446, 83 L.Ed. 455 (1939), AND UNSUSPENDED, SAVE ONLY IN CASES SPECIFIED IN OUR CONSTITUTION." SMITH v BENNETT, 365 U.S. 708, 713, 81 S.Ct. 895, 898, 6 L.Ed 2d 39 (1961)

FOR THE AFOREMENTIONED REASONS WHICH ESTABLISH CAUSE, THE PETITIONER COMPELS THIS HONORABLE COURT TO GRANT CERTIORARI.

13 *Miraliakbari v. Pennicooke,* 254 Ga.App. 156, 157(2), 561 S.E.2d 483 (2002) (citations and punctuation omitted).

14 See id. at 159(2), 561 S.E.2d 483 (noting that "it is not enough that [a defendant's] conduct in a given situation is intentional or that it is wilful and wanton").

15 See id.

16 Id.

17 244 Ga.App. 43, 535 S.E.2d 16 (2000).

18 Id. at 45(1)(a), 535 S.E.2d 16.

19 Id. at 43(1), 535 S.E.2d 16.

20 Id. at 43–44(1), 535 S.E.2d 16.

21 Id. at 44(1), 535 S.E.2d 16.

22 Id.

23 Id. at 45(1)(a), 535 S.E.2d 16.

24 Id. at 43(1) n. 1, 535 S.E.2d 16.

25 Id. at 43(1), 535 S.E.2d 16.

26 Id.

27 Id. at 45(1)(a), 535 S.E.2d 16.

28 *Miraliakbari,* supra at 157(2), 561 S.E.2d 483.

29 See id. at 159–160(2), 561 S.E.2d 483.

30 *McDaniel v. Elliott,* 269 Ga. 262, 264–265(2), 497 S.E.2d 786 (1998) (citation omitted).

31 *Hayes v. Hallmark Apts.,* 232 Ga. 307, 308(1), 207 S.E.2d 197 (1974).

32 See *Davidson Mineral Properties v. Baird,* 260 Ga. 75, 78(5), 390 S.E.2d 33 (1990) (statements were not fraudulent, where they were statements or promises as to future events, not facts as they then existed, and there was no evidence that the promises were made with the present intent not to perform); cf. *E–Z Serve Convenience Stores,* supra at 46(1)(b), 535 S.E.2d 16 (due to supervisor's history of ignoring prior notifications regarding ordinance violations, jury could have concluded that, at the time the supervisor informed store manager that he would take care of ordinance citation, the supervisor had no real intention to do so).

CONCLUSION

WHEREFORE, THE PETITIONER GIVES DEFERENCE TO SUPREME COURT RULE 10: CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI, WITH THE UNDERSTANDING THAT A WRIT OF CERTIORARI IS NOT REVIEWED AS A MATTER OF RIGHT, BUT JUDICIAL DISCRETION AND THAT A PETITION FOR CERTIORARI WILL BE GRANTED ONLY FOR COMPELLING REASONS. THE PETITIONER ALSO UNDERSTANDS THAT ALTHOUGH RULE 10 (c) IS APPLICABLE IN THIS CASE, IT IS NEITHER CONTROLLING NOR FULLY MEASURING THE COURT'S DISCRETION. FURTHERMORE, THE PETITIONER STATES THAT HE HAS PRESENTED FOUR CONSTITUTIONAL QUESTIONS WHICH RAISES ISSUES OF SIGNIFICANT CONSTITUTIONAL AND PUBLIC INTEREST, JURISPRUDENTIAL IMPORTANCE, PREDICATED UPON GEORGIA STATE COURT RULINGS THAT CONFLICT WITH CONTROLLING SUPREME COURT OF THE UNITED STATES PRECEDENT. FOR IN THE INTEREST OF JUSTICE, THE PETITIONER CAN ONLY PRAY THAT ISSUES REGARDING THE

THE PETITIONER'S "FALSE ARREST" IS ENOUGH FOR CAUSE TO COMPEL THIS COURT TO REVIEW THIS PETITION. THE PETITIONER PRAYS THAT THIS HONORABLE COURT GRANT CERTIORARI AFTER AN IMPARTIAL AND UNBIASED REVIEW OF THE FOREGOING PETITION AND REMAND THE PETITIONER'S CASE BACK TO THE APPROPRIATE COURT WITH DIRECTION CONSISTENT WITH THE SUPREME COURT OF THE UNITED STATES OPINION.

also ignores the role of the judge in the grand jury process in Alabama. For example, the court both draws and summons grand jurors. Code of Ala. (1975), § 12–16–70. It is empowered to recall and reassemble the grand jury. *Id.*, § 12–16–190. The Court also can require a grand juror to disclose the testimony of any grand jury witness to determine whether perjury has been committed. *Id.*, § 12–16–201. This list does not exhaust the powers that the court may exercise over grand jury proceedings. Therefore, we reject the Strengths' suggestion that the more limited role of the judge somehow ***425** divests the grand jury of its status as a "judicial proceeding."

The determination that Carroll has absolute immunity from civil liability based on his grand jury *testimony* does not end our investigation, however. The Strengths also base their § 1983 claim on an alleged conspiracy to cause their wrongful indictment and prosecution. In its memorandum opinion disposing of the Strengths' motion for reconsideration, the district court concluded that the pretestimonial acts in furtherance of this alleged conspiracy do not state a claim under § 1983 because they do not result in a constitutional deprivation. In our view, the district court erred in this conclusion.

[2] The Supreme Court and this court's predecessor have recognized that a conspiracy to violate constitutional rights states a claim under § 1983. *Dennis v. Sparks,* 449 U.S. 24, 29, 101 S.Ct. 183, 187, 66 L.Ed.2d 185, 190 (1980); *Adickes v. Kress & Co.,* 398 U.S. 144, 152, 90 S.Ct. 1598, 1605–06, 26 L.Ed.2d 142, 150–51 (1970); *Crowe v. Lucas,* 595 F.2d 985, 990 (5th Cir.1979).[3] To establish a prima facie case of conspiracy to violate rights protected by § 1983, a plaintiff must demonstrate that the defendants " 'reached an understanding' to violate [his] rights." *Dykes v. Hosemann,* 743 F.2d 1488, 1498 (11th Cir.1984), *vacated,* 776 F.2d 942 (11th Cir.1985), *reinstated,* 783 F.2d 1000 (11th Cir.), *cert. denied,* 479 U.S. 983, 107 S.Ct. 569, 93 L.Ed.2d 574 (1986). Therefore, if the alleged conspiratorial, pretestimonial acts of Carroll and Hubert impinge upon rights protected by § 1983, then the district court's conclusion with respect to the conspiracy claim must be reversed.

[3] In *Shaw v. Garrison,* 467 F.2d 113, 120 (5th Cir.), *cert. denied,* 409 U.S. 1024, 93 S.Ct. 467, 34 L.Ed.2d 317 (1972), our predecessor court determined that "there is a federal right to be free from bad faith prosecutions." The district court, however, declined to follow *Shaw* because the new Fifth Circuit, in *Wheeler v. Cosden Oil & Chemical Co.,* 734 F.2d 254 (5th Cir.), *amended,* 744 F.2d 1134 (5th Cir.1984), had questioned its continued validity in light of the intervening decision of the Supreme Court in *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975). In *Gerstein,* the Court held that the fourth amendment requires a state to provide a judicial or neutral determination of probable cause for a person detained after arrest.[4] This determination, however, does not, under the Constitution, necessitate an adversarial determination, with its full panoply of procedural safeguards. *Id.* at 123, 95 S.Ct. at 867–68, 43 L.Ed.2d at 71.

The *Wheeler* court's misgivings about *Shaw* focused on a footnote in *Gerstein:* "Because the probable cause determination is not a constitutional prerequisite to the charging decision, it is required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial." 420 U.S. at 125 n. 25, 95 S.Ct. at 869 n. 26, 43 L.Ed.2d at 72 n. 26. This passage prompted the *Wheeler* court to consider whether *Gerstein* gave a prosecutor absolute discretion "to charge one he has no reason to suspect" as long as there is no detention. 734 F.2d at 259. The court in *Wheeler* determined, however, that the language of *Gerstein* assumes a duty by the prosecutor to determine probable cause before making a charge. *Id.* at 259–60 (citing *Gerstein,* 420 U.S. at 113–14, 95 S.Ct. 862–63, 43 L.Ed.2d at 64). Given this duty, *Wheeler* concluded that a right against "capricious prosecutions," i.e. those prosecutions procured by false and misleading information that would cause a prosecutor to believe probable cause existed when it in fact did not, was incorporated by the fourteenth amendment. ***426** 734 F.2d at 260. Thus, the rule in *Shaw* survived *Gerstein.*

We agree with the new Fifth Circuit Court of Appeals that "a safeguard so fundamental to criminal due process—one against capricious prosecutions—is ... incorporated by the fourteenth amendment." 734 F.2d at 260.[5] Thus, any of the pretestimonial acts that might have undermined the federally guaranteed right to be free of malicious prosecution can form the basis of a § 1983 action.

Finally, we note that Carroll, in his motion for summary judgment, raised the issue of qualified immunity from civil liability for his acts prior to

