

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

NO. 21-7036

FILED

NOV 12 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

JEFFREY DAVIS
Petitioner,

– against –

ORANGE COUNTY SHERIFF'S OFFICE,
ORANGE COUNTY STATE ATTORNEY OFFICE,
BRIAN LEMONS, Detective
JENNIZA ROSADO, Assistant State Attorney

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JEFFREY DAVIS – 344291
WAKULLA CORRECTION INSTITUTION
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CRAWFORDVILLE, FL 32327-4963

QUESTION PRESENTED

Whether the district court departed from the essential requirements of the law, in the absence of *prima facie* evidence attached to its order to refute that the Petitioner's arrest and detention are invalid.

PARTIES

The Petitioner is Jeffrey Davis, a prisoner at Wakulla Correctional Institution facility in Crawfordville, Florida. The Respondents are Orange County Sheriff's Office, Orange County State Attorney's Office, Brian Lemons /7556 – Detective, Jenniza Rosado /111733 – Assistant State Attorney.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit is unreported. It is cited in the court dockets Case No.: 20-13825-C and a copy is attached as Appendix B to this petition (A. 4). The order of the United States District Courts for the Middle District of Florida is not reported. A copy is attached as Appendix C to this petition (A. 10).

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on August 6, 2021. An order denying a motion for reconsideration was entered after October 15, 2021, and a copy of that order is attached as Appendix B to this petition (A. 8). Jurisdiction is conferred by 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment 14 to the United States Constitution, which provides:

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.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendment is enforced by Title 42, Section 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

In this petition for certiorari Petitioner sets forth in greater detail his claims of violation of the Due Process Clause. All of the claims presented in this case consistent of the following:

Jeffrey Davis filed this action in this United States Supreme Court under Title 42, Section 1983, United States Code. Alleging the district court violated his constitutional rights when he was subjected to a departure from the essential requirements of law and subsequent in this case, the grant of relief will serve the public interest because it is always in the public interest for district court judges to obey the law, especially the constitution.

"Respect for the law, particularly by judges responsible for the proper administration of justice is in itself a matter of the highest public interest." The Petitioner states the Constitution is the ultimate expression of the public interest.

The Petitioner's complaint alleged that the underlying case arose on December 3, 2017. The Detective Brian Lemons/ 7556 drafted a false affidavit for arrest warrant. Which resulted in Jeffrey Davis' erroneous arrest and subsequent illegal detention. It further alleged that the charges were false and that in reality the Petitioner had been arrested on March 9, 2018 pursuant to the aforementioned affidavit for arrest warrant.

Petitioner further contends that Rosado failed to prosecute him for over a year for the (original) arrest warrant sanctions in violation of Florida Rule of Criminal Procedure Rule 3.134. Ms. Rosado knew that Detective Lemons had lied on the affidavit for arrest warrant, but purportedly failed to notify the trial court of that fact.

Instead, she stated to the judge on April 10, 2019 that she knew of the Petitioner sitting in the Orange County Corrections Department over one year without being charged. Unfortunately, Rosado failed to prosecute him for over a year for the uncharged offenses submitted by Detective Lemons.

Defense counsel mentioned to the court that Davis was still being held in the Orange County Corrections Department on the (original) arrest warrant sanctions. The court released Jeffrey Davis on the charges drafted by Detective Lemons seeking a warrant for the arrest of Mr. Davis.

The district court denied the complaint on the grounds that the charges drafted by Detective Lemons were not invalidated without attaching record evidence or actually conducting an evidentiary hearing. The Court of Appeals affirmed the denial of the complaint for the reasons stated by the district court.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The district court had jurisdiction under the general federal jurisdiction conferred by 28 U.S.C. 1331.

REASONS FOR GRANTING WRIT

CONFLICT WITH DECISIONS OF OTHER COURTS

The holding of both courts in this case is directly contrary to the holding of multiple federal circuits and the U.S. Supreme Court. Jeffrey Davis has a due process right not to have Detective Lemons deliberately fabricate evidence and use it to frame and bring false charges against him. As the Third Circuit has stated, "no sensible concept or ordered liberty is consistent with law enforcement cooking up its own evidence." *Halsey*, 750 F. 3d at 292-93.

Detective Brian Lemons violated due process when he fabricated his affidavit in order to get Davis falsely arrested and convicted. "When falsified evidence is used as a basis to initiate the prosecution of a defendant, or is used to convict him, the defendant has been injured." *Id.* at 289. *Halsey v. Pfeiffer*, 750 F. 3d 273, 296 (3d Cir. 2014).

The Sixth Circuit "recognizes a... claim of malicious prosecution under the Fourth Amendment, which encompasses wrongful investigation, prosecution, conviction, and incarceration." *Sykes v. Anderson*, 625 F. 3d 294, 308 (6th Cir. 2010) (citation omitted).

Petitioner agree with the Second Circuit that official framing by Detective Lemons in this circumstance undermines the right to a fair trial. *Ricciuti*, 124 F. 3d at 130; See also *Boyd*, 579 F. 3d 515 (noting that the right to a fair trial is

undermined by State fabrication of evidence even when defendant is acquitted).

Being framed and falsely charged brings inevitable damage to the person's reputation, especially where, as here, the crime is a felony involving threat of violence. See *Albright*, 510 U.S. at 278 (opinion of Ginsburg, J.) (discussing the consequences of being charged with a serious offense); *Id.* at 289 (opinion of Souter, J.). "When properly applied, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Al-kidd II*, 131 S. Ct. at 2085 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 106 S. Ct. 1092, 89 L. Ed 2d 271 (1986)). The self-evident wrongfulness of Rosado's conduct is sufficient to place her in either category. She is not entitled to qualified immunity.

The government as an entity is responsible under §1983. "Where as here, the policy in question concerns a failure to train or supervise county employees, liability under Section 1983 requires a showing that the failure amounts to "deliberate indifference" to the rights of persons which those employees will come into contact. *City of Canton v. Harris*, 489 U.S. 378, 388, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989).

IMPORTANCE OF THE QUESTION PRESENTED

This case presents a fundamental question of the interpretation of Orange County, Florida, Ninth Judicial Circuit Court's decision in *State of Florida v. Jeffrey Davis*, Case No.: 2017-CF-015616-A-0. The question presented is of great public importance because it affects the operations of police systems in all 50 states, the District of Columbia, and hundreds of city police and county deputies.

In view of the large amount of litigation over official unlawful actions, guidance on the question is also great public importance to arrestees, because it affects their ability to receive fair decisions in proceedings that may result in months or years of added incarceration or harsh punitive confinement.

The issue's importance is enhanced by the fact that the district court in this case has seriously misinterpreted *State v. Davis*. The circuit court in *State v. Davis* held that Jeffrey Davis was released as to any uncharged counts in this case, and the judge added that, "I mean between the original and the indictment, there's some uncharged ones".... Ms. Rosado having the burden of explaining the reason for refusing to charge Mr. Davis in over one year replied:

Ms. Rosado: I believe so, yes. (TT. pg. 494)

The common sense comprehending of "calling" a defendant is bringing Ms. Rosado into the proceeding to give testimony, and nothing in *State v. Davis* suggests otherwise. This case acknowledges that there are fabrication and

illegal detention concerns that require limiting Mr. Davis' due process rights in this particular case.

However, those concerns are accommodated by permitting the district court to deny the Title 42, Section 1983 when calling the defendants to jury trial would be duly hazardous to governmental corruption or furtherance of a conspiracy to deprive Jeffrey Davis of equal protection under the law and equal privileges of the law.

PETITIONER RAISED THE PROPER OBJECTION TO THE DISTRICT COURT INTRODUCING EVIDENCE NOT REGARDING THE FALSE AFFIDAVIT USED TO OBTAIN THE WARRANT ISSUED FOR MR. DAVIS' ARREST.

The district court presented assertive written comments on its order, which made improper references to introduction of evidence that violated the Fourteenth Amendment. Detective Lemons drafted an affidavit seeking a warrant for the arrest of Mr. Davis. An arrest warrant was then issued by Honorable Reginald Whitehead.

The introduction of these assertive written comments constituted improper judicial comments on the guilt of Mr. Davis and improperly bolstered the credibility of Detective Lemons. Petitioner raised a timely and specific objection to this evidence constituting disagreement to judicial comments which prejudiced Mr. Davis ("admission of improper judicial comments that lead to denial of the Title 42, Section 1983 supports a reversal").

Given the nature of the district court's allegations there is a substantial danger that the court dismissed Davis' complaint based on matters not introduced into the complaint concerning Detective Lemon's Affidavit of Arrest Warrant.

The district court's failure to investigate the dismissed affidavit for arrest warrant sanctions (uncharged offenses was plain error, and as a result, the Petitioner's 42 U.S.C. §1983 civil rights complaint must be reversed.

It is well established that judges are precluded from commenting on the weight of the evidence, the credibility of a witness or the guilt of the defendant. In fact, the concept is codified in Fla. Stat. §90.106, which provides the following: "A judge may not sum up the evidence or comment to the jury upon the weight of the evidence, the credibility of the witnesses or the guilt of the accused."

The district court judge stated: In this case, Detective Lemons' Affidavit for Arrest Warrant provided that two other individuals identified Plaintiff as the person who fired shots into the house into which Harvey fled. (Doc. 6-1 at 7) Consequently, removing the alleged misstatements would not negate probable cause in the arrest affidavit. Furthermore, from the incident report, ample evidence existed to establish a probability or substantial chance that Plaintiff committed attempted first-degree murder, shooting into an occupied dwelling, and aggravated assault. See Appendix C (Doc. 9 pg. 4).

The district court judge's assertive written comments improperly advised that a judge had concluded that Mr. Davis was involved in criminal activity fabricated by Detective Lemons.

An assertive written judicial comment on Mr. Davis' guilt was completely improper and violates Fla. Stat. §90.106. The charges drafted by Detective Lemons seeking a warrant for the arrest of Jeffrey Davis was properly determined invalid and dismissed by the circuit court judge. See Appendix A to this petition. (A. 2) (TT – pg. 494).

Additionally, the assertive written judicial comments improperly bolstered the credibility of Detective Lemons. The assertive written judicial comments supported the dismissal of the Title 42, Section 1983 complaint. Based on an Incident Report that was dismissed as hearsay on hearsay at a hearing following a motion in limine on February 4, 2019.

In making that finding, it is inescapable that the district court judge concluded that Detective Lemons was a credible witness. Improperly adding assertive written judicial comments in his court order finding Detective Lemons to be credible is in direct violation of Fla. Stat. §90.106.

The Petitioner did object to the district court judge's assertive written judicial comments. The appropriate objection had been made to the Chief Judge, the judge whom violated petitioner's constitutional rights overruled the objection. (Doc. 28) Appendix C (A. 20).

Mr. Davis was prejudiced by the assertive written judicial comments by the district court judge and the judge's subsequent reference to evidence which was dismissed by the circuit court judge, during the district court's order denying the Title 42, Section 1983 compliant.

During writing his court order, the district court judge specifically referenced the fact that Detective Lemons had sought an arrest warrant for Mr. Davis and an Incident Report that had both been dismissed at the circuit court. (TT at 494)

Had the proper investigation been made by the district court, both the improper assertive written comments and improper dismissal of the Title 42, Section 1983 complaint would have been precluded.

EXCLUSION OF INADMISSIBLE ASSERTED WRITTEN DISTRICT COURT'S STATEMENTS

Any and all statements by the district court judge describing the alleged incident on December 3, 2017. Exclusion of the above – reference statements is required as the statements are inadmissible hearsay not covered by any hearsay exception. See, Fed. R. Evi. 803.

Any asserted written district court's statements made concerning Jeffrey Davis in the (original) arrest warrant sanctions dismissed (unchanged offenses). See (TT – pg. 494). By the circuit court's own statement, he does not know Davis'

offenses was uncharged by the prosecutor (Rosado), and the prosecutor did not object to dismissing the (original) arrest warrant sanctions. See Appendix A

Furthermore, character was not raised by Petitioner and so was not properly raised by the district court judge. *Id.* Exclusion of any and all evidence described above is required as improper character evidence introduced to show propensity. See, Fed. R. Evi. Rule 404(b).

Exclusion of this evidence is required due to lack of relevance. Fed. R. Evi. Rule 402. Further, it stands that any police reports derived from this evidence is likewise inadmissible.

Accordingly, Mr. Davis was provided with a clear and prejudicial abuse of discretion. This Court should vacate the district court's decisions or grant him an evidentiary hearing.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully submitted,



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