

IN THE SUPREME COURT OF THE UNITED STATES

21-7864

ORIGINAL

Andrew James Johnston,

Petitioner,

v.

United States of America,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

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SUPREME COURT, U.S.

Originating Case Information: USC A 7, No. 21-1746

Executed on: 07/11/22 Andrew Johnston

Mr. Andrew James Johnston
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QUESTIONS PRESENTED

1. When the United States, through an FBI agent, in combination with state/local police, manufactures, causes, promotes, or encourages the loss of a criminal defendant's personal property (initially seized as part of a federal investigation) - is the lack of possession of the property at the time of a motion for return of property under Federal Rule of Criminal Procedure 41(c) a bar to a claim for just compensation in monetary relief?

2. Is the Ninth and Second Circuits' position that monetary relief is available by way of a Rule 41(c) motion when it becomes known the United States no longer possesses the property correct, as opposed to the Third, Fifth, and Seventh Circuits' position?

3. Did the court of appeals commit reversible error by concluding the United States' lack of possession was dispositive and that the claim of judicial bias was based on the district judge's Democrat appointment when it was actually made against the district judge's political statements against President Trump during voir dire in the criminal case on January 8, 2019?

JURISDICTION

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The jurisdiction of the district court was founded upon 18 U.S.C. § 3231, 28 U.S.C. § 1331, and Rule 4(G). The jurisdiction of the court of appeals was founded upon 28 U.S.C. § 1291. The jurisdiction of this Court is founded upon 28 U.S.C. § 1254(c) and the following:
U.S.C.A. Order: April 4, 2022; Rehearing En Banc: N/A

TABLE OF AUTHORITIES

Organic

Amendment V, Due Process Clause

Statutes

18 U.S.C. § 3231; 18 U.S.C. § 1331

Other

Federal Rule of Criminal Procedure 4(G)

Cases

United States v. Martinson, 809 F.2d 1364, 1368 (CA9 1987)

Mora v. United States, 955 F.2d 156, 159-60 (CA2 1992)

United States v. Albinson, 356 F.3d 278, 284 n. 6 (CA3 2004)

Pena v. United States, 157 F.3d 984, 987 (CA5 1998)

United States v. Norwood, 602 F.3d 830, 836-37 (CA7 2010)

STATEMENT OF THE CASE/FACTS

In July 2020, petitioner sought return of his property and/or just compensation for its value. The respondent no longer possessed the property at issue, and responded accordingly. In reply,

petitioner sought just compensation for the lost items: cash, car tools, and personal effects. Respondent possessed petitioner's cell phone and had returned and selectively inventoried other items from the car but not the items in dispute. After ordering supplemental briefing, the district court granted return of the cell phone, but denied money damages for the lost items on January 12, 2021. Appendix B. On appeal, the court of appeals affirmed, albeit for slightly different reasons, and stated a separate civil action for money damages was needed.

REASONS WHY CERTIORARI SHOULD BE GRANTED

In *Martinson* and *Mora*, *supra*, the Ninth and Second Circuits held monetary relief is available under Rule 41(c) when property was mishandled/lost at the cause of the criminal case. That position is the most practical as most Rule 41(c) petitioners are pro se, the litigation doesn't get unnecessarily protracted as the loss of property typically becomes known during the Rule 41(c) briefing, and it swiftly deters law enforcement from manufacturing property loss.

In *Albinson*, *Pena*, and *Norwood*, *supra*, separate, ambiguous, civil actions are required. This position should be overruled to streamline Rule 41(c) proceedings rationally, and avoid the extension beyond the criminal case under 18 U.S.C.

On the merits, petitioner sought return of his car, documents, clothes, tools, and money inside the car at the time the FBI took custody of it on the day of the arrest. In response, the FBI said it doesn't have the property, it gave it to local police, who told petitioner's girlfriend how to retrieve it, but she never did. In reply, petitioner showed the untruthfulness of the FBI, the hearsay nature of its response, and sought \$2500.00 in just compensation and/or a hearing.

Supplemental briefing was ordered, and the response rested entirely on whether notice was provided to petitioner or his girlfriend. That fact was presented by the FBI in a sworn affidavit that petitioner's girlfriend was notified by certified mail. However, running the tracking number on that certified mail shows that notice was never delivered to Samantha Behinder in Forest Park, IL. In fact, in reply, petitioner showed the notice was never delivered to anyone - despite being incorporated into the FBI's affidavit. Nevertheless, the district court excused this false evidence, denied monetary relief, but ordered return of a cell phone: obtained from within the same car at the same time.

On appeal, petitioner argued lack of fair notice, and referenced the selective inventory of personal property in combination with the falsified certified mail receipts to seek reversal. Petitioner also argued the district court should have recused due to political statements made during voir dire on January 8, 2019 directed at petitioner's public posts in December 2018 supporting President Trump's veto power and resulting "government shutdown" as well as how every time the democrats have had power since 1933 they have bankrupted the states and caused rampant inflation. The district judge being a Democrat appointee made comments that people supporting the shutdown were "sick" and told jurors she would buy them all lunch regardless of the shutdown etc. On March 25, 2022, the POTUS audio of those statements was released for the first time. U.S. Dist. Ct., ND IL, CD Request 122-32.

The Court of Appeals mischaracterized the basis for recusal as being predicated on the judge's appointment alone, and did not listen to the January 8, 2019 audio or read the December 2018 tweets on President Trump's former Twitter account by petitioner.

Conclusion

Wherefore petitioner prays the Court grants issuance of a writ of certiorari, reverses the court of appeals April 7, 2022 judgment, and remands with directions for the foregoing reasons.

Respectfully Submitted,

Date: 4/11/22 Andrew Johnston

Mr. Andrew James Johnston

NOTICE

PLEASE TAKE NOTICE: The Court of appeals states monetary relief is actionable, but maintains a filing bar leaving me no way to seek redress for the manufactured loss of property. This continued mistreatment of pro se litigants should be deterred by this Court. Nothing I have filed is not supported by clear evidence, especially with the voir dire audio released now.

Andrew Johnston