

NO. 22-7411

IN THE
SUPREME COURT OF THE UNITED STATES

PASTOR MARIO L. SIMS,

Petitioner,

v

PETE BUTTIGIEG, MIKE SCHMUL, TIM CORBETT, ST. JOSEPH COUNTY, INDIANA by and through the ST. JOSEPH COUNTY BOARD OF COMMISSIONERS in their individual and official capacities, CITY OF SOUTH BEND INDIANA, STEPHANIE STEELE, as Corporation Counsel for the City of South Bend, TASHA REED OUTLAW, ANN-CAROL NASH, CRISTAL BRISCO, all named individuals are current or former South Bend City employees, and are sued in their official and individual capacities,

Respondents

On Petition for Writ of Certiorari to the
Indiana Supreme Court

PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

Pastor Mario L. Sims, *pro se*
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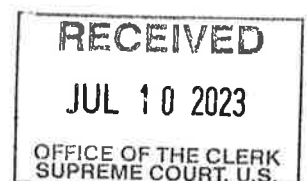


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INTRODUCTION

The dispositive judicial admission:

Here the record for review shows Respondents admit planted evidence was used by a law enforcement officer to wrongly convict Pastor Sims and a threat was used to cover up the admission when it was disclosed to a Reporter.

That admission is dispositive to the issue raised in the Petitioner's Petition for Writ of Certiorari

The Respondent's Brief in Opposition, page 2 and 3, makes a judicial admission dispositive to this Petition for Writ Of Certiorari, as it cites from paragraph 4 of Trial Court's Order of February 18, 2022, stating: “In fact, the only real “new” element as set out in the proposed Verified Complaint is the conduit of these actions which is a local news anchor and a reporter and a reported conversation, she allegedly had with Defendant Corbett.”

This “newly discovered evidence” was first discovered on or about April 15, 2019, as shown in the verified complaint filed by Pastor Mario Lamont Sims, (Sims”) was contacted by an investigative news reporter, Alexis Rivas Shear from ABC 21 News.

Sims was asked by the reporter if he was available for a meeting and if they could meet at the church where he is the Senior Pastor. (Indiana Court of Appeals App. Vol. II page 19-24, Plaintiff's 1st Verified Amended Complaint at law).

The news reporter arrived at the church with a cameraman and another news reporter, Tom Powell. The news reporter, Mrs. Shear disclosed to Sims that she was conducting an interview with Mr. Tim Corbett, Mr. Corbett was a South Bend, Indiana Police Officer in 1994, and he is now still in the law enforcement field as a consultant/cold case investigator with the St. Joseph County Metro homicide unit. According to Mrs. Shear during her interview with Mr. Corbett, Mr. Corbett admitted that he had planted evidence in the case of Mario L. Sims in 1994.

Mrs. Shear stated that she was now afraid for her life because Mr. Corbett had threatened her life after she made her police report, but that Pastor Sims could act on what she had told him about Mr. Corbett's statement.

Pastor Sims was made aware that Mrs. Shear had taken steps to inform others of the admission made by Mr. Corbett. Mrs. Shear stated her news executives told her she had to make a police report about Mr. Corbett's admission, therefore she called Elkhart City Police Officer Davin Hackett who took her statement about the admission. Officer Hackett then filed a report of the statement made by Mrs. Shear to his department's Internal Affairs office.

And, she also called the former South Bend City Board of Public Safety President Mr. Pat Cotrell as well to former City Councilman Derek Dieter, both Mr. Cotrell and Councilman Dieter were former members of the South Bend City Police Department.

Sims was made aware of a news article by the news agency Young Turks in September of 2019, in which then South Bend City Mayor, Pete Buttigieg, his Chief of Staff Mike Schmuhl, and the South Bend City Legal Department were aware that Mr. Corbett had bragged about planting evidence to gain convictions of Black males. The information obtained by the Young Turks was obtained through discovery by using of the Freedom of Information Act. The information obtained by the Young Turks support the information provide to Sims by Mrs. Shear that Mr. Corbett fabricated and/or planted evidence against Sims resulting in his conviction of a crime that he did not commit. Another important piece of evidence that came to the attention of Sims was Mr. Corbett's own words, spoken by the others, who are on tapes which were heard by Mrs. Karen DePaepe, the former Communication Director of the South Bend Police Department.

While these tapes have not yet been made public, Mrs. DePaepe's deposition supports Mrs. Shears' statement that Mr. Corbett fabricated evidence to convict men of crimes they did not commit.

In response to this newly disclosed evidence, Sims filed his "Verified Complaint at Law (filed pursuant to the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021), on September 6, 2021. (Indiana Court of Appeals App. II, 18-45).

The Respondent admit, the above, first uncovered beginning in April 2019, is all newly discovered.

They place no evidence before this court or any court showing this judicial admission was ever denied. The record shows in fact they were deemed admitted by operation of law pursuant to Indiana Trial Rule 8(D).

They place no evidence before this court or any court showing this judicial admission was ever heard on the merits by any court in the state of Indiana, or any other court and therefore cannot be subject to *res judicata* or *collateral estoppel*.

CORRECTED STATEMENT OF FACT

The Respondents asserts, falsely, in an effort to misled this court on factual matters, Sims failed to comply with *Scopelitis* and clearly fails to acknowledge the paragraphs of the Trial Court's Order of February 18, 2023 showing he fully complied.¹ ABA Model Rules 8.4(c) (an attorney shall not engage in conduct involving dishonestly, fraud, deceit or misrepresentation).

This is egregious litigation misconduct clear and convincing that the Respondents are deliberately not being forthright with the court and that its refusal to do so is subverting the administration of justice in this case to severely prejudice the Petitioner. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 15 Fed. R. Serv. 3d 482 (1st Cir. 1989).

Further the record from the Trial Court shows in response to the newly disclosed evidence, Sims filed his “Verified Complaint at Law (filed pursuant to the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021), on

¹Petitioner filed his Motion for Sanctions simultaneously to address this effort to mislead this Court.

September 6, 2021. (App. II, 18-45).

As required by the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021, simultaneously with the “Verified Complaint at Law” Plaintiff also filed on September 6, 2021, his “ Plaintiff's Brief Directed Solely to the Court in Support of His Verified Complaint at Law (Pursuant to the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021)” with attachments. (Indiana Court of Appeals App. II, 2-8).

After the mandatory *Scopelitis* screening was conducted by the trial court, the case was docketed on September 6, 2021, under Cause Number.: 71C01-2109- CT-342, which is the case on Appeal. (Indiana Court of Appeals App. II. 2-8, 18-45).

Sims served the complaint via USPS certified mail and filed copies proving service on the record. (Indiana Court of Appeals App. II, 2-8).

After more twenty three (23) days elapsed, and the Defendants failed to appear, move to enlarge time, or file any motion or appearance, on October 8, 2021, the Sims filed his “Verified Motion for Entry of Default Pursuant to Trial Rule 55(A).” (Indiana Court of Appeals App. II, 46-47 and attached as a Exhibit to the Petitioner's Motion for Sanctions filed herein). None of the Defendants filed an opposing motion, moved to enlarge time to respond or challenge service. The Respondents never denied the truth of the allegations, in fact made a judicial admission as to them being newly discovered, and pursuant to Indiana law, Trial Rule 8D the facts are deemed admitted.

ARGUMENT

The Courts of Indiana, including its highest court, the Indiana Supreme Court, failed to address an admission of evidence planting and of a threat made to conceal the admission of evidence planting.

Government must treat its citizens fairly by following laws and established procedures in everything it does.

While the Constitution, in its entirety, uses the phrase “due process of law” twice (as a protection applied against actions by the national government in the Fifth Amendment and as a protection applied against state government actions in the Fourteenth Amendment), the principle of due process is woven throughout the document.

The Indiana Supreme Court, in violation of both the United States Constitutions, Illinois State Supreme Court, and cases decided by this Court, make an exception to those authorities to the uncontroverted allegations made April 2019 in his verified unchallenged complaint that the Respondent, a sworn law enforcement officer, boasted to a Reporter that he had planted evidence to gain the Petitioner's wrongful conviction, then threatened to kill the Reporter after she made a police report and told other authorities.

And after the Petitioner filed suit, the law enforcement officer, his legal counsel, and all other Respondents failed to file anything, in any court denying or controverting this admission of evidence planting, thereby deeming the facts

admitted by operation of Indiana law. Indiana Trial Rule 8D. This petition seeks to harmonize the Indiana Supreme Court's decision with the U.S. Constitution, Illinois' State Court of last resort, and 1st Circuit Court of Appeals, and this Court as shown in the following decisions: The First Circuit said in *Limone v. Condon* 372 F.3d 39, 44-45 (1st Cir. 2004): [I]f any concept is fundamental to our American system of justice, it is that those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit Actions taken in contravention of this prohibition necessarily violate due process (indeed, we are unsure what due process entails if not protection against deliberate framing under color of official sanction).

The Illinois Supreme Court, in addressing police misconduct, wrote “Simply put, there are some forms of official misconduct that are so offensive to the values of the State of Illinois that they can never be ignored.” *People v. Wrice*, 962 N.E.2d 934 (Ill. 2012). In *Wrice* the Court quoted Justice Brandeis: “Almost eighty years ago, Justice Brandeis recognized that “ a single courageous state may...serve as a laboratory” in defining the rights of its people.” *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932)(Brandeis, J., dissenting). And in this light, each state retains the sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.” *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980).

In a seminal article describing the protections of individual rights within the federalist system, Justice Brennan emphasized that state constitutional provisions were not “adopted to mirror the federal Bill of Rights.” William J. Brennan, Jr., *State Constitutions and the Protections of Individual Rights*, 90 HARV. L. REV. 489, 501 (1977). Rather, he noted, “[t]he lesson of history is otherwise,” since “the drafters of the federal Bill of Rights drew upon corresponding provisions in the various state constitutions.” *Id.* In light of this country's historical reliance on local rights-making, Justice Brennan explained that “the decisions of [the United States Supreme] Court are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of state law.” *Id.* At 501. He called for the states to “step into the breach” left by more limited federal remedies, and to strengthen the liberties and protections afforded citizens. *Id.* at 503. *See also* Ellen A. Peters, *Capacity and Respect: A Perspective on the Historical Role of the State Courts in the Federal System*, 73 N.Y.U.L. REV. 1065, 1067(1998)(Justice Brennan's article “was a clarion call to lawyers and judges not to overlook the capacity of state law...to assist in the pursuit of justice for all.”).


Judge Learned Hand famously called “the ghost of the innocent man convicted” an “unreal dream.” *United States v. Garsson*, 291 F. 646, 649 (S.D.N.Y. 1923).

Justice Sandra Day O'Connor touted how "[o]ur society has a high degree of confidence in its criminal trials, in no small part because the Constitution offers unparalleled protections against convicting the innocent." *Herrera v. Collins*, 506 U.S. 390, 420 (1993) (O'Connor, J., concurring).

CONCLUSION

The decision below risks eroding or removing entirely that protection against wrongful convictions. Pastor Sims respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,



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