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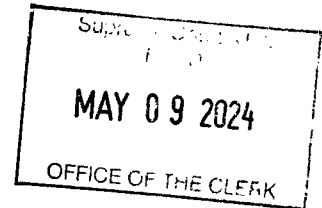
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

REGINALD ANDREW PAULK, SR. - PETITIONER

VS.

L. BENSON, et. al. - RESPONDANT(S)



ON PETITION OF WRIT OF CERTIORARI AND FOR ORDER
DESIGNATING CASE A "COMPLEX CASE" DIRECTIONS TO THE
CLERK OF THE ELEVENTH CIRCUIT COURT OF APPEALS.

FOR THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION OF WRIT OF CERTIORARI

Reginald Andrew Paulk, Sr.

Okeechobee Correctional Institution
3420 N.E. 168th Street
Okeechobee, Fl. 34972

QUESTIONS PRESENTED

1. Did the District Court and the Eleventh Circuit use the incorrect standard to review the issues and thus incorrectly apply the law under *Tolan v. Cotton*,
2. Is the District Court and the Eleventh Circuit Court's decision then both "contrary to" or involves an unreasonable application of clearly established federal law, as determined by the United States Supreme Court.
3. Does the probable cause standard apply to state law claims because the concept under federal law is "Sovereign Immunity" not qualified immunity.
4. Under *Whitely*, was the judicial officer supplied with sufficient information to support an independent judgment that probable cause existed for the warrant?
5. Did the District Court err by dismissing the purposeful discrimination claims and used the incorrect standard based on racial animus and not petitioner's criminal history.
6. Did the Eleventh Circuit and/or Court appointed Counsel properly and timely notify the Petitioner- Paulk, of the "Mandate" entered on September 29, 2023?
7. Did appellant's counsel fail to properly represent him by failing to provide him a copy of the Appellate Brief or consult with him before filing the Initial brief (blue cover)?
8. Was the District Court and the Eleventh Circuit Court decision based on an unreasonable determination of the facts in light of the evidence presented in the trial court proceedings?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State v. Reginald A. Paulk, Fifteenth Judicial Circuit
Case No. 19MM010792NB. Palm Beach County, Fla.

United States District Court, Southern District of Florida
Dist. Court Docket No. 9:22-cv-80126-BAR

United States Court of Appeals, Eleventh Circuit
Appeal No. 22-11635-J

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Cottrell v. Caldwell, 85 F. 3d. 1480
Mitchell v. Forsyth, 472 U.S. 511 - 86 L. Ed. 2d 411
Anderson, 477 U.S. at 251-52
Tolan v. Cotton, 572 U.S. 650 134 S. ct. 1861, 188 L. Ed. 2d 85.
Anderson v. Scott, 729 F. App'x 804 (11th cir).
Davis v. Williams, 451 F. 3d. 759
Knight v. Jackson, 300 F. 3d. 1272.

STATUTES AND RULES

Rule 7. (2)(c)
Fed. R. Civ. P. 12(G)(b)
Rule 1. 201. Fla. R. Jud. Admin.
Section 25.
Rule 56
Rule 32.1
Fed. R. Civ. P. 12(G)(b)
Rule 29

OTHER

28 U.S.C. § 1915 (a)
Rule 29.2
28 U.S.C. § 1746

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☒ reported at 2023 U.S. App LEXIS 6676; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☒ reported at 2022 U.S. App LEXIS 22206; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix G to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the Fifth and Eleventh Circuit court appears at Appendix _____ to the petition and is

☒ reported at 2023 U.S. App LEXIS 23183; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 29, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 12, 2023, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. Art. IV, Sec. 4, Amend IX

U.S.C.A. Art. XIV, § 1.

Title 42, Chapter 21, § 1988

§ 768.28, § 9(a)

§ 784.021

§ 784.011(1).

U.S.C.A. Amendment VI

STATEMENT OF THE CASE

The District Court, Southern District of Florida dismissed the Complaint citing that, even if the Petitioner - Paulk was correct that O'Hearon and Leoffler had lied to police, that fact was irrelevant to the probable cause analysis because there was no suggestion that D/S L. Benson, Shield no. 13736 knew that their statements were false.

Specifically, D/S L. Benson was dispatched to 800 Broadway Riviera Beach, Fl., in reference to an armed assault. Daniel O'Hearon placed the 911 Call to Palm Beach County Sheriff's Office stating that the Petitioner - Paulk, had a "hand gun" and was threatening to use it.

Upon arrival D/S Benson made contact with both O'Hearon and Leoffler, Each of whom upon giving their statements to police now impart that the Petitioner - Paulk had use instead a "6 foot trident pitch fork" to threaten them with.

This case concluded when the Eleventh Circuit Court of Appeals ruled that D/S L. Benson, Shield no. 13736 had at minimum, arguable probable cause to affect the arrest of the Petitioner - Paulk subsequently dismissing the Complaint and issuing the "Mandate" on September 29, 2023

Notwithstanding, the Petitioner - Paulk, utilized Eleventh Circuit Rule 7(2)(e) seeking reconsideration.

(Judicial review of the sufficiency for an affidavit for the issuance of a warrant must be strictly confined to the information brought to the magistrate's attention). In other words, seizures pursuant to legal process concerns whether the judicial officer who approved the

seizure had sufficient information to find probable cause. Probable cause may exist based on the collective knowledge of law enforcement officials derived from reasonably trustworthy information. Madriwale v. Savaiko, 117 F. 3d 1321.

The existence of actual or even arguable probable cause depends on the elements of the alleged crime and the operative fact pattern.

To determine whether Benson had actual or even arguable probable cause for an arrest, the court must look at the totality of the circumstances, "including what law enforcement knew at the time of the arrest.

This inquiry includes the collective knowledge of law enforcement if they maintained at least a minimal level of communication from the time the 911 call was placed by Daniel O'Hearon, the statements made to police when they arrived and the petitioner - Paulk's criminal history.

LEGAL ANALYSIS.

The legal analysis of whether seizures pursuant to legal process violates the Fourth Amendment is distinct from the analysis of seizure without legal process. Although the lawfulness of a warrantless arrest turns on whether the arresting officer has probable cause, the lawfulness of a seizure pursuant to legal process turns on the validity of the legal process itself.

In the context of arrest warrants, for example, an officer ordinarily does not violate the Fourth Amendment when he/she executes a facially valid arrest warrant, regardless of whether the facts known to the officer support probable cause. Whitely v. Warden 401 U.S. 560.

✓ Instead, the Supreme Court has instructed courts to examine whether "the judicial officer issuing the warrant [was] supplied with sufficient information to support an independent judgment that probable cause exist for the warrant." Whitely 401 U.S. at 564

Under this standard, an otherwise insufficient affidavit cannot be rehabilitated with information possessed by the officer when he/she sought the warrant but not disclosed to the magistrate. Id at 568 n. 8; See also W. Point-Pepperell, Inc., v. Donovan, 689 F.2d 950.

General Legal Principles.

Because Petitioner-Paulk claim in his original complaint for malicious prosecution clearly arose in an unlawful arrest context, in a broad rule that under the right to be free from unlawful arrest, even the Eleventh Circuit has articulated four non-exclusive factors to consider when trying to characterize seizure; (1) Law enforcement purpose served by the seizure; (2) the diligence with which the police pursue the investigation; (3) the scope and intrusiveness of the detention; and (4) duration of the detention. United States v. Acosta, 363 F.3d 1141.

Malicious prosecution and false arrest are mutually exclusive. If after the arrest the warrant is dismissed or not followed up, the remedy is for false arrest. If the action is prosecuted, an action for malicious prosecution is the exclusive remedy. A claim for false arrest differs from the malicious prosecution only in that malicious prosecution requires the additional element that prosecution took place. Both "false arrest" and "malicious prosecution" are recognized claims for distinct violations of the Fourth Amendment. False arrest and malicious prosecution overlap; the former is a species of the latter. Wallace v. Kato, 579 U.S. 384, 388, 127 S. Ct. 1091, 166 L.Ed. 2d 973 (2007).

a) (1) the present defendant was the legal cause of the original proceeding against petitioner; (2) the termination of the original proceedings constituted a bona fide termination of that proceeding in his favor; (3) there was an absence of probable cause for the original proceeding; (4) there was malice on the part of the present defendant; (5) the petitioner suffered damages as a result of the original proceeding.

[proof of actual malice is not necessary, since proof of malice i.e. an intentional act performed without justification or excuse - is sufficient. Olson v. Johnson, 961 So. 2d 356, 359 (Fla. 2d DCA 2001).

Petitioner - Paulk, seeks to successfully pursue this cause of action for intentional infliction of emotional distress, the defendant's conduct was so outrageous in character, so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Byrd v. B.T. Foods, Inc., 948 So. 2d 921, 928 (Fla. 4th DCA 2001).

It is not enough that the intent is tortious or criminal; it is not enough that the defendant(s) intended to inflict emotional distress; and it is not enough if the conduct complained of was characterized by malice or aggravation which would entitle the Petitioner - Paulk to punitive damages for another tort. State Farm Mut. Auto Ins., Co. v. Novotny, 657 So. 1210, 1213 (Fla. 3rd DCA 1995).

Moreover, the Court's analysis should turn to whether the Constitutional right to be free from arrest without probable cause is clearly established. To demonstrate that a Constitutional right is clearly established a plaintiff must show; that a materially similar case has been decided giving notice to the police; (2) that a broader, clearly established principle should control the novel facts

In this situation; (3) this case fits within the exception of conduct which so violates the Constitution that prior case law is unnecessary. Keeting v. City of Miami, 598 F.3d 573.

An officer is intitled to qualified immunity unless "a reasonable police officer would have known that the witness's testimony was not just negligently false, but recklessly so. Hendricks v. Sheriff, Collier Cnty., Fla. 492 F. App'x 90, 91-94 (11th Cir 2012).

Viewing the facts in light most favorable to the Petitioner - Paulk, the court must find that a reasonable officer in the same circumstances and possessing the same knowledge as D/S L. Benson could not believe that probable cause existed to establish these offenses. see Tolan v. Cotton, 572 U.S. 650 134 S. Ct. 1861, 188 L. Ed. 2d 895 (2014), (The necessary fact-intensive inquiry inherent to the qualified immunity analysis must be based on the Petitioner - Paulk's allegations). When an officer has arguable probable cause is based on an objective standard and does not include an examination of the officers objective intents and beliefs. Andrews v. Scott, 729 F. App'x 804 (11th Cir.).

Therefore, the only question is whether the circumstances as Benson understood them objectively constituted actual or arguable probable cause.

When the facts are viewed in the light most favorable to the petitioner, the evidence fails to support a finding of either arguable or actual probable cause. See Davis v. Williams, 451 F.3d. 759. see also Knight v. Jacobson, 300 F.3d. 1272,

CASE SUMMARY

This case has its origins in a dispute over stolen boating equipment that belonged to the petitioner. The petitioner had docked his 32 foot sail-boat "The Celtic Lady" at a popular boating venue in Palm Beach, FL.

Cronologically but not casually stated the following rapid concatenation of events took place:

The petitioner enlisted the help of a friend the Defendant, Daniel O'Hearon, and his brother for help with minor repairs to the vessel. The three of them, the petitioner Paulk, who is African American and the defendant and his brother who are Caucasian hand carried the boating equipment i.e. Solar panels, on-board power cell and other equipment totaling \$750 to an Autozone Auto parts store one block away from the boating docks, dropped the equipment off to be serviced and was instructed by the auto parts clerk to return in one hour the diagnostics would be complete.

The three parties left Autozone parts store only for the "Defendant" Daniel and his brother Shawn to double-back ten minutes later without the petitioner, his knowledge, or consent to pick up the boating equipment.

After returning to the Autozone parts store as instructed the petitioner was told by the parts counter that the equipment was released to the same gentlemen that accompanied the petitioner when he dropped off the equipment and the Autoparts Clerk sent a screen-shot of the store surveillance video ~~to~~ of the two men return then leave the store with the equipment.

The petitioner returned to 800 Broadway, Tim Barry Light Harbor Park where his sail boat was docked next to the defendants, Daniel O'Hearon's boat at the adjacent boat slip.

The petitioner approached both Daniel and his brother Shawn the both blainly denied having his property. The petitioner then presented ~~him~~ Daniel with the store video on his cell phone. Daniel, slapped the phone from his hand smashing the phone face down on the metal floating dock!

Defending himself from what he now perceived as an intentional act and in fear for the safety of his grandson and fiance who was just feet away, a confrontation issued resulting in petitioners fiance spotting their property in plain view on the deck of Brian Leofflers pontoon boat.

After retrieving the stolen equipment both Daniel and Brian left the boating area in seperat boats only to return 3 seperat times to confront the petitioner.

After the third fight the pititioner finally decided to leave the boating area to remove himself, grandson, and girlfriend from any other threat or harm from the defendants.

The Petitioner - Paulk was arrested the following day at a different marina in Palm Beach and charged with aggravated assault with a deadly weapon for a fight he did not initiate nor did he posses any weapon of any kind during this ordeal. IF he did have a weapon the defendants would not have returned un-armed themselves to confront the Petitioner - Paulk a second and third time. (HOW IS THIS EVEN POSSIBLE)?

REASONS FOR GRANTING THE PETITION

By promulgating basis for issuance of the Writ, enunciating its predicate facts will guarantee disparate prohibition, while scrutiny of due process from malicious prosecution and equal protection (via the Fourth Amendment) secures vested public interest.

The Court has recognized that qualified immunity is effectively lost if a case is permitted to go to trial. see Cottrell v. Caldwell, 85 F. 3d 1480. (quoting Mitchell v. Forsyth 472 U.S. 511 and 86 L. Ed. 2d 411. But the Rule 56 requires this result because there is sufficient factual disagreement to require ("LTP") i.e. appointment of Counsel and submission to a jury. Anderson, 477 U.S. at 251-52.

The gravamen of the case is when the facts are viewed in light most favorable to the petitioner, the Court cannot say that D/s L. Benson is intitled to qualified immunity as a matter of law, and a rational trier of fact could enter a verdict in his favor. It cannot be argued that summary denial is not appropriate, even on qualified immunity grounds, therefore, this writ should be granted.

CONCLUSION

Though the intention of the Eleventh Circuit is well intended, it is creating problems of Constitutional magnitude. The Petitioner - Paulk seeks Certiorari review in the instant matter based on the "Mandate" entered on September 29, 2023, concluding that Deputy Sheriff, L. Benson, Shield #13736 was intitled to qualified immunity. The Eleventh Circuit also concluded that the District Court did not err in its explanation that even if the Petitioner - Paulk was correct that Daniel O'Hearon, Brian Leoffler, and Wanda hogancamp had lied to police, and continued to lie during trial proceedings, that fact was irrelevant to the probable cause analysis because there was no suggestion that D/S L. Benson knew that their statements were false.

Section 1367(c) establishes four factors a court should consider in declining to exercise Supplemental Jurisdiction; (1) the existance of a novel or complex issue of State law; (2) the predominance of state law issues over the claim giving rise to the original jurisdiction; (3) the dismissal of all the claims over which the court has original jurisdiction; and (4) other compelling reasons for declining jurisdiction i.e. claims under Florida law against the remaining, private-individuals defendants; Complaint failed to identify similarly situated white individuals who recieved more favorable treatment.

The petition for writ of certiorari should be GRANTED

Respectfully submitted,

Reg. A. Paulk, Sr.

Date: April 26, 2024.