



No. 24-402

In the
Supreme Court of the United States

JOHN LUGO,
Petitioner,

v.

ALAN BURTON, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. In determining whether a police officer acted reasonably in denying a citizen's right to loiter on public property for innocent purposes protected by the Constitution such as videotaping, are Federal Appellate Circuits bound by *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965); *Chicago v. Morales*, 527 U.S. 41 (1999).

LIST OF PARTIES

John Lugo-Petitioner; Woodford County Sheriff's Office; Deputy Alan Burton; Woodford County Illinois; Unknown Woodford County Sheriff's Office Supervisors-Respondents

RELATED PROCEEDINGS

Lugo v. Alan Burton, et al., United States Court of Appeals For the Seventh Circuit, No. 23-3168

John Lugo v. Woodford County Sheriff's Office; Deputy Alan Barton, in his individual capacity; Woodford County Illinois, a unit of local government; Unknown Woodford County Sheriff's Department Supervisors, in their individual and official capacities, United States District Court for the Central District of Illinois, Peoria Division, No. 23-cv-01061.

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PETITION FOR WRIT OF CERTIORARI

Petitioner John Lugo (“Lugo”) respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals For the Seventh Circuit.

DECISION BELOW

The decision of the United States Court of Appeals For the Seventh Circuit is reproduced at Pet. App. A.

JURISDICTION

The United States Court of Appeals For the Seventh Circuit entered judgment on June 21, 2024. *See* Pet. App. A and denied a Petition for Rehearing on July 11, 2024. *See* Pet. App. C. This Court’s jurisdiction is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment 1:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

“In a free society, police officers do not have plenary authority to order citizens to “move on” or disperse.” *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965).

“The Supreme Court has long held that the government may not condition a person's right to stand on a public sidewalk “on the whim of any police officer of that city.” *Shuttlesworth*, 382 U.S. at 90.

“The Constitution protects the right to loiter for innocent purposes.” *Chicago v. Morales*, 527 U.S. 41 (1999).

STATEMENT OF THE CASE

I. Proceedings below.

Lugo filed the operative First Amended Complaint (“FAC”) (Doc.10) in the Central District of Illinois on March 7, 2023, alleging that the Defendants violated his “property rights, due process rights, and civil rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

On June 1, 2023, Defendants Woodford County Sheriff's Office (“WCSO”) and Deputy Burton filed an Answer (In Part) and Affirmative Defenses (Doc. 22). Also, on June 1, 2023, Defendants WCSO and Woodford County filed a Motion to Dismiss in part for Failure to State a Claim related to Counts II and III in the FAC (Doc. 23).

On June 2, 2023, Defendants filed a Motion for Summary Judgment (“MSJ”) (Doc. 25) arguing that WCSO and Deputy Burton were entitled to judgment as a matter of law.

On June 9, 2023, Lugo filed a Response in Opposition to Defendants Motion to Dismiss Counts II, and III of the First Amended Complaint. (Doc. 27), and a Response to Defendants MSJ with Supporting Memorandum and Exhibits (Doc. 28).

On October 31, 2023, the District Court Granted Defendants’ Motion for Summary Judgment and Dismissed with Prejudice all claims brought pursuant to § 1983. The Court further declined to extend jurisdiction over Lugo’s state supplemental claim, Dismissing it Without Prejudice and ordered that Defendants’ Motion to Dismiss be Stricken as Moot. (Doc. 30).

On November 2, 2023, The District Court entered Judgment Granting Defendants’ MSJ and Dismissing with Prejudice all claims brought by Lugo pursuant to § 1983. (Doc. 31). *See Pet. App. B*

On November 8, 2023, Lugo appealed the November 2, 2023 Judgment to the United States Court of Appeals For the Seventh Circuit (Doc. 32).

The United States Court of Appeals For the Seventh Circuit entered judgment on June 21, 2024 in Case No. 23-3168 affirming the Judgment of the District Court for the Central District of Illinois in Case No. 23-cv-01061. *See Pet. App. A.*

The United States Court of Appeals For the Seventh Circuit denied Lugo's Petition for Rehearing on July 11, 2024. *See Pet. App. C38.*

II. Statement of facts.

This case arises from an ongoing property boundary dispute between neighbors resulting in litigation initiated by Lugo after repeated incidents of trespassing, assault and harassment committed over many years against him by the "Sturms'." When the Sturms' hired tree trimmers to trim a tree located on Lugo's property they called law enforcement to the scene to "stand by." WCSO Deputy Burton informed Lugo that the tree trimmers would need to enter onto his property to trim the tree because they did not have the proper equipment to safely trim the tree from the Sturms' property. Lugo refused to allow the tree trimmers to enter his property.

Notwithstanding, Lugo was concerned that the tree trimmers would trespass onto his property at the direction of the Sturms and so he proceeded to videotape the tree trimmers actions from an advantageous position while located on public property. At that time Deputy Burton yelled at Lugo and ordered him to move' from the public property preventing him from videotaping the tree trimmers activities.

Later, after Deputy Burton left the scene Lugo called the WCSO dispatch line multiple times to report that the tree trimmers were actively trespassing on his property. Deputy Burton arrived

back at Lugo's residence for a second time while the tree trimmers were present. Once again Lugo informed Deputy Burton that he intended to videotape the tree trimmers trespassing onto his own property from an advantageous position located on public property near the Sturms' residence. At that time Deputy Burton again prevented Lugo from videotaping by threat of arrest for "obstruction" should he (Lugo) videotape the tree trimmers while located on the same public property in question. Fearing arrest Lugo complied with Deputy Burton's order and did not return to that public property.

The FAC included the following three counts: (1) against Deputy Burton for violating the security and privacy of Lugo's property under the Fourth Amendment of the U.S. Constitution and Art. I, § 6 of the Illinois Constitution by facilitating unlawful trespass and threatening to arrest Lugo; (2) against Woodford County Sheriff's Office ("WCSO") and Woodford County under *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978), (hereinafter the "Monell claim"); and (3) against Unknown Supervisors for failure to train and supervise Deputy Burton. *Id.* at pp. 6-12.

In Defendants MSJ (Doc. 25) they argued that WCSO and Deputy Burton were entitled to judgment as a matter of law because: (1) no constitutional violation occurred; (2) even if one did, Deputy Burton is entitled to qualified immunity; and (3) the WCSO cannot be liable where there is no underlying constitutional violation. *Id.*

In Lugo's Response to Defendants MSJ (Doc. 28) he cited Additional Material Facts including, but not limited to the fact that: (1) Deputy Burton had no probable cause to believe that a violation of State law had occurred, or was about to occur, thereby providing him with no legal basis for ordering Lugo move from public property while he videotaped tree trimmers trespassing onto his (Lugo's) own property (2) Deputy Burton had no basis to threaten Lugo with arrest for obstruction if he remained on public property, as in doing so Lugo could not have resisted or obstructed Deputy Burton from an authorized act, as no state or federal law related to the specific facts confronting Deputy Burton when he arbitrarily instructed Lugo that he could not videotape on a specific section of public property located near the Sturms' residence (3) When Deputy Burton responded for the second time to Lugo's residence and learned of his claims that the tree trimmers were actively committing a criminal trespass onto Lugo's property, he did not conduct any type of investigation, interview the tree trimmers, or take any type of enforcement action. *Id.*

In its Order on Defendants Motion for Summary Judgment (Doc. 30), the District Court found that Lugo failed to present facts showing Defendants violated his constitutional rights, and thus he could not maintain a cause of action against them under 28 U.S.C. § 1983.

REASONS FOR GRANTING THE PETITION

The Court Should Grant Certiorari to Clarify whether Federal Appellate Circuits are bound by its

holdings in *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965): (1) (1) "In a free society, police officers do not have plenary authority to order citizens to "move on" or disperse" and (2) "The government may not condition a person's right to stand on a public sidewalk "on the whim of any police officer of that city." *Shuttlesworth*, 382 U.S. at 90.

Moreover, the Court Should Grant Certiorari to Clarify whether Federal Appellate Circuits are bound by its holding in *Chicago v. Morales*, 527 U.S. 41 (1999), that "the Constitution protects the right to loiter for innocent purposes."

Finally, the Court Should Grant Certiorari to settle what appears to be a conflict within the circuit itself, as the instant case clearly runs afoul of established Seventh Circuit jurisprudence holding that the real issue is "whether the law was clear *in relation to the specific facts* confronting the public official when he or she acted." *Apostol v. Landau*, 957 F.2d 339, 341 (7th Cir. 1992) (emphasis added) (quoting *Green v. Carlson*, 826 F.2d 647, 649 (7th Cir. 1987); *Colaizzi v. Walker*, 812 F.2d 304, 308 (7th Cir. 1987)).

The Judgment of United States Court of Appeals For the Seventh Circuit (Pet. App B) sidesteps any analysis of the facts in the instant case utilizing the holdings in the cases noted above. Instead, the Judgment referring to the "reasonableness" of Deputy Burton's actions during the first incident when he yelled at Lugo and ordered him to leave the area of public property where Lugo was videotaping states:

“Further, we repeatedly have said that an officer who separates parties to a domestic disturbance by ordering one party to leave acted reasonably under the “community caretaking function” regardless of whether his actions constituted a seizure.” (Doc. 30 at 5).

Notwithstanding the fact that Defendants offered no such argument in any of their moving papers, although Lugo at that time had applied for a stalking no-contact order against Scott Sturm, his neighbor, no “domestic disturbance” had occurred or was likely to occur, as Lugo is not related to the Sturms and does not reside in their household. A fact apparently lost on the Seventh Circuit Panel.

Pursuant to “Illinois Domestic Violence Act of 1986” 750 ILCS 60/103(6) states:

“Family or household members” include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly share a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers as defined in Section 12-4.4a of the Criminal Code of 2012.

In failing to acknowledge that Lugo, a neighbor, does not and cannot meet the definition of a family or household member of the Sturms pursuant to Illinois Domestic Violence Act of 1986, the Judgment does not explain how Deputy Burton's order to Lugo requiring him to move from public property located near the Sturms residence was "reasonable" under the "community caretaking function."

As to the second incident, in conflict with the Seventh Circuit cases noted above the Judgment fails to explain how Deputy Burton's actions were reasonable in preventing Lugo from exercising his fundamental right to stand on public property for the purpose of videotaping an active trespass then occurring to his own property.

While the Judgment appears to cite the identifiable law as the Illinois Domestic Violence Act of 1986" 750 ILCS 60/103(6) related to the specific facts confronting Deputy Burton when threatened to arrest Lugo for obstruction if he returned to public property (although never stated in Defendants moving papers), the foregoing was wholly inapplicable to Lugo. Despite the Judgment's assertion of reasonableness, Deputy Burton's actions in depriving Lugo of his Constitutional rights were anything but reasonable. Instead, they were arbitrary and squarely at odds with the holdings in the cases noted above. Essentially the Judgment empowered Deputy Burton with plenary authority to order Lugo to "move on" or disperse" on a whim, depriving him

(Lugo) of the right to loiter for innocent purposes protected by the Constitution.

CONCLUSION

This Petition presents this Court with the opportunity to Clarify whether Federal Appellate Circuits are bound by its holdings in *Shuttlesworth* and *Morales*. The Seventh Circuit Court of Appeals in denying Lugo's Petition for Review let stand its decision essentially declaring those cases, as well as cases within the Seventh Circuit affirming the principals established therein as irrelevant when determining the standard for a police officer to deny a citizen the right to stand on public property and loiter for innocent purposes.

This Petition also presents this Court with the opportunity to settle what appears to be a conflict within the circuit itself. The decision in the instant case ignores established Seventh Circuit jurisprudence in *Apostol v. Landau*, *Green v. Carlson*, and *Colaizzi v. Walker* holding that the real issue is "whether the law was clear *in relation to the specific facts* confronting the public official when he or she acted."

For the reasons stated herein, Petitioner respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

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