

No. _____

IN THE

original

SUPREME COURT OF THE UNITED STATES

Jonathan Duran— PETITIONER
(Your Name)

vs.

Jason B. Muse et al— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

10th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jonathan Duran
(Your Name)

c/o Mike Schwiya 6929 E. 11th st.
(Address)

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(City, State, Zip Code)

(918) 277-1666
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QUESTION(S) PRESENTED .

Is a U.S. citizen lawfully bound to open the door of his residence to an officer of the law who does not possess a warrant?

Has a U.S. citizen committed a crime if he does not open the door of his residence to an officer ordering him through the doorway to open the door?

Is it lawful for a officer of the law to claim that he has a warrant on official documentation when he does not possess any sort of document?

If a U.S. citizen asks an officer of the law through the doorway of his home "could I please see a warrant?" does the citizen have the right to receive an answer?

Is it lawful for an officer of the law to threaten to kill you if you do not open the door of your residence?

Are sane exams conducted on minors without any attempt at informed consent and without any written court orders lawful?

Are Police officers allowed to use the terminology of "warrant" when they only have in their possession a verbal order?

If a Police officer claims to have a warrant on an official state record as the basis for sending someone to jail, while he in fact has no such warrant as described would this not equal a case of false imprisonment?

If there are no authorities available anywhere from any court stating that verbal orders are lawful for non-consensual entries into private homes, then how would a person in his home know that he was committing a crime if he did not assist officers(who claimed to be in possession of verbal orders) in making a non-consensual entry into his home?

If a person were to assist officers in making a non-consensual entry into his home would this then be considered a consensual entry?

LIST OF PARTIES

[] 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:

1.Jason B. Muse, 2.City of Tulsa

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1. As a general rule, therefore, before parents may be deprived of the care, custody or management of their children without their consent, due process--ordinarily a court proceeding resulting in an order permitting removal--must be accorded to them. See *Stanley*, 405 U.S. at 649, 651, 92 S.Ct. 1208; *Hurlman*, 927 F.2d at 79 (such due process is "generally in the form of a predeprivation hearing"); *Robison v. Via*, 821 F.2d 913, 921 (2d Cir.1987) (due process "would generally require a predeprivation hearing").

2. 405 U.S. at 656, 92 S.Ct. 1208. And as this case may demonstrate, if officers of the State come to believe that they can never be questioned in a court of law for the manner in which they remove a child from her ordinary care, custody and management, it is inevitable that they will eventually inflict harm on the parents, the State, and the child.

3. Decisions by other courts support the requirements of both probable cause and a warrant for intrusive examinations of children for evidence of abuse. In *Good v. Dauphin County Social Servs.*, 891 F.2d 1087, 1092-93 (3d Cir.1989), the Third Circuit held that a strip search of a child as part of an investigation of abuse was constitutional only if conducted pursuant to a warrant issued on probable cause, absent consent or exigent circumstances.

4. In *Franz v. Lytle*, 997 F.2d 784, 788 (10th Cir.1993), the Tenth Circuit held that a warrant issued on probable cause was required before a police officer investigating alleged child abuse could constitutionally probe the child's genitals for evidence of abuse and subject her to a medical examination by a doctor.[13]

5. "[t]he Fourteenth Amendment guarantees that parents will not be separated from their children without due process of law except in emergencies." This right is violated if the removal is done without either a court order or "reasonable cause to believe that the child is in imminent danger of serious bodily injury."

**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 A 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 United States district court appears at Appendix B to the petition and is

☐ reported at ; 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 May 3, 2018 .

☒ 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: , 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. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

Plaintiff's Fourth Amendment Claim

In general~ a search of a person and his residence is unreasonable under the Fourth Amendment if the search is not authorized by a search warrant.

[A "search warrant" is a written order signed by a judge that permits a law enforcement officer to search a particular person~ place~ or thing.] Under the Fourth Amendment~ a person has the right to be free from an unreasonable seizure of [his] [her] person. Officers admit to breaking into Plaintiff's residence and searching it without a search warrant.

Officers admit to seizing 3 people at the residence. Without a warrant, all of this conduct was unreasonable.

Plaintiff's Fourteenth Amendment Claim: Deliberate Fabrication of Evidence

The Fourteenth Amendment protects against being subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the defendant. In this case, the plaintiff alleges the defendant deprived him of his rights under the Fourteenth Amendment to the Constitution when he fabricated a story about the existence of a warrant to enter the plaintiff's home and how the plaintiff committed the crime of obstructing an officer by not opening the door to his home.

This evidence that Defendant Muse deliberately fabricated , in the form of an A and B report was used for the filing of criminal charges against the Plaintiff. This is the one and only element necessary to prove a Fourteenth Amendment violation for deliberate fabrication of evidence.

Plaintiff's First Amendment Claim

When Muse Arrested Mr. Duran for the stated purpose of" ... ordered him to open the door. The suspect did not comply."(A and B report authored by Muse.) Muse was retaliating against Mr. Duran for exercising his First Amendment rights. The Jury instructions for First Amendment claims reads as follows: Under the First Amendment, a citizen has the I.A right to access the courts. In order to prove the defendant deprived the plaintiff of this First Amendment right, the plaintiff must prove the following additional elements :

- 1a. the plaintiff was engaged in a constitutionally protected activity;
- 2 .. the defendant's actions against the plaintiff would chill a person of ordinary firmness from continuing to engage in the protected activity; and

3. the plaintiff's protected activity was a substantial or motivating factor in the defendant's conduct.

Element 1.A:

By requesting a warrant, the plaintiff was trying to secure access to the courts. (warrants must be court approved.)

Element 1.B:

The Plaintiff was engaged in the constitutionally protected activity of being safe and secure in one's home.

Element 2. By threatening to kill the Plaintiff this immediately caused a chilling effect on the Plaintiff, and then of course by breaking in without a warrant and then arresting the Plaintiff for not opening the door to an officer not in possession of a warrant he then committed an action that would chill a person of ordinary firmness from ever again attempting to feel safe and secure in his home.

3. By arresting the Plaintiff for not opening the door Muse demonstrated that the Plaintiff's protected activity of being in his home with a secure door was his motivation for making the arrest. All four elements of a first amendment violation are clearly met in this case.

Statement of the case:

On April 18, 2015 officers of the Tulsa Police Dept. Arrived at Mr. Duran's residence. Cpl. Muse the supervisory and commanding officer yelled through the door "open this door or we are going to splatter you all over the floor." At this point in time the residents of the home were in fear for their lives and were there for unsure what to do. It is commonly known that threatening a violent act is a crime, there for this caused the residents of the home to be very confused being as such a threat came from someone who presumably was an officer of the law. Being paralyzed with fear this caused to effect a state of inaction in the residence who were simply unaware as to what the correct actions should be. Forced entry to the home was affected by the officers and guns were pointed at the residents of the home. While being held at gunpoint the residents of the home obeyed all the commands of the officers and then were subsequently placed in handcuffs for 2 hours while a search of the home was conducted. The minor child in the home, J.D. was taken for a forced medical exam at a hospital. At no time did any officers inform the parents of the child that such an action was to take place. After being informed by the hospital that the child had no injuries on her person, Muse could be heard loudly proclaiming " put them back in the house." . A few minutes after this announcement Muse walked over to the police car in which Mr. Duran was being held captive and handed the driver of the car, one David H. Pyle, a document. Officer Pyle read the document for about 5 seconds and then announced to Mr. Duran " you are going to jail, your bond is 150\$". While in the jail Officer Pyle made a phone call to Officer Muse asking him whether state charges of "obstructing an officer" or city charges should be filed. Officer Muse replied State charges, which then caused the bail to be upped to 500\$. At no point in time was Mr. Duran informed the reason or rationale for his being arrested and sent to jail. After being bailed out of jail Mr. Duran was able to get a copy of the Arrest and booking document(appendix D) that was used to imprison Mr. Duran. This A and B report contained a multitude of lies. Muse claimed on the document that visual and verbal contact was made with Mr. Duran and that Mr. Duran was informed of a "Telephonic Warrant to enter the home". While making verbal contact could have been possible by yelling through the doorway of the home, visual contact was impossible as the glass partition of the door had a closed curtain that was never opened at anytime. The crime that Muse is claiming took place is that a command to open the door of the home was not followed after information of the warrant was proclaimed to Mr. Duran. This is an outright lie, being as not only did Muse not possess a warrant, he also did not inform Mr. Duran that he possessed a warrant.

Later on Muse backtracked and stated on the interrogatories served on him that he never informed Mr. Duran of a warrant possessed by the officers, that instead, Muse had informed Mr. Duran that DHS possessed a verbal order. Muse is there for directly admitting in this case that he lied on the A and B report. In the interrogatories served on him Muse also admits to writing the A and B report, but then later on through his attorneys announces that it was not himself who wrote it but rather the officer under his command, officer Pyle. Muse's attorneys were served with a request for production during the discovery phase of this lawsuit to produce an affidavit from officer Pyle stating that this is the case. They in turn filed multiple motions in district court attempting to evade the responsibility of producing this document. Mr. Duran was prosecuted in court for the crime of "Obstructing an Officer" based upon the A and B report authored by Muse. After attending 7 court dates related to this case and receiving discovery documents in this case Mr. Duran found no evidence that any verbal order was ever issued to Muse. The relevant Oklahoma statute that this verbal order was issued under has a requirement that such verbal orders must be filed in court in written format on the next judicial day. Such a document was never produced or shown to Mr. Duran at any time. During the discovery phase of this lawsuit such a document was produced by the City of Tulsa attorneys. In there initial filed response to this lawsuit no such document was produced. Mr. Duran filed a response to the City Of Tulsa's initial response filing and indicated to the Defendants that such a document does not exist in any court records anywhere. A full 5 weeks after being informed of this deficiency in their filings City Of Tulsa attorneys were able to produce this document. In e-mail communications with Mr. Wangsgard, attorney for the City of Tulsa, he indicated that it was very difficult for him to produce this document. The document produced has the wrong case number stamped on it. Being as this document was produced at such a late stage in the lawsuit against the City Of Tulsa, and also being as Mr. Duran had previously searched for this document in the Juvenile court and was unable to find it, being told by the Juvenile court clerk that such a document does not exist in their records, Mr. Duran feels that there is the very strong possibility that this is a forged document, produced by the City of Tulsa in an attempt to avoid liability in this lawsuit against them.

Reasons for Granting the Petition:

This case raises the question of basic human rights that far and away transcends constitutional civil rights while at the same time encompasses the first, fourth and fourteenth amendment to the constitution regarding basic civil rights. Does an individual have the right to be scared in their own home? Does an individual have the right to question the authenticity of verbal orders that he is not even aware of? The arrest made in this case comes under the authority of the Oklahoma statute of "Obstructing an Officer". This statute states in particular that "...whosoever willfully delays an officer of the law in commission of his official duty is guilty of obstructing an officer". The delay that Muse is referring to in his A and B report{see Appendix D} is the delay caused to him by a door to a residence in it's secure and locked position. The vast majority of U.S. citizens typically reside in their homes with their doors in the locked position, especially after dark.

By this rationale presented by Muse and the relevant Oklahoma statute any U.S. citizen could easily be arrested in their own home if they do not open the door fast enough to Muse's liking. Was there a willful attempt at causing a delay for the officers in the commission of their official duty or was the door to the home simply in it's normal default position of locked and the residents simply unsure of the legality of Muse's demand to enter the home? Quite obviously the residents of the home would have had no idea whether Muse's verbal order was a lawful one or not if he is to be given the benefit of the doubt and it is presumed that he is telling the truth when he says that he did inform the residents of a verbal order{see Appendix E}.

There were no authorities cited by the district court or the appeals court stating as to whether verbal orders are sufficient for violent home break ins or not. Suffice it to say the vast majority of U.S. citizens do not believe that verbal orders are acceptable to forcibly enter a private home. The vast majority of U.S. citizens would react with total confusion at being confronted with officers claiming the authority of verbal orders to enter their home. This case represents an officer of the law and his agency criminalizing having a home with a locked door. Muse's actions in arresting Mr. Duran also represent retaliation against Mr. Duran for asserting his Fourth Amendment rights by asking Muse the question "could I please see a warrant.". If an officer is allowed to retaliate against someone for attempting to assert his Fourth Amendment rights, then and there for he is

attacking the Fourth amendment rights directly and this would in turn have an affect on all citizens of the U.S.A. if such an attack were allowed to stand.

The ways the decisions of the lower courts in this case were erroneous

The appellate court quoted an authority: **(J.B. v. Washington Cty., 127 F.3d 919, 930 (10th Cir. 1997))** to support it's conclusion that **“an order to take a child.... Is tantamount to an arrest warrant”** however the case cited by the appellate court is referencing an actual written court order that complied with the particularity clause of the Fourth Amendment by having the child's name written on it and was not a verbal order (absent any name), so would there for be inapplicable to the case at hand. The case cited does not mention anything about forced entry, medical exams and arrests for causing delays due to having a door in it's usual position.

The appellate court also stated: **Thus, even without a warrant, entry into the house would not have violated the Fourth Amendment.**

The forced entry into the home plainly violated the Fourth Amendments particularity clause being as the officers on hand did not know the name of the child that they were there to seize. In all of the filings submitted by the Defendants in this case not one filing has mentioned as to whether the officers knew the name of the child or not. Muse is accused of asking Mr. Duran “what is the name of this girl that I am here to get?” and has never contested this accusation in this lawsuit so by default can be accepted as true that he did in fact make this statement.

The appellate court went on to state **“Mr. Duran had failed to create a genuine dispute on whether the police officers had knocked and announced their presence. On appeal, Mr. Duran has not given a persuasive reason to question the district court's analysis.”**

This statement is plainly false. Muse has offered 2 different accounts{ see Appendix D and Appendix E} of what he knocked and announced thus causing there to be clear uncertainty as to what he actually “knocked and announced.” If his most recent statement of announcing a “verbal order” is held to be true, this would simply be knocking and announcing a verbal order that would only cause to confuse any person familiar with constitutional law and the warrant requirement. There for his “knock and announcement” would not have served any other purpose other than to create confusion.

The Appellate court also ruled that Mr. Duran had made new claims of a first and fourteenth amendment violation and there for dismissed them as time barred. This is an erroneous judgment being as all of the elements that meet these claims were initially filed at the very beginning of the case. When Muse committed perjury he was "deliberately fabricating evidence" as such that would meet a Fourteenth amendment claim against him. Dismissing this as a new claim is ridiculous when this was the original claim against Muse. The First Amendment claim has always been a viable claim as well due to the nature of this case, and was never a new claim as decided by the appellate court.

The appellate court completely failed to address whether probable cause existed on April, 18 2015 to arrest Mr. Duran for "Obstructing an Officer" in their judgment and is there for facially deficient.

However the district court did not fail to address the issues of probable cause for the arrest, and rather alleges that the Plaintiff himself *alleged in his court filings that he himself caused a delay without going into any specifics or details.* The district court declined to use any statements or evidence from the A and B report authored by Muse because it was readily apparent to the district court that it was incriminating evidence against Muse. To smooth over this apparent deficiency in it's opinion the district court wrote the following statement:

: "In the interest of granting all inferences in Plaintiffs favor, the Court will not consider statements made in the Arrest and Booking Form for the purpose of Defendants' motion for summary judgment."

On a document where absolute zero inferences are made in the Plaintiff's favor, the district court decides to use this language. The A and B report is a key part of the evidence submitted by the Plaintiff, and in order to make all inferences in the Plaintiff's favor the court decides to not consider any statements made on the Plaintiff's evidence that he had submitted and filed with the court. This statement is a demonstration in incoherence.

Please see the Attached original appeal filed in the appellate court that details the errors made by the district court in deciding this case. {Appendix C}.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jon Duran
Date *May 7, 2018*