

25-6096

No. \_\_\_\_\_

FILED

SEP 08 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MARIUS O'DON MCCORMICK — PETITIONER  
(Your Name)

VS.

DEPUTY SHERIFF JAMIE MCLEOD et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARIUS O'DON MCCORMICK  
(Your Name)

P.O. Box 1109  
(Address)

Clinton, N.C. 28329  
(City, State, Zip Code)

(910) 592-2151  
(Phone Number)

**QUESTION(S) PRESENTED**

Whether the Fourth Circuit en banc court erred finding no reversible error in the District Court order granting the defendants Fed. R. Civ. P. 12(b)(6) motion to dismiss complaint?

Whether fact issues existed as to Fourth Amendment violations?

Whether fact issues existed as to Fourteenth Amendment violations?

## 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:

Officer Ramon Herrera

Janet Olsen

## RELATED CASES

24-4522 - Fourth Circuit

24-7068 - Fourth Circuit

25-6052 - Fourth Circuit

25-5373 - Supreme Court

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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 B 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☒ is unpublished.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 A to the petition and is

- ☐ reported at \_\_\_\_\_; 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☒ is unpublished.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 \_\_\_\_\_ 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☐ is unpublished.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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ 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 4-29-2025.

☐ 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: 8-26-2025, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

United States Constitution, Amendment IV: provides, in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution Amendment XIV: provides, in pertinent part: "No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

Federal Rules Civil Procedure 12(b)(6)

### STATEMENT OF THE CASE

On 12-10-2020 in Hope Mills, N.C. Eric Vazquez (E.V. hereinafter) had been up for a few days high on drugs, deliriously thinking people were watching him and talking about him, to the point where he would brag to others on how he was going to "rob" ~~Defendant~~ (M.M. hereinafter) to individuals he hung around, one of them being Pasha Brittany McInnis (P.M. hereinafter) whom thought E.V. was just talking crazy and told her boy friend Michael Scott "to stay out of it," later that night M.M. called E.V. to purchase four viagra pills for ten dollars a piece and when M.M. pulled up to E.V.'s residence, as he was sitting in his vehicle, E.V. handed him the 4 pills with P.M. beside him and as M.M. stated "I owe you forty dollars," E.V. snapped and punched M.M. in the face and then snatched him out of his vehicle which led to M.M. blacking out and coming to on the passenger side of his vehicle as officers approached telling them "I was defending myself," before being arrested and driven to Cumberland County Sheriff's Office (C.C.S.O.) and then to Cumberland County Detention Center (C.C.D.C.). E.V. sister Kenya Vazquez called the police to residence in reference to a physical disturbance/shooting. Four viagra pills were recovered outside of M.M. vehicle.

Lead Investigating Officer Defendant Jamie McLeod (J.M. hereinafter) interviewed P.M. on the night of incident and during this interview P.M. stated "M.M. pulled in driveway, she seen a handoff/transaction and heard M.M. say 'I owe you forty dollars,' that's when E.V. snapped and punched M.M. in face through the driver side window, and then she seen two flashes and heard pop-pop and then M.M. chased E.V. inside the trailer and heard what sounded like scuffling going on and then seen E.V. exit out the way he came in and M.M. behind him moments later and seen M.M. go to underpinning of the trailer to stash something but then M.M. came back to underpinning to get it out and that's when officers detained him." And from this interview on scene J.M. directed officers to search the underpinning of trailer where a firearm and contraband was recovered.

E.V. was transported to hospital and interviewed by officer Cristol Adams (C.A. hereinafter) whom informed J.M. that as the medical staff was doing inventory on E.V. personal items they discovered a large quantity of crystal meth: fentanyl out of E.V. pocket, in which E.V. stated "as him and M.M. were fighting he lost consciousness and woke up to M.M. planting the drugs on him to frame him as a drug dealer," and from this statement J.M. declined to charge E.V. with the large quantity of drugs instead charged M.M. with all the drugs recovered out of E.V. pocket.

J.M. had M.M. detained on scene, and searched him and his vehicle without his consent where officers seized forty dollars and his cell phone. J.M. had M.M. transported to Cumberland County Sheriff's Office and then C.C.D.C. where J.M. charged M.M. with breaking & entering with intent to injure, terrorize, assault with a deadly weapon, possession of firearm by felon and PWISO Schedule I, II and VI controlled substances, and M.M. was booked into C.C.D.C.



(attachment)

and given a bond. M.M. posted the bond and was sent home on Fayetteville Police Dept. electronic monitoring 24 hr. house arrest. From the interview E.V. gave at hospital, on 12-21-2020 J.M. swore out probable cause to have M.M. arrested on upgraded charges of First Degree Burglary and Assault with Deadly Weapon inflicting serious injury.

On 12-21-2020 from the upgraded charges by J.M. at M.M. house arrest residence defendant Ramon Herrera (R.H. hereinafter) and other officers executed the arrest. R.H. and officers breached the front door busting it open and ordered for M.M. to come outside and surrender peacefully. M.M. complied with officers instructions and was arrested outside the home without incident. After M.M. was transported to C.C.D.C. officers without consent searched M.M. house arrest residence and allegedly recovered drug residue and 2 firearms that M.M. was also charged with. Alaza Jenkins and Stefanie Nobles (S.N. hereinafter) were both present at residence and S.N. had active warrants in Hoke County so she was arrested as well. The next day Defendant Janet Olsen (J.O. hereinafter) charged M.M. with promoting prostitution, human trafficking alleged victim S.N. date of offense on or about 12-20-2020 and M.M. was given a bond by a Magistrate.

On 1-21-2021 M.M. had a bond hearing at the Cumberland County Courthouse where Defendants J.M., R.H. and J.O. gave sworn testimony under oath. S.N. was served with subpoena but failed to show.

The State on 9-1-2021 elected to voluntarily dismiss all charges M.M. received on 12-20-2020 and 12-21-2020 from arresting officers J.M., R.H. and J.O. this action follows.

## REASONS FOR GRANTING THE PETITION

I. The Fourth Circuit en banc court did err in finding no reversible error in the district court granting the Defendants Federal Rules Civil Procedure 12(b)(6) motion to dismiss complaint because fact issues existed as to 4<sup>th</sup> and 14<sup>th</sup> Amendments Constitutional Claims

(1) It has been well established in considering a motion to dismiss the court must accept as true all factual allegations in the complaint and must draw all inferences in favor of the Plaintiff. see "Heatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 164, 113 S.Ct. 1160, 122 L.Ed. 2d 1193 (1993)", and when a court considers a motion to dismiss for failure to state a claim, three sequential steps must be taken; first it must take note of the elements the Plaintiff must plead to state a claim; Next, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and Finally, when there are well-pleaded factual allegations, the court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. see "CBA Environmental Services, Inc. v. Toll Brothers Inc. D.N.J. 2019, 403 F. Supp. 3d 403. And 12(b)(6) motion is not procedure for resolving contest about facts or merits of the case. see "Stepan Co. v. Winter Panel Corp., N.D. Ill. 1996, 948 F. Supp. 802"

(a) In the instant case the en banc court did err because in Defendant J.M. application for search warrant, information was omitted that was material with the intent to make it misleading in which J.M. had an interview with an eyewitness on scene P.M. on 12-10-2020 (day of incident) and 12-18-2020 where P.M. states "Petitioner was sitting in his car outside when E.V. who had been up for a couple days getting high on serious drugs became delirious and began thinking people were watching him and talking about him, punched Petitioner in the face through his driver side window". And in subsection 20 in J.M. probable cause affidavit under oath she falsely stated "Defendant followed E.V. inside the residence after giving permission not to enter, a verbal agreement ensued, defendant during argument struck alleged victim multiple times with a handgun". Petitioner asserts there is a strong possibility had J.M. told the truth about the information she received from the witness on scene, included E.V. assaulting Petitioner first, E.V. being up for days high on drugs deliriously thinking people were watching him, these facts combined would of delineated probable cause in application and when view in the light most favorable

(see attachment)

(attachment)

to Plaintiff- it creates a genuine dispute that must be decided by a jury, see "Miller v. Prince George's Cnty, Md. 970 F.3d 621, 632 (4<sup>th</sup> Cir. 2007)"

(b) In the instant case the 4<sup>th</sup> Circuit en banc court did err dismissing Petitioner's 4<sup>th</sup> Amendment malicious prosecution and 14<sup>th</sup> Amendment Fabricated evidence claims against Defendant J.O. because J.O. was well aware that Petitioner was on 24 hr. GPS house arrest ankle monitoring and did not violate it once by leaving the premises and yet J.O. still swore out promoting prostituting and human trafficking charges falsely claiming Petitioner was driving S.N. to do sex dates, performing the function of a complaining witness when this court has ruled "law enforcement officials who submitted affidavits in support of applications for arrest warrants were denied absolute immunity because they "performed the function of a complaining witness." see "Kaliner v. Fletcher, 522 U.S. 118, 123, 118 S.Ct. 502, 139 L.Ed. 2d 471 (1997)" And when these facts viewed in the light most favorable to Petitioner creates a genuine material dispute that must be decided by a jury

(c) In the instant case the en banc court did err by dismissing Petitioner claims as it pertains to Defendant R.H. because R.H. and other officers monitored Petitioner's residence before approaching and didn't see no activity whatsoever. Petitioner's residence was less than 5 minutes from Fayetteville Police Department to where officers could of had an arrest warrant in their possession at time of arrest and still failed to do so even though Petitioner repeatedly asked for arrest warrant as he was detained on front porch, Petitioner was arrested outside of his home where no exigent circumstances existed and illegally entered the residence without consent to do a "protective sweep", and then as Petitioner was in booking at Cumberland County Detention Center R.H. maliciously appeared before a Magistrate falsely stating "he smelled a strong odor of marijuana outside of the residence", which gave probable cause for issuance of search warrant and the search only produced small residual amounts of marijuana not strong enough to detect from outside in which R.H. admitted under oath at Petitioner's bond

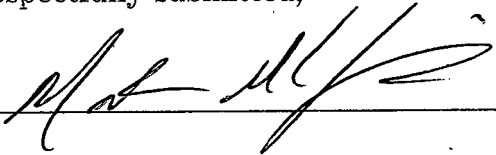
hearing on 1-21-2021. see "U.S. v. McClants, 664 F. Supp. 2d 620 (4<sup>th</sup> Cir. 2009)" And when these facts viewed in the light most favorable to Plaintiff creates a genuine material dispute that must be decided by a jury.

Petitioner ~~Pratt~~ based upon the foregoing arguments and authorities, upon the briefs previously filed and other courts, and upon the record in the case at bar that this court reverse and order the district court to allow discovery and all claims against Defendants proceed to trial and for these reasons contained in this petition

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 9-8-2025

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

MARKUS O'DON MCCORMICK — PETITIONER  
(Your Name)

VS.

JAMIE MCLEOD, et al — RESPONDENT(S)

**PROOF OF SERVICE**

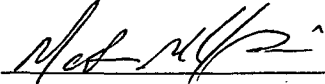
I, Markus Odon McCormick, do swear or declare that on this date,  
9 - 8, 2025, as required by Supreme Court Rule 29 I have  
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*  
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding  
or that party's counsel, and on every other person required to be served, by depositing  
an envelope containing the above documents in the United States mail properly addressed  
to each of them and with first-class postage prepaid, or by delivery to a third-party  
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Insufficient funds to serve opposing party  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9 - 8, 2025

  
(Signature)