Misc. No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ALEXANDER JESUS SANTIAGO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

MARK DIAMOND
Attorney for Petitioner
7400 Beaufont Springs Dr., Suite 300
Richmond, VA 23225
(917) 660-8758

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The petitioner, ALEXANDER SANTIAGO, who is incarcerated in a federal correctional facility, asks leave to file the attached Petition for a Writ of Certiorari to The Supreme Court of the United States of America without prepayment of costs and to proceed in forma pauperis, pursuant to Rule 39 of this Court.

The Petitioner was previously granted leave to proceed in forma pauperis by the Court of Appeal for the Fourth Circuit. By order of the Court of Appeals dated December 1, 2017, the undersigned was appointed as counsel for the petitioner pursuant to the Criminal Justice Act, (18 USC § 3006A) which is why no affidavit from the petitioner is attached, pursuant to Supreme Court Rule 39(1).

Dated: August 9, 2018

_____
MARK DIAMOND
Attorney for Petitioner

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PETITION FOR A WRIT OF CERTIORARI

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Attorney for Petitioner
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Richmond, VA 23225
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QUESTIONS PRESENTED FOR REVIEW

Did the district court improperly revoke Mr. Santiago's supervised release and resentence him despite a lack of evidence that he violated supervised release?

Did the improper admission of evidence of uncharged misconduct outweigh its probative value and deprive Mr. Santiago of a fair trial?

Did the prosecutor fail to prove that Mr. Santiago was guilty beyond a reasonable doubt?

Did the trial court improperly admit evidence of drugs that should have been suppressed because police lacked probable cause to search Mr. Santiago?

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The United States Court of Appeals for the Fourth Circuit affirmed the judgment of the district court in the consolidated appeal *United States of America v. Alexander Jesus Santiago,* Slip Copy, 2018 WL 3689251 (4th Cir. Va.). (Appendix -A-)

JURISDICTION

The final Order of the U.S. Court of Appeals, Fourth Circuit, was issued on August 2, 2018. This petition was filed within ninety days thereof. Jurisdiction in the trial court was based on 18 USC § 3231, since the appellant was charged with offenses against the laws of the United States of America. The jurisdiction of this Court is invoked under 28 USC § 1257(a) and Supreme Court Rule 10.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Mr. Santiago's rights against unreasonable search and seizure, as well as to due process and a fair trial. (U.S. Const. 4th, 5th, 6th Amends.)

STATEMENT OF THE CASE

By affirming his judgment, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory

power. In addition, the Fourth Circuit's rulings contradict rulings on the same issues rendered by the Supreme Court.

BACKGROUND OF THE CASE

A Judgment following jury trial on drug-related counts was entered in the United States District Court for the Eastern District of Virginia in Newport News on October 20, 2017, under case number 4:17-cr-00017-HCM-LRL-1. A final Order revoking supervised release and resentencing Mr. Santiago was entered in the United States District Court for the Eastern District of Virginia in Richmond on November 27, 2017, under case number 3:09-cr-00299-HCM-1.

In the first matter, Mr. Santiago was convicted of conspiracy to distribute heroin, two counts of distributing heroin, and possession with intent to distribute heroin on May 31, 2017. He was sentenced on October 19, 2017, to 120 months in prison on count 1 and 84 months in prison on each of counts 2, 3, and 4, as well as eight years of supervised release on count 1 and six years of supervised release on each of counts 2, 3, and 4, the sentences to run concurrently. His appeal under USCA 17-4668 challenged the decision by the district court to revoke supervised release and resentence him to additional incarceration.

In the second matter, the government sought to revoke his sentence of four years of supervised release that he received for a judgment that was entered on February 3, 2010, and amended on March 3, 2015. An Order of Revocation was

entered on November 27, 2017. His appeal under USCA 17-4743 challenged his conviction and sentence.

The Court of Appeals for the Fourth Circuit consolidated Santiago's appeal in both matter on December 1, 2017. On August 2, 2018, the Court affirmed the judgments in both cases.

REASONS FOR GRANTING THE WRIT

ARGUMENT 1: THE DISTRICT COURT IMPROPERLY REVOKED MR. SANTIAGO'S SUPERVISED RELEASE.

On January 29, 2010, Mr. Santiago was sentenced to 87 months in prison and four years of supervised release for his conviction of possession with intent to distribute heroin. On March 3, 2015, his sentence was reduced to 70 months. He was released from prison on November 2, 2015, and began supervised release.

On January 17, 2017, the prosecutor filed a petition to revoke supervised release and resentence Mr. Santiago. Following a hearing, the district court revoked supervised release and held that Mr. Santiago committed a grade C violation, which is the least pernicious of supervised release violation. (USSG § 7B1.1[a]) It held that Santiago (1) failed to follow the instructions of the probation officer regarding the program in which he was placed, and (2) committed a new criminal offense.

A sentencing court must detail the circumstances of a defendant's violation and explain why the sentence imposed was justified, taking into consideration all of the factors enumerated in 18 USC 3553[a]. (*United States v. Flowers*, 237 Fed.Appx. 824 (4th Cir. 2007) A sentence is substantively unreasonable if the court does not give a proper basis for concluding that the defendant should be resentenced to the terms imposed (18 USC § 3583(e); *United States v. White*, 310 Fed.Appx. 572 (4th Cir. 2009)

The district court erred when it revoked supervised release because of Mr. Santiago allege failure to complete the Moral Reconation program. Mr. Santiago's attendance in the Moral Reconation treatment group was never a condition of supervised release. Nor did the probation officer testify that his failure to complete the program was critical or resulted in Probation considering him to be in violation of supervised release. True, too, that probation officer Arnold acknowledged that Santiago appeared to be failing to meet the requirements of the program because of his memory problem, which was being untreated.

While Special Condition 2 of his supervised release required him to complete a drug treatment program, the prosecutor acknowledged in his Petition on Supervised Release that Santiago "completed a substance abuse assessment on December 8, 2015, and no treatment was recommended." In any event, Off. Arnold testified that the Moral Reconation program was not a drug treatment program so it cannot be said that Santiago violated the drug-treatment condition of

supervised release. For these reasons, Mr. Santiago's revocation of supervised release and resentencing should have been reversed.

ARGUMENT 2: THE ADMISSION OF EVIDENCE OF UNCHARGED MISCONDUCT VIOLATED MR. SANTIAGO'S RIGHT TO A FAIR TRIAL.

Chemist Lauren Dillon testified that one of the pills imputed to Mr. Santiago contained 1.047 grams of oxycodone and acetaminophen and another contained .2504 grams of oxycodone. Before she testified, the defense objected:

> Q. Did you show yesterday Exhibit 12E (*i.e., pills recovered from Santiago when arrested*) to Mr. Brown?
>
> A. Yes, sir.
>
> Q. And to the chemist?
>
> A. Yes, sir.
>
> MR. BRADENHAM: Move to introduce 12E.
>
> MS. O'BRIEN: And I would object, Your Honor. I don't know the relevancy of this. The pills that were found and what the relevancy is, he is not charged with this. It's not part of the charges here today. I don't know what relevance, what probative value they have on this case.
>
> THE COURT: Overrule.
>
> MR. BRADENHAM: Move to introduce 12E.

THE COURT: 12E will be admitted. (Transc. 5/31 p. 240)

The prosecutor raised the pills a second time during the chemist's testimony and the defense reiterated its objection:

> Q. And did you run a chemical analysis of 12E that's in your –
>
> MS. O'BRIEN: Your Honor, at this point in time I would like to renew my objection to the admissibility and relevancy of the testimony concerning the pills that were found at the scene. There is that charge, and I don't think they are relevant in this case.
>
> THE COURT: Overruled. (Transc. 5/31 p. 272)

In determining whether evidence of uncharged criminal conduct is admissible, "the district court must balance its probative value, defined as its relevance, necessity, and reliability, against the prejudice to the defendant of admitting the evidence." (*United States v. DiZenzo*, 500 F.2d 263, 266 (4th Cir. 1974); see also, *Michelson v. United States*, 335 U.S. 469 (1948) The district court abused its discretion when it allowed evidence of the pills. They were irrelevant to the case against Mr. Santiago. There was no testimony or other evidence that these two pills, or the other two pills recovered from Santiago, were obtained or possessed by him illegally. No charge was brought against Mr. Santiago in the indictment concerning pills, only heroin. Nor did the prosecutor

make any claim that evidence of pills was in any way relevant to his case to prove motive, intent, absence of mistake, common plan, identity, or any other purpose. (*United States v. Hadaway*, 681 F.2d 214, 219 (4th Cir. 1982)

Conversely, the risk was real that the jury would take Santiago's possession of the pills as evidence of a propensity to commit crimes in general and the charged crimes in specific, which is prohibited under FRE § 404(b)(1). Additionally, the prosecutor did not notify the defense in a timely manner of his intent to elicit such evidence, in violation of FRE § 404(b)(2).

Adding further to the prejudice caused by evidence of the pills is the fact that the district court did not give cautionary instructions to the jury about the proper use of extrinsic evidence at the time the evidence was introduced or in its final charge. (*United States v. Fish*, 952 F.2d 397 (4th Cir. 1991) Under all these circumstances, the district court abused its discretion in admitting evidence of the pills. (*United States v. Simpson*, 910 F.2d 154 (4th Cir. 1990)

The risk of prejudice by admission of the pills to Mr. Santiago's right to a fair trial based upon relevant evidence outweighed any probative value, which was none at all. The error was not harmless because it cannot be said beyond reasonable doubt that the error did not affect the verdict reached by the jury. For these reasons, judgment should have been be reversed.

ARGUMENT 3: MR. SANTIAGO WAS NOT PROVEN GUILTY BEYOND A REASONABLE DOUBT.

Insufficient Evidence For Counts 2 and 4

At the close of the prosecutor's case, the defense moved for a judgment of acquittal pursuant to FRCP 29(a), which was denied. That was an error. Accepting the evidence in a light most favorable to the prosecutor, there was legally insufficient evidence to convict Mr. Santiago of count 2 alleging distribution of heroin on September 28, 2016. Nor did the factual weight of the credible evidence prove Santiago guilty beyond a reasonable doubt. (*In re Winship*, 397 U.S. 358 (1970)

The evidence showed that informant Anthony met his childhood friend Vernon Jones and Mr. Santiago to discuss a possible purchase of heroin. But no deal was done and no future purchase arrangement made. Then, on September 27, 2016, Anthony called Jones directly and asked him to sell him two ounces of heroin. Santiago was not involved in the call. Jones said the cost was $2500 per ounce and told Anthony come to his house in Gloucester to get it. On September 28, the DEA gave $5000 to Anthony, who he went to Jones' house, gave Jones the money, and Jones gave him the heroin. Santiago showed up after the transaction but was not involved in it, although Jones gave Santiago money after he had arrived. Santiago did not give drugs to Anthony or Jones and Anthony did not

testify that that the money Jones gave Santiago was part of Anthony's drug purchase from Jones.

Det. Gibson testified that on September 28, 2016, he and other officers set up surveillance across the street from Jones' house. He saw Anthony drive up and Jones come out to greet him. They went into the house. Santiago drove up two hours later, got out, and entered the house. About nine minutes later, Jones, Anthony, and Santiago left the house, stood in the driveway talking for about four minutes, and drove away in separate cars.

In summary, Anthony arranged a purchase of heroin from Jones. Santiago was not involved. Anthony bought the heroin from Jones. While Santiago came to the house two hours after the transaction, he was not involved in the transfer of the drug. The prosecutor's assertion that Santiago participated in the transaction underlying count 2 was surmise and unsupported by evidence.

Anthony never claimed that the drugs he bought from Jones on September 28 were the drugs discussed by Santiago on September 23. While Jones gave Santiago money on September 28, there was no evidence that it was in exchange for the drugs as opposed to, say, the payment of an unrelated debt that Jones owed Santiago. For these reasons, judgment on count 2 should be have been reversed.

Nor was Santiago proven guilty beyond a reasonable doubt of count 4 alleging possession with intent to distribute heroin on January 5, 2017. Informant Anthony testified that on January 4, he phoned Santiago in order to buy eight

ounces (i.e., 226.796 grams) of an unspecified item for $2300 an ounce. On January 5, he spoke to Santiago and decided where to meet but made no further contact with him. No transaction took place. Trooper Jackson testified he helped arrest Santiago on January 5, and recovered what he believed to be heroin from Santiago's underwear.

It was the prosecutor's contention that the drugs recovered from Santiago on January 5 were the drugs he had previously discussed selling to Jones, thus supplying the intent to distribute element of the charge. But there was no evidence to support that contention because the potential drug purchase that Jones and Santiago discussed was for 226.796 grams ounces, and the drugs recovered from Santiago was only 33.73 grams. In other words, while the drugs recovered from Santiago on January 5 may or may not have been intended for distribution, they were not the drugs intended for distribution to Jones, who served as the basis of the intent-to-distribute element underlying count 4. For these reasons, judgment on count 4 should have been reversed.

Insufficient Evidence For Count 1

The insufficiency of evidence on counts 2 and 4 means that there was insufficient evidence for count 1, conspiracy to distribute and possess 100 grams or more of heroin. The total drug amount remaining after reversal of counts 2 and/or 4 would be less than 100 grams. In fact, in his summation, the prosecutor

told the jury that the criminal acts underlying counts 2,3, and 4 were the criminal acts that served as the basis for the conspiracy charge. (Transc. 5/31 p. 320)

Count 1 for conspiracy to commit a drug offense should be reversed for the additional reason that there was insufficient evidence that Santiago and a co-conspirator agreed to commit an illegal act. As previously discussed, the underlying sale was committed solely by Vernon Jones. The prosecutor's circular argument to the jury during summation that because Santiago was charged with conspiracy there must have been some unknown conspirator working with him was unsupported by a whiff of evidence. The prosecutor cited none, either in his opening statement or summation.

In count 1, Santiago was also charged with conspiring to sell heroin on December 1, which was the act underling count 3, and possession with intent to sell on January 5, which was the act underlying count 4. The evidence was clear that Jones had nothing to do with these events and no reasonable jury could have thought he did.

Concerning the December 1 sale underlying count 3, informant Anthony testified that on November 30, 2016, he phoned Santiago in order to buy heroin. At a later time, he called Santiago and said he wanted two ounces for $2500 an ounce. On December 1, he called Santiago and decided where and when to meet. Santiago later called and told him to meet him at the Wawa gas station in Gloucester. Anthony went to the station and bought two ounces of heroin from

Santiago. Anthony made absolutely no mention of Jones being involved in this purchase. He did not call Jones, meet Jones, or testify that he had any reason to believe that Jones was involved. Jones was not present at the gas station.

Det. Kempf testified that he monitored Anthony's phone calls to Santiago and helped conduct surveillance. On December 1, 2016, Anthony met him at the York County Courthouse and gave him the heroin. Kempf did not testify to any act on the part of Jones that would lead the jury to believe that he was Santiago's co-conspirator in the December 1 sale. Jones was not on any of the phone calls made by Anthony, not present during the sale, and never met Anthony. For these reasons, there was insufficient evidence that Santiago had a co-conspirator for the December 1 drug sale underlying count 2.

Concerning the January 5th possession underlying count 3, Anthony testified that on January 4, he called Santiago to buy eight ounces of heroin. On January 5, he called Santiago and they decided where to meet. He had no further contact with Santiago after that phone call. Det. Kempf testified that he listened to these phone conversations and then arranged for police to arrest Santiago before any transaction took place. Kempf did not testify about any act on the part of Jones that would lead the jury to believe that he was Santiago's co-conspirator in the January 5 possession with intent to sell. Jones was not on any of the phone calls made by Anthony and there was no evidence that Jones was involved in Santiago's January 5th possession in any way.

Since the evidence and reasonable inferences from it did not prove beyond a reasonable doubt that Mr. Santiago conspired to sell or possess heroin, or that he sold heroin, judgment should have been reversed. The evidence was not substantial, drawing all reasonable inferences in the light most favorable to the government. (*Glasser v. United States*, 315 U.S. 60 (1942); *Jackson v. Virginia*, 443 U.S. 307 (1979)

ARGUMENT 4: DRUGS IMPUTED TO MR. SANTIAGO SHOULD HAVE BEEN SUPPRESSED BECAUSE POLICE LACKED PROBABLE CAUSE TO SEARCH HIM.

Mr. Santiago's January 5, 2017 search was illegal for three reasons:

1. Trooper Johnson's claim that he stopped the vehicle in which Santiago was a passenger because it was driving too close to the car ahead of him was pretextual, belied by the patrol car video of the event, the fact that the driver of the vehicle was not summonsed, and the following testimony of Det. Kempf:

> Q. And why was a traffic stop selected, as opposed to some kind of a felony stop? Operationally, why was that selected?
>
> A (*Kempf*). We do that ... to make it look like it was a walled-off stop, where he had just been stopped for a traffic infraction. (Transc. 5/23 p. 17)
>
> Q. At this point in time it was already the decision, based upon the briefings, that you were going to arrest Mr.

> Santiago – that Mr. Santiago was being arrested that day, correct?
>
> A That's correct.
>
> Q. And Mr. Santiago was going to be transported, no matter what, to a police station, correct?
>
> A. That's correct. (Transc. 5/23 pp. 91-92)

2. Police lacked probable cause to make a warrantless search for a crime in progress because they lacked sufficient information that Santiago was involved in a crime.

3. Police intrusion exceeded a permissible level of a warrantless search under the circumstances of this case when Trooper Jackson unzipped Santiago's pants fly in public, reached into his pants, and felt around his underwear, buttocks, and genitalia.

> Q. And you testified you saw his underwear all the way down; that there was a pocket all the way down past, I would think – past where his genitalia was, right?
>
> A. (*Jackson*) It was right here at the crotch area.
>
> Q. Okay. So the pocket went from the waistband to the crotch area?
>
> A. From down – from the crotch area to under the back, under the – towards the buttocks and to halfway up the buttocks. (Transc. 5/23 pp. 89-90)

Jackson did not testify that he believed he was in any danger or that the bulge he allegedly saw in Santiago's pants was a weapon. Jackson's testimony that he conducted the intrusive search because he saw a bulge in Santiago's pants was also pretextual, belied by the testimony of Trooper Johnson, who did visual and pat down searches of Santiago before Jackson arrived and testified that he saw no bulge in Santiago's pants.

The Fourth Amendment generally requires the police to obtain a warrant before conducting a search. There is an exception for automobile searches. (*Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) However, "Because an automobile stop is a seizure of a person, the stop must comply with the Fourth Amendment's requirement 'that it not be 'unreasonable' under the circumstances.'" (*Whren v. United States*, 517 U.S. 806, 810 (1996) "As a result, an automobile stop 'must be justified by probable cause or a reasonable suspicion ... of unlawful conduct.'" (*United States v. Hassan El*, 5 F.3d 726 (4th Cir. 1993)

A finding of probable cause to arrest is proper when, at the time an arrest occurs, the facts and circumstances known to the arresting officer, acting as a prudent person, reasonably leads him to believes that the suspect has committed or is about to commit a crime. (*Beck v. Ohio*, 379 U.S. 89 (1964) A finding of probable cause is based upon a practical assessment of the totality of the circumstances. (*Illinois v. Gates*, 462 U.S. 213 (1983)

To establish that his seizure was unreasonable, a defendant must demonstrate that his arrest was made without probable cause (*Dunaway v. New York*, 442 U.S. 200 (1979); that is, the officer lacked a reasonable belief that an offense has been or is being committed. (*Wong Sun v. United States*, 371 U.S. 471 (1963) Two factors govern the determination of probable cause: "(T)he suspect's conduct as known to the officer, and the contours of the offense thought to be committed by that conduct." (*Pritchett v. Alford*, 973 F.2d 307, 314 (4th Cir. 1992) The officer must have reasonable suspicion, based on specific and articulable facts, to believe that "criminal activity may be afoot." (*Terry v. Ohio*, 392 U.S. 1, 30 (1968) When police stop an automobile without probable cause or reasonable suspicion, the exclusionary rule applies to preclude the admission of evidence obtained as a result. (*Elkins v. United States*, 364 U.S. 206, 217 (1960)

No Probable Cause

Police lacked probable cause to stop Santiago's vehicle. Concerning the arresting officer's testimony that he witnessed a traffic violation, this was a pretextual excuse, as was his claim that he smelled marijuana emanating from the SUV. In its Order, the district court, in reviewing the patrol car video of the event, found it "inconclusive" as to whether or not Santiago's vehicle was driving too closely to another vehicle before police stopped it.

The traffic violation claim is belied by the testimony of Trooper Johnson, who testified that he knew even before seeing Santiago's SUV that he was going to pull it over because his supervisors earlier that day told him he would be stopping the vehicle. True, too, that Johnson released the driver of the vehicle without issuing a traffic summons. In addition, Det. Kempf let the cat out of the bag when he testified that he instructed Johnson to allege that he was pulling Santiago for a traffic violation because, "We do that ... to make it look like it was a walled-off stop, where he had just been stopped for a traffic infraction" (Transc. 5/23 p. 17) as well as his testimony that "Mr. Santiago was being arrested that day ... no matter what." (Transc. 5/23 p. 91-92) In addition, Johnson's claim that he smelled marijuana from the vehicle is belied by the fact that he saw no marijuana in the SUV; no marijuana was recovered from it, Santiago, or the driver; none of the other officers, including Johnson's partner, confirmed Johnson's claim; and no charges were brought for marijuana.

There was, however, a second claimed basis of probable cause: That police suspected Santiago possessed drugs. This argument also fails. A probable-cause determination made by a law enforcement agent "must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers. [A]s we have seen, good faith is not enough to constitute probable cause. That faith must be grounded on facts within knowledge of the [officer]...." (*United States v. Ross*, 456 U.S. 798, 808 (1982)

Off. Kempf, who was the fellow officer that all the other officers relied on for probable cause to stop Santiago's vehicle, testified that on January 4, he set up Santiago by having paid informant Anthony arrange to buy eight ounces of heroin at the Williamsburg Outlet Mall. But the vehicle stop took place a day later at a different location. No time was specified for the purchase, so this identifying element was missing from Kempf's testimony.

In other words, while police had information that a sale was going to take place, they had insufficient information that the vehicle they stopped on January 5 was involved in that sale other than the fact that Santiago was in the vehicle. The information to which Kempf was privy was insufficient for a "neutral and detached magistrate" to have based a search warrant. (*Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972)

No Continuing Probable Cause Plus an Overly Intrusive Search

After stopping Santiago, Off. Johnson removed him from the vehicle and patted him down. He found no contraband. Johnson kept Santiago at the location until Off. Page arrived with his dog which eventually alerted to the presence of contraband. Off. Page and other officers searched both the vehicle, Santiago, and Brydie thoroughly. Again, they found nothing. Santiago should have been left to go his merry way at that point, since the original claim of probable cause made by Kempf was unfounded and there was no additional probable cause to detain him.

Instead, police continued to prevent Santiago from leaving until Off. Jackson arrived. Jackson was an "expert" in searching for places in vehicles in which drugs could be hidden. Jackson conduced a through search and again found nothing. Santiago should have been free to leave. Instead, Jackson "patted" down Santiago yet again and felt a bulge, at which point he immediately handcuffed him. Curiously, this was a bulge that Off. Johnson and other officers had not seen when they patted down and searched Santiago twice before Jackson's arrival. Since police lacked probable cause to initially and continue to detain and search Santiago, the drugs imputed to him should have been suppressed.

Assuming arguendo that Jackson lawfully arrested Santiago, an officer may search for weapons and evidence so long as the arrest itself was valid. (*United States v. Robinson*, 414 U.S. 218 (1973) But a warrantless search under these circumstances must not be unreasonable. (*Vernonia Sch. Dist. v. Acton*, 515 U.S. 646 (1995) The authority to search incident to a lawful arrest has "little applicability with respect to searches involving intrusions beyond the body's surface." (*Schmerber v. California*, 384 U.S. 757, 769 (1966) An officer's authority to effectuate a full search of the person, when conducting a search incident to arrest, does not include the right to "swipe the arrestee's outer genitalia and slightly penetrate the genitalia." (*Amaechi v. West*, 237 F.3d 356, 361 (4th Cir. 2001) For that, in a non-prison setting, a warrant is needed.

In *Bell v. Wolfish*, 441 U.S. 520, 559 (1979) this Court established the analytical framework for determining the reasonableness of a sexually intrusive search: the court must analyze "the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." Off. Jackson's search of Mr. Santiago exceeded all bounds of decency, particularly since it occurred in a church parking lot open to the public. Jackson never claimed he thought Santiago had a weapon at the time of the search. Upon feeling the bulge, instead of applying for a search warrant, Jackson unzipped Santiago's pants fly, reached into his pants, and felt around his underwear, crotch, and buttocks. Jackson's search of Santiago exceeded the lawful bounds of a warrantless public search and drugs imputed to him suppressed.

The drugs imputed to Mr. Santiago should have been suppressed for lack of probable cause to search him and because the search exceeded permissible non-warrant bounds. For this reasons, judgment should have been reversed.

CONCLUSION

The judgment of the Court of Appeals so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. For these reasons, the petitioner respectfully asks this Court to issue a *writ of certiorari* to

review the Court of Appeals for the Fourth Circuit's decision to affirm, and for such further relief as this Court deems proper.

MARK DIAMOND
Attorney for Petitioner
7400 Beaufont Springs Drive, Suite 300
Richmond, VA 23225
(917) 660-8758

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PROOF OF SERVICE

Mark Diamond swears that on August 9, 2018, pursuant to Supreme Court Rules 29.3 and 29.4, I served the attached Motion for Leave to Proceed In Forma Pauperis and Petition for a Writ of Certiorari on every person who is required to be served by first-class mail through the U.S. Postal Service as follows:

(1) Mr. Scott Putney, U.S. Attorney, Fountain Plaza 3, Suite 300, 721 Lakefront Commons, Newport News, VA 23606

(2) Mr. Alexander Santiago, 35104-183, Ft. Dix Correctional Institution, Box 2000, Joint Base MDL, NJ 08640

(3) Hon. Noel Francisco, Solicitor General, Department of Justice, 950 Pennsylvania Ave. N.W., Washington, DC 20530

MARK DIAMOND
Attorney for Petitioner