

No. 20-1247

IN THE
Supreme Court of the United States

GERALD DIX,

Petitioner,

v.

EDELMAN FINANCIAL SERVICES, LLC, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For the Seventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2 of this Court, Petitioner, Gerald Dix, respectfully petitions for an order (1) granting rehearing, (2) vacating this Court's May 17, 2021 order denying certiorari, and (3) redispersing of this case by granting the petition for a writ of certiorari, vacating the judgment, and remanding to the Seventh Circuit for further consideration in light of *Caniglia v. Strom*, 593 U. S. ____ (2021), for the purpose of determining whether the Fourth Amendment protects a person and property from seizure to effect an eviction in contravention of clearly *established* law – the first question in the Petitioner's petition.

A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Mr. Dix submits that, on the same day as the denial of his petition, this Court held that “community caretaking” duties by police do not create a standalone doctrine that justifies warrantless searches and seizures in the home. *Caniglia*, at 1.

The Seventh Circuit held that the warrantless seizure of Mr. Dix's person and property in his own home and on its curtilage “comfortably qualifies” as one instance in which police officers may act as part of their “community caretaking” function. *Dix v. Edelman Fin. Servs.*, 978 F.3d 507, 517 (7th Cir. 2020). The Seventh Circuit's stance on the community caretaking doctrine was of such vital interest to the respondent in *Caniglia* that his attorney, Marc DeSisto filed a supplemental brief attempting to

convince this Court that it should not grant certiorari in that case. In his supplemental brief, DeSisto noted that “[I]n *Dix*, the Seventh Circuit applied the community caretaking function to a home entry without hesitation...” Accordingly, this Court should not hesitate to vacate the Seventh Circuit’s opinion in *Dix* and remand this case back to the district court.

Mr. Dix and his property were unlawfully seized by the Lisle police. The seizures were performed without any judicial authority, specifically, a judicial order for the Petitioner’s eviction which was known to all Respondents at the time. The unlawful eviction was performed by the Lisle police to breach a private agreement between the Petitioner and Respondent, Theresa Miller. After the Petitioner filed his civil rights complaint, the Respondents and the lower courts concocted meritless legal theories to justify the unlawful eviction including the community caretaking doctrine. Since this Court has held that the community caretaking exception to the warrant requirement does not extend to the home, the concocted reason for the Lisle police seizing Mr. Dix’s person and property must fail.

At the time of his eviction, Mr. Dix *occupied* and resided in a Lisle home deeded to Theresa Miller, and because Mr. Dix came to reside in his home peaceably, he could only be removed by judicial order according to Illinois law under the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.*) and *People v. Evans*, 516 N.E.2d 817, 818-19 (1987) (Defendant who refused to sign a lease and remained in a home owned by another could only be removed through a forcible entry and detainer action.)

In *Dix*, Lisle police officer, Robert Sommer first seized the Petitioner by preventing him from retreating into his own home to oversee the forcible removal of his personal property from his abode, a clear violation of the Petitioner's Fourth Amendment right. Furthermore, Sommer seized Mr. Dix again by preventing him from entering the second and third floors of his home to retrieve his property stored on those floors. In *Caniglia* at 3, this Court reiterated that the Fourth Amendment guarantees "the right of a man to retreat into his own home and there be free from unreasonable government intrusion." Citing *Florida v. Jardines*, 569 U. S. 1, 6 (2013). Unlike the case in *Cagnilia*, the Petitioner stored no firearms in his home and made no suicidal threats. The Petitioner was only interested in recovering his papers and effects – mostly electronic equipment and ordinary household items which he has not been able to recover through the lower courts because of their clearly erroneous decisions. Because the Petitioner has never been able to recover his "effects," his injuries from their seizure in violation of the Fourth Amendment continue. While *Caniglia* drew the ire of Second Amendment advocates protecting gun owners, the importance of protecting "papers and other effects" in the home should not be diminished and the Petitioner should also be afforded Fourth Amendment protections in *his* home.

There was no objectively reasonable reason for the Lisle police to seize the Petitioner or his property. Instead, the Lisle police should have reminded Theresa Miller that if she wanted Mr. Dix evicted from her home, she needed to obtain a judicial order

for eviction in accordance with Illinois law, absent his decision to voluntarily vacate the premises. Furthermore, given the fact that the Lisle police informed Mr. Dix not to return to his abode after the eviction, there was no reasonable reason for the Lisle police to prevent him from securing *all* his property while still present at his home with a moving van. Instead, the Lisle police violated the Petitioner's Fourth Amendment rights and, thereafter, threatened to prosecute Ms. Miller for seeking their assistance to unlawfully evict Mr. Dix.

None of the permissible, unwelcome intrusions cited by this Court in *Caniglia* existed in *Dix*. No valid warrant or eviction order was procured. There were **no exigent circumstances** such as a need to render aid to an injured occupant or any imminent threat to any of the home's occupants or any right for the police to take action that "any private citizen might do." *Id.* In *Dix*, the Seventh Circuit never articulated any events which would constitute an exigent circumstance and thus chose to label the unlawful eviction as a "community caretaking" function by police. Like the First Circuit's "community caretaking" rule, the Seventh Circuit's opinion in *Dix* goes beyond anything this Court has recognized, and consequently, the lower court's opinion must be vacated.

This Court opined that since the respondents in *Caniglia* failed to recognize the presence of any exigent circumstances, they forfeited that point. *Id.* Kim Caniglia was in a potentially deadly situation when a firearm was produced in the course of a verbal disagreement and chose to sleep elsewhere in light of

that situation. Before leaving, she haphazardly hid the firearm while distraught over the invitation to murder her husband. Clearly, her judgment was impaired by distress, but the more prudent action would have been to relinquish the firearm to a trusted and sensible neighbor. In that case, a private and responsible gun-owning citizen would have taken the firearm and magazine after being apprised that Ed Caniglia was potentially suicidal. Hence, the Cranston police had as much of a right to seize the firearm as a private citizen as this Court inferred. *Caniglia* at 4. Although Second Amendment zealots heralded this Court's opinion in *Caniglia* as a victory, they failed to comprehend that the gun seizure was permissible under a different plausible legal doctrine. This instant case does not involve any incident which can be labeled as an "exigent circumstance" and therefore provides another forum for this Court to clarify its stance on the community caretaking doctrine.

In *Dix*, the Respondents and the lower courts failed to consider whether any recognized exigent circumstances were present, and thus they have also forfeited that point even though the Seventh Circuit attempted to interject injuries and property damage from other cases which were not present in this instant case. At most, the Petitioner hurt a third party's feelings by criticizing her lack of skills in a field which she was purported to be a professional which can hardly be considered an exigent circumstance. Furthermore, the Respondents lacked consent to remove the Petitioner's person from his home and seize his property and he made verbal

objections to those acts. Because of his non-threatening objections, the Seventh Circuit saw fit to label the police actions as “community caretaking” functions rather than exigent circumstances. Therefore, this Court should vacate the Seventh Circuit’s decision under its supervisory powers.

This Court must act in this case to prevent the community caretaking doctrine from being used as a procedural defense to warrantless seizures which occur in the home, particularly during an illegal eviction. “The function of the Supreme Court is...to exercise supervisory power over the lower federal courts.” *Boag v. MacDougall*, 454 U.S. 364, 368 (1982). This Court must reverse the Seventh Circuit’s opinion in this case in order to uphold its superior authority over the circuit courts. This Court should note that in the past, members of the Seventh Circuit have been rather flippant of this Court’s authority. For instance, when asked in 2016 which members of this Court are worth reading, Posner said “probably only a couple of the justices, namely Ruth Bader Ginsburg and Stephen G. Breyer are qualified. They’re OK, they’re not great. Those justices’ opinions are readable, and sometimes quite eloquent. The others, I wouldn’t waste my time reading their opinions.”¹

Permitting the Seventh Circuit to apply the community caretaking doctrine to the home will cause chaos in Illinois, Indiana and Wisconsin as different district courts will begin to use differing standards. Litigants will be confused and will not have a clear

¹ <https://www.c-span.org/video/?c4628445/user-clip-posner-scotus>

understanding that regardless of the circumstances, the community caretaking exception to warrantless seizure does not extend to the home. But most importantly, the Seventh Circuit cannot be permitted to be dismissive of the unanimous decision by this Court.

This Court decided a legal question in the Petitioner's favor and this petition for rehearing is timely and presented well within Rule 44.2's limitations. There being no reason to sustain the warrantless seizures in *Dix* based on the "community caretaking" doctrine, this petition for rehearing should be granted.

CONCLUSION

For the reasons set forth in this Petition, Gerald Dix respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Gerald Dix". The signature is written in dark ink and is positioned above a horizontal line.

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**RULE 44.2 GOOD FAITH CERTIFICATE REGARDING
PETITION FOR REHEARING OF DENIAL OF
PETITION FOR WRIT OF CERTIORARI**

Gerald Dix pursuant to Supreme Court Rule 44.2 hereby certifies that the foregoing attached Petition for Rehearing and request to vacate denial of Petition for Writ of Certiorari is limited to intervening circumstances of a substantial or controlling effect and/or to other substantial grounds not previously considered and is made in good faith and not for delay. Specifically, the grounds not previously considered include the identical issues and legal arguments in this Court's unanimous decision in *Caniglia v. Strom*, 593 U. S. ____ (2021) (No. 20-157).

Submitted this 7th day of June 2021

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{Signature page follows}

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

SUBSCRIBED AND SWORN TO BEFORE ME this 7th day of June 2021.

Gerald Dix
Gerald Dix

State of Illinois, County of Cook, ss. I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gerald Dix personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed the said instrument as his free and voluntary act as Witness for the uses and purposes therein set forth

Given under my hand and official seal, this 7th day of June 2021.


Notary Public

Commission expires: 06/22/2022

