No. 19-200

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Morgan Mccoy,

– pro se –

Petitioner,

.v.

Michael Bullock,

Tarry House Inc.,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

Morgan Mccoy
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Petitioner — pro se

Questions Set Out for Review:

1. Does pretrial court dismissing prima facie case before its evidence filing deadline constitute R.103(D) plain error in constitutional violation of due process?

2a. Does Respondent-landlord acquiescing having had surveillance of the small parking area that Petitioner-tenant rents out back of landlord's Belvidere Apartments result with that landlord's resident property manager of said eight tenant building, under O.R.C.3701.244(c), understanding or having shouldve understood it more likely than not automobile was Petitioner-tenant's, legally parked and so not to put the cops on tenant about it, and further

2b. Does the White Respondent-landlord acquiescing having had called cops on Petitioner-tenant, the Black man renting landlord's apartment lot, but not the apartment's 'similarly situated' White man, result with that landlord understanding or having should've understood his selective cop calling more likely than not indicative of a disparate treatment and of landlord wanting or expecting tenant be met with armed, dangerous response in violation of 8th Amendment prohibitions against inflicting a cruel distress?

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Basis of Jurisdiction

Understand that the truth is this case portends two constitutional questions: one for the future of juris prudence; two for the future of race relations in America. Question (1) asks defining of pretrial court dismissing prima facie case before it's evidence filing deadline as R.l03(D)'s 'Plain Error'. Question 2(a) asks whether what Blacks and Browns have been suffering subject of, what F.B.I. Director Christopher Wray calls 'White Supremacist ... Terrorism', paraphrased, warrants scrutiny. 2(b) is asking whether, more in particular, (1) a mens rea is exposed w/those calling cops, on a law abiding portion of the population for '#LivingWhileBlack', as part of a rag-tag but more & more concerted White Supremacist effort so that (2) constitutional interpreting of 8th, 14th amendments require had a hate crimes civil law so that those, pastly underreported but exposed by modern cell phone footage, can be fought.

Cop calling is no '*mere* inconvenience' to Blacks. Outset question (1) self-explanatory, w/question (2) is a history that goes back to White supremacist slave patrols that morphed into what we'd today call 'police' –literally, 'keepers of the 'policy'. Malcontented Whites incessantly have 'called the cops' on Blacks during this, the legacy of a Manifest Destiny doctrine which justified enslaving Blacks as 'drawers of water', and other periods of Black oppression by Whites known as Reconstruction, Jim Crow. These Anti-Blacks fearing a browning America, should these folks & people respectively let up some and understand that a better way than separation is not clear? Present day has the death toll of Blacks and Browns mounting as NBA

players sit or kneel during performances of the National Anthem as a form of resistance. Past that, representing these realities, people clash. Yes but, it's just that rather than plow into it adversarially, we civilly proposition a judiciary, ideally, to its perfecting. Yes but again, with nothing wrong with R56(C) constitutionality, Mr. Mccoy just asks that this court de novo review trial court errors in misapplying it and grant Mr. Mccoy foregoing & following lay logic, but largely relevant, race case petition under R.7.08B(3).

Statement of Case

Mr. Mccoy brought this action against Bullock's Tarry House Incorporated or 'THI' in the Summit County Court of Common Pleas, cv2018.07.2921, Mccoy .v. Bullock, THI, July 16th 2018. Mr. Mccoy's claims were Negligence; Breach of Lease (Habitability implied) peace & enjoyment; & Harassment with the court granting THI summary judgement denying Mr. Mccoy dispositive motion for summary judgement March 18th 2019, Mr. Mccoy timely filing notice of appeal with the Ninth District Court of Appeals, c.a.29353, Mccoy .v. Bullock, THI, March 28th 2019 and with said appeal denied, Mr. Mccoy timely appealing to the Supreme Court of Ohio, No.19.1193, Mccoy .v. Bullock, THI, August 23rd 2019. THI again acquiesced in its response to that filed jurisdiction memorandum to camera monitoring its parking spot Mr. Mccoy's lease gives him use of and to calling cop on Mr. Mccoy, a Black man, but not Apt.No.4's similarly parked White man Steve Sanders: re. exchange between THI's Ferracane, Mr. Mccoy and the cop May 5th 2018 about what Ferracane, willfully

ignorant, understood or should've understood w/monitoring, was Mr. Mccoy's legally parked SUV.

Reasons for Granting Writ

Question Set Out for Review: **1**. Does pretrial court dismissing prima facie case before its evidence filing deadline constitute R.103(D) plain error in constitutional violation of due process?

'Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court'– State .v. Perry, 101 Ohio St.3d 118, 2004, Ohio-297. Plain error doctrine is to 'safeguard the rights of a (litigant), notwithstanding his failure to (submit evidences) in a timely fashion'– State .v. Worley, 46 Ohio St.2d 316, 327,348 N.E. 2d 851 (1976) cert. denied, 429 U.S. 932 (1976). Mr. Mccoy's prima facie case was apparent from the record. Pretrial court dismissal before evidence filing deadline and without trial and it's excluding or not recognizing Mr. Mccoy's Jan. 30th 2019 dispositive motion's lot of horse sense and mixed motive issues apparent from the record, was plain error. '(Litigants must) preserve the record for appellate review unless the nature of the excluded material is apparent from the record'– Brooks, 44 Ohio St. 3d 185, 195 (1989).

Point (1)

THI negligently breached a duty in its hiring, THI dealing in the oft devious nature of alcohol drug & mental health or ADM pools but hiring them, recklessly in this case, to monitor one another in its employ. Mr. Mccoy further asserts breach of

lease & harassment claims mixed motive apparent from the record with a said hire, THI property manager Victor Ferracane, calling cops about who owned Mr. Mccoy's parked suv but not the similarly situated White man's showing race was substantial 'motivating factor', ESN .v. Charter Communications, No.17.55723 (9th Cir. Affirmed): presumed THI wouldn't've called cops absent racial profiling, dismissal was plain error.

Point (2)

Mr. Mccoy further asserts THI 'knew' he owned the suv-car. Injury is foreseeable if defendant 'knew or should've known'– Mudrich .v. Standard Oil Co, 153 Ohio St.31, 39, 90 N.E.2d 859 (1950). Bad apple cops daily kill Blacks in America. Mr. Mccoy will repeat that until out & understood, making no mistake about it. Re. Nightly News friction between Blacks & Cops. Did THI figure Basic Cop & Black Community relations were all rainbows & butterflies? Or would a distress on the part of the latter during encounter be presumed? THI knew or should've known: (1) Blacks distress at cops, and, (2) Mr. Mccoy owned said car. In case of doubt, the presumption is cops cause Blacks distress and that camera monitored parking lots are recorded & kept under systematic review. So. THI not knowing its lots goings on unlikely, its mixed motive's pretextually calling the cops to do its job prejudicially harassed Mr. Mccoy, dismissal plain error.

Question Set Out for Review: **2a**. Does Respond-ent/landlord acquiescing having had surveillance of the small parking area that Petitioner-tenant rents out back of landlord's Belvidere Apartments result with that landlord's resident property manager of said eight tenant building, under O.R.C.3701.244(c), understanding or having shouldve understood it more likely than not automobile was Petitioner-tenant's, legally parked and so not to put the cops on tenant about it, and further

Question Set Out for Review: **2b**. Does the White Respondent-landlord acquiescing having had called cops on Petitioner-tenant, the Black man renting landlord's apartment lot, but not the apartment's 'similarly situated' White man, result with that landlord understanding or having should've understood his selective cop calling more likely than not indicative of a disparate treatment and of landlord wanting or expecting tenant be met with armed, dangerous response in violation of 8th Amendment prohibitions against inflicting a cruel distress?

Point (3)

'Knew' isn't Mr. Mccoy's language. But. Bullock acquiescing imparting to Mr. Mccoy 3 years ago THI's up-grading its camera monitoring of his Belvidere Apartments, new lot sign & all, it's more likely than not THI understood or should've understood SUV-Chevy Mr. Mccoy's. THI calling cop on Mr. Mccoy, a Black man, but, disparately, not the similarly situated White man– what did THI want happen to Mr. Mccoy?

Said surveilling & Mccoy/Sanders disparity Mr. Mccoy preserved w/his January 30th 2019 'dispositive (summary judgment) motion'. He asks that motion be reviewed more regarding its dispositive content than its miscaptioning. Said motion rebutting THI's key affidavit [App.1¶12] filed w/September 13th 2018 THI memorandum and THI silent, simply resubmitting its argument w/its February 7th 2019 opposition to Mr. Mccoy's motion for summary judgment, Mr. Mccoy needed rebut no further. THI's surveilled 'knowing' Mr. Mccoy owned parked car, he legal by

appearances- why but the race disparity call cop on him? Trial court missing these prima facie material facts, denying Mr. Mccoy R56(C) summary judgment was plain error:

As illustrated. THI calling cops to question Mr. Mccoy but not to question the similarly situated White man was mixed motive's pretexted prejudice. Onus shifted, THI hasnt illustrated otherwise. Its Summary Judgment Motion swore pg.5¶2 'Ferracane monitors – rear (parking) lot': so it's more likely than not he understood or should've understood said parked SUV Mr. Mccoy's. Yes but, he'd even still call the cop and, it's more likely than not, direct cop to Mr. Mccoy's door– the dodgy dissembling of his THI affidavit notwithstanding. The affidavit's #10 swore, 'When (THI) discovered – Chevy was owned by – Mccoy – no further action was taken'. Yes but would the cop have referred THI to dayshift traffic [Exhibit A(4)] follow-up gratis? an overreach w/the matter resolved so and cop having no dog in the fight? or, more likely presumed, annoyed enough to call the Akron Police in the first place, did THI in some way prompt the cops referral? with an alleged catalyst of racism presumed.

No note of THI declining, the referral suggests that and 'pretextual, of their own manufacture & consequently unlawful (State of Ohio .v. Scott Stacey, ¶11, C.A. No. OT-13-002)' THI affidavits #9 swearing to 'not know – Chevy – was owned by – Mccoy'. Motive mixed, would the injuring party even with presumed legal pretext have called cop or wanted follow-up on the injured party absent a concluded illegal prejudice?

Mr. Mccoy made prima facie case with sufficient evidence both direct & circumstantial uncontroverted. The direct evidence was pretrial Exhibit A(4): a THI APD complaint [App.1¶13] illustrative of in part the exchange between Mr. Mccoy, Ferracane & the cop. As per, cop referring THI to 'dayshift traffic' follow-up was a circumstance presuming Ferracane, malcontented at Mr. Mccoy not being further scrutinized, prompted follow-up of what THI's affidavit's #10 swore resolved: that 'suggests' Ferracane calling cop & follow-up was to harass Mr. Mccoy [App.1¶13]. Below excerpt of claims, letters, story line appears new but is not, it believed they ended harassing: first person:

..Ferracane kept saying, 'Somebody stole my car'– his stolen just after I'd purchased mine. I'd kept responding, 'What's that got to do with me?' Frightened by events, I asked Ferracane, 'Why are you doing this?!' He nodded at the cop commanding me, 'talk to him', which is what I did- not wanting to get shot. I pleaded with the cop, '(Give me til) next month'. Ferracane sniped, 'I can have it towed; it's just sitting there'. Rallying, I disputed, 'As a resident of the Belvidere I'm due a parking spot out back'. The cop told him, 'He's rite', agreeing w/me, posited a similar situation to illustrate and as they left I closed my door...

Yes but again, more than new 'conversation', that's just a narrated continuation of claims 8-12, acquiesced to Exhibits A(4), B, C(a) & C(b), underlined, that do appear in pretrial record [App.1¶14] and their presumed story line. THI's Ferracane argued further, as per exhibit C(a)'s 'excited utterance', 'you've no license' and 'your tags are expired'. None of those things criminal offenses, it's presumbably more likely than not he with, again, a malcontent's insistence in some way prompted the cop's follow-up referral. From that line of reasoning we have nexus permitting we presume harrying or despoiling of Mr. Mccoy's peaceful enjoyment of lease habitability on the

part of Ferracane. In condemnation of despoilers all things presumed, the Court may presume him harasser. Camera-monitoring its apartment lot parking spot, its grounds comings & goings– it's more likely than not THI understood or should've understood that Mr. Mccoy's SUV was Mr. Mccoy's SUV. So. Why call the cops on Mr. Mccoy? presumed no violation of lease or law. Mr. Mccoy preserved, w/his Jan. 30th 2019 dispositive motion, this profiling disparity & that rebuttal of Belvidere Apt.No.5 (we'd speak in passing) resident Ferracane, his assertion as property manager to 'not know' SUV's owner [App.1¶11]. Is this lawsuit or those few missives Mr. Mccoy sent to THI contemporaneous with its harassing him all that stopped THI further harassing him down time? w/no response dismissal was plain error.

..the following note a common theme: harassment by threat, intimidation, discrimination of Blacks. Lower courts' dismissals allow bad precedent of permitting: THI violating O.R.C.s: 4113.06, Negligence of Employer; THI severely breaching Petitioner's lease habitability by violating 5321.15(A): 'No landlord of residential premises shall initiate . threat .. against a tenant ... of a residential premises'; THI severely harassing Petitioner in violating 3313.666(A)(2), Harassment (or) intimidation mean(ing) either of the following: (i) causes mental harm (ii) is sufficiently severe .. that it creates an intimidating, threatening or abusive ... environment; THI disparately treating Petitioner, a Black man, in violating 4112.02: It shall be an unlawful discriminatory practice: (A) For a (landlord), because of the race (or) color, ... of a person to (H)(12) '.. intimidate, threaten, or interfere with a

person in the exercise or enjoyment of ... a right granted .. by division (H) of this section; THI causing consequent emotional distress under said sections, under O.R.C. 5321.15(C), is liable for their threat to Mr. Mccoy's 5321.04(A)(1) [App.1¶6] 'common area safe(ty)' with his housing choices otherwise frying pan to fire...

w/Price Waterhouse .v. Hopkins 490 U.S. 228, onus shifts if Mr. Mccoy can prove mixed motive. With 1. THI's pretexted cop call on Mr. Mccoy, the only Black car owner, but not Steve Sanders, the only White car owner; 2. THI monitoring said apartment lot parking spot it more likely than not THI understood or should've understood said Chevy Mr. Mccoy's and, parked with expired tags even still it presumed as at no point violating lease or law; 3. THI having not illustrated that it would've called cops or wanted follow-up on Mr. Mccoy absent the Sanders prejudice, mixed motive pretexted prejudice is more likely than not.

Bullock condoned Ferracane's disparate distressing of Mr. Mccoy– employing him til he, Ferracane, succumbed to the after effects of a life of addiction. THI's Ferracane affidavit is inferior weight & Mr. Mccoy's Exhibit A(4) police incident report is superior weight. w/Desert Palace, Inc .v. Costa, 539 U.S. 90 (2003), the Supreme Court expressed that mixed motive litigants need but produce evidence of discriminatory animus, direct or circumstantial, more likely than not– with 'motivating factor' mixed motive in this case nothing more than means to prove 'but-for' single motive bias that exposes THI's Respondeat Superior liability.

Not red with rage. Not crying the blues. Mr. Mccoy understands that he has a past. Yes but he is now author of 2 books, has copyrighted 32 songs and, having gotten a grip, he takes such purploseful and basic pains to put the missteps of the first 35 of the 50 years of his existence, when he was young and foolish and didn't know what he was doing, behind him. Black's Law Dictionary defines discrimination as, 'a failure to treat all equally'. Yes but you decide. Mr. Mccoy may be a profligate liar. You never know. But prima facie facts don't lie: 1. THI had duty not to pretextually put cops on Black man; 2. THI did breach that duty but wouldn't've less mixed motive's prejudice; 3. in so breaching that duty, THI treated Black man disparately than similarly situated White; 4. Bullock knowing had a last chance to fire Ferracane but kept him on a year more & those duty breaches ranked a proximate cause of 'severe' (Castleberry) distress to Black man Mr. Mccoy, his safe habitabilty.

Existence of fact oft laid out by inference:

Fact A

THI called the cops, threatening Mr. Mccoy, a Black man, w/the towing of his car parked in the THI lot he rented– but the responding cop wouldn't tow it; THI still disputing legality of Mr. Mccoy parking there– the cop simply shooed THI's Ferracane away referring him to dayshift traffic follow-up with, to date, 'no further action – taken regarding – vehicle'.

Fact B

THI didn't call cops on the similarly parked White man, Steve Sanders, a tenant of THI's Belvidere Apartments, Apt.No.4 with, further, Mr. Mccoy and Sanders similarly situated regarding rules at and their lengthy familiarity of tenancy with THI's Belvidere Apartments & Agents.

Fact C

THI admits with its Summary Judgment Motion pg.5¶2 that it 'monitor(ed)' its 'rear (apartment) lot' parking spot where Mr. Mccoy parked his dark blue Chevy Blazer & Sanders parked his dark brown Chrysler Sebring, the only 2 cars owned and parked by Belvidere tenants in its small lot.

Inferred Fact D: Under Res Ipsa Loquitur

THI understood or should've understood triangulated pyre of facts AB&C buttress happenstance of THI mixed motive: (1) legal pretext- it's more likely than not THI called cop to tow Mr. Mccoy's car & prompted cops follow-up referral on Mr. Mccoy though cop found Mr. Mccoy parking so not illegal and (2) illegal prejudice- it's more likely than not that rather than a disparity of persona or the like the more prima facie disparity of racism was substantial 'motivating factor' – ESN .v. Charter Communications.

Again. We all have biases. Large or small. Yes but not like this. Yes but, after all our griping, we do the decent thing. It's not who it's done for, but that it's done. Ideally, the recipient of decency becomes decent– that or they choke on it. Yes but

either way the world is made a better place and we've done our part. Michael Bullock's resident property manager, Victor Ferracane, didn't– his calling cops on the Black man but not the similarly situated White man more likely than not mixed motive's legal pretext / illegal prejudice or single motive prejudice, this can't stand.

Also. Minister Muhammad writes his preliminary assaying of Mr. Mccoy in his capacity as a Minister with the Nation of Islam. Yes but, the Minister is also a Behavioral Specialist– w/a local behavioral health service as lately as August 2nd 2019. These respective ministerial & behavioral specializings inform and cannot be completely divorced from one another. Min. Muhammad's preliminary testimony filed Jan. 30th 2019 says as per this paragraph's nonparenthetical quotes: 'Re:cv2018.07.2921 (pg.1, outset)', 'the situation at hand (pg.1¶3, line 1)': that so everything the Minister states pg.2¶4 is (tho related yes, to a 'past' police shooting of Mr. Mccoy) a proximate 'trauma' 'easily triggered' by past 'sounds, scents, images' recurring as Mr. Mccoy claims THI cop calling caused.

Mr. Mccoy, asserting but what he can prove, refrains from premature pronouncements. Yes but, working backward, Ferracane alive to testify, THI was mute acquiescing: 5. March 28th 2018 Mr. Mccoy left a note on Ferracane's door-note-pad about chevy & tags. 4. That April he dropped by telling Mr. Mccoy police were checking out his Chevy. 3. When Mr. Mccoy, with trepidation, made a move to go ask the cops, 'what's the deal', he said, 'Oh they're gone now'. 2. Mr. Mccoy supposing with basis of hiss April gaslighting, he, Ferracane, could've been the one who called the

cops back in April, Mr. Mccoy realized with police records that he, upset at the theft of his car, looking for someone to blame, someone who 'looked the part', hadn't really called them, presuming fact 1. He, Ferracane, simply lashed out at Mr. Mccoy, showing up at Mr. Mccoy's door w/a cop May 5th 2018.

Yes but, the facts of the case support the suppositions of the case –reasonably inferred, acquiesced to, presumed fact– as 'conclusions which are regarded as logical by reasonable people in the light of their experience'– Lannon .v. Hogan, 719 F.2d 518, 521 (1st Cir. Mass.). In the experience of Blacks, in White societies, it's understood that from juris prudence's civilian-call-to-police 'floor' to its adjudicating 'ceiling'– we're the first suspected and last protected. Connecting presumption, inference, fact dots they corroborate Mr. Mccoy's suppositions or theory of case as probable, more likely than not– trial court dismissal against manifest weight of evidence.

The cop's follow-up referral presumes THI had intent to disparately harass Mr. Mccoy further on a matter resolved. Bullock has lost two Belvidere property managers to the after effects of a life of addiction the last three years. Where one such loss might be but coincidence, two happenstance– their deaths & behaviors finding causal-connection, coincidence & happenstance then are not, but rather go to the pattern or practice of negligent hiring alleged. Mr. Mccoy, maybe, yes morbidly, takes quite a bit of comfort w/Ferracane's passing. Yes but he died at a hospital while property manager Dale Pizer we arrived home to find overdosed, five days ripe,

w/drugs & paraphernalia evident. Dale a good man, addiction notwithstanding, unlike Ferracane, a racist: RIP them both but Bullock let both slide through the cracks years, that going to negligent supervision, retention.

So. THI having patterns or practices negligent with the lodging of this lawsuit, also having them in the area of a discrimination is a probability. Bullock condoning Ferracane, Court may presume his condoning discrimination as such even with, again, Dale a good man and no disparate actions in common between he & Ferracane. It's Bullock's THI Officers & Board boasting but one Black of eleven members while his grunt, lower tier staff & those served, by contrast, were mostly Black that Mr. Mccoy asserts illustrates THI-Ferracane disparate actions in common a shade reminiscent plantations– not lauded equal diversity.

They respectively Black & White aside, Mr. Mccoy telling Ferracane, it's more likely than not he knew, id est, understood or should've understood Mr. Mccoy was owner of the legally parked Chevy, therewith not engaged in criminal activity and not to call the cop. He should have reviewed the camera footage where he was uncertain, knocked on the doors of and asked the tenants of THI's Belvidere (there were but eight (8) of us) if he was still uncertain– he was the property manager, he should've managed. Calling the cop on Mr. Mccoy, THI increased the chances that even a good cop make a bad mistake. Mr. Mccoy does not make these claims lightly or with an overage of hunches. Understanding that somebody's gotta win and somebody's gotta lose– the beast will be fed. Yes but, the standard is more likely than

not. 'In my years of looking at discrimination complaints, it's pretty rare to throw one out at the motion to dismiss stage, as long as it passes, you know, a pretty low bar'– Associate Justice Brett Kavanaugh. You don't have to be 100% sure. 50.1% is basically good or sure enough.

Conclusion:

With foregoing & just basis, understood whether fruit of poison or premature tree this can't stand, pretrial court dismissing Mr. Mccoy's prima facie mixed motive case before evidence filing deadline was plain error- R56(C) fact, law, reasonable mind test sidestepped, offended. Such is illustrative and can be more by new evidence (bodycam) and exhibited subpoenaed witnesses under modifying of the pretrial court's Sept. 12th 2018 Case Management Order and its April 1st 2019 deadline for evidence filing Mr. Mccoy had relied on to preserve issues that was cut off by March 18th 2019 dismissal. But. Constitutional Amendments 8, 14 ask are Blacks due grievance redress of an inflicted, 'cruel' distress, its 'due process' trial & relief stemming & rooting out this type *subtle* White Supremacist Terrorism? where so may it please the Court grant certiorari and enter 'judgment summarily' for Petitioner under R.7.08B(3), just that basically or nothing more– thank you.

Petition of Morgan Mccoy

This suit raises substantial constitutional question and one that finds great general or public interest.

Please leniently construe.

Respectfully submitted by/about tuesday January 14th 2020 and timely resubmitted as per or under R.14.5, 28 USC Section 1746. **/ s / Morgan Mccoy ∴ ⅞**