No. 23-7580

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court U.S.
MAY 07 2024
OFFICE OF THE CLERK

JOSEPH MORAGA — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSEPH MORAGA
(Your Name)

777 F.M.3497
(Address)

WOODVILLE, TX. 75990
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

PETITIONER AT TRIAL FILED A MOTION TO SUPPRESS EVIDENCE THAT THE STATE ADMITS WAS FOUND DURING A WARRANTLESS SEARCH.Petitioner's MOTION WAS BASED ON THE RULINGS OF THE UNITED STATES SUPREME COURT IN U.S. v. CHADWICK,433 U.S. 1 (1977) WHICH CONTAINS SIMULAR FACTS. IN DENYING PETITIONER'S APPEAL THE TEXAS COURT OF APPEALS,THIRD DISTRICT,AT AUSTIN HELD THAT THE LUGGAGE STORED IN THE MOTELS CLOSET WAS NOT A 200 LB FOOTLOCKER STORED IN THE BOOT OF AN AUTOMOBILE AND WAS CONTEMPORANEOUS TO HIS CUSTODIAL ARREST.THE COURT ALSO HELD THAT THE ITEMS COULD BE CONSIDERED AS BEING PART OF AN ARREST INCIDENT AS IT WOULD BE INCONCEIVEABLE THAT THEY WOULD NOT FOLLOW PETITIONER INTO CUSTODY.LASTLY THE COURT STATED THAT TWO PERSONS COULD BE FOUND GUILTY OF POSSESSING THE SAME ITEMS BECAUSE THEY WERE ARRESTED TOGETHER,BASICALLY STATED.

THE QUESTIONS ALL THIS RAISES ARE :

(1)DOES THE SIZE OF AN ITEM DETERMINE WHETHER A SEARCH INCIDENT TO ARREST HAS OCCURRED OR IS IT IN THE DISTANCE FROM THE ARRESTEE?

(2) WHAT IS MEANT BY CONTEMPORANEOUS TO A CUSTODIAL ARREST?IS IT WITHIN THE SAME BUILDING OR CONTAINED ON HIS PERSON AS SOME COURTS HAVE RULED?

(3)WHEN ONE PERSON PLEADS GUILTY TO POSSESSING THE ITEMS AND TESTIFIES THAT ALL THE ITEMS CONFISCATED BELONGED SOLELY TO HER CAN THE COURT LATER STATE THAT THE ITEMS WERE OWNED JOINTLY?

(4) IS MORE REQUIRED TO PROVE OWNERSHIP THAN THE FACT THAT A WHITE T-SHIRT AND BOXER SHORTS WERE FOUND IN THE LUGGAGE BAG AND THAT PETITIONER WAS WEARING A WHITE T-SHIRT AT TIME OF ARREST? IS CIRCUMSTANTIAL EVIDENCE PROOF BEYOND A REASONABLE DOUBT OF OWNERSHIP OR POSSESSION,JUST BECAUSE THAT PERSON CARRIED THE

ITEM AT ONE TIME OR ANOTHER?

(5) THE COURT NOTED THAT THE LUGGAGE WAS LEFT IN THE CUSTODY OF THE MOTEL CLERK AND PETITIONER WERE TO BE BACK AROUND TWELVE TO CHECK IN.A RECIPT FROM JACK-IN-THE-BOX FROM 11:21 FOUND IN MS.PEREZ'S PURSE IS SUFFICIENT PROOF THAT ALL THE BAGS WERE CONTEMPORANEOUS TO ARREST.WOULD THE CONTEMPORANEOUS ITEMS INCLUDE THE BAGS THAT WERE IN A CLOSET BEHIND THE CHECK-IN COUNTER OR ONLY WHAT WAS IN MS.PEREZ'S PURSE AND PETITIONER'S POCKETS?

(6) SHOULD THE THIRD DISTRICT COURT OF APPEAL BE ALLOWED TO GIVE WHAT AMOUNTS TO AN ADVISORY OPINION BECAUSE THE TRIAL COURT FAILED TO PROVIDE WRITTEN FINDINGS OF FACT AND CONCLUSSIONS OF LAW AS REQUIRED IN ORDER TO GIVE REASON FOR HIS DENIAL OF PETITIONER'S MOTION TO SUPPRESS EVIDENCE? THE ABLITY TO MAKE USE OF ANY THEORY OF LAW INSTEAD OF THE SPECIFIC FINDINGS OF THE COURT.INSTEAD OF ANY CORRECT THEORY OR SHOULD THE REVIEW HAVE BEEN MADE UNDER THE HISTORIC FACTS OF THE CASE SUCH AS THE FACT THAT THE ITEMS SEARCH WERE NOT IN THE IMMEDIATE AREA UNDER THE CONTROL OF THE ARRESTEES NOR WERE THEY IN PLAIN VIEW SINCE THEY WERE INSIDE A CLOSET?

LIST OF PARTIES

[X] 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:

FOR THE STATE OF TEXAS

HAYS COUNTY DISTRICT ATTORNEY MICHAEL (MIKE) FOUTS

P.O.BOX 193

HASKELL,TX. 79521-0193

RELATED CASES

THE STATE OF TEXAS v. JOSEPH MORAGA ,No. CR-19-0608-C In the 274th Judicial District Court Hays County,Texas Judgment entered on July 21,2021

JOSEPH MORAGA v.THE STATE OF TEXAS, No.03-21-00354-CR TEXAS COURT OF APPEALS,THIRD DISTRICT,AT AUSTIN Judgment Rendered on July 14,2023

JOSEPH MORAGA v. THE STATE OF TEXAS, PD-0515-23, TEXAS COURT OF CRIMINAL APPEALS Review refused on January 10,2024

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TABLE OF AUTHORITIES CITED

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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 _____ 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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[X] reported at MORAGA v.STATE,2023 Tex.App.LEXIS 5110;or
[x] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the 274th Judicial 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,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 1-10-2024. A copy of that decision appears at Appendix C. Rehearing ruled 2-13-2024

[X] A timely petition for rehearing was thereafter denied on the following date: 02-13-2024, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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 FOUR,PART 1 OF16

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,ARTICLE VI,CL.2

THIS CONSTITUTION,AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOF,AND ALL TREATIES MADE,OR WHICH SHALL BE MADE,UNDER THE AUTHORITY OF THE UNITED STATES, SHALL BE THE SUPREME LAW OF THE LAND,AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY,ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING.

UNITED STATES CONSTITUTION,FOURTEENTH AMENDMENT,SECTION 1

ALL PERSONS BORN OR NATURLIZED IN THE UNITED STATES,AND SUBJECT TO THE JURISDICTION THEREOF,ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE.NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVIEGES 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 THE EQUAL PROTECTION OF THE LAWS.

TEXAS CONSTITUTION,ART.I,§ 19,PART 1 OF 2

NO CITIZEN OF THIS STATE SHALL BE DEPRIVED OF LIFE,LIBERTY, PROPERTY , PRIVILEGES OR IMMUNITIES,OR IN ANY MANNER DISENFRANCHISED,EXCEPT BY THE DUE COURSE OF THE LAW OF THE LAND.

TEXAS CODE OF CRIMINAL PROCEDURES,ART.38.23

(a)NO EVIDENCE OBTAINED BY AN OFFICER OR OTHER PERSON IN VIOLATION OF ANY PROVISIONS OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS,OR OF THE CONSTITUTION OR LAWS OF THE UNITED STATES OF AMERICA,SHALL BE ADMITTED IN EVIDENCE AGAINST THE ACCUSED ON THE TRIAL OF ANY CRIMINAL CASE.....

STATEMENT OF THE CASE

THIS CASE STEMS FROM A FALSE INCIDENT REPORT OF KIDNAPPING AND ROBBERY MADE TO A SAN MARCOS TEXAS POLICE DEPARTMENT OFFICER (SMPD) BY ONE RUBEN MENDIOLA.MR. MENDIOLA WAS THE CAUSE OF MISS SARAH PEREZ'S FLIGHT FROM AUSTIN,TEXAS.THE FALSE REPORT WAS MADE ABOUT 7:20 AM ON DECEMBER 27,2018.

DUE TO THE INTRUSION OF MR. MENDIOLA, SARAH PEREZ NO LONGER FELT SAFE IN HER ROOM AT THE SAN MARCOS ECONOLODGE MOTEL.THEREFORE THEY LEFT THAT MOTEL AND DECIDED TO TRY ANOTHER, AND LEFT.

SAN MARCOS POLICE ADMIT THAT THEY WATCHED THE SECURITY RECORDING OF THE MOTEL PARKING LOT AND NOTED THAT MISS PEREZ AND PETITIONER LEFT THE ECONOLODGE MOTEL BY WAY OF AN UBER RIDE. HOWEVER ,THEY FAILED TO WATCH THE SECURITY FOOTAGE BACK TO THE ARRIVAL OF MR. MENDIOLA WHICH WOULD HAVE PROVEN THAT HE WAS IN FACT MAKING A FALSE OFFENSE REPORT TO THE POLICE OFFICER.THE ARREST WAS THEREFORE UNREASONABLE IN LIGHT OF A FAILURE TO PROPERLY INVESTIGATE THE ALLEGATIONS.

SAN MARCOS POLICE TRACED MISS PEREZ AND PETITIONER TO THE COUNTRY INN & SUITES WHERE THEY FOUND THAT THE COUPLE HAD BEEN, AND IN FACT HAD LEFT MISS PEREZ'S LUGGAGE IN THE CUSTODY OF THE CLERK IN A LOCKED CLOSET BEHIND THE CHECK IN COUNTER, WITH THE INTENTION OF RETURNING AFTER TWELVE NOON IN ORDER TO CHECK INTO A ROOM.

SAN MARCOS POLICE DEPARTMENT WERE INFORMED ABOUT THE LUGGAGE LEFT IN THE CUSTODY OF THE CLERK YET REQUESTED NO WARRANT IN ORDER TO BE ABLE TO TAKE CUSTODY OF SAID LUGGAGE AND SEARCH IT,INSTEAD HOPING THAT THE COUPLE WOULD TAKE CUSTODY OF THE LUGGAGE UPON

THEIR RETURN. INSTEAD THE SAN MARCOS POLICE CALLED IN BACK-UP OF THEIR SWAT TEAM AND SET UP A PARIMETER CORRIDOR OPERATION IN ORDER TO ARREST THE COUPLE UPON THEIR RETURN TO THE COUNTRY INN & SUITES.

BECAUSE THEIR RETURN WAS BEFORE NOON THE COUPLE TOOK SEATS ON THE LOBBY COUCH NEER THE FRONT DOOR.NEITHER MADE A REQUEST FOR THE LUGGAGE AND IT WAS STILL LOCKED AWAY IN THE CLOSET AT THE TIME OF ARREST. DURING ARREST WHILE COMPLYING WITH OFFICERS ORDERS TO KEEP HANDS RAISED AND GET ON THE FLOOR, ONE OVER ZEALOUS SWAT OFFICER SHOT PETITIONER IN THE ABDOMEN FROM SIX FEET AWAY WITH A BEAN BAG CANNON.FOR THIS REASON SAN MARCOS POLICE DID NOT ATTEMPT TO OBTAIN A COPY OF THE LOBBY SECURITY VIDEO AS PETITIONER WAS SERIOUSLY INJURED BY THE UNNESSISARY FORCE USED AGAINST HIM.

AT TIME OF ARREST BOTH MISS PEREZ AND PETITIONER WERE PAT SEARCHED AND THEIR PROPERTY THAT WAS IN THEIR POSSESSION AT THAT TIME WAS CONFISCATED BY SAN MARCOS POLICE.THEREFORE PETITIONER ACKNOWLEDGES THAT HIS WALLET AND MISS PEREZ'S PURSE ARE THE ONLY ITEMS THAT WERE TAKEN THAT WERE SUBJECT TO A SEARCH INCIDENT TO ARREST PROCEDURE.HOWEVER THESE ITEMS WERE NOT SEARCH AT THE SCENE OF THE ARREST AND WERE TRANSPORTED IN A SEPARATE VEHICLE TO THE SAN MARCOS POLICE STATION ALONG WITH THE LUGGAGE COL-LECTED FROM THE LOCKED CLOSET BEHIND THE CHECK-IN COUNTER.

WHILE MISS PEREZ AND PETITIONER WERE BEING INTEROGATED BY DETECTIVES CONCERNING THE FALSE INCIDENT REPORT BY MR. MENDIOLA, TWO OTHER OFFICERS PERFORMED A WARRANTLESS SEARCH OF MISS PEREZ'S LUGGAGE TAKEN FROM THE LOCKED CLOSET AND HER HAND BAG THAT SHE HAD ON HER PERSON.IT WAS THIS HAND BAG THAT CONTAINED THE TIMED RECEIPTS THE APPEALS COURT MADE MENTION OF.SAN MARCOS POLICE

ADMIT THAT THE PROPERTY SEARCH WAS CONDUCTED WITHOUT A WARRANT SOME TIME AFTER THE ALLEGED SUSPECTS WERE TAKEN INTO CUSTODY. NEITHER MISS PEREZ OR PETITIONER GAVE CONSENT FOR MISS PEREZ'S LUGGAGE TO BE SEARCHED.DURING THE WARRANTLESS SEARCH OF THE LUGGAGE POLICE OPENED A PLASTIC CVS PHARMACY BAG THAT CONTAINED A TIED SHUT BAG CONTAINING A JAR OF MARIJUANA,A LIGHTER,A SCALE, SOME CIGARILLO WRAPPERS,A SMALL BAG CONTAINING 14 MULTICOLORED PILLS,A WHITE T-SHIRT AND BOXER SHORTS.

THE PILLS WERE LATER TESTED BY A CHEMIST WITH THE AUSTIN POLICE DEPARTMENT WHO STATED THAT THE PILLS HAD A COMBINED WEIGHT OF 1.22 GRAMS THAT CONTAINED METHAMPHETAMINE.

MISS PEREZ PLEAD GUILTY TO POSSESSION DURING HER COURT APPEARANCE AND TESTIFIED UNDER OATH THAT ALL THE LUGGAGE AND THE ITEMS CONTAINED IN IT BELONGED TO HER ALONE, IN CAUSE NO. CR-19-0608-C,PETITIONER FILED A PRE-TRIAL MOTION TO SUPPRESS ALL EVIDENCE OBTAINED THROUGH A WARRANTLESS SEARCH AND SEIZURE OF ALL ITEMS THAT WERE NOT WITHIN HIS IMMEDIATE AREA OF CONTROL AS DEFINED BY U.S. v.CHADWICK,433 U.S.1 (1977).THE TRIAL COURT DENIED THE MOTION WITHOUT CITING THE REASON FOR THE DENIAL.

PETITIONER APPEALED AND THE TEXAS COURT OF APPEALS,THIRD DISTRICT,AT AUSTIN IN CAUSE NO.03-21-00354-CR HELD THAT IT WAS INCONCEIVABLE THAT UNDER THE CIRCUMSTANCES THAT THE JUDGE WOULD NOT BELIEVE THAT LUGGAGE WOULD ACCOMPANY MORAGA INTO CUSTODY AND THAT BECAUSE HE WAS SEEN IN A VIDEO WITH A PLASTIC BAG IN HIS HAND AT 7:20 AM THAT THAT EVIDENCE WAS SUFFICIENT TO SUPPORT A FINDING THAT MORAGA'S POSSESSION OF THE BAG FOUND IN THE LOCKED CLOSET OF THE COUNTRY INN & SUITES SOME FOUR AND ONE HALF HOURS LATER WAS REASONABLY CONTEMPORANEOUS TO HIS ARREST.PETITIONER

WAS NOT THE OWNER OF THE LUGGAGE AND HAD NO KNOWLEDGE OF WHAT MISS PEREZ HAD IN HER PROPERTY.HE DID NOT KNOW WHY HE WAS BEING ARRESTED NOR TO HIS WAY OF THINKING WOULD IT BE REASONABLE FOR THE POLICE TO VIOLATE HIS AND MISS PEREZ'S CONSTITUTIONAL RIGHTS PROTECTING HIS RIGHT TO BE SECURE IN HIS PERSON AND PROPERTY FROM UNREASONABLE SEARCH AND SEIZURE WITHOUT A PROPERLY EXECUTED WARRANT ISSUED BY A MAGISTRATE DEFINING THE ITEMS TO BE SEARCHED FOR AND THE ITEMS TO BE SEARCHED.THE LUGGAGE CONTAINED WITHIN THE SECURED CLOSET WAS NOT WITHIN HIS AREA OF CONTROL AT THE TIME OF THE ARREST AND WAS ONLY CONFISCATED AFTER HE WAS PLACED IN A SECURED VIHICLE.THEREFORE IT IS NOT CONTEMPORANEOUS TO HIS ARREST.

PETITIONER FILED A PETITION FOR DISCRETIONARY REVIEW WITH THE TEXAS COURT OF CRIMINAL APPEALS (PD-0515-23) WHICH WAS REFUSED ON 01/10/2024. PETITIONER RECEIVED NOTICE OF THIS DECISION BY MAIL ON 01/25/2024. PETITIONER FILED FOR REHEARING WITH THAT COURT THAT WAS MAILED ON 02/08/2024 AND RECEIVED THE COURTS RESPONSE BY MAIL ON 02/23/2024 SOME TEN DAYS AFTER THE COURT HAD RENDERED A FINDING ON THE MOTION FOR REHEARING.PETITIONER BELIEVES THAT HIS MOTION WAS TIMELY DUE TO THE ACTIONS OF THE UNIT MAIL ROOM IN HOLDING PETITIONER'S LEGAL MAIL FOR SUCH LONG PERIODS OF TIME.

REASONS FOR GRANTING THE PETITION

THE TEXAS COURT OF APPEALS,THIRD DISTRICT,AT AUSTIN HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS UNITED STATES SUPREME COURT. IN SO DOING THE THIRD DISTRICT COURT OF APPEALS FOR THE RECORD NOTED THAT THE TRIAL COURT FAILED TO ENTER ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW TO SUPPORT THE DENIAL OF PETITIONER'S MOTION TO SUPPRESS EVIDENCE.HOWEVER,INSTEAD OF ABATING THE APPEAL AND ORDERING THE TRIAL COURT TO MAKE WRITTEN FINDINGS OF FACT THEY STATE THAT THEY MUST ASSUME THE TRIAL COURT MADE IMPLICIT FINDINGS OF FACT THAT SUPPORT THE TRIAL COURT'S DECISION, AND THAT THEY WOULD SUSTAIN THE TRIAL COURT'S RULING IF THAT RULING IS "REASONABLY SUPPORTED BY THE RECORD AND IS CORRECT ON ANY THEORY OF LAW APPLICABLE TO THE CASE(QUOTING VALTRERRA v.STATE, 310 S.W.3d 442,447(TEX.CRIM.APP.2010)).HOWEVER,THE TEXAS COURT OF APPEALS,SECOND DISTRICT,AT FORT WORTH IN STATE v.DRURY,560 S.W.3d 752(TEX.APP.-FORT WORTH 2018)HELD:

> We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review.Amador v.State,221 S.W.3d 666,673(Tex.Crim. App.2007);Guzman v. State,955 S.W.2d 85,89(Tex.Crim. App.1997).We give almost total deference to a trial court's rulings on questions of historical fact and application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor,but we review de novo application of law-to-fact questions that do not turn on credibility and demeanor.Amador,221 S.W. 3d at 673;Estrada v.State,154 S.W.3d 604,607(Tex. Crim.App.2005);Johnson v. State,68 S.W.3d 644,652-53 (Tex.Crim.App.2002).

THE STATE IN OUR CASE NEVER CLAIMS INEVITABLE DISCOVERY AND BASES THE WARRANTLESS SEARCH OF MISS PEREZ'S LUGGAGE,SUCH AS IT WAS,ON PRICE v.STATE,662 S.W.3d 428(TEX.CRIM.APP.2020)(SEE TRIAL TRANSCRIPT 4VOL.20-21) WHICH CITES A NORTH DAKOTA SUPREME COURT CASE.IN BOTH THOSE CASES PROPERTY SECURED WITHIN LUGGAGE OR A BACKPACK WERE SEARCHED AFTER THE ARRESTEE WAS SECURED AND TAKEN TO A POLICE STATION WERE THE LUGGAGE WAS FINALLY SEARCHED.STATING BASICALLY THAT THE LUGGAGE NECESSARILY HAD TO ACCOMPANY THE ARRESTEE TO JAIL.THUS GIVING POLICE THE RIGHT TO SEARCH THE PROPERTY WITHOUT OBTAINING A WARRANT.PRICE ALSO CITED LALANDE v.STATE, 676 S.W.2d 115(TEX.CRIM.APP.1984) BUT IN THAT CASE THE ISSUE WAS THE TEXAS EXCLUTIONARY RULE OF THE TEXAS CODE OF CRIM.PROC.art. 38.23(a).THE NORTH DAKOTA CASE CITED ABOVE WAS STATE v.MERCIER, 883 N.D.2d 478(N.D.2016).IN ALL THESE CASES CITED BY THE STATE PROSECUTOR AND THE THIRD DISTRICT COURT OF APPEALS WE FIND CONTRARY RULINGS TO THAT OF THIS SUPREME COURT IN OPINIONS IN SUCH CASES AS UNITED STATES v. CHADWICK,433 U.S.1,97 S.Ct.2476,53 L.Ed. 2d 538(1977);CHIMEL v. CALIFORNIA ,395 U.S.752,89 S.Ct.2034,23 L. Ed.685(1969); KATZ v.UNITED STATES,389 U.S.347,88 S.Ct.507,19 L.Ed.2d 576(1967);AND ARIZONA v.GANT,556 U.S.332,129 S.Ct.1710, 173 L.Ed.2d 485(2009).THE RULINGS MADE BY THE SUPREME COURT IN THESE CASES HAVE BEEN CONSISTENT THROUGH THE YEARS IN THAT:(1) WARRANTLESS SEARCHES CONDUCTED OUTSIDE THE JUDICIAL PROCESS,WITHOUT PRIOR APPROVAL BY A JUDGE OR MAGISTRATE,ARE PER SE UNREASONABLE UNDER THE FOURTH AMENDMENT.(2) THERE ARE ONLY TWO EXCEPTIONS TO THE FOURTH AMENDMENT WARRANT CLAUSE;THOSE BEING A CONSENTUAL SEARCH AND A SEARCH -INCIDENT-TO-LAWFUL-ARREST ,WITH AN ALLOWANCE FOR THE IN PLAIN VIEW DOCTRINE AS DESCRIBED IN TEXAS v.BROWN,460

U.S.730,103 S.Ct.1535,75 L.Ed.2d 502(1983);(3)A SEARCH-INCIDENT-TO-ARREST MAY ONLY INCLUDE THE ARRESTEE'S PERSON AND THE AREA WITHIN ARRESTEE'S IMMEDIATE CONTROL:(4)IMMEDIATE CONTROL MEANING THE AREA FROM WITHIN WHICH THE ARRESTEE MIGHT GAIN POSSESSION OF A WEAPON OR DESTRUCTABLE EVIDENCE:(5) IF THERE IS NO POSSIBILITY THAT AN ARRESTEE COULD REACH INTO THE AREA THAT LAW ENFORCEMENT OFFICERS SEEK TO SEARCH,BOTH JUSTIFICATIONS FOR THE SEARCH-INCIDENT-TO-ARREST EXCEPTIONS ARE ABSENT AND THE RULE DOES NOT APPLY;AND (6) ONCE LAW ENFORCEMENT OFFICERS HAVE REDUCED THE LUGGAGE OR OTHER ITEMS OF PERSONAL PROPERTY NOT IMMEDIATELY ASSOCIATED WITH THE PERSON OF THE ARRESTEE TO THEIR EXCLUSIVE CONTROL,AND THERE IS NO LONGER A DANGER THAT THE ARRESTEE MIGHT GAIN ACCESS TO THE PROPERTY TO SEIZE A WEAPON OR DESTROY EVIDENCE, A SEARCH OF THE PROPERTY IS NO LONGER AN INCIDENT OF THE ARREST.

IN QUESTION ONE PETITIONER SEEKS THE COURTS CLARIFICATION AS TO THE SUPREME COURT'S RULING THAT ONCE THE LUGGAGE IS REDUCED TO THE EXCLUSIVE CONTROL OF THE LAW ENFORCEMENT OFFICERS A SEARCH OF THE PROPERTY IS NO LONGER A SEARCH-INCIDENT-TO-ARREST.THE IMPETUS FOR THIS QUESTION CAN BE FOUND IN THE THIRD DISTRICT COURT OF APPEAL'S OPINION ON PAGE EIGHT OF MORAGA v.STATE,2023 TEX.APP.LEXIS 5110 CONCERNING PRICE v.STATE,662 S.W.3d 428 (TEX. CRIM.APP. 2020) WHICH STATES:

> The Court of Criminal Appeals majority in Price distinguished Chadwick and Daugherty[State v. Daugherty,931 S.W.2d 268 (Tex.Crim.App.1996)] and reversed the court of appeals.662 S.W.3d at435,438.The court noted that Chadwick concerned a 200-pound footlocker,which is less portable than a suitcase. Id.at 435....

AGAIN IN THE CASE AT BAR,THE LUGGAGE WAS NOT ON THE ARRESTEE

OR MISS PEREZ'S PERSON.NOR WAS IT WITHIN REACH AS IT WAS BEING STORED IN A SECURE CLOSET BEHIND THE CHECK-IN COUNTER BY THE MOTEL CLERK.WHICH LEADS TO THE IMPETUS FOR QUESTION TWO OF THIS PETITION, THE MEANING OF THE WORD "CONTEMPORANEOUS" AS USED IN THE SUPREME COURT'S DECISIONS MENTIONED ABOVE.DOES THE COURT HOLD TO A DIFFERENT MEANING THAN THAT OF THE MERRIAM-WEBSTER DICTIONARY,NEW EDITION,COPYRIGHT 2019 BY MERRIAM-WEBSTER,INCORPORATED THAT DEFINES THE WORD ON PAGE 108 AS:

CONTEMPORANEOUS:adj.of contemporary.

CONTEMPORARY: 1.occurring or existing at the same time.
2.marked by characteristics of the present period.

IF WE HOLD THAT THE SUPREME COURT'S UNDERSTANDING OF THE WORD IS THE SAME AS THE DICTIONARIES DEFINITION OF THE WORD THEN ACCORDINGLY THE ITEMS TO BE SEARCHED WOULD NEED TO BE ON THE PERSON OF THE ARRESTEE OR MISS PEREZ AT THE TIME THEY WERE ARRESTED,OR WITHIN THEIR IMMEDIATE REACH.THEREFORE,IS IT REASONABLE FOR THE THIRD DISTRICT COURT OF APPEALS TO HOLD THAT BECAUSE PETITIONER WAS SEEN ON A SECURITY VIDEO AT SEVEN-FOURTY OR THERE ABOUTS CARRYING WHAT APPEARS TO BE A PLASTIC BAG AND ROLLING MISS PEREZ'S LUGGAGE TO AN UBER DRIVER'S VEHICLE SOME FOUR HOUR PLUS FROM THE TIME OF ARREST THAT THE THIRD DISTRICT COURT OF APPEALS COULD HOLD THAT WAS WITHIN THE BOUNDRIES OF THE TERM "CONTEMPORANEOUS" POSSESSION ? THEN AGAIN,IF THE THIRD DISTRICT COURT OF APPEALS WAS INSTEAD REFERING TO THE "JACK-IN-THE-BOX" RECIPT TIME STAMPED AT 11:21 AND THE ARREST OCCURRED NEER NOON WOULD THAT BE PROOF OF "CONTEMPORANEOUS"POSSESSION OF LUGGAGE THAT WAS NOT AT THE FAST FOOD CHAIN AT THE TIME,NOR

ON THE ARRESTEE'S PERSON.THE RECIPT WAS FOUND IN MISS PEREZ'S HANDBAG AS EVIDENCED BY THE PHOTOS IN EVIDENCE,IT WAS NOT FOUND INSIDE THE LUGGAGE TAKEN FROM THE MOTEL CLOSET BEHIND THE CHECK IN COUNTER.WHAT IF THE THIRD DISTRICT COURT OF APPEALS RULED THAT THE POSSESSION WAS "CONTEMPORANEOUS" BECAUSE BOTH ARRESTEES HAD ENTERED THE LOBBY WITH THE INTENT OF PROCURING A ROOM,YET HAD NOT APPROACHED THE DESK BECAUSE IT WAS NOT YET AFTER NOON AND THEY HAD BEEN TOLD A ROOM WOULD NOT BE AVAILABLE UNTIL AFTER NOON.IS INTENT TO OBTAIN THE LUGGAGE THEREFORE "CONTEMPORANEOUS" POSSESSION?

PETITIONER,MORAGA,WAS A RESIDENT OF THE CITY OF SAN MARCOS. HE HAD MET MISS PEREZ WHILE VISITING RELATIVES IN AUSTIN.WHEN SHE LEFT AUSTIN AND CAME TO SAN MARCOS SHE CONTACTED PETITIONER AND HE WAS HELPING HER BY USING HIS IDENTIFICATION TO CHECK IN TO THE AREA MOTEL BECAUSE SHE DID NOT HAVE AN IDENTIFICATION CARD. HE HAD NO NEED OF LUGGAGE FOR HIMSELF AS HE WAS IN HIS OWN HOME CITY AND COULD GET A CHANGE OF CLOTHING BY TAKING AN UBER RIDE TO HIS HOME AND BACK.PETITIONER RESPECTED MISS PEREZ'S RIGHT TO PRIVACY AND THEREFORE HAD NO KNOWLEDGE OF WHAT SHE CARRIED IN HER PERSONAL LUGGAGE.IF AS THE THIRD DISTRICT COURT OF APPEALS HOLDS IS ALLOWED TO STAND THEN NO PORTER IN ANY HOTEL OR AIRPORT WOULD CARE TO HANDLE PEOPLE'S LUGGAGE FOR FEAR THAT THEY COULD BE CONSIDERED AS PARTIES TO ANYTHING ILLEGAL THAT WAS CONTAINED WITHIN THE BAGS AND LUGGAGE THEY CARRIED FOR OTHERS.IN CAUSE NO. CR-19-0717-C MISS PEREZ PLEAD GUILTY TO POSSESSION STATING TO THE SAME TRIAL JUDGE IN THIS CAUSE THAT SHE OWNED ALL THE BAGS THAT THE PROSECUTOR DISPLAYED AS EVIDENCE IN THIS CAUSE AND ALL THE CONTENTS OF THOSE SAME BAGS AND LUGGAGE THAT THE POLICE

OBTAINED FROM THE CLOSET OF THE COUNTRY INN & SUITES WITHOUT A WARRANT. BASED ON HER PLEA AND STATEMENT UNDER OATH HOW COULD THE THIRD DISTRICT COURT OF APPEALS CONCLUDE THAT THE EVIDENCE PRESENTED PROVED BEYOND A REASONABLE DOUBT DUEL POSSESSION? BEING A GENTLEMAN AND CARRYING A LADY'S BAGS IS NOT DUEL POSSESSION.IF SO THAN THE CASE THAT THE PROSECUTION AND THE THIRD DISTRICT COURT OF APPEALS USED THAT WAS UNDER PRICE ,LALANDE v.STATE,676 S.W.2d 115(TEX.CRIM.APP.1984)(SEE MORAGA v.STATE, 2023 TEX.APP. LEXIS 5110 @7,WHERE THE THIRD DISTRICT COURT OF APPEALS NOTED THAT A COMPANION OF ARRESTEE LALANDE WAS ACTUALLY TOTING THE BAG THAT CONTAINED THE MURDER WEAPON, YET THE COMPANION IS NOT LISTED AS BEING AN ACCESSORY TO THAT MURDER,OR POSSESSING AN ILLEGAL FIREARM BECAUSE THE LALANDE HIMSELF CLAIMED THAT THE BAG IN QUESTION BELONGED TO HIM.THEREFORE THE STATE'S OWN CASE SHOWS THAT SOMETHING MORE THAN JUST BEING WITH SOMEONE IS NECESSARY IN ORDER TO PROVE DUEL POSSESSION OF AN ITEM,OR EVEN JUST CARRYING THAT ITEM FOR THE OTHER PERSON IS NOT DUEL POSSESSION.

QUESTION FOUR DEALS WITH PROOF BEYOND A REASONABLE DOUBT. PETITIONER IS SAID TO HAVE DUEL POSSESSION BECAUSE THE BAG THAT CONTAINED THE PILLS ALSO CONTAINED A WHITE T-SHIRT AND BOXER SHORTS.NO EVIDENCE WAS PRESENTED THAT WOULD OR COULD BE HELD AS PROOF THAT ANY OF THESE ITEMS BELONGED TO PETITIONER.THE BRAND NAME WAS NOT MATCHED TO THE SHIRT THAT HE ACTUALLY WORE, THERE WAS NO NAME INSCRIBED ON THE ARTICLES THAT WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE ARTICLES BELONGED TO PETITIONER. THE CLOTHING SIZE WAS NOT MATCHED TO THE T-SHIRT WORN BY THE PETITIONER,YET THE FACT THAT PETITIONER APPEARED ON A VIDEO RECORDING SOME FOUR HOURS BEFORE HIS ARREST WEARING A WHITE T-

SHIRT WAS ALONE SUFFICIENT EVIDENCE THAT PETITIONER OWNED OR HAD DUEL POSSESSION OF THE BAG THAT WAS SECULUDED FROM VIEW IN THE MOTEL CLOSET UNDER THE CARE AND CUSTODY OF THE MOTEL CLERK. BOTH THE PROSECUTIONER'S AND THE THIRD DISTRICT COURT OF APPEAL'S PRIMA FACIE EVIDENCE OF OWNERSHIP OR DUEL POSSESSION OF THE BAG BASED ON THE WHITE T-SHIRT AND SHORTS FAIL BESIDE THE TESTIMONY OF MISS PEREZ IN CAUSE NO. CR-19-0717-C WERE SHE TOOK FULL OWNERSHIP OF ALL THE ITEMS OF LUGGAGE AND THEIR CONTENTS BEFORE THE SAME TRIAL JUDGE.THEN AGAIN ONE HAS TO WONDER IF THE FACT THAT PETITIONER WAS WEARING A WHITE T-SHIRT SOME FOUR HOURS EARLIER AND WAS STILL WEARING THAT SAME T-SHIRT AT TIME OF HIS ARREST QUALIFIES AS PROOF BEYOND REASONABLE DOUBT WHICH IS STILL THE DEGREE OF PROOF NEEDED TO CONVICT OF A FELONY IN THIS STATE AND COUNTRY,SEE JACKSON v.VIRGINIA,443 U.S.307,99 S.Ct. 2781,61 L.Ed.2d 560(1979).

QUESTION FIVE ALSO DEALS WITH SUFFICIENCY OF THE EVIDENCE IN THAT A RECIEPT FROM JACK-IN-THE-BOX FOUND IN MISS PEREZ'S PURSE TIME STAMPED 11:21 WAS SUFFICIENT TO PROVE THAT THE BAGS THAT WERE NEVER AT THE FAST FOOD ESTABLISHMENT WAS CONTEMPORANEOUS POSSESSION OF THOSE SAME BAGS THAT WERE STILL SECURED IN THE MOTEL'S CLOSET .

QUESTION SIX HAS ALREADY BEEN DISCUSSED ABOVE IN THAT IT SEEMS THAT BY ALLOWING THE TRIAL COURT TO EXCUSE ITSELF FROM MAKING FINDINGS OF FACT AND THE CONCLUSIONS OF LAW THAT IT USED IN ORDER TO DENY PETITIONER'S MOTION TO SUPPRESS EVIDENCE INSTEAD OF ABATING THE APPEAL BACK TO THE TRIAL COURT FOR THE SAME WAS UNREASONABLE AND ALLOWED THEM TO MAKE AN ADVISORY OPINION IN-STEAD OF AN OPINION BASED ON THE FINDINGS OF THE TRIAL COURT.IN

TEXAS AN ADVISORY OPINION LACKS FORCE AND CAN NOT BE USED TO UPHOLD A CONVICTION,AS IT IS BASED ON EITHER DETAILS NOT ARGUED IN TRIAL OR PLEADINGS THAT WERE NOT MADE BEFORE THE COURT.IT IS APPEARANT FROM THE RECORD THAT THE PROSECUTOR NEVER ARGUED DUEL POSSESSION OR INEVITABLE DISCOVERY DURING TRIAL WHICH IS WHAT THE THIRD DISTRICT COURT OF APPEALS USES WHEN IT ADVISES THAT IT MAY HAVE BEEN UNREASONABLE FOR THE JUDGE TO NOT BELIEVE THAT THAT THE LUGGAGE WOULD HAVE ACCOMPANIED THE PETITIONER AND MISS PEREZ TO THE POLICE STATION.HOWEVER,IT WAS ALSO UNREASONABLE FOR THE LAW ENFORCEMENT OFFICERS TO SEARCH THE SAME WITHOUT A WARRANT BEFORE IT WAS DETERMINED THAT A CRIME HAD ACTUALLY BEEN COMMITTED. IF THE OFFICERS THAT INITIALLY RESPONDED TO THE FALSE REPORT GIVEN BY MISTER MENDIOLA WOULD HAVE VIEWED THE SECURITY VIDEO FROM THE TIME PETITIONER AND MISS PEREZ CHECKED INTO THE ECONO LODGE MOTEL IT WOULD HAVE BEEN EVIDENT THAT THE REPORT FILED BY MISTER MENDIOLA WAS FALSE, AND THE ARREST WOULD HAVE BEEN UNWARRANTED BASED ON A FALSE REPORT.ONCE AGAIN THE THIRD DISTRICT COURT OF APPEAL BASED ITS DECISION ON THE FACT THAT THAT THE COUPLE WERE GOING TO JAIL,BUT THIS WAS NOT THE CASE.THE DETECTIVE CONDUCTING THE INTERVIEWS OF THE COUPLE HAD ALREADY DETERMINED THAT MISTER MENDIOLA HAD FILED A FALSE REPORT AND THE OFFICER THAT CONDUCTED THE SEARCH GAVE TWO REASONS FOR THE SEARCH,ONE WAS TO INVENTORY THE ITEMS AND TO SEARCH FOR ITEMS THAT MISTER MENDIOLA HAD STATED WERE STOLEN FROM HIM.INVENTORY IS NOT AT THIS POINT REASONABLE AS THERE HAD NOT BEEN ANY DETERMINATION AS YET THAT A CRIME HAD BEEN COMMITTED.THE SECOND REASON WOULD HAVE REQUIRED A SEARCH WARRANT AS IT WAS DONE UNDER THE HOPE OF FINDING ITEMS THAT MISTER MENDIOLA HAD DESCRIBED AS BEING TAKEN FROM

HIM DURING A KIDNAPPING AND ROBBERY.THERE WAS NO REASON TO SEARCH FOR WEAPONS AS NO ONE COULD GET POSSESSION OF THE BAGS FROM OUT OF THE EXCLUSIVE CONTROL OF LAW ENFORCEMENT.THERE WAS NO DANGER TO THE OFFICERS OR A DANGER THAT ITEMS COULD BE DESTROYED BY THE ARRESTEES.THEREFORE THE ONLY REASON FOR THE WARRANTLESS INTRUTION WAS A SEARCH FOR WHAT HAD BEEN REPORTED AS STOLEN WHICH REQUIRES A WARRANT ISSUED BY A JUDGE OR MAGISTRATE,AND WITHOUT SUCH IS A WARRANTLESS INTRUTION ON THE PRIVACY OF MISS PEREZ AND IN THIS CASE HER COMPANION AND FRIEND THAT WAS CAUGHT IN THE MIDDLE OF HER CONFLICT WITH MISTER MENDIOLA.EVERYTHING ELSE IS JUST A LOT OF SMOKE AND MIRRORS TO MUDDY THE FACTS OF WHAT OCCURRED.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph M. Moraga

Date: 5-7-24