No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Alexander Soto
_____ — PETITIONER
(Your Name)

VS.

Commonwealth of Massachusetts
_____ — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

_____

_____

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☒ The appointment was made under the following provision of law: _____
Mass. Gen. Laws chapter 211D, section 5
_____, or

☐ a copy of the order of appointment is appended.

/s/ Dana Goldblatt
_____
(Signature)

NO. _____

IN THE
Supreme Court of the United States

_____

ALEXANDER SOTO,

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

_____

On Petition for a Writ of Certiorari to the
Massachusetts Appeals Court

PETITION FOR A WRIT OF CERTIORARI

_____

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May 22, 2025

I. QUESTION PRESENTED

1. With respect to the search-incident-to-arrest exception to the warrant requirement of the Fourth Amendment to the United States Constitution, this Court held in *Arizona v. Gant* that the exception applies only if the container searched is within the arrestee's reach *at the time of the search*. Does *Gant*'s limitation on the geographic scope of the exception apply to searches of containers found in buildings, or only to containers found in automobiles?

II. LIST OF PROCEEDINGS

1. Massachusetts Superior Court, Hampden County, Docket Number 1979CR00433, *Commonwealth v. Alexander Soto*, August 14, 2023;

2. Massachusetts Appeals Court, Docket Number 2023-P-1111, *Commonwealth v. Alexander Soto,* October 10, 2024; and

3. Massachusetts Supreme Judicial Court, Docket Number FAR-30092, *Commonwealth v. Alexander Soto*, February 21, 2025.

III. OPINIONS AND ORDERS BELOW

The decision by the Massachusetts Superior Court denying Petitioner's motion to suppress is unpublished. (Appendix ("App.") 14.) The decision by the Massachusetts Appeals Court denying Petitioner's direct appeal is reported as *Commonwealth v. Alexander Soto*, 245 N.E.3d 241 (Massachsetts App. Ct. October 10, 2024). (App. 2.) The denial by the Massachusetts Supreme Judicial Court ("SJC") on February 21, 2025, of Petitioner's request for Further Appellate Review ("FAR") is unpublished. (App. 24.)

IV. JURISDICTION

The highest court of Massachusetts denied FAR on February 21, 2025. (App. 24.) This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

V. CONSTITUTIONAL PROVISIONS AND RULES

> 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.

U.S. Const., amend. IV.

> All persons born or naturalized 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 privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

> without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., amend. XIV, § 1.

> *Pleas Reserving Appellate Review*. With the written agreement of the prosecutor, the defendant may tender a plea of guilty or an admission to sufficient facts while reserving the right to appeal any ruling or rulings that would, if reversed, render the Commonwealth's case not viable on one or more charges. The written agreement must specify the ruling or rulings that may be appealed, and must state that reversal of the ruling or rulings would render the Commonwealth's case not viable on one or more specified charges. The judge, in an exercise of discretion, may refuse to accept a plea of guilty or an admission to sufficient facts reserving the right to appeal. If the defendant prevails in whole or in part on appeal, the defendant may withdraw the guilty plea or the admission to sufficient facts on any of the specified charges. If the defendant withdraws the guilty plea or the admission to sufficient facts, the judge shall dismiss the complaint or indictment on those charges, unless the prosecutor shows good cause to do otherwise. The appeal shall be governed by the Massachusetts Rules of Appellate Procedure, provided that a notice of appeal is filed within thirty days of the acceptance of the plea.

Mass. R. Crim. P. 12(b)(6).

VI. STATEMENT OF THE CASE

Petitioner was arrested as he stepped out of an apartment. (App. 4.) A backpack containing heroin was later recovered from inside the apartment. (App. 5.) Petitioner was handcuffed in the hallway when police found and opened the backpack in the apartment, and the search therefore "took place beyond [Petitioner's] reach[.]" (App. 7.)

Petitioner, indicted on drug trafficking charges, filed a motion to suppress the results of the search of the backpack, asserting that it violated the Fourth Amendment to the United States Constitution, as incorporated against the states in the Fourteenth Amendment to the United States Constitution. (App. 26.) The Massachusetts Superior Court opined that the "'geographic scope of a lawful search incident to arrest' is [the] area within [a] defendant's 'immediate control' at time of arrest, not at [the] time of search')[,]" (App. 13) (quoting *Commonwealth v. Figueroa*, 468 Mass. 204, 215-216 (2014)). It held the search reasonsable because the backpack had been "within [Petitioner's] immediate reach as he exited the apartment" and was arrested. (*Id.*).

Petitioner pled guilty, reserving for appeal the denial of his motion to suppress. *See* Mass. R. Crim. P. 12(b)(6). On appeal, he challenged the warrantless search of the backpack as a violation of the Fourth Amendment. The Massachusetts Appeals Court opined:

> We acknowledge the differences between the time of arrest test used in *Figueroa* and *Netto* on the one hand, and the time of the search test used in *Gant* as interpreted by some Federal circuit courts on the other. *Cf. Commonwealth v. Williams*, 104 Mass. App. Ct. 498, 502-503 & n.5 (2024) (acknowledging difference). Notwithstanding that, under *Commonwealth v. Vasquez*, 456 Mass. 350, 357, 923 N.E.2d 524 (2010), even "on an interpretation of Federal constitutional law … so long as the [Supreme Judicial Court's] holding has not been abrogated, it is the law the [lower courts] must apply." As a result, the motion judge and we are bound by *Figueroa* and *Netto*, and therefore the Federal cases do not change our analysis or the result.

(App. 13.) A request for FAR squarely raised the federal question again. (App. 28.) The SJC denied FAR. (App. 24.)

VII. REASONS FOR GRANTING THE PETITION

The SJC's interpretation of the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement conflicts with decisions by multiple United States courts of appeals.[1] Massachusetts applies the exception to searches of containers "within the defendant's immediate control at the moment of *arrest*," *Commonwealth v. Figueroa* 468 Mass. 204, 215 (2014) (emphasis added). By contrast, the First, Third, Fourth, Seventh, and Ninth Circuits all apply the interpretation articulated by this Court in *Arizona v. Gant*, limiting the exception to containers within reach of the arrestee "at the time of the *search*[,]" 556 U.S. 332, 344 (2009) (emphasis added).

In this case, the Massachusetts Appeals Court distinguished *Gant* as inapplicable, noting that *Gant* involved "an arrest for a motor vehicle violation," whereas Petitioner was arrested in a building. (App. 11.) The opinion placed Massachusetts directly at odds with the First, Third, Fourth, Seventh, and Ninth Circuits, which have all concluded that time-of-search test articulated in *Gant* applies regardless of whether the container at issue is seized from an automobile or

[1] The Supreme Judicial Court is the state court of last resport in Massachusetts.

elsewhere. *See United States v. Davis*, 997 F.3d 191, 193 (4th Cir. 2021); *United States v. Knapp*, 917 F.3d 1161, 1168 (10th Cir. 2019); *United States v. Cook*, 808 F.3d 1195, 1199–1200 (9th Cir. 2015); *United States v. Wurie*, 728, F.3d 1, 12 (1st Cir. 2013), S.C. sub nom. *Riley v. California*, 573 U.S. 373 (2014); *United States v. Shakir*, 616 F.3d 315, 318 (3d Cir. 2010).[2] The Massachusetts Appeals Court acknowledges the conflict but follows *Figueroa*. (App. 13.)

Petitioner's case is ideal for review in this forum because it crystalizes a single legal question – does *Gant* apply outside of motor vehicles? – and presents the issue in the narrowest possible configuration.[3] The relevant facts are undisputed: Petitioner could reach the backpack when *arrested* (App.5) but not when *searched* (App. 7). All that remains is for this Court to clarify the scope of *Gant*.

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[2] A circuit split has developed regarding the applicability of *Gant* to a search of "personal property carried by an arrestee at the time of the arrest" as opposed to items that are merely located near the arrestee at the time of the arrest. *United States v. Perez*, 89 F.4th 247, 261 (1st Cir. 2023); *Cf. United States v. Davis*, 997 F.3d 191, 193 (4th Cir. 2021). However, the split does not affect the analysis in this case. Petitioner was not carrying the backpack when he was arrested. *Soto*, 245 N.E.3d at 244.

[3] Because Petitioner was *not* carrying the backpack at the moment of the arrest, the Court need not consider whether the geographic limitations of *Gant* apply to searches of "personal property carried by an arrestee at the time of the arrest[,]" *United States v. Perez*, 89 F.4th 247, 261 (1st Cir. 2023).

Respectfully Submitted,

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INDEX OF APPENDICES

Commonwealth v. Soto

Appeals Court of Massachusetts
June 6, 2024, Argued; October 10, 2024, Decided
No. 23-P-1111.

Reporter

104 Mass. App. Ct. 806 *; 245 N.E.3d 241 **; 2024 Mass. App. LEXIS 136 ***; 2024 WL 4454974

COMMONWEALTH *vs*. **ALEXANDER SOTO**.

Subsequent History: Appeal denied by Commonwealth v. Soto, 495 Mass. 1107, 2025 Mass. LEXIS 78 (Feb. 21, 2025)

Prior History: [***1] Hampden. INDICTMENT found and returned in the Superior Court Department on October 1, 2019.

A pretrial motion to suppress evidence was heard by *Michael K. Callan*, J.; a motion to reconsider was considered by him; and a conditional plea of guilty was accepted by *James M. Manitsas*, J.

Counsel: *Dana Goldblatt* for the defendant.

Carmel A. Motherway, Assistant District Attorney, for the Commonwealth.

Judges: Present: BLAKE, NEYMAN, & SACKS, JJ.

Opinion by: BLAKE

Opinion

[**243] **BLAKE**, J. Following his indictment on a charge of trafficking in heroin, the defendant, Alexander Soto, filed a motion to suppress statements he made when confronted by police and evidence [*807] found in a backpack.[1] He claimed that the statements were the fruits of a warrantless seizure and search that occurred in violation of art. 14 of the Massachusetts Declaration of Rights and the Fourth and Fourteenth Amendments to the United States Constitution. After an evidentiary hearing, a judge of the Superior Court, in a comprehensive and well-reasoned decision, allowed the motion to suppress certain statements, but denied the motion to suppress evidence found in the backpack. The defendant filed a motion for reconsideration, which the same judge denied. Thereafter, pursuant to Mass. R. Crim. P. 12 (b) (6), as appearing in 482 Mass. 1501 [***2] (2019), the defendant pleaded guilty to a reduced charge of possession with intent to distribute a class A substance, reserving the right to appeal the partial denial of his motion to suppress. We affirm.

Facts. We recite the facts as found by the judge, none of which the defendant contests. On July 19, 2019, at 7:15 P.M., Westfield Police Officer Brendan Irujo was on routine traffic enforcement patrol in his police cruiser on Elm Street. Around this same time, a tenant living at 97 Elm Street called 911 to report two men breaking and entering into his apartment.[2] The caller provided his name and telephone number and advised the 911 operator that he was not at home, but that he had active surveillance cameras and was watching the men "in real time." The caller described the men by their build and clothing, reported that they were

[1] This item was referred to in numerous ways at the hearing including bag, book bag, and backpack. For consistency we will refer to it as a backpack.

[2] An audio recording of the 911 call was played during the hearing and introduced in evidence.

wearing masks, and stated "they got gloves and everything." The caller reported that one of the men was "looking all over [his] cabinets." He informed the dispatch operator that his apartment was number 402, but that the door was not marked with a unit number. Initially he reported that the men were unarmed.

[**244] The caller was told to stay on the line while Officer [***3] Irujo was contacted. The caller continued to report what he was seeing on his surveillance cameras in real time to the dispatcher who then repeated it to Officer Irujo. Shortly after dispatch contacted Officer Irujo, the caller stated, "[T]hey got guns." He repeated this statement several times in an excited manner. The caller described one gun as black and noted that one intruder "had a book bag."

By happenstance, Officer Irujo was immediately in front of 97 [*808] Elm Street, and "within moments of the call," parked his cruiser, grabbed his rifle, and entered the front door of the apartment building. He was familiar with the building having responded to it many times over his ten-year career. Officer Irujo knew that apartment 402 was on the fourth floor; he took the stairs and reached the apartment within minutes of the dispatch call. Although he was alone, Officer Irujo knew other police officers were due to arrive shortly. He took up a position in the hallway that provided a clear line of sight and tactical cover as he monitored the door to apartment 402. Less than a minute after his arrival on the fourth floor, the door to apartment 402 opened and a man, later identified as the defendant, [***4] stepped into the doorway. Officer Irujo immediately ordered the defendant to the ground. The defendant complied; he was not armed, did not have gloves or a mask, and was not carrying a backpack. As Officer Irujo approached the defendant, he looked inside the apartment and saw a second man standing immediately inside the doorway, all within seconds after the apartment

door opened. The second individual, who also did not have a mask or a weapon visible, was ordered to the ground, and he complied.

As Officer Irujo was covering the two individuals with his rifle, backup officers arrived within a minute and handcuffed the men. One officer asked what the defendant was "doing here," and he replied that "everything is in the backpack."[3] Officer Irujo at once noticed a backpack "immediately at or within the threshold of apartment 402." The backpack, which was within the defendant's "immediate reach as he exited the apartment[,]" was seized and searched, and heroin was discovered.[4] The judge found that in seizing the backpack, Officer Irujo was "primarily concerned with locating the unaccounted-for handguns observed and reported by [the caller]."

Discussion. The primary issue on appeal is whether [***5] the judge properly denied the motion to suppress evidence. Our standard of review is well settled. "[W]e accept the judge's subsidiary findings of fact absent clear error 'but conduct an independent review of his ultimate findings and conclusions of law.'" *Common [*809] wealth* v. *Clarke*, 461 Mass. 336, 340, 960 N.E.2d 306 (2012), quoting *Commonwealth* v. *Scott*, 440 Mass. 642, 646, 801 N.E.2d 233 (2004). We also accept the credibility determinations made by the judge. See *Commonwealth* v. *Eckert*, 431 Mass. 591, 592-593, 728 N.E.2d 312 (2000).

1. *The arrest*. The judge ruled that Officer Irujo had probable cause to arrest the defendant, and that the search [**245] of the backpack was a lawful search incident to arrest. Because the legality of a search incident to arrest depends on

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[3] As noted supra, the judge suppressed this statement as obtained in violation of the defendant's Miranda rights, and the Commonwealth did not appeal from that decision. See generally *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[4] In his motion to suppress, the defendant sought to suppress heroin, cash, and ammunition "seized from the backpack," and a BB gun, butter knife, mask, crowbar, and screwdriver "seized from his person."

the legality of the arrest, we first address the arrest. See *Commonwealth* v. *Washington*, 449 Mass. 476, 481, 869 N.E.2d 605 (2007). "A lawful arrest requires the existence of probable cause to believe that the individual arrested is committing or has committed a criminal offense." *Commonwealth* v. *Jackson*, 464 Mass. 758, 761, 985 N.E.2d 853 (2013). The defendant does not suggest that his arrest was unlawful. Nor could he. Here, the defendant and his companion, while armed and masked, and carrying a backpack, broke into apartment 402, all of which was observed in real time by the tenant and relayed to police. "In dealing with probable cause … we deal with probabilities. These are not technical; they are … practical considerations of everyday life [***6] on which reasonable and prudent [people], not legal technicians, act" (citation omitted). *Commonwealth* v. *Hason*, 387 Mass. 169, 174, 439 N.E.2d 251 (1982). Based on the detailed and particularized facts known to police, Officer Irujo had probable cause to arrest the defendant for breaking and entering a building with the intent to commit a felony, as defined by G. L. c. 266, § 18.

2. *Search incident to arrest*. We now turn to the seizure and search of the backpack. "Among the exceptions to the warrant requirement is a search incident to a lawful arrest" (citation omitted). *Commonwealth* v. *Perkins*, 465 Mass. 600, 605, 989 N.E.2d 854 (2013). Pursuant to G. L. c. 276, § 1,

> "[a] search conducted incident to an arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction or concealment; and removing any weapons that the arrestee might use to resist arrest or effect his escape."

As the Supreme Judicial Court observed,

> "The purpose, long established, of a search incident to an arrest is to prevent an individual from destroying or concealing evidence of the crime for which the police have probable [*810] cause to arrest, or to prevent an individual from acquiring a weapon to resist arrest or to facilitate an escape."

Commonwealth v. *Santiago*, 410 Mass. 737, 743, 575 N.E.2d 350 (1991).

Here, the crime [***7] — an armed breaking and entering — was observed and reported in real time; the events were rapidly developing; "[s]econds" elapsed between the report of the crime and Officer Irujo's arrival on the scene, his detection of the suspects, and the realization that there were one or two unaccounted-for guns. We view these facts using an objective standard. See *Commonwealth* v. *Blevines*, 438 Mass. 604, 608, 782 N.E.2d 491 (2003).

The defendant claims that here the search incident to arrest exception to the warrant requirement does not apply because, where the police had stopped and handcuffed him before turning their attention to the backpack, the search "took place beyond the [d]efendant's reach at the time of the search." However, as the Supreme Judicial Court held in *Commonwealth* v. *Figueroa*, 468 Mass. 204, 216, 9 N.E.3d 812 (2014), officers "may secure the arrestee and then safely search the area within his immediate control at the moment of arrest."[5] In so holding, the [**246] court recognized that officer safety would be compromised if police

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[5] See *Commonwealth* v. *Elizondo*, 428 Mass. 322, 324-325, 701 N.E.2d 325 (1998) (search of bathroom lawful search incident to arrest where defendant handcuffed outside bathroom); *Commonwealth* v. *Dickerson*, 372 Mass. 783, 786, 792, 364 N.E.2d 1052 (1977), overruled on other grounds, *Commonwealth* v. *Paulding*, 438 Mass. 1, 777 N.E.2d 135 (2002) (search of backpack at foot of defendant's hospital bed lawful search incident to arrest where defendant suffering from gunshot wounds and outnumbered by police); *Commonwealth* v. *Turner*, 14 Mass. App. Ct. 1023, 1024, 442 N.E.2d 40 (1982) (search of pillowcase and bag on floor outside hotel room lawful search incident to arrest even though defendant taken inside adjacent room prior to search). Cf. *Commonwealth* v. *Madera*, 402 Mass. 156, 160-161, 521 N.E.2d 738 (1988) (search of gym bag taken from defendant at time of arrest upheld even though "the police presence was substantial and the risk of the defendant successfully repossessing the bag was minimal").

were required "to seize all evidence within the arrestee's immediate control *before* securing the arrestee."[6] *Id.* at 215. To the extent that the defendant argues that the statement in *Figueroa* is dicta, we are not persuaded. There, in connection with a homicide investigation, the defendant was handcuffed [***8] and removed from a bedroom, and the police searched a duffel bag approximately five to six feet from where [*811] the defendant had been found. See *id.* at 208, 210. The seizure of the duffel bag was directly related to the question whether the police lawfully seized it incident to the defendant's arrest. See *id.* at 215. See also *Commonwealth* v. *Rahim*, 441 Mass. 273, 284, 805 N.E.2d 13 (2004) (dicta defined as "language which was unnecessary … and which passed upon an issue not really presented" [quotations and citation omitted]). That the *Figueroa* court also concluded that there was a second ground for upholding the search does not transform into dicta its discussion of the search incident to arrest. See *Figueroa, supra* at 216 n.4. Alternative holdings are still holdings; they are not dicta. See *United States* v. *Potts*, 644 F.3d 233, 237 (5th Cir. 2011), cert. denied, 566 U.S. 923, 132 S. Ct. 1855, 182 L. Ed. 2d 647 (2012); *Surefoot LC* v. *Sure Foot Corp.*, 531 F.3d 1236, 1243 (10th Cir. 2008).

The defendant's argument also fails to account for the rapidly evolving facts in this case, including that the police came on a scene where there were real time observations of a breaking and entering in progress, where the intruders were armed and carrying a backpack, and where Officer Irujo could reasonably be "primarily concerned with locating the unaccounted-for handguns observed and reported by" the 911 caller. When Officer Irujo first encountered the intruders, neither [***9] had a weapon in plain view, and the backpack was located

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[6] Given the *Figueroa* court's reliance in part on Federal decisions, see 468 Mass. at 215, we view *Figueroa* as based at least in part on the Supreme Judicial Court's understanding of the Fourth Amendment. The same is true of *Commonwealth* v. *Netto*, 438 Mass. 686, 695-696, 783 N.E.2d 439 (2003), discussed infra.

immediately in or at the threshold to the apartment, within the defendant's immediate reach as he left the apartment. The search was not remote in time or place from the arrest, and it was "a natural part of the arrest transaction." *Commonwealth* v. *Turner*, 14 Mass. App. Ct. 1023, 1024, 442 N.E.2d 40 (1982). That the defendant was already in handcuffs is of no moment under governing precedent, as

> "a police officer's decision how and where to conduct the search is a quick ad hoc judgment, and … [a] search incident to arrest may be valid even though a court operating with the benefit of hindsight in an environment well removed from the scene of the arrest doubts that the defendant could have reached the items seized during the [**247] search" (quotations and citation omitted).

Commonwealth v. *Netto*, 438 Mass. 686, 694-695, 783 N.E.2d 439 (2003).

We conclude that it was reasonable to infer that the backpack located in the doorway through which the defendant left the apartment was the same backpack that the caller reported seeing in real time during the armed break-in. There was no significant [*812] delay between the time of the defendant's arrest and the search. Contrast *Commonwealth* v. *Pierre*, 453 Mass. 1010, 1010, 902 N.E.2d 367 (2009) (search of bag too remote where bag taken from defendant, placed in vehicle, towed from location, and searched [***10] more than thirty minutes after arrest). The Supreme Judicial Court has said that to require the police to search such a container before securing the arrestee "would compromise the safety of arresting officers." *Figueroa*, 468 Mass. at 215. The court also has said that "the pragmatic necessity of not invalidating … a search the instant the risks pass is well accepted. … [Officers] need not reorder the sequence of their conduct during arrest simply to satisfy an artificial rule that would link the validity of the

search to the duration of the risks" (citation omitted). *Netto*, 438 Mass. at 695. For all these reasons, we agree with the judge's conclusion that, applying *Figueroa* and *Netto*, the seizure and search of the backpack was a lawful search incident to a lawful arrest.

3. *Argument raised in motion for reconsideration*. For the first time in his motion for reconsideration,[7] the defendant cited *Arizona* v. *Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) (*Gant)*, for the proposition that the permissible scope of a search incident to arrest is coextensive with the arrestee's reaching distance at the time of the search, not the time of the arrest. The judge rejected this argument, noting that (1) unlike this case, *Gant* involved the search of a vehicle incident to arrest, and (2) unlike in *Gant*, the police here [***11] had a basis on which to conclude that evidence of the crime under investigation might be found in the backpack subject to their search.[8] We discern no error in the judge's conclusion; indeed, as we discuss below, we conclude that there were additional reasons [*813] why *Gant* does not control here.

In *Gant*, the defendant was arrested for driving with a suspended license. See *id.* at 335. While he was handcuffed and placed in the back of a police cruiser, the police searched his car and found cocaine in a jacket on the back seat. See *id.* On

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[7] The Commonwealth contends that the defendant waived any argument concerning the application of *Gant* because he raised it for the first time in his motion for reconsideration and did not appeal from the denial of that motion. Although the better practice would have been to identify, in the rule 12 (b) (6) agreement, the ruling on the motion to reconsider as well as the ruling on the underlying motion, we conclude that the issue concerning the application of *Gant* was sufficiently raised and preserved for appellate review. Cf. *Commonwealth* v. *Mathis*, 76 Mass. App. Ct. 366, 374, 922 N.E.2d 816 (2010).

[8] In denying the motion for reconsideration, the judge noted that *Gant* "stands for the proposition that a search of a vehicle may be conducted incident to arrest if the area searched is within reach of the defendant at the time of the arrest or the police have a reasonable belief that evidence related to the crime would be present." The judge further stated that "in addition to the reasons articulated in the [prior] memorandum; given the police knowledge of a weapon, masks and a book bag being used in the crime, it was a legitimate and reasonable conclusion that the back pack contained evidence related to the crime."

these facts, the United States Supreme Court held that the search incident to arrest exception to the Fourth [**248] Amendment's warrant requirement did not justify the search, because the arrestee was not "unsecured and within reaching distance of the passenger compartment at the time of the search." *Id.* at 343. Rather, he was outnumbered by police, handcuffed, and in a police cruiser. See *id.* at 344. Thus, "police could not reasonably have believed [that the arrestee] could have accessed his car at the time of the search." *Id.* The Court further held "that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might [***12] be found in the vehicle."[9] *Id.* at 335. Because the police could not reasonably believe evidence of the crime (driving with a suspended license) would be located in the passenger compartment of the car, the search was deemed unlawful. See *id.* at 344.

Here, the defendant argues that the police could not search the backpack without a warrant because at the time of the search the defendant was handcuffed and under arrest, and the backpack was not located in an automobile. For a variety of reasons, we are not persuaded. First, *Gant* involved an arrest for a motor vehicle violation and a subsequent exploratory search; the defendant's argument does not account for searches conducted under the circumstances present in this case. See *Figueroa*, 468 Mass. at 215 (search incident to arrest need not occur before securing arrestee because doing so would "compromise the safety of arresting officers"). Next, *Gant* did not involve police officers responding to an ongoing armed breaking and entering. Further, *Gant* did not involve a crime where a gun and backpack were observed in real time during commission of the crime.

[9] In so doing, the Court emphasized Justice Scalia's caution against "purely exploratory searches" as articulated in his concurrence in *Thornton* v. *United States*, 541 U.S. 615, 628, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004). See *Gant*, 556 U.S. at 335.

Additionally, *Gant* did not involve a subsequent search for unaccounted-for guns that were used in the crime, nor did *Gant* involve an arrestee who [***13] was handcuffed on the ground only feet away from the backpack that was searched. Put differently, the facts of *Gant* did not present the same degree of concern about safety or [*814] destruction of evidence that, under the rationale of *Figueroa* and *Netto*, are present in this case.

In support of his argument, the defendant cites several Federal circuit court cases that have applied *Gant*, including: *United States* v. *Davis*, 997 F.3d 191 (4th Cir. 2021); *United States* v. *Knapp*, 917 F.3d 1161 (10th Cir. 2019); *United States* v. *Cook*, 808 F.3d 1195 (9th Cir. 2015); and *United States* v. *Shakir*, 616 F.3d 315 (3d Cir.), cert. denied, 562 U.S. 1116, 131 S. Ct. 841, 178 L. Ed. 2d 571 (2010). In each of these cases, the circuit courts applied *Gant* outside of the automobile context and held, in part, that the focus of the inquiry is whether, at the time of the search (rather than the time of arrest), the suspect "is unsecured and within reaching distance of" the container sought to be searched. E.g., *Davis, supra* at 197, quoting *Gant*, 556 U.S. at 343. In so doing, the circuit courts engaged in a fact-intensive analysis that included whether it was reasonable to believe that the defendant could break free from police and access the bag or container that was searched. See *Davis, supra* at 198, 200; *Knapp, supra* at 1168-1169; *Cook, supra* at 1199-1200; *Shakir, supra* at 318-321. The circuit courts have differed somewhat in their approaches to this inquiry as reflected by the results they reached. For example, the United States Courts of Appeals for the Ninth [**249] Circuit [***14] in *Cook* and the Third Circuit in *Shakir* affirmed the denial of the defendant's motion to suppress, but the Fourth Circuit in *Davis* and the Tenth Circuit in *Knapp* reversed the denial of the motion to suppress.

We acknowledge the differences between the time of arrest test used in *Figueroa* and *Netto* on the one hand, and the time of the search test used in *Gant* as interpreted by some Federal circuit courts on the other. Cf. *Commonwealth* v. *Williams*, 104 Mass. App. Ct. 498, 502-503 & n.5 (2024) (acknowledging difference). Notwithstanding that, under *Commonwealth* v. *Vasquez*, 456 Mass. 350, 357, 923 N.E.2d 524 (2010), even "on an interpretation of Federal constitutional law … so long as the [Supreme Judicial Court's] holding has not been abrogated, it is the law the [lower courts] *must* apply." As a result, the motion judge and we are bound by *Figueroa* and *Netto*, and therefore the Federal cases do not change our analysis or the result.

Conclusion. We affirm so much of the order as denied the motion to suppress evidence.

So ordered.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN , ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 1979CR00433

COMMONWEALTH

vs.

ALEXANDER SOTO

DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Alexander Soto ("Mr. Soto"), stands indicted for Trafficking in a Controlled Substance in violation of G. L. c. 94C, § 32E(c)(3). Mr. Soto moves to suppress all evidence seized and statements made during his arrest on July 16, 2019, in Westfield. An evidentiary hearing was held on April 24, 2023. A single witness, Westfield police officer Brendan Irujo ("Officer Irujo"), testified, and a single exhibit, an audio recording of a 911 call and dispatch to Officer Irujo, was offered in evidence. Based on the credible evidence, the court makes the following findings of fact and rulings of law.

On July 19, 2019, at approximately 7:15 p.m., Officer Irujo was alone and on routine traffic enforcement patrol in his cruiser on Elm Street in Westfield.

The tenant at 97 Elm Street, Mr. Miguel Riviera, called Westfield 911 to report a breaking and entering to his apartment by two men. He identified himself by name and provided a telephone number. He advised that he was in Holyoke and not near the apartment, but that he had active surveillance cameras and was watching the men in his apartment in real time as he was describing them to dispatch. He described the men by body build and by dress, noted that they were wearing masks, and stated "they got gloves and everything." He further stated that one

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of the men was "looking all over my cabinets." Mr. Riviera further informed dispatch that the door to apartment 402 was not marked with a unit number. He initially reported that the men were unarmed.

After taking the basic information, dispatch told Mr. Riviera to "stay on the line" and the dispatcher contacted Westfield Officer Irujo, who was on routine patrol in the vicinity of the apartment. Dispatch, Officer Irujo, and Mr. Riviera thereafter participated in a three-way relay call whereby Mr. Riviera would report what he was actively observing, and dispatch would repeat it to Officer Irujo.

Dispatch repeated Mr. Riviera's information to Officer Irujo about the active breaking and entering by two men underway at 97 Elm Street, Apartment 402, including Mr. Riviera's observations of the intruders' clothing and masks. Officer Irujo learned from dispatch that the crime in progress had been reported by the tenant of the apartment. Shortly after the three-way relay call was initiated, Mr. Riviera first reported that "they got guns"; he repeated this statement to the dispatcher several times in an excited manner. Dispatch relayed the information to Officer Irujo immediately after Mr. Riviera reported it, and continued to provide details as Mr. Riviera gave them. Mr. Rivier identified one gun as a "black one" and stated, "they [the intruders] are looking all over my room." He only saw one gun. He further informed dispatch (and, by relay, Officer Irujo) that the door to apartment 402 was not marked with a unit number, but that "the door next to it is 403." He stated, "If you go there, you will catch them." He also noted that one of the intruders "had a book bag," which the court accepts as reasonably describing a backpack Dispatch relayed all material aspects of Mr. Riviera's statements to Officer Irujo.

Officer Irujo, by happenstance, was immediately in front of the subject apartment building and, within moments of the call, pulled his cruiser into the parking lot. He reported to

dispatch and Mr. Riviera that he was "on scene". He grabbed his rifle, exited the cruiser, and entered the apartment building's front door. He was familiar with the building and apartment complex, since over the course of his ten-year career in Westfield, he had responded on approximately two dozen previous occasions to domestic complaints and noise complaints at the building.

Officer Irujo knew from his experience and common sense that apartment 402 was on the fourth floor. The court infers that his purpose in entering the building was to apprehend whoever had allegedly entered the subject apartment. Officer Irujo took the stairs and quickly identified the subject apartment when he reached the fourth floor. As had been represented to 911 dispatch by Mr. Riviera, the apartment did not have a number on the door and was beside the apartment door marked 403. Officer Irujo ascended the stairs and made these observations minutes of the dispatch call.

Officer Irujo was still alone, but the court credits his testimony that he knew other officers were due to arrive momentarily. Officer Irujo took up a position in the hallway, partially obscured by an "elbow" bend, and monitored the door to apartment 402. Officer Irujo preferred this vantage point since it provided both tactical cover and a clear line of sight into the apartment if the door opened.

When near the apartment, he confirmed Mr. Riviera's report that there were two men inside the apartment. There were no sounds coming from the apartment suggesting that the apartment was being tossed or ransacked. Less than a minute after Officer Irujo arrived on the fourth floor and took up his tactical position, the door to apartment 402 opened and a male individual, later identified to be Mr. Soto, stepped into the doorway. Officer Irujo immediately

ordered Mr. Soto at rifle point to the ground, and he complied. Mr. Soto was not armed, did not have gloves or a mask on, and was not carrying a book bag.

Officer Irujo approached Mr. Soto and looked inside the apartment, where he saw a second man, later identified to be codefendant Julio Viruet,[1] standing immediately inside the doorway. Mere seconds passed from the door opening to Officer Irujo seeing the second individual.

The officer ordered the second individual to the ground, and he complied. Officer Irujo ordered the men not to move and they complied. Officer Irujo covered the two prone individuals on the ground with his rifle while waiting for backup officers to arrive. Those backup officers arrived within a minute and cuffed both Mr. Soto and the other individual.

One of the backup officers asked Mr. Soto "what are you doing here?" Mr. Soto said that "everything is in the bag." Once that statement was made, Officer Irujo noticed a backpack or "book bag" immediately inside the door frame on the floor. The backpack was seized and searched, and a trafficking weight of heroin was discovered inside the backpack. There was no evidence that Officer Irujo observed any masks or weapons on or near either individual at any time. I infer that Officer Irujo was primarily concerned with locating the unaccounted-for handguns observed and reported by Mr. Riviera

[1] Mr. Viruet is also charged with trafficking in a controlled substance. Hampden County docket no. 1979CR00432. He filed a motion to suppress on March 1, 2022, which the court allowed on January 27, 2023, on the ground that Officer Irujo lacked probable cause to arrest Mr. Viruet and, therefore, to search the backpack incident to the arrest. At the evidentiary hearing on Mr. Viruet's motion, the Commonwealth failed to present any evidence as to the 911 caller's identity, beyond a representation in its (non-evidentiary) opening statement that the call was made by the tenant of apartment 402. The 911 call itself was not introduced into evidence at that hearing. Here, by contrast, the Commonwealth introduced credible evidence that not only did Mr. Riviera provide his name and cell phone number to 911 dispatch but was also reporting to dispatch events occurring inside the apartment in real time, based on his remote observations – making him, functionally, an eyewitness. The Commonwealth also introduced evidence that Mr. Riviera specifically informed police that the intruders had a "book bag" (i.e., a backpack) with them. As discussed in the rulings of law, *infra*, this plethora of additional information is the basis for the court's conclusion, inconsistent with the prior ruling, that Officer Irujo did in fact have probable cause to arrest Mr. Soto.

Mr. Soto challenges whether Officer Irujo had probable cause to place him under arrest and subsequently search the bag. Mr. Soto also contends that his statement in response to the single question to him after he had been placed into custody at rifle point was obtained in violation of his Miranda rights and necessitates the suppression of his statement and the contents of the bag.

RULINGS OF LAW

Based on the detailed particularized facts known to Officer Irujo, he had probable cause to arrest Mr. Soto. Commonwealth v. White, 422 Mass. 487, 496 (1996) (the probable cause upon which an arrest is made may be predicated upon reliable hearsay).

Police officers may make a warrantless arrest of an individual if the officers possess probable cause to believe that the individual has committed a felony. Commonwealth v. Hason, 387 Mass. 169, 173 (1982), citing Commonwealth v. Holmes, 344 Mass. 524, 525 (1962) (finding probable cause to believe that vehicle had been stolen based on information from reliable informant that defendant was in possession of stolen vehicle, where informant provided vehicle description and VIN, and police observed these details).

Probable cause is established "where the facts and circumstances within . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." Hason, 387 Mass. at 174, quoting Brinegar v. United States, 338 U.S. 160, 175-176 (1949). "Probable cause requires more than mere suspicion but something less than evidence sufficient to warrant a conviction." Id. Moreover, "[i]n dealing with probable cause . . . we deal with probabilities. These are not technical; they are the factual and practical

considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Id., quoting Brinegar, 338 U.S. at 175.

Here Officer Irujo had probable cause to arrest Mr. Soto. Although he did not testify to personally hearing every piece of information reported by Mr. Riviera, he was in continuous communication with dispatch and was aware that other officers were on their way to support him. It is therefore appropriate to aggregate the officers' knowledge. Commonwealth v. Privette, No. SJC-13248, slip op. at 4 (March 28, 2023) ("officers must be involved in a joint investigation, pursuing a mutual purpose and objective, and they must be in close and continuous communication with each other about that shared objective").

The police were in possession of specific facts from an identified person, by both name and phone number, that Mr. Soto was one of two individuals involved in an armed, masked breaking and entering of an apartment. Although Mr. Riviera's observations were made by a remote, live video feed, he was still a witness to the crime as it was occurring and told dispatch his location at the time. Mr. Riviera provided a detailed, real-time description of the intruders' activities as they were unfolding, as well as a reasonably detailed description of their clothing and approximate physical builds. He also, critically, told 911 dispatch that the intruders had a "book bag" with them. In addition, within minutes of the 911 call, Officer Irujo was able to corroborate certain aspects of Mr. Riviera's description, such as apartment 402's lack of an identifying door number and the presence of two alleged intruders.[2] Officer Irujo therefore had probable cause to arrest Mr. Soto upon his exit from apartment 402.

[2] The fact that Officer Irujo did not hear sounds of a disturbance from within apartment 402 does not undermine the corroboration of Mr. Riviera's report, as Mr. Riviera did not indicate that the intruders were ransacking the apartment or otherwise causing a commotion during their search.

However, after Officer Irujo arrested Mr. Soto by ordering him to the ground at gunpoint, neither he nor any of the supporting officers provided Mr. Soto with Miranda warnings before Mr. Soto was asked about his purpose at the apartment. Therefore, that single question posed to Mr. Soto constituted an unlawful interrogation, and Mr. Soto's response that "everything is in the backpack" must be suppressed. See Commonwealth v. Fredericq, 482 Mass. 70, 78 (2019) ("exclusionary rule bars the use of evidence derived from an unconstitutional search or seizure"); Commonwealth v. Balicki, 436 Mass. 1, 15, 762 N.E.2d 290 (2002) ("The general rule is that evidence is to be excluded if it is found to be the 'fruit' of a police officer's unlawful actions").

Mr. Soto argues that the backpack and its contents must likewise be suppressed as the fruits of an unlawful interrogation. However, "[u]nder art. 14 of the Massachusetts Declaration of Rights, the Commonwealth [may satisfy] the inevitable discovery exception to the exclusionary rule if it proves by a preponderance of the evidence that 'discovery by lawful means was certain as a practical matter.'" Commonwealth v. Linton, 456 Mass. 534, 558 (2010), quoting Commonwealth v. O'Connor, 406 Mass. 112, 117 (1989).

In this case, the Commonwealth has met its burden, because the backpack would inevitably have been searched as part of a search incident to Mr. Soto's arrest. One "long established" purpose of a search incident to an arrest is "to prevent an individual from acquiring a weapon to resist arrest or to facilitate an escape." Commonwealth v. Santiago, 410 Mass. 737, 743 (1991). "A search incident to arrest, similar to the search of a person pursuant to a warrant, generally is limited . . . to the body of the person arrested and the area and items within his or her immediate possession and control at the time." Id. "Whether the search is permissible is based on an objective standard." Commonwealth v. Blevines, 438 Mass. 604, 608 (2003); Commonwealth v. Ceria, 13 Mass. App. Ct. 230, 235 (1982), quoting Scott v. United States, 436 U.S. 128, 138

(1978) ("police conduct is to be judged 'under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved'").

Officer Irujo was aware of Mr. Riviera's report that the intruders had a "book bag" and were armed. He also knew that one or more handguns were unaccounted for, given that neither Mr. Viruet nor Mr. Soto had a weapon in plain view at the moment of arrest. Moreover, the backpack was located immediately at or within the threshold of apartment 402; it was, therefore, within Mr. Soto's immediate reach as he exited the apartment. See Commonwealth v. Figueroa, 468 Mass. 204, 215-216 (2014) ("geographic scope of a lawful search incident to arrest" is area within defendant's "immediate control" at time of arrest, not at time of search; officers "may secure the arrestee and then safely search the area within his immediate control at the moment of arrest").

On these facts alone, Officer Irujo reasonably could infer that the backpack observed by the doorway was the same backpack Mr. Riviera had reported the intruders possessing and could search it incident to Mr. Soto's arrest in order to ensure it did not contain a weapon that Mr. Soto might attempt to reacquire. Nor was there any significant delay between Mr. Soto's arrest and the search of the backpack. Contrast Commonwealth v. Pierre, 453 Mass. 1010, 1010 (2009) (search of defendant's bag too remote to qualify as search incident to arrest, where bag was taken from defendant, placed in vehicle, towed away, and searched over half an hour after arrest).

To the extent Mr. Soto argues that the search of the backpack was not justified because there was no proof that it belonged to him or Mr. Viruet, that argument is unpersuasive.[3] On the

[3] The court does not address this as a standing issue because Massachusetts has recently "abandon[ed] the separate standing requirement"; "[u]nder art. 14, as under the Fourth Amendment, a defendant need only show a reasonable expectation of privacy in the place searched to contest a search or seizure." Commonwealth v. DeJesus, 489 Mass. 292, 296 (2022). Unsurprisingly, however, the Commonwealth does not argue that Mr. Soto lacked a reasonable expectation of privacy in the backpack alleged to belong to himself or his codefendant. See Commonwealth v. Frazier, 410 Mass. 235, 243-244 (1991) (explaining basis for prior rule of "automatic standing" in cases where possession is an essential element of the charged offense, given "the problem of allowing the government to benefit

facts found by the court, the defendant's argument that there was nothing beyond his own statement to connect him to the backpack is inaccurate. Putting aside that unlawfully induced statement, the backpack's location near the door, at a time when Mr. Soto was exiting the apartment, and Mr. Riviera's report that the intruders had a "book bag" with them were together sufficient to support an inference that the backpack belonged to one of the defendants. This is not a case in which, for example, the backpack was found in a remote location in the apartment, such as a closet or inner room, far away from the defendants; the police here had ample reason to believe that the "book bag" reported by Mr. Riviera was the same as the backpack found in proximity to Mr. Soto.

The court is also mindful that, in this context, the Commonwealth's burden of proof is comparatively lesser: it need only demonstrate that it is "more probable than not" that the contents of the backpack would inevitably have been discovered, absent Mr. Soto's unlawfully induced statement. Continental Assur. Co. v. Diorio-Volungas, 51 Mass. App. Ct. 403, 408 n.9 (2001). That is certainly the case here, because the backpack's location and the description provided by Mr. Riviera, including his report that the intruders were armed, were sufficient to justify a search of the backpack for weapons incident to Mr. Soto's arrest. Put differently, while Mr. Soto may certainly – and perhaps successfully – challenge his possession of the backpack at trial, where the Commonwealth will need to prove that matter beyond a reasonable doubt, the information available to officers at the time of arrest was sufficient to justify a search incident to arrest, and it is more likely than not that the search would have been conducted even if Mr. Soto

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from contradictory positions" and "the defendant's self-incrimination dilemma"); DeJesus, 489 Mass. at 296-297 (where charged with possession at time of search, defendant may rely on codefendant's reasonable expectation of privacy to establish right to challenge search).

had not said anything about the backpack's contents. Therefore, suppression of the backpack's contents is not warranted.

ORDER

For all of the foregoing reasons, the motion to suppress is **ALLOWED IN PART**, as to the defendant's statement that "everything is in the bag." It is otherwise **DENIED**, as to the contents of the backpack.

MICHAEL K. CALLAN
Justice of the Superior Court

DATE: May 5, 2023

Commonwealth v. Soto

Supreme Judicial Court of Massachusetts

February 21, 2025, Decided

No Number in Original

Reporter

2025 Mass. LEXIS 78 *; 495 Mass. 1107; 253 N.E.3d 597; 2025 LX 37354; 2025 WL 626562

COMMONWEALTH *vs*. ALEXANDER SOTO.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: Reported below: 104 Mass. App. Ct. 806, 245 N.E.3d 241 (2024) [*1] .

Commonwealth v. Soto, 104 Mass. App. Ct. 806, 2024 Mass. App. LEXIS 136, 245 N.E.3d 241, 2024 WL 4454974 (Oct. 10, 2024)

Opinion

Further appellate review denied.

End of Document

> 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.

U.S. Const., amend. IV

> All persons born or naturalized 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 privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., amend. XIV, § 1

> *Pleas Reserving Appellate Review*. With the written agreement of the prosecutor, the defendant may tender a plea of guilty or an admission to sufficient facts while reserving the right to appeal any ruling or rulings that would, if reversed, render the Commonwealth's case not viable on one or more charges. The written agreement must specify the ruling or rulings that may be appealed, and must state that reversal of the ruling or rulings would render the Commonwealth's case not viable on one or more specified charges. The judge, in an exercise of discretion, may refuse to accept a plea of guilty or an admission to sufficient facts reserving the right to appeal. If the defendant prevails in whole or in part on appeal, the defendant may withdraw the guilty plea or the admission to sufficient facts on any of the specified charges. If the defendant withdraws the guilty plea or the admission to sufficient facts, the judge shall dismiss the complaint or indictment on those charges, unless the prosecutor shows good cause to do otherwise. The appeal shall be governed by the Massachusetts Rules of Appellate Procedure, provided that a notice of appeal is filed within thirty days of the acceptance of the plea.

Mass. R. Crim. P. 12(b)(6)

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

HAMPDEN, S.S. SUPER. COURT DEP'T

COMMONWEALTH)
)
v.)
)
ALEXANDER SOTO)

HAMPDEN COUNTY
SUPERIOR COURT
FILED
1979CR00433 APR 24 2023
CLERK OF COURTS

MOTION TO SUPPRESS

Defendant Alexander Soto here moves to suppress the following evidence:

1. Evidence seized from his person, specifically a BB gun, a butter knife, a mask, a crowbar, and a screwdriver;
2. All statements made after his physical seizure, both at the scene of his arrest and thereafter at the police station, including but not limited to statements directing the attention of police officers to a backpack that was inside the apartment; and
3. Evidence seized from the backpack, specifically heroin, cash, and ammunition.

As reason therefor, Defendant argues that the above-listed evidence and statements (numbered 1-3) were the fruits of the warrantless seizure and search of his person, which seizure and search occurred in violation of Article Fourteen of the Massachusetts Declaration of Rights and the Fourth and Fourteenth Amendments to the United States Constitution.

Defendant further moves to suppress the following evidence:

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4. Statements made in response to questioning at the scene of his arrest, calling the officers' attention to the backpack inside the apartment;
5. Evidence seized from the same backpack, specifically heroin, cash, and ammunition; and
6. All statements the Defendant made at the police station.

As reason therefor, Defendant argues that the above-listed evidence (numbered 4-6) and statements were the fruits of an involuntary statement made during an unwarned, custodial interrogation and that introduction thereof would violate his privilege against self-incrimination as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution, Article Twelve of the Massachusetts Declaration of Rights, and the Massachusetts common law.

Respectfully submitted,
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April 24, 2023

COMMONWEALTH OF MASSACHUSETTS

Hampden County

Supreme Judicial Court
No._____
Appeals Court
No. 2023-P-1111

COMMONWEALTH

v.

ALEXANDER SOTO

APPLICATION FOR FURTHER APPELLATE REVIEW

Now comes the Defendant, ALEXANDER SOTO, and hereby requests that this Honorable Court, pursuant to Mass. R. App. P. 27.1, grant him leave to obtain further appellate review ("FAR") of the August 14, 2023, judgment in *Commonwealth v. Alexander Soto*, 1979CR00433, aff'd Appeals Court No. 2023-P-1111, 104 Mass. App. Ct. 806 (2024). Review is necessary because the Appeals Court has held that this court's opinion in *Commonwealth v. Figueroa*, 468 Mass. 204, 215-216 (2014), prevents Massachusetts courts from applying clearly established Federal law, as determined by the Supreme Court of the United States in *Arizona v. Gant*, 556 U.S. 332, 339 (2009). This Court should grant FAR to address the conflict the Appeals Court has identified between *Figueroa* and *Gant*.