

No.

IN THE

SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

DENIS CATANIA,

Petitioner,

- VS. -

STATE OF NEW JERSEY,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of New Jersey

PETITION FOR WRIT OF CERTIORARI

Denis Catania # 841023
Lock Bag R
Rahway, New Jersey 07065
Petitioner, Pro Se

Petitioner Denis Catania petitions this court for a writ of certiorari to issue to the final judgment of the Supreme Court of New Jersey based on the following:

a. Questions Presented For Review

1. Since petitioner was not under arrest requiring exigencies of HUDSON V. MICHIGAN, did police have a right to accompany him into a bedroom beyond WASHINGTON V. CHRISMAN guidelines, and did this constitute an unconstitutional limited security search beyond MARYLAND V. BUIE?
2. Did police surpass seizures of premises authorized in MC ARTHUR V. ILLINOIS, (presence of illegal contraband); SEGURA V. U.S., (arrest); and CHAMBERS V. MARONEY, (intervening circumstances)?
3. Did the fruit of the initial warrantless intrusion and seizure of petitioner's premises used as probable cause to secure warrants progress beyond limits imposed in WONG SUN and MURRAY V. U.S.?

b. List of All Parties Whose Judgment Is Sought To Be Reviewed

The parties in this action consist of the petitioner, Denis Catania, and the respondent, State of New Jersey.

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d. Opinions By Courts Below

On November 29, 2012 the Superior Court, Law Division denied a motion to suppress the fruits of searches. [A 1-14].

On March 27, 2017 the Superior Court of New Jersey, Appellate Division affirmed that decision after petitioner pled guilty, but preserved his right to appeal the ruling. [B 1-39].

On September 27, 2017 the Supreme Court of New Jersey denied a petition for certification. [C 1].

e. Jurisdictional Statement

The date review is sought of is September 27, 2017. The judgment is a denial of a petition for certification. The statutory provision jurisdiction is predicated on is 28 U.S.C. § 1257(a). The judgment was rendered by the Supreme Court of New Jersey, the highest state court. N.J. CONST. (1947), art. VI, ¶ 1, § 2.

f. Constitutional Provisions, Treaties, Statutes and Regulations Involved

The Fourth Amendment of the Constitution of the United States:

"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 person or things to be seized."

N.J. CONST. (1947), art. IV, ¶ 1, § 2:

"The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided for in this Constitution."

28 U.S.C. § 1257(a):

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question, or when the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States,

or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States."

g. Statement of the Case

(i) Specific Stage In State Proceedings At
Which Federal Question Sought To Be
Reviewed Presented

The specific stage at which a federal question as to the fourth amendment was raised were petitioner's brief in support of the motion to suppress in petitioner's briefs to: the trial court, [J 12-13]; the Superior Court, Appellate Division, [M 30]; and within his petition to the Supreme Court of New Jersey. [O 11]. Applicability of decisional law were made as indicated.

At trial level, by petitioner, of: WONG SUN V. UNITED STATES, 371 U.S. 471 (1963), [D 12, J 18]; SEGURA V. UNITED STATES, 468 U.S. 796 (1984), [A 7, J 12]; and WASHINGTON V. CRISMAN, 455 U.S. 1 (1982), [J 14], by co-defendant of ILLINOIS V. MC ARTHUR, 531 U.S. 326 (2001), [I 2]; respondent's acknowledgments of SEGURA and fourth amendment implications, [E 10, K 5]; and the ruling involving SEGURA. [A 7].

On appeal, by petitioner, of: HUDSON V. MICHIGAN, 547 U.S. 586 (2006), [M 30]; MARYLAND V. BUIE, 494 U.S. 325 (1990), [M 31]; SEGURA, [M 34, 39, 41, 44, 47-49]; CRISMAN, [M 34, 36-37]; MC ARTHUR, [M 42, 44]; CHAMBERS V. MARONEY, 399 U.S. 42 (1970), [M 45]; and MURRAY V. UNITED STATES, 487 U.S. 533 (1988), [M 49]; as acknowledged in the opinion as to SEGURA. [B 26].

On petition to the Supreme Court of New Jersey, by petitioner of SEGURA, [O 8, 15, 21]; and MC ARTHUR, [O 16].

(ii) Relevant Occurrences

A. Facts

1. September 29, 2010

At 3:19 a.m. Hammonton, New Jersey police extinguished a vehicular fire and found severely burned human remains incapable of distinguishing gender. They contacted Ross Heimlich's grandfather, the owner. He informed them his grandson who resided with him had used the car the day prior, and never returned. His grandfather reported he phoned Heimlich's cell several times and never received a response. Heimlich failed to appear for class at a community college he attended on the day of the fire. [B 8].

Surveillance video of the area revealed the burned vehicle was being followed by a dark color vehicle. Both made right turns and stopped. At 2:57 a.m. a bright flash was seen in Heimlich's car then the other vehicle left.

Police obtained Heimlich's cell records and discovered several messages between him and someone known as Diana. The content revealed Diana told Heimlich to go to her house on the night of September 28, 2010 with the promise of sex, after her return from Philadelphia. She stated she would contact decedent when she was ten minutes away. The last exchange occurred at 9:28 p.m., lasted 24 seconds, and his cell phone was near petitioner's home in Voorhees, New Jersey. Heimlich's aunt and a friend of his reported he was having an affair with Diana Camacho, a co-worker at a store, who may have been married.

The employer reported that on August 5, 2010 Camacho attempted to file a complaint against Heimlich which alleged he sexually assaulted her at work and home. He also related Camacho stated she and Heimlich had been having an affair since April resultant in her getting a STD which she gave to her boyfriend. She stated he was jealous and controlling, and drove a dark green four door Toyota, possibly a Camry. On August 16, 2010 a municipal court dismissed that complaint. Another employee told police petitioner came to the store on August 23, 2010 confronted Heimlich, and asked why he proposed to his girlfriend. Police also obtained Heimlich's computer which revealed he and Camacho had communicated via it.

After learning petitioner's identity as Camacho's boyfriend, police located a 911 call regarding a dispute petitioner had with a moving company at his house revealing it differed from the 4955 number Camacho used to contact Heimlich the night prior to his death.

2. October 1, 2010

Police went to petitioner's home and found a for sale sign on it. They contacted the realtor involved who stated they listed it for sale approximately seven months earlier and moved to Florida.

Police then got petitioner's cell and E-2 pass record which revealed he left New Jersey on July 9 and arrived in Florida on July 19, 2010. Petitioner obtained a Florida driver's license on the day of his arrival and lived at a home in Cape Coral.

On August 26, 2010 Camacho and her children left New Jersey and moved to Florida.

3. October 5, 2010

New Jersey authorities contacted Florida police to locate petitioner and Camacho. The same day sergeant Anton of the Atlantic county prosecutor's office viewed the photo of the Florida motor vehicle division which was taken on July 19. [G 94.3-7].

4. October 6, 2010

Florida authorities went to petitioner's home there, and discovered a white Cadillac registered to petitioner outside. They also found a dark green Toyota registered to him at a nearby apartment complex at which Camacho resided.

5. October 29, 2010

Dental records confirmed Heimlich's identity. Petitioner and Camacho left their original residences and were living at another house in Cape Coral. Police then obtained a warrant for the Vorhees house where they recovered no electronic devices.

6. November 12, 2010

Verizon responded to a subpoena regarding the 4955 number and reported it had been activated by a call from a pay phone from outside a store in New Jersey on September 28.

7. November 16, 2010

Police viewed a surveillance tape of a man purchasing the phone which appeared to be petitioner and went to Florida in an attempt to interview him and Camacho. They then placed the

Florida house the two were residing at under surveillance.

8. November 17, 2010

Camacho departed in the Toyota and dropped her son off at a day car center. Police then approached and informed her they desired an interview regarding Heimlich's death. She refused and they returned her to the car. About ten minutes after Camacho left the house four officers knocked on the door. Petitioner, not wearing a shirt, responded. They identified themselves and informed petitioner they were there for a homicide investigation involving Heimlich. At the hearing on the motion to suppress two of the officers testified petitioner invited them in. One identified petitioner as the man who purchased the phone in the surveillance video. [B 8-15].

According to police, whom the state courts found credible, petitioner led officers into the kitchen where the two New Jersey detectives remained. The house had an open floor plan. From the kitchen one of the detectives could see a laptop computer in the living room. At first, the group engaged in talk about restaurants in the area. When petitioner requested to get a shirt from his bedroom, a U.S. marshal who had accompanied them, followed him "for safety purposes." [B 16]. Purportedly, he stood at the doorway while petitioner put on a shirt, did not search any of the rooms, and did not make any observations.

A conversation continued regarding petitioner's plans to take a cruise. One of the detectives asked petitioner if he would agree to an interview regarding Heimlich's death.

Petitioner responded he desired to speak to a lawyer and questioning stopped.

Police got a Florida judge to issue a search warrant for the house. It was arranged for two other officers to guard the house from entry by others, and petitioner left after he was informed he could not remain while the premises were secured and the warrant was obtained. Petitioner attempted to take a cellphone with him and was informed he could not. Police then exited as well. Two officers testified no search was conducted until later in the day after the warrant was issued.

Police proceeded to the local police station about thirty minutes away. There, an affidavit was prepared for submission by detective Rauch who testified he had prepared the majority of it prior to departing New Jersey. It was submitted to the emergent duty judge at 4 p.m., who issued the warrant. It was executed at about 5 p.m., approximately ten hours after petitioner departed.

According to police reasoning for the initial intrusion at petitioner's residence, (and resultant 1,200 mile one-way trip), and accosting of Camacho were two. They consisted of: identifying petitioner as the individual who purchased the cellphone in the New Jersey video, and interviews of the two. These came about by viewing of the video a day prior to flying to Florida. [G 122.14-20, 144.10-12]. Detective Rauch who had been employed by police since 1994 and had extensive training in investigative fields, [N 82-87], maintained this was required

despite viewing the Florida drivers license photo of petitioner taken four months earlier and an ability to ascertain if the two would agree to interviews by phone.

The majority of the affidavit in support of a warrant was completed in New Jersey except for the information come by on the day seeking it in Florida. [H 11.9-14]. Despite this, authorities maintained there was no intention to obtain a warrant when they departed the state, [H 62.13-63.4], but never provided reasons for the preparation.

Additional items seized were a laptop computer, a personal computer, two cellphones and a cellphone charger. Authorities maintained the laptop germane because there was evidence the victim and Camacho had communicated by computer that was in plain view in the living room and not inside the bedroom which they could not see into from the kitchen where they remained. Despite this the laptop was found in the master bedroom. [N 97, Item 5].

At this juncture police believed petitioner and Camacho moved to Florida in July but returned to New Jersey shortly before September 27, the date petitioner bought the phone to lure Heimlich to their home on the following day. Authorities believed they had left their cells in Florida to prevent tracking but thought they may have used a GPS device which would determine when they had returned.

9. November 18, 2010

Three officers proceeded to the school Camacho's children attended. They interviewed one of her children, Christopher Meyers. He related they visited their grandparents in Philadelphia and slept in the Voorhees house. He told them petitioner rented a van for the trip, removed a GPS device from one of the cars and put it in the van.

10. November 19, 2010

Rauch prepared a second affidavit to search petitioner's and Camacho's vehicles for GPS devices, maps, toll records, other cellphones, computers, other electronic devices and clothing worn by petitioner and the victim. The same judge issued that warrant. Later that day police found the two and both cars in a parking lot. They recovered two GPS devices. [B 17-20].

11. March 7, 2011

Petitioner was charged with murder. [G 4.3-14].

12. May 2011

A woman employed at a store in Philadelphia called the authorities to report Damien Leo, a customer admitted involvement in the murder according to Rauch who testified when respondent obtained the superseding indictment in March 2013. Leo related petitioner requested him to help rough a guy up in fall 2010. He agreed and petitioner picked him up and brought him to the Voorhees home. Petitioner stated Camacho contacted Heimlich and told him to come there. When he arrived Camacho let him

in. Petitioner then entered from a back room brandishing a starter's pistol ordered him onto the floor, then struck him several times with the pistol and placed him in a choke hold while Leo got in a few blows. Heimlich stopped moving and petitioner said, "[H]e's fucking dead." [B 17-22].

13. December 21, 2011 and March 20, 2013

The GPS devices were used as evidence before the grand jury which indicted petitioner. One of the devices was at the location the phone used to contact the victim was activated, and three miles from the scene of the fire 21 minutes after it began. [D 38.3-14, 45.1-12, 46.22-47.11; L 30.16-31.11].

B. Procedural Events

1. March 7, 2011

Petitioner was charged with Heimlich's murder and related offenses. [G 4.3-14].

2. December 21, 2011

The Atlantic County New Jersey grand jury indicted petitioner, Camacho, and Leo for several offenses including first degree murder, conspiracy to commit murder and felony murder. [D 1-93].

3. June 25, 2012

Petitioner filed a brief in support of a motion to suppress material seized during the searches. [E 1-12].

4. July 2, 2012

Respondent filed a brief in opposition. [F 1-13].

5. September 21 and October 24, 2012

Hearings were conducted on the motion to suppress. [G 1-152, H 1-145].

6. November 14, 2012

Camacho filed a brief in support. [I 1-4].

7. November 15, 2012

Petitioner filed a supplemental brief. [J 1-23].

8. November 19, 2012

Respondent filed a supplemental brief. [K 1-11].

9. November 29, 2012

The motion was denied. [A 1-14]. The trial judge characterized the discrepancy between police seizing the laptop

in the bedroom and attesting it was in plain view in the living room as a minor factual discrepancy, resultant in a conclusion police were credible. [A 5; N 97, Item 5].

10. March 20, 2013

A superseding indictment charging the same offenses and others was obtained. [L 1-59, N 35-51].

11. July 11, 2013

Petitioner pled guilty to aggravated manslaughter and preserved the right to appeal disposition of motions. [N 54].

12. August 22, 2013

Petitioner was sentenced to 25 years imprisonment. [N 60].

13. September 9, 2017

Petitioner filed his brief on direct appeal, [M 1-61], along with a separate appendix. [N 1-114].

14. March 27, 2017

The Superior Court of New Jersey, Appellate Division affirmed. [B 1-39]. The appellate court found the seizures of premises and fruits of searches of them and the vehicles harmless under SEGURA. [B 34].

15. May 18, 2017

Petitioner filed a petition for certification with the Supreme Court of New Jersey. [O 1-22].

16. September 27, 2017

The petition was denied. [C 1].

h. Argument Amplifying Reasons For Granting Writ

1. Criteria For Granting Writ

The granting of certiorari is discretionary. Nonetheless, criteria demonstrating when the exercise of the writ should be had occurred in *LEAVITT V. JANE L.*, 116 S.Ct. 2068 (1996). There it was held that this court does not normally grant petitions to review state law, but undoubtedly should when the alternative is an obvious allowing of blatant federal nullification of state law. Here, an even more egregious set of circumstances has occurred as there has been a nullification of the rulings of this court by a state court.

The situation in *LEAVITT* presented a situation where a court of appeals made an erroneous decision holding invalid provisions of a Utah statute regulating abortions up to twenty weeks was not severable from another provision regulating abortions after twenty weeks gestational age. This nullified a state created right and modification of it.

This court similarly held it could not simply accept a determination of a lower court there was sufficient due process protection to an interest provided by state law and not determine whether petitioner's customs or policies were provided too little protection. *CASTLE ROCK V. GONZALES*, 545 U.S. 748, 757-758 (2005).

Yet another instance of similarity was when an implicit decision on state law of the Virginia Supreme Court was held rightfully subject to review. *VIRGINIA V. HICKS*, 539 U.S. 121

(2003). This was because the state law involved was an overbreadth application of the first amendment. On what appears to be the last holding of this court as to when jurisdiction is rightfully invoked is GEORGIA V. RANDOLPH, 164 L.Ed.2d 208 (2006). There, the liberty interest involved in a search was held to justify federal involvement by this court. Id., at 241.

Because of the questions which follow as to a ruling by the state courts in this matter which authorizes police conduct beyond precedential law of this court BY STATE PRECEDENT, it should be apparent the matter brought by petitioner renders an outcome which is yet more ripe for certiorari than these matters. (Emphasis Added).

It is further maintained this should be had here based on the finding of failing to review any police credibility determination of a trial court addressing fourth amendment implications predicated on STATE V. BARRONE, 147 N.J. 599, 615 (1997). [B 32].

Certiorari should be had to ascertain if BARRONE can serve to validate pretextual highly questionable police credibility as to where objects are found and where they entered. This is especially so when, as here, documents prepared by police contradict their own testimony. Whether this is constitutional, is a germane topic pursuant to RANDOLPH and GONZALES, as to whether sufficient due process was afforded.

2. Specific Questions As Reasons For The Writ

A. Intrusion As to Non-Arrestee Absent
Exigencies of HUDSON, Police Right to
Accompany Beyond CRISMAN, and Limited
Security Search Beyond BUIE Authorization

(1) Warrantless Intrusion Absent Exigencies Present In HUDSON

Both in HUDSON and the instant matter warrantless intrusive conduct is at issue. In HUDSON the court was confronted with the right of the citizenry to secure their persons, papers and property from seizure until police obtain a warrant. What was revealed in HUDSON is that warrantless intrusive conduct is presumably unconstitutional, and police are responsible for providing information overcoming this presumption. *Id.*, at 593.

In the instant matter no person, nor police themselves, ever maintained either patently illegal material such as drugs or firearms were believed to be present in petitioner's residence, or there was material present capable of ready destruction.

If anything, the results of police conduct seizing a laptop computer, cellular telephones and GPS devices lays bare this matter was not one where evidence capable of instant destruction such as drugs, were implicated. Additionally, this too, was not a case where inherently destructive devices in the form of firearms, explosives or other weaponry were believed present.

Accordingly, this court is confronted with a situation where contrary to HUDSON directives governing warrantless

intrusive conduct may police justify that presumably unconstitutional conduct absent any evidence whatsoever of either patently illegal and/or inherently dangerous material?

This question has not previously been addressed by this court. Not content with two specific situations present as to a warrantless non-arrested person premised on a possible presence of material which is per se illegal or inherently dangerous, respondent requests intrusion based on possible evidence presence alone. This constitutes the sole rationale. The evidence consisted of devices which were: (a) lawful to be possessed; and (b) incapable of instantaneous destruction, reflected by seizure.

Respondent may disguise the conduct in whatever fashion it desires to make it more palatable for judicial consumption. Nonetheless, this represents a clear break with HUDSON as police exploitation of authorized conduct taken to new limits. This court has never endorsed this. It is therefore ripe for examination as to validity.

In HUDSON this court was confronted with whether failure to comply with a knock and announce rule prior to entry of a residence required suppression. Police admitted to turning a doorknob prior to an announcement. Elimination of the presumption of unconstitutional conduct had absent a warrant was addressed in MARYLAND V. KING, 186 L.Ed.2d 1 (2013), decided after the trial court's ruling in this matter.

There, it was held in such cases of intrusion there must be present, "some quantum of individualized suspicion." *Id.*, at 8. Even assuming respondent failed to comply with HUDSON and was capable of rectification pursuant to KING, this has failed to occur within the record. Police failed to articulate any reason as to why their conduct was necessitated and overcame the presumption of unconstitutionality.

Moreover, the record is bare as to any justification for their actions. They testified to no suspicious activity by petitioner upon their accosting him. Similarly, the record is bare as to attempted concealment or destruction of evidence, the presence of weapons or patently illegal material such as drugs, and the presence of weapons or any other persons posing a danger.

If anything, police readily testified to their observations of the sole other adult occupant of the residence depart with her son and that they began surveillance prior to entry. The eventual search, when conducted, yielded materials such as a laptop computer, cellphones and GPS devices. These fruits were not easily destructible, nor were they per se illegal for a person to possess.

Neither HUDSON nor KING condones these acts. Thus, the course of conduct is one unexamined previously by this court.

(2) Accompaniment of Non-Arrestee Beyond CRISMAN

In CRISMAN police observed an apparently underage man exit a university dorm with a bottle of liquor. When they requested proof of age he responded his room contained it and asked to be permitted to retrieve it. Police maintained they had to accompany him. When they did and remained in the doorway, within 30 to 45 seconds a roommate placed a small box in a medicine cabinet, became nervous, and the officers saw a pipe and seeds believed to be marijuana from their training. Both were advised of their self-incrimination rights which they waived. *Id.*, at 3-4. This court held police had a right to maintain continuous observation of persons in custody, *Ibid.*, at 6; a class which petitioner in the instant matter, is not a member of.

Today, this court is confronted with a situation whereby it can answer should police in certain situations be permitted to go beyond the accompaniment of an arrestee as to a non-arrestee? Further, the court is provided the opportunity to answer this in the context of when the person is in his own residence, and there is no specific belief of the possibility of other persons or weapons present. Such is particular to the case since police themselves testified petitioner's girlfriend and son left the residence prior to their entry and they articulated nothing regarding the presence of anyone else or any other concerns.

(3) Limited Security Search In Excess of BUIE

A limited security search or a protective sweep is authorized in certain circumstances by BUIE. There, police had a warrant for defendant for armed robbery and saw him enter the basement. After speaking to a woman they entered the basement to conduct the sweep and encountered defendant along with clothing worn in the robbery in plain view. *Id.*, at 328.

In condoning this conduct the court was careful to note it was limited to areas which may contain a person. *Ibid.*, at 335-336. Respondent can urge petitioner's bedroom in this matter may constitute such an area. Arguendo, petitioner readily concedes that while this may be true, BUIE is distinguished from this matter for several reasons.

First, no arrest warrant for petitioner or anyone was in possession of police. Second, this matter contradicts BUIE where police had observed not only the entry of a person to the premises beyond the initial female they encountered, but the focus of their investigation, defendant, for whom an arrest warrant was issued. Such highly individualized suspicion of the premises as harboring someone combined with their observations of defendant's entry could reasonably authorize their conduct.

However, using that as justification for what occurred here is taking the court's holding to a ridiculous end in an attempt to permit general expansion of intruding into all of a residence which BUIE failed to authorize. Thus, this too

constitutes a unique expansion of BUIE never authorized by this court. It presents a constitutional question as to legality which should invoke certiorari jurisdiction.

In all, police have three unique unauthorized facets as to their conduct. They intruded throughout the residence to observe evidence used to secure a warrant absent indicia presence of anything illegal beyond HUDSON. Police progressed beyond CRISMAN and escorted a non-arrestee inside his own residence. Lastly, their conduct permitted them to view evidence in plain view absent an arrest warrant for petitioner, or an arrest warrant for anyone believed to be in the residence authorized in BUIE.

At the outset, petitioner submits the entire incident at his Florida home was staged and conducted as a fishing expedition in hopes of observing items to utilize in obtaining a search warrant. Despite CHIMEL V. CALIFORNIA, 395 U.S. 752 (1969) police conducted a pre-rehearsed act in violation of it. The record reveals police involved appeared to be highly attuned to what conduct was constitutional, and attempted to exploit this by recounting a slightly different scenario than those previously before this court.

Since the court decided CHIMEL nearly a half century ago authorities know a pretext must be sophisticatedly cloaked as come about in a setting they were legally in for a court to validate it. This court condemned police conduct when they came to defendant's residence to arrest him, permitted him to

enter, arrested him, and searched the entire residence which yielded the fruits of the burglary he was arrested for. There this court limited searches incident to arrest to areas under immediate control of defendants. *Id.*, at 753-754.

Here, the conduct in question is similarly disguised. They admitted Camacho was approached after she left the same residence with her son. Nothing indicated petitioner could not have been approached in the same fashion, upon exit. Moreover, neither was the subject of arrest at the time justifying more intrusive conduct. Finally, and of the utmost import, police could have informed petitioner what they desired to interview him about, their true purpose; when he answered his door. Accordingly, he could have invoked his right to counsel at that time and foreclosed the pretextual intrusion. Given petitioner's reaction when he was advised of the police purpose, nothing indicates the same response would not have been triggered.

Proceeding to petitioner's home to engage him in topics regarding restaurants and a cruise he was planning on which they characterized as "small talk" is akin to previous conduct condemned by this court in *BREWER V. WILLIAMS*, 430 U.S. 387 (1977), (officers transporting defendant charged with murder engaged in talk regarding the ability of victim's family for Christian burial if body located); and *RHODE ISLAND V. INNIS*, 446 U.S. 291 (1981), (officers transporting defendant talked about if gun used in crime defendant was charged with not

located, a child could find it and get hurt).

There, the court made it clear police were to refrain from words or actions which they should know are "reasonably likely to elicit an incriminating response." INNIS, at 301.

The education of how not to precisely violate those dictates is laid bare by the talk regarding differing subjects distinguishing the conduct from BREWER. Instead they never came to the point regarding their purpose, observed as much as they could, and then broached the topic leading to invocation of counsel. Here, the "safety purposes" are nothing but a disguised attempt at CHIMEL legality for weapons, as nothing indicated the presence of weapons or others after Camacho's departure. However, a distinguishing feature is there defendant was arrested. Here he was not. In fact he was evicted from his home while authorities secured it, obtained a warrant and executed it.

What occurred here can be viewed as more intrusive than BREWER or INNIS. There, defendants incriminated themselves. Here, petitioner invoked the right to counsel when the topic of the crime he was eventually convicted of was referred to. Nonetheless, they derived fruits of their conduct, the observations which led to the warrant, and ultimately the incriminating evidence seized.

Despite BREWER and INNIS constituting fifth and sixth amendment violations, intrusive police conduct accomplished through ruse yielding incriminating evidence has not been

condoned by this court to compromise constitutional protections. Nonetheless, relevant law of this court on fourth amendment principles provides no support for the actions here. If anything, this case represents a factual scenario of police conduct never previously legitimized by this court, rendering it one which is suitable for certiorari.

As in those matters, here police engaged in conduct hoping not to yield an incriminating response, but an act which justified a further intrusion. That was engaging petitioner in a talk of some length which eventually led to a request from him that he wanted to go to his bedroom to get a shirt. Prolonging the talk to elicit this yielded the officer accompanying petitioner and derived the benefit of intrusion of what was observed in plain view being used as probable cause for the warrant.

What is involved here resembles CHIMEL in that it came on the heels of TERRY V. OHIO, 392 U.S. 1 (1968). For in TERRY, the court authorized a brief detention for investigation and a pat down frisk for weapons for safety. Id., at 22-24. The following term this court was confronted with CHIMEL where police searched defendant's home, purportedly for weapons and safety purposes pursuant to TERRY authorization. In CHIMEL police permitted defendant to enter his residence, and then searched it yielding a coin taken in a burglary of a coin dealer he was arrested for. This court found a constitutional violation and held any intrusion, (similar to TERRY), must be limited to an

immediate area under an arrestee's control which could contain a weapon or destructible evidence. Id., at 763.

Here it must be noted the rulings below found petitioner invited police into his residence resultant in a conversation in the kitchen. What is of the utmost import is he did NOT invite anyone to accompany him to his bedroom. (Emphasis Added). Police continue to push the envelope as to tolerable conduct. This is representative of a new frontier in that arena which this court should examine.

In SEGURA the court enunciated a clear test was to be resorted to when it is claimed that evidence subsequently obtained was either tainted or the fruit of a prior illegality. This is whether the evidence was come about at exploration of the initial illegality, or instead by means distinguished to be purged of the primary illegality pursuant to WONG SUN, at 484; SEGURA, at 804.

The facts in SEGURA differed greatly. A couple occupying an apartment were arrested outside of it with one in possession of cocaine. A United States attorney authorized an arrest at 6:30 to 7:00 p.m., and no warrant was obtained until the following day while the apartment was secured to prevent possible destruction of evidence. Also therein, agents established external surveillance and arrested defendant at 7:30 p.m. in the lobby and denied him entrance to the apartment. Agents then returned to the apartment to search for other persons. Upon doing so a woman answered the door and they observed drug

paraphernalia in a bedroom. Id., at 800.

Nothing here indicated any reasonable belief of other dangerous persons. Camacho, the sole other adult residing there, had departed. A key point here was that, as noted in ruling on the motion to suppress, one of the officers most candidly testified the search resulted in confiscation of a laptop computer found on a dresser in the master bedroom was NOT observable from the kitchen, but asserted to be in the affidavit for the warrant. [H 115.20-25, N 97]. (Emphasis Added).

This confirms the sole method for that to be known was from the marshal accompanying defendant to retrieve a shirt, an act authorized by neither CRISMAN nor SEGURA.

The actions here occurred in November 2010. Petitioner was not charged until March 2011. No one was arrested and no one testified to belief other dangerous persons were present. Harm ensued in the form of evidence showing Camacho and decedent communicated by computer along with inculpating petitioner by cellphone records proving activation and purchase at times petitioner was demonstrated to be in the areas subsequently corroborated by the GPS devices seized.

This question presents an issue unaddressed previously by this court. That being whether police can go beyond intrusion authorized in CRISMAN as to accompaniment of an arrestee, and accompany a non-arrestee into another room in his residence resultant in observations used to secure a warrant, which is purged of taint as to WONG SUN-SEGURA requirements.

Certiorari on this matter would determine if the state court could hold no violation of law of this court when supposedly an officer did not use his entry to view anything leading to the warrant, [B 32-33], but the laptop was found in the master bedroom, [N 97], a room officers could NOT see into, and maintained the laptop was in the living room, [H 103.3-6]. (Emphasis Added). This is especially so since detective Anton candidly admitted he did not know if anyone entered the bedroom. [H 88.25-89.15].

The finding of police credibility despite the laptop being located in a room different than police maintained when the warrant was executed, and more importantly, one which police were not constitutionally authorized to enter pursuant to any previous decision of this court, cannot be said to constitute "a minor discrepancy." [A 5]. This is what the trial judge did and which the state appellate court found unreviewable by state precedent.

This presents a case where at best for respondent, evidence is found by police in a location they were admittedly not authorized to be in.

It further presents a matter which thus far remains unaddressed by this court, and is of significant constitutional import. This court has previously found police motives relevant in CHIMEL, BREWER and INNIS and here is provided with an opportunity to rule as to whether there are some findings so far afield from facts adduced and so intertwined with motives

rendering them ripe for anew findings by appellate courts in affording due process required. It is submitted this is particularly so for certiorari petitioned for, on direct appeal, as opposed to habeas where hearings regarding suppression on fourth amendment issues afforded as deemed to be full and fair, are beyond purview. STONE V. POWELL, 428 U.S. 465 (1976).

B. Police Surpassing Seizures of Premises
Authorized By Presence of Illegal Contraband
In MC ARTHUR, Arrest In SEGURA, and
Intervening Circumstances In CHAMBERS

(1) Surpassing Seizures of Premises Authorized By MC ARTHUR
Absent Presence of Illegal Contraband

In MC ARTHUR this court endorsed securing premises for two hours subsequent to defendant's wife, informing police he had narcotics inside. Here no one provided information petitioner had anything facially presumsumably unlawful or questionable. Securing the residence for seven hours after observation of items contrary to CRISMAN and HUDSON, to secure a warrant takes intrusion to a new level.

Respondent lacked the evidence required by MC ARTHUR for securing the premises. Respondent cannot maintain the observations of plain view items contrary to CRISMAN coupled with a lack of individualized suspicion required by KING to overcome the HUDSON presumptive invalidity. Extracts of holdings out of context to come to a convoluted conclusion is open to question as never previously endorsed.

Petitioner urges this court to examine whether police should be permitted to go to these lengths.

(2) SEGURA Incident To Arrest Situation

Highly relevant matter to this is SEGURA. The rulings rendered by the state courts in this matter utilized it in reference to residence seizure. Petitioner brought to the attention of the court respondent had erroneously maintained this court had given endorsement of a premises seizure for 19 hours absent a warrant. This was a minority opinion of two justices. The majority of four failed to approve this action. SEGURA, at 812 and 818, n. 1.

This appears to have not been known of in that the seizure of a residence was not endorsed by this court. The state courts apparently interpreted this court's ruling to afford much lesser protection from a premises seizure as prelude to a search, which petitioner was subjected to, as opposed to a search. SEGURA, at 806. [A 34].

SEGURA differs from this matter. Two distinctions there were the arrest and the possible narcotics presence predicated on paraphernalia in plain view. Here there was no arrest, if anything petitioner was evicted.

The determination of legality by this court has been said to hinge on examination of an earlier illegal intrusion tainting a later valid intrusion, SEGURA, at 604-605, or results in an indirect result where initial intrusion becomes "so attenuated to 'dissipate the taint.'" MURRAY, at 537, NARDONE V. UNITED STATES, 308 U.S. 338 (1939).

Before the court is a situation not only in which there is no suspicion of something per se illegal, but also one in

which there was no arrest. Respondent still maintains a seizure of premises prior to obtaining a warrant was legitimate. This logic does not succeed under MC ARTHUR or SEGURA. It follows no intervening circumstances present in CHAMBERS, MURRAY or NARDONE justified the action.

(3) CHAMBERS Intervening Circumstances

In CHAMBERS police seized a car after a stop during which defendants were arrested based on a description of suspects in a robbery. Police seized clothing consistent with that worn, and firearms consistent resembling those used during the robbery.

What transpired during the initial accosting provided the reasons for intrusion. This court condoned that action but distinguished the difference between a home and a car because of mobility.

With facts present there this court held either without warrant as incidental to arrest, or seized after a warrant was obtained, evidence was admissible. The holding was police conduct resorted to there was necessary to be effective. *Id.*, at 50-51.

Petitioner submits constraints placed on conduct as to residences guaranteed higher protection in CHIMEL and SEGURA, clearly distinguished from a vehicle in CHAMBERS. CHAMBERS could have made legitimate searching of petitioner's car for weapons prior to his use of it if police were truly concerned regarding safety. With that not accomplished it displays police were on a fishing expedition to observe as much as possible for recounting in the pre-prepared affidavit they coincidentally happened to bring with them.

CHAMBERS is differentiated from this. Neither presence of weapons nor intrusion into a vehicle was initially utilized to make a seizure of premises. Nothing intervening occurred

at petitioner's residence except observing electronic devices.

This reverts back to the fact police ventured into petitioner's home, and absent invitation accompanied him into another room to make observations which were used in an affidavit earlier prepared, to obtain a warrant. The other scenarios justifying seizure had either arrest or the presence of something inherently suspicious, readily destructible or dangerous, such as firearms or drugs. Moreover, they were come at during normal good faith activity.

Here, officers testified to preparing the bulk of an affidavit prior to proceeding to Florida. The entry was had to conduct surveillance of as much of the home as possible, and to recount it in the affidavit. This type of conduct has not been previously approved by this court and is why this court should examine this case to ascertain if police should be afforded license to conduct such intrusions. They progress beyond authorized ones in SEGURA, MC ARTHUR and CHAMBERS to justify seizure of a person's home and evicting of him.

However law enforcement may package it, the record is clear their admissions are tantamount to the declinations to be questioned by petitioner and his girlfriend constituted the CHAMBERS intervening circumstances. This transpired when Anton testified after the two refused to be questioned they had to move on to their next option which was to attempt to secure warrants, [I 94.25-96.6], an option police would have the court believe was never contemplated previously.

This offers an opportunity for the court to address whether invocation of fifth and sixth amendment rights can provide reasons to justify intrusions pursuant to the fourth amendment CHAMBERS definition of intervening circumstances. If the court can somehow believe there was no prior intent to search and good faith intrusion, it remains open to question if this constitutes cause for action taken.

C. Fruit of Initial Warrantless Intrusion
and Seizure of Premises Used as Probable
Cause to Secure Warrants Beyond Limits
Imposed In WONG SUN and MURRAY

(1) WONG SUN-MURRAY limits

Within SEGURA, this court addressed WONG SUN. There the question to be resolved as to whether evidence subsequently obtained is tainted or fruit of a poisonous illegality is whether the evidence was come at by exploitation of the initial illegality, or means purged of the taint. WONG SUN, at 484, SEGURA, at 804.

In this matter the evidence fails to conform to one which is "purged of the primary taint." This is an impossibility. U.S. Marshal Green escorted petitioner to his bedroom when he retrieved a shirt. Green's purported rationale for this conduct was a, "general officer safety policy." The statement is tantamount to he was just following orders.

This fails to suffice constitutionally, and is in direct contradiction to CRISMAN because of petitioner's status as a non-arrestee, and Green's and other officers' failure to view anything illegal at the residence. Petitioner cannot conceive of a rational method of purging the conduct which led to an affidavit a laptop was viewed at the residence and it was one of the devices seized after the warrant was obtained listed as in the master bedroom, a room officers admitted they could not see into.

The conduct is certainly exploitation of the initial illegality beyond WONG SUN and SEGURA. Petitioner submits this

renders this matter one suitable for review by the court to decide if an officer can disregard rulings on constitutionally required fourth amendment conduct because of a policy as general practice. [G 19.3-7]. Petitioner submits the intent to intrude and observe is best demonstrated by what police failed to do. That is pat frisk him for weapons. It is farcical to maintain there was a concern for general safety and that he may retrieve a weapon if unescorted, yet no one ever ascertained if he already had one on his person.

Several facts note the benefit derived and intent. Detective Rauch admitted: the only things added to the affidavit for warrants were the observation of petitioner and the vehicles. [I 7.4-8.4]. Contrarily, he maintained there was no plan to search and police would have returned to New Jersey absent seeing evidence at petitioner's residence. [I 62.13-63.4].

In MURRAY, the court clarified the WONG SUN purging requirement by noting that if unlawful entry has given officers knowledge of facts x and y, but fact z has been learned by other means, fact z can be said to be admissible because it was derived from an independent source. MURRAY, at 537-538.

This was applied in SEGURA to conclude that what was found during an untainted and valid search was admissible. Id., at 813-814. Eventual discovery of what was uncovered during an initial illegal search was not excluded because it was later legally based on a valid warrant. MURRAY, at 539-540. However, in MURRAY there were present intervening circumstances of a

clear break from the initial conduct to the ensuing one accomplished with a warrant which is not present here.

If anything, the facts as represented by the officers present portray a continuous conduct of proceeding to the residence, leaving, preparing affidavits, proceeding to a judge, obtaining the warrant and returning. As noted earlier this conduct was premeditated, and supposedly accomplished as expediently as possible to deprive petitioner of entry of his home for a minimal time to execute the warrant.

With this the case, respondent cannot have things both ways. It cannot be argued there was a continuous course of conduct in obtaining the warrant and executing it, and too that there was a clear break removing the exploitation of the illegality had. In essence, the officers' actions fail under one of two scenarios either they failed to act expeditiously, and there was undue delay not constitutional pursuant to SEGURA, or there was continuous conduct in searching. This is resultant in the failure of the intervening circumstance required under MURRAY to validate their actions.

Accordingly, this court is being requested to examine a situation where neither of these occurred, and assess how the conduct can be constitutional.

(2) UTAH V. STRIEFF Exceptions

Petitioner further maintains the applicability of two holdings of the court subsequent to the ruling on his motion to suppress in 2012 at the trial level fail to sanction the police action below. MARYLAND V. KING, *infra.*; UTAH V. STRIEFF, 195 L.Ed.2d 400 (2016).

In KING this court elucidated the requirement of "some quantum of individualized suspicion" for intrusive conduct beyond that authorized in warrants. *Id.*, at 8. In STRIEFF the court noted three exceptions barring primary and derivative evidence as fruit of the poisonous tree. They were enumerated as evidence: (1) acquired from a separate independent source, as permitted by MURRAY, at 537; (2) come at by inevitable discovery, allowable by NIX V. WILLIAMS, 467 U.S. 431, 434 (1984); and (3) the attenuation doctrine whereby an intervening circumstance interrupted police conduct, validated by HUDSON, at 593.

Here, respondent has pressed the KING individualized suspicion to one of general officer safety absent any individualized suspicion. Certiorari would present the court with an ability to answer if this is encompassed by KING.

Secondly, as to authorized conduct by STRIEFF as acquisition from an independent source respondent cannot point to such. The intent of police is apparent. This was to proceed to petitioner's residence to conduct as much surveillance as possible, and then to supplement the pre-prepared affidavit with it to secure more permissible intrusion.

The pretextuality much akin to what was condemned in CHIMEL, is simple to follow here. What respondent had the state courts authorize were that police prepared the majority of an affidavit in support of a request for a search warrant in New Jersey and decided they would travel to Florida to identify petitioner in person despite viewing of a drivers license photo taken four months earlier, and to ascertain if he and his girlfriend would be interviewed regarding the crime.

After arrival they encountered petitioner and observed the laptop. They seized his premises, evicted him and were unsuccessful in obtaining interviews. Viewing of the laptop and seizure of it and several cellphones failed to place petitioner in New Jersey at the time of the crime. Next, his girlfriend's son was questioned. He provided information they had traveled there at the time of the crime and a GPS device was used. They then obtained additional warrants for the two vehicles executed them and recovered the incriminating GPS device.

Lastly, petitioner's affidavit which detailed his escort into his bedroom was explained away as self-serving with a conclusion the live testimony of police was highly credible, (but not cast as self-serving to further their ends). [A 5].

Representations within the affidavit resultant in the warrant recount recitation of completion of 51 courses including the F.B.I. one regarding identification, three regarding interrogation and none as to fourth amendment protections.

Maintaining a need for corporeal identification of petitioner located 1,200 miles away already identified on a drivers license four months old by a detective who has such training is utterly ridiculous. Further, the interrogation training and the talk about restaurants illustrate the real motives, and what transpired. There was a desire to interrogate coupled with a lack of compliance with the fourth amendment based on the lack of training in that area.

The evidence was not come at by inevitable discovery validated by STRIEFF because of NIX since petitioner fit the criteria of no other relevant decision constitutionally permitting an escort within his own home. There were no intervening circumstances which occurred permitting the intrusion with the record bare of authorities attesting to a belief others were present or weapons were present.

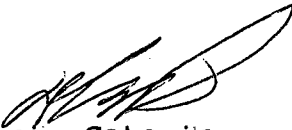
Because of all of this the conduct is of the type previously not before this court as approved. If anything it progresses beyond what has been held constitutionally tolerable in the past. As such it provides the court with an opportunity to reach the question of whether the clearly defined limits established in STRIEFF may be enlarged in certain situations. It further triggers the question of whether police themselves may create the CHAMBERS-MURRAY intervening exigency by resorting to unconstitutional conduct based on policy they are unaware is unconstitutional.

Conclusion

These are all serious questions of jurisprudence justifying certiorari.

Respectfully Submitted,

Dated: X 12/4/2017

X 
Denis Catania,
Petitioner, Pro Se