

ORIGINAL

25-5102
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

BRASHEAR, DANNIE PETITIONER
(Your Name) *PRO SE*

vs.

ST. OF WASHINGTON RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DIVISION ONE
COURT OF APPEALS OF THE ST. OF WA.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRASHEAR, DANNIE #350974

(Your Name)

WASH. ST. PEN.
1313 N. 13TH AVE.

(Address)

WALLA WALLA, WA. 99362

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. DID MS. MOUIRE POSSES AUTHORITY TO GIVE OFFICERS THIRD PARTY TO CONSENT TO SEARCH MR. BRASHEAR'S PROPERTY?
2. DID EXIGENT CIRCUMSTANCES EXIST ON 10-27-21 AT ANY TIME?
3. DID MR. BRASHEAR ASSUME RISK THAT A THIRD PARTY CONSENT MAY OCCURE?
4. WAS MS. MOUIRE INFORMED SHE COULD REFUSE CONSENT?
5. WAS SAID CONSENT KNOWINGLY, INTELLIGENTLY, VOLUNTARILY GIVEN?
6. DOES PRIVATE CURTILAGE FALL UNDER THE UMBRELA OF PROTECTION GURANTEED BY THE FOURTH AMENDMENT?
7. DID TRIAL COURT COMMIT REVERSIBLE ERROR BY NOT GRANTING BRASHEAR'S MOTION TO SUPPRESS EVIDENCE TWICE?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

STATE V. BRASHEAR, NO. 22-1-02088-06
CLARK COUNTY SUPERIOR COURT
THE HONORABLE DAVID GREGG ERSO, JUDGE

BRASHEAR V. STATE OF WASHINGTON
COURT OF APPEALS, DIVISION ONE
NO. 86610-9-1

THE SUPREME COURT OF WASHINGTON
BRASHEAR V. STATE NO. 103719-8
PETITION FOR REVIEW DENIED

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1 HALL, SEARCH AND SEIZURE §
(LEXIS NEXIS) © 2024, MATTHEW
BENDER & COMPANY, INC. MEMBER
OF THE LEXIS NEXIS GROUP.

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2RP - REFERS TO VERBATIM RECORD
FROM TRIAL COURT. 766 PAGES

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

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☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

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

☒ For cases from **state courts**:

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

- ☒ reported at STATE V. BRASHEAR 86610-9-1; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

OPINION PUBLISHED IN PART
NOV. 19, 2024

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11-19-2024.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: APRIL 2ND 2025, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 4 UNREASONABLE SEARCHES
AND SEIZURES.

"THE RIGHT OF THE PEOPLE TO BE
SECURE IN THEIR PERSONS, HOUSES,
PAPERS, AND EFFECTS, AGAINST UNREAS-
ONABLE SEARCHES AND SEIZURES, SHALL
NOT BE VIOLATED, AND NO WARRANTS
SHALL ISSUE, BUT UPON PROBABLE
CAUSE, SUPPORTED BY OATH OR AFF-
IRMATION, AND PARTICULARLY
DESCRIBING THE PLACE TO BE SEARCHED,
AND THE PERSONS OR THINGS TO BE
SEIZED."

STATEMENT OF THE CASE

THIS APPEAL ARISES FROM JUDGEMENT ENTERED ON A JURY VERDICT. APPELLANT CLAIMS THAT THE VERDICT RESULTED FROM THE TRIAL COURTS ERRONEOUS INCLUSION OF EVIDENCE THAT WAS FRUIT OF TWO ILLEGAL SEARCHES THAT VIOLATED APPELLANTS FOURTH AMENDMENT RIGHTS.

IT WAS ILLEGAL BECAUSE PERSON WHO GAVE CONSENT TO SEARCH DID NOT HAVE AUTHORITY TO GIVE CONSENT. AND CONSENT WAS GIVEN UNDER DURESS AND COERCION OVER TELEPHONE. PERSON GIVING CONSENT TESTIFIED THAT NO EXIGENT CIRCUMSTANCE EVER EXISTED ON OCT. 27, 2021. AND DEPUTY TESTIFIED THAT, "EXIGENT CIRCUMSTANCE WAS OVER" WHEN HE TRESPASSED ON OCT. 30, 2021 "ASSUMING THAT CONSENT GIVEN ON OCT. 27" (BY PERSON WITHOUT AUTHORITY) "WAS STILL GOOD AND WAS NON-VERBAL."

ERROR WAS PREJUDICIAL DUE TO FACT JURY WOULD NOT CONVICT WITHOUT FRUIT FROM A POISONOUS TREE BEING ADMITTED AT TRIAL.

"WHERE SUFFICIENCY OF EVIDENCE IS ATTACKED, THE APPELLATE COURT CAN NOT ESCAPE FROM METICULOUS REVIEW OF THE RECORD AND THE EXHIBITS INTRODUCED"

(U.S. V. RABINOWITZ, 327 F.2d 62)

JUSTICES MARSHAL, BRENNAN, STEVENS DISSENT IN (ILLINOIS V. RODRIGUEZ, 497 U.S. 177, 110 S. CT. 2793, 111 L. ED. 148 (1990)) "BASELINE FOR THE REASONABLENESS OF A SEARCH AND SEIZURE IN THE HOME IS THE PRESENCE OF A WARRANT. (SKINNER V. RAILWAY LABOR EXECUTIVES' ASSN. 489 U.S. 602, 103 L. ED. 639, 109 S. CT. 1402 (1989))

"SEARCHES AND SEIZURES INSIDE A HOME WITHOUT A WARRANT ARE PRESUMPTIVELY UNREASONABLE." (PAYTON V. NY, 445 U.S. 573, 586, 63 L. ED 639, 100 S. CT. 1371 (1980))

"EXCEPTIONS TO THE WARRANT REQUIREMENT MUST THEREFORE SERVE COMPELLING LAW ENFORCEMENT GOALS." (MINCEY V. AZ., 437 U.S. 385, 394, 57 L. ED. 290, 98 S. CT. 2408 (1978))

"THE SOLE LAW ENFORCEMENT PURPOSE UNDERLYING THIRD-PARTY CONSENT SEARCHES IS AVOIDING INCONVENIENCE OF SECURING A WARRANT. DEPARTURE FROM THE WARRANT REQUIREMENT IS NOT JUSTIFIED SIMPLY BECAUSE AN OFFICER REASONABLY BELIEVES A THIRD PARTY HAS CONSENTED TO A SEARCH OF THE DEFENDANT'S HOME."

"THE INFORMED AND DELIBERATE DETERMINATIONS OF MAGISTRATES... AS TO WHAT SEARCHES AND SEIZURES ARE PERMISSIBLE UNDER THE CONSTITUTION ARE PREFERRED OVER THE HURRIED ACTION OF OFFICERS AND OTHERS WHO MAY HAPPEN TO MAKE ARRESTS."

(UNITED STATES V. LEFKOWITZ, 285 U.S. 452, 464, 76 L. ED 877, 52 S. CT. 420 (1932))

"AS THIS COURT STATED IN (MCDONALD V. B.S., 335 U.S. 451, 93 L. ED. 153, 69 S. CT. 191 (1948)) THE PRESENCE OF A SEARCH WARRANT SERVES A HIGH FUNCTION. ABSENT GRAVE EMERGENCY, THE 4TH AMENDMENT HAS INTERPOSED A MAGISTRATE BETWEEN CITIZEN AND POLICE."

THIS WAS NOT DONE TO SHIELD CRIMINALS NOR MAKE THE HOME A SAFE HAVEN FOR ILLEGAL ACTIVITIES. IT WAS DONE SO THAT AN OBJECTIVE MIND MIGHT WEIGH THE NEED TO INVADE THAT PRIVACY IN ORDER TO ENFORCE THE LAW. THE RIGHT OF PRIVACY WAS DEEMED TO BE PRECIOUS TO ENTRUST TO THE DISCRETION OF THOSE WHOSE JOB IS THE DETECTION OF CRIME AND THE ARREST OF CRIMINALS." *Id.* AT 455-56

"THE COURT HAS TOLERATED DEPARTURES FROM THE WARRANT REQUIREMENT ONLY WHEN AN EXIGENCY MAKES A WARRANTLESS SEARCH IMPERATIVE TO THE SAFETY OF THE POLICE AND COMMUNITY." *SEE id.* AT 456

"IN THE ABSENCE OF EXIGENCY, THEN, WARRANTLESS HOME SEARCHES AND SEIZURES ARE UNREASONABLE UNDER THE 4TH AMENDMENT... POTENTIALLY MISTAKEN BELIEF THAT A THIRD PARTY HAS AUTHORITY TO CONSENT... AS THE PRESENT CASE ILLUSTRATES, ONLY THE INCONVENIENCE OF OBTAINING A WARRANT..."

AGAINST THIS LAW ENFORCEMENT INTEREST IS, "THE RIGHT OF A MAN TO RETREAT INTO HIS OWN HOME..."

(SILVERMAN V. U.S., 365 U.S. 505)

"BUT IN OTHER CASES, SUCH AS THIS ONE, THE AUTHORITY CLAIMED BY THE THIRD PARTY WILL PROVE FALSE. REASONABLENESS OF POLICE CONDUCT MUST BE MEASURED IN LIGHT OF POSSIBILITY THAT TARGET HAS NOT CONSENTED, WHERE NO REASON IS OFFERED FOR NOT OBTAINING A WARRANT..."

THE CONSTITUTION DEMANDS THAT THE WARRANT PROCEDURE BE OBSERVED. (JOHNSON V. U.S., 333 U.S. 10, 15, 92 L. ED. 436, 68 S. CT. 367 (1948)) "IF THE OFFICERS IN THIS CASE WERE EXCLUDED FROM THE CONSTITUTIONAL DUTY OF PRESENTING THEIR EVIDENCE TO A MAGISTRATE, IT IS DIFFICULT TO THINK OF A CASE IN WHICH IT SHOULD BE REQUIRED." "... OFFICERS ACCEPT THE RISK OF ERROR WHEN RELYING ON CONSENT. ... REASONABLE FACTUAL ERRORS ... WILL NOT VALIDATE ACTIONS ... MISTAKEN BELIEF ... IS IRRELEVANT."

JUSTICE KAVANAUGH, CONCURRING
... "THE COURT'S EXIGENCY PRECEDENT,
AS I READ THEM, PERMIT WARRANT-
LESS ENTRIES WHEN POLICE HAVE
AN OBJECTIVELY REASONABLE BASIS
TO BELIEVE THAT THERE IS A CURR-
ENT, ONGOING CRISIS FOR WHICH
IT IS TO ACT NOW." (CANIGLIA V.
STROM, 593 U.S. 194 (MAY 17, 2021)
SEE E.G., SHEEHAN, 575 U.S. AT 612,
135 S. CT. 1765, 191 L. ED. 2d 856)

JUSTICE ALITO, CONCURRING.
... "CIRCUMSTANCES ARE EXIGENT
ONLY WHEN THERE IS NOT ENOUGH
TIME TO GET A WARRANT." (SEE
MISSOURI V. MCNEELY, 569 U.S. 141, 149,
133 S. CT. 1552, 185 L. ED. 2d. 696 (2013))

IN THE PRESENT CASE, MONIER
(COMPLAINING WITNESS) TESTIFIED:
"I WAS IN THE AMBULANCE" WHEN
FIRST ACTUAL CONTACT WITH POLICE
OCCURRED ON THE 27TH (2RP 180:19)
THIS CORROBORATES BRASHEAR'S TEST-
IMONY THAT, "I HELPED HER INTO THE
AMBULANCE." (2RP 634:8) (653:4) "THEN
SHUT AND LOCKED THE GATE."

NO EXIGENT CIRCUMSTANCE CONCERNING POLICE EXISTED ON 27TH OF OCT. 2021 WHEN POLICE TRESPASSED AROUND A LOCKED GATE, WITH A K-9 SEARCHING ILLEGALLY FOR A MAN WHO'D RETREATED TO HIS HOME AND WAS ASLEEP, THEN PROCEEDED TO TAKE PHOTO'S FROM THRESHOLD OF FRONT DOOR.

"THE SHERIFF'S DEPUTY VIOLATED THE 4TH AMENDMENT BY ENTERING PAROLEE'S CURTILAGE WITHOUT A WARRANT OR EXIGENCY."

"JUST ONE FOOT AWAY FROM HOME... WE HAVE NO DOUBT THE DEPUTY PHYSICALLY TRESPASSED ONTO THE CURTILAGE, AND DEPUTY'S UNCONVENTIONAL MANNER OF ENTRY ONTO THE PROPERTY OBJECTIVELY MANIFESTED HIS INVESTIGATORY PURPOSE, CONFIRMING THIS TRESPASS."

[*852] PER CURIAM, HARSON CHONG V. U.S., 112 F. 4TH 848. (AUG. 14, 2024)

... "NOT DEBATABLE BUT OBVIOUS IN THE WAKE OF SUPREME COURT'S SEMINAL CURTILAGE DECISION IN FLORIDA V. JARDINES, 569 U.S. 1, 133 S. CT. 1409, 185 L. ED. 2D 495 (2013)

DEPUTY GONZALEZ TESTIFIED, "WE APPROACHED LOCATION IN A SNEAKY WAY..." (2RP 164:12, 3.6 HEARING)

AND JUST LIKE IN JARDINES, THE DEPUTY HAD NO LICENSE TO BE THERE. SEARCHING WITH A POLICE DOG VIOLATES "CUSTOMARY INVITATION."

(JARDINES, 569 U.S. AT 9)

"... CLIMBING OVER... COVERTLY TRAVERSING THE DRIVEWAY... LACKS LICENSE," CHONG V. U.S.

DEPUTY GONZALEZ TESTIFIED "DOOR WAS ADJACENT, PLAIN VIEW APPLIES" (2RP 339:5, 13)

ACCORDING TO CHONG THIS IS IRRELEVANT DUE TO THE WAY THAT THE DEPUTY "COVERTLY APPROACHED."

DEPUTY TESTIFIED THAT HE HAD "PERMISSION TO SEARCH INSIDE THE HOUSE" FOR SUSPECT. (2RP 339:15-340:12) PROSECUTION AGREES THAT "THERE'S NO DIFFERENCE BETWEEN CURTILAGE AND INSIDE THE HOME."

LET US ADDRESS THE AUTHORITY TO CONSENT QUESTION.

IF OFFICERS TRULY BELIEVED THEY HAD AUTHORITY TO ENTER THE HOME, WHY DIDN'T THEY TO TAKE BETTER PHOTO'S, COLLECT EVIDENCE, APPREHEND SUSPECT?

"WHETHER A PERSON HAS ACTUAL OR APPARENT AUTHORITY TO CONSENT TO A SEARCH IS A MIXED QUESTION OF LAW AND FACT THAT IS REVIEWED DE NOVO," (U.S. V. CHAVEZ, 673 FED. APPX. 754(2016))

"THE GOVERNMENT HAS THE BURDEN OF ESTABLISHING EFFECTIVENESS OF A THIRD PARTY'S CONSENT... IN 3 WAYS. 1ST IS PERSUASIVE EVIDENCE OF BOTH SHARED USE AND CONTROL OVER AREA, WHICH DEMONSTRATES ACTUAL AUTHORITY TO CONSENT. 2ND CAN SHOW THAT OWNER HAS EXPRESSLY AUTHORIZED A THIRD PARTY TO CONSENT. 3RD BY THE APPARENT AUTHORITY DOCTRINE." (UNITED STATES V. WELCH, 4F 3d 761, 764 9TH CIR. 1994)

MISTAKEN BELIEF AS TO THE LAW, NO MATTER HOW REASONABLE, IS NOT SUFFICIENT. (1d AT 765)

1ST, AS A MERE GUEST MS. MOUREIR HAD NO CONTROL OVER THE PROPERTY.

SIMPLE ACCESS WHILE ACCOMPANIED BY OWNER DOES NOT EQUAL CONTROL OVER OR AUTHORITY TO CONSENT.

MOUREIR TESTIFIED HERSELF THAT "SHE WASN'T SURE IF SHE HAD THE RIGHT TO GIVE CONSENT." (2RP 180:22, 186:24)

AFTER POLICE QUESTIONED HER SHE SAYS: "AT THAT POINT THERE WAS NOTHING I COULD DO, I NEEDED TO GIVE PERMISSION."

(2RP 187:2-3) THAT DOESN'T SOUND VOLUNTARILY, KNOWINGLY, INTELLIGENT. SHE DID NOT PAY RENT (2RP 187:5) "NEVER HAD GUESTS AT THE PROPERTY" (2RP 187:22-24) "WAS NOT ON THE LEASE" (188:1) "WAS ONLY ON PROPERTY WHEN BRASHEAR BROUGHT HER THERE." (188:6-8) "DID NOT HAVE A KEY" (188:9-20)

2ND BRASHEAR DID NOT AUTHORIZE MOUREIR TO GIVE CONSENT. ACTUALLY THE OPPOSITE, MOUREIR TESTIFIED THAT: "HE WAS VERY SPECIFIC ABOUT NOT ALLOWING COPS ONTO HIS PROPERTY." (2RP 190:4-16)

§ 12.35 - LIMITS ON THIRD PARTY'S AUTHORITY OVER PLACE TO BE SEARCHED OR THINGS TO BE SEIZED. HEAD NOTE #9, "THE PARTY AGAINST WHOM SEARCH IS TO BE CONDUCTED CAN ALSO INSTRUCT THE COTENANT NOT TO GRANT ANYONE ELSE ACCESS TO THE PROPERTY, WHICH COULD THUS BAR POLICE ACCESS," (UNITED STATES V. WELCH, 4 F3d. 761, 764 (9TH CIR. 1993))

THUS, BRASHEAR DID NOT "ASSUME RISK THAT MOUREIR WOULD CONSENT."

§ 12.34 - WHO MUST BE ASKED FOR CONSENT HEAD NOTE #9, "OBJECTING DEFENDANT BE PHYSICALLY PRESENT." AS BRASHEAR TESTIFIED HE WAS "IN THE HOUSE ASLEEP." (2RP 634:8-21) #10 "DEFENDANTS SPECIFIC INSTRUCTIONS TO COTENANT SHOULD BE BINDING ON THE POLICE..." "SUSPECT WHO IS PRESENT HAS SUPERIOR PRIVACY INTEREST."

§ 12.33 GENERALLY - THERE MUST BE TRUE "COMMON AUTHORITY", A "MERE PROPERTY INTEREST" MAY NOT BE ENOUGH. (U.S. V. MATLOCK, 415 U.S. 164, 171, 94 S. CT. FLUDD V. UNITED STATES SECRET SERVICE)

§ 12.11-BURDEN OF PROOF OF VOLUNTARINESS
(U.S. V. METCALF, 2007 U.S. DIST. LEXIS 55188)

"WHERE THE EVIDENCE ON CONSENT IS
EQUALLY BALANCED, THE GOVERNMENT
FAILS ON ITS BURDEN OF PROOF."

BRASHEAR TESTIFIES THAT MOURER
"DID NOT LIVE WITH HIM, LIVES IN
A NUMBER OF LOCATIONS, HAS HER
OWN APARTMENT (FULLY FUNDED BY
THE STATE), ONLY KEPT OVERNIGHT
THINGS AT HIS HOUSE, WAS NEVER
THERE ALONE, WAS NOT ON LEASE, HAD
NO KEY, AND DOES NOT HAVE AUTHOR-
ITY TO CONSENT TO A SEARCH." (2RP
196:10 - 203:10)

PROSECUTION AGREES, "FIREARM WAS
FOUND IN CURTILAGE, THERE WAS NO
EXIGENCY." SIMPLY THAT MOURER
HAD AUTHORITY TO CONSENT TO SEARCH.
"ACTUAL AUTHORITY" (2RP 206:18) IS
REQUIRED. POLICE REPORT IS "SILENT"
ON THIS ISSUE OF CONSENT, (207:25 -
208:1)

THE COURT STATES: "EXPRESSED CONSENT
OF AUTHORITY, NOT APPARANT OR IMPLIED,
BUT EXPRESSED GRANT OF CONSENT,"
(2RP 209:5-8)

"PURELY LEGAL QUESTION" (2RP. 209:12)
DENIES THAT CURTILAGE IS EQUAL TO
THE HOME ITSELF. (209:21-24) ALTHO
POLICE SAY CONSENT WAS TO ENTER THE
HOME ITSELF.

"I THINK ITS A CLOSE CALL"
(2RP. 210:4) BUT DENIES PETITION
TO SUPPRESS EVIDENCE ILLEGALLY
OBTAINED BY DEPUTIES.

THIS CONSENT WAS GIVEN BY
TELEPHONE, BY A WOMAN THAT WAS
INTOXICATED (WITH A B.A.C. OF
.25) WHEN ARRIVING AT THE
HOSPITAL. SEE TOXICOLOGY REPORT
2RP. 304:3-25 DR. TESTIMONY)
HAD TWO BROKEN RIBS, COLLAPSED
LUNG AND A HEAD INJURY. THE
DEPUTY TESTIFIED, "IT WAS VERY
HARD TO GET INFORMATION OUT OF
HER, BECAUSE OF HER STATE. SHE WAS
HYSTERICAL, CRYING, SCARED."
(2RP. 328:13-15)

2RP. 334-345 IS 3.6 HEARING
CONCERNING 27TH OF OCT. ABOUT
PHOTO'S, EXHIBIT # T-18 ON WHICH
JURY CONVICTS ON COUNT 1.

THE 3.6 HEARING CONCERNING THE FIREARM FOUND ON OCT. 30, 2021 IS IN THE RECORD ON 2RP ~~154~~ -154 THRU 210.

THIS UNREASONABLE SEARCH IS BASED ON OFFICERS BELIEF THAT UNLAWFUL CONSENT SUPPOSEDLY OBTAINED ON OCT. 27 STILL HOLDS WEIGHT FOUR DAYS LATER IN THE EARLY HOURS OF OCT. 31. (2RP 156:11-13)

OFFICER TESTIFIES: "GATE WAS SHUT (163:21), WE WALKED AROUND IT (163:23), WE APPROACHED IN A SNEAKY WAY (164:12), I DONT RECALL ASKING PERMISSION TO SEARCH ON THE 30TH (165:24-166:1), SHE WAS OUT OF LOCATION AND SAFE (166:9), SO WE BACKED OUT TO RETURN LATER (166:12-14), I DON'T KNOW IF I ASKED PERMISSION ON THE 30TH (166:15-17) SHE WAS SAFE, WE BACKED OUT DUE TO SAFETY REASONS (167:6) WE WERE USING K-9 TO SEARCH WHEN WE FOUND FIREARM AFTER MS. MOUIER WAS TRANSPORTED TO HOSPITAL (167:16-22).

WE DIDN'T GET A WARRANT BECAUSE MS. MOURER DIDN'T SAY WE COULD NOT BE ON PROPERTY. (167:23-168:19), WE SEARCHED THE ENTIRE PROPERTY (169:8), THE GATE WAS LOCKED (169:14), THERE WAS NO EXIGENT CIRCUMSTANCE (170:16), WE DIDN'T HAVE A WARRANT (171:17), PROBABLE CAUSE FOR ARREST DOES NOT ALLOW ME TO SEARCH THE PROPERTY. (171:20-22) IT WAS NON-VERBAL THAT WE COULD SEARCH THE PROPERTY. (171:23-25) I DID NOT ASK SPECIFICALLY FOR CONSENT. IT WAS AN INTIMATE AREA OF THE HOME. (174:17-19) I DON'T REMEMBER ASKING SPECIFICALLY FOR CONSENT TO SEARCH THE PROPERTY. (175:10) THE BOLD HAD BEEN RECALLED (177:16-24) I COULD BE WRONG (178:11) I DID NOT ASK FOR A WARRANT. (178:13-19)

MS. MOIR TESTIFIES: I WAS IN THE AMBULANCE WHEN FIRST CONTACT WAS MADE ON THE 27TH (180:19) I NEVER HAD GUESTS ON HIS PROPERTY. (186:5-7) (ACCESS TO KEYS DOES NOT EQUAL AUTHORITY TO USE

THEM, WHEN KEYS ARE LEFT IN TRUCK CONSOLE ON PRIVATE PROPERTY DOES NOT MEAN ANYONE WHO WANTS TO CAN USE THEM, THAT IS THEFT.) (189:1-15)

"HE DIDN'T WANT COPS UP THERE, HE WAS SPECIFIC ABOUT THAT." (190:6-16)

"I HAD NO AUTHORITY TO CONSENT TO LAW ENFORCEMENT ONTO PROPERTY."

"THE OFFICER RIPPED IT APART," (IN REFERENCE TO BRASHEARS PRIVATE PROPERTY 193:8-13)

2RP 438:22-23 MS. NOURER CLAIMS SHE WAS WITH POLICE WHEN FIREARM WAS FOUND, THIS COMPLETELY CONTRADICTS OFFICER'S TESTIMONY THAT SHE WAS OFF THE PROPERTY WHEN THEY SEARCHED WITH K-9.

I WOULD SUBMIT TO THE COURT, NEITHER ONE OF THEM CAN RECALL WHAT TOOK PLACE ON THE 30TH OR THE 27TH OF OCT. 2021. SHE WAS IN A BLACKOUT DRUNK ON THE 27TH, ON THE 30TH SHE WAS DRINKING AND TAKING OXYCODONE, ESTABLISHED IN RECORD.

U.S. V. STANBACK, 2015 U.S. DIST.
LEXIS 171751

A. CONSENT SEARCH

[*13] "THE GOVERNMENT HAS NOT MET IT'S BURDEN... OFFICER UNABLE TO DESCRIBE WITH ANY PRECISION HOW HE FRAMED HIS ~~REQUEST~~ REQUEST FOR CONSENT... IT'S ENTIRELY UNCLEAR... OFFERED TWO POSSIBLE VERSIONS...

[*14] IT IS UNCLEAR WHETHER OFFICER EVER SAID ANYTHING THAT WOULD REASONABLY HAVE BEEN UNDERSTOOD TO BE A REQUEST FOR CONSENT TO SEARCH... SUBJECT NEVER SAID YES, BUT "HE DIDN'T SAY NO"... STATED HE COULD NOT REMEMBER (JUST LIKE OFFICER GONZALEZ AND MS. MOVIER... "I DON'T REMEMBER BUT SHE DIDN'T SAY NO.")... OFFICER DID NOT HAVE A CLEAR MEMORY... THE GOVERNMENT THEREFORE HAS ^{NOT} MET IT'S BURDEN... OFFICER NEVER TOLD STANBACK HE COULD DECLINE THE SEARCH. (DID OFFICER GONZALEZ TELL MS. MOVIER SHE COULD DECLINE? SHE SAID, "I HAD TOO.")

LET'S LOOK AT THE 911 TRANSCRIPT.

APPENDIX "D"

CRESA 911, INCIDENT DRILL DOWN

10/30/2021, 23:51:05 (TIME)

23:48:51 MEDIC 7.5 MINUTES AWAY.

23:50:10 JENNEY SAID SHE'S CURRENTLY SAFE

00:12:10 GET THE DOG STARTED

00:22:58 AMR. HAS HER.

EXIGENCY ENDS.

00:28:03 MS2 IS TRANSPORTING HER

TO PEACE HEALTH SOUTH WEST WA.

(NOW SEEMS LIKE A GOOD TIME TO
CALL A JUDGE AND GET A NO-
KNOCK ARREST WARRANT)

00:29:53 DOG IS 10 MINUTES AWAY.

00:30:51 I'M BACK AT THE HOUSE

00:43:17 K9 WARNING

00:44:54 JUST FOUND A BULLET

(WHICH NEVER APPEARS AT TRIAL)

00:45:13 K9 WARNING

00:48:02 LIGHTS WEREN'T OUT BEFORE

(PEEKING IN WINDOWS)

00:48:02 THERE'S A REVOLVER ON THE

COUNTER MATCHING BULLETS

FOUND EARLIER.

(HOW CAN YOU TELL THAT FROM OUTSIDE
HOUSE? BY THE WAY THIS 2ND GUN
DOES NOT EXIST.)

00:48:59 FOUND FIREARM OUTSIDE

SITTING ON A BENCH. (26 MINUTES
AFTER EXIGENCY ENDED. MS. MOURER
IS NOT THERE.)

00:56:04 OFFICERS TRY TO ENTER
HOUSE WITHOUT WARRANT OR
EXIGENCY.

01:00:52 "WORKING ON CONSENT"
(38 MINUTES AFTER EXIGENCY
ENDS.)

01:01:48 "VIC SAYING THAT SUSP RAN
TOW THE HOUSE."
(MUST BE ON PHONE WITH
MS. MOURER)

01:06:29 WE HAVE RIFLE

01:51:50 PATROL CLEARED RATHER
THAN ENTER RESIDENCE.

(SEEMS LIKE A GOOD TIME TO CALL
A JUDGE AND SECURE A WARRANT)

00:59:58 MS. MOURER ARRIVED AT THE
HOSPITAL 2 MINUTES BEFORE
BEING ON PHONE.

AT NO TIME WERE POLICE IN "HOT
PERSUIT", NOR VISUALLY SEEN SUSPECT
IN BED ASLEEP ON THE 27TH AND WAS
IN TREE STAND OFF PROPERTY ON
THE 30TH.

THERE IS NOT A JUDGE IN THE LAND THAT WOULD DENY THESE OFFICERS A WARRANT, HAD THEY SIMPLY TOOK A STEP BACK AND REGROUP FOR A HALF HOUR AND CALL^A SUPERIOR COURT JUDGE, THEY COULD HAVE ENTERED HOUSE ON THE 27TH AND FOUND MR. BRASHEAR PASSED OUT PEACEFULLY IN HIS BED. THEN THEY WOULD NOT BE RUNNING AROUND WITH DOGS ALL OVER 5 ACRES OF FOREST IN THE DARK ON THE 30TH. ON NOV. 10, 2021 THEY RETURNED AGAIN ONLY TO LEAVE MS. MOURER BEHIND BECAUSE SHE WAS UNCOOPERATIVE.

NOV. 11 THEY OBTAINED WARRANT, S.W.A.T. BLEW ALL THE DOORS OFF AND RANSACKED BOTH HOUSES CREATING 10⁵ OF THOUSANDS OF \$ IN DAMAGE.

MR. BRASHEAR WAS NOT HOME. HE WAS ARRESTED ON NOV. 24 AFTER A G.P.S. TRACK ON HIS IGNITION INTERLOCK.

REASONS FOR GRANTING THE PETITION

THIS IS SIMPLE. IF POLICE ARE ALLOWED TO VIOLATE OUR CONSTITUTIONAL RIGHTS, WHERE DOES IT END? THE RAMIFICATIONS OF THESE ACTS HAVE FAR REACHING CONSEQUENCES ON EVERY AMERICAN CITIZEN WHO BELIEVES IN OUR CONSTITUTION AND THE AUTHORITY OF THE HIGHEST COURT IN THE LAND TO PRESERVE OUR JUSTICE SYSTEM. ACTIONS HAVE CONSEQUENCES. THE CONSEQUENCE OF POLICE NOT HONORING OUR FOURTH AMENDMENT BRINGS TO BEAR OUR EXCLUSIONARY RULE.

ELKINS V. U.S., 364 U.S. 206
(SUPRA, AT 217)

"PURPOSE OF EXCLUSIONARY RULE IS TO DETER- TO COMPEL RESPECT FOR THE CONSTITUTIONAL GUARANTEE IN THE ONLY EFFECTIVELY AVAILABLE WAY- BY REMOVING INCENTIVE TO DISREGARD IT."

DENIAL OF MOTIONS TO SUPPRESS ILLEGALLY OBTAINED PHOTOS AND FIREARM WAS REVERSIBLE ERROR,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PRO SE


DANNIE C. BRASHEAR

Date: 6-30-2025