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IN THE
Supreme Court of the United States

CITY OF BRIDGEPORT, JEREMY DEPIETRO, Officer
and CHRISTOPHER BORONA, Detective,
Petitioners,

v.

CHRISTOPHER RUSSO,
Respondent.

**Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth Amendment to the United States Constitution requires law enforcement officers to exhaustively investigate items of evidence identified by a suspect after an arrest based on probable cause?

2. Whether, notwithstanding an initial arrest based on a valid warrant for the correct individual and the presentment of that defendant to a court immediately after the arrest, a law enforcement officer bears a continuing duty to properly investigate and ascertain what evidence will prove to be exculpatory?

PARTIES TO THE PROCEEDING¹

The parties to the proceedings in the Second Circuit Court of Appeals whose judgment is sought to be reviewed were: Christopher Russo, Plaintiff; the City of Bridgeport, Connecticut; Jeremy DePietro; John Rosa; Christopher Borona and John Sherbo, Defendants.

¹ No corporate disclosure statement is required by Sup. Ct. R. 29.6, as there is no non-governmental corporation as a party.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, the City of Bridgeport, Jeremy DePietro and Christopher Borona, respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals of the Second Circuit.

OPINION BELOW

The opinion of the Court of Appeals is reported as *Russo v. City of Bridgeport*, 479 F.3d 196 (2nd Cir. 2007). It is reproduced in the Appendix at 1a-27a. The opinion of the District Court (Thompson, J.) is unreported and was given from the bench at the conclusion of oral argument on Petitioners' Motion for Summary Judgment. A transcript of that hearing, including the decision of the District Court is reproduced in the Appendix at 28a-72a.

JURISDICTION

On February 27, 2007, the Second Circuit Court of Appeals entered its decision for which review is sought. The jurisdiction of this Court is involved under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

Respondent, Christopher Russo, seeks damages for the alleged violation of his constitutional rights, pursuant to 42 U.S.C. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Respondent had claimed a violation of the due process clause of the Fourteenth Amendment to the United States Constitution, which provides that:

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.

The decision of the Circuit Court of Appeals rejected that basis but found a right to exist under the Fourth Amendment to the United States Constitution. The Fourth Amendment provides that

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.

STATEMENT OF THE CASE

Since this Court's decision in *Baker v. McCollan*, 443 U.S. 137 (1979), a number of circuit courts have had occasion to address factual patterns that went beyond the facts in that case, and where the periods of detention were sufficiently prolonged that violations of the Constitution, under the due process clause of the Fourteenth Amendment, were found sufficiently pled or proven. Typically, these prolonged detention cases under 42 U.S.C. § 1983 have involved mistaken identity cases where the claim of the detained person was simple: either they were not the person named in the warrant or, like *Baker*, the warrant had been issued based on a mistake as to the identity of the person named therein. *Baker* held that, in such situations, the initial arrest and some period of continued detention were not violations of the U.S. Constitution, but suggested a continuing failure to address the identity issue would be found to violate constitutional requirements.

This case presents a case of first impression before this Court, because it attempts to create an entirely new constitutional duty by extrapolating from *Baker*'s suggestion of constitutional limits. Here, there was no mistake in the identity of the person named in the warrant or the person arrested, the existence of probable cause for the arrest was unchallenged, the suspect had been presented to court and the continuing detention of the suspect was determined by ongoing court proceedings. This case concerns whether or not law enforcement officers have constitutional obligations to conduct post-arrest investigations in a manner that will uncover all exculpatory evidence. Based on the reasoning of the Second Circuit, law enforcement officers will shoulder personal responsibility and a continuing duty to exhaustively investigate defenses brought to their attention by the suspect, and to monitor the detention status of the suspect at all times subsequent to their arrest and presentment to judicial officials. The decision imposes liability on officers solely on the basis of how they handled a single item of evidence, a videotape of an armed robbery, the exculpatory value of which only became apparent after laboratory enhancement, which these officers had not obtained. As such, it extends the constitutional obligations of officers beyond simply assuring that every seizure of a person is based on probable cause, and it would require them to assess anew, each day, every lead or clue that a suspect could later show would have been exculpatory had it been pursued more exhaustively.

This decision presents a conflict in the decisions of the circuit courts that have addressed the existence of a continuing duty of an officer to investigate exculpatory defenses and whether an officer can become liable for subsequent incarceration over which the officer has no control. The decision also purports to find this constitutional duty already heralded by this Court's decision in *Baker* under circumstances where other circuits cite *Baker* for the opposite conclusion.

A determination of the duties law enforcement officers bear whenever a custodial arrest is made is essential to the daily conduct of thousands of officers. Our legal system has strongly encouraged officers to rely on judicial determinations as to probable cause, pretrial detention and the right of each accused to a speedy trial, but would now hold the officers responsible for how well the judicial system performs. These officers deserve a single, clear statement as to what the Constitution requires of them and whether they may continue to rely on the protection of judicial determinations. Any such imposition of additional duties on law enforcement officials will materially obstruct the day-to-day operations of state and municipal police departments throughout the nation and impede the effective ability of those officers to protect the public.

1. *The Investigation and Arrest Giving Rise to this Case.*

On August 1, 2002, a gas service and convenience store located in Bridgeport, Connecticut, was robbed by an armed, unmasked male, who fled the scene of the crime. The cashier, who was the victim of the robbery, gave a physical description of the perpetrator to police, said he would be able to identify the robber, and that there was a videotape available. (Appendix at 100a-101a.) The videotape was obtained by the Bridgeport Police Department (the "BPD") on the same day of the robbery. Due to the poor quality of the video and the condition of the tape, the investigating officers went to a local security department and obtained still photographs of the robber from the videotape. (Appendix at 124a.) Based on the facial characteristics of these photos, a police department computer selected possible matching photos from the BPD photo identification database. (Appendix at 124a.) The photo of plaintiff, Christopher Russo, was included in the eight photos selected by the computer.

When the photos were shown to the cashier, he identified the photo of Mr. Russo, stating: "He is the guy who robbed me with the gun at the Amoco Station last night. I am positive. I am one hundred percent sure." (Appendix at 101a.) Based upon this identification, the BPD sought a warrant for Mr. Russo's arrest. Detective DePietro completed the Application for Arrest Warrant, reciting in the written application the above facts and also stating that the robbery was caught on videotape, which tape was retrieved by him on the day of the robbery. (Appendix at 106a-107a.) On September 9, 2002, a judge of the Connecticut Superior Court reviewed the Application, found probable cause existed for the arrest of Christopher Russo and issued a warrant. (Appendix at 106a-107a.) Under Connecticut practice, the officer executing the warrant "shall take the accused into custody, serve a copy of the warrant upon him or her" and either release the accused on bail or bring the arrestee before the court. (Connecticut Practice Book § 36-5.)

On September 18, 2002, Mr. Russo was arrested by officers from the State/FBI Task Force at his residence without incident. (Appendix at 108a-109a.) When he arrived at the BPD, he was interrogated by Officers DePietro and Borona. The officers confronted Mr. Russo with photographs taken from the videotape showing the face of the robber and telling him that, given the photographic proof, he should confess. Mr. Russo denied his guilt. Among the several reasons offered for his innocence, Mr. Russo asked if the robber had extensive tattooing on his arms, which Mr. Russo did, and he also questioned whether he matched the physical description. During the interrogation, Mr. Russo claims the officers left the interrogation room, claimed to review the videotape and returned claiming Mr. Russo should confess, because the perpetrator had tattoos. Mr. Russo, however, did not confess. At no time prior to September 18, 2002, nor subsequent to that day, has Christopher Russo had any

contact with any of the individual officers sued. (Appendix at 5a, 124a, 126a and 127.)

On September 19, 2002, Mr. Russo was arraigned before the Superior Court and bound over for trial. Due to his prior criminal record, and the pendency of other charges, his bail was set at \$100,000, and he was detained due to his inability to post bail. (Appendix at 117a-118a.)

Even before Mr. Russo's first court appearance on September 19, 2002, the day after his arrest, Mr. Russo had advised his appointed public defender of the existence of the videotape and his belief it would exonerate him. (Appendix at 6a.) Within weeks, his now retained private counsel was also told about the videotape. (*Id.*)

On November 19, 2002, an investigator with the State's Attorney's office went to the BPD's property room to obtain the videotape. The investigator found the tape had not been logged into the evidence room but was locked in a desk drawer of the lead investigating officer, Officer DePietro. Sometime after November 25, 2002, the investigator obtained the tape from Officer DePietro and reviewed it. Because the investigator determined he could not see the perpetrator clearly, on January 3, 2003, he requested laboratory enhancement of the videotape which was received about January 23, 2003. (Appendix at 112a). After January 23, 2003, the enhanced videotape was made available to Mr. Russo's counsel who viewed it and reported to the State's Attorney's office that his client could not be the perpetrator shown in the tape. Ultimately, the State's Attorney viewed the enhanced videotape personally and determined that the individual shown in the videotape did not have tattoos such as Mr. Russo did. The following day on April 23, 2003, on the motion of the prosecution, the court dismissed the charges.

2. *The District Court Proceedings*

Following his release, Mr. Russo brought an action under 42 U.S.C. § 1983 against the City of Bridgeport and four individual officers of the BPD, which action was removed to the District of Connecticut. Among the claims asserted were ones for false arrest, false imprisonment and violation of his civil rights under the Fourth and Fourteenth Amendments.

After discovery, all the defendants filed a motion for summary judgment that was heard by the Federal District Court on July 12, 2005. At the hearing, the Honorable Alvin W. Thompson painstakingly walked through the undisputed events leading up to the arrest of Christopher Russo and came to the conclusion that the arrest was fully supported by probable cause, duly determined by a court of law, and based on an unqualified identification by the victim, who had been face-to-face with the robber. Plaintiff's counsel concealed the existence of probable cause for the arrest (Appendix at 47a-48a.) but argued the real crux of the case was when, after the arrest and during Christopher Russo's interrogation of September 18, 2002, the BPD officers first saw his tattoos and were challenged by the suspect to determine if the man in the videotape had tattoos. (*Id.*) At that time, however, with Christopher Russo in custody, Judge Thompson asked plaintiff "who's the decision maker in terms of what happens to him." Mr. Russo's counsel said: "The court." (Appendix at 48a.)

The District Court judge found that Mr. Russo's federal constitutional rights had not been violated and dismissed the associated state law claims, declining to exercise supplemental jurisdiction. (Appendix at 72a.) The stated basis of the District Court's decision was that probable cause for the arrest had been established, precluding the false arrest and false imprisonment claims under § 1983. The District Court also concluded that there was no genuine dispute that the unenhanced videotape was insufficiently clear to exonerate

Mr. Russo (Appendix at 66a-69a.) and rejected the argument that police officers violate a suspect's constitutional right when they fail to go out and investigate a suspect's explanation as to why they are not guilty, as claimed by the suspect. For that reason, the District Court granted the motion for summary judgment by all defendants.

3. *The Decision of the Second Circuit*

Russo appealed the District Court's order granting summary judgment in favor of all defendants. The Second Circuit affirmed the summary judgment with regard to two of the four officers named as individual defendants. The Second Circuit vacated, in part, the summary judgment as to Petitioners. The Second Circuit affirmed summary judgment with regard to the claims for false arrest and false imprisonment on the basis that such claims cannot lie when the challenged arrest was supported by probable cause. The Second Circuit reversed the entry of summary judgment, however, with regard to the claim of prolonged detention due to the Petitioning officers' alleged mishandling of "exculpatory" evidence (the videotape) and failure to turn such evidence over to the prosecuting attorney. Specifically, the Second Circuit's decision held that "the right mentioned in *Baker* . . . protected Russo from a sustained detention stemming directly from the law enforcement officials refusal to investigate available exculpatory evidence." (Appendix at 18a.) The Second Circuit did not find that right on the basis of the Fourteenth Amendment's due process clause, as claimed by Russo on appeal, but rather as a right guaranteed under the Fourth Amendment's prohibition on unreasonable seizures of the person.

REASONS FOR GRANTING OF THE PETITION

A writ of certiorari is warranted in this case for several reasons. First, the decision creates a split of authority among

the circuits that have considered the underlying constitutional question of whether a law enforcement officer has a duty to continue investigating claims of innocence or a suspect's offered defenses after making an arrest based on probable cause. Several circuits have flatly rejected the duty that the Second Circuit imposes. The Second Circuit's decision also creates a continuing constitutional obligation on the part of law enforcement officers for the suspect's detention, which lies entirely beyond the officer's control. When officers execute a valid arrest warrant issued by a court of law, arrest the correct person and promptly present that individual for arraignment before the court, the court determines whether the defendant should be detained or released and on what terms and conditions. Under the Second Circuit's decision, an officer's ability to rely on the independent determination of probable cause reflected by a court issued warrant may decay over time. Not only can an arrest initially reasonable dissolve over time into an unconstitutional seizure, but that point in time will first be announced years later in a court proceeding.

Finally, the determination of the Second Circuit carries significant public policy implications, as it will impose an impossible burden on law enforcement officers and ultimately prove counterproductive. Rather than encourage officers to further investigate crimes, seek out confessions or develop leads leading to the implication or discharge of other suspects, officers will shun any information or further involvement that might some day trigger a claim that this clue was the true defense that would have resulted in the suspect's earlier release.

SPLIT OF AUTHORITY IN THE CIRCUITS

In *Baker*, this Court found a § 1983 claim against a sheriff alleging the intentional failure to investigate and determine that the wrong man was imprisoned, failed to state a

constitutional claim. *Baker*, 443 U.S. at 143-44. This Court, in dicta, however, went on to state that a misidentified suspect “could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment.” *Id.* at 144. Since *Baker*, the district and circuit courts have come to discern a constitutional prohibition on prolonged detention, pointing to this language as support. The decisions have come to increasingly diverge, however, and are now substantially in conflict and disagreement creating substantial uncertainty in the law enforcement community as to the responsibilities officers have under the Fourth Amendment to the United States Constitution.

The Second Circuit in this case clearly looked to *Baker* for the recognition of a constitutional right to be free from prolonged detention. The Second Circuit also relied upon several earlier decisions from circuit courts, including its own prior decision, to reach its holding.

In the first of these, *Cannon v. Macon County*, 1 F.3d 1558 (11th Cir. 1993), an officer had arrested an individual whose name matched that of a person with the same name listed on the NCIC system. Despite her protests that she was not the same person, and obvious differences in her appearance, age and identifying data, the suspect was arrested, booked, held for several days, and even extradited to another state before her claims of mistaken identity were recognized. While the Eleventh Circuit recognized the holding of *Baker*, it did not find it precluded the claim made before it, and indeed read *Baker* as recognizing “that after the lapse of a certain amount of time, continued detention in the face of repeated protests will deprive the accused of liberty without due process.” *Cannon*, 1 F.3d at 1562. Ultimately, *Cannon* recognized a “constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release.” *Id.* at 1563.

Another circuit decision relied on by the Second Circuit was *Fairley v. Luman*, 281 F.3d 913 (9th Cir. 2002). *Fairley* involved a suspect arrested on outstanding warrants for his identical twin brother. Though a number of citizens established this fact, as did a court restraining order, and the officers making the arrest reported it to the booking sergeant, it was never pursued, and the suspect was held for 12 days before being released. Even though the initial arrest was based on a valid warrant, the Ninth Circuit found the continued detention to comprise a constitutional injury and found that constitutional right recognized by *Baker*.

Likewise, the Second Circuit relied upon the decision of the Fifth Circuit Court of Appeals in *Sanders v. English*, 950 F.2d 1152 (5th Cir. 1992). *Sanders* involved the arrest of a suspect based on a warrant with the strength of the prosecution's case unraveling almost immediately after the arrest. Multiple and seemingly unimpeachable witnesses to the crime vouched for the suspect's presence out of town at the time of the robbery, and a number of witnesses either could not identify the suspect or flatly stated he was not the robber. The police officers in charge of the investigation actually received this exculpatory information but then told the witnesses they did not want to hear it. The district court, relying on *Baker*, found that once Sanders was lawfully arrested, the police officer had no obligation to conduct an investigation to clear the suspect of the charges. *Sanders*, 950 F.2d at 1160. The Fifth Circuit reversed and held that this Court's decision in *Baker* did not bar Sanders' claim because the claim was not a failure to investigate claims of innocence, but rather a failure to aid in the suspect's release after the officer knew the suspect had been misidentified.

Based on these cases "recognizing" *Baker* as establishing a Fourteenth Amendment due process right to be free from continued detention after an officer knows or should have known the suspect was entitled to release, the Second Circuit

held “that the right mentioned in *Baker* and enunciated in the above cited cases protected Russo from a sustained detention stemming directly from the law enforcement officials’ refusal to investigate available exculpatory evidence.” (Appendix at 18a.) The Second Circuit decision, however, clearly contradicts the decisions from other circuits.

One of the clearest and most reasoned of these conflicting decisions is that of the First Circuit Court of Appeals in *Brady v. Dill*, 187 F.3d 104 (1st Cir. 1999). In *Dill*, the plaintiff was arrested on an outstanding warrant issued for him when a different individual who had impersonated Dill failed to appear for a court appearance. Officers, responding to an unrelated complaint, arrested Dill on the outstanding warrant but soon came to believe he was the victim of mistaken identity and did everything in their power to secure his release, ultimately at the time of his initial arraignment before a court of law. Though the First Circuit found the period of detention was within the limits established by *Baker* as reasonable for officers to sort out such claims of mistaken identity, it went on to discuss the principles established by *Baker* and the principles applicable in reviewing Fourth Amendment seizure and post-arrest claims. The *Dill* court noted this Court’s statements in *Baker* that police officers do not have an affirmative duty to investigate every claim of innocence.¹ *Dill* also expresses grave reservations with whether police officers are being asked, in effect, to “acting unilaterally, . . . undo a judicial determination of probable cause.” *Id.* at 111 n.6. The First Circuit held that when a warrant has been issued upon probable cause, police officers are not required to exercise discretion or weigh proof. Their obligations are to execute the warrant and return the suspect

¹ *Dill* also conflicts with the decision of the Second Circuit in that the First Circuit held once the validity of the arrest is determined, the Fourth Amendment issues are resolved. *Dill*, 187 F.2d at 108. The Second Circuit’s decision based its decision on the Fourth Amendment.

to a court of law. Any requirement that police officers “determine” the guilt or innocence of a suspect would “blur the usual separation of functions” between law enforcement and the judicial system. *Id.* at 112. While *Dill* noted an officer may have duties to disclose to prosecutor “known exculpatory evidence,” *Id.* at 114, it noted “it is ordinarily sufficient for the police officer to bring the relevant information to the attention of the prosecutor or the proper judicial official.” *Id.*

Other circuit courts have recognized that an officer has “no constitutional obligation to conduct any further investigation in the hopes of uncovering potentially exculpatory evidence” once probable cause has been determined to exist. *Eversole v. Steele*, 59 F.3d 710, 718 (7th Cir. 1995). This appears to be the same standard applied in the Sixth Circuit, which has held that while officers, pre-probable cause, cannot disregard potentially exculpatory evidence, once probable cause is established, the officer has no duty to investigate further or pursue evidence that might exculpate. *Ahlers v. Schebil*, 188 F.3d 365, 371 (6th Cir. 1999).

There is also no basis in this case to claim that this case involves known exculpatory evidence. The District Court determined that, based upon the evidence presented in support and in opposition to the motion for summary judgment, there was no genuine dispute that until the videotape was enhanced, it was not exculpatory. (Appendix at 9a, 66a-67a.) The evidence before the District Court was undisputed in this regard and there is no contention in the Second Circuit’s decision that this was not the case. Indeed, in construing the evidence “in the light most favorable to Mr. Russo,” (Appendix at 4a.) the Second Circuit determined that the state investigator who watched the pre-enhancement tape “determined that he could not see the perpetrator clearly,” and this is what led to a request for laboratory enhancement of the footage. (Appendix at 6a.)

Thus, the sole basis for the Second Circuit's decision below was the failure of the detectives to investigate. (Appendix at 18a.) Until the tape was enhanced, the officers had no basis to know the tape could prove exculpatory, other than the denial of the suspect who had been identified, positively, by the victim of the crime.

The undisputed evidence in this case also showed the officers did nothing to hide or conceal the existence of the videotape from Mr. Russo or anyone else. Mr. Russo alleges in his complaint and in his sworn testimony submitted with regard to the motion for summary judgment that the officers disclosed to him the existence of the videotape and that a person matching his description was shown therein. (Appendix at 172a-173a.) Not only was Mr. Russo immediately told of the existence of the videotape, and that it was in the BPD's possession, the officers disclosed that to the Superior Court, as well. The documents submitted to the District Court with regard to the motion for summary judgment clearly show that the existence and location of the videotape was disclosed to the Superior Court at the time the warrant was requested (Appendix at 106a.) and under Connecticut law, a copy of the arrest warrant is provided to the defendant at the time of the arrest. Mr. Russo's sworn testimony presented to the District Court with regard to the motion for summary judgment established that Mr. Russo told his defense counsel about the existence of the videotape and how it could help exonerate him before he was even arraigned on the morning of September 19, 2002. (Appendix at 189a.) The record shows Mr. Russo's retained counsel knew within weeks of the existence of the videotape and its potential importance to the defense and, indeed, made some efforts to obtain it as part of the defense. (Appendix at 190a-191a.) What is not in dispute is that none of the Petitioners had any contact with Mr. Russo either before the date of his arrest and interrogation or subsequent thereto. They neither hid, nor failed to disclose anything to the court, to defense counsel or the State's

Attorney, but are being held fully responsible for Mr. Russo's continued detention, though they had no ability to control that detention.

It is beyond dispute that the initial arrest of Christopher Russo fully satisfied the Fourth Amendment's requirement of probable cause. The victim of the armed robbery had ample opportunity to see the face of the unmasked perpetrator who stood in close proximity to him. Still photographs, depicting as clearly as possible the face of the robber, and not portraying any extremities, were obtained as part of the investigation. By inputting some of the facial characteristics of the robber shown in the still photographs, a police department computer selected photos from the BPD's database that contained similar characteristics. Those photos were shown to the victim the same day as the robbery, and the victim provided a positive and absolute identification of Christopher Russo as the man who committed the crime. That information was brought to a neutral judge of the Connecticut Superior Court, who approved a warrant for Mr. Russo's arrest. There can be no question but that probable cause existed for the arrest. By any version of the facts or allegations, the issue of whether the videotape depicted a robber with extensive tattooing, or even permitted such a determination, was never an issue until after the arrest, when Mr. Russo showed his tattooing and questioned whether the robber had similar tattoos.

Under Connecticut law, upon issuance of the warrant, the obligation of the officers serving the warrant was to make the arrest and either release the defendant on approved conditions of bail or bring the arrestee before the court. There is no dispute that this is exactly what the officers did. Christopher Russo was arrested on September 18, 2002, and brought before the court the following morning, September 19, 2002. While the Second Circuit's decision purports to simply follow this Court's ruling in *Baker* and subsequent circuit court

decisions extending that constitutional right, in point of fact, it clearly departs from these authorities and comes into conflict with heretofore unquestioned law in this Court and other circuits.

PUBLIC POLICY

These conflicting decisions and principles of law create nightmares for law enforcement officers. In situations where a good faith investigation leads to an independent, court determination of probable cause, officers make an arrest and promptly return the accused to court, under what circumstances do they become liable for the prolonged detention of that suspect? If the officers maintain the evidence and disclose its existence to all sides, including the accused, what more must they do to satisfy the Fourth Amendment? When can officers rely on the courts to satisfy Constitutional requirements of access to exculpable evidence, speedy trials and limited pretrial detention? What right do officers have to direct the enforcement of these rights after the suspect is turned over to the Court?

These are fascinating and complex legal questions, but officers deserve clear answers to these questions.

In this case, Christopher Russo was the person identified by the victim of the crime, a warrant was issued for Christopher Russo's arrest, and Christopher Russo was in fact arrested. There was no confusion, no mistake, and no failure of due process. The only complaint by Christopher Russo, and the entire basis for the Second Circuit's decision, is that the detectives in the BPD should have conducted a better investigation, by pursuing a defense that Russo claimed would exonerate him. Such a burden will require every law enforcement officer making an arrest to either cut their case load drastically and exhaust every possible defense or just run the risk they will be second guessed any time they fail to exercise perfect judgment.

CONCLUSION

This Court should grant Certiorari to consider whether the Fourth Amendment imposes an obligation on law enforcement officers to prevent any prolonged detention that can result from their failure to investigate potentially exculpatory evidence.

Respectfully Submitted,

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