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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Appellant,

-against-

No. 195

JOHN M. GAVAZZI,

Respondent.

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20 Eagle Street  
Albany, New York 12207  
October 16, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE THEODORE T. JONES

Appearances:

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Penina Wolicki  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: And talking about  
2 Chenango County, counselor, you're up.

3 MR. GENUTE: Thank you, Your Honors. May  
4 it please the court, Michael Genute on behalf of the  
5 People.

6 CHIEF JUDGE LIPPMAN: Do you want any  
7 rebuttal time, counselor?

8 MR. GENUTE: The People would reserve - - -  
9 would request two minutes of rebuttal time, Your  
10 Honor.

11 CHIEF JUDGE LIPPMAN: Two minutes. You  
12 have it. Go ahead.

13 MR. GENUTE: Thank you. Your Honors, the  
14 purpose of the exclusionary rule has been to prevent  
15 violations of an individual's Fourth Amendment rights  
16 under the Constitution as well as under the New York  
17 Constitution. In this case, defendant's argument is  
18 a fairly novel one, that any time there's a statutory  
19 violation - - -

20 CHIEF JUDGE LIPPMAN: Counsel, is this just  
21 a mere statutory - - - are you saying this is a  
22 technical violation?

23 MR. GENUTE: I am saying that this is a  
24 technical - - - allegedly a technical violation. The  
25 People still do not concede that there was not

1           substantial - - -

2                   CHIEF JUDGE LIPPMAN:  What is - - - given  
3           the purposes of this document, were those purposes  
4           fulfilled?  Did they provide proper notice to the  
5           person who's involved, or for that matter, to the  
6           police officials who have to go in and execute?  Does  
7           this - - - does it meet the purposes of what the  
8           document's supposed to be?

9                   MR. GENUTE:  Absolutely, Your Honor.  There  
10          was probable cause.  In the lower court's decision,  
11          it was - - -

12                   JUDGE CIPARICK:  And that's so, even though  
13          it says, "A search warrant must contain", even though  
14          it's couched in that strong language?

15                   MR. GENUTE:  This court, over the years,  
16          going back from Young in '82 to Taylor in '89 to  
17          Patterson in '91, has consistently held that  
18          suppression is a remedy only in circumstances where a  
19          defendant's fundamental rights are in jeopardy.  In  
20          this - - -

21                   JUDGE GRAFFEO:  But should we - - - should  
22          we make an exception here, or is it a wiser policy  
23          for us to clearly tell the police what they have to  
24          do when they issue a search warrant and what kind of  
25          information is necessary?

1                   MR. GENUTE: I believe I understood the  
2 question. I'll try to answer it as best as I can. I  
3 believe the purpose of this and most every other  
4 Criminal Procedure Law statute is to protect a  
5 defendant's rights, their Constitutional rights.  
6 However, there are many times, many circumstances,  
7 where a violation of a statute doesn't result in the  
8 deprivation of a fundamental right of that - - -

9                   JUDGE JONES: What should the remedy be?

10                  MR. GENUTE: I'm sorry?

11                  JUDGE JONES: What should the remedy be?

12                  What are you proposing?

13                  MR. GENUTE: Well, in this case, the remedy  
14 was that the defendant had a suppression hearing. At  
15 the suppression hearing, the trooper who prepared the  
16 affidavit, which itself was properly labeled and  
17 captioned and even notarized by the judge, the  
18 trooper testified that - - - testified to the  
19 circumstances involved in obtaining the warrant;  
20 testified that the judge signed the warrant; that he  
21 was there when the judge signed the warrant.

22                  And the lower court, the county court,  
23 specifically noted that everybody's in agreement that  
24 probable cause was not an issue. That's on page 54 -  
25 - -

1 CHIEF JUDGE LIPPMAN: Counsel, does it  
2 matter that you have an unidentified judge in a  
3 nonexistent court in a different county? Doesn't any  
4 of that matter? Doesn't there have to be some  
5 semblance of protocol or notice which is  
6 ascertainable in some way, as to what's going on?

7 MR. GENUTE: In the best of circumstances,  
8 absolutely.

9 CHIEF JUDGE LIPPMAN: Is that technical in  
10 this context? You get a piece of paper; you don't  
11 know who signed it; it's - - - such a court doesn't  
12 exist. Again, I understand your argument, but  
13 doesn't there have to be some protocols to the play?

14 MR. GENUTE: There - - - Your Honor, there  
15 are plenty of protocols. And with regard to the  
16 search warrant itself, just about every other aspect  
17 of CPL 690.45 was followed. Going back to this - - -

18 JUDGE GRAFFEO: Well, the Appellate  
19 Division found more than a couple of deficiencies - -  
20 -

21 MR. GENUTE: Well, the primary deficiency -  
22 - -

23 JUDGE GRAFFEO: - - - as the Chief just  
24 enumerated.

25 MR. GENUTE: Well, the primary deficiency

1 was the failed caption. I mean, really the bottom -  
2 - -

3 JUDGE CIPARICK: How did that failed  
4 caption come about? Was this a form that was being  
5 used that somebody picked up and they - - -

6 MR. GENUTE: The - - -

7 JUDGE CIPARICK: - - - didn't change the  
8 caption, or - - -

9 MR. GENUTE: What we learned through the  
10 suppression hearing was that the trooper does a lot  
11 of work in Broome County. I don't know how the  
12 County of Broome came up. And I don't believe, quite  
13 frankly, that the trooper really understood exactly  
14 how the Town of Broome showed up, as it's  
15 nonexistent.

16 JUDGE PIGOTT: But whoever the judge was,  
17 he or she missed it, too. Because as you pointed  
18 out, they were the notary both on the application and  
19 on the warrant. And we still don't know who the  
20 judge was, but assuming that it was the judge, that  
21 person didn't know the county or the town was  
22 defective, as well?

23 MR. GENUTE: Well, that's correct. Now,  
24 the warrant does address - - - does make the Village  
25 of Greene Police Department an addressee. So there's

1           indicia on the warrant to determine who - - -

2                   JUDGE SMITH:   Suppose the person - - - the  
3           householder who opened the door when the warrant was  
4           executed took a look at it and said I don't have to  
5           honor this, I can't tell what court it came from;  
6           could she have done that?

7                   MR. GENUTE:   Your Honor, in that regard, my  
8           - - - the People's response would simply be that  
9           every person who receives a search warrant isn't  
10          entitled to a suppression hearing at their front  
11          doorstep.

12                   JUDGE JONES:   Well, no, no.  I guess I'm  
13          suggesting, suppose - - - yeah, the question is  
14          what's the remedy?  Is the remedy for the - - - could  
15          the remedy be for the householder to say you can't  
16          search until you go back and fix the problem?

17                   MR. GENUTE:   Well, in this case the trooper  
18          knew that it was a judge who signed it.  It wasn't a  
19          trooper that was bringing it over there who didn't  
20          know what the circumstances were.

21                   JUDGE SMITH:   I understand.  I'm suggesting  
22          there might be a remedy other than suppression.

23                   MR. GENUTE:   If - - -

24                   JUDGE SMITH:   That the remedy is not to  
25          honor the warrant when it's defective.

1 MR. GENUTE: If the trooper - - - if the  
2 trooper in that case wasn't aware of who issued - - -

3 JUDGE SMITH: I'm not talking about what  
4 the trooper was aware of; I'm talking about the  
5 person whose premises are being searched. Doesn't  
6 she have the right to know what court is telling her  
7 that her property has to be searched?

8 MR. GENUTE: Arguably that would be the  
9 case, Your Honor. If she - - - in this case, she  
10 wasn't aware of who the issuing - - - or where the  
11 issuing court, you know, was.

12 But Your Honors, just going back to the  
13 historical essence of this matter; going back to more  
14 recent, now. The most recent case out of the three I  
15 cited, in the People v. Patterson, 1991, a  
16 defendant's photograph wasn't returned to him. It  
17 violated the statute. The charges were dropped. And  
18 then two weeks later the officers or the DA's office,  
19 which should have brought back that photograph to the  
20 defendant, or at least the defendant's counselor, at  
21 least sealed it up, ends up using that same  
22 photograph, and a witness identifies the defendant in  
23 that case.

24 This court says, you know what, we don't  
25 see any circumstance where there's a fundamental

1 right that's being deprived of the defendant. And  
2 therefore, strict compliance with the statute - - -

3 JUDGE PIGOTT: I guess what you worry  
4 about, and it wouldn't have happened - - - won't  
5 happen in Chenango County, I know - - - but if there  
6 was a police officer who, because of exigent  
7 circumstances, just decided to fill something out and  
8 put a scribble where a judge's signature was, and  
9 then purport that to be a search warrant and hand it  
10 to somebody and then search the premises, you would  
11 agree that would be trouble? - - -

12 MR. GENUTE: Absolute - - -

13 JUDGE PIGOTT: So wouldn't we be protecting  
14 everyone if we said, you know, at least get the  
15 judge's signature right and make sure that it's  
16 identifiable as to who the detached, disinterested  
17 magistrate is who's making this determination?

18 MR. GENUTE: Well, certainly it would help  
19 every circumstance. I mean, we do have a judge's  
20 signature. We do have an appropriate court here.  
21 And as Your Honor pointed out, certainly arguably, if  
22 there's not an identification and you cannot  
23 determine where the warrant came from, that's  
24 certainly a potential remedy.

25 JUDGE PIGOTT: Do you expect that to

1           happen? I mean, if a trooper knocks on your door and  
2           says I'm coming in to search and here's the warrant,  
3           you say, wait a minute. Stand here a minute; I'm  
4           going to take a look at this and - - - oh, wait a  
5           minute; you got this wrong. Would you please turn  
6           around and leave, because I don't think you have the  
7           right to search my premises?

8                       MR. GENUTE: I can certainly say that in  
9           that situation, if the officer happened to forge the  
10          judge's signature, then we would have a problem that  
11          the suppression hearing would delve into and resolve  
12          the problem - - -

13                      CHIEF JUDGE LIPPMAN: Okay, counsel.  
14          You'll have some rebuttal. Thanks, counselor.

15                      MR. GENUTE: Thank you, Your Honors.

16                      CHIEF JUDGE LIPPMAN: Counselor?

17                      MR. CAMERON: Yes, hello. Thank you. My  
18          name is John Cameron and I'm the public defender for  
19          Chenango County and I represent Mr. John Gavazzi the  
20          defendant in this matter.

21                      JUDGE READ: Does the remedy here have to  
22          be suppression?

23                      MR. CAMERON: The remedy has to be  
24          suppression because what we're talking - - -

25                      JUDGE READ: Why is that?

1 MR. CAMERON: - - - because we're talking  
2 about a fundamental right from the Bill of Rights,  
3 the Fourth Amendment, the right to unreason - - -

4 JUDGE SMITH: Was this an unreasonable  
5 search?

6 MR. CAMERON: It absolutely is an  
7 unreasonable search, because my client had no idea -  
8 - - and of course it was his mother who was at the  
9 house at the time - - - they had a search warrant  
10 that named the Town of Broome, which doesn't exist,  
11 from Broome County, which is the wrong county from  
12 where the search was taking place.

13 JUDGE READ: Well, would a warrantless  
14 search have been justifiable under the circumstances?

15 MR. CAMERON: Absolutely not. There's  
16 nothing - - - there's no exigent circumstances.  
17 There's nothing - - -

18 JUDGE READ: Shouldn't the court - - -  
19 shouldn't the lower court maybe have an opportunity  
20 to look into that?

21 MR. CAMERON: Well - - - to look into  
22 whether there were some other circumstances? I don't  
23 believe that - - -

24 JUDGE READ: To see if a warrantless search  
25 was justifiable as opposed to just suppression?

1 MR. CAMERON: That's something that perhaps  
2 the court should have reviewed or considered at the  
3 time. I don't believe that they did so.

4 JUDGE GRAFFEO: What's the standard for  
5 reviewing the warrant? Is it strict compliance or  
6 substantial compliance?

7 MR. CAMERON: Substantial compliance. But  
8 it's substantial com - - -

9 JUDGE GRAFFEO: So if - - - if we didn't  
10 have all the deficiencies or errors, whatever you  
11 want to call it, on this warrant, say it was just the  
12 county name that said "Broome" instead of "Chenango",  
13 but the other information - - - the name of the  
14 village, the name of the judge, the rest of it was  
15 there, would you still be making the same argument?

16 MR. CAMERON: No, I would not. That would  
17 be substantial compliance. Substantial compliance  
18 requires substantial compliance with each  
19 subdivision.

20 CHIEF JUDGE LIPPMAN: Counselor, where do  
21 we draw the line, though? What's the rule? Is your  
22 basic argument here that an invalid warrant is  
23 analogous to an invalid search? I mean, is that what  
24 you're - - -

25 MR. CAMERON: Yes, I am.

1 CHIEF JUDGE LIPPMAN: - - - what you're  
2 saying? And it's just - - -

3 MR. CAMERON: That's correct, sir.

4 CHIEF JUDGE LIPPMAN: But how do - - -  
5 where do - - - how do we know it's invalid? At what  
6 point? How much - - - how many indicia do you have  
7 to have? If you make one mistake in it - - - what if  
8 just the judge's name was - - - you know, weren't  
9 able to figure out what it was and there's no seal  
10 and no printing underneath. Is that enou - - - if  
11 you had all the other indicia, that would be okay?

12 MR. CAMERON: Yes, it would be. Because  
13 the defendant, or the person who was being issued the  
14 search warrant, would at least know who - - -

15 CHIEF JUDGE LIPPMAN: Where - - - yes.

16 MR. CAMERON: - - - where it came from.  
17 That's - - - this goes to authority, to the issuing  
18 authority.

19 JUDGE SMITH: Where does your subdivision  
20 rule come from that you've got to substantially  
21 comply with each subdivision?

22 MR. CAMERON: Well, I believe that issue  
23 has been addressed in other court decisions. Off the  
24 top of my head, I can't recall which they are.

25 JUDGE SMITH: Well, suppose the legislature

1 decides to renumber the statute and put subsections 1  
2 and 2 together, does that mean we've got substantial  
3 compliance, because you can comply with the other  
4 half of the subdivision?

5 MR. CAMERON: I think no. I believe that -  
6 - - see, now you're getting into what I believe would  
7 be more technical issues. And this isn't a technical  
8 issue. This is an issue going to the heart of a  
9 person's rights for unreasonable search and seizure.

10 CHIEF JUDGE LIPPMAN: But how do we  
11 distinguish, though, between the technical and  
12 getting to a person's rights? You could argue that  
13 if we don't set the boundary - - - I think Judge  
14 Pigott had said it before - - - if we don't set the  
15 boundaries as to what it is, you know, are we in  
16 trouble, and therefore, are you getting into  
17 affecting people's rights? Or do you really - - - is  
18 it a question of looking at the particular thing; how  
19 many indicia are met; what's wrong with it; and  
20 saying hmm, there are two or three or a subdivision  
21 or whatever that's wrong with it, but the rest is  
22 right?

23 You know what I mean? Is it more wrong  
24 than right? How do we - - - how do we set the rule?  
25 How do we know when it impacts on someone's rights as

1           opposed to a technical error? As you said, if you -  
2           - - if everything else was right, but you couldn't  
3           read the scrawl of the signature, it might be okay.

4                   MR. CAMERON: And the reason why it would  
5           be okay is because all of the elements or all the  
6           subdivisions have been - - - they've been met because  
7           - - -

8                   JUDGE PIGOTT: We get excited - - - we get  
9           excited if there's a no-knock. I mean, you don't  
10          want to do - - - and I think this is a no-knock - - -  
11          or if it's one that says you can search in the middle  
12          of the night where you're getting people up - - - you  
13          don't want to do things like that. The search  
14          warrant, this one's pretty much a straightforward  
15          one.

16                   But it also says the address of 21 South  
17          Chenango Street, Greene, New York. It doesn't have  
18          any problems with the county. It doesn't have any  
19          problems with the town. And it describes the house  
20          in great detail. And what more do you need? It  
21          wasn't - - - I mean, they weren't out in the wrong  
22          county in the wrong town doing what they weren't  
23          supposed to do.

24                   MR. CAMERON: If I may? Out in Chenango  
25          County, it's a very rural area. The town that I live

1 in, or the village I'm in, New Berlin, in the Town of  
2 New Berlin, it has addresses in Pittsfield and Otsego  
3 County, which says New Berlin. Greene has a post  
4 office. And there are places in Broome County that  
5 have addresses of Greene.

6 JUDGE PIGOTT: But if it then goes on to  
7 say, "is a two-story wooden frame structure with  
8 siding and off-white trim and wrap-around" et cetera,  
9 et cetera, "The main entrance is on the west side of  
10 the building facing the street. On the front of the  
11 residence is a number 21, located to the right of the  
12 residence above the front door," you pretty much know  
13 you're in the right spot.

14 MR. CAMERON: Yes, you are. But you don't  
15 know who the issuing authority is; who issued this.  
16 Some - - -

17 JUDGE SMITH: Why did your client suffer a  
18 greater deprivation of his rights than the defendant  
19 in Patterson, whose picture was not returned to him?

20 MR. CAMERON: My client's rights were - - -  
21 they dealt with his right to have a secure home; the  
22 expectation of privacy. His own place - - -

23 JUDGE SMITH: Well, but not when there's  
24 prob - - - not when a detached magistrate finds  
25 probable cause to search it. And one did.

1 MR. CAMERON: But the search warrant did  
2 not contain the information required so that the  
3 person who's being searched knows who the issuing  
4 authority is.

5 JUDGE SMITH: I guess what I'm saying is  
6 how does that invade your client's privacy, that the  
7 court wasn't on the - - -

8 MR. CAMERON: Because it could have been  
9 from anyone, Your Honor. And this - - -

10 JUDGE SMITH: Suppose the legislature  
11 repealed that subsection that says that the warrant  
12 doesn't have to identify the court?

13 MR. CAMERON: Then we'd have - - -

14 JUDGE SMITH: Is that unconstitutional?

15 MR. CAMERON: I think there's a problem  
16 there. Yes, I do, Your Honor. Because I think that  
17 this - - - there's a reason to know - - - we're  
18 talking about people - - - a person's home. And  
19 we're looking at - - - we consider courts, you know,  
20 who have the authority to issue these kinds of orders  
21 that invade a person's privacy, invade a person's own  
22 home, that's very, very - - -

23 JUDGE SMITH: Well, suppose the legislature  
24 says it's okay to say at the top "Supreme Court of  
25 the State of New York", and you don't have to

1 designate the county. Does that violate the Fourth  
2 Amendment?

3 MR. CAMERON: If it simply says "Supreme  
4 Court", and it's signed by a judge and the - - -

5 JUDGE SMITH: Yes.

6 MR. CAMERON: - - - judge identifies - - -  
7 then no, it does not violate. Because the supreme  
8 court in that county can issue a search warrant.

9 JUDGE SMITH: So why does it viol - - - I  
10 mean, why does it violate the Fourth Amendment when  
11 the statute does require the county to be there, but  
12 they left it out?

13 MR. CAMERON: Because it - - - a person  
14 who's being searched is entitled to notice as to who  
15 - - - who has the authority, the power to do this.  
16 If they don't - - - if that's not there, then it's  
17 anarchy, because anybody can whip up a search  
18 warrant, and someone can hand it over and have their  
19 way. And that's just fundamentally wrong.

20 JUDGE PIGOTT: But in point of fact, I'd  
21 asked your opponent, we don't know who the judge was,  
22 but in point of fact, at some point, you know, when  
23 you bring a suppression motion, someone's going to  
24 find out who the judge was. And there's no claim  
25 here that it wasn't the village justice that did

1           this, right? I mean, even though you can't read the  
2           name, it was the village justice who signed this?

3                   MR. CAMERON: I think that there was a  
4           hearing. At the suppression hearing it came out that  
5           the village justice signed it.

6                   JUDGE PIGOTT: So if it had been my  
7           hypothetical, which is that the officer made it up  
8           because he wanted to cut it short, and decided to  
9           sign the judge's name rather than go down to the  
10          courthouse, that would have come out in that hearing?

11                   MR. CAMERON: Yes, of course.

12                   JUDGE PIGOTT: Okay.

13                   JUDGE GRAFFEO: I think what we're trying  
14          to struggle with is what makes it an invalid warrant.  
15          And I seem to - - - my impression from your  
16          statements is that if you don't clearly indicate who  
17          issued it, that makes it an invalid warrant. So it's  
18          not just a technical defect?

19                   MR. CAMERON: For me, when I'm looking at  
20          this statute, and it's the first subdivision, the  
21          first thing that's named here, is the authority, is  
22          the power of the people, of the government, in order  
23          to enter your home, that's very, very important.

24                   Now, they go down to such things as  
25          describing the property; they talk about things that

1 can be retrieved. Those are important, too. But  
2 without knowing who is the issuing authority, who is  
3 the one who can take this from me -- who can enter my  
4 home, take these things from me -- that to me, is  
5 probably the most important thing that a search  
6 warrant has to have. You need to know who this is  
7 coming from - - -

8 CHIEF JUDGE LIPPMAN: But you're tell - - -

9 MR. CAMERON: - - - or has redressed that -  
10 - -

11 CHIEF JUDGE LIPPMAN: - - - I think what  
12 you're saying - - - I mean, you agree this is  
13 sufficient for law enforcement, right, the  
14 description and the house and all of that?

15 MR. CAMERON: That part, yes.

16 CHIEF JUDGE LIPPMAN: It's the particular  
17 individual that makes - - - the application to the  
18 particular individual that makes it invalid in your  
19 view?

20 MR. CAMERON: If I understood - - -

21 CHIEF JUDGE LIPPMAN: In the end, there's  
22 two purposes. One is to have the individual have  
23 notice who's coming in to, you know, to their  
24 property, and the other purpose is so law enforcement  
25 can be guided in executing. The second part is okay,

1 right? It's the first part that's our problem?

2 MR. CAMERON: That's right. The first part  
3 is the problem. Obviously the officer knew what he  
4 was doing.

5 CHIEF JUDGE LIPPMAN: Okay. Thanks,  
6 counsel.

7 MR. CAMERON: Thank you.

8 CHIEF JUDGE LIPPMAN: Counselor, why isn't  
9 an invalid warrant analogous to an invalid search?

10 MR. GENUITE: Because an invalid search  
11 specifically goes to the heart of the Constitutional  
12 rights guaranteed to a defendant. Your Honor - - -

13 JUDGE PIGOTT: Mr. Cameron seems to be  
14 arguing that you got to focus on the facial  
15 sufficiency at the time of the search. We can al - -  
16 - you can always go back and say well, county was  
17 wrong, village was wrong, we don't know the judge,  
18 but we can fix all of that after the search warrant  
19 has been, you know, returned.

20 In fact, I think there was some argument  
21 that some of this can end up on a return. But  
22 shouldn't our concern be, you know, those searches  
23 that may have - - - that can be held that never go  
24 any further? In other words, you search the wrong  
25 house or something like that? It's the facial

1           quality of the search warrant at the time of the  
2           search; wouldn't you agree?

3                       MR. GENUTE:   Absolutely, Your Honor.   If I  
4           understood the correction - - - the question  
5           correctly.   We're concerned - - - and this court has  
6           been concerned with the regularity of the process.  
7           The regularity of the process is that there was  
8           probable cause.   It was signed by an appropriate  
9           judge.   It was acknowledged by all.   There's no  
10          dispute that that is the circumstance.   We don't have  
11          a situation, as the defendant suggests, that we have  
12          anarchy because that's the purpose of hearings;  
13          that's the purpose of a suppression motion, to ensure  
14          that a defendant's rights are guaranteed under - - -

15                      CHIEF JUDGE LIPPMAN:   But at the time the  
16          defendant is dealing with this, what's the guarantee,  
17          what's the assurance that their rights are not being  
18          violated?

19                      MR. GENUTE:   Well, if they are violated,  
20          the assurance is the evidence will be suppressed, as  
21          this court did where it couldn't guarantee the  
22          regularity of the process in *People v. Taylor*.

23                      CHIEF JUDGE LIPPMAN:   But isn't that a  
24          little bit of anarchy if we allow anyone to go into  
25          another person's house to search, and the guy says,

1           hey, wait a second, you're not giving me notice, and  
2           the answer is don't worry about it; if you're right,  
3           they'll fix it later? That's kind of not the society  
4           we live in, right?

5                       MR. GENUTE: Well, that's not what happened  
6           here, however, Your Honor. And certainly if that  
7           were the case, and that - - -

8                       CHIEF JUDGE LIPPMAN: Yes, but how did the  
9           defendant know that that's not what was happening  
10          here?

11                      MR. GENUTE: The defendant wasn't even at  
12          the house at the time, Your Honor. The - - - it was  
13          his mother who allowed the police in. There was no  
14          question at the time, when the police came into the  
15          house. And again, as I have indicated, the trooper  
16          himself, who witnessed the judge sign the warrant - -  
17          -

18                      CHIEF JUDGE LIPPMAN: But last question,  
19          and I think you were asked this before, I'm not sure,  
20          maybe by Judge Smith - - - but what if she said wait  
21          a second, what is this? You can't come in here.  
22          What would be the result?

23                      MR. GENUTE: If the trooper couldn't - - -

24                      CHIEF JUDGE LIPPMAN: If she was proven  
25          right, it would be suppressed later?

1                   MR. GENUTE:  If she was proven right, it  
2                   would be suppressed later.  If the trooper was unable  
3                   to identify who signed the warrant, then I believe  
4                   that the trooper would have to go and correct the  
5                   mistake in that situation.

6                   CHIEF JUDGE LIPPMAN:  Okay, counselor.  
7                   Thank you both.  Appreciate it.

8                   MR. GENUTE:  Thank you, Your Honors.

9                   (Court is adjourned)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. John M. Gavazzi, No. 195 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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