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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 German Felipe Reyes-Reyes,  
10 Petitioner,  
11 v.  
12 Charles L. Ryan, et al.,  
13 Respondents.

No. CV-14-00005-PHX-DGC

**ORDER**

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15 Petitioner German Felipe Reyes-Reyes filed a Petition for Writ of Habeas Corpus  
16 pursuant to 28 U.S.C. § 2254. Doc. 1. On May 20, 2014, United States Magistrate Judge  
17 Mark E. Aspey issued a report and recommendation (“R&R”) recommending that the  
18 petition be denied. Doc. 13 at 9. The Court will accept the R&R.

19 **I. Background.**

20 On January 13, 2012, two off-duty Phoenix police officers were providing security  
21 for an apartment complex at 1717 West Glendale Avenue in Phoenix, Arizona. Doc. 11  
22 at 3. At about 8:00 p.m., the officers noticed a black Mercedes parked in one of the  
23 parking coves on the east side of the apartment complex. *Id.* A registration check on the  
24 Mercedes revealed that it was registered to Amy Marie Siegel. *Id.* The officers  
25 approached the vehicle on foot. *Id.* Petitioner, the sole occupant of the vehicle, was  
26 talking on a cell phone. *Id.* The officers began conversing with Petitioner. *Id.* After  
27 performing a warrant search on their mobile data terminal, the officers learned that there  
28 was an outstanding warrant for Petitioner’s arrest, so they handcuffed him and placed him

1 under arrest. *Id.* Pursuant to the arrest, the officers searched Petitioner’s person and  
2 discovered two baggies of methamphetamine in his pockets. *Id.* at 4. The officers also  
3 noticed a black handgun protruding from underneath the center console of the Mercedes.  
4 *Id.* The officers searched the car and found the loaded handgun. *Id.* The officers also  
5 found another baggie of methamphetamine inside the car. *Id.*

6 On February 6, 2012, Petitioner was charged with one count of possession or use  
7 of dangerous drugs and three counts of misconduct involving weapons. Doc. 11-1 at 7.  
8 On March 29, 2012, the State of Arizona filed allegations of aggravating circumstances  
9 and allegations of prior convictions, including an assertion that Petitioner committed the  
10 charged offenses while on felony release. *Id.* at 11, 15, 18.

11 Prior to his trial, Petitioner moved to suppress all evidence collected from the  
12 January 13, 2012 encounter with the two officers. Doc. 11-3 at 54. Petitioner claimed  
13 that he had been illegally seized by the officers. *Id.* at 58. The state trial court denied the  
14 motion to suppress, concluding that “[a] police officer does not need reasonable suspicion  
15 or cause to approach a person and ask questions” and that Petitioner “was free to leave or  
16 not talk to the officers.” Doc. 11-1 at 99.

17 On July 12, 2012, a jury convicted Petitioner on two counts. Doc. 11-2 at 135.  
18 Petitioner was sentenced to concurrent terms of ten years on each count. Doc. 11-3 at 48.

19 Petitioner appealed, asserting that the trial court abused its discretion when it  
20 denied his motion to suppress. *Id.* at 87. On June 20, 2013, the Arizona Court of  
21 Appeals affirmed Petitioner’s conviction. *Id.* at 138-41. Petitioner sought review by the  
22 Arizona Supreme Court, which denied review on December 4, 2013. *Id.* at 158.

23 On December 18, 2013, Petitioner initiated a state action for post-conviction relief  
24 pursuant to Arizona Rule of Criminal Procedure 32. *Id.* at 163. Respondents assert that  
25 the state proceeding is still pending. Doc. 11 at 9. On January 2, 2014, Petitioner filed  
26 this Petition for Writ of Habeas Corpus. Doc. 1.

27 **II. Legal Standard.**

28 The Court must undertake a *de novo* review of those portions of the R&R to which

1 specific objections are made. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). The Court  
2 may accept, reject, or modify the findings or recommendations made by the magistrate  
3 judge. *See* 28 U.S.C. § 636(b)(1).

4 “If the state has provided a state prisoner an opportunity for full and fair litigation  
5 of his Fourth Amendment claim, [a federal District Court] cannot grant federal habeas  
6 relief on the Fourth Amendment issue.” *Moorman v. Schriro*, 426 F.3d 1044, 1053 (9th  
7 Cir. 2005) (citing *Stone v. Powell*, 428 U.S. 465, 494 (1976)). Whether the state court  
8 correctly decided the Fourth Amendment claim is irrelevant. *See Stone*, 428 U.S. at 494  
9 (“[W]here the State has provided an opportunity for full and fair litigation of a Fourth  
10 Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the  
11 ground that evidence obtained in an unconstitutional search or seizure was introduced at  
12 trial.”); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 899 (9th Cir. 1996) (“The relevant inquiry  
13 is whether petitioner had the opportunity to litigate his claim, not whether he did in fact  
14 do so or even whether the claim was correctly decided.”).

15 *Stone* did not specify a test for determining whether a State has provided an  
16 opportunity for full and fair litigation of a claim. *Stone* did, however, cite *Townsend v.*  
17 *Sain*, 372 U.S. 293 (1963), in a footnote. *Stone*, 428 U.S. at 494 n.36. *Townsend* held  
18 that a federal court must grant a habeas petitioner an evidentiary hearing if (1) the merits  
19 of the factual dispute were not resolved in the state hearing; (2) the state factual  
20 determination is not fairly supported by the record as a whole; (3) the fact-finding  
21 procedure employed by the state court was not adequate to afford a full and fair hearing;  
22 (4) there is a substantial allegation of newly discovered evidence; (5) the material facts  
23 were not adequately developed at the state-court hearing; or (6) for any reason it appears  
24 that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.  
25 372 U.S. at 313. In *Mack v. Cupp*, 564 F.2d 898 (9th Cir. 1977), the Ninth Circuit  
26 explained that although the *Townsend* test “must be given great weight in defining what  
27 constitutes full and fair consideration under *Stone*,” it need not “always be applied  
28 literally . . . as the sole measure of fullness and fairness.” 564 F.2d at 901. The Ninth

1 Circuit has also considered the extent to which the claims were briefed before and  
2 considered by the state trial and appellate courts. *Abell v. Raines*, 640 F.2d 1085, 1088  
3 (9th Cir. 1981).

4 Petitioner bears the burden of establishing that the state courts did not fully and  
5 fairly consider his Fourth Amendment claim. *Woolery v. Arave*, 8 F.3d 1325, 1328 (9th  
6 Cir. 1993).

### 7 **III. Analysis.**

8 Petitioner objects to the R&R, asserting that the Arizona courts failed to afford a  
9 full and fair opportunity to litigate his Fourth Amendment claim. Doc. 14 at 1. Petitioner  
10 bases his assertion on three arguments: (1) a commissioner performed an unauthorized  
11 review of the evidence in his case, which yielded a defective response to Petitioner’s  
12 motion for disclosure that tainted the evidentiary universe in which Petitioner’s Fourth  
13 Amendment motion practice was conducted; (2) the trial court precluded any mention of  
14 the nature and quality of the arrest warrant in an evidentiary hearing and at trial; and  
15 (3) the Arizona Court of Appeals chose to simply affirm rather than review the trial court  
16 decisions. The Court will address each of these arguments below.

#### 17 **A. Commissioner’s Review of the Evidence.**

18 Petitioner argues that a commissioner has “extremely circumscribed authority”  
19 under A.R.S. § 12-212 and Arizona Supreme Court Rule 96(a)(11) and that the rules  
20 “distinctly withhold[] power” from a commissioner to consider matters arising under  
21 Arizona Rules of Criminal Procedure 15, 16, and 35, which rules were “essential to the  
22 determination of present matters.” Doc. 14 at 3. Petitioner is mistaken. Arizona  
23 Supreme Court Rule 96(a)(11) expressly permits commissioners, if approved by the  
24 presiding judge, to hear matters governed by Arizona Rules of Criminal Procedure 15,  
25 16.2, and 16.3, which are the rules under which Petitioner’s motion for disclosure arose.  
26 Petitioner does not argue that Commissioner Steven Lynch, the commissioner appointed  
27 in this case, was not approved by the presiding judge to hear such matters. In addition, it  
28 is not clear how Arizona Rule of Criminal Procedure 35, which governs the form,

1 content, and service of motions and requests, was violated by the commissioner's  
2 participation. The Court concludes that Petitioner's first argument is meritless.

3 **B. Trial Court's Evidentiary Rulings.**

4 Because the warrant executed by the officers on January 13, 2012 was for a non-  
5 extraditable misdemeanor from Yuma County, Petitioner argues that the officers did not  
6 have probable cause to arrest him and that, without the arrest, the officers would not have  
7 discovered the contraband on his person or in the vehicle. Doc. 14 at 2, 4. Petitioner  
8 asserts that he was denied a full and fair opportunity to litigate the Fourth  
9 Amendment issue because the trial court refused to hear evidence regarding the nature  
10 and quality of the arrest warrant, which would have demonstrated a clear Fourth  
11 Amendment violation. *Id.* at 2.

12 The transcript from Petitioner's July 9, 2012 suppression hearing demonstrates the  
13 trial court addressed Petitioner's evidence, or lack thereof, regarding the nature and  
14 quality of the arrest warrant. Doc. 11-1 at 24-30. At the suppression hearing, which took  
15 place two days before Petitioner's trial, the trial court permitted Petitioner to argue that  
16 the nature and quality of the arrest warrant invalidated the January 13, 2012 seizure.  
17 Petitioner, however, had previously failed to raise the issue in his written motion and he  
18 failed to present any statute or case law relevant to the issue at the hearing. Likewise,  
19 Petitioner's submissions in this proceeding fail to cite any controlling law suggesting that  
20 the officers wrongly executed the non-extraditable misdemeanor arrest warrant from  
21 Yuma County. Applying the *Townsend* factors, the Court concludes, that Petitioner was  
22 provided a full and fair opportunity to litigate his Fourth Amendment claim before the  
23 trial court.

24 **C. Appellate Review.**

25 Petitioner argues that the Arizona Court of Appeals "in its lock-step effort to  
26 affirm the result of the inferior tribunal, necessarily had to deny reference to clearly, and  
27 long established U.S. Supreme Court precedence (sic)." Doc. 14 at 4. Specifically,  
28 Petitioner asserts that the Arizona Court of Appeals failed to adhere to the holding of

1 *Arizona v. Gant*, 556 U.S. 332 (2010), which circumscribed the ability of law  
2 enforcement officers to conduct warrantless vehicular searches incident to arrest after a  
3 vehicle's occupant(s) have been arrested and secured. 556 U.S. at 335.

4 This argument challenges the state court's application of the relevant law, not its  
5 factual determinations. As such, "the *Abell* factors are more useful than the test  
6 enunciated in *Townsend*." *Terrovona v. Kincheloe*, 912 F.2d 1176, 1179 (9th Cir. 1990).  
7 Because the Fourth Amendment claim was briefed before the Arizona Court of Appeals,  
8 Petitioner was provided a full and fair opportunity to litigate his Fourth Amendment  
9 claim before the state appellate court. Doc. 11-3 at 84-101, 115-130. Interestingly,  
10 Petitioner did not rely on or otherwise cite *Gant* in his appeal, which explains why the  
11 state appellate court did not consider Fourth Amendment arguments founded on *Gant*.  
12 The Court concludes that Petitioner's third argument is meritless.

13 **IT IS ORDERED:**

- 14 1. The R&R (Doc. 13) is **accepted**.  
15 2. The Clerk is directed to **terminate** this action.

16 Dated this 14th day of July, 2014.

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21 David G. Campbell  
22 United States District Judge  
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