
No. _____

In the
Supreme Court of the United States

KRISTIAN THOMAS, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Tenth Circuit

Motion for Leave to Proceed in Forma Pauperis

The petitioner, by his undersigned counsel, asks leave to file the attached petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit without prepayment of costs and to proceed in forma pauperis. The petitioner was represented by counsel appointed in the trial court under the Criminal Justice Act, 18 U.S.C. §3006A(b).

* * *

This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

STEPHEN P. MCCUE
Federal Public Defender

DATED: July 13, 2018

By: *s/ Margaret A. Katze*
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Assistant Federal Public Defender

Attorneys for the Petitioner
* Counsel of Record

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Petition for Writ of Certiorari

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Question Presented

Does not the Fourth Amendment require prudence or reasonable caution so that before exercising a misdemeanor arrest warrant for failure to appear, a week-old warrant is quickly checked to confirm it is still active?

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In the
Supreme Court of the United States

KRISTIAN THOMAS, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

Petition for Writ of Certiorari

Kristian Thomas petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit in his case.

Opinions Below

The Tenth Circuit’s decision affirming the district court’s denial of Thomas’s motion to suppress in *United States v. Kristian Thomas*, Case No. 17-2033, was not published.¹ The district court’s memorandum opinion denying the motion was not published.²

¹ App. 1a-4a. “App.” refers to the attached appendix. “Vol.” refers to the record on appeal which is contained in three volumes. Thomas refers to the documents and pleadings in those volumes as Vol. I-III followed by the page number found on the bottom right of the page (e.g. Vol. III at 89).

² App. 5a-8a.

Jurisdiction

On April 16, 2018, the Tenth Circuit affirmed the district court's decision to deny Thomas's motion to suppress.³ This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

Constitutional Provision Involved

U.S. CONSTITUTION, Amendment IV

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.

Statement of the Case

An Albuquerque bicycle patrol officer watched a pick-up truck drive by. Inside he saw three people. One of them was holding a large screen television. The officer suspected they might be heading to a pawn shop nearby and radioed to other officers to meet him there. Vol. III at 23-25.

Officer Martinez responded. Thomas was at the counter when Martinez walked into the shop. She recognized him from the week before when Thomas's girlfriend asked the police to check on him. Id. at 36-37. Martinez spoke with Thomas then and knew from the encounter that a misdemeanor arrest warrant had been issued for him. She decided not to arrest him. App. at 5a-6a.

At the pawn shop she asked him for identification. Vol. III at 51. He said he did not have any with him. She asked for his true name. Thomas answered and started to walk away. Id. at 53. Martinez ordered him back. Id. She told him other officers thought it

³ App. 1a-4a.

was suspicious that he was in a truck with a television inside. *Id.* Martinez then commented to the other officer with her that Thomas had an outstanding arrest warrant. However, she had not confirmed it was still active. *Id.* at 47.

Martinez told Thomas to turn around so he could be handcuffed. *Id.* at 56. When the officers searched Thomas, they found a revolver. He was taken to a police car and locked inside. Later he gave incriminating statements regarding the gun.

Thomas argued the government had not shown there was an active warrant for his arrest when Martinez took him into custody. Although Martinez testified she believed there was one, she could not know if during that week the warrant had been set aside. Vol. III at 47. Therefore, Thomas said, the government did not prove there was probable cause to arrest him. Without probable cause, the officer did not have reasonable suspicion to ask Thomas his name or for identification. She also had no authority to search him.

The district court disagreed. It found Martinez's testimony credible. It also held that Martinez knew Thomas and believed there was an outstanding warrant for his arrest based on her investigation a week earlier. The court concluded Thomas's arrest and the search incident thereto were lawful. *App.* at 7a.

In a memorandum decision, the Tenth Circuit acknowledged the officer "could have been more diligent in checking the status of the warrant" before arresting Thomas. *App.* at 3a. It also agreed that the factors discussed in *United States v. Hewlett*, 395 F.3d 458 (D.C. Cir. 2005), were relevant to deciding whether the officer's decision to arrest Thomas was reasonable without verifying a week later that the misdemeanor arrest for failure to appear was still active. *App.* at 3a. Those factors include the possibility that the warrant was quashed or withdrawn and the likelihood the person was arrested and released on bond. The court ruled that "the theoretical possibility that the warrant was no longer active does not in itself make it unreasonable for Officer Martinez to believe there

was still an active warrant for Thomas' arrest." App. at 3a. The court added it was "reasonable to assume" that Thomas "had not been arrested or that the warrant had not been otherwise resolved in that brief time period." Id.

The district court had jurisdiction pursuant to 18 U.S.C. § 3231, and the Tenth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

Reasons for Granting the Writ

The Court's answer to the question potentially affects the freedom of every citizen. As it stands now, the Tenth Circuit allows police officers to make an arrest without objective confirmation that probable cause still exists. Time often passes between when a warrant is broadcast and when there is an opportunity to act on it. Thomas seeks the Court's guidance on whether it is reasonable to let officers assume a valid warrant, even a week later, rather than check its status first with an objective source.

The constitutionality of Officer Martinez's search depended on whether - at the moment of arrest - she had probable cause to arrest. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). The question here is whether an officer must verify with the National Criminal Information Center (NCIC) if a misdemeanor bench warrant is active before she has probable cause to arrest. By not verifying the bench warrant with the NCIC, the officer did not take the necessary steps to ensure that she did. Martinez said she believed a misdemeanor bench warrant for Thomas that she had found a week earlier was active. Belief alone is not the "reasonably trustworthy information" that supports probable cause to arrest. *Beck*, 379 U.S. at 91. As Martinez admitted, a reasonable officer verifies a misdemeanor warrant is active by confirming it through the NCIC database. Vol. III at 44, 47.⁴ Yet, she failed to do so.

⁴ Volume III of the record on appeal. Specifically, pages 36 and 38 of the transcript of

Given the amount of time that elapsed since Martinez was told there was a misdemeanor warrant for Thomas's arrest, the warrant could have been quashed, withdrawn, or executed. Mere assumption that it is active is folly. If already executed, Thomas might have been released on bond or the charge against him dismissed. What Martinez believed when she saw Thomas in the pawn shop cannot stand in for NCIC confirmation of the warrant before an arrest. In other words, without checking if the warrant was active, Martinez did not have probable cause to arrest Thomas. Without probable cause, his arrest and the accompanying search were illegal.

Moreover, it is legally inaccurate to say, as the Tenth Circuit does, that Martinez could "reasonabl[y] assume" there was an arrest warrant. App. at 3a. "That determination, as of that time, cannot be left to mere inference or conjecture." *Sgro v. United States*, 287 U.S. 206, 211 (1932). When asked by the prosecutor if she had determined whether Thomas had outstanding warrants prior to the pawn shop encounter, Martinez answered, "He did have outstanding warrants that day. I did not confirm them since he was not in my custody." Vol. III at 43. Her statement is instructive. First, she did not confirm the warrant was active. Second, simply declaring it was, however emphatically, does not make it legally actionable. Martinez did not really know there was an arrest warrant; she thought there might be. Instead of hoping after the fact that she was right, the Constitution demands she know beforehand. Deprivation of liberty requires an objective basis for probable cause.

the motion to suppress hearing held on April 1, 2016. Martinez testified if there is an arrest warrant, when the name is entered into the NCIC database, it will "return a hit on that individual." She also said she did not confirm Thomas had a warrant through NCIC because "she was not going to arrest him on that day."

In *Hewlett*, the court assumed the passage of eleven months might erode the original support that the accused had committed a crime. Nevertheless, because of certain facts – dissimilar to those here but still instructive – the court found support was not reduced below the level of probable cause. 395 F.3d at 461-62. It identified specific factors relevant to whether probable cause diminished: the nature of the charge; the possibility the charge was resolved; the likelihood of arrest and release on bond; and the probability the warrant was quashed or withdrawn. The court concluded that the “the nature of the charge (murder) and the relative brevity of the elapsed time period eliminate some possibilities that might otherwise have been relevant.” *Id.* Regarding resolution, it was unlikely that Hewlett had been convicted and served his time or had been tried and acquitted in just eleven months. Given the nature of the charge, it was equally unlikely he had been arrested and released on bond. For the same reason, it was improbable the warrant was quashed or withdrawn. *Hewlett* found probable cause for a murder warrant is relatively impervious. The finding favors Thomas. Here, a misdemeanor arrest warrant for failure to appear inverts the *Hewlett* finding. All the specific factors affecting probable cause are possible, likely, and probable.

Yet, without any thoughtful analysis, the Tenth Circuit assumes these factors do not favor Thomas. In doing so it minimizes the importance of those factors in the probable cause analysis and thereby categorically reduces the government’s burden to prove the arresting officer had probable cause. As Martinez admitted a reasonable officer verifies a misdemeanor warrant is active by confirming it through the NCIC database. Implicit in that admission is an understanding that it is more than “theoretically possible” that a misdemeanor warrant can be quashed or withdrawn within a week’s time. It was the government’s responsibility to prove that Martinez had a reason to detain Thomas or

cause to arrest him.⁵ She chose not to check her belief there was a misdemeanor arrest warrant with an objective source. Thus, contrary to the circuit court’s conclusion, a “prudent person” would not believe there was an active warrant for Thomas’s arrest. Without support for probable cause, Thomas’s arrest was unconstitutional. The Tenth Circuit should have reversed the district court’s decision and ordered that the gun seized as part of the arrest be suppressed.

Conclusion

For the foregoing reasons, Thomas requests the Court grant his petition for writ of certiorari.

Respectfully submitted,

STEPHEN P. MCCUE
Federal Public Defender

DATED: July 13, 2018

By: *s/ Margaret A. Katze*
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Assistant Federal Public Defender

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* Counsel of Record

⁵ The vehicle that caught the bicycle patrol officer’s attention was registered to Barth. The police were interested in Barth, not Thomas. Indeed, neither the government nor Martinez ever suggested there was reasonable suspicion to detain Thomas at the pawn shop.

Appendix

2018 WL 1792190

Only the Westlaw citation is currently available.

This case was not selected for publication in
West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial decisions
issued on or after Jan. 1, 2007. See also U.S.Ct. of
App. 10th Cir. Rule 32.1.

United States Court of Appeals, Tenth Circuit.

UNITED STATES of America,
Plaintiff-Appellee,
v.

Kristian THOMAS, Defendant-Appellant.
No. 17-2033

|
Filed April 16, 2018

Synopsis

Background: Defendant was convicted upon
conditional guilty plea in the United States District
Court for the District of New Mexico, M. Christina
Armijo, Chief District Judge, of being a felon in
possession of a firearm. Defendant appealed.

[Holding:] The Court of Appeals, [Mary Beck Briscoe](#),
Circuit Judge, held that officer had probable cause to
arrest defendant.

Affirmed.

West Headnotes (1)

[1] [Arrest](#)

[35](#)Arrest

Police officer had probable cause to arrest
defendant pursuant to outstanding warrant
on misdemeanor charge; although
defendant argued that officer lacked
probable cause because she did not
confirm that warrant was still active before
executing arrest, only one week had passed
since officer's previous encounter with
defendant when she learned of active
warrant, and, given defendant's presence
on the street, it was reasonable to assume
that he had not been arrested or that
warrant had not been otherwise resolved in
that brief time period, and officer promptly
checked status of warrant to confirm that it
was still active after arresting defendant
and securing the scene. [U.S. Const.
Amend. 4](#).

[Cases that cite this headnote](#)

(D.C. No. 1:15-CR-01500-MCA-1) (D. New Mexico)

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Kristian Thomas, Pro Se
Before [BRISCOE](#), [HOLMES](#), and [MATHESON](#),
Circuit Judges.

ORDER AND JUDGMENT*

[Mary Beck Briscoe](#), Circuit Judge

20, 34–35.

*1 Defendant-Appellant Kristian Thomas brings this direct criminal appeal. After Thomas was indicted for being a felon in possession of a firearm in violation of [18 U.S.C. §§ 922\(g\)\(1\), 924\(a\)\(2\), \(e\)](#), he moved to suppress the evidence against him. The district court denied the motion to suppress. Thomas then entered a conditional guilty plea, and now appeals. We AFFIRM.

I

On the evening of March 19, 2015, Thomas' girlfriend called 911 and reported that she was concerned about Thomas' welfare. ROA, Vol. III at 39–42. A police dispatcher in Albuquerque, New Mexico, informed the officers on patrol of the call. *Id.* Officer Yvonne Martinez fielded the call, and went to Thomas' residence. *Id.* She encountered a man who claimed to be Kristian Padilla, and determined that he was not in danger. *Id.*

Officer Martinez returned to her police car, drove a short distance away, and searched for further information on Kristian Thomas. *Id.* at 42, 49. She determined that the person she had spoken with was actually Kristian Thomas. *Id.* at 42–43. She also learned there was an outstanding warrant for Thomas' arrest on a misdemeanor charge. *Id.* at 43, 63. Because she had driven some distance from Thomas' residence, and because the warrant was only for a misdemeanor, Officer Martinez decided not to return to Thomas' residence to execute the warrant. *Id.* at 45, 47, 63.

One week later, on March 26, 2015, an Albuquerque police officer was on patrol and noticed a suspicious pickup truck. *Id.* at 17–18. The truck contained a passenger holding a large television. *Id.* at 18. Given that there were many residential burglaries and theft in that neighborhood, the officer believed the television might have been stolen. *Id.* After officers ran the license plate on the truck and determined the owner, they suspected the truck might be headed for a local pawn shop. *Id.* at 18–19. The police dispatcher sent Officer Martinez and one of her colleagues to the pawn shop, and informed them of the background facts. *Id.* at

Upon arriving at the pawn shop, Officer Martinez recognized Thomas from the encounter a week earlier. *Id.* at 36. After a brief conversation, Officer Martinez informed her colleague that there was a warrant out for Thomas' arrest. *Id.* at 56, 67, 69. Officer Martinez's colleague then handcuffed Thomas. *Id.* at 67. Thomas then told the officers “that he was armed, at which point [an officer] removed a ... Ruger .357 pistol from [Thomas'] pocket.” *Id.* As the district court found, “Officer Martinez then verified the status of the warrant.” ROA, Vol. I at 38; *see also* ROA, Vol. III at 37 (Officer Martinez testifying the warrant was “still active”).

The government charged Thomas with being a felon in possession of a firearm. ROA, Vol. I at 10 (citing [18 U.S.C. § 922\(g\)\(1\)](#)). A month later, a grand jury indicted Thomas for violations of [18 U.S.C. §§ 922\(g\)\(1\), 924\(a\)\(2\), \(e\)](#). *Id.* at 14–15.

Thomas moved to suppress the evidence of his arrest, including the firearm found in his pocket. *Id.* at 16–23. The district court denied the motion in a written order. *Id.* at 36–39. Thomas then entered a conditional guilty plea under [Federal Rule of Criminal Procedure 11\(a\)\(2\)](#), which reserved the right to appeal the denial of his motion to suppress. *See generally* ROA, Vol. II. The district court sentenced Thomas to 92 months' imprisonment and entered the judgment. ROA, Vol. I at 48. Thomas filed this timely appeal.¹ *Id.* at 53–54.

II

*2 [\[1\]](#)In an appeal from an order denying a motion to suppress, we review all legal determinations de novo and all factual determinations for clear error. *United States v. Ludwig*, 641 F.3d 1243, 1247 (10th Cir. 2011).

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” [U.S. Const. amend. IV](#). Consistent with the Fourth Amendment, a police officer can only make an

arrest if the officer has probable cause. See Michigan v. Summers, 452 U.S. 692, 700, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981). Probable cause is present when “facts and circumstances within the officer’s knowledge ... are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.” Michigan v. DeFillippo, 443 U.S. 31, 37, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979). “[P]robable cause is a flexible, common-sense standard” that “does not demand any showing that such a belief be correct or more likely true than false.” Texas v. Brown, 460 U.S. 730, 742, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983).

Thomas argues Officer Martinez did not have probable cause to arrest him because, even though Officer Martinez knew there had been a warrant for Thomas’ arrest on a misdemeanor charge a week earlier, Officer Martinez did not confirm that the warrant was still active. In Thomas’ view, it was theoretically possible that he could have been arrested on the warrant, processed, and released on bond in the week since Officer Martinez last encountered him. Or, alternatively, Thomas argues the warrant could have been quashed or withdrawn.

At bottom, Thomas raises the issue of whether “a prudent person, or one of reasonable caution,” DeFillippo, 443 U.S. at 37, 99 S.Ct. 2627, when confronted with a suspect who had a misdemeanor warrant for his arrest a week earlier, could reasonably believe without verification that the arrest warrant was still active. The district court held that such a belief was reasonable, and that Officer Martinez had probable cause to believe the misdemeanor arrest warrant was still valid. We agree.

Though the Tenth Circuit has not encountered this unusual factual scenario, the D.C. Circuit decided a case on similar facts in United States v. Hewlett, 395 F.3d 458 (D.C. Cir. 2005). In Hewlett, an FBI agent learned in April 2002 that there was a warrant for Hewlett’s arrest on murder charges in Maryland. Id. at 459. The officer did not make an arrest at that time, but checked the computer system to verify the warrant. Id. Eleven months later, the officer received a tip that Hewlett was eating in a restaurant in Washington, D.C. Id. The FBI agent and two other officers arrived at the restaurant and arrested Hewlett on the murder warrant, even though none of them had recently checked

whether the warrant was still active. Id. The D.C. Circuit held that it “cannot conclude that the passage of eleven months so diminished” the belief that there was a warrant for Hewlett’s arrest “as to reduce it below the level of probable cause.” Id. at 462. “[W]hile it remained possible that the warrant had been quashed or withdrawn,” the D.C. Circuit still held that it was “reasonable for the arresting officers to believe that the warrant, and the finding of probable cause that it evidenced, remained valid.” Id.

*3 Thomas argues that Hewlett is factually distinguishable from the instant case. Specifically, the D.C. Circuit noted that the seriousness of Hewlett’s murder charge made it unlikely that he could have received bond or been tried and acquitted in only 11 months. Id.

Yet, there were still many theoretical possibilities allowing Hewlett to be lawfully free in Washington, D.C., despite the existence of the warrant 11 months earlier. For instance—though perhaps not likely—it is possible that Hewlett could have posted bond if he had been arrested. Further, the State of Maryland could have withdrawn the warrant. Ultimately, though, the most likely scenario at the moment the officers encountered Hewlett was that Hewlett had never been arrested, and was still wanted pursuant to the warrant the FBI agent saw 11 months earlier.

Thus, Hewlett posed circumstances which were similar to those present here. Like the FBI agent in Hewlett, Officer Martinez perhaps could have been more diligent in checking the status of the warrant before executing an arrest. However, like Hewlett, the theoretical possibility that the warrant was no longer active does not in itself make it unreasonable for Officer Martinez to believe there was still an active warrant for Thomas’ arrest. Only one week had passed since Officer Martinez’s encounter with Thomas, and, given Thomas’ presence on the street, it was reasonable to assume that Thomas had not been arrested or that the warrant had not been otherwise resolved in that brief time period. Further, after arresting Thomas and securing the scene by removing Thomas’ firearm, Officer Martinez promptly checked the status of the warrant to confirm that it was still active.

Like the D.C. Circuit in Hewlett, we conclude that the facts and circumstances within Officer Martinez’s

knowledge were sufficient for a prudent person to believe there was an active warrant for Thomas' arrest.² See *DeFillippo*, 443 U.S. at 37, 99 S.Ct. 2627. Therefore, the officer's arrest was valid, and we affirm the district court's denial of the motion to suppress.

III

AFFIRMED.

All Citations

--- Fed.Appx. ----, 2018 WL 1792190

Footnotes

*
— After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See [Fed. R. App. P. 34\(a\)\(2\)](#); [10th Cir. R. 34.1\(G\)](#). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with [Fed. R. App. P. 32.1](#) and [10th Cir. R. 32.1](#).

1 In this appeal, Thomas' counsel first filed an *Anders* brief on June 15, 2017. Doc. #10475215 (citing *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)). However, after the court asked Thomas' counsel for further explanation of why he believed this appeal was frivolous, Thomas' counsel filed an amended opening brief on November 16, 2017, without citation to *Anders*. Doc. #10514434. The government responded, and Thomas replied, making this matter ripe for decision.

2 There may be an argument that even if Officer Martinez lacked probable cause to believe the warrant was still active, Officer Martinez's subsequent verification of the warrant's validity attenuated any unlawful actions. See *Utah v. Strieff*, ___ U.S. ___, 136 S.Ct. 2056, 2061–63, 195 L.Ed.2d 400 (2016) (holding that even though an officer unlawfully detained a suspect, the later discovery of a warrant to arrest the suspect attenuated the unlawful detention and made the arrest Constitutional). Yet, the government did not make that argument in the district court. See Govt. Br. at 8 n.6 (acknowledging “the United States has never made an attenuation argument in this case”). It is therefore forfeited. *United States v. Hernandez*, 847 F.3d 1257, 1262 (10th Cir. 2017) (holding the government “waived” an attenuation argument by not raising it in the district court).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Crim. No. 15-1500 MCA

**Kristian Thomas,
Defendant.**

ORDER

This case comes before the Court on Defendant Kristian Thomas' *Motion to Suppress Evidence*. [Doc. 41] The Court has considered the written submissions of the parties, the evidence adduced at the April 1, 2016 evidentiary hearing, the record, the applicable law, and is otherwise fully advised.

BACKGROUND

Based upon the criminal complaint in this matter, along with the testimony presented at the April 1, 2016 evidentiary hearing, the Court finds the following:

On March 26, 2015, Officer John Garcia of the Albuquerque Police Department was on bicycle patrol in a neighborhood that had been targeted by residential burglary. A pickup truck drove by and Officer Garcia noticed that the male passenger was holding a large-screen TV. Officer Garcia found this circumstance suspicious because large-screen TV's are commonly stolen in residential burglaries. Upon checking the license plate number of the pickup truck, Officer Garcia learned that it was registered to a person who Officer Garcia had previously arrested for larceny crimes. Officer Garcia also knew that the registered owner of the pickup truck frequented Ruby's pawn shop. Accordingly,

Officer Garcia requested that “marked units” (Police Officers driving motor vehicles) check Ruby’s pawn shop to see whether the pickup truck was there.

Officer Yvonne Martinez of the Albuquerque Police Department was one of the officers who responded to Officer Garcia’s request. When Officer Martinez walked into the pawn shop she recognized Defendant. Seven days earlier, on March 19, 2015 Officer Martinez had responded to a welfare-check call in which the caller (Defendant’s girlfriend) had requested that the police “check and make sure that [Kristian Thomas (Defendant in this matter)] was okay.” In conducting the welfare-check, Officer Martinez had encountered Defendant, who told Officer Martinez that his name was Kristian Padilla. After their discussion Officer Martinez went back to her car and, because Defendant had stated that his name was “Kristian Padilla,” but she had been called to check upon Kristian Thomas, she investigated further to determine whom she had encountered. Using the address at which she had encountered Defendant and other information, Officer Martinez was able to learn Defendant’s true identity. She then ran his name through Booking, NCIC, and MVD (by which she retrieved a photo of Defendant). Through this investigation, Officer Martinez learned of an outstanding warrant for Defendant’s arrest. She did not execute the arrest warrant at that time.

Based upon her March 19 investigation, when Officer Martinez encountered Defendant at Ruby’s pawn shop on March 26 she knew who he was, and she knew that there was an outstanding warrant for his arrest. She advised her fellow officer (David Hinson) of this fact. She then advised Defendant that he was going to be placed in

handcuffs “for additional investigation,” and Officer Hinson handcuffed him. Officer Martinez then verified the status of the warrant through NCIC.

After Officer Hinson handcuffed him, Defendant advised Officer Hinson that he was armed. Officer Hinson searched Defendant, and found a firearm in Defendant’s pocket. Defendant, who is a felon, was charged in a criminal complaint with a violation of 18 U.S.C. § 922(g)(1). [Doc. 1] Later, a grand jury indicted Defendant for violations of 18 U.S.C. § 922(g) (1); and 18 U.S.C. 924(a)(2), and 924(e). [Doc. 4]

DISCUSSION

In his *Motion to Suppress*, Defendant argues that Officer Martinez’s version of events is “not to be believed or trusted as it is highly unlikely that she was aware that [Defendant] had warrants until after she had already seized him and determined his identity.” [Doc. 41 p.5] Building on that premise, Defendant argues further that Officer Martinez violated his Fourth Amendment rights by seizing him without reasonable suspicion while he was visiting the pawn shop. [Doc 41 p. 4] Defendant contends that the firearm and “any [additional] evidence” found as a result of the purportedly unlawful seizure must be suppressed. [Doc. 41 p. 8]

As reflected in the earlier discussion of the facts, the Court finds Officer Martinez’s testimony credible. Pertinently, the Court finds Officer Martinez knew who Defendant was and knew that there was an outstanding warrant for his arrest based upon her investigation seven days earlier. As such, Defendant’s arrest, and the search incident thereto were lawful. *Beard v. City of Northglenn, Colo.*, 24 F.3d 110, 115 (10th Cir. 1994) (“Clearly established law indicates that an arrest is valid and does not violate the

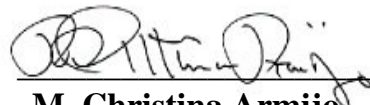
Fourth amendment” if it is made pursuant to a valid warrant.); *U.S. v. Hewlett*, 395 F.3d 458, 461-62 (D.C. Cir. 2005) (upholding the validity of a search incident to arrest that led to the discovery that the defendant, a felon, possessed a firearm; and concluding that the arrest was supported by probable cause because the arresting officer knew that a valid arrest warrant for the defendant had been issued eleven months earlier). Defendant’s argument to the contrary does not provide a basis for suppressing the evidence found as a result of the search incident to his valid arrest.

CONCLUSION

For the reasons stated herein, the Motion will be denied.

IT IS THEREFORE HEREBY ORDERED that Defendant Kristian Thomas’ *Motion to Suppress Evidence* is **DENIED**.

SO ORDERED this 11th day of April, 2016 in Albuquerque, New Mexico.



M. Christina Armijo
Chief United States District Judge

No. _____

In the
Supreme Court of the United States

KRISTIAN THOMAS, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Tenth Circuit

Certificate of Service

I, Margaret A. Katze, hereby certify that on July 13, 2018, a copy of the petitioner's Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit were mailed postage prepaid, to the Solicitor General of the United States, Department of Justice, Room 5614,

950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, counsel for the Respondent.

Respectfully submitted,

STEPHEN P. MCCUE
Federal Public Defender

DATED: July 13, 2018

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