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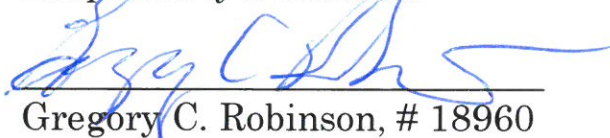
IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH P. PACHECO – PETITIONER

VS.

UNITED STATES OF AMERICA – RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENTH CIRCUIT COURT OF APPEALS
PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted



Gregory C. Robinson, # 18960
400 N. Main Street
Lansing, Kansas 66042
Tel: 913.727.5800
Fax: 913.727.1550
Email: grobinsonesq@aol.com
Attorney for Petitioner

QUESTION PRESENTED

The petition is an opportunity for this Court to clear up several issues related to search warrants on cell phones. The questions presented include: (1) when is a search of a cell phone conducted for the purposes of a search warrant following *Riley v. California*? (2) If the search of a cell phone occurs at the time its contents are downloaded, if the cell phone is taken to a different, foreign jurisdiction than from where the search warrant is issued to have the contents downloaded, does this constitute an illegal search in violation of the Fourth Amendment to the United States Constitution? (3) If the search is a warrantless search under the Fourth Amendment, does *Leon's* good-faith exception apply?

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is published and reported at 884 F.3d 1031.

The decision of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The United States Court of Appeals decided the case on March 7, 2018.

There was no petition for rehearing filed. On May 30, 2018, Justice Sotomayor extended the time for filing this petition to August 6, 2018.

See No. 17A1320. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Fourth Amendment to the United States Constitution states:

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

A. Charges and District Court Proceedings and Findings

Joseph P. Pacheco (“Pacheco”) was charged in a three count indictment with knowingly and intentionally possessed with intent to distribute 5 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii), possessed a firearm in furtherance of drug trafficking in violation of 18 U.S.C. § 924(c)(1)(A)(i), and felon in possession of a firearm which was shipped and transported in interstate and foreign commerce in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). Petitioner was ultimately sentenced to 355 months of imprisonment. Pet.App. 1-2.

Prior to trial Pacheco filed three motions to suppress, including the seizure of items outside of the scope of the search warrant, the contents from the unlawful execution of a Kansas search warrant in Missouri, and evidence derived from the illegal search of Pacheco’s home. Pet.App. 2. The district court denied the motions. *Id.*

Pacheco went to trial on March 30, 2015. During the trial the government put on the testimony of several officers who testified to

their investigation including the contents allowed by the denial of Pacheco's suppression motions.

Testimony presented at trial relevant to the issue in this petition included the following. On February 5, 2016, following a car chase from the previous day in which it was determined the car was driven by the Defendant, Joseph Pacheco, Officer Jacob Dent responded to the address indicated on the car's registration to arrest Pacheco because he had an outstanding warrant for violating the terms of his parole. Pet.App. 3. Dent observed the vehicle in the driveway and approached the back door to look for Pacheco. *Id.*

Upon reaching the back door, Dent knocked and observed through the drapes Pacheco sitting at a computer desk. *Id.* When Dent looked at Pacheco he looked back for about 10 to 15 seconds before scooting his chair away. *Id.* At this point, Dent called for assistance and three members of the Kansas City Kansas Police Department ("KCKPD") responded to the residence. *Id.* Vic Harshbarger, an agent with Kansas Department of Corrections, also arrived with an arrest warrant for a parole violation. *Id.*

Eventually officers decided to make entry into the house. *Id.* Prior to forcing the door open, the back door opened and three unknown males exited. *Id.* The individuals were identified as John Carter, Jason Crump, and Walter Flaughter. *Id.* Although not a full interview, the three males were asked if anyone else was inside, and at least one advised “he” was inside with a gun and was not going back to prison, but did not advise who “he” was. *Id.* at 4.

Within a couple minutes of the males coming out, the officers made entry through the back door. *Id.* No one was found on the main level of the house or in the basement. *Id.* The officers then moved upstairs and found a cluttered room that held a bed with a bunch of scattered items on the bed. *Id.* Eventually, the officers lifted the mattress off the bed and saw a handgun, a green tube containing contraband items, and a bag they believed to contain narcotics. *Id.* The items were not collected at this time as the officers continued the search. *Id.*

Officers then noticed a window in the bedroom that led to an unfinished attic space and entered the attic space through the closed window. *Id.* Officers observed an empty space with large swaths of

insulation and noticed a bulge in some of the insulation. *Id.* Officers pulled the insulation back and observe a person laying there with a cell phone in his hand, and identified the male as Joseph Pacheco. *Id.* Pacheco was handcuffed and taken outside and placed in the back of a patrol car. *Id.*

At this point, KCKPD requested and obtained a search warrant for the residence to search for evidence of narcotics activity. *Id.* at 5. A narcotics unit responded to the scene to conduct a search for contraband and narcotics. *Id.* The search warrant mentioned a number of items to search for explicitly, which were:

- Methamphetamine
- Firearms
- Drug Paraphernalia
- United States Currency
- Records of narcotics transactions, and documents which prove legal occupancy including, but not limited to, writings, books, checkbooks, and bank account statements, magazines, records, tax receipts, utility receipts, rent receipts, post-marked envelopes, photographs, and keys, all of which tend to show the identity of person in ownership, dominion, or control of said premises.

The warrant said nothing about searching for cell phones or other electronic devices. *Id.*

The narcotics unit was advised of the gun and some meth underneath the mattress and pursuant to the search warrant, KCKPD then collected the gun and the narcotics from the upstairs bedroom under the mattress, as well as other drug contraband in other parts of the house. *Id.*

KCKPD also recovered the phone from the upstairs attic where Pacheco was taken into custody. *Id.* at 6. There was also another phone found in plain view in the house that no officer seized. No phones were confiscated from the other individuals in the house.

A warrant was obtained on February 14, 2013, to search the cell phone that was found in the attic. *See id.* The search warrant was signed by a Kansas state district judge and the warrant stated that the download and retrieval of the information from the phone would occur at the Heart of America Regional Computer Forensics Laboratory (“HARCFL”) located in Missouri. *Id.* at 6. The affiant was Officer Dylan Passinese of the Kansas City Kansas Police Department Narcotics Unit, a state police department and there is no evidence in the record that he was anything other than a state agent. *Id.* at 16.

Eventually, Officer Johnson took the phone to the Regional Computer Forensic Laboratory in Parkville, Missouri where he did the examination. *Id.* at 23 n. 15. The execution of the search warrant took place in Missouri on April 26, 2013. *Id.* Upon examination of the phone, photos of a book depicting a gun similar to the one recovered as well as text messages that arguably included drug activity were found. *Id.* at 6.

In addition, Pacheco was not a parolee when his cell phone was searched. His arrest occurred on February 5. His parole was officially revoked on February 8, and the Government failed to search the contents of his cell phone until April 26.

After all the testimony was presented, the case was sent to the jury and the jury returned a verdict of guilty on all counts. Pet.App. at 7. Pacheco appealed the decision to the Tenth Circuit Court of appeals pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. *Id.* at 8.

B. The Tenth's Circuit's Decision

The Tenth Circuit affirmed the decision as it related to the search warrant of Mr. Pacheco's cell phone. In an opinion by Judge Ebel issued on March 7, 2018, the court held that a search of the contents of a cell phone that was issued by a Kansas state district court judge in which

the contents were downloaded in Missouri was upheld under the *Leon* good-faith exception to the warrant requirement. Pet.App. 15-25.

The panel began by stating that “we believe the issue is more nuanced than either party would suggest ...” before ultimately holding that suppression is inappropriate because the officers acted in good-faith reliance on the “Digital Search Warrant” when the contents of the cell phone were downloaded in Missouri. Pet.App. 18.

In reaching its holding, the Tenth Circuit panel found that even if there were any potential constitutional infirmities, it was not wholly unwarranted for the state officers to rely on the search warrant because the warrant was authorized by a duly sworn judge, and the affidavit presented to the judge explicitly mentioned that the contents of the phone would be downloaded and accessed in Missouri. Pet.App. 23-24.

In addition to this holding, the panel declined to make a ruling whether the warrant was valid, but found little deterrence rationale in excluding the evidence because the warrant was authorized by a duly sworn judge and the affidavit explicitly mentioned that the phone

contents would be downloaded and accessed in a separate jurisdiction. Pet. App. 23.¹

To support its holding, the panel relied on *United States v. Workman*, in determining “that even if a court concludes ‘that the warrant [] exceed[s] geographical constraints[,]’ it is still required to consider the applicability of the *Leon* exception.” 864 F.3d 1313, 1319 (10th Cir. 2017) *petition for cert. denied*, (April 16, 2018).

The panel also found that that a “reasonable officer” would rely on the warrant because officers routinely ship seized drugs, guns, and other physical evidence outside of a jurisdiction to be analyzed without constitutional problems. Pet.App. 24.

¹ While declining to make a formal finding or holding, the panel did state that the warrant may be valid and able to be upheld on other grounds.

REASON FOR GRANTING THE PETITION

By its own admission, the Tenth Circuit described the issues presented as being, “more nuanced than either party would suggest.” Pet. App. 18. This is an opportunity for this Court to address these “nuanced” issues and provide a national standard and framework for search warrants as it relates to cell phones and whether a search warrant that directs that a search of a cell phone will take place in a separate jurisdiction from which the warrant is issued is a valid warrant and search under the Fourth Amendment; and if there is no warrant, whether the *Leon* good-faith exception applies?

I. The Tenth Circuit’s Decision Conflicts with Existing Law set forth by this Court and the Fourth Amendment.

A. The Tenth Circuit’s decision misapplied this Court’s ruling in *Riley v. California* as it relates to when a search of a cell phone occurs which impacted its entire opinion and ruling.

One finding in the Tenth Circuit’s opinion that will have echoing consequences throughout the courts is the Tenth Circuit’s reading of *Riley v. California*, 134 S.Ct. 2473 (2014), as it relates to the point in time when in fact a search warrant for a cell phone is required, as well

as when the search of a cell phone actually occurs under the Fourth Amendment.

The Fourth Amendment to our Constitution protects persons against unreasonable searches and seizures. U.S. const. amend. IV. A search is *per se* unreasonable unless law enforcement secures a warrant based on probable cause, subject to only a few well-established exceptions. *Id.*; see also *Arizona v. Gant*, 556 U.S. 332 (2009). Officers conduct searches of electronic devices such as cell phones and computers when they examine their contents. See *Riley v. California*, 134 S. Ct. 2473 (2014) (holding that an officer performed an unconstitutional search when he went through an arrestee's phone looking at texts such as videos, text messages and contacts).

The Tenth Circuit found that *Riley* only applies to the specific problem of cell phones seized pursuant to a search incident to arrest. Pet.App. 19. However, the Tenth Circuit suggests in footnote eleven of its opinion, that *Riley* could also be read for the “basic proposition” that law enforcement is required to obtain a warrant before downloading and searching the digital contents of a cell phone. Pet.App. 21 n. 11.

It seems clear that *Riley* stands for the requirement that a search of a cell phone occurs at the time the contents are examined, either by physical personal contact or through a download. Therefore, if the examination either by personal contact or download is actually when a search happens under *Riley*, then the Fourth Amendment would require a valid search warrant or that search would be per se unreasonable.

If this Court and other courts adopt the strict reading set forth by the Tenth Circuit in the present case, that *Riley* only requires a warrant for a search incident to arrest, then you have a situation where a phone may be seized pursuant to a warrant or other exception other than a search incident to arrest, and upon proper seizure, the contents of a cell phone can be downloaded at a later time at any location without a proper search warrant and comply with the Fourth Amendment. This is an illogical reading and interpretation of *Riley*, that a warrant is only required if a cell phone is searched incident to arrest. The present case clearly illustrates an example of just such a situation.

The on-scene law enforcement officers obtained a search warrant to seize items during a search of the house. Upon seizure of various

items, the officers were sufficiently well-trained in law to attempt to obtain a second warrant, albeit an invalid warrant, as it relates to searching, i.e. downloading and reviewing, the contents of the cell phone seized. The situation here clearly shows an understanding by law enforcement that a search of a cell phone occurs when the contents are downloaded, and that a valid warrant is required at this legal juncture. This Court should grant the petition for certiorari to elaborate on *Riley* and make a finding to guide all courts that a search of a cell phone occurs at the time the contents are extracted, either by physical contact or download, and that a valid warrant or other exception must be in place for this to occur or the search is per se unreasonable under the Fourth Amendment.

Following the suggestion and Pacheco's interpretation of *Riley*; here, Officer Johnson did not perform the search of the contents of Pacheco's cell phone until April 26, 2013, and he did so in Clay County, Missouri. Due to jurisdictional limitation on the execution of search warrants, Officer Johnson had no authority to execute it in Missouri. There was no valid warrant, and the search was per se unreasonable and in violation of the Fourth Amendment.

B. Based upon the misapplication of *Riley*, the Tenth Circuit should have found that there was no valid warrant for the purpose of the Fourth Amendment.

1. Search warrants issued by Kansas state district court judges can only be executed within the state.

In *State v. Englund*, the Kansas Court of Appeals held that “the legislature intended the district judges to still have the power to issue search warrants *statewide*.” 50 Kan. App. 2d 123, 133 (Kan. Ct. App. 2014) (emphasis added). Moreover, federal district judges in the district of Kansas have taken similar stances. *United States v. Aikman*, No. 09-10097-01-JTM, 2009 WL 129367, at *6 (D. Kan. 2009) (“ ‘[a] search warrant issued by a district judge may be executed anywhere within the state’ *State v. Soddors*, 255 Kan. 79, 87 (1994) (Lockett, J., dissenting)); *Lord v. City of Leavenworth*, No. 08-2171-JWL, 2009 WL 129367, at *4 (D. Kan. 2009).

Since *Riley* should stand for the proposition that a search of a cell phone takes place when its contents are downloaded and analyzed which means law enforcement only had the authority to search Mr. Pacheco’s cell phone in Kansas under the search warrant obtained from a Kansas state judge.

However, the contents of Pacheco's cell phone were downloaded and analyzed in Missouri. Pet.App. 17. Under the correct interpretation of *Riley*, this is when the actual search takes place. The affidavit for the warrant stated that the contents of the phone will be downloaded and examined in Clay County, Missouri. Pet.App. 16.

The Tenth Circuit in its good faith analysis about what a reasonable officer would do compared this situation to shipping seized drugs, guns, and other physical evidence that gets shipped to other jurisdictions to be analyzed. Pet.App. 24. However, the Tenth Circuit erred because a cell phone is different from a situation involving a gun or drugs that are sent off for testing because there, the search and seizure had already been completed; whereas here, under a proper interpretation of *Riley*, the search does not occur until the contents are downloaded and/or extracted.

The Kansas Supreme Court in *Sodders*, the court in *Englund*, as well as the Kansas federal district courts, have explicitly said that a search warrant issued by a Kansas state district court judge may only be *executed in Kansas*, this was a violation of Kansas law, making the warrant invalid.

2. Under an appropriate interpretation of *Riley*, the issuance of a search warrant by a Kansas state district court judge to be executed in Missouri violates the Fourth Amendment.

This question presents an opportunity for this Court to announce a rule as to the transfer of cell phones, the contents of which are to be downloaded, i.e. searched, in accordance with *Riley*, to other foreign territorial jurisdictions than from which the search warrant was issued. This Court should adopt the findings set forth by then-Judge Gorsuch in his Tenth Circuit concurrence in *United State v. Krueger*.

As stated by then-Judge Gorsuch in his *United State v. Krueger* concurrence, a warrant issued against the restrictions of territorial reach of the issuing authority will not qualify as a warrant for Fourth Amendment purposes. 809 F.3d 1109, 1124 (10th Cir. 2015) (Gorsuch, J., Concurring). In *United States v. Krueger*, a United States magistrate judge in the district of Kansas issued a search warrant to be executed in Oklahoma. *Id.* at 1111. The Defendant filed a motion to suppress that the warrant violated Fed. R. Crim. P. 41. *Id.* at 1112. The district court granted the motion and the government appealed. *Id.* at 1112-13. The *Kreuger* court found a rule 41 violation and upheld the decision based

on the showing of prejudice and refused to answer whether it was a Fourth Amendment violation. *Id.* at 1114-15.

However, then-Judge Gorsuch in his concurrence went on to answer this question. *Id.* at 1117-18 (Gorsuch, J., Concurring). Then-Judge Gorsuch found that a warrant issued in defiance of positive law's jurisdiction limitations on a magistrate judge's powers is not a warrant at all for Fourth Amendment purposes. *Id.* at 1126. Therefore it is a violation of the Fourth Amendment. *Id.*

Here, we have a state judge issuing a warrant to be executed in a jurisdiction outside of where the judge sits, similar to *Krueger*. While *Krueger* was a federal warrant and the warrant here was a state warrant, the reasoning as it relates to the Fourth Amendment is identical. As shown in the above section, the state district judge did not have authority to issue a warrant to be executed in Missouri. *See supra* I.B.1. Following the reasoning set forth by then-Judge Gorsuch in his concurrence, the warrant was invalid on its face—*void ab initio*—and not a warrant at all. Therefore, the search violated the Fourth Amendment's restriction against warrantless searches and seizures and was per se unreasonable.

The petition for certiorari should be granted to address the limits of this Court’s findings in *Riley* as it applies to searches of cell phones and the limits of the Fourth Amendment. This Court should ultimately follow then-Judge Gorsuch’s framework set forth in *State v. Krueger* and find that the warrant in the present case was invalid and the search of Pacheco’s cell phone was per se unreasonable under the Fourth Amendment.

3. Under a proper interpretation of *Riley*, the present case would allow this Court to put a framework in place as to when the exclusionary rule should apply in warrantless cell phone searches.

The Fourth Amendment prohibits unreasonable searches. *Krueger* at 1125. (Gorsuch, J., Concurring). “A warrantless search may still be a reasonable one if the government can show consent or exigent circumstances.” *Id.* The exclusionary rule applies where it results in appreciable deterrence of Fourth Amendment violations. *Herring v. United States*, 555 U.S. 135, 141 (2009) (citations omitted).

Following the legal framework and analysis set forth by then-Judge Gorsuch in *Krueger*, the district court determined that any reasonable officer should have known a warrant issued by a Kansas

magistrate judge for a search in Oklahoma was facially deficient. 809 F.3d at 1126. The district court found that suppression was warranted because appreciable deterrence of future mistakes along these lines could be had, and the government did not challenge these assessments. *Id.* The same reasoning set forth by the district court in *Krueger* for suppression is present here. The officers who applied for and executed the search warrant were state officers who should have known that a state district court judge in Kansas did not have authority to sign and approve a search warrant to be executed in Missouri. In fact, as already set forth above, the officers clearly, and correctly, believed a second warrant to search the contents of Pacheco's cell phone was legally required.

In addition, with an appropriate interpretation of *Riley* by the Tenth Circuit and other courts, state district judges will know that they cannot order a search warrant to be executed outside of their jurisdiction. It would also support deterrence of future obvious mistakes by suppressing the evidence obtained by the warrantless search.

Therefore, unless some exception to the warrant requirement exists, the execution of the search of Pacheco's cell phone in Missouri

was a warrantless search in violation of the Fourth Amendment and *per se* unreasonable. Deterrence of future conduct requires that the exclusionary rule be applied. The petition for certiorari should be granted to lay out a proper framework for judges and law enforcement officials at all levels to be able to follow and apply going forward.

C. The Tenth Circuit failed to follow its own framework and analysis when finding that the *Leon* good-faith exception applies in this case.

In ultimately holding that the motion to suppress should be denied on the basis of the *Leon* good-faith exception, the Tenth Circuit incorrectly applied its own framework and rules set forth in *United States v. Workman*. In holding that the *Leon* good-faith analysis applies even if there is no warrant, the Tenth Circuit cited *United States v. Workman*, 863 F.3d 1313, 1319 (10th Cir. 2017). Pet.App. 24. However, the reasons set forth in *Workman* by the Tenth Circuit, along with its misinterpretation of *Riley* in this case, do not fit the facts of the present case as to why, even if there is no warrant, as is the case here, why the *Leon* good-faith exception still applies.

In *Workman*, just as here, the Tenth Circuit found that the *Leon* good-faith exception applies even if there is no valid warrant. *Id.* In

finding that the *Leon* good-faith exception can still apply, the Tenth Circuit relied on *Herring v. United States* and *Arizona v. Evans*. *Id.* at 1318. In both of those cases, there was a clerical error of some sort in which an officer believed there was a warrant when there really was not. *Id.* In addition, the *Workman* court went on to determine whether the agent acted with an objectively reasonable belief in the validity of the warrant. *Id.* at 1320.

The Tenth Circuit found that a presumption of good-faith existed because of three factors based upon what the agent would have known:

1. The software was installed in a government server located in the Eastern District of Virginia.
2. The magistrate judge, who issued the warrant, was in the Eastern District of Virginia.
3. All of the information yielded from the search would be retrieved in the Eastern District of Virginia.

Id. These findings do not fit with this Court's rulings in *Riley* as well as the facts of the present case.

In the present case, whether the *Leon* good-faith exception applies is different than *Workman* or the cases it relies upon for its holding. A proper reading of *Riley* would suggest that officers and courts should know that a cellular phone is searched at the time its contents are

examined or downloaded. A review of then-Judge Gorsuch's reasoning for applying the exclusionary rule as listed in the section above, in his concurrence in *United States v. Krueger* should apply here and any other similar situation as to why the good-faith exception does not apply. *See supra* I.A.3.

The officers who applied for and executed the search warrant were state officers who should have known the standards set forth in *Riley*; and in fact, it can be strongly inferred that the officers did know these standards as the officers obtained a second search warrant specifically for the cell phone and its contents. However, as then-Judge Gorsuch stated in *Krueger*, officers should also know that a state district court judge in Kansas does not have legal authority to sign a search warrant to be executed in Missouri. As then-Judge Gorsuch basically stated, why should officers get the benefit of the *Leon* good-faith exception if they are not aware of even the simplest notions of jurisdictional limitations? The petition for certiorari should be granted to allow the Supreme Court to clear up this issue after *Riley* as it relates to the Fourth Amendment and warrantless searches of cell phones that are per se unreasonable.

In addition, the factors the Tenth Circuit relied upon to find a presumption of reasonable reliance in *Workman* are not present in this case or most cell phone cases of similar nature. Again, this is premised on an appropriate interpretation of *Riley* by the Tenth Circuit because a search of a cell phone occurs at the time the contents are examined or downloaded. In this case, that search was performed in Missouri. In fact the warrant said the search would be done in Missouri. Therefore, unlike *Workman*, the judge that issued the warrant was not sitting in Missouri where the search occurred, nor was all of the information downloaded or examined where the warrant was issued (in Kansas); instead, the search was executed in the separate jurisdiction of Missouri. Thus, based on the Tenth Circuit's own framework in *Workman*, it erred when it relied on *Workman* to find that the *Leon* good-faith exception should be applied in the context of a cell phone search in a separate jurisdiction.

In its good faith analysis about what a reasonable officer would do in the instant situation, the Tenth Circuit compared this situation to shipping seized drugs, guns, and other physical evidence that gets shipped to other jurisdictions to be analyzed. Pet.App. 24. However, the

Tenth Circuit erred because a search of a cell phone is altogether different from a situation involving guns or drugs which are sent to outside foreign jurisdictions for testing, because there, the search of the guns and drugs has already been completed; whereas here, under a proper interpretation of *Riley*, the search does not occur until the contents are downloaded.

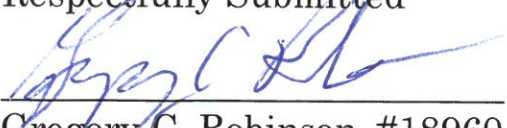
Even if this Court does not believe certiorari should be granted to determine whether the *Leon* good-faith exception should apply in a situation of an invalid warrant, this Court should still grant certiorari to set forth a framework where the good-faith exception applies and does not in a situation where there is no warrant. If this Court does not take this opportunity, it sets up a situation where jurisdictional limitations are a farce. Any search warrant signed by any judge from any locale or jurisdiction can issue a warrant for any location and the officer can just claim good-faith because the officer was relying on the issuance of a warrant by a judge. For these reasons, the petition for certiorari should be granted to take up and determine these issues of great importance.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted

By:



Gregory C. Robinson, #18960
400 N. Main Street
Lansing, Kansas 66043
Tel: 913.727.5800
Fax: 913.727.1550
Email: grobinsonesq@aol.com
Attorney for Petitioner