No. _____

In the Supreme Court of the United States

TRALVIS EDMOND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a complaint for search warrant that is silent as to the date on which alleged criminal activity occurred and recounts only a single drug purchase by a confidential informant at an unspecified time is so lacking in probable cause that no reasonable police officer could rely on it.

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CASES

CONSTITUTION AND STATUTES

Petitioner Tralvis Edmond respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reproduced in the appendix to this petition ("App.") at App. 1 and is reported at *Edmond v. United States,* 899 F.3d 446 (7th Cir. 2018). The order of the district court denying Edmond's motion to set aside his conviction under 28 U.S.C. § 2255 is reproduced at App. 25.

JURISDICTION

The court of appeals entered its order denying rehearing on October 4, 2018. App. 74. This petition is filed within 90 days of that order. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. 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.

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall

have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

INTRODUCTION

Under this Court's holding in *U.S. v. Leon,* evidence that is seized pursuant to a subsequently invalidated search warrant need not be suppressed if the officers relied in good faith on the judge's decision to issue the warrant. *See* 468 U.S. 897 (1984). However, an officer's reliance on the technical sufficiency of a warrant issued by the court must be objectively reasonable. *Id.* at 922. To that end, this Court has held that there is no basis for good faith reliance where the affidavit or complaint underlying a search warrant is so plainly deficient that any reasonably well-trained officer would have known that it failed to establish probable cause and that he should not have executed the warrant. *Id.* at 914-23.

In evaluating what a reasonably well-trained officer would have known, courts presume that police officers are armed with knowledge of the law, and that this knowledge extends to Fourth Amendment principles and precedent. Thus, a reasonably well-trained police officer is presumed to know that a search warrant affidavit establishes probable cause when, based on the totality of the circumstances, it sets forth sufficient evidence to induce a reasonably prudent person to believe that a search will uncover evidence of a crime. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Equally so, a reasonably well-trained officer would know that probable cause to search exists only if it is established

that certain identifiable objects are probably connected with certain criminal activity and are probably found at the present time in a certain identifiable place. *See Zurcher v. Stanford Daily,* 436 U.S. 547, 556, (1978) (The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought.")

This Court has long-held that information can be so stale as to vitiate probable cause. *See Sgro v. U.S.,* 287 U.S. 206, 210 (1932) ("[I]t is manifest that the proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time."). Indeed, a critical cornerstone of Fourth Amendment principles is that probable cause dissipates with the passage of time and grows stale, and that once it does, the staleness of information provided in support of a warrant can defeat the existence of probable cause. A reasonably well-trained officer would know, therefore, that a warrant that lacks a temporal guidepost is plainly deficient.

In the case below, the Seventh Circuit disregarded these principles. Despite being faced with a complaint for search warrant that was silent as to the date on which alleged criminal activity occurred, and which recounted only a single drug purchase by a confidential informant at an unspecified time, the court held that the complaint was not so lacking in probable cause that no reasonable officer could rely on it. App. 18-19. Given the wealth of authority emphasizing the importance of temporal guideposts to the probable cause inquiry, the court of appeals' willingness to excuse a complaint for

search warrant that omitted them entirely is a misapplication of the law. This decision significantly undermines prevailing Fourth Amendment precedent, and merits review by this Court.

STATEMENT OF THE CASE

A. Factual Background

On May 18, 2010, a confidential informant told Chicago Police Officer John Frano ("Frano") that he had seen Petitioner Tralvis Edmond in possession of suspected heroin in a basement apartment located at 736 N. Ridgeway in Chicago, Illinois (hereinafter "Ridgeway") at some unspecified point in the past. App. 76-79. Based on this information, Frano drafted a Complaint for Search Warrant ("Complaint"), in which he described the alleged transaction between the informant and Edmond in the following manner:

> On 18 May 2010 RCI related to R/O that RCI was at the residence of 736 N Ridgeway and in the presence of Edmond, Tralvis E. in the basement apartment. RCI related to R/O that RCI was in the rear of the apartment in an area with a bed. RCI was in the rear of the apartment in an area with a bed. RCI related to [Frano] that [Edmond] walked over to the bed, pushed the mattress away from the wall and pulled from under the bed a shoe box. RCI related to [Frano] that [Edmond] then opened the shoe box at which point RCI observed 20-30 golf ball sized clear plastic bags filled to the top of the shoe box. RCI related to [Frano] that each golf ball sized clear plastic bag had between 10 and 13 zip lock bags containing suspect heroin . . . RCI

> moments later then left the residence alone and ingested the heroin RCI bought from [Edmond]. RCI received the same euphoric high RCI has received in the past from ingested heroin.

App. 77-78.

The Complaint did not describe: (a) when the informant was in Ridgeway; (b) how the informant knew Edmond; (c) ongoing criminal activity, or (d) any other details regarding the alleged transaction, Ridgeway's physical appearance, or its layout. Further, Officer Frano made no efforts to corroborate the informant's claims other than to (a) drive the informant past Ridgway, at which point the informant "pointed to [Ridgeway] as the building where RCI was with [Edmond]," and (b) locate a picture of Edmond from a prior arrest and the informant was able to positively identify the picture. App. 78. The day after speaking to the informant, Frano presented the Complaint to a judge and obtained a warrant to search Ridgeway. App. 79, 80. Frano did not present the magistrate with any evidence other than the Complaint when he applied for the search warrant, and did not make the informant available for questioning when he presented the Complaint. App. 82-83.

Officers of the Chicago Police Department executed the search warrant and raided Ridgeway on May 20, 2010. App. 4. On June 1, 2011, Edmond was charged in connection with that raid of one count of possessing a firearm after previously having been convicted of a felony, in violation of 18 U.S.C. § 922(g); one count of possessing heroin with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); and one count of possessing crack cocaine with the intent to distribute, in violation

of 21 U.S.C. § 841(a)(1). *Id.* A jury convicted Edmond of the felon-in-possession and heroin charges, and acquitted him on the crack cocaine charge. App. 5. The district court ultimately imposed a sentence of 84 months' imprisonment. *Id.* Edmond timely appealed his conviction and was unsuccessful. *See United States v. Edmond*, 560 F. App'x 580 (7th Cir. 2014).

B. Procedural Background

On April 22, 2015, Edmond filed a *pro se* motion pursuant to 28 U.S.C. § 2255 seeking to vacate, set aside or correct his sentence on several grounds, including ineffective assistance of counsel. App. 5. In particular, and as set forth more fully in his amended § 2255 motion, Edmond argued that trial counsel provided ineffective assistance by (1) failing to file a motion to suppress evidence seized during a search and (2) failing to call Edmond to testify at a hearing on a motion to suppress statements he was claimed to have made while in custody. App. 26. Edmond also sought to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2) based on Amendment 782 to the Sentencing Guidelines.

The district court held that no probable cause existed for the police to search Ridgeway and that Edmond's trial counsel's failure to move to suppress the evidence was objectively unreasonable. App. 34, 60. Nevertheless, the court concluded that Edmond could not satisfy the prejudice prong for purposes of establishing ineffective assistance of counsel under the test set forth in *Strickland v. Washington,* 466 U.S. 668 (1984) because the warrant was saved by the good faith exception to the exclusionary rule. App. 37.

C. The Seventh Circuit's Decision

On appeal, a three-judge panel of the court of appeals affirmed the district court's decision, finding that, "despite the temporal deficiencies in Officer Frano's complaint [. . .] an objectively reasonable officer could rely on the resultant search warrant" because the complaint contained some indicia of timeliness that, when combined with the other evidence of probable cause, justified good faith reliance by the officers executing the search. App. 23. Edmond timely filed a petition for rehearing *en banc,* which was denied.

REASONS FOR GRANTING THE WRIT

The Seventh Circuit's decision implicates a question of great legal significance that is rooted in this Court's probable cause principles and the purpose of the good faith exception to the exclusionary rule. The search warrant at issue failed to identify when illegal activity was observed in the residence that the police sought to search. As a result, it was impossible for a police officer to reasonably determine from the four corners of the search warrant that illegal activity was likely to be discovered at the residence at the time of the search. In holding that this search warrant was not so lacking in probable cause that no reasonable police officer could rely on it, the court of appeals departed from established principles of the Fourth Amendment's particularity clause and undermined the power and purpose of the good faith exception.

I. THE PANEL'S DECISION DISREGARDS PREVAILING FOURTH AMENDMENT PRINCIPLES AND CONTRADICTS THE PRECEDENT OF OTHER CIRCUITS

The District Court held, and Seventh Circuit did not dispute on appeal, that the Complaint failed to state a date on which the alleged illegal activity occurred at Ridgeway. App. 31. Likewise, the government did not contest, and the court of appeals did not find to the contrary, that the Complaint recounted only an isolated, single-use narcotics purchase by one confidential informant. Despite this, the court of appeals held that an objectively reasonable officer could, in good faith, rely on the search warrant. In arriving at this conclusion, the panel made a fundamental error by deciding that a police officer could reasonably rely on a search warrant despite the complete absence of a temporal guidepost to indicate when the alleged illegal activity occurred. This conclusion does not find support in the precedent of this Court, nor that of the federal circuit courts.

A. The Timeliness Inquiry is an Essential Component of the Probable Cause Determination.

The Fourth Amendment's particularity clause requires the government to limit the scope of its searches to the places in which there is probable cause to believe that evidence may be found. *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). The critical element is that there is reasonable cause to believe that the specific "things" to be searched for and seized are located on the property to which entry is sought. *See, U.S. v. Grubbs,* 547 U.S. 90, 95 (2006); *Gates,* 462 U.S.

at 238; *Zurcher,* 436 U.S. at 556. To this end, "[i]t is manifest that proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *Sgro,* 287 U.S. at 210; *Grubbs,* 547 U.S. at 95 n.2.

Whether information is too stale to establish probable cause depends on the nature of the criminal activity and is determined by the circumstances of each case. *Sgro,* 187 U.S. at 210. Thus, where the property sought is likely to remain in one place for a long time, probable cause may be found even though there was a substantial delay between the occurrence of the event relied on and the issuance of the warrant. *U.S. v. Carroll,* 750 F.3d 700, 704-05 (7th Cir. 2014) (recognizing that under certain circumstances, long periods of time can pass between information about child pornography offenses without rendering the information stale because collectors and distributors of child pornography rarely dispose of their collections). By contrast, staleness is highly relevant to the legality of a search where the item or goods sought are perishable, consumable, or easily transferrable, such as drugs. *U.S. v. Sevier,* 692 F.3d 774, 777 (7th Cir. 2012) ("'Staleness' is highly relevant to the legality of a search for a perishable or consumable object, like cocaine."); *U.S. v. Owens,* 387 F.3d 607, 608 (7th Cir. 2004) (three months between the purchase of drugs and the issuing of the warrant rendered information in an affidavit for search warrant too stale to justify a search).

This inquiry, however, necessarily begins with *some kind* of temporal guidepost from which to measure the staleness of the information—whether it be 72 hours,

3 months, or 1 year. In Petitioner's case, because the Complaint did not contain any information related to the date on which the alleged illegal activity occurred at Ridgeway, there was no way to *begin* the staleness analysis in order to determine if the information contained in the Complaint was too stale to establish probable cause. In other words, the problem is not just that too much time elapsed, but instead that there was insufficient evidence presented to the magistrate to determine *how much* time elapsed.

This Court and the federal circuit courts—including, in previous cases, the Seventh Circuit—have consistently held that probable cause does not exist under such circumstances. *See*, *e.g., Sgro*, 287 U.S. at 201; *U.S. v. Hython*, 443 F.3d 480, 489 (6th Cir. 2006) (holding that the good faith exception cannot apply when a complaint for search warrant fails to identify when the alleged illegal activity is observed because there would be "absolutely no way to begin measuring the continued existence of probable cause"); *U.S. v. Doyle*, 650 F.3d 460, 475 (4th Cir. 2011) (holding that it was unreasonable to believe that probable cause existed to search the defendant's home when there was "absolutely no indication in the affidavit as to when probable cause to search arose"); *U.S. v. Salvucci*, 599 F.2d 1094, 1096 (1st Cir. 1979), *rev'd on other grounds*, 448 U.S. 83 (1980) ("The absence of any reasonable specific averment as to the time of this conversation [overheard by an informant] is fatal to the warrant."); *U.S. v. Adams,* 615 F. App'x 502 (10th Cir. 2015) (holding that the affidavit in support of a search warrant for firearms was stale where there was no indication that the firearms could be reasonably expected to be found in the defendant's home, and

granting defendant's motion to suppress); *U.S. v. Button*, 653 F.2d 319, 325 (8th Cir.1981) ("It is axiomatic by now that under the fourth amendment the probable cause upon which a valid search warrant must be based must exist at the time at which the warrant was issued, not at some earlier time.") (citations omitted); *Owens*, 387 F.3d at 608; *U.S. v. Mitten*, 592 F.3d 767 (7th Cir. 2010); *U.S. v. Prideaux-Wentz*, 543 F.3d 954 (7th Cir. 2008); *U.S. v. Harris*, 464 F.3d 733 (7th Cir. 2006); *U.S. v. Doan*, 245 F. App'x 550 (7th Cir. 2007); *see also United States v. Huggins,* 733 F. Supp. 445, 449 (D.D.C. 1990) (refusing to apply the good faith exception where the court could not infer, from the information within the four corners of the affidavit, the time during which the criminal activity was observed).

Here, the court of appeals did not dispute that the Complaint omitted an exact date by which to measure the staleness of the information contained within it. However, the panel held that the complaint contained elements of "timeliness" that excused this fault. App. 13-16. In so holding, the panel effectively treated the complaint's omission of the date of the alleged illegal activity as a mere technical deficiency. Given the wealth of authority emphasizing the importance of temporal guideposts to the probable cause inquiry, the panel's willingness to excuse a complaint for search warrant that omitted them entirely is a misapplication of the law.

B. The Complaint for Search Warrant Failed to Set Forth Timely Evidence of Illegal Activity.

Despite the fact the Complaint omitted an exact date by which to measure the staleness of the information contained within it, the court of appeals determined that the complaint contained elements of "timeliness" that excused this fault. The court erred in reaching this decision.

The court of appeals relied on three indicators of "timeliness," none of which warranted application of the good faith exception. First the panel suggested that the Complaint could be interpreted to reasonably mean that the informant was at the Ridgeway apartment on May 18, 2010. App. 14. This conclusion defies the plain language of the Complaint, which reads in relevant part:

> On 18 May 2010 RCI related to R/O that RCI was at the residence of 736 N Ridgeway and in the presence of Edmond, Tralvis E. in the basement apartment. […]

App. 77. The plain language of the Complaint is clear: it indicates only that on May 18, 2010, a confidential informant met with Officer Frano and reported that he had purchased heroin from Edmond at an unspecified date in the past. Since the panel's construction of the Complaint is inconsistent with the plain language of the Complaint, it would not be objectively reasonable for a police officer to come to the same conclusion.

The panel also held that the complaint contained indicia of timeliness because of the frequency with which Officer Frano met with the informant and the

fact that the informant's tips had been timely. App. 14. Neither the Seventh Circuit nor this Court has ever before held that probable cause exists where the complaint for search warrant fails to identify when the alleged illegal activity occurred, but where the informant who provided the tip has recently worked with the police. Indeed, if this were the case, the staleness doctrine would be rendered meaningless in all cases involving regular confidential informants, and the purposes of the exclusionary rule would not be served.

Finally, the panel held the Complaint "could be understood as conveying that a certain amount of future drug deals beyond the single reported sale would occur at the Ridgeway apartment." App. 15. Under some circumstances, courts have excused an affidavit's failure to provide some indication of the age of the information when other details in the affidavit provide evidence of ongoing criminal activity. *See, e.g.*, *U.S. v. Lamon*, 930 F.2d 1183, 1188-89 (7th Cir. 1991). However, that is not what the court of appeals found here. While the panel held that the Complaint's description of multiple golf ball-sized bags, each containing ten to thirteen similar bags of suspected heroin, "reasonably suggests that Mr. Edmond planned multiple further drug deals," the panel also held that "this fact alone *does not establish a pattern of ongoing criminal activity*." App. 15 (emphasis added). In the absence of evidence establishing any ongoing criminal activity, whether or not Mr. Edmond planned multiple further drug deals is of little import—that fact alone does not establish that the drugs would be found in the Ridgeway residence at the time of the search, particularly in light of the easily transferrable and

consumable nature of narcotics. Moreover, even where ongoing criminal activity is at issue, at some point an event becomes too old to have meaningful predictive value. Given the total lack of information regarding the date of informant's observation, there is no way to discern whether that threshold was reached here.

C. Given the Complete Absence of a Temporal Guidepost to Indicate When the Alleged Illegal Activity Occurred, Any Reasonably Trained Police Officer Would Have Known that the Search Warrant Lacked Probable Cause.

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" and states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. AMEND. IV. Ordinarily, when a search violates the Fourth Amendment, the fruits thereof are inadmissible under the exclusionary rule, "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect." *Leon,* 468 U.S. at 906 (citations omitted). *Leon* modified the exclusionary rule so as not to bar from admission evidence "seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective." *Id.* at 905.

However, the good-faith exception is inapposite in four situations: (1) where the issuing magistrate was misled by information in an affidavit that the affiant knew was false or would have known was false except

for his reckless disregard for the truth; (2) where the issuing magistrate wholly abandoned his judicial role and failed to act in a neutral and detached fashion, serving merely as a rubber stamp for the police; (3) where the affidavit was nothing more than a "bare bones" affidavit that did not provide the magistrate with a substantial basis for determining the existence of probable cause, or where the affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where the officer's reliance on the warrant was not in good faith or objectively reasonable, such as where the warrant is facially deficient. *See id.* at 923.

Here, the question is whether the affidavit supporting the search warrant for the Ridgeway residence was so lacking in indicia of probable cause as to render official belief in its existence unreasonable. Because there is no specific or concrete nexus between the location to be searched and evidence of criminal activity, the answer is yes.

Police officers, in effecting searches, are charged with a knowledge of well-established legal principals, as well as an ability to apply the facts of a particular situation to these principles. *U.S. v. Koerth,* 312 F.3d 862, 869 (7th Cir. 2002). It is well-established that the probable cause inquiry gauges the likelihood that evidence of a crime may presently be found at a certain location. "A reasonably well-trained law enforcement officer should be familiar with the fundamental legal principle that both the 'commission' and 'nexus' elements of 'probable cause' include an essential temporal component." *United States v. Zayes-Diaz*, 95 F.3d 105, 114-15 (1st Cir. 1996). This is particularly

true given the nature of the crime at issue in Petitioner's case—the single sale of drugs out of a residence. This crime is not inherently ongoing or continuous, *see Hython* 443 F.3d at 485*,* nor were the items sought—narcotics—the kinds of goods that are not easily moved. Indeed, it is well-established that staleness is highly relevant to the legality of a search where the items and good sought are, like narcotics, easily transferable, consumable, or perishable. *See, e.g. U.S. v. Musgraves,* 831 F.3d 454, 461 (7th Cir. 2016) (eleven months between a controlled buy of drugs and a warrant request rendered information in an affidavit too stale to justify a search for drugs and related items).

A reasonable police officer would have been aware of this precedent and could not have believed that the search warrant here was supported by probable cause. Indeed, such was the finding by the Sixth Circuit in *Hython,* 443 F.3d at 488-89. There, the police received information from a "reliable confidential informant" that he was able to purchase crack cocaine from a woman who had advised him in the past that her source of crack cocaine was a subject in the city of Steubenville. The police set up a controlled buy, in which they provided the informant with money, surveilled the informant's meeting with the woman, and obtained audio of the exchange between the woman and the informant. They subsequently followed the woman to a residence in the city of Steubenville, observed her enter the residence and emerge shortly thereafter, and followed the woman to the spot where she met the informant and provided him with a baggie containing crack cocaine. The officers in *Hython* described this controlled buy in an affidavit for search

warrant. The magistrate judge granted the search warrant, which the officers executed later that day. The officers subsequently arrested the defendant, who was found in the residence.

Despite the officers' detailed description of the controlled buy, as well as the officers' use of a "reliable" confidential informant, neither the affidavit nor the warrant specified the date on which the alleged transaction at the defendant's house took place. Ruling on the defendant's motion to suppress, the district court noted that the warrant was void for staleness. Nevertheless, the district court denied the defendant's motion to suppress. The Sixth Circuit reversed. The sole issue on appeal was whether the district court properly applied the good-faith exception to the search. The court noted that "because probable cause has a durational aspect, at least some temporal reference point is necessary to ascertain its existence." *Id.* at 486. Without a date or a reference to 'recent activity' in the affidavit or the search warrant, there was "absolutely no way to begin measuring the continued existence of probable cause." *Id*. In light of this, and in light of the fact that the affidavit contained no indication that the residence was the site of an ongoing criminal enterprise, the affidavit was "patently insufficient" and "[n]o well-trained officer could have reasonably relied on a warrant issued on the basis of [the] affidavit." *Id.* at 489.

Similarly, in *Doyle,* 650 F.3d at 475-76, the Fourth Circuit also found that no reasonable officer could rely on a complaint for search warrant that contained no temporal guideposts. There, police obtained a search warrant for evidence of child pornography based on an

affidavit that recounted that three minor children had reported that the defendant had sexually assaulted them at his residence, and that the defendant had shown lewd photographs to one of the victims. The affidavit did not include any mention of when the assaults occurred or when the pictures were shown to one of the victims. Because there was insufficient evidence presented to the magistrate to determine how much time elapsed between the criminal activity and the application for search warrant, the Fourth Circuit held that "even if the affidavit established probable cause, it was completely devoid of indicia that the probable cause was not stale." *Id.* at 475. The Fourth Circuit found that the good faith exception to the exclusionary rule did not apply because a reasonably well-trained officer should be familiar with the fundamental legal principle that the probable cause inquiry includes an essential temporal element. *Id.* at 476.

Finally, the Seventh Circuit established long ago that probable cause will not lie in the absence of a temporal guidepost. In *Owens*, 387 F.3d at 608-09, the court of appeals rejected the application of the good faith exception to an affidavit that was stale—even though, unlike the present case, the affidavit contained some indication of when the criminal activity occurred. There, the affidavit stated that the informant had purchased a "quantity of crack" from the defendant three months earlier at a house that he believed to be the defendant's residence. *Id.* at 608. Given the three month gap between the informant's alleged purchase and the search warrant, as well as the fact that the informant had only purchased a slight amount of narcotics, the court held that no decent inference could

be drawn that narcotics would still be on the premises. *Id.* On those grounds, the court declined to apply the good faith exception. *Id.* at 608-609.

Judged on objective criteria, a reasonably trained officer would have known that he may not rely on a warrant from which no reasonable inference could be drawn as to when the alleged sale of narcotics took place. Without a date or a reference to 'recent activity' in the affidavit or the search warrant, there was "absolutely no way to begin measuring the continued existence of probable cause." *Hython,* 443 F.3d at 486. In light of this, and in light of the fact that the Complaint contained no indication that the residence was the site of an ongoing criminal enterprise, the Complaint here was patently insufficient and provided no basis for good faith reliance on the warrant.

CONCLUSION

The petition for a writ of certiorari should be granted and the judgment below reversed.

Respectfully submitted,

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