No. _____

In the
Supreme Court of the United States

Aivaras Mardosas,
Petitioner,

v.

State of Florida,
Respondent.

On Petition for Writ of Certiorari to the First District Court of Appeal State of Florida

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

Whether under the Fourth Amendment, the "fellow officer rule" (or the collective knowledge doctrine) can be utilized in justifying a search warrant where the probable cause relied on at time of issuance was flawed, i.e. bare bones, and did not contain facts or circumstances to support the affiant officer's reliance on facts known by an unknown fellow officer.

Whether under the Fourth Amendment, suppression of evidence would be proper when the basis, probable cause, for the search warrant relies on facts or circumstances known by fellow law enforcement but those facts or circumstances of knowledge are not provided to the magistrate by the affiant officer when applying for a search warrant for a private dwelling, and without the application of the "fellow officer rule" the probable cause is based on essentially a 'bare bones' affidavit.

This Court has never directly addressed these issues.

Parties Involved

The parties involved are identified in the style of the case.

Related Cases

- *State of Florida v. Aivaras Mardosas,* Case No. 372015CF001230AXXXXX, Circuit Court of the 2nd Judicial Circuit in and for Leon County, Florida. Judgment entered June 7, 2017.

- *Aivaras Mardosas v. State of Florida,* Case No. 1D17-2537, First District Court of Appeal for the State of Florida. Opinion rendered Oct. 3, 2018. Rehearing and certification denied Nov. 13, 2018.

- *Aivaras Mardosas v. State of Florida,* Case No. SC18-2002, Supreme Court of Florida. Discretionary review denied Mar. 26, 2019.

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PETITION FOR A WRIT OF CERTIORARI

Aivaras Mardosas respectfully petitions for a writ of certiorari to review the judgment and opinion of the First District Court of Appeals for the State of Florida. (A-1)[1]

OPINIONS BELOW

First District Court of Appeals for the State of Florida Opinion is reported at *Mardosas v. State*, 257 So. 3d 540, 43 Fla. L. Weekly D 2264, 2018 WL 4762753 (Fla. Dist. Ct. App. 1st Dist., October 3, 2018). (A-1). District Court of Appeal of Florida, First District, Denying Motion for Rehearing and Certification (November 13, 2018) is contained in (A-4). Florida Supreme Court Denying Discretionary Review (March 26, 2019) is contained in (A-5).

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257 (a). The judgment of the First District Court of Appeals for the State of Florida issued its decision on October 3, 2018. Aivaras Mardosas filed a motion for rehearing. First District Court of Appeals for the State of Florida denied rehearing on November 13, 2018. Aivaras Mardosas then sought discretionary review by The Florida Supreme Court. The Florida Supreme Court declined to accept jurisdiction and denied the petition for review on March 26, 2019. *See* Sup. Ct. R. 13.1 (providing: ". . . A petition for a writ

[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number. References to the record below will be made by the designation "R" followed by the appropriate page number.

of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review."). Additionally, "when a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law, and the adequacy and independence of any possible state-law ground is not clear from the face of its opinion, this Court presumes that federal law controlled the state court's decision" and therefore provides This Court with jurisdiction. *Florida v. Powell*, 559 U.S. 50, 50 (2010).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitutional provides:

> 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. IV.

The searches and seizure provision of the Florida Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects

> against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

Art. I, § 12, Fla. Const.

STATEMENT OF THE CASE

On December 11, 2014, a search warrant, applied for by Officer Osborn of the Tallahassee Police Department, was executed at the Petitioner's residence located in Tallahassee, FL, where he resided with three fellow college aged roommates and numerous items were seized as evidence. (R 314-323).

Probable Cause in the Affidavit for Search Warrant

The information put forth in support of issuance of the search warrant, presented under Probable Cause in the Affidavit for Search Warrant, reads as follows:

On October 2, 2014, I was conducting an online investigation on the BitTorrent network for offenders sharing child pornography. I directed my investigative focus to a device at IP address 98.230.43.220, because it was associated with a torrent with the infohash: 4759b14620e1ae7de9501ad011ca68356b2ec08f. **[Of note is that this string of numbers does not match the string of numbers used for the cut and paste description of the video below.]** This torrent file references 75 files (4521 pieces), with 18 having been identified as being a file of investigative interest to child pornography investigations.

Using a computer running investigative BitTorrent software, I directly connected to the device at IP address 98.230.43.220, hereinafter referred to as "suspect device". The suspect device reported it was using BitTorrent client software BitTorrent 7.8.1

Between October 4, 2014 at 10:51pm and October 5, 2014 at 2:54am, a direct connection was made with the suspect device. The suspect device acknow1edged having 1120 of the 4521 pieces in the torrent file. The suspect device acknowledged having all pieces of the following files:

File 22 -[PTHC]Moscow #45 Compilation.mpg

Sha1 -423043d437c36be07b4e198ef654a0de1cf5e007

Md5 -3bac9c6dc478b6b30f21a779f7f2b3c1

This file has previously been viewed and described as follows by law enforcement:

> 'The length of the movie was: around 1 hour, 20 minutes, and 49 seconds. Description: This video was a compilation of three scenes which depicted a nude pubescent Caucasian girl approximately 11 to 14 years of age wearing a masquerade feather mask.[2] Her undeveloped breasts, vagina, and anus were visible. A nude overweight adult male and a clothed female were observed in the three scenes. The faces of the adults were not seen. All three scenes were very similar in content.....

[2] The affiant officer, lead investigator, does not know if the mask was ever taken off, he had not seen the video personally, nor had any communications with the author of the "cut and paste" description used within his affidavit.

> [Explicit description of sexual acts.] [3] Because of the quality of the video, it appeared this video may have originally been a video cassette recording which had been converted to digital. This video was in a MPG format and approximately 233 megabytes in size.'

This account was shown to be a Comcast user. I issued a subpoena to Comcast for customer records associated with that account, at the time of the direct connect. Upon return of the information, I discovered the Comcast account was issued to Marshall Gordon[4] at 1526 Blountstown St. in Tallahassee.

On 11/17/14, I did a WiFi scan in the immediate area of the residence and found no open WiFi sources.

Based on the above detailed investigation, there is probable cause to believe there is evidence of possession of child pornography within the residence of 1526 Blountstown St..

On the basis of your affiant's experience and from the facts set forth herein, your affiant believes and had good reason to believe that certain evidence, more particularly described herein of the crime of Possession of Child Pornography is now being kept

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[3] The explicit description of the sexual acts is contained within the Appendix.

[4] The Search Warrant named two people, Petitioner's two of three college roomates.

within said premises.
(sic) [R 316-317 (Affidavit for Search Warrant)].

The remainder of the information contained in the Affidavit for Search Warrant contained almost the identical language as that found in the Search Warrant, not inclusive of the commanding paragraphs. [R 314-323].

Trial Court Proceedings

Petitioner was charged by information with aggravated possession of child pornography. (A-1).

Petitioner sought to have the trial court suppress the evidence obtained as a result of the search warrant in violation of the Fourth Amendment of the United States Constitution and, additionally, in violation of Florida's law and its Constitution. Petitioner argued that there was a lack of probable cause for issuance of a search warrant where the warrant seeking Tallahassee Police Department officer, and sole affiant of affidavit for search warrant, did not acquire or view the child pornography video relied upon for the formulation of probable cause and the root for issuance of the search warrant. *Id.* An evidentiary hearing was held.

At the evidentiary hearing on Petitioner's Motion to Suppress, Investigator Paul Osborn, the lead investigator in this case, testified to the following: (1) he did not have firsthand knowledge of the contents of the alleged video [R:269,13-14; R269-70, 25-1]; (2) he relied on an unknown officer for the description of the video and had no direct

communication with the unknown officer [R:270-71,15-2]; (3) he copied and pasted the description of the video into the probable cause affidavit in first person rather than third person, which formed the basis of an unknown affiants probable cause [R:271-72,23-11; R275-76, 15-6]; and (4) he did not inform the magistrate that he did not have personal knowledge of the contents of the video. [R:277-78, 22-8].

Lack of Personal Knowledge

Q. Prior to the search warrant being executed.

A. I did not have the ability to watch the video prior to the search warrant being executed. [R269, 13-15].

Q. Okay. So you did not watch the video yourself, did you?

A. That's correct. [R269-270, 25-2].

No Direct Communication with Unknown Officer

Q. All right. And because you didn't watch the video, you had no opportunity to show it to say a Child Protection Team doctor or someone who could state with certainty that the person in the video was under 18?

A. No, sir. I relied on law enforcement viewing the video previously. [R270, 15-20].

Q. Other law enforcement officers, not necessarily those connected with your agency?

A. Right, a fellow law enforcement officer. [R270, 21-23].

Q. Okay. **Are you able to tell us what fellow law enforcement officers watched the video**?

A. **That is not noted in the data base**. [R270-71, 24-1].

Q. And if you had known who the law enforcement officer was from the data base who gave the description of the video you would have been able to list that as well, is that correct.

A. I would. [R289, 15-19].

Q. Okay. And when you write, the file has previously been viewed and described as follows by law enforcement, if it wasn't you, do you describe who in law enforcement has viewed that file?

A. If I had that information available to me, I would have put that in [the affidavit].[R276, 13-18].

Misleading Affidavit Using First Person Tense

Q. I guess you pasted the description on it as opposed to writing one, is that correct?

A. That's correct. [R272, 6-8]

Q. All right. And If I get what you're saying, then that's another officer's description that you put in there?

A. Correct. [R272, 9-11]]

Q. Okay. Did you indicate anywhere in there that you did not look at that file?

A. Basically – [R275, 19-21]

Q. Or you did not see the pornography, or that you did not see what it is that you were asking for?

A. I used that specific language to indicate that it wasn't me that viewed the video, as the rest of the affidavit is written in first person. And everything that I completed is referred to as, I did this, I did that. Therefore, I didn't use the term, I described the video

as follows. And the use of the quotes indicates that it's a quote **from someone else**, **other than myself**, **who is the author of the – and affiant of the search warrant**. [R276-76, 22-6].

Q. You didn't indicate in there though specifically that you didn't watch the video did you?

A. If you're asking did I put, I did not watch this video? No, sir, I did not. [R276, 7-10].

Q. … But I've got to ask you just straight out, did you tell the judge that you cut and pasted this and that you didn't watch it?

A. I did not say, Judge, I cut and pasted this and I did not watch this video. [R278, 4-8].

The trial court denied the motion and ruled as follows: "I'm going to deny your motion though because quite frankly I think the State is right on the facts and the law and I don't think you've met your burden. So I'm going to deny your motion." [R 304 (Transcript of Motion to Suppress Hearing pp. 60:23-61:1)].

Reserving Right to Appeal

Ultimately, the Petitioner entered a plea of no contest, after expressly reserving the right to appeal the trial court's dispositive ruling on his motion to suppress. (A-1)

Appellate Proceedings

The Petitioner timely sought appellate review with Florida First District Court of Appeal of the trial court's ruling on the motion to suppress. (A-2, n.1).

The First District Court of Appeal ultimately Affirmed and held the trial court did not err in denying Petitioner's motion to suppress in an Opinion rendered on October 3, 2018. (A-3).

The First District Court acknowledged that the affiant officer in charge of the investigation was unable to personally view the video but, instead, in his affidavit for search warrant, utilized a graphic description given by another unknown law enforcement detective, a description affiant officer was able to acquire from a database maintained by the National Center for Missing and Exploited Children (NCMEC). (A-2). A held that any "flaw" due to the lead investigator's lack of personal knowledge of the video was cured by the rationale underlying the 'fellow officer rule'. (A-2).

Petitioner filed a Motion for Rehearing and Certification, on October 18, 2018, which the Florida First District Court of Appeal denied on November 13, 2018. (A-4).

Petitioner then sought discretionary review by The Florida Supreme Court, which the Florida Supreme Court declined on March 26, 2019. (A-5)

REASONS FOR GRANTING THE PETITION

The First District Court of Appeal for the State of Florida, held that any flaw due to the lead investigator's lack of personal knowledge of the video was cured by the rationale underlying the "fellow officer rule." In holding so, the court has provided a mechanism, in direct conflict to the United States Constitution and This Courts precedent, of requiring an independent determination by a detached and neutral magistrate's finding of probable cause from *facts or circumstances* presented under oath or affirmation. In short, the holding below allows judicial officers tasked with review of probable cause determination at the time of issuance of a search and seizure warrant to consider additional *facts and circumstances* not within the purview of the oath or affirmation presented in the application for a search warrant by way of the "fellow officer rule." The decision warrants review for two reasons.

First, a Florida District Appellate Court has rendered a decision on an important Fourth Amendment issue, specifically the application of the "fellow officer rule" as it relates to the issuance of a search and seizure warrant for a private dwelling and the rules implication in the application for determination of probable cause, that has not been addressed directly by This Court but should be as it has a disturbing and sweeping affect to the rights of the people to be secure in their persons, houses, papers, and effects.

Second, a Florida District Appellate Court has rendered a decision on an important Fourth Amendment issue, specifically the determination of

probable cause for the issuance of a search and seizure warrant for a private dwelling that is in direct conflict with This Courts stare decisis under the Fourth Amendment, that a warrant shall not issue for the search of a private dwelling without the finding of probable cause by a neutral and detached magistrate from *facts and circumstances* provided under oath or affirmation.

The Fourth Amendment to the United States Constitution provides that no Warrant shall issue but upon probable cause and This Court has the last word as the ultimate protector of the people's right to be secure in their persons, houses, papers, and effects from unreasonable governmental searches and seizures. Florida's Constitution reiterates the right of the people and requires that this right be construed in conformity with the Fourth Amendment and as interpreted by This Court. *See* Art. I, § 12, Fla. Const. "All unreasonable searches and seizures are absolutely forbidden by the Fourth Amendment. In some circumstances a public officer may make a lawful seizure without a warrant; in others he may act only under permission of one." *Nathanson v. United States*, 290 U.S. 41, 46 (1933). The Petitioner's writ of certiorari before This Court is the search and seizure of his private dwelling and required a search warrant.

This Court in the *Nathanson v. United* States decision stated that under the Fourth Amendment, a judicial officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under oath or affirmation. Mere affirmance of

belief or suspicion is not enough. *Nathanson v. United States*, 290 U.S. 41, 47 (1933). "Probable cause exists where facts and circumstances within officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 161 (1949).

> Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. *To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice*.

Brinegar v. United States, 338 U.S. 160, 161 (1949)(emphasis added).

This Court discussed a related issue in *Whitley v Warden, Wyo. State Penitentiary*, 401 U.S. 560 (1971). In *Whiteley*, a county sheriff in Wyoming obtained an arrest warrant for a person suspected of burglary. The sheriff then issued a message through a statewide law enforcement radio network describing the suspect, his car, and the property taken. At least

one version of the message also indicated that a warrant had been issued. *Id.*, at 564, and n. 5. The message did not specify the evidence that gave the sheriff probable cause to believe the suspect had committed the breaking and entering. In reliance on the radio message, police in Laramie stopped the suspect and searched his car. This Court ultimately concluded that the sheriff had lacked probable cause to obtain the warrant and that the evidence obtained during the search by the police in Laramie had to be excluded. In so ruling, however, This Court noted:

> 'We do not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin as *certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.*'

United States v. Hensley, 469 U.S. 221, 230 (1985) quoting *Whiteley* v. *Warden*, 401 U.S. 560, 568 (1971).

The Florida First District Court of Appeal, held that "any flaw" of personal knowledge by the affiant officer can be cured by knowledge possessed by fellow law enforcement officers even though said information was not provided to the magistrate

making a probable cause determination for issuing a search warrant. This issue is a significant decision, insomuch as it will allow state and federal law enforcement to forego putting forth some adequate *facts or circumstances* in their oaths or affirmations in applications for search warrant of private dwellings, knowing that they will be armed with the crutch of the "fellow officer rule" or collective knowledge doctrine to rectify probable cause determinations with additional facts not presented but crucial at the time of application for search and seizure warrants were reviewed by neutral and detached magistrates for probable cause.

This Court has consistently held that an officer cannot obtain a warrant on the basis of a 'bare bones' affidavit and then rely on the warrant to conduct a search and seizure. *Herring v United States*, 555 U.S. 135, 146 (2009)(quoting *Whitley v Warden, Wyo. State Penitentiary*, 401 U.S. 560, 568 (1971)).

The affidavit supporting an application for a search warrant must provide the magistrate with a substantial basis for determining the existence of probable cause and a wholly conclusory statement is inadequate to supply such a basis. *Illinois v. Gates*, 462 U.S. 213, 216 (1983).

The task of a magistrate issuing a search warrant is to make a practical, common-sense decision whether, given all the circumstances set before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place and the duty of a reviewing court is

simply to ensure that the magistrate had a substantial basis for concluding probable cause existed. *Illinois v. Gates*, 462 U.S. 213, 216 (1983).

The requirement for the finding of probable cause for issuance of a search or seizure warrant is that the magistrate must be informed of *some of the underlying circumstances* from which the informant concluded his claim, and *some of the underlying circumstances* from which the officer concluded that the informant was credible or his information reliable. *Illinois v. Gates*, 462 U.S. 213, 230 n.6 (1983).

For example an anonymous letter stating that contraband may be found at a certain place at a certain time will not, standing alone, provide the basis for a magistrate's determination that there is sufficient probable cause for the issuance of a search warrant where the letter provides virtually nothing from which one might conclude that its author is either honest or reliable and where it gives no indication of the basis for the writer's predictions regarding the criminal activities mentioned. *Illinois v. Gates*, 462 U.S. 213, 216 (1983).

Fellow Officer Rule

The Florida Supreme Court is of the opinion that the "fellow officer rule" was adopted by This Court in *Whitley v Warden, Wyo. State Penitentiary*, 401 U.S. 560 (1971) decision. *State v. Peterson*, 739 So. 2d 561, 565 (Fla. 1999). Relying on This Courts statement that "police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause." *Whitley v*

Warden, Wyo. State Penitentiary, 401 U.S. 560, 568 (1971). Police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. The issue is whether an officer who himself lacks any personal knowledge to establish probable cause, who has not been directed to effect an arrest, and who does not know a valid warrant has been issued nevertheless can lawfully arrest a suspect. In broad terms, the collective knowledge of police investigating a crime is imputed to each member under a rule of law often called the "fellow officer rule" or "collective knowledge doctrine." The exact contours of the rule are not entirely clear. Florida courts have tended to frame this doctrine in very sweeping terms, though the court is obviously bound by any contrary federal law in the United States Fourth Amendment context. *State v. Peterson*, 739 So. 2d 561, 562 (Fla. 1999). The so-called fellow officer rule has been applied to search warrants as well as arrests by Florida's Lower Courts. *State v. Peterson*, 739 So. 2d 561, 562 (Fla. 1999) (Where a Florida district court in its decision in *Polk v. Williams*, 565 So. 2d 1387, 1390 (Fla. 5th DCA 1990) relied on This Court's decision in *United States v. Ventresca*, 380 U.S. 102, 111, (1965) to support the application of the "fellow officer" rule in the context of a search warrant).

Some jurisdictions throughout the country have applied the "fellow officer" rule to cases involving searches. *See United States v. Wilson*, 894 F.2d 1245, 1254 (11th Cir. 1990) ("Moreover, when a group of

officers is conducting an operation and there exists at least minimal communication between them, their collective knowledge is determinative of probable cause."); *United States v. McCormick*, 309 F.2d 367, 372 (7th Cir. 1962); *Chin Kay v. United States*, 311 F.2d 317, 320 (9th Cir. 1962); *People v. Leahy*, 173 Colo. 339, 484 P.2d 778, 781 (Colo. 1970); *State v. Mickelson*, 18 Ore. App. 647, 526 P.2d 583, 584 (Or. Ct. App. 1974); *State v. Austin*, 641 A.2d 56, 58 (R.I. 1994).

But some lower federal courts have limited the doctrine to two fairly narrow circumstances. The first is when an arresting officer with no personal knowledge of any facts establishing probable cause nevertheless is directed to make the arrest by other officers who do have probable cause. The other is when the arresting officer possesses personal knowledge that, standing alone, is insufficient to establish probable cause but when shared with the knowledge of other officers collectively meets the requirement. *Charles v. Smith*, 894 F.2d 718, 724 (5th Cir.), *cert. denied*, 498 U.S. 957, (1990).

While other lower federal courts have elaborated on the question in somewhat different factual contexts, typically requiring a direct communications link between officers who possess probable cause and the arresting officer. This often takes the form of a direct order that the arrest be effected, *United States v. Woods*, 544 F.2d 242 (6th Cir. 1976), *cert. denied*, 429 U.S. 1062, (1977), but also can consist of general communications among officers at least one of whom possesses probable cause. *United States v. Edwards*, 885 F.2d 377 (7th Cir. 1989).

The Supreme Court of Florida took a stance in *State v. Peterson*, 739 So. 2d 561 (Fla. 1999) that the "fellow officer" rule applies to searches as well as arrests even though there is a split in the rules application throughout the country and there seems to lack of precedent by This Court that would bind Florida Courts through The searches and seizure provision of the Florida Constitution, Art. I, § 12, Fla. Const.

The Conformity Clause of the Florida Constitution, binds Florida courts to United States Supreme Court precedent when deciding Fourth Amendment cases. See Art. I, § 12, Fla. Const. (providing that the state constitutional right "shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court."); Florida v. Casal, 462 U.S. 637, 638 (1983)(Burger, C.J., concurring in dismissing the writ as improvidently granted) (observing that Florida's conformity clause "ensures that the Florida courts will no longer be able to rely on the State Constitution to suppress evidence that would be admissible under the decisions of the Supreme Court of the United States."). Therefore, in the case at hand no issue exists as to separate and independent state law and This Courts word would be final.

The Fourth Amendment to the United States Constitution provides that no Warrant shall issue but upon probable cause and This Court has the last word as the ultimate protector of the people's right to be secure in their persons, houses, papers, and effects from unreasonable governmental searches and

seizures.

Accordingly, for the reasons set forth above, the Petitioner prays the Court to grant this petition for writ of certiorari in order to address this important issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 26, 2019

APPENDIX

Appendix A

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-2537

AIVARAS MARDOSAS,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

On appeal from the Circuit Court for Leon County.
James C. Hankinson, Judge.

October 3, 2018

PER CURIAM.

Following an extended online investigation that utilized a file-sharing software tool known as "BitTorrent Roundup," members of the Tallahassee Police Department's Internet Crimes Against Children Task Force arrived at a home in Leon County armed with a search warrant and seized, among other items, Appellant's computer and hard drive. Afterwards, Appellant was charged by Information with 421 counts of aggravated possession of child pornography pursuant to sections

827.071(5)(a) and 775.0847(2), Florida Statutes (2014). Appellant filed a motion to suppress the evidence obtained as a result of the search warrant, which the trial court denied. Ultimately, Appellant entered a plea of no contest, expressly reserving the right to appeal the trial court's dispositive ruling on his motion to suppress.[1]

After carefully reviewing the record, we affirm the trial court's ruling that the search warrant did not lack probable cause. *See State v. Williams*, 46 So. 3d 1149 (Fla. 1st DCA 2010). We acknowledge that the officer in charge of the investigation was unable, personally, to view the video containing the child pornography—which he knew from his investigation had been downloaded onto Appellant's hard drive—but, instead, in his affidavit for search warrant, utilized a graphic description of the same video given by another detective who had personally viewed the video, which description he was able to acquire from a law enforcement database maintained by the National Center for Missing and Exploited Children. We hold that any flaw due to the lead investigator's lack of personal knowledge of the video was cured by the rationale underlying the "fellow officer rule." *See State v. Bowers*, 87 So. 3d 704 (Fla. 2012).[2] We also

[1] This appeal was timely filed within thirty days of the rendition of the written order imposing Appellant's sentence. *See* Fla. R. App. P. 9.140(b)(3). Furthermore, the record unquestionably demonstrates that Appellant reserved the right to appeal the trial court's admittedly dispositive order, as permitted by Florida Rule of Appellate Procedure 9.140(2)(i).

[2] In *Bowers*, the Florida Supreme Court held:

find that the case of *United States v. Cartier*, 543 F.3d 442 (8th Cir. 2008), is factually and logically persuasive, and hold that it is supportive of our ultimate conclusion that the trial court did not err in denying Appellant's motion to suppress.

AFFIRMED.

MAKAR, OSTERHAUS, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Zilvinas Mardosas of Mardosas Law, PLLC, West Palm Beach, for Appellant.

Pamela Jo Bondi, Attorney General, and Daniel Krumbholz, Assistant Attorney General, Tallahassee, for Appellee.

The fellow officer rule has been applied by this Court only to instances where the officer is testifying as to the details of a search or seizure in which the officer was a direct participant. If an officer relies on a chain of evidence to formulate his or her belief as to the existence of probable cause for a search or seizure, the rule excuses the officer from possessing personal knowledge of each link in the chain of evidence if the collective knowledge of all the officers involved supports a finding of probable cause. In short, the rule allows an officer to testify with regard to a previous link in the chain for the purpose of justifying his or her own conduct. 87 So. 3d at 710-11.

Appendix B

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

November 13, 2018

CASE NO.: 1D17-2537

L.T. No.: 2015-CF1230

Aivaras Mardosas	v.	State of Florida
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed October 18, 2018, for rehearing and certification is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Hon. Pamela Jo Bondi, AG Daniel Krumbholz, AAG

Zilvinas Mardosas

th

/s/ KRISTINA SAMUELS

KRISTINA SAMUELS, CLERK

Appendix C

SUPREME COURT OF FLORIDA

TUESDAY, MARCH 26, 2019

CASE NO.: SC18-2002

Lower Tribunal No(s).:

1D17-2537;

372015CF001230AXXXXX

AIVARAS MARDOSAS vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

CANADY, C.J., and POLSTON, LAWSON, LAGOA, and LUCK, JJ., concur.

A True Copy

Test:

/s/ John A. Tomasino
John A. Tomasino
Clerk, Supreme Court

db

Served:

ZILVINAS MARDOSAS

DANIEL KRUMBHOLZ

HON. GWEN MARSHALL, CLERK

HON. KRISTINA SAMUELS, CLERK

HON. JAMES C. HANKINSON, JUDGE