No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2020

ROBERTO CLEMENTE-GOVEA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNTED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

6th Circuit Case No. 18-2350

MARK E. BROWN (TN. BPR #021851)*
Attorney for the Petitioner Roberto Clemente-Govea appointed under the provisions of the Criminal Justice Act, 18 U.S.C.§3006A
MENEFEE & BROWN, P.C.
9724 Kingston Pike, Ste. 505
Knoxville, Tennessee 37922
Phone: (865) 357-9800
Fax: (865) 357-9810
e-mail: mbrown@menefeebrown.com

*Counsel of Record (CJA)

QUESTIONS PRESENTED

I.

Whether the decision of the Sixth Circuit Court of Appeals in holding that the good-faith exception of Leon v. United States, 468 U.S. 897, 104 S. Ct. 405, 82 L. Ed. 2d 677 (1984) applied to save the warrant for the search of Defendant Roberto Clemente-Govea's home created a split in Circuit Court authority to warrant this Court's review?

II.

Whether this Court should grant review to properly define what "reasonably well-trained officer" means in the context of the Leon good-faith exception?

PARTIES TO THE PROCEEDING

Pursuant to United States Supreme Court Rule 14(1)(b), your Petitioner states that the parties to this petition are:

Petitioner: Roberto Clemente-Govea

Respondent: United States of America

The opinion of the United States Court of Appeals for the Sixth Circuit that is the subject of this appeal was only as to Roberto Clemente-Govea as the only defendant. Govea is not aware of any separate petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit also seeking review of the Sixth Circuit opinion that is the subject of this appeal.

LIST OF PROCEEDINGS IN STATE AND FEDERAL COURTS THAT ARE DIRECTLY RELATED TO THIS CASE

There are no cases in either State or Federal Court that are directly related to this case.

TABLE OF CONTENTS

Appendix 3 – Order Denying Petition for Rehearing En Banc (April 24, 2020)

TABLE OF AUTHORITIES

CASES CITED:

STATUTES CITED:

RULES CITED:

CONSTITUTION CITED:

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER 2020 TERM

ROBERTO CLEMENTE-GOVEA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

PETTION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner Roberto Clemente-Govea respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-styled proceedings on March 26, 2020, and an Order denying Petition for Rehearing with Suggestion of Rehearing En Banc entered on July 24, 2020.

OPINIONS BELOW

(1) Judgment in a Criminal Case, United States of America v. Roberto Clemente-Govea, Case No. 1:18-cr-00015- RJJ, United States District Court for the Western District of Michigan on November 5, 2018. (Appendix 1).

(2) Opinion, United States of America v. Roberto Clemente-Govea, No. 18-2350, United States Court of Appeals for the Sixth Circuit, March 26, 2020. (Appendix 2).

(3) Order Denying Petition for Rehearing with Suggestion of Rehearing En Banc, United States Court of Appeals for the Sixth Circuit, April 24, 2020. (Appendix 3).

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Sixth (6th) Circuit was entered on March 26, 2020 affirming the Petitioner Roberto Clemente-Govea's denial of his Motion to Suppress and sentence of 84 months following his Conditional Plea of Guilty to three counts in the Indictment: Count 1 – Possession with Intent to Distribute an Unspecified Quantity of Methamphetamine; Count 2 – Possession with Intent to Distribute an Unspecified Quantity of Heroin; and Count 3 – Possession with Intent to Distribute an Unspecified Quantity of Cocaine. All convictions were ordered to run consecutively. A Final Judgment was entered by the United States District Court for the Western District of Michigan on November 6, 2018. A Petition for Rehearing with Suggestion of Rehearing En Banc was denied by an Order entered by the Sixth Circuit Court of Appeals on April 24, 2020.

The United States Court of Appeals for the Sixth (6th) Circuit had jurisdiction over Govea's appeal pursuant to 28 U.S.C. §1291, which confers on the United States Court of Appeals jurisdiction from all final decisions of District Courts of the United States. (28 U.S.C. §1291 (West 2020)).

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1), which provides that cases in the Courts of Appeal may be reviewed by the Supreme Court by Writ of Certiorari granted upon the petition of any party. (28 U.S.C. §1254(1) (West 2020)). Jurisdiction is also invoked by United States Supreme Court Rules 10 and 13. (U. S. Sup. Ct. R. 10, 13).

CONSTITIONAL PROVISIONS INVOLVED

The Fourth (4th) Amendment to the United States Constitution provides that "[T]he 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).

STATUTORY PROVISIONS INVOLVED

None are at issue in this case.

STATEMENT OF THE CASE

A.

1. Govea pled guilty on June 25, 2018 in the United States District Court for the Western District of Michigan to three (3) counts charged against him in an Indictment. Govea was charged in Count one (1) with Possession with Intent to Distribute Methamphetamine, in Count two (2) with Possession with Intent to Distribute Heroin, and in Count three (3) with Possession with Intent to Distribute Cocaine.

2. Govea was arrested as the result of an investigation by the Kent County, Michigan Sheriff's Department. The department's Narcotics Enforcement Team which went by the acronym "KANET" had been investigating the sale and distribution of methamphetamine and other narcotics in Grand Rapids, Michigan. The target was identified as Ashton Belcher, who lived at an address on Dolbee Avenue and who had sold methamphetamine to a confidential informant on several occasions as part of KANET controlled buys.

3. While KANET was conducting surveillance on the Dolbee Avenue address, they observed two (2) people leave the back yard of the residence, get into a 2017 Nissan with Maryland license plates and travel to a residence on Mason Street NE in Grand Rapids. The residence was associated with Govea, and Govea was further identified as the owner of the Nissan.

4. At the Mason Street address, Govea went into the residence for a few minutes, returned to the vehicle and drove Belcher to a location where Belcher completed a drug transaction with the confidential informant.

5. The informant identified Govea for KANET and told officers that Govea had been with Belcher during the last four (4) controlled buys of methamphetamine. The informant also told officers that Govea was present during other transactions he had with Belcher; that one of the transactions occurred inside Belcher's residence; that multiple guns were present at Belcher's residence; and he had seen Govea with a handgun during another transaction.

6. On November 7, 2017, KANET obtained a search warrant for Govea's residence believing it to be a "stash house" for drug trafficking. They executed the search warrant on November 8, 2017 and seized forty (40) grams of methamphetamine, twenty-eight (28) grams of heroin, eight (8) grams of cocaine, twenty (20) suboxone strips, three (3) digital scales, and drug packaging materials.

7. Govea was arrested on a Michigan Department of Corrections Parole Violation on November 16, 2017. He was initially charged in state court, but those charges were dropped and Govea was transferred to federal custody on the pending federal indictment.

8. On May 4, 2018, Govea filed a motion to suppress the drugs seized from his residence. In his motion, Govea asserted two arguments: (1) the Affidavit in support of the search warrant failed to establish probable cause; and (2) even if the warrant was not supported by probable cause, the Leon "good-faith" exception did not apply.

9. The search warrant was supported by the affidavit of Deputy Warren Hanson. Hanson asserted that probable cause existed for the issuance of the warrant as the items listed in

the warrant would be found in Govea's residence. Hanson asserted the following facts (among others) in his affidavit:

> *a reliable, credible confidential informant was used to purchase methamphetamine from Ashton Belcher on three (3) separate occasions over the last month with the most recent purchase within the last 48 hours.
> *During the last controlled buy, Govea was identified as the driver of a 2017 Nissan with a Maryland license plate.
> *During the last controlled buy, another detective was conducting surveillance on an address on Dolbee Avenue and observed Govea and Belcher leave the back yard, stop at Govea's house, Govea go inside for a few minutes, exit and drive Belcher to the informant where Belcher completed the drug transaction.
> *The informant identified Govea as being with Belcher during the three methamphetamine transactions. He also observed a handgun in Govea's waistband.
> *One of the controlled buys from Belcher was completed inside the Dolbee Avenue residence believed to be Belcher's home. Multiple guns were observed at the home.
> *The informant identified Belcher as the person who sold him methamphetamine.
> *The informant purchased from Belcher over a hundred times, and Govea was with Belcher and in possession of a gun
> *Govea's residence was accessed immediately before the narcotics transaction.

10. Govea argued in his motion that the one occasion where he went into the home for a few minutes and drove to a place where Belcher sold drugs to the informant, did not establish probable cause that drugs would be found in Govea's apartment.

11. Govea noted specifically that the Affidavit does not state whether he went inside the apartment and observed drugs or paraphernalia; that drugs were ever sold out of his apartment or that suspicious activity was observed taking place inside the residence; that Govea was a known drug dealer; or that Govea carried anything out of the residence that appeared to be drugs or handed anything to Belcher.

12. As to the Leon good-faith exception Govea argued that it did not apply in this case as the affidavit did not establish a minimally sufficient nexus between the illegal activity and the place to be searched.

13. The District Court held a hearing on the motion to suppress on June 6, 2018. At the hearing, the Court expressed some skepticism regarding Hanson's affidavit by mentioning on at least two (2) occasions that the allegations appeared thin as to Govea.

14. On June 15, 2018, the District Court issued an opinion and order denying Govea's motion to suppress. The District Court concluded that there was probable cause for the issuance of a search warrant, and even if probable cause was lacking, Leon's good-faith exception applies.

15. On the issue of the Leon good-faith exception, the District Court concluded:

> "The Court finds the good-faith exception applies because the affidavit in this case is not so lacking in indicia of probable cause to render official belief in its existence entirely unreasonable."
>
> ***
>
> "There is no question that probable cause ties Mr. Govea to the suspected drug trafficking organization. And the brief visit to Mr. Govea's residence shortly before the last controlled purchase provides at least some nexus of facts between Mr. Govea and his residence."
>
> ***
>
> "This was not simply an occasion where officers decided to raid an individual's house because the officers had probable cause that the individual was involved in criminal activity."

16. Following the denial of his motion to suppress, Govea entered into a conditional guilty plea preserving the right to appeal the denial of his motion.

17. On November 5, 2018, Govea was sentenced to 84 months, a downward variance from his guideline range of 151 – 188 months.

B.

1. In his brief to the Sixth (6^{th}) Circuit Court of Appeals Govea argued that the only probable cause asserted to support the search warrant of his residence was leaving Belcher's backyard, stopping at his house, and then driving Belcher to a place where Belcher completed a

drug deal with a confidential informant. Govea further argued that Officer Hanson's affidavit did not establish that drug activity was ever observed at Govea's residence or that anyone ever bought drugs at his residence.

2. Govea also argued that the search warrant could not be saved by the good-faith exception of Leon v. United States, 468 U.S. 897, 104 S. Ct. 405, 82 L. Ed. 2d 677 (1984). Govea argued that one of the four enumerated exceptions to Leon's good-faith standard applied to the facts of this case: the affidavit is so deficient that no reasonable officer could believe that probable cause could be found. Govea argued that there was no nexus between his residence and the crime of drug dealing.

3. On direct appeal a three (3) judge panel of the United States Court of Appeals affirmed the denial of Govea's motion to suppress in an opinion dated March 26, 2020. (Appendix 2). The Court denied Govea's petition for rehearing with suggestion of rehearing en banc on April 24, 2020. (Appendix 3).

C.

1. The Petitioner now seeks review by the United States Supreme Court for the following reasons:

(1) The reasoning used by the Sixth (6^{th}) Circuit Court of Appeals to affirm the denial of Govea's Motion to Suppress conflicts with the reasoning set forth by other circuits on whether matters outside the four-corners of the Affidavit may be used to determine whether the Leon good-faith exception applies; and

(2) What exactly does the vague phrase "reasonably well-trained officer" mean in determining the applicability of the Leon good-faith exception.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT CONFLICTS WITH DECISIONS OF OTHER CIRCUIT COURTS THAT MATTERS OUTSIDE THE AFFIDAVIT MAY BE CONSIDERED IN DETERMINING WHETHER THE LEON GOOD-FAITH EXCEPTION APPLIES

It is apparent in the Sixth Circuit's opinion that the warrant did not provide sufficient probable cause for the search of Govea's home. The Sixth Circuit did not address probable cause, relying instead on the good-faith exception pronounced by this Court in Leon v. United States, 468 U.S. 897, 104 S. Ct. 405, 82 L. Ed. 2d 677 (1984). Under Leon evidence seized in reasonable good-faith reliance on a search warrant that is subsequently held defective is not excluded from evidence at trial. See, United States v. Mills, 357 F. Supp. 3d 634, 651 (6th Cir. 2019). "To determine whether the good-faith exception applies [a] court must decide whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization." Id. Only when the answer is yes, is suppression appropriate. United States v. White, 874 F. 3d 490, 496 (6th Cir. 2017).

Leon is obviously an exception to the exclusionary rule, and it contains what can best be described as exceptions to the exception. This Court "has identified four instances where [the] good faith exception to the exclusionary rule will not apply; each implicates officer misconduct, where deterrence might be effective or official defalcation by the judicial officer." United States v. Myers, 354 F. Supp. 3d 785, 794 (E.D. Mich. 2019). "The first is where the affiant misleads the magistrate by false or reckless information. The second is where the magistrate sides with the police, abandons neutrality and becomes a rubber stamp. Third, where the affidavit is so deficient that no reasonable officer could believe that probable cause could be founds, there is no exception from the exclusionary rule. And, fourth, there can be no good faith reliance on a search warrant

that is so lacking in particularity that a reasonable officer could not believe it is valid." Id. See also, United States v. Washington, 380 F. 3d 236, 241 (6th Cir. 2004).

Govea argued in his brief to the Circuit Court and at Oral Argument that the third scenario was present and that the Leon good-faith exception did not apply. The Circuit Court however, held in its opinion:

> "Under this third scenario, the court does not examine the subjective states of mind of [the particular] law enforcement officers [conducting this particular search], but instead asks whether the faceless, nameless, reasonably well-trained officer in the field, upon looking at this warrant, would have realized that probable cause was not established for the search described. *United States v. Hodson*, 543 F. 3d 286, 293 (6th Cir. 2008) (quoting, *United States v. Helton*, 314 F. 3d 812, 824 (6th Cir. 2003)).
> The good-faith exception clearly applies in a situation where the affidavit "tie[s] the alleged drug activity to [the defendant's] residence," is "based upon multiple events," and "relie[s] on verifiable facts, not conclusory assertions, unsubstantiated hearsay, or a purely subjective belief that [the defendant] was involved in drug trafficking." *Gilbert*, 2020 WL 1160904, at *5. Those circumstances are present here. The affidavit detailed several closely monitored controlled buys, a detective's direct observation of a brief stop at Govea's residence just prior to one of these buys, and a reliable CI's description of Govea's longstanding ties to an ongoing drug-trafficking operation.
> Govea argues that the affidavit did not provide a sufficient nexus between the drug activity and his residence. We disagree. All that is needed for the good-faith exception to apply is for "the affidavit [to] contain[] a minimally sufficient nexus between the illegal activity and the place to be searched[.]" *Carpenter*, 360 F.3d at 596. Even a "modicum of evidence, however slight, to connect the criminal activity described in the affidavit to the place to be searched" will suffice for the good-faith exception to apply. *United States v. Laughton*, 409 F.3d 744, 749 (6th Cir. 2005).
> Govea's brief stop at his home—immediately before driving to the scene of a controlled buy and immediately after driving to his home from the home of the seller in the controlled buy, with the seller as a passenger—connected the drug trafficking operation to Govea's residence and provided a basis to believe that his home was a stash house. The *Leon* good-faith exception therefore applies."

(6th Circuit Op., pp. 4 - 6).

Part of the authority the Sixth Circuit relied on in making its decision in this case is the case of United States v. Laughton, 409 F. 3d 744 (2005), which unequivocally held that "a determination of good-faith reliance, like a determination of probable cause, must be bound by the four corners of the affidavit." Id. That directly conflicts with authority from other circuit courts of

appeals which hold that matters outside of the affidavit may be considered when evaluating both probable cause and whether the Leon good-faith exception applies.

See, United States v. Procopio, 88 F. 3d 21, 28 (1st Cir. 1996) (An agent on the scene knew that surveillance showed defendant lived in the building and was in the apartment moments before, but none of that information was in the affidavit. However, Leon good faith exception still applied); United States v. Owens, 848 F. 2d 462, 466 (4th Cir. 1988) ("While the warrant here was facially deficient because an incorrect apartment number was given, the deficiency was corrected prior to the search by personal observations and information on which one could reasonably and in good-faith make a determination of the actual place the warrant authorized to be searched").

The Sixth Circuit has realized that its own holdings on this issue conflict with other circuit courts of appeal and this Court's precedent. In a concurring opinion in United States v. Christian, 925 F. 3d 305 (6th Cir. 2019), Sixth Circuit Judge Amul Thapar, while concurring that the search of the defendant Christian's house was supported by probable cause or at least the officers executed the search in good-faith, wrote: "But because of our precedent, we must ignore critical evidence of which the officers undisputedly knew and isolate the good-faith analysis to the four corners of the affidavit. See, *United States v. Laughton,* 409 F. 3d 744, 751-52 (6th Cir. 2005), I write separately to explain why *Laughton's* limit on the good-faith exception conflicts with Supreme Court precedent and should be overruled." Id.

In Christian, the affidavit executed by the officer had a number of facts included that connected the defendant and his house to the crime of drug trafficking. Id. Those facts included Christian's four (4) prior drug convictions, at least two (2) of which involved his home; a confidential informant had purchased drugs from Christian at his house nine (9) months earlier; several buyers had completed drug purchases from Christian at his house during the previous four

(4) months; and a purchaser named Thomas was stopped with 20 grams of heroin in his car after leaving Christian's home. Id. However, the affidavit did not connect that purchase with the house as it did not say officers saw the defendant interact with Christian or saw him inside his house. Id. The affidavit only said Thomas walked away from the house. Id.

In arguing that that the Sixth Circuit precedent is in conflict with other circuits and this Court's precedent, Judge Thapar wrote:

> "The Supreme Court's instruction to focus on culpability is enough to show that the good-faith analysis must consider facts that are not included in the affidavit. But the Supreme Court has been even more explicit. In *Sheppard*, an officer under severe time pressure used the wrong warrant application form for his search (a form for drugs rather than murder). *Massachusetts v. Sheppard*, 468 U.S. 981, 986, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984). The magistrate judge explained that edits were necessary but only made some of them; as a result, the warrant still authorized only a search for drugs. *Id.* at 986–87, 104 S.Ct. 3424. Despite the obvious error, the Court held that the good-faith exception applied. In doing so, it rejected the argument that the officers' reliance on a facially invalid warrant undermined good faith. Given the circumstances, "[t]he officers ... took every step that could reasonably be expected of them." *Id.* at 987–89, 104 S.Ct. 3424. Among other things, they thoroughly investigated the suspect in a short amount of time, sought the advice of a district attorney, presented the warrant application to a judge, and trusted that he had fixed it. *Id.* at 984, 988–89, 104 S.Ct. 3424. Those facts were not in the affidavit but still were relevant to the *Sheppard* court. Thus, *Sheppard* "forecloses ... a categorical rule" that the good-faith exception depends entirely on the face of the warrant itself. *United States v. Franz*, 772 F.3d 134, 146 (3d Cir. 2014); *accord United States v. Frazier*, 423 F.3d 526, 534–35 (6th Cir. 2005). And *Sheppard*'s logic extends to affidavits and any other documents in a warrant application. Indeed, our sister circuits have applied the good-faith exception when affidavits (often prepared under time pressure) omitted a few words that were needed to establish probable cause. *See, e.g.*, *United States v. McKenzie-Gude*, 671 F.3d 452, 456–57, 460 (4th Cir. 2011); *United States v. Martin*, 297 F.3d 1308, 1320 (11th Cir. 2002). Even the Tenth Circuit, which purportedly follows a "four corners" rule, still considers (1) additional information presented to the issuing judge, (2) "information relating to the warrant application process," and (3) "testimony illuminating how a reasonable officer would interpret factual information contained in an affidavit." *See United States v. Knox*, 883 F.3d 1262, 1272 & n.9 (10th Cir. 2018).
>
> In addition, we already allow courts to look outside facially *valid* documents to see if there was a Fourth Amendment violation that compels suppression. For example, if a facially valid warrant was rooted in culpable misconduct, then the good-faith exception does not apply. *See Herring*, 555 U.S. at 146, 129 S.Ct. 695 ("If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay

> the groundwork for future false arrests, exclusion would certainly be justified ...."); *see also Franks v. Delaware*, 438 U.S. 154, 155–56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). Likewise, a facially valid warrant cannot support good faith if the officers purposely withheld damaging information from it to present an "incomplete and misleading" picture to the magistrate. *United States v. West*, 520 F.3d 604, 611–12 (6th Cir. 2008).In other words, we *already* consider facts outside the affidavitwhen evaluating good faith—we just consider facts that *undermine* probable cause and ignore facts that support it. Under *Laughton*, outside facts are a one-way ratchet in favor of criminals. This disparity upsets the cost-benefit balance at the heart of the good-faith exception: we should only undermine the truth-finding function of the criminal justice system when necessary to deter culpable misconduct."

Id. at 317 – 318.

So, the natural question is what is the benefit to the Defendant Govea in this case? The answer is plenty. The affidavit in support of the issuance of the search warrant for Govea's residence provides:

> (1) Your affiant used a reliable, credible and confidential informant [redacted] to purchase methamphetamine from Ashton Belcher on three separate occasions over the last month with the most recent purchase being within the last 48 hours.
>
> (2) During this controlled buy, the informant identified Roberto Clemente Govea [redacted] as being the driver of the vehicle. The vehicle used is a 2017 Nissan silver in color with a Maryland license plate [redacted].
>
> (3) During the most recent controlled buy, Detective Todd Butler surveilled [redacted] Dolbee Avenue SE and observed two subjects leave the back yard and get into a 2017 Nissan with Maryland plate [redacted]. Detective Butler followed the Nissan to [redacted] Mason Street NE [redacted] in the City of Grand Rapids. The driver which was later identified as Roberto Clemente Govea went inside for a few minutes and then exited. The Nissan responded directly to the informant and Ashton Belcher completed the meth transaction.
>
> (4) The informant was provided a photograph of Roberto Govea from Law Enforcement Databases and he/she identified Roberto Govea as being with Ashton Belcher during all three methamphetamine buys. The informant observed a handgun in Roberto Govea's waistband during one of the buys.
>
> (5) One of the above described controlled buys from Ashton Belcher was completed inside the [redacted] at [redacted] Dolbee Avenue SE. The informant identifies this location as being Ashton Belcher's home. The informant has seen multiple guns in this venue multiple times.

> (6) Your affiant searched public records and learned Ashton Belcher owns [redacted] Dolbee Avenue SE.
>
> (7) Your affiant showed the informant a photograph of Ashton Belcher from a Law Enforcement database and the informant positively identified Ashton Belcher as being the subject that sold him/her methamphetamine in reference to this investigation.
>
> (8) The informant has been purchasing narcotics from Ashton Belcher for more than a year and has bought from him over a hundred times. During most of the buys from Ashton Belcher, the informant states Roberto Govea is with Ashton Belcher and the informant has seen a gun on Roberto Govea on multiple occasions.
>
> (9) Roberto Govea's known residence was accessed immediately before the narcotics transaction and the informant identified Roberto Govea as being the driver of the vehicle during the drug transaction with the informant within the last 48 hours.

The court however could not consider in determining whether probable cause or good-faith applied that the affidavit only established that Govea was "with" Ashton Belcher, and beyond being in proximity to Belcher, that Govea participated in, observed or was even aware of drug transactions. Likewise, the Court could not consider that the Affidavit does not state whether the informant or anyone had ever gone inside the apartment and observed drugs or paraphernalia; whether drugs were ever sold out of his apartment or that suspicious activity was observed taking place inside the residence; whether Govea was not a known drug dealer; or whether Govea carried anything out of the residence that appeared to be drugs or handed anything to Belcher.

The Court is constrained by the Laughton opinion from considering any of those facts in determining whether good faith applies to save what the Sixth (6^{th}) Circuit obviously believed was a warrant not supported by probable cause. Govea respectfully requests this Court grant the writ of certiorari and resolve the split among the circuits on the scope of what can be considered in ruling on whether the Leon good-faith exception applies.

II. THIS COURT NEEDS TO ADDRESS AND CLARIFY WHAT A "REASONABLY WELL-TRAINED OFFICER" MEANS IN THE CONTEXT OF THE LEON GOOD-FAITH EXCEPTION

"In United States v. Leon, 468 U.S. 897, 104 S. Ct. 2405, 82 L. Ed. 2d 677 (1984), the Supreme Court established that the Fourth Amendment exclusionary rule does not apply in cases where law enforcement acted in good faith and reasonably relied on a search warrant that is ultimately found invalid." United States v. Thomas, 605 F. 3d 300, 311 (6th Cir. 2010). Leon set a supposed objective standard of "whether a reasonably trained police officer would have known that the search was illegal despite the [issuing judge's] authorization." Id.

"To help reviewing courts properly answer this question, the Court identified four specific situations in which an officer's reliance on a subsequently invalidated warrant cannot be considered objectively reasonable: 1) where the warrant is issued on the basis of an affidavit that the affiant knows (or is reckless in not knowing) contains false information; 2) when the issuing magistrate abandons his neutral and detached role and serves as a rubber stamp for police activities; 3) when the affidavit is so lacking in indicia of probable cause that a belief in its existence is objectively unreasonable; and 4) when the warrant is so facially deficient that it cannot be reasonable presumed to be valid." Id. See also, United States v. White, 874 F. 3d 490, 496 (6th Cir. 2017) ("Following Leon, courts presented with a motion to suppress claiming a lack of probable cause must ask whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's decision").

Other circuits have uniformly applied the "reasonably well-trained officer language." See, United States v. Martin, 297 F. 3d 1308 (11th Cir. 2002); United States v. Bynum, 293 F. 3d 192 (4th Cir. 2002); United States v. Corral-Corral, 899 F. 2d 927 (10th Cir. 1990); United States v. Ninety-Two Thousand Four-Hundred Twenty-Two Dollars and Fifty-Seven Cents ($92.422.57),

307 F. 3d 137 (3rd Cir. 2002); United States v. Zayaz-Diaz, 95 F. 3d 105 (1st Cir. 1996); United States v. Sager, 743 F. 2d 1261 (8th Cir. 1984); United States v. Clark, 638 F. 3d 89 (2d. Cir. 2011); United States v. Maggitt, 778 F. 2d 1029 (5th Cir. 1985); United States v. Klebig, 228 Fed. Appx. 613 (7th Cir. 2007); and United States v. Tate, 795 F. 2d 1487 (9th Cir. 1986).

But what all circuits have not done and need guidance on is the vagueness of the term "reasonably well-trained officer". This Court has never said what that means and given the broad application of the Leon standard, and in many cases the good-faith exception saves a warrant that lacks probable cause. In effect, it is become such a crutch for judges to use to uphold a bad search that the exception (the minnow) has swallowed the whale (the Fourth Amendment). Govea respectfully requests this Court grant review to clarify its meaning.

CONCLUSION

The Petitioner Roberto Clemente Govea respectfully requests that this Court grant of Writ of Certiorari and undertake review of this case.

Respectfully submitted this 2nd day of July 2020

/s/ Mark E. Brown
Mark E. Brown (TN. BPR #021851)
MENEFEE & BROWN, P.C.
9724 Kingston Pike, Ste. 505
Knoxville, Tennessee 37922
Phone: (865) 357-9800
Fax: (865) 357-9810
e-mail: mbrown@menefeebrown.com

Attorney for the Petitioner Roberto Clemente Govea, appointed pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. §3006A

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July 2020, a true and exact copy of this document has been filed via this Court's electronic filing system and service on the OFFICE OF THE SOLICITOR GENERAL, DEPARTMENT OF JUSTICE, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001 by placing the same in the United States Mail, first class postage pre-paid.

/s/ Mark E. Brown
Mark E. Brown