

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
TYSLEN J. BAKER, PETITIONER
V.
UNITED STATES OF AMERICA, RESPONDENT

On Petition for Writ of Certiorari
To the U.S. Sixth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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I. Question Presented

Does a police officer violate a defendant's Fourth Amendment rights by executing an arrest warrant consisting of bare bones allegations lacking in probable cause as well as a temporal connection to the alleged offense or information contained in the warrant.

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IV. Petition for Writ of Certiorari

Tyslen Baker, an inmate currently incarcerated at FCI Manchester in Manchester, Kentucky, by and through the undersigned counsel, respectfully petitions this Court for a Writ of Certiorari to review the Judgment of the United States Sixth Circuit Court of Appeals.

V. Opinions Below

Petitioner Baker filed a Motion to Suppress in the United States District Court for the Western District of Kentucky. The Motion was denied and he ultimately entered a plea reserving his right to appeal the suppression issue. The Sixth Circuit Court of Appeals affirmed the suppression ruling by the Trial Court by Opinion dated September 24, 2020. A copy of the arrest warrant forming the basis of the Motion to Suppress filed in the District Court as well as the ruling on the Motion to Suppress entered in the District Court, the District Court Judgment, and the Sixth Circuit Court of Appeals' Opinion are attached to the Appendix to this Petition. Neither of the lower court rulings are reported decisions, although the Sixth Circuit opinion has been recommended for publication.

VI. Jurisdictions

The United States Sixth Circuit Court of Appeals denied Mr. Baker's direct appeal of his suppression motion by Opinion dated September 24, 2020. No Petition for rehearing was filed in that case. Mr. Baker invokes this Court's jurisdiction pursuant to 28 USC § 1254(1), having timely filed this Petition for a Writ of Certiorari.

VII. Constitutional Provisions Involved

This Writ of Certiorari involves Mr. Baker's rights under the Fourth Amendment to the United States Constitution. The Amendment reads as follows:

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 person or things to be seized.

VIII. Statement of the Case

Officer Zacharey Render went to the business/residence of Tyslen Baker on the night of January 25, 2017. Officer Render had reviewed a warrant list and determined that there might be a warrant outstanding for the arrest of Mr. Baker. He had no knowledge of the validity of the criminal complaint or arrest warrant prior to going to Mr. Baker's property. The officer testified that he typically verified the existence of arrest warrants on the list by checking with a dispatcher who would then confirm the existence of the warrant. No officer confirmed the existence of the warrant in this case until after asking Mr. Baker to allow them entry to the building because it was cold outside, asking for his identification, and then following him to the back portion of the residence to his bedroom where he had gone to retrieve his identification as requested by the officer. Once the officer saw a firearm and possible drugs, Mr. Baker was detained and ultimately arrested. Only then was the existence of the warrant at issue verified.

The arrest warrant in this case alleged an offense of receiving stolen property.

The warrant was signed by a Judge of the Webster District Court on January 24, 2017. The warrant alleged the offense of Receiving Stolen Property valued at less than \$500.00. The warrant read as follows:

The Affiant, Alan King (Providence Police Department 3962), states that on 4/19/2015 in Webster County, Kentucky, the above-named Defendant unlawfully: Receiving Stolen Property. On 4/19/2015 a Nextbook tablet and several other items were taken from the residence at 601 St. Bernard Street in Providence, Kentucky. The tablet turned up pawned at River City Pawn in Madisonville, Kentucky. An interview with the subject who pawned the tablet revealed the that tablet was purchased in Madisonville, Kentucky from a Tyslen Baker. The stolen tablet was recovered from the pawn shop in Madisonville.

The warrant was executed by Zacharey Render of the Madisonville Police Department on January 28, 2017. A violation of KRS 514.110(3) for receiving stolen property valued under \$500.00 is a misdemeanor in the State of Kentucky. The statute of limitations on such a charge is twelve months as set out in KRS 500.020(2). The offense in question involves the receiving, retaining or disposing of property of another knowing it has been stolen or having reason to believe it was stolen, with no intent to return the property to the owner. KRS 514.110(1).

The arrest warrant alleges that Mr. Baker committed the misdemeanor offense on April 19, 2015. This is twenty-one months prior to the issuance of the arrest warrant and nine months past the statute of limitations for the charge in question. The warrant does not contain any basis for the judge to determine that Mr. Baker ever possessed the tablet in question in Webster County, Kentucky, or that he knowingly possessed stolen property. In fact, the complaint proves nothing more

than some unknown person pawned a tablet in Madisonville, Kentucky, and then apparently when confronted by police, claimed to have purchased that tablet from “a Tyslen Baker”. There is no indication when the alleged purchase took place. The City of Madisonville is located in Hopkins County, Kentucky. The warrant was issued by the District Court in Webster County, Kentucky, and alleged an offense occurring in that county.

The warrant does not indicate when the tablet was pawned. It further lacks any basis upon which the court could determine the credibility or reliability of the subject interviewed as referenced in the body of the warrant.

Mr. Baker’s Motion to Suppress in the District Court was based on his belief that the warrant was not supported by probable cause and further was so facially deficient that no officer could objectively reasonably rely on the validity of the warrant to place Mr. Baker under arrest. The warrant was based on a bare bones affidavit. The District Court overruled the Motion to Suppress.

Mr. Baker filed an Appeal with the Sixth Circuit Court of Appeals as a matter of right. The Sixth Circuit affirmed the Trial Court ruling. The Sixth Circuit sidestepped the issue of whether the warrant was supported by probably cause. Instead, the Court applied the United States v. Leon, 468 US 897, 922 (1984) factors in ruling that the officer could reasonably and in good faith believe that his actions were justified in light of the existence of the warrant. In essence, the Sixth Circuit held that the affidavit indicated some limited quality of evidence, however slight,

connecting the criminal activity at issue to Mr. Baker. The Court acknowledged that the affidavit contained no details about whether Mr. Baker knew or should have known the tablet was stolen, but nonetheless concluded that the officer was not reckless in believing that mere possession created an inference of knowledge sufficient for upholding the arrest. Additionally, the Sixth Circuit also gave little thought to the twenty-one month timeframe between the date the tablet was reported stolen and when a police officer sought a warrant for Mr. Baker's arrest. The Court determined that mere possession resolved this deficiency in the arrest warrant. Finally, the Court took no issue with the lack of information about the informant's credibility which is completely lacking in the arrest warrant.

IX. Reason for Granting the Writ

The warrant in this case is not saved by the Leon decision. A police officer cannot objectively reasonably rely on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. United States v. McCoy, 905 F. 3d 409, 416 (6th Cir. 2018). The Leon decision does not allow an officer to obtain a warrant on the basis of a bare bones affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search. See Whitely v. Warden, Wyo State Penitentiary, 401 US 560, 568 (1971). In other words, the illegal arrest may not be insulated from challenge allowing the officer who obtains the warrant to rely on fellow officers to execute the warrant.

An affidavit that is so lacking in indicia of probable cause that no reasonable offer would rely on the warrant is known as a bare bones affidavit. United States v. White, 874 F. 3d 490, 496 (6th Cir. 2017). A bare bones affidavit is one that states only suspicions, beliefs or conclusions, without providing some underlying facts or circumstances regarding veracity, reliability, and basis of knowledge. White, 874 F 3d 496. A conclusionary affidavit is a bare bones affidavit.

The affidavit in question did not provide a sufficient basis for determining that a criminal act had been committed by Mr. Baker. At best, it established that a notebook had been stolen in April of 2015 from a home in Providence, Kentucky. It was subsequently pawned at an unknown time and eventually recovered by law enforcement. Ultimately, the police interviewed the subject who pawned the tablet and he or she informed the police that they had purchased the tablet from a Mr. Baker in Madisonville, Kentucky. It is worth noting that the warrant alleges criminal conduct in Webster County, Kentucky. These facts do not support a conclusion, or even an allegation, that Mr. Baker knowingly received the stolen tablet in question. In fact, the informant did not even make an allegation they knew or had reason to know that the tablet was stolen as required by the statute. No other corroboration is provided in the body of the affidavit. The affidavit does not provide the required connection between illegal activity and Mr. Baker in Webster County, Kentucky.

Moreover, the affidavit does not address the question of whether the situation involved recently stolen property. There was no basis for the judge who signed the

warrant to conclude that Mr. Baker had possessed recently stolen property. To resolve this issue, the Sixth Circuit relied upon Barnes v. United States, 412 US 837 (1973) and cases flowing from the decision. However, as more time passes from the time of theft, the inferences that may be drawn from possession grow weaker. United States v. Johnson, 741 F. 2d 854, 857 (6th Cir. 1984). No case was cited in the Sixth Circuit to support a temporal proximity argument covering a timeframe of twenty-one months. The longest period of time addressing the “recently stolen” issue in an opinion issued by the Kentucky Supreme Court that counsel could locate is the case of Fairley v. Commonwealth, Ky., 527 S.W. 3d 792-801-02 (2017). The Fairley case was subjected to palpable review which requires that manifest injustice result from the error. The Court found the fifteen month timeframe to be a “close call”. Simply put, the affidavit in this case does not contain adequate temporal proximity of a sufficient nexus between the illegal activity and Mr. Baker. There is no indication when Mr. Baker possessed the property or when the police officer received information from the unnamed informant. Finally, there was nothing in the affidavit that establishes that Mr. Baker is anything other than an innocent purchaser of the tablet in question. Thus, the affidavit in this case is bare bones and suppression was the appropriate remedy for Mr. Baker. The affidavit in this case presents a classic example of a bare bones affidavit lacking in indicia of probable cause that no officer could reasonably rely upon in making an arrest.

The issues related to Mr. Baker’s suppression arguments touched on one of the

most basic and fundamental rights guaranteed to a criminal defendant in the American justice system. The dangerous precedent set by the Sixth Circuit in allowing an arrest on the charge of receiving stolen property based on a mere assertion of the possession of stolen property at some point in time constitutes a deviation from the precedent of the United State Supreme Court as well as the Kentucky Supreme Court. This Court should accept Certiorari in this matter to correct this error of law.

X. Conclusion

For the foregoing reasons, Mr. Baker respectfully requests that this Court issue a Writ of Certiorari to review the Judgment of the United State Sixth Circuit Court of Appeals.

Respectfully submitted.

This the 22nd day of February, 2021.

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