

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2021

DERRICK BAER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the decision of the Third Circuit denying petitioner's request for a Franks hearing conflicts with the United States Supreme Court's decision in Franks v. Delaware, 439 U.S. 154 (1978)?

Whether the decision of the Third Circuit refusing to suppress evidence due to law enforcement's pattern of lengthy, inexplicable delay violates Fourth and Fourteenth Amendment interests as set forth in the Third Circuit's decision in United States v. Stabile, 633 F.3d 219 (3d Cir. 2011) and the United State Supreme Court's decision in United States v. Jacobson, 466 U.S. 109 (1984)?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Derrick Baer respectfully requests that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered on January 20, 2021 in the captioned matter.

OPINION BELOW

The decision of the United States Court of Appeals for the Third Circuit was memorialized in an unpublished opinion attached at Appendix 001-15a (“App.”). The Third Circuit’s Decision denying a panel rehearing en banc on February 16, 2021 is attached at App. 018-9a.

JURISDICTION

The District Court had jurisdiction under 18 *U.S.C.* § 3231 and entered judgment on November 19, 2019. App.009-15. The Third Circuit had jurisdiction under 18 *U.S.C.* § 3742 and 28 *U.S.C.* § 1291 and entered judgment on January 20, 2021. App. 001-6. A subsequent motion for panel rehearing and reheard en banc was denied on February 16, 2021. App. 018-19. This Court has jurisdiction under 28 *U.S.C.* § 1254(1).

PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all parties to this proceeding, namely, petitioner Derrick Baer and respondent the United States.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons.... against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause supported by oath or affirmation...

The Fourteenth Amendment of the United States Constitution provides:

...nor shall any state deprive any person of life, liberty or property, without due process of law...

STATEMENT OF THE CASE

On January 20, 2021, the United States Court of Appeals for the Third Circuit issued an opinion affirming the District Court's decision denying Mr. Baer's suppression motion despite the fact that law enforcement engaged in a pattern of a lengthy, inexplicable fourteen-month delay in seeking a warrant to obtain evidence.

In addition, the Third Circuit affirmed the District Court’s decision to deny Mr. Baer a *Franks* hearing, in contravention of this Court’s decision in *Franks v. Delaware*, 439 U.S. 154 (1978), despite the fact that the search warrant affidavit was replete with deliberate falsehoods and misleading alterations of witness statements and, absent these misstatements, was insufficient to establish probable cause.

1. Factual Background

Petitioner Derrick Baer lived with his long-time girlfriend, Lorianne Kosnac. On May 31, 2010, law enforcement received a 911 call from Baer’s residence. Kosnac was unresponsive. Police and emergency personnel responded, but could not revive Kosnac. App. 020-21a.

Police asked Baer to consent to a search of his residence. He obliged. During that search, they seized Baer’s computer equipment. More than a year later, on August 10, 2011, they obtained a search warrant to conduct forensic testing of the electronic media. App. 021a.

Pohatcong Township Sergeant Scott Robb prepared the search warrant application. R. 41:63-64. He drafted his affidavit based on a “boilerplate affidavit and “borrowed” language because he had never prepared a warrant seeking to examine electronic media. *Id.* at 64-65. He did not even know why certain language was included in his affidavit; others told him what to write and he complied. *Id.* at 68-69. His affidavit did not include references to child pornography. *Id.* at 87-90, 101-03, 106, 109-19. He admitted that he quoted witnesses in the affidavit, but the quotes were inaccurate because he did not quote their actual words or statements. Rather,

he treated the “sum and substance” as direct quotes. *Id.* at 92-93,100. Robb also failed to follow-up on and/or corroborate a statement from a dubious source that potentially linked Baer to child pornography, but included her statement in his affidavit. *Id.* at 93-97, 101. Robb misrepresented his education and experience as well in his affidavit. *Id.* at 116-17, 118-19.

The Affidavit was executed on August 10, 2011, more than fourteen months after law enforcement had seized the devices on May 31, 2010. App. 118a. On the face of the affidavit, Robb did not provide any information suggesting that child pornography could be found on the devices. App. 118-130a. He omitted information that during the search of the house, no books or pictures containing child pornography had been found. R. 45: 66-68.¹ The affidavit contains a single, attenuated reference to child pornography: “Lorraine [Kosnac] also told [her sister] that several years ago Derrick had a problem with kiddy porn in the form of pictures and books.” App. 123a.

Additionally, the affidavit includes an uncorroborated, triple hearsay statement that accuses Baer of taking a photo of his then minor niece in a shower “several years” ago. *Id.* In the more than fourteen months that lapsed between when police seized the media and when Robb executed the warrant, police took no action to investigate or corroborate this allegation. Yet Robb still included it within his affidavit. R. 45: 68.

¹ The transcripts of Petitioner’s District Court trial were filed in the District Court below at Docs. 41, 45, 72, 108 and 145 and are cited herein as (“R. 41:x”).

The district court below found that there were “five pieces of information” in the affidavit that amounted to probable cause to search for evidence of child pornography. In addition to Kosnac’s dated hearsay statement and the uncorroborated allegation regarding the shower photo, the court was persuaded by: (1) a statement to a third party that “[Baer] had a problem with porn;” (2) floppy disks labelled “Derrick’s eyes only,” “pics incriminating,” and a hard drive marked “porn;” and (3) an uncorroborated allegation that Mr. Baer’s minor daughter had awakened once and found him standing over her with a washcloth. App. 101-02a . The court credited Robb’s testimony and found he had offered a “substantial basis” to accept any hearsay. App. 102-03a. The court concluded that the hearsay information plus Robb’s corroborating testimony sufficiently established probable cause to search for child pornography. App. 103a.

Baer contended that law enforcement’s pattern of delay was unreasonable and violated the Fourth Amendment. First, he argued that the fourteen-month delay in obtaining a search warrant was unconstitutional. App. 118a,131a. Then, law enforcement waited an additional forty days to contact the New Jersey Regional Computer Forensic Laboratory (“NJRCFL”) to make arrangements to have the evidence examined. In response, Robb learned that NJRCFL might not be able to conduct the examination for up to a year. No effort was made to expedite his request. R. 41:36. The NJRCFL did not complete their investigation until October 2012. On December 14, 2014, law enforcement made another request with the NJRCFL to examine an additional piece of electronic media for evidence of a file sharing device.

This request came fifty-five months after law enforcement seized electronic media from Baer’s residence and forty months after the search warrant was signed. *Id.* at 25, 27, 28, 31-36, 39, 115-116.

By subsequent motion, Baer argued that federal agents had unreasonably delayed in securing a search warrant for a computer hard drive that his ex-girlfriend, C.J., surrendered. C.J. turned over the Seagate Hard Drive on May 29, 2014. R. 108: 10-11. In releasing it to police, C.J. told them that she had looked at the computer and found what she believed to be child pornography, remarking: “You up for child pornography?” *Id.* at 15, 17. Inexplicably, authorities ignored C.J.’s comment and did nothing with the device for more than three years. *Id.* at 15. Finally, on October 16, 2017, Special Agent Matthews of the Federal Bureau of Investigation (“FBI”) sought a search warrant for this device. *See* App. 136a.

As to the search warrant for the items seized from Baer’s residence in May 2010, the district court refused to suppress the evidence based upon law enforcement’s delay, calling the delay “not unreasonable under the circumstances of this case.” App. 106-10a. In so concluding, the court focused on Baer’s initial, general consent to the search and found he had “little-if any-personal interest” in his possessions. App. 107a. The court also justified the delay, opining that law enforcement had “a substantial interest” in retaining Baer’s electronic media in that they were investigating Kosnac’s death and allegations linking Baer to child pornography. App. 109a.

As to Matthews' search warrant application for the Seagate Hard Drive, the court denied Baer's motion to suppress. App. 063a . The court concluded that C.J., as a joint user, gave proper consent to search the device. R. 145: 8-11. The court rejected the three-year delay as a basis for suppression. *Id.* at 8. According to the court, the delay after C.J. handed over was reasonable because C.J. never made allegations that "the Drive contained evidence of criminality." *Id.* at 11-12.

Baer moved for an evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). R. 72: 11, 13, 16, 20-21. Robb previously had been unsuccessful in securing a search warrant when he consulted with an assistant prosecutor. *Id.* at 7. With no new information regarding the child pornography and working with a new prosecutor, Robb again sought a search warrant in August 2011 – never mentioning his previous denial the year before. *Id.* at 9. Robb borrowed boilerplate language from other more experienced police officers pertaining to "experience," "education," and "training" because he lacked all of these in child pornography cases. *Id.* at 17-20. He admittedly misquoted witnesses. *Id.* at 10, 11, 12. Robb failed to conduct necessary follow-up and/or investigation of key, hostile witnesses. *Id.* at 6-7, 8, 13. Overall, Robb drafted an affidavit fraught with reckless disregard for the truth and omitted vital information regarding the principal witnesses. *Id.* at 21-23.

The district court denied a *Franks* hearing, stating that Baer failed to meet his burden. App. 075a. As to the requirement that a defendant prove an affiant's bad faith to justify a hearing, the court relied on its previous ruling that Robb had acted in good faith. App.077a. The court accepted Robb's affidavit as is, calling his

representations not “deliberately or recklessly false” and “accurately conveyed.” App. 077-79a. And, as to Robb’s misrepresentations concerning his education and training, the court was unpersuaded, glossing over Robb’s own admissions that he lacked relevant experience. App. 083a.

2. Procedural History

Baer was charged with one count of receipt of child pornography, 18 U.S.C. § 2252A(a)(2)(A), § 2252A(b)(1), and one count of possession of child pornography, 18 U.S.C. § 2252A(a)(5)(B), § 2252A(b)(2) App. 1526. The district court held an evidentiary hearing on Baer’s motion to suppress evidence and later denied his motion. App. 117a. Baer elected a jury trial in which he defended his case *pro se*. His then counsel was appointed as stand-by counsel for the trial. After a three-day jury trial, the jury found Baer guilty of both counts. App. 005a.

New counsel was appointed to represent Baer at sentencing and the district court imposed concurrent 168-month prison terms on the two counts. App. 011a.

3. The Opinion of the Third Circuit Court of Appeals

Mr. Baer filed an appeal to the Third Circuit Court of Appeals on July 23, 2020. In an unpublished opinion, the Third Circuit affirmed the District Court’s decision to deny Baer’s motion to suppress evidence obtained from his computers despite the fact that law enforcement took possession of these items and held them for fourteen months and three years respectively without offering any explanation for the delay. In reaching that determination, the Third Circuit concluded that the government’s lengthy, unexplained retention of his property did not run afoul of Baer’s Fourth

Amendment protections because Baer never requested their return. App. 006a It rejected Baer’s argument that this determination was squarely at odds with its previous pronouncements in *United States v. Stabile*, 633 F.3d 219 (3d Cir. 2011), which questioned a delay of a mere three months, without further comment, effectively affirming the district court’s pronouncing the delay “not unreasonable under the circumstances of this case”. App. 106a.

The Court further denied Baer’s request for an evidentiary hearing pursuant to *Franks*. It did so despite the fact that the affidavit submitted by Sergeant Robb in support of the search warrant admittedly contained deliberate outright falsehoods or, at very least, statements made with reckless disregard for the truth. Absent these false statements, the warrant would not have been adequate to support a finding of probable cause. Despite this fact, the Third Circuit agreed with the District Court’s determination that the myriad inaccuracies were “minor” and “inadvertent” and that the affidavit provided probable cause to search even if the intentional misstatements were eliminated. App. 008a.

Baer filed a subsequent application for a rehearing en banc. This motion was summarily denied on February 16, 2021. App. 018a.

REASONS FOR GRANTING THE PETITION

I. The Fourth Amendment dictates that evidence must be suppressed when law enforcement engages in a pattern of lengthy, inexplicable delay to obtain a warrant

In the present case, law enforcement engaged in a pattern of unexplained dilatory conduct which runs afoul of Baer's Fourth Amendment interests. After conducting a search and seizure in May of 2010, they waited fourteen months to file a search warrant application for the electronic devices. This delay was inexcusable.

In the decision below, the Third Circuit panel held that the search of the electronic devices did not require probable cause because they were conducted with the consent of the owners. The court erroneously held that Baer's initial consent to the search of his home permitted the government to conduct an unlimited search of his electronic devices. In so doing, the panel conflated Baer's general consent for a search of his home regarding the cause of his wife's untimely death with consent to search his personal computers and devices for the completely unrelated crime of possessing child pornography. An objectively reasonable person would not have understood this consent to be so broad and limitless. *See e.g., United States v. Richardson*, 583 F. Supp 2d 694, 718 (W.D. Pa. 2008); *see also United States v. Corey*, 172 F. 3d 1268, 1277 (10th Cir. 1999) (Baldock, J., concurring).

More importantly, law enforcement could not justify its 14-month delay in withholding Baer's electronic devices and failing to return them once their initial investigation had been completed. Robb (the officer in charge of the search) testified that after the search of Baer's home, he sought permission for a search warrant to

examine the computers and was denied by both the assistant prosecutor in charge as well as Robb's direct supervisor. Robb conceded that at this point, it was a "cold case". At that point, law enforcement had no legitimate possessory interest in the items seized and they should have been returned to Baer. R. 45: 35. Certainly, once Robb's request was denied, Baer had a greater possessory interest in those items than law enforcement did. Law enforcement no longer had a legitimate interest in retaining possessions of Baer's computers and they should have been returned to him.

Computers are essential to modern life. They contain a myriad of uniquely private and personal information. Indeed, they are the "digital equivalent" of one's home "capable of holding a universe of private information." *United States v. Mitchell*, 565 F. 3d 1347, 1351-52 (11th Cir. 2009). In the present case, law enforcement took possession of these items and held them for 14 months without providing any reasonable basis for such a delay.

The seminal case on delay in the Third Circuit is *United States v. Stabile*, 633 F. 3d 219 (3d Cir. 2011). In *Stabile*, this Court noted that a lawful seizure can be rendered unreasonable when law enforcement unreasonably delays in conducting its search. In analyzing the issue, a reviewing court must balance the intrusion upon the individual's Fourth Amendment interests against law enforcement's interests. *Id.* at 235. As forcefully noted by this Court "a seizure lawful at its inception can nevertheless violate the Fourth Amendment if its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures.'" *United States v. Jacobsen*, 466 U.S. 109, 125 (1984).

Here, the Government offered no explanation that would justify a 14-month delay. Robb enjoyed the full resources of his department as well as those of the Prosecutor's Office in seeking a warrant. R. 45:33-34. Yet after some initial follow up in the first week after the seizure, law enforcement did nothing to effectuate a search of the devices. *Id.* at 33-35.

The Third Circuit erroneously concluded that the government's retention of Baer's property was justified because Baer never sought its return. See *United States v. Stabile*, 633 F. 3d at 235-36 (citing *United States v. Johns*, 469 U.S. 478, 487 (1985)). This conclusion is not supported by logic and reason. At the time, Baer was represented by counsel, and he would not have been able to have any direct communications with law enforcement while under investigation by that department. At that point, all communications were handled by his then counsel Mr. Flynn. R. 41:25. Moreover, it would be difficult to seek the return of property when the police never gave him an actual receipt for the items seized. *Id.* at 78. The consent search was conditioned upon Baer receiving a receipt of anything that was removed. R. 41:43. Robb admitted that he never provided a receipt. *Id.* Robb did not suggest that the delay was caused by some extraordinary assignment or personal catastrophe. He was attending to his normal duties during this time. Compare *Stabile*, 633 F. 3d at 236 (where agent testified that three-month delay was caused by his re-assignment to a security detail for the President.).

While there is no "bright line" test for determining the reasonableness of delay, the fourteen month delay in this case was unreasonable and required suppression of

the evidence. The delay in this case was 4 to 5 times longer than that permitted in *Stabile*. The longer the delay, the greater the intrusion upon the individual's Fourth Amendment interests. Even after securing the warrant, Robb inexplicably waited 40 days to contact the NJRCFL to get the devices examined. To make that request, he simply had to fill out a single page form. Even after being told it might take another year to complete the forensic review, he made no effort to expedite that process. R. 41:36.

Similarly, law enforcement delayed three years to secure an examination of the Seagate Hard Drive. The Third Circuit justified the Government's three-year delay in seeking a search warrant for that device based upon Carly Jones' consent. App. 006a. The Court concluded, with no analysis, that Jones had "joint access" to the hard drive which gave her authority to consent to a search. *Id.* This conclusion also ignores the facts in this case.

While Jones had possession of the device, it was unquestionably Baer's hard drive. R. 108: 24. He still had an expectation of privacy in that device even after Jones "took" it. App. 193a (where Jones confirms that the item "belongs to Derrick" and that she "took" it). Indeed, Jones acknowledged that she took it and "hid it in my drawer". *Id.* Jones further admitted that she effectively prevented Baer from recovering it. App. 194a ("Derrick was not allowed to stay there at any point."). Jones' statement makes clear that she only had access to the hard drive when Baer was present and that the device unquestionably belonged to Baer. *Id.* The Third Circuit erred when it concluded that Jones had the ability to consent. Accordingly,

the evidence obtained from the Seagate Hard Drive should also have been suppressed.

The Third Circuit's decision in this case conflicts with the decision in *Stabile* and violates established interests safeguarded by the Fourth Amendment. The delays in this case go far beyond any delays that the Third Circuit has found to be reasonable. The *Stabile* court ultimately found the temporal delay of three months at issue in that case reasonable under the circumstances because the agent involved in obtaining the warrant had been temporarily re-assigned to protect the President during the intervening period. It nonetheless noted that "we are troubled by it" and that "[i]n the absence of the same circumstances present here, we might very well reach a different result". *United States v. Stabile*, 633 F.3d at 237.

The pattern of unexplained dilatory conduct by law enforcement in this case justifies the suppression of evidence and a reversal of the decision below denying petitioner's motion to suppress.

II. The Third Circuit's Decision Denying Baer's Request for a *Franks* Hearing Is Inconsistent with Fourth and Fourteenth Amendment Principles

Baer submits that he met his initial burden in order to obtain a *Franks* hearing. He established below that: (1) Robb's search warrant affidavit contained deliberate falsehoods and/or statements made with reckless disregard for the truth and (2) without these false statements, the affidavit did not support a finding of probable cause. *Franks v. Delaware*, 438 U.S. 154, 155-56. (1978).

The Third Circuit incorrectly concluded that the district court had not erred when it denied Baer’s request for a *Franks* hearing. The panel agreed with the district court that the many inaccuracies in Robb’s affidavit were “minor” “inadvertent” and “accurately conveyed the information.” App. 008a. Moreover, the Third Circuit concluded that probable cause existed to justify the search even if the many misrepresentations in the affidavit were excised. *Id.* In reaching this determination, the Third Circuit misapplied this Court’s ruling in *Franks*.

The lies and deliberate falsehoods in Robb’s search warrant affidavit were manifold. First and foremost, Robb inexplicably provided direct quotations of witnesses when no such quotes were actually made by those witnesses. Rather he was attempting to summarize their statements. R.41:93 (Q: “And is it fair to say that with regards to the use of quotation marks, you did not reflect the actual words someone said, but rather their sum and substance? A: That’s correct.”). Certainly, the court reviewing that affidavit was entitled to know that quotations were not accurate. Words matter. Direct quotes have an impact above and beyond a summary of a statement.

Even more egregiously, Robb completely misrepresented his training and experience. In his affidavit, he swore that he had been involved in several hundred arrests including arrests and investigations for child pornography. This statement was blatantly false. He admitted that he simply “cut and pasted” that information from affidavits of other search warrant applications. R. 72:17-20.

The Third Circuit did not even attempt to justify this serious misrepresentation in its decision. Robb had never previously sought a search warrant involving the forensic review of electronic devices. R. 41:126. A judge reviewing a search warrant application must rely heavily upon the training and experience of the officer. This is particularly true regarding searches of electronic devices that are highly technical and which contain a myriad of extremely private information. The officer's training and experience are the foundation of the search warrant application. A reviewing court cannot simply sweep away the affiant's blatant lies about his training and experience when that information is absolutely crucial to the decision to grant the warrant.

Robb's misrepresentations continued in his summary of Marcinkowski's statement. Marcinkowski's statement was critical to the search warrant application since it was the only piece of information that made any direct reference to Baer and child pornography. R. 41: 88-110 (where defense counsel established that virtually none of the items in Robb's affidavit directly referenced child pornography). The actual statement that she made to the police was qualified and equivocal. She said her sister told her that "several years ago" Baer had a "problem with kiddy porn" but that she provided no other details - - "I'm really not sure I kind of tried not to pay too much attention to the details with that..." App.153a. When Robb included this information in the affidavit, he deleted any of the equivocal language. This was a deliberate distortion of a stale, uncorroborated hearsay statement. Even after receiving this statement, Robb did nothing to pursue it or ask follow up questions. R.

41:93-94. Similarly, Robb omitted portions of Marcinkowski's statement regarding the shower incident. This was also an intentional misrepresentation designed to mislead the judge issuing the search warrant.

Robb omitted crucial information from his affidavit. He did not disclose that he had previously sought authorization to apply for a search warrant and been denied. A reviewing court should have been informed of that information. Moreover, he deliberately omitted the fact that during an extensive search of the home on May 31, 2010 no evidence of child pornography was discovered. R. 41:94-95.

Robb's misrepresentations and omissions tainted his affidavit in contravention of Baer's established Fourth Amendment rights. The fact that he blatantly falsified his training and experience undermined his entire presentation. He represented that he had extensive training and experience in computer crimes involving child pornography. Yet he admitted at the suppression hearing that the present case was his very first media-related child pornography investigation. R.72:17-20. He admitted that he had merely added this language because other officers told him to do so. This misrepresentation casts doubt upon the validity of the entire affidavit. Certainly, the judge reviewing the application should have been aware of such a significant falsehood. *See Wilson v. Russo*, 212 F.3d. 781,787 (3d Cir. 2000) (omissions are made with reckless disregard when officer withholds fact that "was the kind of thing a judge would wish to know.").

It is beyond dispute that without the deliberately false statements and omissions of fact, probable cause was lacking. The five factors identified by the

district court below did not establish probable cause absent the blatant misstatements contained in the warrant. The statement of Marcinkowski that Baer had a “problem with kiddy porn” was triple hearsay that related to information that was several years old. Her statement itself was fifteen months old at the time Robb completed his search warrant affidavit. Similarly, the statement regarding an alleged picture of Baer’s niece in the shower was also several years old.

Moreover, Robb did nothing to corroborate any of this incredibly stale information. Neither would be sufficient to establish probable cause for a search in 2011. And the labelling of devices “porn” or “Derrick’s eyes only” did not establish probable cause to believe that they contained evidence of child pornography. *See R. 41:101* (Robb admitting that nothing in wording established presence of child pornography). Finally, the statement regarding Baer having a washcloth is tenuous and completely unrelated to the crime of possessing child pornography. Once again, this represents a distortion of the child’s actual statement. At best, this might establish a suspicion of child molestation - - and Robb was aware when he prepared his affidavit that there was no evidence of this offense. *Id.* at 112.

It is abundantly clear that after excising the falsehoods and misstatements of Robb, probable cause was lacking. This Court has held that a bare suspicion of criminal activity is not sufficient to establish probable cause. *Brinegar v. United States*, 338 U.S. 160, 175 (1949). To demonstrate probable cause, the affidavit must contain facts establishing probable cause not merely “the unsupported assertion or belief of the officer.” *Spinelli v. United States*, 393 U.S. 410, 423-24 (1969) (White, J.,

concurring). Upon close examination, the affidavit of Robb does not pass constitutional muster.

In sum, Baer met his burden of establishing that (1) Robb's affidavit was rife with deliberate falsehood and statements made with reckless disregard for the truth, and (2) without these false statements, the affidavit did not support a finding of probable cause. *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978).

The questions presented by this petition are important ones and implicate established Fourth and Fourteenth Amendment rights. As noted by this Court in *Franks*, that decision has “limited scope” with regards to “when exclusion of the seized evidence is mandated” and “when a hearing on allegations of misstatements must be accorded”. *Id.* at 167. The issues involved in this case were fully briefed at both the district court and appellate levels. Accordingly, this case presents an ideal vehicle to resolve these important issues.

CONCLUSION

For the foregoing reasons, Petitioner Derrick Baer respectfully requests that the Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

/s/ Timothy M. Donohue

Timothy M. Donohue,
Attorney for Petitioner, Derrick Baer

Dated: May 14, 2021