No. 21-5228

IN THE SUPREME COURT OF THE UNITED STATES

DWAYNE SHECKLES, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the lower courts erred in determining that probable cause supported the warrant that officers obtained to search petitioner's residence.

ADDITONAL RELATED PROCEEEDINGS

United States District Court (W.D. Ky.):

United States v. Sheckles, No. 17-cr-104 (Jan. 9, 2020)

United States Court of Appeals (6th Cir.):

United States v. Sheckles, No. 20-5096 (Apr. 30, 2021)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1, at 1-22) is reported at 996 F.3d 330. The opinion and order of the district court (Pet. App. 2, at 1-11) is not published in the Federal Supplement but is available at 2019 WL 325637.

JURISDICTION

The judgment of the court of appeals was entered on April 30, 2021. The petition for a writ of certiorari was filed on July 22, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Western District of Kentucky, petitioner was convicted of conspiring to traffic in heroin and methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) (2012) and 21 U.S.C. 846; possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2012), and 18 U.S.C. 2; possessing methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b), and 18 U.S.C. 2; leasing, renting, using, and maintaining a place for manufacturing or distributing controlled substances, in violation of 21 U.S.C. 856(a)(1); and possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2). Judgment 2; Pet. App. 1, at 5. The district court sentenced petitioner to 108 months of imprisonment to be followed by five years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 1, at 1-22.

1. During the 2000s, the Drug Enforcement Administration (DEA) investigated a major cross-border drug trafficking operation by Louisville drug dealer Byron Mayes and his suppliers Julio and Alfredo Rivas-Lopez. Pet. App. 1, at 2. The investigation led to charges against all three men, who were convicted of drug offenses and sentenced to prison. Ibid. By 2016, however, the three men were out of prison. Ibid. At that time, the DEA learned that the

operator of a Louisville drug stash house was receiving drugs from Julio Rivas-Lopez in Mexico for resale to Mayes. Ibid. Officers saw a person they subsequently identified as petitioner visit the stash house shortly after it received a drug shipment from Julio Rivas-Lopez. Ibid. Later that month, officers executed a warrant at the stash house and seized a kilogram of heroin and about $200,000. Ibid.

In 2017, officers learned that Alfredo Rivas-Lopez had taken over the drug business after Julio was murdered and that he planned to send ten kilograms of cocaine to his "Louisville distributor." Pet. App. 1, at 3. Officers obtained a warrant for the location data of the distributor's phone. Ibid. On July 7, the phone pinged at the Terrace Creek Apartments. Ibid. Officers saw an SUV rented by petitioner at that location and confirmed that he had an address there. Ibid.

Three days later, officers learned that Alfredo Rivas-Lopez's deal with the distributor had fallen through because the distributor "had invested in other drugs." Pet. App. 1, at 3. On July 11, the officers pinged the phone again, which led them to the Crescent Centre Apartments. Ibid. The officers saw petitioner's rented SUV parked there. Ibid. The officers also obtained substantial evidence that drug dealing was occurring from a particular Crescent Centre apartment. Ibid.

The officers sought and received search warrants for the Terrace Creek and Crescent Centre apartments from a state court. Pet. App. 1, at 3. As to the Terrace Creek apartment, the affidavit described the long-running investigation of the Rivas-Lopez brothers' drug trafficking. D. Ct. Doc. 33-4, at 4-5 (Jan. 16, 2018) (Affidavit). Next, it described the large-scale drug operations at the Louisville stash house and petitioner's connection to those operations as a "known kilogram narcotics trafficker." Affidavit 4-5. The affidavit explained that Alfredo Rivas-Lopez negotiated for the sale of ten kilograms of cocaine with a Louisville distributor, and that GPS-tracking of the distributor's phone traced the phone to the Terrace Creek apartment complex, where petitioner leased a specific unit. Affidavit 4. It also described substantial evidence of drug dealing occurring from the Crescent Centre apartment and further evidence that petitioner was one of the drug dealers. Affidavit 5. And it explained that petitioner was receiving "large quantities of drugs" from Alfredo Rivas-Lopez and that he was likely to be residing at the Terrace Creek apartment and using the Crescent Centre apartment to store and sell drugs. Ibid.

The state judge issued warrants for both apartments. Pet. App. 3, at 5. The warrant for the Terrace Creek apartment allowed officers to search for and seize, inter alia, "cellular phone(s) * * * which may contain the identities of suppliers or buyers."

Affidavit 1. The officers executed the warrant for the Crescent Centre apartment and seized 1.5 kilograms of heroin, 144 grams of methamphetamine, two handguns and a rifle. Pet. App. 1, at 4. The officers then executed the warrant for the Terrace Creek apartment and seized the pinged phone, a firearm magazine, documents that connected petitioner to the Crescent Centre apartment, and paperwork for a storage unit at a self-storage facility. Ibid. Petitioner's girlfriend consented to a search of the storage unit, where the officers seized a substantial amount of money and other items. Ibid.

2. A federal grand jury indicted petitioner for conspiring to traffic in heroin and methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) (2012) and 21 U.S.C. 846; possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2012), and 18 U.S.C. 2; possessing methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2012), and 18 U.S.C. 2; leasing, renting, using, and maintaining a place for manufacturing or distributing controlled substances, in violation of 21 U.S.C. 856(a)(1) and (b) and 18 U.S.C. 2; possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2); and possessing a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. 924(c)(1)(A). See Third Superseding Indictment 1-4; Judgment 2. Petitioner moved to suppress evidence

against him, arguing among other things that the warrant authorizing the Terrace Creek apartment search was not based on probable cause. See Pet. App. 1, at 4. After an evidentiary hearing, a magistrate judge recommended that the district court deny petitioner's motion. Ibid. The district court did so. Ibid.

Petitioner then entered a conditional plea agreement, reserving the right to appeal the denial of the suppression motion. Pet. App. 1, at 5. The government agreed to dismiss the Section 924(c) count. See Judgment 1; Pet. App. 1, at 5. The district court sentenced petitioner to 108 months of imprisonment to be followed by five years of supervised release. Judgment 3-4.

3. The court of appeals affirmed, rejecting a number of Fourth Amendment claims, including a renewed challenge to the apartment warrants. Pet. App. 1, at 1-22.

The court of appeals observed that under the "well-established" framework governing claims that a warrant lacked probable cause, probable cause "is not a high bar" and requires a "common-sense," "totality of the circumstances" analysis. Pet. App. 1, at 5 (citation omitted). The court also noted that a reviewing court must accord "great deference" to the state judge's initial probable-cause determination in issuing the warrant, and must accordingly limit its review to whether the judge had a "substantial basis" for that determination. Id. at 6 (citations omitted). And it declined to overturn the state judge's

determination that, on the facts here, the Terrace Creek warrant was supported by probable cause. Id. at 9-12.

The court of appeals acknowledged circuit precedent "dismissing the notion that a 'defendant's status as a drug dealer, standing alone, gives rise to a fair probability that drugs will be found in his home.'" Pet. App. 1, at 11 (quoting United States v. Frazier, 423 F.3d 526, 533 (6th Cir. 2005)). It observed, however that its "fact-specific" case law had also recognized that drug activities "involving large amounts of drugs" and that are "continual and ongoing" in nature could support a warrant for the suspected trafficker's residence. Ibid. (citation omitted). And the court found that, irrespective of any ambiguity in the precise amount of drug activity that would be necessary, the affidavit in this case supported probable cause "[f]or two reasons." Id. at 12. First, the court observed that the affidavit "described [petitioner's] connection to a large, ongoing drug trafficking operation," including evidence that petitioner "had been negotiating" with a well-known drug trafficker "to buy 10 kilograms of cocaine," and contained detailed evidence "corroborating the ongoing nature of [petitioner's] drug distribution." Ibid. (citation and internal quotation marks omitted). Second, the affidavit "identified a specific connection" between petitioner's phone, which had been used to negotiate a major drug deal, and the Terrace Creek apartment, because the phone had "pinged" at the

residence. Ibid. The court accordingly found that "[t]he totality of the circumstances * * * permitted the state judge to find probable cause to search [the Terrace Creek] apartment." Ibid.

ARGUMENT

Petitioner renews his claim (Pet. 8-12) that the affidavit submitted in support of the warrant to search the Terrace Creek apartment was insufficient to establish probable cause. The lower courts' factbound rejection of that claim is correct and does not conflict with any decision of another court of appeals. In addition, this case would be an unsuitable vehicle for reviewing the question presented because the good-faith exception to the exclusionary rule provides an independent basis for sustaining the lower courts' decisions in this case. Further review is unwarranted.

1. The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. Probable cause "is 'a fluid concept' that is 'not readily, or even usefully, reduced to a neat set of legal rules.'" District of Columbia v. Wesby, 138 S. Ct. 577, 586 (2018) (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)). Instead, "probable cause 'deals with probabilities and depends on the totality of the circumstances,'" ibid. (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003)), including "the factual and practical considerations of everyday life," Pringle, 540 U.S. at 370 (citation omitted). Accordingly,

a probable-cause determination "does not deal with hard certainties," and evidence "must be seen and weighed * * * as understood by those versed in the field of law enforcement," who are entitled to "formulate[] certain common-sense conclusions about human behavior." Gates, 462 U.S. at 231-232 (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).

The probable-cause standard "is not a high bar." Wesby, 138 S. Ct. at 586 (quoting Kaley v. United States, 571 U.S. 320, 338 (2014)). Instead, probable cause "requires only the kind of fair probability on which reasonable and prudent people, not legal technicians, act," Kaley, 571 U.S. at 338 (brackets, citations, and internal quotation marks omitted). And it "does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands." Gerstein v. Pugh, 420 U.S. 103, 121 (1975); see Gates, 462 U.S. at 235.

In the context of a search warrant, the probable-cause standard requires the issuing judge to conduct a "totality-of-the-circumstances analysis" to determine whether the affidavit in support of the warrant application establishes a "fair probability that contraband or evidence of a crime will be found in a particular place." Gates, 462 U.S. at 238. In making that determination, the issuing judge may draw "reasonable inferences" from the evidence described in the affidavit. Id. at 240. And a reviewing court will uphold the issuing judge's determination so

long as the judge had a "substantial basis" for finding probable cause. Id. at 241-242 (citation omitted).

2. The lower courts correctly applied those "well-established" principles to determine that the state judge had a substantial basis for finding probable cause for a warrant to search the Terrace Creek apartment. Pet. App. 1, at 5; see id. at 9-12. The affidavit "described [petitioner's] connection to a large, ongoing drug trafficking operation," including evidence that petitioner "had been negotiating" with a well-known drug trafficker "to buy 10 kilograms of cocaine" and that he did not complete that deal "because he had invested in other drugs." Id. at 12 (citation and internal quotation marks omitted). The affidavit also detailed evidence "corroborating the ongoing nature of" petitioner's drug distribution activities. Ibid. And the affidavit "identified a specific connection" between petitioner's phone, which had been used to negotiate the drug deal, and petitioner's residence because the phone had "pinged" at the residence days before the search. Ibid. As the court of appeals recognized, "[t]he totality of the circumstances" "permitted the state judge to find probable cause to search th[e] apartment." Ibid.

Petitioner's contrary arguments lack merit. Petitioner argues (Pet. 11) that the court of appeals mistakenly relied on a rule that "a suspected drug trafficker's status as a drug

trafficker, alone" necessarily allows "police entry into the home." But the court emphasized that, under its case law, a "'defendant's status as a drug dealer, standing alone'" does not suffice and that the required analysis is "fact[ ]specific." Pet. App. 1, at 11 (citation omitted). Accordingly, rather than relying on any per se rule to resolve this case, the court instead based its determination on the detailed evidence in the affidavit both of petitioner's connection to a large, ongoing drug operation and on the "specific connection" between the residence and a phone that had been used in the drug trafficking. Id. at 12. And while petitioner asserts that there must be "reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought," Pet. 12 (quoting Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978)), he offers no response to the specific determination that the affidavit established a "fair probability" that the phone used to negotiate the sale of ten kilograms of cocaine would be found at petitioner's residence, Pet. App. 1, at 12.

3. Petitioner errs in asserting (Pet. 11-12) that the decision below conflicts with the decisions of other courts of appeals. Three of the decisions that petitioner cites merely state a principle -- which the court of appeals here likewise stated, see Pet. App. 1, at 11 -- that no categorical rule automatically authorizes a residence search based solely on evidence that a

defendant has dealt drugs, and then proceed to find probable cause on the specific facts of each case. See United States v. Abdul-Ganiu, 480 Fed. Appx. 128, 130-131 (3d Cir. 2012); United States v. Biglow, 562 F.3d 1272, 1279-1280, 1283 (10th Cir. 2009); United States v. Wiley, 475 F.3d 908, 916-917 (7th Cir.), cert. denied, 550 U.S. 977, and 551 U.S. 1127 (2007).

Petitioner cites two published decisions that found a warrant lacking on the particular facts of those cases, but neither supports his assertion of a conflict. In United States v. Roman, 942 F.3d 43 (2019), the First Circuit reiterated the "fact-specific" nature of the inquiry, and concluded that a warrant was not supported by probable cause because it neither contained any specific allegations that evidence of the offense would be found at the residence nor established that the defendant was a successful drug trafficker with ongoing involvement in drug operations. Id. at 51, 53 (citation omitted). Similarly, in United States v. Lalor, 996 F.2d 1578, 1582, cert. denied, 510 U.S. 983 (1993), the Fourth Circuit concluded that a warrant was not supported by probable cause where it contained no information at all linking the criminal activity to the defendant's residence, id. at 1582-1583, in a case where the affidavit did not indicate that the defendant was a major drug trafficker dealing in large quantities of drugs, see id. at 1579-1580. Petitioner accordingly fails to show that the courts that decided those cases would have

reached a different result from the decision below on the facts of this case.[1]

Petitioner also contends (Pet. 9-10) that the Sixth Circuit has taken inconsistent positions on the issue. But in the decision below, the court of appeals specifically addressed its prior decisions, explaining that differences between them do not show a "[c]onflict," but instead that each turned on the specific facts. Pet. App. 1, at 11-12. In any event, petitioner's assertion of intracircuit disagreement would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

3. This case would, moreover, be an unsuitable vehicle for considering the question presented. That question is not outcome-determinative here, because the good-faith exception to the exclusionary rule applies. Although the court of appeals did not need to address the good-faith exception, the government raised it before the court, see Gov't C.A. Br. 38, and it provides an independent basis for affirmance. See Dandridge v. Williams, 397

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[1] Petitioner also cites the Fifth Circuit's unpublished decision in United States v. Brown, 567 Fed. Appx. 272 (2014), which concluded that probable cause was lacking where the warrant was supported by a "'bare bones' affidavit" that "misled the magistrate" and did not contain evidence that the defendant was a large-quantity drug trafficker or identify any specific link between drug trafficking and the residence. Id. at 275, 281-282 (citation omitted). That factbound, nonprecedential decision does not conflict with the decision below.

U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment, even if not considered below).

As this Court has explained, the exclusionary rule is a "'judicially created remedy'" "designed to deter police misconduct rather than to punish the errors of judges and magistrates." United States v. Leon, 468 U.S. 897, 906, 916 (1984) (citation omitted). "As with any remedial device, application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced." Illinois v. Krull, 480 U.S. 340, 347 (1987). And because suppression "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity," the exclusionary rule does not apply "where [an] officer's conduct is objectively reasonable." Leon, 468 U.S. at 919. Instead, to justify suppression, "police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system" for the exclusion of probative evidence. Herring v. United States, 555 U.S. 135, 144 (2009).

The Court has accordingly long held that evidence should not be suppressed if it was obtained "in objectively reasonable reliance" on a search warrant, even if that warrant is subsequently deemed invalid. Leon, 468 U.S. at 922. Instead, suppression of evidence seized pursuant to a warrant is not justified unless (1)

the issuing magistrate was misled by affidavit information that the affiant either "knew was false" or offered with "reckless disregard of the truth"; (2) "the issuing magistrate wholly abandoned his judicial role"; (3) the supporting affidavit was "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'"; or (4) the warrant was "so facially deficient -- i.e., in failing to particularize the place to be searched or the things to be seized -- that the executing officers could not reasonably presume it to be valid." Id. at 923 (citation omitted). As the Court has emphasized, "evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." Id. at 919 (citation omitted).

The good-faith exception would therefore preclude any application of the exclusionary rule to the evidence recovered pursuant to the warrant challenged here. Petitioner does not challenge the specificity of the warrant's terms or contend that the state judge either was misled by the affidavit or wholly abandoned the judicial role. And, at a minimum, the affidavit was not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Leon, 468 U.S. at 923 (citation omitted). Indeed, in addition to the issuing judge,

each of the five judges who addressed probable cause during the federal proceedings recognized that the affidavit was sufficient to establish probable cause and that the resulting search was constitutional. Even if this Court ultimately disagreed with that judgment, the warrant was not so deficient that an officer's reliance on it was "entirely unreasonable," ibid. (citation omitted), so as to support application of the exclusionary rule. See Lalor, 996 F.2d at 1582-1584 (applying the good-faith exception where an affidavit was "devoid of any basis from which the magistrate could infer that evidence of drug activity would be found at" the defendant's residence).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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