No. 21-5902

IN THE SUPREME COURT OF THE UNITED STATES

ALHAKKA CAMPBELL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court's denial -- on the ground that officers acted in objective good-faith reliance on a warrant -- of petitioner's motion to suppress evidence obtained from his cellphone.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Va.):

United States v. Campbell, No. 18-cr-124 (Apr. 22, 2019)

Supreme Court of the United States:

John Campbell v. United States, No. 20-8228 (Oct. 4, 2021) (denying certiorari)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is not published in the Federal Reporter but is reprinted at 850 Fed. Appx. 178.

JURISDICTION

The judgment of the court of appeals was entered on April 2, 2021. A petition for rehearing was denied on May 4, 2021 (Pet. App. 1b-2b).* By orders dated March 19, 2020, and July 19, 2021, this Court extended the time within which to file any petition for

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* The second appendix to the petition for a writ of certiorari is not paginated. This brief treats that appendix as if it were paginated beginning at 1b.

a writ of certiorari due on or after March 19, 2020, to 150 days from the date of the lower-court judgment, order denying discretionary review, or order denying a timely petition for rehearing, as long as that judgment or order was issued before July 19, 2021. The petition for a writ of certiorari was filed on October 1, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was convicted of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and 2; and using, carrying, and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A) and 2. Judgment 1. He was sentenced to 135 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-11a.

1. a. On November 17, 2017, petitioner and his cousin robbed a bank in Henrico, Virginia. Presentence Investigation Report (PSR) ¶ 11. During the robbery, petitioner wore black work-style boots, a black belt with two rows of studs, a "blue/grey" hooded sweatshirt, and grey gloves. PSR ¶ 12; C.A. App. 1085, 1173. While his cousin used a gun to threaten employees in the bank lobby, petitioner jumped over the teller's counter, leaving a boot print on the counter, and grabbed cash. PSR ¶ 11;

C.A. App. 1155-1156. Petitioner stuffed bundles of cash, which (presumably unbeknownst to him) contained two GPS trackers, into a black bag with pink handles and multi-colored peace signs. PSR ¶ 13; C.A. App. 554, 983. The two men fled in a dark Ford F-150 truck. PSR ¶ 11.

Signals from the GPS trackers showed that the devices stopped for a period of time on Wilmer Road in Richmond, Virginia, where police later recovered a black Ford F-150 truck with no license plates. PSR ¶ 13. The signals from the GPS trackers indicated that the devices continued to travel from that location to a residence on Willis Lane, Richmond, Virginia. Ibid. Police surveilling the Willis Lane residence saw petitioner exit, look up and down the street, return inside, re-emerge with a small bag, and drive off. PSR ¶ 14. Officers stopped and arrested petitioner, who indicated that his cousin remained inside the residence. Ibid.; Pet. App. 13a. Petitioner gave officers permission to use his cellphone to call his cousin, informing them that his cousin "should be one of his recent contacts because he had just recently been calling and texting with him." Pet. App. 13a.

Officers obtained warrants to search the Willis Lane residence and the Ford F-150 truck. C.A. App. 77-88. From those two locations, officers recovered the grey gloves, "blue/grey" sweatshirt, and black studded belt that petitioner wore during the bank robbery, as well as clothing matching what his cousin wore.

PSR ¶ 15; C.A. App. 905, 935-937, 1085, 1385-1386. Behind the residence, officers found the black bag with multi-colored peace signs that petitioner had used to hold the cash. C.A. App. 920-921. In the bag, officers found a gun that appeared to match the one that petitioner's cousin used to threaten bank employees, as depicted on the bank's surveillance video footage. Id. at 1171. A witness identified the gun as the same one he sold to petitioner's cousin. Id. at 965. Additionally, a forensic examiner matched the boot print from the teller's counter with petitioner's boots, id. at 1155, and recovered petitioner's DNA on the grey gloves, id. at 1084-1094.

b. In August 2018, Special Agent Michael Willis of the FBI applied for a warrant to search petitioner's cellphone. Pet. App. 12a-17a. In the affidavit, Special Agent Willis described the events surrounding the bank robbery. Id. at 13a. Special Agent Willis also stated that "[i]n [his] training and experience, [he] know[s] that when people act in concert with one another to commit a crime they frequently utilize electronic communications, including, but not limited to, telephones, email, Facebook Messenger, Google Hangouts, and Google Chat to communicate with each other through voice calls, text messages, and emails." Id. at 13a-14a. Special Agent Willis explained that "[t]hese electronic communications allow them to plan, coordinate, execute, and flee the scene of crimes." Id. at 14a. He further explained that "people often take pictures utilizing their electronic

devices that may implicate them in a crime, i.e., possessing a firearm, posing with large quantities of stolen items, or large amounts of cash." Ibid.

A state magistrate issued a warrant authorizing officers to search petitioner's "Samsung Galaxy Cellular Device" for "[a]ll electronic data on the cellular device[] to include but not limited to stored phone book (Contacts), call logs, SMS messages, MMS messages, location information, associated account information, cloud account information, photographs, videos, list of third party applications, email accounts, and web search history." Pet. App. 16a. The warrant stated that it was being "issued in relation to" a "violation of Virginia State Code Sections 18.2-58 to wit: Robbery, violation of Virginia State Code Sections 18.2-22/18.2-58 to wit: Conspiracy to Commit Robbery and Virginia State Code Sections 18.2-53.1 to wit: Use of a Firearm in a Felony." Ibid. The warrant further stated that based upon the magistrate's finding of probable cause, a search "should be made, based on the statements in the attached affidavit sworn to by Michael Willis." Ibid. The magistrate signed and dated not just the warrant but also the attached affidavit, and he initialed the affidavit below the recitation of material facts. Id. at 14a-16a.

2. In 2018, a federal grand jury returned an indictment charging petitioner with armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and 2; and using, carrying, and brandishing

a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), and 2. Indictment 1-2.

Petitioner moved to suppress any evidence obtained from his cellphone on the theory that the search warrant was a general warrant because it authorized officers to search for "[a]ll electronic data on the cellular device[]." C.A. App. 57 (emphasis omitted); see id. at 56-58. The government opposed the motion, arguing that the warrant was permissible and observing that, in any event, the good-faith exception to the exclusionary rule applied. Id. at 145-148; see United States v. Leon, 468 U.S. 897, 920 (1984) (explaining that suppression generally is unwarranted "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope"). After briefing and argument, the district court denied the suppression motion, stating that "a reasonably trained police officer, one that is skilled in the execution of search warrants, could rely upon the magistrate's decision that there is probable cause, and therefore I think the good faith exception applies." C.A. App. 239.

Petitioner proceeded to a jury trial. In addition to evidence establishing the facts set forth above, see pp. 2-4, supra, the government introduced evidence obtained from petitioner's cellphone, including web and search history related to short-term loans, banks, and robberies, see C.A. App. 1185-1186, 1222-1227, 1236-1240; text messages with his codefendant, see id. at 1216,

1227-1229; and call logs on the day before and day of the robbery that showed calls to his wife and his codefendant, see id. at 1193-1194, 1216, 1230-1234. The jury found petitioner guilty on both counts. Id. at 1601-1602; Judgment 1. The district court sentenced petitioner to 135 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3.

3. The court of appeals affirmed in an unpublished per curiam disposition. Pet. App. 1a-11a. Addressing petitioner's challenge to the suppression ruling, the court explained that a "warrant is sufficiently particularized if it 'describes the items to be seized with enough specificity that the executing officer is able to distinguish between those items which are to be seized and those that are not,' and 'constrains the discretion of the executing officers and prevents a general search.'" Id. at 6a (brackets and citation omitted). The court then stated that "[a]fter reviewing the record and relevant authorities on this point, we conclude that the district court did not err by refusing to suppress the evidence obtained from the search of [petitioner's] phone." Id. at 6a-7a.

ARGUMENT

Petitioner renews his contention (Pet. 5-16) that the district court erroneously denied his motion to suppress evidence obtained from his cellphone pursuant to a warrant. The court of appeals correctly rejected that contention, and its factbound disposition does not conflict with any decision of this Court,

another court of appeals, or a state court of last resort. Moreover, this would be a poor vehicle in which to address the question presented because the government introduced overwhelming evidence of petitioner's guilt even without the evidence from the cellphone, making any potential error harmless. Further review is unwarranted.

1. The court of appeals correctly determined that the district court did not err in denying petitioner's motion to suppress the evidence from his cellphone.

a. The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. The probable-cause requirement ensures "a careful prior determination of necessity" for a search or seizure. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). The particularity requirement, in turn, "limit[s] the authorization to search to the specific areas and things for which there is probable cause to search." Maryland v. Garrison, 480 U.S. 79, 84 (1987).

This Court's decision in United States v. Leon, 468 U.S. 897 (1984), 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 held invalid. Id. at 922. Under Leon, 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) in "the circumstances of the particular case," 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 cannot reasonably presume it to be valid." Id. at 923 (citation omitted). "[E]vidence 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).

b. The court of appeals correctly applied those principles in determining that suppression was unwarranted here. Petitioner does not dispute that the warrant was sufficiently particularized as to "the place to be searched," U.S. Const. Amend. IV -- namely, his cellphone. See Pet. App. 16a (authorizing a "search [of] the following place": "A Samsung Galaxy Cellular Device, Package Number [redacted], currently in the custody of the Henrico County Police"); cf. C.A. App. 231-232. Instead, petitioner contends that the warrant was not sufficiently particularized as to the "things to be seized," U.S. Const. Amend. IV, on the theory that the warrant permitted a search "for 'all electronic data' on

[petitioner's] phone without requiring any restrictions on category of information, timeframe of the information, or nexus to the bank robbery under investigation." Pet. 4; see Pet. 12-15.

But the warrant expressly stated that it was being "issued in relation to" three specifically enumerated Virginia state offenses that were identified by their statutory section numbers. Pet. App. 16a. See Andresen v. Maryland, 427 U.S. 463, 479-481 (1976) (upholding a warrant authorizing a search for "'other fruits, instrumentalities and evidence of crime at this time unknown'" because "[w]e think it clear from context that the term 'crime' in the warrants refers only to the crime of false pretenses" that was mentioned elsewhere in the warrant) (brackets and citation omitted). Particularly in the context of the separately signed affidavit attached to the warrant -- which explained how offenders who "act in concert with one another to commit a crime" (such as petitioner and his cousin) "frequently utilize electronic communications" such as "voice calls," "text messages," "emails," and "pictures" in furtherance of the crime, Pet. App. 13a-14a -- and the corresponding list of examples of data, id. at 16a, the warrant would reasonably be interpreted as limited to data with potential relevance to the listed crimes.

Courts have consistently recognized that a warrant satisfies the Fourth Amendment's particularity requirement when it seeks evidence or information related to the commission of specifically identified crimes. See, e.g., United States v. Christie, 717 F.3d

1156, 1165 (10th Cir. 2013) (Gorsuch, J.) (explaining that warrant applications "may pass the particularity test if they limit their scope either 'to evidence of specific federal crimes or to specific types of material'") (brackets and citation omitted); see also, e.g., United States v. Bishop, 910 F.3d 335, 337 (7th Cir. 2018) ("It is enough * * * if the warrant cabins the things being looked for by stating what crime is under investigation."), cert. denied, 139 S. Ct. 1590 (2019); United States v. Castro, 881 F.3d 961, 965 (6th Cir. 2018) ("A warrant that empowers police to search for something satisfies the particularity requirement if its text constrains the search to evidence of a specific crime."). The warrant's specific reference to the three Virginia crimes would thus appear to be a sufficient "nexus to the bank robbery under investigation," Pet. 4, to satisfy even petitioner's proposed particularity standard.

At a minimum, as the district court determined, the good-faith exception to the exclusionary rule applies. See C.A. App. 239. This Court has found the good-faith exception "particularly" apt "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope." Leon, 468 U.S. at 920. Here, reliance on the warrant and attached affidavit falls within the good-faith exception because it was "objectively reasonable," id. at 922, given the warrant's express inclusion of a list of examples of particular data types to be searched and the specific state offenses being investigated.

And although the good-faith exception was the sole basis for the district court's denial of petitioner's suppression motion -- a denial that the court of appeals affirmed without providing an alternative rationale, Pet. App. 7a -- petitioner has not directly addressed the good-faith exception in the petition for a writ of certiorari.

Petitioner's reliance (Pet. 12-13) on Groh v. Ramirez, 540 U.S. 551 (2004), is misplaced. Groh involved a warrant form with a "glaring deficiency": "[i]n the portion of the form that called for a description of the 'person or property' to be seized, [the agent] typed a description of [the] two-story blue house [to be searched] rather than the alleged stockpile of firearms" to be seized. Id. at 554, 564. And although the warrant application and affidavit included the list of things to be seized with particularity, the warrant "did not incorporate by reference the itemized list contained in the application," id. at 554-555, or otherwise "describe the items to be seized at all," id. at 558. Here, in contrast, the warrant itself contains examples of the types of items to be seized, i.e., "stored phone book (Contacts), call logs, SMS messages, MMS messages," etc.; a list of specific Virginia crimes and statutory sections "in relation to" which the warrant "is issued"; and an express incorporation by reference of the "attached affidavit" and the "statements" contained in it -- which were themselves signed and initialed, respectively, by the

magistrate who issued the warrant. Pet. App. 16a; see id. at 14a-15a.

2. The court of appeals' nonprecedential and factbound disposition does not implicate any conflict with the decisions of other court of appeals or state courts of last resort that warrants this Court's review.

Contrary to petitioner's contention (Pet. 7-8), the decision below does not conflict with the Tenth Circuit's decision in United States v. Russian, 848 F.3d 1239 (2017), and the Third Circuit's decision in United States v. Stabile, 633 F.3d 219, cert. denied, 565 U.S. 942 (2011). Like the decision below, Russian affirmed the denial of a suppression motion based on the good-faith exception. 848 F.3d at 1246-1248. And Stabile rejected many challenges to the denial of a suppression motion; in the portion of its opinion that petitioner cites (Pet. 7), the court found that the officer did not exceed the scope of a warrant authorizing a search for evidence of financial crimes when he opened a video that contained child pornography. 633 F.3d at 237-239. Although the court observed that a warrant to search for evidence of a financial crime does not "grant[] the Government a carte blanche to search every file on the hard drive," id. at 237, it recognized that the officer's "decision to highlight and view the contents" of a folder containing child pornography "objectively reasonable because criminals can easily alter file names and file extensions to conceal contraband," id. at 239. Particularly given that both

cases affirmed the denial of suppression motions, Russian and Stabile provide no sound basis to conclude that the Tenth and Third Circuits would have resolved petitioner's case differently.

Petitioner also errs in asserting (Pet. 8-10) a conflict between the unpublished disposition below and any decision of a state court of last resort that would warrant this Court's review. Consistent with the decision below, State v. Henderson, 854 N.W.2d 616 (Neb. 2014), cert. denied, 576 U.S. 1025 (2015), applied the good-faith exception to an "all data" warrant. Id. at 632-636. Also consistent with the decision below, Commonwealth v. Holley, 87 N.E.3d 77 (Mass. 2017), determined that the trial judge had not erred in declining to suppress evidence seized pursuant to a warrant for "all stored contents of electronic or wire communications" and "stored files" in the defendant's cellphone records. Id. at 93. And the "trio" of Delaware high-court opinions on which petitioner relies (Pet. 9) are inapposite because they involved claims arising under the Delaware Constitution, and "the 'good faith' exception to the exclusionary rule d[oes] not apply in Delaware." Wheeler v. State, 135 A.3d 282, 298 n.71 (Del. 2016); see Taylor v. State, 260 A.3d 602, 614-615 (Del. 2021) (relying in part on Wheeler); Buckham v. State, 185 A.3d 1, 19-20 (Del. 2018) (same).

Nor does the disposition below conflict with the factbound decisions in Burns v. United States, 235 A.3d 758 (D.C. 2020), and State v. Castagnola, 46 N.E.3d 638 (Ohio 2015). Burns declined to

apply the good-faith exception in part because "[i]n lieu of facts," the detective "simply stated it was his 'belief' there was probable cause that evidence related to the homicide would be found on the phones," rendering his affidavits "classic 'bare bones' statements" to which the good-faith exception does not apply. 235 A.3d at 774; see id. at 779 (observing that the detective "prepared the warrants using the boilerplate language of a template and made no effort to tailor their scope to the facts of the case"). And Castagnola declined to apply the good-faith exception to the search of a home desktop computer (rather than a cellphone) because "the search-warrant affidavit was not based on evidentiary fact," but instead "on layered inferences," as exemplified by the detective's admission that when he swore the affidavit, he had simply "assumed" that because the defendant had "sen[t] numerous things via text which implicated himself in [a vandalism] crime," "there [are] probably other items in the house that would be of evidentiary value." 46 N.E.3d at 661 (citation and emphasis omitted). The affidavit here (Pet. App. 12a-14a) contains no defects of the sort evident in the bare-bones affidavits in Burns and Castagnola.

Finally, petitioner errs in asserting (Pet. 6-7) that the government's position in this case conflicts with the government's position in United States v. Morton, No. 19-10842, which is currently pending before the en banc Fifth Circuit. See 996 F.3d 754, 755 (2021) (per curiam) (granting rehearing en banc). Morton involves the question whether it is sufficient for the government

to specify the cellphone as a whole as the "place to be searched," or whether officers must separately establish probable cause to search "each category of content" on the phone as a separate "place." United States v. Morton, 984 F.3d 421, 426-427 (5th Cir.) (panel decision), vacated, 996 F.3d 754 (2021) (per curiam). Here, in contrast, petitioner appeared to agree below (see C.A. App. 231-232) that a cellphone, standing alone, is sufficiently particularized as a "place to be searched," U.S. Const. Amend. IV, and in this Court he contends (Pet. 4, 12-15) only that the warrant did not specify the "things to be seized," U.S. Const. Amend. IV, with sufficient particularity. And the government did not concede the invalidity of relying in good faith on a warrant like the one in this case.

3. In any event, this case would be a poor vehicle in which to address the question presented. Any error in the admission of evidence from petitioner's cellphone was harmless because other evidence at trial, the admission of which petitioner does not challenge, conclusively established petitioner's guilt beyond a reasonable doubt. See Chambers v. Maroney, 399 U.S. 42, 52-53 (1970) (applying harmless-error analysis to the admission of evidence obtained in violation of the Fourth Amendment).

The trial evidence in this case included the items recovered from the Ford F-150 and the Willis Lane residence, which were distinctive and which matched items worn or carried by the bank robbers: the "blue/grey" sweatshirt, the grey gloves with

petitioner's DNA, the black bag with multi-colored peace signs, and the black belt with studs. The evidence also included the boot print lifted from the teller's counter that matched petitioner's boot. And it included data from the GPS trackers embedded in the stolen cash, which led law enforcement directly to petitioner's location. That evidence alone makes "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." Neder v. United States, 527 U.S. 1, 18 (1999). Petitioner thus would not be entitled to relief even if the question presented were resolved in his favor.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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