

IN THE SUPREME COURT OF THE UNITED STATES

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KYLE S. MATTHEWS, PETITIONER

v.

UNITED STATES OF AMERICA

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

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

KENNETH A. POLITE, JR.  
Assistant Attorney General

THOMAS E. BOOTH  
Attorney

Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly determined that the exclusionary rule did not require suppression of evidence obtained pursuant to a search warrant in the circumstances of this case.

2. Whether the court of appeals, in determining that the exclusionary rule did not require suppression, permissibly referenced the search-warrant affiant's consultation with a prosecutor in preparing and submitting an affidavit.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Ill.):

United States v. Matthews, No. 18-cr-30102 (Aug. 26, 2020)

United States Court of Appeals (7th Cir.):

United States v. Matthews, No. 20-2686 (Aug. 27, 2021)

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No. 21-6394

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-9) is reported at 12 F.4th 647. The opinion of the district court denying petitioner's suppression motion (Pet. App. 15-31) is reported at 364 F. Supp. 3d 921. The opinion of the district court denying petitioner's motion for reconsideration (Pet. App. 10-14) is not reported in the Federal Supplement but is available at 2019 WL 1552983.

JURISDICTION

The judgment of the court of appeals was entered on August 27, 2021. The petition for a writ of certiorari was filed on

November 19, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Illinois, petitioner was convicted of possessing an unregistered short-barreled rifle, in violation of 26 U.S.C. 5861(d). Pet. App. 32. The district court sentenced petitioner to three years of probation. Id. at 33. The court of appeals affirmed. Id. at 1-9.

1. In March 2018, Michael Long -- an employee at an auto-parts store in Carlyle, Illinois -- overheard petitioner talking about pipe bombs with Long's co-worker in the store. Pet. App. 2. According to Long, the two men talked about a bomb that they had detonated the previous day; they also discussed where to place a bomb that petitioner appeared to be carrying, and contemplated placing it at a church or a school. Ibid.

Long called the Clinton County Sheriff's Office to report the overheard conversation, and Detective Charles Becherer opened an investigation. Pet. App. 2. Detective Becherer interviewed Long, who explained that petitioner was a frequent customer of the store who owned an AR-15 rifle with a silencer and lived in a camper trailer behind the "old Fin & Feather Restaurant." Ibid. (citation omitted). Long added that petitioner worked on cars in a nearby

shed and had "free reign [sic] of the property." Ibid. (citation omitted).

Detective Becherer then consulted his colleagues in the Sheriff's Department. Pet. App. 2. He learned that someone living near the Fin & Feather restaurant had recently called about an explosion; that petitioner's public social-media posts showed that he possessed explosives; and that a local resident had reported to another detective that the "word on the street" was that petitioner possessed bombs. Ibid. (citation omitted).

Following his regular practice, Detective Becherer promptly consulted with a prosecutor in the State's Attorney Office, who began drafting a search-warrant complaint and supporting affidavit. Pet. App. 2. The complaint requested a search warrant for "all buildings and structures on the property of the former Fin & Feather restaurant," including "the motor home and camper trailer behind the restaurant building, for any explosives, explosive materials, firearms, or ammunition." Ibid. The complaint stated that petitioner was believed to occupy the motor home and camper trailer on the property and that he had access to "all other structures and building[s] situated on the premises." Ibid. (citation omitted).

The affidavit recounted Long's account of the overheard conversation at the auto-parts store, the information that Detective Becherer had obtained about the possible presence of

explosives on the old Fin & Feather property, and petitioner's demonstrated interest in explosives. Pet. App. 17. The affidavit did not discuss the specific information that Becherer had obtained linking petitioner to the Fin & Feather property (e.g., Long's statements that petitioner lived in a camper trailer behind the former restaurant, worked on cars in the nearby shed, and had free rein of the property). See id. at 2, 17.

After reviewing the search-warrant complaint and affidavit, a state judge heard testimony from Long and Detective Becherer. Pet. App. 3. Long "summarized again the conversation he had overheard," and Detective Becherer stated his understanding that petitioner had access to all of the places on the property. Ibid. The judge "determined there was probable cause to believe" that petitioner "had materials to commit terrorism, among other crimes, stored at the Fin & Feather property and signed the warrant." Ibid.

About an hour later, officers executed the warrant and seized multiple firearms, a pipe bomb, silencers, and other explosive materials. Pet. App. 3. A grand jury subsequently indicted petitioner for possessing a machine gun, in violation of 18 U.S.C. 922(o), and possessing an unregistered silencer and short-barreled rifle, in violation of 26 U.S.C. 5861(d). Pet. App. 3.

2. Petitioner filed a pretrial motion to suppress the evidence, asserting that the warrant was overbroad and violated

the Fourth Amendment. Pet. App. 3. The district court concluded that the good-faith exception to the exclusionary rule permitted admission of the evidence. Id. at 28-31.

The district court determined that Becherer had demonstrated his good faith by both "obtain[ing] a search warrant" and "also consult[ing] with" a state's attorney, who prepared the warrant request and affidavit. Pet. App. 28. The court acknowledged that the materials submitted with the warrant application did not expressly identify the basis for connecting petitioner to the property, but observed that Becherer did have a basis for making that connection in light of his conversation with Long. See id. at 30. The court accordingly found that Becherer "relied in good faith on the warrant." Ibid.

Petitioner moved for reconsideration, asserting that the district court had erred in basing its good-faith ruling in part on information that had not been presented to the state judge. Pet. App. 3. The district court agreed that, under Seventh Circuit precedent, it could not rely on such information. See id. at 12. The court determined, however, that the good-faith exception would apply even without consideration of that information. Id. at 13. The court explained that, "[w]hile Detective Becherer did not expressly state that it was Long who told him Matthews lived at and had access to all structures at" the property in question, "he did state that said premises were believed to be [petitioner's]

residence based on information he obtained through 'personal interviews' and/or through other law enforcement officers," and "he testified that he interviewed Long." Id. at 14 (citations omitted). "Given the information that was presented to the judge," the court explained, "a reasonable officer could have believed that the facts set forth in the affidavit and supporting testimony were sufficient to support the finding of probable cause." Ibid.

3. The court of appeals affirmed. Pet. App. 1-9. Like the district court in its reconsideration decision, the court of appeals limited its review to "the evidence presented to the" state judge. Id. at 5. And like the district court, it found that while Detective Becherer's supporting affidavit elided important details linking petitioner to the property, the affidavit "was far from boilerplate" and contained sufficient "indicia of probable cause" to trigger the good-faith exception. Id. at 5-6.

The court of appeals explained that although the affidavit had a "lack of detail" in omitting the particular sources that had led Detective Becherer to connect petitioner to the Fin & Feather property, the affidavit "explained, albeit in broad strokes, how" Detective Becherer "came to his belief that [petitioner] lived on the property -- 'by personal interviews and ... through other law enforcement officers.'" Pet. App. 6 (citation omitted). The court further observed that the "affidavit references twice 'the residence of Suspect,' provides pictures of a camper trailer behind

a building (albeit without visible street numbers) and seeks authorization to search a camper trailer behind the Fin & Feather restaurant (among other, secondary locations).” Ibid. (citation omitted). Given those aspects of the warrant application, the court determined that “what Detective Becherer provided was” not “so lacking in substance that he could not rely reasonably on the warrant that issued.” Ibid.

The court of appeals added that Detective Becherer’s objective good faith was “demonstrated by his decision to consult with the State’s Attorney before preparing the complaint for a search warrant.” Pet. App. 7. The court noted that petitioner did not dispute the general principle that attorney involvement supports a finding of good faith, but argued instead that attorney involvement does not compensate for the omission of probable cause. Ibid. The court explained that here, “the involvement of the State’s Attorney in preparing and approving the warrant and affidavit simply bolsters [the] conclusion that these documents contained sufficient indicia of probable cause to permit Detective Becherer to rely on the warrant.” Ibid.

Judge Hamilton issued a concurring opinion noting that the court of appeals was not addressing the separate question whether a court may rely on facts beyond the search warrant application to decide whether the good-faith exception applies. Pet. App. 7-8.

## ARGUMENT

Petitioner contends (Pet. 6-10) that the court of appeals erred in finding that the search-warrant affidavit submitted in this case contained sufficient indicia of reliability to allow application of the good-faith exception to the exclusionary rule. The lower courts carefully considered and correctly rejected petitioner's exclusionary-rule argument under settled principles prescribed by this Court, and the factbound decision below does not conflict with any decision of this Court or another court of appeals. Further review is unwarranted.

1. The court of appeals properly applied the settled principles governing the good-faith exception to the exclusionary rule to the facts of this case.

As this Court explained in United States v. Leon, 468 U.S. 897 (1984), the "Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands." Id. at 906. Such evidence is sometimes barred under the exclusionary rule, a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect" on law enforcement officers. Ibid. (citation omitted). But no such deterrent effect is achieved -- and the exclusionary rule therefore does not apply -- "when law enforcement officers have acted in objective good faith." Id. at 908; see id. at 913;

see, e.g., Davis v. United States, 564 U.S. 229, 236-239 (2011); Herring v. United States, 555 U.S. 135, 140-144 (2009).

As directly relevant here, the good-faith exception allows admission of “evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant.” Leon, 468 U.S. at 922. Reliance on a “warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.” Ibid. (citation and internal quotation marks omitted). The exclusionary rule applies in such a case only if the officer has “no reasonable grounds for believing that the warrant was properly issued,” such as when the warrant was “based on an affidavit ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’” Id. at 923 (citation omitted). The “threshold for establishing” such a deficiency “is a high one.” Messerschmidt v. Millender, 565 U.S. 535, 547 (2012).

The court of appeals here correctly described the “well settled” principles that govern the good-faith exception. Pet. App. 4 (citing Leon, 468 U.S. at 906); see id. at 4-5. And the court properly applied those principles to the facts of this case to find that Detective Becherer relied in good faith on the search warrant issued by the state judge. Id. at 5-7. In particular, the court explained that the affidavit submitted with the warrant application had sufficient “indicia of probable cause” because it

recounted the "source of Detective Becherer's suspicions" and included ample information to permit the "reasonable conclusion" that petitioner lived on the property that Detective Becherer sought to search. Id. at 6.

2. Petitioner asserts that the court of appeals' decision was erroneous -- and contrary to this Court's decision in Leon and related cases -- on the theory that "the information presented to the magistrate was wholly lacking in any specific facts from which a magistrate could independently determine the existence of probable cause, that is, a fair probability evidence would be found on the Fin and Feather property." Pet. 7; see Pet. 7-8. Petitioner's contentions seek simply to relitigate the lower courts' application of settled good-faith-exception principles to the facts of this case.

As explained above, the court of appeals agreed with petitioner that the good-faith exception does not apply where an affidavit fails to "provide the magistrate with a substantial basis for determining the existence of probable cause," Pet. 7 (quoting Leon, 486 U.S. at 915); see Pet. App. 5-6, but after carefully analyzing the affidavit here, it agreed with the district court that the affidavit did provide such a basis, see Pet. App. 5-7. Petitioner's factbound disagreement with that result does not provide a basis for this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the

asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."). That is particularly so given that the court of appeals and the district court both agreed that the exclusionary rule should not require suppression of the evidence on the particular facts found here. See, e.g., Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in Johnston] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)).

Petitioner also asserts (Pet. 7-10) that the decision below conflicts with the decisions of other circuits. But as petitioner's quotations from those decisions demonstrate, see ibid., each of the assertedly conflicting decisions turned on the highly specific facts presented by the particular warrant applications in those individual cases. In United States v. Wilhelm, 80 F.3d 116 (4th Cir. 1996), the officer relied on "an unknown, unavailable informant without significant corroboration," and the court suggested that the officer "herself knew that probable cause was lacking." Id. at 123. The warrant application in United States v. Weaver, 99 F.3d 1372 (6th Cir. 1996), similarly

relied on uncorroborated informant reports. See id. at 1380-1381. And the government in United States v. Gonzales, 399 F.3d 1225 (10th Cir. 2005), acknowledged that the affidavit supporting the warrant request lacked any indicia of probable cause. See id. at 1229. Petitioner identifies nothing in those highly fact-dependent decisions to suggest that the respective courts of appeals would have resolved this case any differently than the court below.

3. Petitioner also contends (Pet. 11-14) that the court of appeals erred by considering, in its good-faith-exception analysis, Detective Becherer's consultation with a state prosecutor in preparing and submitting the affidavit. But in the court of appeals, petitioner expressly agreed that prosecutor participation in the search-warrant process is a permissible (although not dispositive) consideration in such analysis. Pet. App. 7. He therefore cannot fault the court of appeals for considering it in this case.

In any event, both this Court and other courts of appeals have treated prosecutor participation as a relevant factor in determining whether a police officer had a reasonable belief that the warrant was supported by probable cause. See, e.g., Millender, 565 U.S. at 553-555; Massachusetts v. Sheppard, 468 U.S. 981, 989 (1984); see also United States v. Cotto, 995 F.3d 786, 796 (10th Cir. 2021), cert. denied, No. 21-6370 (Jan. 10, 2022); United

States v. Conant, 799 F.3d 1195, 1202-1203 (8th Cir. 2015), cert. denied, 577 U.S. 1661, and 577 U.S. 1167 (2016). The court of appeals here thus did not err, and its factbound application of the good-faith exception to this case does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Acting Solicitor General

KENNETH A. POLITE, JR  
Assistant Attorney General

THOMAS E. BOOTH  
Attorney

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