

IN THE
Supreme Court of the United States

KYLE S. MATTHEWS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITIONER’S REPLY BRIEF

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ARGUMENT

Respondent recites facts discovered by Detective Becherer that were not presented to the judge reviewing the warrant application. (Respondent's Brief p. 2-4). Although these facts were in the record, Petitioner wishes to clarify that these facts were not relied upon by the District Court or Seventh Circuit in finding the search warrant affidavit presented an indicia of probable cause. In addition, in describing Petitioner's questions presented as "factbound disagreements," Respondent misconstrues Petitioner arguments. Petitioner argues the Seventh Circuit's decision is contrary to this Court's precedent, and creates a Circuit split regarding whether an officer may rely in good faith on a search warrant where the information presented to the issuing judge was so lacking in detail as to preclude an independent evaluation of the facts that supposedly amount to probable cause. Respondent also purports to distinguish cases relied on by Petitioner by arguing the facts of those cases were all distinct. Respondent overlooks that Petitioner's cases all demonstrate that other Circuits construe this Court's precedent as prohibiting a finding of an indicia of probable cause, where an issuing judge is given insufficient details to independently evaluate the officer's basis for believing probable cause exist. Such holding conflicts with the Seventh Circuit's finding an indicia of probable cause in just such circumstances in this case.

1) This case involves a narrow set of undisputed facts. The Seventh Circuit did not rely on every fact gleaned from Detective Becherer's investigation to find an indicia of probable cause existed. The Seventh Circuit stated it relied on this information only to the extent it was passed on to the state judge. *Matthews*, 12 F.4th at 654. The information passed on was limited to:

i) Petitioner was engaged in criminal activity involving explosives. Petitioner admitted "the affidavit established probable cause that [he] was engaged in criminal activity," as ample evidence supported this fact. *Id.* at 653-54.

ii) Detective Becherer and the prosecutor “believed” Petitioner lived on the property to be searched. *Id.* at 654-55.

iii) The information in the warrant affidavit generally was obtained “by personal interviews and ... through other law enforcement officers.” *Id.* at 654.

iv) the affidavit twice referenced the “the residence of Suspect,” and included pictures of a camper trailer behind a building, without identifying information, along with the request to search a camper. *Id.* at 655.

The Seventh Circuit found the issuing judge had no information on how Detective Becherer, or the prosecutor who prepared the affidavit, came to the belief that Petitioner lived at or had access to the property to be searched; “[r]ather, the affidavit stated generally that Detective Becherer had, ‘in the course of [his] investigation . . . obtained the information contained herein, some by personal interviews and some through other law enforcement officers.’” *Id.* at 650. Thus, the Seventh Circuit found an indicia of probable cause based only on the above, undisputed facts.

2) Questions presented involve legal issues about which there is a circuit split.

Respondent inaccurately describes Petitioner’s legal issues as “factbound disagreements.”

(Respondent’s Brief p. 11-12). Petitioner seeks review of two narrow legal questions, neither of which involve questions of fact, nor a determination of whether a particular set of facts provides an indicia of probable cause. First, Petitioner asks, where a warrant affidavit omits details as to an officer’s basis for believing a defendant has a connection to the place to be searched, can a court find an “indicia of probable cause,” as required for good faith reliance on a warrant lacking probable cause, based on a general statement that the information in the affidavit came from “personal interviews” and “other law enforcement officers?” Second, may a court’s finding of

good faith be premised partly on the fact that the police officer consulted with the prosecutor in preparing the warrant application?

The Seventh Circuit answered “yes” to both of these questions. Such holding is contrary to this Court’s Fourth Amendment jurisprudence, which requires “the deliberate, impartial judgment of a judicial officer . . . between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause.” *Wong Sun v. United States*, 371 U.S. 471, 481-482 (1963). Particularly important is the neutral magistrate’s review of the “‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Accordingly, the magistrate’s “action cannot be a mere ratification of the bare conclusions of others.” *United States v. Leon*, 468 U.S. 897, 915 (1984).

In addition, as argued by Petitioner, this Court construes an “indicia” of probable cause as requiring articulable facts presented to a judge, even if they fall short of probable cause. *See Messerschmidt v. Millender*, 565 U.S. 535 (2012) (Based on the defendant’s possession of one illegal gun, his gang membership, and past attempt to shoot someone, a reasonable officer could conclude that there would be additional illegal guns among others that the defendant owned.). Thus, contrary to the Seventh Circuit’s holding, an officer’s consultation with the prosecutor in preparing a warrant application, is not an articulable fact supporting probable cause, and cannot compensate for the absence of detailed information which the officer believes supports probable cause.

3) Circuit split on whether an indicia of probable cause may exist without details to allow an independent evaluation of an officer’s basis of knowledge. The Seventh Circuit’s finding an indicia of probable cause, without articulable facts informing the officer’s belief connecting

Petitioner to the place to be searched, is contrary to the holdings of other circuits. Respondent complains the cases asserted by Petitioner all involve distinct facts. Respondent overlooks that these cases, despite each involving particular facts, all require that a warrant application provide sufficient information to independently evaluate an officer's basis for adducing probable cause, in order to find an indicia of probable cause.

In *United States v. Wilhelm*, 80 F.3d 116, 123 (4th Cir. 1996), the Fourth Circuit found an officer “could not reasonably rely on an unknown, unavailable informant without significant corroboration.” Thus, the good faith exception could not apply. In *United States v. Weaver*, 99 F.3d 1372, 1380–81 (6th Cir. 1996), the Sixth Circuit rejected application of the good faith doctrine, where the only facts regarding the reliability and basis of knowledge of information from a third party were “flimsy.” In *United States v. Gonzales*, 399 F.3d 1225, 1229–31 (10th Cir. 2005), the Tenth Circuit found, “For good faith to exist, there must be some factual basis connecting the place to be searched to the defendant or suspected criminal activity. When this connection is wholly absent, the affidavit and resulting warrant are ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’” *Gonzales*, 399 F.3d at 1231 *citing* *Leon*, 468 U.S. at 923. Similarly, in *United States v. Hove*, 848 F.2d 137, 140 (9th Cir.1988), the Ninth Circuit found the good faith doctrine did not apply where, “the affidavit does not link this location to the defendant and it does not offer an explanation of why the police believed they may find incriminating evidence there; the affidavit simply lists the [] address as a location to be searched. It is critical to a showing of probable cause that the affidavit state facts sufficient to justify a conclusion that evidence or contraband will probably be found at the premises to be searched.”

The Seventh Circuit’s finding of good faith, despite the absence of facts connecting Petitioner with the place to be searched, is in direct conflict with the decisions of these circuits. *See Matthews*, 12 F.4th at 655 (“[W]e conclude that Detective Becherer's failure to specify a source for his knowledge that Mr. Matthews lived on the Fin & Feather property at 21000 North Emerald Road does not deprive the affidavit of all indicia of probable cause to search the property.”).

CONCLUSION

This case presents an excellent vehicle to resolve the above circuit split. There are no factual complications, and the legal issues are well-defined. The issues are also extremely important. Good faith reliance on a warrant omitting details connecting a defendant to the place to be searched undermines this Court’s precedent, which requires warrants contain enough information to allow a neutral magistrate to independently review the basis for an officer’s determination of probable cause. The Seventh Circuit’s reliance on the fact that the officer consulted with the prosecutor in making the warrant application, a fact that does not facilitate an independent review of the basis for probable cause, undermines this precedent in the same way. For these reasons, Petitioner asks this Court to grant his petition for certiorari.

Dated: February 3, 2022

Respectfully submitted,

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