

No.

IN THE
Supreme Court of the United States

KRA DEANGELO BROOKS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Margaret Diane "Annie" Depper
Counsel of Record
Ark. Bar No. 2009267
Fuqua Campbell, P.A.
3700 Cantrell Rd., Suite 205
Little Rock, AR 72202
(501) 975-7144
adeppe@fc-lawyers.com

QUESTIONS PRESENTED FOR REVIEW

1. Whether, absent the presentation of evidence demonstrating an “independent source” at the district court level and absent specific findings of an “independent source” by the district court, a court of appeals may “implicitly find” that an “independent source” existed.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 22 F.4th 773 (8th Cir. 2022). (App. A).

The order of the United States District Court for the Eastern District of Arkansas is unpublished but available at 2019 U.S. Dist. LEXIS 241930 (E.D. Ark. June 17, 2019). (App. B).

The order of the United States Court of Appeals for the Eighth Circuit denying the petition for rehearing and rehearing *en banc* is unpublished but available at 2022 U.S. App. LEXIS 3923 (8th Cir. Feb. 11, 2022). (App. C).

STATEMENT OF JURISDICTION

The Eighth Circuit filed its opinion and judgment on January 6, 2022. (App. A). The Eighth Circuit denied a petition for rehearing and rehearing *en banc* on February 11, 2022. (App. C). This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The U.S. Constitution, amendment IV provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.

STATEMENT OF THE CASE

On the morning of January 23, 2017, Brooks arrived at the Clinton National Airport (“the airport”) to board a flight. After checking in, he proceeded to the Transportation Security Administration (“TSA”) security screening. His carry-on luggage was put through the x-ray machine, and a TSA agent identified a large organic mass in the luggage. TSA agent Johnathon Christensen (“TSA Agent Christensen”) then took Brooks to a secondary screening area. Inside the luggage, TSA Agent Christensen located multiple manila envelopes. One of the manila envelopes was labeled “legal documents” and contained a large amount of heat-sealed U.S. currency. TSA Agent Christensen alerted his supervisor.

The Little Rock Police Department (“LRPD”) assigns LRPD officers to the airport. LRPD Officer Mitchell MacIntire (“Officer MacIntire”) is one of those officers. At approximately 7:36 a.m., Officer MacIntire and LRPD Officer Bryant were dispatched to the TSA screening area. TSA agents told Officer MacIntire and Officer Bryant they had “bulk cash.”

When Officer MacIntire and Officer Bryant arrived at the TSA screening area, they observed the cash, vacuum-sealed. Officer MacIntire asked Brooks if the bags and the cash were his. Brooks stated they were. Officer MacIntire asked Brooks how much money was in the bag and Brooks responded he did not know. Officer MacIntire asked Brooks why the cash was vacuum-sealed, and Brooks responded he “likes to keep his money neat” and “didn’t want it falling all around the suitcase.”

Officer MacIntire then contacted LRPD detectives. LRPD detectives told Officer MacIntire they would meet Officer MacIntire and Brooks in the LRPD airport security office. Officer MacIntire asked Brooks if he would accompany Officer MacIntire and Officer Bryant to the LRPD airport security office, and Brooks said yes. Officer MacIntire, Officer Bryant, and Brooks walked downstairs to the LRPD airport security office. Brooks sat in a chair next to the door of the office and Officer MacIntire sat behind the desk. Officer MacIntire and Brooks waited for LRPD detectives to arrive. Neither Officer MacIntire nor Officer Bryant questioned Brooks while waiting for LRPD detectives to arrive.

Within fifteen to twenty minutes, LRPD Detective Ryan Hudson (“Detective Hudson”), LRPD Detective Barry Flannery (“Detective Flannery”), and LRPD Detective Debra Attkisson (“Detective Attkisson”) arrived at the airport security office. The detectives began questioning Brooks about the currency. Brooks explained that the currency came from a settlement he received following the death of his son, as well as earnings from his work at Power Ultra Lounge and his work as a barber. Brooks further stated he was traveling to California to purchase merchandise from high-end stores to resell in Little Rock. Brooks stated documentation could be found to support his explanation for the source and purpose of the currency in the same manila envelope where the currency was located. This documentation included checks for the settlement, a settlement memorandum, a paystub from Power Ultra Lounge, a barber’s license, and a receipt from Luis Vuitton.

During the interrogation of Brooks, Detective Hudson located a hydrocodone pill and approximately \$4,000 in currency on Brooks's person. Detectives also further searched Brooks's suitcase and found two bottles of promethazine with codeine. Brooks's suitcase, along with four to five other suitcases, were placed in a hallway next to the room where Brooks was being questioned. Detective Hudson then walked a narcotics k-9 around the suitcases in the hallway. The k-9 gave a positive alert on Brooks's suitcase for the smell of narcotics. Brooks was then arrested and charged with possession of a hydrocodone pill without a prescription and possession of two 280 ml bottles of promethazine with an expired prescription.

Brooks was taken to LRPD Northwest Division where he was *Mirandized*, signed a waiver of rights form, and gave a statement to Detective Flannery, Detective Hudson, Homeland Security Special Agent Jason Bennett, and Special Agent Alan Jukes.

On February 15, 2017, DEA Special Agent John Hensley ("Agent Hensley") applied for a search warrant for Brooks's home located at 2516 Gristmill Road, Little Rock, Arkansas 72227. In paragraphs 21 and 25 of the Affidavit in Support of Search Warrant (the "Affidavit"), Agent Hensley swore the following:

21. "On January 23, 2017, at approximately 9:00 a.m., HSI Little Rock, Arkansas, received a notification from the National Bulk Cash Smuggling Center concerning Kra Brooks. The notification stated that Brooks was attempting to board a flight from Little Rock, Arkansas, bound for San Francisco, California. Brooks was carrying a large suitcase in his possession while going through the Transportation and Security Administration (TSA) security area. While proceeding through the screening area, TSA officials observed a suspicious anomaly inside a suitcase as it went through TSA screening equipment. Brooks and the suitcase were moved to a secondary screening area where TSA officials

found two large manila envelopes labeled ‘legal documents’ that contained a large amount of U.S. currency that was heat sealed in plastic wrap. The packaging was consistent with known narcotics concealment methods.”

25. “Upon a review of records at the Little Rock Airport, agents located Incident report 2016-125568, pertaining to an incident that occurred on November 6, 2016. On that occasion, an unknown male arrived at the Southwest Airlines baggage claim and asked to retrieve luggage for Julie Harrison. The Southwest employee requested to see the individual’s identification, but the individual left the office. The unknown male then walked to baggage belt #5 and retrieved two bags off the baggage belt, then ran out of the Airport terminal. Officers reviewed photographs and identified the individual as Kra Brooks. Officers queried Southwest Airlines regarding Julie Harrison and learned Harrison has been banned from flying via Southwest Airlines due to repeated instances of Harrison purchasing tickets in Oakland, CA, checking luggage, then leaving the airport without flying on the purchased ticket. In this manner, Harrison has sent multiple items of luggage to various locations throughout the United States.”

A search warrant was issued on February 15, 2017, and the Gristmill property was searched on February 16, 2017. At the Gristmill property, law enforcement uncovered items forming the basis of the indictments against Brooks.

On March 7, 2017, a grand jury of the Eastern District of Arkansas charged Brooks with one count of possession with intent to distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(D), one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i), and one count of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

On June 6, 2017, a superseding indictment was filed charging Brooks with conspiracy to distribute and to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846, one count of possession with intent to

distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. § 841(a)(1), one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i), and one count of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

On December 4, 2019, a second superseding indictment was filed charging Brooks with conspiracy to distribute and to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), and 846, one count of possession with intent to distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. § 841(a)(1), one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i), and one count of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

Jurisdiction in the United States District Court was based on 18 U.S.C. § 3231, as Brooks was charged with violating federal statutes and prosecuted by the United States.

Brooks filed two motions to suppress on January 25, 2019. The District Court held a one-day hearing on March 6, 2019. On June 17, 2019, the District Court entered an order granting, in part, Brooks's motions to suppress. *United States v. Brooks*, No. 4:17-CR-00046 BSM, 2019 U.S. Dist. LEXIS 241930 (E.D. Ark. June 17, 2019). The District Court held Brooks was unlawfully detained and unlawfully interrogated at the airport. *Id.* at *16-17. The District Court suppressed Brooks's pre-*Miranda* statement and the items uncovered during the unlawful detention of Brooks. *Id.* The District Court further held Brooks's post-*Miranda* statement was

sufficiently attenuated from the unconstitutional conduct of the officers and denied Brooks's motion to suppress the post-*Miranda* statement. *Id.* at *18. The District Court then excised unconstitutionally obtained information from the Affidavit to determine whether the remaining information constituted probable cause to search Brooks's home. *Id.* at *18-20. The Court, however, left remaining in the Affidavit the following information, in pertinent part: 1) that TSA agents observed Brooks trying to carry a large amount of currency through the Little Rock airport which was vacuum sealed and in an envelope labeled legal documents; and 2) Brooks's alleged theft of luggage from a known marijuana source. *Id.* at *19. Based on this information, the District Court determined there was sufficient probable cause to support the warrant to search Brooks's home and denied Brooks's motion to suppress all evidence uncovered during the search of Brooks's home. *Id.*

On February 12, 2020, Brooks entered a conditional guilty plea to one count of possession of a firearm in furtherance of a drug trafficking crime, reserving the right to appeal the District Court's adverse determination on Brooks's motions to suppress. The remaining counts contained in the second superseding indictment were dismissed on motion by the government. On December 10, 2020, the District Court sentenced Brooks to 60-months imprisonment.

Following his conviction, Brooks argued on appeal to the Eighth Circuit, in pertinent part, that (1) the District Court failed to properly redact the Affidavit; and (2) the properly redacted Affidavit did not sufficiently demonstrate probable cause.

With respect to these arguments, the Eighth Circuit held (1) the challenged information in the Affidavit came from an “independent source”; and (2) the Affidavit established probable cause to search Brooks’s residence. *United States v. Brooks*, 22 F.4th 773, 779 & 781 (8th Cir. 2022).

REASONS FOR GRANTING THE PETITION

The Eighth Circuit Court of Appeals erred in determining an “independent source” existed for information contained in the Affidavit when the government presented no specific evidence supporting an “independent source” and the District Court made no findings related to “independent source”. This is in direct conflict with this Court’s decision in *Murray v. United States*, 487 U.S. 533, 108 S. Ct. 2529, 1010 L. Ed. 2d 472 (1988), and presents an issue of national importance. It is necessary, as a matter of public policy, to hold the government to its burden of establishing an “independent source” and to require that district courts make specific findings on “independent source.”

The Court should hold lower courts to the “independent source doctrine” standard presented in *Murray*. Specifically, as required in *Murray*, the government must present evidence supporting the “independent source” and the district court must make explicit findings related to the “independent source.”

At issue in *Murray* was application of the “independent source doctrine.” In *Murray*, law enforcement surveilled petitioner Michael Murray (“Murray”) and petitioner James Carter (“Carter”) following receipt of information from informants. *Id.* at 535. During that surveillance, officers observed Murray and Carter drive vehicles into a warehouse in South Boston. *Id.* Approximately 20 minutes later, officers observed Murray and Carter drive the vehicles out of the warehouse. *Id.* At

this time, officers also observed “two individuals and a tractor-trailer rig bearing a long, dark container.” *Id.* Murray and Carter ultimately turned the vehicles over to other drivers who were followed and arrested. *Id.* Marijuana was found in both vehicles. *Id.* Following the surveillance, officers went to the warehouse, forced entry, and observed “numerous burlap-wrapped bales that were later found to contain marijuana.” *Id.* Officers then “left without disturbing the bales, kept the warehouse under surveillance, and did not reenter it until they had a search warrant.” *Id.* Once the warrant was obtained, officers returned to the warehouse and seized 270 bales of marijuana and “notebooks listing customers for whom the bales were destined.” *Id.* at 536.

Prior to trial, Murray and Carter filed a motion to suppress the evidence found in the warehouse. *Id.* The district court denied the motion and the First Circuit Court of Appeals affirmed. *Id.* Analyzing the “independent source doctrine”, the First Circuit stated,

[W]e can be absolutely certain that the warrantless entry in no way contributed in the slightest either to the issuance of a warrant or to the discovery of the evidence during the lawful search that occurred pursuant to the warrant. . . . This is as clear a case as can be imagined where the discovery of the contraband in plain view was totally irrelevant to the later securing of a warrant and the successful search that ensued. As there was no causal link whatever between the illegal entry and the discovery of the challenged evidence, we find no error in the court’s refusal to suppress.

Id. at 542-43.

On appeal, this Court vacated the judgment and remanded the case to the First Circuit “with instructions that it remand to the District Court for determination

whether the warrant-authorized search of the warehouse was an independent source of the challenged evidence in the sense we have described.” *Id.* at 543-44. The basis of the remand and vacating of the judgment was the lack of adequate findings. As stated by this Court,

Although these statements [(referencing the statements made by the First Circuit set forth above)] can be read to provide emphatic support for the Government’s position, it is the function of the District Court rather than the Court of Appeals to determine the facts, and we do not think the Court of Appeals’ conclusions are supported by adequate findings.

Id. at 543.

In *Murray*, this Court determined the District Court did not “*explicitly* find that the agents would have sought the warrant if they had not earlier entered the warehouse.” *Id.* (emphasis added). Further,

To be sure, the District Court did determine that the purpose of the warrantless entry was in part “to guard against the destruction of possibly critical evidence,” . . . and one could perhaps *infer* from this that the agents who made the entry already planned to obtain that “critical evidence” through a warrant-authorized search. That *inference* is not, however, clear enough to justify the conclusion that the District Court’s findings amounted to a determination of independent source.

Id. (emphasis added).

In the order granting, in part, and denying, in part, Brooks’s motions to suppress, the District Court did not address the “independent source doctrine.” There were no findings that certain information contained in the Affidavit came from an “independent source.” Indeed, the government did not present specific evidence establishing an “independent source” of the information contained in the Affidavit.

Even lacking such evidence and findings, however, the Eighth Circuit determined that certain information contained in the Affidavit was independent of Brooks's unlawful detention. With respect to paragraph 21 set forth above, the Eighth Circuit determined, "The record supports the district court's *implicit* finding that the disputed information was independent of any unlawful seizure." *United States v. Brooks*, 22 F.4th 773, 779 (8th Cir. 2022) (emphasis added). With respect to paragraph 25 set forth above, the Eighth Circuit determined, "The district court *implicitly* found that this information was discovered independent of the airport detention of Brooks" and "It is reasonable to *infer* that once Brooks's suspicious activities with currency were tied to the airport, investigators would review airport records on that basis alone to determine whether Brooks had engaged in other suspicious activity at the airport." *Id.* (emphasis added).

As in *Murray*, the Eighth Circuit Court of Appeals made determinations with respect to application of the "independent source doctrine" that lacked sufficient findings by the District Court and proof presented by the government. As such, the Eighth Circuit "decided an important federal question in a way that conflicts with relevant decisions of this Court" (Sup. Ct. R. 10(c)), specifically *Murray v. United States*.

The correction of this error is not only important to Brooks, but also to the public and presents an issue of national importance. If the Eighth Circuit's opinion is allowed to stand, the government will be held to no burden of adequately establishing an independent source of information obtained subsequent to violations of

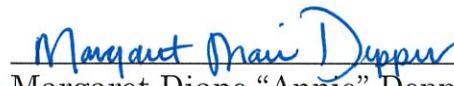
individuals' rights. If the government is held to no such burden, then the "independent source doctrine" loses all meaning.

For these reasons, Brooks asks that the Court grant this petition for writ of certiorari and correct the error of the Eighth Circuit Court of Appeals.

CONCLUSION

For the reasons set out above, the petition for writ of certiorari should be granted, and upon plenary consideration and oral argument, the judgment of the Eighth Circuit Court of Appeals should be vacated and the case remanded.

Respectfully submitted,



Margaret Diane "Annie" Depper
Counsel of Record
Ark. Bar No. 2009267
Fuqua Campbell, P.A.
3700 Cantrell Rd., Suite 205
Little Rock, AR 72202
(501) 975-7144
adepper@fc-lawyers.com