
No.

In the
Supreme Court
of the
United States

Term,

MYRON BAKER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

Gregory C. Sasse
6642 Silvermound Dr.
Mentor, OH 44060
(440) 488-1919
Gregory.sasse@gmail.com
Counsel for Petitioner

QUESTIONS PRESENTED

I.

As Courts of the United States are Courts of Record, is it structural error for the federal Prosecution to rely upon a state search warrant for the admission of evidence without making such search warrant part of the formal record of the United States District Court by filing it with the District Court? Does the virtually universal practice of federal prosecutors of obtaining state search warrants, and using those state search warrants in federal prosecutions, but not filing those state search warrants with the District Court, constitute structural error as said warrants usually are critical to the outcome of the case?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	ii
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	iii
1. It is the virtually universal practice of federal prosecutors to obtain state search warrants, and to use these state search warrants in federal prosecutions, but to not file these state search warrants in the formal record of the District Court. Thus, much of the time, it is impossible to know precisely what happened to allow the admission of evidence critical to the outcome of the case. As Courts of the United States are Courts of Record, this practice ought not be permitted.	
CONCLUSION	15
APPENDIX	

TABLE OF AUTHORITIES

Cases

<u>Arizona v. Fulminante</u> , 499 U.S. 279 (1991)	10, 13
<u>Chapman v. California</u> , 386 U.S. 18, at 23 (1967)	10, 11
<u>Faretta v. California</u> , 422 U.S. 806, 834 (1975)	11
<u>Gideon v. Wainwright</u> , 372 U.S. 335 (1963)	12
<u>McKaskle v. Wiggins</u> , 465 U.S. 168 (1984)	11
<u>Neder v. United States</u> , 527 U.S. 1 (1999)	6
<u>Sullivan v. Louisiana</u> , 508 U.S. 275 (1993)	12
<u>United States v. Gonzalez-Lopez</u> , 548 U.S. 140, 146–50 (2006)	11, 12, 13
<u>United States v. Justin Martin</u> , Sixth Circuit No. 21-1377	9
<u>United States v. Lavone Ganithus Dixon, Jr.</u> , Sixth Circuit No. 21-6001	9
<u>Vasquez v. Hillery</u> , 474 U.S. 254, 263 (1986)	11
<u>Weaver v. Massachusetts</u> , __ U.S. __, 137 S. Ct. 1899, 1907 (2017)...	7, 11, 12

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The Petitioner, Myron Baker, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled proceeding on April 27, 2022.

OPINION BELOW

The opinion of the Sixth Circuit in this matter was not published and is attached hereto in the Appendix.

JURISDICTION

The Sixth Circuit denied Petitioner's appeal on April 27, 2022. This petition is timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1291 and Supreme Court Rule 12.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects,[a] 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

STATEMENT OF THE CASE

Petitioner was accused of being a Felon in Possession of a Firearm and drug charges. Specifically, Myron Baker was charged in a superseding indictment with being a Felon in Possession of a Firearm, Possession with Intent to Distribute Carfentanil, Possession with Intent to Distribute Cocaine, Conspiracy to Possess with Intent to Distribute and Distribution of Carfentanil and 1,000 grams or more of Heroin, Distribution of Carfentanil Causing Death, Distribution of Carfentanil Causing Serious Bodily Injury, and Maintaining Drug-Involved Premises.

Baker filed Motions to Suppress seeking suppression of Evidence seized at his residence resulting from a search pursuant to a warrant, and suppression of evidence seized from his person. The government conceded suppression of the evidence seized from Baker's person and dismissed two counts of the Superseding Indictment, mooted the suppression of evidence seized from Baker's person. Baker argued that the affidavit supporting the search warrant for his residence lacked probable cause. The search warrant and affidavit were an attachment to a defense motion but were not of themselves filed in the district court record. A search warrant return does not appear anywhere in the formal record, not even as an attachment.

There was hearsay testimony concerning the existence of a search warrant for Baker's residence, but no search warrant documents were filed in the case docket and admitted into evidence. Pursuant to this hearsay concerning a search warrant, police seized a handgun, a shotgun, a DVR camera system, a press, mail in the name

of Myron Baker, and a piece of body armor. There was an issue concerning the reliability of the source of the information used in the purported affidavit and concerning the full disclosure of information regarding this source. The government conceded that the search of Baker's residence was lawful solely on the basis of a search warrant that was never filed in the formal record of the court.

A suppression hearing was held and, at its conclusion, the government rested and moved for the admission of Government's Exhibit 1. Government's Exhibit 1 was not identified by the government nor by the Court, either in the transcript of the suppression hearing or in the court's minute entry following the hearing.

Government's Exhibit 1 was not filed either in the formal record nor anywhere else by anyone, so no record reveals its nature. The record does not clearly demonstrate that a search warrant ever was filed in the district court's docket nor ever was admitted into evidence. The district court overruled Baker's motion to suppress evidence seized from his residence, which meant that Baker faced the charge of being a felon in possession of a firearm, which firearm apparently was seized from his residence.

The Government filed a Second Superseding Indictment charging Baker with being a Felon in Possession of a Firearm, Conspiracy to Possess with Intent to Distribute and Distribution of Carfentanil and 1,000 grams or more of Heroin, Distribution of Carfentanil Causing Death, Distribution of Carfentanil Causing Serious Bodily Injury, and Maintaining a Drug-Involved Premises, and with

Forfeiture Counts.

Baker pleaded guilty to Conspiracy to Possession with Intent to Distribute and Distribution of Carfentanil and of 1,000 grams or more of Heroin and to the Distribution of Carfentanil Causing a Death.

Baker filed a pro se motion to withdraw his guilty plea, which was denied.

The district court entered Judgment on February 12, 2021, sentencing Myron Baker to 288 months of imprisonment followed by five years of supervised release, and a special assessment of \$200.00. On February 17, 2021. Baker filed a timely Notice of Appeal.

The Sixth Circuit did not consider the issue of structural error because Petitioner could cite no precedent to support structural error. The present issue was not raised before the District Court.

REASONS FOR GRANTING THE WRIT

Courts of the United States are Courts of Record, therefore it is structural error for the Prosecution to rely upon a state search warrant for the admission of evidence without making such search warrant part of the formal record of the United States District Court by filing it with the District Court. The virtually universal practice of federal prosecutors in obtaining state search warrants, and using said state search warrants in federal prosecutions, but not filing such warrants in federal court, must be corrected. In a Court of Record, orders critical to the outcome of a case must appear in the formal record of the court. It is structural error not to file such search warrants.

This Court should grant certiorari to determine whether state search warrants used in federal prosecutions must be filed with the district court and whether or not it is structural error to fail to do so.

Even if a structural error issue is raised for the first time on appeal, if it appears there is structure error, the result is automatic reversal of the conviction. Neder v. United States, 527 U.S. 1 (1999).

It is structural error to deny a motion to suppress evidence based upon a search warrant where no search warrant is found in the court's formal record. The trial Court viewed the determinative suppression issue as "Whether Probable Cause Existed for Issuance of the Search Warrant." The search warrant was the foundation upon which the evidence seized from Baker's residence was deemed admissible.

Courts of the United States are courts of record. Black's Law Dictionary defines a court of record as a court maintaining "... official written documentation of what happened..." Duhaime's Law Dictionary Court of Record Definition: "A court of law which retains written records of its proceedings ..." William Blackstone wrote, in

his Commentaries on the Laws of England, Book 3: "A court of record is that where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony; which rolls are called records of the court, and are of such high and supereminent authority that their truth is not to be called in question." In Volume V of his A History of English Law, Holdsworth writes: **"It is the infallibility of its formal record which is the earliest mark of a court of record. ..."** (Emphasis added). Pivotal documents such as state search warrants must be filed with the District Court exactly as federal search and federal arrest warrants always are filed with the District Court. Moreover, this is true as state warrants are judged by federal standards and the same filing requirements into the formal record of the court should apply.

The Fourth Amendment to the Constitution of the United States requires a search warrant for the search of a residence. The search warrant obviously is an important Constitutionally mandated document when a person's home or privacy is invaded and that person's liberty is compromised. The prosecution must be required to file state search warrants for residences in federal court when the prosecution is in federal court, as a precondition to the prosecution of the home owner.

This Court has instructed that the purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal prosecution. Weaver v. Massachusetts, ___ U.S. ___, 137 S. Ct. 1899, 1907 (2017). In Baker's case, this Court should ensure insistence on the

basic constitutional guarantee of a publicly disclosed search warrant by requiring that the prosecution file a state warrant in the district court when that warrant is used in a federal prosecution and most especially so when items seized pursuant to the search warrant are used at trial. This easy action should define the framework of any criminal prosecution involving the search of a person's home.

The state search warrant was critical to Baker's prosecution, as the warrant was the reason the trial Court denied Baker's suppression motion. The trial Court viewed the determinative suppression issue as "Whether Probable Cause Existed for Issuance of [the] Search Warrant." The search warrant was the foundation upon which the evidence seized from Baker's residence was deemed admissible, which formed the basis of the firearms charge.

The admissibility of evidence obtained from the search of Baker's residence depended entirely upon the affidavit in the unfiled search warrant. No search warrant or arrest warrant was filed and no affidavit for a search warrant or arrest warrant was filed. The Constitution of the United States requires that warrants of such critical importance be presented by filing them in the formal record. Mere conversation about state search warrants or arrest warrants or informal disclosure of them between parties is insufficient for the requirements of a Court of Record.

The virtually universal practice of federal prosecutors of obtaining state search warrants, then using said state search warrants in federal prosecutions, but not filing such warrants in federal court, must be corrected. In 31 years as an

Assistant U. S. Attorney and seven years as a CJA defense attorney, this attorney has yet to see a state search warrant filed in the formal record of the district court wherein the prosecution was occurring. Presently, this attorney has other appeals wherein state search warrants were utilized in federal court without their filing in the district court record. Procedures regarding the handling of search warrants have become sloppy and lax as evidenced by two pending appeals.

In U.S. v. Justin Martin, Sixth Circuit No. 21-1377, the only record of a residential search warrant was disclosed when the defense attached the search warrant and affidavit to a document it filed. The search warrant return never was filed. There is no record that the return on the state search warrant even was disclosed to the defense or to the court. Also, evidence from a search warrant for cell telephone information was utilized, but nothing was filed and the search warrant is vaguely mentioned only in rumor. However, at the advice of the government, the district court was misled and all information known to the police, despite not having been included in the search warrant affidavit, was used by the court to augment the affidavit in determining whether the affidavit established probable cause for a search.

In U.S. v Lavone Ganithus Dixon, Jr., Sixth Circuit No. 21-6001, a document unfiled in any court, state or federal, at the time of the search was deemed by the government and the district court to be a search warrant.

The Constitution of the United States requires that documents of such critical importance as search warrants be presented to the public by filing them and making them part of the formal record of the case, not merely by talking about them, or by informally disclosing them, or possibly even by having them as an attachment to another document. In a court of record, these documents undeniably are critical to the resolution of most criminal cases. State search warrants used to obtain evidence used in a criminal case in federal court are judged by federal standards. Federal search warrants must be filed in the formal record of the court. State search warrants, when used in federal prosecutions, in order to comport with federal standards, should be filed in the formal record of the court. Not to insist upon filing of state search warrants in the formal record of the court is structural error, as the court of record thereby lacks a record critical to the resolution of the case.

Assessment of what a timely examination of the record concerning state search warrants would yield in most cases, as this Court states below, is a speculative inquiry into what might have occurred in an alternate universe. Was the state search warrant actually signed by the appropriate judge and actually filed on the date of its file stamp? Without the filing of state search warrants, these constitutional issues cannot be determined from the record.

This Court reviewed the history of structural error beginning in Chapman v. California, 386 U.S. 18, at 23 (1967), wherein the Court noted that some errors

should not be deemed harmless beyond a reasonable doubt. These errors came to be known as structural errors. Arizona v. Fulminante, 499 U.S. 279, at 309-310 (1991).

This Court stated that, “The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it ‘affect[s] the framework within which the trial proceeds,’ rather than being ‘simply an error in the trial process itself.’ Id., at 310. For the same reason, a structural error “def[ies] analysis by harmless error standards.” Id., at 309 (internal quotation marks omitted). Weaver, *supra*, 137 S. Ct. at 1907- 08.

This Court explained that:

“The precise reason why a particular error is not amenable to that kind of analysis—and thus the precise reason why the Court has deemed it structural—varies in a significant way from error to error. There appear to be at least three broad rationales.

“First, an error has been deemed structural in some instances if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest. This is true of the defendant's right to conduct his own defense, which, when exercised, ‘usually increases the likelihood of a trial outcome unfavorable to the defendant.’ McKaskle v. Wiggins, 465 U.S. 168, 177, n. 8, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984). That right is based on the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty. See Faretta v. California, 422 U.S. 806, 834 (1975). Because harm is irrelevant to the basis underlying the right, the Court has deemed a violation of that right structural error. See United States v. Gonzalez-Lopez, 548 U.S. 140, 149, n. 4 (2006).

“Second, an error has been deemed structural if the effects of the error are simply too hard to measure. For example, when a defendant is denied the right to select his or her own attorney, the precise ‘effect of the violation cannot be ascertained.’ Ibid. (quoting Vasquez v. Hillery, 474 U.S. 254, at 263 (1986)). Because the government will, as a result, find it almost impossible to show that the error was ‘harmless beyond a reasonable doubt,’ Chapman,

supra, at 24, the efficiency costs of letting the government try to make the showing are unjustified.

“Third, an error has been deemed structural if the error always results in fundamental unfairness. For example, if an indigent defendant is denied an attorney or if the judge fails to give a reasonable-doubt instruction, the resulting trial is always a fundamentally unfair one. See Gideon v. Wainwright, 372 U.S. 335, at 343-345 (1963) (right to an attorney); Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) (right to a reasonable-doubt instruction). It therefore would be futile for the government to try to show harmlessness.

“These categories are not rigid. In a particular case, more than one of these rationales may be part of the explanation for why an error is deemed to be structural. See e.g., *Id.*, at 280–282. For these purposes, however, one point is critical: An error can count as structural even if the error does not lead to fundamental unfairness in every case. See Gonzalez-Lopez, *supra*, at 149, n. 4, 126 S.Ct. 2557 (rejecting as ‘inconsistent with the reasoning of our precedents’ the idea that structural errors ‘always or necessarily render a trial fundamentally unfair and unreliable’ (emphasis deleted)). Weaver, U.S. 137, at 1907-1908.”

The first rationale applies. Requiring that the prosecution file state search warrants, affidavits, and returns of the warrants goes beyond protecting Baker. The filing in the formal record protects the integrity of the judicial process by ensuring insistence upon the basic constitutional guarantee that a warrant has been properly issued, which must be part of the framework of any criminal prosecution. In a court of record, as Holdsworth writes: “It is the infallibility of its **formal record** which is the earliest mark of a court of record. ...” (Emphasis added). Requiring that important Constitutionally mandated documents, as are search warrants, appear timely in the formal record of a federal prosecution is an obvious component of such a constitutional framework.

This Court’s analysis of the right to counsel of choice also is perhaps instructive. This Court asserted that the “consequences [of such deprivation of the

right to counsel of choice] are necessarily unquantifiable and indeterminate, [which] unquestionably qualifies as ‘structural error.’ ” Sullivan, 508 U.S. at 282.

This Court noted that: “Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument... In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the ‘framework within which the trial proceeds,’ [Arizona v. Fulminante, 499 U.S. 279 (1991)] (cited with approval) ... Harmless error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe.” Gonzalez-Lopez, 548 U.S. 140, at 14.

In some cases, the consequences of disclosure may affect the outcome of the cases.

It is hardly a heavy burden to require that if the government uses a state search warrant, the government must file the warrant and the documents pertaining to it in the federal record. This process merely involves handing the documents to a clerk and asking that they be filed. It takes all of five minutes.

This Court views all structural errors as “intrinsically harmful” and holds that any structural error warrants “automatic reversal.” The errors in Baker’s prosecution are such errors and automatic reversal of the suppression decision and of the concomitant conviction is warranted.

CONCLUSION

Baker requests that this Court grant certiorari, reverse the Sixth Circuit's affirmance, and remand for further proceedings.

Respectfully submitted,

Gregory C. Sasse
6642 Silvermound Dr.
Mentor, OH 44060
(440) 488 1919
Gregory.sasse@gmail.com
Counsel for Petitioner

APPENDIX

1. COURT OF APPEALS ORDER April 15, 2015