

ORIGINAL

Donte Lamont Dingle,
Petitioner

Case #: 22-7370

vs.

United States of America,
Respondent

Petition for Rehearing In the Supreme Court of the United States

Donte Lamont Dingle
Federal Correctional Institution-Manchester
P.O. Box 4000
Manchester, Kentucky 40962-4000
Counsel of Record

FILED
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SUPREME COURT, U.S.



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Constitutional Provisions:

U.S. Const. 4th Amendment
U.S. Const. 14th Amendment

(1) There exists intervening circumstances of a substantial and/or controlling effect of law that has not been properly considered by this Court, and further is in conflict with prior holdings made by not only this Court, but another United States Court of Appeals.

Pursuant to Rule 44, the Petitioner (Donte Lamont Dingle herein) submits that the panel's refusal to grant certiorari in the instant case conflicts with prior holdings made by this Court that are controlling.

First, and foremost, this Court has previously held that "an assessment of the presence of probable cause must be based on the totality of the relevant circumstances, rather than on the technical or rigid demands of a formulaic test...In making a probable cause assessment, a judicial officer must simply make a practical, common sense decision whether given all the circumstances set forth in the affidavit...there is a fair probability that contraband or evidence of a crime will be found in a particular place..." See Illinois v. Gates, 462 U.S. 213, 230-31, 103 S.Ct. 2317 (1993) and see Ornelas v. United States, 519 U.S. 690 116 S.Ct. 1657 (1996) in which this Court granted certiorari in both cases to answer questions of whether probable cause existed as required under the 4th Amendment to the United States Constitution.

In the instant case, the Fourth Circuit, at no time, made any determination that probable cause existed. (See Exhibit 1 pg. 2-3) The affidavit prepared by Detective Jason Blevins of the Baltimore County Police Department was made part of the record. (See Exhibit 2, pg. 8-10) And, within that affidavit, did he do anything to establish a nexus between the Petitioner's suspected criminal activity and the St. Charles residence that was eventually searched located in Baltimore City which is outside of the detective's jurisdiction. (See Exhibit 3) This Court must grant certiorari to discuss how a search warrant such as the one involved here established probable cause to search a residence that the Petitioner was only seen exiting once. (See Exhibit 4, pg. 1)

In fact, there was no finding nor discussion held by the Fourth Circuit to state otherwise. There, that Court overlooked and failed to apply De Novo review to properly address this issue when this Court has already placed substantial and/or controlling effect of law as a guiding tool for lower courts to adopt as to continue the accepted and usual course of judicial proceedings. This Court must exercise its supervisory powers and grant certiorari to properly address whether a search warrant such as the one involved here established probable cause.

Also, this Court should grant a Rehearing on this petition and further grant certiorari due to the Fourth Circuit's decision being in conflict with prior decisions held by its own court. See United States v. Doyle, 650 F.3d 449 (4th Cir. 2011) in which that Court specifically previously held that " the critical element in a reasonable search is not that the owner of the property is suspected of crime, but there is reasonable cause to believe that the specific things to be searched for and seized are located on the property to which entry is sought...Accordingly, residential searches have been upheld only where some information links the criminal activity to the defendant's residence..."

Detective Blevins never asserted nor indicated that the St. Charles residence was the Petitioner's home or residence, and neither did he further assert any training-and-experience based knowledge to support any nexus. The Fourth Circuit's decision in this case conflicts with previous cases held by its own court, and other sister circuits on this same important matter. (See United States v. Yarber, 915 f.2d 1103, 1106 (7th Cir. 2019) and United States v. Tagg, 886 F.2d 579, 590 (6th Cir. 2018) in which both circuits have found probable cause based on evidence that consisted of way more than simply exiting a premises. A finding that the Fourth Circuit did not make. Now, this Court's refusal to grant certiorari to address this conflict is at odds with controlling law set in place by the Supreme Court that has set a guide for lower courts to use in making probable cause determinations.

This Court should grant this Petition for a Rehearing, and further grant certiorari to properly address whether the Fourth Circuit's decision is in conflict with both prior holdings made by this Court, and its own Court for that matter, along with other sister circuits as to whether probable existed to search a residence that the Petitioner was only seen exiting one time.

Also, and most significantly, this Court should grant a Rehearing on this Petition due to the multiple Franks violations committed by both Detectives Jason Blevins and Mohammed Ali in this case. This Court has previously held in Franks v. Delaware, 438 U.S. 154 (1978) that " to establish a Franks violation, a defendant must prove that the affiant either intentionally or recklessly made a materially false statement or that the affiant intentionally or recklessly omitted material information from the warrant. Franks thus has two distinct prongs, requiring proof of both intentionality and materiality...With respect to the second prong, the defendant must show materiality—that is that the false statements were necessary to the finding of probable cause. Courts will strip the allegedly false statements from an affidavit and determine whether the remaining portion of an application would still support a finding of probable cause...And when facts have been recklessly or intentionally omitted the Court, in assessing materiality, should insert the facts recklessly or intentionally omitted, and then determine whether or not the corrected warrant affidavit would still establish probable cause. If the corrected warrant affidavit establishes probable cause, there is no Franks violation..."

This Court has set precedent for lower courts to follow when dealing with Franks violations, and that precedent is controlling law that this Court is now conflicting with. And to take this course of action will only continue to show that this panel's review of this case has so far departed from the accepted and usual course of judicial proceedings.

Plainly speaking, Detective Blevins mischaracterized the information given to him by the Surveillance team in relation to the Petitioner and the St. Charles premises when drafting his affidavit. (See Exhibit 2, pg. 8-10 and Exhibit 4, pg.1) Then, to make matters worse, he went on to conceal from the issuing judge the material fact that all data bases reviewed showed that Petitioner resided at 3915 Callaway Avenue, and not at 5229 St. Charles; both of which are located in Baltimore City outside of both the detective's and the issuing judge's jurisdiction. (See Exhibit 3 and Exhibit 9, pg. 1-3)

Then, it was also established that Detective Ali subsequently misrepresented information in relation to the Petitioner and the St. Charles location by stating, under oath, that " Investigators observed Dingle enter that address on the evening of July 18th 2018, and it was believed that he spent the night", knowing beforehand that there was no surveillance conducted on that date to state otherwise. (See Exhibit 5, pg. 8) This was also false, and the District Court, at no time, made any finding as to this falsity at the hearing, and it was further accepted as false by the government on direct appeal.

Without any discussion whatsoever, the Fourth Circuit affirmed the Petitioner's convictions with a decision that conflicts with previous holdings made by its own Court in relation to Franks issues. See United States v. Lull, 824 F.3d 109 (4th Cir. 2016) (omissions) and United States v. Tate, 524 F.3d 449 (4th Cir. 2003) (omissions)

And, most importantly, the Fourth Circuit's decision conflicts with prior holdings in sister circuits that it has previously relied on. See United States v. Glover, 755 F.3d 811 (7th Cir. 2014) (omissions); United States v. Jacobs, 986 F.2d 1231 (8th Cir. 2011) (omissions); and United States v. Brown, 631 F.3d 638 (3rd Cir. 2011) (false statements).

Petitioner has supported this issue with an abundance of supporting exhibits to establish that there were multiple Franks violations committed by both Detective Blevins and Detective Ali, and those violations were, indeed, material. (See Exhibit 6 pg. 151-154 and Exhibit 7, pg. 16-17) This Court has set precedent law in place in relation to Franks issues for lower courts to follow that is controlling. A rehearing should be granted to properly address these issues to deter police misconduct when submitting warrant affidavits, and to guide lower courts on how to properly resolve these issues when they are presented. To not do so would only encourage the lower courts such as the Fourth Circuit, who continues to resort with this pattern of non-compliance when dealing with misconduct in relation to police officers and warrant affidavits, to dispose of these allegations of police misconduct improperly which would continue to violate due process under the 14th Amendment to the United States Constitution, and would continue to conflict with precedent law that has previously been set in place by this Court that is binding. This is even recognized by judges within the Fourth Circuit that have noticed other district court judges who have continued to dispose of suppression hearings without any regard for the 4th and 14th Amendments to the United States Constitution when dealing with criminal defendants. (See Exhibit 9)

This Court should grant this Petition for Rehearing, and further grant certiorari to properly resolve this issue. (See Exhibit 10)

CONCLUSION

Petitioner respectfully prays that this forgoing Petition for a Rehearing be granted.

Certificate of Counsel and Compliance

I hereby declare and certify that I, the Petitioner, am the counsel of record, and that I am proceeding "Pro Se." I declare under the penalties of perjury that this statement is true to the best of my knowledge, information, and belief.

Signature



Petitioner

Certificate of Service and Compliance

I also certify that a copy of this Petition for Rehearing was mailed via certified mail on this 20day of June 2023 to:

The Clerk of the Court for the United States Supreme Court

1 First Street, N.E.

Washington, D.C. 20543

Certificate of Compliance

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay. Pursuant to Rule 44 of this Court and presented on this 1st day of July 2023

Respectfully Submitted,

Mr. Dante L. Dingle
I.D. # 64755037

Petitioner

Ex
1

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4330

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DONTE LAMONT DINGLE,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Deborah K. Chasanow, Senior District Judge. (1:19-cr-00204-DKC-1)

Submitted: November 29, 2022

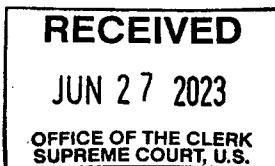
Decided: January 27, 2023

Before AGEE and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Christopher M. Davis, Mary E. Davis, DAVIS & DAVIS, Washington, D.C., for Appellant. Erek L. Barron, United States Attorney, Brandon K. Moore, Assistant United States Attorney, LaRai N. Everett, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.



PER CURIAM:

Donte Dingle was convicted by a jury of ten offenses arising from four armed robberies. See 18 U.S.C. §§ 922(g)(1), 924(c), 1951(a). The district court sentenced Dingle to 30 years of imprisonment, to be followed by 5 years of supervised release. Dingle raises three questions related to the search warrant of Dingle's room: whether the warrant was supported by probable cause; whether the warrant affidavit contained material misstatements and omissions; and whether the issuing magistrate had power to authorize a warrant. Dingle also objects to two of the district court's evidentiary rulings: its admission of witness testimony about the robbery suspect's shirt, and its limitation of Dingle's counsel's cross-examination of an FBI witness.

Before the district court, Dingle objected to the veracity of the warrant affidavit and whether the warrant was supported by probable cause. This Court thus reviews the district court's factual findings on those issues for clear error and its legal determinations *de novo*. *United States v. Scott*, 941 F.3d 677, 683 (4th Cir. 2019); *United States v. Jones*, 942 F.3d 634, 640 (4th Cir. 2019). Because Dingle objects to the issuing magistrate's authority for the first time before this Court, he must establish a plain error that affected his substantial rights. *United States v. Nelson*, 37 F.4th 962, 966 (4th Cir. 2022); see also Fed. R. Crim. P. 52(b). Finally, because Dingle made the same evidentiary objections before the district court and has thus preserved them, we review those rulings for abuse of discretion, *mindful* of whether any errors were harmless. See *United States v. Walker*, 32 F.4th 377, 394 (4th Cir. 2022).

We have carefully reviewed the record and have identified no-reversible error. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

**Additional material
from this filing is
available in the
Clerk's Office.**