No. 23-7321

IN THE SUPREME COURT OF THE UNITED STATES

BENTLEY STREETT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Amendment required suppression of evidence derived from a search of petitioner's home on the ground that the search warrant affidavit did not explicitly identify the house as petitioner's residence.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-31a) is reported at 83 F.4th 842. The order of the district court (Pet. App. 34a-214a) is reported at 363 F. Supp. 3d 1212.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 2023. A petition for rehearing was denied on December 26, 2023 (Pet. App. 215a-216a). On March 11, 2024, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including April 24, 2024, and the petition for a writ of

certiorari was filed on that date. 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 District of New Mexico, petitioner was convicted on one count of traveling to engage in illicit sexual conduct, in violation of 18 U.S.C. 2423(b) (2012); two counts of producing a visual depiction of a minor engaging in sexually explicit conduct, in violation of 18 U.S.C. 2251(a) and (e) and 18 U.S.C. 2256 (2012); three counts of attempting to produce a visual depiction of a minor engaging in sexually explicit conduct, in violation of 18 U.S.C. 2251(a) and (e) and 18 U.S.C. 2256 (2012); one count of distributing a visual depiction of a minor engaging in sexually explicit conduct, in violation of 18 U.S.C. 2252(a)(2) and (b)(1) and 18 U.S.C. 2256 (2012); and one count of possessing child pornography, in violation of 18 U.S.C. 2252A(a)(5)(B) and (b)(2) and 18 U.S.C. 2256 (2012). Judgment 1-2. He was sentenced to 360 months of imprisonment, to be followed by ten years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-31a.

1. a. In October 2013, a woman in Minnesota alerted the National Center for Missing and Exploited Children (NCMEC) that her 15-year-old daughter had recently received text messages soliciting nude photographs. Pet. App. 39a. The woman gave NCMEC the phone number of the texter, and based on an internal database,

NCMEC learned that it was a T-Mobile number under petitioner's name. Id. at 41a-42a. The same database listed petitioner's address as 4620 Plume Road in Albuquerque, New Mexico. Ibid.

NCMEC forwarded the information to the New Mexico Attorney General's office, which subpoenaed T-Mobile for additional information relating to the phone number. Pet. App. 50a-51a. Among other things, T-Mobile confirmed that the number was registered to petitioner at 4620 Plume Road. Id. at 53a. The Attorney General's office referred that information to the sheriff's office in Bernalillo County, New Mexico, where Albuquerque is the county seat. Id. at 55a.

A detective in the sheriff's office, Kyle Hartsock, then obtained a search warrant for T-Mobile's records relating to the number. Pet. App. 35a, 58a. The records revealed, inter alia, that petitioner's phone had exchanged thousands of calls and text messages with phones across the United States and Canada, including over 100 exchanges with the girl in Minnesota. Id. at 63a-64a. Through further investigation, Detective Hartsock learned that many of petitioner's communications had, like his communications with that girl, been with minors. Id. at 65a-67a.

Detective Hartsock next contacted law-enforcement officers in Minnesota and asked that they speak with the girl and her mother. Pet. App. 70a. The girl told the officers that she had met petitioner on Twitter when she was 14 years old; that her Twitter profile had listed her age; and that petitioner had requested

multiple times that she send him nude photographs. Id. at 4a, 5a, 208a.

b. Several days later, Detective Hartsock applied for a warrant to search the residence at 4620 Plume Road. Pet. App. 67a. His warrant affidavit recounted the investigation to date, including the NCMEC tip and the girl's statements to the officers in Minnesota, and explained that, in some cases of suspected child exploitation, law enforcement "will get subpoenas on internet and phone providers to establish an address of the incident." 1 C.A. App. 176-178. Detective Hartsock's affidavit further stated that investigators had subpoenaed T-Mobile and found that the cellphone number that had messaged the girl "was registered to Bentley Streett, who lives in Bernalillo County." Id. at 177. The affidavit described the 4620 Plume Road residence in detail, id. at 174, and explained at length Detective Hartsock's knowledge, "from training and experience," that searches of sexual predators' "residential properties" commonly yield evidence of sexual exploitation of minors, id. at 178-186.

A state magistrate judge approved the warrant telephonically. 1 C.A. App. 648. While executing the warrant, officers spoke with petitioner, who admitted he may have used Twitter to "ask[] some girls under eighteen for nude photographs of themselves." Pet. App. 5a-6a. The search of the residence uncovered various electronic devices that contained sexually explicit images of minors. Gov't C.A. Br. 6. Some of the evidence obtained during

the search also caused officers to obtain and execute additional warrants for searches that revealed petitioner to have communicated with other underage victims. Pet. App. 6a; 1 C.A. App. 165.

2. A federal grand jury sitting in the District of New Mexico returned a second superseding indictment charging petitioner with various offenses, including traveling for the purpose of engaging in illicit sexual conduct with a minor, in violation of 18 U.S.C. 2423(b); producing and distributing visual depictions of minors engaging in sexually explicit conduct, in violation of 18 U.S.C. 2251(a) and (e), 2252(a)(2), and 2256; transferring obscene material to a minor, in violation of 18 U.S.C. 1470; and possessing child pornography, in violation of 18 U.S.C. 2252A(a)(5)(B), (b)(2), and 2256. 1 C.A. App. 1165-1166.

Petitioner moved to suppress all evidence derived from the search of his residence, on the theory (inter alia) that Detective Hartsock's warrant affidavit had not established probable cause because it failed to connect petitioner to the 4620 Plume Road address. Pet. App. 6a. The government opposed the motion, arguing that the affidavit had established probable cause, and that even if it had not, officers had relied on the warrant in good faith, see United States v. Leon, 468 U.S. 897 (1984), and would have inevitably discovered the evidence through other means, see Nix v. Williams, 467 U.S. 431 (1984). 1 C.A. App. 418-429.

At a hearing on the motion to suppress, Detective Hartsock acknowledged that he had not explicitly identified 4620 Plume Road as petitioner's residence in the warrant affidavit. 3 C.A. App. 567. Detective Hartsock noted, however, that he could have done so "[v]ery easily" had it been requested by the magistrate, id. at 478, because he knew when he applied for the warrant that petitioner lived at 4620 Plume Road based on the NCMEC report and the materials T-Mobile had provided in response to the subpoena from the New Mexico Attorney General's office and Detective Hartsock's first warrant, id. at 475-476.

The district court denied petitioner's motion. It took the view that Detective Hartsock's warrant affidavit had failed to establish probable cause by not "indicat[ing] [petitioner's] connection with the 4620 Plume residence." Pet. App. 196a. But it declined to suppress the evidence recovered from the house, finding that the officers had relied on the warrant in good faith, id. at 199a-206a; that they would have inevitably discovered the evidence through a valid warrant for the residence if the state magistrate had rejected Detective Hartsock's application for lack of an explicit statement that 4620 Plume Road was petitioner's address, id. at 207a-210a; and that Detective Hartsock would in fact have found the identities of the victims of the charged crimes simply from the phone records, without any search of petitioner's residence at all, id. at 210a-212a.

Petitioner then pleaded guilty to eight of the counts in the indictment, Judgment 1-2, while reserving his right to appeal the denial of the suppression motion, Pet. App. 7a.

3. The court of appeals affirmed. Pet. App. 1a-31a. The government accepted, and the court agreed, that the warrant affidavit "did not establish probable cause because it failed explicitly to link [petitioner] to the 4620 Plume residence." Id. at 8a; see id. at 14a. But the court affirmed the denial of the suppression motion under the inevitable-discovery doctrine, which provides that evidence obtained in violation of the Fourth Amendment "need not be suppressed" if "'the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means.'" Id. at 9a (quoting Nix, 467 U.S. at 444). The court reasoned that because Detective Hartsock had strong evidence "that 4620 Plume was [petitioner's] residence" when he sought the warrant, "[i]n a hypothetical world where the warrant application was denied" for failure to link petitioner to that address, Detective Hartsock would have easily remedied the defect and a valid warrant would have been granted. Id. at 14a-15a. And because it affirmed on that rationale, the court saw no need to address the government's alternative arguments that suppression was unwarranted under the good-faith doctrine or whether the evidence of petitioner's offenses would "have been discovered

without reliance" on the search of petitioner's residence. Id. at 8a.

ARGUMENT

Petitioner renews his contention (Pet. 12-16) that evidence derived from a search of his residence should have been suppressed based on the warrant affidavit's failure to explicitly identify the house to be searched as his residence. Even assuming that the inevitable-discovery doctrine was not the appropriate framework for affirmance, the judgment below is correct and does not warrant this Court's review. The search warrant affidavit in this case was at least sufficient for reliance on the warrant to be objectively reasonable for purposes of the good-faith exception to the exclusionary rule. See Schiro v. Farley, 510 U.S. 222, 228-229 (1994) (respondent may "rely on any legal argument in support of the judgment below"). And petitioner fails to show that the question presented requires this Court's review in any case, let alone this one.

1. The court of appeals correctly affirmed the denial of petitioner's motion to suppress.

As the district court found and the government contended below, see Pet. App. 7a-8a, 199a-206a, denial of petitioner's motion to suppress was fully supported by the good-faith exception to the exclusionary rule. The only defect petitioner alleges is that the supporting affidavit "contained no link" between him and "the property to be searched," the residence at 4620 Plume Road.

Pet. 2. But "[p]robable cause," as this Court has "often told litigants, is not a high bar." Kaley v. United States, 571 U.S. 320, 338 (2014). And in United States v. Leon, 468 U.S. 897 (1984), this Court held that "evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant" is not subject to suppression under the Fourth Amendment. Id. at 922. The bare existence of a warrant "'normally suffices to establish' that a law enforcement officer has 'acted in good faith in conducting the search.'" Ibid. (quoting United States v. Ross, 456 U.S. 798, 823 n.32 (1982)).

Read as a whole, Detective Hartsock's affidavit at least indirectly identified 4620 Plume Road as petitioner's residence. See Massachusetts v. Upton, 466 U.S. 727, 732 (1984) (per curiam) (warrant affidavit must be considered "in its entirety," not in "bits and pieces"). The affidavit described 4620 Plume Road as a residential address, and it explained that (1) phone records are sometimes used "to establish an address of the incident" in cases involving sexual exploitation of children; (2) evidence of such conduct is likely to be found in a perpetrator's home; and (3) law enforcement had used phone records to identify the suspect as "Bentley Streett, who lives in Bernalillo County." 1 C.A. App. 177; see p. 4, supra. The warrant thus strongly indicated that 4620 Plume Road was petitioner's address, and that the source of that information was his phone records, even if it did not say so in haec verba.

Reliance on the warrant in those circumstances was therefore, at a minimum, objectively reasonable. Probable cause does not turn on formalities; instead, affidavits "are normally drafted by nonlawyers in the midst and haste of a criminal investigation," and "must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion." United States v. Ventresca, 380 U.S. 102, 108 (1965); see Florida v. Harris, 568 U.S. 237, 244 (2013); Illinois v. Gates, 462 U.S. 213, 235-236 (1983). Accordingly, it was not unreasonable for the state magistrate and the officers to read the affidavit here in a holistic, commonsense manner as at least implicitly representing that 4620 Plume Road was petitioner's residence. See United States v. Harper, 802 F.2d 115, 120 (5th Cir. 1986) (relying on the affidavit's implicit content in upholding a warrant); State v. Koen, 152 P.3d 1148, 1153 (Alaska 2007) (per curiam) (upholding a warrant based on an affidavit that implicitly linked the defendant to the target property); cf. United States v. Hove, 848 F.2d 137, 140 (9th Cir. 1988) (finding a warrant invalid where the affidavit provided no link to the property at all).

Petitioner errs in contending that Detective Hartsock's affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Pet. 18 (quoting Leon, 468 U.S. at 923). "[T]he threshold for establishing" that limitation on the good-faith doctrine "is a high one, and it should be." Messerschmidt v. Millender, 565 U.S.

535, 547 (2012). And in any event, Detective Hartsock's testimony at the suppression hearing confirmed that the deficiency was an inadvertent mistake. See p. 6, supra. Applying the exclusionary rule to such a mistake, which does not advantage law enforcement and would easily be corrected if identified, would have no appreciable deterrent value. See Herring v. United States, 555 U.S. 135, 147-148 (2009) ("In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not pay its way.") (citations and internal quotation marks omitted); Leon, 468 U.S. at 907, 918-921; United States v. Frazier, 423 F.3d 526, 535 (6th Cir. 2005) (applying the good-faith exception where the deficiency in the warrant affidavit amounted to "a scrivener's error").

2. The decision below therefore reached the correct result -- affirming the denial of petitioner's suppression motion. And because "[t]his Court reviews * * * judgments, not statements in opinions," Black v. Cutter Labs., 351 U.S. 292, 297 (1956), petitioner's contention that court of appeals mistakenly relied on the inevitable-discovery doctrine, rather than the good-faith doctrine, would not justify this Court's review.

The inevitable-discovery doctrine provides that evidence derived from a Fourth Amendment violation should not be suppressed if "the information ultimately or inevitably would have been discovered by lawful means." Nix v. Williams, 467 U.S. 431, 444 (1984). But even assuming that the inevitable-discovery doctrine is not the applicable rule in a case like this -- one involving, at most, mistaken omission of "a single sentence," Pet. App. 14a, from the warrant affidavit -- petitioner fails to show any need for this Court's intervention.

As petitioner recognizes, in light of the good-faith doctrine, application of the inevitable-discovery doctrine rather than the good-faith doctrine in a case like this would "matter[] only when the probable cause defect is egregious." Pet. 14 (citation omitted). Yet he fails to show that any decision of a federal appellate court or a state court of last resort has relied on the inevitable-discovery doctrine in these circumstances. See Pet. 6-10. For reasons explained above, this is not such a case. Nor is the only appellate decision that he views as directly on all fours with the decision below: the Supreme Court of Oregon's decision in State v. Johnson, 131 P.3d 173, cert. denied, 549 U.S. 1079 (2006).

As a threshold matter, it is far from clear that Johnson -- which involved a second warrant whose validity did not depend on an earlier defective one -- is in fact analogous to this case. See 131 P.3d at 179; see also Segura v. United States, 468 U.S.

796, 813-816 (1984). In any event, as in this case, Johnson would have reached the same result under the good-faith exception irrespective of inevitable discovery. The putatively defective affidavit in Johnson only "arguably" failed to identify the property as the defendant's home, and it otherwise "contained everything that was needed to establish probable cause," 131 P.3d at 179 n.4, rendering reliance upon it objectively reasonable. Cf. pp. 8-11, supra.

The handful of cases petitioner cites to support his claim of lower-court disagreement (Pet. 6-10) simply confirms that this Court's review is unnecessary. As petitioner acknowledges (Pet. 9), two of the federal cases involve different contexts; they are therefore not directly in conflict with the decision below. See United States v. Lazar, 604 F.3d 230 (6th Cir. 2010), cert. denied, 562 U.S. 1140 (2011); United States v. Young, 573 F.3d 711, 713 (9th Cir. 2009). And the third federal decision emphasized that suppression would not be required if the district court found on remand that the defect in the warrant was a good-faith mistake. See United States v. Lauria, 70 F.4th 106, 122-124, 132 (2d Cir. 2023).*

* Petitioner also cites (Pet. 8-9) two state-court decisions, a 35-year-old case in which the State forfeited any good-faith argument, State v. Handtmann, 437 N.W.2d 830, 838 n.6 (N.D. 1989), and a more recent case that was decided under state law, State v. Haidle, 285 P.3d 668, 677 (N.M. 2012) (declining to apply "a good-faith exception to the warrant requirement" because New Mexico does not recognize one). Neither suggests that further review is necessary here.

An issue that rarely arises and makes no real-world difference is not an issue that warrants this Court's review. Cf. Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties). Petitioner accordingly provides no sound reason for further review of the correct disposition of his case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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