No. 24-5107

IN THE SUPREME COURT OF THE UNITED STATES

MYRON MOTLEY, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether law-enforcement officers violated petitioner's Fourth Amendment rights by obtaining opioid prescription information from a state database containing information provided by pharmacies that filled prescriptions.

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1-13, 14-17) are published and unpublished and are available at 89 F.4th 777 and 2023 WL 9014457. The opinion of the district court (Pet. App. 19-31) is reported at 443 F. Supp. 3d 1203.

JURISDICTION

The judgment of the court of appeals was entered on December 29, 2023. A petition for rehearing was denied on April 18, 2024 (Pet. App. 18). The petition for a writ of certiorari was filed

on July 16, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Nevada, petitioner was convicted on one count of conspiring to possess with intent to distribute and to distribute oxycodone and hydrocodone, in violation of 21 U.S.C. 841(a)(1) and 846; four counts of distributing oxycodone, in violation of 21 U.S.C. 841(a); and one count of distributing hydrocodone, in violation of 21 U.S.C. 841(a). Judgment 1-2. The district court sentenced petitioner to 179 months of imprisonment, to be followed by five years of supervised release. Judgment 3-4. The court of appeals affirmed the convictions, vacated the conditions of supervised release, and remanded for resentencing. Pet. App. 16.

1. In 2018, petitioner conspired to pay a physician, Eric Math, to write oxycodone and hydrocodone prescriptions for petitioner and other coconspirators. C.A. E.R. 1031-1032, 1035-1036, 1043-1044, 1050, 1055. From January 2018 to May 2019, Math frequently wrote prescriptions for the coconspirators, without any medical examination, id. at 1031, 1039-1040, and petitioner paid Math between $600 to $800 per prescription, id. at 1044, 1050.

In total, Math prescribed petitioner and his coconspirators over 6000 oxycodone and hydrocodone pills. C.A. E.R. 1039. After

filling the prescriptions, petitioner and his co-conspirators would sell the pills to others, including other distributors. Id. at 941-950, 960-974, 1113-1123, 1127-1128. 1208-1221, 1231-1232, 1392-1396.

2. a. In July 2018, a confidential informant informed law-enforcement agents that petitioner, "who lives in California, regularly traveled to Reno, Nevada, to illegally obtain and sell prescription drugs." Pet. App. 4. The informant reported that petitioner would meet with a doctor in Nevada who would provide petitioner with "a prescription for Oxycodone" and "a stack of prescriptions in other people's names for [petitioner] to sell." C.A. E.R. 574; Pet. App. 4, 23. The informant also told law enforcement that petitioner filled most of the prescriptions at a local pharmacy in Reno. C.A. E.R. 100, 574. The informant stated that his wife had received one of these prescriptions from petitioner, although she had never met the prescribing doctor. Id. at 574.

Officers then accessed the Nevada Prescription Monitoring Program, a computer database that tracks "each prescription for a controlled substance" dispensed by a registered pharmacist. Nev. Rev. Stat. § 453.162.1; C.A. E.R. 574-575; Pet. App. 3.[1] Each registered dispenser must report the name, address, and phone number of any individual to whom a controlled substance is

[1] All references in this brief to the Nevada Revised Statutes or the Nevada Administrative Code are to current law.

prescribed, as well as the name of the individual who prescribed it. Nev. Admin. Code § 639.926.1; Nev. Rev. Stat. § 453.163.1; Pet. App. 3-4. The state board that operates the program must report "activity it reasonably suspects may" be unlawful controlled-substance activity "to the appropriate law enforcement agency," and disclose "relevant information obtained from the program." Nev. Rev. Stat. § 453.164.3(a); see id. § 453.031. And certain law-enforcement officers have "access to the" program to "[i]nvestigate a crime related to prescription drugs." Id. § 453.165.4(a); Pet. App. 4.

Here, the database informed the officers that petitioner had regularly filled opioid prescriptions at a pharmacy in Reno, C.A. E.R. 574-575, and that a "particular physician" had prescribed petitioner "a combination of Oxycodone and Tramadol" in extremely high doses, id. at 575; Pet. App. 4.

b. In September 2018, law enforcement sought and obtained a warrant to place a tracking device on petitioner's car. C.A. E.R. 581-583; Pet. App. 4.

The supporting affidavit recounted the information disclosed by the confidential informant -- namely, that petitioner "was selling illegal prescription narcotics throughout the Reno/Sparks area." C.A. E.R. 574; Pet. App. 4. The affidavit further explained that the informant had previously "proven reliable during the course of a controlled drug purchase." C.A. E.R. 574.

It additionally stated that petitioner did not live in Nevada and that his car was registered in California. Id. at 575-576. It noted that officers determined that petitioner had a history of drug trafficking, id. at 101, 576-577, and had "been the subject of a DEA initiated case," id. at 577. And it recounted that on August 14, 2018, the informant informed law enforcement that petitioner was staying at a resort in Nevada, id. at 575, and that petitioner was then spotted in that resort, id. at 576. The affidavit also described the information in Nevada's Prescription Monitoring Program database, which revealed that petitioner was prescribed Oxycodone and Tramadol in extremely high doses. Id. at 575; Pet. App. 4.

In December 2018, after the first warrant expired, law enforcement sought and obtained a second tracking warrant, which allowed law enforcement to place a tracking device on petitioner's vehicle for another 90 days. Pet. App. 4.

3. A federal grand jury in the District of Nevada charged petitioner with one count of conspiring to possess with intent to distribute and to distribute oxycodone and hydrocodone, in violation of 21 U.S.C. 841(a)(1) and 846; four counts of distributing oxycodone, in violation of 21 U.S.C. 841(a); and one count of distributing hydrocodone, in violation of 21 U.S.C. 841(a). Judgment 1-2.[2] Petitioner moved to suppress the evidence

[2] Petitioner was also charged with distribution of methamphetamine, but that count was dismissed. Pet. App. 12, n.7.

discovered as a result of the two tracking warrants, on the theory that the warrants rested on an unconstitutional search of Nevada's prescription database. Pet. App. 5.

The district court denied the motion. Pet. App. 19-31. The court found it "unclear" whether petitioner "had a subjective expectation of privacy" in the prescription records. Id. at 26. But the court found that any such "expectation was not reasonable," because the database was "maintained by a governmental entity * * * outside of [petitioner's] control"; petitioner "voluntarily released his information to multiple third parties"; and "individuals who receive prescription drugs do not have any reasonable expectation of privacy in the highly regulated prescription drug industry." Id. at 26-27. Alternatively, the court found that "[e]ven if [petitioner] had a reasonable expectation of privacy" in the database, the officers' database query "is subject to the good faith exception" because Nevada law authorized law-enforcement officers to search the database. Id. at 28.

A jury found petitioner guilty on all counts. Pet. App. 5. The district court sentenced petitioner to 179 months of imprisonment on each count, to be served concurrently, and to be followed by five years of supervised release. Judgment 3-4.

4. The court of appeals affirmed petitioner's convictions, affirmed his sentence in part and vacated his sentence in part, and remanded for resentencing. Pet. App. 14-17.

a. The court of appeals rejected petitioner's suppression claim because it determined that he lacked a reasonable expectation of privacy in the prescription information maintained in Nevada's database. Pet. App. 3.

Like the district court, the court of appeals recognized that even assuming petitioner had a subjective expectation of privacy in his opioid prescription records, that expectation was not reasonable "[g]iven the long-standing and pervasive regulation of opioids as a controlled substance and regulatory disclosure of opioid prescription records." Pet. App. 7; see id. at 6-87. The court explained that opioid prescriptions are extensively regulated at both the federal and state level. Id. at 6-7. And the court observed that "[f]or over half a century, the federal government has regulated opioids," and that "Nevada's laws track [federal law's] close, extensive regulation of opioid prescriptions." Ibid.

The court of appeals "declined to equate prescription drug records to all other medical records." Pet. App. 7. The court noted that "[p]rescription opioid records are unlike general medical records" because they "are only a 'subset of medical records . . . [that] do not generally or necessarily contain the

more personal and intimate information that other medical records do,'" and because general medical records "'are not subject to pervasive regulatory disclosures under both federal and state law.'" Ibid. (quoting United States v. Ricco Jonas, 24 F.4th 718, 736 (1st Cir.), cert. denied, 143 S. Ct. 207 (2022)).

While it affirmed the convictions, the court of appeals remanded for limited resentencing as to the conditions of supervised release. Pet. App. 16.

b. Judge Graber concurred in part and concurred in the judgment. Pet. App. 8-11. Judge Graber opined that she would not have reached the question whether petitioner has "an objectively reasonable expectation of privacy in the identity and dosage of his prescription medications" because "[t]wo alternative grounds support the district court's conclusion: the good-faith exception and harmlessness." Id. at 9. First, Judge Graber observed that "the good-faith exception applies here" because "[t]he Nevada statute clearly authorized the officer's access to the database, and the officer acted 'in objectively reasonable reliance" on the statute." Ibid. (quoting Illinois v. Krull, 480 U.S. 340, 349 (1987)). Second, Judge Graber explained that "any error here was harmless" because "[e]ven assuming that the information from the prescription database should have been excluded" from the affidavit for the GPS tracker, "the remaining assertions in the affidavit" -- which relied on the information provided by the

confidential informant -- independently "provided probable cause." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 5-13) that law-enforcement officers violated his Fourth Amendment rights by obtaining information from Nevada's prescription database. The court of appeals correctly rejected petitioner's contention, and its decision does not conflict with any decision of this Court or of another court of appeals. In addition, this case would be a poor vehicle in which to consider the question presented, because the decision below could be affirmed on multiple alternative grounds. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly recognized that petitioner's suppression claim lacks merit. Pet. App. 6-7.

The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. Amend. IV. Absent the existence of recognized property rights capable of invasion through "physical intrusion," Florida v. Jardines, 569 U.S. 1, 5 (2013) (citation omitted), a search occurs only "when the government violates a subjective expectation of privacy that society recognizes as reasonable," Kyllo v. United States, 533 U.S. 27, 33 (2001); see United States v. Jones, 565 U.S. 400, 405-406 (2012).

The touchstone of that inquiry is an affirmative showing that the defendant had a "legitimate expectation of privacy in the

invaded place." Minnesota v. Olson, 495 U.S. 91, 95 (1990) (citation omitted); see Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) (recognizing that a defendant "bears the burden of proving * * * that he had a legitimate expectation of privacy"). For a "subjective expectation of privacy" to be "legitimate," it must be "'one that society is prepared to recognize as reasonable.'" Olson, 495 U.S. at 95-96 (citations omitted); see Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). That is, it must be "one that has 'a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.'" Minnesota v. Carter, 525 U.S. 83, 88 (1998) (citation omitted).

The court of appeals correctly recognized that petitioner lacked a legitimate expectation of privacy in the database records, which contain information that he shared with third parties and is subject to a pervasive regulatory scheme. Pet. App. 7. This Court has long recognized a diminished expectation of privacy in information that is subject to pervasive regulation, inspection, and disclosure. See, e.g., New York v. Burger, 482 U.S. 691, 702 (1987) (explaining that "[b]ecause the owner or operator of commercial premises in a 'closely regulated' industry has a reduced expectation of privacy," administrative searches and warrantless inspections "may well be reasonable within the meaning of the

Fourth Amendment"); New York v. Class, 475 U.S. 106, 112-113 (1986) (noting that individuals have "a lesser expectation of privacy in a motor vehicle" in part because vehicles "are subject to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements") (citations omitted); Donovan v. Dewey, 452 U.S. 594, 600 (1981) (explaining that in a pervasively regulated business, "the federal regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes").

As the court of appeals observed, opioid prescriptions have long "been subject to well established and extensive regulation, including disclosure of opioid records to law enforcement without a warrant." Pet. App. 7. "On the undisputed historical record, for more than fifty years, society's expectation has been that law enforcement would closely monitor and have access to opioid prescription records." Ibid. Indeed, both Nevada law and federal law regulate controlled substances by requiring pharmacies to maintain prescription records and make those records available for law-enforcement inspection. Id. at 6.

Specifically, Nevada's Prescription Monitoring Program requires that each registered dispenser upload to a database the name of each individual prescribed a controlled substance, the

associated prescriber information, and the quantity and type of controlled substance prescribed. Nev. Admin. Code § 639.926.1; Nev. Rev. Stat. § 453.163.1. The state board that operates the program must report "activity it reasonably suspects may" be unlawful controlled-substance activity "to the appropriate law enforcement agency" and provide law enforcement "with the relevant information obtained from the program." Nev. Rev. Stat. § 453.164.3(a); see id. § 453.031. And certain law-enforcement officers have "access" to the database to "[i]nvestigate a crime related to prescription drugs." Id. § 453.165.4(a).

Nevada law also requires pharmacies to retain, for at least two years, records of "[a]ll prescriptions filled." Nev. Rev. Stat. § 639.236.1; see id. § 639.0125.2. Pharmacists must keep "records of all controlled substances" dispensed, including the "[n]ame of the patient," the "[n]ame, strength and quantity of the controlled substance," the "[d]ate the controlled substance was dispensed," and the "[n]ame of the prescribing practitioner." Nev. Admin. Code §§ 453.410.1(a) and (b), 453.480. Pharmacies must allow certain state and federal officials, including "[a] member, inspector or investigator of * * * the Department of Public Safety," to inspect these files. Nev. Rev. Stat. § 639.238.1(d).

Federal law likewise requires "handlers of controlled substances to comply with statutory and regulatory provisions mandating * * * recordkeeping and reporting obligations, and

prescription requirements." Gonzales v. Raich, 545 U.S. 1, 27 (2005). Under federal law, dispensers must maintain a record of each controlled substance "received, sold, delivered, or otherwise disposed of." 21 U.S.C. 827(a)(3); 21 C.F.R. 1304.03, 1304.04(h), 1304.21(a), 1304.22. Those records must be kept for at least two years "for inspection and copying by officers or employees of the United States authorized by the Attorney General." 21 U.S.C. 827(b); see also 21 C.F.R. 1304.04(a) and (h). Dispensers must "identify" and "notify" the Drug Enforcement Administration "upon discovering a suspicious order." 21 U.S.C. 832(a). Particularly in light of that regulatory and historical backdrop, it would not be legitimate or reasonable to expect that prescription records in the possession of a third party will remain private.

2. Contrary to petitioner's contention (Pet. 5-10), the decision below does not conflict with any decision of this Court or another court of appeals.

a. Petitioner asserts (Pet. 10-11) that the decision below "unreasonably extends" this Court's precedents addressing other pervasively regulated contexts to opioid prescription records. But nothing suggests that those precedents are irrelevant in this context. Petitioner contends (Pet. 11-12) that the diminished expectation of privacy that they describe is limited to a business owner, but it would be unreasonable for anyone in the opioid prescription chain -- the prescriber, the pharmacy, or the

recipient -- to expect opioid prescription records to remain private.

Petitioner's assertion (Pet. 10-11) that the decision below conflicts with this Court's decision in Ferguson v. City of Charleston, 532 U.S. 67 (2001), lacks merit. There, it was not disputed by the parties that the state hospital's test of a patient's urine for drugs was a search. See id. at 76 & n.9. And the Court rejected the lower court's view that the search was reasonable under the "special needs" doctrine, pursuant to which a warrantless search may be justified, in certain circumstances, if designed to serve non-law—enforcement ends. Id. at 83-84. This case -- which does not involve state agents conducting an "intrusive search of the body," id. at 83 n.21 (citation omitted), in order "to obtain evidence of a patient's criminal conduct for law enforcement purposes," id. at 69, without the patient's consent, id. at 70 -- differs on the threshold issue of whether an individual's Fourth Amendment rights were violated. Among other things, as the court of appeals explained, opioid prescription records cannot be "equate[d]" to other medical records for Fourth Amendment purposes because they do not "'generally or necessarily contain the more personal and intimate information that other medical records do,'" and other medical records are not "'subject to pervasive regulatory disclosures under both federal and state law.'" Pet. App. 7 (citations omitted).

b. Nor is there any circuit conflict. In United States v. Ricco Jonas, 24 F.4th 718, cert. denied, 143 S. Ct. 207 (2022), cert. denied, 546 U.S. 1138 (1006), the First Circuit recently addressed an analogous issue concerning New Hampshire's database of prescription information and reached a decision in accord with the court of appeals' decision here. Like the decision below, the First Circuit's decision in Ricco Jonas recognized that "in light of the intense government scrutiny to which prescription drug records are subject and the availability of those records for inspection without the need of court intervention under both state and federal law, a person does not have a reasonable expectation that the information contained in prescription drug records will be kept private and free of government intrusion." Id. at 736-737; see Pet. App. 6 (citing Ricco Jonas approvingly).

No court of appeals has held to the contrary. Petitioner cites (Pet. 6) Douglas v. Dobbs, 419 F.3d 1097 (10th Cir. 2005), but Dobbs does not support his claim. In Dobbs, the Tenth Circuit held that qualified immunity protected a district attorney who had authorized a proposed search order, but the court declined to decide whether a warrant or probable cause "is required to conduct an investigatory search of prescription records." Id. at 1103; see id. at 1102-1103 nn.3-4. And the court noted that "the right to privacy is not absolute," and that "state law can operate to

diminish the privacy expectation in prescription drug records." Id. at 1102 n.3.

Petitioner likewise errs in relying (Pet. 6) on Doe v. Southeastern Pennsylvania Transportation Authority, 72 F.3d 1133 (3d Cir. 1995), cert. denied, 519 U.S. 808 (1996). In Doe, the Third Circuit considered "an employee's conditional right to privacy" in prescription drug records monitored "for fraud, drug abuse and excessive costs" in the context of a damages suit under 42 U.S.C. 1983. 72 F.3d at 1134-1135. While the court concluded "that there is a constitutional right to privacy in one's prescription records," it did not address a regulatory scheme like Nevada's; framed the discussion solely in Fourteenth Amendment terms, see id. at 1137; and did not even cite the Fourth Amendment at all. Furthermore, the court emphasized that that the plaintiff's privacy right "[wa]s not absolute," but instead "must be balanced against important competing interests." Id. at 1138. And it ultimately ordered judgment as a matter of law on the ground that such interests overcame privacy rights. Id. at 1143. The decision does not adopt the argument that petitioner has raised here.

Petitioner also cites (Pet. 7) State v. Skinner, 10 So. 3d 1212 (La. 2009). But as the court of appeals here noted (see Pet. App. 13 n.11), Skinner was largely premised on state law -- specifically, "Louisiana's constitutional requirement of a

heightened privacy interest for its citizens." 10 So. 3d. at 1218. Finally, petitioner cites (Pet. 7-8) a handful of cases recognizing, under various doctrines, that an individual may have a privacy interest in her medical records and medical information. But as the decision below illustrates, medical and prescription records need not be treated the same way. The court of appeals emphasized that "[p]rescription opioid records are unlike general medical records" in their general level of intimacy and their degree of regulation, Pet. App. 7, and expressly declined to address "the extent" to which "patients have a reasonable expectation of privacy in other types of medical or prescription records," beyond the "opioid prescription records maintained in Nevada's" database that were directly at issue, id. at 13 n.12.

3. At all events, three alternative grounds for affirmance make this case an unsuitable vehicle to consider the question presented. See Granfinanciera, S. A. v. Nordberg, 492 U.S. 33, 38 (1989) ("[A] prevailing party may, of course, 'defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals."') (citation omitted).

a. First, petitioner's suppression claim is unsound because he voluntarily revealed the information in the prescription database to a third party. See Pet. App. 26-27.

This Court "has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities." Smith v. Maryland, 442 U.S. 735, 744 (1979) (quoting United States v. Miller, 425 U.S. 435, 443 (1976)). In United States v. Miller, the Court held that law enforcement's acquisition of banking records associated with the defendant, under a subpoena issued to various banks, did not impair any Fourth Amendment interest of the defendant. See 425 U.S. at 437-443. The Court rejected the defendant's argument that he had "a Fourth Amendment interest in the records kept by the banks because they [were] merely copies of personal records that were made available to the banks for a limited purpose." Id. at 442; see id. at 443. The Court explained that individuals lack a "legitimate 'expectation of privacy'" in documents that "contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business." Id. at 442 (citation omitted). The Court observed that "[t]he depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government." Id. at 443.

This Court applied the same principle in Smith v. Maryland, where it held that the use of a pen register to record phone numbers dialed from the defendant's telephone did not constitute a search for purposes of the Fourth Amendment. 442 U.S. at 742-

744. The Court observed that the defendant lacked a subjective expectation of privacy in the numbers dialed from his phone because "[a]ll telephone users realize that they must 'convey' phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed." Id. at 742. And the Court explained that any such expectation of privacy would be unreasonable because "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." Id. at 743-744. Thus, when the defendant "voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment in the ordinary course of business," he "assumed the risk that the company would reveal to the police the numbers he dialed." Id. at 744.

The principles set forth in Miller and Smith apply with equal force here. Petitioner filled prescriptions for opioids, and in doing so disclosed the prescription-related information to third-party pharmacies, which maintained the information in the regular course of business and shared it with the prescription database. "[T]he prescriptions * * * were, by their very nature, intended to be revealed to others when they were disclosed by the physician and the patients to the pharmacies which filled them." United States v. Gayden, 977 F.3d 1146, 1152 (11th Cir. 2020), cert. denied, 142 S. Ct. 128 (2021). Petitioner thus lacked any reasonable expectation of privacy in the prescription information.

b. Second, as Judge Graber recognized, Pet. App. 9, suppression is also unwarranted because the law-enforcement officers acted in good faith in searching the database.

The exclusionary rule is a "'judicially created remedy'" that is "designed to deter police misconduct rather than to punish the errors of judges and magistrates." United States v. Leon, 468 U.S. 897, 906, 916 (1984) (citation omitted). To justify suppression, a case must involve police conduct that is "sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system" in suppressing evidence. Herring v. United States, 555 U.S. 135, 144 (2009). Suppression may be justified only "[w]hen the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights." Davis v. United States, 564 U.S. 229, 238 (2011) (citation omitted). "But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, * * * the deterrence rationale loses much of its force, and exclusion cannot pay its way." Ibid. (citations and internal quotation marks omitted).

The "'good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal' in light of 'all of the circumstances.'" Herring, 555 U.S. at 145-146. Good-faith

searches include "searches conducted in reasonable reliance on * * * statutes" and in reasonable reliance on binding appellate precedent. Davis, 564 U.S. at 232; see id. at 239. Suppression is not justified when the police misconduct that led to discovery of the illegally obtained evidence is itself subject to the good-faith exception. See Herring, 555 U.S. at 145; United States v. Artis, 919 F.3d 1123, 1133 (9th Cir. 2019).

Here, as both the district court and the concurrence recognized, Pet. App. 9-10, 29, the officers acted in good faith in accessing information in the prescription database, as authorized by Nevada law. See Nev. Rev. Stat. § 453.165. As this Court has explained, "[t]he application of the exclusionary rule to suppress evidence obtained by an officer acting in objectively reasonable reliance on a statute would have as little deterrent effect on the officer's actions as would the exclusion of evidence when an officer acts in objectively reasonable reliance on a warrant. Unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law." Illinois v. Krull, 480 U.S. 340, 349-350 (1987). And "[p]enalizing the officer for the legislature's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." Id. at 350 (brackets and citation omitted). Suppression is accordingly unjustified.

c. Third, any error was harmless because the affidavits rested on sufficient probable cause even without the information from the prescription database. See Pet. App. 9 (Graber, J., concurring in part and concurring in the judgment). A "warrant remains valid if, after excising the tainted evidence, the affidavit's 'remaining untainted evidence would provide a neutral magistrate with probable cause to issue a warrant.'" United States v. Nora, 765 F.3d 1049, 1058 (9th Cir. 2014) (citation omitted); see generally Murray v. United States, 487 U.S. 533, 538-539 (1987). And that was the case here.

Even without the prescription-database information, the affidavits related that the confidential informant had informed officers that petitioner would drive from California to obtain narcotics prescriptions for him and others from a certain doctor, and petitioner would then sell those narcotics. C.A. E.R. 574. The informant explained that the source of information was the informant's spouse, who had received one of these prescriptions. Ibid.; see, e.g., United States v. Rowland, 464 F.3d 899, 908 (9th Cir. 2006) (noting that "the informant's tip is considered more reliable if the informant reveals the basis of knowledge"). The informant also explained that petitioner filled most of his prescriptions at a local Walgreens. C.A. E.R. 100, 574.

The affidavits noted that the informant had previously proved reliable during a controlled drug purchase. C.A. E.R. 574; see

Rowland, 464 F.3d at 908 ("[A]n informant with a proven track record of reliability is considered more reliable than an unproven informant."). And the affidavits explained that law enforcement had verified some of the information the informant provided: petitioner's car was registered in California and petitioner was seen in a resort where the informant said he would be found. C.A. E.R. 575-576; United States v. Bishop, 264 F.3d 919, 925 (2001) (recognizing that an informant's reliability "may be demonstrated through independent police corroboration"); Rowland, 464 F.3d at 908 (recognizing that "a tip that provides detailed predictive information about future events that is corroborated by police observation may be considered reliable").

The affidavit also recounted petitioner's "criminal history consistent with being involved in a criminal [drug] enterprise," including multiple arrests and investigations for possessing and trafficking in controlled substances. C.A. E.R. 576; see id. at 576-577. That criminal history further "establish[ed] probable cause, especially where the previous arrest or conviction involves a crime of the same general nature,'" Nora, 765 F.3d at 1059 (citation omitted), even without the prescription database information.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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