

No. 24-____

IN THE
SUPREME COURT OF THE UNITED STATES

USHERY STEWART,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth Amendment permits the search of a person's residence based solely on that person's status as a known drug dealer.
2. Whether *Leon's* good-faith exception applies where the search was unconstitutional under applicable Circuit law at the time it was conducted.

LIST OF PARTIES

Petitioner Pursuant to Rule 14.1(b), Petitioner states the parties include:

1. Ushery Stewart, Defendant and Petitioner; and
2. United States of America, Plaintiff and Respondent.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (the “Sixth Circuit”) was issued on August 2, 2024. (App. 1). The Sixth Circuit’s opinion affirmed the judgment of the United States District Court for the Eastern District of Tennessee, which was issued on July 25, 2022. (App. 4; Judgment, R. 898).¹

As relevant to this petition, the Sixth Circuit affirmed the district court’s denial of Mr. Stewart’s motion to suppress, which was issued on May 13, 2021. (App. 2; Opinion and Order, R. 383). The district court’s decision adopted the magistrate judge’s Report and Recommendation. (App. 3; Report and Recommendation, R. 326).

JURISDICTION

The judgment of the Sixth Circuit was entered on August 2, 2024. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

¹ “R.” designates a citation to the district court docket, Case No. 3:19-cr-00151-TAV-DCP.

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

This case directly involves the Fourth Amendment of the United States Constitution, which provides as follows:

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

This case presents two questions of great importance to the current state of Fourth Amendment jurisprudence: (1) whether the Fourth Amendment permits the search of a residence based solely on a person's status as a known drug dealer; and (2) whether *Leon's* good-faith exception applies where the search was unconstitutional under applicable Circuit law at the time it was conducted.

The first question has split the Circuits. The First and Sixth Circuits² have held that a defendant's

² This issue has also split state courts interpreting the Fourth Amendment. *See* footnote 4, *infra*.

mere status as a drug dealer does not create a sufficient nexus to search his home, while most other Circuits have held otherwise. This unbalanced split deprives most Americans of their Fourth Amendment rights and must be resolved by this Court.

To be sure, the evidence needed to connect drug activity to a residence is minimal and can be established by, for example, observing a defendant leave his residence and then sell drugs at a controlled buy. By transporting drugs directly from his residence to the sale, the defendant has created probable cause to believe he stores drugs in his home, and that drugs, therefore, will be found at his residence. The same inference does not lie, however, simply because the defendant is a known drug dealer. That fact, standing alone, does not create probable cause to believe drugs will be found at the defendant's residence, rather than some other place. Drug dealers may store their drugs in any number of locations, including stash houses designed specifically for that purpose. Only by requiring some nexus between drug activity and the defendant's residence can courts properly find probable cause. Warrants which dispense with this nexus inquiry necessarily fail the Fourth Amendment's probable cause requirement.

The second question—regarding *Leon*'s³ good-faith exception to the warrant requirement—is resolved by this Court's precedent in *Davis v. United States*. 564 U.S. 229 (2011). In the present case, the Sixth Circuit did not reach the question of probable cause because it determined that its case law on the nexus requirement was conflicting, and the *Leon* good-faith exception therefore precluded exclusion of the evidence seized. Simply put, the Sixth Circuit's holding is based on a demonstrably incorrect characterization of its case law. Indeed, the Sixth Circuit cited case law which (1) predated the search of Mr. Stewart's by more than a decade, and (2) had been reconciled prior the search at issue. If allowed to stand, the Sixth Circuit's holding would effectively eviscerate defendants' Fourth Amendment rights by allowing courts to perpetually apply *Leon*'s good-faith exception on the basis of conflicting case law, even where those cases have already been reconciled and the conflict resolved.

A. Factual Background

In July 2021, Mr. Stewart and seven other defendants went to trial in the Eastern District of Tennessee on a 21-count Second Superseding Indictment, which alleged conspiracy to distribute controlled substances, conspiracy to commit money laundering, aiding and abetting possession of firearms in furtherance of a drug trafficking crime, and aiding and abetting possession of controlled substances with intent to distribute. (Second Superseding Indictment, R. 243). The government

³ *United States v. Leon*, 468 U.S. 897 (1984).

alleged these conspiracies occurred from July 2018 through November 22, 2019. (*Id.*).

Many of the underlying facts are irrelevant to the questions presented, but the search of Mr. Stewart's residence is central to this petition. In September 2019, an apartment the police attributed to Stewart was searched by the FBI. (App. 1, p. 16). The search returned firearms, drug paraphernalia, and suspected drugs. (*Id.* at 17).

The search of Mr. Stewart's residence was conducted pursuant to a search warrant. The affidavit used to procure the warrant contained no evidence that Mr. Stewart stored drugs in his home or that the residence was otherwise connected to drug trafficking. Rather, the warrant merely alleged that Mr. Stewart was selling illegal narcotics. (App. 1, pp. 16-17).

Mr. Stewart filed a motion to suppress the evidence seized from the apartment. (Motion to Suppress, R. 191). The district court denied his motion, finding that Mr. Stewart's status as a known drug dealer furnished probable cause to search his residence and, in the alternative, that evidence should not be suppressed pursuant to *Leon's* good-faith exception. (App. 2). The district court's decision adopted the magistrate judge's Report and Recommendation. (App. 3).

Mr. Stewart was ultimately convicted of four counts following a jury trial and sentenced to a term of life imprisonment. (App. 4).

B. The Sixth Circuit's Decision

Mr. Stewart appealed the district court's judgment, raising five assignments of error. Mr. Stewart presses only one of those issues—the denial of his motion to suppress—in this petition.

The Sixth Circuit affirmed the district court's judgment and held the district court properly denied Mr. Stewart's motion to suppress. The Sixth Circuit did not decide whether the police had probable cause to search Mr. Stewart's residence, but noted that "the affidavit contained no direct evidence linking Stewart's trafficking activities to his house." (App. 1, p. 18) (emphasis added). Perhaps recognizing the absence of probable cause, the Sixth Circuit instead held that *Leon's* good-faith exception applied due to conflicting case law on the nexus requirement. (*Id.* at 18-19).

Mr. Stewart now petitions this Court to review two questions—one related to probable cause, and the other relating to *Leon's* good-faith exception.

REASONS FOR GRANTING THE PETITION

I. This Court Must Resolve the Split Among the Circuits as to Whether a Person's Status as a Known Drug Dealer Creates a Sufficient Nexus to Search that Person's Residence.

It is axiomatic that, pursuant to the Fourth Amendment of the United States Constitution, "a warrant may not be issued unless probable cause is properly established." *Kentucky v. King*, 563 U.S. 452,

459 (2011). Applying this general standard, courts have consistently required a “nexus between the place to be searched and the evidence sought.” *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004) (en banc) (quoting *United States v. Van Shutters*, 163 F.3d 331, 336-37 (6th Cir. 1998)). This nexus requirement implements this Court’s precedent by insisting on a showing “that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

Lower courts have continually confronted a fact pattern which tests the outer limits of the Fourth Amendment’s probable cause requirement. The question those courts face is whether the Fourth Amendment permits the search of a residence based solely on a person’s status as a known drug dealer. These are sometimes referred to as “known drug dealer” cases.

In most cases, law enforcement will endeavor to connect drug dealing to the residence through controlled buys. By transporting drugs directly from his residence to the sale, the defendant has created probable cause to believe he stores drugs in his home, and that drugs, therefore, will be found at his residence. See *United States v. Fitzgerald*, 754 F. App’x 351, 359 (6th Cir. 2018) (“Controlled buys of drugs at a defendant’s residence have been especially critical in establishing a sufficient nexus between the residence and evidence sought by law enforcement.”). But in some cases, such as this one, law enforcement pushes forward without such evidence and relies solely on the person’s status as a known drug dealer. Indeed, in this case, the Sixth Circuit specifically acknowledged the warrant’s deficiencies and

expressly abstained from deciding whether probable cause existed to search Mr. Stewart's residence.

In known drug dealer cases, the Circuits have split on whether probable cause exists to search the residence. The Sixth Circuit has unambiguously held that "a defendant's status as a drug dealer, standing alone, does not give rise to a fair probability that drugs will be found in defendant's home." *United States v. Berry*, 565 F.3d 332, 339 (6th Cir. 2009). Probable cause premised not merely on the defendant's alleged drug activity, but on "facts showing that the residence had been used in drug trafficking." *United States v. Brown*, 828 F.3d 375, 383 (6th Cir. 2016). The First Circuit has similarly held. *United States v. Roman*, 942 F.3d 43, 51 (1st Cir. 2019) ("we have rejected a per se rule automatically permitting the search of a defendant's home when he has engaged in drug activity"). Most Circuits, however, have held otherwise. See, e.g., *United States v. Reddick*, 90 F.3d 1276, 1281 (7th Cir. 1996) (quoting *United States v. Lamon*, 930 F.2d 1183, 1188 (7th Cir. 1991)) ("in the case of drug dealers evidence is likely to be found where the dealers live"); *United States v. Henson*, 123 F.3d 1226, 1239 (9th Cir. 1997) (same); *United States v. Spencer*, 530 F.3d 1003, 1007 (D.C. Cir. 2008) ("For the vast majority of drug dealers, the most convenient location to secure items is the home.").

This split, observed both in federal and state courts,⁴ leaves individuals across the country with

⁴ This question has also split state courts, meaning that individuals across the country possess different Fourth Amendment rights depending on both federal and state jurisdiction. Compare *State v. Silvestri*, 136 N.H. 522, 527 (N.H. 1992) ("we have consistently required some nexus between the

different Fourth Amendment rights depending on both federal and state jurisdiction. This Court should remedy those disparities by holding that a person's status as a known drug dealer, standing alone, does not create probable cause to search that person's residence. Any other conclusion would do malice to the Fourth Amendment and this Court's well-worn rule that probable cause lies only upon a showing "that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

Such a holding would not handcuff law enforcement in their efforts to curtail drug trafficking. The nexus requirement is flexible, and may be satisfied by "facts showing that the residence had been used in drug trafficking, such as an informant who observed drug deals or drug paraphernalia in or around the residence." *United States v. Brown*, 828 F.3d 375, 383 (6th Cir. 2016). But to properly safeguard an individual's Fourth Amendment rights, this Court must require "some reliable evidence connecting the known drug dealer's ongoing criminal activity to the residence." *Id.* (emphasis added).

defendant's residence and drug-dealing activities in order to establish probable cause to search the residence"), with *State v. Nunez*, 138 Idaho 636, 642 (Idaho 2003) (holding warrant was properly issued where the defendant was a known drug dealer and it was reasonable to conclude he "would have evidence of this extensive drug dealing at his [] residence").

II. The Warrant Requirement Would be Eviscerated if Courts are Permitted to Apply *Leon*'s Good-Faith Exception Where the Search was Unconstitutional Under Applicable Circuit Law at the Time it was Conducted.

This Court must answer the first question presented to properly resolve this case. The Sixth Circuit, however, ducked the probable cause determination by applying *Leon*'s good-faith exception to the warrant requirement. Although evidence obtained from an unconstitutional search must ordinarily be suppressed, an exception exists where the officer executing the warrant acts in good-faith reliance on a judicially authorized warrant. *United States v. Leon*, 468 U.S. 897, 909 (1984). An officer acts in good-faith reliance when he conducts a search “in objectively reasonable reliance on binding judicial precedent.” *Davis v. United States*, 564 U.S. 229, 239 (2011).

Here, the Sixth Circuit held that its own conflicting case law on the nexus requirement—specifically, whether a person's status as a drug dealer, standing alone, is sufficient to establish probable cause—warranted application of the good-faith exception. In support of this holding, the Sixth Circuit cited two conflicting cases: one from 2005 and the other from 1991. Those cases far predate the search of Mr. Stewart's residence, which occurred in September 2019. At the time of the search, Sixth Circuit case law was no longer conflicting. Indeed, in 2016, the Sixth Circuit explicitly reconciled its cases:

In sum, our cases teach, as a general matter, that if the affidavit fails to include facts that directly connect the residence with the suspected drug dealing activity, or the evidence of this connection is unreliable, it cannot be inferred that drugs will be found in the defendant's home—even if the defendant is a known drug dealer.

United States v. Brown, 828 F.3d 375, 384 (6th Cir. 2016) (emphasis added); see also *United States v. Berry*, 565 F.3d 332, 339 (6th Cir. 2009) (“a defendant’s status as a drug dealer, standing alone, does not give rise to a fair probability that drugs will be found in defendant’s home”). Sixth Circuit law was therefore clear at the time Mr. Stewart’s residence was searched, and the Sixth Circuit improperly relied on repudiated cases to manufacture a nonexistent “conflict” in its case law.

It should go without saying that *Leon*’s good-faith exception does not apply where Circuit law, at the time the warrant is executed, establishes a lack of probable cause. Should this Court need any support for that conclusion, it need look no further than *Davis v. United States*. 564 U.S. 229 (2011). In *Davis*, this Court applied the good-faith exception where, even though the search at issue was rendered unconstitutional by a case decided after the search, “the officers’ conduct was in strict compliance with then-binding Circuit law and was not culpable in any way.” *Id.* at 239-40. In so holding, this Court made clear that the question is whether a search is constitutional at the time it is conducted.

Under the Sixth Circuit's view, conflict is perpetual. If case law is ambiguous at one point in time, it is ambiguous forever, and police officers may rely on that ambiguity—even though later resolved—to conduct unconstitutional searches *ad infinitum*.⁵ Such expansion of *Leon* would forever deprive defendants of their Fourth Amendment rights—a state of law which this Court must not countenance.

⁵ Lower courts have observed similar concerns in the context of qualified immunity, where courts will often determine that an officer's conduct does not violate clearly established law, yet simultaneously fail to create clearly established law precisely because they never reach the constitutional question at issue:

Section 1983 meets Catch-22. Plaintiffs must produce precedent even as fewer courts are producing precedent. Important constitutional questions go unanswered precisely because no one's answered them before. Courts then rely on that judicial silence to conclude there's no equivalent case on the books. No precedent = no clearly established law = no liability. An Escherian Stairwell. Heads government wins, tails plaintiff loses.

Zadeh v. Robinson, 928 F.3d 457, 479-80 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part).

The issue here, though, is even worse. In this case, the Sixth Circuit resolved its case law and answered the constitutional question—namely, the quantum of evidence needed to establish probable cause in known drug dealer cases—yet the court nevertheless relied on a nonexistent conflict to apply the *Leon* good-faith exception.

CONCLUSION

For the foregoing reasons, Mr. Stewart respectfully requests that this Court grant a writ of certiorari.

Respectfully submitted,



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