

No. _____

**IN THE SUPREME COURT
OF THE UNITED STATES**

DEREK MICHAEL MIMS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether a district court judge who makes probable cause and necessity findings in connection with a wiretap application may later review its own findings in response to a motion to suppress the wiretap warrants.

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CITATION TO OPINION BELOW

A copy of the Opinion of the Eighth Circuit Court of Appeals, dated December 9, 2024, is attached as Appendix “A.” The opinion is believed to be unreported.

JURISDICTIONAL STATEMENT

The date of the Opinion sought to be reviewed is December 9, 2024. The date of Order denying the Petition for Rehearing is February 18, 2025, and is attached as Appendix “B.”

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Course of Proceedings

Petitioner Derek Micheal Mims (“Mims”) appealed to the Eighth Circuit Court of Appeals from his conviction and 360-month prison sentence following a conditional guilty plea to a drug trafficking conspiracy charge. The Eighth Circuit affirmed.

B. Statement of Facts

This case arose from the law enforcement’s investigation into the David Belton Drug Trafficking Organization (“Belton DTO”). Investigators suspected that between 2017 and continuing until March 2022, David Belton and several others were involved in transporting large shipments of ice methamphetamine from California to Cedar Rapids, Iowa, for distribution. Law enforcement applied for and obtained several wiretap search warrants.

On April 21, 2022, the Government filed an Indictment charging Mims, and several co-defendants¹, with drug trafficking crimes. Mims was charged in only one count -- Count 1 -- with Conspiracy to Distribute a Controlled Substance (Methamphetamine).²

¹ The charged co-defendants are David Poitier Belton, Phillip Lanell Rogers, Robert Lee Michael Bates, Anton Tarrice Whitney, Jr., Christopher Eric Curley, Calub Joseph Storlie, Elmer Mims, Timothy Michael Webber, Kiyonte Levell Sowell, and Jesus Vera. (R. Doc. 12).

² In violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846.

On October 28, 2022, Mims filed a motion to suppress wiretap evidence. The Government resisted the motion. In his motion, Mims argued that suppression was necessary due to lack of probable cause and because other investigative procedures were untried.

On November 6, 2022, co-defendant Whitney filed a motion to recuse the trial judge from adjudicating his pending motion to suppress wiretap evidence. Whitney reasoned that the same judge who approved the wiretap warrants was now assigned to hear the case and to rule on whether probable cause existed to issue the warrants. Mims joined in the motion for the reasons cited in Whitney's recusal motion. The Government resisted the motions to recuse. On November 16, 2022, the court filed its Order denying the recusal motions.

On January 10, 2023, the Magistrate Judge filed its report and recommendation denying all motions to suppress wiretap evidence. With respect to Mims's motion, the Magistrate found there was probable cause to issue the wiretap warrants. The Magistrate also found that the affidavits all satisfied the necessity requirement under the wiretap statute. The Magistrate further found "the investigators relied on the wiretap orders in good faith."

On January 17, 2023, Mims filed written objections to the report and recommendation. He objected to the report's probable cause finding, citing several instances of conclusory statements in the affidavits. Mims also objected to the necessity showing, pointing out that such showing was to the conspiracy as a whole and not specifically to Mims. Finally, Mims objected to the finding that the good

faith exception applies where, as here, it was “entirely unreasonable to believe that an affidavit provides probable cause to issue a warrant.”

On January 31, 2023, the district court filed an Order adopting the report and recommendation as to all Defendants’ motions to suppress. With respect to Mims, the court found probable cause, a sufficient showing of necessity, and that the good faith exception applies.

On February 6, 2023, Mims signed a written conditional plea agreement. The parties agreed that Mims reserved the right to appeal “the issues raised in defendant’s motion to suppress … and motion for recusal” Mims pleaded guilty pursuant to the conditional plea agreement.

On February 8, 2023, the district court entered an Order adopting the report and recommendation and accepting Mims’s conditional guilty plea.

The court sentenced Mims to 360 months in prison (the bottom of the guideline range).

Mims filed a Notice of Appeal on August 17, 2023. The Eighth Circuit Court of Appeals affirmed on December 9, 2024.

REASONS FOR GRANTING THE PETITION

- 1. Whether a district court judge who makes probable cause and necessity findings in connection with a wiretap application may later review its own findings in response to a motion to suppress the wiretap warrants.**

Mims urged on appeal, *inter alia*, that the district court abused its discretion in denying his request that the judge recuse himself from considering Mims’s

motion to suppress wiretap evidence. The panel affirmed the district court's actions, but in its seventeen-page ruling the panel devoted only two short paragraphs to this important recusal issue. See Opinion, p. 12. While not stating so explicitly, the panel seemed to suggest that Mims was required to make a showing of *actual* bias. This is an incorrect statement of the law. The objective standard established in the recusal statute³ does not require proof of actual bias. *See Moran v. Clarke*, 296 F.3d 638, 648 (8th Cir. 2002) (actual bias is irrelevant to the objective standard stated in § 455(a)(1)). Allowing a judge, as here, to review the propriety of his prior decision "could seriously affect the fairness and public reputation of the judicial proceedings and create an appearance of impropriety." *Weddington v. Zatecky*, 721 456 (7th Cir. 2013) (appellate judge should not review his prior suppress ruling made as a trial judge).

The panel's reliance on the *Jones* decision is misplaced. *United States v. Jones*, 801 F.2d 304 (8th Cir. 1986). The *Jones* decision predates *Moran*'s holding regarding irrelevancy of actual bias. 296 F.3d 638 (8th Cir. 2002). *See also United States v. Alton*, 982 F.2d 285, 287 (8th Cir. 1992) (expressing concern about the appearance of bias that arises when a judge reviews a probable cause determination made by the same judge who issued the search warrant); *But see United States v. May*, 70 F.4d 1064 (8th Cir. 2023).

CONCLUSION

For all the above reasons, Petitioner respectfully requests the Court grant his Petition.

³ 28 U.S. C. § 455.

Respectfully submitted,

/s/ David E. Mullin

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APPENDIX “A”

Opinion of the United States Court of Appeals for the Eighth Circuit in the case of *United States of America v. Derek Michael Mims*, filed on December 9, 2024.

APPENDIX “B”

Order of the United States Court of Appeals for the Eighth Circuit denying Petition for Rehearing in the case of United States of America v. Derek Michael Mims, filed on February 18, 2025.