
No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

WILLIAM ROGER WILKINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a magistrate may, consistent with the Fourth Amendment, issue a warrant to search a residence where the lone fact connecting the defendant to the address is a statement that he was living there, five years ago.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

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William Roger Wilkinson, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit that was entered on August 25, 2017.

1. Opinions Below

The district court denied Mr. Wilkinson's motion to suppress on September 21, 2015 (Appendix B). The Court of Appeals for the Ninth Circuit affirmed the judgment on August 25, 2017, in an unpublished opinion (Appendix C). *United*

States v. Wilkinson, 706 Fed. Appx. 337 (9th Cir. Aug. 25, 2017). Mr. Wilkinson petitioned for rehearing before the panel, for other reasons, and the court denied his petition on October 27, 2017 (Appendix D).

2. Jurisdictional Statement

The district court had jurisdiction pursuant to 18 U.S.C. § 3231. The court of appeals exercised its jurisdiction pursuant to 28 U.S.C. § 1291, and entered its judgment on August 25, 2017, and its order denying petitioner's petition for panel rehearing on October 27, 2017. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

3. Constitutional and Statutory Provisions

The Fourth Amendment to the United States Constitution states:

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.

4. Statement of the Case

On May 24, 2013, sheriff's deputy Sergeant JR Gregory applied for, obtained, and executed a search warrant for a residence, at an address in Shoshone, Idaho (Appendix A). The affidavit in support stated that Sergeant Gregory had received a report from a grandfather who suspected that his nine-year-old granddaughter, H.H., was being sexually abused by his daughter's ex-boyfriend, Mr. Wilkinson. The

grandfather told Sergeant Gregory that H.H. and her mother once lived with Mr. Wilkinson, in 2006-2008, in Shoshone, Idaho, and the grandfather provided Sergeant Gregory with that address. The grandfather reported other details about Mr. Wilkinson's relationship with the mother and H.H., including that several months after the mother and H.H. left, Mr. Wilkinson obtained court-ordered visitation rights for H.H. Sergeant Gregory advised the grandfather that, "everything he had stated was third hand and [Sergeant Gregory] would have to talk with [the mother]."

Sergeant Gregory interviewed the mother. The mother confirmed that she and H.H. had once lived with Mr. Wilkinson, and that she had moved out about five years ago. The mother described the house they had shared as "unfinished [and] there was no sheet rock up for walls just 2X4's so you could see from room to room," but gave no other description. The mother confirmed that, after she ended her relationship with Mr. Wilkinson H.H. visited him, but she did not indicate that these visits took place at the same unfinished house she had shared with Mr. Wilkinson.

Several days later, H.H. disclosed that she had been sexually abused by Mr. Wilkinson. H.H. stated that this abuse took place "at Roger's" house, but she did not otherwise describe that house other than to indicate that the bedroom of the house had a closet. H.H. did not indicate whether the house was the same house she and her mother had shared with Mr. Wilkinson, five years ago.

After reviewing Sergeant Gregory's affidavit, the state magistrate judge issued a search warrant authorizing a search of the residence at the address in Shoshone. Sergeant Gregory and other officers served the warrant at the Shoshone property that same day, and found and seized numerous items, including Mr. Wilkinson's computers.

A forensic exam of the computers revealed a sexual video of H.H., sexual pictures of H.H., and possible child pornography, forming the basis of four counts of which Mr. Wilkinson was ultimately convicted, and leading to the discovery of evidence that formed the basis of the fifth count.

On May 13, 2014, the government brought federal charges against Mr. Wilkinson in the United States District Court, in Idaho. On December 9th, 2014, the government filed a second superseding indictment containing the charges for which Mr. Wilkinson was ultimately tried and convicted.

On January 12, 2015, Mr. Wilkinson filed a motion to suppress all evidence from the searches of his residence, his computers and electronics, and his vehicle, obtained in violation of the Fourth Amendment. Relevant here, he argued that the May 24th search of his residence was invalid on the ground that the affidavit in support of the warrant failed to establish that the Shoshone address was the place where Mr. Wilkinson was living, and therefore failed to support a reasonable belief that evidence of his alleged criminal activities would be found at that location.

In a memorandum decision and order, the district court denied Mr. Wilkinson's motion to suppress. (Appendix B.)

After being convicted by a jury and sentenced to 130 years, Mr. Wilkinson appealed the judgment challenging, among other things, the denial of his motion to suppress.

In an unpublished decision following oral argument, the Ninth Circuit Court of Appeals denied relief, concluding, that, "the affidavit contains relevant statements from the victim, her mother, and her grandfather that would lead a magistrate judge to reasonably conclude that evidence that Wilkinson sexually abused the victim would be found at the address" (Appendix C, at 3).

5. Reasons for Granting the Writ

- A. The Court Should Grant the Writ Because the Court of Appeals Ruling To Uphold The Search Warrant Authorizes Police To Search A Personal Residence, Where Based On The Fact The Defendant Was Living At The Address, Five Years Ago, Decides An Important Federal Question In A Way That Conflicts With the Relevant Decisions of This Court.

A foundational principal of Fourth Amendment law is that a search warrant must be supported by probable cause that evidence of crime will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Probable-cause-as-to-residence exists if an officer of "reasonable caution" would believe, "based on the totality of [the] circumstances," that the person actually lives at a particular residence. *See United States v. Grandberry*, 730 F.3d 968 (9th Cir. 2013).The

magistrate must be provided with sufficient facts from which he or she may draw the inferences and form the conclusions necessary to a determination of probable cause. *Giordenello v. United States*, 357 U.S. 480, 485-86 (1958). The magistrate’s action cannot be a mere ratification of the bare conclusions of others. *Gates*, 462 U.S. at 238.

Here, the magistrate judge authorized police to search a residence, at any time of the day or night, twenty seconds after knocking on the front door of the address. (Appendix A). Yet the affidavit supporting the warrant contained no facts showing that Mr. Wilkinson was currently living at that address. The affidavit’s sole reference to the search address was the grandfather’s statement, incorporated into the underlying affidavit, that his daughter, granddaughter and Mr. Wilkinson had lived at that address during the years 2006 – 2008, ending some five years earlier. This five-year old address could not provide the magistrate with the requisite probable cause to believe that evidence of Mr. Wilkinson’s current activities would be found at that location.

The Fourth Amendment’s “probable-cause requirement looks to whether evidence would be found *when the search is conducted*.” *United States v. Grubbs*, 547 U.S. 90, 95 (2006) (emphasis in original). Nothing in the affidavit indicates that Mr. Wilkinson continued to reside at the address after H.H. and her mother moved out in 2008, or that the Shoshone address was his current address, in 2013. There were no facts suggesting Mr. Wilkinson lived at the address prior to the time he was

living with H.H. and her mother; no facts showing whether he had been renting the place or owned it; and no other information that might support an inference that Mr. Wilkinson still lived at the Shoshone address five years after his relationship and living arrangement with the mother had ended. The magistrate was given absolutely no information to verify the address belonged to Mr. Wilkinson – not a driver’s license check, nor attestation of personal knowledge from the affiant. Thus, H.H.’s statements that she had recently been abused at Mr. Wilkinson’s house, without facts to show that the place to be searched was Mr. Wilkinson’s house, could not provide the requisite probable cause.

Without such crucial, yet easily-obtainable information, no magistrate could reasonably conclude that evidence of a crime committed at Mr. Wilkinson’s house, would probably be found at the address to be searched.

The issue is a serious one of potentially national dimension, given the mobility of our modern society. If courts bless this type of warrant, few citizens are safe from the possibility of the police breaching their door in the middle of the night looking for evidence related to some prior tenant. The Court should grant certiorari to ensure the Fourth Amendment guards the doors of every household against these intrusions.

6. Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

DATED this 19th day of January, 2017.

/s/ Kimberly A. Coster
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