No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MALGUM WHITESIDE, JR. – PETITIONER

v.

UNITED STATES OF AMERICA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Takura Nyamfukudza
Chartier & Nyamfukudza, P.L.C.
Attorney for Petitioner – CJA Appointment
2295 Sower Boulevard
Okemos, MI 48864
517.885.3305
takura@cndefenders.com

QUESTIONS PRESENTED

I. Mr. Whiteside moved to suppress the evidence related to the firearms because the affidavit did not establish a nexus. Did the district court improperly deny suppression and did the appellate court improperly affirm the district court?

II. Mr. Whiteside's home was unreasonably search when officers relied on an unsigned search warrant and there was no constitutional rationale that supported the officer's actions. Did the district court improperly deny suppression and did the appellate court improperly affirm the district court?

LIST OF PARTIES

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

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is published. It is attached as Appendix A.

JURISDICTION

The date on which the United States Court of Appeals for the Sixth Circuit decided Mr. Whiteside's case was May 19, 2025. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment of the United States Constitution.

STATEMENT OF THE CASE

Malgum Whiteside, Jr. was charged with being a felon in possession of firearms. (Indictment, RE 1, Page ID # 1.) The indictment indicated that on February 11, 2022—knowing that he had a felony conviction—Mr. Whiteside possessed a Glock 9mm pistol and a Springfield .45 caliber pistol and that both weapons were stolen and loaded. (Indictment, RE 1, Page ID # 1; Transcript, RE 59, Page ID #490.) The maximum penalty for this charge was up to 10 years in prison, a fine of up to $250,000, and three years of supervised release. (Transcript, RE 59, Page ID # 492.)

There was a bifurcated motion hearing regarding suppression of the contraband found in his apartment following the execution of a deficient search warrant. (Motion Hearing, RE 61, Page ID # 523, 524, 526.) Mr. Whiteside argued that the warrant was issued without probable cause. (Motion, RE 21-1, Page ID # 41.) Also, the warrant—which was unsigned—and incomplete affidavit made no mention of weapons as a target of their search, so there was nothing about their presence in the residence that pointed to their illegality. (Motion, RE 21-1, Page ID # 41-42.) There were no exigent circumstances to justify the search and the plain view doctrine was, therefore, inapplicable and that unwarranted search could not be salvaged by the good faith doctrine. (Motion, RE 21-1, Page ID # 42.) The court erroneously denied the motion. (Opinion and Order, RE 37, Page ID # 228.)

Regarding whether the warrant had been signed, the government provided an email that represented that the warrant had been signed and bore the judge's signature. (Motion Hearing, RE 61, Page ID # 525.) When the court stated that

defense counsel should have the chance to cross-examine the witness about its authenticity, the government again stated that it believed the proceeding to be non-evidentiary in nature and added that it really did not need to as the crux of its argument was the applicability of the good faith exception, so the authenticity of the warrant really did not apply. (Motion Hearing, RE 61, Page ID # 525-526.)

Under the good faith exception, the government posited that the only question here was whether the officer could reasonably rely on the search warrant that only contained a rubber-stamped signature that had been represented to the officer as being signed. (Motion Hearing, RE 61, Page ID # 527.) The court rejected the government's argument that the docket showed that the affidavit was sworn out over the phone because that was not within the four corners. (Motion Hearing, RE 61, Page ID # 528.)

The government added that—while it would not reiterate why it believed that the firearms were evidence of stalking and, therefore, authorized for seizure by the warrant—the guns were in "plain view" when they were found between the mattress box spring and the bedframe. (Evidentiary Hearing, RE 58, Page ID # 460; Motion Hearing, RE 61, Page ID # 531-532.) The government also attempted to portray that the officers knew that Mr. Whiteside was a convicted felon before the guns were found, but the court pointed out that there was nothing within the four corners of the affidavit for the search warrant related to the residence that stated that information. (Motion Hearing, RE 61, Page ID # 532.)

Counsel offered other warrants issued by a different judge for the same matter that *were* properly signed, initialed, and dated to show that it was not a common or typical practice in that jurisdiction for warrants to be issued with just

a rubber stamp and not dated. (Motion Hearing, RE 61, Page ID # 535-537, 547.) With regard to the good faith and exclusionary rules, counsel offered the court caselaw that showed when a judge failed to sign any copy of the warrant that it could plausibly be maintained that the warrant never issued in the first place. (Motion Hearing, RE 61, Page ID # 537.) Further, counsel added that the court would not accept counsel's word that Mr. Whiteside agreed with counsel's request for an ends of justice continuance, but instead required an ink signature by Mr. Whiteside himself. (Motion Hearing, RE 61, Page ID # 538.) Counsel stated that they could not have it both ways, so if the court required Mr. Whiteside's signature in this very matter, then the same should be true of the judge who allegedly validated the warrant. (Motion Hearing, RE 61, Page ID # 538.)

Counsel pointed out that there was no mention anywhere in the warrant about any sort of weapon. (Motion Hearing, RE 61, Page ID # 545.) Instead, the warrant only listed devices, USBs, telephones, and laptops. (Motion Hearing, RE 61, Page ID # 545.) In short, the nexus between the firearms being evidence of stalking was not readily apparent in the document nor the argument made by the government in court—and this was crucially important. (Motion Hearing, RE 61, Page ID # 546-547.)

Ultimately, the court stated it could not fully grant or deny the motion without an evidentiary hearing. (Motion Hearing, RE 61, Page ID # 547.) The court needed evidence to determine if the warrant had issued properly. (Motion Hearing, RE 61, Page ID # 548-549.) The court also needed to decide whether the firearms were within the parameters of the warrant that sought "any related evidence of stalking" or, failing that, whether there was a plain view reason to believe that

those firearms were contraband given Mr. Whiteside's status as a convicted felon. (Motion Hearing, RE 61, Page ID # 549-550.)

The evidentiary hearing was held on September 25, 2023. (Evidentiary Hearing, RE 58, Page ID # 394.) The "issuing" judge, Judge Valvo, was the first witness called to the stand. (Evidentiary Hearing, RE 58, Page ID # 398.) In pertinent part, she testified to her general process for swearing out search warrants over the phone. (Evidentiary Hearing, RE 58, Page ID # 399.) To be noted here, the judge herself did not consider the stamp of her name and P number to be either her signature or a facsimile of her signature. (Evidentiary Hearing, RE 58, Page ID # 400.) She explained that it was just used to clarify her signature that was written in script by her to make sure whoever looked at it could understand her full name and P number in case they needed to contact her. (Evidentiary Hearing, RE 58, Page ID # 400.)

The judge then would reach out to the officer, ask them to raise their right hand, and then has the officer swear that he provided truthful information about all that is contained in the affidavit. (Evidentiary Hearing, RE 58, Page ID # 399-400.) When asked if she would physically sign both the warrant and the affidavit itself, she said yes. (Evidentiary Hearing, RE 58, Page ID # 400, 401.) She indicated that she signed the bottom of the affidavit before the warrant, then she would sign the signature page on the warrant if she approved it. (Evidentiary Hearing, RE 58, Page ID # 400.)

Judge Valvo further claimed that she never signed or initialed an affidavit without reviewing the entire document. (Evidentiary Hearing, RE 58, Page ID # 400.) However, she stated that she historically signed whichever pages the officer

had signed and that was often only the first page. (Evidentiary Hearing, RE 58, Page ID # 401, 406.) It is worth noting here that she has since changed this practice and now makes sure that she initials each page as that is a more thorough practice and assures everyone is aware that she reviewed everything. (Evidentiary Hearing, RE 58, Page ID # 406, 408.)

Regarding the specific affidavit for Mr. Whiteside's residence, the judge indicated that she recognized the initials on the front page as her handwriting. (Evidentiary Hearing, RE 58, Page ID # 401, 404-405, 406.) She called the officer and administered the oath to him, which he swore to. (Evidentiary Hearing, RE 58, Page ID # 405.) She did not recall any discrepancies or typographical errors that needed to be corrected, so she *believed* she authorized the warrant. (Evidentiary Hearing, RE 58, Page ID # 405-407.) However, despite claiming that she read the warrant and approved it, she did not sign the warrant even though that was her typical practice. (Evidentiary Hearing, RE 58, Page ID # 400, 407.) It should be noted that she stated, "No, I didn't sign the warrant, and I'm at a loss to understand why. Typically I would have signed each of those warrants." (Evidentiary Hearing, RE 58, Page ID # 407.) When asked what she would have done if she had denied issuing the warrant the judge stated, "I *may* have given them back to her with a line drawn through them to make it clear that I was not authorizing them." (Evidentiary Hearing, RE 58, Page ID # 407, emphasis added.) But the warrant regarding Mr. Whiteside's residence was neither signed nor had a line drawn through it. (Evidentiary Hearing, RE 58, Page ID # 407-408.)

The judicial coordinator was the next witness. (Evidentiary Hearing, RE 58, Page ID # 411.) She could not remember if she reviewed everything after receiving

them back from the judge before she returned them to the officer. (Evidentiary Hearing, RE 58, Page ID # 412-413.) She *assumed* they had been signed but she did not verify that. (Evidentiary Hearing, RE 58, Page ID # 414-415.)

Detective Sergeant Mathews, who was the author of the affidavits, was the next witness. (Evidentiary Hearing, RE 58, Page ID # 417-418, 421.) He testified that he drafted the affidavit for the search warrant, it was reviewed by a co-worker and then sent to the prosecutor's office for review. (Evidentiary Hearing, RE 58, Page ID # 419-420.) He then submitted the paperwork, swore to it over the phone, and claimed the "signed" warrant was returned to him by the judge's support staff. (Evidentiary Hearing, RE 58, Page ID # 420.)

In preparing the affidavit, the detective claimed that he relied on the reports of three other officers. (Evidentiary Hearing, RE 58, Page ID # 421-422.) Counsel objected to the reports being admitted, but the government stated they helped support the good faith argument he planned to make, so the court allowed the reports to enter for limited purposes but noted that they could not cure any deficiencies of the four corners of the affidavit. (Evidentiary Hearing, RE 58, Page ID # 423-428.)

The detective testified that he interviewed the complainant who made the stalking allegations on February 9, 2023. (Evidentiary Hearing, RE 58, Page ID # 432.) He testified that they would have run a criminal history check and discussed that prior to the patrol. (Evidentiary Hearing, RE 58, Page ID # 433-434.) During the patrol, the officers located and arrested Mr. Whiteside. (Evidentiary Hearing, RE 58, Page ID # 434.)

The following day, the detective stated that he drafted two search warrant affidavits—one for Mr. Whiteside's residence and one for his vehicle. (Evidentiary Hearing, RE 58, Page ID # 434-435.) While the detective included Mr. Whiteside's status as a convicted felon in the affidavit for the search of the vehicle, he could not explain why that information was not included in the affidavit for the residence. (Evidentiary Hearing, RE 58, Page ID # 436.)

While he stated that he saw that the affidavits were stamped and signed, he claimed he did not have memory of reviewing the entire packet. (Evidentiary Hearing, RE 58, Page ID # 438.) He also claimed that he had no reason to doubt the judicial coordinator's representation that the warrants themselves had been signed. (Evidentiary Hearing, RE 58, Page ID # 438.)

Detective Sergeant Mathews was not directly involved with the search of Mr. Whiteside's apartment. (Evidentiary Hearing, RE 58, Page ID # 438.) Detective Sergeant Mathews emailed the warrants for the residence and vehicle to all involved and claimed that Mr. Whiteside's criminal history would have been discussed in preparation for executing the warrants. (Evidentiary Hearing, RE 58, Page ID # 439-441.) He also acknowledged later that he knew that many of the previous charges in Mr. Whiteside's criminal history had been dismissed. (Evidentiary Hearing, RE 58, Page ID # 444.)

On cross-examination, the detective sergeant confirmed that, in his experience, a complete search warrant was one that had been sworn to in front of a judge, contained a signature or stamp, and had a return and tabulation with it. (Evidentiary Hearing, RE 58, Page ID # 442.) He agreed that there were no signatures or dates on either warrant, just a rubber stamp. (Evidentiary Hearing,

RE 58, Page ID # 442, 451-452.) Nor did he receive any emails directly from the judge indicating that she had issued the warrants, he only had the email from the judicial coordinator to rely on. (Evidentiary Hearing, RE 58, Page ID # 449, 451.) And it is important to note here that the judicial coordinator testified that she only *assumed* they had been signed and did not confirm there was a signature. (Evidentiary Hearing, RE 58, Page ID # 414-415.) Detective Sergeant Mathews further admitted that there had been no surveillance of Mr. Whiteside's apartment before the warrant was executed. (Evidentiary Hearing, RE 58, Page ID # 443.) It was further noted that the affidavits did not state that the complainant alleged any threats of violence toward her by Mr. Whiteside. (Evidentiary Hearing, RE 58, Page ID # 444.)

Detective Sergeant Cavanaugh was the next witness and testified that he assisted with the patrol to locate Mr. Whiteside in relation to the stalking allegations reported to the police. (Evidentiary Hearing, RE 58, Page ID # 453-454.) Detective Sergeant Cavanaugh was also directly involved with the execution of the search warrant on Mr. Whiteside's apartment and was the officer who briefed everyone beforehand on the situation and claimed he included Mr. Whiteside's criminal history as well. (Evidentiary Hearing, RE 58, Page ID # 440, 455-456.)

While the detective sergeant stated that he had reviewed the affidavits—and incorrectly stated that Mr. Whiteside's criminal status was included—what he did *not* notice during his claimed review was that only the first page of the affidavit was initialed by the judge. (Evidentiary Hearing, RE 58, Page ID # 457-458.) And while he claimed to have thoroughly prepared for the execution of the

warrants, it should be noted that Detective Sergeant Cavanaugh also noted on the record later in the proceeding that he had actually *not* reviewed the entire report—which casts doubt on whether or not he had seen Mr. Whiteside's previous criminal history before entering the residence. (Evidentiary Hearing, RE 58, Page ID # 465.)

Detective Sergeant Cavanaugh testified that he was the one who found the firearms when he was looking for potential evidence in the beds. (Evidentiary Hearing, RE 58, Page ID # 459-460.) While he was not aware of any claims from the complainant that Mr. Whiteside threatened violence toward her and firearms were not listed as items to be seized as any evidence of stalking, he claimed that he knew of Mr. Whiteside's status as a convicted felon, so he seized the firearms and also the ammunition found at the apartment. (Evidentiary Hearing, RE 58, Page ID # 462, 465.) While he was part of the search, he claimed that he had no knowledge of any women's clothing being found at the apartment and believed that Mr. Whiteside was the only occupant. (Evidentiary Hearing, RE 58, Page ID # 462-463.)

At the conclusion of the hearing, counsel argued that suppression was warranted. (Evidentiary Hearing, RE 58, Page ID # 467.) Specifically, he stated that the affidavit did not establish the required nexus to directly connect Mr. Whiteside to the residence within the four corners of the affidavit. (Evidentiary Hearing, RE 58, Page ID # 467.) The only information given was Mr. Whiteside's date of birth and the record established that no surveillance was done to verify that Mr. Whiteside lived at the address or if there were other occupants there as well. (Evidentiary Hearing, RE 58, Page ID # 467-468.) There was no mention of

Mr. Whiteside's criminal history in the affidavit related to the search of the residence. (Evidentiary Hearing, RE 58, Page ID # 468.) There was no nexus or particularized suspicion to say that any of the contraband belonged to Mr. Whiteside, especially when women's clothing was found in the apartment and there was no surveillance to establish who came and went from there. (Evidentiary Hearing, RE 58, Page ID # 468.) And the officer's independent knowledge without any indication within the four corners of the affidavit simply was not enough. (Evidentiary Hearing, RE 58, Page ID # 469.)

The judge who supposedly issued the warrant could not explain why she did not sign the warrants or initial the affidavits if she reviewed them and had since changed her process so everyone could decipher what exactly had been reviewed. (Evidentiary Hearing, RE 58, Page ID # 468.) But in this matter, there is no proof other than everyone's *assumption* that the warrants were issued based on "past practice" that it was *probably* done because that was what they *usually* did. (Evidentiary Hearing, RE 58, Page ID # 468, 470.) But that is not enough as the only thing that was truly proven was that it was the judicial coordinator who stamped the judge's name on the documents and sent them back to the officer because she assumed they were signed. (Evidentiary Hearing, RE 58, Page ID # 400, 468.) And since Mr. Whiteside was in custody, there was no emergency situation that would allow for "sloppy work." (Evidentiary Hearing, RE 58, Page ID # 471.)

Counsel stated that without going outside the four corners of the affidavit, the nexus was sorely lacking and there was no verification or connection between Mr. Whiteside and the apartment nor the contents therein. (Evidentiary Hearing,

RE 58, Page ID # 471.) The affidavit did not offer that the complainant had been to the residence and the affidavit did not provide any way to know how they landed on that address or why it could be believed that Mr. Whiteside's electronics may be found there. (Evidentiary Hearing, RE 58, Page ID # 471-472.) In short, there was no verification, corroboration, or nexus that was demanded of the officers. (Evidentiary Hearing, RE 58, Page ID # 472.)

The court took the motion under advisement and gave the parties time to submit supplemental briefing if they wished to do so. (Evidentiary Hearing, RE 58, Page ID # 475.) The court suggested that the supplemental briefing focus on the nexus issue and if the four corners of the search warrant affidavit established the necessary "probable cause to believe that the information the police were looking for is at [address redacted], and, you know, there is nothing really within the four corners that clearly says, and this is where the defendant lives." (Evidentiary Hearing, RE 58, Page ID # 476-477.) While the court noted that there were references to the law enforcement information network (LEIN), it wanted briefing on what in the actual information in the four corners established that nexus to that address. (Evidentiary Hearing, RE 58, Page ID # 477.) The court noted that this would naturally include a possible good faith argument as well. (Evidentiary Hearing, RE 58, Page ID # 477.)

The court ultimately denied Mr. Whiteside's motion to suppress the evidence. (Opinion and Order, RE 37, Page ID # 253.) In its opinion and order, the court decided that the Fourth Amendment was satisfied in this case even though the warrant was not signed. (Opinion and Order, RE 37, Page ID # 239-240.) As far as connecting Mr. Whiteside to the apartment itself, counsel argued that there

was no assertion *or even a suggestion* within the four corners of the affidavit linking him to the residence. (Opinion and Order, RE 37, Page ID # 244.) But then the court sidestepped this assertion that there was nothing asserted or even suggested and instead flipped the other way in. Indeed, the court confusingly stated, "The residence warrant does not contain abundant evidence of nexus, but there is enough here to pass muster." (Opinion and Order, RE 37, Page ID # 243.) The court further stated that "while the better practice perhaps would have been for the warrant to expressly state that Mr. Whiteside lived at the address, the Court finds that this omission is not fatal here." (Opinion and Order, RE 37, Page ID # 244.) And the court ruled that even if Mr. Whiteside could succeed on his issuance and nexus challenges, the "good faith" exception to the exclusionary rule applied in this situation and the plain view exception allowed for the seizure of the firearms. (Opinion and Order, RE 37, Page ID # 252.)

On November 2, 2023, a hearing was held and it was anticipated that Mr. Whiteside would enter a change of plea under a conditional plea agreement. (Transcript, RE 62, Page ID # 556-557, 559.) The court verified the necessary information with Mr. Whiteside to confirm that he was competent to proceed. (Transcript, RE 62, Page ID # 559-562.) The court also verified that Mr. Whiteside understood the rights he was giving up pursuant to entering the conditional plea and also the possible results of doing so. (Transcript, RE 62, Page ID # 562-579.)

Mr. Whiteside pleaded guilty to the charge of being a felon in possession of firearms in February 2022 in Ingham County. (Transcript, RE 62, Page ID # 579.) After establishing the factual basis, the court accepted Mr. Whiteside's plea. (Transcript, RE 62, Page ID # 580-583.)

At the sentencing hearing held on February 26, 2024, the court ultimately sentenced Mr. Whiteside to 60 months in the Bureau of Prisons. (Transcript, RE 63, Page ID # 604-605, 608, 611-612.) The court detailed the need for specific programming and assessments during his incarceration and noted it would highlight Mr. Whiteside's medical issues as well. (Transcript, RE 63, Page ID #608-609.) And placement at the Milan, Michigan facility was requested due to its close proximity to proper medical care. (Transcript, RE 63, Page ID # 611-612.) Mr. Whiteside filed an appeal with the United States Court of Appeals for the Sixth Circuit, and his conviction was affirmed. (Appendix A, Opinion, RE 46-1, Page ID # 2.) Mr. Whiteside—like many others in the same situation—now turns to this Court for guidance and relief.

REASONS FOR GRANTING THE PETITION

I. The affidavit did not establish a nexus; thus, any evidence derived from it should have been suppressed.

The Fourth Amendment guarantees that "[t]he 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 . . . ." U.S. Const. Amend. IV. A warrant satisfies the burden of probable cause when, after looking at the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238; 103 S. Ct. 2317; 76 L. Ed. 2d 527 (1983). Whether there is probable cause to issue a warrant should be determined from the facts and circumstances presented to the issuing officer under oath and affirmation. *Nathanson v. United States*, 290 U.S. 41, 47; 54 S. Ct. 11; 78 L. Ed. 159 (1933).

The affidavit to a search warrant application must provide a substantial basis for determining the existence of probable cause, and a wholly conclusory statement fails to meet this requirement. *Gates*, 462 U.S. at 239. "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Id.* Further, "[m]ere affirmance of belief or suspicion is not enough." *Nathanson*, 290 U.S. at 47.

A. The supporting affidavit in the instant matter did not establish a nexus because there was no information as to a direct connection between the residence and suspected criminal activity.

If the affidavit fails to include facts that directly connect the residence with the suspected criminal activity or the evidence of the connection is unreliable, it cannot be inferred that evidence of criminal wrongdoing will be found in the defendant's home. See *Gates*, 462 U.S. at 238. A reviewing court may not consider information not provided to the magistrate in the supporting affidavit. *Giordenello v. United States*, 357 U.S. 480, 485-486; 78 S. Ct. 1245; 2 L. Ed. 2d 1503 (1958). This Court has clarified that recordkeeping errors by the police are not immune from the exclusionary rule. *Herring v. United States*, 555 U.S. 135, 146; 129 S. Ct. 695; 172 L. Ed. 2d 496 (2009). Important here, "an otherwise insufficient affidavit cannot be rehabilitated by testimony concerning information possessed by the affiant when he sought the warrant but not disclosed to the issuing magistrate." *Whiteley v. Warden*, 401 U.S. 560, 565 n. 8; 91 S. Ct. 1031; 28 L. Ed. 2d 306 (1971). Not surprisingly, this Court has consistently rejected the proposition that a search that was unlawful at its inception may ultimately be validated by what it turns up. *Byars v. United States*, 273 U.S. 28, 29; 47 S. Ct. 248; 71 L. Ed. 520 (1927).

"To hold that an officer may act in his own, unchecked discretion upon information too vague and from too untested a source to permit a judicial officer to accept it as probable cause for a warrant . . . subvert[s] th[e] fundamental policy" that shores up the warrant procedure. *Wong Sun v. United States*, 371 U.S. 471, 482; 83 S. Ct. 407; 9 L. Ed. 2d 441 (1963). A relaxation of the fundamental requirements of probable cause would leave law-abiding citizens at the mercy of officers' whims or caprice. *Brinegar v. United States*, 338 U.S. 160, 176; 69 S. Ct. 1302; 93 L. Ed. 1879 (1949).

Cases that have the absence of any indicia of the informant's reliability must have substantial independent police corroboration. See *Wong Sun*, 371 U.S. at 481-482. And this Court has upheld a state supreme court's judgment quashing a search because it lacked sufficient indicia of reliability in a case that alleged the illegal possession of a firearm. See *Florida v. J.L.*, 529 U.S. 266, 274; 120 S. Ct. 1375; 146 L. Ed. 2d 254 (2000).

In *Massachusetts v. Upton*, 466 U.S. 727, 729-730; 104 S. Ct. 2085; 80 L. Ed. 2d 721 (1984), a lieutenant submitted an affidavit in hopes of searching the defendant's motor home for evidence of burglaries, receiving stolen property, and related crimes. The supporting affidavit explained that the defendant's girlfriend had shared details about some of the jewelry, silver, and gold that were stowed in the motor home as well as where it was parked. *Id.* at 729. She also detailed the defendant's impending plans for the motor home, which were motivated by a recent raid, and she told the lieutenant who the defendant had purchased the stolen items from. *Id.* A magistrate issued the warrant, a subsequent search

produced the items described by the caller, and the defendant was ultimately convicted. *Id.* at 730.

On appeal, the Supreme Judicial Court of Massachusetts granted the defendant's post-conviction motion to suppress the search warrant, but this Court reversed that decision. *Id.* at 735. It proved pivotal that the caller's description of stolen goods tallied with those taken in recent burglaries. *Id.* at 733. She also knew about the recent raid on the motel room and its yield. *Id.* In the end, the caller's story and the surrounding facts possessed an internal coherence that gave weight to the whole. *Id.* at 734.

Conversely, the supporting affidavit in the instant matter was too vague to pass constitutional muster. There was an oblique reference to Mr. Whiteside distributing explicit images in a previous relationship. (Appendix B, 2.) However, there was no claim that the complainant in the instant matter had spent any amount of time inside the searched residence or that she had ever observed Mr. Whiteside committing illegal acts therein. These shortcomings buttress the district court's deduction that the residence warrant "does not contain abundant evidence of nexus." (Opinion and Order, RE 37, Page ID # 243.)

The nexus would have been sufficient if the affidavit had revealed that the LEIN and the Michigan Secretary of State (SOS) checks established the address listed in the affidavit as Mr. Whiteside's residence. But that was not the case. Also, the complainant gave a decidedly underwhelming description of the laptop that she claimed to have seen in Mr. Whiteside's possession. All she knew was that it was black; she did not provide a make or model. (Appendix B, ¶ M.) Nothing provided in the affidavit gave the magistrate the ability to determine reliability

since there was absolutely no explanation of how the information was found. And without more, there is no way to ascertain whether the information provided by the mysterious source was correct. For example, the information could have been stale, assuming arguendo that it was the complainant who provided it, based on the last time that she had been there. The address could have been reported incorrectly from whatever source it came from. Doubtless, it is also possible that Mr. Whiteside could have moved out of the apartment after his affair with the complainant ended. Without more, there was just no way for the reviewing judge to have confidence that the address in the affidavit was correct or that the contraband sought would be there. And since there was no surveillance of the apartment done to confirm that Mr. Whiteside still resided there, reliability on the scant information in the affidavit was improper.

It deserves emphasis that this Court has concluded that unless the specific items described in an affidavit are also listed in the warrant itself, there can be no written assurance that the magistrate actually found probable cause to search for, and to seize, every item mentioned in the affidavit. *McDonald v. United States*, 335 U.S. 451, 455; 69 S. Ct. 191; 93 L. Ed. 153 (1948). The warrant, too, must specifically list what the officers are permitted to look for and seize. This safeguards private citizens from officers who would otherwise rummage through their personal files and papers despite lacking a sufficient evidentiary basis. *Groh v. Ramirez*, 540 U.S. 551, 560; 124 S. Ct. 1284; 157 L. Ed. 2d 1068 (2004).

In addition, it is axiomatic that probable cause to search a person's home does not arise based solely upon probable cause that he is guilty of a crime. *Zurcher v. Stanford Daily*, 436 U.S. 547, 558-559; 98 S. Ct. 1970; 56 L. Ed. 2d 525 (1978).

In other words, search warrants are not directed at people; they authorize the search of places and seizure of things. *United States v. Kahn*, 415 U.S. 143, 155 n. 15; 94 S. Ct. 977; 39 L. Ed. 2d 225 (1974).

The district court here had no choice but to recognize that "the warrant does not explicitly state why Detective Sergeant Mathews believed that evidence of stalking would be found at the [address redacted] address." (Opinion and Order, RE 37, Page ID # 244.) And since that is required for a valid warrant to issue, that alone should be enough to suppress the evidence found. The ensuant declaration that it would simply have been "the better practice" for the warrant to state that Mr. Whiteside resided there seeks to transmogrify a long-recognized precondition for valid search warrants into a paltry impediment for law enforcement. (Opinion and Order, RE 37, Page ID # 244.) But this is not what the Constitution demands and courts should not be allowed to downplay such violations.

The district court makes much of the purported tension between the lack of a nexus within the four corners of the affidavit and Mr. Whiteside's reasonable expectation of privacy. (Opinion and Order, RE 37, Page ID # 244.) In doing so, it improperly shifts the burden of proving the validity of the search warrant and the sufficiency of its supporting documents from the government and places it squarely in Mr. Whiteside's lap. Indeed, a wholly conclusory statement that officers believe contraband is located on certain premises will not do. *Gates*, 462 U.S. at 239. Additionally, it is an inescapable precept that to establish probable cause, an affidavit must describe the relationship of the defendant to the premises. See *Carroll v. United States*, 267 U.S. 132, 148-149; 45 S. Ct. 280; 69 L. Ed. 543 (1925). And that was simply not done here.

Regarding devices, the affidavit does not list any unique identifying markings or features of any laptops or cell phones that the complainant believed Mr. Whiteside may have used to accomplish the behavior that she complained about. Indeed, "[i]t would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to suppose evidence of just about any crime could be found on a cell phone." *Riley v. California*, 573 U.S. 373, 399; 134 S. Ct. 2473; 189 L. Ed. 2d 430 (2014). This Court has recognized that cellular phones are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude that they were an important feature of human anatomy. *Id.* at 385. Laptops and the other devices sought from Mr. Whiteside's apartment are almost as ubiquitous as cellular phones. Thus, the affidavit does not establish the necessary probable cause for their seizure without more specific information.

The affidavit presented only the affiant's conclusion that the information was correct, and the reviewing judge was acting not on facts, but on faith alone that the information was reliable. There was nothing to indicate for what purpose Mr. Whiteside was using the laptop that the complainant, who was a nurse, saw in his possession at the hospital. The judge could not just assume that the affiant viewed the same laptop or that anything illegal was stored on it. The judge was not permitted to presume missing facts or links that would enable her to draw the necessary or required inferences.

Significantly, the affidavit contained no information that the devices to be seized were used to store or distribute explicit images that the complainant revealed were originally captured on Mr. Whiteside's phone with her consent.

Countenancing this unconstitutional search guts the Fourth Amendment and allows the police to invade the privacy of any person based on unreliable and unsupported claims made by any person who may have a desire to harass any other citizen.

There was not sufficient information to establish probable cause that further evidence of Mr. Whiteside's illegal conduct would be found at the address listed in the affidavit and warrant. In fact, Mr. Whiteside was arrested on February 9, 2022, and was already in custody when the search warrant was granted. (Appendix B, ¶ L.) To permit the broad invasion of his right to privacy and allow the government to ransack his home based on a warrant lacking any necessary supporting details is unconstitutional. Overall, the affidavit lacked sufficient information to establish probable cause, so all evidence derived from the search warrant must be suppressed. The district court erred when it decided otherwise, the Court of Appeals for the Sixth Circuit should not have affirmed that erroneous ruling, and their decisions should be overturned by this Court.

B. There was no verification that Mr. Whiteside lived at the residence to be searched.

Probable cause cannot be created by affidavits which are purely conclusory, stating only the affiant's or an informer's "belief" that probable cause exists without detailing any of the circumstances underlying that supposed belief. *United States v. Ventresca*, 380 U.S. 102, 108-109; 85 S. Ct. 741; 13 L. Ed. 2d 684 (1965). Recital of at least some of the circumstances is essential if the magistrate is to perform his detached function and not be a mere rubber stamp for the police. *Id.* at 109. Overzealous officers often fail to grasp that the Fourth Amendment does not deny them the support of the usual inferences that reasonable men draw

from evidence. *Id.* at 106. Rather, its protection requires that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often-competitive enterprise of ferreting out crime. *Id.*

In *Ventresca*, this Court reversed the Court of Appeals for the Sixth Circuit's grant of the defendant's motion to suppress because the affidavit was detailed and specific. *Id.* at 109. Further, the affidavit listed many of the underlying circumstances supporting the officer's belief, not just some of them. *Id.* Reading the affidavit as a whole, the *Ventresca* Court determined that many of the detailed observations recounted in the affidavit were made by full-time investigators of the Alcohol and Tobacco Tax Division of the Internal Revenue Service. *Id.* at 111. This was decisive because observations of fellow officers of the government who are engaged in a common investigation are undoubtedly a reliable basis for a warrant applied for by one of their number. *Id.*

In this case, there was no indication that the complainant in the stalking allegations had ever set foot inside the residence that was illegally searched or that she had seen Mr. Whiteside doing anything illegal on a laptop. While officers claimed they ran Mr. Whiteside's information through the LEIN and the SOS database for a date of birth, there is no indication that either source connected Mr. Whiteside with the searched address until the evidentiary hearing that was held in federal court nearly two years later. The affidavit did not describe anything about independent police corroboration to verify the listed address. The source of the information was not disclosed, and the affidavit lacked disclosure of the method that the officers used to pinpoint the address. Reading the affidavit, the information provided offered nothing more than the conclusion that the address

fell from the sky and landed in the lap of the affiant. This is distinguishable from a case where this Court, nearly a century ago, affirmed a decree that the challenged search warrant fully complied with statutory and constitutional requirements because the lead detective ascertained the related information by his own investigation of the official records. *Steele v. United States*, 267 U.S. 498, 504; 45 S. Ct. 414; 69 L. Ed. 757 (1925).

Notably, the affiant here was in a remote location, and he enlisted the services of a sergeant from a local department to provide a physical description of the property. However, there was no information in the affidavit to support an assertion that either officer corroborated that the address was used by Mr. Whiteside in any manner. As the affiant testified, no member of law enforcement ever conducted surveillance of the residence. (Evidentiary Hearing, RE 58, Page ID # 443.) Moreover, he confirmed that no member of law enforcement had any personal knowledge regarding the comings and goings of any person connected to the searched residence. (Evidentiary Hearing, RE 58, Page ID # 443.) This does not create an indicia of reliability or probable cause such that a reasonable officer could rely in good faith on the judge's issuance of the warrant.

In short, the warrant application was supported by nothing more than a bare bones affidavit. And experienced officers should recognize that the glaring omission of vital information cast suspicion on the warrant's validity. Thus, the good faith exception does not apply, particularly given the uncontroverted testimony which established that the judge neither signed the search warrant nor made any markings that would allow law enforcement to reach an objective conclusion that she had reviewed the second and third pages of the anemic

affidavit. (Evidentiary Hearing, RE 58, Page ID # 406-407.) Thus, the items obtained due to the flawed search warrant must be suppressed.

II. Mr. Whiteside's home was unreasonably searched when officers relied on an unsigned search warrant. There was no constitutional rationale that supports the officers' actions.

The Fourth Amendment provides that, "No warrant shall issue but upon probable cause, supported by oath or affirmation." U.S. Const., Amend. IV. In determining the existence of probable cause, a magistrate is to apply the "totality-of-the-circumstances" analysis discussed in *Gates*, 462 U.S. at 238.The magistrate judge looking at all of the circumstances *must* have a substantial basis to believe that evidence will be found at the place cited on the date of the search. See *United States v. Grubbs*, 547 U.S. 90, 95; 126 S. Ct. 1494; 164 L. Ed. 2d 195 (2006).

A. No valid search warrant was issued to authorize the search of Mr. Whiteside's home.

The affidavit is to be reviewed in a common sense, rather than hyper-technical, manner. *Upton*, 466 U.S. at 732. And a search of a residence or building without a warrant is "presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586; 100 S. Ct. 1371; 63 L. Ed. 2d 639 (1980). Searches conducted outside the judicial process are *per se* unreasonable, subject only to a few specifically established and well-delineated exceptions. *Katz v. United States*, 389 U.S. 347, 357; 88 S. Ct. 507; 19 L. Ed. 2d 576 (1967). Notably, only exigent circumstances or consent may excuse the necessity of a warrant. *Payton*, 445 U.S. at 587.

No exigent circumstance that may have allowed a warrantless search exists in the case at bar. Because Mr. Whiteside was in custody, there can be no argument made that officers were concerned about the destruction of evidence, they were obviously not in hot pursuit of anyone, the suspected contraband was

not going to be removed to a different jurisdiction, and they were not responding to an emergency. More to the point, the officers' reliance on an unsigned warrant was not reasonable and cannot be said to have occurred in good faith. *Leon* cannot save Judge Valvo's facially invalid search warrant and incomplete affidavit. As this Court has made clear, a valid search warrant is not an impediment for law enforcement under such circumstances—it is a *requirement*.

All that any officer who entered Mr. Whiteside's home had to do to realize these deficiencies was look at the documents. "Where, as here, officers are not responding to an emergency, there must be compelling reasons to justify the absence of a search warrant." *McDonald*, 335 U.S. at 454. Indeed, it is well settled that the Fourth Amendment shields every person against incrimination by use of evidence that was obtained through searches that were executed in violation of his rights under the Fourth Amendment. *Agnello v. United States*, 269 U.S. 20, 34-35; 46 S. Ct. 4; 70 L. Ed. 145 (1925). "It is incumbent on the officer executing a search warrant to ensure the search is lawfully authorized and lawfully conducted." *Groh*, 540 U.S. at 563.

The government in the instant matter placed more weight on the reasoning from *United States v. Cazares-Olivas*, 515 F.3d 726 (7th Cir. 2008) than it can bear. (Government's Response, RE 26, Page ID # 98.) As the government observed, in that case, the judge told the agents, "'the bottom line is you've got judicial authorization. It is so ordered. You can send your team in right now.'" *Cazares-Olivas*, 515 F.3d at 727. Conversely, here Judge Valvo testified that she merely "believe[d]" that she authorized the warrant and did *not* call or email the affiant after he provided her with a recitation of facts. (Evidentiary Hearing, RE 58, Page

ID # 405.) In an attempt to justify that "belief," Judge Valvo explained that it would have been anomalous for her to contact the affiant directly, anyhow. (Evidentiary Hearing, RE 58, Page ID # 407.) Rather, her judicial coordinator would have sent copies out to the officer who originally requested the warrant. (Evidentiary Hearing, RE 58, Page ID # 407.) The judicial coordinator's assumption that the warrant had been signed only compounded the judge's error when the coordinator told the detective that they were signed without first checking to make sure that they actually had been. (Evidentiary Hearing, RE 58, Page ID # 414.) The district court ultimately allowed Judge Valvo to reverse engineer a subjective remedy to an objective defect that would not have existed if she had communicated directly with the affiant or the leader of the search team that entered the address in the unequivocal terms that the judge in *Cazares-Olivas* did.

To be sure, it is puzzling that the district court was inflexible and would not grant the ends of justice motion that counsel filed until it received Mr. Whiteside's signed consent. (Motion Hearing, RE 61, Page ID # 538.) But it was much more pliable when it came to the import of a missing signature in deciding whether Judge Valvo reviewed all the pertinent information and in fact issued the warrant.

The affidavits and search warrants that were issued by Magistrate Garwood in this matter underscore all the ways in which Judge Valvo's were deficient. The cover sheet of each affidavit bears Magistrate Garwood's timestamped signature and the subsequent pages reference the first page. So, there can be no quibbles about whether she reviewed all of the alleged facts before she issued the search warrants by signing and dating them. Magistrate Garwood's

execution of the documents makes it readily apparent that there is no local exception to the signature requirement or cross-reference practice.

The government wants this Court to grant it a passing grade for an incomplete assignment. Despite having reviewed "a few hundred warrants" and his confirmation that he did not bother to confirm that the warrant was signed, Detective Sergeant Mathews posited that it was a valid one. (Evidentiary Hearing, RE 58, Page ID # 441-443.) This cannot be reconciled with Detective Sergeant Cavanaugh's testimony that he once had his counterpart "go back to the judge to get that signed" when he noticed that the warrant in a different case bore no signature from the judge. (Evidentiary Hearing, RE 58, Page ID # 459.) Said differently, the government argues that Judge Valvo's absentmindedness, her coordinator's assumptions, and Detective Sergeant Mathews' and Detective Sergeant Cavanaugh's repeated decisions not to do what their lengthy experience demanded all still militates toward a finding of good faith. That cannot be. There was simply no way to tell whether Judge Valvo had conducted the sort of review that vitiates the issuance of a warrant until she testified at the evidentiary hearing almost two years after the search had taken place.

Even the district court adduced that "it is a little awkward to say just because an officer gets a literally rubber stamped search warrant that there is good faith in assuming the judge signed it." (Motion Hearing, RE 61, Page ID # 528.) Especially when one considers that it was the judicial coordinator and *not* the judge who placed the rubber stamp on the document. (Evidentiary Hearing, RE 58, Page ID # 468.) As such, any of the officers' subjective beliefs that the stamp

placed on the warrant by the judicial coordinator was equivalent to the signature of a judge—which the Michigan Constitution requires—must rest on its bottom.

The district court concluded, "On this record, the stamp alone is not enough." (Opinion and Order, RE 37, Page ID # 242.) And it conceded that a signature on the warrant itself would have been preferable, as Judge Valvo herself testified. (Opinion and Order, RE 37, Page ID # 242.) Yet it inexplicably credited her testimony that she "believed" that she reviewed the warrant packet despite an unequivocal admission that she was at a loss to explain why she did not sign the warrant. (Evidentiary Hearing, RE 58, Page ID # 407-408.) This was in direct contrast to a different matter where the judge whose stamped name and bar number sufficed to demonstrate issuance because he "testified unequivocally that he remembered placing the signature stamp on the warrant," as revealed by the district court's analysis. (Opinion and Order, RE 37, Page ID # 241, quoting *United States v. Juarez*, 549 F.2d 1113, 1114-1115 (7th Cir. 1977). It comes as no surprise that Judge Valvo has since changed her practice. (Evidentiary Hearing, RE 58, Page ID # 406.)

This direct violation of Mr. Whiteside's rights should not be considered the collateral damage of the lessons learned by a judge who was charged with ensuring that his rights were not trampled by law enforcement in the first place. And the evidence related to this faulty warrant must be suppressed.

B. The officers performed a warrantless search when they moved the firearms.

"Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant." *Coolidge v. New Hampshire*, 403 U.S. 443, 451; 91 S. Ct. 2022; 29 L. Ed.

2d 564 (1971) (quoting *Agnello*, 269 U.S. 29, 33; 46 S. Ct. 416; 70 L. Ed. 145 (1925)). Allowing the warrantless search of Mr. Whiteside's home would, in essence, be reading the "Fourth Amendment out of the Constitution." *Coolidge*, 403 U.S. at 480. And, to be certain, a generalized search for weapons is unconstitutional. *Ybarra v. Illinois*, 444 U.S. 85, 93-94; 100 S. Ct. 338; 62 L. Ed. 2d 238 (1979).

The incriminating character of the firearms was not immediately apparent because Detective Sergeant Cavanaugh had to rearrange furniture and manipulate the items to see them. (Evidentiary Hearing, RE 58, Page ID # 462.) A critical aspect of the plain view doctrine is that the incriminating significance of the item must be evident *with no manipulation of the item* by the officer. *Horton v. California*, 496 U.S. 128, 135-137; 110 S. Ct. 2301; 110 L. Ed. 2d 112 (1990). All that officers saw *after* moving and manipulating furniture and bedding were firearms; there was nothing about the character of the items that indicated a probable or substantial chance of criminal activity. This is doubly true because no mention was made of weapons in the unsigned search warrant. Moreover, as established above, the officers breached the threshold of Mr. Whiteside's home based on an invalid warrant and were consequently not in a lawful position to view the firearms in the first place.

This Court has held that moving a stereo to read the serial number on the back was a violation of the plain view doctrine in *Arizona v. Hicks*, 480 U.S. 321, 325-326; 107 S. Ct. 1149; 94 L. Ed. 2d 347 (1987). The police in *Hicks* lacked probable cause to believe that the item was contraband before moving it. *Id.* at 326. Likewise, officers in this case had no reason to believe that the firearms were contraband when they saw them. The district court's conclusion that firearms

were within the scope of a warrant that focused solely on sexually explicit images and the distribution thereof stretches the phrase "related evidence of stalking" well past the breaking point. (Opinion and Order, RE 37, Page ID # 251.) That conclusion is based on fanciful suppositions because there is absolutely no mention made of Mr. Whiteside using weapons of any sort in the suspected distribution of explicit sexual images within the four corners of the affidavit.

The district court seized on the detective's testimony that he confiscated the firearms because he knew that convicted felons like Mr. Whiteside could not lawfully possess firearms. (Opinion and Order, RE 37, Page ID # 252.) However, that claim presupposes that the detective knew Mr. Whiteside was a felon who lived in the subject residence—a "fact" that was not supported by the affidavit. Even if this had been verified, the lack of any type of surveillance means law enforcement could not support claims that Mr. Whiteside lived there by himself. When combined with the lack of information in the affidavit that Mr. Whiteside was a convicted felon and the lack of surveillance before entry was made, the fact that clothes belonging to a woman were found inside presents questions about who frequents that location and who could have left the suspected contraband where it was found and when. (Motion Hearing, RE 61, Page ID # 539-540.) Again, unless they were typed with invisible ink, any facts connecting Mr. Whiteside to the address and being a convicted felon are not included within the four corners of the affidavit for the search of the residence. And that is all that the courts and the officers conducting the search are constitutionally allowed to rely on. Accordingly, the plain view exception is inapplicable and the firearms must be suppressed.

CONCLUSION AND RELIEF REQUESTED

The methods used to achieve a legal outcome must be ethical and lawful, irrespective of the desired result. Here, Mr. Whiteside's rights were repeatedly violated by the gatekeepers to the criminal justice system and literally rubberstamped by a jurist's coordinator. Procedural rules are put in place to protect the rights of the citizens of this country. But here, the government and its representatives refused to abide by those protections. Instead, they took a stance that aligned with the adage that "it is better to beg forgiveness than ask permission." And ignoring the requirements for a search then crying foul when those omissions are brought to light jeopardize the rights of every single citizen. A slap on the hand with the admonition to "do better next time" does not suffice to restore confidence in the protections afforded by federal and state Constitutions if the judicial system does not back them up. Yet the district court and the United States Court of Appeals for the Sixth Circuit erroneously held otherwise. Accordingly, Mr. Whiteside respectfully requests that this Court grant his petition.

Respectfully submitted,

CHARTIER & NYAMFUKUDZA, P.L.C.

Dated: 08/13/2025

/s/TAKURA NYAMFUKUDZA
Takura Nyamfukudza