

IN THE SUPREME COURT OF THE UNITED STATES

MACKENZIE BECKER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the affidavit submitted in support of the warrant to search petitioner's residence established probable cause to believe that firearms would be found in that residence.

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellant below) is Mackenzie Becker.

Respondent (plaintiff-appellee below) is the United States of America.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Colo.):

United States v. Becker, No. 23-cr-285 (Aug. 16, 2024)

United States Court of Appeals (10th Cir.):

United States v. Becker, No. 24-1331 (Mar. 9, 2026)

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No. 26-5086

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A15) is reported at 168 F.4th 1337. The order of the district court (Pet. App. A51) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 9, 2026. On June 3, 2026, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including July 7, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Colorado, petitioner was convicted of possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1); possessing 400 grams or more of fentanyl with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(vi); and possessing cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Judgment 1. He was sentenced to 180 months of imprisonment, to be followed by five years of supervised release. Pet. App. A54-A55. The court of appeals affirmed. Id. at A1-A15.

1. In February 2023, petitioner, driving a gray Saab sedan, committed "several egregious traffic violations" while merging onto the interstate in the Denver, Colorado area. Pet. App. A2-A3; see Gov't C.A. Br. 2-4. When a motorist pulled alongside petitioner's vehicle to speak with him, petitioner brandished a firearm. Pet. App. A2-A3. Fearing for his safety, the motorist drove toward the nearest exit. Id. at A3. Petitioner followed the motorist, pulled alongside him, and fired a shot in the motorist's direction. Ibid. The motorist took a photo of petitioner's vehicle and reported the incident to the police. Id. at A3.

Denver Police Department Detective Gerald Sloan investigated the incident. Pet. App. A2. State records revealed that the Saab's license plate number was registered to petitioner, that

petitioner's driver's license photo matched the description given by the victim, and that petitioner had two prior felony convictions, which prohibited him from possessing firearms. Id. at A3. Ultimately, the investigation led law enforcement to an address associated with petitioner: a house on West Iliff Lane. Id. at A3-A4. On March 1, 2023, approximately two weeks after the shooting incident, officers visited the West Iliff Lane house and saw a gray Saab in the driveway with the same license plate number as the one involved in the incident. Id. at A4. On subsequent visits, officers observed petitioner exiting the house and entering the car, as well as washing the car in the driveway. Ibid.

On March 7, Detective Sloan sought a warrant to search the West Iliff Lane house and the gray Saab for, among other things, "firearms, ammunition, and items that would establish who controlled the premises." Pet. App. A4. Detective Sloan's supporting affidavit stated that "whether or not the firearm sought is recovered, the above items would tend to show that a firearm existed and may have once been located in a place to which the suspect had access and that these items would tend to connect the suspect with the weapon sought." Id. at A4. The affidavit further stated: "A firearm is not normally disposed of after the commission of a crime, and it is, therefore, still likely to be found in any location or vehicle to be searched associated with [petitioner]." Ibid. And the affidavit stated Detective Sloan's belief, "based

on several law enforcement records,” including visual observation, that petitioner resided at the West Iliff Lane house. Ibid.

A state magistrate judge approved the search warrant that same day. Pet. App. A5. Two days later, police executed the warrant, and after seeing drug-trafficking evidence and obtaining a second warrant, they found firearms, ammunition, fentanyl, and cocaine. Ibid.

2. A grand jury in the District of Colorado charged petitioner with possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1); possessing 400 grams or more of fentanyl with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(vi); possessing cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C); and possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i). Indictment 1-2.

Petitioner moved to suppress the firearm and drug evidence found at his residence, on the theory that the affidavit for the first search warrant did not show a sufficient nexus between the alleged criminal activity and the location to be searched to establish probable cause. D. Ct. Doc. 19, at 11-17 (Oct. 5, 2023); Pet. App. A5. Following a hearing, the district court orally denied the motion, finding “a sufficient nexus to justify requesting this warrant be issued for the Iliff location.” Pet. App. A50; see id. at A16-A51. The court observed that the presence

of both petitioner and his car "indicates that he did live there or at least exercised sufficient control such that the officer could conclude reasonably that * * * the firearm involved in the offense could be there" and that the magistrate judge was "entitled to rely on the detective's opinion that a gun may be hidden there." Id. at A50. In addition, the court stated that while it did not need to reach the issue, it "would have found that the good faith exception" to the exclusionary rule "applied." Id. at A51.

Pursuant to a written plea agreement, petitioner pleaded guilty to the first three counts of the indictment, reserving his right to appeal the denial of his motion to suppress. Plea Agreement 1-2; Pet. App. A5. The district court sentenced petitioner to 180 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. A1-A15.

The court of appeals agreed with the district court that the warrant affidavit established a sufficient nexus between petitioner's suspected possession of a firearm and the West Iliff Lane house to support the issuing judge's finding of probable cause. Id. at A8-A14. The court rejected petitioner's argument that the potential to conceal or dispose of firearms precluded officers from reasonably inferring a likelihood that the firearm would be at the West Iliff Lane house. Id. at A8-A9. The court accepted that "probable cause to search a person's residence does not arise based solely upon probable cause that the person is

guilty of a crime,” and that an affidavit must provide “additional evidence linking the person’s home to the suspected criminal activity.” Id. at A9-A10 (brackets and citation omitted). But it found that Detective Sloan’s affidavit “supplies additional evidence linking the West Iliff Lane house to the offense.” Id. at A10.

The court of appeals noted the evidence that the house was petitioner’s residence, and explained that “law-enforcement experience, precedent, and common sense strongly support an inference that the firearm would be kept at the user’s residence.” Pet. App. A10-A11. The court observed that the affidavit stated that “a firearm is not normally disposed of after the commission of a crime,” id. at A10 (bracket and citation omitted), and that courts have “repeatedly recognized” the reasonableness of the view that a firearm is likely to be kept in a suspect’s home, id. at A11. The court of appeals thus agreed with the district court that there was a “fair probability” that evidence of the firearm used in the road-rage incident could be found at the West Iliff Lane house. Ibid. (emphasis omitted).

The court of appeals disagreed with petitioner’s assertion that the officers’ information was stale because three weeks passed between the shooting incident and the warrant application. Pet. App. A11. The court explained that “three weeks is hardly enough time to defeat the inference that the firearm was at [petitioner’s] residence,” ibid., finding it “unlikely that [petitioner] would

dispose of the firearm when his prior felony conviction would make it that much more difficult to acquire a replacement," and noting that "another, and more observable, instrumentality of the crime -- the gray Saab -- remained at the same address," id. at A12.

Because the court of appeals found that the affidavit established probable cause to search petitioner's residence, it declined to address the government's contention that the denial of petitioner's motion should be affirmed under the good-faith exception to the exclusionary rule. Pet. App. A14.

ARGUMENT

Petitioner renews his contention (Pet. 7-22) that the affidavit submitted in support of the warrant to search his residence failed to establish probable cause to believe that firearms would be found in that residence. The lower courts' rejection of that fact-bound contention is correct, and petitioner identifies no disagreement in the courts of appeals that would warrant this Court's review. In addition, this case would be an unsuitable vehicle for reviewing the question presented because, as the district court itself noted, the good-faith exception to the exclusionary rule would provide an alternative basis for affirming the denial of petitioner's suppression motion. No further review is warranted.

1. The Fourth Amendment provides in part that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. The probable-cause standard "is not a high bar." District of

Columbia v. Wesby, 583 U.S. 48, 57 (2018) (quoting Kaley v. United States, 571 U.S. 320, 338 (2014)). It “requires only the kind of fair probability on which reasonable and prudent people, not legal technicians, act.” Kaley, 571 U.S. at 338 (brackets, citations, and internal quotation marks omitted). And it “does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands.” Gerstein v. Pugh, 420 U.S. 103, 121 (1975); see also Illinois v. Gates, 462 U.S. 213, 235 (1983).

Probable cause is also “‘a fluid concept’ that is ‘not readily, or even usefully, reduced to a neat set of legal rules.’” Wesby, 583 U.S. at 57 (quoting Gates, 462 U.S. at 232). Instead, “probable cause ‘deals with probabilities and depends on the totality of the circumstances,’” ibid. (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003)), including “the factual and practical considerations of everyday life,” Pringle, 540 U.S. at 370 (citation omitted). A probable-cause determination “does not deal with hard certainties,” and in that context evidence “must be seen and weighed * * * as understood by those versed in the field of law enforcement,” who are entitled to “formulate[] certain common-sense conclusions about human behavior.” Gates, 462 U.S. at 231-232 (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).

In the context of a search warrant, the probable-cause standard requires a magistrate judge to conduct a “totality-of-

the-circumstances analysis” to determine whether the affidavit in support of the warrant application establishes a “fair probability that contraband or evidence of a crime will be found in a particular place.” Gates, 462 U.S. at 238. In making that determination, the magistrate judge may draw “reasonable inferences” from the evidence described in the affidavit. Id. at 240. And a reviewing court will uphold the magistrate judge’s determination so long as the magistrate judge had a “substantial basis” for finding probable cause. Id. at 238 (citation omitted).

2. The court of appeals correctly determined that the facts set forth in Detective Sloan’s affidavit, along with reasonable inferences based on those facts, gave the magistrate judge a substantial basis for finding probable cause to search petitioner’s residence for evidence of firearms offenses.

As a threshold matter, the affidavit provided a “substantial basis” for finding probable cause to conclude that petitioner participated in the February 2023 shooting incident. Gates, 462 U.S. at 238 (citation omitted). The affidavit explained that the victim captured a photograph of the suspect’s gray Saab, and that motor-vehicle records connected the Saab’s license plate to petitioner. Warrant Appl. ¶¶ 7, 10. The affidavit also explained that, upon running petitioner’s name through several law enforcement databases, Detective Sloan discovered that petitioner matched the description provided by the victim. Id. ¶ 11. And it stated that further research had revealed that petitioner had

several active arrest warrants, and had two felony convictions in his criminal history. Id. ¶¶ 13, 14.

The affidavit also provided a substantial basis for probable cause to conclude that the West Iliff Lane location was petitioner's residence. The affidavit explained that law-enforcement database records connected petitioner with that address and that petitioner was observed entering and exiting the premises where a Saab with petitioner's license plate was parked. See Pet. App. A8; Warrant Appl. ¶¶ 11, 20, 21. And the affidavit further provided a substantial basis for the magistrate judge's determination that a fair probability existed that petitioner kept a firearm in his home, a location that would be both safe and readily accessible to him. See Gates, 462 U.S. at 231-232 (basing probable cause determination on "common-sense conclusions about human behavior") (citation omitted).

In the affidavit, Detective Sloan explained that "[a] firearm is not normally disposed of after the commission of a crime," and that "it is, therefore, still likely to be found in any location or vehicle to be searched associated with" petitioner. Warrant Appl. ¶ 21; see also Texas v. Brown, 460 U.S. 730, 742-743 (1983) (plurality opinion) (relying in part on officer's testimony that, in his experience, "balloons tied in the manner of the one possessed by [the defendant] were frequently used to carry narcotics"). As the court of appeals noted, that inference is only bolstered by the fact that "another, and more observable,

instrumentality of the crime -- the gray Saab -- remained" at that residence. Pet. App. A12. And the likelihood was also increased by the difficulty that a felon might have in obtaining a replacement firearm. Ibid.

Petitioner's only argument (Pet. 17) for rejecting the court of appeals' analysis is that the affidavit makes "a generalization" and did not show that petitioner "likely conformed to that general pattern." But petitioner provides no basis for rejecting Detective Sloan's affidavit merely because it contains a general observation based on his experience: "common-sense conclusions about human behavior," Gates, 462 U.S. at 231 (citation omitted), almost always trade in generalizations, yet they may undoubtedly be used to support probable cause, see ibid. And there were, in fact, particular reasons to believe that petitioner would still have the firearm, such as the presence of the Saab -- which had contained the firearm during the road-rage incident and was itself covered by the warrant -- and the particular challenges that a felon would face in finding a new gun. C.A. Doc. 17-1, at 74-76; Pet. App. A12.

3. Petitioner acknowledges (Pet. 8-9 & n.1, 13-14) the numerous courts that have upheld the issuance of warrants to search homes for firearms in circumstances similar to those present in this case. Consistent with this Court's precedents, the courts of appeals have relied on similar evidence and inferences to uphold warrants to search defendants' residences for firearms. See, e.g.,

United States v. Algahtani, 73 F.4th 835, 844 (10th Cir. 2023) (upholding warrant to search residence of defendant suspected of illegally possessing a firearm and explaining that “a personal firearm is the type of evidence likely to be kept in a suspect’s residence”) (brackets, citation, and internal quotation marks omitted); United States v. Anton, 546 F.3d 1355, 1358 (11th Cir. 2008) (relying on agent’s statements and experience regarding practices of “convicted felons and firearms dealers” in upholding warrant to search defendant’s property for firearms); United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993) (upholding warrant and explaining that firearms are “likely to be kept in a suspect’s residence”); United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988) (reasoning that because “the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence,” “[i]t was reasonable for the magistrate to believe,” in issuing the search warrant, “that the defendant’s gun and the silencer would be found in his residence”); United States v. Steeves, 525 F.2d 33, 38 (8th Cir. 1975) (upholding warrant to search armed bank robber’s home months after the incident based on reasoning that “people who own pistols generally keep them at home or on their persons”).

Petitioner overstates (Pet. 8-14) the level of any disagreement. In United States v. Charest, 602 F.2d 1015 (1979), the First Circuit rejected an automatic inference that a suspected

murderer would be likely to "hide in his own home a gun used to shoot someone," given that the "well-known" "science" of "[b]allistics" could be used to trace the bullet back to the shooter. Id. at 1017; see id. at 1017-1018. But it did not purport to set out a bright-line rule for all circumstances, and this case -- unlike that one -- does not naturally involve a "type of crime where the bullets used could be traced to the gun," id. at 1017. And in United States v. Wilson, 153 F.4th 478 (2025), the Fifth Circuit simply found that an affidavit's "lone, unexplained assertion" that officers "believed" that a firearm used to threaten customers "was located at [the suspect's] residence" was "far too thin" to support a belief that it would be found there two weeks later. Id. at 486 (citation and internal quotation marks omitted); see id. at 485-486. Here, in contrast, the affidavit expressly provided the affiant's professional assessment of the "common tendency" of criminals not to dispose of their firearms, as well as "facts suggesting that" petitioner's firearm "made its way to" petitioner's residence, Wilson, 153 F.3d at 486 -- namely, that petitioner stored the other instrumentality of his crime (his Saab) at that location, and that he was a felon (thereby allowing for an inference that he was more likely to retain his difficult-to-replace firearm).

4. Even if the question presented otherwise warranted this Court's review, this case would be an unsuitable vehicle for considering it because a decision in petitioner's favor would have

no practical effect on his conviction. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to “decide abstract questions of law * * * which, if decided either way, affect no right” of the parties). Even assuming that the warrant affidavit fell short of establishing probable cause, the district court in this case “would have found that the good faith exception applied.” Pet. App. A51.

As this Court has explained, 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). That rule accordingly does not apply “where [an] officer’s conduct is objectively reasonable.” Id. at 919. As the Court has emphasized, “evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.” Ibid. (citation omitted). Instead, to justify suppression, “police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system” for the exclusion of probative evidence. Herring v. United States, 555 U.S. 135, 144 (2009).

As to warrants in particular, this Court has long held that evidence should not be suppressed if it was obtained “in

objectively reasonable reliance" on a search warrant. Leon, 468 U.S. at 922. Suppression of evidence seized pursuant to a warrant is justified only where (1) the issuing magistrate was misled by affidavit information that the affiant either "knew was false" or offered with "reckless disregard of the truth"; (2) "the issuing magistrate wholly abandoned his judicial role"; (3) the supporting affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; or (4) the warrant was "so facially deficient -- i.e., in failing to particularize the place to be searched or the things to be seized -- that the executing officers cannot reasonably presume it to be valid." Id. at 923 (citation omitted).

None of those circumstances is present here. Instead, as the district court correctly recognized, it would have been "entirely reasonable" for the detective to execute the warrant based on the affidavit's contents and the magistrate's approval. Pet. App. A51. And the court of appeals' own prior decisions would have bolstered a reasonable officer's belief that the search warrant was valid. Cf. Davis v. United States, 564 U.S. 229, 239 (2011) (holding that suppression is inappropriate "when the police conduct a search in objectively reasonable reliance on binding judicial precedent"). At the time the magistrate judge issued the search warrant for petitioner's home, the court below had previously upheld a warrant to search a defendant's residence for firearms where the supporting affidavit "d[id] not contain

anyone's observation of the property at the residence." United States v. Rahn, 511 F.2d 290, 293 (1975); see United States v. Shomo, 786 F.2d 981, 984 (10th Cir. 1986) (relying on Rahn to find it was reasonable for magistrate to conclude that revolver would still be located in defendant's house ten days after he was seen carrying it); see also United States v. One Hundred Forty-Nine Thousand Four Hundred Forty-Two & 43/100 Dollars (\$149,442.43) in United States Currency, 965 F.2d 868, 874 (10th Cir. 1992) (recognizing that "courts often rely on the opinion of police officers as to where contraband may be kept" in upholding warrant to search residence for evidence of drug trafficking).*

* To the extent that petitioner might point to the Fifth Circuit's refusal to apply the good-faith exception in Wilson, that refusal does not show that the Fifth Circuit would decline to apply the exception here. As discussed, this case does not involve an affidavit that "contained no facts -- none -- establishing a nexus," 153 F.4th at 489, and the court below identified circuit-specific precedent that would have bolstered the objective reasonableness of the officers' reliance on the warrant.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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