FILED
United States Court of Appeals
Tenth Circuit

June 13, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PERRY WAYNE SUGGS, JR.,

Defendant - Appellant.

No. 22-1024
(D.C. No. 1:18-CR-00089-WJM-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **MURPHY**, and **EID**, Circuit Judges.

Perry Wayne Suggs Jr. was indicted for being a felon in possession of a firearm and ammunition. He moved to suppress evidence from a residential search. The district court held a hearing and denied the motion. A jury convicted Suggs. Suggs appealed, and we held the residential search warrant violated the Fourth Amendment's particularity requirement and could not be cured by the severability doctrine. *United States v. Suggs* ("*Suggs I*"), 998 F.3d 1125, 1130 (10th Cir. 2021). We remanded for the district court to consider in the first instance whether the good-faith exception to the Fourth Amendment's exclusionary rule applied. On remand,

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

the district court applied the exception and denied the motion. Suggs appealed. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.[1]

I.

We assume the parties' knowledge of this case and only detail the required facts. The driver of Perry Wayne Suggs Jr.'s vehicle fired a shot at a pedestrian. Colorado Springs Police Department Officer Adam Menter obtained a state court warrant to arrest Suggs and search his residence. As part of the warrant application, Officer Menter submitted an affidavit that detailed the circumstances of the shooting and his investigation's fruits. The application asked for authority to search Suggs's home for items listed in an "Attachment B," which described the targeted property as:

> The following person(s), property or thing(s) will be searched for and if found seized:
> GENERAL INFO
> - General photographs of the scene
> - Indicia of residency
> - Identification which would identify any occupants of the residence
>
> GUNS INVOLVED
> - Any and all firearms: specify if known
> - Any and all ammo: specify if known
> - Any documentation showing the ownership of a firearm
> - Any and all sales records showing the purchase of a firearm
> - Any projectiles
> - Any and all spent shell casings
> - Any item commonly used to carry and transport a firearm (i.e. holster & gun carrying case, magazines, cleaning kits)
>
> VEHICLE
> - Indicia of ownership of vehicle
> - Vehicle registration
>
> MISCELLANEOUS
> - Any item identified as being involved in crime
>
> NO OTHER ITEMS ARE SOUGHT FOR SEIZURE

Id. at 1131. A Colorado state court issued a warrant that identified the place to be searched as Suggs's home. Regarding the items to be searched for and seized, the

[1] During the pendency of this appeal, Suggs filed a motion to expedite oral argument and a motion to expedite this ruling. We deny these motions as moot.

warrant incorporated by reference Attachment B. However, the warrant did not expressly incorporate Officer Menter's affidavit.

Suggs was arrested while away from his residence. CSPD Officer Teresa Tomczyk then led a SWAT team to Suggs's home to execute the warrant. Sergeant Keith Wrede and Officer Aaron Lloyd assisted Officer Menter in the search; the officers located a box of ammunition that matched ammunition used in the shooting. During a protective sweep of the residence, Officer Tomczyk noticed firearms inside an SUV parked under the carport. Officer Tomczyk told Officer Menter about the guns outside. Officer Menter soon used this information to obtain a warrant to search the SUV; the second warrant was almost identical to the residential warrant. Officer Menter then returned to Suggs's home, executed the vehicle warrant, and located guns and more ammunition.

Suggs was indicted for being a felon in possession of a firearm and ammunition. He moved to suppress the evidence, arguing that the residential search warrant violated the Fourth Amendment's particularity requirement and that the evidence from the SUV should be suppressed as fruit of an unconstitutional search. The district court held a hearing and then denied the motion. A jury convicted Suggs, and the district court sentenced him to ninety months' imprisonment.

Suggs appealed the suppression issue. We reasoned that the residential search warrant violated the Fourth Amendment's particularity requirement and could not be cured by the severability doctrine. "Read as a whole, the warrant told officers they could search for evidence of any crime rather than only evidence related to the vehicle

shooting." *Id.* at 1135. Accordingly, we reversed and remanded for the district court to consider whether the good-faith exception applied, observing that "[t]he inquiry on the good-faith exception requires not only an examination of the warrant's text but also a careful consideration of the totality of the circumstances to determine whether officers reasonably relied on the invalid warrant." *Id.* at 1140. We noted "potentially material" aspects of that inquiry included: (1) whether officers limited their search to evidence related to the vehicle shooting; (2) whether the officers who conducted the search read the warrant or reviewed its supporting documents beforehand; and (3) whether the searching officers were informed of the warrant's contents or briefed on what to look for. *Id.* at 1140–41. We determined that "[e]ven if the district court declines to take additional evidence on remand, the good-faith question is close on the current record. And before issuing a definitive decision, this court would benefit from a district court judgment that addresses the implications of previously unaddressed facts." *Id.* at 1141. "In particular, is it fair to say Officer Tomczyk reasonably relied on the residential search warrant when she testified that she never received a copy of the warrant or reviewed Officer Menter's affidavit?" *Id.* "Maybe the answer is yes, since Officer Tomczyk was on Defendant's property only to conduct a protective sweep, not to search for any items." *Id.* "Or perhaps Officer Tomczyk relied on the warrant in good faith because her supervisor, Sergeant Wolf, had reviewed the entire warrant package and directed her to lead the SWAT team in his stead." *Id.* "Then again, maybe not, as the warrant was the supposed lawful basis for Officer Tomczyk's entry into Defendant's property." *Id.*

On remand, the district court applied the good-faith exception and denied the suppression motion. Observing that we "found the catch-all phrase swept too broadly to pass muster under the Fourth Amendment," the court reasoned that the warrant was not so facially deficient that a reasonably well-trained officer would have known the search was illegal. R. Vol. I at 193. The court held that the warrant specified the place to be searched and the things to be seized, and while "the final catch-all phrase doom[ed] this warrant under the Tenth Circuit's particularity analysis . . . the good faith exception stretche[d] more broadly . . . ." *Id.* at 193–94. Thus, the district court concluded that "[a]n objectively reasonable officer acting in good faith could have read the warrant—particularly the specific list of items to be seized—and interpreted it as restricting the scope of the search to items involved in the shooting under investigation." *Id.* at 194.

In addition, the district court held that the totality of the circumstances showed that the officers relied in good faith on the warrant's text. The court depended on testimony of law enforcement officers to reach its conclusion. First, the court established that Officer Menter prepared the warrant, application, and affidavit, and then executed the search. The district court applied Tenth Circuit precedent to hold that a warrant application and affidavit can support a finding of good faith where the officer who prepared those documents also executed the search.

Next, the district court determined that the officers confined their search to the evidence specified in Attachment B, which indicated "that they acted in good faith and in objectively reasonable reliance on what they believed was a valid warrant." *Id.* at 197. In doing so, the district court depended on Officer Menter's testimony and the fact that

the officers only seized firearms, ammunition, and indicia of residency—all of which were listed in Attachment B and consistent with the shooting crime under investigation.

Subsequently, the district court inferred from Officer Menter's "highly probative" testimony that Sergeant Wrede and Officer Lloyd were aware of the vehicle shooting and only searched for items connected with that incident. *Id.* The court also reasoned that other testimony demonstrated Sergeant Wrede knew he was searching for evidence related to the shooting. The court then verified "that Officer Menter followed his normal practice of telling officers assisting a search what they are looking for before they started searching," which supported applying the good faith exception. *Id.* at 200.

The district court ultimately held that Officer Tomczyk reasonably relied on the search warrant. The court concluded that under our precedent, as an assisting officer at the scene specifically there to perform a protective sweep, Officer Tomczyk need not have read the warrant nor ensured its validity. While the district court recognized "the evidence with respect to Officer Tomczyk's reasonable reliance on the warrant is arguably weak in comparison with the reliance of Officer Menter, Sergeant Wrede, and Officer Lloyd, since Officer Menter—drafter of the warrant—did not advise her of the search's parameters," the court held that "Officer Tomczyk's testimony that she was aware of the vehicle shooting demonstrates that she had a basis to believe that the weapons she discovered in the car in the carport were connected to the alleged crime under investigation." *Id.* at 203. The court also observed that "the evidence concerning Officer Tomczyk, particularly because *she was not an officer involved in the search*, does not militate in favor of suppressing . . . ." *Id.* (emphasis in original).

Next, the district court held that "given that two different magistrate judges approved the warrants containing the catch-all language, it was nevertheless reasonable for Officer Menter to rely on the judges' approval of the residential and vehicle warrants and to search the residence for the items listed in Attachment B." *Id.* at 204–05. The district court banked on the fact that, in addition to signing the warrant, a magistrate judge signed Officer Menter's application and affidavit, both of which incorporated Attachment B by reference. The district court reasoned that Tenth Circuit precedent endorses the idea that a magistrate judge's approval of the application and affidavit further supports the objective reasonableness of an officer's reliance on a warrant.

Finally, the district court held that excluding the challenged evidence would not serve the exclusionary rule's purpose. The court noted that Officer Menter was not required to obtain a separate vehicle warrant, but still did so, which demonstrated "he made every effort to comply with the law." *Id.* at 205. From the totality of the circumstances, the court "easily" concluded that Officer Menter was not the law enforcement official for whom the exclusionary rule was judicially crafted. *Id.*

Accordingly, the district court denied the motion to suppress. Suggs now appeals.

II.

"[W]e review a district court's application of the good-faith exception to the warrant requirement de novo." *United States v. Knox*, 883 F.3d 1262, 1268 (10th Cir. 2018). This "review does not involve viewing the evidence in the light most favorable to the government." *Id.* at 1269 n.4 (cleaned up). The government is burdened with "proving that its agents' reliance upon the warrant was objectively reasonable." *United*

States v. Leary, 846 F.2d 592, 607 n.26 (10th Cir. 1988). We examine factual findings for clear error. *United States v. Nelson*, 868 F.3d 885, 889 (10th Cir. 2017).

Under the exclusionary rule, "evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure." *Knox*, 883 F.3d at 1273 (cleaned up). The "rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." *Id.* (cleaned up). Altogether, the rule is "a disincentive for law enforcement to engage in unconstitutional activity." *Id.*

However, "[e]ven if a warrant fails to satisfy the Fourth Amendment's particularity requirement, the exclusionary rule should not be applied to suppress evidence obtained by officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate judge that is ultimately deemed invalid." *United States v. Russian*, 848 F.3d 1239, 1246 (10th Cir. 2017) (cleaned up). In such cases, we apply the good-faith exception. *Id.* (cleaned up). The exception's rationale "is the underlying purpose of the exclusionary rule—namely, to deter police misconduct. When an officer acts in good faith, there is nothing to deter." *Id.* Consequently, "the suppression of evidence obtained pursuant to a warrant should be ordered only in the unusual cases in which exclusion will further the purposes of the exclusionary rule." *Id.* (cleaned up).

"But the officer's reliance on the defective warrant still must be objectively reasonable: the government is not entitled to the good faith exception when a warrant is 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.* (cleaned up). "The test is an objective one that asks whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization." *United States v. Otero*, 563 F.3d 1127, 1134 (10th Cir. 2009) (cleaned up). "Not every deficient warrant, however, will be so deficient that an officer would lack an objectively reasonable basis for relying upon it." *Id.* "Even if the court finds the warrant to be facially invalid . . . it must also review the text of the warrant and the circumstances of the search to ascertain whether the agents might have reasonably presumed it to be valid." *Id.* (cleaned up). "We must consider all of the circumstances, not only the text of the warrant, and we assume that the executing officers have a reasonable knowledge of what the law prohibits." *Id.* (cleaned up).

III.

We conclude that the good-faith exception applies here.[2] Multiple factors support our decision. While the warrant's text failed to satisfy our particularity analysis

[2] Our dissenting colleague avows that *Suggs I* and Tenth Circuit caselaw demand that we decline to apply the good-faith exception here. In the dissent's view, if we conclude that a warrant is so facially deficient that no officer could have reasonably relied on it, then our inquiry ends. But the dissent's analysis fails to fully address the impact of *Suggs I* on this case. True, the *Suggs I* panel held that the warrant here was facially deficient, but remanded so that the district court could determine in the first instance whether to apply the good-faith exception. By remanding the case, the *Suggs I* panel left open the question of whether the warrant was *so* facially deficient that *no* reasonable officer could rely on it. "The inquiry on the good-faith exception requires not only an examination of the warrant's text but also a careful consideration of the totality of the circumstances to determine whether officers reasonably relied on the invalid warrant." *Suggs I*, 998 F.3d at 1140. The *Suggs I* panel accordingly reasoned that "[e]ven if the district court declines to take

under the Fourth Amendment, a reasonable officer could have understood the warrant as limited to the shooting crime under investigation and presumed the warrant to be valid. *Id.* As the district court noted, the warrant specified that Suggs's residence was the place to be searched, and Attachment B contained a detailed list of things to be searched for and seized. Similarly, Officer Menter's understanding of the warrant's text was not so unreasonable that a reasonable officer would have known it was wrong, especially since he prepared the application and affidavit. *Russian*, 848 F.3d at 1246 ("Although a warrant application or affidavit cannot save a warrant from facial invalidity, it can support a finding of good faith, particularly where, as here, the officer who prepared the application or affidavit also executed the search."); *see also United States v. Cotto*, 995 F.3d 786, 796 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 820 (2022).

Likewise, the totality of the circumstances demonstrates that law enforcement relied on the warrant in good faith. The executing officers understood the search was limited to the shooting under investigation, which validates that they acted in good faith. Officer Menter's involvement with the warrant from drafting to execution—as well as his understanding of its confines and acts consistent with them—shows he acted in good faith. *Cotto*, 995 F.3d at 796 ("[I]t is indicative of good faith when the officer who prepares an affidavit is the same one who executes a search.").

Neither can we fault the district court for relying on testimony that the officers limited their search to the crime under investigation, especially since the items seized

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additional evidence on remand, the good-faith question is close on the current record." *Id.* That logic supports our decision here.

were consistent with a shooting. *United States v. Riccardi*, 405 F.3d 852, 864 (10th Cir. 2005) ("The officers remained within the terms of the warrant as well as the affidavit, and did not conduct a 'fishing expedition' beyond the scope of the authorized investigation. They did not search for, or seize, any materials for which probable cause had not been shown.").

Officer Menter also briefed Sergeant Wrede and Officer Lloyd to look for evidence of the crime under investigation, which corroborates their good faith and grasp of the warrant's restrictions. *Otero*, 563 F.3d at 1135 ("The fact that the officer conducting the . . . search had not been involved from the beginning of the investigation does not alone militate against good faith when that officer received—and, more importantly, followed—search instructions that limited the scope of his search to crimes for which there was probable cause.").

Similarly, although a close call, we cannot say that the district court's determination that Officer Tomczyk also understood the nature of the search and the crime under investigation was clearly erroneous, even if the argument in favor is weaker than argument in favor of the other officers. *See id.* The district court reasonably relied on the record, which contained just enough support to determine that Officer Tomczyk limited her search. *Wigley v. City of Albuquerque*, 567 F. App'x 606, 610 (10th Cir. 2014) (unpublished)[3] ("[P]laintiffs have not pointed to, nor are we aware of, any law clearly establishing that . . . one of the many SWAT team members assisting in the

[3] "Unpublished decisions are not precedential, but may be cited for their persuasive value." Fed. R. Civ. P. 32.1; 10th Cir. R. 32.1 (2023).

execution of the warrant, . . . who was briefed that the search included stolen guns and body armor, had a duty to read the warrant or affidavit and assess whether handcuffed detention was justified.").

By the same token, the fact that a state magistrate judge signed Officer Menter's application and affidavit supports law enforcement's good faith here. *Russian*, 848 F.3d at 1247 ("The magistrate judge's approval of the application and affidavit—and reference to both documents in the first paragraph of the warrant—further supports the objective reasonableness of [law enforcement's] reliance on the warrant."). "Courts applying the good faith exception have concluded that, at least when the magistrate neither intimates he has made any changes in the warrant nor engages in conduct making it appear he has made such changes, the affiant-officer is entitled to assume that what the magistrate approved is precisely what he requested." *Id.* (cleaned up).

Finally, suppression would not serve the underlying deterrent purpose of the exclusionary rule. *Knox*, 883 F.3d at 1273. Officer Menter's actions are not the kind of flagrant or deliberate violation that the rule was meant to deter, as the "rule's prime purpose is to deter future unlawful police conduct . . . ." *Id.* Since Officer Menter acted in good faith, as evidenced by his leaving Suggs's home to acquire another warrant, "there is nothing to deter." *Russian*, 848 F.3d at 1246.

IV.

We AFFIRM the district court's denial of Suggs's motion to suppress.

Entered for the Court

Allison H. Eid
Circuit Judge

22-1024, *United States v. Suggs*
Phillips, J., dissenting.

Though I sympathize with the majority's outcome, I would rule otherwise based on our ruling in *Cassady v. Goering*, 567 F.3d 628 (10th Cir. 2009), our reasoning in our earlier review of this same case, *United States v. Suggs* (*Suggs I*), 998 F.3d 1125 (10th Cir. 2021), and controlling case law dictating that the warrant was "so facially deficient" that no officer could reasonably rely on it. Because the warrant was "so facially deficient," I see no reason why the conduct of other officers involved in the search would be relevant to suppression. I respectfully dissent.

Even the good-faith exception has its exceptions. *United States v. Leon*, 468 U.S. 897, 922–23 (1984) (citations omitted). Relevant here, the good-faith exception doesn't apply when a warrant is "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).

This language in *Leon* creates an inflection point in the good-faith analysis. If we conclude that a warrant is "so facially deficient" that no officer could have reasonably relied on it, then our inquiry ends. *See id.*; *Groh v. Ramirez*, 540 U.S. 551, 564–65 (2004) (denying qualified immunity when "even a cursory reading of the warrant in this case—perhaps just a simple glance—would have revealed a glaring deficiency that any reasonable police

officer would have known was constitutionally fatal"). An officer relying on a warrant that is obviously deficient doesn't act objectively reasonably, so we deny qualified immunity in civil cases and suppress the evidence in criminal cases. *See Cassady*, 567 F.3d at 636–37, 643–44 (holding a warrant unconstitutionally overbroad when it "permitted officers to search for *all* evidence of *any* crime," finding that the "clearly established prong is easily satisfied," and denying qualified immunity); *Groh*, 540 U.S. at 565 n.8 (quoting *Malley v. Briggs*, 475 U.S. 335, 344 (1986)). But if we find that a deficient warrant wasn't *so* deficient that no officer could have reasonably relied on it, then we move on to a multifactor inquiry in which we examine the officers' behavior in executing the search. *See, e.g.*, *United States v. Potts*, 586 F.3d 823, 833–35 (10th Cir. 2009) (concluding that a warrant wasn't "so facially deficient" that officers couldn't reasonably rely on it and addressing the totality of the circumstances of the search to conclude that the good-faith exception applied (citations omitted)).

The majority brushes past the threshold question—whether the warrant was so facially deficient—and then dives headfirst into discussing the totality of the circumstances. Maj. Op. 10. If we could reach the totality of the circumstances, then I might credit the majority's reasoning that the officers acted in good faith by limiting the scope of the search to the crime under investigation. But we shouldn't even reach this step. As I read *Cassady*, it dictates a conclusion that the warrant to search Suggs's home was so facially

deficient that no officer could reasonably rely on it. That's where our inquiry should end. *See Groh*, 540 U.S. at 558, 563–65 (focusing on the text of the warrant—and not discussing the limited scope of the search or the officer's oral communications to the residents—when the warrant "plainly did not comply" with the particularity requirement (citation omitted)).

We assume that officers executing a search "have a reasonable knowledge of what the law prohibits." *United States v. Cook*, 854 F.2d 371, 372 (10th Cir. 1988) (quoting *Leon*, 468 U.S. at 919–20). And "objective reasonableness" in our Fourth Amendment exclusionary-rule analysis is directly linked to clearly established law in qualified-immunity cases. *Groh*, 540 U.S. at 565 n.8 (quoting *Malley*, 475 U.S. at 344). We apply "the same standard of objective reasonableness . . . in the context of a suppression hearing in *Leon*" that we apply to determine whether an officer is entitled to qualified immunity. *Id.* (quoting *Malley*, 475 U.S. at 344). In evaluating whether the good-faith exception should apply, we deem officers to be aware of binding precedent clearly establishing a rule. *United States v. Herrera*, 444 F.3d 1238, 1253 & n.16 (10th Cir. 2006) (citations omitted).

The catchall provision in the warrant used to search Suggs's home suffers the same defect as the catchall provision in the warrant in *Cassady*, 567 F.3d at 645. Like the warrant to search Suggs's home, the search warrant in *Cassady* listed evidence to be seized, followed by a catchall provision allowing officers to search for "all other evidence of criminal activity." *Id.* In *Cassady*, we held

that the catchall provision doomed the warrant by violating the Fourth Amendment's particularity requirement. *Id.* at 641–43. If the warrant in *Cassady* was unconstitutionally overbroad, so was the warrant to search Suggs's home. *See Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) (explaining that precedent provides clearly established law when it "place[s] the statutory or constitutional question beyond debate" (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011))). And because the warrant was invalid under clearly established law, Officer Menter could not reasonably rely on it to conduct a search.[1] *Groh*, 540 U.S. at 565 n.8 (quoting *Malley*, 475 U.S. at 344); *Herrera*, 444 F.3d at 1253 & n.16 (citations omitted). In obtaining and enforcing a search warrant, Officer Menter is subject to *Cassady*'s rule: A warrant with a catchall provision allowing the search and seizure of all

[1] Our unpublished decision, *United States v. Dunn*, 719 F. App'x 746 (10th Cir. 2017) (per curiam), only bolsters my conclusion that *Cassady* clearly establishes the rule that a catchall provision in a warrant invalidates the warrant for lack of particularity. The warrant in *Dunn* "listed particular items to be searched, but prefaced the list with a catch-all phrase, stating that the items to be searched 'include but are not limited to' the listed items." *Id.* at 748. We explained that "[t]he infirmity in the warrant was obvious under *Cassady*," so the good-faith exception didn't apply. *Id.* at 752 (citation omitted). Because *Cassady* prohibits catchall provisions in warrants, and because the warrant to search Dunn's apartment was "even broader than the one in *Cassady*," we held that the "officers could not reasonably rely on the warrant." *Id.* Having held that the warrant was so facially invalid that the officers couldn't reasonably rely on it, we didn't discuss the totality of the circumstances of the search. *See id.*

evidence of any crime is overbroad and violates the Fourth Amendment. 567 F.3d at 636, 643–44.

In *Suggs I*, we could see no material difference between the warrant in Suggs's case and the warrant in *Cassady*. *Id.* at 1135. We closely tethered our reasoning to *Cassady*, both on whether the warrant violated the Fourth Amendment and whether it was severable. *Id.* at 1135, 1139–40 (citations omitted). In holding that the warrant in *Suggs I* "flubbed the Fourth Amendment's particularity requirement," we reasoned that the *Cassady* warrant contained a "similar catch-all phrase" and that "[w]e have no basis to reach a different conclusion here." *Id.* at 1135 (citing *Cassady*, 567 F.3d at 635). And in holding that the warrant wasn't severable, we reasoned that "the invalid portions of the search warrant are just as broad and invasive as the tainted provisions in the *Cassady* warrant." *Id.* at 1140.

Now, in addressing the good-faith exception, I would make explicit what we implied but didn't hold in *Suggs I*: *Cassady* clearly establishes that the warrant to search Suggs's home violated the Fourth Amendment's particularity requirement. Applying the good-faith exception here runs counter to *Leon*'s rule that evidence should be suppressed when the warrant is "so facially deficient . . . that the executing officers cannot reasonably presume it to be valid." 468 U.S. at 923 (citation omitted).

Next, because I believe the warrant is "so facially deficient" that no officer could reasonably rely on it, I see no room for the majority to save the

warrant by considering any good-faith conduct of the other officers conducting the search—Wrede, Lloyd, or Tomczyk. Maj. Op. 11–12. The majority concludes that Wrede, Lloyd, and Tomczyk understood the search to be limited to the shooting crime under investigation and that their understanding favors applying the good-faith exception. *Id.* True, for qualified-immunity purposes, line officers may sometimes act in good faith without reading the warrant that the lead officer prepared. *Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022, 1028 (9th Cir. 2002) (citations omitted), *aff'd on other grounds sub nom. Groh*, 540 U.S. 551, *and abrogated on other grounds by United States v. Grubbs*, 547 U.S. 90, 98–99 (2006). But even if Wrede, Lloyd, and Tomczyk each acted in good faith, that would be relevant only for qualified immunity—not for suppression. *See id.* (citation omitted). In *Ramirez*, the Ninth Circuit explained that line officers were entitled to qualified immunity when they relied in good faith on a lead officer's briefing about a warrant that turned out to be glaringly deficient. *Id.* (citations omitted). But the court suggested that the line officers' good behavior wouldn't have saved the evidence from suppression in a criminal case. *See id.* (citations omitted).

For qualified-immunity purposes, we consider the objective reasonableness of each officer individually, but for suppression purposes, we consider the objective reasonableness of the government as a whole. *Id.* (citations omitted). The government offers no authority showing that the good-faith reliance of subordinate officers can insulate a search when the

search warrant itself is "so facially deficient." Rather, the government relies on its argument that "[t]his is not a case in which Officer Menter used other officers to end-run an obviously deficient warrant." But as I have explained, Officer Menter prepared an obviously deficient warrant. Whether Officer Menter actually realized it or not, the warrant's deficiencies require suppression because they mirror the deficiencies of the warrant in *Cassady* and because we impute knowledge of clearly established law to officers executing a search. *See Herrera*, 444 F.3d at 1253 & n.16 (citations omitted); *Groh*, 540 U.S. at 564–65 & n.8 (citations omitted).

Finally, the majority concludes that suppressing the evidence would offer no deterrent value because "Officer Menter's actions are not the kind of flagrant or deliberate violation that the rule was meant to deter." Maj. Op. 12 (citation omitted). I disagree. In *Groh*, the Supreme Court cited *Leon* to conclude that the culpability inquiry ends when a court holds that a warrant is "so facially deficient . . . that the executing officers cannot reasonably presume it to be valid." 540 U.S. at 565 (quoting *Leon*, 468 U.S. at 923). Since *Groh*, the Supreme Court has emphasized that "[t]o trigger the exclusionary rule, 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." *Herring v. United States*, 555 U.S. 135, 144 (2009). But I agree with the Sixth Circuit that "*Herring* does not purport to alter that aspect of the exclusionary rule which applies to warrants that are facially deficient

warrants *ab initio*." *United States v. Lazar*, 604 F.3d 230, 237–38 (6th Cir. 2010). Declining to suppress the evidence because Officer Menter was personally unaware of *Cassady*'s prohibition on catchall provisions would obliterate our rule imputing knowledge of clearly established law to officers executing a search. *Cook*, 854 F.2d at 372 (quoting *Leon*, 468 U.S. at 919–20); *Herrera*, 444 F.3d at 1253 & n.16 (citations omitted).

What's more, in drafting the obviously defective warrant, Officer Menter relied on a template that the Colorado Springs Police Department regularly used to apply for search warrants. R. vol. 2, at 46 (¶¶ 12–15). Suppressing the evidence in this case would deter police officers and departments from drafting warrants that serve as blank checks to search for evidence of any crime.

I would hold that the good-faith exception doesn't apply, so the evidence should be suppressed.