SUPREME COURT OF THE UNITED STATES

No. 02–811

JEFF GROH, PETITIONER *v.* JOSEPH R. RAMIREZ ET AL.

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

[February 24, 2004]

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE joins, dissenting.

I agree with the Court that the Fourth Amendment was violated in this case. The Fourth Amendment states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The warrant issued in this case did not particularly describe the things to be seized, and so did not comply with the Fourth Amendment. I disagree with the Court on whether the officer who obtained the warrant and led the search team is entitled to qualified immunity for his role in the search. In my view, the officer should receive qualified immunity.

An officer conducting a search is entitled to qualified immunity if "a reasonable officer could have believed" that the search was lawful "in light of clearly established law and the information the searching officers possessed." *Anderson* v. *Creighton,* 483 U. S. 635, 641 (1987). As the Court notes, this is the same objective reasonableness standard applied under the "good faith" exception to the exclusionary rule. See *ante*, at 13, n. 8 (citing *Malley* v. *Briggs,* 475 U. S. 335, 344 (1986)). The central question is whether someone in the officer's position could reasonably but mistakenly conclude that his conduct complied with the

Fourth Amendment. *Creighton, supra,* at 641. See also *Saucier* v. *Katz,* 533 U. S. 194, 206 (2001); *Hunter* v. *Bryant,* 502 U. S. 224, 227 (1991) *(per curiam).*

An officer might reach such a mistaken conclusion for several reasons. He may be unaware of existing law and how it should be applied. See, *e.g., Saucier*, *supra.* Alternatively, he may misunderstand important facts about the search and assess the legality of his conduct based on that misunderstanding. See, *e.g., Arizona* v. *Evans,* 514 U. S. 1 (1995). Finally, an officer may misunderstand elements of both the facts and the law. See, *e.g., Creighton*, *supra.* Our qualified immunity doctrine applies regardless of whether the officer's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact. *Butz* v. *Economou,* 438 U. S. 478, 507 (1978) (noting that qualified immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law").

The present case involves a straightforward mistake of fact. Although the Court does not acknowledge it directly, it is obvious from the record below that the officer simply made a clerical error when he filled out the proposed warrant and offered it to the Magistrate Judge. The officer used the proper description of the property to be seized when he completed the affidavit. He also used the proper description in the accompanying application. When he typed up the description a third time for the proposed warrant, however, the officer accidentally entered a description of the place to be searched in the part of the warrant form that called for a description of the property to be seized. No one noticed the error before the search was executed. Although the record is not entirely clear on this point, the mistake apparently remained undiscovered until the day after the search when respondents' attorney reviewed the warrant for defects. The officer, being unaware of his mistake, did not rely on it in any way. It is uncontested that the officer trained the

search team and executed the warrant based on his mistaken belief that the warrant contained the proper description of the items to be seized.

The question is whether the officer's mistaken belief that the warrant contained the proper language was a reasonable belief. In my view, it was. A law enforcement officer charged with leading a team to execute a search warrant for illegal weapons must fulfill a number of serious responsibilities. The officer must establish probable cause to believe the crime has been committed and that evidence is likely to be found at the place to be searched; must articulate specific items that can be seized, and a specific place to be searched; must obtain the warrant from a magistrate judge; and must instruct a search team to execute the warrant within the time allowed by the warrant. The officer must also oversee the execution of the warrant in a way that protects officer safety, directs a thorough and professional search for the evidence, and avoids unnecessary destruction of property. These difficult and important tasks demand the officer's full attention in the heat of an ongoing and often dangerous criminal investigation.

An officer who complies fully with all of these duties can be excused for not being aware that he had made a clerical error in the course of filling out the proposed warrant. See *Maryland* v. *Garrison,* 480 U. S. 79, 87 (1987) (recognizing "the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants"). An officer who drafts an affidavit, types up an application and proposed warrant, and then obtains a judge's approval naturally assumes that he has filled out the warrant form correctly. Even if the officer checks over the warrant, he may very well miss a mistake. We all tend toward myopia when looking for our own errors. Every lawyer and every judge can recite examples of documents that they wrote,

checked, and doublechecked, but that still contained glaring errors. Law enforcement officers are no different. It would be better if the officer recognizes the error, of course. It would be better still if he does not make the mistake in the first place. In the context of an otherwise proper search, however, an officer's failure to recognize his clerical error on a warrant form can be a reasonable mistake.

The Court reaches a different result by construing the officer's error as a mistake of law rather than a mistake of fact. According to the Court, the officer should not receive qualified immunity because "no reasonable officer could believe that a warrant that plainly did not comply with [the particularity] requirement was valid." *Ante*, at 12. The majority is surely right that a reasonable officer must know that a defective warrant is invalid. This much is obvious, if not tautological. It is also irrelevant, for the essential question here is whether a reasonable officer in petitioner's position would necessarily know that the warrant had a clerical error in the first place. The issue in this case is whether an officer can reasonably fail to recognize a clerical error, not whether an officer who recognizes a clerical error can reasonably conclude that a defective warrant is legally valid.

The Court gives little attention to this important and difficult question. It receives only two sentences at the very end of the Court's opinion. In the first sentence, the Court quotes dictum from *United States* v. *Leon,* 468 U. S. 897, 923 (1984), to the effect that "'a warrant may be 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.'" *Ante*, at 13–14. In the second sentence, the Court informs us without explanation that "[t]his is such a case." *Ante,* at 14. This reasoning is not convincing.

To understand the passage from *Leon* that the Court

relies upon, it helps to recognize that most challenges to defective search warrants arise when officers rely on the defect and conduct a search that should not have occurred. The target of the improper search then brings a civil action challenging the improper search, or, if charges have been filed, moves to suppress the fruits of the search. The inquiry in both instances is whether the officers' reliance on the defect was reasonable. See, *e.g.*, *Garrison, supra,* (apartment wrongly searched because the searching officers did not realize that there were two apartments on the third floor and obtained a warrant to search the entire floor); *Arizona* v. *Evans,* 514 U. S. 1 (1995) (person wrongly arrested and searched because a court employee's clerical error led officer to believe a warrant existed for person's arrest); *McLeary* v. *Navarro*, 504 U. S. 966 (1992) (White, J., dissenting from denial of certiorari) (house wrongly searched because informant told officers the suspect lived in the second house on the right, but the suspect lived in the third house on the right).

The language the Court quotes from *Leon* comes from a discussion of when "an officer [who] has obtained a [defective] warrant and abided by its terms" has acted reasonably. 468 U. S., at 922. The discussion notes that there are some cases in which "no reasonably well trained officer should rely on the warrant." *Id.*, at 923. The passage also includes several examples, among them the one that the Court relies on in this case: "depending on the circumstances of the particular case, a warrant may be 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." *Ibid.*

The Court interprets this language to mean that a clerical mistake can be so obvious that an officer who fails to recognize the mistake should not receive qualified immunity. Read in context, however, the quoted language is addressed to a quite different issue. The most natural

interpretation of the language is that a clerical mistake can be so obvious that the officer cannot reasonably rely on the mistake in the course of executing the warrant. In other words, a defect can be so clear that an officer cannot reasonably "abid[e] by its terms" and execute the warrant as written. *Id.,* at 922.

We confront no such issue here, of course. No one suggests that the officer reasonably could have relied on the defective language in the warrant. This is a case about an officer being unaware of a clerical error, not a case about an officer relying on one. The respondents do not make the usual claim that they were injured by a defect that led to an improper search. Rather, they make an unusual claim that they were injured simply because the warrant form did not contain the correct description of the property to be seized, even though no property was seized. The language from *Leon* is not on point.

Our Court has stressed that "the purpose of encouraging recourse to the warrant procedure" can be served best by rejecting overly technical standards when courts review warrants. *Illinois* v. *Gates,* 462 U. S. 213, 237 (1983). We have also stressed that qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley,* 475 U. S., at 341. The Court's opinion is inconsistent with these principles. Its analysis requires our Nation's police officers to concentrate more on the correctness of paper forms than substantive rights. The Court's new "duty to ensure that the warrant conforms to constitutional requirements" sounds laudable, *ante*, at 11, n. 6, but would be more at home in a regime of strict liability than within the "ample room for mistaken judgments" that our qualified immunity jurisprudence traditionally provides. *Malley, supra,* at 343.

For these reasons, I dissent.