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 STEVENS delivered the opinion of the Court.

Petitioner conducted a search of respondents' home pursuant to a warrant that failed to describe the "persons or things to be seized." U. S. Const., Amdt. 4. The questions presented are (1) whether the search violated the Fourth Amendment, and (2) if so, whether petitioner nevertheless is entitled to qualified immunity, given that a Magistrate Judge (Magistrate), relying on an affidavit that particularly described the items in question, found probable cause to conduct the search.

I

Respondents, Joseph Ramirez and members of his family, live on a large ranch in Butte-Silver Bow County, Montana. Petitioner, Jeff Groh, has been a Special Agent for the Bureau of Alcohol, Tobacco and Firearms (ATF) since 1989. In February 1997, a concerned citizen informed petitioner that on a number of visits to respondents' ranch the visitor had seen a large stock of weaponry, including an automatic rifle, grenades, a grenade

launcher, and a rocket launcher.[1] Based on that information, petitioner prepared and signed an application for a warrant to search the ranch. The application stated that the search was for "any automatic firearms or parts to automatic weapons, destructive devices to include but not limited to grenades, grenade launchers, rocket launchers, and any and all receipts pertaining to the purchase or manufacture of automatic weapons or explosive devices or launchers." App. to Pet. for Cert. 28a. Petitioner supported the application with a detailed affidavit, which he also prepared and executed, that set forth the basis for his belief that the listed items were concealed on the ranch. Petitioner then presented these documents to a Magistrate, along with a warrant form that petitioner also had completed. The Magistrate signed the warrant form.

Although the application particularly described the place to be searched and the contraband petitioner expected to find, the warrant itself was less specific; it failed to identify any of the items that petitioner intended to seize. In the portion of the form that called for a description of the "person or property" to be seized, petitioner typed a description of respondents' two-story blue house rather than the alleged stockpile of firearms.[2] The warrant did not incorporate by reference the itemized list contained in the application. It did, however, recite that the Magistrate was satisfied the affidavit established probable cause to believe that contraband was concealed on the premises, and that sufficient grounds existed for

---

[1] Possession of these items, if unregistered, would violate 18 U. S. C. §922(*o*)(1) and 26 U. S. C. §5861.

[2] The warrant stated: "[T]here is now concealed [on the specified premises] a certain person or property, namely [a] single dwelling residence two story in height which is blue in color and has two additions attached to the east. The front entrance to the residence faces in a southerly direction." App. to Pet. for Cert. 26a.

the warrant's issuance.[3]

The day after the Magistrate issued the warrant, petitioner led a team of law enforcement officers, including both federal agents and members of the local sheriff's department, in the search of respondents' premises. Although respondent Joseph Ramirez was not home, his wife and children were. Petitioner states that he orally described the objects of the search to Mrs. Ramirez in person and to Mr. Ramirez by telephone. According to Mrs. Ramirez, however, petitioner explained only that he was searching for "'an explosive device in a box.'" *Ramirez* v. *Butte-Silver Bow County*, 298 F. 3d 1022, 1026 (CA9 2002). At any rate, the officers' search uncovered no illegal weapons or explosives. When the officers left, petitioner gave Mrs. Ramirez a copy of the search warrant, but not a copy of the application, which had been sealed. The following day, in response to a request from respondents' attorney, petitioner faxed the attorney a copy of the page of the application that listed the items to be seized. No charges were filed against the Ramirezes.

Respondents sued petitioner and the other officers under *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388 (1971), and Rev. Stat. §1979, 42 U. S. C. §1983, raising eight claims, including violation of the Fourth Amendment. App. 17–27. The District Court entered summary judgment for all defendants. The court found no Fourth Amendment violation, because it considered the case comparable to one in which the warrant contained an inaccurate address, and in such a case, the court reasoned, the warrant is sufficiently detailed if the executing officers can locate the correct house. App. to Pet. for Cert. 20a–22a. The court added that even if a constitutional violation occurred, the defendants were entitled to qualified

---

[3] The affidavit was sealed. Its sufficiency is not disputed.

immunity because the failure of the warrant to describe the objects of the search amounted to a mere "typographical error." *Id.*, at 22a–24a.

The Court of Appeals affirmed the judgment with respect to all defendants and all claims, with the exception of respondents' Fourth Amendment claim against petitioner. 298 F. 3d, at 1029–1030. On that claim, the court held that the warrant was invalid because it did not "describe with particularity the place to be searched and the items to be seized," and that oral statements by petitioner during or after the search could not cure the omission. *Id.*, at 1025–1026. The court observed that the warrant's facial defect "increased the likelihood and degree of confrontation between the Ramirezes and the police" and deprived respondents of the means "to challenge officers who might have exceeded the limits imposed by the magistrate." *Id.*, at 1027. The court also expressed concern that "permitting officers to expand the scope of the warrant by oral statements would broaden the area of dispute between the parties in subsequent litigation." *Ibid.* The court nevertheless concluded that all of the officers except petitioner were protected by qualified immunity. With respect to petitioner, the court read our opinion in *United States* v. *Leon,* 468 U. S. 897 (1984), as precluding qualified immunity for the leader of a search who fails to "read the warrant and satisfy [himself] that [he] understand[s] its scope and limitations, and that it is not defective in some obvious way." 298 F. 3d, at 1027. The court added that "[t]he leaders of the search team must also make sure that a copy of the warrant is available to give to the person whose property is being searched at the commencement of the search, and that such copy has no missing pages or other obvious defects." *Ibid.* (footnote omitted). We granted certiorari. 537 U. S. 1231 (2003).

II

The warrant was plainly invalid. The Fourth Amendment states unambiguously 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*." (Emphasis added.) The warrant in this case complied with the first three of these requirements: It was based on probable cause and supported by a sworn affidavit, and it described particularly the place of the search. On the fourth requirement, however, the warrant failed altogether. Indeed, petitioner concedes that "the warrant . . . was deficient in particularity because it provided no description of the type of evidence sought." Brief for Petitioner 10.

The fact that the *application* adequately described the "things to be seized" does not save the *warrant* from its facial invalidity. The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents. See *Massachusetts* v. *Sheppard,* 468 U. S. 981, 988, n. 5 (1984) ("[A] warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional"); see also *United States* v. *Stefonek*, 179 F. 3d 1030, 1033 (CA7 1999) ("The Fourth Amendment requires that the *warrant* particularly describe the things to be seized, not the papers presented to the judicial officer . . . asked to issue the warrant"). And for good reason: "The presence of a search warrant serves a high function," *McDonald* v. *United States,* 335 U. S. 451, 455 (1948), and that high function is not necessarily vindicated when some other document, somewhere, says something about the objects of the search, but the contents of that document are neither known to the person whose home is being searched nor available for her inspection. We do not say that the Fourth Amendment forbids a warrant from cross-referencing other documents. Indeed, most Courts of Appeals have held that a court may construe a warrant

with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant. See, *e.g.*, *United States* v. *McGrew*, 122 F. 3d 847, 849–850 (CA9 1997); *United States* v. *Williamson*, 1 F. 3d 1134, 1136, n. 1 (CA10 1993); *United States* v. *Blakeney*, 942 F. 2d 1001, 1025–1026 (CA6 1991); *United States* v. *Maxwell*, 920 F. 2d 1028, 1031 (CADC 1990); *United States* v. *Curry*, 911 F. 2d 72, 76–77 (CA8 1990); *United States* v. *Roche*, 614 F. 2d 6, 8 (CA1 1980). But in this case the warrant did not incorporate other documents by reference, nor did either the affidavit or the application (which had been placed under seal) accompany the warrant. Hence, we need not further explore the matter of incorporation.

Petitioner argues that even though the warrant was invalid, the search nevertheless was "reasonable" within the meaning of the Fourth Amendment. He notes that a Magistrate authorized the search on the basis of adequate evidence of probable cause, that petitioner orally described to respondents the items to be seized, and that the search did not exceed the limits intended by the Magistrate and described by petitioner. Thus, petitioner maintains, his search of respondents' ranch was functionally equivalent to a search authorized by a valid warrant.

We disagree. This warrant did not simply omit a few items from a list of many to be seized, or misdescribe a few of several items. Nor did it make what fairly could be characterized as a mere technical mistake or typographical error. Rather, in the space set aside for a description of the items to be seized, the warrant stated that the items consisted of a "single dwelling residence . . . blue in color." In other words, the warrant did not describe the items to be seized *at all*. In this respect the warrant was so obviously deficient that we must regard the search as "warrantless" within the meaning of our case law. See *Leon,* 468 U. S., at 923; cf. *Maryland* v. *Garrison,* 480 U. S. 79,

85 (1987); *Steele* v. *United States,* 267 U. S. 498, 503–504 (1925). "We are not dealing with formalities." *McDonald,* 335 U. S., at 455. Because "'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion'" stands "'[a]t the very core' of the Fourth Amendment," *Kyllo* v. *United States,* 533 U. S. 27, 31 (2001) (quoting *Silverman* v. *United States,* 365 U. S. 505, 511 (1961)), our cases have firmly established the "'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable," *Payton* v. *New York,* 445 U. S. 573, 586 (1980) (footnote omitted). Thus, "absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within." *Id.*, at 587–588 (footnote omitted). See *Kyllo*, 533 U. S., at 29; *Illinois* v. *Rodriguez,* 497 U. S. 177, 181 (1990); *Chimel* v. *California,* 395 U. S. 752, 761–763 (1969); *McDonald,* 335 U. S., at 454; *Johnson* v. *United States,* 333 U. S. 10 (1948).

We have clearly stated that the presumptive rule against warrantless searches applies with equal force to searches whose only defect is a lack of particularity in the warrant. In *Sheppard*, for instance, the petitioner argued that even though the warrant was invalid for lack of particularity, "the search was constitutional because it was reasonable within the meaning of the Fourth Amendment." 468 U. S., at 988, n. 5. In squarely rejecting that position, we explained:

> "The uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional. *Stanford* v. *Texas*, 379 U. S. 476 (1965); *United States* v. *Cardwell*, 680 F. 2d 75, 77–78 (CA9 1982); *United States* v. *Crozier*, 674 F. 2d 1293,

> 1299 (CA9 1982); *United States* v. *Klein*, 565 F. 2d 183, 185 (CA1 1977); *United States* v. *Gardner*, 537 F. 2d 861, 862 (CA6 1976); *United States* v. *Marti*, 421 F. 2d 1263, 1268–1269 (CA2 1970). That rule is in keeping with the well-established principle that 'except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant.' *Camara* v. *Municipal Court*, 387 U. S. 523, 528–529 (1967). See *Steagald* v. *United States*, 451 U. S. 204, 211–212 (1981); *Jones* v. *United States*, 357 U. S. 493, 499 (1958)." *Ibid.*

Petitioner asks us to hold that a search conducted pursuant to a warrant lacking particularity should be exempt from the presumption of unreasonableness if the goals served by the particularity requirement are otherwise satisfied. He maintains that the search in this case satisfied those goals—which he says are "to prevent general searches, to prevent the seizure of one thing under a warrant describing another, and to prevent warrants from being issued on vague or dubious information," Brief for Petitioner 16—because the scope of the search did not exceed the limits set forth in the application. But unless the particular items described in the affidavit are also set forth in the warrant itself (or at least incorporated by reference, and the affidavit present at the search), 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. See *McDonald*, 335 U. S., at 455 ("Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done . . . so that an objective mind might weigh the need to invade [the citizen's] privacy in order to enforce the law"). In this case, for example, it is at least theoretically possible that the Magistrate was

satisfied that the search for weapons and explosives was justified by the showing in the affidavit, but not convinced that any evidentiary basis existed for rummaging through respondents' files and papers for receipts pertaining to the purchase or manufacture of such items. Cf. *Stanford* v. *Texas,* 379 U. S. 476, 485–486 (1965). Or, conceivably, the Magistrate might have believed that some of the weapons mentioned in the affidavit could have been lawfully possessed and therefore should not be seized. See 26 U. S. C. §5861 (requiring registration, but not banning possession of, certain firearms). The mere fact that the Magistrate issued a warrant does not necessarily establish that he agreed that the scope of the search should be as broad as the affiant's request. Even though petitioner acted with restraint in conducting the search, "the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer." *Katz* v. *United States,* 389 U. S. 347, 356 (1967).[4]

We have long held, moreover, that the purpose of the particularity requirement is not limited to the prevention of general searches. See *Garrison*, 480 U. S., at 84. A

---

[4] For this reason petitioner's argument that any constitutional error was committed by the Magistrate, not petitioner, is misplaced. In *Massachusetts* v. *Sheppard,* 468 U. S. 981 (1984), we suggested that "the judge, not the police officers," may have committed "[a]n error of constitutional dimension," *id*., at 990, because the judge had assured the officers requesting the warrant that he would take the steps necessary to conform the warrant to constitutional requirements, *id*., at 986. Thus, "it was not unreasonable for the police in [that] case to rely on the judge's assurances that the warrant authorized the search they had requested." *Id*., at 990, n. 6. In this case, by contrast, petitioner did not alert the Magistrate to the defect in the warrant that petitioner had drafted, and we therefore cannot know whether the Magistrate was aware of the scope of the search he was authorizing. Nor would it have been reasonable for petitioner to rely on a warrant that was so patently defective, even if the Magistrate was aware of the deficiency. See *United States* v. *Leon,* 468 U. S. 897, 915, 922, n. 23 (1984).

particular warrant also "assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search." *United States* v. *Chadwick,* 433 U. S. 1, 9 (1977) (citing *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 532 (1967)), abrogated on other grounds, *California* v. *Acevedo,* 500 U. S. 565 (1991). See also *Illinois* v. *Gates,* 462 U. S. 213, 236 (1983) ("[P]ossession of a warrant by officers conducting an arrest or search greatly reduces the perception of unlawful or intrusive police conduct").[5]

Petitioner argues that even if the goals of the particularity requirement are broader than he acknowledges, those goals nevertheless were served because he orally described to respondents the items for which he was searching. Thus, he submits, respondents had all of the notice that a proper warrant would have accorded. But this case presents no occasion even to reach this argument, since respondents, as noted above, dispute petitioner's account. According to Mrs. Ramirez, petitioner

---

[5] It is true, as petitioner points out, that neither the Fourth Amendment nor Rule 41 of the Federal Rules of Criminal Procedure requires the executing officer to serve the warrant on the owner before commencing the search. Rule 41(f)(3) provides that "[t]he officer executing the warrant must: (A) give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or (B) leave a copy of the warrant and receipt at the place where the officer took the property." Quite obviously, in some circumstances—a surreptitious search by means of a wiretap, for example, or the search of empty or abandoned premises—it will be impracticable or imprudent for the officers to show the warrant in advance. See *Katz* v. *United States,* 389 U. S. 347, 355, n. 16 (1967); *Ker* v. *California*, 374 U. S. 23, 37–41 (1963). Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises is present and poses no threat to the officers' safe and effective performance of their mission, is a question that this case does not present.

stated only that he was looking for an "'explosive device in a box.'" 298 F. 3d, at 1026. Because this dispute is before us on petitioner's motion for summary judgment, App. to Pet. for Cert. 13a, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [her] favor," *Anderson* v. *Liberty Lobby, Inc.,* 477 U. S. 242, 255 (1986) (citation omitted). The posture of the case therefore obliges us to credit Mrs. Ramirez's account, and we find that petitioner's description of "'an explosive device in a box'" was little better than no guidance at all. See *Stefonek*, 179 F. 3d, at 1032–1033 (holding that a search warrant for "'evidence of crime'" was "[s]o open-ended" in its description that it could "only be described as a general warrant").

It is incumbent on the officer executing a search warrant to ensure the search is lawfully authorized and lawfully conducted.[6] Because petitioner did not have in his possession a warrant particularly describing the things he intended to seize, proceeding with the search was clearly "unreasonable" under the Fourth Amendment. The Court of Appeals correctly held that the search was unconstitutional.

III

Having concluded that a constitutional violation occurred, we turn to the question whether petitioner is entitled to qualified immunity despite that violation. See *Wilson* v. *Layne,* 526 U. S. 603, 609 (1999). The answer

---

[6]The Court of Appeals' decision is consistent with this principle. Petitioner mischaracterizes the court's decision when he contends that it imposed a novel proofreading requirement on officers executing warrants. The court held that officers leading a search team must "mak[e] sure that they have a proper warrant that in fact authorizes the search and seizure they are about to conduct." 298 F. 3d 1022, 1027 (CA9 2002). That is not a duty to proofread; it is, rather, a duty to ensure that the warrant conforms to constitutional requirements.

depends on whether the right that was transgressed was "'clearly established'"—that is, "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier* v. *Katz,* 533 U. S. 194, 202 (2001).

Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid. See *Harlow* v. *Fitzgerald,* 457 U. S. 800, 818–819 (1982) ("If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct"). Moreover, because petitioner himself prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance that the warrant contained an adequate description of the things to be seized and was therefore valid. Cf. *Sheppard*, 468 U. S., at 989–990. In fact, the guidelines of petitioner's own department placed him on notice that he might be liable for executing a manifestly invalid warrant. An ATF directive in force at the time of this search warned: "Special agents are liable if they exceed their authority while executing a search warrant and must be sure that a search warrant is sufficient on its face even when issued by a magistrate." Searches and Examinations, ATF Order O 3220.1(7)(d) (Feb. 13, 1997). See also *id.,* at 3220.1(23)(b) ("If any error or deficiency is discovered and there is a reasonable probability that it will invalidate the warrant, such warrant shall not be executed. The search shall be postponed until a satisfactory warrant has been obtained").[7] And even a cursory reading

---

[7]We do not suggest that an official is deprived of qualified immunity whenever he violates an internal guideline. We refer to the ATF Order only to underscore that petitioner should have known that he should not execute a patently defective warrant.

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.

No reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional. See *Payton*, 445 U. S., at 586–588. Indeed, as we noted nearly 20 years ago in *Sheppard:* "The uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional." 468 U. S., at 988, n. 5.[8] Because not a word in any of our cases would suggest to a reasonable officer that this case fits within any exception to that fundamental tenet, petitioner is asking us, in effect, to craft a new exception. Absent any support for such an exception in our cases, he cannot reasonably have relied on an expectation that we would do so.

Petitioner contends that the search in this case was the product, at worst, of a lack of due care, and that our case law requires more than negligent behavior before depriving an official of qualified immunity. See *Malley* v. *Briggs,* 475 U. S. 335, 341 (1986). But as we observed in the companion case to *Sheppard*, "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." *Leon,* 468

---

[8] Although both *Sheppard* and *Leon* involved the application of the "good faith" exception to the Fourth Amendment's general exclusionary rule, we have explained that "the same standard of objective reasonableness that we applied in the context of a suppression hearing in *Leon* defines the qualified immunity accorded an officer." *Malley* v. *Briggs,* 475 U. S. 335, 344 (1986) (citation omitted).

U. S., at 923. This is such a case.[9]

Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

---

[9]JUSTICE KENNEDY argues in dissent that we have not allowed "'ample room for mistaken judgments,'" *post*, at 6 (quoting *Malley*, 475 U. S., at 343), because "difficult and important tasks demand the officer's full attention in the heat of an ongoing and often dangerous criminal investigation," *post*, at 3. In this case, however, petitioner does not contend that any sort of exigency existed when he drafted the affidavit, the warrant application, and the warrant, or when he conducted the search. This is not the situation, therefore, in which we have recognized that "officers in the dangerous and difficult process of making arrests and executing search warrants" require "some latitude." *Maryland* v. *Garrison,* 480 U. S. 79, 87 (1987).

Nor are we according "the correctness of paper forms" a higher status than "substantive rights." *Post*, at 6. As we have explained, the Fourth Amendment's particularity requirement assures the subject of the search that a magistrate has duly authorized the officer to conduct a search of limited scope. This substantive right is not protected when the officer fails to take the time to glance at the authorizing document and detect a glaring defect that JUSTICE KENNEDY agrees is of constitutional magnitude, *post*, at 1.