

No. 21-047

IN THE

Supreme Court of the United States

Gina Grace Stone,

Petitioner,

v.

United States of America,

Respondent.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTEENTH CIRCUIT

BRIEF FOR RESPONDENT

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Questions Presented

- I. Under the Fourth Amendment do officers executing an arrest warrant need a reasonable belief or probable cause that the target resided in and was present at the residence when officers reasonably relied on a mistaken belief as to the warrant target's residence?

- II. Under the reasonableness requirement of the Fourth Amendment, did the evidence gathered during the officers' diligent investigation satisfy the required level of certainty when determining whether the warrant target resided at and was present in 401 West Deerfield Court at the time of entry?

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Opinions Below

The opinion of the United States Court of Appeals for the Fifteenth Circuit is unreported but may be found at J.A.70-72. The judgment of the United States District Court for the District of Alamo is also unreported but may be found at J.A.56-67.

Statement of Jurisdiction

The United States Court of Appeals for the Fifteenth Circuit entered judgment on the 1st day of November 2020. J.A.70. Petitioner timely filed a Petition for Writ of Certiorari, which this Court granted on the 31st day of December 2021 J.A.73. This Court's jurisdiction rests on 28 U.S.C § 1254(1).

Standard of Review

This Court reviews a district court's fact findings for clear error and its legal conclusions *de novo*.

Constitutional Provision Involved

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend. IV.

Statement of the Case

On January 8, 2018, police obtained an arrest warrant for repeat offender Bo Boudreaux charging him with assault and drug charges. J.A.1, 3. Boudreaux was on the radar of the United States Drug Enforcement Agency (DEA) due to officers suspecting him of being connected to a party-drug trafficking ring. J.A.17. The investigation into, and arrest of, Boudreaux was headed by Special Agent Lam Nguyen of the DEA. J.A.8, 17. At the time of arrest Agent Nguyen was very experienced at his job and had close to twenty years of experience in law enforcement. J.A.17.

In early 2018, Agent Nguyen learned of the arrest warrant for Boudreaux but having many other leads and limited resources, he decided not to act yet. J.A.17. The facts changed on August 8, 2018, when a confidential informant told officers that he had overheard Boudreaux saying he was living in a big house in the Deerfield neighborhood and saw him driving a white GMC truck. J.A.17-18. Understanding the importance of this information, while appreciating the necessity of corroboration, Agent Nguyen began his investigation to track down Boudreaux. J.A.18.

Officers then engaged in a diligent investigation into the information provided by the confidential informant which led them to the 401 West Deerfield Court address. J.A.18-20. Agent Nguyen searched traffic records, spoke with Boudreaux's parole officer, and visited one of the two addresses listed in the arrest warrant. J.A.18. The apartment Agent Nguyen visited belonged to a woman Boudreaux was dating over a year ago. J.A.18. Officers were unable to locate

anyone at the apartment and no one seemed to be present. J.A.19. Then officers drove through the Deerfield neighborhood searching for a residence and vehicle matching the description given by the confidential informant. J.A.19. Petitioner's residence matched the description, and a white truck was parked out front. J.A.19. Wanting to do his due diligence but understanding the widely held notion that criminals are likely to keep their names off public records, Agent Nguyen checked the records of both the house and the truck. J.A.19. Predictably, the records were not linked to Boudreaux. J.A.19.

In speaking with a neighbor who lived across the street, officers learned there was constant traffic in and out of the house – consistent with a house linked to drug trafficking. J.A.20. When officers showed this neighbor a picture of Boudreaux, he identified Boudreaux as the driver of the white truck and someone who was frequently at the residence. J.A.20. In the very early morning hours the next day, officers viewed the truck still parked out front and evidence of a party taking place at the address. J.A.20.

When officers arrived the morning of August 11, the truck matching the description of Boudreaux's was still parked outside and officers heard loud music playing inside. J.A.20-21. Agent Nguyen believed Boudreaux was inside and after no response to the officers' knocking, Agent Nguyen directed the officers to make forcible entry into the residence. J.A.21.

The search resulted in the officer's learning Boudreaux did not reside there. J.A.22. Boudreaux was apprehended a few days later in the Deer Park

neighborhood across the street and was driving a white GMC as the informant had stated. J.A.23.

Petitioner was arrested and charged under 18 U.S.C § 922(g)(3). J.A.56. The Alamo District Court denied Petitioner's motion to suppress evidence. J.A.67.

Following the denial of the motion to suppress, Petitioner entered a conditional guilty plea reserving her right to appeal asserting that officers violated her Fourth Amendment rights. J.A.68. The district court concluded that officers only needed a reasonable belief that the target of an arrest warrant resided at and was present in a residence before officer's could enter. J.A.66-67. Additionally, the court held that officers satisfied this standard. J.A.66-67. On appeal, the Fifteenth Circuit affirmed the judgment of the district court and stated Petitioner's rights were not violated. J.A.72. Petitioner then petitioned for a writ of certiorari and this Court granted. J.A.73.

Summary of the Argument

The rights prescribed by the Fourth Amendment are protected during the execution of an arrest warrant in a home when the officers are required to have a reasonable belief that the target resides there and is present. When officers have established the requisite requirement of showing probable cause to acquire an arrest warrant, they only need a reasonable belief that the target resides at and is present in a residence to enter. This Court explicitly stated that officers need only a "reason to believe" that a target is present, therefore it logically follows to apply that standard to residence as well. When applying the reasonable belief standard, the government's interest in efficient policework to protect the public is fully and

fairly considered against an individual's interest in privacy. A higher standard of probable cause would place an undue burden on officers working diligently to keep the public safe.

The standard set out by this Court applies to all cases in which officers believed the residence to be that of the warrant target, even if it is later determined to be a mistaken belief. The courts understand that a certain amount of latitude is required to allow officers to make honest and reasonable mistakes. Requiring officers to obtain a search warrant because of an after-the-fact determination exposed a reasonable mistake is flatly incompatible with the standard this Court set out in *Payton*. The reasonable belief standard is the most fair and logical level of certainty to require of officers when executing an arrest warrant.

Both the residence and presence prong of the *Payton* standard should be evaluated under a reasonable belief standard. Probable cause and a reasonable belief are concepts that do not have precise legal definitions, but instead are fluid concepts that require one to assess probabilities given the surrounding circumstances. Reasonable belief is a lower standard than probable cause which requires more than a hunch but less than a probability. The proper level of certainty to be applied is reasonable belief rather than probable cause, but the investigation officers engaged in satisfies both standards. The officers engaged in a diligent investigation to corroborate the information given by the confidential informant. The officers relied on information from a reliable confidential informant, evidence gathered in their investigation, commonsense factors, and their expertise.

Officer's investigation established the necessary protections to safeguard Petitioner's rights. Officer's had ample evidence to satisfy both a reasonable belief and probable cause standard.

Argument

The Fourth Amendment provides a right to the people to be free from unreasonable searches and seizures. U.S. CONST. amend. IV. This is a fundamental right, and one which protects the citizens of the United States from unreasonable intrusion by the government. *United States v. Vasquez-Algarin*, 821 F.3d 467, 478 (3d Cir. 2016).

In order to enter a residence, in the absence of exigent circumstances or consent, law enforcement needs a warrant based on probable cause and issued by a neutral magistrate. *Johnson v. United States*, 333 U.S. 10, 14 (1948). Probable cause cannot be reduced to a neat and specific legal rule; it is better understood as a fluid concept relying on an assessment of the surrounding circumstances. *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

This Court has previously stated that a valid arrest warrant based on probable cause gives law enforcement the limited authority to enter a target's home when there is "reason to believe" the target is present in the home. *Payton v. New York*, 445 U.S. 573, 603 (1980). That case created what is now known as the "Payton standard" or "Payton test," which has been employed by the courts to determine whether law enforcement had authority to enter a residence when executing an arrest warrant. *Valadez v. McPheters*, 172 F.3d 1220, 1225 (10th Cir. 1999); *United*

States v. Magluta, 44 F.3d 1530, 1534 (11th Cir. 1995). Alternatively, there is a different requirement of officers when attempting to execute an arrest warrant at a residence where they believe the target is a guest. *Steagald v. United States*, 451 U.S. 204, 232 (1981). When officers are attempting to execute an arrest warrant in a third-party's residence, they must have a search warrant to protect the privacy interests of the third-party. *Id.*

I. Reasonable belief is the proper standard for both prongs of the *Payton* standard.

A majority of courts have concluded that reason to believe is synonymous with reasonable belief and is a lower standard than probable cause; while others conclude the standard requires probable cause. *See Vasquez-Algarin*, 821 F.3d at 473-74 (examining the divergent results of the circuits). When establishing the scope of the government's ability to enter someone's home, the courts should carefully balance two competing interests. *Winston v. Lee*, 470 U.S. 753, 759 (1985). Courts must balance the individual's interest in the right to privacy against the community's interest in law enforcement and its ability to make efficient arrests to protect the public. *See id.*

A. Requiring a different level of certainty for each prong of the *Payton* standard is illogical.

The proper inquiry courts should engage in when determining an officer's authority to enter a person's residence to execute an arrest warrant is reasonable belief rather than probable cause. *United States v. Lovelock*, 170 F.3d 339, 343 (2d

Cir. 1999). Reasonable belief is distinct from the probable cause standard that governs the issuance of the arrest warrant required by officers. *United States v. Route*, 104 F.3d 59, 62 (5th Cir. 1997). A reasonable belief requires more than a hunch, but less than a probability. *United States v. Bohannon*, 824 F.3d 242, 255 (2d Cir. 2016).

The circuit courts have bifurcated the standard set out in *Payton* into two prongs – the first prong relating to residence and the second relating to presence. *Magluta*, 44 F.3d at 1533. This Court was explicit as to the level of certainty required of officers when deciding whether the target is present in a residence before entry when it stated officers need a reason to believe the suspect is within. *Payton*, 445 U.S. at 603. Reason to believe is synonymous with a reasonable belief. *See McPheters*, 172 F.3d at 1225-26 (using the terms reason to believe and reasonable belief interchangeably). It would be illogical to assume this Court was requiring a different and higher level of certainty with respect to the residence prong. *Id.* at 1225. It does not stand to reason that this Court would use the phrase reason to believe instead of probable cause, if that is in fact what this Court intended. *Magluta*, 44 F.3d at 1534. The illogic of the conclusion that the Court meant probable cause is demonstrated by the truism that when the Court wishes to use the term probable cause, it knows when to do so. *Smith v. Tolley*, 960 F. Supp. 977, 987 (E.D. Va. 1997). The term probable cause was even used in the same sentence with “reason to believe” demonstrating that this Court was using them to mean different things. *Id.*

The Petitioner may attempt to minimize this argument by pointing to this Court's analysis in a case disputing officer's authority to enter a residence. *Maryland v. Buie*, 494 U.S. 325, 332 (1990). In that case this Court explained that officers were entitled to enter the residence because they were armed with an arrest warrant and had probable cause to believe the target was in his home. *Id.* at 332-33. Even though this Court used the term probable cause, this statement is not dispositive. *See id.* This Court was simply reasoning that the evidence in that case supported probable cause – this Court did not hold that probable cause was required. *See id.*

Many of the circuit courts have come to the same conclusion the United States asserts in this brief – reasonable belief is a lower level of certainty than probable cause and is the correct standard to be applied. *United States v. Route*, 104 F.3d 59, 61 (5th Cir. 1997); *Valadez v. McPheters*, 172 F.3d 1220, 1225 (10th Cir. 1999); *United States v. Magluta*, 44 F.3d 1530, 1535 (11th Cir. 1995); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005); *United States v. Werra*, 638 F.3d 326, 377 (1st Cir. 2011); *El Bey v. Roop*, 530 F.3d 407, 416-17 (6th Cir. 2008); *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995). This Court has also repeatedly denied certiorari on this issue, even when the lower courts applied a reasonable belief standard, signaling this Court agrees with the application of that standard. *See United States v. Magluta*, 44 F.3d 1530, 1535 (11th Cir. 1995), *cert. denied*, 516 U.S. 869 (1995); *See Barrera v. United States*, 464 F.3d 496, 500 (5th

Cir. 2006), *cert. denied*, 550 U.S. 937 (2007); *United States v. Pruitt*, 458 F.3d 477, 482 (6th Cir. 2006), *cert. denied*, 549 U.S. 1283 (2007).

This Court was explicit in its designation of the reasonable belief analysis to the presence prong and applying the same standard to both prongs is the only logical conclusion. Therefore, this Court should apply the reasonable belief standard to both prongs of the *Payton* standard.

B. Applying a level of certainty greater than a reasonable belief would disrupt the balance between the necessity of efficient police work and the individual's right to privacy.

Courts have long recognized that the Fourth Amendment protection against government intrusion does not forbid all intrusions, rather it is limited to unreasonable ones or ones made in an improper manner. *Winston*, 470 U.S. at 760; *see Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (stating the touchstone of the Fourth Amendment is reasonableness). When a court is assessing the reasonableness of an intrusion, it must carefully balance society's interest in effective and efficient police work and the individual's right to privacy. *See Winston*, 470 U.S. at 759 (stating it is justifiable for the community to demand an individual give up some of his privacy to advance community's interest in law enforcement).

Requiring a higher standard of probable cause would disrupt this balance and unduly burden law enforcement. *See United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995) (stating probable cause is too stringent a test). A person's right to be free from unreasonable intrusions is adequately protected by applying the

reasonable belief standard to officers who are already armed with an arrest warrant based on probable cause. *See Magluta*, 44 F.3d at 1534-35. This requirement will not allow officers to unjustifiably expand their authority; officers still must do their due diligence and conduct a reasonable investigation to gather evidence. *See United States v. Barrera*, 464 F.3d 496, 502 (5th Cir. 2006).

When officers are armed with an arrest warrant, they have already persuaded a neutral magistrate to determine there is probable cause to justify that person's arrest. *Payton*, 445 U.S. at 603. It is then constitutionally reasonable to require the target of the arrest warrant to open her door to law enforcement. *Payton*, 445 U.S. at 603. Allowing officers who have already shown there is probable cause to arrest their target to then rely on a reasonable belief saves resources and time. *See United States v. Woods*, 560 F.2d 660, 665 (5th Cir. 1977) (stating officers are not required to make an additional trip to the magistrate). This previous probable cause determination is sufficient to protect the citizen from the zealous officer during the execution of that warrant. *See Payton*, 445 U.S. at 603. Thus, the interference a probable cause standard would have on efficient police work would outweigh any minimal increase in privacy rights that may occur. *See Route*, 104 F.3d at 62 (concluding that once an officer has obtained an arrest warrant, they should not have to make an additional trip to the magistrate).

Petitioner may argue that since the arrest warrant did not list the Deerfield address, the officers needed to obtain an updated arrest warrant to have the authority to enter the residence. J.A.2. This reasoning is flawed because a target's

address is immaterial to the determination of whether probable cause exists for her arrest. *Lauter*, 57 F.3d at 215. An officer with an arrest warrant is limited only by a reasonable belief that the target resides there and is present. *See United States v. Stinson*, 857 F. Supp. 1026, 1030 (D. Conn. 1994). An incorrect or missing address on the arrest warrant does not limit an officer's authority to enter a residence. *Id.* An arrest warrant is used to identify the person sought, not to identify the location where she is to be arrested. *See Lauter*, 57 F.3d at 215.

In *Maryland v. Garrison* this Court explained how a proper inquiry into the Fourth Amendment's protection rests on the reasonableness of officers' beliefs and actions. *Maryland v. Garrison*, 480 U.S. 79, 87-88 (1987). The reasonableness of the officer's beliefs and actions were the central point in this Court's analysis of whether the petitioner's Fourth Amendment rights were breached. *Id.* at 87-88. This Court reasoned that so long as the officer's actions and beliefs are reasonable, the rights protected by the Fourth Amendment are safeguarded and the balance between personal and government interests stays intact. *See id.* at 85, 87.

A probable cause standard would too heavily burden the community's interests in efficient and effective police work. Therefore, this Court should conclude that the reasonable belief standard properly balances the community's interests against the individual's interests.

C. It would be incompatible with the *Payton* standard to require officers to first acquire a search warrant before executing an arrest warrant at a

residence believed to be that of the target, even if it is later determined to be a third-party home.

Whether a target actually resides at a residence is not dispositive so long as officers had established a reasonable belief that the target resided there and was present before entry. *United States v. Graham*, 553 F.3d 6, 12 (1st Cir. 2009). When officers believe that the residence is the home of the warrant target, officers only need to have a reasonable belief that the target resides there and is present at the time of entry. *Magluta*, 44 F.3d at 1533. On the other hand, when officers are executing an arrest warrant in a residence known to be that of a third party, they are required to also be armed with a search warrant. *Steagald*, 451 U.S. at 232.

Asserting that an after the fact determination of actual residence does not bear on the decision of whether officers established the requisite level of certainty is not novel. *United States v. Hamilton*, 819 F.3d 503, 506 (1st. Cir. 2016); *McPheters*, 172 F.3d at 1225; *Lovelock*, 170 F.3d at 343-44; *United States v. Risse*, 83 F.3d 212, 216 (8th Cir. 1996). This Court's own jurisprudence even makes clear that the search warrant requirement was being applied to a home where the officers knew, before entry, that it was a third-party home. *See Steagald*, 451 U.S. at 213 (referring to the target of the arrest warrant as a guest in the residence).

It can be reasonably argued that the standard offered in *Payton* was tailored to give authority to officers who made a mistake, so long as it was reasonable. *See McPheters*, at 172 F.3d 1225 (stating that requiring actual knowledge of the suspect's true residence would effectively make *Payton* a dead letter). If this Court

expected officers to have full certainty before entering a residence, the text of *Payton* would have called for that certainty. *See id.* Instead, this Court expressly required officer to only have a reason to believe the target was present. *See Payton*, 445 F.3d at 603.

This Court has recognized the dangerous and difficult tasks officers face when doing their job and has necessarily allowed some latitude for honest and reasonable mistakes made in the process of their duties. *Garrison*, 480 U.S. at 87. Officers are not perfect, and they are not required to be. *See id.* Instead, officers are required to make reasonable determinations given the facts available to them. *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990).

It would be illogical for this Court to apply the *Steagald* standard solely based on information later obtained. The *Payton* standard should apply to all cases where the officers had a reasonable belief that the target of the arrest warrant resided and was present in the home. It should not be limited to the cases where the target in fact resided there. This Court should, therefore, hold that this case and similar cases should be evaluated under the framework established in *Payton*, not *Steagald*.

II. Officers had sufficient evidence to satisfy the level of certainty required by both a reasonable belief standard and a probable cause standard.

This Court has made clear that the reasonableness requirement of the Fourth Amendment requires officers to always be reasonable, not always correct. *Rodriguez*, 497 U.S. at 185. Neither reasonable belief nor probable cause requires law enforcement to have full certainty, rather it is a fluid concept that depends on

an assessment of probabilities – probable cause being established by a “fair probability”. *See Gates*, 462 U.S. at 232, 246.

Respondents do not make the claim that Boudreaux was an actual resident of the home, but instead assert that officers satisfied the level of certainty required of before they entered the residence, regardless of the later determination that they were mistaken.

A. Information from the confidential informant coupled with officers’ investigation established a reasonable belief that Boudreaux resided at and was present in the home at the time of entry.

A reasonable belief requires more than a hunch, but less than a probability. *Bohannon*, 824 F.3d at 255. In order to establish a reasonable belief, agents can consider information from informants, their own observations, and information given by other law enforcement agents. *United States v. Veal*, 453 F.3d 164, 168 (3d Cir. 2006); *Vasquez-Algarin*, 821 F.3d at 469. Informant tips can be useful information but are enhanced with corroborative police work. *See Vasquez-Algarin*, 821 F.3d at 480 (reviewing the use of second-hand information). When using a confidential informant, the informant’s past reliability, accuracy, and basis for knowledge is considered. *Id*

1. The totality of information officers gathered in their investigation provided ample evidence to establish a reasonable belief that Boudreaux resided at the residence.

Officers will look at the facts as a whole to determine if there is sufficient evidence to form a reasonable belief. *Magluta*, 44 F.3d at 1535. Officers are not required to produce rock-solid indicators of residence before a reasonable belief that

a suspect resides at a given place can be formed. *Graham*, 553 F.3d at 13. The types of steps officers can take to perform a diligent investigation include obtaining information from informants, visiting potential addresses, checking a vehicle's registration, and checking utilities. *Barrera*, 464 F.3d at 504; *Route*, 104 F.3d at 62-63.

Officers based their belief that Boudreaux resided at 401 W. Deerfield Court on four pieces of evidence gathered throughout the investigation. *See* J.A.17-21. First, a reliable confidential informant provided information as to the neighborhood Boudreaux was living in and the vehicle he was currently driving. J.A.18. This informant was known to the officers and had provided reliable information multiple times in the past. J.A.18. Second, Agent Nguyen located a home in the Deerfield neighborhood that matched the description and had a white truck parked out front. J.A.19. Although the informant had stated Boudreaux's truck was a GMC and the one located was a Ford, those vehicles have very similar looks, and it would be understandable for someone to confuse the two. J.A.27. Third, when officers showed a neighbor across the street a picture of Boudreaux, he identified him as the owner of the truck and someone who was frequently at the residence. J.A.20. The neighbor also said that people regularly came and went from the house at all hours, which is common behavior at homes associated with drug trafficking. J.A.20. Fourth, officers drove past the house after midnight and observed signs of a party going on, which again gave credence to the suspicion that the home was a party-drug house. J.A.20. Additionally, the white truck remained parked in front of the house. J.A.20.

Since there is no precise legal definition for a reasonable belief standard, circuit court cases can inform how this standard is applied to the facts. *See United States v. Gay*, 240 F.3d 1222, 1225 (10th Cir. 2001); *United States v. Young*, 835 F.3d 13, 23 (1st Cir. 2016). For example, in *United States v. Gay*, an unknown confidential informant who personally knew the target provided police with the location of the subject of an arrest warrant. *Gay*, 240 F.3d at 1225. The confidential informant accompanied officers to the location where he claimed the target resided. *Id.* Within five minutes of learning of this address, the officers entered the residence to execute the arrest warrant based solely on the informant's tip. *Id.* The court held that this information was sufficient for officers to form a reasonable belief that the target resided at the address even though the reliability of the informant was unknown. *Id.* at 1227. The court reasoned that the informant's connection with the target and his presence with the officers gave officers sufficient reason to believe the informant's tip. *Id.* at 1227. The court stated it was objectively reasonable for officers to rely on the tip because the informant remained accountable in the event the tip was fabricated. *Id.* at 1227.

In *United States v. Young*, the court reached the contrary conclusion and stated officers did not satisfy a reasonable belief standard. *Young*, 835 F.3d at 23. There, officers were attempting to execute an arrest warrant for their target and had three addresses they believed the target may be residing at because all were linked to some of the target's female companions. *Id.* at 15. The first address was that of a woman named Kayla Davidson who had recently told officers she was

dating the target. *Id.* at 15. The target had also previously been found at that address. *Id.* at 15. Neither Davidson nor the target were present when officers arrived. *Id.* at 15. Officers failed to locate the target at any of the addresses and decided to return to Davidson's. *Id.* at 15. At that address they did not find Davidson but ran into one of the target's other companions. *Id.* at 15-16. She stated that if officers had not found the target at the previous addresses, he must have been back with his former girlfriend. *Id.* at 15-16. Officers arrived at this woman's house and executed the arrest warrant. *Id.* at 16. The court held that officers had not satisfied the requisite level of certainty to satisfy a reasonable belief that the target resided there. *Id.* at 23. The court reasoned that the statement given by the target's companion was not sufficiently definitive and likened it to a guess rather than a reliable tip. *Id.* at 21-22. The woman did not claim to know that the target was staying there or that the target was back with his former girlfriend. *Id.* at 21. She only stated that if he was not at the other addresses, he was likely to be with his former girlfriend. *Id.* at 21. The court also noted the officers had not established the target was not residing at the first address, since they had not made contact with anyone there. *Id.* at 22. Additionally, officers did not take any steps to verify the target was back with his former girlfriend. *Id.* at 22.

The present case more closely resembles the *Gay* case and the evidence gathered by officers here even exceeds that which was available in that case. J.A.17-21. Here, officers knew the confidential informant and believed him to be reliable. J.A.17-18. Since the confidential informant was known to the officers and had been

used in the past, he was accountable had his tip turned out to be fabricated. J.A.17-18. Contrary to *Gay*, officers here did not solely rely on the tip, but engaged in a corroborative investigation. J.A.18-21; *see Gay*, 240 F.3d at 1225. Through this investigation officers found a house matching the description given by the informant and identified a truck matching the description of Boudreaux's outside the residence. J.A.19. A neighbor identified Boudreaux from a picture as the driver of the truck and someone that was frequently at the house, and provided information that signaled the house was linked to drug trafficking. J.A.20. Additionally, here officers did not rush to arrest Boudreaux with only the informant's tip – they took a few days to investigate and corroborate the information. J.A.17-20, 26.

This case can be distinguished from *Young* in two critical ways. J.A.17-20. First, officers here had much more evidence available to form their reasonable belief. J.A.17-20; *see Young*, 835 F.3d at 15-16. Second, both the confidential informant and the neighbor were definitive in their statements to officers, unlike the informant in *Young* who provided more of a guess than a reliable tip. J.A.18, 20; *see Young*, 835 F.3d at 22. While officers in both cases were unable to contact anyone at one of the addresses they visited, this fact does not equate the two cases. J.A.19; *see Young*, 835 F.3d at 15. In *Young*, the address where officers could not contact anyone was their most solid lead since it was the residence of the woman who had recently told officers she was dating the target. *See Young*, 835 F.3d at 15. Officers clearly believed that location to be their best chance of finding the target

since they returned to it after failing to find him elsewhere. *See id.* Here, the residence where officers could not locate anyone was not a very important lead. *See* J.A.18-19. The residence was, at some point, rented by a woman Boudreaux was dating over a year prior. J.A.18-19. This residence was not the one described by the informant; it was just an address that had been previously linked to Boudreaux through his then girlfriend. J.A.18. Officers simply checked that address to do their due diligence. *See* J.A.26. The implications of a failure to locate the target at the address in *Young* is clearly distinct from a failure to locate Boudreaux at the address of a woman he was with a year prior. J.A.19; *see Young*, 835 F.3d at 15.

Looking at the evidence produced in the investigation as a whole, officers established sufficient evidence to form a reasonable belief that Boudreaux resided at 401 W. Deerfield Court. Therefore, this Court should affirm the lower court's decision.

2. Officers used the evidence gathered throughout their investigation and commonsense factors to establish a reasonable belief that Boudreaux was present at the time of entry.

Under the totality of the circumstances test, once officers have established a reasonable belief that a target resides in the home, the amount of evidence necessary to establish presence is lowered as it is assumed a target will likely be in his own home. *Vasquez-Algarin*, 821 F.3d at 481. Courts must take into consideration the on-the-spot decision that is required of officers as to the second *Payton* prong and common-sense factors that indicate presence. *Magluta*, 44 F.3d at 1535.

Officers arrived at the home at 10:00 a.m. on Saturday morning. J.A.20. The white truck was still parked out front and there was music coming from inside the home which led agents to believe Boudreaux was still there. J.A.13; *see Magluta*, 44 F.3d at 1535 (noting that the presence of a vehicle connected to the target creates an inference that the target is home). Since there had been a party at the home the night before that went late into the night, it was reasonable for the agents to conclude that Boudreaux would still be home. J.A.20; *see Magluta*, 44 F.3d at 1535. The agents did not personally see Boudreaux, but the courts have not held officers to this unreasonably high standard. J.A.29; *see Magluta*, 44 F.3d at 1538. The officers could assume that Boudreaux was trying to conceal his location from officers. *See Magluta*, 44 F.3d at 1538 (allowing officers to consider that a fugitive is likely to be concealing his presence).

Although the Petitioner may point to a Third Circuit opinion stating that mere signs of life in a residence cannot be used to justify that the person inside is the specific target of the warrant, the present case is clearly distinguishable. J.A.17-20; *see Vasquez-Algarin*, 821 F.3d at 482. In that case officers had an arrest warrant for a homicide suspect and received information from another officer and street informants regarding the suspect's current address. *Id.* at 469. Without attempting to corroborate the information or identify the informants' reliability the officers went to the address to execute the arrest warrant. *Id.* at 480, 483. When officers knocked on the door they reported hearing movement inside, a phone start and stop ringing abruptly, and a dog bark and stop barking as if it had been

muzzled. *Id.* at 470. The officers then forced entry. *Id.* at 470. The court held that the mere signs of life in the residence were insufficient to form a reasonable belief that the target was present. *Id.* at 482. The court reasoned that since officers were relying on uncorroborated information and had little reason to believe the suspect resided in the home, the mere signs of life were clearly not enough evidence to authorize entry into the residence. *Id.*

The case here is patently distinct from that case. J.A.21; *see Vasquez-Algarin*, 821 F.3d at 469-471. In this case officers received their tip from a known and reliable confidential informant, and they subsequently performed an investigation to corroborate the information and obtain further evidence. J.A.17-20. When officers arrived at the residence, they were not met with mere signs of life in the house. J.A.21. Instead, a car matching the description of the suspect's was parked outside, it was the morning hours on the weekend after a late-night party, and there was music inside evidencing someone was home. J.A.21. The officers did not rely solely in the music playing to make the determination that Boudreaux was inside. J.A.21. Officers used the whole of the information they had on hand and these commonsense factors to form a reasonable belief that Boudreaux was inside. J.A.21; *see Magluta*, 44 F.3d at 1535 (stating commonsense factors can be taken into account to determine presence).

The evidence obtained prior to officers' arrival that morning and the evidence obtained that morning are sufficient to establish a reasonable belief that Boudreaux was present. Therefore, this Court should affirm the lower court's decision.

B. If the Court uses a probable cause standard, the evidence acquired during the officers' investigation adequately established probable cause to believe Boudreaux resided at and was present in the home at the time of entry.

Probable cause does not require the level of certainty demanded in formal trials, instead it requires only a fair probability based on the totality of the circumstances. *Gates*, 462 U.S. at 230-32. Probable cause cannot be reduced to a neat set of legal rules because it is a fluid concept which looks at the particular facts given the surrounding circumstances. *Id.* at 232.

Using this understanding of the concept of probable cause, the court in *United States v. Veal* found the evidence gathered by officers met a probable cause standard. *Veal*, 453 F.3d at 168. There, officers were interviewing the nephew of a murder victim when he divulged that he was selling drugs for Samuel Veal, who had two open arrest warrants. *Id.* at 165. The nephew provided officers with a description of Veal's vehicle. *Id.* 165. During their investigation officers spoke with the target's parole officer and confirmed he was no longer living with his mother, as he was required under the terms of his parole. *Id.* 165. Officers then visited multiple addresses provided by the nephew and the parole board. *Id.* at 166. At one of the addresses officers spoke with a landlord that said Veal no longer lived there but had previously lived there with his wife. *Id.* at 166. Early in the morning officers arrived at Veal's wife's residence, viewed a car matching the description of Veal's parked outside, and executed the arrest warrant. *Id.* at 166. The court reasoned that when

viewing the facts in the totality and applying commonsense factors, the evidence gathered was sufficient to support probable cause that the target resided there. *Id.*

The court also held that the facts gave officers probable cause to believe the target was present in the residence at the time of entry. *Id.* Officers arrived at the residence in the morning, a car matching the description of the target's was parked outside, officers heard unexplained noises upstairs, and the officers were aware the target was likely to be concealing his location to avoid arrest. *Id.* The court again reasoned that considering the commonsense factors and the totality of information available to officers, there was sufficient evidence to establish probable cause the target was present. *Id.* at 168-69.

Just as probable cause was established in that case, the evidence in this case satisfies the standard as well. J.A.17-20. In both cases officer's took investigative steps after receiving information on the target. J.A.17-20; *see Veal*, 453 F.3d at 165-66. In both cases officers had a description of the target's vehicle and a vehicle matching that description was parked outside the residence. J.A.19; *see Veal*, 453 F.3d at 166. In the present case officers not only viewed a truck matching the description near the residence, but a neighbor also identified Boudreaux as the driver. J.A.20. In *Veal*, officers did not receive the description of the target's car from someone known to be reliable, as in the present case, but instead from the someone who was not reported to have a history of reliability with officers. J.A.18; *see Veal*, 453 F.3d at 165. Officers in both cases arrived at the residence in the morning when it could be inferred the target would be home. J.A.20; *see Veal*, 453

F.3d at 166. The similar facts and the corroborative investigation officers engaged in demonstrate that officers in this case satisfied a probable cause standard. J.A.17-20; *see Veal*, 453 F.3d at 168.

Agent Nguyen's experience is also an important factor in determining whether probable cause was established. *See Gates*, 462 U.S. at 231-32 (stating the importance of considering evidence as understood by those experienced in law enforcement). Agent Nguyen has close to twenty years of service as a law enforcement agent and significant training and experience with drug crimes. J.A.17. His many years of experience informed the decisions and conclusions he made throughout the investigation. J.A.19-20. When this Court looks at whether probable cause was satisfied, it must consider how Agent Nguyen's expertise and experience informed his beliefs. *See Gates*, 462 U.S. at 231-32 (stating the evidence must be weighed in terms understood by those well versed in law enforcement).

Even if this Court decides that the probable cause standard is the appropriate standard, the evidence officers produced throughout their investigation satisfies that standard. Therefore, this Court should hold that officers also satisfied a probable cause standard to believe that Boudreaux resided at and was present at the residence.

Conclusion

Based on the foregoing, this Court should affirm the lower court's decision.

Respectfully Submitted,
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Certificate of Service

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