

No. 11-6971

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2011

RALPH DOUGLAS TRACEY,

Petitioner

V.

UNITED STATES OF AMERICA,

Respondent

On Writ of Certiorari To The
United States Court of Appeals
For the Third Circuit

REPLY BRIEF IN SUPPORT OF CERTIORARI PETITION

Steve Rice
Counsel of Record for Petitioner, Ralph Douglas Tracey

STEVE RICE, PC.
18 Carlisle Street, Suite 215
Gettysburg, PA 17325
sr@attorneyrice.com
717.339.0011



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REPLY BRIEF

The government misses the point of Tracey's certiorari petition. The central claim offered by Tracey is that the Third Circuit Court of Appeals erroneously decided that the warrant in this case was not general. The government writes on page 8 of its brief, "Review of that issue is not warranted" because of the good faith exception. Tracey disagrees. He essentially argues that the Third Circuit "decided an important federal question *in a way* that conflicts with relevant decisions of this Court," a textual reason for review under Rule 10(c) of the Rules of this Court. In his petition, he discussed how this Court's case law supports his position and how the general warrant here is not made particular (or merely overbroad, for that matter) by reference to 18 Pa.C.S.A. § 6312.


The government does not affirmatively dispute that we are here dealing with a general warrant. The government simply does not address the matter. Rather, the government effectively argues that the good faith exception is a viable trump card, even if the warrant is general. Tracey submits that review should be granted on the nature of the warrant only, and that if he prevails, a remand to the Third Circuit would be appropriate, to give it the first opportunity to address whether the good faith exception can save a general warrant. As previously indicated, Third Circuit case law suggests support for Tracey's position, not that of the government.

In any case, Tracey disagrees that the good faith exception can take the sting out of a general warrant, especially one involving a conspicuously infirm description not resulting from a clerical error. *Cf. Groh v. Ramirez*, 540 U.S. 551, 567-71 (2004) (Kennedy, J., dissenting) (impliedly agreeing with majority that warrant was general but concluding that officer is entitled to qualified immunity where he mistakenly believed that warrant contained proper description, and did not in any way rely on clerical error). None of the case law cited by the government squarely addresses this question. It appears that there is no controlling authority, at least none of which Tracey is aware. The issue effectively raised by the government, concerning the interplay between general warrants and good faith, is itself important and one of first impression, offering an independent basis for review under Rule 10(c).

The petition for a writ of certiorari should be granted.

Respectfully submitted,
STEVE RICE, P.C.

Dated: 2/5/12



Steve Rice
18 Carlisle Street, Suite 215
Gettysburg, PA 17325
sr@attorneyrice.com
717.339.0011

Counsel for Petitioner, Ralph Douglas Tracey