

19-7026

No. _____

Supreme Court, U.S.

FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES GUY – PETITIONER

Vs.

STATE OF OHIO – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

The Franklin County Court of Appeals Tenth Appellate District

PETITION FOR WRIT OF CERTIORARI

JAMES GUY
P.O. BOX 7010
CHILLICOTHE, OHIO 45601

ORIGINAL

Questions Presented

Questions submitted:

- (1) Did a trial judge deny a self-representing defendant his due process right to a fair trial when the State disclosed untimely discovery documents in the middle of trial and the judge denied the accused a continuance to present a complete defense enabling the defendant to include the exculpatory value of the suppressed material as a part of the defense theory of his innocence?
- (2) Was a self-representing criminal defendant prejudice by a trial judge in a denial of a fair trial when the prosecution turned over numerous pages of undisclosed discovery in the middle of trial and admitted that there could be Brady material yet the judge denied a continuance when requested by the accused and prosecution?

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at State v. Guy, 2018-Ohio-4836; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Franklin County Tenth District court appears at Appendix A to the petition and is

reported at State v. Guy, 2018-Ohio-4836; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 9-3-2019. A copy of that decision appears at Appendix B.

[] A timely petition for rehearing was thereafter denied on the following date: none filed, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

This Supreme Court case establishes that limitations placed on the accused's ability to present a fair and complete defense can, in some circumstances, be severe enough to violate due process. "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." Chambers v. Mississippi, 410 U.S. 284, 294, 35 L. Ed. 2d 297, 93 S. Ct. 1038 (1973).

The attributes of a fair trial is the requirement that it be adversarial in nature: "[t]he very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Herring v. New York, 422 U.S. 853, 862, 95 S. Ct. 2550, 45 L. Ed. 2d 593 (1975). Just as "[t]he right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." United States v. Cronic, 466 U.S. 648, 658, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). The same must hold true when it comes to a criminal defendant representing himself. That limitations should not be placed upon him when it comes to defending himself and a fair opportunity to a "meaningful adversarial testing" of the State's case.

In this case before this Supreme Court, there was a complete breakdown in the adversary system and a "meaningful adversarial testing" of the prosecution's case never occurred. During the middle of trial, the State handed over (on two different

occasions) numerous pages of undisclosed discovery. As the prosecution was turning over the undisclosed discovery it stated to the court that it could not rule out that there may be a Brady violation and the that the State itself had not had an opportunity to review those documents.

In *Brady v. Maryland*, 373 U.S. 83 (1963), this Supreme Court explained that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. Furthermore, this Supreme Court not only refined Brady but also clarified that it is not necessary that a defendant request exculpatory evidence; "regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" Kyles v. Whitley, 514 U.S. at 433 (quoting United States v. Bagley, 473 U.S. at 682). See Douglas v. Workman, 560 F.3d at 1172 ("The government's obligation to disclose exculpatory evidence does not turn on an accused's request.").

The issue is once it was brought to the judge's attention by the Petitioner to impose the appropriate sanction (continuance) for the untimely disclosure whether the judge denied the Petitioner an opportunity to prepare a meaningful defense along with the self-admission by the State that there could be a Brady violation.

Due process demands an opportunity to be heard "at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85

S. Ct. 1187 (1965); see In re Oliver, 333 U.S. 257, 275, 92 L. Ed. 682, 68 S. Ct. 499 (1948) (defendant must be afforded "a reasonable opportunity to meet [the charges against him] by way of defense or explanation"); Morgan v. United States, 304 U.S. 1, 18, 82 L. Ed. 1129, 58 S. Ct. 773, 58 S. Ct. 999 (1938).

In this case it cannot be said that the Petitioner/accused had an opportunity to be heard in presenting a meaningful defense. Furthermore, based on the fact that the Petitioner was representing himself during trial, the judge's action in not allowing the Petitioner a meaningful continuance to thoroughly review of the undisclosed discovery when the Petitioner receive them in the middle in the of trial was clearly unconstitutional, also neglecting the Petitioner the ability to use the undisclosed discovery of exculpatory nature during trial. Wherfore, the Petitioner was prejudice.

The right to fair trial means just that and a denial to present a meaningful defense strikes at the heart of due process. For this reason, this case should be reviewed by this Supreme Court.

Statement of the Case

Petitioner James Guy was indicted February 2, 2016 and charged with Kidnapping (with a three (3) year firearm specification); two counts of Trafficking in Drugs (with a one (1) and three (3)); one Count of Possession of Drugs; and one Count of Having Weapons While Under Disability.

Amongst the allegations against the Petitioner it was stated that: Petitioner was present during a drug transaction with an undercover officer Detective Jodrey. On October 16, 2014 the Petitioner asked the detective questions and tried to pat the detective down but was shoved by the detective. Next it was alleged that the Petitioner held the detective at gun point during further questioning and allowed the officer to leave unharmed after the transaction. The following day a search warrant was executed at 72 S. Wheatland Columbus, Ohio which was leased to Andrew Naus October 17, 2014. During this raid Petitioner James Guy and his brother Isaiah Guy was taken into custody and eventually charged.

In the first trial, the key witness Detective Jodrey testified that they did a traffic stop on Daniel Guy (Petitioner's brother) because someone thought they had seen the Petitioner in a pickup truck on May 24, 2016. Tr. P. (the same pickup the detective used to identify the Petitioner) The detective further testified that they thought another one of the Petitioner's brother James Eagan (also in the truck with Daniel) was the Petitioner. Tr. P. 180 The first trial resulted in a hung jury. Petitioner was retried in February 2017. However, in the second trial Detective Jodrey did not

testify to the same facts and he even denied that they ever thought someone else was the Petitioner. Tr. P. 208.

On February 27, 2017 the prosecutor untimely disclosed an extensive amount of undisclosed discovery to the defense in the middle of trial that was unknown to the defense. (Tr. P. 1030) The defense requested additional time to review the evidence because the material was not only too extensive to review but also several demands for supplementary discovery were requested by the defense in this case that even including a motion to dismiss based on a Brady violation.

The State responded by stating that they communicated with the Detectives from the Police Department who informed the State that all evidence was turned over. Nevertheless, once the additional evidence was eventually disclosed Petitioner, representing himself, state to the trial court that “more time” was need to review the additional untimely disclosed discovery material and a continuance was requested. (Tr. P. 1036).

The trial court only offered the Petitioner a few minutes in the middle of trial to go over the lengthy discovery before trial resumed. (Tr. P. 1036). Furthermore, in the mist of requesting the continuance the State would again turn over more undisclosed discovery that was in the State’s possession. (Tr. P. 1037 line 4-11). The Petitioner asked the trial court to apply the appropriate sanctions in this matter. (Tr. P. 1038). Petitioner argued to the court that if he had enough time to review the late discovery it could help in presenting a defense. (Tr. P. 1038-1039). Even the

prosecution concluded that they couldn't rule out the possibility of a Brady violation (Tr. P. 1047, 1048).

Following the prosecution's statement Petitioner responded by stating that if more time was given he could certainly find some material value of impeachment evidence or evidence exculpatory in nature. (Tr. P. 1049). However, the trial judge demanded an example by the Petitioner without first allowing the Petitioner an opportunity to fully review the entire discovery Petitioner had just received. (Tr. P. 1049).

By failing to grant Petitioner more time i.e., a continuance to review the untimely discovery given to the defense close to the end of trial, coupled with the fact that Petitioner was representing himself, this denied Petitioner from being able to prepare a meaningful defense and having a fair trial.

After being found guilty on all Counts in the second trial, the trial court ordered a pre-sentence investigation and a sentencing hearing was scheduled for March 23, 2017. Prior to the sentence being imposed, Petitioner requested a new trial due to the discovery violation which was denied. The trial court ultimately imposed a twenty (20) year prison term, a total of seven years of gun specifications to run consecutively even though the underlying offenses for the first two firearm specifications were both committed as part of the same act and transaction.

REASONS FOR GRANTING THE WRIT

This matter before the court is unique and involves a constitutional question involving a due process violation of a right to a fair trial. This case involves a trial judge denying a criminal defendant, who is representing himself, a continuance to review undisclosed discovery material turned over to the defense during the middle of trial.

This Court in *Ungar v. Sarafite*, 376 U.S. 575, 84 S. Ct. 841, 11 L. Ed. 2d 921 has held:

The question of a continuance is traditionally within the trial judge's discretion, and not every denial of a request for more time violates due process, even if the party thereafter offers no evidence or defends without counsel; whether a denial of a continuance is so arbitrary as to violate due process depends on the facts of each case . . .

Part three of the Syllabus.

The question presented for this review is this:

It is well established that “[a] defendant's right to self-representation plainly encompasses certain specific rights to have his voice heard. The pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to

question witnesses, and to address the court and the jury at appropriate points in the trial." McKaskle v. Wiggins, 465 U.S. 168, 104 S. Ct. 944, 79 L. Ed. 2d 122. See also Faretta v. California, 422 U.S. 806 (1975).

In this case, it is an undisputed fact that trial had commenced and in the middle of trial the prosecution twice submitted to the defense numerous pages of undisclosed discovery. The prosecution not only admitted that they hadn't had time to review the undisclosed discovery themselves but also stated that there could be Brady material. The Petitioner while representing himself requested sanctions against the prosecution or, as an alternative to allow the Petitioner "more time" i.e., a continuance to review the material to prepare a defense.

The prosecution argued against sanctions and instead argued that the more appropriate remedy by the court is to allow the defense "more time" i.e., a continuance to review the material. When the Petitioner again requested at the very least "more time" i.e., a continuance, to review the undisclosed evidence to find anything to use for trial, the trial judge responded telling the Petitioner that if the Petitioner could not produce an example at that moment then the court was not going to allow the Petitioner a meaningful continuance. The Petitioner was not able to produce an example in such limited time so therefore trial continued and subsequently thereafter Petitioner was found guilty on all counts.

Ohio Crim.R. 16 governs discovery matters in a criminal proceeding. The purpose of this rule is "to provide the parties in a criminal case with the information

necessary for a full and fair adjudication of the facts, to protect the integrity of the justice system, the rights of defendants, and the well-being of witnesses, victims, and society at large." Crim.R. 16(A). Furthermore, Crim.R. 16(L)(1) provides,

[i]f at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

When inquiring into discovery violations in Ohio, the Ohio Supreme Court in Lakewood v. Papadelis, 32 Ohio St.3d 1, 511 N.E.2d 1138 (1987), held that "[a] trial court must inquire into the circumstances surrounding a discovery rule violation and, when deciding whether to impose a sanction, must impose the least severe sanction that is consistent with the purpose of the rules of discovery." Id. at paragraph two of the syllabus. In State v. Darmond, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, the Ohio Supreme Court explained that the *Papadelis* rationale "applies equally to discovery violations committed by the state and to discovery violations committed by a criminal defendant." *Darmond* at syllabus.

In this matter before this Supreme Court, the trial judge in this case never fully inquired into the prosecutions discovery violation and when demanded by the Petitioner to imposed sanctions such as dismissing the case or allowing the Petitioner more time to review the undisclosed discovery the trial judge denied both options

even, as stated above, after the prosecution stated to the court that the appropriate remedy was to grant the Petitioner more time in order to review the evidence.

Nevertheless, after being found guilty and sentenced the Petitioner was separated from all his legal material before being transferred to the Department of Corrections and never had an opportunity to fully obtain the complete copy all of those documents.

After Petitioner's conviction was affirmed on direct appeal, pursuant to Ohio Appellate Rule 26(B), Petitioner filed an Application to Reopen appeal based on ineffective assistance of appellate counsel. Among the issues raised in the Application the Petitioner raised appellate counsel was ineffective for failing to raise that the trial court abused its discretion in failing to grant the Petitioner a continuance or impose sanctions on the prosecution due to the untimely disclosure of discovery material during trial.

In addition to attaching transcripts in support of this issue, the Petitioner also submitted as evidence a Franklin County Sheriff Detail Call Sheet (**Attached herein and Exhibit (C)**). This piece of evidence was important because on page one of the Detail Call Sheet, the fourth entry on the log at 11:43 A.M. 10/17/14, just before SWAT executed their raid, the surveillance listed two (2) kids and four (4) adults possibly in the residence. A couple minutes later, according to the Sheet, at 11:45A.M. the SWAT made entry immediately taking Isaiah Guy and the Petitioner into custody. Then on pages two of the Detail Call Sheet at 12:11P.M. a surveillance officer noted that the Unit was looking in the area for suspect brother.

The fact that this material was disclosed untimely by the State and the trial judge's decision not to grant a continuance the Petitioner wasn't able to use this evidence in his favor. This evidence was significant because the Petitioner has maintained that throughout this entire case he was being mistaken for one of his brothers because of the similar facial features. The fact the Petitioner was in police custody after the raid along with one of his brothers and the authorities were still looking for suspect's brother proves that there was a mistaken identity between the Petitioner and one of his brothers and the Petitioner wasn't able to question the witnesses about the exculpatory nature of this surveillance log of what brother the police were looking for while Petitioner and his other brother Isaiah Guy were already in custody.

In this case, the detective testified that during the transaction, suspect "Zay" introduced a second suspect "as my brother Stone" and based off that statement alone the detective learned of Petitioner James Guy who was also the brother to Isaiah Guy. To further support the material value of the suppressed evidence the witness/detective testified that he didn't know the suspect "Zay" had more than one brother at the time he found James Guy.

The value of this Franklin County Sheriff Detail Call Sheet is that it would have impeached the detective testimony and establishing the fact that once the Petitioner was in police custody along with his brother Isaiah Guy after being arrested in the house, police was still looking for "suspect's brother." The Petitioner has always maintained that is a case of mistaken identity for his brother because of

the strong resemblance. Which would explain that once the Petitioner was in custody police were still looking for another suspect. If the police were positive that the Petitioner was the person of interest, then there was no need to further search for another “suspect.”

In denying the Application to Reopen as it relates to this issue, the Ohio Tenth District Court of Appeals Court stated that the trial court did give Petitioner ninety (90) minutes to review all of the undisclosed evidence and claims that the Petitioner never requested a continuance and only asked that the case be dismissed or that sanctions to imposed against the State. (**See Exhibit (A) Ohio Tenth District Court of Appeals Court Opinion dated April 30, 2019 paragraphs 5-7.**)

The second part to this issue is when the Petitioner asked the trial judge for “more time,” can it be reasonably interpreted that the Petitioner was requesting a continuance; and the answer to the question should be yes. In fact, the State, as stated above, even suggested that the trial judge give the Petitioner “more time” to review the undisclosed material instead of imposing sanctions. Even when the State used the phrase “more time” just as the Petitioner did and logic dictates that both sides are stating that a continuance be given.

The fact that the Petitioner was representing himself and the State provided on two separate occasions numerous pages of undisclosed discovery, in the middle of trial, a continuance requested by the Petitioner and also suggested by the prosecution was at least a fair option. Had there been counsel representing the Petitioner and had used the phrase needing “more time” to review late discovery the result would

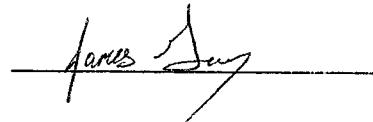
have been different as it would not have been mistaken as to what counsel was requesting.

For this reason, it's clear that the Petitioner's right to Due Process was denied when he was denied an opportunity to prepare a meaningful defense which ultimately resulted in a denial to fair trial and as a result the Petitioner was prejudiced.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James Day", is written over a horizontal line.

Date: November 11, 2019