No. 19-7533

IN THE

SUPREME COURT OF THE UNITED STATES

Allan Leslie Sinanan Jr. (Pro-Se) Petitioner

Vs.

Commonwealth of Pennsylvania, Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Pennsylvania (Direct Appeal)

PETITION FOR WRIT OF CERTIORARI

Brief for Petitioner

Joint Appendix

PARTIES:

ALLAN LESLIE SINANAN JR.

#JY-2380

S.C.I. Albion

10745 Route 18

Albion, Pa. 16475-0001

KATHARINE R. KURNAS

Northampton County District Attorney's Office

669 Washington Street

Easton, Pa. 18042

THE QUESTIONS PRESENTED FOR REVIEW

1) The crux of this Writ of Certiorari is whether Law Enforcement Authorities engaged in tactics and procedures designed to circumvent Petitioner's Constitutional protected rights guaranteed by the Fourth Amendment against unlawful search and seizure, and whether the State Court determination represented a decision that is contrary to or an unreasonable application of clearly established Federal Law?

2) The last issue presented for this Writ of Certiorari is whether the State's determination in this matter represents a decision that will permit Law Enforcement Authorities to embark on policy and procedure that will routinely violate a citizen's Fourth Amendment right?

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35 § 780-113 §§ A16

35 § 780-113 §§ A30

35 § 780-113 §§ A32

WHARTON"S CRIMINAL PROCEDURE (10th Ed.)

SECTION 36, PAGES 74, 75

"In those cases where the offense is past, the rule is different and an officer may not apprehend the offender without a warrant, except in outrageous crimes of the felony type. In the cases of such crimes, however, it is the duty of the officers to begin immediately after notice the pursuit of the person charged with the offense, provided only that there be at the time reasonable grounds of suspicion."

LIST OF PARTIES

All parties that do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

HONORABLE JACQUELINE M. TASCHNER
Magistrate District Judge (Pa. Commonwealth)
Palmer Township
3 Weller Place
Easton, Pa. 18045

HONORABLE JUDGE EMIL GIORDANO
Northampton County Courthouse (Pa. Commonwealth)
669 Washington Street
Easton, Pa. 18042

HONORABLE PRESIDENT JUDGE STEPHEN G. BARATTA
Northampton County Courthouse (Pa. Commonwealth)
669 Washington Street
Easton, Pa. 18042

MICHAEL J. THOMPSON
Assistant District Attorney (Pa. Commonwealth)
Northampton County District Attorney's Office
669 Washington Street
Easton, Pa. 18042

JOHN MICHAEL MORGANELLI
District Attorney (Pa. Commonwealth)
Northampton County District Attorney's Office
669 Washington Street
Easton, Pa. 18042

CITATIONS OF THE OFFICIAL OPINIONS AND ORDERS

Court of Common Pleas

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A copy of the Honorable President Judge Stephen G. Baratta's Opinion, dated January 29, 2018..... APPENDIX B

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A copy of amended 1925(b) Statement filed May 24, 2018..... APPENDIX N

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).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was 1/7/2020. A copy of that decision appears at Appendix G.

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

THE CONSTITUTIONAL PROVISIONS

The United States Constitution Amendment 4 Provides: 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.

The Pennsylvania Constitution Article 1, Section 8 Provides: The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Under both Federal and State provisions, people are to be secure in their persons against unreasonable searches and seizures.

STATEMENT OF THE CASE

The instant matter before the Court involves two (2) Criminal Informations, which were consolidated for purposes of trial: **Docket No's, CP-48-CR-0004301-2016** and **CP-48-CR-0000169-2017.** A Preliminary Hearing was held on **December 27, 2016,** before Magisterial District Judge Jacqueline M. Taschner for **Docket No. 4301-2016,** which was bound over to Common Pleas Court for Formal Arraignment held for **March 2, 2017.** This was followed by **New Charges** being filed on **December 27, 2016** at same Preliminary Hearing (Docket No. 169-2017). This was followed by a **second** Preliminary Hearing on **January 18, 2017,** held before Magisterial District Judge Jacqueline M. Taschner for **Docket No. 169-2017,** which was bound over to Common Pleas Court for Formal Arraignment held for **March 30, 2017.**

A Habeas Corpus and Suppression Hearing was held on **June 14, 2017,** both Criminal Informations were consolidated for that Hearing.

Both Criminal Informations were consolidated for a **Jury Trial** held on **September 5, 2017 through September 8, 2017.** Petitioner was sentenced on **September 22, 2017,** to a total term of 11 to 22 years, commencing on **November 4, 2016,** by Hon. President Judge Stephen G. Baratta, Northampton County Courthouse. This was followed by a Post Sentence Motion (In Arrest of Judgment) filed on **September 27, 2017.**

Notice of Appeal to the Superior Court of Pennsylvania was filed on **February 15, 2018,** from the ORDER entered on **January 29, 2018** by Court of Common Pleas of Northampton County. On **January**

23, 2019, the Superior Court of Pennsylvania affirmed, the judgment of sentence entered in the Northampton County Court of Common Pleas. Request for reargument was filed on February 12, 2019, with the Superior Court of Pennsylvania, for decision dated January 23, 2019. On April 11, 2019 the Superior Court of Pennsylvania denied the request for reargument.

A Petition for Allocatur was filed on May 9, 2019 with the Supreme Court of Pennsylvania Docket No. 305 MAL 2019. The Petition for Allowance of Appeal was denied on January 7, 2020, by the Supreme Court of Pennsylvania.

BACKGROUND HISTORY OF CASE

Petitioner was arrested and taken into custody on November 4, 2016 for:

Docket No. 4301-2016, Filed on November 4, 2016 by the Palmer Township Police Department, charging the Petitioner with three (3) counts of Possession of a Controlled Substance with Intent to Deliver (F) 35 § 780-113 §§ A30; three (3) counts of Possession of a Controlled Substance (M) 35 § 780-113 §§ A16; and three (3) counts of Criminal Use of a Communication Facility (F3) 18 § 7512 §§ A.

It is alleged by Vasa Faasuamalie, Task Force Officer with the Drug Enforcement Adminstration Agency and at the time of arrest, Detective at the Palmer Township Police Department, he received information in June 2016, from a Confidential Source (who has been allowed to stay anonymous agaisnt all legal protests), that the Petitioner was trafficking cocaine in the

area. Thereafter, Vasa Faasuamalie alleged that in **July 2016**, the Palmer Township Police Department conducted a traffic stop on a **Daniel Skodocek,** based on their belief that Mr. Skodocek had just purchased drugs from Petitioner. It is said by Vasa Faasuamalie that, in return for Mr. Skodocek's cooperation, Mr. Skodocek was promised not to be criminally charged, for the drugs in his possession, recovered during this alleged traffic stop in the month of **July 2016**; if, Mr. Skodocek agreed to work as a **Confidential Source** for Vasa Faasuamalie against the Petitioner.

Thereafter, on these three (3) separate occasions, Mr. Skodocek worked for Vasa Faasuamalie as this Confidential Source, on a mission to engage the Petitioner for Detective Vasa Faasuamalie: **(1)** On **August 3, 2016**, it is alleged by Dt. Vasa Faasuamalie that, Mr. Skodocek told him that, he obtained cocaine from Petitioner inside a K-Mart, that was in exchanged for pre-recorded U.S. currency. It is said that Mr. Skodocek arrived at this K-Mart in his own vehicle by himself. **(2)** On **August 17, 2016**, it is alleged by Dt. Vasa Faasuamalie that, Mr. Skodocek told him that, he again, obtained cocaine from Petitioner, this time at the Palmer Township Center, that was in exchanged for pre-recorded U.S. currency. It is said that Mr. Skodocek arrived at this Palmer Township Center in his own vehicle by himself. **(3)** On **August 31, 2016 the last alleged interaction**, it is alleged by Dt. Vasa Faasuamalie that, Mr. Skodocek told him that, once more, he obtained cocaine from Petitioner inside a K-Mart, that was in exchanged for pre-recorded U.S. currency. It is said that Mr. Skodocek arrived at this K-Mart in his own vehicle by himself.

Following these three (3) alleged sales, without any continued criminal activity up to or about **November 4, 2016**, over sixty (60) days after the alleged **third** sale. Dt. Vasa Faasuamalie along with, members of the DEA, Palmer Township Police Department, Wilson Borough Police Department, and the Drug Task Force, **without an arrest warrant**, were conducting surveillance at **8:00am at 914 South 25th Street, Easton, Pa. 18042**, to seize the Petitioner at his residence, **solely for the alleged drug sales from the month of August 2016.** Officers observed the Petitioner exit his residence for work at 8:30am. Dt. Vasa Faasuamalie approached the Petitioner, while the Petitioner was standing at the trunk of his vehicle placing his tool bag in the trunk. Dt. Faasuamalie announced his title and office, at the same time grabbed the Petitioner, then informed the Petitioner that he was being detained on pending charges. Petitioner complied and was transported to the Palmer Township Police Station for the arrest process. Officer's remained on the scene at the Petitoner's residence, while Dt. Faasuamalie was transporting the Petitioner to a holding cell for arrest, and **to obtain a search warrant to search the Petitoner's properties without Petitioner being present. (Due to no criminal complaint filed before the arrest, the first record of arrest is within the subsequent Search Warrant Application on page #10, Filed November 4, 2016.)**

NOTEWORTHY: The Search Warrant Application was issued on a false report by Vasa Faasuamalie that, Petitioner had drugs on his person when he was stripped searched at the police station, with

no proof, documentation, and or exhibit. Subsequent to the search of Petitioner's properties, Dt. Vasa Faasuamalie filed a Police Criminal Complaint dated **November 4, 2016. See, (Police Criminal Complaint 11-4- 2016.)**

On **December 27, 2016, fifty-three (53) days after** the arrest and search of the properties, at the end of the Preliminary Hearing for the three (3) alleged drug sales, Officer Vasa Faasuamalie files a **second** Police Criminal Complaint with reckless disregard for the truth, alleging for the first time **ever**, that Petitioner was on **November 4, 2016**, observed throwing a large duffle bag of drugs, **that was allegedly found outside the apartment complex**, that was introduced in the inventory of the Search Warrant on **November 4, 2016. See, (Search Warrant Inventory Sheet dated November 4, 2016); Also See, (Police Criminal Complaint dated December 27, 2016).**

This admission of false information filed by Dt. Vasa Faasuamalie, along with the alleged drugs found on the Petitioner's person at the Police Station, all stem from the arrest made on **November 4, 2016.** Dt. Vasa Faasuamalie used that arrest to circumvent the Petitioner's Constitutional protected rights, to obtain a Search Warrant for Petitioner's properties, and when he did not find what he was looking for he panicked, by putting on the Search Warrant Inventory sheet that a Black Jacket with drugs was sitting on a chair outside door of apartment. When he talked to the A.D.A and realized there was no **constructive possession** he filed the second Criminal Complaint with a better story for a **constructive possession charge.** Why do I say this?

On November 4, 2016, day of arrest and property search, Officer Vasa Faasuamalie filed two different Affidavits for probable cause, subsequent to Petitioner's arrest: [1] A affidavit for the Search Warrant which alleged that the Petitioner had drugs on his person, when moved to the Police Station, Officer Vasa Faasuamalie used that information to validate the Search Warrant; and [2] A affidavit for the Criminal Complaint to justify the arrest itself, which was filed after the search of Petitioner's properties. See, (Police Criminal Complaint, Affidavit of Probable Cause Continuation, page 5 paragraph 15, File November 4, 2016 even though Vasa forgot to number the pages its still page 5 paragraph 15.)

No where, on either of those two Affidavit does Officer Vasa Faasuamalie mention or even hint at a bag or jacket being thrown on the day of arrest.

Due to the New Charges filed because of the new Criminal Complaint I was charged with:

Docket No. 169-2017, filed on December 27, 2016 by the Palmer Township Police Department charged the Petitioner with five (5) counts of Possession of a Controlled Substance with Intent to Deliver (F) 35 § 780-113 §§ A30; five (5) counts of Possession of a Controlled Substance (M) 35 § 780-113 §§ A16; one (1) count of Possession of Drug Paraphernalia (M) 35 § 780-113 §§ A32.

This is where (Docket No. 169-2017) I got 11 to 22 years, from some random charge when Officer Vasa Faasuamalie didn't get his way, because I didn't want to work for him. Now I fight for my life.

ARGUMENT

1) The crux of this Writ of Certiorari is whether Law Enforcement Authorities engaged in tactics and procedures designed to circumvent Petitioner's Constitutional protected rights guaranteed by the Fourth Amendment against unlawful search and seizure, and whether the State Court determination represented a decision that is contrary to or an unreasonable application of clearly established Federal Law?

The instant case is complex because the Commonwealth Courts failed to properly administer the totality of the circumstances test, for determining probable cause in actions involving informants. Illinois V. Gates, 462 U.S. 213 (1983). The Commonwealth Courts will not present any controlling legal priniciples to the facts bearing upon Appellant's constitutional claims. Therefore, I call for an exercise of power of supervision of the Supreme Court of the United States.

Here is why, in this case a warrantless arrest was initiated, and a warrantless search was made at that time. Warrantless searchs are presumed unreasonable under the Fourth Amendment, unless the search falls within a specifically established and well-delineated exception. Ker V. State of California, 374 U.S. 23 (1963). One established exception is a warrantless search incident to a lawful arrest. U.S. V. Watson, 423 U.S. 411 (1976). Therefore, the initial inquiry in the

instant case must be whether the warrantless arrest of Appellant was lawful.

In order to be constitutionally valid under the 4th Amendment to the United States Constitution, a warrantless arrest must be supported by probable cause. Beck V. Ohio, 379 U.S. 89 (1964). Where probable cause to arrest does not exist in the first instance, any evidence seized in a search incident to arrest must be suppressed. U.S. V. Campbell, 920 F.2d 793 (U.S. App. 1991). It is well settled that in determining whether probable cause exists to justify a warrantless arrest, the totality of the circumstances must be considered. Illinois V. Gates, 462 U.S. 213 (1983).

The totality of the circumstances test finds its roots in the opinion of the United States Supreme Court in Illinois V. Gates, 462 U.S. 213 (1983). In Gates, the Court abandoned the more stringent test for probable cause, previously established in Aguilar V. Texas, 378 U.S. 108 (1964) and Spinelli V. U.S., 393 U.S. 410 (1969). The Aguilar-Spinelli test was a rigid two-prong analysis requiring a finding of both reliability and basis of knowledge as two separate prongs. In Gates, the Court concluded that in determining the existence of probable cause a more flexible approach was desirable.

In Commonwealth V. Gray, 503 A.2d 921 (1985), this court adhered to the Gates totality of the circumstances test for determining probable cause under the 4th Amendment. In addition, however, the court held that Article 1, § 8 of the Pennsylvania Constitution is satisfied by the Gates test and embraced it as a

matter of Pennsylvania constitutional law.

Under the totality of the circumstances test, probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. Ker V. State of California, 374 U.S. 23 (1963). Mere suspicion is not a substitute for probable cause. Beck V. Ohio, 379 U.S. 89 (1964). The totality of the circumstances test dictates that we consider all the relevant facts, when deciding whether the warrantless arrest was justified by probable cause. U.S. V. Robertson, 305 F.3d 164 (U.S. App. 2002). Where, as here, the officers actions resulted from information gleaned from a Confidential Source, in determining whether there was probable cause, the Confidential Source's veracity, reliability and basis of knowledge must be assessed. Gates, 462 U.S. at 233, 103 S.Ct. at 2329, 76 L.Ed.2d. at 545.

In the case sub judice, the last reviewing court, the Pa. Superior Court, relying on the opinion of the Trial Court, concluded that, "Appellant's issues merit no relief". Moreover, "The trial court opinions comprehensively dicuss and properly dispose of the questions presented. Therefore, we have no need to restate them".

In the instant case, the lower courts relied on the bare assertion of Officer Vasa Faasuamalie that the Confidential Source provided reliable information by stating, the Confidential Source "related that the narcotic transaction was with SINANAN". See, (Criminal Complaint-Affidavit of Probable Cause, Date Filed November 4, 2016); See Also, (Preliminary Hearing 12-27-2016 N/T

"Dt. Vasa Faasuamalie", pages 20 through 21). Although Officer Vasa Faasuamalie claimed that there was corroborating VIDEO and CELL PHONE evidence, there is no record of criminal activity or an exchange of drugs between the Confidential Source and Appellant on VIDEO, nor is there any evidence of any talk about a drug sale or the set up of a drug sale by CELL PHONE. It is well settled that this Confidential Source has never been somebody that this TASK FORCE has used in the past. See, (Preliminary Hearing 12-27-2016 N/T "Dt. Vasa Faasuamalie", page 21, lines 15-17). Through this investigation on these three (3) dates August 3, 2016, August 17, 2016, and August 31, 2016 that are in question, NO Officer approached or ever came in direct contact with Appellant. Therefore, Appellant was NEVER checked by Officers for whether Appellant would have had drugs, paraphernalia, or the alleged pre-recorded money on him. See, (Preliminary Hearing 12-27-2016 N/T "Dt. Vasa Faasuamalie", page 21, lines 4-14). In other words, there is a blanket assertion by the police officers as to the Confidential Source's veracity and reliability with no objective facts lending credibility to the assertion. For it is well settled in this case that the officers did not see or observe an exchange between the Confidential Source and Appellant. See, (Preliminary Hearing 12-27-2016 N/T "Dt. Vasa Faasaumalie", page 20, lines 7-10). They maintain that they only observed the Confidential Source meeting with the Appellant. Moreover, there was NO arrest made in the month of August 2016.

The last reviewing court, the Pa. Superior Court memorandum

opinion, in the case sub judice, created there own narrative by implying, **"officers observed Appellant sell cocaine to confidential informant during each controlled buy"**, therefore, insinuating corroboration was established for probable cause. It is well settled that this is not the case.

Due to numerous discrepancies in facts presented in the Trial Court's opinion and the Pa. Superior Court, relying on the opinion of the Trial Court, I believe it necessary to reproduce the pertinent portions of Officer's testimony.

(1) Preliminary Hearing, December 27, 2016, N/T "Dt. Vasa Faasuamalie", pages 19 through 22:

Q) Is there video surveillance and would it be available at the Common Pleas level?

A) Yes.

Q) And you did maintain that there was somebody that did surveil the C.S. when he was in the store, correct?

A) That's correct.

THE COURT: And will that person be available to testify in the future?

DETECTIVE FAASUAMALIE: Yes.

BY MR. DRISCOLE:

Q) And they maintain that they saw the exchange between the C.S. and Mr. Sinanan, is that correct?

A) They maintain that they observed Mr. Sinanan meeting with the C.S..

Q) At that time, on the dates between August 1st and August 3rd, an arrest was not made on Mr. Sinanan, is that correct?

A) That's correct.

Q) So there would not be any evidence that he had any prerecorded money on him at that time, is that correct?

A) Say that again, please.

Q) There's no evidence that Mr. Sinanan had prerecorded money, correct, direct evidence?

A) No, no, not unless we arrested him at that time. I couldn't answer that question.

Q) And the same goes for the August 17th and the August 31st controlled buy, Mr. Sinanan was not arrested at those times, is that correct?

A) That's correct.

Q) Through this investigation on these three dates that are in question, no Officers ever came in direct contact with Mr. Sinanan, is that correct?

A) That's correct.

Q) So Mr. Sinanan was never checked himself for whether he would have had drugs, paraphernalia, or prerecorded money on him?

A) Not in each of those incidences, no.

Q) So any direct communication with Mr. Sinanan was by the confidential informant, correct?

A) Correct.

Q) And is this confidential informant somebody that this Task Force has used in the past?

A) No.

Q) Now, all three purchases were set up via telephone conversation, is that correct?

A) That's correct.

Q) And it was using the same number?

A) Correct.

Q) Were you able to verify whether that number was in fact Mr. Sinanan's number?

A) Yes, and I also have that cell phone.

Q) And during those conversations, were you able to listen to see whether or not there was any talk about a sale or the set up of a sale?

A) It depended on the conversation at the time, the conversation was going on. There were text messages, too, I believe.

Q) And that phone would be available to us through the discovery process, and any of those text messages?

A) Correct.

(2) Suppression Hearing, June 14, 2017, N/T "Dt. Vasa Faasuamalie", page 92 lines 10-21 and page 94 lines 1-16:

Q) Okay. At the time of Mr. Sinanan's arrest, you seized a telephone from him, I believe, correct?

A) Correct.

Q) And in all the confidential source arranged purchases, there was a phone number, 484-425-9526; was it the same phone you seized from him?

A) It was the same number that was utilized by the informant.

Q) Okay.

A) But I believe the hardware was different.

NOTEWORTHY: No cell phone evidence was ever produced in this case outside of a phone number (no text messages or recorded

text messages from the Confidential Source's phone showing Appellant's phone number or recorded conversations).

page 94 lines 1-16

Q) Okay. Is there any video surveillance or video record of any of the confidential buys that we talked about previously here?

A) There is store surveillance.

Q) Okay. Based on the location where the transaction occurred?

A) Correct.

Q) And you have that in your possession?

A) Yes.

Q) Can you clearly identify Mr. Sinanan as one of the individuals involved in the transaction?

A) I can clearly identify Mr. Sinanan entering the store. And during the same time frame, we were conducting surveillance on the exterior of the store.

COMPARE: This After Discovered Evidence Filed When Discovered, (3) Forfeiture Hearing, March 13, [2017](correct date is [2018]), N/T "Dt. Brent Lear", pages 48 through 49:

Q) So, what I'm saying is from your recollection of what happened on this video, was there any criminal activity taped on this video that gives it substance other than contact between the two individuals?

A) No.

Q) So, there was no criminal activity and no hand to hand? No drugs on this video, right? I'm asking. I'm trying to make that clear.

A) There were no hand to hands on the video.

Q) So, the video was basically just used for contact? The purpose of it was to show contact between the two individuals?

A) To show that you guys met, correct.

Q) Right. So that's it. And then, also, I remember from testimony that you said that you were also brought into the store and you was there to witness it physically with you?

You're the only one that was in the store when this occurred on these two different occasions as far as the store, correct?

A) Correct.

Q) Okay. Now, when you were there did you see anything as far as illegal contact or hand to hand or drugs being passed off or anything like that? Since we don't have the video to prove any of that. Did you see it?

A) I did not.

NOTEWORTHY: In determining the existence of probable cause the Courts may only concern themselves with what the officers had reason to believe at the time of the arrest without warrant, which took place over sixty (60) days after alleged criminal activity in the instant case. Johnson V. U.S, 333 U.S. 10 (1948). As the Court said in U.S. V. DiRe, 332 U.S. 581 (1948), "a search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from what is dug up subsequently". (emphasis added).

In Illinois V. Gates, 462 U.S. at 233, 103 S.Ct. at 2329, 76 L.Ed.2d at 545 - I do not believe that an assertion by a police officer as to an informant's reliability with no objective facts

to substantiate his assertion, is sufficient to support a finding of probable cause.

Moreover, the hearsay in this case does not disclose a sufficient basis of knowledge to support the police officer's belief that a crime had been or was being committed at the time of the warrantless arrest over sixty (60) days later. The only assertion that the Confidential Source made relevant to his basis of knowledge was that, "the narcotics transaction was with Appellant", which was only alleged in the month of August 2016. However, given the dearth of specifics on this point this statement is likewise insufficient to form the basis for a warrantless arrest on November 4, 2016.

There was no assertion that this Confidential Source had provided information leading to any prior narcotics arrest. Which goes against the totality of the circumstances test for determining probable cause under the U.S. 4th Amend. and Pa. Art. 1, § 8 constitutions. Illinois V. Gates, 462 U.S. 213 (1983).

Based on the above, the Confidential Source's hearsay did not provide the police officers with sufficient facts and circumstances to warrant the inference that an offense had been or was being committed at the time of the warrantless arrest. Beck V. Ohio, 379 U.S. 89 (1964). Where the reliability of the informant is not established, then the facts and circumstances surrounding the hearsay must provide sufficient indicia of reliability to support a finding of probable cause. Adams V. Williams, 407 U.S. 143 (1972). The instant case provided a situation where the police needed to "further investigate" before

arresting the Appellant, as the hearsay lacked indicia of reliability. Since the totality of circumstances test is not met by the Confidential Source's hearsay, standing alone, we will examine whether there was sufficient corroboration of the hearsay by the police to establish probable cause.

Corroboration of the details of an informant's tip with independent police work can provide sufficient indicia of reliability to an otherwise unreliable tip. Gates, at 241, 103 S.Ct. at 2334, 76 L.Ed.2d at 550. Police officers making a warrantless arrest may rely on an informant's hearsay even where they do not personally observe the activity, so long as the informant's hearsay is reasonably corroborated by other matters within the officer's knowledge. Id. at 242, 103 S.Ct. at 2334, 76 L.Ed.2d at 550; Alabama V. White, 496 U.S. 325 (1990). In the classic corroboration case, Draper V. U.S., 358 U.S. 307 (1959), an informant named Hereford supplied police officers with information that Draper would be arriving on a train from Denver on either the morning of December 8th or 9th with drugs in his possession. Draper, at 309, 79 S.Ct. at 331. Hereford also provided the police with a physical description of Draper. The Court held that when the police "had personally verified every facet of the information given to him by Hereford" except for the fact whether Draper actually possessed drugs, they could presume the only uncorroborated fact-that Draper was carrying drugs would likewise be confirmed. 358 U.S. at 313, 79 S.Ct. at 333. Thus, the corroboration of every facet of the information supplied by the informant gave the officer 'reasonable grounds' to arrest.

Since the time of Draper and Gates, the Court has expanded

upon what it intended by "corroboration of detailed and accurate predictions" first introduced in Gates. See, U.S. V. Gilbert, 45 F.3d 1163, 1167 (7th Cir. 1995); U.S. V. Miller, 925 F.2d 695, 699-700 (4th Cir. 1991); and U.S. V. Fixen, 780 F.2d 1434, 1438 (9th Cir. 1986). When police are relying on an informant's hearsay, it is important that the hearsay provide information that demonstrates "inside information" a special familiarity with the defendant's affairs. White at 332, 110 S.Ct. at 2417, 110 L.Ed.2d at 310. If the tip provides inside information, then police corroboration of this inside information can impart additional reliability to the hearsay. White at 331, 110 S.Ct. at 2416, 110 L.Ed.2d at 309; Gates, at 245-246, 103 S.Ct. at 2335-2336, 76 L.Ed.2d at 551-552. If the facts that are supplied by the hearsay are no more than those easily obtained, then the fact that the police corroborated them is of no moment. It is only where the facts provide inside information, which represent a special familiarity with a defendant's affairs, that police corroboration of the information imparts indicia of reliability to the hearsay to support a finding of probable cause. Thus, police corroboration of an informant's hearsay enhances the indicia of reliability and thereby strengthens the determination that the facts and circumstances surrounding the hearsay warrant a finding of probable cause.

The police officers in the instant case did not assert that they personally observed any drugs in Appellant's possession either prior to his arrest in August 2016 or at the time of his arrest on November 4, 2016. Nor do they assert that they

personally observed any drug transactions in the month of August 2016 or any other suspicious circumstances that if taken together with the Confidential Source's hearsay might constitute probable cause, for an arrest without warrant on November 4, 2016. In sum, the record is devoid of facts that would support a finding that the Confidential Source's unsubstantiated hearsay was corroborated by other evidence gathered by the arresting officers.

2) The last issue presented for this Writ of Certiorari is whether the State's determination in this matter represent a decision that will permit Law Enforcement Authorities to embark on policy and procedure that will routinely violate a citizen's Fourth Amendment right?

The Fourth Amendment prohibits unreasonable searches and seizures, U.S. Const. amend. IV. Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause. U.S. V. Robertson, 305 F.3d 164, 167 (3rd Cir. 2002). However, under the exception to the warrant requirement established in Terry V. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." Illinois V. Wardlow, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). "Any evidence obtained pursuant to an investigatory stop (also known as a

'Terry Stop' or a 'Stop and Frisk') that does not meet this exception must be suppressed as **fruit of the poisonous tree."** U.S. V. Brown, 448 F.3d 239, 244 (3d Cir. 2006)(citing Wong Sun V. U.S., 371 U.S. 471, 487-88, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

In **Wharton's Criminal Procedure (10th Ed.) section 36, pages 74, 75,** we find the following pertinent language: "In those cases where the offense is past, the **rule** is different and an officer may **not** apprehend the offender **without a warrant**, except in outrageous crimes of the felony type. In the cases of such crimes, **however**, it is the duty of the officers to begin **immediately** after notice the pursuit of the person charged with the offense, provided only that there be at the time reasonable grounds of suspicion."

In the instant case the determination was made by a police officer performing a warrantless arrest. A probable cause determination by a police officer making a warrantless arrest lacks the procedural safeguard that a neutral and detached magistrate can impart to any determination of probable cause. The totality of the circumstances standard is the same whether used for determining the existence of probable cause for a magistrate's issuance of a search warrant **or a police officer's determination that a warrantless arrest is justified.** Nonetheless, any analysis of the relevant circumstances must consider that "the detached scrutiny of a neutral magistrate, is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the

often competitive enterprise of ferreting out crime." U.S. V. Leon, 468 U.S. 897 (1984).

In the instant case, police arrived at the Petitioner's residence, over sixty (60) days after they received the hearsay, only to find that the Petitioner was leaving his residence for work (JOB). Furthermore, at the time of the arrest, Petitioner was not engaged in any criminal activity, and there was no alleged criminal activity continued up to or about that time.

Due to misrepresented facts from day of arrest on November 4, 2016. I believe it necessary to reproduce the pertinent portions of DEA Special Agent Robertjohn Wohlbach's testimony.

Suppression Hearing 6-14-2017 N/T "Robertjohn Wohlbach DEA", page 45 lines 20-25 with page 46 lines 1-20; and page 64 lines 2-10:

page 45 lines 20-25 with page 46 lines 1-20

Q) Okay. Let's go back to the date in question. What was the operation for the day at Mr. Sinanan's residence?

A) The day he was arrested?

Q) Yes.

A) That was November 4th, 2017. Basically, the operation was to sit on his house, wait to see him, he comes out or comes home or whatever; and just approach him. We didn't have an arrest warrant or search warrant at the time.

Q) Okay. And that was the plan of the day?

A) The plan was -- what Task Force Officer Faasuamalie likes to do, he didn't charge him with anything. So no arrest warrant, but

always gives them an opportunity to meet up with him and see if he is willing to cooperate and see where that person is getting their -- try to work out the chain and try to figure out where that person is getting it from.

So he figured we would just approach him and see if he wants to cooperate. And Vasa approached him; I wasn't there for that conversation, but he didn't want to cooperate.

Q) Okay. Just for the record, this is after the three controlled purchases; is that correct?

A) That's correct.

page 64 lines 2-10

Q) Why did you pick November 4th? Did you go to arrest him? Was there surveillance on the 3rd, and on the 2nd, on the 1st? What was the purpose?

A) No, not that I remember. I just think Task Force Officer Faasamalie picked that day, and hopefully, we would see him Mr. Sinanan.

Q) Did you have any tip from anybody?

A) That day, no.

Therefore, the propriety of Officer Vasa Faasuamalie's taking steps to seize Petitioner on November 4, 2016, was unconstitutional, because any refusal to cooperate without more does not furnish the minimal level of objective justification needed for a detention or seizure, Terry V. Ohio, 392 U.S. 1 (1968). When an arrest is so timed that it is no more than an attempt to circumvent the warrant requirement, the courts have

held the subsequent arrest or search unlawful. See, U.S. V. Washington, 387 F.3d 1060 (U.S. App. 2004) or Coolidge V. New Hampshire, 403 U.S., at 469-471 (1971).

In the instant case Petitioner was sacrificed by officers on November 4, 2016, based on a **hunch** or **a gut feeling** that the Petitioner is dirty by arresting and searching the Petitioner before they legally had grounds to do so. These officers feel that the result of the search will justify the police activity. U.S. V. Johnson, 427 F.3d 1053 (U.S. App. 2005). However, the courts have made it quite clear that a **bad arrest** or a **bad search** cannot be salvaged or corrected by what the officer recovers from the suspect. U.S. V. DiRe, 332 U.S. 581 (1948). Therefore, Petitioner was transported involuntarily to a police station without probable cause or the limited intrusion of reasonable suspicion to link Petitioner with criminal activity **on November 4, 2016.** Dunaway V. New York, 442 U.S. 200 (1979).

Where police are acting solely on the basis of an informant's hearsay and the veracity and reliability of the informant is not established by objective facts, it is essential that the hearsay provide adequate indication that the informant has actual knowledge that criminal conduct is occurring or has occurred at the time the warrantless arrest is made. U.S. V. Robertson, 305 F.3d 164 (U.S. App. 2002).

Moreover, the totality of the circumstances standard is the same whether used for determining the existence of probable cause for a magistrate's issuance of **a search warrant** or **a police officer's determination that a warrantless arrest is justified.**

U.S. V. Leon, 468 U.S. 897 (1984).

In the case of Commonwealth V. Eazer, the Pennsylvania Supreme Court held that, "The criminal act in the officer's report to the magistrate was two months old, and thus was too remote in time to provide the requisite existing probable cause necessary for the issuance of a search warrant. Further, the presence of evidence of criminal activity at some prior time would not support a finding of probable cause as of the date the warrant was issued unless it also had shown that the criminal activity continued up to or about that time." Com. V. Eazer, 312 A.2d 398 (Pa. 1973).

In the case of Commonwealth V. Melendez, the Pennsylvania Supreme Court held that, "There are two circumstances in which warrantless seizures of a person are constitutionally permissible. The first is where police have probable cause to believe that a crime is being or is about to be committed. The second is that a limited seizure may be effected where there is a reasonable police belief that criminal activity is afoot. Therefore, unless police have specific and articulable facts which lead them to suspect criminal activity, they may not stop and search any person without a warrant." Com. V. Melendez, 676 A.2d 226 (Pa. 1996). In the case of a warrantless arrest, the police have the burden of demonstrating its validity. Beck V. Ohio, 379 U.S. 89 (1964).

To summarize the instant case, in the absence of police corroboration to impart additional indicia of veracity and reliability to the Confidential Source's hearsay, the police

officers did not have probable cause to believe that a crime had been committed or was being committed at the time of Petitioner's arrest on November 4, 2016. The Trial Court made no findings of facts in the instant case. The trial Judge simply made a conclusory statement: "The record and testimony established at trial clearly established that probable cause existed to support the Defendant's warrantless arrest." The Court of Appeals merely concluded, "Appelant's issues merit no relief."

Those, then, who controvert the principle, that the Constitution is to be considered, in Court, as a paramount law, are reduced to the necessity of maintaining that Courts must close their eyes on the Constitution, and see only the law [passed by Congress]. This doctrine would subvert the very foundation of all written Constitutions.

When that happens, the Court is making law rather than representing the law.

CONCLUSION

In the instant case the arrest here was illegal, pursuant to the totality of the circumstances inquiry under the Fourth Amendment of the United States Constitution established by Gates and adopted by the Commonwealth Court in Gray, is equally applicable to the question of illegality of the arrest under Article 1, § 8 of the Pennsylvania Constitution, as being previously held that the Gates test is consistent with Article 1, § 8 of the Pennsylvania Constitution. See, Gray, 509 Pa. at 488, 503 A.2d at 921.

Accordingly, the warrantless arrest in the instant case was not supported by probable cause. If we were to hold otherwise, such a finding would wreak havoc on the Fourth Amendment. The Fourth Amendment was created to protect against unreasonable searches and seizures. Terry V. Ohio, 392 U.S. 1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). A finding of probable cause in the instant case, would amount to a finding of probable cause to arrest any person on the street by the mere assertion of a police officer that a confidential source told him this particular individual was dealing drugs and that the confidential source was reliable. This type of unsubstantiated seizure was the exact result that the probable cause standard was intended to avoid. Brinegar V. U.S., 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). "These long prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." Brinegar, at 176, 69 S.Ct. 1302 (emphasis added). We cannot condone arrests based solely

upon the bald assertions by an informant not proved reliable, without any consideration of whether there is a fair probability that the person arrested actually committed or was in the process of committing a crime.

If, instead of arresting the Petitioner in error, the officer had presented all the facts within his knowledge and all the information at hand to a magistrate, no magistrate would issue a warrant of arrest for the Petitioner in error; no magistrate would hold the Petitioner in error to answer for a crime before another tribunal; no grand jury would indite; no court would submit the case to a jury; and, if the officer were sued for false imprisonment, no court would instruct that the arrest was justified, assuming all the foregoing testimony to be true. If we are correct in these conclusions, and we see no escape from them, the arrest was without authority of law, and the alleged property wrongfully seized was not admissible in evidence.

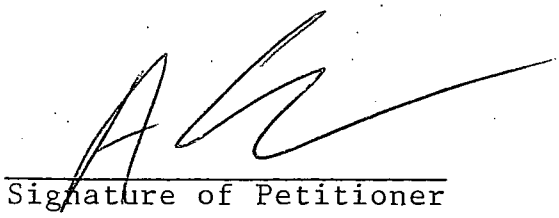
Moreover, having concluded that the Commonwealth has not established probable cause for the arrest, we must conclude that the evidence seized as a result of the warrantless search of Petitioner incident to his arrest must be suppressed.

For the foregoing reasons, Mr. Sinanan respectfully request this Honorable Court to reverse and remand the above-captioned case with instructions to the trial court to grant Mr. Sinanan's suppression motion or to vacate his convictions. In the alternative, Mr. Sinanan respectfully requests that this Honorable Court grant any other relief that law and justice

require.

Respectfully Submitted,

Allan Leslie Sinanan Jr. (Pro-Se)



Signature of Petitioner

DATE: 1/15/2020

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