

No. 21-6412

IN THE SUPREME COURT OF THE UNITED STATES

REBECCA STAMPE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether, if petitioner made a plausible showing that certain information not disclosed to the defense is material under Brady v. Maryland, 373 U.S. 83, 87 (1963), the district court was required to review that information in camera at petitioner's request.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Tenn.):

United States v. Stampe, No. 18-cr-16 (Nov. 5, 2019)

United States Court of Appeals (6th Cir.):

United States v. Stampe, No. 19-6293 (Apr. 20, 2021)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 2-10) is reported at 994 F.3d 767.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 2021. A petition for rehearing was denied on June 22, 2021. By orders dated March 19, 2020, and July 19, 2021, this Court extended the time within which to file any petition for a writ of certiorari due on or after March 19, 2020, to 150 days from the date of the lower-court judgment, order denying discretionary review, or order denying a timely petition for rehearing, as long as that judgment

or order was issued before July 19, 2021. The petition for a writ of certiorari was filed on November 19, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Tennessee, petitioner was convicted on one count of conspiring to distribute 500 grams or more of a mixture containing methamphetamine, in violation of 21 U.S.C. 846, 841(a)(1), and 841(b)(1)(A). Pet. App. 12. The district court sentenced petitioner to 168 months of imprisonment, to be followed by five years of supervised release. Id. at 13-14. The court of appeals affirmed. Id. at 2-10.

1. In November 2017, the Sheriff of Rhea County, Tennessee, and several local law enforcement officers executed a search warrant at petitioner's home. Presentence Investigation Report (PSR) 5. The warrant relied on information from a confidential informant. Pet. App. 3. The police found drugs, scales, guns, and cash. Ibid. Petitioner was arrested; she admitted to selling about 15 kilograms of methamphetamine and stated that Michael Loden had been purchasing distribution quantities of methamphetamine from her. Ibid. The government used that information, along with information from a confidential informant, to obtain a search warrant for Loden's house. Ibid.

On April 24, 2018, a grand jury in the Eastern District of Tennessee returned a superseding indictment charging petitioner and Loden with one count of conspiring to distribute 500 grams or more of a mixture containing methamphetamine, in violation of 21 U.S.C. 846, 841(a)(1), and (b)(1)(A); charging petitioner with one count of possessing with intent to distribute 50 grams or more of a mixture containing methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B); and charging Loden with one count of possessing with intent to distribute a mixture containing methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). PSR 4. The superseding indictment charged that the conspiracy occurred between January 1, 2017, and January 20, 2018; that petitioner's individual offense occurred on November 15, 2017; and that Loden's individual offense occurred on January 20, 2018. Ibid.

2. On October 25, 2018, petitioner pleaded guilty to the conspiracy charge, pursuant to a plea agreement specifying a binding sentence of 168 months of imprisonment under Federal Rule of Criminal Procedure 11(c)(1)(C). PSR 4; Pet. App. 2-3. The plea agreement contemplated the possibility of a reduction from the agreed-upon 168-month sentence based on petitioner's potential cooperation in Loden's case. Pet. App. 3-4.

Shortly before Loden's trial, the government moved to dismiss all charges against him. Pet. App. 4. When petitioner asked the

government for information about the dismissal, the government stated that it related to inappropriate conduct of a confidential informant. Ibid. Petitioner then moved to have the court compel production or review the materials relating to the dismissal in camera, arguing that information that could lead to the dismissal of Loden's entire case must be relevant to her case, which involved the same conspiracy charge. Ibid. The government responded that the events in question occurred while petitioner was in custody and thus did not affect her case. Ibid. The district court denied petitioner's request, observing that the government had represented that it had complied with all of its discovery obligations and that petitioner's claim that the information underlying the Loden dismissal was discoverable was based on "pure speculation." Id. at 4-5 (citation omitted).

3. The court of appeals affirmed. Pet. App. 2-10. As relevant here, the court recognized that this Court "has explained that a criminal defendant may be able to force disclosure or in camera review of some materials" if the defendant makes "'some plausible showing'" that the undisclosed information "'contains material evidence.'" Id. at 6 (quoting Pennsylvania v. Ritchie, 480 U.S. 39, 58 n.15 (1987)). The court of appeals then observed that the district court had determined that petitioner failed to satisfy that standard, characterizing petitioner's arguments as "pure speculation." Id. at 7. But the court of appeals found it

"not immediately clear that the district court's characterization was accurate" because "[t]his is not a case in which the defendant fired blindly into the prosecution's papers alleging materiality." Ibid. The court accordingly took the view that petitioner's "speculation was at least to a certain degree informed." Ibid. The court concluded, however, that "[e]ven assuming" that petitioner had "said enough to trigger * * * Brady disclosure," the district court had not abused its discretion in denying petitioner's motion for in camera review because it was entitled to "rely[] on the government's representations" that any misconduct by the confidential informant postdated petitioner's arrest and thus could not affect her case. Ibid.; see id. at 6-8 (citing United States v. Hernandez, 31 F.3d 354, 361 (6th Cir.), cert. denied, 513 U.S. 912 (1994)). And the court of appeals separately concluded that the district court did not abuse its discretion in declining to allow petitioner to withdraw from her plea agreement. Id. at 8-10.

DISCUSSION

Petitioner contends (Pet. 14-18) that the district court erred in denying her request to review information in camera after she made a "plausible showing" that the information was material to either guilt or punishment. Pennsylvania v. Ritchie, 480 U.S. 39, 58 n.15 (1987) (citation omitted); see Brady v. Maryland, 373 U.S. 83, 87 (1963). The court of appeals took the view that, even

if petitioner had made a plausible showing that the information was material under Brady, the district court was entitled to rely on the government's representations to deny in camera review. Pet. App. 7-8. The government's brief in the court of appeals, however, did not argue for affirmance on that rationale. See Gov't C.A. Br. 10-13. And on further review of the record, the government agrees that petitioner made a plausible showing that the information in question was material, and it is preparing to disclose that information to petitioner.

Where a defendant has made a plausible showing that undisclosed information is "material either to guilt or to punishment," Brady, 373 U.S. at 87, a district court should review the materials in camera to determine materiality. See Ritchie, 480 U.S. at 58 & n.15. The government erred in this case by opposing such in camera review in the district court. Nor does the Sixth Circuit's prior decision in United States v. Hernandez, 31 F.3d 354, cert. denied, 513 U.S. 912 (1994), support the court of appeals' decision in this case. Hernandez does not refer to the "plausible showing" standard and is not properly interpreted to allow a government representation to supplant (rather than potentially inform) a court's determination of whether a defendant has made the requisite plausible showing to trigger the need for in camera review.

Further proceedings in the lower courts following the government's disclosure of the previously undisclosed information will likely allow those courts to resolve this case without any need for review in this Court. The appropriate course in these circumstances accordingly would be to grant the petition for a writ of certiorari, vacate the court of appeals' judgment, and remand so that the court may consider the position of the government expressed in this brief. See Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam) (noting propriety of grant, vacatur, and remand procedure to allow lower courts to consider "confessions of error or other positions newly taken by the Solicitor General").

Respectfully submitted.

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FEBRUARY 2022