

21-6721

No.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Washington, DC

Supreme Court, U.S.
FILED

DEC 15 2021

OFFICE OF THE CLERK

Tyrone Anderson — PETITIONER
(Your Name)

vs.

State of Delaware — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Delaware Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tyrone Anderson
(Your Name)

1181 Paddock Rd
(Address)

Smyrna, DE 19977
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

Argument I

QUESTION(S) PRESENTED

Question Presented: ^(A) Does it constitute Ineffective Assistance of Counsel to Fail to object to a statement from the state's Chief Witness who claimed that a Non-Testifying Declarant and stated that the defendant was in fact committing the crimes for which he was on trial in violation of the 6th and 14th Amendments to the United States Constitution Article I, Section 7 of the Delaware Constitution, Hearsay (DRE 801) and DRE 404 which prohibits the introduction of prior bad acts under circumstances like those that are present in this case?

(B) The Standard and Scope of Review is whether Trial Counsel's conduct in his representation of the defendant failed the objective standard of reasonableness and there is a reasonable probability that but for his professional errors the results of the trial proceedings would have been different as a matter of law. Strickland v Washington 466 US 668 1984.

(C) Merits of Argument: IT constituted Ineffective Assistance of Counsel for Trial Counsel to Fail to object to an out of court statement by a declarant who did not testify and was not even identified that the defendant was engaged in committing the very type of crimes for which he was put on trial in violation of the Confrontation Clause of the Delaware and United States Constitutions DRE 801 and DRE 404

Argument II

A. Question Presented: Did it constitute Ineffective Assistance of Counsel for Trial Counsel to Fail to object or seek to modify an order of the Court which prevented him from providing identifying information to the defendant about witnesses to the alleged crimes and prevented Counsel himself from contacting directly or indirectly any witnesses to the alleged crimes which were

Identifiable Through the state's Discovery? The Defendant/Appellant Presented This objection in the trial Court by Filing his Motion For Post Conviction Relief.

B) The Standard and Scope of Review is Whether trial Counsel' conduct in his Representation of the of the Defendant Failed the Objective Standard of reasonableness and there is a reasonable Probability that but for his Professional Errors the result of the Proceeding would have been Different as a matter of Law. Strickland v Washington, 466 US 678 1984.

C) Merit of Argument: Trial Counsel Should have Objected or at least Sought to Modify the Proposed order by the state which Prevented him from Providing Identifying Information as To Witness to the Alleged Crimes to the Defendant and Contacting Those Witnesses himself which Prejudiced the Defendant by Failing to Provide Access to Witnesses Exculpatory Information to show that the defendant did not commit some of the Crimes that He was Charged.

Argument III

1. Question Presented: Did it Constitute Ineffective Assistance of Counsel For Defense Counsel to Fail to Request a hearing Pursuant to Deberry v. State, Del 457 A.2D 744 (1983). When there was clear Uncontradicted Evidence that an Audio Recording which was Attempted to be done by The State Malfunctioned During the majority Part of an Alleged Recording of one of the Crimes For which the defendant was Convicted

(B.) The Standard and Scope of Review is Whether Trial Counsel Conduct in his Representation of the defendant Failed the Objective Standard of Reasonableness and there is a reasonable Probability that but for his Professional errors the result of the Proceeding would have been Different as a matter of Law. Strickland v Washington 466 U.S. 668 (1984).

(C.) Merits of Argument: Trial Counsel was Ineffective in Failing to request a hearing Pursuant to Deberry v. State 457 A.2d 744 (1983), when the Clear Evidence Revealed that an Audio Recording of one of the Alleged crimes for which the defendant was charged was Lost.

Argument IV

4. Question Presented: Did it constitute Ineffective Assistance of Counsel to Fail to Request A hearing to Determine the Identity of a Confidential Informant Pursuant to State v. Flowers, Del super 316 A.2d 564 (1973), when that Confidential Informant Possessed Exculpatory Information for the defense and was an Actual Participant in the Alleged Crime which the state Alleged occurred? The Defendant Appellant Preserved the Question in the trial court by Filing his motion for Post-Conviction Relief.

(B.) The Standard and Scope of Review is Whether Trial Counsel Conduct in his Representation of the Defendant Failed the Objective Standard of Reasonableness and there is a Reasonable Probability that but for his Professional Errors the result of the Proceeding would have been Different as a matter of Law. Strickland v. Washington 466 U.S. 668 (1984.)

③ merits of Argument: Trial Counsel was ineffective in Failing to Request a hearing to determine the Identity of a Confidential Informant who was an Actual Participant to at Least one of the Alleged crimes which the defendant was charged with and had exculpatory Information.

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **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:

RELATED CASES

Deberry v State, Del 457 A.2d 744 (1983).
Gietz v State, Del 538 A.2d 736 (1988).
State v Flowers Del super 316 A.2d (1973).
Strickland v Washington 466 U.S 688 (1984).

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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 B 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 _____ 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.

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 Oct. 27, 2021.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: Nov. 15, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

Petition for Writ of Certiorari to
The United State Supreme Court

The Petitioner, Tyrone Anderson respectfully prays that
a Writ of Certiorari issue to review the Judgement
and opinion of the Delaware Supreme Court on October 27,
2021.

Opinion Below

The Supreme Court of the State of Delaware on Appeal
Affirmed Petitioners Conviction in its Cause NO. 128, 2021
The opinion is unpublished, and is reprinted in the Appendix to
the petition at 1a. The order of the Supreme court of the state
of Delaware denying rehearing before deadline was up is in Appendix
2A.

Jurisdiction

The original opinion of the Delaware Superior Court was entered
submitted March 1, 2021 and Decided April 12, 2021. A timely
motion for a Appeal to the Delaware Supreme Courts and
Affirmed October 27, 2021.

The Jurisdiction of this Court is invoked under 6th Amendment and
the 14th Amendment

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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Strickland v Washington 466 U.S 688 (1984)	1, 2, 3

STATUTES AND RULES

DRE 801

DRE 404

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6th Amendment to the United States Constitution
14th Amendment to the United States Constitution
Article I, Section 7 of Delaware Constitution

U.S. Const., Amend. VI

In all criminal Prosecutions, the accused shall enjoy the right
to a speed and public trial, by an impartial jury of the
state and district wherein the crime shall have been committed,
which district shall have been previously ascertained by
Law, and to be informed of the nature and cause of the
accusation; to be confronted with the witnesses against him; to
have compulsory process for obtaining witnesses in his favor, and
to have the Assistance of Counsel for his defence.

U.S. Const., Amend. XIV

Section 1. All persons born or naturalized in the United States, and
subject to the jurisdiction hereof, are citizens of the United States
and of the state wherein they reside. No state shall make or
enforce any law which shall abridge the privileges or immunities of citizens
of the United States; nor shall any state deprive any person of
Life, liberty, or property, without due process of Law; nor shall any
State Deny to any person within its jurisdiction the equal protection
of the Laws.

STATEMENT OF THE CASE

Mr. Anderson was Convicted on Nov 13, 2017 on 4 Counts of Drug dealing Herion, 4 counts of Aggravated Possession of Herion, 1 count of 2nd degree conspiracy and 1 count of Lesser Included offense of Possession of Herion, Misdemeanor Level offense) DDeal tier 2 + AF #16090806 DDeal Tier 2 + AF 16090808 DDeal + AF 16090802 Consp 16090812 Att poss of Herion Tier 4 16090811. Anderson was sentenced to 20 year of Level 5 Incarceration Followed by various Levels of Probation.

New Castle county Police Detective John Mancuso was part of a undercover Investigation into a drug dealing operation involving defendant and 5 others Co-defendant during Spring and Summer of 2016. On Four separate occasions during this period Det. Mancuso contacted both directly and through an Informant that called the defendants Phone and arranged drug sells for the Purpose of exchanging money For Illegal drugs all these transaction were captured on Audio recordings That were choppy and unclear and two of the meetings were video recorded from a helicopters view you do not see Face visual, and on the other video recorded during sale blacks out and you do not see any transaction or even the defendant anywhere near the Dt. Mancuso at all. The Informer was Present on Two of those sales where the Defendant met with C-1 and the Detective. The Defendant was not arrested after any of the sales.

The defendant Filed Rule 61 to Superior Court, Submitted March 1, 2021. Decided April 12, 2021. State v Anderson 2021 Del super Lexis 324 2021 WL 1424302.

Holding on the overview, Petitioner was entitled Post-conviction relief under Del super Ct R crim P 61 based on Ineffective Assistance for Failure to object to a detective's statements

The statement was not hearsay because it was not offered for the truth of the matter asserted; The statement did not constitute impermissible prior bad act evidence because it was not offered to show that petitioner acted in accordance with a certain character and in any event, other evidence was sufficient to support Petitioner's conviction. Because Petitioner had the chance to cross examine the detective there was no confrontation clause violated; Petitioner was also not entitled to post conviction relief based on the Identity of a Cal as Petitioner Failed to establish that the informer would have materially Aid his defense.

Defendant Filed a timely Appeal the Supreme Court of Delaware October 27, 2021. Submitted October 27, 2021 Decided. The supreme court Found it evident that the Final Judgement of the superior court should be Affirmed regarding the claims to the trial counsel Constitutionally ineffective for Failing to object to some of the Testimony of Det. Mancuso based on the second Prong of the Test in Strickland v Washington 466 US 668 1984. Given the strenght of the other Evidence the Prosecution offered at trial The defendant did not suffer Prejudice as defined in Strickland as a result of counsel Failure to object.

Reasons For Granting the Petition

The Supreme Court of Delaware's Opinion misapplied the *Strickland v. Washington*, 466 US 668 (1984.) Affirming Solely on the Basis of The Second Prong to the test. Given the strength of the other Evidence the prosecution offered at trial the concluded that the defendant did not suffer Prejudice as Defined in *Strickland* as a result of counsel's Failure to object and the reasons stated in its April 12, 2021 opinion. Ground one: Failing to Object or move to Modify over broad Protective order the state moved For a Protective order in this case. The Trial court Provided a opportunity for the defendant to respond by Nov 16, 2016. As a result of the defendant not responding, the Protective order was Entered. This order, which the defendant never recieved Relief From prevented defense counsel from sharing any Information with the defendant. The state alleged that there were Four direct buys From the defendant and a Fifth attempted buy. None of the statements, videos, Audio was allowed to be disclosed to the defendant at any point in the process until the day of trial. Furthermore, Defense Counsel was no Permitted to Attempt to contact any of the witnesses to either confirm or deny the states version of the events the Failure to object and seek relief this order prevented the defendant from being Afforded any sort of effective assistance of counsel whatsoever, he was unable to prepare in any respect for the trial Furthermore as counsel for the

Defendant stated in an Office Conference on Feb 6, 2017 it prevented any meaningful Plea negotiation from place since the Defendant was not able to be informed as to what he was facing. It was not completely improper for a protective order to be entered when the circumstances warrant. However when such an order is approved the defendant must be allowed some ability to properly prepare such as in the case *Phillips v State* 154 A.3d 1146 Del. 2017. In that case a protective order stayed in place until eleven (11) days prior to trial. The court made clear in that case the defendant and his Attorney had in their possession prior to any witness testifying and his attorney had knowledge that, that absolutely did not occur in the case at bar as protective order was never lifted. The Trial courts also claim that any non disclosure of witnesses was material to the outcome of the trial because the state relied on video and Audio recordings (rather than witnesses testimony) of drug sales between Anderson and Det Mancuso and Anderson cannot claim that any witnesses info he may have been denied was material to the verdict in his case. The state provided choppy Audio, Audio malfunctions also video of a drug sale that goes completely black during the sale this video shows no transaction whatsoever but the Jury was shown this video anyway. The defendant was only shown this video the day

of trial. Therefore since the defendant was not afforded effective assistance of counsel so as to enable him to defend himself against the charges and effectively weigh his choices regarding the plea negotiations he suffered prejudice and a new trial should be ordered. Ground Two: Failing to object to out of court declarations that violated the confrontation clause hearsay and DRE 404. On the second day of trial November 8, 2017 the following exchanged occurred when a detective of the state was testifying on Direct Examination.

Q Okay Drawing your attention to Deal Number 1

I believe you said that it was April the 19th?

A Yes

Q 2016

A Yes

Q Okay, how does that deal occur

A What happens is that I was introduced to this gentleman as I was introduced to the defendant as a person who is selling heroin via third party."

No objections was made by the defense. This was clearly prejudicial hearsay and had an out of court speaker making a statement for the truth of the matter that the defendant was a person who's committing the very crimes he was charged with. This was a clear violation of the confrontation clauses of the Delaware and United States Constitutions and Prohibitions against hearsay contained in the Delaware Uniform Rules of Evidence. Counsel's failing to object, seek strike the statement, seek a mistrial or at a minimum seek a curative instruction constituted ineffective assistance of counsel.

which prejudiced the defendant's right to receive a fair trial. This was also introduced in violation of Dre 404 as a prior bad act that counsel did not object to and request a Gietz hearing on which also constituted prejudice ineffective assistance of counsel. Ground Three: Supporting Facts, Failing to request a Flowers hearing. In the case at bar a Confidential Informant was directly involved in some of the drug transactions which the defendant was charged in, that the Informer set up transactions from his Cell Phone, negotiated the Alleged Price for the drugs. Furthermore According to the undisputed testimony at trial. The Informer was present in the car with the undercover Police Officer when Two of the transactions occurred and was a Direct witness to everything that occurred. The strategy of defense counsel at trial was to attack the credibility of the state's evidence and identifying the defendant as the perpetrator of the drug sales. Thus the identity of the Confidential Informer testimony at trial would have materially aided the Defense. If that Defense Counsel would have been able to explore discrepancies between the testimony of the Informant and the Co's involvement in the crimes and receiving consideration from the state in exchange for his or her involvement Delaware Uniform Rule of Evidence 509(c) (3) *McNair v State* 947 821122 (Del 2008). On Day 2 of the trial 76-81. The Undercover explains to the Jury that on April 19th that the defendant walked up to his Driver side of the Door and made the Transaction when the video was shown from a helicopter view the perpetrator walked to the Passenger side

of the vehicle. When trial counsel on cross-examination

The detective stated the C.I. was seated on the passenger

side of the car and he leaned the informer to make the

sale. The Confidential Informer could have materially aided

his defense for Alibi reasons. The informer called the defendant

and was right in the middle of his transactions and

could have implicated another perpetrator. Despite that defense

Counsel did not even request a Flowers hearing in order for the

Court to explore whether the testimony of that informant would

materially aid the defense as to allow that C.I. to testify

at trial. This constituted ineffective assistance in that it undercut

a major attack that could have been made by the defense

Counsel, upon the states case under the theory that trial

Counsel used to defend the case. Thus this ineffective Assistance

of Counsel prevented the defendant receiving a fair trial and

of Counsel prevented the defendant receiving a fair trial and

prejudice him and warrants a New Trial Ground Four: Deprivation

Supporting Facts, The Detective for the State of Delaware that

Testified that he was Directly involved in the Drug transaction

was Det. Mancuso. DT Mancuso at page 39 of the November 18,

2017 Transcript testified with regards to the July 20, 2016

Alleged sale from the defendant. He indicated that the

Audio recording device he was using malfunctioned during a major

part of what Alleged was his transaction. Thus, he went on to

describe the transaction orally without the defendant having

any opportunity to actually listen to what was said effectively cross-examine the officer based on the discrepancies between what was said by the officer testifying about Audio recordings. Those malfunctions of the recordings could have someone other than the defendant. Despite this malfunctions Defense counsel made no objection and did not seek a missing evidence instruction Pursuant to Deberry v State 744 (Del 1983). This prejudiced the defendant since if a Deberry hearing was held the court would have provided the Jury with an instruction, which indicated that due to the Failure of the state to Preserve this evidence Properly the Jury should infer that the evidence was Favorable to the defendant. This constituted ineffective assistance of counsel and prejudice the defendant's ability to have a Fair Trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tyron Anderson

Date: _____