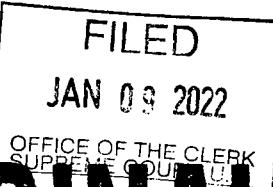


No. 21-7104

IN THE  
SUPREME COURT OF THE UNITED STATES



**ORIGINAL**

JEFFREY RYAN SIMMERMAKER --PETITIONER

Vs.

CEDAR COUNTY SHERIFF'S DEP'T, et. al.-- RESPONDANT(S)  
ON PETITION FOR A WRIT OF CERTIORARI TO

• UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

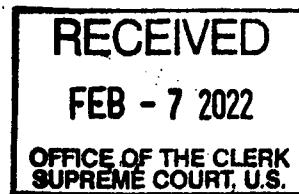
PETITION FOR WRIT OF CERTIORARI

JEFFREY RYAN SIMMERMAKER #09380-029

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 34550

Memphis, Tn 38184-0550



QUESTIONS PRESENTED

- 1.) Did the court err in it's HECK BARR determination?
- 2.) Did the magistrate rely on fraudulent, fabricated and uncorroborated evidence?
- 3.) Was the relevant conduct in Simmermaker's subsequent Federal conviction relevant to his §1983 action when the United States Government stated the relevant conduct from the May 12, 2017 raid was not needed for his federal conviction?
- 4.) Did the court err in dismissing Simmermaker's claim of a Fourth Amendment violation?
- 5.) Did the court err in not properly determining and examining the motive of the confidential informant (Frank Young), and considering why no information was provided or relied upon by the magistrate concerning the (CI's) prior criminal history, his current legal issues on why he was offering his testimony, and there was no mention of the reward the (CI) was offered for his testimony- (no evidence presented to magistrate of prior uses of this (CI)?
- 6.) Why was (Bryan Simmermaker) as the only corroborating testimony for the warrant affidavit not required to sign his statement or was he required or even asked to testify in front of the Grand Jury. (His testimony was Unsworn, Unsigned, and Unrecorded)
- 7.) Did the court's err in ignoring the affidavit (Bryan Simmermaker)? Where (B.S.) denies that he offered the testimony and states that Officer McGlaughlin fabricated with fraud the information he provided to SGT. Peck for the Corroboration on the warrant?
- 8.) If the excessive use of force by using a military like swat team, not justified by the totality of circumstances Is a constitutional violation, than did the court's err by denying Simmermaker the opportunity to challenge the search warrant in his §1983 action?
- 9.) Is the GRAHAM 20/20 hindsight Doctrine constitutional when the fruits of the raid are detrimental to the proof of innocence?

QUESTIONS PRESENTED (cont.)

- 10.) Is user material-(paraphernalia, user amounts of drugs), proper relevant conduct when considering a conspiracy to distribute indictment.- (is relevant conduct of a conspiracy to distribute amounts that are for resale and packaging material)?
- 11.) Did the court's err in it's probable cause determination?
- 12.) Did the court's err in it's corroboration requirement determination?
- 13.) To use innocent bits of information, such as the magistrate used in it's totality of circumstances determination, a violation Simmermaker's Fourth Amendment rights?
- 14.) Is it proper (constitutional) to use prior criminal history to enhance someones sentence when the crimes used for the enhancement have already been discharged and time served? (when a sentence is complete that debt to society has been paid)
- 15.) Was mere presence adequate to charge Simmermaker with contraband located throught the residence when the residence was not his legal residence?
- 16.) Was the residence even established to determine if in fact Simmermaker even resided in the residence, or would even be present?
- 17.) Is Justice equal when a inmate has been denied a fair opportunity to present his case due to Louis 19's restrictions that inmates have faced extreme Lockdowns, No adequate access to Law Library for research and is it equal Justice when the rules and format of Societys expectation to punish its Criminals has changed to very extreme, very harsh sentences. Going time has changed with time, Mental anguish on americas inmates.

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Mireless V. Waco, 502 U.S. 9, 11 (1991)	
Imbler V. Pachtman, 424 U.S. 409, 430-31 (1976)	
Helmig, V. Fowler, 828 F.3d 755, 761-63 (8th cir. 2016)	
Aguilar V. Wright, Cnty., 990 F. Supp.2d 926, 946 (N.D. Iowa 2014)	
Heck V. Humphrey, 512 U.S. 477, 486087(1994)	
ODON V. U.S., 70 F.2d 104 (4th Cir. 1934)	
ESTATE OF SMITH V. MAROSCO, 430 F.3d 140, 145 (3rd Cir. 2005)	
SPACELFIRE V. GARDNER, 330 F.3d 849, 854 (6th Cir. 2003)	
Hooks V. Hooks, 771 F.2d 935, 943-44 (4th Cir. 1985)	
U.S. V. BRINKLEY, (NO. 18-4455) (4th Cir., 2020)	
DRAPER V. U.S., 358 U.S. 307, 79 S.Ct. 325 3.L.Ed. 2d 327 (1919)	
ILLINOIS V. GALE, 103 S.Ct. at 2335	
U.S. V. AELIS, 245 F.3d 671, 674 (8th Cir. 2001)	
U.S. STATUTES AND RULES F.2d 458, 462 (8th Cir. 1990)	
42 U.S.C § 1983	
42 U.S.C § 1985(c)	

## OTHER

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## **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:

Cedar County Sheriff Warran Wethington, Deputy Sheriff Matt Jackson, SGT. Bradley Peck, Chief Lisa Kepford, Brian Carney- Mayor of Tipton, Iowas State Tactical Team- Muscatine County Drug Task Force, City of Tipton, Cedar County, Tipton Police Department.

## **RELATED CASES**

Jeffrey ryan Simmermaker Vs. United States of America, 17-CR-00088-LRR

Jeffrey Ryan Simmermaker v. Cedar Co. Attorney  
No. 036100 State of Iowa For Seventh ~~Circuit~~  
Judicial District

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APPENDIX B - UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA. CASE NO.: 1:18-cv-00049-LTS

APPENDIX C - UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA. CASE NO.: 17-CR-88-LRR & 19-CV-00064-LRR

APPENDIX D

APPENDIX E

APPENDIX F SEE ADDENDUM TO INDEX OF APPENDICES

(A)

(v)

ADDENDUM TO INDEX OF APPENDICES

Plaintiff requests the court to allow his filing of this writ of certiorari without the proper attachments and documents for the index of appendices. Due to his recent transfer from one institution to another, he has lost all his legal documents pertaining to this case and his Federal Indictment. The BOP has misplaced all legal material Plaintiff has accrued, and the Plaintiff has no access to the interney via/ PACER, or IOwa online court to receive the documents required to add to the index of appendices.. Please allow this writ to proceed without the added needed documents.

(A)

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**

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

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

reported at U.S. App. Lexis 18155; 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 B to the petition and is

reported at 850 Fed. Appx. 463; 2021; 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 \_\_\_\_\_ 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**

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

The date on which the United States Court of Appeals decided my case was August 4, 2021.

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

[ X ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 20, 2021, and a copy of the order denying rehearing appears at Appendix A.

[ X ] An extension of time to file the petition for a writ of certiorari was granted to and including January 14, 2021 (date) on Dec. 4, 2021 (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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] 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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Mere Presence Doctrine,  
Corroboration requirement Doctrine,  
Fourth Amendment  
Fourteenth Amendment,  
Totality of circumstances,  
Heck Exception,

## STATEMENT OF THE CASE

In March 20, 2019 the court made the following findings regarding Simmermaker's claims under 28 U.S.C. §1983:

Simmermaker states a number of claims against police officers of the Tipton Police Department, Muscatine County Drug Task Force, and Cedar County Sheriff's Department, a State Magistrate , the Cedar County District Attorney, and a witness against him. Simmermaker's claims arise from his arrest May 12, 2017. He alleges that the named police officers and state Magistrate conspired to violate his Fourth Amendment rights with a warrantless search, that the County Attorney committed the tort of malicious prosecution, and that the witness gave false testimony and committed the tort of defamation. Simmermaker also alleges that excessive force was used in his arrest by using a Military®like swat team as the excessive force. Simmermaker seeks monetary damages in compensation for the injuries to his constitutional rights.

After Simmermaker was arrested, he was indicted on state and federal charges. See United States v. Simmermaker, 17-CR-88-LRR-CJW (N.D. Iowa); Cedar County, Iowa v. Simmermaker, SRGR024788, Cedar County, Iowa v. Simmermaker, SRCR024787; Cedar County, Iowa v. Simmermaker, FECR025021. The state charges were dismissed, Simmermaker pleaded guilty in federal court on December 20, 2017, to conspiracy to distribute methamphetamine after a prior felony drug conviction in violation of 21 U.S.C §§ 841(a)(1), 841(b)(1)(B), 846 and 851. 17-CR-88-LRR-CJW at Doc. No. 10,11. Simmermaker was sentenced to 120 months imprisonment in the Bureau of Prisons on June 13, 2018. His time to appeal that conviction has expired.

As a result of these facts, the court determined that several of Simmermaker's claims are barred. First, the claims against the magistrate judge, the County attorney and the witness are barred by various absolute immunities. See Mireles v. Waco, 502 U.S. 9, 11 (1991) (judicial immunity); Imbler V. Pachtman, 424 U.S. 409, 430-31 (1976) (prosecutorial immunity); Helming V. Fowler, 828 F.3d 755, 761-63 (8th cir. 2016) (witness immunity). In Simmermaker's proposed complaint he does not allege any facts that would displace these immunities.

See:

Second, "§1983 claims are barred by Heck when such claims necessarily imply the invalidity of a prisoner's conviction or sentence." *Aguilera V. Wright Cnty.*, 990 F. Supp.2d 926, 946 (N.D. Iowa 2014) (citing *Heck V. Humphrey*, 512 U.S. 477, 486-87 (1994)). Simmermaker's claims related to an invalid warrant, search and seizure and malicious prosecution all necessarily imply the invalidity of his federal conviction and therefore the courts ruled them barred.

Simmermaker's claim that excessive force was used in his arrest does not imply the invalidity of his conviction and is therefore not barred by Heck. Simmermaker did not identify what force was used or by whom, and how that force was excessive, Simmermaker was ordered and given 30 days of the date of that order to file an amended complaint as to the excessive force and should clearly describe the use of force and the facts supporting the claim.

Doc. No. 13 at 5-7. Simmermaker also asked the court to reconsider it's determination that the claims against the police officers involved in the May 12, 2017, search of his mother's home and arrest are barred by Heck, and that his claims that the Cedar County District Attorney and the Magistrate Judge conspired to commit the tort of malicious prosecution is not barred by absolute immunity.

Simmermaker asked the court to reconsider it's finding that Heck bars his §1983 claims for an unlawful search and seizure on May 12, 2017, because "the charges stemming from said raid do not invalidate his federal sentence and conviction [which] are from 3 controlled buys and a seperate raid on September 12, 2017." Doc. No. 15 at 2.

In Heck, the Supreme court held that

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under §1983. Thus, when a state prisoner seeks damages in a §1983 suit, the district court must consider whether judgment in favor of the Plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would , the complaint must be dismissed,

"Unless the plaintiff can demonstrate that the conviction or sentence has alrerady been invalidated. " "But if the district court determines that the plaintiff's action, even if successfull will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowedsto proceed, in the absence of some other bar to the suit."

On August Fourth, 2020 the district court dismissed Simmermaker's  $\frac{1}{2}$ s Suit.

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## REASONS FOR GRANTING THE PETITION

The reason this writ of certiorari should be granted is because the district court failed to examine a "Heck" exception to Simmermaker's 42 U.S.C. § 1983 suit. Summary judgment was premature and the courts error in it's duties to "view evidence in light most favorable to the Plaintiff" ODOM V. UNITED STATES, 70 F.2d 104 (4th cir. 1934)

Simmermaker has from the beginning of his suit challenged the search and seizure, Warrant affidavits, and probable cause determination as a violation of his Fourth Amendment Rights. The Corroboration requirement pursuant to the Fourth, Eighth, and Fourteenth Amendments was also lacking Due Process.

Simmermaker asserts that he must be allowed to challenge the probable cause, (warrant affidavit) in order to prove that the "use of a swat\_type team not justified by the 'totality of circumstances'", is an excessive use of force. See e.g. Estate of Smith V. Marasco, 430 F.3d 140, 145 (3rd cir. 2005).

Clearly defendant's try to set the scene as a drugged-up crazed ex-felon with a gun, a methamphetamine lab, along with a crazy plot to rob a bank. The courts examined the excessive force as individual officer's participation. Simmermaker does not allege individual participation as the excessive force, but alleges the employment and deployment of the Military\_like Swat team raid was the excessive force used. SGT. Peck and Deputy Jackson are not entitled to qualified immunity, nor are their Supervisors, Sheriff Wethington, and Chief Kepford, whom Chief Kepford actually attended the raid, and she supervised her subordinates throughout the raid. All Officer's who were present are absolutely responsible for their participation in an illegal raid.

Officers initial testimony from Bryan Simmermaker was fabricated by Officer McGlaughlin and was provided to SGT. Peck as an opportunity to verify the second CI's testimony. Bryan Simmermaker never said what Officer McGlaughlin stated in SGT. Peck's warrant affidavit. (AFFIDAVIT OF BRYAN SIMMERMAKER), adamently denies providing the testimony. Coincidentally, Bryan Simmermaker never signed his statement, it was unrecorded, and why didn't the government direct Bryan Simmermaker to testify in front of the grand jury? Bryan Simmermaker

was the only evidence used as corroboration on the warrant affidavit. It seems like Bryan Simmermaker would of been the first witness called to testify. Is it possible officer's had other motivation not to call Bryan Simmermaker to testify? Simmermaker asserts this case has a 42 U.S.C. §1985(3) officers conspiracy aspect . That the courts have also failed to examine where Simmermaker has provided circumstantial evidence by providing the court with (AFFIDAVIT OF BRYAN SIMMERMAKER)(AFFIDAVIT OF SHERRIE LUETJOHANN), and (AFFIDAVIT OF TIMOTHY CLAUSSEN). Where Simmermaker has shown the court that there is a conspiracy amongst these officers to incarcerate him. A civil conspiracy is an agreement between two or more people to injure another by unlawful actions. Express agreement amongst all conspirators is not necessary to find the existance of a civil conspiracy. Each conspirator need not have known all of the details of an illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused the injury to the complainant. SPADEFOR V. GARDNER, 330 F.3d 849, 854 (6th cir. 2003)(quoting HOOKS V. HOOKS, 771 F.2d 935, 943-44 (6TH cir. 1985)).

In appellee's brief, pg,6, defendant Matt Jackson states, "he had known of Simmermaker's earlier conviction, his recent release from prison and his return to his mother's residence." Four months had passed from Simmermaker's release from prison. Four months is not recent for corroborative reasons. No evidence was provided to magistrate Roberts in the Four-corners of warrant affidavit to suggest any determination of establishing residency.

UNITED STATES V. BRINKLEY,(No. 18-4455)(4th cir. Nov. 16 2020).... "to execute a warrant... police officers entered a private home. BRINKLEY , (as does Simmermaker) argues that officers lacked the necessary reason to believe that he (1) resided in the home, and (2) would be present when they entered. " The court held that resonable belief amounts to probable cause, and that the police in this case lacked reason to believe BRINKLEY resided in the Stoney Trace, Apartments, and would be present when they entered. The Fourth Amendment requires a more

(8.)

rigorous showing of probable cause before officers may lawfully enter a private home.

There is no evidence provided anywhere that officers even attempted to determine if Simmermaker was at the residence.

It was against the background that two scholars recently wrote..."arrest on mere suspicion collides violently with basic human rights of liberty."

The complaint from which the warrant was issued was inadequate, because the complaining officer relied exclusively on hearsay information, rather than personal knowledge in executing the complaint and that it was defective in that it recited no more than the elements of the crime charged. The courts have relied on Simmermaker's Subsequent Federal Conviction 1:19-CR-00064-LRR, in it's determination process.

Simmermaker asserts that the May 12, 2017 raid is wholly separate and the courts are going against the GRAHAM 20/20 doctrine. To properly rule on this case the courts can only look at this case with what officers knew at the time of the execution ovf the warrant. Here, the courts misconstru the federal conspiracy conviction, which happened months after the May 12, 2017 issue.

Simmermaker is not challenging the probable cause in his federal conviction. Simmermaker is challenging all aspects of the May 12, 2017 raid.

(doc. 22 1:19-cv-00064-LRR pg 3,4.)

The government states..." that the search warrant (May 12, 2017), was not subject to suppression and even if it was, the search warrant was not necessary for movant's conspiracy conviction."

BLATANTLY stated by the government is that the relevant conduct used from the May 12, 2017 raid "was not necessary" for the federal conspiracy conviction. This alone creates the exception to HECK, and to challenge the warrant here does not imply the invalidity of Simmermaker's subsequent conspiracy conviction. Simmermaker was only a guest at 102 W. 9th st., Tipton, Ia when officers took information from a CI (Frank Young) never challenging Mr. Youngs motivation. At no-time (as shown in all documents), was Mr. Young properly vetted.

The magistrate was never provided the "totality of circumstance" and denied movant evidence most favorable to him. By omitting CI Young's currant (kidnapping charge), his very obvious reason to provide testimony, his past criminal conduct and never once was CI Young's veracity challenged. CI Young had extreme motivation to provide his false testimony. This is obvious as to what was not located in the raid. Not one assertion made by CI Young proved to be true upon the completion of the raid. User material located throughout the residence was placed on Simmermaker. Mere presence is not adequate. None of the corroborative facts involved predictions of future events. **DRAPER V. UNITED STATES**, 358 U.S. 307, 79 S. Ct. 329 3.Led.2d 327(1959). ("Classic case on the value of corroboration""

The facts corroborated did not encompass a range of details regarding the future actions of third-parties, not easily predicted. **ILLINOIS V. GATES**, Supra, 103 S.Ct. at 2335. Finally, the corroborated facts were easily obtained bits of information that were not corroborative of the statements regarding plaintiff possessing a gun, a methamphetamine manufacturing lab, or even a bank robbery. No "little blue book" was located as reported by CI Young. No weapon, ammunition, or any evidence seized was ever located that coincidentally never belonged to Simmermaker.

There is also an important factor in determining whether a private citizen was acting as an agent for the government or whether the government acquiesced in the citizens improper conduct, and whether the citizen was acting to assist law enforcement or to further his own ends. **UNITED STATES V. HOLLIS**, 245 F.3d 671, 674 (8th cir. 2001) quoting **UNITED STATES V. MALBROUGH**, 922 F.2d 458, 462 (8th cir. 1990). It is shown by the evidence that Simmermaker has shown that law enforcement acquiesced in CI Young's and CI Simmermaker's false statements and CI Young did not have a public-spirited reason for providing those statements to law enforcement. There is absolutely no doubt that officers had reckless disregard for the truth, and failed to establish the veracity of their CI, and the fabrication by officer McGlaughlin of Bryan Simmermaker's testimony. There is a **HECK EXCEPTION** to this case. There is a **42 U.S.C. § 1985(3) officer conspiracy**. Officer's fabricated testimony as the only corroboration to CI Young. Officer's never established residency, they never established the veracity of CI Young. Magistrate Roberts failed in her probable cause determination and relied on many falsities to issue a bare-bones warrant. Simmermaker asserts summary judgment was not proper and prays this honorable court allow him to be heard.

RESPECTFULLY SUBMITTED,

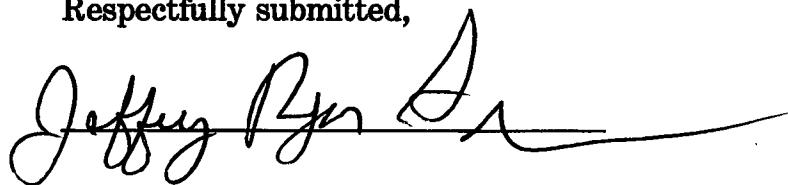
JEFFREY SIMMERMAKER #09380-029  
FEDERAL CORRECTIONAL INSTITUTION  
P.O. BOX 34550  
Memphis, TN 81384-0550

(11)

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey Bynum Jr." The signature is fluid and cursive, with "Jeffrey" and "Bynum" connected, and "Jr." written separately to the right.

Date: 1-9-22

(12)