

● 22-6077 ●

No. USAP10 22-1093

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
SEP 04 2022  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

William Donnell III #171036 — PETITIONER  
(Your Name)

vs.

Eddie Caley Warden C.T.C.F.  
Attorney General of the State of Colorado — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 10<sup>th</sup> Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Donnell #171036

(Your Name)

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(Address)

Limon, CO 80826

(City, State, Zip Code)

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(Phone Number)

## **QUESTION(S) PRESENTED**

1. Did the trial court, by prohibiting me from impeaching the lead detective with extrinsic evidence specifically contradicting his testimony on direct examination, violate my Confrontation Clause rights and my right to present a defense, necessitating reversal?
2. Did the trial court violate my Confrontation Clause rights, and thus reversibly err, when it prohibited cross-examination of a key prosecution witness concerning that witness's pending drug charge, which was dismissed before trial by the same District Attorney's office prosecuting this case?
3. Did the trial court abuse its discretion by rejecting a 16-year plea agreement proposed by the parties, without articulating any reason for doing so?
4. Does cumulative trial error necessitate reversal?
5. Were the Appellate Courts wrong to uphold the decisions of the trial court, based upon misapplication or misinterpretation of the law?
6. Do the violations of the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments of the Constitution, Due Process of Law, and the established case law involved demand review by the Supreme Court in order to protect the provisions within?

## **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**

|  |                    |            |
|--|--------------------|------------|
| Crowley County District Court.....                                   | case #13CR5.....   | 11/23/2015 |
| Colorado Court of Appeals.....                                       | case #16CA425..... | 12/26/19   |
| Colorado Supreme Court.....  | case #22SC60.....  | 6/22/20    |
| U.S. District Court-District of Colorado...case#1:21-cv-01372-RBJ... | 3/3/22             |            |
| U.S. Court of Appeals 10 <sup>th</sup> Circuit.....                  | case #22-1093..... | 6/10/22    |

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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 E to the petition and is

reported at U.S. Court of Appeals case #22-1093\_\_\_\_\_; 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 D to the petition and is

reported at U.S. District Court case #1:21-CV001372-RBJ\_\_\_\_; 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 C to the petition and is

reported at Colorado Supreme Court case #2020 SC60\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the Crowley County District court appears at Appendix B to the petition and is

reported at Crowley County District Court case #13CR5\_\_\_\_; 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 June 10, 2022.

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 June 22, 2020. A copy of that decision appears at Appendix C.

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

A criminal defendant has the right, as part of the right to compulsory process, confrontation, and to present a defense, to call witness's on his own defense. U.S. Constitutional Amendments 5, 6, and 14. This right is a fundamental component of a defendant's right to a fair trial. Chambers V. Mississippi 410 U.S. 284 (1973) ("Few rights are more fundamental than that of the accused to present witnesses in his own defense.") This Court should grant certiorari to reiterate that it is error to preclude a cross-examining party from using extrinsic evidence to specifically contradict a witness whose false testimony on direct examination has left a misleading impression on the jury. The District Court failed to allow me to present a complete defense. Agent Morlock (lead investigator) gave misleading testimony. I was denied my right to call an impeaching witness (Agent Crouch).

A defendant's fundamental right to confront witnesses against him is guaranteed by the 6<sup>th</sup> Amendment of the U.S. Constitution. The right to confrontation includes the right to cross-examination. Davis V. Alaska 415 U.S. 308 (1974). A trial court commits error when it prohibits or severely limits inquiry into the potential bias of the witness. Delaware V. Van Arsdall 475 U.S. 673 (1986). The trial court violated my confrontation clause rights when it prohibited defense counsel from cross-examining key prosecution witness Shanda Flick about a felony drug charge she acquired during the pendency of this case. A charge that was dismissed before this trial started, by the same District Attorneys office that was prosecuting this case.

"While a defendant has no absolute right to have a guilty plea accepted, a court must exercise sound discretion in determining whether or not to reject a plea." Santobello V. New York 404 U.S. 257, 262, 92 S.Ct. 495, 498 L.Ed. 2d 427 (1972). "Thus a defendant is entitled to plead guilty unless the District Court can articulate a sound reason for rejecting the plea." U.S. V. Davis 516 F.2d 574, 578 (1975), U.S. V. Delegal 678 F.2d 47 (7<sup>th</sup> Cir. 1982) "Failure to exercise discretion is itself an abuse of discretion." People V. Darlington 105 P.3d 230 ( Colo. 2005). "A trial court may only reject a plea in the exercise of sound judicial discretion." Santobello V. New York (1972). Here the trial court clearly abused its discretion by not articulating its reasons for rejecting the proposed 16-year plea deal. The Appellate Courts claim there was a waiver of my rights to this claim. There is no such waiver anywhere in the record. "Waiver is the intentional relinquishment of a known right or privilege. The court does not presume acquiescence in the loss of fundamental constitutional rights, and therefore indulges every reasonable presumption against waiver." People V. Rediger 416 P.3d 893 (2018). "The requirement of an intentional relinquishment of a known right or privilege also distinguishes a waiver from a forfeiture, which is the failure to make a timely assertion of a right. This distinction is important because a waiver extinguishes error, and therefore appellate review, but a forfeiture does not. The Colorado Supreme Court may review a forfeited error under the plain error standard." People V. Rediger 416 P.3d (2018). This is critical to the decision in this case because the Appellate Courts ruled that this right was waived by defense counsel not addressing the issue when the district court offered. Therefore not reviewing the matter on appeal.

"The requirement of an intentional relinquishment of a known right or privilege also distinguishes a waiver from a forfeiture, which is the timely assertion of a right." U.S. V. Olano 507, U.S. 725, 733, 113 S.Ct. 1770 123 L. Ed 2d 508 (1993). See also United States V. Carrasco-Salazar, 494 F.3d 1270, 1272 (10<sup>th</sup> Cir. 2007). (Waiver is accomplished by intent, but forfeiture come about through neglect.) Quoting U.S. V. Staples 202 F.3d 992, 995 (7<sup>th</sup> Cir. 2000). This distinction is important because a waiver extinguishes error, and therefore appellate review, but a forfeiture does not. U.S. V. Olano (1993). Accordingly this court may review a forfeited error under the plain error standard. See People V. Miller 113 P.3d 743, 751 (Colo. 2005). People V. Rediger (2018)

The District Court erred by not recognizing my U.S. Constitutional rights under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments. Due to the cumulative errors, any of which is grounds for the conviction and sentence to be reversed/remanded. As such there are more than one constitutional error to analyze under the cumulative error doctrine making this claim viable for review on writ of certiorari to this court. Aggregating all constitutional errors found and the effect on the outcome of the trial proceedings, subsequently had a substantial and injurious effect and influence in determining the jury's verdict.

## STATEMENT OF THE CASE

After midnight on 2/19/13 a deputy sheriff responded to a call from Shanda Flick who had called the police out of concern that she hadn't been able to reach her friend Tara Martinez (victim). When the deputy responded to the trailer house Flick had called from, no one answered when the deputy knocked on the door. When he looked inside a window the deputy didn't see anyone inside. A few hours later, the deputy was dispatched back to the trailer on the report of a caller claiming someone had been killed there. The back door had been kicked in. Upon entering the trailer, the deputy observed Martinez lying on the bed deceased. There were no signs of struggle in the trailer. Neighbors told the deputy they hadn't heard any gunshots, screaming, or other noises. The police found an expended shell casing lying on the kitchen table next to several beer bottles, a wine glass, and a wine bottle. An autopsy determined the cause of death was a single gunshot wound. Mark Morlock of C.B.I. was assigned as lead investigator on the case. He immediately focused on me as the suspect. Morlock determined that, as of the morning Martinez was found dead, I was no longer in the area. There are no eyewitnesses. The murder weapon was never found. There were no inculpatory statements made. No one witnessed me leaving or even being at the trailer. The State charged me with first degree murder, second degree murder, and two crime of violence sentence enhancers. I was found guilty of first degree murder and sentenced to life without parole. I have challenged the convictions on several grounds, through the Colorado Court of Appeals, Colorado Supreme Court, 10<sup>th</sup> Circuit Court of Appeals, U.S. Court of Appeals, and now to the United States Supreme Court.

## REASONS FOR GRANTING THE PETITION

The issues of confronting and cross-examining witnesses are critical to the fair trial process. The decisions of the lower courts in this case are in conflict with the Constitutional rights of the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments and also a plethora of long and well established case law. Agent Morlock misrepresented his credibility to the jury. The District Court protected his credibility. Even though they knew he had made false statements under oath they would not allow me to call an impeaching witness (Agent Crouch) against him. The Supreme Court must not allow the lower courts to protect law enforcement officers who are dishonest while under oath. Morlock states he has never been accused of being untruthful in any criminal investigative report. This was a lie. It would have been proven to be false had Agent Crouch been allowed to testify. This was also proven false by his C.B.I. record which the court had reviewed over this very issue.

Again the issue of cross-examination/confrontation of a witness is in question with the ruling on Shanda Flick's previous drug arrest and dismissal not being made known to the jury. These two critical facts should have been made known to the jury so that they may have weighed these factors into the credibility of the witness and the verdict.

The district court did not articulate its reasons for denial of a plea to the record. The court claimed this right was waived, but there was no such waiver as the record will show. This lack of discretion is in itself an abuse of discretion. If the District Court is obligated to do something and does not, then who must enforce these rules? The Appellate Courts, and if they fail then you the Supreme Court.

There are too many violations of the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments of the constitution, due process, and many decisions/rulings not aligned with established case law for this court not to review this case by granting this writ of certiorari. It is the duty of this Court to protect and uphold the U.S. Constitution. I humbly and respectfully ask that this Court review the claims made and grant this writ of certiorari.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 6<sup>th</sup>, 2022