

No. 22-6427

A rectangular filing stamp with a decorative border. The word "FILED" is at the top in large letters, followed by the date "DEC 15 2022" in the center, and "OFFICE OF THE CLERK, SUPREME COURT, U.S." at the bottom.

IN THE

SUPREME COURT OF THE UNITED STATES

In re Denver Sangster – PETITIONER

VS.

United States of America – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Denver Sangster

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QUESTIONS PRESENTED

There has been more than enough cases in the last few decades, where search warrants that lack probable cause has been accepted by all the lower United States District Courts merely on a good-faith exception to the exclusory rule. But the good-faith exception does not apply if the warrant affidavit is “so lacking in indica of probable cause as to render official belief in its existence entirely unreasonable.” Did the lower courts err in deciding probable cause, the confrontation clause concerning search and seizures and/or requirements of a warrant, with the production of a confidential informant and the right for the accused to be confronted with the witnesses against him. *United States v. Giglio*, 405 U.S. 150 (1972), *Brady v. Maryland*, 373 U.S. 83 (1963), *Strickland*, 466 U.S. at 688.

- 1. Did the lower courts err in deciding whether counsel for the defendant met the standards of the aba standards for criminal justice?**
- 2. Did the lower courts hinder Brady/Giglio material of a CI and the corruption that took place with the lab chemist on Mr. Sangster’s case?**
- 3. Last but not the least, did the lower courts err in establishing whether or not Mr. Sangster employed the use of legally purchased firearms in furtherance of a drug trafficking crime that was nonexistent?**

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:

1. United States v. Denver Sangster, No. 2-16-cr-00205, U.S. District Court for the Western District of Pennsylvania. Judgment entered Oct. 1, 2019.
2. United States v. Denver Sangster, No. 19-3273, U.S. Court of Appeals for the Third Circuit. Judgment entered July 15, 2021.

RELATED CASES

1. United states v. Denver Sangster, No. 19-3273.
2. The United States District Court for the Western District of Pennsylvania. No. 2-16-cr-00205.

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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 judgement below.

OPINIONS BELOW

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 _____; 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 _____; 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 15, 2021.

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: September 28, 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. § 1651(a).

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 this 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

Constitutional Provisions

1. US Constitution, 6th amendment
2. US Constitution, 4th amendment

Statutes

1. 18 U.S.C. § 924
2. 18 U.S.C. § 3500

STATEMENT OF THE CASE

On March 30th, 2016, Detective William Churilla, of the Pittsburgh Police Department, was accompanied with members of the SWAT team to execute a warrant which led to the arrest of Denver Sangster. During the search for cocaine and marijuana which was described in the search warrant they also found multiple legally owned handguns and/or rifles and cell phones. However, there was another search warrant for the cell phones on April 14, 2016, after Detective Churilla had already viewed the contents of the phone.

On September 21st 2016 Denver Sangster was indicted by a grand jury on a two-count indictment a violation of 18 U.S.C. section 924(c)(1)(a)(i) and a violation of 18 U.S.C. sections 841(a)(1), (b)(1)(B)(iii), (b)(1)(C), and (b)(1)(D). In January 2018 a grand jury returned a superseding indictment stating the charges are staying the same. However, they the grand jury found that there were more drugs than what they assumed after the first couple of weighing the evidence and repackaging them. In January 2019 Denver Sangster had his first trial that ended up being declared a deadlock or mistrial on both counts of the indictment. In May of 2019 Denver Sangster had his second trial where the evidentiary issues from the first trial was carried over to the second trial in which resulted in a jury convicting Denver Sangster on both counts of the indictment.

Denver Sangster filed a timely notice of appeal thereafter raising issues on the lower District court's decision on his prior motion to suppress evidence that was denied and the decision on his 6th amendment right being denied by not allowing him to argue that he legally possessed the firearms. Furthermore, after appeal, Mr. Sangster, filed for a Rehearing En Banc and was denied on July 15, 2021, although Mr. Sangster did not get notice of this until September of 2022. Following this Mr. Sangster is filing an

Extraordinary Writ with a note of untimeliness under the special circumstances and in light of new information.

REASONS FOR GRANTING THE WRIT

When a search warrant is found to be lacking in probable cause—which resulted in an unconstitutional search under the Fourth Amendment – the use of a confidential informant’s tip without any corroborating evidence of a crime being committed or a crime to be committed at a future date is unsupported by underlying facts and cannot be used to establish probable cause making the search and seizure itself unconstitutional. *See United States v. Underwood* (9th Cir. 2013) 725 F.3d 1076 and *See Illinois v. Gates*, 462 U.S. 213, 254 (1983). However, the courts held in *United States v. Leon* 468 U.S. 897 (1984) that the good-faith exception would apply in a situation like this but being that Under 234 Pa Code § 203(B) it establishes “no search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology..... may not consider any evidence outside the affidavits.” & Under 234 Pa Code § 206 (5) the affidavit shall “specify or describe the crime which has been or is being committed”. Furthermore, in this case, there is no crime being committed. Usually, when the good-faith exception is applied, the underlying warrant lacks probable cause, making the search necessarily unconstitutional. *See United States v. Edwards*, 813 F.3d 953, 959 (10th Cir. 2015) where it is (asserting discretion to address Leon’s good-faith exception without first addressing probable cause itself). Probable cause is generally established when the affiant has factual and substantiated evidence that can give the Magistrate the chance to form a second opinion. To show probable cause in an affidavit see *United States v. Melvin Andrew Morris* Case No. 1:14-mj-30319. During this unconstitutional search Denver Sangster was subsequently arrested and charged with possession with the intent to distribute and possession of firearms in furtherance of some mysterious criminal activity that he supposedly had going on, when it was a mere fact that it was left out that he legally purchased those firearms as a

respectable security officer, and a respected individual in his community with a spotless record. It is held that the language of 18 U.S.C. § 924 (c)(1) is specifically supported by its history and context which compels the conclusion that the congress intended for the word “use” in the active sense of “to avail oneself of”. The courts must show that a defendant actively employed the firearm during and in relation to a specified drug-related crime. *See Bailey v. United States*, 516 U.S. 137 (1995). Denver Sangster had two trials, the first of which resulted in a mistrial by a hung jury on an issue of whether Sangster had actually possessed a quantity of over 280 grams of crack due to a discrepancy of evidence and information, the second trial came back guilty on both counts where the courts erred on multiple issues brought forth on appeal. One of these issues being ineffective counsel which in the 6th amendment, it guarantees the right of criminal defendants to have the assistance of counsel for his defense. According to the ABA Model Rules of Professional Conduct, “A Lawyer shall abide by a client’s decision to settle a matter: In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer; as to a plea to be entered, whether to waive jury trial and whether the client will testify..... assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law...” Denver expressed multiple times that he wanted to testify and was denied, when he raised these issues in open court, the Judge Cercone referenced to Mr. Sangster that he takes no interest in that allegation & it was not up to him, it was up to his attorney, furthermore, telling him that he had no say in his own defense; directly violating his 6th amendment right. While raising the allegations of ineffective counsel Mr. Sangster spoke on the attorney’s failure to argue a correct and full summation nor did he fully investigate into the facts regarding the confidential informant *See Gaines v. Hooper*, 575 f.2d 1147 (5th Cir. 1978); *Sullivan v. Freeman*, 819 F.2d 1382 (7th Cir. 1987); *United States v. Gray*, 878 f.2d 702 (3rd Cir. 1989) which had a meaningful interest into why the warrant was presumed to

have probable cause. For the defense the closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt. *See Winship*, 397 U.S. 358. The Attorney for the defendant William C. Kaczynski failed to raise a full argument, *see Bridges v. United States*, (March 7th Cir. 2021).

Another violation of the defendant's 6th amendment right is the Confrontation clause a CIs testimony of hearsay to the Courts was only offered to prove that the defendant was distributing illegal narcotics and that they purchased (not for the detective but for oneself) and watched Mr. Sangster selling illegal narcotics which violates the clause of confrontation. *See United States v. Alvarado-Valdez*, 521 F.3d 337 (5th Cir. 2008). *See Fed. R. Evid. 801*. Nor did the Government meet its burden of establishing that the reference to the informant's identification of Sangster as a drug source/distributing narcotic in the Pittsburg area even after contacting other agencies who confirmed they had no knowledge of Sangster being a drug source in the area of Penn hills. *See United States v. Kizzee*, 877 f.3d at 656.

The confrontation clause of the 6th amendment to the United States Constitution requires that in all criminal prosecutions, the accused shall enjoy the right to be confronted by the witnesses against him. *See United States v. Bench*, 82 M.J. 388; *See United States v. Beauge*, 82 M.J. 157; *See United States v. Becker*, 81 M.J. 483; *See United States v. Erikson*, 76 M.J. 231; *United States v. Bess*, 75 M.J. 70; *See United States v. Savala*, 70 M.J. 70; *See United States v. Cavitt*, 69 M.J. 413; *See United States v. Collier*, 67 M.J. 347; *See United States v. Harcrow*, 66 M.J. 154; *See United States v. Hamann*, (5th Cir. May 2022).

There is a constitutional guarantee that the 6th Amendment affords to all that is accused of a criminal act involving a Confidential Informant, that guarantee is that the accused will face his accuser and receive a just and fair trial. *See Brady v. Maryland*, 373 U.S. 83 (1963). The

Government is already required to provide such information to the defendant prior to trial, pursuant to *Giglio v. United States*, 405 U.S. 150 (1972). The Supreme Court held that the only time they can withhold such information is if the defendant pleads guilty, pursuant to *United States v. Ruiz*, 536 U.S. 626 (2002). The prosecution has a constitutional duty to disclose, that is triggered by the potential impact of favorable but undisclosed evidence *See Kyles v. Whitley* 514 U.S. 419, 434 (1995) and *United States v. Bagley*, 473 U.S. 667 (1985). Failing to disclose *Brady/Giglio* material about the credibility of an informant violates the constitutional obligation to ensure a fair trial so as not to violate *the due process clause* where evidence is material either to guilt or to punishment. *See, e.g. Weatherford v. Bursey*, 429 U.S. 545, 559 (1997). Required disclosures regarding CI's may at a time and in a manner consistent with the policy embodied in *the Jencks Act*, 18 U.S.C. § 3500 Section 9-5.001 of the United States Attorney's Manual describes the departments policy for disclosure of exculpatory and impeachment information. Pursuant to *Strickler v. Greene*, 527 U.S. 263, 281-82, 119, S. Ct. 1936, 144 L. Ed. 2d 286 1999 (evidence is material "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.") In this case, the confidential informant or otherwise known as "Jameelah Miller" admitted to partaking in the criminal activity that she has accused Mr. Sangster of, had this been disclosed to the defense, the result would have been different. Furthermore, it would be in the best interest of justice, to be afforded the right to confront the lab chemist under the 6th amendment of the United States Constitution. *See Crawford v. Washington*, 541 U.S. 36; *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009); *Bullcoming v. New Mexico*, 564 U.S. 647; *Penate v. Hanchett*, 944 F.3d 358. In light of new evidence concerning the lab chemist, Matthew Iaraci as in *United States v. Iaraci*, Criminal No. 18-164, was the lab chemist in Mr. Sangster's case making this a crucial new piece of evidence to review being that Mr. Iaraci

was convicted of tampering with evidence. As a result of this case, District Attorney Stephen Zappala said that they would be reviewing all 575 cases that Mr. Iaraci was a part of. *See Commonwealth v. Cotto, Indictment No. 2007770.* Nevertheless, cross examination may be “the greatest legal engine ever invented for the discovery of truth,” *California v. Green*, 399 U.S. 149, 158, 90 S. Ct. 1930, 26 L. Ed. 2d 489 (1970), the Constitution promises every person accused of a crime the right to confront his accusers. {2019 U.S. LEXIS 2} Amdt. 6. This right is a fundamental element of due process of law. Both *Commonwealth v. Elliot*, No. 627 WDA 2012; *Kirk v. SUPT. Mcginley, et al.*, No. 2:16-cv-733; *Commonwealth v. Davis*; are three other cases to show that they were never presented during discovery in Mr. Sangster’s case, because the reliability of the witness was not sufficient and deemed not credible. In this case, the lower courts erred when they did not take the *Giglio/Brady* material into consideration, they did not uphold the United States Constitution according to the elements it was founded on.

Although this petition falls under the fact that it is untimely, this is due to lack of knowledge of new evidence until recent light of new information, which makes for extraordinary circumstances to review these issues which would affect the outcome of cases in the future in the interest of justice. Therefore, these reasons set forth above show that it would be in the best interest of justice to review this and make solid determinations and decisions to stop any further confusion and correct the wrongs on behalf of Mr. Sangster and the people of the United States as a whole.

CONCLUSION

Wherefore the pro se petitioner respectfully requests that the petition for a writ of certiorari should be granted.

Respectfully Submitted,

Denver J. Sangster

Date: December 13 , 2022