No. ___________

IN THE

SUPREME COURT OF THE UNITED STATES

CHAD HANSMEIER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTIONS PRESENTED

I. Whether corroboration of innocent or innocuous details is sufficient to support a first-time informant's story that contained purported first-hand accounts that later were proven to be inaccurate?

OPINION BELOW

The decision of the Court of Appeals for the Seventh Circuit ("Seventh Circuit") is a published opinion. The opinion is attached as Appendix A. The Orders of the District Court for the Central District of Illinois, Springfield Division, ("district court") denying Mr. Hansmeier's suppression motions are collectively attached as Appendix B.

JURISDICTION

On August 14, 2017, the Seventh Circuit entered its opinion in the Mr. Mitchell's appeal of the district court's denials of his motions to suppress physical evidence and the search of his home. The opinion affirmed the district court's orders denying Mr. Hansmeier's motion.

On April 6, 2017, in Application No. 17A430, Associate Justice Elena Kagan granted Mr. Hansmeier's motion for an extension of time in which to file this petition. The deadline was extended to December 12, 2017.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

STATUTORY OR CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

INTRODUCTION

This case presents the opportunity to clarify when law enforcement demonstrates probable cause to search a house based upon the statements of a single, previously unknown and untested confidential informant. While this Court's guidance with regard to the factors to consider in evaluating the reliability of a confidential informant's statements has been longstanding, one particular scenario continues to challenge the lower courts. In evaluating the reliability of a confidential informant, how to balance, or whether to balance, the factors of corroboration, level of detail, first-hand knowledge, and other aspects of the statements remains a challenge in terms of defining the line for law enforcement and warrant issuing judges.

In Mr. Hansmeier's case, in the span of less than 12 hours, law enforcement took the word of a previously-unknown informant, which was allegedly detailed, and corroborated it solely through having the individual direct them to the Mr. Hansmeier's home and conducting an unclear criminal background check. Based solely on that innocuous information, law enforcement sought authorization for, and received, a no-knock search warrant, executing it less than a day after the initial arrest of the informant for his own drug activity. Upon completing the search, officers found a small amount of marijuana, a firearm, cash, and an undetermined powdery substance; the alleged large quantity of methamphetamine and cash were nowhere to be found despite the rapidly executed interview and search. It was only after the search and custody that further investigation resulted in additional evidence of criminal activity.

Given that the evaluation criteria for a single informant search is necessary for both reviewing courts and law enforcement, clarity is required. Further, to protect the privacy interests of individuals in their own homes, clarity with regard to the requirements will lead to a more definite balance between the investigative and privacy interests involved on both sides.

STATEMENT OF THE CASE[1]

On the morning of May 15, 2013, Chad Hansmeier was home with his family in Canton, Missouri. (Supp. R.16 11-12 Tr. 4.) Suddenly and without warning, law enforcement broke into Mr. Hansmeier's home with their guns drawn. (*Id.*) During the following search, officers found 200 grams of a white, powdery substance that was potentially a cutting agent; one thousand dollars in cash; and a firearm. (Supp. R.15-2:175; App. B-11.) While in post-search custody, Mr. Hansmeier made statements to law enforcement with regard to his drug involvement. (PSR ¶20.)

Sometime prior to 1:15 AM on May 15, 2013, Jason Walker was arrested in Illinois for possession of 68.3 grams of methamphetamine, 14.5 grams of heroin, and small amounts of marijuana. (PSR ¶17.) Law enforcement had conducted two prior controlled buys from Walker. (Supp. R.15-2:42.) At the time of his arrest, Walker was on parole in Illinois and Missouri for prior drug-related convictions. (Supp. R.16 11-7 Tr. 67:5-7.)

Walker agreed to be interviewed by law enforcement. (Supp. R.16 11-7 Tr. 60:2-6; App. R.15-2:42.) As the interview commenced, Walker admitted that he was addicted to methamphetamine, and officers noticed evidence of Walker's intravenous drug use. (Supp. R.16 11-7 Tr.17:17-23.) Walker told Agent Hiland of the West Central Illinois Drug Task Force that Mr. Hansmeier, who resided in

[1] The following abbreviations are used herein: Criminal Record on Appeal, cited by page: "Crim. R. __:__"; Supplemental Record on Appeal (suppression documents and transcripts), cited by page: "Supp. R.__:__"; Transcripts from the two-day suppression hearing, "Supp. R.16 11-7 Tr. __:__" and "Supp. R.16 11-12 Tr.__:__"; and Presentence Investigation Report, cited by paragraph: "PSR ¶ __".

Canton, Missouri, provided him with at least a portion of the drugs found in his possession. (Supp. R.16 11-7 Tr. 24.) At 1:15 AM on May 15, 2013, Agent Hiland contacted Agent Murphy from the Northeast Missouri Narcotics Taskforce ("NEMO"). (Supp. R.16 11-7 Tr. 24:11-24, 59:17-22.) Agent Murphy drove to pick up Special Agent Snow, and together they drove to Quincy, Illinois, to interview Walker. (Supp. R.16 11-7 Tr. 60.)

During his interview, Walker alleged that for the preceding six months, Mr. Hansmeier acted as his supplier. (Supp. R.15-2:43.) However, at that time, Walker had been out of prison for less than six months. (Supp. R.16 11-7 Tr. 111-112.) Mr. Hansmeier had also been incarcerated for a portion of this alleged sixth-month time period. (Supp. R.15-2:344-45; App. B-81-82.) Walker told Agent Murphy that he received quarter pounds of methamphetamine and quarter ounces of heroin from Mr. Hansmeier. (Supp. R.16 11-7 Tr. 87:18-22.) Additionally, Walker alleged that Mr. Hansmeier supplied others in Missouri with large quantities of narcotics. (Supp. R.16 11-7 Tr. 91:17-20.) Walker further stated that Mr. Hansmeier retained large quantities of narcotics and cash in his home at all times. (Supp. R.15-2:42-43.) He asserted that Mr. Hansmeier recently supplied him with 110.8 grams of methamphetamine, of which 63.3 grams remained. (PSR ¶17.)

Walker described Mr. Hansmeier's home as having two cameras located outside the front of his house. (Supp. R.15-2:44.) According to law enforcement, Walker then drew a diagram to indicate the location of Mr. Hansmeier's home and the alleged location of the drugs inside. (Supp. R.16 11-7 Tr. 63:9-12.) The diagram that Walker allegedly drew was not included with the search warrant affidavit, or in the record on appeal. (Supp. R.15-2:41-48.) Agent Murphy did not inquire about how recently Walker last visited Mr. Hansmeier's home. (Supp. R.16 11-7 Tr. 72:21-73:1.) Additionally, Walker stated that Mr. Hansmeier planned to go on vacation for 30 days, thus he purportedly had more drugs in his home than normal to allow dealers to stock up on their supply. (Supp. R.16 11-7 Tr. 91:12-23.) According to Agent Murphy, his interview with Walker lasted for approximately 30 minutes. (Supp. R.16 11-7 Tr. 62:3-5.)

Law enforcement took two actions to corroborate Walker's allegations. First, at around 3:00 AM on May 15, 2013, Agents Snow and Murphy drove to Canton with Walker. (Supp. R.15-2:43.) Once they arrived in Canton, Walker directed them to Mr. Hansmeier's home. (*Id.*) Agent Murphy stated that prior to his interview with Walker, he was already familiar with where Mr. Hansmeier lived. (Supp. R.15-2:42-43.) He further stated that he did not observe any cameras outside Mr. Hansmeier's home as they drove by. (Supp. R.16 11-7 Tr. 72.) They returned to Quincy at approximately 3:30 AM that morning. (Supp. R.16 11-7 Tr. 102:11-16.)

Second, Agent Murphy reported that he checked Mr. Hansmeier's criminal record on a system called "Case.Net," not describing that system in the affidavit, and found that he had prior convictions for drug-related offenses. (Supp. R.16 11-7 Tr. 94:13-20.) However, Agent Murphy claimed he did not obtain Mr. Hansmeier's full criminal record. (Supp. R.16 11-7 Tr. 97:17-20.) Agent Murphy testified that

Case.net only provided a "snapshot" of Mr. Hansmeier's criminal history. (Supp. R.16 11-7 Tr. 97:21-24.)

After taking Walker back to Quincy, Agents Murphy and Snow went back to Missouri to prepare an affidavit for a no-knock search warrant for Mr. Hansmeier's home. (Supp. R.16 11-7 Tr. 64:13-25.) According to Agent Murphy, the affidavit was prepared between 4:00 – 7:00 AM that same morning. (Supp. R.16 11-7 Tr. 101:19-20.) The affidavit's information came from a "suspect" (Walker), who had recently been arrested for drug possession. (Supp. R.15-2:42.) The affidavit described the purported number of transactions that occurred between "the suspect" and Mr. Hansmeier, the frequency, the quantities involved, and some information about Mr. Hansmeier's home and his personal life. (Supp. R.15-2:42-43.) It further stated that "the suspect" correctly "directed" Agents Murphy and Snow to Mr. Hansmeier's residence and had cameras set up outside and inside. (Supp. R.15-2:43.) Additionally, the affidavit stated that Agent Murphy was "familiar" with Mr. Hansmeier from previous investigations, had "received information from another reliable source that Mr. Hansmeier was a multi-ounce methamphetamine dealer," and was "aware" that Mr. Hansmeier had been released from prison within the last year. (Supp. 15-2:42.)

With regard to Mr. Hansmeier's criminal history, the affidavit stated that Agent Murphy believed Mr. Hansmeier was on parole, that his parole officer was Craig Tallman, and that Hansmeier's "criminal history" showed various drug and weapons offenses. (Supp. R.15-2:44.) Finally, the affidavit alleged Mr. Hansmeier flushed drugs down the toilet during the execution of a previous search warrant at his home. (Supp. R.15-2:44-45.) Captain Patti Talburt reviewed the warrant. (Supp. R.16 11-7 Tr. 103:4-5; Supp. R.16 11-12 Tr. 129:12-14.) Captain Talburt later described her review of the affidavit as "cursory." (Supp. R.16 11-7 Tr. 139:1-3.) A local prosecutor, Jules Decoster, notarized the warrant application. (Supp. R.16 11-7 Tr. 55:13-15.)

Agent Murphy acknowledged the search warrant affidavit omitted facts and contained inaccurate information. Nowhere in the affidavit did Agent Murphy include any of Walker's numerous past convictions. (Supp. R.16 11-7 Tr. 67:15-19.) Agent Murphy failed to include that Walker was on parole for prior drug-related offenses and that Walker was a drug user. (Supp. R.16 11-7 Tr. 67:15-25, 68:1.) In fact, at that time, Agent Murphy knew that Walker was on parole at least in Missouri. (Supp. R.16 11-7 Tr. 67:5-8.) Furthermore, despite the record check, the affidavit failed to state that during a period of the time Mr. Hansmeier was allegedly supplying drugs to Walker, Mr. Hansmeier was in prison. (Supp. R.15-2:344-45; App. A-81-82.) Specifically, Mr. Hansmeier was released from prison in either December 2012 or January 2013. (Supp. R.16 11-12 Tr. 9:12-15.)

Additionally, the affidavit did not state when the alleged flushing incident occurred or other key facts. (Supp. R.16 11-7 Tr. 71:20-22.) The information contained in the affidavit with regard to the so-called “flushing incident” was inaccurate. (Supp. R.15-2:341; App. B-78.) Captain Talburt relayed this information to Agent Murphy. (Supp. R.16 11-7 Tr. 71:17-19.) Agent Murphy acknowledged that he either received misinformation or that the information was relayed in the wrong manner. (Supp. R.15-2:340; App. B-77.) In fact, this information rendered by Captain Talburt was incorrect. (Supp. R.15-2:339-40; App. B-76-77.) Eventually, Captain Talburt also admitted that she "never saw or heard [Mr. Hansmeier] flush a toilet in that house that day." (Supp. R.16 11-12 Tr. 133:7-14.) During that search, Mr. Hansmeier was not in his home; rather, he was apprehended a mile away from his house. (Supp. R.16 11-12 Tr. 141:7-15.)

Early in this case, Mr. Hansmeier made three motions to suppress evidence with regard to the search and subsequent evidence, as well as a motion to reconsider the district court's rulings. (Supp. R.15-2:32, 147, 205, 348.) Mr. Hansmeier raised several arguments. The arguments included that the information submitted by the affiant was unreliable, the search warrant affidavit contained deliberate or reckless information and omissions, and that the search warrant lacked probable cause and could not be reasonably relied upon in good faith. (Supp. R.15-2:34-36, 148-50, 210-16.)

On November 7 and 12, 2014, the district court held a hearing pursuant to *Franks v. Delaware,* 438 U.S. 154 (1978). (Supp. R.15-2:304; App. B-41.) During that hearing, the defense directed questions to Agents Hiland and Murphy regarding the omissions and false statements in the affidavit. Agent Hiland stated that it was standard practice in Quincy, Illinois, to omit the criminal history of a confidential source. (Supp. R.16 11-7 Tr. 46:12-15.)

The district court denied all three motions to suppress. (Supp. R.15-2:165, 304, 373; App. B-1, 41, 99.) The district court stated that the affidavit provided sufficient reliable information to support a finding of probable cause. (Supp. R.15-2:165-66, 323; App. B-1-2, 60.) The district court felt that "several of the [confidential informant reliability] factors provide strong indicia of the credibility of [Walker.]" (Supp. R.15-2:183; App. B-19.) However, the district court went on to discount several pieces of information in the affidavit or show that they were inaccurate, including the duration of the relationship between Walker and Mr. Hansmeier and the alleged flushing incident. (Supp. R.15-2:185, 322-23, 341, 344; App. B-21, 59-60, 78, 81.) Nevertheless, the district court said that even if the affidavit was insufficient, the officers acted in good faith reliance on the warrant. (Supp. R.15-2:166; App. B-2.)

On May 22, 2015, pursuant to a written plea agreement, Mr. Hansmeier, waived his right to indictment and pled guilty to a single count of conspiring to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B) and 846. (PSR ¶94.) Mr. Hansmeier waived his right to appeal his sentence. (PSR ¶94.) Hansmeier reserved the right to appeal the court's denial of his motion to suppress evidence. (PSR ¶4.) The district court sentenced Mr. Hansmeier to a total of 188 months of imprisonment and four years of supervised release. (R.22:2.)

Mr. Hansmeier appealed the district court's orders. *United States v. Hansmeier*, 867 F.3d 807, 809 (7th Cir. 2017). On appeal, Mr. Hansmeier argued that the affidavit, based on a single confidential informant and two pieces of collaboration, was insufficient to support probable cause. *Hansmeier*, 867 F.3d at 809. Further, though the state court issued a warrant, the resulting search was not in good faith because the warrant lacked any reasonable indicia of probable cause, was nearly identical to previous affidavits that the Seventh and Eighth Circuits have held to be insufficient, and also contained false and/or misleading information. *Id*. at 810-12.

The Seventh Circuit Affirmed the district court. In its opinion, the Seventh Circuit held that there was sufficient probable cause. The Seventh Circuit felt that while the Government acknowledged that corroboration was not the 'strong suit' of this investigation, that the level of detail (though incorrect in light of the search), and the minimal corroboration of the location of the home and the broad criminal history check was sufficient to demonstrate the reliability of the informant and the probable cause for the search of Mr. Hansmeier's home. *Id*. at 812-13.

REASONS FOR GRANTING THE PETITION

I. Clarity with Regard to The Nature and Extent of Corroboration is Necessary for Law Enforcement Requesting and Magistrates Evaluating Search Warrant Affidavits.

A. Current Law Remains Unclear with Regard to the Necessity and Nature, or Lack Thereof, of Confidential Informant Corroboration.

The Fourth Amendment requires that a search warrant may only issue on a showing of probable cause, supported by oath or affirmation. U.S. Const. amend. IV. The Court has addressed how to evaluate scope of what constitutes probable cause, but has left open the exact way in which to carry out the Court's current guidance with regard to the "totality of the circumstances" that form the alleged probable cause in cases involving informants. Mr. Hansmeier's case presents an opportunity to clarify how lower courts and law enforcement are to view the requirements for issuing a warrant.

The current test for determining whether probable cause exists is a review of the "totality of the circumstances." *Illinois v. Gates*, 462 U.S. 213, 231 (1983). *Gates* followed the long-standing *Aguilar-Spinelli* test for evaluating informant-based probable cause. *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States,* 393 U.S. 410 (1969). In conducting this totality review, a magistrate must be both neutral and detached, "and not serve merely as a rubber stamp for police." *United States v. Ventresca*, 380 U.S. 102, 109 (1965).

However, while clarifying how to apply the test, the Court retained the factors outlined in the prior cases. *Gates*, 462 U.S. at 233 (reducing the veracity and basis of knowledge from independent requirements to factors). However, lower courts are still required to assess the adequacy of an affidavit in terms of "veracity" and "basis of knowledge." *Id*. The affidavit must still show some of the underlying circumstances establishing informant credibility or reliability and a basis for how the informant obtained his information. *Id*. at 228-29. However, in broadening the review to the totality of the circumstances, the Court has created a situation in which lower courts and law enforcement personnel are without consistent and clear guidance with regard to when an informant's information meets the standard of probable cause. Wayne R. LaFave, "Information from an informant", 2 SEARCH & SEIZURE § 3.3 (5th ed.).

This confusion is especially evident in the context of the reliability of the information from an informant. Despite a shift to the totality of the circumstances, the *Gates* Court placed considerable reliance upon corroboration of the informant's story. *Gates*, 462 U.S. at 243 ("Even standing alone, the facts obtained through the independent investigation … at least suggested that the Gates were involved in drug trafficking. … In addition, the magistrate could rely on the anonymous letter, which had been corroborated in major part.) The Court has used corroboration in a variety of ways in informant cases.

> [T]he Supreme Court has either used corroboration or assumed that it might be used in a variety of ways. Sometimes it appears the Court was seeking evidence of corroboration because of no showing of the informant's basis of knowledge (*Draper, Ker*), sometimes because the informant's veracity was not otherwise established sufficiently (*Jones, Harris*), and sometimes for both reasons (*Aguilar, Spinelli, Gates*). Moreover, the type of

> information considered as tending to corroborate has ranged from the innocent conduct in *Draper* to that which itself created "strong suspicion" in *Ker*.

LaFave, *supra*, §3.3(f) (citations omitted). However, despite these different uses in nearly every such informant case, the Court has yet to address whether even minimal corroboration, and the nature of that corroboration, is necessary as a component of the totality evaluation. This has led to a circuit split among the requirement for corroboration, especially as it pertains to the type of information that the authorizes corroborate.

B. Circuits Disagree on Whether Corroboration of Innocuous or Unconnected Information from a Confidential Informant Supports Probable Cause.

As noted above, the Court has used corroboration as a component of its analysis for all of its informant cases. However, the question remains as to what is the lower limit of sufficient corroboration to prove the veracity of an informant's story. This open question has led to a split amongst the circuits and state high courts with regard to whether minimal corroboration of innocuous details, not the incriminating information itself, is sufficient to demonstrate the veracity of a claim.

On one side of the divide, some courts have held that law enforcement must corroborate more than innocuous facts when utilizing information from an unproven confidential informant. Two cases are instructive of this side. First, the Tenth Circuit in *United States v. Danhauer*, 229 F.3d 1002 (10th Cir. 2000), held that there was insufficient probable cause when there was insufficient corroboration of the unproven informant's information beyond innocent facts. In that case, law enforcement verified the description of the property indicated by the informant, confirmed the names of the residents, and ran a criminal history check on the occupants. *Danhauer*, 229 F.3d at 1004. The court held that despite that corroboration, there was not sufficient probable cause because none of the additional information spoke to the alleged methamphetamine trafficking or the veracity of the informant's story. *Id.* at 1006. The court felt that these public details, readily available through non-criminal and indirect means, were insufficient to support the validity of the untested informant.

Similarly, the Eighth Circuit, where Mr. Hansmeier's home is located, held that even extensive corroboration of innocuous facts was insufficient for probable cause. In *United States v. Gibson*, 928 F.2d 250 (8th Cir 1991), an anonymous caller reported that a white male, whom the caller described as being six feet, two inches tall, thin build, with brown hair and a beard and mustache, was dealing cocaine along with his wife from a house in Springfield, Missouri. *Gibson*, 928 F.3d at 252. The caller specifically identified the address of the house, and reported that there was a pit-bull outside the house, a Doberman inside the house, and described three vehicles owned by the residents—a 1979 or 1980 Yellow Chevrolet pick-up and two Ford Mustangs, one white and one gray. *Id.* The caller stated that he/she had been inside the house earlier that day and had seen $30,000 in cash and three kilos of cocaine. *Id.* The caller also stated that he/she learned that a new shipment of cocaine was expected to arrive within a few days. *Id.* One week later, an officer from the Springfield Police Department drove by the address provided by the caller and he observed a white Ford Mustang and a pit-bull outside of the house. *Id*. The officer also learned that the utilities account was in the name of Kevin E. Gibson, and he learned that a person with this same name held title to a 1979 and 1980 Ford. *Id*. The officer included this information in a search warrant affidavit. *Id*. The Eighth Circuit did not accept the government's argument that the warrant affidavit supported probable cause. *Id.* at 253. The court noted that law enforcement "at most" corroborated "only innocent details" in driving by the address and checking some records. *Id*. This appears to be the case in the majority of courts. *See e.g. United States v. Hall*, 113 F.3d 157 (9th Cir. 1997); *United States v. Hammond*, 351 F.3d 765 (6th Cir. 2003).

On the other side, some courts have allowed corroboration of innocent details to establish probable cause when done in sufficient quantity. The Second Circuit has held that sufficient corroboration of apparently innocuous facts could provide for the necessary probable cause coupled with an informant's story. *United States v. Steppello*, 664 F.3d 359, 366 (2d Cir. 2011). There, the court upheld the warrant that was corroborated based upon predicted response of the defendant to a telephone call. *Id*. The court reasoned that to a trained law enforcement officer, such an innocuous action could be seen as conforming to criminal conduct that helps to prove the informant's story. *Id.*

Similarly, the *United States v. Laws,* the court held that verification of the occupants of a hotel room alleged to be engaged in drug trafficking was sufficient for probable cause. 808 F.2d 92, 102-03 (DC Cir. 1986). Again, the court relied on the officer's perspective. The court held that based upon the training and experience of law enforcement, innocuous information, especially when coupled with a criminal background of the alleged perpetrator, was sufficient corroboration to prove the veracity of an unproven informant's story.

This divide demonstrates the difficulty for courts and law enforcement alike as it pertains to the nature of corroboration required for an informant's information. To what degree is deference and consideration given to law enforcement's experience? When does any such deference turn into an approval of a warrant of insufficient veracity? These questions appear to remain in the circuits, and in the end, result in uneven treatment for individuals and the privacy of their homes. That is the case for Mr. Hansmeier, caught living in the Eighth Circuit, but prosecuted in the Seventh Circuit which now appears to allow for corroboration of just innocent, publicly known information.

C. Law Enforcement Only Corroborated a Few Publicly Known and Innocuous Facts from the Informant's Story about Mr. Hansmeier.

Like every circuit, the Seventh Circuit has addressed many informant cases. However, despite prior caselaw showing a similar approach to the Tenth Circuit and others with regard to corroboration, it appears to have joined the Second and D.C. Circuits in requiring minimal corroboration of innocuous facts to provide probable cause. As a result, the circuit split continues and appears to be evolving, further removing clarity that courts, law enforcement, and citizens need.

In the Seventh Circuit, when a warrant issuing judge is presented with and only approves a search warrant on the basis of an affidavit, the probable cause inquiry is based solely on the strength of the affidavit. *United States v. Peck*, 317 F.3d 754, 755 (7th Cir. 2003). Further, it is undisputed that when a search warrant affidavit is supported solely by the statements of a confidential informant, the validity of the affidavit rises and falls with the informant's credibility. *United States v. Olson*, 408 F.3d 366, 370 (7th Cir. 2005). To that end, this Court employs four flexible factors to determine whether an informant is credible: (1) whether the informant had firsthand knowledge; (2) whether the informant provided sufficient details; (3) whether the information relayed by the informant was subsequently corroborated; and (4) whether the informant testified at a probable cause hearing. *Id*.

The warrant affidavit in Mr. Hansmeier's case contains next to no facts not supplied by the informant himself—a suspect recently arrested with a substantial amount of methamphetamine on his person—which support his story and ultimately contributing to probable cause. The single fact which is indisputably accurate is that Walker was able to "direct" Agents Murphy and Snow to Mr. Hansmeier's house. (Supp. R.15-2:43; App. B-3.) While this fact is evidence merely that Walker knew the location of Mr. Hansmeier's house, it fails to support Walker's allegations regarding purported drug activity, let alone a conspiracy of the size and scale that Walker described. The Government relies on the affidavit's bare bones description of Mr. Hansmeier's "criminal history" and Agent Murphy's inclusion of information from the unknown "CI 648" as evidence of corroboration. (See Gov't Br. 46.) However, the alleged criminal history check, in addition to being unclear as to the source or extent of the information revealed, only describes one instance related to drug distribution and various "drug related arrests and convictions." (Supp. R.15-2:45; App. B-5.) While the description in the affidavit, taken as true, might suggest that Mr. Hansmeier has a proclivity to some unspecified severity of criminal behavior, it does not lend support to Walker's kingpin-esque account of Mr. Hansmeier's ongoing drug activity. Finally, it should go without saying that Agent Murphy's inclusion of information provided by the unknown CI 648, properly excluded from consideration by the district court (Supp. R.15-2:185; App. A-21), contributes no corroborative weight and cannot be considered to have properly contributed to a finding of probable cause.

This case begs the question of the extent to which degree of detail weighs in favor of credibility when officers independently verify none of those details. The weight and value of the first two factors—whether an informant claims to have firsthand knowledge and the degree of detail provided by an informant—are entirely dependent upon the credibility and truthfulness of the informant himself. *United States v. Bell*, 585 F.3d 1045, 1049 (7th Cir. 2009). The fact that Walker was in custody after just having been arrested with a substantial quantity of narcotics on his person and that he was a known drug dealer himself seriously damages his personal credibility. (Supp. R.15-2:43-45; App. B-3-5.) The warrant affidavit contains almost no information which validly contributes to probable cause to compensate for that damage. Faced with a weak informant and knowing that Walker could not provide oral testimony before the warrant-issuing judge, Agent Murphy could have (and should have) taken any number of steps—contacting and coordinating with Mr. Hansmeier's parole officer, surveilling Hansmeier's home and self, or checking Walker's phone for communications or location—to independently verify Walker's story and ultimately reflect those actions in the warrant affidavit. Why Agent Murphy pushed this affidavit and abruptly executed a no-knock search less than 10 hours after hearing this story about Mr. Hansmeier, by all accounts for the very first time, is utterly unclear. However, the Seventh Circuit still felt that there was sufficient probable cause despite the minimal corroboration of innocuous details.

The Seventh Circuit noted that Walker directed the agent to the home and that there was a criminal background check performed. *Hansmeier*, 867 F.3d at 811-12. It acknowledged that the house location did not "verify Walker's claim that Hansmeier was dealing drugs," but nonetheless said it had corroboration value. *Id.* at 811. It similarly discounted the true collaborative value of the information obtained from the background check. *Id.* at 812. The court also gave limited corroborative value to the completely unidentified prior knowledge of Mr. Hansmeier's drug activity. However, in the end, the court itself noted the limited value of the corroboration in terms of verifying aspects of Walker's story. "Admittedly, those facts are not enough alone to find Walker credible. But they are, to an extent, indicators of credibility. And any additional steps that Agent Murphy could have taken to corroborate Walker's story do 'not in any way detract from what was done.'" *Id.* (citations omitted). This is similar to the circuits which hold that innocuous details, those even readily known to the public, can form the basis of collaboration, in part due to extreme deference to precedent. This is contrary to other circuits, and even prior statements from the Seventh Circuit.

As noted above, other circuits, consistent with *Gates* and prior holdings from this Court. Other circuits that require greater, deeper corroboration all note that the information helps to establish the veracity and credibility of information when it comes from an anonymous source, or an individual who has no proven track record of providing valid details. *Gibson*, 928 F.3d at 252 (extensive corroboration of innocent details is insufficient in the case of an anonymous informant); *Danhauer*, 229 F.3d at 1004 (corroboration of innocuous details insufficient to support the veracity of the informant's information). The Seventh Circuit acknowledged that the information did little, if any to demonstrate the veracity of the information. The Seventh Circuit itself has noted that credibility of an informant is crucial to these types of reviews of search warrant affidavits. "Cases that test the sufficiency of affidavits for warrants obtained based on informants are highly fact-specific, but information about the informant's credibility or potential bias is crucial." *United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014). In the case a of newly arrested informant, the only way in which to establish credibility and veracity of information is to corroborate non-innocent, publicly-unknown aspects of the story. While officers do not need to independently develop probable cause, there needs to be more than what could be acquired from the phone book or a Google search.

As in other cases involving the Fourth Amendment, clarity is necessary for all individuals in the system. Law enforcement needs guidance with regard to when they need to do more in order to obtain a search warrant, especially a potentially dangerous no-knock warrant as in this case. Warrant-issuing magistrates and reviewing courts need direction in order to more uniformly carry out their task of being a constitutional check on the intrusion of the state into the private realms of citizens. And last, but not least, citizens need protection against improper violation of their constitutional privacy. Otherwise, search warrants could issue, and initiate intrusions, could rest on the story of a single person and the simple "corroboration" of the look of his or her house, or the car that they drive, or any other piece of public information.

CONCLUSION

This case presents the opportunity to clarify whether corroboration beyond innocent details is a critical component in demonstrating the reliability of a previously unknown confidential informant and any resulting search warrant affidavit. Given that story detail can be fabricated, it is critical to clarify whether corroboration of the informant's information is necessary to support veracity, or else the checks on a confidential informant's information are at risk of being rendered moot. Mr. Hansmeier's case provides the opportunity to evaluate the level of necessary corroboration, or balance against other factors, in just such a situation.

Based on the foregoing, along with the record in his criminal cases, Mr. Hansmeier asks this Court to issue a writ of certiorari and review his case.

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Respectfully Submitted,

/s/ [ADAM STEVENSON]
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