

No. 18-58

**In The
Supreme Court of the United States**

EDWARD JAIMAAL PRICE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

SUPPLEMENTAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
ARGUMENT	1
APPENDIX:	
Order for Disclosure of The United States District Court for the Western District of Virginia entered May 16, 2018.....	1a

TABLE OF AUTHORITIES

Page(s)

CASES

<u>Brady v. Maryland</u> , 373 U.S. 83 (1963)	1, 2, 3, 4
<u>Crane v. Kentucky</u> , 476 U.S. 683, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986)	4
<u>Giglio v. United States</u> , 405 U.S. 150 (1972)	1, 2
<u>Kyles v. Whitley</u> , 514 U.S. 419, 115 S. Ct. 1555 (1995)	2
<u>United States v. Flynn</u> , 131 F. Supp. 742 (1955)	4
<u>United States v. Lighty</u> , 616 F.3d 321, 83 Fed. R. Evid. Serv. (Callaghan) 597 (2010)	1

STATUTE

28 U.S.C. § 2106	3
------------------------	---

CONSTITUTIONAL PROVISION

U.S. CONST. amend. VI	4
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SUPPLEMENTAL BRIEF

Comes now your Appellant, Edward Jaimaal Price, by and through the undersigned counsel, and respectfully moves this Court to remand the pending action to the United States District Court for the Western District of Virginia- Danville Division for a further factual determination. In support of this Supplemental Brief, counsel presents the following:

ARGUMENT

In the normal course of affairs, a trial is the culmination of an adequate period of investigation by all parties and a presentation of the investigation to a judge or jury so that a verdict may be rendered. A litigant is not entitled to a perfect trial, but there must be a fair trial. United States v. Lighty, 616 F.3d 321, 83 Fed. R. Evid. Serv. (Callaghan) 597 (2010). A criminal defendant or a civil litigant may request a new trial, without the consent of the opposing party, within the prescribed and relatively short periods of time after trial based on known and finite evidence which that litigant presents to the court. When new evidence is not finite, or even fully known, a remand is an appropriate first step.

A disclosure made by a prosecutor pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972) is an affirmative acknowledgement of the existence of evidence which could lead to the defendant's establishment of innocence. Since there is no apparent circumstance where a defendant would disagree with a United States Attorney's position that Brady material

exists, such a disclosure has the effect of being a joint declaration.

Brady material is usually subject to a reasonable period of investigation before a trial on the merits. Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555 (1995) Since a reasonable likelihood exists that Brady material could be introduced into a subsequent new trial, even if a dismissal does not occur, a more substantial factual record will exist so that an appellate court can fairly judge a legal issue.

The undersigned counsel received a notice on May 1, 2018 from the United States Attorney's Office that a task force agent involved in Appellant's case, as well as fifty-five (55) other cases in the Western District of Virginia, may have had certain impeachment and investigative information which was material to the Appellant's defense, and such material should have been disclosed pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972).

The task force agent which caused these problems Moved to Intervene on May 3, 2018 to prevent the disclosure; which Motion was heard in the United States District Court for the Western District of Virginia on May 16, 2018.

At the May 16, 2018 hearing, it was Ordered that the material which was the subject of the Motions be disclosed, subject to an Order to Seal, pending further briefing of the issue, which opinion is attached hereto.

Based on preliminary review, this material is thought to include hundreds of pages of emails, disciplinary records, internal emails between certain federal and state agencies, as well as local law enforcement, and other information which establishes a pattern of misbehavior, racial profiling and disregard for the Constitutional rights of criminal defendants.

These materials, in addition to the officer in question's involvement in the Edward Price investigation, raise substantial issues concerning the investigation and court proceedings which resulted in the conviction of Appellant Price.

Once the existence of these materials was known, Appellant requested and was granted additional time to file his Petition for Writ of Certiorari with this Court. Appellant has not yet received the Brady materials, but filed his Petition with the hope that the material would be soon. To date, no disclosures have been received by Appellant, though the United States District Court for the Western District of Virginia ordered these disclosures to be given to Appellant's counsel on May 16, 2018. Appellant filed for an extension of time to file his Petition on May 7, 2018 in hope of receiving the materials. At this time, seventeen weeks later, the Brady material has not been received, likely due to the volume of material which is being produced.

28 U.S.C. § 2106 provides that "The Supreme Court, or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully

brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, *or require such further proceedings to be had as may be just under the circumstances.*” (emphasis added).

The government indicates that the Brady material contains hundreds of pages. This information to be disclosed could not have been known by the defense at the time of the trial or at the time this matter was heard in the Fourth Circuit Court of Appeals. United States v. Flynn, 131 F. Supp. 742 (1955).

The unusual claims that were made regarding the identification of the Appellant appear to be significantly impacted by material that the United States Attorney’s Office has identified as Brady material. The information is not known even at this time and further evidence is capable of being developed from the Brady material.

In light of the Brady disclosures, the current record before this Court is inadequate, as there has been, at a minimum, a failure to present information which would have impacted Appellant’s decision to make a final determination on whether or not Appellant should exercise his right to a jury trial, as guaranteed to him under the Sixth Amendment of the Constitution of the United States. An indispensable consideration regarding the right to a jury trial is the ability to have a fair trial under the Sixth Amendment. Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986).

Judicial economy would be promoted by the presentation of a complete record at the trial level, and the ends of justice would be best served by a complete examination of all the evidence, including the new evidence offered by the United States Attorney's Office.

In light of the foregoing, Appellant respectfully moves this Court to intervene and to remand his case back to the United States District Court for the Western District of Virginia- Danville Division.

This is the 14th of September, 2018.

Edward Jaimaal Price

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