

No. 19-5336

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IN THE
SUPREME COURT OF THE UNITED STATES

JOHN S. BENCHICK-PETITIONER

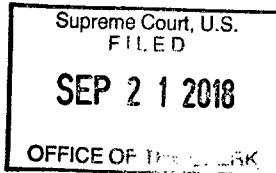
vs.

UNITED STATES OF AMERICA-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT



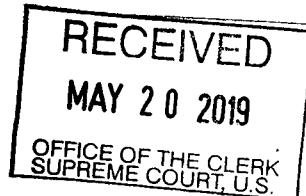
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Defendant have a right to a true and correct record of his trial, that the Court Reporter failed to properly transcribe witness testimony, objections to denied Exculpatory Evidence, statements by the Defendant, i.e., in order to properly argue his appeal and receive Due Process?
2. Does a Defendant have a right to Exculpatory Evidence that was denied at trial, under Rules of Evidence as "too confusing for the jury" and "too time consuming for the court", that clearly denied Defendant Due Process?
3. Does a Defendant have a right to Exculpatory Evidence that the FBI agrees were between the government's witness and the Defendant, yet the Court rules is hearsay? The Court affirmation was clear error.
4. Can the District Court and Appeals Court fail to follow Supreme Court cases Robers v. U.S. and Boccagna v. U.S., that address M.V.R.A. (Mandatory Victims Restitution Act), which go to the heart of restitution, that clearly states that the recipient of restitution has to be a Direct or Proximate victim, and that the victim can not reap a windfall.
5. Does the Government have an obligation and duty to follow precedent cases, such as Napue v. Illinois, Giglio v. U.S., DeMarco v. U.S., and Haskell v. Superintendent Greene SCI, that addresses when the Government knows their witness(s) are lying or are perjuring themselves in order to escape prosecution or a reduction in sentencing?
6. Does a Defendant have a right to an unbiased Prosecutor?

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LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
MANDATORY VICTIMS RESTITUTION ACT of 1996, 18 U.S.C.S. & 3663A	
ROBERS v. U.S., SUPREME COURT 134 S.Ct. 1854; 188 L.Ed. 2d 885; 2014	
BOCCAGNA v. U.S., 450 F. 3d 107, 117, 2006	
NAPUE v. ILLINOIS, 360 US 264, 3 L. Ed. 2d 1217, 1959	
GIGLIO v. U.S., 405 US 150, 154, 31 L Ed. 2d. 104, 92 S Ct 763 (1972)	
DEMARCO v. U.S., 415 US 444, 39 L. Ed. 2d 501 94 S Ct. 1185, 127 LED 2D 391, 510 US 1120, 2016 U.S. LEXIS 2552, 194 L.Ed. 794 (2016)	
HASKELL v. SUPERINTENDENT GREENE SCI, 2017 BL 266640, 3RD CIRCUIT CASE NO. 15- 34278-1-17 2015	

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 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 2-15-18.

[] 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: 3-9-18, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including SEP, 2018 (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 _____. 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).

STATEMENT OF THE CASE

1. Defendant was convicted of 3 counts of Aiding and Abetting, Bank Fraud, his parents mortgages. Defendant turned down the Governments plea offer and was charged in First Superseding Indictment of his own Paid in Full Mortgage, of which he was also convicted. An additional Second Superseding Indictment of Wire Fraud was filed after Defendant turned down a third plea offer, and Defendant was convicted of this charge also.

Defendant was Sentenced Oct. 4, 2016 and filed for a Direct Appeal and was appointed a Public Defender, Paul Laufman, in Jan. 2017, at which time Laufman ordered Court Trial Transcripts. In March, 2017 Defendant received his copy of the Transcripts of the 11 day trial, and proceeded to review them over the following six weeks.

Upon review Defendant explained to Laufman that key passages and segments were missing from the Record. Defendant asked for an extension to reread and review again, while expressing his concerns with the Record, not being correct, nor truthful, as it would be impossible to get a fair and accurate argument in the Direct Appeal, as someone had removed many key issues that needed to be argued. This violated the Defendant's constitutional rights and due process.

Defendant asked Laufman to motion the District Court for a Third Party Review of the Record, at which point Laufman refused. Laufman insisted on writing a brief based on an inaccurate record and refused to let Defendant review or correct his brief. Laufman filed the brief at 11:00 PM on July 10, 2017, which was the last day it was due and sent it by email after the Defendant was locked down for the night.

Laufman failed to follow the direction and instructions of the Defendant, damaging the Direct Appeal. Defendant tried twice to remove Laufman, and the Appeal Court refused, as he had already filed. At this time Defendant filed Pro Se in the District Court in an attempt to get a Third Party Review of the Transcripts. The Court denied, yet allowed the Defendant to file an Appeal, which he did and the Government objected and the Appeals Court denied also.

The Court Reporter stated that she reviewed the recordings of the trial and

they were true and accurate. This statement is not believable as this was an eleven day trial, involving thousands of pages.

(1) Some of the missing segments and passages that are most memorable and apparent are as follows.

1. FBI Agent Link testified that the FBI did forensic analysis on hundreds of texts between the Defendant and witness Doug Knoerr. In spite of this admission, that the text were between them, the court ruled them as hearsay, yet this important admission is missing from the transcripts.

2. Missing also was National City Broker Bill Genna's testimony that Genna never met the father of the Defendant, in spite of Genna having brokered 8 different mortgages through the years, all while being at the closings, in Michigan, while the Defendant lived in Florida, and attended none of the closings. Genna feared the loss of his job of 29 years at National City, as his boss was the Prosecutor's wife. This in spite of Defendant's exhibit of the 8 mortgages, not allowed in to evidence.

3. Loanstar Lending Broker Chris Apeland stated in his testimony that he spoke with the elder Benchick about transacting the Washington Mutual (WAMU) mortgage on 22003 Beck Rd, Northville, Mi. to verify the income he represented to be true. As The Elder Benchick was applying for a N.I.V.A. (No Income Verified Assets) loan, this statement was false, and Apeland filed a false #1003 mortgage Application, that Apeland filled in Benchick's income, in spite of the original showing it blank, as it was not required. Apeland continued to lie, as he stated he only dealt with the Defendant. So the perjured testimony was removed from the Record that showed Apeland talked to the Elder Benchick. Further testimony showed that Apeland forged the Todors mortgage application, changing the Todors income from \$10,000 per month to \$40,000 per month as Apeland was intent on making his commissions from the loans. Yet the Government being aware of this perjured testimony did nothing to correct the testimony and notifying the Court, which goes to the heart of Napue, Giglio, DeMarco and Haskell, violating the Defendants Due Process.

4. Defendants testimony was also missing key segments and passages with respect

to Genna's 8 Mortgages of the elder Benchick and Genna's review and witnessing Benchick's WAMU mortgage of the Florida property that was a mail-away to Michigan as Genna was a valued friend to the Elder Benchick, yet Genna's friendship, did not fit the narrative of the Government's version of Bank Fraud and Aiding and Abetting.

5. Missing from the transcripts is testimony which documents the Defendant's explanation of the circumstances surrounding the purchase of 22080 Beck Rd, Northville, Mi. by the Defendant, while trading his only personal property in Florida to move to Michigan, while moving his girl friend and there twin 1 year old girls, in order to qualify for the Homestead Exemption.

Missing also was testimony that explained why the Defendant moved back to Florida and transfer the property to his mother by quit claim deed, as she paid off the Defendant's mortgage and obtained a new WAMU mortgage.

6. Testimony is missing from the transcripts with respect to the Defendant's explanation of work performed by the Defendant at the Sunset Bay, Florida house, during cross examination of him by Prosecutor Hammoud.

7. Testimony provided during the proceeding, yet missing from the transcript consists of a quote attributed to Prosecutor Hammoud when he stated, [That] Mr. Benchick thinks he's so smart, because he knows all of his dates, facts and figures... [that] is because Mr. Benchick is an accomplished con artist!" (citation omitted). The aforementioned omission is due to the fact this statement made in open court is not in the record, one of the several omissions complained of herein.

Whereas this kind of a remark by Prosecutor Hammoud is less than flattering, the Defendant suggests Mr. Hammoud might find it a saving grace it was one of the less probative, yet more easily recalled parts of the record NOT reflected in the transcript, but should be.

8. A review of the media will clearly reflect that Doug Knoerr's testimony does not match the faulty record of transcript. What is missing and is a glaring omission at that, is Knoerr's explanation of the business relationship, with the remainder left as part of the record a patent falsehood, part of the perjured testimony the

Government failed to correct. Simply stated, the Defendant has a difficult time demonstrating the perjured testimony which the Government knew of and failed to correct when such perjured testimony, although rendered, was failed to have been included in the transcript.

This adds to the already complex agenda the Defendant must accomplish in order to vindicate his position as an innocent man. Correcting the record can only be accomplished through a review of the media, and such is absolutely necessary, given the numerous and material omissions.

Defendant argues these examples go to the heart of his arguments, as the Government provided the discovery which contradicts the testimony rendered. Then, complicating the matter, such testimony is missing from the record! Defendant can not ask the Courts to apply Napue, Giglio, DeMarco or Haskell to the case until there is a reliable record to refer.

9. Most important, is the testimony of the Defendant at his sentencing. Defendant's first words were, "Your Honor, I don't blame the Jury for convicting me, yet I had one hundred sixty-nine pieces of evidence and over one thousand texts, and you only let in a handful." (Citation omitted). Defendant respectfully suggests that there is no doubt that he stated this statement, as the Defendant was body chained and could only read from the first page of his 39 page letter that he wanted to read from, as the Judge refused to hear what the Defendant had written. In fact Defendant asked the Judge to let him read a smaller 10 page letter, which the Judge also refused to hear or let him read.

As the Judge heard what Defendant stated, the Judge replied "OH I DIDN'T THINK I DID THAT". This threw the DEFendant off for a second, as the Judge just admitted that he violated Defendant's Due Process to a fair trial. (Record missing from the transcript).

The statement was the first item that Defendant was looking for when he finally received the copies of the transcripts of his trial, from the Public Defenders Office. Needless to say there is no excuse for the numerous omissions, yet this was stunning

(2) Defendant's right to present exculpatory evidence? Defendant's right to Due Process was violated by the Government's objection to present over 100 exhibit in his defense, with the argument that the exhibits that were mainly provided by the Government discovery, were deemed in their objections, "too confusing for the jury", and "too time consuming for the Court", yet these very objections were wiped out, when the Court Reporter failed to give an accurate and true record, thereby harming the Defendant's right to Direct Appeal, as the Defendant's Public Defender, claimed there was no objection, so Laufman did not raise the argument. Again the inaccurate and false record, denied the Defendant's Due Process. There should be nothing more important to not only this Defendant, yet any Defendant in the Nation, that attempts to right the wrong inflicted on them.

(3) The Government provide 795 text messages between the Defendant and Knoerr, that were conclusive exculpatory evidence, as they laid out the very business contract that the Government claimed did not exist, so in order to further their false allegation, they convinced the Court to rule that evidence the FBI did forensic analysis on, suddenly became hearsay, after testimony by FBI Agent Link, said they were direct communication between the parties, yet again, the Court Reporter wiped out this testimony, violating the Defendant's Due Process and argument in his Direct Appeal, with the incorrect and inaccurate record. This again effects every Defendant charged with a crime, as no one, can argue wrong doing or misuse of power by the Government, unless you have the correct and true facts.

(4) The Government argued and convinced the Court to issue restitution to the amount of almost \$4,200,000 to Chase Bank. Yet under M.V.R.A. (Mandatory Victims Resitution Act), it clearly states that under Robers v. U.S., it clearly states a victim is "a person directly and proximately harmed as a result of the commission of the offense" and it also points out that the Government bears the "burden of demonstrating the amount of the loss substained by a victim as a result of the offense".

WAMU was the originator of the 3 mortgages, yet was taken over by the FDIC in Sep. 2008 and the assets sold to Chase Bank for thirty cents on the dollar. The

amount of the 3 WAMU mortgages totaled, \$7,355,000.00 and were purchased by Chase Bank for \$2,206,500.00. Through 2 Short Sales and 1 Short Payoff Settlement, Chase Received \$3,350,000.00, netting a profit of over \$1,100,000.00. Given that Chase was not even entitled to the profit the Government and the District and Appeal Court errored in awarding an additional \$4,200,000.00 in restitution by the Defendant.

U.S. v. Robers, 1345 Ct. 1854 (2014) Supreme Court observed that the statute allows the Court to avoid an undercompensation or a windfall, *Id* at 1858. In addition Boccagna v. U.S. 450 F. 3d 107, 117 (2nd Cir. 2006) held that M.V.R.A. does NOT permit awards in excess of victims loss *Id* at 117.

If the courts are not going to observe the Supreme Court rulings, how is Justice served, when these illegal Restitution amounts on awarded against defendants, as this affects hundreds, if not thousands of defendants, while enriching Banks not entitled to these awards.

WAMU is a non-existent entity and as such is not an identifiable victim. Chase Bank is not a victim as they did not do the original Mortgages. In fact David Bonderman of TPG Hedge Funds, bought \$1,350,000,000.00 worth of WAMU stock in April, 2008, just 5 months before WAMU failed. He as every stock holder received nothing from the FDIC nor Chase Bank. Chase Bank is not a victim, and entitled to no further restitution. The Government has failed to prove any loss, in spite of WAMU/Chase Bank expert witness testimony at trial, as he knew nothing of M.V.R.A. , in spite of his 30+ years, originating over 20,000 loans, as he testified to. Again more testimony scrubbed from the record, as there is question to where the "Justice" is in the U.S. Justice Department, when the defendant can not get a true and correct copy of the Record.

(5) Does the Government have a duty and obligation to follow *Napue v. Illinois*, 360 US 264, 3 L Ed. 2d. 1217, 1959 as well as *Giglio v. U.S.* 1972. The Government knew that witnesses , Bill Genna and Chris Apeland were lying under oath during there testimony and had exculpatory evidence that was in discovery showing that their witnesses were not telling the truth, yet refused to correct the Record to the Court. Given that Genna was employed by National City Bank/ PNC Bank where

Prosecutor Hammoud's wife was an Executive Vice President, Genna was under extreme pressure to lie and concoct a story that he never met Benchick Sr., in spite of the 8 mortgages done by Genna through National City Bank, as the Government had every HUD Statement in discovery. Genna concocted a story that Defendant was behind these loans, yet every loan was closed in Michigan at Genna's office, as Defendant was living in Florida and never attended any closing.

So even if this far fetched story was to be believed, than why was not Genna charged with Bank Fraud? One can only conclude that Genna was promised or struck a deal to not be prosecuted in exchange for his perjured testimony, yet the Government at no time informed the court of this deal. Under Napue v. Illinois, The State Attorney knew that their witness's testimony was false, but did nothing to correct it. Violating the Defendant's Due Process.

Under Giglio v. U.S., The Government promised coconspirator witness that he would not be prosecuted, if he testified for the Government. The government's case depended almost entirely on the coconspirator's testimony. Again key segments of Genna's testimony was scrubbed. Making it difficult, if not impossible to argue in Direct appeal. Due Process and Justice denied.

Demarco v. U.S. 2016, again shows Justice denied by Perjured Tesimony by a witness, known to be lying to the Government.

Chris Apeland who broked the Mortgage on 22003 Beck Rd, with WAMU, forged the #1003 application by Benchick Sr. that was sent by fax to Apeland with the income left blank as it was to be a N.I.V.A. mortgage (No Income Verified Assets) and required no income, obviously. Yet Apeland decided to falsify Benchick Sr's #1003 by entering income of \$95,000.00 per month, as Apeland falsified Todar's income from \$10,000 to \$40,000.00 per month. Again this was in Ms. Todar's FBI #302 interview, that without question the Government knew about and still decided to use Apeland false and perjured testimony. Again Apeland was the person who should have been prosecuted, yet the Government, without question struck another deal, and did not tell the Court or Jury about this arrangement.

Government knows about Napue v. Illinois, Giglio v. U.S. and DeMarco v. U.S., yet ignores these Supreme Court cases and rulings, in order to deny Defendant's Due Process and Justice, making a mockery of the Court System and Defendant's constitutional rights, as well as every defendant in the nation. The Government has scrubbed the record or directed the Court Reporter to do so. To think that the Court Reporter knew or took upon herself such an endeavor, defies logic.

(6) Does the Defendant have a right to an unbiased Prosecutor? The Prosecutor was personal friends with Metro Title attorney Laura Lynch-McMahon, who lost a civil suit against the Benchicks, and stated in Civil Court, she would prove Bank Fraud involving a mortgage with Republic Bank that had \$269,000.00 owing and because of the egregious conduct by the Title Company, was forced to buy the remaining money owed on the original note. Lynch claimed Fraud, yet the Court found none, and Lynch called Prosecutor Hammoud to prosecute the Defendant.

In summer of 2012, Defendant received a Grand Jury Subpoena for this exact same charge involving the \$269,000.00 that Metro Title was forced to take over. Yet the Grand Jury never returned an indictment and Hammoud concocted 3 charges of Bank Fraud involving Bank Fraud by Defendants parents, then changed to aiding and abetting. Hammoud could not get the WAMU Broker who was in Tampa, Fl., Mark Fitzpatrick to roll over on the Defendant and promptly told this still practicing broker at Sun Trust Bank, was somehow nowhere to be found. Obviously Fitzpatrick informed the Government there was no fraud committed. Yet the Government manufactured a story and by denying Defendant's evidence into trial succeeded in convicting the Defendant.

The Defendant's constitutional rights have been violated by the Prosecutors actions and conduct. The inaccurate transcripts provide by the Court Reporter have further damaged the Defendant's Due Process and ability to prove his innocence and seek Justice.

REASONS FOR GRANTING THE WRIT

Petitioner seeks relief from the actions committed by the Government and

the Court Reporter, who has harmed the Defendant's 5th, 6th and 14th Amendment rights to a fair trial and to have Justice served.

Petitioner begs that this Court allow the injustice served upon the Defendant to be corrected and stop any further actions such as these upon any other unfortunate Defendants.

CONCLUSION

Defendant went to trial in spite of 3 plea offers, expecting to have a fair and honest trial, and be able to present his over 100 exhibits, yet literally every piece of exculpatory evidence was denied, including 795 text messages between the Defendant and Knoerr. Most of these exhibits were derived from the discovery provided by the Government, Yet the Government objected to and succeeded in keeping them from being entered in.

To complicate matters, upon Direct Appeal, when the Defendant received his copy of trial transcripts, it was obvious that key segments and passages were missing which made any argument that much harder to overcome.

Defendant motioned the District Court for a Third Party Review of the Media, yet the Government objected as too costly and time consuming, which the Court agreed with, in spite of denying the Defendant's Due Process as to his 5th, 6th and 14th Amendment rights.

Upon Appeal to the Sixth Circuit Court of Appeals, they also denied the Defendant's right to a True and Correct Record in order to argue his Appeal.

Without a True and Correct Record, it is impossible to argue that the District Court has withheld Exculpatory Evidence that was critical to the Defendant's Defense.

Without a True and Correct Record, it is impossible to argue that the 795 text messages that the FBI agreed were direct conversations between the Defendant and Knoerr proving that the Defendant did not commit Wire Fraud, but instead Knoerr Defrauded the Defendant and his Mother.

Without a True and Correct Record, it is impossible to show that the District Court errored in awarding Chase Bank a restitution of approximately \$4,200,000.00

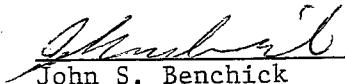
as Chase Bank, was not a Direct Victim as described in M.V.R.A. and Robers v. U.S., and the Government failed to meet it's burden of demonstrating that Chase Bank was a Direct Victim.

Without a True and Correct Record, it is impossible to show that the Government failed to meet it's obligations and duty to show the Court and Jury that they had struck a deal with Genna and Apeland in ordered to not be Prosecuted for Bank Fraud if they offered their Perjured testimony against the Defendant. The Government knew that Napue, Giglio and DeMarco, demanded that they correct any lies or perjured testimony against the Defendant.

Without a True and Correct Record, it becomes that much more difficult to show the biased conduct by the Prosecutor, from his wife working for National City Bank and having control over Genna. Laura Lynch-McMahon's desire to get the Defendant charged and convicted on anything that they can concoct. The Prosecutor should never been in position to abuse his power and attack an innocent man, in order to satisfy his biased convictions.

Without a True and Correct Record, it is impossible for hundreds, if not thousands of Defendants to argue for Truth and Justice. The Defendant asks that this Honorable Court allow his Petition for Writ of Certiorari to proceed and grant him relief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a True and Correct copy of the above was sent by regular U.S. Mail this 20th day of Sep. 2018 to the following:

Mr. Noel J. Francisco
Solicitor General
United States Department of Justice
950 Pennsylvania Ave. NW
Washington DC 20530-0001

