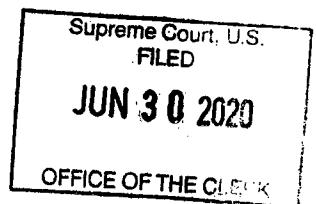


IN THE UNITED STATES SUPREME COURT

20-6496

ORIGINAL

MS. MICHAEL ALFORD
V.
UNITED STATES



CASE NO. 5.16cr28-RH
CIL NO. 5.19cv488-RH
APPEAL NO. 19.13429-HH

PETITION
WRIT OF CERTIORARI

APPEAL FROM THE US COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

INITIAL BRIEF

Ms. Michael Alford

COVER

Ms. Michael Alford
fcl Marianna.
P.O. Box 7007
Marianna, FL 32447

1. Whether The Court erred in Refusing To Order legal assistance, and Forensic Software expert ass'ts. To Obtain and Submit factual evidence of The assault and their whereabouts Operatting Software & functions Microsoft Windows Operating System and Come from on Recieve'd because They did Not know'ing Proving That The Thumbna'il was Not know'ing Recieve'd because They did Not come from on Microsoft Windows Operating System and Submis'ion of factual evidence of The assault and Submis'ion of a 2255 Motion of Support of The Merit's of a 2255 Motion of 3006A(e)(1)(F2) To Submit factual evidence in Obtain expert Services as Affordays under know'ing Recieve'd.
2. Whether The Court erred in Refusing To Order legal assistance To Obtain and Submis'ion of add'l functions evidence Proving That The spam e-mail was Not know'ing Recieve'd.
3. Whether a Pro Se litigant has an equal Right To know'ing Recieve'd.

QUESTIONS

CERTIFICATE OF INTEREST PERSONS:

Michael Alford (Appellant)

Melvin Alford (Father)

Ethel Alford (Mother)

Angie Moore (Sister)

Michelle Daffin (Attorney)

Jonathan Dingus (Attorney)

Barbara Sanders (Attorney)

Larry Bodiford (Judge)

Robert Hinkle (Judge)

Jeffrey Tharp (US Attorney)

ORAL ARGUMENT:

Appellant request oral argument.

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THE COURT OPINIONS:

The united states district court opinion. Exhibit 3- Pages 1-2.

The Eleventh circuit court opinion. Exhibit 4- Pages 1-4.

REFERENCE TO THE OPINION:

C-2

JURISDICTION:

C-2

REFERENCE TO THE OPINION:

1. The Eleventh circuit court opinioned that - irrespective of how the thumbnails were generated, there were images in the folder which could be recovered. id. (P.2; P.4, at 13-16; P.5, at 17-21); (Ex.4, P.4).
2. The Eleventh circuit court opinioned that - Alford was able to adequately state [her] legal argument. id. (P.5, at 22-23; P.6, at 24-27; P.7, at 28-29); (Ex.4, P.4).
3. The Eleventh circuit court opinioned that - Alford received e-mails containing child porn which came through the internet. id. (P.7, at 30-32); (Ex.4, at P.4).

JURISDICTION:

1. On December 23, 2019, the Eleventh circuit concluded that it had jurisdiction over the appeal. See Exhibit 1.
2. The Eleventh circuit opinion on appeal was issued on June 1, 2020. See Exhibit 2-(a),(b).
3. From the above, I had [90] days to file a Writ of Certiorari to the US Supreme court. Warmus V. US, F.App. 2 (11th cir. 2007), Close V. US, 336 F.3d 1283 (11th cir. 2003).

Thus, this court has jurisdiction over the appeal from the Eleventh circuit court. The [90] day toll ran from June 1, 2020, to August 30, 2020.

STATEMENT OF ISSUE - QUESTIONS:

1. Whether the court erred in refusing to order legal assistance, and forensic software expert assistance to obtain and submit factual evidence of the Microsoft Windows operating software and functions, proving that the "thumbnails" was not "knowingly" [received] because they did not come from an "outside source".
2. Whether the court erred in refusing to order legal assistance to obtain and submit additional evidence proving that the spam e-mail was not "knowingly" received.
3. Whether a "Pro se" litigant has an equal right to obtain expert services as attorneys under 3006A(e)(1)-(2) to submit factual evidence in support of the merits of a 2255 motion of innocence.

STATEMENT OF THE CASE:

On July 25, 2019, a motion for counsel, legal or paralegal assistance, and forensic services, was filed to the district court. *id.* (Doc. 164). It was denied by the court on August 22, 2019. *id.* (Doc. 165).

On August 28, 2019, a notice of appeal was filed against the court's denial to order legal and forensic assistance to obtain evidence in support of my innocence. *id.* (Doc. 168).

On September 23, 2019, an appeal brief was filed to the Eleventh circuit court on the court's denial to order counsel and forensic expert assistance.

On October 10, 2019, a response motion to the Government's response was filed to the Eleventh circuit court.

On June 1, 2020, the Eleventh circuit court denied the appeal brief on the basis that Pro se litigants have no right to any counsel, legal paralegal, or expert services, to help assist and prove their innocence.

SUMMARY OF ARGUMENT:

The court erred when it refused to order counsel, legal assistance, and forensic software expert assistance in obtaining factual evidence in proving that the thumbnails did not come from an "outside source", and that the e-mail was not "knowingly".

ARGUMENT:

The law makes clear that - "appointment of counsel can be granted on a 2255 motion". Sneathen V. Sec'y Dept. Of Corr., 2019 US App. Lexis 1255 (11th Cir. 2019), Lewis V. Casey, 518 US 343; 18 USC 3006A(a)(2)(B).

The law also says that - "the court can appoint counsel for any indigent person under 28 USC 1915(e)(1)". Killiam V. Holt, 166 F.3d 1156 (11th Cir. 1999).

The law further mandates that - "counsel can be appointed where the 2255 motion present novel or complex legal and factual issues". Kilgo V. Ricks, 983 F.2d 189, 193 (11th Cir. 1993), Snerthen.

The Government contends that - "the evidence showed that the thumbnails traveled over the internet". id. (Gov. Apl. br. P.19).

The Government also contends that - "Alford already had a highly qualified expert to assist with [her] case". id. (Gov. Apl. br. P.19).

The Government further contends that - "the court is not required to appoint Alford paralegal or counsel to type the 2255, where the record shows [she] was able to file a typed 2255". id. (Gov. Apl. br. P.19).

The Eleventh circuit court contends that - "irrespective of how the thumbnails were generated, there were images in the folder which could recover deleted files". id. (Apl. Denial 11th, 6-1-2020, P.4).

The court also contends that - "Alford was able to adequately state [her] legal argument - such that [she] did not need help in presenting the essential merits of the case". id. (Apl. Denial, P.4).

FACTS OF THE CASE:

1. The indictment presented [2] counts. Count I - "knowingly receipt"; and count II - "knowingly possession". Both counts were based on the same act of conduct that constituted a double jeopardy violation. After trial, the Gov. dismissed count II of possession. id. (Doc. 90, P.1-2); (Doc. 92).
2. The Government conceded that - "the [24] cache files, [like the thumbnails], did not constitute 'receipt' because the evidence was insufficient to prove that they came from an 'outside source'" - required by law. id. (Gov. Apl. br. P.43).
3. Forensic evidence established only that "there were thumbnails located only in the Microsoft Windows Explorer software system, among [482,897] files", id. (Gov.

Forensic Report P.24); (Gov. Ex. 53), and was within [2] user account locations. id. (Gov. Report P.24). Expert testimony established that the thumbnails were copied by the Windows "automatic- caching function". id. (tr. P.254, at 5-8).

4. Forensic evidence also established that the "thumbnails was not stored [on] my Father's computer or [on] any user account". id. (Gov. Forensic Report P.25).

5. Forensic evidence showed that "information from [internet explorer] is stored along with information from [windows explorer]". id. (Tr. P.224, at 7-10). Evidence showed a file path of - (microsoft/windows/explorer/thumbcache). id. (Gov. Forensic Report P.24).

6. Computer expert testimony conceded that the thumbnails at issue, "was part of the operating system of Windows Explorer, as a result of either opening a folder in gallery view, or connecting a phone to import photos, or running a Windows program or application". id. (Tr. P.210, at 7-13; P.211, at 8-10; P.224, at 2-4; P.253, at 15-25; P.254, at 1-4).

7. There were no evidence or testimony that mentioned or concluded that the thumbnails actually linked to the internet or came from an "outside source" - required by law. id.

8. The Government conceded that - "Alford did not have to ever open or view the images [in the zip file] - after receipt, to 'knowingly' receive them". id. (Gov. Apl. br. P.42).

9. The only evidence relevant to the "time period" in question concerning the spam e-mail (zip file) was between December 26, 2008 and July 23, 2009, which was never obtained or presented at trial or on appeal.

10. The law makes clear that - "receiving means to 'knowingly' receive from an 'outside source'". US V. Pruitt, 633 F.3d 763 (11th cir. 2011). Relevant case law prove that thumbnails are not received from the internet or an "outside source". US V. Carpenter, 2016 CCA Lexis 15 (CANF 2016)(thumb-cache files appearing in the system unallocated space were automatically created by the computer when the computer conducted a system back-up at any given point), US V. Lively, 852 F.3d 549 (6th Cir. 2016)(the thumb-cache images were from the SanDisk memory card when

plugged into the computer).

11. The law also mandates that - "'receiving' - in proving 'knowledge', you know [before] you accept an item from an 'outside source'". US V. Polizzi, 549 F.Supp 2d. 308, 342 (2nd Cir. 2007)(for crimes of "receiving", you know [before] you accept an illegal item), US V. Fabiano, 169 F.3d 1299 (10th Cir. 1999)(Fabiano must have the requisite knowledge of the content [before] he received the e-mail attachments), US V. Szymanski, 631 F.3d 794 (6th Cir. 2011)(conviction vacated where no proof that Szymanski sought out or requested the e-mail attachments at a point [prior] to their receipt), US V. Little, 864 F.3d 1283, 1289 (11th Cir. 2017)(Little believed the e-mail attachment contained child porn because evidence showed context of him requesting for such [prior] to their receipt), US V. Samad, 754 F.3d 1091 (4th Cir. 1984)(no proof that Samad had [prior] knowledge of the drugs he received, even after he had opened the package).
12. The need for counsel or computer forensic expert assistance is to prove my legal argument. my argument was that - "the evidence did not constitute knowingly receipt because the thumbnails, like the [24] cache files, did not come from an 'outside source'". id. (Doc. 164, P.2); (Apl br. P.1); (Gov. Apl. br. P.42). Which is required by law. id. Pruitt, at 766.
13. The appeals court contends that - "regardless of how the thumbnails were generated, there were images in the folder which could recover deleted files". id. (Apl. denial, 11th - 6-1-2020, P.4).
14. The court ignored the basis principal of my legal argument. Very simply, the thumbnails did not constitute a crime because they were never "received". They were never "received" because they did not come from an "outside source". id. Pruitt, at 766.
15. Secondly, count II of "knowingly" possession was dismissed on double jeopardy violations. Although the jury was never properly instructed on this requirement. US V. Roders, 731 F.Supp 849 (11th Cir. 2018), Milanovich V. US, 365 US 551, 5 L.Ed.2d 773, 81 S.Ct 728 (1961), US V. Gaddis, 424 US 544, 96 S.Ct 1023, 47 L.Ed.2d 222 (1976)(citing Heflin, 358 US 415). Also, (Supplement Motion 2-24-2020, to ground 7 & 9).
16. Thus, I cannot be accused of "possessing" the same files in a [folder] that I was also accused of "receiving". So regardless of whether "the images were in a system folder that could be recovered", that count - of knowingly possessing, was dismissed on double jeopardy violations and cannot now be argued.

17. Because the court continues to ignore the fact of law that the thumbnails did not constitute "knowingly" receipt, additional evidence of the (Microsoft Windows Explorer Mechanical Functions) is needed to prove that the thumbnails were never cached from an "outside source". US V. Carroll, 886 F.3d 1347 (11th Cir. 2018)(the software mechanics was a critical issue to Carroll's defense concerning his knowledge of sending child porn), US V. Budziak, 697 F.3d 1105 (9th Cir. 2012)(the software functions constituted a very important issue to his defense). id. (Doc. 164, P.2). Without this proof, the court will continue to ignore my legal argument and my innocence.
18. The forensic expert (Mr. Meinke) in my defense failed to prove "where" the thumbnails came from. id. (Doc. 164, P.1-2). Kloth V. Microsoft, 444 F.3d 312 (4th Cir. 2006)(computer system degraded by integration of [Internet Explorer Web Browser] with [Windows Operating System]).
19. Forensic evidence showed a file path of - (Windows Explorer), not (Internet Explorer). id. (Tr. P.224, at 7-10). Thus, additional forensic evidence is [key] in proving that (Windows Explorer) does not cache images from the "internet", and thus does not constitute "receipt". id. Pruitt, at 766.
20. Counsel or computer forensic expert assistance is also needed to obtain evidence of the "software mechanical functions" on the Google Chrome web browser, which was the primary online internet browser. id. (Gov. Ex. 50-F, G, H).
21. The thumbnails file path, however, were in both [Guest] and [Mel] user accounts under - (microsoft/windows/explorer/thumbcache_256.db). id. (Gov. Forensic Report P.24). Based on this evidence, images that were viewed on the internet through the Google Chrome browser would not be cached under "Windows Explorer". Rather, the file path would be under - (chrome/internet/browser).
22. Likewise, with the spam e-mail received in 2009. It too was not received "knowingly". The court contended that - "Alford was able to adequately state [her] legal argument" - but yet the court continues to misbelieve that - "Alford received e-mails containing child porn from the internet" and that "the evidence was sufficient for a reasonable jury to conclude [she] knowingly received child porn". id. (Apl. denial, P.4).
23. The need for counsel or computer forensic expert assistance is critical in

obtaining evidence to prove my legal argument. My argument was that - "I did not 'knowingly' receive an e-mail with knowledge of the content in the zip file [before] it was received in 2009, given that I did not ever have to open or view the images - after receipt, to 'knowingly' receive them". id. (Gov. br. P.42).

24. The spam e-mail was inadvertently sent to the michelleculty013 Google account on July 23, 2009. id. (Gov. Ex. 15). Thus, the only evidence that would be considered relevant to the spam e-mail would be the "time period" between the creation of the michelleculty013 Google account of - (December 26, 2008) id. (Gov. Ex. 7) and the spam e-mail of - (July 23, 1009) id. (Gov. Ex. 15). These [7] months was never presented at trial or on appeal.

25. According to records, there were no evidence presented at trial, [prior] to July 23, 2009, that was relevant to prove "prior knowledge" of the spam e-mail. id. Polizzi, (on crimes of "receiving" - proving knowledge, "you know [before] you accept); Szymanski, (no proof that Szymanski sought out the e-mail attachments at a time period [prior] to their receipt); Fabiano, (evidence must show that Fabiano had [prior] knowledge of the e-mail attachments [before] receiving them); Samad, (no proof of [prior] knowledge of drugs received); Little, (2252A requires that Little believed he was receiving child porn at a point of time [before] receipt).

26. The HP laptop and all its content was purchased and created in [2011] after the relevant time period of 2009. id. (Gov. Ex. 47-B). My mobile phone and all its content was also purchased and created in [2011] after the time period in question in 2009. id. (Gov. Ex. 46-A,E). The [284] pages of search history and search terms were all in [2014] also after the relevant time period of 2009. id. (Gov. Ex. 4). The teen and preteen models were all specifically on the laptop created after [2011]. id. (Gov. Ex. 47-B, 49). So none of this evidence is relevant to the 2009 spam e-mail.

27. Because the court continues to ignor the fact of law that the spam e-mail did not constitute "knowingly" receipt, additional evidence between these [7] months is needed to prove that I had no "prior knowledge" to the content in the zip file. Thus, counsel and or forensic software expert assistance is needed to obtain additional evidence within the context of the michelleculty013 Google account, the content within the desktop computer, and the Yahoo account, to prove that there were no communication between the sender and myself to show proof that I had no

[prior] awareness of what the actual content depicted in the compressed zip file.

28. Because "prior knowledge" is required to prove the element of "knowingly" receipt, only evidence [prior] to July 23, 2009, would be considered relevant to show "knowledge" of what the content of the zip file depicted [before] it was received. Thus, evidence between (10-26-2008) and (7-23-2009) is needed to prove that the spam e-mail was merely received inadvertently.
29. The [7] months of evidence is critical to my defense because it will show that I had no awareness to the content in the zip file. It will show that I never sought for this zip file or ever knew the individual who sent it. It will show that I never spoken a single word to this person, never e-mailed her, never called her or requested anything from her. It will show that I could not have possible [believed] that the zip file actually contained child porn. id. Budziak, 697 F.3d at 1112 (the computer information Budziak sought was critical to his defense making it "more likely" that he did not "knowingly" distribute child porn).
30. The appeals court has a misbelief that - "alford received e-mails containing child porn which came through the internet". id. (Apl denial, P.4). Receiving child porn from the internet is not a crime. id. Pruitt, 638 F.3d at 766 (we so stress that section 2252A(a)(2) criminalizes only "knowingly" receipt). The court doesn't even abide by their own ruling. So its most critical to have counsel and or forensic assistance to obtain the relevant evidence between December 26, 2008 and July 23, 2009, to prove that the spam e-mail was not received "knowingly".
31. It is necessary to appoint counsel and or forensic assistance to obtain all the necessary computer software evidence to prove my innocence. I do not have access to any of this material. I have begged my family and friends ever since 2017 to help me obtain the evidence to support my legal argument of my actual innocence. My parents were trying to help obtain the material to support my innocence, but my Father went to Heaven on December 26, 2017, and my Mother had a severe stroke and can no longer walk. I've then begged my Sister to help obtain the material for nearly [4] years, and have received nothing. I've even asked next-door friends, and others, for help, and still have not received anything.
32. Without the supporting evidence, the court refuses to see the truth, refuses to accept my statements under oath, refuses to hear the facts I presented from the trial records, and refuses to declare my innocence.

CONCLUSION:

33. Based on the foregoing, including my right to obtain the material necessary to prove the software mechanical functions, and the [7] months of missing evidence that prove my innocence, I ask that the court's erroneous err be reversed and a mandate be issued that the court appoint counsel and or forensic expert assistance to assist in obtaining the material critical needed to prove my innocence.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the US Attorney's office at 21 East Garden St., Ste. 400, Pensacola, Fl. 32502.

By Michael Alford on this 15 day of ~~July~~^{Nov-} 2020

Ms. Michael Alford
[REDACTED]
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