Exhibit #17

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Leonard Green
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: October 04, 2007

Charles Gary Bruce
U.S. Penitentiary
P.O. Box 1000
Lewisburg, PA 17837-0000

Mr. Stephen C. Parker
U.S. Attorney's Office
167 N. Main Street
Suite 800 Clifford Davis Federal Building
Memphis, TN 38103-1827

Re: No. 07-5385, *InRe:Charles G.Bruce*
Originating Case No. 99-99999

Dear Mr. Bruce and Counsel:

The Court issued the enclosed Order today in this appeal.

Sincerely yours,

s/Linda M. Niesen
Case Manager
Direct Dial No. 513-564-7038
Fax No. 513-564-7094
CA06-Team3@ca6.uscourts.gov

cc: Mr. Thomas M. Gould
Honorable James D. Todd

Enclosure

Appx A

No. 07-5385

FILED

OCT - 4 2007

LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: CHARLES GARY BRUCE,

Movant.

ORDER

Before: BATCHELDER and GILMAN, Circuit Judges; STAFFORD, District Judge.*

Charles Gary Bruce moves the court, pursuant to 28 U.S.C. § 2244, for an order granting permission to file in the district court a second motion to vacate his sentence filed under 28 U.S.C. § 2255.

In 1996, Bruce was convicted of conspiring to rob a business affecting interstate commerce in violation of 18 U.S.C. § 1951; robbing a business affecting interstate commerce in violation of 18 U.S.C. § 1951; using a firearm during the commission of a robbery in violation of 18 U.S.C. § 924(c); destroying by fire a business affecting interstate commerce in violation of 18 U.S.C. § 844(h)(1); murdering to prevent communication to a law enforcement official of a federal offense in violation of 18 U.S.C. § 1512(a)(1); conspiring to obstruct justice by interfering with the investigation of the robbery and murder in violation of 18 U.S.C. § 371; and escaping from custody in violation of 18 U.S.C. § 751. He was sentenced to life imprisonment. His convictions were affirmed on direct appeal. *United States v. Bruce*, Nos. 96-6590/6591, 1998 WL 165144 (6th Cir. Mar. 31, 1998). The Supreme Court denied Bruce's petition for a writ of certiorari on October 5,

*The Honorable William H. Stafford, Jr., United States District Judge for the Northern District of Florida, sitting by designation.

1998. *Bruce v. United States*, 525 U.S. 882 (1998). The parties agree that Bruce has not previously filed a motion to vacate his sentence under § 2255.

Certification under § 2244 (as cross-referenced in § 2255) is required only if there has been a prior motion to vacate filed. *See* 28 U.S.C. §§ 2244(a); 2255. Because Bruce has not filed a previous § 2255 motion in the district court, he does not need certification under §§ 2244 and 2255 to file his proposed motion to vacate.

Accordingly, Bruce's request before this court is denied as unnecessary. Bruce is free to file his proposed motion to vacate directly with the district court.

ENTERED BY ORDER OF THE COURT

Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	Civ. No. 08-1136-JDT-egb
	)	Crim. No. 93-10052-01-JDT
CHARLES GARY BRUCE,	)	
	)	
Defendant.	)	

ORDER TRANSFERRING MOTION FOR RELIEF FROM JUDGMENT TO THE SIXTH CIRCUIT PURSUANT TO 28 U.S.C. § 2244(b)(3)
ORDER DENYING MOTIONS TO PROCEED *IN FORMA PAUPERIS*
AND
ORDER DENYING MOTION TO SUBMIT VIDEO EXHIBIT

Defendant Charles Gary Bruce filed a *pro se* motion pursuant to 28 U.S.C. § 2255 on June 6, 2008. (Docket Entry 1.) The Court directed the United States to respond, and an answer was filed on March 25, 2009 (D.E. 8); Defendant then filed a reply (D.E. 11). On February 4, 2011, the Court denied the § 2255 motion on the grounds that Bruce's claims were untimely. (D.E. 17 at 15-27.) The Court also determined that, even if the "new" evidence submitted by Bruce was considered, he had not established a claim of actual innocence that would toll the statute of limitations. (Id. at 27-41.) Judgment was entered the same day. (D.E. 18.) Bruce filed a notice of appeal (D.E. 19), and the Sixth Circuit denied a certificate of appealability. Bruce v. United States, No. 11-5251 (6th Cir. Sept. 20, 2011).

On February 3, 2012, Bruce filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b), offering what he maintains is more newly discovered evidence that he is actually innocent.[1] However, use of Rule 60(b) to consider a claim of newly discovered evidence in a § 2255 case "would impermissibly circumvent the requirement that a successive [§ 2255 motion] be precertified by the court of appeals as falling within an exception to the successive-petition bar. [28 U.S.C.] § 2244(b)(3)." Gonzalez v Crosby, 545 U.S. 524, 531-32 (2005). Therefore, Bruce's motion under Rule 60(b) must be construed as an attempt to file a second or successive § 2255 motion.

Under In re Sims, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam), "when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from [the Sixth Circuit], the district court shall transfer the document to [the Sixth Circuit] pursuant to 28 U.S.C. § 1631." Therefore, Bruce's motion for relief from judgment under Rule 60(b) is hereby TRANSFERRED to the United States Court of Appeals for the Sixth Circuit.

Along with the Rule 60(b) motion, Bruce also filed a motion to proceed *in forma pauperis*. (D.E. 26.) On February 17, 2012, he filed a motion to submit a video exhibit and another motion to proceed *in forma pauperis*. (D.E. 27 & 28.) The motions to proceed *in forma pauperis* are DENIED at this time. There is no filing fee attached to a petition to file a second or successive § 2255 motion, 6th Cir. R. 22(b)(4), and this Court will not appoint

[1] However, as was the case in his original § 2255 motion, nowhere in his Rule 60(b) motion does Bruce actually claim that his conviction was the result of a constitutional violation. (D.E. 17 at 41-46.)

counsel at this stage of the proceeding. The motion to submit a video exhibit is also DENIED, pending the decision of the Sixth Circuit .[2]

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

[2] In the motion to submit the exhibit, Bruce refers to the video as the "deposition" of Tammy Cook, the person whose affidavit has been submitted as new evidence. However, the Rule 60(b) motion and attached exhibits make it clear that the exhibit he seeks to submit is actually a video "statement" by Ms. Cook that was taken with a cell phone by a friend, Barbie Swearingen. (D.E. 25 at 2; D.E. 25-1 at 2; D.E. 25-2 at 1.)

No. 10-6011

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: CHARLES GARY BRUCE,)
) ORDER
Petitioner.)

Before: BATCHELDER, Chief Judge; GUY and GRIFFIN, Circuit Judges.

Charles Gary Bruce petitions this court for a writ of mandamus, asking the court to compel the district court to rule on his pending motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. He also moves to proceed in forma pauperis.

On June 6, 2008, Bruce filed his motion to vacate in the district court. The government responded on January 15, 2009. Bruce replied on June 8, 2009. As yet, there has been no further action in the district court.

"'[M]andamus relief is an extraordinary remedy.'" *John B. v. Goetz*, 531 F.3d 448, 457 (6th Cir. 2008) (quoting *In re Perrigo Co.*, 128 F.3d 430, 435 (6th Cir. 1997)). "Traditionally, writs of mandamus [are] used only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *In re Prof'ls Direct Ins. Co.*, 578 F.3d 432, 437 (6th Cir. 2009) (internal quotation and citation omitted).

Bruce's motion to vacate has been pending before the district court since 2008, and has been ripe for review for over a year. From the face of the docket, we cannot determine if there are any extraneous factors why his petition has not yet been reviewed. Under these circumstances, a response from the district court would be helpful.

Therefore, the district court judge to whom this case has been assigned is **INVITED** to respond to the petition for a writ of mandamus within 28 days of the entry of this order. *See* Fed. R. App. P. 21(b)(4). A ruling on Bruce's motion to proceed in forma pauperis is **RESERVED** pending our consideration of any response received from the district court judge.

ENTERED BY ORDER OF THE COURT

Clerk

No. 10-6011

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: CHARLES GARY BRUCE,)
) ORDER
Petitioner.)

Before: BATCHELDER, Chief Judge; GUY and GRIFFIN, Circuit Judges.

Charles Gary Bruce petitions this court for a writ of mandamus, asking the court to compel the district court to rule on his pending motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. He also moves to proceed in forma pauperis.

On February 4, 2011, the district court denied Bruce's motion to vacate, and he has since taken an appeal from that order. Therefore, the relief he seeks is moot.

The petition for a writ of mandamus is **DISMISSED AS MOOT**. The motion to proceed in forma pauperis is **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

Leonard Green

Clerk

UNITED STATES OF AMERICA, Plaintiff, VS. CHARLES GARY BRUCE, Defendant.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, EASTERN DIVISION
2011 U.S. Dist. LEXIS 158245
Civ. No. 08-1136-JDT-egb,Crim. No. 93-10052-01-JDT
February 4, 2011, Filed

Editorial Information: Subsequent History

Certificate of appealability denied, Motion denied by, As moot Bruce v. United States, 2011 U.S. App. LEXIS 26699 (6th Cir., Sept. 20, 2011)Motion denied by, Transferred by United States v. Bruce, 2012 U.S. Dist. LEXIS 207431 (W.D. Tenn., Feb. 21, 2012)Motion denied by In re Bruce, 2014 U.S. App. LEXIS 25320 (6th Cir., Apr. 16, 2014)

Editorial Information: Prior History

United States v. Bruce, 142 F.3d 437, 1998 U.S. App. LEXIS 15955 (6th Cir. Tenn., Mar. 31, 1998)

Counsel **Charles Gary Bruce** (1:08-cv-01136-JDT-egb), Movant, Pro se, Lewisburg, PA.

For United States of America (1:08-cv-01136-JDT-egb), Respondent: John D. Fabian, LEAD ATTORNEY, UNITED STATES ATTORNEY'S OFFICE, Memphis, TN; Stephen C. Parker, LEAD ATTORNEY, U.S. ATTORNEY'S OFFICE, Memphis, TN.

For USA (1:93-cr-10052-JDT), Plaintiff: Stephen C. Parker, LEAD ATTORNEY, U.S. ATTORNEY'S OFFICE, Memphis, TN.

Judges: JAMES D. TODD, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: JAMES D. TODD

Opinion

ORDER DENYING MOTION PURSUANT TO 28 U.S.C. § 2255 ORDER DENYING CERTIFICATE OF APPEALABILITY ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH AND ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

On June 6, 2008, Defendant **Charles Gary Bruce**, Bureau of Prisons inmate registration number 03377-033 ("Defendant" or "Gary"), an inmate at the United States Penitentiary in Lewisburg, Pennsylvania, filed a *pro se* motion pursuant to 28 U.S.C. § 2255, accompanied by a legal memorandum and numerous exhibits. (Docket Entry 1.) On July 7, 2008, Defendant filed a corrected version of one page of his motion. (D.E. 2.) United States District Judge J. Daniel Breen issued an order on November 13, 2008, directing the Government to respond. (D.E. 3.) **{2011 U.S. Dist. LEXIS 2}**The Government filed its response on March 25, 2009 (D.E. 8), and Defendant filed his reply on June 8, 2009 (D.E. 11). Defendant filed a correction to his reply on June 12, 2009. (D.E. 12.)1

Gary Bruce is a Defendant in two federal criminal cases filed in this district. On November 1, 1993, a

federal grand jury in this district returned a ten-count indictment against Defendant and four codefendants, Jerry Lee Bruce ("Jerry"), Robert H. Bruce ("Robert"), William David Riales ("Riales"), and Mary Kathleen Ryion a/k/a Mary Kathleen Bruce ("Mary Kathleen"). United States v. Gary Charles Bruce, et al., No. 93-10052-01-JDT (W.D. Tenn.). Gary, Jerry, and Robert are brothers and Mary Kathleen is their mother. Gary was named in counts 1 through 8. The first count charged Gary, Jerry, Robert, and Riales with conspiring in violation of 18 U.S.C. § 1951 to: (i) obtain money and property from various mussel shell buyers in Benton County, Tennessee, including but not limited to Danny Vine and Della Thornton, by robbery in violation of 18 U.S.C. § 1951(a); (ii) maliciously destroy, by fire, the building used by Danny Vine **{2011 U.S. Dist. LEXIS 3}**in interstate commerce for the purchase of mussel shells, in violation of 18 U.S.C. § 844(i); and (iii) kill Danny Vine and Della Thornton with intent to prevent the communication to a law enforcement officer information relating to the commission of a federal offense, in violation of 18 U.S.C. § 1512(a)(1)(C). The second count charged Gary, Jerry, Robert, and Riales, aided and abetted by each other, with obstructing commerce by robbery, in the unlawful taking of a motor vehicle, a trailer, and mussel shells from and in the presence of Vine and Thornton by means of actual or threatened violence, in violation of 18 U.S.C. §§ 1951 and 2. Count three charged Gary, Jerry, Robert, and Riales, aided and abetted by each other, with carrying and using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). Count four charged Gary, Jerry, Robert, and Riales, aided and abetted by each other, with arson in violation of 18 U.S.C. §§ 844(e) and 2. The fifth count charged Gary, Jerry, Robert, and Riales, aided and abetted by each other, with using fire to commit robbery in violation of the Hobbs Act and killing a person to prevent communication to a law enforcement **{2011 U.S. Dist. LEXIS 4}**officer, in violation of 18 U.S.C. §§ 844(h)(1) and 2. The sixth count charged Gary, Jerry, Robert, and Riales, aided and abetted by each other, with killing Vine to prevent him from communicating to a law enforcement officer the fact that Vine could identify these defendants as the individuals who robbed him and burned his place of business, in violation of 18 U.S.C. §§ 1512(a)(1)(C) and 2. Count seven charged Gary, Jerry, Robert, and Riales, aided and abetted by each other, with killing Thornton to prevent her from communicating to a law enforcement officer the fact that she could identify these defendants as the individuals who had robbed Vine and burned his place of business, in violation of 18 U.S.C. §§ 1512(a)(1)(C) and 2. Count eight charged all Defendants with conspiring, in violation of 18 U.S.C. § 371 to: (i) obstruct justice and commit perjury before the grand jury in order to interfere with the grand jury's investigation of the robbery and killing of Vine and Thornton, in violation of 18 U.S.C. § 1623(a); and (ii) intimidate and threaten witnesses with intent to prevent the communication to a law enforcement officer information relating to a federal offense, in violation **{2011 U.S. Dist. LEXIS 5}**of 18 U.S.C. § 1512(b)(3). United States v. Bruce, et al., No. 93-10052-01-JDT (W.D. Tenn.).

On July 27, 1994, while awaiting trial, Gary escaped from custody, and he was recaptured on September 22, 1995. On October 16, 1995, a federal grand jury returned a single-count indictment charging Defendant with escape, in violation of 18 U.S.C. § 371. United States v. Bruce, No. 95-10051-JDT (W.D. Tenn.).

The factual basis for all of these charges is summarized in Defendant's presentence report:

> 11. According to Assistant United States Attorney Steve Parker, in the fall of 1990, Gary Bruce, Jerry Bruce, Robert Bruce and probably David Riales began planning to rob several mussel shell buyers in and around Benton County, Tennessee. Discussion between the Bruce's [sic] and one Mike Franklin concerned potential targets of this robbery scheme. The business of Danny Vine was specifically discussed as the best candidate to be robbed as his place of business and home were located in an isolated, wooded area. The conspirators also discussed other potential victims of their robbery scheme.

12. During December of 1990, Jerry, Robert and Gary Bruce and Mike Franklin went out planning **{2011 U.S. Dist. LEXIS 6}**to rob American Shell Company. They planned to steal a large load of mussel shells but upon arriving at American Shell Company, they found it was protected by a security guard. Robert Bruce suggested that they simply kill the security guard. At that time, Gary Bruce was armed with a .38 caliber blue steel revolver. Mike Franklin then backed out of the robbery, and the plans were discarded.

13. On December 31, 1990, Gray Bruce, Mike Franklin, along with Franklin's girlfriend, Patricia Henderson, went to Louisiana to test dive for mussel shells. They were gone for approximately one week and returned without making any money. Several days later, Mike Franklin and Gary Bruce left for Louisiana after Gary borrowed $1,000 from his brother Mike Bruce. They returned to Benton County on January 15, 1991, totally broke, and Gary Bruce in debt to his brother for $1,000.

14. On the afternoon of January 15, 1991, Gary Bruce, Jerry Bruce, Robert Bruce, David Riales and Ira Travis met at the trailer home of Patricia Henderson where they began drinking beer and Vodka [sic]. Later that evening, Gary Bruce made the statement that Butch Ballinger, a local shell buyer, had offered him $4,000 to kill Danny **{2011 U.S. Dist. LEXIS 7}**Vine. However, Gary stated, "that was not enough." They then huddled in the kitchen talking about Danny Vine. Patricia Henderson overheard Gary Bruce saying, "I guarantee we can do it."

15. Ira Travis testified during the **Charles Gary Bruce** trial that on January 15, 1991, while at Patricia Henderson's trailer, Gary Bruce initiated a conversation concerning Butch Ballinger's offer of money to kill Danny Vine. The subjects present discussed the possibility and decided that they could make more money by killing Vine and robbing him of the cash on hand and the load of shells. The five then went outside and Gary called for a vote to see who would commit the murder. Gary, Jerry, Robert, and David Riales all raised their hand [sic] while Ira did not. Jerry and Robert then began calling [Ira] a "pussy" and a "wimp." Ira got mad and stormed inside the trailer. Gary came inside and calmed Ira, asking him not to tell anyone of the conversation he had heard.

16. Shortly thereafter, the remaining defendants, Jerry, Robert and Riales, came back in as a group. Robert walked around saying, "We can do this, we can do this."

17. The following day at approximately sundown, Jerry, Robert and Gary pulled **{2011 U.S. Dist. LEXIS 8}**up at the Eva Road Grocery owned by Ralph Sentell. There the three got out of the truck and Gary directed Robert toward the gas pumps. Robert went out and filled up two five gallon plastic cans of gasoline. Mr. Sentell testified that this had never happened before or since that night. Upon leaving the store, Gary kicked open the front door and stated, "it's gonna be a fun time tonight." At that time, the subjects were driving Jerry Bruce's blue and white Chevrolet pickup.

18. Later that evening, at approximately 9 PM, three witnesses saw the defendants at the Camden court square. The blue and white pickup was pulling around the square with David Riales and Robert Bruce sitting in the middle and passenger side. They could not identify the driver. The witnesses last saw the truck turning back toward Danny Vine's house off the court square. Danny Vine lived on Kennon Road, a side road off of Eva Road.

19. Later that evening, Carla Candella saw two pickup trucks pulling in Danny Vine's driveway, driving at a high rate of speed. She identified the second truck as Jerry Bruce's truck. The first truck she testified was a larger truck that set high like a four-wheel drive truck. This fit the **{2011 U.S. Dist. LEXIS 9}**description of Gary Bruce's truck.

20. According to the testimony of James Sanders, Mr. Riales' cell mate, when the defendants pulled into the Vine driveway, no one was home. They were in the process of unhooking a trailer load of mussel shells from Danny Vine's truck, when Danny Vine and Della Thornton pulled up in Della's car. Danny Vine jumped out of the car and a fight ensued. Once the four subjects gained control of Vine and Thornton, they took them into the house, tied them up, sat them on the couch and executed them. Sanders testified that Riales told him Vine was shot in the head and that his face "puffed out when he was shot."

21. Following these events, the assailants obtained the keys to Danny Vine's truck and witnesses on Kennon Road saw this vehicle leave by itself driven at a high rate of speed. Mussel shells were found scattered on the roadway. As the truck was approaching the intersection of Kennon Road and Eva Road, it almost collided with another truck in which Mr. John Norwell was the passenger. Mr. Norwell later picked David Riales out of a lineup as being the driver of Danny Vine's truck that evening.

22. Danny Vine's truck was driven a short distance from the scene **{2011 U.S. Dist. LEXIS 10}**of the offense to Beaver Dam Road where it was pulled up and abandoned on a gravel pit road in a wooded area. Another truck was then backed up to the trailer and approximately $2,500 in mussel shells were loaded onto the other truck. Danny Vine's truck and trailer were left abandoned at that location.

23. Neighbors of the Vines later testified that shortly after hearing several trucks leave at a high rate of speed, they looked out their windows and saw flames peaking over the top of the woods where Danny Vine's house was located. At that time the fire department was dispatched, but by the time of their arrival, the Vine house was burned to the ground. Since Vine's truck and trailer were gone, authorities assumed that no one was home and departed the scene. Vine's relatives were not notified until late in the afternoon of January 17. Upon their arrival at the scene, they found the charred remains of Danny Vine and Della Thornton.

24. The crime scene investigation yielded little information except that arson investigators determined gasoline had been poured throughout the house. In addition, lab tests from pieces of carpet under the floor board revealed the presence of gasoline. Arson **{2011 U.S. Dist. LEXIS 11}**investigators were able to determine where gasoline had been poured out the front door onto the front porch, burning away portions of the porch. This left what are known as "pour patterns" on the beams of the porch.

25. Forensic anthropologists from the University of Tennessee were then summoned and the skeletal remains were excavated. Following an examination of the remains, these specialists opined that the bodies of the deceased were both seated on the couch prior to the fire. After taking the bodies back to the University of Tennessee and reconstructing the remains of the skulls, it was determined that the probable cause of death on Della Thornton was a gunshot wound to the head. During reconstruction of Danny Vine's skull, a copper jacket from a .38 caliber bullet was found in between Mr. Vine's eyes. It was then ruled that Mr. Vine was killed by a gunshot wound to the head. In the anthropologists' opinions, accelerant had to be poured directly onto the bodies to produce charring to such a great extent.

26. Beginning on the morning following the robbery, the Bruces began making shell sales which over the next nine days totaled approximately $2,500. This equalled the same amount **{2011 U.S. Dist. LEXIS 12}**as the value of the shells taken from Danny Vine's residence. Moreover, Danny Vine was the only person in the area who would buy specific types of shells called river shells. Nine days after the sale of the river shells, Jerry Bruce, along with Mike Franklin, went to

Kentucky and passed off $650 worth of river shells as lake shells.

27. Gary Charles Bruce threatened Shannon Cooper Norwood after the investigation started. He told Ms. Norwood that he could blow her brains out because he did not have a conscious [sic]. Mr. Bruce had also told Patricia Henderson that he had two alibis. At first he said he was at home with the children all night. Later, he changed his alibi to state he was at the pool room and his mother was the alibi witness.

28. Following the murder, the entire Bruce family tried to intimidate the Vine family, particularly Rev. Vine, who was pushing law enforcement to solve the case. On one occasion, when Rev. Vine was driving to the river, Gary and other Bruce brothers chased him down the road. When he pulled over, they slowed their vehicles and gave him intimidating stares. On other occasions, the Bruces would pull in front of Rev. Vine or give him "the finger", or simply **{2011 U.S. Dist. LEXIS 13}**wave like they knew each other. All of this was done to intimidate the Vine family.

29. Upon being interviewed by the Tennessee Bureau of Investigation officials, Jerry, Robert and Gary Bruce alibied that they had been with their mother at J.C. Bruce's trailer shooting pool on the night of the offense. Mrs. Bruce gave a statement corroborating this information.

30. Shannon Norwood, however, testified that she was at the trailer on the evening of the offenses with Mrs. Bruce and recalled that the defendants were not present. In fact, she stated that they were calling around attempting to locate the defendants during the course of that evening. Mrs. Norwood further stated that she left the trailer at approximately 9 PM and at that time, none of the brothers were home. Additionally, defendants' alibi statements put them at the house at approximately 9 PM. This was at the time that three witnesses saw them circling the Camden court square.

31. Several days after the 16th of January, Robert Bruce approached Ms. Tammy Rayburn in Puryear, Tennessee. At that time he asked Ms. Rayburn if someone asked her where he was on a particular night if she would state that she was with him. Ms. Rayburn **{2011 U.S. Dist. LEXIS 14}**refused as she had recently been married and could not explain why she was spending the night with Robert Bruce. At that point, Mr. Bruce offered Ms. Rayburn money to give a statement. Again, she refused. Approximately a week and a half later, Ms. Rayburn returned home to Camden, Tennessee and learned of Danny Vine and Della Thornton's death. She then realized that Robert Bruce had approached her shortly after the murders. During the following Christmas, Ms. Rayburn had an opportunity to speak with Robert Bruce privately. She stated to Mr. Bruce that he had almost drug her into the murder. Mr. Bruce responded that he was glad he didn't drag her into it and that it was all over. He also stated that "you know I couldn't kill anybody, all I did was drive Gary's truck because I owed Gary a favor." Additionally, Robert was dating Ms. Tabbath Greenarch. Ms. Greenarch was pressuring Robert to attend church. At one point, Mr. Bruce broke down crying, and stated, "I can't go. I've killed two people."

32. Later, Special Agent Alvin Daniels received information that Gary Bruce owned a .38 caliber pistol of the same type that was used to kill Danny Vine and Della Thornton. He was able to find two **{2011 U.S. Dist. LEXIS 15}**locations where the pistol had been fired into trees. The first location was on Gary Bruce's property. A search warrant was issued and a sweetgum tree was cut down. During the serving of the search warrant, Agent Daniels was threatened by Gary Bruce.

33. Patricia Henderson had been with Gary Bruce when he shot into a tree on TVA property off of Highway 70. Agent Daniels located this area and dug a bullet out of this tree. The bullets were then sent to the TBI laboratory where they were compared by ballistics experts to the bullet

removed from Danny Vine's skull. The laboratory concluded that Gary Bruce's .38 had fired the bullet that was recovered from Danny Vine's head.

34. During the course of the grand jury investigation, intimidation of witnesses was a consistent problem. As stated above, Agent Alvin Daniels was threatened by Gary Bruce during the service of a search warrant. Tammy Rayburn reported that Mrs. Bruce pulled up and sat in a car across the street from her residence watching her house. In addition, Sheila Norwood was followed into a store by Mrs. Bruce and felt intimidated. Upon being called to appear before a grand jury, Robert, Gary and William Riales all stuck to their **{2011 U.S. Dist. LEXIS 16}**original alibi stories. Mr. Riales' alibi was that he was at his home with his girlfriend, Lisa Taylor, on the night in question. Mrs. Bruce appeared before the grand jury and testified that her sons were playing pool as noted above. Jerry Bruce claimed to have amnesia.

35. During the course of the investigation, Lisa Taylor, Mr. Riales' girlfriend, recanted her alibi statement. While Riales stated that he was home all day and all night on January 16, 1991, she stated that he was gone for several hours during the afternoon and returned around dusk. She then stated she went to bed early that night and could not say for certain whether Mr. Riales was in the house. However, she was adamant that she slept very lightly and felt that she would have heard the defendant had he left the house.

36. While awaiting trial, Gary Bruce and Jerry Bruce were incarcerated with Mr. James McGrogan at the McNairy County Jail. In the presence of Mr. McGrogan, Jerry and Gary Bruce laughed about how they committed the murder, particularly, Jerry asked about how gas samples could have been recovered from the scene. He stated, "they should have as much gas as I poured throughout the house." Mr. McGrogan informed **{2011 U.S. Dist. LEXIS 17}**that Jerry Bruce made a statement about a 12 week old puppy that was in the house that was not shot but left in the house to burn alive. Jerry Bruce complained that during the course of the robbery, the puppy kept jumping on his leg. Mussel shell buyers who sold shells the day before the offense was committed, gave testimony as to how the dog was very playful and would jump and nip at their legs.

37. During the course of his incarceration, David Riales was placed in a cell with Mr. James Sanders. Mr. Riales admitted to Mr. Sanders that he was involved in the offense and advised that Gary Bruce had fired the shot that killed Danny Vine. He further told Sanders that they were in the process of unhooking the trailer from Danny Vine's truck when Danny Vine and Della Thornton pulled up and a fight ensued. This information was corroborated by physical evidence. When Della Thornton's car was found at the scene, the keys were located still in the ignition. The following day, when a mussel shell diver pulled up, the car's buzzer was sounding to indicate that either the lights were on or the door was open. The driver could not recall which was the case but felt that he had either turned the lights **{2011 U.S. Dist. LEXIS 18}**off or shut the door to stop the buzzer. Mr. Sanders' statement was further corroborated by proof that Gary Bruce had a black eye the day after the robberies.

38. During the course of the trial, Mr. Riales called a new alibi witness, Becky Medlin. He had never mentioned Ms. Medlin as a witness during the four years of the investigation. Ms. Medlin testified that she had come over to make a drug buy from Mr. Riales on January 16, 1991, at approximately 9 PM. She further testified that she stayed for over an hour. She stated that her husband and three small children were also present on that evening. However, Lisa Taylor, Mr. Riales' girlfriend at that time, stated that she slept very lightly, and had never heard any visitors on that evening. Becky Medlin could not properly explain why she had never come forward to offer this information on Mr. Riales' behalf, or could Mr. Riales explain why he had not offered

Ms. Medlin as an alibi witness during the course of the investigation.

39. Counts 8-10 of the indictment pertained to a conspiracy to obstruct justice and are based primarily on the defendants giving false alibis to TBI agents and committing perjury before the grand jury. When he **{2011 U.S. Dist. LEXIS 19}**appeared before the grand jury, Jerry Bruce simply claimed he had amnesia and could not remember any details about the day in question.

40. According to an affidavit prepared by FBI Special Agent William Ricci, on July 27, 1994, **Charles Gary Bruce**, while incarcerated at the McNairy County Criminal Justice Complex as a prisoner of the United States Marshal Service, escaped through a hole an inmate had cut in the fence surrounding the facilities' exercise yard. At 7:30 p.m., four (4) inmates crawled through the hole in the fence and fled the compound. One inmate, who had escaped along with **Charles Gary Bruce**, was recaptured and at that time advised investigators that Mr. Bruce had run several hundred yards to a railroad track and had turned south away from the facility. He was last seen fleeing the Criminal Justice Complex. Mr. Bruce was subsequently arrested by agents of the Tennessee Bureau of Investigation on September 22, 1995. At that time, he was using the alias of Glenn Humphrey Barton.

. . . .

43. According to Assistant United States Attorney Steve Parker, Mr. Bruce committed an obstruction of justice on the Robbery, Murder and Arson counts when at trial he **{2011 U.S. Dist. LEXIS 20}**took the stand and perjured himself. Mr. Bruce testified that Ira Travis, Patricia Henderson, Mike Franklin, and Rev. Vine all gave untruthful testimony. He further testified untruthfully that he had never discussed killing Danny Vine on the night of January 15, 1991, and claimed he never called for a vote to rob and murder Danny Vine. Other false testimony provided to [sic] by the defendant included statements that the shells sold after the murder of Danny Vine were not Mr. Vine's shells; that the defendant gave his brothers his guns to use, but did not know what they were going to do with them; that the defendant did not try to intimidate Rev. Vine; that he had no knowledge of Danny Vine's murder before it occurred; and that he gave false statements during the investigation because his brothers had threatened to kill him and his family.

44. In addition, Mr. Bruce was convicted of Conspiracy to Obstruct Justice based on his providing false alibis to Tennessee Bureau of Investigation agents and committing perjury before a grand jury. . . .(Presentence Report, ¶¶ 11-40, 43-44.)

The cases against Defendant were consolidated for trial. A jury trial commenced on July 29, 1996. By that time, **{2011 U.S. Dist. LEXIS 21}**the other Defendants had gone to trial and had been sentenced. On August 8, 1996, the jury returned a guilty verdict on all counts. The Court conducted a sentencing hearing on November 4, 1996, at which Defendant was sentenced to a term of imprisonment of life plus ten years in case number 93-10052 and to a concurrent term of sixty months in case number 95-10051. Judgments were entered on November 13, 1996. The United States Court of Appeals for the Sixth Circuit affirmed. United States v. Bruce, Nos. 96-6590, 96-6591, 1998 U.S. App. LEXIS 6643, 1998 WL 165144 (6th Cir. Mar. 31, 1998) (per curiam), *cert. denied,* 525 U.S. 882, 119 S. Ct. 190, 142 L. Ed. 2d 155 (1998).

Defendant did not file a § 2255 motion within one year of the date his convictions became final. Instead, on March 29, 2007, Defendant filed an application with the Court of Appeals seeking leave to file a second or successive § 2255 motion. The Government filed a response in opposition to the application on May 22, 2007, and Defendant filed a reply on July 2, 2007. On October 4, 2007, the Court of Appeals issued an order denying Defendant's application as unnecessary because he had

not previously filed a § 2255 motion. In re Bruce, No. 07-5385 (6th Cir.). Defendant filed the instant **{2011 U.S. Dist. LEXIS 22}**action eight months later.

Defendant's § 2255 motion is not filed on the official form and does not raise any clearly enumerated claims.2 Instead, Defendant argues, on the basis of three items that he contends constitute newly discovered evidence, that his convictions in case number 93-10052 should be vacated.3 Defendant also urges that an attorney be appointed to represent him, that an investigator be appointed, that he be afforded discovery into various matters, and that the Court hold an evidentiary hearing. Because the Court concludes that the motion is untimely, that Defendant is not entitled to tolling of the limitations period due to a credible claim of actual innocence, and that the motion fails to allege a constitutional violation, these applications are DENIED.

Pursuant to 28 U.S.C. § 2255(a),

> [a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."A prisoner seeking relief under 28 U.S.C. § 2255 must allege either (1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid." Short v. United States, 471 F.3d 686, 691 (6th Cir. 2006) (internal quotation marks omitted). Moreover, as the Sixth Circuit has explained:
>
> A prisoner who files a motion under Section 2255 challenging a federal conviction is entitled to "a prompt hearing" at which the district **{2011 U.S. Dist. LEXIS 25}**court is to "determine the issues and make findings of fact and conclusions of law with respect thereto." 28 U.S.C. § 2255. The hearing is mandatory "unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." Fontaine v. United States, 411 U.S. 213, 215, 93 S. Ct. 1461, 36 L. Ed. 2d 169 . . . (1973) (citation omitted). See also Blanton v. United States, 94 F.3d 227, 235 (6th Cir. 1996) (holding that "evidentiary hearings are not required when . . . the record conclusively shows that the petitioner is entitled to no relief."). The statute "does not require a full blown evidentiary hearing in every instance . . . . Rather, the hearing conducted by the court, if any, must be tailored to the specific needs of the case, with due regard for the origin and complexity of the issues of fact and the thoroughness of the record on which (or perhaps, against which) the section 2255 motion is made." United States v. Todaro, 982 F.2d 1025, 1030 (6th Cir. 1993). Furthermore, "when the trial judge also hears the collateral proceedings . . . that judge may rely on his recollections of the trial in ruling on the collateral attack." Blanton, 94 F.3d at 235 (citing Blackledge v. Allison, 431 U.S. 63, 74 n. 4, 97 S. Ct. 1621, 52 L. Ed. 2d 136 . . . (1977)). **{2011 U.S. Dist. LEXIS 26}**However, "[w]here there is a factual dispute, the habeas court must hold an evidentiary hearing to determine the truth of the petitioner's claims." Turner v. United States, 183 F.3d 474, 477 (6th Cir. 1999) (citing Paprocki v. Foltz, 869 F.2d 281, 287 (6th Cir. 1989)). We have observed that a Section 2255 petitioner's burden "for establishing an entitlement to an evidentiary hearing is relatively light." Id. at 477.Smith v. United States, 348 F.3d 545, 550-51 (6th Cir. 2003).

Applications for a new trial because of newly discovered evidence can be made under both Fed. R. Crim. P. 33 and 28 U.S.C. § 2255. Under Rule 33, "[a]ny motion for a new trial must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may take additional time to file a new judgment." In this case, the time for filing a Rule 33 motion has expired.

In order to obtain a new trial on the basis of newly discovered evidence, a defendant must establish that "the evidence (1) was discovered only after trial, (2) could not have been discovered earlier with due diligence, (3) is material and not merely cumulative or impeaching, and (4) would likely produce an acquittal if the case **{2011 U.S. Dist. LEXIS 27}**were retried."Aguwa v. United States, 19 F. App'x 289, 292 (6th Cir. 2001) (quoting United States v. Garland, 991 F.2d 328, 335 (6th Cir. 1993)). In addition, if the claim is raised in a § 2255 motion, the defendant must also show a constitutional violation. Sims v. United States, No. 98-1228, 1999 U.S. App. LEXIS 34746, 1999 WL 1000855, at *2 (6th Cir. Oct. 29, 1999) (claim that newly discovered evidence demonstrates defendant's actual innocence not cognizable in § 2255; "[s]ince Sims does not seek relief based on any independent constitutional claim, his claim is not a cognizable ground for relief in his § 2255 motion, and is more properly presented in a Rule 33 motion.") (collecting cases); 3 Charles Alan Wright, Nancy J. King, Susan R. Klein & Sarah N. Welling, Federal Practice & Procedure § 552 (3d ed.).

The Government contends this motion is time barred. Twenty-eight U.S.C. § 2255(f) provides:

> A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of-
>
> (1) the date on which the judgment of conviction becomes final;
>
> (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of **{2011 U.S. Dist. LEXIS 28}**the United States is removed, if the movant was prevented from making a motion by such governmental action;
>
> (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

"[F]or purposes of collateral attack, a conviction becomes final at the conclusion of direct review." Johnson v. United States, 246 F.3d 655, 657 (6th Cir. 2001). In this case, the Supreme Court denied certiorari on October 5, 1996, and this motion, which was filed more than eleven years later, is, on its face, untimely.

Defendant first contends that the motion is timely under subsection (f)(4), under which the limitations period begins to run on "the date on which the facts surrounding the claim or claims could have been discovered through the exercise of due diligence."4 The timeliness of each of Defendant's three items of newly discovered evidence must be separately analyzed. See Bachman v. Bagley, 487 F.3d 979, 983-85 (6th Cir. 2007); **{2011 U.S. Dist. LEXIS 29}**Souter v. Jones, 395 F.3d 577, 586-86 (6th Cir. 2005).

The first item of newly discovered evidence is a report, dated October 6, 2006, by Camden Police Sergeant Frank Stockdale (the "2006 Stockdale Statement"). (D.E. 1, Ex. 1.) That report, which is on the letterhead of the Camden Police Department, states as follows:

> TO WHOM IT MAY COCCERN [sic]: REFERENCE THE DANNY VINE AND DELLA THORNTON MURDER BACK IN THE EARLY NINETY'S. THERE HAS BEEN INFORMATION FROM 2 DIFFERENT INFORMANT'S [sic] THAT HAS BEEN STATED TO THE WRITER OF THIS REPORT THAT A JAY ALLEN SCARBOROUGH AND HIS BROTHER WESLEY SCARBOROUGH ALONG WITH SOME OTHER PERSONS WAS RESPONSIBLE FOR THE

ROBBERY AND ONE OF THE PERSON WHO IS GIVING THIS INFORMATION WAS SUPPOSED TO HAVE BEEN WITH THEM AT THE TIME OF THE ROBBERY.

THIS PERSON NAME IS RUSTY BLAGBURN WHO LIVES IN BIG SANDY, TN. AND THE WRITER HAS KNOWN THIS PERSON FOR ALL OF HIS LIFE AND DOES NOT BELIEVE THAT HE IS MAKING THIS STATEMENT UP. AT THE TIME THAT HE STARTED TALKING TO MYSELF WAS BACK IN OCTOBER OF 2005 AND THAN [sic] AGAIN IN JUNE OF THIS YEAR.

THE WRITER OF THIS STATEMENT BELIEVES **{2011 U.S. Dist. LEXIS 30}**AT LEAST THIS PERSON SHOULD BE TALKED TO, TO SEE IF HE IS TELLING THE TRUTH ABOUT THIS MATTER AND IF SO DO WHAT IS RIGHT IN REGARD TO THIS MATTER.

END OF REPORT BY SGT. FRANK STOCKDALE OCTOBER 06, 2006

Defendant initially filed this document with the Court of Appeals in his application for leave to file a second or successive § 2255 motion. In a response filed on May 22, 2007, the Government submitted a second statement by Stockdale, on Camden Police Department letterhead (the "2007 Stockdale Statement"), which stated as follows:

On or about June 30, 2006 the writer of this report did talk to a Rusty Blagburn in reference to a statement that he had made about a robbery and killing that had occurred in Benton County, Camden, Tn. back in the early 90's. The statement that he had made was that a Jay Allen Scarbourough and his Brother Wesley Scarbourough was involved in the killing of Danny Vine and Della Thornton and that he was supposed to have been with them but he and his wife at that time had gotten back together and that he was not with them. He did say thank God that he was not with them, but he did say that it was not right what had happened to the Bruce Brothers and that the Scarbourough **{2011 U.S. Dist. LEXIS 31}**Brothers had gotten clean away from their involvement in the robbery and murder.

I have been trying to find Rusty Blagburn since the first of August 2006 but he does have a BOP out of Circuit Court in Madison County, Tn. and has gone into hiding. There has been people in Benton County, Tn. that has seen him but every time he is sighted, the Benton County Sheriff Department cannot find him. At the time of the statement that Mr. Blagburn had made to this Officer, he did say that he would talk to any body that I thought would be able to do something about this incident, including any Federal Officials.(D.E. 1, Ex. 2.)5

In response to Defendant's § 2255 motion, the Government filed a third statement by Stockdale, dated March 16, 2009 (the "2009 Stockdale Statement"), on Camden Police Department letterhead, that stated as follows:

TO WHOM IT MAY CONCERN: THIS LETTER IS BEING WRITTEN TO CLARIFY A LETTER THAT WAS WRITTEN BACK IN THE YEAR OF **{2011 U.S. Dist. LEXIS 32}**2005 [sic] WHEN A CONFIDENTIAL AND RELIABLE INFORMANT DID GIVE A STATEMENT TO THE WRITER OF THIS LETTER THAT A JAY ALLEN SCARBOROUGH AND A WESLEY SCARBOROUGH WAS INVOLVED IN THE MURDER OF DANNY VINE AND DELTA [sic] THORNTON BACK IN 1991. THE STATEMENT THAT WAS WRITTEN BY THIS WRITER DID NOT MENTION THAT THE BRUCE BROTHERS WAS INVOLVED IN THE MURDER. THE INFORMANT DID SAY THAT IT WAS NOT RIGHT WHAT HAD HAPPENED TO THE BRUCE BROTHERS FOR THE OTHER PERSONS WHO WAS ALSO INVOLVED IN THE MURDER TO GET BY WITHOUT BEING ARRESTED. THE INFORMANT NEVER SAID THAT THE PERSONS WHO WAS ARRESTED WAS NOT INVOLVED IN THE INCIDENT. THE ONLY THING THAT WAS SAID WAS THAT IT WAS NOT RIGHT HAS [sic] TO WHAT HAPPENED AND THE OTHER

PARTIES, AND THE REST OF THE PEOPLE NOT TO BE CHARGED. THIS LETTER IS BEING DONE ON MY BEHALF TO SAY THAT THE OTHER PARTIES WHO WAS ARRESTED AND CONVICTED WAS ALSO INVOLVED WITH THE MURDER ALSO.(D.E. 8-1 at 1.)

The 2006 Stockdale Statement was discovered only after the trial, and the Court will assume, for present purposes, that the information contained in it could not have been discovered earlier with due diligence. Even if it were assumed that the discovery of that statement commenced **{2011 U.S. Dist. LEXIS 33}**a new limitations period under § 2255(f)(4), this claim is untimely because Defendant did not file his motion within one year of its discovery. Neither Defendant nor Billy has disclosed when they received the 2006 Stockdale Statement. Billy's second affidavit (D.E. 1-8) suggests that Stockdale made his 2006 statement at Billy's request and gave it to him on October 6, 2006, the date on which it was signed. Defendant included the statement in the application he filed with the Court of Appeals 174 days later, on March 29, 2007. Even if it were assumed that the limitations period was tolled during the pendency of Defendant's application for leave to file a second or successive § 2255 motion, the running of the limitations period recommenced on October 4, 2007, when the order of the Court of Appeals issued. At that time, 191 days of the one-year limitations period remained. That period expired on April 14, 2008.6 Defendant filed the instant motion more than seven weeks later, and any claim based on the 2006 Stockdale Statement is, therefore, time barred.

Moreover, it is not appropriate in this case to toll the running of the limitations period during the pendency of Defendant's application to the Sixth Circuit because he had not filed a previous § 2255 motion. Therefore, the instant application is not second or successive. Tolling of the limitations period is proper only when an application is properly filed in the correct court. Artuz v. Bennett, 531 U.S. 4, 8, 121 S. Ct. 361, 148 L. Ed. 2d 213 (2000). Therefore, the limitations period expired one year after Defendant obtained the 2006 Stockdale statement, and Defendant's claim based on that statement is time barred.

Defendant attempts to avoid this result by arguing that he discovered the 2007 Stockdale Statement and the 2009 Stockdale Statement less than one year before he filed his § 2255 motion. (D.E. 1-2 at 9-10, 13.) That argument is not persuasive for several reasons. First, Defendant learned of the factual basis for this claim no later than when he received the 2006 Stockdale Statement. The factual predicate for Defendant's claim is that Blagburn and another individual told Stockdale that the Scarborough brothers might have been involved **{2011 U.S. Dist. LEXIS 35}**in the murders. See 28 U.S.C. § 2255(f)(4) ("the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence"); Souter, 395 F.3d at 586.7 That Stockdale had one or more later conversations with Billy, and executed two clarifying statements, are not "facts supporting the claim or claims presented." Defendant also has not demonstrated that the additional information contained in those statements could not have been discovered with due diligence when Billy obtained the 2006 Statement. Therefore, any claim based on the 2006 Stockdale Statement is untimely.8

The second item of new evidence on which Defendant relies pertains to the postal receipt (the "1991 postal receipt") for a box containing a bullet that was taken from the skull of Danny Vine. The receipt was introduced into evidence at Defendant's trial. (Tr. 4045-46.)9 Defendant contends that, on June 4, 2007, one year prior to the commencement of this action, Billy was told by Alisa Byars, a postmaster in Benton County, that the 1991 postal receipt was not valid:

> I, Billy Wayne Bruce, hereby swear that the following statement is true. On June 4th, 2007, around 10:00 a.m. I took a certified mail receipt number P-600-863-623 to the Post Office in Benton County, Tennessee. I took this receipt on behalf of **Charles Gary Bruce**. I had a meeting with Mrs. Alisa C. Byars, Postmaster of Benton County United States Post Office. **{2011 U.S.**

Dist. LEXIS 37}I asked Mrs. Byars if the receipt number P-600-863-623 was a valid receipt. Mrs. Byars said she would check it and see what year it was mailed. I, Billy Wayne Bruce, asked Mrs. Byars to check if she would go al [sic] the way back to the beginning of 1991. She was on the computer for at least 5 minutes. She said there was not any numbers in the state of Tennessee that would match. I, Billy Wayne Bruce, asked why. She replied that all receipt numbers for those years had more digits. I asked her if Postal Service Form 3811 number P-600-863-623 was a valid number. She said it was not a valid certified receipt number.(D.E. 1-11.)10

In general, a defendant cannot obtain a new trial based on a new legal theory arising from documents that were introduced into evidence at trial. "[T]he evidence itself, not merely the legal implications of the evidence, [must] be newly discovered." United States v. Seago, 930 F.2d 482, 489 (6th Cir. 1991); see also United States v. Starnes, No. 96-6001, 1998 U.S. App. LEXIS 9371, 1998 WL 24636, at *2 (6th Cir. May 6, 1998) ("New legal theories of defense are specifically excluded from the definition of newly discovered evidence."); United States v. Mapp, No. 08-20583, 2009 U.S. Dist. LEXIS 60452, 2009 WL 2143776, at *3 (E.D. Mich. July 15, 2009) ("It is the evidence itself, and not its legal implications or significance, that must be newly discovered."); Harris v. United States, 9 F. Supp. 2d 246, 257 (S.D.N.Y. 1998), *aff'd,* No. 98-2594, 2000 U.S. App. LEXIS 12468, 2000 WL 730375 (2d Cir. June 2, 2000). The certified mail receipt was introduced into evidence at trial, without objection by Defendant, and Defendant's belated challenge to its authenticity cannot constitute new evidence.

That conclusion is not altered by the facts that Billy interviewed Postmaster Byars in 2007, **{2011 U.S. Dist. LEXIS 39}**or that, if Billy's statement were credited, it would necessarily mean that a trial witness, Dr. Mark Guilbeau, must have committed perjury when he testified that he mailed the bullet found in Vine's skull by certified mail to the TBI Agent. (Tr. 4046.)11 A defendant is not entitled to a new trial based on newly discovered documents "unless the applicant can show that the documents in question were not known to the defense at trial, and could not have been discovered by the exercise of due diligence." Harris, 9 F. Supp. 2d at 259. The same rule applies to the newly discovered perjury of a government witness. Id.; see also United States v. Wade, 108 F. App'x 336, 338 (6th Cir. 2004) (rejecting argument that "newly discovered evidence" consisted of false testimony during criminal trial; "[n]ewly discovered evidence does not include new legal theories or new interpretations of the legal significance of the evidence. . . . '[N]ewly discovered evidence' in the context of Rule 33 is not evidence that was within the defendant's knowledge at the time of trial.").

Defendant has not shown that he could not have previously discovered the information provided by Byars with the exercise of due diligence. If Defendant knew, at the time of trial, that his handgun was not used to kill Vine, then he, or his attorney, had every reason to investigate the authenticity of the exhibit.12 Instead, Defendant did not contest the introduction of the bullet at trial, and he also did not cross-examine the forensics expert who testified that the bullet found in Vine's skull was consistent with other bullets shot by Defendant's .38 revolver. (Tr. 4617-36.) He chose, instead, to testify that his brothers borrowed his gun the night of the murders. (Tr. 4881, 4884, 4896-97.) That defense was unsuccessful, either because the jury did not believe him or because the jury believed he aided and abetted his brothers in the commission of the charged offenses.

Defendant's new legal theory is not "newly discovered evidence," and Defendant has not satisfied his burden of demonstrating that he could not have previously discovered the information provided by **{2011 U.S. Dist. LEXIS 41}**Byars through the exercise of due diligence. Therefore, Defendant's claim arising from the 1991 postal receipt and the purported Byars statement is time barred.

The third item of newly discovered evidence on which Defendant relies is several statements impeaching a state witness, Carla Candella ("Carla"),13 with evidence that she was unable clearly to

see the events of the night in question. At that time, Carla was fourteen years old and lived with her sister, Tina Elmore ("Tina"), and Tina's husband, across the street from Vine's driveway. (Tr. 4469-70.) Carla did not know anyone in the Bruce family before the night in question. (Tr. at 4481.) Carla testified she saw two trucks entering Vine's driveway. (Tr. 4471-72.) One truck was "up off the ground" (Tr. 4471), a "bigger truck" on "higher wheels" (Tr. 4472). Carla did not see what color that truck was or how many people were in it. Id. Carla testified that she saw the back end of the second truck. Id. "It was a Chevrolet truck. It was light-colored. It was old. You could hear how loud it was. That caught my attention." Id. Carla also saw "a dent in the back end." (Tr. 4473.) There were two or three people inside that truck. Id. Carla **{2011 U.S. Dist. LEXIS 42}**identified the truck belonging to Jerry as the truck she saw that night. (Tr. 4480-81.) Later, "probably fifteen to twenty minutes, maybe a little bit shorter, maybe a little big longer, they came back out." (Tr. 4473.) Carla testified she did not see them come out but she heard them. Id. "They were just driving back out the same way they came in. They were just coming out really fast again." (Tr. 4473-74.) Carla heard "[m]ore than two" vehicles leaving, and she also "heard shells clattering." (Tr. 4474.) She did not look out the window to see which way the vehicles turned upon reaching the road. Id. About ten minutes later, Carla looked out the window and saw "flames over the trees" on Vine's property. (Tr. 4474-75.) Carla told Tina, who called the fire department. (Tr. 4475.) On cross examination, Carla testified that "[i]t was late" when these events occurred, "after nine o'clock, at least" and "[i]t could have been later." (Tr. 4481.) She also conceded it was dark outside. (Tr. 4482.)

Defendant's new evidence amounts of a challenge to Carla's credibility. Defendants has submitted a statement by Steve Elmore ("Steve"), **{2011 U.S. Dist. LEXIS 43}**the brother of Tina's husband, dated February 3, 2008, that Carla was not wearing her glasses during the events in question. (D.E. 1-2 at 24; D.E. 1-14.) On March 3, 2008, Billy obtained a statement from Steve's former wife, Bobbie Joe Elmore ("Bobbie Joe"), concerning her recollections of what Steve had told her about the night in question. (D.E. 1-2 at 24; D.E. 1-15.) Billy had previously obtained a copy of Carla's 1991 eyeglasses prescription (D.E. 1-12) and sent it to a nurse who prefers to remain anonymous. On April 25, 2008, the nurse faxed Billy an article from Wikipedia about myopia, or nearsightedness. (D.E. 1-2 at 24-25; D.E. 1-16.)

Steve's statement, which is not sworn to under penalty of perjury, states that "I, Steven Elmore was present at Timmy and Tina Elmore's house on January 16, 1991. I observed that Carla Christy did not have her glasses on, the night in question." (D.E. 1-14.) Bobbie Jo's unsworn statement says that:

> I Bobbie Jo Elmore was married to Steven Wayne Elmore and he told me many of times about when he was there when Carla Candella or Carla Christy was supposed to seen the trucks, he said she did not have her glasses on, there was no way she could see 5 **{2011 U.S. Dist. LEXIS 44}**feet in front of her self. He said he was with her the night of 1991 January 16.(D.E. 1-15.)14

This information is not "newly discovered evidence" for several reasons. First, impeachment evidence is not newly discovered evidence that will warrant a new trial. See, e.g., United States v. Carson, 560 F.3d 566, 585 (6th Cir. 2009); United States v. Seago, 930 F.2d at 488.

Second, Defendant cannot satisfy his burden of demonstrating that he could not previously have discovered this evidence through the exercise of due diligence. Although Carla did not know the Bruces when the crimes were committed, the individuals who have supplied affidavits are relatives of Billy. Billy married Tina, Carla's sister, prior to the trial. (Tr. 4469-70.) Defendant acknowledges that, "[i]n beginning of 1996-1997 (after Billy Bruce married Tina Elmore; Tina Elmore is the sister of Carla Christy), investigator Bruce began noticing that Carla Christy had very poor eyesight at night." (D.E. 1-2 at 32.) In 1997, Billy spoke with Kathy Candella, Carla's mother, id. at 33, and, in

"[a]pproximately **{2011 U.S. Dist. LEXIS 45}**2000-2001, investigator Bruce convinced Ms. Kathy Candella . . . to go to her daughter's eye doctor to secure Carla Christy's prior eyeglass prescription." Id. at 34. Thus, even before Defendant's trial in July and August 1996, Billy was aware of Carla's poor eyesight. Billy could have passed that information on to defense counsel, and could have asked his wife to obtain the name of Carla's eye doctor from her mother. Despite his personal knowledge of Carla's poor eyesight, and copy of her prescription, Billy apparently did no research into the extent of Carla's nearsightedness until he obtained the statements from Steve and Bobbie Jo. (D.E. 1-2 at 26 ("While investigator Bruce had Carla Christy's eye prescription, he did not know th[e] value of this piece of evidence."). The information obtained from the Wikipedia article is readily available to anyone with access to an internet connection, and a Google search of the non-medical term "nearsightedness" produces numerous articles on myopia.

Moreover, Billy had ready access to Steve more than one year before this motion was filed. Bobbie Jo, Steve's former wife, is Billy's daughter. (D.E. 1-13.) Billy filed an affidavit in which he stated **{2011 U.S. Dist. LEXIS 46}**that "in 2003-2004, Steve Elmore married my daughter (Bobbie Jo)" and that "I began talking with Steve Elmore before that marriage (as he was getting ready to marry Bobbie Jo), as well as after that marriage as Steve Elmore and I were then related due to his and Bobbie Jo's marriage." Id. Billy swears that Elmore told him that he was with at Tina's house with Carla on the night of the murders and that Carla was not wearing her glasses. Id. Defendant does not argue that he could not, with the exercise of due diligence, have filed a timely motion based on this evidence.15

Therefore, Defendant's claim arising from the Elmore statement and the Wikipedia article is time barred.

The Sixth Circuit has recognized that a credible claim of actual innocence can equitably toll the statute of limitations. Souter, 395 F.3d at 588-90, 597-601. Thus, "where an otherwise time-barred habeas petitioner can demonstrate that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt, the petitioner should be allowed to pass through the gateway and argue the merits of **{2011 U.S. Dist. LEXIS 47}**his underlying constitutional claim." Id. at 602.16 Consideration of Defendant's actual innocence claim requires an evaluation of all the newly discovered evidence without consideration of the movant's due diligence. Souter, 395 F.3d at 600 & n.15.

In Schlup, the Supreme Court emphasized that

> experience has taught us that a substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare. To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence-whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence-that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful.513 U.S. at 324. Moreover,
>
> [i]n assessing the adequacy of petitioner's showing [of actual innocence], . . . the district court is not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on 'actual innocence' allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial. . . . The habeas court must make its determination concerning the petitioner's innocence "in light of all the evidence, including that alleged to have been illegally admitted (but with **{2011 U.S. Dist. LEXIS 49}**due regard to any reliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial."Id. at 326-27. Finally, an evidentiary hearing is not required every

time a prisoner makes a gateway claim of actual innocence. In evaluating a defendant's request for an evidentiary hearing, "the District Court must assess the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial. Obviously, the Court is not required to test the new evidence by a standard appropriate for summary judgment. . . . Instead, the court may consider how the timing of the submission and the likely credibility of the affiants bear on the probable reliability of that evidence." Id. at 331-32 (citations omitted).

In this case, Defendant has not satisfied his burden of demonstrating that it is more likely than not that no reasonable juror would have convicted him in light of his new evidence. As a preliminary matter, the evidence presented at trial of Defendant's guilt was overwhelming. Although he also was charged as an aider and abettor, there was very strong circumstantial evidence that Defendant was actually present **{2011 U.S. Dist. LEXIS 50}**at the time of the murders and personally shot Vine.

In assessing the credibility of Defendant's new evidence, the Court is mindful that Defendant and his brothers were convicted of conspiring to obstruct justice and to commit perjury before the grand jury and with intimidating and threatening witnesses. Moreover, once she was released from prison, Mary Kathleen assisted Billy in obtaining evidence to exonerate Defendant. (Billy Bruce Aff. ¶ 12, D.E. 1-17 at 2.) Mary Kathleen was a participant in the brothers' conspiracy to obstruct justice, commit perjury, and intimidate witnesses. Mary Kathleen was also convicted of a separate count of perjury before the grand jury.

In that regard, the Court is aware that the § 2255 motion filed by Defendant in this district is materially different from the application filed with the Court of Appeals for leave to file a second or successive § 2255 motion. Although both filings rely on the 2006 Stockdale Statement, the Sixth Circuit filing does not include any issue about the 1991 postal receipt or any challenge to the credibility of Carly. Instead, the centerpiece of Defendant's Sixth Circuit application was a purported statement by Maria Liston, who **{2011 U.S. Dist. LEXIS 51}**was identified by Defendant as the supervisor of Guilbeau,17 on the letterhead of the University of Tennessee Forensic Anthropology Center, stating that no bullet was found among the fragments of Vine's skull.18 In response, the Government submitted a statement by Dr. Liston, who was then teaching in the Anthropology Department at the University of Waterloo in Canada. Dr. Liston confirmed that a bullet was found within the remains of Vine's skull, and she further denied having authored the letters submitted by Defendant:

> The two letters, labeled Exhibit 20, and signed "Maria Liston" that were shown to me are false documents. I did not write the two letters dated 03/25/06 and labeled Exhibit 20. I am not, and have never been, a Supervisor at the University of Tennessee Forensic Anthropology Center. In 1991 I was a PhD student, not an employee or supervisor. In August 1991 I left Knoxville, TN to accept a faculty position at Adirondack Community College, State University of New York, in Glens Falls, NY. Since 1997 I have been a professor in the Anthropology Department at the University of Waterloo, Waterloo, Ontario, Canada. On March 25 2006, when the letters claim I was a supervisor **{2011 U.S. Dist. LEXIS 52}**in the Forensic Anthropology Center, I was employed and teaching at the University of Waterloo. If I had written the letters labeled Exhibit 20, I would have used the letterhead of the University of Waterloo. I do not have access to the letterhead paper of the University of Tennessee Forensic Anthropology Center. I would not write out such a letter by hand. I would produce a formal document such as these letters on a computer and print out the text. When signing my name on any formal document, I use my middle initial "A." as well as my first and last names. Although I occasionally sign an e-mail message "Maria Liston" I use my middle initial when writing out my name. The writing in the text and the signature on the document labeled Exhibit 20 does not resemble my own handwriting and signature.In re Bruce, No. 07-5385 (6th Cir.) (Ex. 1, Response Opposing Petitioner's

Request for Authorization to File for Relief Under 28 U.S.C. § 2255). In his § 2255 motion, Defendant acknowledged filing forged statements in the Court of Appeals, but he conveniently placed the blame (without proof) on an overly zealous unidentified inmate advisor rather than on himself on or Billy. (D.E. 1-2 at 31.)

The three items of newly discovered evidence submitted by Defendant do not satisfy his burden of demonstrating that it is more likely than not that no reasonable juror would find him guilty. The information contained in the 2006 Stockdale Statement does not tend to undermine Defendant's guilt. Defendant's characterization of this statement as a confession by Blagburn (D.E. 1-2 at 13-14) is not accurate. The statement, on its face, says that Blagburn "was supposed to have been with them," not that he was, and there is no other indication in the document that Blagburn personally participated in the robbery, arson, and murders. Nothing in the statement indicates that Defendant was not involved in the crimes; instead, Blagburn and the confidential informant stated only that the Scarborough brothers "along with some other persons" was responsible. Nothing on the face of the 2006 Stockdale Statement gives any reason to doubt the **{2011 U.S. Dist. LEXIS 54}**ample evidence presented at both trials against Defendant, Jerry, Robert, and Riales.19

Contrary to Defendant's suggestion (D.E. 1-2 at 10-14), the 2007 and 2009 Stockdale Statements are not inconsistent with the 2006 Stockdale Statement. The 2007 Statement says that, although Blagburn was supposed to have been present on the night in question, he was not because he got back together with his wife. (D.E. 1-6.) That is consistent with the statement in the 2006 Statement that Blagburn "was supposed to have been" there. Similarly, Blagburn's remark in the 2007 Statement that "it was not right what had happened to the Bruce Brothers and that the Scarborough Brothers had gotten **{2011 U.S. Dist. LEXIS 55}**clean away from their involvement in the robbery and murder" (D.E. 8-1 at 1) does not tend to exonerate Defendant and his brothers. Nothing in the various Stockdale Statements provides any concrete evidence that the Bruce brothers were not involved. Instead, the statements appear to reflect the layman's perception that it is unfair for some participants in a crime to escape unpunished while others are serving life in prison. That reading is confirmed by the 2009 Stockdale Statement, which clarifies that "the other parties who was arrested and convicted was also involved with the murder also." Id.

The 1991 postal receipt and the newly obtained postmaster statements also do not tend to suggest that Defendant is actually innocent. In response to Defendant's motion, the Government has submitted the declaration of Marcus Ewing, a United States Postal Inspector, who stated, in pertinent part, as follows:

> 3. The certified mail receipt attached as Exhibit 1 to this Declaration, bearing the number P-888-417-161, was in use in June 1990, and is a true and accurate representation of the certified mail receipts used by the United States Postal Service during 1990 and 1991.
>
> 4. The certified mail receipt **{2011 U.S. Dist. LEXIS 56}**attached as Exhibit 2 of this Declaration, labeled bearin [sic] number P-884-417-155, was in use as of June 1990, and is a true and accurate representation of the certified mail receipts used by the United States Postal Service during 1990 and 1991.
>
> 5. The certified mail receipt attached as Exhibit 3 to this declaration, bearing the number P-423-973-100, was in use as of June 1991, and is a true and accurate representation of the certified mail receipts used by the United States Postal Service during 1991.
>
> 6. The certified mail receipt attached as Exhibit 4 to this Declaration, bearing the number P-423-973-100, was in use as of June 1991, and is a true and accurate representation of the certified mail receipts used by the United States Postal Service during 1991.

7. Accordingly, based on the foregoing, any claim that receipt numbers during 1990 and 1991 that were composed of a P followed by three sets of three numbers contained an invalid number system is false. Furthermore, any claim that receipts from that time period had more digits than an alpha character followed by three sets of three numbers is also false.(Ewing Decl., Mar. 10, 2009, D.E. 8-1 at 2-8.) The examples of certified **{2011 U.S. Dist. LEXIS 57}**mail receipts submitted by Defendant in his reply (D.E. 11-6 at 31-33) do not undermine this declaration because each of the receipts submitted involved a version of the form in use after 1991.

Moreover, although it appears that Billy did speak to Byars and two other postmasters, he has either misunderstood or exaggerated what was told to him. Billy submitted a statement in which he claimed that Benton County Postmaster Alisa Byars told him that the 1991 Postal Receipt was not valid because it had too many digits. However, the Government submitted a sworn statement from Byars that provided as follows:

I recall speaking with Mr. Bruce concerning a certified mail receipt he was asking about. I recall looking at the certified mail receipt and explaining to him that it was an old receipt and we did not keep delivery records on these past two years. I do not recall telling Mr. Bruce that the receipt was invalid. I do recall explaining to him that our receipts now have longer numbers and are barcoded so they can be scanned and we can check delivery status online. As a former window clerk and 18 years experience with the Postal Service, I recognized the mailing receipt as one we used in earlier **{2011 U.S. Dist. LEXIS 58}**years and would not have said it was invalid. I would not have tried to look the information up on the computer because I knew there would be no information available because this information was not maintained by computers during that time.(Byars Aff., Feb. 12, 2009, D.E. 8-1 at 9-10.)20 The Government presented similar affidavits from the two other postmasters Billy claims to have spoken to, Bobby Kilzer of Henry County, Tennessee, and Kathleen Klein of Eva, Tennessee. (D.E. 8-1 at 11-14.) Thus, none of the interviews Billy conducted with the Tennessee postmasters casts doubt on Guilbeau's testimony that he mailed a bullet removed from Vine's skull to the TBI.21

The purported statement by Steve also is not probative of Defendant's actual innocence. First, Carly's testimony is corroborated by Randy Farlow, Sheila McGahan, Todd McGahan, Mildred Kennon, and **{2011 U.S. Dist. LEXIS 60}**John Norrell, who saw the blue and white truck near the time of the murders. Although Tina Elmore, Carla's sister, did not look out the window to see the trucks, she corroborated Carla's testimony about hearing trucks entering and leaving Vine's property shortly before the fire was discovered. (Video Deposition of Tina Elmore Bruce ("T. Elmore Dep."), Aug. 1, 2006, at 9-13.)22 Second, the testimony of Carly and her sister, Tina, suggest that Steve had gone to bed by the time of the events in question. Carla does not mention Steve; in her testimony, she talks about playing Monopoly, and the only other people she mentions as being with her that evening were her sister and her sister's husband. (Tr. 4470, 4471, 4475.) Tina testified by in her video deposition that her brother-in-law, Steve, was present but at some point he "got up and went to bed." (T. Elmore Dep. at 5.) On cross examination, Tina clarified that her husband and brother-in-law had gone to bed by the time of the Monopoly game and the events in question. Id. at 19-20. Thus, regardless of what Steve might have said to his acquaintances in the years after the murders, nothing in the record corroborates his new statement that **{2011 U.S. Dist. LEXIS 61}**he was present during the relevant events.

Moreover, there is reason to question the authenticity of the unsworn statement by Steve that was submitted by Defendant. In its response, the Government submitted the first page of a declaration of FBI Special Agent Terry Dicus (D.E. 8-1 at 15), accompanied by another signed statement by Steve. Steve's second statement, also unsworn and dated April 28, 2008, provides as follows:

About five years ago, Billy Bruce approached me and asked me to write out a statement about Angie Christy not having her glasses on at the time that she witnessed the truck going by. I was in the bedroom with her at the time that she witnessed the truck. I honest to God do not know if she had her glasses on at that time, but I believe she was wearing them.

I am Billy's son-in-law. My wife does not want me to get involved in this. Billy has been to my brother's girlfriend's, Christie Johnson, to my mom and dad's and he has sent a message to my niece, Ashley Elmore, trying to get in touch with me. I have left word with him that I am not writing a statement and that I don't want **{2011 U.S. Dist. LEXIS 62}**nothing to do with it. Billy told my mom and dad and Ashley that he was going to subpoena me to court if I didn't give a statement.

Billy has not been threatening me, but he has been persistently trying to get me to write this statement.

I am 100% positive that I have not signed anything related to this case, and I have told no one that I have signed anything. Angie asked me that if there was a document that is notarized with my name on it, did I sign it. I told her no. This conversation was about three or four months ago.

Lisa Malin never called me and told me that she had a document with my name on it.23 I don't know Lisa that well, but I know she works at the jewelry factory. Maybe about six months ago, I had a message on my cell phone from Lisa. It might have been about that, but I never called her back. I have known Lisa for ten years, I didn't know which Lisa you were talking about earlier.

Billy never asked me to write down anything that didn't happen that night. Billy just told me to write down the truth. Billy and Lisa are real close.(Statement of Steven W. Elmore, Apr. 28, 2008, D.E. 8-1 at 17-18.) Steve's signature on the statement submitted by the Government is similar, but **{2011 U.S. Dist. LEXIS 63}**not identical, to that on the statement submitted by Defendant. The handwritten bodies of the two statements do not appear to have been written by the same person.

The substance of the statement purported purportedly given by Steve to Billy cannot be reconciled with that of his statement to the Government. Steve claims he did not provide Billy with a signed statement, but the statement submitted by Defendant was notarized by Lisa Malin. It is possible that the statement submitted by Defendant is forged, but any such forgery would probably have involved the notary.24 If both documents are genuine, the most likely explanation is that Steve has made statements over the years about the night in question that he is not prepared to swear to because they were false or exaggerated. It is unnecessary to resolve this issue through an evidentiary hearing because Carla's testimony is corroborated by other witnesses, including, in significant part, her sister, Tina.

The remainder of Defendant's motion does not satisfy his burden of demonstrating that it is more likely than not that no reasonable juror would vote to convict him. For example, Defendant suggests, without evidence, that either TBI Special Agent Daniels or a relative of Carla might have told her not to volunteer any information about her nearsightedness. (D.E. 1-2 at 28.) Defendant speculates that Daniels, whether intentionally or not, "employed an interview technique designed to cause prospective witnesses to 'remember' a version of events which matches the agent's theory." Id. at 29. Those witnesses are Mike Franklin, Ira Travis, Patricia Odham, Ralph Sentell, Shannon Cooper Irwin, Wayne Decker, David Busby, and James McGrogan. (D.E. 1-3 at 8.)25 No evidence is presented in support of this supposition.

Defendant also asserts that the prosecution manipulated its discovery responses to avoid producing

information concerning the "self-interest" of the witnesses. Thus, for example, Defendant speculates that Wayne Decker had ties to law enforcement (D.E. 1-2 at 40-41; D.E. 1-3 at 1), that Mike Franklin obtained a favorable recommendation for a parole violation in Alabama (D.E. 1-3 at 2-3), that an Alabama charge against Odham for growing marijuana was dropped, id. at 3-4, that Irwin (who apparently died of a drug overdose shortly after Defendant's trial) was allowed to escape prosecution for her drug use, id. at 4, and that the Government did not ask Busby at trial to enumerate the criminal charges that were pending against him or question him about his "ongoing relationship with TBI and local law enforcement." Id. at 5.26 Defendant asks the Court to consider this "excluded evidence," id. at 10, but he has come forward with no evidence that there were any agreements between the Government and any of its witnesses, express or tacit, that **{2011 U.S. Dist. LEXIS 66}**were not disclosed.

The alleged recantation by Government witness Ira Travis, which Defendant does not discuss at length in this motion, also does not tend to show that Defendant is actually innocent. (D.E. 1-2 at 34-35; D.E. 1-22; D.E. 1-23.) Billy provided an affidavit, dated November 11, 2006 (D.E. 1-22), in which he stated that, in April or May of 2006, Travis approached him at a funeral and told him that "I didn't tell the truth at trial" and that "he had no recollection of the party held January 15, 1991." Id. Defendant also produced an unsworn, notarized statement by Travis, dated November 28, 2006, saying that all he remembers about the night of January 15, 1991, is that he went to a party, got drunk, and does not recall the details of the evening. (D.E. 1-23.)27 Even if it is assumed that Travis made these statements in 2006,28 it does not establish that Travis's trial testimony in 1996 was false. As the Government pointed out (D.E. 8 at 27 n.15), the most damning portion of Travis's testimony (Tr. 4154-59) was corroborated by Tamara **{2011 U.S. Dist. LEXIS 67}**Sroka, who overheard part of the conversation outside Henderson's trailer that evening. (Tr. 4193-94.) Moreover, affidavits by Government witnesses recanting their testimony are viewed with "extreme suspicion," United States v. Willis, 257 F.3d 636, 645 (6th Cir. 2001); United States v. Chambers, 944 F.2d 1253, 1264 (6th Cir. 1991), particularly where, as here, "the recanting witness is a family member and the witness has feelings of guilt or the family members seek to influence the witness to change his story." Willis, 257 F.3d at 646 (internal quotation marks omitted). In this case, the Court is not "reasonably well satisfied" that the original trial testimony of Travis was false. See id. at 645, 646; Chambers, 944 F.2d at 1264.

Defendant's **{2011 U.S. Dist. LEXIS 68}**newly obtained statements from his former wife, Janet Harper ("Janet"), and his son, **Charles Gary Bruce**, Jr. ("Jr."), also do not tend to undermine the guilty verdicts in this case. Janet has submitted a notarized, unsworn statement, dated April 20, 2009, which states as follows:

> I, Janet Phipps, Bruce, Haper, do hereby testify to the following statement. While Stephen Parker had me in an office in the Jackson Federal Courthouse, after hours of interrogation and also allowing a lie detector to be used, did threaten me with removing my underage children from my care and "seeing to it" that I would do jail time if I did not agree to testify against **Charles Gary Bruce** Sr. the father of my children, saying I did not have possession of the GMC truck on January 16, which put it as a vehicle driven in the murders of Danny Vine and Della Thornton. Several appearances later, when I still would not agree to testify to something I knew to be a lie, it was set up with an officer named Robert Weller to arrange for myself to win a package of fireworks on July 4th. Officer Weller was waiting for me on Eva Road at the store and arrested me at the store driving same said truck. I also had my children **{2011 U.S. Dist. LEXIS 69}**with me and had to arrange for their grandmother to come and pick them up as Officer Weller was going to make arrangements for them to go to DHS. While I was in the Benton County jail for a period of 53 days, I was repeatedly brought out of my cell and taken to the office of Billy Gut

Wyatt, then Sheriff of Benton County, Robert Weller tried to convince me that if I would only testify to not having the truck on the night of January 16, they would have a complete case to convict **Charles Gary Bruce** Sr. as an accomplice in the murders.(D.E. 11-6 at 44.) Defendant also submitted what he has labeled a deposition by written questions of Janet, which is signed and notarized, that reiterated the alleged coercion from law enforcement prior to Defendant's trial. Id. at 45-50. Specifically, Janet claims that the Assistant United States Attorney who prosecuted the case administered a lie detector test and accused her of lying about whether she had the truck at the time of the murders. Id. at 46. Janet's statement is corroborated, in part, by Jr.'s unsworn statement, dated May 26, 2009, recounting that he "remembered the law intimidating my mother as well as us kids" and stating that his father **{2011 U.S. Dist. LEXIS 70}**asked him to give a statement. Id. at 51. Jr. submitted a second unsworn statement, dated May 26, 2009, recounting an incident in 1993 in which Janet was arrested after winning a package of fireworks. (D.E. 11-7.) Despite what Janet and Defendant contend was the pressure applied by the Government and law enforcement officers, Janet did testify at Defendant's trial that she had Defendant's truck at the time of the murders. (Tr. 4954-54.)

Because Defendant has not satisfied his burden of demonstrating that it is more likely than not that a reasonable juror would not vote to convict after considering the evidence presented at trial and the various items of new evidence submitted by Defendant, the Court concludes that Defendant has not established an actual innocence claim that would equitably toll the statute of limitations. Therefore, the Court GRANTS the Government's motion to dismiss this motion as time barred.

Although it is unnecessary further to address the merits of time barred claims, it is necessary briefly to discuss one other issue. As previously mentioned, a federal prisoner's showing of actual innocence is insufficient to obtain relief from his conviction. Instead, a defendant **{2011 U.S. Dist. LEXIS 71}**must also show that his conviction was the result of a constitutional violation. As the Government has pointed out (D.E. 8 at 29-31), Defendant has not done so.

As previously noted, Defendant's original motion does not set forth any clearly enumerated constitutional claims. Despite Defendant's focus on the differences between the testimony presented at his trial and at the earlier trial of his codefendants, he does not argue that his attorney rendered ineffective assistance by failing to impeach any Government witness with his or her prior testimony.

Defendant argues, at length, that the police improperly narrowed the focus of the investigation to the Bruce brothers and Riales and failed adequately to investigate other, known suspects and that the Government also did not prosecute other people who might have been involved. (D.E. 1-2 at 3, 13-14; D.E. 1-3 at 14-18.) These allegations do not establish a constitutional violation. The United States Constitution does not compel law enforcement officers to investigate crimes reported by citizens or to conduct their investigations in a competent or timely manner. DeShaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 195, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) ("[N]othing **{2011 U.S. Dist. LEXIS 72}**in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security."); Mitchell v. McNeil, 487 F.3d 374 (6th Cir. 2007) (dismissing due process claim based on failure to investigate); Smith v. Jackson, No. 93-3052, 1993 U.S. App. LEXIS 17661, 1993 WL 241816 (6th Cir. July 2, 1993) (affirming dismissal of claim that police and social worker failed to investigate alleged sexual abuse of child); Parkhurst v. Tabor, Civ. No. 07-2068, 2007 U.S. Dist. LEXIS 80725, 2007 WL 3227305 (W.D. Ark. Oct. 30, 2007); Langworthy v. Dean, 37 F. Supp. 2d 417, 422-23 (D. Md. 1999) (holding that "there is not a clearly established constitutional right to have claims of criminal activity by a private actor investigated"; collecting cases). Moreover, "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Linda

R. S. v. Richard D., 410 U.S. 614, 619, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973)).29

Finally, Defendant's suggestion that the Government failed to disclose promises it made to defense witnesses in exchange for their testimony does not warrant relief. Tellingly, Defendant specifically disclaims any intention of raising a claim under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). (D.E. 1-3 at 7 ("Importantly, the Defendant is not before the Court requesting relief pursuant to alleged Brady nondisclosures."). Despite that disclaimer, the cases he cites involve claimed Brady violations. One such case is Bell v. Bell, 460 F.3d 739, 753 (6th Cir. 2006), which concluded that a prosecutor's failure to disclose a tacit agreement with a state witness violates Brady. This decision was subsequently vacated, and the Court of Appeals, sitting en banc, held there was no Brady violation. Bell v. Bell, 512 F.3d 223 (6th Cir.), *cert. denied,* 555 U.S. 822, 129 S. Ct. 114, 172 L. Ed. 2d 35 (2008). Although the en banc court agreed that "[t]he existence of a less formal, unwritten or tacit agreement is also subject to Brady's disclosure **{2011 U.S. Dist. LEXIS 74}**mandate," id. at 233, the Court of Appeals concluded that the prisoner had not adequately demonstrated that the parties "had reached a mutual understanding, albeit unspoken," id. The en banc court held that an agreement cannot be inferred from the expectation of one party or from the fact that, after the defendant's trial, a witness receives a benefit:

> If Bell could prove that Davenport and Miller had reached a mutual understanding, albeit unspoken, that Davenport would provide testimony in exchange for the district attorney's intervention in the case against him, such an agreement would qualify as favorable impeachment material under Brady. On the record before us, however, we are unable to conclude that such an agreement existed here.
>
> In support of his assertion of an implied agreement, Bell relies in part on the notes from Miller's discussion with Davenport on October 3, 1986. He argues, in addition, that the events following this meeting-specifically, the resolution of the case against Davenport-confirm the existence of an agreement between Davenport and Miller. The record confirms Bell's claim that Davenport contacted the district attorney's office in the hope of receiving a benefit **{2011 U.S. Dist. LEXIS 75}**in exchange for his assistance. Indeed, Miller testified at the evidentiary hearing before the district court that, although he was not certain what Davenport wanted, "[e]verybody wants something, and I'm sure Davenport wanted something."
>
> The fact that Davenport desired favorable treatment in return for his testimony in Bell's case does not, standing alone, demonstrate the existence of an implied agreement with Miller. A witness's expectation of a future benefit is not determinative of the question of whether a tacit agreement subject to disclosure existed. See [Wisehart v. Davis, 408 F.3d 321, 325 (7th Cir. 2005)] ("[W]hat one party might expect from another does not amount to an agreement between them."). Although Davenport may have been seeking more lenient treatment in his own case, we find no evidence of a corresponding assurance or promise from Miller. Miller testified at the evidentiary hearing before the district court that he did not promise Davenport anything in exchange for his testimony, stating unequivocally that he "made no agreements with Mr. Davenport at all." When asked at his parole hearing about Miller's letter to the parole board and Davenport's participation in **{2011 U.S. Dist. LEXIS 76}**the Bell case, Davenport stated that he "got nothing out of that whatsoever."
>
> Nor do we believe that the handling of Davenport's case after his meeting in October 1986 proves the existence of an understanding. As to the disposition of the six counts pending against Davenport, Bell does not direct us to any reliable evidence that the prosecutor or judge assigned to Davenport's case had any awareness that Davenport was planning to render assistance in the Bell case. Without evidence to the contrary, one could just as reasonably conclude that the result

in Davenport's case merely reflects the standard operations of the criminal justice system, in which the state offers leniency to defendants in exchange for their pleas of guilty. Cf. Wisehart, 408 F.3d at 324 ("[M]ost criminal cases are disposed of pursuant to plea agreements that involve concessions on [the government's] part."). Moreover, Bell relies too heavily upon Miller's subsequent decision to transmit a letter to the parole board. In his letter, Miller mentions Davenport's cooperation in the case against Bell, but also notes the threat of possible retaliation by other prisoners as a reason for granting Davenport early parole. In **{2011 U.S. Dist. LEXIS 77}**light of Miller's sworn statement before the district court that he had no agreement with Davenport, we have no reason to believe that an undisclosed agreement was the true reason for Miller's letter to the parole board.

In sum, although we do not take issue with the principle that the prosecution must disclose a tacit agreement between the prosecution and a witness, it is not the case that, if the government chooses to provide assistance to a witness following a trial, a court must necessarily infer a preexisting deal subject to disclosure under Brady. "The government is free to reward witnesses for their cooperation with favorable treatment in pending criminal cases without disclosing to the defendant its intention to do so, *provided* that it does not promise anything to the witnesses prior to their testimony." Shabazz v. Artuz, 336 F.3d 154, 165 (2d Cir. 2003) (emphasis in original). To conclude otherwise would place prosecutors in the untenable position of being obligated to disclose information prior to trial that may not be available to them or to forgo the award of favorable treatment to a participating witness for fear that they will be accused of withholding evidence of an agreement.

Bell **{2011 U.S. Dist. LEXIS 78}**has not adequately demonstrated the existence of an understanding between Davenport and Miller concerning his testimony at Bell's trial. "Without an agreement, no evidence was suppressed, and the state's conduct, not disclosing something it did not have, cannot be considered a Brady violation." Todd v. Schomig, 283 F.3d 842, 849 (7th Cir. 2002). The result advocated by Judge Clay in his dissenting opinion would create a new definition of Brady material that includes possible post-trial witness favorable treatment-something never previously considered by any court to be within Brady's ambit.Id. at 233-34 (footnotes omitted); see also United States v. White, 861 F.2d 994, 996-97 (6th Cir. 1988) (a witnesses' subjective belief that he had been promised a letter to the Parole Commission does not warrant a new trial in the absence of evidence of a promise by the government).30

The only evidence presented by Defendant that can possibly raise a Brady issue is the hearsay statement by Travis that the prosecutor promised to "go to the **{2011 U.S. Dist. LEXIS 80}**parole board and would get him out of prison early," but that he failed to do so. (D.E. 1-22.) Travis does not repeat that assertion in his own, unsworn statement. (D.E. 1-23.) At trial, Travis testified that no promises were made to him in exchange for his testimony. (Tr. 4163, 4173-74.) Billy's second-hand recitation of a statement that the witness himself declined to repeat in his own statement is insufficient to warrant further investigation. The other instances cited by Defendant are entirely speculative.

Because all of Defendant's claims have been dismissed, the motion pursuant to 28 U.S.C. § 2255 is DENIED.

Twenty-eight U.S.C. § 2253(a) requires the district court to evaluate the appealability of its decision denying a § 2255 motion and to issue a certificate of appealability ("COA") only if "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see also Fed. R. App. P. 22(b); Lyons v. Ohio Adult Parole Auth., 105 F.3d 1063, 1073 (6th Cir. 1997) (district

judges may issue certificates of appealability). No § 2255 movant may appeal without this certificate.

In Slack v. McDaniel, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000), the Supreme Court **{2011 U.S. Dist. LEXIS 81}**stated that § 2253 is a codification of the standard announced in Barefoot v. Estelle, 463 U.S. 880, 893, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983), which requires a showing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were '"adequate to deserve encouragement to proceed further.'" Slack, 529 U.S. at 484 (quoting Barefoot, 463 U.S. at 893 & n.4).

The Supreme Court has cautioned against undue limitations on the issuance of certificates of appealability:

> [O]ur opinion in Slack held that a COA does not require a showing that the appeal will succeed. Accordingly, a court of appeals should not decline the application of a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in Slack would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with § 2253 that a COA will issue in some instances where there is no certainty of ultimate relief. After all, when a COA is sought, the whole premise is that the prisoner '"has already failed **{2011 U.S. Dist. LEXIS 82}**in that endeavor.'"Miller-El v. Cockrell, 537 U.S. 322, 337, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) (quoting Barefoot, 463 U.S. at 893). Thus,
>
> [a] prisoner seeking a COA must prove '"something more than the absence of frivolity'" or the existence of mere "good faith" on his or her part. . . . We do not require petitioners to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.Id. at 338 (quoting Barefoot, 463 U.S. at 893); see also id. at 342 (cautioning courts against conflating their analysis of the merits with the decision of whether to issue a COA; "[t]he question is the debatability of the underlying constitutional claim, not the resolution of that debate.").31

In this case, for the reasons previously **{2011 U.S. Dist. LEXIS 83}**stated, the issues raised by Defendant lack substantive merit and, therefore, he cannot present a question of some substance about which reasonable jurists could differ. The Court therefore DENIES a certificate of appealability.

The Sixth Circuit has held that the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915(a)-(b), does not apply to appeals of orders denying § 2255 motions. Kincade v. Sparkman, 117 F.3d 949, 951 (6th Cir. 1997). Rather, to appeal *in forma pauperis* in a § 2255 case, and thereby avoid the $455 appellate filing fee required by 28 U.S.C. §§ 1913 and 1917, the Defendant must obtain pauper status pursuant to Federal Rule of Appellate Procedure 24(a). Kincade, 117 F.3d at 952. Rule 24(a) provides that a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a)(1). However, Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma pauperis,* the party must file his motion to proceed *in forma pauperis* in the appellate court. See Fed. R. App. P. 24(a)(4)-(5).

In this case, for the same reasons **{2011 U.S. Dist. LEXIS 84}**the Court denies a certificate of appealability, the Court determines that any appeal would not be taken in good faith. It is therefore CERTIFIED, pursuant to Fed. R. App. P. 24(a), that any appeal in this matter is not taken in good faith, and leave to appeal *in forma pauperis* is DENIED. Accordingly, if the Defendant files a notice of appeal, he must also pay the full $455 appellate filing fee or file a motion to proceed *in forma*

pauperis and supporting affidavit in the Sixth Circuit Court of Appeals.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

/s/ **James D. Todd**

JAMES D. TODD

UNITED STATES DISTRICT JUDGE

Footnotes

1

The case was reassigned to the undersigned judge on July 1, 2009. (D.E. 13.)

2

The organization of Defendant's motion is confusing. After presenting the three items of newly discovered evidence that form the basis for the motion, and arguing that he was duly diligent in filing this motion, Defendant expends considerable effort in speculating that various Government witnesses were promised benefits in exchange for their testimony (D.E. 1-2 at 39-41; D.E. 1-3 at 1-10), and pointing out weaknesses **{2011 U.S. Dist. LEXIS 23}**in the Government's case as presented at trial (D.E. 1-3 at 11-38.) Another piece of newly disclosed evidence-the statement by Ira Travis, a Government witness, that he no longer recalls the events of the night in question, is mentioned only in passing in the section concerning due diligence. (D.E. 1-2 at 34-35; see also D.E. 1-22.) Among the exhibits to Defendant's motion is the 46-page factual section of Defendant's application to the Sixth Circuit (D.E. 1-30), which, as will be discussed *infra,* relies, in part, on evidence Defendant concedes is forged (see id. at 44).

Defendant's response does not distinguish between testimony presented at Defendant's trial and the earlier trial of his codefendants. The transcripts for both trials are numbered sequentially, and Defendant's trial begins at p. 3478.

Defendant's reply also is not clearly organized. Instead of responding to the arguments in the Government's response, the reply consists of a lengthy, 53-page recitation of the facts from Defendant's perspective (D.E. 11-1, 11-2 & 11-3), and various items of new evidence not presented in the original motion, including statements from Defendant's son and former wife. (D.E. 11-5 at 16-18; **{2011 U.S. Dist. LEXIS 24}**D.E. 11-6 at 44-51; D.E. 11-7 at 1.)

3

Defendant's § 2255 motion does not challenge his conviction or sentence in case number 95-10051.

4

This standard is similar, but not identical, to the first two prongs of the Rule 33 standard.

5

Defendant has accompanied these statements with two unsworn and undated statements by his brother, Billy Bruce ("Billy"), who he has hired as an investigator. (D.E. 1-7 & 1-8.) Those statements purport to recount conversations between Billy and Stockdale.

6

Because the final day of the limitations period fell on Saturday, April 12, 2008, Defendant had until

the close of the next business {2011 U.S. Dist. LEXIS 34}day to file his § 2255 motion. Fed. R. Civ. P. 6(a)(2)(C) (current version).
7

The Government says that the possible involvement of the Scarborough brothers had been rumored for some time (D.E. 8 at 22), and Defendant testified at his trial that he had tried to get law enforcement to investigate Jay ("Mino") Scarborough near the time of the crimes. (Tr. at 4867 (Jay Scarborough was at Henderson's trailer the evening of Jan. 15, 1991), 4915 ("I've asked you all to contact Mino in this investigation for five years. Has Mino been questioned? Has he even been brought forward, sir?").) If so, the anonymous tip memorialized in the 2006 Stockdale Statement {2011 U.S. Dist. LEXIS 36}is not new evidence because it adds nothing to the existing rumors. To the extent the tip by Blagburn was based on personal knowledge, the Court will assume that it constitutes newly discovered evidence.
8

The Government also argues that the 2006 Stockdale Statement does not tend to show that Defendant is actually innocent of the murders. That argument will be addressed *infra.*
9

A copy of the receipt is found at D.E. 1-9. The transcript pages submitted by Defendant (D.E. 1-10) are from the trial of his codefendants and are not relevant to this proceeding. Defendant did not object at trial to introduction of the bullet and 1991 postal receipt. (Tr. 4046.)
10

Defendant asserts that Billy obtained similar information from two other Postmasters on June 4, 2007 (D.E. 1-2 at 18, 37-38), but Defendant has not submitted an affidavit from Billy attesting to those conversations.

As will be discussed *infra,* Billy obtained what appears to be a signed {2011 U.S. Dist. LEXIS 38}statement by Byars, but that statement did not address whether the receipt number is valid.
11

Guilbeau testified that he mailed the bullet to TBI Agent Daniels. Id. Daniels died before the case against any of the Defendants {2011 U.S. Dist. LEXIS 40}was tried.
12

As will be discussed *infra,* the purported statement by Byars is not probative of Defendant's actual innocence.
13

Carla is sometimes referred to as "Carla Christy" or as "Angie."
14

At trial, defense counsel did not ask Carla about her eyesight or whether she was wearing her glasses during the events in question.
15

The Government's challenge to the authenticity of Steve's statement will be addressed *infra.*
16

The Court of Appeals explained the difference between the evaluation of new evidence under this equitable tolling standard and that set forth in § 2244(d)(1)(D):

A claim filed within one year of the discovery of new evidence proceeds directly to the district court for a determination of the merits of the habeas petitioner's constitutional claims. By contrast, under

the Schlup [v. Delo, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995)] actual innocence gateway, the petitioner must clear the procedural bar of demonstrating a credible claim of actual innocence before a court will reach the merits of his constitutional claims. Because one must meet a significantly greater burden to pass through the gateway, no petitioner would forego filing within the one-year period under § 2244(d)(1)(D) if possible. The actual innocence exception would be limited to the rate and extraordinary case where a petitioner can demonstrate a credible claim of actual innocence and the one-year **{2011 U.S. Dist. LEXIS 48}**limitations window has closed.Souter, 395 F.3d at 600.
17

In **{2011 U.S. Dist. LEXIS 53}**re Bruce, No. 07-5385 (6th Cir.) (Application Under 28 U.S.C. § 2244 Requesting the Court Authorize a Second or Successive 28 U.S.C. § 2255 Motion at 73, 75-76).
18

In re Bruce, No. 07-5385 (6th Cir.) (Ex. 20, Applicant's Exhibits for 28 U.S.C. § 2244 Application).
19

The information is also inadmissible in its present form. Any testimony by Stockdale is hearsay because the information obtained from Blagburn and the other informant is presented for the truth of the matter asserted. If Blagburn was present during the crimes, he has Fifth Amendment rights that he could be expected to assert. If Blagburn was not present, he could testify about his conversations with the Scarborough brothers but he would appear to lack personal knowledge that the Bruce brothers were not also involved.
20

As will be discussed *infra,* Defendant's reply includes an unsworn statement by Byars in which she states that the receipt is invalid but not because of the receipt number.
21

In his motion, Defendant also points out that the 1991 postal receipt "contains no date that can be verified." (D.E. 1-2 at 17.) In his reply, Defendant submitted what appears to be an unsworn statement by Byars, dated June 4, 2007, that stated that "[t]he PS Form 3811 for this article has not been signed and does not show the type of service for the **{2011 U.S. Dist. LEXIS 59}**article number." (D.E. 11-6 at 51; D.E. 11-3 at 44-45.) Defendant has not explained why he did not produce this statement, or state that it existed, when he filed this motion. (D.E. 1-2 at 16, 18; D.E. 11-3 at 3-4.) Byars's purported statement does not support the claim initially attributed to her by Defendant, that the receipt was invalid because of the number of digits used. As for the omissions noted by the purported statement, the receipt was in evidence at trial, and defense counsel had the opportunity to cross examine Guilbeau or to subpoena a representative of the Postal Service to testify concerning any alleged irregularities. Because the Postal Service's records do not go back to 1991, any further investigation at this point would be futile.

Defendant also argues, at length, that the testimony of Guilbeau at his trial differed from that at the trial of his codefendants. (D.E. 1-3 at 24-31.) Guilbeau's testimony at the earlier trial was available at Defendant's trial, yet was not used.
22

Tina was unavailable to testify at trial, and her video deposition was played for the jury.
23

Ms. Malin notarized several of Billy's statements, and she also notarized the Elmore statement submitted by Defendant.
24

The Clerk's office no longer has the original of Defendant's motion or his reply, so it cannot be determined whether **{2011 U.S. Dist. LEXIS 64}**this statement contained a raised notary seal. It is the policy of the Clerk's office to dispose of documents submitted by *pro se* litigants one year after they are scanned into the Court's electronic case filing ("ECF") system.
25

Defendant also has submitted a copy of the Government's factual statement in its opposition to his motion for leave to file a second or successive § 2255 motion **{2011 U.S. Dist. LEXIS 65}**that blacks out the testimony of the eight witnesses he suspects were subjected to suggestive interviewing techniques. Compare D.E. 1-27 with D.E. 1-28.
26

Defendant does not claim the Government violated Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), by concealing Busby's prior convictions from the defense.
27

During cross examination at Defendant's trial, Travis admitted that he had been drinking since early that afternoon and that he continued drinking at the party. (Tr. 4166.) Despite his alcohol intake, Travis testified that "I was coherent" and "I can remember some of it." Id.
28

Travis testified at Defendant's trial that he and the Bruce brothers are first cousins, that he knew them all his life, and that he spent much time with them. (Tr. 4151.)
29

Defendant's claim that a Government official falsified the 1991 postal receipt, if it were established, would state a constitutional **{2011 U.S. Dist. LEXIS 73}**claim. See, e.g., Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959); Mooney v. Holohan, 294 U.S. 103, 112-13, 55 S. Ct. 340, 79 L. Ed. 791 (1935). For the reasons previously stated, the Court has found this claim to be meritless.
30

The other cases cited by Defendant are readily distinguishable. In United States v. Sipe, 388 F.3d 471, 488 (5th Cir. 2004), the Government failed to disclose numerous benefits given to its illegal alien witnesses, including "Social Security cards, witness fees, permits allowing travel to and from Mexico, travel **{2011 U.S. Dist. LEXIS 79}**expenses, living expenses, some phone expenses, and other benefits." Instead, the Government disclosed only that these witnesses were allowed to live and work in the United States pending the trial. The Fifth Circuit concluded that these witnesses "were essentially given all, and more, of the benefits they were arrested for trying to obtain illegally-benefits so valuable that they took great risks to obtain them by crossing the border illegally," id., and that "the sheer scope of the benefits given the aliens, the disturbing evidence regarding the government's control over the witnesses, and the fact that Guevara changed his account of the incident after dealing with the prosecutors gives us pause," id. at 489. This nondisclosure was particularly serious because the defendant had made a specific request for the withheld evidence and because the testimony of the aliens "formed the heart of the government's case." Id. at 490. Defendant has not suggested that any witness in this case received lavish benefits such as those in Sipe.
31

The Supreme Court also emphasized that "[o]ur holding should not be misconstrued as directing that a COA always must issue." Id. at 337. Instead, the COA requirement implements a system of "differential treatment of those appeals deserving of attention from those that plainly do not." Id.

Exhibit-G

B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Leonard Green
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 20, 2011

Mr. Charles Gary Bruce
U.S.P. Lewisburg
P.O. Box 1000
Lewisburg, PA 17837

Mr. John D. Fabian
U.S. Attorney's Office
167 N. Main Street
Suite 800
Memphis, TN 38103

Re: Case No. 11-5251, *Charles Bruce v. USA*
Originating Case No. : 08-01136 : 93-10052-001

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Linda M. Niesen
Case Manager
Direct Dial No. 513-564-7038

cc: Mr. Thomas M. Gould

Enclosure

No. 11-5251

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLES GARY BRUCE,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Charles Gary Bruce, a pro se federal prisoner, appeals a district court order dismissing his motion to vacate his sentence filed pursuant to 28 U.S.C. § 2255. Bruce has moved for a certificate of appealability pursuant to Federal Rule of Appellate Procedure 22(b) and for leave to proceed in forma pauperis.

In 1996, Bruce was convicted of conspiring to rob a business affecting interstate commerce in violation of 18 U.S.C. § 1951; robbing a business affecting interstate commerce in violation of 18 U.S.C. § 1951; using a firearm during the commission of a robbery in violation of 18 U.S.C. § 924(c); destroying by fire a business affecting interstate commerce in violation of 18 U.S.C. § 844(h)(1); murdering to prevent communication to a law enforcement official of a federal offense in violation of 18 U.S.C. § 1512(a)(1); conspiring to obstruct justice by interfering with the investigation of the robbery and murder in violation of 18 U.S.C. § 371; and escaping from custody in violation of 18 U.S.C. § 751. Bruce was sentenced to life imprisonment. His convictions were affirmed on direct appeal. *United States v. Bruce*, Nos. 96-6590/6591, 1998 WL 165144 (6th Cir. Mar. 31, 1998). The Supreme Court denied Bruce's petition for a writ of certiorari on October 5, 1998. *Bruce v. United States*, 525 U.S. 882 (1998).

On June 6, 2008, Bruce filed his motion to vacate his sentence arguing that newly discovered evidence established his innocence; that the prosecution engaged in misconduct; that the district

court should conduct an evidentiary hearing; that his due process rights were violated; that knowingly perjured testimony was submitted into evidence; that witnesses were threatened; and that he was actually innocent of the charges. The district court examined the allegedly newly discovered evidence and found that the evidence was not new. The district court also noted that Bruce had not established that he was actually innocent of the charges against him. The court granted the government's motion to dismiss Bruce's § 2255 motion as being barred by the applicable one-year statute of limitations of § 2255(f).

In his motion for a certificate of appealability, Bruce continues to argue the merits of his § 2255 motion, and he challenges the district court's conclusion that the motion was time-barred.

An individual seeking a certificate of appealability is required to make a substantial showing of the denial of a federal constitutional right. 28 U.S.C. § 2253(c)(2). The individual must establish that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented deserved further consideration. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). When the petition has been denied on a procedural ground, the petitioner must show, "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* at 484. "Where a plain procedural bar is present and the district court [was] correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.*

Under § 2255(f), the one-year statute of limitations runs from the latest of (1) the date on which the judgment of conviction became final, (2) the date on which an impediment created by the government is removed, (3) the date the right asserted is recognized by the Supreme Court and is made retroactive to cases on collateral review, or (4) the date the facts supporting the claim could have been discovered through due diligence. *See Benitez v. United States*, 521 F.3d 625, 629 (6th Cir. 2008).

Bruce argues that subsection (f)(4) is applicable to his case based on three items that he asserts constitute newly discovered evidence. However, a review of the items establishes that they are not new and, in some instances, existed prior to Bruce's trial. In addition, the evidence does not exonerate Bruce. *See Schlup v. Delo*, 513 U.S. 298, 326-27 (1995); *Souter v. Jones*, 395 F.3d 577, 599 (6th Cir. 2005).

Although the one-year statute of limitations is not jurisdictional and may be equitably tolled when the prisoner demonstrates "'(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing," *Lawrence v. Florida*, 549 U.S. 327, 336 (2007) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)), Bruce cannot show either. Almost all of the "new" evidence cited by Bruce was well known to Bruce, or should have been, long before the statute of limitations expired. The statements of a local police sergeant may not have been known to Bruce earlier than 2006, but those statements had no exculpatory effect and Bruce did not file the instant motion until 2008. Because Bruce has failed to establish that he was diligent in pursuing his rights, reasonable jurists could not find the district court's dismissal of his motion on statute of limitations grounds debatable.

Accordingly, Bruce's request for a certificate of appealability is denied and his motion for leave to proceed in forma pauperis is denied as moot.

ENTERED BY ORDER OF THE COURT

Clerk

No. 12-5204

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: CHARLES GARY BRUCE,

Movant.

ORDER

Before: SILER, KETHLEDGE, and WHITE, Circuit Judges.

Charles Gary Bruce, a federal prisoner proceeding pro se, moves this court, pursuant to 28 U.S.C. § 2244(b), for an order authorizing the district court to consider a second or successive motion to vacate, set aside or correct sentence to be filed under 28 U.S.C. § 2255.

In 1996, a federal jury convicted Bruce of conspiring to rob a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; robbing a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; using a firearm during the commission of a robbery, in violation of 18 U.S.C. § 924(c); destroying by fire a business affecting interstate commerce, in violation of 18 U.S.C. § 844(h)(1); murdering to prevent communication to a law enforcement official of a federal offense, in violation of 18 U.S.C. § 1512(a)(1); conspiring to obstruct justice by interfering with the investigation of robbery and murder, in violation of 18 U.S.C. § 371; and escaping from custody, in violation of 18 U.S.C. § 751. The trial evidence showed that Bruce and several codefendants murdered the operators of a mussel-shell buying business, burned down the business, and stole and sold several thousand dollars worth of shells. Bruce was sentenced to life imprisonment plus ten years to run consecutively. We affirmed the convictions and sentence, *United States v. Bruce*, Nos. 96-6590, 96-6591, 1998 WL 165144 (6th Cir. Mar. 31, 1998), and the Supreme Court denied certiorari, *Bruce v. United States*, 525 U.S. 882 (1998).

In 2007, Bruce filed in this court a motion for authorization to file a second or successive § 2255 motion to vacate in the district court. We denied the motion as unnecessary because Bruce

had yet to file an initial § 2255 motion in the district court. *In re Bruce*, No. 07-5385 (6th Cir. Oct. 4, 2007). In 2008, he filed a § 2255 motion to vacate in the district court, but the district court denied it as untimely and for failing to raise a constitutional violation. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 4, 2011). We denied Bruce a certificate of appealability. *Bruce v. United States*, No. 11-5251 (6th Cir. Sept. 20, 2011).

In 2012, Bruce filed in the district court a motion under Federal Rule of Civil Procedure 60(b). The district court construed the Rule 60(b) motion as a second or successive § 2255 motion and transferred it to this court for consideration as a motion for an order authorizing the filing of a second or successive motion. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 28, 2012); *see Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). To obtain that authorization, he must make a prima facie showing that: 1) there is "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense"; or 2) a new rule of constitutional law applies to his case that the Supreme Court has made retroactive to cases on collateral review. 28 U.S.C. §§ 2244(b), 2255(h). A prima facie showing requires "sufficient allegations of fact together with some documentation that would 'warrant a fuller exploration in the district court.'" *In re McDonald*, 514 F.3d 539, 546 (6th Cir. 2008) (quoting *In re Lott*, 366 F.3d 431, 433 (6th Cir. 2004)).

In his proposed motion, Bruce raises an actual innocence claim. He produces two affidavits from women, and claims that he has a video documenting a conversation between the two women, that state that a third party, Jay Scarborough, confessed to the murders for which Bruce was charged. Related to this claim are claims of law enforcement misconduct, law enforcement perjury, and law enforcement cover-ups of this "newly discovered" evidence.

Bruce's motion fails for a number of reasons. First, Bruce brought a similar "actual innocence" claim in his first habeas petition and claimed that Scarborough was the real murderer. Second, the veracity of the affidavits is highly suspect. One affidavit, signed by a Ms. Tammy Cook,

merely says that Scarborough admitted to Ms. Cook that he committed the murders, explaining how it was done and naming accomplices. The other affidavit, signed by a Ms. Barbie Swearingen, states only that Ms. Cook told Ms. Swearingen the information Ms. Cook attested to in her affidavit. The video apparently documents the conversation between Ms. Cook and Ms. Swearingen. Nothing presented comes straight from the party taking responsibility for the murders, and nothing can be construed as definitive or reliable proof that another party actually committed the murders. Further, the affidavit is largely conclusory: Ms. Cook does not relay information that only someone connected to the crime would know, i.e., information that could not have been found in the newspaper or public domain. In other words, the detail provided is not so unique as to lead a reasonable factfinder to believe that Ms. Cook (through Scarborough) knew information that others unconnected to the incident did not know. Finally, and most importantly, neither affidavit exonerates Bruce's guilt of the offense. While each affidavit includes a statement Scarborough allegedly made about having shot the victims, neither affidavit features any information to show that Bruce did not participate in the shootings. Neither affidavit provides enough evidence to call into question the evidence relied upon to convict Bruce, which this court previously held was sufficient for finding Bruce guilty. That evidence included testimony from witnesses who placed Bruce within the conspiracy and a witness who saw Bruce at the gas station putting gas into containers hours before the arson at one of the victim's houses, and evidence showing that bullets from Bruce's gun were found in one victim's skull and that Bruce sold large quantities of shells of the type the victims used immediately following the murder. *See Bruce*, 1998 WL 165144, at *2.

Bruce has filed a reply to which he has attached interrogatories that he purportedly propounded to Ms. Cook on September 4, 2012. Ms. Cook's answers do offer somewhat more detail about what Scarborough allegedly told her: She replied "no" in response to several questions asking whether Scarborough had "ever mention[ed]" to her that Bruce was involved in the case "in any way." However, none of Ms. Cook's answers suggest that Scarborough ever affirmatively stated that Bruce was *not* involved in the murders.

No. 13-5222

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: CHARLES GARY BRUCE,

Movant.

ORDER

Before: SILER, CLAY, and KETHLEDGE, Circuit Judges.

Charles Gary Bruce, a federal prisoner filing *pro se*, moves this court for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government has responded in opposition.

In 1996, a federal jury found Bruce guilty on all counts of an eight-count indictment: Conspiracy to rob a business affecting interstate commerce, robbery of a business affecting interstate commerce, using a firearm during the commission of a felony, conspiracy to obstruct justice, destroying by fire a business affecting interstate commerce, two counts of murder to prevent communication to a law enforcement official, and escaping from custody. The evidence showed that Bruce and several co-defendants conspired to rob a mussel-shell business, bound and shot the owners, burned down the building, and stole a truckload of shells, selling them for several thousand dollars. The district court sentenced Bruce to life imprisonment plus ten consecutive years. This court affirmed his convictions and sentence. *United States v. Bruce*, Nos. 96-6590/6591, 1998 WL 165144 (6th Cir. Mar. 31, 1998). The Supreme Court denied certiorari. *Bruce v. United States*, 525 U.S. 882 (1998).

Bruce filed a motion for authorization to file a second or successive motion under 28 U.S.C. § 2255 in 2007, which this court denied as unnecessary because Bruce had not filed an initial motion. *In re Bruce*, No. 07-5385 (6th Cir. Oct. 4, 2007). In 2008, the district court dismissed Bruce's

subsequent § 2255 motion as untimely, and this court denied a certificate of appealability. *Bruce v. United States*, No. 11-5251 (6th Cir. Sept. 20, 2011). Bruce filed a Federal Rule of Civil Procedure 60(b) motion, which was construed as a second or successive motion under § 2255 and transferred to this court. The motion was denied, as the evidence Bruce cited was not new and did not tend to demonstrate his innocence. *In re Bruce*, No. 12-5204 (6th Cir. Dec. 21, 2012).

On February 2, 2013, Bruce filed the instant motion seeking this court's authorization to file a second or successive petition under 28 U.S.C. § 2255. In support, Bruce relies on the Supreme Court decision in *Fowler v. United States*, 131 S. Ct. 2045 (2011).

Permission to file a second or successive motion under 28 U.S.C. § 2255 requires a prima facie showing of either:

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). Here, Bruce has presented no new evidence, and the *Fowler* case does not meet the statutory standard.

Not every new Supreme Court case justifies a grant of authorization to file a second or successive § 2255 motion. The case must have: (1) announced a new rule of constitutional law; (2) been held retroactive to cases on collateral review by the Supreme Court; and (3) been "previously unavailable." The *Fowler* case fails to meet all three criteria in this instance.

New rules of statutory law do not justify a second or successive § 2255 motion. *See Paulino v. United States*, 352 F.3d 1056, 1059 n.2 (6th Cir. 2003). In *Fowler*, the Supreme Court settled an issue of statutory application in murder cases under the federal witness tampering statute. 18 U.S.C. § 1512(a)(1)(C); *Fowler*, 131 S. Ct. at 2049–50. The Supreme Court held that murder committed with the intent to prevent communication to a federal law enforcement officer under 18 U.S.C. § 1512(a)(1)(C) requires a showing of a "reasonable likelihood" that the victim would have communicated with a federal officer about the event had he survived. *Fowler*, 131 S. Ct. at 2053.

The majority cited no constitutional reason for its holding, nor did it mention any constitutional provision. Thus, it is clear that *Fowler* created a rule of statutory interpretation and not one of constitutional law.

Nor has the Supreme Court rendered the *Fowler* rule retroactive on collateral review. It is not enough that a case meets the *Teague v. Lane*, 489 U.S. 288 (1989), test for retroactive application; the Supreme Court must have explicitly held that it retroactively applies. *Tyler v. Cain*, 533 U.S. 656, 661–66 (2001); *In re Clemmons*, 259 F.3d 489, 493 (6th Cir. 2001). The Supreme Court in *Fowler* did not establish its retroactivity, nor have any subsequent Supreme Court holdings led to a similar result.

Lastly, a rule announced before a prior motion under 28 U.S.C. § 2255 was filed is not considered "previously unavailable." *See In re Acosta*, 480 F.3d 421, 423 (6th Cir. 2007); *see also In re Williams*, 364 F.3d 235, 239 (4th Cir. 2004). The *Fowler* opinion was issued on May 26, 2011. Bruce filed his most recent § 2255 motion on February 28, 2012, which this court denied. *In re Bruce*, No. 12-5204. Thus, *Fowler* was not "previously unavailable" to Bruce, as he could have raised the argument in his previous motion.

Because Bruce has not satisfied either of the statutory requirements to obtain authorization to file a second or successive motion under 28 U.S.C. § 2255, his motion is denied.

ENTERED BY ORDER OF THE COURT

Clerk

In re: CHARLES GARY BRUCE, Movant.
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2014 U.S. App. LEXIS 25320
No. 13-6193
April 16, 2014, Filed

Editorial Information: Prior History

United States v. Bruce, 2011 U.S. Dist. LEXIS 158245 (W.D. Tenn., Feb. 4, 2011)

Counsel {2014 U.S. App. LEXIS 1}**CHARLES GARY BRUCE**, Movant, Pro se, Lewisburg, PA.

For United States of America, Respondent: John D. Fabian, Assistant U.S. Attorney, Office of the U.S. Attorney, Memphis, TN.

Judges: Before: GUY and CLAY, Circuit Judges; BERTELSMAN, District Judge.*.

Opinion

ORDER

Charles Gary Bruce, a pro se federal prisoner, moves for an order authorizing the district court to consider a second or successive motion to vacate his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government has filed a response in opposition.

In 1996, a jury convicted Bruce of the following: conspiring to rob a business affecting interstate commerce; robbing a business affecting interstate commerce; using a firearm during the commission of a robbery; destroying by fire a business affecting interstate commerce; murdering to prevent communication of a federal offense to a law enforcement official; conspiring to obstruct justice by interfering with the investigation of robbery and murder; and escaping from custody. Bruce was sentenced to life imprisonment plus ten years to run consecutively. This court affirmed the convictions and sentence, *United States v. Bruce*, Nos. 96-6590/6591, 1998 U.S. App. LEXIS 6643, 1998 WL 165144 (6th Cir. Mar. 31, 1998) (unpublished), and the Supreme Court denied certiorari. *Bruce v. United States*, 525 U.S. 882, 119 S. Ct. 190, 142 L. Ed. 2d 155 (1998).

In 2007, Bruce filed{2014 U.S. App. LEXIS 2} a motion in this court for authorization to file a second or successive § 2255 motion. This court denied the motion as unnecessary because Bruce had yet to file an initial § 2255 motion in the district court. *In re Bruce*, No. 07-5385 (6th Cir. Oct. 4, 2007) (order). In 2008, he filed a § 2255 motion, which the district court denied as untimely and for failing to raise a constitutional violation. *United States v. Bruce*, No. 1:08-cv-1136-JDT-egb (W.D. Tenn. Feb. 4, 2011) (unpublished). Both the district court and this court denied Bruce a certificate of appealability. *Id.; Bruce v. United States*, No. 11-5251 (6th Cir. Sept. 20, 2011) (order). Bruce filed three other unsuccessful motions for authorization to file second or successive § 2255 motions. *In re Bruce*, No. 13-5886 (6th Cir. Dec. 4, 2013) (order); *In re Bruce*, No. 13-5222 (6th Cir. Aug. 2, 2013) (order); *In re Bruce*, No. 12-5204 (6th Cir. Dec. 21, 2012) (order).

In September 2013, Bruce filed the instant motion, in which he seeks to raise arguments based on *Alleyne v. United States*, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013), and *Peugh v. United States*, 569 U.S. 530, 133 S. Ct. 2072, 186 L. Ed. 2d 84 (2013). Before Bruce may file a

second or successive § 2255 motion, he must first obtain permission to do so from this court. 28 U.S.C. § 2244(b)(3)(A). Permission to file a second or successive motion under § 2255 will be granted only{**2014 U.S. App. LEXIS 3**} upon a prima facie showing that the motion contains a new claim based on:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. §§ 2255(h), 2244(b)(3)(C).

Bruce does not rely on any newly discovered evidence. He also does not identify any new rule of constitutional law made retroactive to cases on collateral review by a holding of the Supreme Court. In any event, neither *Alleyne* nor *Peugh* are applicable to Bruce's case.

Accordingly, we deny Bruce's motion for authorization to file a second or successive petition.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

CHARLES GARY BRUCE,	)	
	)	
Movant,	)	
	)	
VS.	)	No. 16-1188-JDT-egb
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

ORDER DISMISSING § 2255 MOTION,
DENYING A CERTIFICATION OF APPEALABILITY,
CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

The Movant, Charles Gary Bruce, filed a *pro se* motion pursuant to 28 U.S.C. § 2255 on June 27, 2016, attempting to challenge, based on the decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), his conviction under 18 U.S.C. § 924(c) for using a firearm during the commission of a robbery. (ECF No. 1.) Because Bruce filed a previous § 2255 motion that was unsuccessful, the Court transferred the motion to the Sixth Circuit Court of Appeals as second or successive, pursuant to 28 U.S.C. § 2244(b)(3). (ECF No. 5.)

The Sixth Circuit directed Bruce to complete and file the appropriate application form and required documents within 30 days and warned that failure to do so would result in dismissal of the proceeding. *In re Bruce*, No. 16-6537 (6th Cir. Oct. 14, 2016) (Notice). Bruce failed to comply, and the Sixth Circuit dismissed the proceeding on December 5, 2016. *Id.* (order dismissing case for want of prosecution).

This Court cannot consider Bruce's successive § 2255 motion absent authorization by the Court of Appeals. As Bruce has failed to obtain that authorization, this § 2255 proceeding is hereby DISMISSED.

The Court hereby DENIES a certificate of appealability and CERTIFIES that an appeal would not be taken in good faith. Leave to appeal *in forma pauperis* is also DENIED.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ James D. Todd
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

CASENO: 1:16cv01188
DOCUMENT: 9

Charles Bruce
03377-033
LEWISBURG
U.S. PENITENTIARY
Inmate Mail/Parcels
P.O. BOX 1000
LEWISBURG, PA 17837

ELECTRONIC FILING AND NOTIFICATION ARE NOW MANDATORY IN THE WESTERN DISTRICT OF TENNESSEE. PLEASE VISIT http://www.tnwd.uscourts.gov/ FOR INFORMATION ON SIGNING UP FOR ELECTRONIC FILING AND NOTIFICATION.

Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

Western District of Tennessee

Notice of Electronic Filing
The following transaction was entered on 1/3/2017 at 10:46 AM CST and filed on 1/3/2017

Case Name:	Bruce v. United States of America
Case Number:	1:16-cv-01188-JDT-egb
Filer:	
Document Number:	8

Docket Text:
ORDER DISMISSING § 2255 MOTION, DENYING A CERTIFICATION OF APPEALABILITY, CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH AND DENYING LEAVE TO APPEAL IN FORMA PAUPERIS. Signed by Judge James D. Todd on 1/3/2017. (Todd, James)

1:16-cv-01188-JDT-egb Notice has been electronically mailed to:
James W. Powell James.Powell@usdoj.gov, betty.mcwherter@usdoj.gov
1:16-cv-01188-JDT-egb Notice will not be electronically mailed to:
Charles Gary Bruce
03377-033
LEWISBURG
United States Penitentiary
U.S. PENITENTIARY
Inmate Mail/Parcels
P.O. BOX 1000
LEWISBURG, PA 17837

The following document(s) are associated with this transaction:

United States District Court
WESTERN DISTRICT OF TENNESSEE
Eastern Division

JUDGMENT IN A CIVIL CASE

CHARLES GARY BRUCE,
Plaintiff,

v. CASE NUMBER: 16-1188-JDT-egb

UNITED STATES OF AMERICA,
Respondent,

Decision by Court. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in compliance with the order entered in the above-styled matter on 1/3/2017, this § 2255 proceeding is hereby DISMISSED. The Court hereby DENIES a certificate of appealability and CERTIFIES that an appeal would not be taken in good faith. Leave to appeal *in forma pauperis* is also DENIED.

APPROVED:

s/James D. Todd
JAMES D. TODD
U. S. DISTRICT JUDGE

THOMAS M. GOULD
CLERK

BY: S/Maurice Bryson
DEPUTY CLERK

Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Western District of Tennessee

Notice of Electronic Filing
The following transaction was entered on 1/3/2017 at 1:48 PM CST and filed on 1/3/2017

Case Name:	Bruce v. United States of America
Case Number:	1:16-cv-01188-JDT-egb
Filer:	
WARNING: CASE CLOSED on 01/03/2017	
Document Number:	9

Docket Text:
JUDGMENT IN A CIVIL CASE. Signed by Judge James D. Todd on 1/3/2017. (Todd, James)

1:16-cv-01188-JDT-egb Notice has been electronically mailed to:
James W. Powell James.Powell@usdoj.gov, betty.mcwherter@usdoj.gov
1:16-cv-01188-JDT-egb Notice will not be electronically mailed to:
Charles Gary Bruce
03377-033
LEWISBURG
United States Penitentiary
U.S. PENITENTIARY
Inmate Mail/Parcels
P.O. BOX 1000
LEWISBURG, PA 17837

The following document(s) are associated with this transaction:

In 2008, Bruce filed a § 2255 motion to vacate in the district court, but the district court denied it as untimely and for failing to raise a constitutional violation. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 4, 2011). We denied Bruce a certificate of appealability. *Bruce v. United States*, No. 11-5251 (6th Cir. Sept. 20, 2011).

In 2012, Bruce filed in the district court a motion under Federal Rule of Civil Procedure 60(b). The district court construed the Rule 60(b) motion as a second or successive § 2255 motion and transferred it to this court for consideration as a motion for an order authorizing the filing of a second or successive motion. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 21, 2012); *see Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). We denied that motion. *In re Bruce*, No. 12-5204 (6th Cir. Dec. 21, 2012). In 2013, Bruce filed two more motions for authorization to file a second or successive § 2255 motion, which were both denied. *In re Bruce*, No. 13-5222 (6th Cir. Aug. 2, 2013); *In re Bruce*, No. 13-6193 (6th Cir. Apr. 16, 2014). In 2016, we dismissed another one of Bruce's motions for authorization for want of prosecution. *In re Bruce*, No. 16-6537 (6th Cir. Dec. 5, 2016).

In 2013, Bruce filed a petition for habeas relief under 28 U.S.C. § 2241 in the Middle District of Pennsylvania, where he was confined at the time, and the district court denied the petition. *See Bruce v. Warden Lewisburg USP*, 868 F.3d 170, 177 (3d Cir. 2017). In its decision affirming the denial, the Third Circuit described the Bruce family's widely-known practice of threatening and intimidating individuals in the area where they lived, including potential witnesses to their criminal behavior. This interference explained the length of the criminal investigation before federal authorities became involved and eventually obtained witness statements. *Id.* at 186-88.

Bruce again moves for authorization to file a successive § 2255 motion, claiming that he has newly discovered evidence in the form of two depositions of trial witness Ira Travis, in which Travis recanted his trial testimony. The depositions were taken in 2017 and conducted by

Bruce's brother, Billy Bruce, who Bruce states is his private investigator. As the government explains in its response, Travis lived outside the state for about five years after the incident before returning and speaking with federal authorities in 1996. At trial, Travis testified that he had observed Bruce planning the robbery and murder, and his trial testimony was corroborated by other evidence and testimony.

Bruce must obtain this court's permission to file a second or successive motion to vacate his sentence under § 2255. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). To obtain that permission, he must make a prima facie showing that his motion relies on: 1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, sufficiently establishes that no reasonable factfinder would have found him guilty; or 2) a new rule of constitutional law that the Supreme Court has made retroactive to cases on collateral review. *See* 28 U.S.C. § 2255(h)(1), (2).

Bruce does not allege a new rule of constitutional law, so he needs to point to newly discovered evidence that would establish that no reasonable factfinder would find him guilty. He has not made this showing. We have explained that "this court views with great suspicion the recantation testimony of trial witnesses in postconviction proceedings." *Brooks v. Tennessee*, 626 F.3d 878, 897 (6th Cir. 2010); *see also Herrera v. Collins*, 506 U.S. 390, 423 (1993). Even if Bruce could prove that the deposition testimony by Travis is newly discovered, his claim of actual innocence based on this evidence is insufficiently persuasive when the deposition is viewed in light of the other evidence and testimony presented at trial. *See* 28 U.S.C. § 2255(h)(2).

Accordingly, we **DENY** Bruce's motion for an order authorizing a second or successive § 2255 motion.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

In re: CHARLES GARY BRUCE, Movant.
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2020 U.S. App. LEXIS 3413
No. 19-6166
February 4, 2020, Filed

Editorial Information: Prior History

United States v. Bruce, 142 F.3d 437, 1998 U.S. App. LEXIS 15955 (6th Cir. Tenn., Mar. 31, 1998)

Counsel {2020 U.S. App. LEXIS 1}In re: CHARLES GARY BRUCE, Movant, Lewisburg, PA.

For United States of America, Respondent: Kevin G. Ritz, Assistant U.S. Attorney, Office of the U.S. Attorney, Memphis, TN.

Judges: Before: COOK and THAPAR, Circuit Judges; HOOD, District Judge.*.

Opinion

ORDER

Charles Gary Bruce, a federal prisoner proceeding pro se, moves this court for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government opposes Bruce's motion.

In 1996, a federal jury convicted Bruce of conspiring to rob a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; robbing a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; using a firearm during the commission of a robbery, in violation of 18 U.S.C. § 924(c); destroying by fire a business affecting interstate commerce, in violation of 18 U.S.C. § 844(h)(1); murdering to prevent communication to a law enforcement official of a federal offense, in violation of 18 U.S.C. § 1512(a)(1); conspiring to obstruct justice by interfering with the investigation of robbery and murder, in violation of 18 U.S.C. § 371; and escaping from custody, in violation of 18 U.S.C. § 751. Bruce was sentenced to life imprisonment plus ten years to run consecutively.

In 2008, Bruce filed a § 2255 motion{**2020 U.S. App. LEXIS 2**} to vacate in the district court, but the district court denied it as untimely and for failing to raise a constitutional violation. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT, 2011 U.S. Dist. LEXIS 158245 (W.D. Tenn. Feb. 4, 2011). This court denied Bruce a certificate of appealability. *Bruce v. United States*, No. 11-5251, 2011 U.S. App. LEXIS 26699 (6th Cir. Sept. 20, 2011).

In 2012, Bruce filed in the district court a motion under Federal Rule of Civil Procedure 60(b), which the district court construed as a second or successive § 2255 motion and transferred to this court. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 28, 2012); *see Gonzalez v. Crosby*, 545 U.S. 524, 531-32, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). This court denied that motion. *In re Bruce*, No. 12-5204, 2012 U.S. App. LEXIS 27161 (6th Cir. Dec. 21, 2012). In 2013, Bruce filed two more motions for authorization to file a second or successive § 2255 motion, which were both denied. *Bruce v. United States*, No. 13-6193 (6th Cir. Apr. 16, 2014); *Bruce v. United States*, No. 13-5222, 2013 U.S. App. LEXIS 25436 (6th Cir. Aug. 2, 2013). In 2016, this court dismissed another one of

Bruce's motions for authorization because he failed to comply with this court's order to file it with the appropriate form and required documents. *Bruce v. United States*, No. 16-6537 (6th Cir. Dec. 5, 2016).**{2020 U.S. App. LEXIS 3}** In 2018, Bruce again moved for authorization to file a successive § 2255 motion, claiming that he had newly discovered evidence in the form of two depositions of trial witness Ira Travis, in which Travis recanted his trial testimony. At trial, Travis testified that he had observed Bruce planning the robbery and murder. This court denied the motion for authorization. *In re Bruce*, No. 18-5080, 2018 U.S. App. LEXIS 21329 (6th Cir. July 31, 2018).

Once again, Bruce moves this court for authorization to file a successive § 2255 motion, claiming that he has newly discovered evidence in the form of an additional affidavit by Travis and an affidavit by another witness, David Frazee. In Travis's affidavit, he declares that the prosecutor threatened and coerced him and recants his prior statement that he was threatened and intimidated by Bruce and his family. The affidavit by Frazee describes his presence with Bruce during a portion of the evening that the crimes took place.

As before, Bruce must obtain this court's permission to file a second or successive motion to vacate his sentence under § 2255. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). To obtain that permission, he must make a prima facie showing that the motion relies on: 1) newly**{2020 U.S. App. LEXIS 4}** discovered evidence that, if proven and viewed in light of the evidence as a whole, sufficiently establishes that no reasonable factfinder would have found him guilty; or 2) a new rule of constitutional law that the Supreme Court has made retroactive to cases on collateral review. *See* 28 U.S.C. § 2255(h)(1), (2).

Bruce does not purport to rely on a new rule of constitutional law. He relies instead on the Travis and Frazee affidavits. To the extent Bruce attempts to raise the new argument that the statements by Travis and Frazee were coerced by the prosecution, Bruce offers no explanation for why he could not have discovered this previously. It is apparent that Bruce knew about this possible ground for relief at the time he filed his first § 2255 motion, when he produced the first recanting statement by Travis and, at the latest, when he filed his 2018 motion for authorization. Therefore, his claim fails because he has not shown that these "new" affidavits could not have been discovered earlier through due diligence. *See* 28 U.S.C. § 2244(b)(2)(B)(i). Moreover, in light of this court's previous findings regarding the remaining evidence and testimony supporting his convictions, *see Bruce*, No. 18-5080, 2018 U.S. App. LEXIS 21329, at *4, this "new" evidence could not establish**{2020 U.S. App. LEXIS 5}** that no reasonable factfinder would have found him guilty.

Accordingly, the court **DENIES** Bruce's motion for an order authorizing a second or successive § 2255 motion.

Footnotes

In re: CHARLES GARY BRUCE, Movant.
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2020 U.S. App. LEXIS 3404
No. 19-6303
February 4, 2020, Filed

Editorial Information: Prior History

United States v. Bruce, 142 F.3d 437, 1998 U.S. App. LEXIS 15955 (6th Cir. Tenn., Mar. 31, 1998)

Counsel {2020 U.S. App. LEXIS 1}In re: CHARLES GARY BRUCE, Movant, Pro se, Lewisburg, PA.

For United States of America, Respondent: Kevin G. Ritz, Assistant U.S. Attorney, Office of the U.S. Attorney, Memphis, TN.

Judges: Before: COOK and THAPAR, Circuit Judges; HOOD, District Judge.*.

Opinion

ORDER

Charles Gary Bruce, a federal prisoner proceeding pro se, moves this court for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government opposes Bruce's motion.

In 1996, a federal jury convicted Bruce of conspiring to rob a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; robbing a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; using a firearm during the commission of a robbery, in violation of 18 U.S.C. § 924(c); destroying by fire a business affecting interstate commerce, in violation of 18 U.S.C. § 844(h)(1); murdering to prevent communication to a law enforcement official of a federal offense, in violation of 18 U.S.C. § 1512(a)(1); conspiring to obstruct justice by interfering with the investigation of robbery and murder, in violation of 18 U.S.C. § 371; and escaping from custody, in violation of 18 U.S.C. § 751. Bruce was sentenced to life imprisonment plus ten years to run consecutively.

In 2008, Bruce filed{2020 U.S. App. LEXIS 2} a § 2255 motion to vacate in the district court, but the district court denied it as untimely and for failing to raise a constitutional violation. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT, 2011 U.S. Dist. LEXIS 158245 (W.D. Tenn. Feb. 4, 2011). This court denied Bruce a certificate of appealability. *Bruce v. United States*, No. 11-5251, 2011 U.S. App. LEXIS 26699 (6th Cir. Sept. 20, 2011).

From 2012 through 2018, Bruce filed several motions to file a successive § 2255 motion, which were all denied or dismissed. *In re Bruce*, No. 18-5080, 2018 U.S. App. LEXIS 21329 (6th Cir. July 31, 2018); *Bruce v. United States*, No. 16-6537 (6th Cir. Dec. 5, 2016); *In re Bruce*, No. 13-6193, 2014 U.S. App. LEXIS 25320 (6th Cir. Apr. 16, 2014); *In re Bruce*, No. 13-5222, 2013 U.S. App. LEXIS 25436 (6th Cir. Aug. 2, 2013); *In re Bruce*, No. 12-5204, 2012 U.S. App. LEXIS 27161 (6th Cir. Dec. 21, 2012).

Once again, Bruce moves this court for authorization to file a successive § 2255 motion, now

claiming that he is entitled to relief from his § 924(c) conviction because his Hobbs Act robbery is not an underlying crime of violence in view of *United States v. Davis*, 139 S. Ct. 2319, 204 L. Ed. 2d 757 (2019). As before, Bruce must obtain this court's permission to file a second or successive motion to vacate his sentence under § 2255. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). To obtain that permission, he must make a prima facie**{2020 U.S. App. LEXIS 3}** showing that the motion relies on: 1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, sufficiently establishes that no reasonable factfinder would have found him guilty; or 2) a new rule of constitutional law that the Supreme Court has made retroactive to cases on collateral review. *See* 28 U.S.C. § 2255(h)(1), (2).

In *Davis*, the Supreme Court held that the definition of crime of violence in § 924(c)(3)(B) (the "residual clause"), which applied to an offense "that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," is unconstitutionally vague. *See* 139 S. Ct. at 2336. Bruce was charged and convicted, however, of using, carrying, and brandishing a firearm while committing a Hobbs Act robbery, which is a crime of violence under § 924(c)(3)(A) (the "elements clause") because it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." *United States v. Gooch*, 850 F.3d 285, 291-92 (6th Cir. 2017). *Davis* therefore does not affect Bruce's § 924(c) conviction.

Accordingly, we **DENY** Bruce's motion for an order authorizing a second or successive § 2255 motion to vacate.

Footnotes

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
100 E. FIFTH STREET, ROOM 540
CINCINNATI, OHIO 45202-3988

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

CINCINNATI OH 450

15 SEP 2020 PM 6 L

$0.50 0
US POSTAGE
FIRST-CLASS
062S0011352675
45202

Charles Gary Bruce
#03377-033
U.S.P. Lewisburg
P.O. Box 1000
Lewisburg, PA 17837

17837-100000

F-1

SEP 21 2020

20-5261

Charles Gary Bruce
#03377-033
U.S.P. Lewisburg
P.O. Box 1000
Lewisburg, PA 17837

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 15, 2020

Mr. Charles Gary Bruce
U.S.P. Lewisburg
P.O. Box 1000
Lewisburg, PA 17837

Mr. Kevin G. Ritz
Office of the U.S. Attorney
167 N. Main Street, Suite 800
Memphis, TN 38103

Re: Case No. 20-5261, *In re: Charles Bruce*
Originating Case No. : 1:93-cr-10052-1 : 1:19-cv-01241 : 1:95-cr-10051-1 : 1:08-cv-01136 : 1:16-cv-01188

Dear Mr. Bruce and Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Robin L. Johnson
Case Manager
Direct Dial No. 513-564-7039

cc: Mr. Thomas M. Gould

Enclosure

No mandate to issue

No. 20-5261

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 15, 2020
DEBORAH S. HUNT, Clerk

In re: CHARLES GARY BRUCE,

Movant.

ORDER

Before: COLE, Chief Judge; BATCHELDER and McKEAGUE, Circuit Judges.

Charles Gary Bruce, a federal prisoner proceeding pro se, moves this court for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government opposes Bruce's motion.

In 1996, a federal jury convicted Bruce of conspiring to commit a Hobbs Act robbery, in violation of 18 U.S.C. § 1951; committing a Hobbs Act robbery, in violation of 18 U.S.C. § 1951; using a firearm during the commission of a crime of violence, in violation of 18 U.S.C. § 924(c); destroying by fire a business affecting interstate commerce, in violation of 18 U.S.C. § 844(h)(1); murdering to prevent communication to a law enforcement official of a federal offense, in violation of 18 U.S.C. § 1512(a)(1); conspiring to obstruct justice by interfering with the investigation of robbery and murder, in violation of 18 U.S.C. § 371; and escaping from custody, in violation of 18 U.S.C. § 751. Bruce was sentenced to life imprisonment plus ten years to run consecutively.

In 2008, Bruce filed a § 2255 motion to vacate in the district court, but the district court denied it as untimely and for failing to raise a constitutional violation. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 4, 2011). This court denied Bruce a certificate of appealability. *Bruce v. United States*, No. 11-5251 (6th Cir. Sept. 20, 2011).

From 2012 through 2019, Bruce filed several motions for authorization to file second or successive § 2255 motions to vacate, and this court denied each of these motions. *Bruce v. United States*, No. 19-6166 (6th Cir. Feb. 4, 2020); *Bruce v. United States*, No. 18-5080 (6th Cir. July 31, 2018); *Bruce v. United States*, No. 16-6537 (6th Cir. Dec. 5, 2016); *Bruce v. United States*, No. 13-6193 (6th Cir. Apr. 16, 2014); *Bruce v. United States*, No. 13-5222 (6th Cir. Aug. 2, 2013); *Bruce v. United States*, No. 12-5204 (6th Cir. Dec. 21, 2012).

Bruce's last motion for authorization in 2019 requested relief from his § 924(c) conviction, arguing that his Hobbs Act robbery was not a crime of violence in view of *United States v. Davis*, 139 S. Ct. 2319 (2019). This court denied that motion because Hobbs Act robbery constitutes a crime of violence under the elements clause of § 924(c)—§ 924(c)(3)(A)—rather than the residual clause that *Davis* found unconstitutionally vague—§ 924(c)(3)(B). *Bruce v. United States*, No. 19-6303 (6th Cir. Feb. 4, 2020).

Bruce now moves this court for authorization to file a successive § 2255 motion on the ground that his § 924(c) conviction for using a firearm during a *conspiracy* to commit a Hobbs Act robbery is invalid under *Davis*. As before, Bruce must obtain this court's permission to file a second or successive motion to vacate his sentence under § 2255. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). To obtain that permission, he must make a prima facie showing that the motion relies on: 1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, sufficiently establishes that no reasonable factfinder would have found him guilty; or 2) a new rule of constitutional law that the Supreme Court has made retroactive to cases on collateral review. *See* 28 U.S.C. § 2255(h)(1), (2).

Bruce argues that his conviction for conspiracy to commit a Hobbs Act robbery lacks the use of force as an element, *see* 18 U.S.C. § 924(c)(3)(A), and thus could qualify as a crime of violence only under the residual clause that *Davis* declared unconstitutionally vague. Bruce is correct that his conviction for conspiracy to commit Hobbs Act robbery is not a crime of violence that can support his § 924(c) conviction. *See United States v. Ledbetter*, 929 F.3d 338, 360-61 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 317, 490, 502, 509 (2019); *Brown v. United States*, 942

F.3d 1069, 1075-76 (11th Cir. 2019). But Bruce's § 924(c) conviction was not based on his conviction for conspiracy to commit Hobbs Act robbery; it was based on his conviction for the substantive offense of Hobbs Act robbery. This conviction falls within the definition of "crime of violence" in § 924(c)(3)(A) (the elements clause) because it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." *United States v. Gooch*, 850 F.3d 285, 291-92 (6th Cir. 2017). *Davis* therefore does not affect Bruce's § 924(c) conviction.

Bruce's application does not meet the requirements of § 2255(h). Accordingly, we **DENY** Bruce's motion for an order authorizing a second or successive § 2255 motion to vacate.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: November 03, 2020

Mr. Charles Gary Bruce
U.S.P. Lewisburg
P.O. Box 1000
Lewisburg, PA 17837

Mr. Kevin G. Ritz
Office of the U.S. Attorney
167 N. Main Street, Suite 800
Memphis, TN 38103

Re: Case No. 20-5810, *In re: Charles Bruce*
Originating Case No. : 1:93-cr-10052-1 : 1:19-cv-01241

Dear Mr. Bruce and Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Robin L. Johnson
Case Manager
Direct Dial No. 513-564-7039

cc: Mr. Thomas M. Gould

Enclosure

No mandate to issue

No: 20-5810

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: CHARLES GARY BRUCE,

Movant.

ORDER

Before: COLE, Chief Judge; BATCHELDER and McKEAGUE, Circuit Judges.

Charles Gary Bruce, a federal prisoner proceeding pro se, moves this court for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government opposes Bruce's motion, and Bruce has replied.

In 1996, a federal jury convicted Bruce of conspiring to rob a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; robbing a business affecting interstate commerce, in violation of 18 U.S.C. § 1951; using a firearm during the commission of a crime of violence, in violation of 18 U.S.C. § 924(c); destroying by fire a business affecting interstate commerce, in violation of 18 U.S.C. § 844(h)(1); murdering to prevent communication to a law enforcement official of a federal offense, in violation of 18 U.S.C. § 1512(a)(1); conspiring to obstruct justice by interfering with the investigation of robbery and murder, in violation of 18 U.S.C. § 371; and escaping from custody, in violation of 18 U.S.C. § 751. Bruce was sentenced to life imprisonment plus ten years to run consecutively.

In 2008, Bruce filed a § 2255 motion to vacate in the district court, but the district court denied it as untimely and for failing to raise a constitutional violation. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 4, 2011). This court denied Bruce a certificate of appealability. *Bruce v. United States*, No. 11-5251 (6th Cir. Sept. 20, 2011).

In 2012, Bruce filed in the district court a motion under Federal Rule of Civil Procedure 60(b), which the district court construed as a second or successive § 2255 motion and transferred to this court. *United States v. Bruce*, Civ. No. 08-1136-JDT-egb, Crim. No. 93-10052-01-JDT (W.D. Tenn. Feb. 21, 2012); *see Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). This court denied that motion. *Bruce v. United States*, No. 12-5204 (6th Cir. Dec. 21, 2012). In 2013, Bruce filed two more motions for authorization to file a second or successive § 2255 motion, which were both denied. *Bruce v. United States*, No. 13-5222 (6th Cir. Aug. 2, 2013); *Bruce v. United States*, No. 13-6193 (6th Cir. Apr. 16, 2014). In 2016, this court dismissed another one of Bruce's motions for authorization because he failed to comply with this court's order to file it with the appropriate form and required documents. *Bruce v. United States*, No. 16-6537 (6th Cir. Dec. 5, 2016). In 2018, Bruce again moved for authorization to file a successive § 2255 motion, claiming that he had newly discovered evidence in the form of two depositions of trial witness Ira Travis, in which Travis recanted his trial testimony that he had observed Bruce planning the robbery and murder. This court denied that motion. *Bruce v. United States*, No. 18-5080 (6th Cir. July 31, 2018).

In 2019, Bruce filed another motion for authorization, supporting it with another recanting statement by Travis and an affidavit by David Frazee regarding Bruce's whereabouts on the evening the crimes took place. This court denied the motion. *Bruce v. United States*, No. 19-6166 (6th Cir. Feb. 4, 2020). About that same time, Bruce filed another motion for authorization, arguing that he was entitled to relief from his § 924(c) conviction because his Hobbs Act robbery was not a crime of violence in view of *United States v. Davis*, 139 S. Ct. 2319 (2019). This court denied that motion because Hobbs Act robbery constitutes a crime of violence under the elements clause of § 924(c). *Bruce v. United States*, No. 19-6303 (6th Cir. Feb. 4, 2020). Bruce filed yet another motion for authorization on the ground that his § 924(c) conviction for using a firearm during a *conspiracy* to commit a Hobbs Act robbery is invalid under *Davis*. This court denied that motion as well. *Bruce v. United States*, No. 20-5261 (6th Cir. Sept. 15, 2020).

In Bruce's motion for authorization before this panel, he argues that the same affidavit by Frazee that he presented in Case No. 19-6166, along with a notarized statement by Barbie Ann Merrell, establishes a due process violation under *Brady v. Maryland*, 373 U.S. 83 (1963). Bruce alleges that Merrell is an investigator and argues that these combined statements prove that the prosecution allegedly withheld Frazee's exculpatory statement at trial. Merrell's credentials are not provided, but she states that she has been "assisting Billy Wayne Bruce as needed with the investigation of the case of Charles Gary Bruce" from 1995 to present.

As before, Bruce must obtain this court's permission to file a second or successive motion to vacate his sentence under § 2255. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). To obtain that permission, he must make a prima facie showing that the motion relies on: 1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, sufficiently establishes that no reasonable factfinder would have found him guilty; or 2) a new rule of constitutional law that the Supreme Court has made retroactive to cases on collateral review. *See* 28 U.S.C. § 2255(h)(1), (2).

Bruce does not rely on a new rule of constitutional law, but on statements that he either previously presented to this court or could have previously obtained. It is apparent that Bruce knew about this possible ground for relief at the time he filed his first § 2255 motion and at least at the time he filed his motion in Case No. 19-6166. Therefore, his claim fails because he has not shown that these "new" affidavits and statements could not have been discovered earlier through due diligence. *See* 28 U.S.C. § 2244(b)(2)(B)(i). Moreover, in light of this court's previous findings regarding the remaining evidence and testimony supporting his convictions, *see Bruce*, No. 18-5080, p. 3, this "new" evidence could not establish that no reasonable factfinder would have found him guilty.

119SCT190, 142 LED2D 155, 525 US 882 Bruce v United States

No. 98-5027.

Charles Gary Bruce, Petitioner

vs.

United States.

525 US 882, 142 L Ed 2d 155, 119 S Ct 190

October 5, 1998.

Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

See same case below, 142 F.3d 437.

Statement #1

In the summer of 1993, July 4 we where contacted by someone saying are name was drawn to win a package of fireworks worth approximately $100.00 my mother was reluctant to go because we had not put are name in any drawing. She wondered weather or not it was a mistake but the people on the phone insisted it was ours and we had won it from a drawing .so we got in the truck and proceeded to the firework stand to receive the fireworks they insisted we had won. The firework stand was located in the Y intersection of Eva road and beaver dam road within eyesight of Ralph's grocery. We entered the parking lot got out of the truck and entered the firework stand. Spoke with jimmy Blackman very briefly and his wife. We received the package of fireworks and walked out the door and got into the truck and proceeded to leave the parking lot and turn right towards Eva landing to go home. I estimated that we got ¼ a mile down the road when we where stopped by two Benton county sheriffs deputies for absolutely no reason they approached the vehicle in a very hostile manner one on each side of the truck. They quickly told my mother to get out and they arrested her for seemingly no reason. They quickly put her in the car. they never gave me or my little brother Johnny any explanation. Other than she was under arrest. I was very scared that they would put us in foster care and split are family up. Johnny was crying out loud, officer Robert Weller showed him no comfort. Only repeatedly told us my mother was going to jail for a while.

Later after I had talked to my mother she told me they had arrested her for driving on revoke license and also that one of the officers Robert Weller said he was going to call human resources to pick us kids up while she was in back of the police car. The only reason that they had not was because my grandma Kathryn was there to pick us up before they could call anyone. It was also learned later the firework stand was owned by jimmy Blackman another Benton county police officer who was also my bus driver that took us to and from school. We truly believe he set up the free fireworks that they said we won to have my mother in a particular place at a particular time so Benton county sheriff deputies could attempt to take us kids away from her custody.

I was not threatened, intimidated, or coercing in any way shape or form

Charles C Brumfield

Appx B

I Charles Bruce JR declare that the statement I'm about to give is the truth the whole truth and nothing but the truth.

In January of 2009 me Charles Bruce and my wife Ellen Bruce discussed the possibility of going to see my father Charles Bruce SR who is a inmate at U.S.P in Lewisburg P.A. we decided we would make the trip in the last two weeks of July. So to give us plenty of time to prepare for the trip being as we live in eastern Oklahoma and he is in Lewisburg P.A. So in the first week of march 2009 my wife wrote my father Charles Gary Bruce SR a letter to let him know of the up coming visit, and give him my phone number to be approved so we could talk on the phone. I had not talked to my father in sometime so the first few conversations we had much to talk about. We mostly talked about the rest of the family's well being and stuff but one particular conversation we had we where talking about his case and my father asked me if I remembered any thing and I told him yes I remembered the law intimidating my mother as well as us kids. My father then asked me to write down what I remembered and notarize it and mail it to him. I told him yes I would he also asked if I would ask my mother to do the same and I told him yes I would .

I was not threatened, Intimidated, or Coercing
In any way shape or form Charles C Bruce Jr

Dated May 26, 2009 appeared Charles Bruce Jr

mmission No. 02017522
mmission Expires 10-21-2010

Barbara Wells
Notary Public

April 20, 2009

I, Janet Phipps, Bruce, Harper, do hereby testify to the following statement. While Stephen Parker had me in an office in the Jackson Federal Courthouse, after hours of interrogation and also allowing a lie detector to be used, did threaten me with removing my underage children from my care and "seeing to it" that I would do jail time if I did not agree to testify against Charles Gary Bruce Sr. the father of my children, saying I did not have possession of the GMC truck on January 16, which put it as a vehicle driven in the murders of Danny Vine and Della Thornton. Several appearances later, when I still would not agree to testify to something I knew to be a lie, it was set up with an officer named Robert Weller to arrange for myself to win a package of fireworks on July 4th. Officer Weller was waiting for me on Eva Road at the store and arrested me at the store driving same said truck. I also had my children with me and had to arrange for their grandmother to come and pick them up as Officer Weller was going to make arrangements for them to go to DHS. While I was in the Benton County jail for a period of 53 days, I was repeatedly brought out of my cell and taken to the office of Billy Fur Wyatt, then Sheriff of Benton County, Robert Weller tried to convince me that if I would only testify to not having the truck on the night of January 16, they would have a complete case to convict Charles Gary Bruce Sr. as an accomplice in the murders.

Janet S. Harper

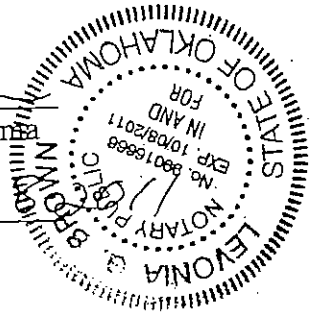
Janet S. Harper

STATE OF OKLAHOMA)
)
COUNTY OF LEFLORE)

This instrument was acknowledged before me on April 20, 2009.

Notary Public- State of Oklahoma

My Commission Expires 10-0



DEPOSITION BY WRITTEN QUESTIONS

(Propounded by Charles G. Bruce to Janet S. Harper)

May 25, 2009

Taken at Poteau, Oklahoma

United States of America v. Charles G. Bruce
Civil No. 08-1136 JDB
Crim No. 93-10052 01 JDT
Crim No. 95-10051 JDT

United States District Court
Western District of Tennessee
Eastern Division

Question: Can you tell me what happened in January of 1991?
I froze my butt off dredging the Sanctuary across from Peckerwood Landing in Leflore County, the Desert Storm War was televised on TV every night, and Danny Vine and Della Thorn were maliciously murdered in their home and it was set on fire.

Answer: What exactly did AUSA Stephen C. Parker threaten or intimidate or coerce against you?
Mr. Parker, after giving me a lie detector test on my being in possession of one GMC 4 wheel drive pickup owned by Charles G. Bruce Sr., proceeded to call me a liar and intimidated me with removal of my children from the home if I did not admit to the lie that I did not have Gary's truck in New Johnsonville on the night of January 16, 1991.

Question: What exactly was AUSA Stephen C, Parker's words as best as you can remember?
Answer: He told me that if I didn't admit that I did not have Gary's truck, he would see to it that I went to jail and that I would lose custody of all 4 of my children.

Question: Because of what AUSA Stephen C. Parker said and did, did you feel scared?
Answer: Yes.

Question: Did you feel scared for your kids?
Answer: Yes.

Question: Was at anytime any of your kids present when AUSA Stephen C, Parker intimidated, threatened or scared you?
Answer: I can't remember a time that a kid was old enough to understand the conversation that would have been present.

Question: Were at any time any of your children present when Benton County officers intimidated or threatened you?
Answer: Yes. We would catch them hiding in the trees and laying in the back yard on almost a weekly basis.

Question: Were you brought out of your cell to the Sheriff's office when you were being held in the Benton County jail?
Answer: Yes, quite a few times. I don't have any recall of the days of the week or to the day of the month. I know that it was never on a week end.

Question: How many times did Benton County officers bring you into the office and talk to you while you were being held?
Answer: Approximately 10 times. Once to speak to a Private Investigator, but that time it was in the front lobby. A jailor would get me out of my cell and take me to the office where the officers would already be waiting. One of the jailors names' was Chris, but I don't remember the other one. He was short and rather blond headed or maybe a light red. I believe Chris is the one that took me to the front to talk to the Private Investigator.

Janet S. Harper

In the office was Sheriff Billy Fur Wyatt, Officer Robert Weiler, and Bob Stevens was there one time I know of. Another time it was Robert Weiler and a man in a suit that I can't remember the name of and another Benton County officer. It was pretty much the same every time. The guy in the suit would change but the officers didn't.

Question: What exactly did these officers want from you?
Answer: They wanted me to say that I did not have Gary's truck that night, and they wanted me to tell them everything I knew about that night, but not what I did in New Johnsonville. If I didn't have the truck, I couldn't have been in New Johnsonville.

Question: Did at any of these intimidation tactics, was AUSA Stephen C. Parker's name mentioned?
Answer: Yes.

Question: Did you feel scared for your kids when these officers were threatening , intimidating you or coercing you?
Answer Yes.
Question: How many years were you and Charles G. Bruce Sr. involved in the shell business?
Answer: Gary was in it for a few years before I met him, but we were in the business from 1976 until the time he was picked up.

Question: Would you consider yourself an experienced shell buyer in the shell business?
Answer: Yes

Question: Let me take you back to June of 1991 to the shells that you sold for Charles G. Bruce, Were they all lake shells?
Yes.

Question: At anytime did you sell any river shells in January 1991 to any shell buyer?
Answer: There were no river shells on the Sanctuary and no I would not.

Question: In your experience as a shell buyer, where would you say by experience that the lake shells you sold for Charles G. Bruce come from?
Answer: The Sanctuary we dredged on.

Question: At anytime during January 1991, did you see Charles G. Bruce grade the 2 ½ to 2 5/8 shells out and then put them in bags and put them back in the water?
Answer: Yes, at Peckerwood Landing in Benton County. It was a nightly routine we did before we left the river if we knew the Game Wardens weren't around.

Question: At anytime during January 1991 did you see Charles G. Bruce take these small shells which were illegal in size in Tennessee but were legal in Kentucky, mix them with a night of good shells dredging and them send them to Kentucky?
Answer: Yes, weekly, while we were dredging.

Janet S. Harper

Question: Was this a normal practice for Charles G. Bruce?
Answer: Yes.

Question: Because of the threats intimidation and coercion from AUSA Stephen C. Parker, were you so scared that you held back material information or testimony that could have helped Charles G. Bruce?
Answer: Mr. Parker put me under immediate subpoena for the prosecution that cut the defense attorney off from questioning me until after the trial was already in progress and then only while I was on the stand. Defense had little knowledge of how I could have helped.

Question: When Charles G. Bruce called home and asked for your help, was it because of the tactics AUSA Stephen C. Parker that you were scared to talk with Charles G. Bruce and help with his defense at trials?
Answer: I feared for the new life that my children had found, one two states away from Benton County, where they didn't have to worry on a daily basis about the men in uniform that should have been protecting them as well, but weren't. I didn't want to jeopardize that for officers crawling out of my trees or scaring them when they went out to pee off the back porch and all of a sudden they spot an officer in camouflage popping up out of the grass. That happened once and I didn't want to put them through it again. I didn't want my young daughter being in jeopardy as she once was when she went to put her kitten outside and spotted an officer in camouflage climbing down from a tree in my front yard. They were constantly stopped in their older brothers' car and searched as if they were criminals. No, I didn't want them to go through that anymore.

Question: When Alvin Daniels asked you to bring shell tickets to a building in Camden, did Alvin Daniels only want certain tickets or all the shell tickets for that time of year?
Answer: He asked for specific dates.

Question: Did Alvin Daniels in anyway intimidate threaten or coerce you?
Answer: No, he had Robert Weiler for that. Robert would come to the house when he wasn't laying in the back yard, and say that "Alvin" has some questions he wants me to ask you. They were questions about the night in New Johnsonville when he said that no one I gave the name to would testify for me, or they were questions about the time Gary and I had a fist fight. He wanted me to say that it never happened even though I also had a black eye. There were also questions about Sheila Bradford on a weekly basis.

Question: I will ask you again, is it because of AUSA Stephen C. Parker's intimidation and threatening or coercing you, that you were so scared that you could not help Charles G. Bruce build a defense.
Answer: He made a believer out of me when he set me up to go to jail and then said it was for my own protection. He separated me from my children and if it wasn't for his mother, he would have taken them too. She met me at the store where they said I won the fireworks because she heard it on a scanner. She took custody of the kids while Robert Weiler took me to jail. I knew he could make his threats a reality and I wasn't willing to give up my children.

Janet S. Harper

Question: When you got home the night of January 16, 1991, you testified it could have been 11:30 or 12:00 when you got home. Could it have been 10:30 to 11;30 when you came home? And you only testified to 11:30 or 12:00 because of AUSA Stephen C. Parker's tactics?

Answer: No, I cut off the road from Haley's Restaurant and saw the bank clock. It might have been 15 minutes to 12:00 but I believe it was 5 minutes to 12:00 because I had spoken to Kathryn earlier that evening when I called her from a pay phone on the highway before the Tennessee River Bridge on the Benton County side, to please go to the poolroom and tell Gary I, and Christina would be home before twelve. I knew I was cutting it close to having an argument. When she answered the phone, I could hear the juke box in the background.

Question: Were there any other officers that also might have threatened or intimidated your husband, you seen or heard while in your presence?
Answer: Other than Robert Weiler and a few Game Wardens, Alvin Daniels telling him he was going to the electric chair, Bob Stevens, I can't think of any.

Question: Did any of your kids at anytime witness Local Law Enforcement, harass or intimidate or threaten you? Or TBI or Stephen C. Parker?
Answer: They often seen Officer Weiler pull into our front driveway and I would go to the porch and speak to him while an officer stayed in the darkness of the car. They were pretty worried about themselves whenever they could leave a football game and be pulled over with everyone else leaving the game watching as they were all asked to stand on the side of the road while officers searched their car. You would have to ask them what they remember about me.

Question: How many times did AUSA Stephen C. Parker's name or his influence ever be mentioned by local law enforcement or TBI officers?
Answer: Always and often.

Question: Were there times that you wanted to help Charles G. Bruce in his defense?
Answer: Right from the beginning and all along while I was under subpoena. I was often reminded of the subpoena and the guidelines that went along with it.

Question: Were you so scared by AUSA Stephen C. Parker and Local Law Enforcement and TBI, that you were so scared you couldn't make yourself help Charles G. Bruce Sr?
Answer: I was always aware that they intended me to not be able to help Gary, that, in it's self, made me unable to do anything. Anyone who wore a badge and could crawl up to your back door step or be allowed to climb in your trees and spy on you on a nightly basis, even after a Federal Judge ordered them back away from my property for the sake of the kids, would still cross the line on a daily basis, is enough to keep anyone wondering what they were willing to do.

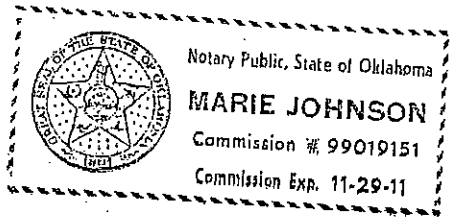
Janet D. Harper

Question: Were there different times that you were just totally scared, physically and mentally that you didn't know what to do?
Answer: I was forced into a survival mode for myself and my children and I knew there was no one left with a badge, in Tennessee, to trust or to give me direction on what to try. Everyone was afraid of what the law might do to them if they spoke up for Gary. I loaded up my children and got as far as my money would take me as close to peace that I could give them, I first took them to my sisters, but that wasn't what made them fit in, so I brought them to Oklahoma, all on a suitcase, and we've been here ever since. Money has never been available to pay someone that might actually have a clue on how to even help and nobody I've ever found does that on a pro bono basis that isn't already swamped with cases.

Janet S. Harper

Janet Sue Harper signed the above document in my presence. Marie Johnson (notary)

State of Oklahoma
County of Leflore



Nov. 28th, 1990

Statement By Travis

Jan. 15th, 1991

All I remember is I was drunk that night & don't Remember any Details. I went to a party got drunk, left from there & went home to Gary Shelton's Next morning I went to pick up my wife at her Aunt's in Cookeville.

Witness

Pam McBride Travis

Lisa Malin
STATE OF TENNESSEE
NOTARY PUBLIC
COUNTY OF BENTON

My Commission Expires June 27, 1992
Lisa Malin

Affidavit of **IRA TRAVIS**

State of Tennessee

County of Benton

IRA TRAVIS being duly sworn, deposes and states' My Name is **IRA TRAVIS**, I am over 18 years of age, I reside at

(street address) 421 High St. E.

(City, State, Zip code) McEwen TN. 37101

I, IRA TRAVIS, am fully competent to make this affidavit. I hereby make this affidavit of my own free will, without threat or coercion.

Signature: _____ DATE: 8-7-[redacted]19

IRA TRAVIS, being duly sworn, makes oath as follows:

1) Mr. Travis, do you have factual knowledge with information pertaining to the actual innocence of Charles Gary Bruce? Yes

2) Have you ever been threatened or intimidated by Charles Gary Bruce or any member of the Bruce family? NO

3) Mr. Travis during the year of 1991, did you move out of the state of Tennessee? (If answered yes, please continue to number 4. If answer is no, skip to number 13.) Yes

4) What were the reasons, that you decided to move out of Tennessee in the year of 1991? To Be with my wife.

5) Mr. Travis, where did you go when you moved out of Tennessee in the year of 1991? Florida.

6) Mr. Travis, were you able to obtain employment in the, newly moved to location, in the year of 1991? (If this answer is yes, continue to number 7. If the answer is No skip to number 13) Yes

7) Mr. Travis, what type of employment were you able to obtain during that time? Labor

8) Mr. Travis, What was the name of your employer/employer's during this time frame? (Business Name and Supervisors Names)

Don't Know

9) Mr. Travis, did you move out of Tennessee due to you or your family members being threatened or intimidated, by Charles Gary Bruce or any members of the Bruce family? NO

10) Mr. Travis, at any time while you were living in Florida, did you have any contact with local law enforcement there, such as, speeding tickets,

citations, or any other circumstances that would cause you to have to communicate with the local law enforcement? NO

11) Mr. Travis, at anytime during residing in Florida, were you contacted by the Federal department, such as TBI or FBI? NO

12) Mr. Travis, did any of your family members from Tennessee know where you were when you resided in Florida? Yes

13) Mr. Travis, did any of your Family members in Tennessee call you while you were residing in Florida and inform you that the Federal department (TBI or FBI) was looking for you? NO

14) Mr. Travis, during Mr. Bruce's trial the statement made by AUSA Stephen Parker, "That you were hiding out from the Bruce's", was this a true statement? NO

15) Mr. Travis, at any time after you returned to Tennessee were you or any of your family members intimidated, threatened, or coerced? NO

16) Mr. Travis you gave a statement on 9/23/2017, was that statement true and correct? Yes

17) Mr. Travis you gave another statement on 10/24/2017, was that statement true and correct? Yes

18) Mr. Travis, at anytime during the investigation of the 1991 Murders of Danny Vine and Delta Throton or during the two trials connected to these murders, were you ever threatened or intimidated by Charles Gary Bruce or any members of the Bruce family? NO

19) Mr. Travis, In your opinion, During the Investigation of the 1991 Murders of Danny Vine and Delta Throton, who was doing the intimidation, threatening, and coercion? Parker

20) Mr. Travis, at any time that AUSA Stephen Parker questioned you about the 1991 Murders of Danny and Delta Throton, did he intimidate, threaten, or coerced you? Yes

21) Mr. Travis In your opinion during the task force Investigation, led by AUSA Stephan Parker, of the 1991 murders of Danny Vine and Delta Throton who was doing the intimidation, threatening, and coercion?

Parker

22) Mr. Travis, has any Bruce family member threatened, intimidated, or try to coerce you into making this statement? NO

I, **Ira Travis** declare (or certify, or state) under penalty of perjury that the foregoing is true an correct.

Affiant's Signature: _____ Date: 8-7-19

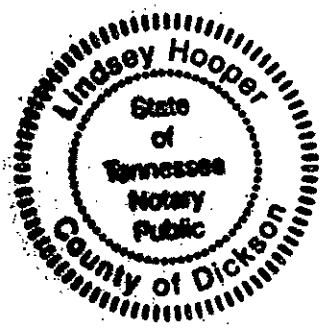
State of Tennessee

County of Dickson

Sworn to and subscribed before me this day 7 day of 8, 2019.

_____ Notary's Signature

Seal



My commission expires: September 25, 2022

Deposition By Billy W. Bruce Investigator
To Ira Travis

Do you Ira Travis solemnly swear that the answers you are about to give are the truth, the whole truth, and nothing, but the truth, so help you God?

ANSWER Yes SIGNATURE [signature]

This is a sworn statement of answered questions that Ira Travis answered on this Date 9-23-17. Mr. Bruce also brought a witness to also hear the answers that Ira Travis gives on these questions.

Witness SIGNATURE [signature]

Ira Travis are you making answering, these questions of your own free will, with no pressure or coersion, intimidation, or threats of any kind toward you or your family?

ANSWER Yes SIGNATURE [signature]

Q. Mr. travis, did you have a meeting at the prison you were at around 1995 or early 1996 with people known and unknown from the AUSA Stephen C. Parkers Office?

A. Y

Q. What prison were you at, when this meeting took place?

A. Camden

Q. Who came to the prison and talked with you about the case against Charles Gary Bruce?

A. Parker

Q. At anytime did the AUSA Stephen C. Parker talk with you about the case against charles Gary Bruce, or a Representative acting on the behalf of AUSA Stephen C. Parker?

A. Yeah

Q. Did the AUSA Stephen C. Parker or his Representative offer you any kind of deal?

A. [redacted] Yes

Q. What was the deal that AUSA Stephen C. Parker or his Representative offer you?

A. He said he would got me out of Jail and no Probason.

Q. Was this deal that AUSA Stephen C. Parker or his representative made to testify against Charles Gary Bruce?

A. Yes

Q. Did the AUSA Stephen c. Parker of his Representative tell you what to say, at the trial of Charles Gary Bruce?

A. Yes

Q. What did AUSA Stephen C. Parker or his Representative want you to testify to at Charles Gary Bruce's trial? [redacted] For Gary To go

A. To Jail

Q. Did the AUSA Stephen C. Parker or his representative tell you to say, that you were scared for your life and your family's life, when you testified against Charles Gary Bruce?

A. Yes Parker did. Parker told me to say that.

Q. At anytime from 1991 to 1996 were you or your family scared of Charles Gary Bruce or any of the Bruce's?

A. NO

Q. On the night of Jan. 16, 1991, before or after the party at Patricia Henderson AKA Odham or during the party did you hear anything about a contract on Danny vine or Delta Thorton?

A. ND

Q. On the night of Jan. 16, 1991 before or after the party at Patricia Henderson AKA Odham or during the party, anything about a contract or vote to do a contract on Danny Vine or Delta Thorton?

A. ND

Q. Were you drinking on the night of the party on Jan. 16, 1991?

A. Yes

Q. Were you so drunk at the party, that you didn't remember anything?

A. Yes

Q. Mr. Travis is it true that AUSA Stephen C. Parker or his representative did not follow through on the deal to get you out of prison?

A. Yes

Q. Mr. Travis is it true that what you testified to at Charles Gary Bruce's trial was what AUSA Stephen C. Parker or his Representative wanted you to say?

A. Yes

I Billy W. Bruce Solemnly swear that the questions propounded to Ira Travis on this Date 9-26-17 were answered by Ira Travis with a witness present.

SIGNATURE Billy Bruce

WITNESS, I Janet Matthew solemnly swear that the questions propounded to Ira Travis by Billy Bruce on this Date 9-26-17 I was present during the question and answer period.

Signed before me this 26 day of Oct 2017

SIGNATURE Janet Matthew

Sherry C Beasley Notary

My Comm Expires 7-2-2021

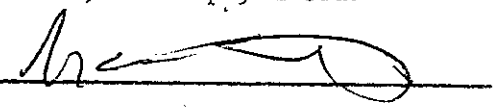
SHERRY C. BEASLEY
STATE OF TENNESSEE
NOTARY PUBLIC
BENTON CO. TENN.

2nd Deposition By Billy Bruce Investigator
To Ira Travis

Because of the complexity of the issues involved with this witness, I felt that a 2nd Deposition was needed to clarify more areas of the 1st Deposition given by Ira Travis.
Because of the complexity of the issues involved their will also be a 2nd witness to the questions and answers given by Ira Travis on that 2nd deposition.

The 1st Deposition will be attached to the 2nd Deposition

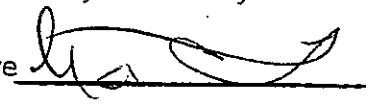
Do you (name) Ira Travis solemnly swear that the answers you are about to give are the truth, the whole truth, and nothing but the truth, so help you God?

Answer Yes Signature 

This is a sworn statement of Answered Questions that Ira Travis answered on this Date: October 24th, 2017

Investigator Bruce also has two witnesses present during the Question and Answer period on this Deposition.

Ira Travis are you answering these questions of your own free will with no pressure, coersion, intimidation or threats of any kind toward you or your family?

Answer Yes Signature 

Q. Travis in your 1st Deposition, did you say that AUSA Stephen C. Parker told you to testify, that you were scared for your life and the life of your family?

A. Yes

Q. Were you scared of the Bruces' or Charles Gary Bruce?

A. No

Q. At anytime in your life, anytime that you worked with Charles Gary Bruce, were you scared for your life or the life of your family?

A. No

Q. How long did you work with Charles Gary Bruce or his family?

A. Around About 33 years ago.

Q. So, you worked a lot of years around Charles Gary Bruce?

A. Yes

Q. Were you working with Charles Gary Bruce in late 1990 through 1991?

A. Yes

For the Deposition purpose-Charles Gary Bruce will be referred to as Gary or Gary Bruce..

Q. I want you to think hard about this question, did you know of anybody that Gary Bruce ever threatened or intimidated?

A. No

Q. After the murders of Danny Vine and Delta Thorton, did you ever hear Gary Bruce threaten Mike Franklin, Patricia Henderson Odham?

A. No

Q. Did you know Shannon Bruce, who was married to Jerry Bruce?

A. Yes

Q. did you ever hear Gary Bruce threaten or intimidate Shannon Bruce in any way?

A. No

Q. Did you know Kathleen Bruce, Gary's Mother?

A. Yes

Q. You were around the Bruces' for so long, did you ever hear Kathleen Bruce, a.k.a. Ryion, threaten Shannon Bruce, a.k.a. Cooper?

A. No

Q. Is it true that Kathleen Bruce was pretty well up in her years in 1991-1995?

A. Yes

Q. How old do you think she was at the time?

A. Between 55-60 years old

Q. Was Kathleen Bruce, a.k.a. Ryion, a person who would threaten people in your own opinion, because you knew her a lot of years?

A. No

Q. Do you remember a store everybody called Eva Road Grocery?

A. Yes

Q. Do you remember a Ralph Sentell, who worked at that store?

A. Didn't know his name, but knew his face when I seen him.

Q. How many times a day or week, would you say that you and Gary Bruce stopped at the store in 1990 and in 1991?

A. Once a day, in the morning before going to river.

Q. Do you remember ever a time, when Gary Bruce threatened or tried to intimidate Ralph Sentell?

A. No

Q. Did you ever hear Gary Bruce or anybody ever talk about threatening or intimidation toward Ralph Sentell?

A. No

Q. After the murders of Danny Vine and Delta Thorton, did Gary Bruce act any different when you both stopped at Eva Road Grocery?

A. No

Q. In your opinion, knowing Gary Bruce for so many years, do you think Gary Bruce would threaten Ralph Sentell?

A. No

Q. Did you go on a trip to Louisiana with Gary Bruce, Mike Franklin and Patricia Henderson, a.k.a. Odham?

A. Yes

Q. Who did most of the diving for shells while all of you were their?

A. Gary Bruce

Q. Is it true, that Gary Bruce had too many shells for one truck and Gary called Black Water Shell Co. in Arkansas and asked for them to bring another truck so that you all could get all the shells back at one time?

A. Don't recall, Are you talking about Arkansas? Because we got truck loads in Arkansas around that time in 1990-1991

Q. Isn't it true that Gary Bruce was always working in 1990 and early 1991 whether it was Louisiana or Tennessee, or Kentucky?

A. Yes

Q. Is it true that Gary Bruce was also going to Kentucky and illegally diving at night in 1990 or 1991?

A. Yes

Q. How much money would Gary Bruce make selling shells on a night in Kentucky?

A. $1200-$1500

Q. Is it true that you were with him many of the nights when Gary was diving in Ky,?

A. Yes

Q. Would you say that Gary Bruce was making a pretty good living diving, dredging and crawling for shells in 1990 and early 1991?

A. Yes

Q. When all of you got back from Louisiana, where did Gary Bruce start crawling for shells at, was it the Santary?

A. Yes

Q. Who was getting shells in 1991 in January on the Santary with Gary Bruce?

A. I was and Mike Franklin

Q. Is it true that Gary Bruce, Mike Franklin, Patricia Henderson and yourself worked on the Santary in early Jan. 1991?

A. Yes

Q. When the water started getting high in late Jan. 1991, did Gary Bruce start dredging on the Santary?

A. Yes, me and him

Q. It's fair to say, that Gary Bruce was making money in 1990 late and early 1991?

A. Yes

Q. Was it a regular practice for Gary Bruce to keep the smaller lake shells on the Santary, so later he could carry them to Kentucky and sell the shells, because the shells were illegal in Tennessee?

A. Yes

Q. Has Gary Bruce ever threatened you or anything to make you feel scared for your life or your familiy's life?

A. No

Q. You said in your 1st Deposition that AUSA, United States Prosecutor, Stephen C. Parker Had a meeting with you?

A. Yes

Q. You said AUSA, United States Prosecutor, Stephen C. Parker offered to get you out of jail and put you on probation?

A. Yes

Q. During the meeting with AUSA,United States Prosecutor, Stephen C. Parker , did Parker tell you Exactly what to say when you testify against Gary Bruce?

A. Yes

Q. In your testimony at Gary Bruce's trial, you said that Gary Bruce brought up that Chet Ballenger wanted Danny out of the picture, was this a true statement or was it what AUSA,United States Prosecutor, Stephen C. Parker wanted you to say?

A. AUSA, United States Prosecutor, Stephen C. Parker wanted me to say that!

Q. You testified that Gary Bruce looked at all of you and said, "what can we do" Did Gary Bruce say these words at the party?

A. No

Q. Who told you to say this when you were testifying against Gary Bruce?

A. AUSA, United States Prosecutor, Stephen C. Parker

Q. You testified that Jerry, Gary, Robert and David Riales how they were going to take the shells and everything else, Did they say these words?

A. No

Q. Who told you to testify to these words?

A. AUSA, United States Prosecutor, Stephen C. Parker

Q. You also testified that Gary Bruce said, "we need a vote on this" Did Gary Bruce ask for a vote?

A. No

Q. Did AUSA, United States Prosecutor, Stephen C. Parker ask you to say this statement at Gary Bruce's trial?

A. YES

Q. You testified that Gary Bruce said, "if anyone is out there we just kill them," Did Gary Bruce say this at the party Jan. 16, 1991 at Patricia Henderson's?

A. No

Q. Did AUSA, United States Prosecutor, Stephen C. Parker ask you to say this statement against Gary Bruce At his trial?

A. Yes

Q. You testified that Gary Bruce said their was a contract to kill Danny Vine for Chet Ballenger, Did Gary Bruce say this at the party at Patricia Henderson's on Jan. 16,, 1991?

A. No

Q. Did AUSA Stephen C. Parker tell you to say this against Gary Bruce at trial?

A. Yes

Q. You testified that Gary Bruce Said , "we can just leave Chet ballenger totally out of it", Did Gary Bruce say this, or did AUSA Stephen C. Parker want you to say this against Gary Bruce at trial?

A. AUSA, United State Prosecutor, Stephen C. Parker wanted me to say it.

Q. You gave a statement to TBI Special Agent Alvin Daniels and said you didn't know anything about the murders, was this a true statement?

A. Yes

Q. Who told you to say, you lied to TBI Special Agent Alvin Daniels at trial?

A. AUSA, United State Prosecutor, Stephen C. Parker

Q. You didn't hear any of the statements that you testified to at Gary Bruces's trial at the party at Patricia Henderson's on Jan. 16, 1991?

A. No

Q. Everything that you testified to at Gary Bruce's trial was a lie?

A. Yes

Q. Did AUSA Stephen C. Parker put you up to these lies against Gary Bruce?

A. Yes

Q. Most of the testimony you gave at Gary Bruce's trial was actually AUSA, United State Prosecutc Stephen C, Parker testimony of what he wanted you to say.

A. Yes

Q. Mr. Travis you have stated that AUSA Stephen C. Parker told you what to say at Gary Bruce's trial, is this true?

A. Yes

Q. Did AUSA Stephen C. Parker tell you that in order to put Gary Bruce in prison, you had to testify, to what he wanted you to say?

A. Yes

Q. Were you scared, threatened, coerced or intimidated by AUSA Stephen C. Parker?

A. Yes, because Parker said if I didn't testify how he they wanted me too that they were going to put me in jail for 25 years.

Q. Did AUSA Stephen C. Parker coach you on how to say the lies against Gary Bruce at his trial?

A. Yes, right before trial.

Q. Did AUSA Stephen C. Parker coach you more than one time?

A. Yes,

Q. How many times did AUSA Stephen C. Parker coach you to say what he wanted?

A. twice – once in Camden jail and once right before trial in Federal court building holding cell down stairs.

Q. Did AUSA Stephen C. Parker tell you at the jail what to say?

A. Yes

Q. How many times did AUSA Stephen C. Parker tell you at the jail what to say?

A. He told me twice while I was in Camden Jail, the one time He came.

Q. How many times did AUSA Stephen C. Parker talk with you at the Federal Building in Jackson Tennessee?

A. Once, in the holding cell.

Q. Would it be fair to say, that it was AUSA Stephen C. Parker who threatened and intimidated you into coercion for his own purpose?

A. Yes

Q. Is it true that it was AUSA Stephen C. parker who made you scared for your life and your family's?

A. Yes

Q. Is it true that AUSA Stephen C. Parker told you he would get you out of prison, if you lied for him?

A. Yes

Q. Mr. Travis, who was it that put you up to telling all these lies at the trial of Gary Bruce?

A. AUSA, United State Prosecutor, Stephen C. Parker

Q. At any time did AUSA Stephen C. Parker give you any kind of paper or transcropt so you could study it, so you could learn what to say?

A. No

Q. Did AUSA Stephen C. Parker threaten you with charges if you didn't do what he asked?

A. Yes, 25 years!

Q. Mr. Travis, who told you what to say at Gary Bruce's trial?

A. AUSA, United State Prosecutor, Stephen C. Parker

Q. Mr. Travis, thank you for your time.

I Billy W. Bruce solemnly swear that the questions propounded to Ira Travis on this Date 10/24/2017 were answered by Ira Travis with two witnesses present.

Signature Billy Bruce

STATE OF TENNESSEE COUNTY OF BENTON

On this the 26 day of October, 2017, before me, the notary public who has signed below, personally appeared the person named above, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

Notary Public

SHERRY C. BEASLEY STATE OF TENNESSEE NOTARY PUBLIC BENTON CO. TENN.

My commission expires: 7-21-21

I, IRA TRAVIS, solemnly swear that the answers to all the above questions on 10/24/2017 are the truth, and nothing but the truth.

Signature:

A copy of this document, certified by a notary public or a government official as a true copy, shall have the same effect as the original.

STATE OF TENNESSEE COUNTY OF BENTON

On this the 26 day of October, 2017, before me, the notary public who has signed below, personally appeared the person named above, who is personally known to me (or proved to me on the

basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

Notary Public

SHERRY C. BEASLEY STATE OF TENNESSEE NOTARY PUBLIC BENTON CO. TENN.

My commission expires: 7-21-21

Witness, I Barbie Merrell solemnly swear that the questions propounded to Ira Travis by Billy Bruce on this Date 10/24/2017 I was present during the question and answer period.

Signature

STATE OF TENNESSEE COUNTY OF BENTON

On this the 26 day of October, 2017, before me, the notary public who has signed below, personally appeared the person named above, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

Notary Public

SHERRY C. BEASLEY STATE OF TENNESSEE NOTARY PUBLIC BENTON CO. TENN.

My commission expires: 7-21-21

Witness, I Janet Matthews solemnly swear that the questions propounded to Ira Travis by Billy Bruce on this Date 10/24/2017 I was present during the question and answer period.

Signature: Janet Matthews

On this the 24 day of October, 2017, before me, the notary public who has signed below, personally appeared the person named above, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

Sherry C Beasley

Notary Public

SHERRY C. BEASLEY
STATE OF TENNESSEE NOTARY PUBLIC
BENTON CO. TENN.

My commission expires: 7-21-21

Affidavit of **David Wayne Frazee**

State of Tennessee

County of Benton

David Frazee being duly sworn, deposes and states' My Name is **David Wayne Frazee**, I am over 18 years of age, I reside at

(street address) 176 Highland Heights

(City, State, Zip code) Camden, TN 38320

I, David Wayne Frazee, am fully competent to make this affidavit. I hereby make this affidavit of my own free will, without threat or coercion.

Signature: X David Frazee DATE: 8-6-2018

David Wayne Frazee, being duly sworn, makes oath as follows:

1. Do you remember the night of January 16th, 1991?
    a. Yes

2. How do you remember the night of January 16th, 1991?
    a. That was the night the war started we were out drinking and listening to the war on the radio, and I was questioned about 2-3 days later about that exact night. My dad (Johnny Odell Frazee) was present when they came to speak to me. My dad used to be a cop but was an ambulance driver at the time they questioned me.

3. Who was you out drinking with?
    a. Shawn Philips (Bruce)

4. How did you know Shawn Philips (Bruce)?
    a. We were friends, I lived there with them and worked at the shell camp?

5. What Shell Camp?
    a. Gary's

6. You lived where in January of 1991?
    a. With Shawn at his parents' house.

7. So, you lived at Gary and Jan Bruce's house in January of 1991 and worked at Gary's shell camp?
    a. Yes

8. Did you work at the shell camp on January 16th, 1991?
    a. Yes
9. Who was with you at work that day?
    a. Me, Shawn, and Jan after a certain time. Gary was there for a little while but went home because he didn't feel good.

10. What time did all three of you leave work on January 16th, 1991; You, Shawn and Jan?
    a. Jan left to go home to cook us dinner about 7:30pm and me and Shawn finished up then we left about 8pm.

11. Where did you and Shawn go after you and him left the shell camp on January 16th, 1991 at 8pm?
    a. We went home

12. Home, are you talking about Gary and Jan Bruce's House?
    a. Yes

13. What time did you make it home?
    a. Shortly after 8pm, it only took a few mins to get from the shell camp to the house. We were there for about forty-five mins.

14. When you arrived at home, was Gary Bruce and Jan Bruce there?
    a. Yes

15. You stated, "we were there for about 45mins", who is we?
    a. Shawn and me

16. Where did you go after that?
    a. Me and Shawn went out Harmons at the river.

17. Did you and Shawn go back to the house anytime that night of January 16th, 1991?

a. Yes, once at about 10pm for about 30mins and then again about 11:45 or 12midnight.

18. Who was at the house when you returned at 10pm on January 16th, 1991?
    a. Gary was there because we talked to him for about 30mins before leaving again.

19. Was Jan Bruce there when you returned home at 10pm on January 16th, 1991?
    a. I'm not sure, I didn't see her.

20. Where did you and Shawn go after you left the house around 10:30pm on January 16th, 1991?
    a. We went riding around in Harmons Creek, out toward the lake. We were drinking and listening to the radio about the war.

21. You stated you returned home again at about 11:45pm or 12midnight on the night of January 16th, 1991, is that correct?
    a. Yes

22. Was Gary Bruce or Jan Bruce home, when you and Shawn came home around 11:45pm or 12mindnight on January 16th, 1991?
    a. Yes, they both were in bed. We seen there heads as we walked by the room.

23. You stated you were questioned about the night of January 16th, 1991, who where you questioned by?
    a. Some cops came out and asked questions.

24. Did you talk to anyone else about January 16th, 1991?
    a. I Was in the Vanderbilt hospital two days after that night, TBI agent (black headed, short woman questioned me, my dad was present. My dad told me to ask her if I needed to sign the statement, I gave her verbally, and she said no she didn't write it down. So, my dad asked her why she didn't write it down due to the fact it was a murder case. She stated she didn't need it that she had it in her head.

25. Do you remember the name of this TBI agent?
    a. No, but my dad made my step mom write her name down, so she might know it.

26.What about your dad, would he know?
    a. He has passed away

I, **David Wayne Frazee** declare (or certify, or state) under penalty of perjury that the foregoing is true an correct.

Affiant's Signature: X David Frazee Date: 8-6-2019

State of Tennessee

County of Benton

Sworn to and subscribed before me this day 6th day of August, 2019.

Wanda Malin Notary's Signature

Seal

My commission expires: 8-31-22

Barbie Ann Merrell
83 College St
Bruceton, TN 38317
June 2, 2020

I Barbie Ann Merrell have been assisting Billy Wayne Bruce as needed, with the Investigation of the case of Charles Gary Bruce vs United States of America, from 1995 to present. I Obtained a statement from David Frazee on 6th of August. Prior to this date Billy Bruce and I spoke to David Frazee at Country Hearth Inn where David Frazee was staying at the time. David Frazee had his statement notarized on the 6th of August 2019 in the Benton County Court House willing and on his own.

Barbie Merrell Dall 6-2-20

TENNESSEE NOTARIAL CERTIFICATE
(COPY CERTIFICATION OF ELECTRONIC DOCUMENT)

I, Barbie Ann Merrell, swear to that the above statement is correct.

State of TN

County of Benton

Personally appeared before me Sherry C Beasley [Name of Notary], a notary public for this county and state, Barbie Merrell [Name of Person making Certification] who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed. TN DL XXXXX 5745

SHERRY C. BEASLEY STATE OF TENNESSEE NOTARY PUBLIC BENTON CO. TENN.

Seal (if on paper)

Sherry C Beasley 6-2-20
Notary's Signature Date

My commission expires: 7-21-21

Billy Wayne Bruce
670 Clifford Hicks Rd
Camden, TN 38320
June 2, 2020

I Billy Wayne Bruce have been Investigating the case of Charles Gary Bruce vs United States of America, from 1995 to present. I obtained multiple statements from different witnesses that came forward willingly for this case. I required help from multiple people during that time frame. Barbie Merrell and I Spoke to David Frazee at Country Hearth Inn, where David Frazee was staying at the time prior to the notarized statement. David Frazee had his statement notarized on 6th of August 2019, at the Benton County Court House willing and on his own.

Billy Bruce 06-02-2020
Date

TENNESSEE NOTARIAL CERTIFICATE
(COPY CERTIFICATION OF ELECTRONIC DOCUMENT)

I, Billy Wayne Bruce, swear to that the above statement is correct.

State of TN

County of Benton

Personally appeared before me Ashley Travis [Name of Notary], a notary public for this county and state, Billy Bruce [Name of Person making Certification] who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

ASHLEY W. TRAVIS STATE OF TENNESSEE NOTARY PUBLIC BENTON CO. TENN.

Ashley Travis 06/02/20
Notary's Signature Date

Seal (if on paper)

My commission expires: September 21, 2022

STATE OF TENNESSEE

COUNTY OF BENTON

AFFLIATE AFFIDAVIT OF BARBIE ANN SWEARINGEN

I, BARBIE ANN SWEARINGEN, do hereby swear that the following statement is true and I am giving this statement knowing and willingly without intimidation or being coursed or threatened. On or around about September 2nd, 2011 I Barbie Swearingen was at the business of Boondocks on highway 70 west of Camden, Tennessee. At this time I was approached by Tammy Cook, who is from Camden, Tennessee. Mrs. Cook begun to cry and stated that she knew things about Danny Vine and Della Thorton murders and that she knew the ones convicted were innocent and she needed to get it off of her conscious . I Barbie Swearingen offered for Tammy Cook to stay at my home for the night; which is located at 138 Mimosa Street Camden, Tennessee; so we could discuss the matter when she was not intoxicated, Mrs. Cook accepted the invite.

TAMMY COOK, knowing and willingly without intimidation or being coursed or threatened gave a video statement to me, BARBIE SWEARINGEN, about the information described below around or about September 2nd 2011. The video was taken with a cell phone so it consists of around about 47 small videos done in 30 second in travels.

TAMMY COOK stated, I was involved with Jay Allen Scarborough, A.K.A Meno, and Wesley Scarborough", A.K.A Poss, during this time period we all became close friends. Meno made the comment "I had no problem going in and shooting Danny and Della while they were sitting down eating their meal why would you be any different." This was said to try and scare me, then they, Meno and Poss, went into details of how it went about. Meno stated "I went in, they were sitting down to eat, I shot them and sat down and ate there meal and even shot there dog". They also gave other names that were involved, such as, A.K.A Potter and Joe Wilson. Meno and Poss Stated that "they all purchased gas that night from Eva Road Grocery at separate times". They also stated that the truck load of shells that were stolen from the house that night were sold at Chat Balenger's shell camp located in Paris, TN at that time.

TAMMY COOK stated , that she went to T.B.I in Jackson, Tennessee, "I went to them for protection because of the information that I Knew concerning the murders of Danny and Della Vine and information on were other bodies were located in an underwater well in Big sandy, TN in a Creek Known as the Tressel, it's a well-known swimming area for locals. I was scared for my life at the time I went to T.B.I because I was informed that Larry Ross was assisting Meno and Poss financially to hire Blagburn to kill me. Blagburn stated that "Poss and Meno want u dead so Larry Ross offered me 10,000 to take you out but I can't follow thru with it because we are good friends".

TAMMY COOK stated," I also went to Frank Stockdale at the Camden city police department after finding out that Meno and Poss wanted me dead. Frank Stockdale stated that the "best thing I could do with everything going on is to walk off and leave everything I had because where I lived there was only one way in and one way out there was nothing I could do."

THIS THE 28 DAY OF NOVEMBER, 2011

Barbie Swearingen

BARBIE ANN SWEARINGEN

WITNESS

STATE OF TENNESSEE

COUNTY OF BENTON

Personally appeared before me, the undersigned, A Notary Public in and for said state and county, the within named BARBIE ANN SWAERINGEN, with whom I am paersonally acquainted or proved to me on the basis of satisfactory evidence, and who, after first duly sworn according to law, acknowledged the statement above to be true

WITNESS MY hand and official seal at office in Camden, Tennessee, this the 28 day of November, 2011.

KAREN LYNCH
STATE OF TENNESSEE NOTARY PUBLIC
BENTON CO. TENN.

Karen Lynch

NOTARY PUBLIC

My commission Expires : 5-26-14

I, Tammy Cook, Knowing and willingly without intimidation or being coursed or threatened gave a video

STATE OF TENNESSEE

COUNTY OF BENTON

AFFLIATE AFFIDAVIT OF TAMMY COOK

I, Tammy Cook, do hereby swear that the following statement is true and I am giving this statement Knowing and willingly without intimidation or being coursed or threatened. Around about the time period of, May or June of 2004 I was involved with Jay Allen Scarborough, A.K.A Meno, and Wesley Scarborough, A.K.A Poss., during this time period we all became close friends. Meno made the comment "I had no problem going in and shooting Danny and Dela while they were sitting down eating there meal why would you be any different". This was said to try and scare me, then they, Meno and Poss, went into details of how it went about. Meno stated "I went in, they were sitting down to eat, I shot them and sat down and ate there meal and even shot there dog". They also gave other names that were involved, such as, A.K.A Potter and Joe Wilson. Meno and Poss stated that "they all purchased gas that night from Eva Road Grocery at separate times". They also stated that the truck load of shells that were stolen from the house that night were sold at Cehat ~~Balenger~~ Balenger shell camp located in Paris, Tn at that time.

I, Tammy Cook, went to TBI in Jackson Tennessee around about the time period of, February or March 2005 I went to them for protection because of the information that I Knew concerning the murders of Danny and Della Vine and information on were other bodies were located in an underwater well in Big sandy, TN in a Creek known as the Tressel, it's a well-known swimming area for locals. I was scared for my life at the time I went to TBI because I was informed that Larry Ross was assisting Meno and Poss Financially to hire ~~Blackburn~~ Blagburn to kill me. ~~Blackburn~~ Blagburn stated that "Poss and Meno want u dead so Larry Ross offered me $10,000 to take you out but I can't follow thru with it because we are good friends"

I, Tammy Cook, also went to Frank Stockdale at the Camden city police department around about the time period of, between May 2004 to July 2005 after finding out that meno and poss wanted me dead. Frank Stockdale stated that the "best thing I could do with everything going on is to walk off and leave everything I had because where I lived there only one way in and one way out there was nothing I could do."

QUESTION: Did you also go to the T.B.I. in Jackson, TN for help or protection?

ANSWER: Yes.

QUESTION: Do you remember whom in the T.B.I. you talked with, in Jackson, Tennessee?

ANSWER: He was White Headed, can't think of his name.

QUESTION: Did you give a statement in Jackson, Tennessee to the T.B.I. about Jay Allen Scarborough "A.K.A. Meno" and Wesley Scarborough "A.K.A. Poss" confessing to the murders of Danny Vine and Della Thornton.

ANSWER: Yes.

QUESTION: At any time while giving a statement in Jackson, Tennessee to the T.B.I. was Charles Gary Bruce, or any of the other Bruce Brothers names, mentioned as being involved in the murders of Danny Vine and Della Thornton?

ANSWER: No.

QUESTION: Did Sgt. Frank Stockdale ever say he would contact the Federal Authorities?

ANSWER: Yes.

QUESTION: At any time, while giving a statement in Jackson, Tennessee to T.B.I did they say they would contact the Federal authorities.

ANSWER: Not Sure.

Tammy Cook Date: 9-7-12

Tammy Cook

Janet Matthew Date: 9-7-12

Witness

Pam Gallimore
09-07-12

PAM GALLIMORE
STATE OF TENNESSEE
NOTARY PUBLIC
COUNTY OF CARROLL

Commission Expires 09/20/1

CAMDEN POLICE DEPARTMENT
119 WEST MAIN ST. P.O. BOX 779 CAMDEN, TN 38320

GEORGE SMITH
CHIEF OF POLICE

731-584-4622 OFFICE
731-584-3858 FAX

MIKE SCOTT
ASST. CHIEF OF POLICE

TO WHOM IT MAY COCCERN: REFERENCE THE DANNY VINE AND DELLA THORTON MURDER BACK IN THE EARLY NINETY'S. THERE HAS BEEN INFORMATION FROM 2 DIFFERENT INFORMANT'S THAT HAS BEEN STATED TO THE WRITER OF THIS REPORT THAT A JAY ALLEN SCARBOROUGH AND HIS BROTHER WESLEY SCARBOROUGH ALONG WITH SOME OTHER PERSONS WAS RESPONSIBLE FOR THE ROBBERY AND ONE OF THE PERSON WHO IS GIVING THIS INFORMATION WAS SUPPOSED TO HAVE BEEN WITH THEM AT THE TIME OF THE ROBBERY.

THIS PERSON NAME IS RUSTY BLAGBURN WHO LIVES IN BIG SANDY, TN. AND THE WRITER HAS KNOWN THIS PERSON FOR ALL OF HIS LIFE AND DOES NOT BELIEVE THAT HE IS MAKING THIS STATEMENT UP. AT THE TIME THAT HE STARTED TALKING TO MYSELF WAS BACK IN OCTOBER OF 2005 AND THAN AGAIN IN JUNE OF THIS YEAR.

THE WRITER OF THIS STATEMENT BELIEVES AT LEAST THIS PERSON SHOULD BE TALKED TO, TO SEE IF HE IS TELLING THE TRUTH ABOUT THIS MATTER AND IF SO DO WHAT IS RIGHT IN REGARD TO THIS MATTER.

END OF REPORT BY SGT. FRANK STOCKDALE
OCTOBER 06, 2006

Frank D Stockdale

INVESTIGATOR BRUCE AFFIDAVIT TWO

I, Billy Wayne Bruce, hereby swear the statement I am about to give is true. I work as an investigator for Charles Gary Bruce. I had a meeting with Sergeant Frank Stockdale that works for the Camden Police Department on this day June 6th, 2007 at 9:30 a.m. at the Benton County Courthouse. I discussed with Sergeant Frank Stockdale the statement that had been given to me for Charles Gary Bruce for October 6th, 2006, concerning two different informers that had stated to Sergeant Frank Stockdale one or both were involved in the killing of Danny Vine and Della Thornton on January 16th, 1991.

I asked Sergeant Frank Stockdale to testify to the fact that he wrote this statement on October 6th, 2006. Sergeant Frank Stockdale replied, "I will testify either in State or Federal" Court that I indeed wrote the statement and believe it to be true.

I, Billy Wayne Bruce, talked to Sergeant Frank Stockdale at the Benton County Courthouse at 9:30 a.m. on June 6th 2007 about giving a new statement and having it certified. Sergeant Frank Stockdale advised me, he couldn't because U.S. Federal D.A. Stephen Parker of Jackson Tennessee had called him and ordered him to make a new statement different from the one given to me for Charles Gary Bruce on October 6th 2006. Sergeant Frank Stockdale said he then wrote a new statement, had it notarized and sent it to U.S. D.A. Stephen Parker on May 17th 2007.

Billy Bruce

Lisa Malin
My Commission Expires June 27, 2009

LISA MALIN
STATE OF TENNESSEE
NOTARY PUBLIC

INVESTIGATOR BRUCE AFFIDAVIT ONE.

I, Billy Bruce, do hereby swear:

1. That as an investigator for applicant Charles Gary Bruce, I contacted Camden Police Department Sgt. Frank Stockdale.

2. Sgt. Stockdale told me that Assistant United States Attorney Parker told Sgt. Stockdale that the signature of Sgt. Frank Stockdale on the October 6, 2006 Report had been illegally duplicated by me, investigator Billy Bruce.

Billy Bruce

LISA MALIN
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF BENTON

Lisa Malin
my Commission Expires
June 27, 2009

CAMDEN POLICE DEPARTMENT

119 WEST MAIN ST. • P.O. BOX 779 • CAMDEN, TN. 38320

GEORGE SMITH
CHIEF OF POLICE

731-584-4623 OFFICE
731-584-1781 FAX

MIKE SCOTT
ASST. CHIEF OF POLICE

TO WHOM IT MAY CONCERN: THIS LETTER IS BEING WRITTEN TO CLARIFY A LETTER THAT WAS WRITTEN BACK IN THE YEAR OF 2005 WHEN A CONFIDENTIAL AND RELIABLE INFORMANT DID GIVE A STATEMENT TO THE WRITER OF THIS LETTER THAT A JAY ALLEN SCARBOROUGH AND A WESLEY SCARBOROUGH WAS INVOLVED IN THE MURDER OF DANNY VINE AND DELTA THORTON BACK IN 1991. THE STATEMENT THAT WAS WRITTEN BY THIS WRITER DID NOT MENTION THAT THE BRUCE BROTHERS WAS INVOLVED IN THE MURDER. THE INFORMANT DID SAY THAT IT WAS NOT RIGHT WHAT HAD HAPPENED TO THE BRUCE BROTHERS FOR THE OTHER PERSONS WHO WAS ALSO INVOLVED IN THE MURDER, TO GET BY WITHOUT BEING ARRESTED. THE INFORMANT NEVER SAID THAT THE PERSONS WHO WAS ARRESTED WAS NOT INVOLVED IN THE INCIDENT. THE ONLY THING THAT WAS SAID WAS THAT IT WAS NOT RIGHT HAS TO WHAT HAD HAPPENED AND THE OTHER PARTIES, AND THE REST OF THE PEOPLE NOT TO BE CHARGED. THIS LETTER IS BEING DONE ON MY BEHALF TO SAY THAT THE OTHER PARTIES WHO WAS ARRESTED AND CONVICTED WAS ALSO INVOLVED WITH THE MURDER ALSO.

SIGNED BY:

Frank D Tackett

Subcribed and sworn to before me in my presence this 16 day of March 2009 m. Notary Public in and for the County of Benton State of Tenn.

Sonya Volz
(Signature) Notary Public

My commission expires 9-22-09

SONYA R. VOLZ NOTARY PUBLIC STATE OF TENNESSEE

CAMDEN POLICE DEPARTMENT

119 WEST MAIN ST. P.O. BOX 779 CAMDEN, TN 38320

GEORGE SMITH
CHIEF OF POLICE

731-584-4622 OFFICE
731-584-3858 FAX

MIKE SCOTT
ASST. CHIEF OF POLICE

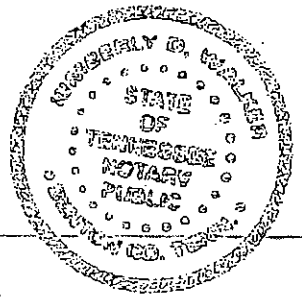
On or about June 30, 2006 the writer of this report did talk to a Rusty Blagburn in reference to a statement that he had made about a robbery and killing that had occurred in Benton County, Camden, Tn. back in the early 90's. The statement that he had made was that a Jay Allen Scarbourough and his Brother Wesley Scarbourough was involved in the killing of Danny Vine and Delta Thorton and that he was suppose to have been with them but he and his wife at that time had gotten back together and that he was not with them. He did say thank God that he was not with them, but he did say that it was not right what had happened to the Bruce Brothers and that the Scarbourough Brothers had gotten clean away from their involvement in the robbery and murder.

I have been trying to find Rusty Blagburn since the first of August of 2006 but he does have a VOP out of Circuit Court in Madison County, Tn. and has gone into hiding. There has been people in Benton County, Tn. that has seen him but every time he is sighted, the Benton County Sheriff Department cannot find him. At the time of the statement that Mr. Blagburn had made to this Officer, he did say that he would talk to any body that I thought would be able to do something about this incident, including any Federal Officials.

Sincerely :

Frank Stockdale

Frank Stockdale



My commission expires 4-19-2011

Kimberly D. Walker

tabbies

Exhibit-e 2