

IN THE  
SUPREME COURT OF THE UNITED STATES  
**22-6623**  
JARMELL RAYMOND' MAYWEATHER

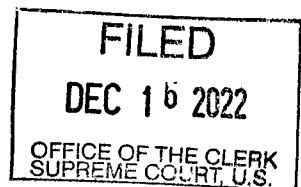
ORIGINAL

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent(s)  
AUSA Nathan Hoye Nelson "et al.".



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

Jarmell Raymond' Mayweather  
Register Number 12496-041  
Federal Prison Camp Yankton  
P.O. Box 700  
Yankton, South Dakota 57078

Phone Number (612) 323-9464

Prose' Petitioner

Scott S. Harris, Clerk  
Supreme Court of the United States  
1 First Street N.E.  
Washington, DC. 20543

Phone Number (202) 479-3009

cc: Mr. Thomas Calhoun-Lopez (AUSA)  
Mr. David P. Steinkamp (AUSA)

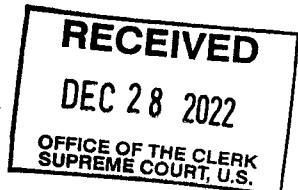
AUSA Nathan Hoye Nelson  
United States Attorney  
600 U.S. Court House  
300 South Fourth Street  
Minneapolis, MN 55415

Douglas Altman  
Defense Attorney  
6701 West 23rd Street  
Saint Louis Park MN 55426

District Court/Agency Case Number(s): 0:21-cv-2355-WMW

CERTIORARI

-COVER PAGE-



QUESTIONS PRESENTED

- 1.) Whether the government omission of evidence that was contrast affiant's Search Warrant Application (Hereafter "SWA") statements constituted a Brady and Franks violation.
- 2.) Whether an officer can falsify the identity of his informant as another suspected informant to protect the infirmities and falsities of his SWA's is a violation of petitioner's Fourth Amendment Constitution rights.
- 3.) For the Court to take an "In Camera Review" of Jerome Wilson's Sealed File. (Federal Number 20719-041) To make the determination of whether government misappropriated the informant in his SWA's and during trial.
- 4.) Whether affiant of Mayweather's SWA's falsified a controlled buy to substantiate probable cause to search, when he had second hand knowledge that drugs would be stored at Mayweather's residence.

## TABLE OF CONTENTS

QUESTIONS PRESENTED	...i
TABLE OF CONTENTS	...ii
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	..iiii
JURISDICTION	...iv
LIST OF PARTIES INVOLVED	...v
RELATED CASES/ STATUTES AND RULES	...vi.
BACKGROUND	...1-10.
STATEMENT OF THE CASE	
A.) EVIDENCE PRESENTED AT TRIAL	11-12
B.) EVIDENCE PRESENTED POST TRIAL	13-23
LEGAL ARGUMENT/REASONING FOR GRANTING THE WRIT	
A.) MAYWEATHER DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL	24-27
B.) DEFENSE COUNSEL OVERLOOKED EXONERATORY EVIDENCE (IMPEACHMENT EVIDENCE)	28-32
CONCLUSION	...33
CERTIFICATE OF FILING AND SERVICE	...34.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Law §840 Due Process-Known false evidence. Deliberate deception of a court and jurors in a criminal case by the presentation of known false evidence is incompatible with the rudimentary demands of justice.

Constitutional Law §840 Due Process-False evidence a conviction secured by the use of false evidence must fall under Due Process Clause where the state, although not soliciting the false evidence, allows it to go uncorrected when it appears.

Constitutional Law §840 Due Process-Suppression under Due Process Clause, the prosecution's suppression of material evidence justifies new trial irrespective of the prosecution's good faith or bad faith.

This Court has held, as long as Mooney v. Holohan, 294 US 103, 112, 79 L Ed 791, 794, 55 S Ct 340 ALR 406 (1935), made clear that deliberate deception of a court and jurors by presentation of known false evidence is incompatible with "rudimentary demands of justice." This was confirmed in Pyle v. Kansas, 317 US 213, 87 L Ed 214, 63 S Ct 177 (1942). In Napue v. Illinois, 360 US 264, 3 L Ed 2d 1217, 79 S Ct 1173 (1959), we said "[t]he same result obtains when state, although not soliciting false evidence, allows it to go uncorrected when it appears." Id. at 269, 3 L Ed 2d at 1221. Thereafter, that suppression of material evidence justified a new trial "irrespective of good faith or bad faith of the prosecution." Giglio v. United States, 405 US 150, 31 L Ed 2d 104, 92 St Ct 763 (1962).

On September 23, 2022, Eighth Circuit Court of Appeals denied petitioner's request for Federal Habeas review pursuant to 28 U.S.C. §2255 rehearing, where Mayweather raised several issues:

- 1.) Ineffective Assistance of counsel; Sixth Amendment; Constitution (1963)
- 2.) Prosecutorial Misconduct; Fourteenth Amendment ; Constitution (1963)
- 3.) Brady Violation; Fifth & Fourteenth Amendment; Constitution (1963)
- 4.) Giglio Violation; Fifth & Fourteenth Amendment; Constitution (1963)

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

---

**PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF  
CERTIORARI ISSUE TO REVIEW THE JUDGEMENT BELOW**

---

**OPINION BELOW**

For the cases of the United States Eighth Circuit Court of Appeals  
reported at United States v. Mayweather, LEXIS 77056.

**JURISDICTION**

United States Court of Appeals for the Eighth Circuit decided  
Mayweather's case August 16, 2022. A timely petition for rehearing was denied  
by the United States Eighth Circuit Court of appeals on September 23, 2022.  
This jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

LIST OF PARTIES

Jarmell Raymond' Mayweather  
Register Number 12496-041  
Federal Prison Camp Yankton  
P.O. Box 700  
Yankton, South Dakota 57078

Phone Number: (612) 323-9464

Prose' Petitioner

Douglas Altman  
Defense Attorney  
6701 West 23rd Street  
Saint Louis Park, Minnesota 55426

Phone Number: (952) 454-5653  
Email Address: Daltmanlaw@gmail.com

Nathan Nelson  
AUSA U.S. Assistant attorney  
600 U.S. District Court House  
300 South Fourth Street  
Minneapolis, Minnesota 55415

Phone Number: (612) 664-5622  
Email Address: Nathan.nelson@usdoj.gov

Scott S. Harris, Clerk  
Supreme court of the United States  
1 First street N.E.  
Washington, District of Columbia 20543

Phone Number: (202) 479-3009

cc: Mr. Thomas Calhoun-Lopez (Assistance U.S. Attorney)  
Mr. David P. Steinkamp (Assistance U.S. Attorney)  
Mrs. Kate M. Fogarty (Minnesota District Court Clerk)

District Court/Agency Case Number: 0:21-cv-2355-WMW

RELATED CASES

Brady v. Maryland, 373 U.S. 83, S. Ct. 1194, 10 L.Ed. 2d 215 (1963).

Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed 2d 667 (1978)

Giglio v. United States, 405 US 150, 31 L.Ed. 2d 104 92 S. Ct 763 (1972)

Kyles v. Whitley, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)

Mooney v. Holohan, 294 US 103, 112, 79 L Ed 791, 794, 55 S Ct 340 ALR 406 (1935)

Napue v. Illinois, 360 US 264, 3 L Ed 2d 1217, 79 S Ct 1173 (1959)

Pyle v. Kansas, 317 US 213, 87 L Ed 214, 63 S Ct 177 (1942)

United States Bagley, 437 U.S. 667, 682, 105 s. Ct 3375, 87 L.Ed. 2d 481 (1985)

United States v. Mayweather, 993 F.3d 1035 (8th Cir. 2021)

United States v. Mayweather, LexIS 77056 (Minnesota District)

STATUTES AND RULES

21 U.S.C. §841(a)(1) and (b)(1)(B)

28 U.S.C. §2255

United States Constitution Amendment IV

United States Constitution Amendment V

United States Constitution Amendment VI

United States Constitution Amendment XIV

## BACKGROUND

October 2015, Detective Cory McLouden of the North Metro Drug Task Force (NWMDTF) initiated an investigation of Mayweather after witnessing Mayweather meet with a known drug trafficker. (Addendum "A-2")

January 10, 2016, Jerome Wilson (Federal Identification Number 20719-041) Lakeville, Minnesota residence and person was under seizure from a drug trafficking agency that intercepted a shipment of drugs coming from California to Wilson's residence. Several kilos of cocaine, heroin, meth, guns and over 300 thousand in U.S. currency was seized from Wilson's residence. During the search and seizure of Wilson's residence Mayweather attempted to contact Wilson from cellular phone (612) 458-2425.

January 12, 2016, Wilson was released pending federal drug indictment. (See Wilson's sealed file)

January 12, 2016, Det. McLouden met an informant that stated they know a black male that went by the moniker "Jig" that was selling large quantities of cocaine, drives a black Cadillac Escalade and uses (612) 458-2425 to arrange narcotics transactions. (A-2) Det. McLouden was able to use a Minneapolis Report system called CAPRS and learned that moniker "Jig" was associated with Mayweather. (Id.) Det. McLouden showed the informant a picture of Mayweather, the informant confirmed that Mayweather was the person they know as "Jig". (A-3)

January 12, 2016, Det. McLouden wrote an "Incident Report" that stated the following: "Received information regarding a cocaine dealer in the metro area. Location: 1516 E 19th St. at 1608." (A-6)

January 26, 2016, Det. McLouden applied with Minnesota state, Hennipen County Court, Honorable Judge Gina M. Brandt, for installation and authorization to use Electronic and/or Mechanical mobile tracking device system of Mayweather's vehicle (black Cadillac Escalade MN LIC 837-PVN). (A-1)

February 25, 2016, Det. McLouden directed an informant to contact Mayweather through phone number (612) 458-2902 to order a predetermined amount of cocaine. Mayweather directed the informant to meet him at "Lyndale and Franklin Avenue." Shortly after Mayweather and the informant met, the informant returned with the money previously given to him by Det. McLouden, because the informant stated Mayweather advised him, "that he probably owed him, and just take the coke." (A-6)

February 29, 2016, Det. McLouden wrote a "Controlled Buy Report" detailing the February 25, 2016 attempt controlled buy. (Id.)

March 8, 2016, in accordance to Det. McLouden's Search Warrant Application (Hereafter "SWA") he met with a CRI, who was searched and given NWMDTF buy fund money and directed to contact Mayweather at (612) 458-3600. The CRI met Mayweather at a predetermined location that was under surveillance by NWMDTF personnel. Shortly after the CRI met Mayweather, McLouden met with the CRI and the CRI presented the agreed amount of cocaine, and he no longer possessed the buy fund money previously given to him. (A-17) Det. McLouden's surveillance team followed Mayweather after the controlled buy and observed Mayweather meet up with Kyla Parker in MN LIC 672-TTM and drive to Mayweather's residence (1516 East 19th Street, Minneapolis). (A-18)

March 10, 2016, Det. McLouden filed for four SWA's with the State of Minnesota, Hennipen County Court, Honorable Judge Bev Benson of Minneapolis. Citing the alleged March 8, 2016 controlled buy for the following addresses:

- 1.) Mayweather's residence "1516 E 19th st." (A-14:19)
- 2.) Mayweather's vehicle, "black Cadillac Escalade MN LIC 837-PVN" (A-20)
- 3.) Kyla Parker's residence, "3611 Cedar Ave. S" (A-25)
- 4.) Tommy Woods residence, "5900 Bass Lake Rd." (A-26)

Although all SWA's are identical, they differ in dates and location to be searched. None make mention of the February 25, 2016 alleged "attempt" controlled buy, nor did any application make mention of the GPS tracking, including the SWA for Mayweather's vehicle, that subsequently is the same vehicle Det. McLouden is GPS tracking.

March 15, 2016, Mayweather received a request from Wilson's nephew (Anton Wilson) to store drugs at Parker's residence (3611 Cedar Ave. S) for a fee. Mayweather declined favorable to Parker. (TT. Vol.III pp.491)

March 16, 2016, Mayweather received notification about Anthony Lyman requesting aid with keeping drugs from police detection. Mayweather agreed to store drugs till Lyman and associates found a secure location. (Trial Transcripts "TT" Vol.III pp.487-535) Mayweather picked up back pack of drugs from Home Depot and brought them back to his residence. (Id.)

March 17, 2016, Det. McLouden executed a search warrant on Mayweather's residence. Upon entry, Mayweather fled out the back door wearing only his underwear. Officers coming in from the rear, deterred Mayweather back to the front entrance where officers were waiting, one single shot was fired incidentally towards Mayweather, but he was not hit. He subsequently gave up flight after he was surrounded.

After Mayweather's residence was secured, Law enforcement discovered a backpack stuffed in a trash compactor with 1,1,130 grams of cocaine and 111 grams of crack cocaine. Also within the backpack was the following items:

garbage bag with packaging and nylon rope, pieces of black rubber, clear plastic food saver bag, pieces of foil, electrical tape, masking tape, paper towel with white residue, and Duct tape. (A-28) Inside the residence the following items were found. A hand-held digital scale was found in Mayweather's bedroom along with two plastic bags visibly stained with cocaine residue. In the kitchen, a large digital scale was found with crumbs of cocaine scattered across the top. In living room, one hand-held digital scale was found with visibly stained cocaine. Lastly, \$11,000 in U.S. currency was found in a gym bag in Mayweather's bedroom. (A-19)

March 17, 2016, Det. McLouden executed a search warrant on Parker's residence at approximately 9:30 A.M., no drugs were found. (A-25) At approximately 12:00 P.M. Det. McLouden executed a search to Tommy Woods residence, no drugs were found. (A-26)

March 18, 2016, Sergeant Robert Topp of the NWMDTF seized Mayweather's vehicle from an Auto body shop. The vehicle was then drove to police quarters where Det. McLouden supposedly recovered 4.47 grams of crack cocaine and 0.5 grams of marijuana from the side department of the vehicle. (A-24) Mayweather was released from police custody pending Federal indictment.

September 13, 2017, a federal indictment was unsealed to Mayweather, Honorable Judge Wihelmina M. Wright was assigned as the Judge, Katherine M. Menendez was assigned as the Magistrate Judge, and AUSA prosecution was represented by David P. Steinkamp. (Electronic Filing "ECF" Doc. #1) Mayweather was released on bond September 19, 2017. Defense Attorney Douglas B. Altman was appointed as counsel.

September 29, 2017, Det. McLouden submitted the content found in backpack at Mayweather's residence for "Latent Processing", over 27 items were tested, none came back conducive to Mayweather's prints. (A-28)

November 7, 2017, Defense filed numerous Non-Dispositive Motions. Motions for Disclosure of 404(b) evidence, Motion for Discovery, Motion for Jenks material, Motion for Disclosure of Evidence Favorable to Defendant, Motion for Disclosure of Informant, Motion for Disclosure of Post Conspiracy Statements, Motion to Retain Rough Notes, Motion to Suppress evidence from Search and Seizures, Motion to Suppress Confessions or statements in Nature of Confessions. (ECF Doc. #'s 26-34)

November 10, 2017, Mayweather advised defense attorney of (612) 458-2425 use during the search and seizure of Jerome Wilson's residence January 10, 2016, and Wilson's relationship with drugs Mayweather picked up several hours before Det. McLouden executed a search of Mayweather's residence.

November 29, 2017, The Court Order was given in regards to Non-Dispositive Motions, all was denied accept, Motion to Retain Rough Notes, Disclosure of 404(b) was granted in part, and Motion of Evidence Favorable to Defendant were granted. (ECF Doc. #40)

January 19, 2018, Motion for Disclosure of Informant was granted in part (pending if government used informant during trial) Motion to Suppress evidence from the Searches and Seizures were denied. (Id. #47) June 29, 2018, Jury trial was scheduled for August 14, 2018, August 2, 2018, Motion Precluding Defendant from Referring to discharge of firearm was granted. August 7, 2018, Mayweather gave notice of change of plea. (Id. Doc. #92)

August 3, 2018, Government was in preparation for trial and learned that Det. McLouden secured GPS tracking device to Mayweather's vehicle in January 2016, the device was active during the March 8, 2016 alleged controlled buy, and Mayweather drove his vehicle from the alleged controlled buy location, opposite of what McLouden recorded in his SWA's. (ECF Doc. #178 pp. 1;2 of) August 12, 2018, Mayweather canceled the change of plea hearing, and Trial was rescheduled for December 11, 2018. (ECF Doc. #101)

December 11, 2018, trial began before Honorable Judge Wilhelmina M. Wright. The Government called Det. McLouden to the stand, he testified to initiating an investigation of Mayweather after meeting an informant that knew a cocaine distributor that went by the name "Jig", in February of 2016, (TT. Vol.I pp.32) Det. McLouden was able to use a Police system called CAPRS that was able to identify the name "Jig" was associated with Mayweather. (Id. #33) Det. McLouden then showed a picture of Mayweather to the informant and the informant identified Mayweather as the person he knew as "Jig". (Id.)

Det. McLouden further testified to conducting physical surveillance of Mayweather prior to the search of his residence; but did not mention he GPS mobile tracked Mayweather for nearly 47 days prior to his execution of a search warrant on Mayweather's residence:

"Q. How often, approximately were you conducting surveillance on Mr. Mayweather?

A. It varied, but between our task force we would do it usually a couple of times a week and we would vary our times between morning, evening, midday.

Q. And so a couple of times a week. How many times do you think that amounted to total over the course of your investigation?

A. We followed Mr. Mayweather approximately ten times. (TT. Vol.I pp.35)

Investigator Bardon of the NWMDTF was named in the "attempt" controlled buy, controlled buy, and surveillance of Mayweather, Investigator Bardon stated the following during cross examination:

"Q. And let me ask you this. There was testimony by Detective Cory McLouden that there might have been ten different surveillances. Does that sound about right?

A. I really can't answer that, I participated in one or two of them. Q.) So did you see anything investigative value while you where doing surveillance?

A. Just that the vehicle was in the area of the house.

Q. You didn't see anybody come up to the vehicle and talk to the driver, did you, or anything like that?

A. Not that I recall. (TT.Vol.II pp.182)

In defense opening statement, Mayweather was called to the stand, he admitted he possessed cocaine, to help a friend avoid police detection, however, defense emphasized that the issue was he did not distribute cocaine, in the previous year to the search of the residence and vehicle. Specifically the controlled buy recorded in Det. McLouden's SWA's of Mayweather's residence and vehicle. (TT. Vol.III pp. 485-535)

The government requested permission from the Court to allow Det. McLouden to testify to his accounts of a purported controlled buy by Mayweather and an informant three days prior to the signing of the SWA's March 10, 2016. (TT. Vol.III pp.535) Defense attempted to renew its motion to disclosure of the informant. (Id.) The Court denied defense request and allowed Det. McLouden to testify to his accounts of the controlled buy he recorded in his SWA's. (Id. pp. 542) Defense requested records and any recordings pertinent to the controlled buy, AUSA stated the following:

"I'll interject briefly, Your Honor. There are no reports related to this controlled buy. This controlled buy was done for the purpose of establishing probable cause or supporting probable cause for what became the search warrant. So there weren't any reports done. (Id. pp.539)

On Rebuttal to Mayweather's testimony government called Det. McLouden, and defense learned the following:

- 1.) Det. McLouden initiated an investigation of Mayweather after meeting Berry in February of 2016. (TT. Vol. III pp.558)
- 2.) Informant's identity "Michael Berry" (Id. pp.556)
- 3.) Det. McLouden conducted an "attempt" controlled buy February 25, 2016. (Id. pp.559)
- 4.) Alleged March 8, 2016 controlled buy location "East 38th Street". (Id. pp.551;579;583)
- 5.) Suspected amount of cocaine purchased "One ounce" (Id. pp.553)
- 6.) Suspected amount of buy money "\$1,300" (Id. pp.549)
- 7.) There was no evidence related to the March 8, 2016 controlled buy. But there was a "Buy Fund Form" and "Buy Fund Photo Copy". (Id. pp. 575)

December 14, 2018, Mayweather was found guilty and was taken into Federal custody.

February 19, 2019, Mayweather learned that defense attorney overlooked Tracking Device Order Application (Hereafter "TDOA") that was subject to a State Court Order on January 26, 2016, that authorized Det. McLouden to GPS track Mayweather's vehicle for 60 days. (A-1)

February 25, 2019, Mayweather motion the Court for new counsel. (ECF Doc. #131) Mayweather requested Inventory of GPS tracking, and Buy Fund Form, and Buy Fund Photo Copy, Det. McLouden mention during trial. (A-44)

March 11, 2019, Defense received a copy of the "Buy Fund Form" and "Buy Fund Photo Copy." (Id.) Defense learned Det. McLouden received money back from the informant during the March 8, 2016 suspected controlled buy, date, time, and location. Defense also learned that Det. McLouden did not retain any of the recordings data from the GPS tracking, that was active during the alleged February 25, 2016 "attempt" buy and March 8, 2016 controlled buy. (Id.)

April 4, 2019, Mayweather's motion for New Counsel was denied. (ECF Doc. #144)

May 28, 2019, Defense attorney Motion the Court for a Franks hearing. (ECF Doc. #154) Mayweather filed a prose' Franks Motion and Brady. (Id. #160;162)

July 25, 2019, Defense Motion to vacate for Brady violation. (ECF Doc. #177) Defense counsel expressed government "dwarfed" the TDOA by sending 27 court exhibits. (Id.)

July 25, 2019, Government Response to Mayweather's Brady violation, verified the GPS was active during the alleged March 8, 2016 controlled buy and Mayweather drove his vehicle to and from the controlled buy. (ECF Doc. #178 pp. 1,2 of 8) (A-30;A-31)

August 12, 2019, Mayweather motion for Franks, and Brady was denied. (ECF Doc. #181)

August 19, 2019, Mayweather was sentenced to the custody of the BOP for 132 months; 8 years supervised released. (ECF Doc. #188)

November 14, 2019, Brandy Byrd (Mayweather's fiance') made contact with Law Clerk to Gina M. Brandt, in search of the TDOA inventory and activities based on Minnesota State Statutes 626A.07 RETURN FILED BY OFFICER, that states the designated officer in the warrant shall forthwith deliver the original warrant accompanying papers to the judge issuing the same, together with a written return, verified by the officer, setting forth "all recordings made as required herein. Said recording shall be delivered to the issuing judge with the return." (A-42) Law Clerk Joel Goldberg stated to Byrd that he was meeting with someone soon to see if district court has custody of inventory data receipts and, if they do, what would be the next step in Mayweather's attorney requesting them. (A-34) November 22, 2019, Goldberg emailed Byrd and let her know that he sent Mayweather's attorney the steps in obtaining the documents that we were requesting. (A-32)

November 21, 2019, Law Clerk Joel Goldberg, sent an email to Mayweather's defense attorney Federick Goetz, that stated the following:

"Great, I had previously been in contact with Douglas Altman so have had a chance to look into the process for requesting GPS inventory sheets. In speaking with the staff attorney, I understand the process for request like this is for the requesting party to file a motion into an administrative case. Because the warrant application and order are under seal, the documents-including the inventory sheets- cannot be acknowledged at this time. The staff attorney did not know, or check into whether the inventory sheets were being retained by the courts because the custody cannot be disclosed regardless. Upon a motion being filed, Judge Brandt would review the motion to determine whether the inventory, or parts of it, will be made available for review (if they have been retained by the court.) If you would like to make a request for the documents, the administrative case where the case would need to be filed is case #27-CR-CV-19-46." Sent November 21, 2019. (A-37)

December 23, 2019, Mayweather petition the court to disclose sealed documents including the inventory. The Court assigned criminal court filed number to this case as a new number, as it was not previously handled in the state District Court. MNCIS number, "27-CR-CV-19-46" and the court had not held the inventory sheets, or a copy of the warrant, nor does the court have that obligation to hold. (A-40) Mayweather petition the court in regards to the State Statutes **626A.08, PRESERVATION OF MATERIAL OBTAINED APPLICATION AND ORDERS; DESTRUCTION;** that states, "Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge or a successor and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of section 626A.09 for investigations." (A-42) State court did not respond to Mayweather's prose' motion.

## STATEMENT OF THE CASE

### A. EVIDENCE PRESENTED AT TRIAL

On September 13, 2017, a Federal indictment was unsealed for Jarmell Raymond' Mayweather in violation of U.S.C. Title 18:2, 21:841(a)(1) and (b)(1)(B) (AIDING AND ABETTING WITH INTENT TO DISTRIBUTE COCAINE BASE AND COCAINE), proceeding a warrant executed on Mayweather's residence (1516 E 19th St.) March 17, 2016, 1,130 grams of cocaine and 111 grams of crack cocaine were seized. The following day, 4.47 grams of crack cocaine was purportedly recovered from Mayweather's vehicle. Government's theory of the case was Mayweather was a large distributor of cocaine.

Trial began December 11, 2018, before the Honorable Judge Wilhelmina Wright. (Electronic filing "ECF" Doc. #108) Government was represented by AUSA Nathan Hoye Nelson. Mayweather was represented by Defense attorney Douglas B. Altman. (Id.) Three days prior to trial, defense attorney for Mayweather attempted to serve Michael Berry a subpoena to Mayweather's trial to be a witness in his defense but was unable to locate Berry. (Trial Transcripts "TT" Vol.III pp. 541)

In defense opening statement, the defense admitted that Mayweather possessed cocaine and crack cocaine. However, defense emphasized the only issue was Mayweather did not distribute cocaine or crack cocaine in the previous year to the search of his residence, and was only storing drugs for Anthony Lyman to keep from police detection until Lyman and associates found a secure location. (TT Vol.III pp.475-535)

Mayweather's intent was to make a challenge to the controlled buy recorded in the Search Warrant Application's (Hereafter "SWA") for his residence and vehicle that recorded a controlled buy within the 72 hours of the signing of the SWA's, signed March 10, 2016. (Addendum "A-19")

On rebuttal, government requested court's permission to recall Det. McLouden to the stand. It was then that defense learned that their witness Berry was the government's informant. Through the court's permission, he testified to his accounts of the buys. (TT. Vol.III pp.543)

Det. McLouden testified to meeting Berry after search of his residence February 2016. (Id. pp.571-72) Berry stated he knew a black male that went by "Jig" who was selling cocaine. (Id. 32) Under his direction Berry contacted Mayweather and secured a location for a buy, after the location was determined, he turned over \$1,300 in buy money and followed Berry down East 38th Street, where he witnessed Mayweather standing on the corner. (Id. pp.551;579;583) Soon after the buy was made, he met Berry and retrieved an ounce of cocaine, searched Berry's person, vehicle and he no longer had buy money previously given to him. (Id. pp.554)

Det. McLouden surveillance team suspectedly followed Mayweather and witnessed him get into Kyla Parker's vehicle (blue Volkswagen MN LIC 672-TTM) and drive to his residence. (Id. pp.585) Det. McLouden's testimony coincided with his SWA's. (A-14-19)

Government attested there were no reports or notes made because the controlled buy was done for the purpose of establishing probable cause to search Mayweather's residence and vehicle. (TT. Vol.III pp.538) Det. McLouden testified during trial that he kept no records, wrote no reports and made no audio or video because he never intended to charge the buy. (Id. pp.578;587)

The significance of dates is who is the informant that initiated the investigation of Mayweather and when did Det. McLouden meet him. January 10, 2016, Jerome Wilson residence was subject to search and seizure after several kilos of cocaine, heroin, methamphetamine, guns, and over 300 thousand in U.S. Currency was seized from his home. (See Jerome Wilson's Sealed file, Federal Register number 20719-041 (Released 8-5-2021)) During the search and seizure of Wilson's residence, Mayweather attempted to contact Wilson from (612) 458-2425. (Id.)

Within the TDOA, Det. McLouden stated he met an informant January 12, 2016 who stated he knew a black male that went by "Jig" that was using (612) 458-2425 to distribute large quantities of cocaine and "Jig" drove a black Cadillac Escalade. (A-2) Although the SWA's shared the same sequence of events as the TDOA in regards to meeting an informant, the following was omitted from the SWA:

- 1.) Det. McLouden initiated an investigation of Mayweather October 2015.
- 2.) Det. McLouden met an informant January 12, 2016. (A-2;A-6)
- 3.) Det. McLouden received authorization to GPS track Mayweather's vehicle on January 26, 2016. (A-2)
- 4.) Det. McLouden GPS recorded Mayweather driving his vehicle during the alleged March 8, 2016 controlled buy. (A-30-31)

Wilson was classified as a "Drug Trafficker" after receiving a shipment of drugs. Notable; Det. McLouden classified the person Mayweather met in his TDOA in October of 2015 as a "Known Drug Trafficker". (A-2) Moreover, Det. McLouden stated the informant contacted Mayweather through (612) 458-2425 to distribute large quantities of cocaine, which is the same number Mayweather used to contact Wilson when his home was under search and seizure. Mayweather disposed that phone after learning of Wilson's arrest January 10, 2016. Yet, Det. McLouden received the same number from Berry February 2016.

Through the course of Det. McLouden's investigation of Mayweather, he has identified three phone number associated with him. One, (612) 458-2425, from informant on January 12, 2016, (A-2) two, (612) 458-2902, alleged "attempt" controlled buy February 25, 2016, (A-6) and three (612) 458-3600, alleged March 8, 2016 controlled buy. (A-16)

January 10, 2016, Mayweather attempted to contact Wilson during the search and seizure of his residence. (See Wilson's Sealed file) Prior to Wilson's search and seizure Wilson contacted Mayweather looking for a secure location to unload a shipment of drugs coming from California. Mayweather advised Wilson that he would look around but did not believe he could find a location under short notice.

After finding possible location Mayweather contacted Wilson, after several attempts, Mayweather requested Wilson's niece Taschell Krotzer to check on Wilson, she then drove to Wilson's residence and learned that he was under arrest. Mayweather then disposed of (612) 458-2425. Mayweather routinely, monthly exchanged phones, to keep from police detection. Thus, the January 2016 phone, (612) 458-2425, February 2016 phone, (612) 458-2902, and March 2016 phone, (612) 458-3600.

Conversely, Det. McLouden stated in his SWA's and during trial to meeting Berry in Mid-February 2016. That of which, Det. McLouden stated Berry knew a black male that went by "Jig" and used (612) 458-2425 to distribute cocaine. (TT. Vol.I 32;34) Due to Det. McLouden meeting Berry in February 2016, and Mayweather not having that phone, substantiates Det. McLouden used Wilson's statement as Berry's testimony.

The TDOA contradicts Det. McLouden's SWA's and trial testimony. Though, the TDOA shares the same sequence of events the dates differ. The record reflects Mayweather's arrest is in conjunction with Wilson's January 10, 2016

arrest and not Det. McLouden's meeting with Berry in February 2016.

Therefore the TDOA identifies Det. McLouden misappropriated when he initiated the investigation of Mayweather, who he met, and omitted the early accounts; due to them being able to establish his infirmities of his SWA's, that otherwise establish a Franks violation. The TDOA also supports a Brady violation. Det. McLouden did not meet Berry until February of 2016, after he witnessed Mayweather meet a "known drug trafficker" in October 2015, after he applied for GPS tracking of Mayweather's vehicle January 26, 2016, and after he GPS tracked Mayweather's vehicle for two or more weeks. (A-2) The government withheld and omitted the early accounts from the SWA's, Discovery, and trial testimony. This disallowed Mayweather's defense from petitioning the court for a Franks hearing.

Mayweather's arrest was in conjunction to Wilson's arrest January 10, 2016. Government deliberately omitted the accounts of the TDOA. This misled defense, jury and the court. Furthermore it encouraged Mayweather to secure the identity of the people who planted drugs at his residence seventeen hours before a search warrant was executed on his residence.

Det. McLouden received information from an informant January 12, 2016 at 1608, two days after Wilson's arrest. Mayweather disposed of phone (612) 458-2425, January 10, 2016, after learning of Wilson's arrest. Det. McLouden utilized the information he obtained January 12, 2016 and applied them to the March 10, 2016 SWA's. Prior, during trial and in his SWA's he omitted all accounts associated to Wilson. (A-2) Det. McLouden destroyed all 54 days of GPS recordings, that of which allegedly recorded two controlled buys.

Mayweather received the buy Fund Form March 11, 2019, three months after trial. (A-44) The Buy Fund Form verifies date, time, and suspected location of the March 8, 2016 controlled buy. The date, time, identity of the informant, conjoined with (612) 458-3600 phone log, verifies what transpired between Mayweather and Berry March 8, 2016, through text messaging and phone calls:

9:32 A.M. **Berry**: "Yo my boy requested one lil' guy. Can we link up this afternoon to do that; My boy kept that pillow so I want have that for you today. I'll keep looking though

9:36 A.M. **Mayweather**: When u ready

9:38 A.M. **Berry**: I got shit to do till bought 2

9:39 A.M. **Mayweather**: Im going to be at work until 2:45 but then taking daughter to job interview we should try to link up before then

9:40 A.M. **Berry**: What time a work before your work out? Or can you run out quick before your work out?

9:41 A.M. **Mayweather**: No ~~it's~~ my job. But lets try to get it done before 1:30 or just try

9:42 A.M. **Berry**: How bout i be at the guy at 2:45 so you can just slide it to me then be on your way

9:51 A.M. **Mayweather**: Ill be by tb (Taco Bell) at 2:45

9:55 A.M. **Berry**: So you want me by tb at 2:45

9:56 A.M. **Mayweather**: Phone call to Berry one minute. (A-8)

2:41 P.M. **Mayweather**: Phone call to Berry no answer

2:47 P.M. **Berry**: Im not far need like 5-10 min

2:47 P.M. **Mayweather**: Behide; Wells Fargo on Franklin

2:49 P.M. **Berry**: U running behide; K; frank n what

2:50 P.M. **Mayweather**: 31st n Frank; 3:01 two phone calls no answer

3:03 P.M. **Berry**: Phone call to Mayweather (1 minute)

4:47 P.M. **Mayweather:** Im waiting on u (A-9)

7:00 P.M. **Berry:** Im sick as fuck can I meet you in the A.M

7:00 P.M. **Mayweather:** Cool get some rest (A-10)

During trial Det. McLouden was questioned by defense of what he was looking for during the search of Berry's residence:

**Det. McLouden:** Marijuana.

**Defense:** Because you knew him as a marijuana dealer isn't that right?

**Det. McLouden:** Yes.

**Defense:** And you later learned, did you not, that he was the source of supply of marijuana for Mr. Mayweather isn't that right?

**Det. McLouden:** I had a hunch, but never confirmed that.

**Defense:** Did you know --I mean, did Berry have a sideline in cocaine?

**Det. McLouden:** Yes.

**Defense:** So he's a cocaine dealer?

**Det. McLouden:** No Berry was a cocaine user. (TT. Vol.III pp.558)

Mayweather motion the court for a Franks hearing, contending to him and Berry's relationship was marijuana not cocaine, and he was meeting Berry March 8, 2016 in regards to marijuana not cocaine. (ECF Doc. #154) Mayweather cited (612) 458-3600 phone log text messages to Berry "I'm waiting on you" as an indication that they rescheduled the meeting for marijuana. (A-9) Government responded Mayweather's "I'm waiting on you text" was for marijuana hence the text message "My boy kept that Pillow. So I want have that for you today." Government emphasized that Berry was a marijuana distributor and "pillow" was parlance for marijuana, and Berry's text message, "One lil guy" is parlance for one ounce of cocaine. (ECF Doc.#169) Mayweather argued that "One lil guy" was parlance for one ounce of marijuana. (Id. 154)

DEA agent Timothy Inglett testified to the Grand jury that 0.2 grams of cocaine is a users amount, 3.5 grams was a small scale drug dealer, and larger amounts what a higher monoarch of the drug trade. (Grand Jury Transcript "Timothy Inglett" pp.28) During trial Det. McLouden testified that Berry was a marijuana distributor and a cocaine user. (TT. Vol.III pp.558) However, Berry suspectedly ordered an ounce of cocaine from Mayweather under the code phrase, "One lil guy". (A-8)

The record suggest otherwise. Det. McLouden testified in his SWA's and during trial to witnessing Berry contact Mayweather and set up a buy amount, and buy location. (TT. Vol.III pp.546) March 8, 2016, the phone log between Berry and Mayweather reflects one phone call from Berry at 3:03 P.M. (A-9) Det. McLouden testified to doing a "head to toe" search of Berry that consisted of, "check underneath his arms; make sure there's nothing on his chest area, check his belt; turn all his pockets inside out; check the shoes". (Id. pp.547) After Det. McLouden searched Berry's person he searched his vehicle, then followed Berry to meet location. (Id. 548-51) All the above was done post the 3:03 P.M. phone call. At 4:47 P.M., Mayweather text Berry I'm waiting on you, Berry text back "Im sick as fuck can I meet you in the A.M." Mayweather text Berry at 7:00 P.M., "Cool get some rest". (A-10)

The Buy Fund Photo Copy, states "No go \$ Returned but got dope, 3-8-2016". (A-11) The phone log indicates Mayweather rescheduled meeting. (A-10) Det. McLoduen kept no record, notes, or recorded the alleged controlled buy. (TT. Vol.III pp.538) Det. McLouden can not recall buy location. Indicates no buy transpired March 8, 2016.

The Buy Fund Form also states \$1,200 was exchanged during the alleged controlled buy March 8, 2016.(A-14) The Buy Fund Photo Copy is a variation of \$100 and \$50 dollar bills, with the following notation written by Det. McLouden:

- 1.) DTF (Drug Task Force) 16-045, 1 oz coke buy (A-12)
- 2.) No go \$ Returned but got dope #60 (Id.)
- 3.) CI packet copy, 3-8-2016 (Id.)
- 4.) Second page 564 Rt (Written on two \$50 bills) (A-13)
- 5.) 3-8-2016 (Id.)

Det. McLouden testified that he turned over \$1,300 of buy fund money, March 8, 2016, and when Berry returned, he possessed cocaine and he no longer had the buy fund money. (TT. Vol.III pp.553) After discussing the differentials in trial testimony and post-trial evidence with government. Government stated the notation of "No go \$ Returned but got dope 3-8-2016", was written on February 25, 2016 during the alleged "attempt" controlled buy and the "Rt" written on the two \$50 dollar bills was written after the March 8, 2016 alleged buy. (A-44) Thus, two \$50 dollar bills was returned after the "March 8, 2016" controlled buy.

Based on post-trial evidence, Berry returned Buy Fund money to Det. McLouden in two separate instances, Det. McLouden forgot the controlled buy location, made no notes, wrote no reports, kept no record of drugs, made no recordings, misappropriated the departure of the alleged controlled buy March 8, 2016, omitted early accounts of investigation and GPS authorization, use and recordings.

Mayweather admitted to possessing cocaine prior to the search of his residence, but he contested the controlled buy recorded in the SWA's never

transpired. All evidence in relation to the purported controlled buy supports no controlled buy occurred, its an accumulative aspect of trial testimony, post-trial evidence, Buy Form, Buy Fund Photo Copy and the omission of the TDOA, early accounts, and activities support no controlled buy transpired.

Finally, Det. McLouden testified during trial and in his SWA's that his surveillance team witnessed Mayweather being driven by Kyla Parker in her vehicle to Mayweather's residence. (TT. Vol.III pp.585) (A-21;A-27;A-31;A-36) However, government unveiled Det. McLouden GPS recorded Mayweather driving in his vehicle to and from the alleged controlled buy:

"In March 2016, officers used a confidential reliable informant ("CRI") to conduct a one ounce of cocaine form defendant, after which officers observed defendant driving to his residence in a black Cadillac Escalade pursuant to a state court order."(A-30 (ECF Doc. #178 pp. 1 of 8)

"In preparation for trial, prosecutors learned that, at the time of the controlled buy, investigators had a GPS tracking device on defendant's Escalade pursuant to a state court order." (Id. pp. 2 of 8) (A-31)

Therefore, government and government's witness Det. McLouden was aware that Det. McLouden misappropriated the alleged departure of the March 8, 2016 controlled buy. Government did not disclose Det. McLouden misappropriation until eight months after trial. (Id.) Though government was aware of Det. McLouden's infirmities, they inadvertently unveiled Mayweather drove his vehicle opposite of Det. McLouden SWA's.

Moreover, though government was aware of Mayweather driving his vehicle after the alleged controlled buy and not with Parker so much so, government objected to Det. McLouden testimony to what he wrote in his SWA's, apprehensive of the fact Mayweather drove his vehicle would come out:

DEFENSE ALTMAN: Where did Mayweather go? (After the controlled buy)

DET. MCLOUDEN: He got in Parker's vehicle and then went home.

AUSA NELSON: Objection, Your Honor. The witness is not testifying from personal knowledge.

DEFENSE ALTMAN: I don't know if he is or not.

THE COURT: Why don't you lay the foundation and we can determine.

DEFENSE ALTMAN: Do you know where surveillance went in connection with Mr. Mayweather?

DET. MCLOUDEN: Via Radio Traffic.

DEFENSE ALTMAN: Would it refresh your recollection if you could refer to your report?

DET. MCLOUDEN: There is no report sir.

DEFENSE ALTMAN: I'm sorry to your application. (SWA)

DET. MCLOUDEN: Yes.

DEFENSE ALTMAN: Why don't you do that.

AUSA NELSON: I'm going to object he says its information coming over radio traffic.

THE COURT: Let me understand where we are. I thought this was refreshing recollection. Is that correct?

DEFENSE ALTMAN: Right.

THE COURT: So overruled. You may be seated Mr. Nelson.

DEFENSE ALTMAN: Does court exhibit Number 1 refresh your recollection as to where Mr. Mayweather went?

DET. MCLOUDEN: It does.

DEFENSE ALTMAN: Where did he go?

AUSA NELSON: Objection calls for hearsay, Your Honor.

THE COURT: Overruled.

DET. MCLOUDEN: 1516 East 19th Street. (TT. Vol.III pp.585-86)

Therefore, the government was aware of Det. McLouden's misappropriation the reported to in his SWA's, because they were aware of Det. McLouden GPS recording Mayweather driving to and from the March 8, 2016 controlled buy, and not with Parker in her vehicle. (ECF Doc.#178 pp. 1 of 8) (A-30)

March 15, 2016 two days before Det. McLouden executed a search warrant of Mayweather's residence, Wilson and associates requested drugs be stored at Parker's residence for a fee, Mayweather declined favorable to Parker.

March 17, 2016, Det. McLouden executed a search of Parker's residence two hours after Mayweather's search. (A-25) Probable cause to search Parker's residence was she drove Mayweather in her vehicle to his residence after the March 8, 2016 controlled buy. (TT. Vol.III pp.585) However, Mayweather was GPS recorded by Det. McLouden in Mayweather's vehicle. (A-30;A-31)

Det. McLouden's rationale for not writing notes, reports, or recording the controlled buy was, "I never intended to charge the buy". (TT. Vol.III pp.578;583) The government emphasizes the controlled buy was done for establishing probable cause to search Mayweather's residence. (Id. pp.538-39) Det. McLouden was government's sole witness, and the only person who recalled the controlled buy. Investigator Bardon was named part of the surveillance teams, and was named in Det. McLouden's February 25, 2016 "attempt" buy and March 8, 2016 controlled buy. Yet, Bardon could not recall neither buy's and testified to doing one or two surveillance where he only witness Mayweather's vehicle at his residence. (TT. Vol.II pp.182)

Mayweather testified to storing drugs to keep from police detection for a close friend. (TT. Vol.III pp.485-535) A backpack was found in a trash compactor in Mayweather's backyard. Over a kilo of cocaine, and 111 grams of crack was found in the bag, but its the following items that supports Mayweather's claim of only storing also found in the bag: Garbage bag, with nylon rope, piece of black rubber (cocaine wrappings), clear plastic food saver bag, pieces of foil, clear plastic, black electrical tape, masking tape, paper towel, and Duct tape. (A-28) The above items indicate a clean up of another area besides Mayweather's, no prints were conducive to Mayweather's prints. (Id.)

For the above following reasons, the TDOA, trial testimony, Buy Fund Form, Buy Fund Photo Copy, and government's unveiling Mayweather drove his vehicle and Det. McLouden recording Mayweather driving after the alleged controlled buy. Supports a Franks and Brady violation occurred.

## LEGAL ARGUMENT

### A. MAYWEATHER DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL

#### 1.) Failure to review Jerome Wilson's arrest, Sealed file or seeks court's permission to do so

The Sixth Amendment to the U.S. Constitution guarantees the right to effective counsel. Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L.Ed. 2d 674 (1984). A defendant receives a new trial if he can show (1) that trial counsel's performance was defective; and (2) a reasonable probability that, but for the deficient performance, the outcome of the proceeding would have been different. A petitioner can meet standard by showing that counsel failed to conduct adequate pretrial investigation. "Before an attorney can make a reasonable strategic choice against pursuing a certain line of investigation, the attorney must obtain the facts needed to make the decision." Foster v. Lockhart, 9 F.3d 722, 726 (8th Circuit).

Mayweather testified to storing drugs for Anthony Lyman to help him avoid police detection. Prior to trial Mayweather advised Defense Attorney Douglas B. Altman, that he contacted Jerome Wilson during a search and seizure of Wilson's residence and Wilson's connection to drugs being stored at his residence seventeen hours prior to the search of Mayweather's residence. Moreover, Wilson's January 10, 2016 arrest was in connection to Mayweather's investigation.

Nevertheless, Altman never sought records of Wilson's arrest or indictment, in doing so Altman would have identified the following:

- 1.) Mayweather's investigation was initiated in October 2015. (A-2)
- 2.) Mayweather contacted Wilson during the search and seizure of Wilson's residence from (612) 458-2425, January 10, 2016.
- 3.) Det. McLouden met an informant January 12, 2016 at 1608 that identified Mayweather as a cocaine dealer. (A-2)

- 4.) Det. McLouden applied and received authorization to GPS track Mayweather's vehicle January 26, 2016. (A-1)
- 5.) Det. McLouden GPS tracked Mayweather from January 26, 2016 till March 18, 2016.
- 6.) The Search Warrant Application was written to protect the identity of Wilson and associates.
- 7.) Wilson received a sentence reduction for government assistance. (See Wilson's Sealed file)

DefendDefense counsel advised Mayweather, there was no evidence that supported the theory that his investigation viably in conjunction with Wilson's arrest January 10, 2016. Due to all evidence that the government turnover was in relation to an investigation was initiated into Mayweather February 2016, after Det. McLouden met Michael Berry. (TT. Vol.I pp.32; Vol. III pp.571-72) However, government turned over two affidavit's that supported Mayweather's claims, (1) "Incident Report" by Det. McLouden numbered as Bates Number One of Mayweather's Discovery, (A-6) and (2) the Tracking Device Order Application (Hereafter "TDOA") (A-1) that Defense counsel overlooked.

The Eighth Circuit and District Court decisions are unreasonable because they fail to consider the totality of ineffective assistance of counsel. See Williams v. Taylor, supra 120 S.Ct. 1515. The Court considered the TDOA conflicted errors individually and as "minor" inconsistencies, whether than cumulatively. Kyles v. Whitley, 514 U.S. at 436-37) See also United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976) at 112 (to determine prejudice, the withheld evidence must be analyzed "in the context of the entire record".)

The Court boasters the United States disclosed the TDOA four months before trial and neither the United States nor Mayweather's used or reference the TDOA. (ECF Doc. #226 pp.8 of 11) Though government turned over the TDOA,

they did so belatedly, after motion's hearing, and omitted facts related to the application such as the device was active during the alleged March 8, 2016, controlled buy and Mayweather was GPS recorded driving to and from the controlled buy opposite of what Det. McLouden testified too at trial.

Contrast to the District Court's findings the TDOA becomes critical to Mayweather's defense when he's contesting no controlled buy took place, henceforth making a challenge to the veracity of the SWA's probable cause to search Mayweather's residence and vehicle that was supported by an alleged March 8, 2016 controlled but that possessed no tangible evidence, and non-verifiable informant. (Trial Transcripts "TT" Vol.III pp.538) The TDOA and related facts to the application, left Mayweather's defense askew from defending his Fouth Amendment right, against unreasonable search of his residence.

Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed 2d 667 (1978) "[a] Fourth Amendment violation occur[s] if [an officers] probable cause statement contained a "deliberate false hood" or he acted with "reckless disregard for the truth" when he prepared it." Murry v. Lene, 595 F.3d 868, 872 (8th Cir. 2010) (Bagby v. Broundhaver, 98 F.3d 1096, 1098 (8th Cir. 1996)). "Omissions...can vitiate a warrant if the [aggrieved party] proves "that facts were omitted with the intent to make, or in reckless disregard or whether they make affidavit misleading". (Id.) (quoting United States v. Allen, 297, F.3d 790, 795 (8th Cir. 2002))

Post-trial evidence reflects Det. McLouden intentionally mislead the court through the assistance of the United States. Due to Det. McLouden and the government inducing an investigation was initiated February of 2016 after he executed a search of Michael Berry's residence. When the TDOA states October 2015. (A-2)

The government misleading defense, deterred the factual basis of Mayweather receiving drugs 17 hours prior to the search of his residence from Wilson and association. Furthermore, Wilson's arrest was in conjunction with Wilson's investigation in October 2015, and Wilson's arrest January 10, 2016. The TDOA identifies Wilson's connection with Mayweather's arrest. Therefore if counsel had done a more thorough investigation of Wilson, he could have received additional information that would have entitled Mayweather to a Franks hearing.

## B. DEFENSE COUNSEL OVERLOOKED EXCULPATORY EVIDENCE

### 1.) Failure to review TDOA that identified Wilson's arrest was in relation to Mayweather's investigation

In Brady v. Maryland, 373 U.S. 83, S. Ct. 1194, 10 L. Ed. 2d 215 (1963), the Court held that "the suppression by the prosecution of evidence to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87 A Giglio violation occurs where the prosecution suppresses evidence that impeaches a witness's credibility. In Giglio violation, the same three elements for a Brady violation must be shown. Kohring, 637 F.3d at 901. Material, the third element of Brady/Giglio, 'material' and 'prejudicial' have the same meaning." Id. 902 n.1 (quoting Kyles v. Whitley, 514 U.S. 419, 343, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)).

United States v. Bagley, 437 U.S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). There is a reasonable probability "of prejudice when suppression of evidence" undermines confidence in outcome of trial. Kyles v. Whitley (citing Bagley, 473 U.S. at 678) But a 'reasonable probability' may be found "even where the remaining evidence would have been sufficient to convict the defendant." Jackson, 513 F.3d at 1071 (citing Strickler, 527 U.S. at 290).

Trial testimony and the SWA's are deduced by an account of Det. McLouden meeting Michael Berry after executing a search warrant of his residence in February of 2016. (TT. Vol.III pp. 571-72) However the derivative of the TDOA, suggest an investigation was initiated in October 2015, after Det. McLouden witness Mayweather meet with a separate narcotics target and conduct what Det. McLouden believed was a narcotics transaction. (A-2)

The Court ignores counsels overlooked the TDOA, in spite of counsels admission of overlooking the documents. (ECF Doc. #177;178) Furthermore. the court contends that the date is insignificant to probable cause. Prior and during trial Mayweather had no evidence supporting drugs he received 17 hours before Det. McLouden executed a search warrant on his residence, was in connection with an investigation of Wilson in October 2015:

"[A]s an investigator for the North West Metro Drug Task Force, your affiant has been conducting an on-going felony investigation regarding Mayweather, Jarmell Raymond DOB: 09/19/1977 for the following criminal offence(s): narcotics distribution.

In this capacity your affiant initiated a narcotics investigation into Mayweather, Jarmell Raymond DOB: 09/19/1977 after seeing Mayweather meet up with a separate narcotics target and conduct what through my training and experience was a narcotics transaction.

In October 2015 plain clothes law enforcement were conducting surveillance on a known drug trafficker. during the course of this surveillance detail law enforcement officers observed the target meet up with an individual driving MN LIC 303-TDX a red chevy Volt.

Your affiant learned through the department of Vehicle Service that MN LIC 303-TTM registers to Mayweather, Jarmell Raymond DOB: 09/19/1977." (A-2)

Trial testimony and SWA's are deduced by an account of Det. McLouden meeting Michael Berry February 2016. (TT. Vol.I pp.31;32; Vol.III pp.571-72) The derivative of the TDOA suggest Det. McLouden initiated an investigation of Mayweather in October 2015 and met an informant January 12, 2016. Due to Wilson's case being under government seal, Mayweather had no access to support his claim, ~~so of this arrest was in conjunction with~~ Wilson's arrest.

The government's omission of the TDOA, and it's finding facts support Mayweather's theory of the case and impeaches Det. McLouden's credibility. The misrepresentation and omissions on how and who Det. McLouden met that began the investigation of Mayweather. Conclude Det. McLouden engaged in a cloak and dagger routine with informant. United States learned of Det. McLouden's misrepresentation in his SWA's August 3, 2018, during government's preparation for trial. (ECF Doc.#178 pp. 1;2 of 8) The TDOA identified the following misrepresentations:

- 1.) Det. McLouden initiated an investigation in October 2015. (A-2)
  - a.) SWA's, state February 2016 (A-17)
  - b.) Trial testimony February 2016 (TT. Vol.I pp.32;571-72)
- 2.) Det. McLouden's met an informant January 12, 2016. (A-2;A-5)
  - a.) Det. McLouden's SWA's states February 2016 (A-17)
  - b.) Det. McLouden's trial testimony February 2016. (TT. Vol.I)
- 3.) Det. McLouden GPS recorded Mayweather March 8, 2016, leaving alleged controlled buy location.
  - a.) Det. McLouden's SWA's states his surveillance team witnessing Mayweather get into Parker's vehicle and drive to his residence. (A-17)
  - b.) Det. McLouden testified to his surveillance team witnessing Mayweather get into Parker's vehicle and drive to his residence. (TT. Vol.III pp.571-72)
- 4.) Mayweather's investigation was in conjunction with Wilson's arrest January 10, 2016. (See Wilson's sealed file)

Though the government objected to Det. McLouden's false testimony of his surveillance team witnessing Mayweather driving with Parker, and defense overlooked the TDOA when it was electronically sent. Government did not explain to defense (1) Det. McLouden initiated an investigation of Mayweather in October 2015, not February 2016, (2) Det. McLouden met an informant January 12, 2016, not February 2016, (3) Det. McLouden GPS

recorded Mayweather in his vehicle leaving the March 8, 2016 alleged controlled buy, not with Parker in her vehicle, and (4) Mayweather's investigation was in conjunction with Jerome Wilson's arrest January 10, 2016, not Michael Berry's search of his residence February 2016.

Det. McLouden and government engaged in deceit, trickery, intentionally misrepresenting Berry is the informant and government conduct violates the universal sense of justice. Det. McLouden and Law enforcement was investigating Wilson in October 2015, witnessed Mayweather meet Wilson, thus incorporating Mayweather into Wilson's investigation. (A-2) Wilson was arrested January 10, 2016 after receiving a shipment of drugs. January 12, 2016, Wilson was released and Det. McLouden received information regarding a cocaine dealer living at Mayweather's address. (A-5) January 26, 2016, Det. McLouden applied and received authorization to GPS track Mayweather's vehicle. (A-1) February 25, 2016 Mayweather was witnessed through GPS tracking meeting with Berry. Berry was arrested and his residence searched February 25, 2016, and he agreed to work with Det. McLouden. March 8, 2016, Det. McLouden directed Berry to purchase cocaine from Mayweather. Berry returned with buy money and cocaine. (A-8)

Det. McLouden incorporated Parker within the controlled buy, thus adding her as a driver, because he believed drugs may be stored at her residence. Therefore filing for search warrants to Mayweather's and Parker's residence March 10, 2016. (A-17) March 16, 2016, Mayweather received drugs from Wilson and associates. seventeen hours later and one week after Det. McLouden filed for the SWA's, he executed the search warrants.

Though government was aware that Mayweather's investigation was in conjunction with Wilson's January 10, 2016 arrest. Government supported Det. McLouden's omission's, and misrepresentations when they became aware of them August 3, 2018 during preparation of trial. Government had ample time to turn over what they learned from the TDOA and Det. McLouden. Turning over just the TDOA does not satisfy Untied States Brady obligation.

The United States Court has held that errors must be considered in their totality, rather than sigly. See Kyles v. Whitley, 514 U.S. 419, 434, 131 L.Ed. 2d 490, 115 S.Ct. 1555 (1995) (Multiple Brady violations); Williams v. Taylor, 529 U.S. 362, 120 S.Ct 1495, 1515, 146 L.Ed. 2d 389 (2000) (Multiple instances of ineffectiveness); Marcerum v. Lueberg, 509 F.3d 489, 502 (8th Circuit): (it's not the court's commission to event strategic reasons or accept any strategy counsel could have followed without regard to what actually happen).

Presumed under he cumulative error, this case pitted Mayweather only stored drugs for a friend and Mayweather was a cocaine distributor. Counsel's ineffectiveness deprived Mayweather of corroborating evidence. Det. McLouden's omission, and government supporting his omission deprived Mayweather of any defense based on his testimony alone. The government's support of Det. McLouden's omission of evidence related to wilson's arrest, that otherwise impeaches government's sole witness Det. McLouden, violated Mayweather's Due Process rights. Government's failure to disclose Giglio material, accumulaively deprived Mayweather of a fair trial.

CONCLUSION

The United States Supreme Court accept petitioner's writ and take an "In Camera Review" of Jerome Wilson's (Federal Identification Number 20719-041) Sealed file. To make the determination that United States violated Brady/Giglio obligation, when United States withheld information pertinent to disclosure of Wilson's arrest was in association to Mayweather's investigation on January 10, 2016. Reverse and Remand Appellant Courts decision, or Order District Court to an Evidentiary hearing.

Respectfully Submitted

Date: December 16, 2022

s/ Jarmell Mayweather  
Jarmell Mayweather

Federal Prison Camp Yankton (FPC)  
Jarmell Mayweather  
Federal Id. 12496-041  
P.O. Box 700  
Yankton, South Dakota 57078