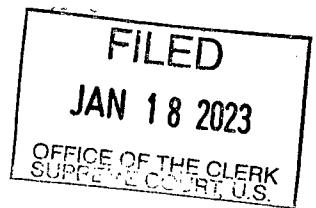


No. **22-6671** ORIGINAL

In the
Supreme Court of the United States



RODNEY MAZZULLA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Rodney P. Mazzulla
Register Number 30179-047
FCI El Reno
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QUESTIONS PRESENTED FOR REVIEW

This Court in *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674 (1984), made it clear that no deference is due to counsel's actions, and the performance of counsel falls below the Strickland objective standard of reasonableness if counsel's specific acts or omissions are not demonstrably the result of actual strategic choices made between or among all plausible options "after a thorough investigation of law and facts relevant to all possible options."

With this standard determined, the Petitioner Rodney Mazzulla presents the following questions:

- I. Does trial counsel render ineffective assistance when counsel fails to request a mid-trial *Franks v. Delaware*, 438 U.S. 154 (1978) hearing when the facts generated mid-trial warrant such a request?
- II. Should a writ of certiorari should be granted since Mazzulla's due process rights were violated when appellate counsel failed to clarify to the Eighth Circuit Court of Appeals during oral arguments that the prosecutor misled the appellate panel regarding the issuance of a search warrant

**PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the Eighth Circuit and the United States District Court for the District of Nebraska.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR WRIT OF CERTIORARI

Rodney Mazzulla, the Petitioner herein, respectfully prays that a writ of certiorari is issued to review the judgment of the United States Court of Appeals for the Eight Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Eight Circuit, whose judgment is herein sought to be reviewed, is an unpublished decision in *Mazzulla v. United States*, No: 22-1605 (8th Cir. October 24, 2022), reprinted in the separate Appendix A to this Petition.

The opinion of the District Court, District of Nebraska. (Gerrard, J.), whose judgment was appealed to be reviewed, is an unpublished opinion in *United States v. Mazzulla*, 4:17cr3089, Dkt No. 243, D. Neb. January 24, 2022), is reprinted in the separate Appendix B to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on October 24, 2022.

The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant parts:

No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

Id. Fifth Amendment

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Id. Sixth Amendment

Title 28 U.S.C. § 2255 provides in the pertinent part:

A prisoner in custody under sentence of a court established by an 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.

* * * * *

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

Id. Title 28 U.S.C. § 2255

STATEMENT OF THE CASE

On July 18, 2017, a five-count Indictment was returned charging Mazzulla with Count One, conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. § 846; Count Two, possession with intent to distribute 5 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1); Count Three possession of a firearm in furtherance of the drug trafficking crimes charged in Counts One and Two in violation of 18 U.S.C. § 924(c)(1)(A)(i); Count Five charged distribution of and possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1). (USDC Dist. Neb, *United States v. Mazzulla*, No: 4:17cr3089, Dkt. 1).¹ Mazzulla proceeded to trial, where the jury returned a verdict of guilty on Counts One and Two and not guilty of Count Three. (*Id.* Dkt. 149). On August 1, 2020, Mazzulla was sentenced to 312 months as to Counts 1, 2, and 5 all to be served concurrent with each other, and a 5-year term of supervised release. (*Id.* Dkt. No. 176). Mazzulla proceeded on appeal, however, on August 2, 2019, the Eight Circuit Court of Appeals affirmed Mazzulla's direct appeal. See, *United States v. Mazzulla*, 932 F.3d 1091 (8th Cir. 2019). A *rehearing* and *suggestion for rehearing en banc* were denied on September 19, 2019. *United*

¹ Count 4 of the Indictment related solely to Shawndell Burke ("Burke"). Mazzulla was found not guilty of Count 3.

States v. Mazzulla, 2019 U.S. App. LEXIS 28484 (8th Cir. Sep. 19, 2019). Mazzulla did not petition for a writ of certiorari.

Mazzulla then filed a Title 28 U.S.C. § 2255 alleging several instances of ineffective assistance of trial and appellate counsel. (*Id.* Dkt. No. 232). After briefing on the merits, the district court denied the § 2255 without a hearing and denied the request for a Certificate of Appealability. The Eighth Circuit also denied the request for a Certificate of Appealability. This petition for writ of certiorari follows.

STATEMENT OF THE FACTS

The Lincoln, Nebraska, Police Department (“LPD”) began investigating Mazzulla in July 2015 when it received information from confidential sources that an individual named “Rob,” who owned a tree-trimming service was selling methamphetamine. Officer Anthony Gratz (“Gratz”) contacted Mazzulla claiming to have a fallen tree that needed to be removed. Mazzulla agreed to meet him. At the meeting and according to Gratz, Mazzulla admitted to possession of a personal quantity of methamphetamine and consented to a search of his vehicle. During the search, Gratz found 3.1 grams of methamphetamine. Mazzulla was arrested and brought to the police station where he was read a Miranda warning. *Id.* According to Gratz, although no recording exists, Mazzulla waived his Miranda rights and agreed to an interview. During this interview, Mazzulla allegedly admitted that over the previous two years, he sold up to two ounces of methamphetamine per week to

his employees. Despite these admissions, Mazzulla was not indicted in 2015.

Gratz and Mazzulla would not meet again for almost 2 years. In March 2017, Gratz allegedly received a confidential tip describing a female named Burke who was selling drugs out of her residence. Burke resided at 1010 South 10th St. Gratz setup surveillance on the residence. On one occasion, Gratz saw two vehicles leaving the residence. He attempted to conduct a vehicle stop on Burke's vehicle when she fled and was able to avoid arrest.

On April 2, 2017, Gratz allegedly received another confidential tip that a male named Troy Utley ("Utley") was selling methamphetamine out of Burke's residence at 1010 10 Street, not the Folsom Street Garage. Later that evening, Gratz located Utley who was in possession of methamphetamine. Gratz arrested Utley. Allegedly, on the way to the police station, Utley identified a Garage at 1421 S. Folsom St. ("Folsom St. Garage"). Utley allegedly made a statement that Mazzulla resided there. At the police station, Utley waived his Miranda rights and consented to an interview, telling Gratz that Burke regularly possessed half-pound and two-pound quantities of methamphetamine. Utley also identified Mazzulla as a *possible source* of Burke's methamphetamine, along with a black male only known as "plug." During surveillance later that evening, Gratz saw a male, Richard Scov ("Scov") leave the Folsom St. Garage area on a bicycle. Gratz stopped Scov for a traffic violation, but before he could make actual contact with him, another officer observed

Scov drop something. The item turned out to be a pouch containing a small amount of methamphetamine. According to Gratz, Scov said that he had just left "Rod Azzu's" residence and that "Azzu" lived in a Garage. Scov believed "Azzu" was still there. Gratz sought and obtained a search warrant for the Folsom St. Garage which was executed that day.

After the search, approximately 49 grams of methamphetamine were located along with a pistol and some drug paraphernalia. Mazzulla and Rhonda Meador ("Medor") were arrested. Several days later, on April 21, 2017, Burke was arrested based on her prior fleeing event and taken to the Lancaster County jail where she waived her Miranda rights. Burke told Gratz she saw Mazzulla in possession of a quantity of methamphetamine that was hidden in the gas tank of a black motorcycle. Based on that information Gratz prepared affidavits supporting warrants for the search of both the 1010 South 10 St. and the 1421 S. Folsom St. residences. In each affidavit, Gratz attested that Burke was living at the respective address for which he was obtaining search warrants. That was not true.

The search of Burke's 1010 South 10 St. residence resulted in the seizure of 85.1 grams of methamphetamine in her bedroom. The search of the Folsom St. Garage was performed in the early morning of April 22, 2017, resulting in the seizure of 210 grams of methamphetamine found under the hood of Burke's green van parked in the Garage. The search of the Folsom St. Garage should have been suppressed.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE EIGHT CIRCUIT AND THE DISTRICT COURT HAVE DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

- (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
- (b) When a ... United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Id. Supreme Court Rule 10.1(a), (c).

QUESTIONS PRESENTED

I. DOES TRIAL COUNSEL RENDER INEFFECTIVE ASSISTANCE WHEN COUNSEL FAILS TO REQUEST A MID-TRIAL *FRANKS v. DELAWARE*, 438 U.S. 154 (1978) HEARING WHEN THE FACTS GENERATED MID-TRIAL WARRANT SUCH A REQUEST.

In *Franks v. Delaware*, 438 U.S. 154, 155, 98 S. Ct. 2674, 2676 (1978) this Court held that the Fourth Amendment derived an exclusionary rule that allowed a defendant to attack the veracity of a warrant's affidavit after the warrant had been issued and executed. Where a defendant makes a substantial preliminary showing of a false statement knowingly and intentionally, or with reckless disregard for the truth was included by an affiant in a search warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the U.S. Const. amend. IV requires that a hearing be held at the defendant's request. *Id.* at 155. The Supreme Court was careful to use the word "requires" and not "may" or "at the District Court's discretion." The court determined that the District Court was required to address a hearing. There is no limitation when a Franks hearing can be requested. No hearing request was made mid-trial or post-trial, even after the *Frank* threshold was met.

Mazzulla's argument was straightforward. Trial counsel rendered ineffective assistance when he failed to file a mid-or-given the option, a post-trial motion for a *Franks* hearing once trial testimony was elicited that demonstrated conclusively that

Gratz's averments in his search warrants and affidavits were made with reckless disregard for the truth and were intentionally misleading.

In *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674 (1984), the Supreme Court made it clear that no deference is due to counsel's actions, and the performance of counsel falls below the *Strickland* objective standard of reasonableness if counsel's specific acts or omissions are not demonstrably the result of actual strategic choices made between or among all plausible options "after a thorough investigation of law and facts relevant to all possible options." *Strickland*, at 691; *Kimmelman v. Morrison*, 477 U.S. 365, 387 (1986); *Williams v. Taylor*, 120 S.Ct. 1495 (2000). As per *Strickland*, Mazzulla "identif[ied] the acts or omissions of counsel [the failure to request a mid-trial Franks hearing] that are alleged not to have been the result of reasonable professional judgment." *Id. Strickland*, at 690. If the record does not "conclusively" demonstrate "strategic reasons" for counsel's failures, the district court entertaining a motion under 28 U.S.C. § 2255 must hold an evidentiary hearing.² All these requirements were met. For example, Mazzulla's request for a *Franks* hearing was denied based on a Magistrate Judge's recommendation centered on the premises that since Burke allegedly "owned" or "drove" a newer red Lincoln car, which was seen at the Mazzulla's residence on

² *Shaw v. United States*, 24 F.3d 1040, 1043 (8th Cir. 1994) (petitioner entitled to evidentiary hearing on claim of ineffective assistance of counsel unless claim inadequate on its face or if records conclusively refute factual assertions of claim).

April 2, 2017, during Gratz' surveillance, that a nexus must therefore exist between "criminal distribution of methamphetamine" and Mazzulla's Garage at 1421 South Folsom Street.³ At the time, the Magistrate Judge did not consider Burke's trial testimony and the statement made by Utley, all of which undermine the facts upon which the Magistrate court based its decision.

Breaking it down, Burke revealed that she never lived with Mazzulla at the Folsom St. Garage and that she never owned or drove a "new red Lincoln" car. (Dkt. 164 at 295-96, 310). This was important. Whether Burke lived with Mazzulla at the Folsom St. Garage, or whether she was "present" there on the morning of April 2, 2017, which was suggested by the "newer red Lincoln" being there, was the basis upon which Gratz applied for the warrant and the basis for the Magistrate court's decision. That information was critical to the issuance of the warrant. Gratz testified as follows:

Q. Now let's talk about the affidavit for the search warrant, the April 2nd one, the first one. Now, you talked to Troy Utley before.

A. That's correct.

Q. And you had information about Ms. Burke that you'd acquired from different sources.

³ The Report and Recommendation redacted all references to the allegations that Burke was "living" with Mazzulla and focused primarily on the red Lincoln car and on the presence of Skov at Mazzulla's residence to establish probable cause. (*United States v. Mazzulla*, No: 4:17cr3089, USDC Dist. Neb. Dkt. 76 at 4-5, 9-11).

A. That's correct.

Q. And when you talked to Troy Utley, did he make a connection for you between Shawndelle Burke and Mazzulla?

A. Yes, ma'am.

Q. And did he indicate to you that he understood that Shawndelle Burke, it -- either living at that Garage or spending significant time there?

A. Correct.

Q. And that she had a red Lincoln she had been driving?

A. Correct.

Q. Whether or not it was hers, she had been driving a red Lincoln.

A. That's correct.

Q. And if that particular red Lincoln was at the Garage, she might be with it?

Q. That was his belief, yes, ma'am.

Q. And did he tell you that Ms. Burke, in his understanding had been obtaining large quantities of methamphetamine from Mr. Mazzulla?

A. Yes, ma'am.

Q. And so that was the basis, in addition to what you learned from Richard Skov, [sic] for that particular search warrant?

A. That's correct.

Id. (Dkt. 164, at 167-70, 194).

This testimony was important because the videotaped recording of Utley's arrests revealed different facts. A timeline of the video recorded Mirandized

interview with Utley shortly, before Gratz applied for the April 2nd search warrant, showed that Gratz mislead the court as to what Utley said during the interview warranting as per this Court's decision in *Franks*, a full hearing:

7:12 Gratz - If you are in jail is there anyone else I can check with to know if Sass [Burke] or Jacob are at the house [1010 10th Street]?

7:40 Utley - I know for a fact that she'll be back there tonight.

7:45 Gratz - Is there a way to know if she's there or not?

7:47 Utley - Uh, no -- you just have to, if the basement lights on down there, where you come up the driveway, the first set of windows there is where her area is.

7:55 Gratz - She stays downstairs?

7:57 Utley - Yes

8:46 Gratz - So if the lights are on in the basement, she's there?

8:49 Utley - Yes.

17:30 Utley - She's going to know [I've been arrested] if she gets home and I'm not home ...

19:48 Gratz - So when's the last time she didn't stay there? Does she stay there every night?

19:51 Utley - She has been there for the last five nights.

Id. Utley Arrest Video Recording.⁴

⁴ This recording has been previously presented to the District Court. (Dkt. 76 p. 2)

This sets the tone for Gratz's embellishments. At the time that Gratz applied for the April 2 search warrant, he knew that Burke lived with Utley at 1010 S. 10 Street, that she stayed in the basement, had been staying there for the last five nights, and would be returning that night. Utley made sure that Gratz knew "if the lights are on in the basement, she's there." *Id.* (Timestamp 8:46). The red Lincoln was not addressed as Gratz wrote in his affidavit. Utley only told Gratz to look to see if the lights were on, not to look for the red Lincoln. Gratz was the one who raised the red Lincoln during the interview:

12:03 Gratz - He [Mazzulla] like lives in that storage, or I mean shop?

12:06 Utley - He's been staying there, yes, uh, but I do know they're at a motel and that might be where she's at. Um, I think the last time I recall the motel was out off Corn Husker and I want to say 56th, it's close to the terminal there.

....

12:26 Gratz - The American Inn?

12:28 Utley - That could be it, yeah.

12:30 Gratz - So if that red Lincoln's out there, she's probably there?

12:32 Utley - Yeah, I do know that was Rod's SUV that was sitting over there, that Chevy Trail Blazer, or whatever it was, that's what Rod's been driving.

Id. Utley Arrest Video Recording.

Utley did not say that Burke was driving a red Lincoln, he merely responded that, yes, if the red Lincoln was at the "motel" then Burke may be there. The context of the conversation was not regarding what Burke was driving; it was about where

Mazzulla lived or might be staying. All these facts, when developed mid-trial, permitted the request for a *Franks* hearing. The *Franks* hearing requirement was easy to overcome had one been requested mid-trial. To establish the necessity of a *Franks* hearing based on allegedly false statements in the affidavit, the Eighth Circuit has set out the following test:

For Brackett to succeed on his mid-trial motion for a *Franks* hearing, he was required to make “a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit” and that the allegedly false statement was necessary to the findings of probable cause. *Franks*, 438 U.S. at 155-56, 98 S.Ct. 2674. This substantiality requirement is “not lightly met,” and it requires a defendant to offer specific allegations of deliberate falsehood along with supporting affidavits or similarly reliable statements. *Id.* at 171-72, 98 S.Ct. 2674; *United States v. Williams*, 477 F.3d 554, 558 (8th Cir. 2007).

Id. United States v. Brackett, 846 F.3d 987, 993 (8th Cir. 2017).

The “individual facts” show that Burke’s trial testimony established that Gratz’s statements in his April 2 warrant/affidavit were purposely false and misleading. Moreover, when coupled with the Mirandized statement of Utley, it’s clear that Gratz knew before applying for the warrant that Burke resided at 1010 S. 10 Street -- not at the Folsom Garage -- and that Utley did not tell him that Burke drove a red Lincoln. Both of those facts were added to justify the issuance of the warrant, not as information learned by Gratz. This failure to act falls squarely within the parameters this court established in *Kimmelman* and *Williams* some 22 years ago. “The performance of counsel falls below the *Strickland* objective standard of

reasonableness if counsel's specific acts or omissions are not demonstrably the result of actual strategic choices made between or among all plausible options "after a thorough investigation of law and facts relevant to all possible options." *Id. Strickland*, at 691. The Eighth Circuit has noted that failing to do so amounts to ineffective assistance. *United States v. Maxwell*, 778 F.3d 719, 732 (8th Cir. 2014) (noting that if errors in the warrant affidavit were exposed during cross-examination, Moore should have moved for a Franks hearing); *United States v. Freeman*, 625 F.3d 1049, 1050 (8th Cir. 2010). All these safeguards were in place on the day of Mazzulla's trial, however, all were ignored.

This is a case where this court has the opportunity to address and emphasize that a *Franks* hearing should be held at any stage of the proceeding, especially when the facts of the case warrant such relief. The failure of trial counsel to file a mid-or post-trail *Franks* motion and to introduce in that motion the testimony of Burke and the Miranda interview of Utley, deprived Mazzulla of a *Franks* hearing in which he would have been entitled to the suppression of evidence, thus rendering ineffective assistance in violation of his Sixth Amendment right to effective assistance of counsel.

As such, Mazzulla is requesting this Honorable Court, grant, vacate and remand the case to the Eight Circuit court of appeals for further consideration.

II. SHOULD A WRIT OF CERTIORARI SHOULD BE GRANTED SINCE MAZZULLA'S DUE PROCESS RIGHTS WERE VIOLATED WHEN APPELLATE COUNSEL FAILED TO CLARIFY TO THE EIGHT CIRCUIT DURING ORAL ARGUMENTS THAT THE PROSECUTOR MISLED THE PANEL REGARDING THE ISSUANCE OF THE AUGUST 2 SEARCH WARRANT.

Mazzulla was constitutionally entitled to the effective assistance of counsel both at trial and on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). A claim of ineffective assistance of appellate counsel is also appropriately raised on a § 2255 motion as Mazzulla raised. *United States v. Ramirez-Hernandez*, 449 F.3d 824, 827 (8th Cir. 2006); *Johnson v. United States*, 860 F. Supp. 2d 663, 745 (N.D. Iowa 2012). Such an ineffective assistance claim also requires proof of deficient performance and prejudice. Here the issue raised on appeal was the issuance of the warrant. On appeal, Mazzulla addressed the denial of a request for a *Franks* hearing. See, *Mazzulla*, 932 F.3d 1091, 1099-1100 (8th Cir. 2019). The due process violation occurred during the appellate arguments. The prosecutor's misconduct and counsel's failure to object arose when the Eight Circuit appellate panel inquired from the prosecutor what was the *nexus* justifying the search. The prosecutor's response was based entirely on the three issues that had previously been redacted from the April 2, search affidavit, (1) Burke living at the Garage, (2) the red Lincoln, and (3) Scov's alleged statement that he did not know the amount of drugs that were in the Garage. These exact statements were redacted by the Magistrate Judge from the April 2

warrant. (Dkt. 76 at 15). The prosecutor *knew* these issues were redacted and not to be considered as probable cause for the issuance of the warrant. The prosecutor (who was the same trial prosecutor), knew that the Magistrate Judge had redacted from the April 2 warrant the same three issues that the panel had inquired about regarding the nexus for the issuance of the search warrant. Even knowing these facts, the prosecutor still violated Mazzulla's due process rights by purposely providing misleading information to the Eight Circuit appellate panel during oral arguments. Those statements reached the level of prosecutorial misconduct. *United States v. Clayton*, 787 F.3d 929, 933 (8th Cir. 2015) (To receive a new trial based on prosecutorial misconduct, "defendant must show that the government's conduct was improper and that it 'affected the defendant's substantial rights to deprive him of a fair trial."); *United States v. Crow*, 2018 U.S. Dist. LEXIS 136614, at *14 (D.S.D. Aug. 13, 2018)

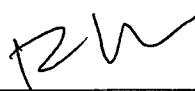
To complicate the matter even further, appellate counsel failed on rebuttal to clarify the record for the appellate panel thus the panel believed that the redacted items were from the search warrant executed on April 22 and not April 2. Although the ineffective assistance of standard on appeal has been addressed, this court needs to consider the prosecutorial misconduct allegation as well. *Id. Clayton* at 933. These misleading facts rendered Mazzulla's appeal a nullity.

As such, Mazzulla is requesting this Honorable Court, grant, vacate and remand the case to the Eight Circuit court of appeals for further consideration.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and order the Court of Appeals for the Eight Circuit.

Done this 18 day of January 2023.


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