

22-6765

No.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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Mamberto Real,

Petitioner,

versus

Michael Perry,

Respondent.

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On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Eleventh Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

1. Whether the district court failed to review the court's building cameras after the facts, to verify a misconduct from a defense's witness; thereby violating the due process of the law or equal protection of the laws?
2. Whether the court of appeals failed to interpret sua sponte; the broad authority from Fed. R. Civ. P. 60 (b), to halt a grave misconduct from a defense's witness?
3. Whether the jury failed to report to the district court about an outside influence from a defense's witness?

## **LIST OF PARTIES**

All parties appear in the caption on the cover page. (City of Fort Myers is no longer a party in this case).

## **CORPORATE DISCLOSURE STATEMENT AS REQUIRED BY RULE 29.6**

There is no parent or publicly held company owning 10% or more of the corporation's stock.

## **LIST OF ALL PROCEEDINGS IN FEDERAL COURTS**

Case No. 2:17-cv-00117-FtM-38CM. Doc. 1. February 23, 2017. Mamberto Real v. City of Fort Myers, Chief of Police Derrick Diggs and Police Officer Michell Perry, Dated Terminated: May 7, 2018. Dismissed Without Prejudice; Doc. 51. United States District Court Middle District of Florida Fort Myers Division.

Case No. 2:18-cv-00331-JES-NPM. Doc. 1. May 11, 2018. Mamberto Real v. Michael Perry individual capacity and the City of Fort Myers official capacity. Opinion and Order September 19, 2019. Dismissed With Prejudice. Doc. 64 United States District Court Middle District of Florida.

Case. No. 19-13808. Doc. 72. Mamberto Real v. Michael Perry, individual capacity, City of Fort Myers, official capacity, Opinion Abril 21, 2020. Affirmed in part, Reversed in part, and Remanded. United States Court of Appeals for the Eleventh Circuit.

Case No. 2:18-cv-00331-JES-NPM. Jury Verdict, December 3, 2021, Doc.147. Jury found no excessive force against the petitioner. United States District Court Middle District of Florida Fort Myers Division.

Case No. 2:18-cv-00331-JES-NPM. Mamberto Real v. Michael Perry individual capacity, March 14, 2022, Motion for Reconsideration, under Fed. R. Civ. P.

60 (b) and 61(2). Doc.177. Order on Motion for Reconsideration, Abril 12, 2022, Doc. 178; Motion Denied. United States District Court Middle District of Florida Fort Myers Division.

Case No. 21-14496 Mamberto Real v. Michael Perry, Individual capacity Capacity, City of Fort Myers, Official capacity, Doc. 36-1. November 1, 2022, denying direct appeal. Affirmed. United States Circuit Court of Appeals for the Eleventh Circuit.

Case No. 21-14496 Mamberto Real v. Michael Perry, Individual capacity, City of Fort Myers, Official capacity. Motion for Rehearing en banc denied; December 29, 2022, Doc.40. Eleventh Circuit Court of Appeals for the Eleventh Circuit.

Writ of Certiorari at this time before this Court.

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## INTRODUCTION

Perhaps this introduction would be unusual in a writ of certiorari, because is unconventional. However, this introduction is coming from an ordinary man who is sincerely seeking justice that has been denied to him, by un settle issues the law. I have no substantial training in how to practice the law and I don't even master the laws of English Grammar. Nevertheless, I do have an absolute mastery of the flavor and color of injustice in all its manifestations. I also know from personal experience that some judges are incorruptible; that no one can induce them to do justice, and for that specific reason, I am fighting until the end looking for that justice that even if it never reaches me it will never be due to weakness of my efforts.

During the course of my reading about the law. I have learned that the law is neither pure nor infallible, but rest on the interpretation from a group of honorable jurists to apply it in the same way that the bible is interpreted given rise to different forms of Christian Protestantism. See Martin Luther 95 thesis attacking the Catholic Church. See also Plessy v. Ferguson 1896 U.S. Supreme Court's interpretation that upheld the constitutionality of racial discrimination under the separate but equal doctrine. It was an untenable and despicable interpretation of the XIV Amendment, but superbly controlling and denigrating people of color for 58 years. However, an Honorable impartial man, a justice from the Supreme Court named, John Marshall Harlan had a dissenting interpretation attacking the majority's decision. It would not be until Brown v. Board of Education in 1954 that the majority of the Supreme Court would essentially concur with Harlan's dissenting opinion in Plessy v. Ferguson. Therefore, I am here in certiorari looking for a fair, impartial, and reasonable

interpretation to kill an injustice by tangible issues of the law. For example: The notorious serial killer Jack the Ripper was never caught “after the facts,” because in 1888 the proper technology to capture him did not exist, such as surveillance cameras circuitry. However, in the 20 th and 21 th centuries surveillance technologies have advanced so much, that it has been possible to clarify “after the facts,” cases of police brutality such as Rodney King on March 3, 1991, and the assassination of George Floyd at the hands of the police on May 25, 2020. Furthermore, the Department of Justice and the Federal Bureau of Investigation have been able to capture and prosecute “after the facts.” because of surveillance cameras more than 950 defendants who participated in the insurrection of January 6, 2021, in Capitol Hill, in accordance with the Department of Justice. In spite of the foregoing the district court stated as follows: “Plaintiff was represented at trial in fact there was cause for concern at the time, the issue could have been raised before the court for further examination. The court cannot after the facts, conduct a ‘review of the building cameras on December 2, 2021, or December 3, 2021.’” See Doc.178. Case No. 2:18-cv- 00331-JES-NPM. (App. 7 at 2).

In addition, the United States Court of Appeals for the Eleventh Circuit, also denied direct appeal and motion for rehearing en banc respectively on November 1, 2022, and December 29, 2022. Case No. 21-14496, (App. 8-9). Therefore, the impartial and reasonable interpretation of equal protection of the laws with respect to similarly, situated persons were not applied upon the petitioner’s case, in accordance with the very principle of the law, because the review of the building cameras “after the facts,” can prove beyond reasonable doubt a self-evident obstruction of justice against our judicial system. Affirming the lower courts’ holding would make it legally permissible in the jurisdiction at issue not to review the cameras “after the facts,” to identify those who broke the law. The petitioner respectfully suggests supervisory authority granting relief.

## **PETITION FOR WRIT OF CERTIORARI**

Mamberto Real (“Mr. Real” or “Petitioner”), petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, on November 1, 2022, and December 29, 2022, respectively. Case No. 21-14496 (App.8-9).

## **OPINION BELOW**

The decision of the United States Court of Appeals for the Eleventh Circuit, denying Mr. Real’s direct appeal is reported as Mamberto Real versus Michael Perry, official capacity, City of Fort Myers, official capacity, Case No.21-14496, Doc. 36-1. November 1, 2022. Affirmed. Opinion Method: Per Curiam (DO NOT PUBLISH) (App. 8). The United States Court of Appeals for the Eleventh Circuit also denied, Mr. Real’s petition for rehearing en banc on December 29, 2022. Case No. 21-14496DD. Doc. 40. (App.9), unreported.

## **STATEMENT OF JURIDICTION**

The date on which the United States Court of Appeals for the Eleventh Circuit decided this case on direct appeal it was November 1, 2022. Opinion non-published. Opinion method: Per Curiam; The Court also denied a timely motion for rehearing en banc on the following date: December 29, 2022. A copy of each event appears in Appendices 8 and 9. The Court of Appeals had jurisdiction under 28 U.S.C. §1291. This Court has jurisdiction under 28 U.S.C. § 1254 (1). This petition is timely filed pursuant to Supreme Court Rule 13. 1.

## **STATUTORY PROVISIONS INVOLVED**

This case involves the relationship of 42 U.S.C. §1983, that provides an individual the right to sue states government employees and others under color of state law for civil rights violations, arising a federal question. This case also involves Fed. R. Civ. P. 60 (b), which authorizes a district court to grant relief from a final judgment in a civil case on equitable grounds. It also involves the United States Court of Appeals for the Eleventh Circuit's interpretation of Fed. R. Civ. P. 60 (b). 18 U.S.C §1503, also is implicated in the instant matter, because it defines "obstruction of justice as an act corruptly or by threats or force, or by any threatening letter or communication, influences, obstruct, or impedes, or endeavor to influence, obstruct or impede, the due administration of justice." It also implicates the United States Court of Appeals for the Eleventh Circuit's interpretation of obstruction of justice.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

### **United States Constitution, Amendment IV:**

"The rights of the people to be secure in their persons, homes, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be searched."

Notably on April 21, 2020, the United States Court of Appeals for the Eleventh Circuit, found violation of the IV Amendment upon the instant case.

Affirmed in part, Reversed in part, and Remanded. Case No. 19-13808

**United States Constitution, XIV Amendment:**

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Mr. Real respectfully asserts that he is entitled to equal protection of the laws, with respect to similarly situated persons.

**United States Constitution, IX Amendment:**

“The enumeration in the Constitution, of the certain rights, shall not be construed to deny or disparage others retained by the people.”

Mr. Real respectfully believes that before a manifestation of obstruction of justice; the Courts have inherent power *sua sponte* to enforce other rights retained by the people and to do justice independently, because to do justice is incontestable.

**STATEMENT OF THE CASE**

**I. Factual background**

**A Concise Statement of the Case, According to this Court’s Rule 14. 1 (g).**

This case was born on February 23, 2017, Case No. 2: 17-cv-00117-FtM-38CM.

Doc. 1; Mamberto Real v. City of Fort Myers, Chief of Police Derrick Diggs and Police Officer Michell Perry. Date Terminated: May 7, 2018; Dismissed Without Prejudice; Doc. 51. (App. 1 at 4). United States District Court Middle District of Florida Fort Myers Division.

A new case was born on May 11, 2018, Case No. 2:18-cv-00331-JES-NPM. Doc. 1. Mamberto Real v. Michael Perry individual capacity and the City of Fort Myers, official capacity. Opinion and Order September 19, 2019, Dismissed With Prejudice; Doc. 64 (App.2 at 6). United States District Court Middle District of Florida Fort Myers Division. Notice of Appeal September 24, 2019, Doc. 66 (App.3). Case No. 2: 18-cv-00331-FtM-29NPM. United States District Court Middle District of Florida Fort Myers Division.

United States Court of Appeals for the Eleventh Circuit; Case No. 19-13808; Mamberto Real versus Michael Perry, individual capacity, City of Fort Myers, official capacity. Opinion issued Abril 21, 2020 Doc. 72. Affirmed in part, Reversed in part, and Remanded. (App. 4 at 10).

Jury Trial-Begun on December 2, 2021. Doc. 143. Case No. 2:18-cv-00331-JES-NPM. Jury Verdict, on December 3, 2021, Doc. 147. (App.5 at 1), Jury found no excessive force against the petitioner. United States District Court Middle District of Florida Fort Myers Division.

On March 14, 2022, Motion for Reconsideration under Fed. R. Civ. P. 60 (b) and 61 (2). Doc. 177. (App. 6). Case No. 2: 18-cv-00331-JES-NPM. United States District Court Middle District of Florida Fort Myers Division.

Order on Motion for Reconsideration. Abril 12, 2022, Doc. 178. Denying motion under Fed. R. Civ. P. 60 (b) and 61 (2). (App.7 at 2). United States District Court Middle District of Florida Fort Myers Division.

On November 1, 2022, United States Court of Appeals for the Eleventh Circuit; Case No. 21-14496, denying petitioner's direct appeal. Doc. 36-1. Affirmed. (App.8 at 4).

Motion for Rehearing en banc also denied. Doc. 40. December 29, 2022, (App.9). Case No. 21-14496. United States Court of Appeals for the Eleventh Circuit.

## II. DISCUSSION

### A. Relevant Procedural History

This is a civil rights action filed pursuant to 42 U.S.C. §1983, by Plaintiff Mamberto Real. This action was set by trial. This petition arises from denials of direct appeal and rehearing En Banc; following a jury trial on December 3, 2021. United States District Court Middle District of Florida Fort Myers Division. The jury found no excessive force was used against the petitioner by the respondent. See Doc.147, (App.5 at 1). However, I automatically defecate when a police officer who is white in blue uniform approaches me and since February 2017, I have to wear a diaper for the rest of my life. (App. 11)

Furthermore, during the process of trial, some events occurred that clearly and fundamentally violate the law and denigrated our judicial system. For example: On December 2, 2021, one day before the verdict, the petitioner saw with his own eyes, likewise petitioner's lawyer namely; Michael Maddux, the members of the jury already empaneled walking through the corridor of the court building during a recess. (Lunch Break). But among the members of the jury there was a person who stands out above the others acting as a tour guide, it was Dana Cuffe, a witness from the defense. She was talking to the jury and even taking the same elevator that lead to the first floor of the building. Mr. Real did not see her during jury selection; likewise, his own lawyer. Petitioner was able to identify Dana Cuffe when she was called by the defense to testify against him, as a character witness. In the first moments Mr. Real was truly confused; he could not believe what his eyes were seeing, for a moment Mr. Real thought that she was not the same person and he did not want to create an atmosphere of chaos within the court,

precisely because she had testified that Mr. Real was very volatile and difficult to deal with it. Mr. Real's lawyer was silent, there was no objection on his part, and that silence was even more confusing to Mr. Real. However, there was a detail of the apparent tour guide that stood above the others members of the jury, and it was the way she was dressed with very tight pants, and this characteristic was the one that for some time convinced Mr. Real, that the apparent tour guide was without question Dana Cuffe a witness from the defense, and for that unlawful reason, Mr. Real filed in district court a motion under Rule 60 (b) and Rule 61 (2), pursuant to newly discovery evidence, requesting review of the court building cameras on December 2, and December 3, 2021, to unmask an obstruction of justice. However, because of the uncertainty mentioned above, Mr. Real failed to file a motion under Fed. R. Civ. P. 59 (b) within the 28- day period. Nevertheless, Mr. Real firmly believes that his motion under Fed. R. Civ. P. 60 (b), on March 14, 2022, before district court was entitled to be construed under an independent sua sponte to correct an injustice/obstruction of justice even if his motion Doc. 177, (App.6), is/ was not considered to be newly discovery as the courts below assert, See Doc. 178. (App. 7) and Doc. 40. (App. 8 at 3-4). Moreover, the respondent failed to respond Mr. Real's motion, See Doc. 178, (App. 7 at 1); the respondent failed to respond Mr. Real's motion because he had the requisite scienter of obstruction of justice from Dana Cuffe, because she confessed to it in private when she was interviewed by the respondent. Furthermore, upon respondent's answer brief Case No. 21-14496DD. Doc. 31 at 6, July 26, 2022, (App. 10), the respondent conceded that "the context of the conversation is unknown by all parties and the veracity of the allegation remains unchecked." In spite of the foregoing

the Eleventh Circuit Court of Appeals denying Mr. Real's direct appeals stated as follows: "The record demonstrates that the district court did not abuse its discretion in denying Real's motion because Real's proffered evidence in the motion was not newly discovered. Thus, Real did not meet the requirements for the district court to grant his motion for a new trial. Real's motion relies on evidence of a defense witness contact with the jury. However, this is not newly discovery evidence because the jury rendered a verdict after Real allegedly saw the witness with the jurors. Real had the opportunity to raise his concerns at trial but he did not. Thus, his evidence does not qualify as newly discovered. Moreover, Real has not demonstrated that the witness's alleged contact with the jurors. If brought to the attention of the district court, would have yielded a different result in the outcome of his trial." See Doc. 36-1 (App. 3-4).

Mr. Real asserts that even affirming that his motion under Rule 60 (b) did not meet the requirements of newly discovery for the district court to grant motion for new trial, we are here before a remarkable obstruction of justice by a defense's witness, that is a perpetrator pursuant to 18 U.S. C. §1503. In addition, upon Rule 60, which gives federal courts broad authority to grant relief from a final judgment "upon such terms as are just," provides that the motion is made within a reasonable time' it is appropriate to consider the risk of injustice to the particular parties, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. See *Liljeberg v. Health Svcs, Acq Corp.* 486 U.S. 847 (1988). Furthermore, the appeal court's opinion did not mention anything with respect to the cameras, they mention an abstract word: ("proffered"), however this is not an issue of acceptance, this is an issue of tangible evidence by fact, to avoid obstruction of justice upon the judicial system. The review of the cameras of the court's building will show a remarkable and despicable misconduct from a defense witness, the review is/was a self-evident of an obstruction of justice not "proffered evidence." In addition, a jury that remained silent and did not report the obstruction of justice from a defense's witness to the court.

Upon Mr. Real's case there was no equal protection of the laws with regard to similarly situated persons as explained below. In addition, the language of Rule 60 (b) (6), which give federal courts "broad authority" to grant relief from a final judgment is in conflict with the opinion of the court of appeals *passim*, likewise is a conflict with Lijelberg, because, courts have inherent power *sua sponte* to do justice. Mr. Real firmly believes that Moore's Federal Practice upon Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure does not allow an obstruction of justice or injustice to prevail without a legal remedy to annihilate it. Mr. Real respectfully suggests that his case is a clear subject of supervisory authority from this court.

### III. REASONS FOR GRANTING THE WRIT

**A. The language of "broad authority" from Fed. R. of Civ. P. 60 (b), that provides relief, and any other reason justifying relief from the operation of a judgment, should be applied liberally upon Mr. Real's motion to avoid a grave injustice.**

The decision of the Eleventh Circuit Court of Appeals in the case of Mr. Real, is in conflict with decisions from the United States Supreme Court.

In accordance with the statement of the case above, during the process of Mr. Real trial on December 2, 2021, he saw as well his lawyer a witness from the defense chatting with the jury and taking the same elevator. The same witness named, Dana Cuffe, after having an illegal communication with the jury went to the stand to testify against him, there was also silent and omission from the jury, when the jury failed to notify the trial court with respect to a remarkable misconduct from a defense's witness. The "broad authority" and any other reason justifying relief from Fed. R. Civ. P. 60 (b); should be applied liberally to avoid a grave injustice, even if Mr. Real's motion under Rule 60 (b), is/was not considered to be newly discovered.

In Thomas H. Buffington v. Denis R. McDonough, Secretary of Veterans Affairs, Certiorari denied No. 21-972, Decided November 7, 2022, Honorable Gorsuch J. dissenting opinion stated: "In America individuals may appeal to neutral Magistrates to resolve their disputes about "what the law is" Marbury v. Madison, 1 Cranch 137, 177 (1803). Everyone is entitled to a judicial decision" without respect to persons" 28 U.S.C. §453, and fair trial in a fair tribunal." In re Murchison, 349 U.S. 133, 136 (1955).

Mr. Real asserts that no fair trial in a fair tribunal was accomplished upon Mr. Real trial, when a defense's witness was obstructing or impeding the due administration of justice. The IX Amendment of the Constitution says. "The enumeration in the Constitution of certain rights shall not be construed to deny others retained by the people."

Liljeborg v. Health Svcs. Acq. 486 U.S. 847 (1988), it was a case where vacator under 28 U. S. C. §455 (a) was involved, but although Mr. Real's case vacator was not involved, this court recognizes that Fed. R. Civ. P. 60 (b) (6) plays a substantive role that provides "broad authority" to grant relief from a final judgment. This Court has never specifically decided the size of that broad authority, but for a reasonable person; there is no doubt that the "broad authority" embraces the removal of an obstruction of justice in any legal proceeding seeking justice, even if Mr. Real's motion does not qualify under newly discovered.

Mr. Real's case is important enough to justify granting certiorari, because it is of great significant to some without voice sector of society, that without exaggeration they represent thousands of people. Fed. R. Civ. P. 60 (b) (6), particularly states "Any other reason that justifying relief from the operation of the judgment." Mr. Real affirms that a trial where a defense's witness was

obstructing or impeding the due administration of justice is fundamentally an extraordinary circumstance that justify relief, this is the plain truth; without taking into account any other different interpretation of the law.

Before a tremendous injustice upon *Klapprott v. United States*, 335 U.S.

601, (1949), this Court stated: "Petitioner is entitled to a fair trial. He had not had it. The Government makes no claim that he has. Fair hearings are in accord with elemental concepts of justice and the language of the "other reason" clause of 60 (b) is broad enough to authorize the Court to set aside the default judgment and grant petitioner a fair hearing."

Therefore, the very principle of Rule 60 (b) was applied upon Klapprott seeking justice, why not upon Mr. Real's case. Mr. Real's case very clear is a subject of this Court's supervisory authority, because there is no further substantial action seeking Justice upon relief, properly said.

#### **B. United States v. Bergerley, 524 U.S. 38 (1998)**

Even if Mr. Real's motion under Rule 60 (b) is not considered to be a newly discovery. Doc. 177 (App.6), in accordance with the court of appeal *passim*.

This Court in Bergerley stated: "Independent action must, if Rule 60 (b) is to be interpreted as a coherent whole, reserved for those cases of "injustices which in certain instances, are deemed sufficiently gross to demand a departure" from rigid adherence to the doctrine of res-judicata."

Mr. Real firmly believes that a witness chatting with the jury to influence a verdict is deemed sufficiently gross to demand a departure from rigid interpretation from Rule 60 (b). Mr. Real also believes that an independent action should be available only to prevent a grave miscarriage of justice. See *Hazel-Atlas Glass Co., v. Hartford-Empire Co.* 322 U.S. 238, 244 (1944).

A miscarriage of justice occurred upon Mr. Real's trial, and the inspection of the cameras on December 2, 2021, it is/was a demand of self-evident showing proof to prevent a grave injustice.

Therefore, the court of appeals' decision is in conflict with Beggerly's "independent action." The court of appeal *passim* is holding wrong plantation of seeds for the future orderly administration upon that particular jurisdiction at issue. Mr. Real respectfully suggests and requests supervisory authority from this Court.

**C. Gonzalez v. Crosby, 545 U.S. 524, 528 (2005)**

"A rule 60 (b) motion can be said to bring a "claim" if it seeks a new ground for relief from the state conviction or attacks the federal court's previous resolution of a claim on the merits..."

Mr. Real brought a new ground upon his motion Rule 60 (b), the record unambiguous is asserting that, even if his motion does not qualify under newly discovered. The reading of the text has no room for a different interpretation if analyzed impartially with respect to the inspection of the cameras, and relief could have been granted to avoid a miscarriage of justice or an obstruction of justice.

**IV. The Eleventh Circuit Court of Appeals went even further, against its own reasoning with respect to Rule 60 (b)**

**A. Scutieri v. Paige 808 F. 2d 785, 794 (11 th Cir.1987)**

"Pursuant to a Rule 60 (b) (3) motion a final judgment may be set aside in the event of fraud, misrepresentation or other misconduct of an adverse party. The granting of Rule 60 (b) (3) relief rests within the sound discretion of the trial court and should be liberally construed. *Razier v. Ford Motor Co.*, 573 F. 2d 1332, 1346 (5 th Cir 1978) ..."

Mr. Real asserts that even when his motion *passim* was not specifically under Rule 60 (3), trial court had the power *sua sponte* to construe his motion under that category to avoid a grave misconduct from an adverse party, because the tantamount and convincing evidence showing misconduct from an adverse party would have been located through an inspection of the cameras of the court building.

Therefore, Mr. Real respectfully suggests that his case merits a grant of certiorari, because of lower court's wrong decision.

**V. The Eleventh Circuit Court of Appeals conflicts with the Fourth Circuit Court of Appeals addressing the same issue with respect to Rule 60 (b).**

**A. Park v. Lexington Ins. Co. 812 F. 2d. 894, 896 (4 th Cir.1987)**

"As we have stated in previous cases, in order to obtain relief from a judgment under Rule 60 (b), a moving party must show that his motion is timely filed, that he has a meritorious defense to the action, and the opposing party would not be unfairly prejudiced by having the judgment set aside. If the moving party makes such a showing, he must then satisfy one or more of the six grounds for relief set forth in Rule 60 (b) in order to obtain relief from the judgment. See e. g., Werner 731 F. 2d at 206-07; Comptom v. Alton Steamship Co., 608 F. 2d 96, 102 (4 th Cir. 1979." See also Nat'l Credit Union Admin. Bd. v. Gray. 1 F. 3d 262, 264 (4 th Cir. 1993)."

Mr. Real firmly asserts that in accordance with his statement of the case above he has satisfied one or more of the six grounds for relief set forth in Rule (60).

Mr. Real suggests, that the court of appeals *passim* was wrong and in conflict with the foregoing authority. Mr. Real respectfully suggests that his case is calling for supervisory authority granting relief.

**VI. The Eleventh Circuit Court of Appeals conflicts with the Second Circuit Court of Appeals addressing the same issue with respect to Rule 60 (b).**

**A. Radack v. Norwegian Line Agency, 318 F. 2d. 538, 542 (2d Cir. 1963).**

"This catch-all clause on Rule 60 gives the district court a' grand reservoir of equitable power to do justice in a particular case." 7 Moore, Federal Practice at p. 308 (1950 ed); Pierre v. Bernuth, Lembcke Co., 20 F.R.D. 116, 117 (S.D.N.Y. 1956)..."

Mr. Real suggests that the best reading of Radack's text infers that the courts below had the power to review the cameras to exercise justice in order to detect an obstruction of justice from a defense's witness. Moreover, according to Black Law Dictionary Tenth Edition, page 673, new discovered evidence means; "Something including testimony, documents, and tangible objects that tend to prove or disprove the existence of an alleged fact, anything presented to the senses and offered to prove the existence or nonexistence of a fact."

Furthermore, Rule 60 does not affect court's authority to grant certain other forms of relief such "an independent action to relieve a party from a judgment." To prevent grave injustice. *Luna v. Bell*. 887 F. 3d 290. 292-93 (6 th Cir. 2018). Thus; Mr. Real's case needs supervisory authority.

## VII. JURY MISCONDUCT

### A. *Parker v. Gladden*, 385 U.S. 363 (1966)

"We conclude that the statements of the bailiff to the jurors are controlled by the command of the Six Amendment, made applicable to the States through The Due Process Clause of the Fourteenth Amendment. It guarantees that The accused shall enjoy the right to a trial...by an impartial jury..." [and] be confronted with the witness against him..." As we said in *Turner v. Louisiana*. 379 U. S. 466. 472-473 (1965), the evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, cross-examination, and of counsel." Here there is dispute neither as to what the bailiff, an officer of the State, said nor that when he said it he was not subjected to confrontation, cross-examination or other safeguards guaranteed to the petitioner. Rather, his expressions were "private talk," tending to reach the jury "outside influence..."

In *Parker* supra bailiff "private talk" namely; "he is guilty." If there is something wrong [in finding petitioner guilty], before the jury, it was sufficient for this court to Grant certiorari and the judgment reverse; why not upon Mr. Real's case.

Mr. Real's case is still much more than enough to allow certiorari because the "Private Talk" to the jury is coming from a defense's witness that went to the stand to testify against him' the difference here is, the "private talk," is unknown, because of district court refused to review the cameras of the building, and because the court of appeals *passim* stated that Mr. Real's motion under Rule 60, is not new discovered. The difference also in Mr. Real's case is that no juror reported the outside influence before trial court. Therefore, here we are not only dealing with a "private talk" before the jury, but also with misconduct from the jury. *Parker* supra was a defendant criminal case but the application of the law also apply upon

Mr. Real's case in accordance with substantive due process of the law.

Therefore, an impartial reading of Parker supra suggests that Mr. Real's case is entitled for certiorari to be granted.

**B. Turner v. Louisiana, 379, U.S. 466 (1965)**

"During petitioner's three-day murder trial which resulted in he being found guilty and being sentenced to death, two deputy sheriffs who were the principal prosecution witnesses had custody of the jurors and as result, were in close and continuous association with them, freely mingling and conversing with them throughout the trial period. Though disapproving of the practice of officers who are witnesses having charge of the jury, the State Supreme Court found no prejudice to petitioner, and affirmed the conviction."

Held "the close and continuous association between key witnesses and the jury deprived the petitioner of the right to trial by an impartial jury which the Due Process Clause of the Fourteenth Amendment requires. Pp. 379 U.S. 471-474. 244 La. 477. 152 So. 2d 555. Reversed and remanded."

Mr. Real affirms that the best and impartial reading of the supra text shows crystal clear that Mr. Real was deprived of Due Process Clause of the Fourteenth Amendment, from the face of the record.

**CONCLUSION**

This petition of certiorari should be granted

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