EXHIBITS TO MOTION

A. Notices regarding jurisdiction

B. Excerpts from Sec. 2255 movant's affidavit (unused testimony)

C. Excerpts from Sec. 2255 movant's memorandum (truth-seeking evidence)

D. Excerpts of record documents relevant to truth-seeking

E. Relevant federal statutes

(Full sizes of these documents are in the Special Appendix)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 14, 2022

Joseph Jordan
#60818-054
P.O. Box 1000
Butner, NC 27509

RE: Jordan v. United States
USCA2 No. 19-2987

Dear Mr. Jordan:

The above-entitled petition for a writ of certiorari was postmarked January 3, 2022 and received January 11, 2022. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was August 6, 2021. Therefore, the petition was due on or before November 4, 2021. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

Sincerely,
Scott S. Harris, Clerk
By:
Lisa Nesbitt
(202) 479-3038

Enclosures

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

May 24, 2022

Mr. Joseph Ray Jordan
Prisoner ID 60818-054
FCI Butner Medium I
P.O. Box 1000
Butner, NC 27509

Re: Joseph Ray Jordan
v. United States
Application No. 21A758

Dear Mr. Jordan:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Sotomayor, who on May 24, 2022, extended the time to and including January 3, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,
Scott S. Harris, Clerk
by
Susan Frimpong
Case Analyst

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

May 26, 2022

Joseph Jordan
#60818-054
FCI Butner Medium I
P.O. Box 1000
Butner, NC 27509

RE: Motion to Exceed Page Limit/Writ of Certiorari
Jordan v. United States
No: 21A758

Dear Mr. Jordan:

The above-entitled motion to exceed the page limit and petition for writ of certiorari were originally postmarked January 3, 2022 and received again on May 10, 2022. The papers are returned for the following reason(s):

The petition is not presented properly. Before the motion can be considered by the Court, the petition must comply with the content requirements of Rule 14.

The petition fails to comply with the content requirements of Rule 14, in that the petition does not contain:

A concise statement of the case. Rule 14.1(g).

The reasons relied on for the allowance of the writ. Rules 10 and 14.1(h).

A guide is enclosed for you to use.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk
By:
Lisa Nesbitt
(202) 479-3038

A

Enclosures

§ I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

v. : Case No. 08-CR-0124

JOSEPH JORDAN, :

Defendant-Affiant. :

X

Affidavit of Joseph Jordan

[Introduction]

Together with other documents,[1/] this affidavit - presented in three parts: (I) Defense Preparation; (II) Defendant's Testimony; and (III) Sentencing Matters - is submitted to support the affiant's motion (under § 2255) to vacate the judgments in the above entitled criminal case.[2/]

I. Defense Preparation

I, Joseph Jordan, state, under the penalty of perjury, the following facts regarding the preparation of my defense in this case, or the lack thereof:

1/ References to documents shall be as follows:

APP.	-	Movant's appendix;
CX, DX, GX	-	Exhibits at trial;
Dkt.	-	Docket entries;
DOC.	-	Movant's submission of documents;
Mem.	-	Movant's memorandum;
Tr.	-	Trial transcript;
[date] Tr.	-	Hearing transcript.

2/ Additional facts shall be presented at an evidentiary hearing when affiant is represented by counsel.

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§ IE1-2

answers to those questions - which she would ask me when I took the stand. I had not before seen or discussed that document with counsel.

7. Among other problems with the set of questions (put before me), was that they appeared to be designed to do little more than elicit my general denial of guilt, and not to actually act as a means to advance a real defense to any of the charges against me. (See Part II for an account of testimony that would not be elicited by counsel.)

8. When I attempted to discuss the papers (attorney Shroff had put before me) with her, she became annoyed, and refused to do so.

9. Under those circumstances, as I explained in a letter given to the judge that day (CX 8), I was "forced" not to testify notwithstanding my desire to do so (APP. 89, 93).

E. The Affirmative Defense

1. Counsel did not inform me of the available affirmative defense (of "truth-seeking") to allegations of witness tampering, or discuss with me any evidence or issue related thereto. And, having read the indictment that charged me with attempting "to influence" or "prevent" testimony, I believed that even an effort "to [properly] influence" or "prevent [false] testimony," or to obtain exculpatory evidence to bring out the truth - violated the law, and thus I erroneously believed that my testimony about "truth-seeking" would not be helpful.

2. Counsel invoked the affirmative defense outside of my

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§ IF1-3

presence, without my knowledge, and without discussing it with me. I first learned of the affirmative defense when the judge instructed the jury regarding it (Tr. 914-15).

3. Had I known at trial that the affirmative defense was available, I would have insisted on taking the stand - because the post-arrest, pre-trial, communications that I made, that regarded this case, were not intended to prevent truthful or produce inaccurate testimony.

4. Had I learned that counsel had invoked the affirmative defense after it was too late for me to testify, and known that counsel was not going to argue it, I would have demanded it be withdrawn - and that no jury instruction on it be given.

F. Testimonial Stipulation

1. I truthfully informed counsel (before and during trial) that the stipulation that substituted for the testimony of my ex-wife (GX 812) - regarding her complaints about our marriage, and an incident at a Connecticut shopping mall (in 1990) when I was arrested for using pepper spray (Tr. 771-73) - was mostly irrelevant and related untruths.

2. I truthfully informed counsel (before and during trial) that the shopping mall incident - which occurred at a time when I had full custodial rights to my children - did not result in me going to prison (9/25/08 Tr. 19-20), and was not the event about which I told ST (Tr. 383), during my relationship with her.

3. Counsel assured me - on the day of the stipulation - that (a) the relevance of the content would still be challenged by

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§ IIF1-4

F. Correspondence To ST

1. While jailed in the New York City system, I wrote several letters to ST, dated: February 2 (GX 405E); February 10 (GX 402E); and March 1 (GX 407E). None of them had anything to do with this federal case. I did not know about any pending federal charges, and did not expect any at that point. (The letters I penned spoke about the NYPD case, or no case at all (APP. 216-19, 222-23, 227-29).)

2. Focusing on the postmark dates while the FBI agent was testifying (Tr. 765, 767) was misleading: I sent the letter and cards to ST (sealed in envelopes) to my sister or friend to mail for me - so as to avoid a big stamp saying "This Mailing Is From A Jail" (which would embarrass ST); some were re-mailed long after I intended them to be. They may have arrived after I was indicted in this case - but did not regard it.

3. When I learned about the charges in this case - on March 3, '08 - I was not surprised that Ms. Adams or Ms. Phillip had lied about me (it appeared - from the indictment - that both had accused me of telephone threats); I was bewildered that Dodson continued to lie about being threatened; but I was shocked that I was being accused of threatening ST over the phone while she was in Virginia (APP. 9, 14).

4. Of course I wanted ST to tell the truth: I did not threaten her over the phone. Letters asking her to do so (GX 400, 401E) were my only option: everyone knows that someone accused of a speech crime is pretty much automatically guilty -

B

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based on the word of the alleged victim alone. I did not know - at the time the missives were sent - what I know now from her testimony: that she would not falsely accuse me of threatening her while she was in Virginia (Tr. 400).

5. I assumed that ST was going to lie about me because others were telling her bad things about my past. Specifically, I believed - likely correctly - that she was being told that I had (in 1990) tried to "kidnap" my children, and used a "gun and bullets" to do so - as the prosecutor erroneously told the court at a hearing before trial (09/25/08 Tr. 19). I have never been tried for, pled guilty or "no contest" to, or convicted of charges of kidnapping or attempting to kidnap my children. And, of course, the same applies to using a gun in the process of doing so.

6. As a means to dissuade ST from lying about me - based on a belief that I was a bad person given the so-called armed kidnapping event (that never happened) - I sent the document attributed to my ex-wife (GX 403E) which (truthfully) explained that I had entered a plea of "no contest" to "assault" charges based on the use of "pepper spray" (Tr. 769-70).

7. While the so-called testimony - entered by stipulation (GX 812) - is in large part false, I attribute that to the facts that it was neither given under oath, nor composed by her. And at this point in my life (and the lives of my now adult sons) I have no interest in defending myself against accusations of bad behavior two decades ago - that have nothing to do with this case.

8. Prior to trial, I told the judge that I wanted to get a subpoena issued to obtain records of the text messages that I had received from ST while she was in Virginia (APP. 31). I did so because those messages would demonstrate that she was not fleeing from me (in fear) when she was in Virginia, as the prosecution asserted with respect to the stalking allegation (Tr. 848), but, rather, sought to get back together with me (as she said in the messages), and left for London only after I rejected her doing so (Tr. 799-800).

9. My counsel neglected to subpoena the text message records before they were purged from T-Mobile's system. And I knew that if the FBI had obtained them they would not share them with the defense - because they would destroy the prosecution's case on count three. As such, I sought to dupe ST into believing that my lawyer did have records of the text messages - so that when she (ST) was asked about them (on cross) she would be afraid to deny sending them because she would think they could be produced by counsel.

10. To dupe ST into testifying truthfully about the text messages that she wrote me (from Virginia), I arranged to have letters to her mention those messages so as to give the impression that my lawyer had them: (a) the first letter to ST about this case (GX 400) was written on the back of a copy of the legitimate subpoena for the text message records (APP. 195-96); (b) the missive mentions the messages as having been seen by my sister (APP. 195); and (c) the only other letter to regard this

case (GX 401E) also speaks about my sister having seen the "very romantic" text messages (APP. 200).

11. The bottom line is that the sole purpose of the mailings to ST was to bring out the truth. The truth about the alleged threat that did not occur (Tr. 400), and the truth about the text messages that did occur (Tr. 799-800).

12. That was not my only "truth-seeking": I also wrote to ST and asked her to find out why her sister (Adams) and mother (Dodson) had falsely accused me of threatening them over the phone (APP. 241-42), as charged in count one (APP. 14). I believed that Mr. Adams had falsely related what I said to him to them (APP. 242). (As I have testified, I did not speak at all to Ms. Adams while ST was in Virginia (§ IIC8, supra), and spoke to Dodson only to the extent that she answered the phone, and I said: "May I speak with [ST], please" (§ IIC6, supra).)

13. Comments made in other missives - as I have testified - had nothing to do with this case (§ IIF1-2, supra). Those that I penned were written (and mailed) from the city jail when I was facing threat charges (by ST's mom), and potential charges for the bathroom incident (§ IIA8, supra) regarding ST. Nevertheless, I will explain my remarks --

(a) The reference to "Italian Mob Types" in a card (APP. 223) is a humorous reference to a little Italian accordian player at a restaurant in Vegas - called Battista's - known for its history as a "mob" hangout where ST and I had dinner on October 8 (DOC. G12);

and (b) the comments - "[N]o one respects ... a 'victim'" (inside quotation marks in original); and "[T]he cops were saying to me '[W]hat were you doing ... with a (racial slur)'" (parenthetical remark in original) (APP. 229) - were both true: (1) The word "victim" (in quotation marks) means "[fake] victim" - and had I been charged (in state court) for assault based on the bathroom incident (§ IIA8, supra), that's what ST would have been; and (2) Not only did the NYPD detective (Courtney) make the racist remark while playing the "bad cop" at the FBI office during my interrogation (§ IIE4, supra), most of the detectives at the 109th precinct made similar remarks that evening.

14. That leaves one other mailing: a card that announced the deaths (by car wreck) of my little brother and father (APP. 226), which I'm sorry to say announced the truth (APP. 308-10).

15. In sum, nothing in any of the correspondence that was sent to ST was intended to induce false or prevent truthful testimony at this trial.

—G. The Press Release

1. While at MDC-Brooklyn, I created several draft press releases about the case against me. Each of them truthfully reported that I was innocent - just as I had pleaded on March 3. Each of them was attributed to me, a/k/a "Jordan Family Media Relations." And I am responsible for the copies that were received by the FBI in New York, and the Trinidadian government. I believed then - and I believe now - that every American has the First Amendment right to issue a press release, and to provide

copies of it to any person or other entity, including a foreign government. This is especially so given that the subject matter (here) was a pending, public, criminal case. Put simply, I had every right to share my story - whether the prosecution agreed with it or not. And I do not have to explain why I did so. Nevertheless, for those on the jury who may not be familiar with the import of free speech in America, I shall --

2. I was charged with, and jailed awaiting trial for, making a criminal threat to "kidnap" my former girlfriend (ST) (APP. 9) based on my response to an email (purporting to be from her (APP. 171), but actually written by her aunt (Tr. 284)). With knowledge that ST had (previously) been sexually abused while living with her aunt (Phillip) (Tr. 406), and after being threatened (with voodoo) by Phillip (Tr. 315-18), I had written in my response (to ST) that I would "rescue" her "unless I [heard] that [she was] safe" (Tr. 287).

3. To defend myself against that outrageous allegation - the threat to kidnap - based on the remark about a "rescue," I needed the court and jury to know two things: (a) ST had claimed to have been sexually abused while living with Phillip (in the past); and (b) Phillip had threatened me when I called to her home (in London) to check on ST's welfare. But I believed - probably correctly - that neither of them would admit those facts at trial unless I could either trick them to do so, or somehow obtain independent evidence to confront them with. And that is what the press release was intended to do - bring out the truth.

4. As I told my lawyer in a letter (copied to the court) before trial, I believed that ST would not admit telling the story about having been sexually abused while living with Phillip (APP. 46). To be sure, if she made the accusation as a child, when she lived in Trinidad (Tr. 125), the government there would have some kind of record of it. Sending that government a copy of the press release - speaking about that accusation - had the real potential to prompt an investigation that would find those records.

5. If the Trinidadian government confirmed - from records - that my defense (as reported in the press release) was based on fact, officials there might share their findings with my lawyer, as the accompanying cover letter suggested (APP. 232), or, more likely, with the prosecution (who would have to disclose it). There was also a slight possibility, as I told my friend (Dr. Mayer), that after learning my side of the story (regarding the "threatening" email), that government would request that the charges against me (regarding Phillip) be dismissed (Tr. 650).

6. But there was more: I wrote two things in the release that were guaranteed to keep ST from denying that she had made the abuse accusation (against Phillip's husband), and Phillip from denying that she threatened me over the phone when I called to her home (in London) to check on ST's welfare. It reported my claims that (a) ST had told others (not just me) about having been sexually abused in Phillip's home (APP. 233), and (b) I had "audio evidence" of Phillip threatening me over the phone (APP.

234). Reporting those claims - if ST or Phillip learned of them - would keep the two women honest because they knew the truth: (a) ST did share her story of abuse with others (Tr. 432); and (b) Phillip did threaten me over the telephone (Tr. 315-18). And thus they knew that those "others" could be called to testify, and that "audio evidence" might actually exist!

7. I know, however, how government's function: not very well. And so to increase the likelihood that the press release would get their attention, I chose a provocative title. Likewise, to ensure that it got prompt attention, I included the cover letter. And I have learned that it did prompt investigations in Trinidad (Tr. 852), and America (APP. 298, 292) - which I bet is the only reason that ST admitted telling the abuse story (Tr. 406), and Phillip admitted making the threat (Tr. 315-18). In other words, I succeeded in bringing out the truth.

H. Miscellaneous

1. I entered into a relationship with a woman who was - if her story is true - damaged by a childhood that no child should have lived. A woman who sought more attention, and needed more help, than I was able to give. A woman who exaggerated problems in that relationship when she believed doing so would benefit her. She told her family things about me that were not true. And they - like me - believed her lies.

2. I am not guilty of any of the charged spoken threats, and my post-arrest communications that regarded this case were (solely) intended to bring out the truth.

IV. Conclusion

1. The foregoing statements are true and correct, and I hereby state, under the penalty of perjury, that the documents relied upon (DOC.) are true copies of documents that I received from counsel.

2. I further seek to provide additional facts at an evidentiary hearing.

Dated: April 6, 2018

Joseph Jordan
Reg. No. 60818-054
Inmate - Federal Bureau of Prisons.

The Following Pages Contain:

THE UNUSED CLOSING ARGUMENTS SUPPORTING TRUTH-SEEKING

(with citations to the supporting record as submitted to the District Court)

[The Unused Closing Arguments To Allegations of Witness Tampering]

Ladies and gentlemen of the jury, after closing arguments the judge is going to instruct you on a very special defense to allegations of witness tampering - as we have here (in counts four and five). It's called the "truth-seeking" defense, and it was created by Congress to protect people like Mr. Jordan. The judge will tell you that he must be acquitted of the witness tampering charges (in counts four and five), even if you believe that the prosecution has proven its case, if I can show you from the evidence, as I am about to do, that it is likely that the written communications - alleged to constitute witness tampering - had a proper purpose, and thus were justified under the law.

In other words, it is not unlawful for an accused person to communicate with an alleged victim, to discuss the case with that person, to issue press releases, to tout their innocence, or even to trick that person into telling the truth about certain things or disclosing exculpatory evidence. That's called "truth-seeking," and it's precisely what Mr. Jordan was doing.

Now, ladies and gentlemen, we could have put Mr. Jordan on the stand to tell you what he was doing; to explain the purpose of certain communications - the letters to ST (count four), the press release about the case (count five) - which may appear inexplicable. But (1) we didn't need to because the prosecutor put in all of the evidence for us, and (2) we didn't want to show our hand until after the prosecutor made his closing argument that you just heard. But I'm going to show you our cards now - and you will see that Mr. Jordan was, in fact, lawfully truth-seeking, and thus is not guilty of witness tampering –

[count 4]

Ladies and gentlemen, let's start with the letters to ST (count four). The prosecutor told you that Mr. Jordan sent false statements (GX 403E [R.A. 319]) to ST that were intended to improve her opinion of him before she testified at this trial (Tr. 855 [R.A. 295]). We don't disagree with that theory; we stipulated to it (Tr. 771 [R.A. 283]) because: improving her opinion of him would make it less likely

that she would lie about him. You see, before trial Mr. Jordan believed that she had lied: he was charged (in count one) with making a threat - during a phone conversation while she was at her sister's home in Virginia - to kill her (Tr. 898 [R.A. 300]). Look at the very first letter put into evidence by the prosecution (GX 400 [R.A. 317]); the first letter to her that mentioned this case: she was asked to "write to the judge" and tell the truth about that particular allegation.

Now we know that ST never received that letter; you heard the testimony: Mr. Jordan's sister - who was going to mail it for him - gave it to the FBI as she was directed to do by the agent who visited her (Tr. 751-53 [R.A. 276-77]). But when ST was asked (on direct) if she recalled being threatened over the phone by Mr. Jordan (as charged in count one), she testified that she did not (Tr. 400 [R.A. 237]). In other words, the request (in GX 400) to "write to the judge" was entirely appropriate because we know (now) that it really did seek the truth - that ST was not threatened over the telephone while she was in Virginia! And we know that now because we heard her testify - there was no threat to kill her ever made.

And here's the thing, ladies and gentlemen, ST had never made that allegation to begin with: An FBI agent - who testified before the grand jury - had just gotten the facts wrong.* But (understandably) Mr. Jordan had erroneously believed that she had falsely accused him to protect her aunt's political career. And so he asked her to tell the truth just about that one particular allegation. And (according to her testimony) it was the truth (Tr. 400 [R.A. 237]). And there's more: that testimony affects the entire case on count four - because the request - for her to tell the truth about that particular alleged threat - was the only request made of her in any of the written communications in evidence.

No other communication (intended for ST) related a request or made mention of any other allegation that Mr. Jordan was facing in this case. And the prosecutor did not tell you otherwise. So to the extent that any of the other letters (to her) regarded this case, the sole request (in GX 400 [R.A. 317]) to be honest

about that particular "threat" allegation, and ST's testimony that there was no such threat (Tr. 400 [R.A. 237]), puts them in context: truth-seeking. (Notably, in another letter - also intercepted by the FBI before trial - that the prosecution chose not to introduce, ST was asked to try to find out why her sister and mother had lied (R.A. 315).)*

Now the prosecutor made a big deal about the letter to ST (GX 400 [R.A. 317]) having been written on the back of a copy of a subpoena for ST's phone records (Tr. 753 [R.A. 277]). We wanted him to do that. Take a look at the document in evidence: It's a legitimate copy of a subpoena for, among other things, the actual content of the text messages sent by ST to Mr. Jordan (GX 400 [R.A. 317]). Now, you heard the testimony from our paralegal: she sent that subpoena to T-Mobile; she gave a copy to him; but we never received the content of the text messages because it had been purged from T-Mobile's system before they received the subpoena.*

We wanted to confront ST with the content of her text messages to Mr. Jordan, but we didn't get it. It was very important to his defense (on count three). Very important - so he wanted her to believe that we did get it because that would keep her honest (at trial, and to the prosecutor) about what she had written in those messages. Now take a look at the telephone records that we did get (from T-Mobile) for ST's cell phone (DX N [R.A. 323]): On December 13 (while she was in Virginia) she sent four text messages to him (646.403.7118, Tr. 814 [R.A. 286]). Those records do not show the actual content of the messages, but we do know what one message said because of evidence that the prosecutor introduced (GX 402E) that we had the FBI agent read into the record: She wanted to get back together with Mr. Jordan [and he rejected the idea] (Tr. 799-800 [R.A. 284]). That text message exchange was relevant to the defense of the telephone stalking charge. And here's why ...

The text message exchange was important to Mr. Jordan's defense of the so-called "stalking" charge (count three) because it refutes what you just heard from the prosecutor: He told you that ST left Mr.