

23-6123

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Kyle Maurice Parks

(Your Name)

— PETITIONER

Supreme Court, U.S.
FILED

OCT 30 2023

OFFICE OF THE CLERK

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kyle M. Parks

(Your Name)

P.O. Box 33

(Address)

TERRE HAUTE IN 47808

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

(1) CAN A police officer plant evidence in a defendant's vehicle, commit perjury to the fact at suppression and trial and not violate due process

(2) Is the government allowed to present false or misinformation in PSR to enhance and not violate due process

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

UNITED STATES V. Kyle M. PARKS No. 4:15-CR-000553
DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI
JUDGMENT ENTERED JAN, 12, 2016

Kyle M. PARKS V. UNITED STATES No. 23-2658 U.S COURT OF
APPEALS FOR THE EIGHTH CIRCUIT, JUDGMENT EN BANC
DENIED AUG 1, 2023, (SEE ATTACH)

Kyle M. PARKS V. UNITED STATES 4:18-CV-1923
28 U.S.C. § 2255

Index To Appendices

- Appendix A. Report by ST CHARLES police department, Bottom Page
Asqt and two detective ask for permission to search the hotel room
- Appendix A I. Report by ST CHARLES police department, Top Page
Females were allowed to gather their cell phones and then exit the room
- Appendix B. Report by ST CHARLES police department, Top Page
Detective MATTHEW BLACK collected all of the cell phones
- Appendix B I Report continues to show four cell phones seized by
ST CHARLES police officer; Item 24-27
- Appendix C. Report by ST CHARLES police DEPARTMENT, Top Page
petitioner is taken into custody, Middle page, Petitioner's
vehicle is search, items of interest collected as evidence
- Appendix E- Report by ST CHARLES police department of items
located in petitioner's VAN, PLEASE NOTE items 24-27 E3
EXACT cell phones gathered by Detective BLACK from females
- Appendix H- Report release by F.B.I AGENT NIKKIE ZADALOTO
of who posted/advertised all ads and which email was
used.
-

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BERGER V. U.S. 295 U.S. 78, 84 (1935)	1
Caldwell V. City & County of San Francisco, 889 F.3d 1105, 1112 (9 th Cir. 2018)	1
Cullen V. Pinholster, 563 U.S. 170, 181, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011)	1
DEVEREAUX V. Abbey, 263 F.3d 1070, 1074-75 (9 th Cir. 2018)	
DONNELLY V. CHRISTOFORO 416 U.S. 637, 648-49, 94 S.Ct. 1868, 1874, 40 L.Ed.2d 431, 440 (1974)	1
Giglio V. U.S. 405, 150, 153, 31 L.Ed.2d 104, 92, S.Ct. 703 (1972)	1
HARRINGTON V. Richter, 562 U.S. 86, 102, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011)	1
MOONEY V. HOLOHAN, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935)	1
MORAN V. CLARKE 359 F.3d 1050, 1066 (8 th Cir. 2004)	1
U.S. V. AGURS, 427 U.S. 97, 104, 44 L.Ed.2d 342, 96 S.Ct. 2392 (1976)	1
U.S. V. GUJARDO - MARTINEZ, 635 F.3d 1056, 1059-61 (7 th Cir. 2011)	1
U.S. V. HOJAYAN 8 F.3d 1315 (9 th Cir. 1993)	1
U.S. V. PUILEY 661 F.3d 660, 665 (7 th Cir. 2010)	1
STATUTES AND RULES	

OTHER

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 judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Aug 30, 2023.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Aug 30, 2023, and a copy of the order denying rehearing appears at Appendix F.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Claim One.

DUE PROCESS is a well enjoyed constitutional right given to all American, and guarded by the 5th and 14th Amendment, at case at bar the district court nor A.U.S.A Howard Marcus is denying the conduct of the officers in planting the cell phones, the court has expressed in its ruling to deny relief that DUE PROCESS was not violated because (1) Petitioner failed to show how the officers may have known the cell phones were not his. Answer; Detective Black personally took possession of all cell phones as reports reveal. (2) Cell phones ownership is not a element of the charge offense. Answer; He or she in this case who owns the cell phones "provided" the email and bitcoins needed to secure the advertisement, He or she who owned the cell phones "maintained" a account, He or she would "advertised" the females broke the law. Lastly the court feels that cell phone evidence was not greatly used at trial. Three different agent testified at trial to contents of the cell phones, one for over a hour. DUE PROCESS is violated when evidence illegally obtained at trial was use. Knowingly, (see item 24-27 van inventory) See 21-3644 8th cir Appeals

Claim Two.

When a judge inflicts punishment based solely on information given to him by the probation officer, received from the prosecutor who knowingly recite a narrative which over a year before he knew or should have known to be false DUE PROCESS is violated. The report written by F.B.I lead agent Radolito could not be more clear, the email used to post ads on backpage.com on Dec 3 2015 was KaylaRay2@gmail.com. Not the petitioner. Minus enhancements the court was required to select a "base sentence" of 121-to-151 months. The erroneous sentence enhancement violated the 6th amendment. (see sentencing hearing); PSR and F.B.I agent Blake Downing testimony. Attach report will show, the petitioner's email was not used at any point. In the event, the misinformation played a major part in sentencing enhancement. The misstatement ballooned the points from 32 to 42, 360 to Life.

Claim One

STATEMENT OF THE CASE

ON DEC 3, 2015 OFFICERS OF ST CHARLES COUNTY POLICE DEPARTMENT INVESTIGATING ALLEGED ACTS OF PROSTITUTION QUESTION FIVE FEMALES AT THE POLICE STATION, PRIOR TO QUESTIONING (DOCUMENTS APPENDICES A) SHOWS THAT ALL FEMALES WERE ALLOWED TO GATHER THEIR CELL PHONES AND EXIT THE HOTEL ROOM. HOURS LATER AFTER QUESTIONING WAS COMPLETED A DETECTIVE BLACK (DOCUMENT APPENDICES B) LEFT, RETURNED AND RE-CONTACTED ALL FEMALES, GATHER EACH ONE CELL PHONE AND ALLEGELY FORWARDED THEM TO THE ST LOUIS CONTROL PROPERTY UNIT. (FOUR CELL PHONES IN TOTAL) ON DEC 4, 2023 THE PETITIONER ENTERED THE ST CHARLES COURT HOUSE AT WHICH TIME HE WAS TAKEN INTO CUSTODY, LOCKED IN A SECOND FLOOR INTERVIEW ROOM (DOCUMENT APPENDICES C) FOR EIGHT HOURS, WHILE THE INVESTIGATION CONTINUED THE BEFORE CITED DETECTIVE WAS INFORM THE PETITIONER WAS IN CUSTODY AND REQUESTED TO RETURN TO ST CHARLES. THE DETECTIVE AND OTHER OFFICERS CONDUCTING A SEARCH OF PETITIONER'S VAN ALLEGELY LOCATE FOUR CELL PHONES (DOCUMENT APPENDICES D) IN THE COURSE OF SEARCH. RECORDS WILL SHOW CELL PHONES LOCATED WERE THE SAME CELL PHONES REPORTED TO HAVE BEEN FORWARDED TO PROPERTY CONTROL UNIT. (DOCUMENT APPENDICES E) NEW TRIAL REQUEST SEE 4:18-CV-1923 GOVERNMENT'S BRIEF AGREEING, PHONE DID NOT BELONG TO PETITIONER Pg 10-12

Claim Two

IN EARLY JAN OF 2016 F. B. I AGENT NIKKIE BADOLETO FORWARDED TO A.U.S.A. HOWARD J. MARCOW HER REPORT OF INDIVIDUAL WHO USED THE EMAIL TO POST ALL ADVERTISEMENT ON BACKPAGE.COM. (DOCUMENT APPENDICES H) YET A.U.S.A. MARCOW FILED PURSUANT TO INTENT TO USE 404(B) EVIDENCE AND ENHANCEMENTS) THAT THE PETITIONER USED HIS EMAIL MAUPARKS3@aimail.com TO POST THE ADS. THIS WAS FALSE AND MISINFORMATION IN VIOLATING OF DUE PROCESS AND FAIR SENTENCE. THE LABELHOD ADDED OVER 100 MONTHS TO PETITIONER'S BASE LEVEL. VACATE SENTENCE. SEE SENTENCING HEARING

REASONS FOR GRANTING THE PETITION

There is a clearly established constitutional due process right not to be subject to criminal charges on the basis of false evidence that was deliberately fabricated by the government. *Caldwell v. City & County of San Francisco*, 899 F.3d 1105, 1112 (9th Cir 2018); (Quoting *Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir 2018)). A plaintiff prevails on a deliberate fabrication of evidence claim if he established that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir 2017), No sensible concept of ordered liberty is consistent with law enforcement cooking up its own evidence; see also *Ricciuti v. N.Y.C. Transit Authy*, 124 F.3d 123 (2nd Cir 1997); No arrest no matter how lawful or objectively reasonable, gives an arresting officer or his fellow officers license to deliberately manufacture false evidence against an arrestee. *U.S. v. Agurs*, 427 U.S. 97, 104, 49 L.Ed. 2d 342, 96 S.Ct. 2392 (1976); *Biglio v. U.S.*, 405 U.S. 150, 153, 31 L.Ed. 2d 104, 42 S.Ct. 703 (1972); *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935); see also *Moran v. Clarke*, 359 F.3d 1058, 1060 (8th Cir 2004)

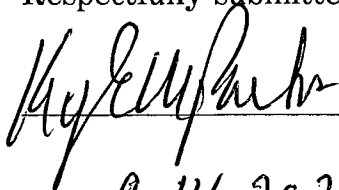
Claim two → A court relied upon some significant piece of misinformation at sentencing. A defendant does have a due process right to be sentenced based on reliable evidence, not speculation or unfounded allegations. The defendant must prove that inaccurate information tainted the choice of sentence. *U.S. v. Guajardo-Martinez*, 635 F.3d 1056, 1059-61 (7th Cir 2011); *U.S. v. Pulley*, 601 F.3d 660, 665 (7th Cir 2010); *Cullen v. Pinholster*, 563 U.S. 170, 181, 131 S.Ct. 1388, 174 L.Ed.2d 557 (2011); *Harrington v. Richter*, 562 U.S. 86, 102, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011). The government's wonton, malice assertion of email used violated. *U.S. v. Kojayan*, 8 F.3d 1315 (9th Cir 1993); *Donnelly v. Christofano*, 416 U.S. 637, 648-49, 94 S.Ct. 1868, 1874, 40 L.Ed.2d 431, 440 (1974); *Berger v. U.S.*, 245 U.S. 78, 84 (1935)

The honorable court is asked to remand this case back to the district court for new trial. When pray A-men.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kyell Smith", written over a horizontal line.

Date: 9-14-2023