DLD-036

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **23-2250**

JOSEPH BRODIE, Appellant

v.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 1:20-cv-12713)

Present: JORDAN, PORTER, and PHIPPS, Circuit Judges

Submitted is Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant appeals from the District Court's July 6, 2023 order, which dismissed in part and denied in part his amended 28 U.S.C. § 2255 motion. Appellant must obtain a certificate of appealability ("COA") to proceed with this appeal. See 28 U.S.C. § 2253(c)(1)(B). But a COA is not warranted unless Appellant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For substantially the reasons set forth in the District Court's opinion accompanying its July 6, 2023 order, Appellant has not made this showing. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, Appellant's request for a COA is denied.

By the Court,

s/ Kent A. Jordan
Circuit Judge

Dated: December 6, 2023

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

kr/cc: Joseph Brodie
Mark E. Coyne, Esq.
Steven G. Sanders, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPH BRODIE, Petitioner, v. THE UNITED STATES OF AMERICA, Respondent.	No. 20-cv-12713 (NLH) OPINION

APPEARANCE:

Joseph Brodie
121 Washington Street
West Pittston, PA 18643

Petitioner Pro se

Philip R. Sellinger, United States Attorney
Sara Aliya Aliabadi, Assistant United States Attorney
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HILLMAN, District Judge

Petitioner Joseph Brodie ("Petitioner") is proceeding pro se on his amended motion to vacate, set aside, or correct his federal sentence under 28 U.S.C. § 2255. ECF No. 20. See United States v. Brodie, No. 18-cr-00162 (D.N.J. Dec. 23, 2019) ("Crim. Case"). Respondent United States opposes the motion. ECF No. 47.

For the reasons below, the Court will dismiss the amended motion in part as procedurally defaulted and deny the amended motion in part.

I. BACKGROUND

Petitioner was convicted of two counts of threatening to assault and murder a United States congressman, 18 U.S.C. §§ 115(a)(1)(B) and (b)(4) (2018). The Court adopts and recites the facts underlying Petitioner's federal convictions as stated by the United States Court of Appeals for the Third Circuit in its opinion denying Petitioner's direct appeal:

> Brodie is a decorated war veteran who served in both the United States Marine Corps and the Army. In 2003, Brodie was seriously wounded while serving as a machine gunner in Iraq. He suffered a traumatic brain injury, seizure disorder, hearing damage, migraines, and post-traumatic stress disorder. These conditions require ongoing medical care. When Brodie later moved to New Jersey in 2017, he encountered multiple obstacles in receiving care from the Veteran's Health Administration and Veteran's Benefits Administration (collectively, the "VA").
>
> Brodie learned that New Jersey Congressman Frank LoBiondo was an advocate for veterans, and he contacted the Congressman's office for assistance. The Congressman's staffer and veterans' liaison Michael Francis was tasked with aiding Brodie. The pair spoke regularly, but the relationship steadily declined. In September 2017, Brodie made various threats to Francis and others through e-mails and a phone call. At one point, Brodie sent an e-mail asking for a face-to-face meeting with Congressman LoBiondo, attaching a Google Earth image showing the location of the Congressman's office. That same evening, Brodie told his fiancée [Dana Mednick] that he wanted to die in a gun fight. He also admitted to threatening the life of the Congressman's Chief of Staff, Jason Galanes, and stated he was not

> "going down without a fight." Concerned, his fiancée asked the New Jersey state police to perform a welfare check on Brodie.
>
> The state troopers arrived at Brodie's residence. Brodie exited his home with a firearm in hand. He explained that he did not want to shoot the officers, and instead, put the firearm into his own mouth, sank to his knees, and pulled the trigger. Twice the weapon failed to discharge. At that point, Brodie surrendered. He was taken into custody, read his Miranda rights, and eventually given a mental health evaluation. Several days later, Brodie was interviewed by the FBI. He was again read his Miranda rights, at which point he executed a written waiver of those rights. Brodie gave an inculpatory statement during the interview.

United States v. Brodie, 824 F. App'x 117, 119 (3d Cir. 2020) (footnote omitted).

The Court appointed Thomas Young, an assistant federal public defender, to represent Petitioner. Crim. Case No. 5.[1] Ralph Jacobs, Esq. was later substituted as counsel and filed several motions on Petitioner's behalf, including motions for release, bail review, motions to suppress evidence, and a motion to suppress Petitioner's statement. Crim. Case Nos. 17, 34, 38, 73, & 77. Magistrate Judge Joel Schneider denied Petitioner's motion for release from custody. Crim. Case No. 25.

This Court conducted oral argument on Petitioner's suppression motions over several dates, hearing testimony from Petitioner, Mednick, and different law enforcement officers.

[1] Petitioner was represented by different counsel during the criminal case. The Court refers to the attorneys by their names for clarity's sake.

July 6, 2018 Hr'g Tr., Crim. Case No. 54; July 16, 2018 Hr'g Tr., Crim. Case No. 57; July 26, 2018 Hr'g Tr., Crim. Case No. 58; and Aug. 27, 2018 Hr'g Tr., Crim. Case No. 68. The Court concluded that the United States had satisfied its burden and denied Petitioner's motion to suppress his statement. Crim. Case Nos. 67 & 86. It found that Petitioner was not in custody when officers arrived at his residence. The Court further concluded that Petitioner's statement to the FBI did not occur after an invocation of his Fifth Amendment right to counsel. Aug. 27, 2018 Hr'g Tr. at 13:7-12. See also Crim. Case No. 67 (Order denying and dismissing defense motions).

Petitioner withdrew his motion challenging the validity of the federal search warrants on his cellular devices after the parties agreed to have the FBI produce the phones to Cornerstone Discovery, a third-party vendor selected by Petitioner, "to download the contents of the devices and give copies those downloads to the defense." Crim. Case No. 52 (Order documenting procedure).

Trial began on October 1, 2018, ending in Petitioner's conviction on October 10, 2018. Crim. Case No. 103. Petitioner testified on his own behalf. Jacobs filed motions for a directed verdict and new trial on October 31, 2018. Crim. Case No. 109. The Court held oral argument on January 14, 2019 and denied the motions on the record. Crim. Case No. 123. The Court

appointed Petitioner new counsel at his request, naming Paul Sarmousakis, Esq. on March 27, 2019. Crim. Case No. 125. Petitioner again sought new counsel on June 6, 2019. Crim. Case No. 128. The Court appointed Gina Amoriello, Esq. Crim. Case No. 136.

Amoriello filed a motion for a new trial under Federal Rule of Criminal Procedure 33 on October 22, 2019. Crim. Case No. 167. The motion alleged Petitioner had received photographs taken during the search at his residence, "as well as fax records that confirm that Mr. Brodie faxed documentation to the State Police on prior occasions," from the attorney representing him in related state court proceedings. Id. at 2. Petitioner alleged these items corroborated his testimony but had been withheld by the United States.

The motion further argued that Petitioner had "received a hard-drive from [Amoriello] which included any and all evidence provided to her in his federal case, from all prior counsel as well as the Government. Upon review of the hard-drive discovery, Mr. Brodie saw (for the first time) an FBI Extraction Report dated June 4, 2018 (before the Motions hearing) . . . ." Id. at 3. According to the motion, the hard-drive included calls between Petitioner and Michael Francis that were not reflected on the AT&T bill that had been produced by the U.S House of Representatives. "The defense contends that the delay

in turning over this extraction (which had the evidence of calls being made), whether a mistake, oversight, or intentional, amounts to prosecutorial misconduct by denying [Petitioner] his right to potentially exculpatory impeachment evidence regarding the existence of calls prior to his testimony at the motions hearing." Id. at 4. The Court denied the motion on November 19, 2019. Crim. Case No. 176.

The Court sentenced Petitioner to a total term of 87 months imprisonment followed by a three-year supervised release period on December 23, 2019. Crim. Case No. 178. Petitioner appealed, and the Third Circuit affirmed the convictions and sentence. Brodie, 824 F. App'x 117.

Petitioner filed his original § 2255 motion on September 14, 2020. ECF No. 1. The Court sua sponte appointed counsel to represent Petitioner and ordered counsel to submit an amended motion. ECF No. 2. Shortly thereafter, Petitioner moved to terminate the appointment of counsel and proceed pro se. ECF No. 16. Petitioner submitted an amended pro se motion. ECF No. 20. The Court granted the motion to proceed pro se and permitted counsel to withdraw from representation. ECF No. 22. The Court also advised Petitioner of his rights under United States v. Miller, 197 F.3d 644 (3d Cir. 1999). Id. at 3. Petitioner responded that he wished to proceed with his amended

motion as filed, ECF No. 23, and the Court directed the United States to answer the amended motion, ECF No. 25.

II. STANDARD OF REVIEW

Section 2255 provides in relevant part that

> [a] prisoner in custody under sentence of a court established by 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 ... may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a).[2]

III. DISCUSSION

Petitioner makes numerous allegations of prosecutorial misconduct and ineffective assistance of counsel throughout the numerous filings in this matter. At the core of his motion are allegations that the United States improperly withheld exculpatory materials from him in violation of Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972). Specifically, Petitioner alleges the United States withheld his complete medical records from his September 21, 2017 evaluation at Inspira Bridgeton, Officer Luis Rivera-Guzman's CAD report, cellular records from AT&T, photographs from the search of Petitioner's residence, and SMS and fax

[2] Petitioner has been released from physical custody but remains on supervised release. A motion to amend the terms of his supervised release is before the Court in Petitioner's criminal case.

messages between Petitioner and Trooper Phil Smith. According to Petitioner, these materials impacted the Court's consideration of Petitioner's motion to suppress his statement and well as trial and sentencing. Petitioner also alleges trial counsel Jacobs was ineffective in connection with preparing Petitioner's defense.

A district court must hold an evidentiary hearing on a § 2255 motion unless the "motion and the files and records of the case conclusively show" that the movant is not entitled to relief. 28 U.S.C. § 2255(b); see also United States v. Arrington, 13 F.4th 331, 334 (3d Cir. 2021). Here, the record conclusively demonstrates that Petitioner is not entitled to relief. Therefore, the Court will not conduct an evidentiary hearing.

A. Reargument Bar

The United States argues that many of Petitioner's claims are barred because they were decided on direct appeal. ECF No. 47 at 27. "[A]s a general rule, federal prisoners may not use a motion under 28 U.S.C. § 2255 to relitigate a claim that was previously rejected on direct appeal." Foster v. Chatman, 578 U.S. 488, 519 (2016) (Alito, J., concurring). See also United States v. Travillion, 759 F.3d 281, 288 (3d Cir. 2014) ("[I]ssues resolved in a prior direct appeal will not be reviewed again by way of a § 2255 motion . . . ."); United

States v. DeRewal, 10 F.3d 100, 105 n.4 (3d Cir. 1993). "That rule is an embodiment of the law-of-the-case doctrine, which provides that 'when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.'" United States v. Thomas, 750 F. App'x 120, 124, (3d Cir. 2018) (quoting Farina v. Nokia Inc., 625 F.3d 97, 117 n.21 (3d Cir. 2010)). There are exceptions to this general rule, and the Court has "discretion to revisit the law of the case when '(1) new evidence is available; (2) a supervening new law has been announced; or (3) the earlier decision was clearly erroneous and would create manifest injustice.'" Id. (quoting Schneyder v. Smith, 653 F.3d 313, 331-32 (3d Cir. 2011)).

Petitioner argued on direct appeal that (1) "the District Court erred in denying his motion to suppress"; (2) "it was error for the District Court to apply sentencing enhancements under United States Sentencing Guidelines §§ 2A6.1(b)(1) and 3C1.1.4;" and (3) "the District Court erred in failing to grant certain downward departures or variances at sentencing." United States v. Brodie, 824 F. App'x 117, 120 (3d Cir. 2020). In his § 2255 motion, Petitioner again challenges this Court's application of U.S.S.G. § 3C1.1 and the Court's order denying the motion to suppress. He argues the complete Inspira records,

the Guzman CAD report, and AT&T records are "new evidence" that warrant relief.

The Third Circuit affirmed this Court's decision to deny Petitioner's motion to suppress his statements to the FBI. "As the District Court correctly determined, Brodie was not in custody when the officers first arrived at his house; thus no Miranda warnings were required. And it is undisputed that he executed a written waiver of his Miranda rights before speaking with the FBI. Moreover, the evidence at the suppression hearing amply supported the District Court's credibility findings." Brodie, 824 F. App'x at 120-21 (footnotes omitted). Petitioner argues that his "newly acquired evidence REFUTES [the Court's findings] as erroneous because the government disclosed altered medical records omitting the critical notes of the mental health evaluators regarding questions and conditions at Inspira Bridgeton." ECF No. 20 at 29. The Court has reviewed the numerous "evidentiary supplements" and "exhibits" filed by Petitioner and sees no reason to revisit this decision.

Petitioner also challenges the Court's application of the sentencing enhancement under U.S.S.G. § 3C1.1. "A two-level enhancement is permitted under § 3C1.1 when a defendant 'willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution or sentencing of the instant offense

of conviction.'" Brodie, 824 F. App'x at 122. The Court found this enhancement was appropriate due to Petitioner's false testimony that he (i) invoked his right to counsel; and (ii) received pornographic images from Francis. The Court noted a pattern of Petitioner making

> claims of prosecutorial misconduct, claims of Brady violations, assaults on the integrity of the agents, the State Police, everyone involved in the process, the complicated nature of the forensic examination, the famous photograph that's never been produced, all of it essentially a campaign of vilification of the government designed to complicate, confuse, complicate these proceedings, confuse the issues, distract from the Court claims, allegations in the indictment, and to wage a war of attrition against the government hoping that some smoke and fog would dissuade them from fully prosecuting this matter.

Sen. Hr'g Tr., Crim. Case No. 189 at 170:3-15. "[I]t is one thing to stand on your right to be silent, it's another thing to exercise your constitutional right to testify, but to lie under oath, to make accusations of fact, which had no support to begin with and have proven to be untrue, in order to complicate and prolong the proceedings I believe is fully within the range of 3C1.1." Id. 171:14-19. Petitioner raised this claim on direct appeal, and the Third Circuit concluded the application "[did] not rise to the level of clear error." Brodie, 824 F. App'x at 122.

Nothing in the voluminous submissions by Petitioner warrants reexamining this claim. The Court has reviewed the

numerous "evidentiary supplements" and "exhibits" filed by Petitioner and sees no reason to revisit this decision. Accordingly, these claims are dismissed as procedurally barred.

B. Procedural Default

The United States argues the amended petition should be dismissed as procedurally defaulted because it raises issues that could have been raised on direct appeal but were not. "As a collateral challenge, a motion pursuant to 28 U.S.C. § 2255 is reviewed much less favorably than a direct appeal of the sentence." United States v. Travillion, 759 F.3d 281, 288 (3d Cir. 2014). In addition to the bar on issues that were raised on direct appeal, "issues which should have been raised on direct appeal may not be raised with a § 2255 motion." Id. at 288 n.11 (citing United States v. DeRewal, 10 F.3d 100, 105 n.4 (3d Cir. 1993)).

Petitioner makes several allegations of prosecutorial misconduct, including, but not limited to, failing to disclose impeachment and exculpatory evidence, disclosing "altered" or "incomplete" evidence, and suborning perjury. ECF No. 20 at 17-20, ¶¶ 2, 4, & 12. He alleges law enforcement, among other things, omitted facts from the search warrant affidavit, conducted an illegal search of his phone, planted evidence, deleted evidence, failed to preserve evidence, withheld

evidence, tampered with his security system, and committed perjury. Id. ¶¶ 1, 3, 5-11, 13-14, & 17.

Petitioner further argues this Court erred by "failing to ensure sequestering of government witnesses in Motion to Suppress proceedings and during Brodie's trial" and "allowing photographs of Brodie's firearms assembled when at the time of his offense were either disassembled, not functioning properly, or not in his immediate possession and, subsequently, inflam[ing] the jury's sensitivities . . . ." Id. ¶¶ 15 & 18-19. These claims could have been raised on direct appeal but were not.

Petitioner's Rule 33 motion alleged that he had received photographs taken during the search at his residence, "as well as fax records that confirm that Mr. Brodie faxed documentation to the State Police on prior occasions," from the attorney representing him in related state court proceedings. Crim. Case No. 167 at 2. The motion further argued that Petitioner had "received a hard-drive from present counsel [Amoriello] which included any and all evidence provided to her in his federal case, from all prior counsel as well as the Government. Upon review of the hard-drive discovery, Mr. Brodie saw (for the first time) an FBI Extraction Report dated June 4, 2018 (before the Motions hearing) . . . ." Id. at 3. Petitioner's allegations of prosecutorial and police misconduct stem from

these documents, which Petitioner knew about prior to filing his direct appeal.

Petitioner argues that "[t]his Court reviewed that Motion and its evidentiary attachments and deemed the Motion as 'more of an issue (later) for a 2255.'" ECF No. 48 at 12. However, this comment was made by the Assistant United States Attorney, not the Court, reflecting the United States' position that Petitioner's argument was not appropriate for a Rule 33 motion. Nov. 6. 2019 Hr'g Tr., Crim. Case No. 188 at 11:8-16. Put differently, the United States was expressing its belief that claims of ineffective assistance of counsel based on Jacobs' decision not to investigate any discrepancy between the phone bill, which had been provided to both parties by congressional counsel, and the extraction reports from Petitioner's phones, which Jacobs possessed at the time of trial, were better suited to a § 2255 motion.[3] It was not a finding by this Court that all

[3] Jacobs subpoenaed Francis' phone records from the U.S. House of Representatives. Nov. 6, 2019 Hr'g Tr. Crim. Case No. 188 4:10-11. Congressional counsel intervened and provided a redacted one-page bill to both parties that showed two calls between Francis and Petitioner, exhibit D-301. Id. 4:13-16. The bill was not shown to the jury. In his motion for a new trial, Petitioner asserted that the FBI and Cornerstone extraction reports showed more than two phone calls between Petitioner and Francis. Crim. Case No. 167 at 3-4. Francis testified during trial that he spoke frequently with Petitioner throughout the spring and summer of 2017. Oct. 4, 2018 Tr. Crim, Case No. 110 42:24 to 43:3. The FBI and Cornerstone extraction reports were available to Jacobs prior to trial, and Petitioner conceded that the FBI extraction report was the "fullest record of any

the issues raised in the Rule 33 motion were appropriate for a § 2255 motion.

"[A] collateral challenge may not do service for an appeal." United States v. Frady, 456 U.S. 152, 165 (1982). See also United States v. Braddy, 837 F. App'x 112, 115 (3d Cir. 2020) ("A § 2255 motion does not function as a second appeal . . . ."). "[T]he general rule [is] that claims not raised on direct appeal may not be raised on collateral review unless the petitioner shows cause and prejudice." Massaro v. United States, 538 U.S. 500, 504 (2003).[4] Petitioner spoke at length about the alleged prosecutorial and law enforcement misconduct during sentencing, meaning he was fully aware of the factual basis of his claims prior to his appeal. Amoriello continued to represent Petitioner during his appeal and did not raise these claims to the Third Circuit.[5] Petitioner has not shown cause for failing to present these claims on direct appeal, so he is barred from presenting them now in his § 2255 motion. The Court

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transactions on Mr. Brodie's phones[.]" Nov. 6, 2019 Hr'g Tr. 12:8-12, 18:1-4.

[4] This does not apply to ineffective assistance of counsel claims. "A § 2255 motion is a proper and indeed the preferred vehicle for a federal prisoner to allege ineffective assistance of counsel." United States v. Nahodil, 36 F.3d 323, 326 (3d Cir. 1994).

[5] Petitioner makes no allegation of ineffective assistance of appellate counsel.

will dismiss the amended petition as procedurally barred, except for the ineffective assistance of counsel claims.

C. Ineffective Assistance of Counsel

Under Strickland v. Washington, a claim of ineffective assistance of counsel requires a petitioner to show that (1) defense counsel's performance was deficient and (2) the deficiency actually prejudiced the petitioner. 466 U.S. 668, 687 (1984). "The deficiency prong asks whether counsel's performance fell below an objective standard of reasonableness." United States v. Brunson, No. 20-3587, 2023 WL 3750596, at *2 (3d Cir. June 1, 2023) (citing Strickland, 466 U.S. at 687-88). This is a high standard, especially given the strong presumption that "counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689; United States v. Gray, 878 F.2d 702, 710 (3d Cir. 1989). A court must be "highly deferential" to a defense counsel's decisions and should not "second-guess counsel's assistance after conviction." Strickland, 466 U.S. at 689; Berryman v. Morton, 100 F.3d 1089, 1094 (3d Cir. 1996). "To overcome that presumption, the challenger must show that the posited strategy did not motivate counsel or that counsel's 'actions could never be considered part of a sound strategy.'" Brunson, 2023 WL 3750596, at *2 (quoting Thomas v. Varner, 428 F.3d 491, 499 (3d Cir. 2005)).

For the second Strickland prong, Petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. "The likelihood of a different result must be substantial, not just conceivable." Harrington v. Richter, 562 U.S. 86, 112 (2011).

"[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Id. See also United States v. Cross, 308 F.3d 308, 315 (3d Cir. 2002) ("Because failure to satisfy either prong defeats an ineffective assistance claim, and because it is preferable to avoid passing judgment on counsel's performance when possible, we begin with the prejudice prong.").

Most of Petitioner's ineffective assistance of counsel claims are rooted in Petitioner's September 21, 2017 medical

records from Inspira Health Center Bridgeton, ECF No. 53-54;[6] Guzman's CAD report, ECF No. 3 at 5-6; and extraction reports for Petitioner's cellular devices and fax machine, ECF No. 9. He argues the United States only produced 17 pages of his Inspira records, concealed the complete Inspira records, and withheld the CAD report and extraction reports.[7] The United States disputes that accusation and argues that it produced those items to counsel prior to trial. ECF No. 47 at 28-29. In his reply papers, Petitioner asserted that Jacobs failed to use these items as impeachment evidence:

> The findings of the Court in evidentiary hearings with regard to Brodie's invocations were not speculation or conjecture. The credibility findings were predicated on the credibility of the testimony heard and the evidence presented. The perjury of the NJSP regarding nearly every element of the encounter as well as the absence of impeachment evidence (possessed by Mr. Jacobs' yet not presented to the Court) was critical to sound

[6] The Court placed these documents under a temporary seal out of concern that they included sensitive identifying information, i.e., Petitioner's full birthdate and copies of Petitioner's and Mednick's drivers' licenses. ECF No. 51. The Court instructed the seal to be lifted in 20 days unless the United States objected. Id. The Court has reviewed the documents and finds that the temporary seal will be lifted as appropriate redactions have been made, the rest of the material is not the kind of information that would normally be entitled to sealing, and the United States has not submitted any objections to the lifting of the seal.

[7] Although the Court has previously dismissed the underlying Brady claims as procedurally defaulted, it is necessary for both clarity's sake and for completeness of the record to address some background of the facts as part of resolving the ineffective assistance of counsel claims.

> credibility determinations as it is to claims of ineffective assistance of counsel.

ECF No. 48 at 9-10 (emphasis in original); see also ECF No. 36 at 1 (faulting Jacobs "for not detecting [the AUSA's] deception"). He continues to assert the Inspira records were incomplete, but shifts the blame from the US Attorney's Office to the VA. See, e.g., id. at 3 (suggesting the subpoenaing of "the VA employee whose name is listed as requesting those September 20, 2017 Inspira medical records 'for billing purposes.' By doing so, we would identify why that person renumbered/removed 2/3 of the original documentation . . . ."); id. at 6 ("The VA **altered** Brodie's 09/21/2017 records and [the US Attorney's Office] used it to the government's gain and profit." (emphasis in the original)). The Court interprets Petitioner's submissions as a concession that Jacobs did receive the CAD and certain extraction reports prior to trial and limits its ineffective assistance analysis of those documents to the decision not to use them on Petitioner's behalf. It also considers Petitioner's claim that Jacobs was ineffective for failing to request the complete Inspira records and other extraction reports.

1. Failure to Present Expert Testimony

Petitioner argues he received ineffective assistance of counsel during the motion to suppress his statements to the FBI

because Jacobs should have called Dr. Gerald Cooke as an expert witness "to ascertain his ability to consent to the F.B.I. interview . . . that the interview occurred while Brodie was in 'a medication induced withdrawal state' at the time of that interview" and was "denied calls to his lawyer and in the cruel, inhumane conditions of confinement" of the Cumberland County Jail. ECF No. 20 at 20 ¶ 16.

Dr. Cooke testified on Petitioner's behalf at sentencing as an expert in forensic psychology. Sen. Hr'g Tr. He testified that he believed that Petitioner was experiencing "moderate depression at the time of the offense" and was a low risk for recidivism. Id. 17:6-9, 18:7-13. He further opined that the "withdrawal symptoms [Petitioner] was experiencing when he was unable to get his seizure medication and antidepressant medication from the VA . . . was a major contributor to this offense behavior." Id. 20:8-11. Dr. Cooke did not testify about Petitioner's ability to consent to an interrogation and stated that he had not reviewed any testimony from the pretrial hearings. Id. 33:4-19.

Petitioner has not shown that he was prejudiced by Jacobs' decision not to call Dr. Cooke as a witness during the suppression hearing. Petitioner has not presented a sworn statement from Dr. Cooke stating that he was available to testify during the suppression hearing and would have testified

that Petitioner was unable to consent to the FBI interview. "In the § 2255 context, other courts have similarly found that a petitioner needs to provide a sworn statement of fact from the proposed witness regarding what they would have testified to if a § 2255 petitioner is to establish Strickland prejudice." Baskerville v. United States, No. 13-5881, 2018 WL 5995501, at *13 (D.N.J. Nov. 15, 2018), aff'd No. 19-3583 (3d Cir. Aug. 13, 2021). See also Duncan v. Morton, 256 F.3d 189, 202 (3d Cir. 2001); Huggins v. United States, 69 F. Supp. 3d 430, 446 (D. Del. 2014) (noting that movant did not provide an affidavit from the witness stating that he would have been available to testify and describing his potential testimony), certificate of appealability denied, No. 14-4129 (3d Cir. Mar. 9, 2015).

Where a petitioner asks the court to "speculate both as to whether [a witnesses] would in fact have testified on his behalf and as to what [the witness's] testimony would have been," rather than presents the court with sworn testimony, he will not be able to establish prejudice. Duncan, 256 F.3d at 201-02 (citing United States v. Gray, 878 F.2d 702, 712 (3d Cir. 1989)). In the absence of a sworn statement from Dr. Cooke describing his testimony, the Court cannot conclude that Jacobs' failure to call him as a witness was error or prejudiced Petitioner. See Baskerville, 2018 WL 5995501, at *13 ("Given this omission, petitioner's declaration as to what these

witnesses would have testified to amounts to speculation that is insufficient to grant him relief, or at a minimum, conduct an evidentiary hearing on this claim with respect to these two witnesses."). Petitioner is not entitled to relief on this claim.

2. Failure to Obtain and Present Inspira Records

Petitioner also asserts Jacobs should have obtained his "complete" Inspira medical records. ECF No. 20 at 24. Petitioner argues the incomplete 17-page document from Inspira that was given to Jacobs by the United States was missing information that would have supported his claim that he invoked his right to counsel and impeached the credibility of the United States' witnesses at the suppression hearing. "The more complete medical records detail a custodial interrogation and a statement made by the petitioner e.g. 'denial of threats' by the petitioner [patient]." Id. at 14 (brackets in original). "The Inspira Medical records of 9/21/17 clearly demonstrate the petitioner was questioned and DENIED 'threatening the congressman or anyone at his office' while handcuffed to a bed and a 'state trooper at his bedside' . . . ." Id. He further argues "the records demonstrate Mednick recanted her [coerced] recorded interview with the NJSP and reported 'patient [MAY] have made threats, but not that she was aware of.'" Id. at 21 (brackets in original).

The Court has reviewed the Inspira records that Petitioner submitted and concludes that he has not shown he was prejudiced by Jacobs' failure to present them during the suppression hearing. The submitted documents do contain more than the 17-pages that were turned over in discovery,[8] but there is nothing in the missing pages that reasonably would have led the Court to grant the motion to suppress. See ECF Nos. 53-54.[9] The additional pages do not support Petitioner's claim that he was subjected to a custodial interrogation or that Mednick recanted her statement to NJSP. In fact, the records contain material that likely would have damaged Petitioner's case.

For example, the "nurse notes" that Petitioner asserts are exculpatory because they note that he denied making threats also include the observation that "Ms. Mednick was inconsistent when reporting details of patient's alleged threats to the Congressman," ECF No. 53-1 at 7, and "Ms. Mednick says patient is a 'compulsive liar', as well." ECF No. 54 at 8. The notes further reflect that Mednick "seemed to be focused on keeping patient out of jail" and that the physician "feels there is a

[8] To be clear, the Court does not find that the United States suppressed the medical records.

[9] Petitioner also argues that the alteration and withholding of his medical records violates the "Federal Records Act", 18 U.S.C. §§ 641, 2071(b). ECF No. 48-2 at 3-4. These two criminal statutes do not apply to Petitioner's case and are not a basis for relief under § 2255.

degree of manipulation to get patient from being jailed." ECF No. 54 at 8-9. These observations are consistent with the Court's findings at the suppression hearing. Therefore, Petitioner has not shown he was prejudiced by Jacobs' failure to obtain these records and present them at the hearing.

3. Failure to Present Guzman CAD

Petitioner argues Jacobs erred by failing to use the CAD report created by Officer Guzman to impeach his testimony as well as the testimony of other officers. "The Guzman CAD . . . demonstrates (6) [NOT 4] troopers were on the scene from 4:09:30 p.m. until [Petitioner's] recorded transport at 4:45:16p.m. nearly (36!) minutes passed between the initial encounter and the petitioner being handcuffed." ECF No. 20 at 29 (parentheses and first brackets in original). He further claims the CAD report "conceal[ed] Miranda invocation (e.g. who was present at the time and scene of arrest, their order of arrival, the duration of the response and encounter, who read vs who witnessed officers at Port Norris and the questioning that occurred at Miranda after being read charges . . .)." Id. at 32-33. "[T]he NJSP deliberately omitted the presence of trooper Townsend and the off-duty detective Steven Hillesheim 52 seconds & 57 seconds prior to any of the troopers referenced as a basis for their warrants, their reports of the investigation, and the USCP's reports for investigation." ECF No. 48 at 19. "Either

of which, 52 or 57 seconds between 7555 and 7179 or 7534, is enough time to invoke Miranda exactly as Brodie testified and regardless of the crude manner in which he did so." Id.

There is not a reasonable probability that the Court would have granted the suppression motion had Jacobs introduced the Guzman CAD report during the hearing. The Court concluded, and the Third Circuit agreed, that Petitioner "was not in custody when the officers first arrived at his house; thus no Miranda warnings were required." United States v. Brodie, 824 F. App'x 117, 120 (3d Cir. 2020). The number of officers on the scene or the order of their arrival does not change the Court's analysis. See United States v. Scott, 590 F.2d 531, 532-33 (3d Cir. 1979). Moreover, Guzman testified during the hearing that he did not recall whether more than four people responded to the scene because he "was so focused on [Petitioner]" but admitted it was possible. July 16, 2018 Hr'g Tr. 128:22-23, 129:2-4. He further admitted he could not recall the timing of specific events because "everything happened so fast . . . ." Id. 135:3-4.

Petitioner's argument that the 36 minutes reflected in the CAD report belies this assertion and "proves the NJSP was on scene for more than 36 minutes before arresting and transporting Brodie, thereby refuting ALL accounts of those same troopers sworn testimony" is not persuasive. ECF No. 48 at 17. It is

perfectly reasonable that someone's perception of the passage of time would be skewed when they are in the middle of a high-stress situation. Moreover, Jacobs questioned the officers about discrepancies in timing of the events and specifically the timing of the Miranda warning. The Court concluded that "whatever their confusion may be about timing," the officers consistently testified that there was no effort to interrogate Petitioner while he was in NJSP custody. The Guzman CAD report does not add anything meaningful to the analysis with generalized entries of dispatch, arrival, and "continuing investigation" times.

For example, Petitioner alleges the CAD report "indisputably refutes Hanlin's testimony; Hanlin was at 7188 Ackley Road with detective DelSordo (Unit 6261) from 9:20 p.m. until 1:19 a.m. on 9/21/17." ECF No. 20 at 13. "Hanlin could not have [possibly] been present for Miranda as he is listed at the scene during the time in which he testified under oath to have been 'the one who read Miranda' to the petitioner." Id. (brackets in original).[10] There is an entry for Unit 6261 at 10:13 p.m. for "continuing investigation." ECF No. 47-2 at 5.

[10] Petitioner additionally argues that the signature on the Miranda card is "forged/altered." ECF No. 20 at 13. This contradicts Petitioner's sworn testimony at the Miranda hearing that it was his signature on the card. July 6, 2018 Hr'g Tr. 75:18-24.

It does not state where the unit was continuing its investigation, so the report does not "indisputably" prove that Hanlin did not administer Miranda warnings at the station around 11:25 p.m.

The Court denies relief on this ground as Petitioner has not satisfied the Strickland prejudice prong.

4. Failure to Present Extraction Reports

Petitioner further claims that Jacobs failed to present reports from Petitioner's phones that allegedly show that New Jersey State Police officers deleted messages that "exist as evidence of detailed knowledge of the security cameras capabilities at the petitioner's scene of arrest." ECF No. 20 at 14. See also ECF Nos. 8 & 9. "The government does not want to discuss the impeachment evidence that exists in those remaining SMS text messages between Brodie and NJSP trooper Phillip Smith. In those SMS text messages, trooper Smith admits to receiving faxes, information on extremist groups acquired via Brodie's investigative journalism, and evidence of financial impropriety and corruption between the VA and former congressman." ECF No. 48 at 16.

Petitioner also states Jacobs did not obtain and present his fax records that showed "fax transmissions from the petitioner to trooper Smith regarding his attempts to register and surrender firearms as well as the fruits of his journalistic

work of impropriety regarding the VA Choice program." ECF No. 20 at 23. He alleges these records would have shown that "NJSP deliberately parked their troop cars on the shoulders of NJ 718 (Ackley Road) more than 50 yards away from the petitioner's residence to evade these cameras at the time of his arrest." Id. "Under these circumstances, the petitioner's statement should have been suppressed as inadmissible." Id.

The Court has reviewed the reports and finds there is nothing in them that would create a reasonable probability of a different result at the suppression hearing or at trial. Petitioner has failed to satisfy Strickland, and the Court will deny § 2255 relief.

5. Failure to Investigate Violation of Sequestration Order

Petitioner also claims that Jacobs failed to investigate a violation of the Court's sequestration order during the Miranda hearing. Petitioner alleges that he emailed Jacobs about "a witness who observed a trooper remarking 'I think I paused mine' (his bodycam) while sharing their testimony e.g., line of question and their answers during evidentiary hearings, July 2018. Another trooper stated how he 'wished his was on' (body camera)." ECF No. 48 at 16-17 (parentheses in original). "Most reprehensible, is that Mr. Jacobs was emailed about these trooper's remarks and sharing testimony under sequester as they were happening and never requested a proper inquiry. The

Petitioner is in possession of these emails. Mr. Jacobs did not take proper actions to deter it from happening on the second day of testimony (July 26th, 2018)." Id. at 17.

Despite flooding the docket with voluminous and repetitive filings, Petitioner has not produced these emails or a sworn statement from the alleged witness about this claim. He did, however, submit an email to that he sent to Jacobs dated July 24, 2018 with the subject line "RE:hearing July 26" in which Petitioner writes: "Thank you! Awesome job!" ECF No. 50-5 at 1. Petitioner has not carried his burden of proof on either prong of the Strickland analysis, so the Court will dismiss this claim.

6. Assorted Ineffective Assistance Claims

Petitioner's remaining ineffective assistance claims argue that "Jacobs failed to deliver (some) discovery in a timely matter. Mr. Jacobs failed to meet with Brodie and review evidence that Brodie articulated in emails with Jacob as corroborating his testimony. Mr. Jacobs failed to request subpoenas for evidence in a timely manner prior to evidentiary hearings." ECF No. 48 at 14. He further alleges ineffective assistance in connection with failing to present the evidence of prosecutorial and law enforcement misconduct alleged throughout the amended motion. ECF No. 20 at 3.

"The burden is on petitioner to demonstrate that the representation provided him by counsel was constitutionally inadequate." U. S. ex rel. Johnson v. Johnson, 531 F.2d 169, 174 (3d Cir. 1976). Upon review of the papers submitted in support of and in opposition to the motion, and the relevant materials contained in the record of the underlying criminal matter, this Court finds that Petitioner has not satisfied this burden.

7. Summary

Petitioner's various allegations raised in the Motion and elsewhere are serious - if true - and this Court treats them as such. At sentencing, the Court noted that it had "spent countless hours trying to get to the bottom of Mr. Brodie's claims about prosecutorial misconduct, Brady violations, missing evidence, destroyed evidence." Sen. Hr'g Tr. at 170:16-19. The same may be said about its efforts to review his § 2255 motion fairly and completely. At the end of the day, however, Petitioner has done nothing more than continue his pattern of making "outlandish, outrageous, false, apparently false, certainly lacking in evidence accusations against literally everyone who has had anything to do with this case." Id. 171:11-13. He continues to assert the existence of evidence that has never materialized despite submitting literally

thousands of pages. Therefore, the Court will deny relief under § 2255.

IV. CERTIFICATE OF APPEALABILITY

An appeal may not be taken to the court of appeals from a final order in a § 2255 proceeding unless a judge issues a certificate of appealability on the ground that "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This Court will deny a certificate of appealability because jurists of reason would not find it debatable that portions of the amended motion are procedurally defaulted and that Petitioner has not made a substantial showing of the denial of a constitutional right.

V. CONCLUSION

For the reasons stated above, the Court will deny the amended § 2255 motion.

An appropriate order follows.

Dated: July 6, 2023
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPH BRODIE, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	:	Civ. No. 20-12713 (NLH) ORDER

For the reasons expressed in the accompanying Opinion,

IT IS on this 6th day of July, 2023,

ORDERED that the amended motion to correct, vacate, or set aside Petitioner's federal conviction under 28 U.S.C. § 2255, ECF No. 20, is DISMISSED AS PROCEDURALLY BARRED in part and DENIED in part; and it is further

ORDERDED that the temporary seal on Docket Entries 52, 53 and 54 shall be LIFTED; and it is further

ORDERED that no certificate of appealability shall issue, 28 U.S.C. § 2253(c)(2); and it is finally

ORDERED that the Clerk of the Court shall send copies of this Opinion and Order to Petitioner by regular mail and mark this case CLOSED.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 18-162-NLH
	:	
JOSEPH BRODIE	:	

NOTICE OF MOTION

PLEASE TAKE NOTICE that on a date and time to be set by the Court, Defendant Joseph Brodie, by and through undersigned counsel, will move for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

In support of said motion, Defendant relies upon the arguments made herein as well as the attached exhibits.

Respectfully submitted,

S/ Gina A. Amoriello

GINA A. AMORIELLO, ESQUIRE
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(856) 661-0018
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DATED: 10/22/19

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 18-162-NLH
	:	
JOSEPH BRODIE	:	

MOTION FOR NEW TRIAL PURSUANT TO RULE 33 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Defendant Joseph Brodie, by and through undersigned counsel, hereby moves for a new trial in the interests of justice based on newly discovered evidence, and in support hereof, states the following:

1. Mr. Brodie was convicted on October 10, 2018, after trial by jury, of Counts 1 and 2 of the instant Indictment, Threatening to Murder an Official of the United States in violation of 18 U.S.C. §§ 115(a)(a)(B) and (b)(4).
2. Trial counsel filed timely post-trial motions on October 31, 2018, seeking both a directed verdict of acquittal and a new trial, both of which were denied by the Court.
3. A third attorney was appointed to represent Mr. Brodie for sentencing, but that attorney was relieved when the defendant decided to proceed pro se, with present counsel acting as "stand-by" counsel.
4. In court at the last status listing, Mr. Brodie provided undersigned counsel photographs that he received from his Public Defender representing him in the related pending State Indictment, Kimberly A. Schultz, Esquire, which were

taken by the State Police when executing the search warrant in this case, as well as fax records that confirm that Mr. Brodie faxed documentation to the State Police on prior occasions. A portion of these photos are attached hereto as Exhibit A (as well as the fax documentation from Ms. Schultz).

5. In these photos, the following can be observed:

(a) On page 1, the rifle has the orange hunting tag attached in both top photos (which was how it appeared when recovered) yet this tag is missing in the bottom photo used at Mr. Brodie's trial;

(b) On page 2, an unassembled gun is also depicted as found, yet it was shown to the jury assembled;

(c) On pages 3 and 4, the wires from his surveillance cameras are shown hanging in front of the shelf in one photo then removed in the others;

(d) Page 5 also depicts the wires shown at Mr. Brodie's residence.

6. Exhibit A also shows various photos of the surveillance cameras at the residence which were not shown to the jury after Mr. Brodie was questioned on cross-examination about their existence.

7. During the course of his pro se representation, Mr. Brodie received a hard-drive from present counsel which included any and all evidence provided to her in his federal case, from all prior counsel as well as the Government.

8. Upon review of the hard-drive discovery, Mr. Brodie saw (for the first time) an FBI Extraction Report dated June 4, 2018 (before the Motions hearing); excerpts of same are attached hereto as Exhibit B.

(a) Call #s 27, 29, 40, 41 and 42 all pertain to M.F. There are five (5) calls on this report but only two (2) are reflected on trial exhibit D-301, which is also attached hereto to Exhibit B.

(b) None of these calls appear in the official AT&T records used at trial as Exhibit D-300, which is attached hereto as Exhibit C.

(c) Further, the Cornerstone Extraction report for this device (Exhibit D herein) shows that the following calls were also missing from the other records: #18, 19, 21, 22, 47, 48, 49, 139, 282, 292, 293, 387, 388, 447.

9. Mr. Brodie seeks a new trial in the interests of justice, as AUSA Aliabadi stated on the record, on July 6, 2018, at pages 96-97, that the Government had "cracked into two of the devices" and was now handing over entire downloads of those two devices. This was an entire month after the FBI extraction was complete, and it was withheld from the defense prior to beginning motions hearings. The defense contends that the delay in turning over this extraction (which had the evidence of calls being made), whether a mistake, oversight, or intentional, amounts to prosecutorial misconduct by denying him his right to potentially exculpatory impeachment evidence regarding the existence of calls prior to his testimony at the motions hearing.

10. The credibility of Mr. Brodie as a witness was attacked by the Government during his trial, and these records stand to corroborate his testimony regarding the existence of said calls.

11. Had the jury known that Mr. Brodie was telling the truth in that regard, the verdict likely would have been different.

WHEREFORE, for the reasons set forth above, it is respectfully requested that this Court grant the requested trial continuance and extend the deadline by which pretrial motions must be filed.

Respectfully submitted,

S/ Gina A. Amoriello

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gamorielloesq@gmail.com

DATED: 10/22/19

CERTIFICATE OF SERVICE

Gina A. Amoriello, Esquire, hereby certifies that, on this day, a true and correct copy of the foregoing was served, via efile and/or hand-delivery, upon all parties of record.

Respectfully Submitted:

S/ Gina A. Amoriello

GINA A. AMORIELLO, ESQUIRE

DATED: 10/22/19

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 18-162-NLH
	:	
JOSEPH BRODIE	:	

DEFENDANT'S REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR NEW TRIAL PURSUANT TO RULE 33 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Defendant, Joseph Brodie, respectfully requests that a new trail be awarded, as requested in his motion for a new trial dated October 22, 2019, and in support thereof, states as follows.

Pursuant to Rule 33(a), upon defendant's motion, this Court may vacate judgment and grant a new trial if the interest of justice so requires, provided the defendant meet the timeliness requirements of subsection (b). If said motion is based on "newly discovered" evidence, the defendant has three (3) years in which to file for relief under subsection (b)(1). Mr. Brodie contends that direct contradiction between the FBI extraction, the AT&T bill, and the Cornerstone extraction, attached as exhibits B, C and D, respectively, to his initial motion qualify as "newly discovered" evidence.[1]

While newly discovered evidence normally applies to evidence that was not in the possession of defense counsel at the time of trial, Mr. Brodie submits that because he

[1] Defendant is basing his reply only in regard to the phone records. As to the photos initially attached to his motion, any video recordings and/or body cam issues will be reserved for a future 2255 Motion if applicable.

himself did not have this phone evidence, this Court can still award him a new trial on this basis. In *Shore v. Warden, Stateville*, 942 F.2d 1117, 1123 (7th Cir. 1991), a case involving newly discovered evidence under Rule 33, the Circuit Court (in footnote 5) discusses what "*the petitioner* reasonably either did not know about....or could not have presented...at an earlier proceeding." (emphasis in original). Mr. Brodie first saw the FBI extraction report when present counsel provided him with a hard-drive containing all documents in four boxes which she received from prior counsel and had scanned for the defendant while he was proceeding *pro se*. The pending Motion for a New Trial was filed within five (5) days thereafter.

According to the trial testimony, Michael Francis told the jury that he always used his government phone to communicate with Mr. Brodie and never used a personal number to communicate with him. (Trial Transcript, 10/2/18 at p. 39). This type of question was not asked of Mr. Brodie during his trial testimony. (Trial Transcript, 10/4/18 at ps. 333-434).

The Government's contention in its reply to defendant's motion that it seems "likely that, as a matter of practice, AT&T does not list *any* calls in its billing records that last for less than a minute" (at p. 10 fn 7) is bellied by the record and defense attachment to motion Exhibit C (which was trial exhibit D-300), wherein there are numerous calls lasting under a minute, some even "0" seconds. (see, i.e., page 3 of exhibit), yet the charged call is missing (see page 8). The FBI extraction, however, shows these "missing" calls, that Mr. Brodie contends may have been deliberately "wiped" from the AT&T records. Hence, Mr. Francis' AT&T records (rather than just a one-page billing statement) should have been provided.

Regardless of whether there was testimony regarding the conflicting records/calls at trial, had this evidence been available to Mr. Brodie, he would have insisted that his trial counsel bring the contradictions in the records to the attention of the jury. The purpose of same would have been to show the jury that Mr. Brodie had a legitimate reason for his actions, which he continues to claim were not "threats."

WHEREFORE, for the reasons set forth above, it is respectfully requested that this Court grant the a new trial and/or a Subpoena pursuant to Rule17(c) for the AT&T records for the personal phone of witness Michael Francis.

Respectfully submitted,

S/ Gina A. Amoriello

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Westmont, NJ 08108
(856) 661-0018
gamorielloesq@gmail.com

DATED: 11/3/19

CERTIFICATE OF SERVICE

Gina A. Amoriello, Esquire, hereby certifies that, on this day, a true and correct copy of the foregoing was served, via efile and/or email, upon all parties of record.

Respectfully Submitted:

S/ Gina A. Amoriello

GINA A. AMORIELLO, ESQUIRE

DATED: 11/3/19

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **23-2250**

JOSEPH BRODIE, Appellant

v.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 1-20-cv-12713)

SUR PETITION FOR PANEL REHEARING

Present: JORDAN, PORTER, and PHIPPS, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby ORDERED that the petition for rehearing by the panel is denied.

BY THE COURT,

s/ Kent A. Jordan
Circuit Judge

Dated: December 22, 2023

kr/cc: Joseph Brodie
Mark E. Coyne, Esq.
Steven G. Sanders, Esq.