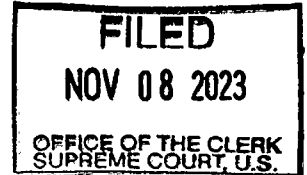


23-6730

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



BRYANT CALLOWAY — PETITIONER (Pro) se
(Your Name)

United States of America ^{vs.} — RESPONDENT(S) Jonathan B. Ortiz
(AUSA)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

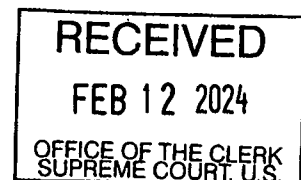
PETITION FOR WRIT OF CERTIORARI

BRYANT CALLOWAY
(Your Name)

USP-Lee P.O Box 305
(Address)

Jonesville V.A 24263
(City, State, Zip Code)

(Phone Number)



Question Presented

Should jurists debate the denial of a constitutional right or whether the district was correct in its procedural rulings when the violation is perjured Grand jury testimony that wasn't corrected by the court?

Parties to the proceeding

The caption identifies all parties in this case.

Parties to the Proceeding

BRYANT CALLOWAY (Pro-se)

Jonathan B Ortiz (AUSA)

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Opinion Below

The opinion of the third Circuit affirming the districts Court judgment is attached to the petition

Jurisdiction

The United States District court for the Eastern District of Pennsylvania had jurisdiction over this Federal criminal case pursuant to 18 USC 3231. The Court of Appeals had jurisdiction pursuant to 28 USC 1291 and 18 USC 3742. That court entered judgement on Sept 8, 2023. This petition is timely filed within ninety days after the judgement is issued. The jurisdiction of this court is invoked pursuant to 28 USC 1254(1)

Constitutional Provision Involved

The Fifth Amendment to the United States Constitution provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury... nor be deprived of life, liberty, or property, without due process of law..."

No. 23-2029

IN THE
SUPREME COURT OF THE UNITED STATES

October Term ~~2022~~ ²⁰²³

BRYANT CALLOWAY,

Petitioner,

v.

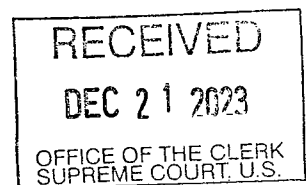
UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner Bryant Calloway respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit in this case.



Statement of the Case

1 This case presents an important question whether perjury before the grand jury, that affects the fundamental fairness of the prosecution, is the type of violation that jurists should or would debate.

2 Before The grand jury I was identified as a shooter based on the direct perceptions of Thomas "Valdo" Guilford, who presented himself as an all knowing and omnipresent witness about all the players in and activities of the competing drug organizations in that section of West Philadelphia, and my actions and the Victims murder, in particular. Guilford testified he saw various things from his brother's stoop on the southeast side of a playground. First, he saw me talking heatedly to a rival drug dealer at a nearby block party. Next, he saw me enter the playground from the southeast corner. Finally, after hearing multiple shots fired, he saw me trotting away holding a gun from that same direction and even locked eyes with me. He also testified that I confided in him about a motive before the shooting and confessed after the murder. Guilford was blind at the time of trial but had limited vision when the events occurred. For later helping the rival drug dealers locate me in Nov 2013, which resulted in me being shot many times, Guilford pled guilty to conspiring to use a firearm and

aiding and abetting use of a firearm.

3 I was also identified as the shooter before the grand jury based on hearsay testimony of the rival drug dealer and a compilation of law enforcement officers

4 Guilford's testimony was perjurious and incredible before both the grand and petit juries. Much of his trial testimony differed significantly from prior statements he made to the grand jury. The trial testimony was not a different recollection, a flaw in memory, a minor inconsistency, or a mere discrepancy from his grand jury testimony. Instead, he just flatly denied making any of the inconsistent statements. His eyewitness and confessional testimony did not change from the grand jury to trial, even though two trial witnesses made clear that his eyewitness testimony was false. A new eyewitness who fled from the shots, as well as an expert in strike mark identification who collected evidence from the scene and testified about bullet trajectory established that the shots had been fired from the northwest side of the playground, not the southeast side, the scenario compelled by Guilford's description of events.

5 I timely appealed to the Third Circuit that the

governments knowing use of perjured testimony before the grand jury was structural error with prejudice and my indictment should be dismissed.

- 6 On September 8 2023, the Third Circuit affirmed my conviction stating that jurists of reason would not debate whether my motion states a valid claim of the denial of a constitutional right or whether the district court was correct in its procedural rulings quoting *Slack v. McDaniel* 529 US 473, 484 (2000)

Reasons for Granting the petition

This court should grant the Writ of certiorari because the decision below is inconsistent with this court's precedent. They also let stand clear perjury and government misconduct go unnoticed as long as jurists don't recognize the error. This issue raises Fifth amendment grand jury and due process concerns. This court's intervention is necessary to maintain the fundamental fairness of the criminal process. See Sup ct R 10(c)

I. An indictment grounded in material perjury to the grand jury is a constitutional violation that should be debated by jurists, especially when the violation was never corrected by the courts.

In *United States v Williams* 504 US 36 (1992) this court clarified the type of prosecutorial misconduct before the grand jury for which a court could exercise its supervisory powers and dismiss an indictment. The misconduct must violate a rule of criminal procedure, statute, or constitutional guarantee, one of the few clear rules which were carefully drafted and approved by congress and this court to ensure the integrity of the grand jury's functions. Williams specifically cited the statutory prohibition against making a false declaration before a grand jury, set forth in Title 18 USC 1623 as a statutory violation that would justify dismissal of an indictment based upon misconduct before the grand jury.

The problem that occurred below, where perjurious testimony was primarily responsible for causing the grand jury to return an indictment charging murder is a violation that jurists would consider the denial of. Perjury before the grand jury threatens the fair and effective administration of justice. It is axiomatic that a defendant is denied due process when the prosecution knowingly uses perjured testimony or allows untrue testimony to go uncorrected. See *Giglio v United States*

405 US 150, 153-54 (1972). See also *United States V Agurs*, 427 US 97, 103 (1976) explaining that the presentation of perjury involves a corruption of the truth seeking function of the trial process. As this court has explained perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are therefore imperative. *United States V Mondragon*, 425 US 564, 576 (1976) Unless this court clarifies that jurists would debate the correctness of this ruling or would debate the denial of a constitutional right then there can be no effective restraint against such misconduct.

Here where the perjurious witness provided the two most powerful types of proof to the grand jury, eyewitness and confessional evidence, See *Napue V Illinois* 360 US 264, 267 (1959) examining perjury as it related to a key eyewitness. I can establish that jurists would and should consider the denial of this constitutional right. Instead the Third circuit found that jurists wouldn't debate this issue or if the district court was correct in its procedural rulings thereby foreclosing appellate review of a significant error.

II The Third circuit's decision failed to follow this court's precedent addressing perjury and other errors before the grand jury.

The Third circuits decision finding that jurists wouldnt debate the correctness of the district courts procedural rulings or if I've made a valid claim of the denial of a constitutional right basically sidesteps an important issue, whether the governments knowing use of perjured testimony is the type of misconduct that would justify dismissal of an indictment. They quote Slack v McDaniel to justify constitutional violations, but in Slack v McDaniel this court overturned the lower courts decision. Here the material perjury that the court let go uncorrected was both a statutory violation and it struck at the core of the criminal justice system. Accordingly this case presents an ideal vehicle to determine if material perjured grand jury testimony should be left unreviewable.

Conclusion

For the foregoing reasons, Petitioner Bryant Calloway respectfully requests that the court grant his petition for a Writ of Certiorari.

Respectfully Submitted
Bryant Calloway