

23-7213
No. _____

ORIGINAL

In The
Supreme Court of the United States

JERRIS M. BLANKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Supreme Court, U.S.
FILED

JAN 28 2024

OFFICE OF THE CLERK

March 27, 2024

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Questions Presented

1. Did the Defendant show "good cause" to obtain discovery, after presenting evidence of multiple instances of Government perjury, falsified documents, inconsistencies with their evidence and testimonies, supported by the record and FOIA request ? And does it appear bias for the judge to blame the Defendant for the Government's misconduct -- even after the record disproves the Court's defense theory?
2. Was it an abuse of discretion to allow the Government to withhold multiple Brady material proven to exist; and did the Judge now violate Brady by allowing known Brady material to continue to be withheld from the Petitioner?
3. Did the Judge abuse his discretion by striking the Petition's reply to the government's response to his 2255 off of the record, for being 106-pages without obtaining leave of Court to do so; and for the reply appearing to not be typed in 12-point font without notice -- after the Court previously allowed the Petitioner to file over 20 pro se motions in less than 12-point font, over a course of 3-years, including his original 2255 petition?
4. If a Petitioner does not have means or equipment to type in 12-point font, does this bar him from filing a 2255 motion or other post conviction relief?

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INTRODUCTION

The United States Constitution Amendment V states: "no person shall ... be deprived of life, liberty, or property, without due process of law...". Mr. Blanks' case is infected with multiple instances of perjury, inconsistencies, misconduct and false documents from the Government and their witnesses, which made the trial proceeding unfair, and lightened their burden of proof through withholding evidence material to the elements of "any person who" and the state-of-mind element, and affecting the credibility of both the Defendant, and the Government. Had the Government not committed these multiple instance of misconduct and not withheld this evidence sought by Mr. Blanks — the trial's outcome would have been different. Every time Mr. Blanks utilized the Freedom of Information Act (FOIA), he discovered more evidence supporting his claims of Government perjury and misconduct, and withheld evidence, which prompted him to request a subpoena of his own phone records to prove his service was not the company alleged by the Government at trial, and to file a motion to obtain discovery in support of his 2255 Motion; which both the request for discovery and subpoena were denied for erroneous reasons, (i.e. it could waste the Court's resources and abuse the process).

Mr. Blanks respectfully asks this Court to find that proof of perjury, inconsistencies within documents and Government misconduct is good cause for discovery so he may present the evidence of misconduct, and obtain relief from a wrongful conviction. Because, it appears the lower Court is intentionally ignoring facts and protecting the Government from their misconduct being exposed, to the point that he is actually defending law enforcement and overlooking clear and obvious evidence supporting Mr. Blanks' claims of misconduct.

After the Court denied his motion for discovery and accused Mr. Blanks of being the source of law enforcement's inconsistencies, and ignored the evidence he presented that suggest and support misconduct, Mr. Blanks then filed a Rule 60 Motion, requesting that the Court correct the clear an obvious mistakes in its finding and rational. The Court denied the Rule 60 Motion, and on the same date, stricken his Reply to the Government's Response to his Motion to Vacate and Correct (2255), for (1) being 106-pages, and (2) not typed in 12-point font, even though Mr. Blanks' original 2255 was 160-pages, and he previously submitted more than 20 pro se motions to the Court in 11-point, which the Court and the Eighth Circuit Court of Appeals both accepted for 3-years. The prison does not provide the equipment for the inmates to edit the font size, as Mr. Blanks types his motions on the Trulincs messaging system, then literally copies and paste them together before copying it on the copier machine.

The Government misinterpreted and misstated the majority of Mr. Blanks' claims, and ignored others, within their response to his 2255 motion, as the Judge also misstates, and misconstrued multiple claims and ignored evidence presented, in the Court's Order denying Blanks' request for discovery. Therefore, Blanks felt it was necessary to re-explain in detail, as there were 23 Grounds for relief, which each ground having multiple claims, causing his Reply to the Government's response to be 106-pages, which the Judge ultimately stricken from the record for not being typed in 12-point font and being 106-pages, and the Eighth Circuit summarily affirmed.

Mr. Blanks respectfully asks this Court to determine if an inmate cannot type in 12-point font, does he then forfeit his right to file post conviction relief? And was this an abuse of discretion to allow him to file multiple motions in this same format, but to then chose to stricken a critical post conviction relief motion, for not complying with an order he did not give till after he filed a Rule 60 motion alleging the Court appeared to ignore facts intentional, and the Court's Order, it stated Rule 60 motions are viewed with disfavor, which gave the appearance of vindictiveness and lack of open-mindedness.

DECISIONS BELOW

The Eighth Circuit's decision (App., infra, 23a) unreported.

The District Court's judgment (app., infra, 19a; 20a) unreported.

STATEMENT OF JURISDICTION

The Eighth Circuit entered it's judgement on November 2, 2023 (App., infra, 23a) and denied Mr. Blanks' timely petition for rehearing and rehearing in banc on December 11, 2023 (App., infra, 24a). This Court has jurisdiction. 28 U.S.C.

1254(1).

STATEMENT OF CASE

A. Charges

The St. Louis County, Missouri Police Department said that in 2011, they found an address on the internet sharing child pornography files, which they linked to a computer at Jerris Blanks' grandmother's home. Mr. Blanks sometimes lived there, as did his cousin. Police seized the computer along with a bag of CD's. They said they found 569 images and 14 videos of child pornography on the computer. A detective recorded Mr. Blanks admitting to the possession and said Mr. Blanks volunteered information to help in other investigations, which continued for the next few years. Mr. Blanks said he took the fall for his grandmother's nephew, after being threatened, whom her nephew later admitted to having a problem with child pornography and molesting his Neace, but was not allowed by the Court to be called in as a witness, at Mr. Blanks' trial. Mr. Blanks, thereafter became a police informant with regards to prostitutions, and continued to assist the police until 2015.

St. Louis Police said that in 2015, Mr. Blanks' phone number came up in an investigation. He voluntarily gave his cell phone to his detective contact. The detective also obtained a warrant for Mr. Blanks' Google Gmail accounts. Police said the Gmail account and phone contained child pornography.

In 2016, a grand jury in the Eastern District of Missouri indicted Mr. Blanks on one count of possessing child pornography in 2015, in a violation of 18 U.S.C. 2252A(a)(2), to which a superseding indictment in 2017 added one count of possession and one count of receiving child pornography in 2011, in violation of 18 U.S.C. 2252A(a)(5)(B) and 2252A(a)(2) after Mr. Blanks would not plead guilty to the 2015 incident, stating his email account had been compromised, and he reported the activity to Google. Google was not present for trial to be cross-examined or verify his or the Government's claims.

B. Post Conviction

Mr. Blanks filed a Motion to Vacate 2255 on 11/22/2022 (Doc. # 1) due to multiple instances of constitutional violations, including confrontation clause violation, Government misconduct and perjury, and ineffective assistance of counsel; motion to Obtain Evidence and Documents in Support of 2255 Motion entered on 02/14/2023 (Doc. # 7), due to multiple instances of perjury; Reply to Response to Obtain Evidence entered 05/02/2023 (Doc. # 19), which was denied on 05/24/2023 (Doc. # 23); Rule 60 Motion to correct mistakes made by the Court on 07/07/2023 (Doc. # 24); timely reply to Response to 2255 on 07/27/2023 which was stricken from the record (Doc. 26); notice of appeal on 08/18/2023 (Doc. # 30), which was denied on 11/02/2023.

REASONS FOR GRANTING THE PETITION

I implore that the Supreme Court give due consideration to this Petition for Writ of Certiorari. The gravity of the matters at hand not only undermines the integrity of the judicial process but also call into question the very principles of justice and due process upon which our legal system is founded.

The Petition in question addresses egregious errors that have permeated Mr. Blanks' conviction and post-conviction proceedings. The following points outline the critical issues necessitating the Court's intervention: Prosecutorial misconduct of a high magnitude, such as: multiple instances of perjury, perjured documents, altered police report, withheld evidence, and evidence tampering, all of which the evidence to support this claims is presented to this Court as exhibits, which clearly warrant the sought after discovery to support claims within the 2255 petition. Compounding this issue is the alarming trend of judicial oversight wherein judges have dismissed evidence of prosecutorial and law enforcement misconduct. This judicial inaction has perpetuated the cycle of injustice, particularly hindering defendants from obtaining post-conviction relief, even in the face of proven misconduct.

The impact of such malpractice on our nation is profound and multifold:

1. Erosion of Public Trust: A justice system that is marred by unethical practices tarnishes the public's perception of fairness and equality under the law. The public's trust in the judiciary is paramount and once eroded, is incredibly challenging to restore.
2. Violation of Constitutional Rights: The VI Amendment guarantees the right of a fair trial. Withholding evidence or manipulating legal proceedings infringes upon these fundamental rights, putting the legitimacy of convictions into question.
3. Degradation of Legal Precedents: Each compromised case has the potential to set dangerous precedents, which can influence future rulings and further embed corruption within the judicial process.
4. National Reputation: Internationally, the United States has been long viewed as a beacon of justice and democracy. However, instance of judicial malpractice and prosecutorial misconduct tarnish our global reputation. It is paramount that these issues be addressed with utmost urgency and rectitude. The Supreme Court, as the highest judicial body in the nation, has the inherent authority and moral obligation to ensure that justice is administered without malice or prejudice.

In conclusion, I ask that this Court recognize the gravity of the situation and the potential for lasting damage to our legal system and broader society. The reputation of the judiciary, the fate of the accused, and the principles of justice are state, making this of national importance.

ARGUMENT

I. Obtain Discovery in Support of Napue/Brady

A. Discovery Sought

The government committed multiple instance of perjury on the record, to connect Mr. Blanks to the crime and withheld Brady exculpatory and material evidence. In support of Mr. Blanks' Napue and Brady claims for post-conviction relief he filed a motion to obtain the following discovery:

1. The original Google complaint and locational evidence that the government failed to present at trial, and admitted to not presenting (Doc. 16 p. 33, lines 2-3);
2. Legal documents (chain of custody form and evidence receipt), as the chain of custody read onto the record withheld a viewing of the phone uncovered through Freedom of Information Act (FOIA), within an email from the AUSA, exposing a second break in the chain of custody of the key evidence;
3. All police reports associated with this case, as a police report recovered through FOIA, contained information from 5 years in the future from the date on the report, which this information was also inconsistent with the lead detective's testimony, whom also wrote the report;
4. Photos of the phone presented in trial and photos of the phone when it was seized to compare; the phone powered on displaying the logo and service provider; the phone's "about phone" menu and settings, displaying the phones IP address, phone number, IMEI number, serial number, service date, MEID number, MSIDN number, ICCID number, and service provider; photo of the phone's back removed revealing the serial number; list of downloaded apps, music, and games; bookmarked and visited website; photos; text messages and last in/outgoing calls with times and dates; and deleted files, as there was two breaks in the chain of custody and the phone appeared different at court then when it was seized, and the government's witnesses stated the phone, phone number, IP address, and service was through T-Mobile listed under the Petitioner's name, but T-Mobile verified that this was false, and furthermore, 3 emails from Straight Talk was located through FOIA, in the Government's unrepresented exhibits connected with Mr. Blanks' email account, which means they was aware his service was through "Straight Talk" and not through "T-Mobile";
5. Government correspondences and emails, as all of the Government's witnesses' perjury was consistent with each other;
6. The Audio transcripts, as the written transcripts do not accurately reflect the legal proceeding.

II. Prosecutorial and Law Enforcement Misconduct is Good Cause to Obtain Discovery

The Judge ignores obvious and clear evidence of misconduct and perjury, and appears to protect the government by accusing Mr. Blanks of being the source of inconsistencies within a police report, and stone walling him from relief.

A. Google Complaint Location Evidence

The government alleged that Mr. Blanks downloaded child pornography images to his Google Gmail account, stlfixhop@gmail.com, from his grandmother's home, and then sent them to himself. Mr. Blanks' defense was that his account was compromised and that he sent an email to Google directly from the "help Center", (which would not have shown up in his outgoing emails) to report that his account had been compromised. Google wrote an affidavit, but was not present at trial for cross-examination or to verify that: (1) if the incident took place at Blanks' grandmother's home, as the police report and government witnesses stated, without proof, or (2) if Mr. Blanks sent customer service a message from the help center, reporting the images. The government admitted that they did not present location evidence, which means they never disproved that someone else from another location, accessed his account. Mr. Blanks requested the location evidence from Google, that does exist (Exhibit A), so he can support that it was perjury for the Government to allege the crime occurred at his grandmother's home, in violation of Napue, and that the government was aware that this was false, but withheld the actual location, that would have supported Mr. Blanks' defense and claims, in violation of Brady. The fact that the government never proved where the crime occurred or took place, and withheld the location evidence (GPS, Internet Service, Cite Towers), that would have supported Mr. Blanks' defense — is "good cause" to obtain the locational discovery, material to the case.

B. Evidence of Perjury and Falsified Documents

Mr. Blanks also requested the "chain of custody" form to establish if the government failed to read its entirety, because, according to their witnesses testimony, the phone set for 3-years undisturbed, and was "viewed" (emphases added) for the first time by anyone on December 28, 2018,

Trial Excerpt:

Cross-examination of Government witness Ken Nix

Q. And can you tell from that if anyone before you ever viewed or analyzed that phone?

A. According to the form it says no.

Q. So there's a checkmark. There's actually a section there that asks that exact question, right?

A. Yes. (Doc. 236 p. 132, lines 17-19).

Cross-examination of Government witness Donya Jackson

Q. ...it was from 2015 to 2018 there was no activity with the phone?

A. That is correct. It was in St. Louis County evidence.

Q. And it just set there for three years?

A. Yes. (Doc. 236 p.164, lines 5-11).

Donya Jackson's testimony to the phone's chain of custody and activity

Q. ... so down here at the bottom of P-92, what is this?

A. This is the chain of custody.

Q. Okay. And what does a chain of custody do?

A. Like I said, that's who signs for the item and where that item may be or who you would get that item from.

(Doc. 236 p. 167, lines 6-13).

Chain of custody according to the Government

* Detective Slaughter checks the phone in to evidence on 6/26/2015.

* Slaughter checks the phone out on 11/6/2018.

* Slaughter gives the phone to Donya Jackson on 11/6/2018.

* Ms. Jackson gives the phone to AUSA Robert Livergood, (where the phone set unsecured for 58-days)

* Mr. Livergood gives the phone to Kenneth Nix on 12/28/2018.

* Kenneth Nix gives the phone back to the AUSA's office, on 1/4/2019. (Doc. 236 p. 167, lines 14-25; p. 168, lines 1-19).

However, an email recovered through the Freedom of Information Act (FOIA), from AUSA Robert Livergood, dated August 18, 2017 stated: "regarding the Samsung phone forensic report, I was informed that the phone was manually reviewed and no forensic report was generated" (Exhibit B). This email establishes the following facts:

1. The request for service form which stated: nobody had ever "viewed" or analyzed the phone prior to the forensic expert's review in December 2018, was false. Because the email states the phone was viewed in 2017.
2. It was knowingly false when the government witness Donya Jackson, stated the phone just set in evidence for 3-years with no activity. Because according to the AUSA's email, there was activity with the phone in 2017.
3. The chain of custody form read on to the record, by Donya Jackson, withheld that the phone was checked out for review in 2017, and who reviewed it. This chain of custody form does not mention the hidden withheld review of the phone, making the document unreliable, and stating inaccurate false information, that was known to be false by the AUSA. This

unreliability of the form creates a reasonable risk of other unknown or hidden handlings of the evidence, by unknown individuals, in unknown settings or conditions, tainting the phone's evidence. The Government went out-of-their-way to deceive and fabricate the appearance that the phone had never been viewed prior to 2018, through orchestrated witness perjury and manipulating the documents (request of service and chain of custody forms) to not reflect the fact that the phone had been viewed prior to 2018. It was of high importance for them to conceal the truth about the material evidence.

According to Merriam-Webster's Collegiate Dictionary Eleventh Edition, the definition of "review" is: renewed study of material previously studied; to examine or study again; to go over or examine critically or deliberately; to study material again.

According to the above definition, "review" means that the phone was not only viewed in 2017, but examined or viewed prior to the 2017 "review", clearly making it false to state it was viewed for the first time 2018 – when in fact, it had been viewed in 2017 without any illegal images or bookmarked websites being location the phone, that did not appear until the phone was re-examined in 2018. The events hat have taken place raises reasonable questions:

1.) How many other times was the phone reviewed or examined, that was also withheld from the record?

Because on the record the following was stated by the prosecutor's examination of their witness:

Q. And does it indicate that Detective Slaughter checked it out again?

A. Yes

Q. When was that?

A. November 6, 2018 (Doc. 236 p. 167, lines 23-25; p. 168, lines 1-3).

The word *again* is of high significance in the context of the chain of custody by the shroud of secrecy surrounding the reviews of the evidence, in this additional email recovered through FOIA stated the phone was viewed in 2015 (Exhibit C), which was also withheld.

2.) Why was nothing illegal found on the phone during the hidden examinations of the phone?

3.) Why was the examination not recorded on the chain of custody form, request from service form, and withheld form the record through false testimony?

The Court will not even allow Blanks to access the chain of custody form, and FOIA claims they cannot locate it, but it exist, according to the trial record.

4.) Why does the judge believe that the custody form and testimonies are consistent with an email that states an event not recorded on the forms and contradicting to the testimonies?

However, even after the Judge was presented with facts on the record along with clear, convincing, and obvious evidence demonstrating inconsistencies, perjury and misconduct through the facts on the record, he still finds there was no perjury, and stated:

""Blanks' assertion is unpersuasive. The statement in AUSA Livergood's letter that the cell phone "was manually reviewed and no forensic report was generated" is consistent with trial testimony and the chain of custody form admitted into evidence that included a checkmark indicating the phone had not been analyzed prior to December 2018. The statement in the AUSA's letter does not support Blanks' allegations of perjured testimony and false evidence." (Doc. 23 p. 8, lines 19-25).

The judge is not persuaded by the record or FOIA and essentially saying: its true that the phone set for 3-years with no activity; the checkmark on the request for service form indicating nobody viewed the phone prior to 2018 is accurate and consistent with the AUSA's letter stating the phone was viewed prior to 2018 in 2017; and that the exam mentioned in AUSA's letter is consistent with the *chain of custody form* that withheld this review in 2017, and ignores the fact that the *request for service form* specifically asked: "if anyone ever viewed or analyzed the phone prior to 2018". This is highly irrational, appearing to be intentional and reflecting the appearance of deep-seated favoritism, making it impossible for Blanks to have a fair hearing based on fact.

Notwithstanding, the 2011 report from RCCEEG (regarding a different phone involved in this case) states: "I ... *manually previewed* the device and did not locate any signs of child pornography within the digital media device." (Exhibit D). Manually previewed, like manually reviewed — both establish the phones were viewed by RCCEEG, more so, because they are subscribed to RCCEEG (Exhibit E). Its not a matter of persuasion, but a matter of clear facts in writing, unless the AUSA committed perjury within his email, and the phone was not really reviewed as he said it was.

The language from AUSA's 2017 email e.g., "the phone was manually reviewed" but no forensic report was made", is nearly identical to the 2011 RCCEEG report's phrase "manually previewed", which establishes the phone was analyzed to look for Child pornography, but none was found, therefore there was no forensic report made. Meaning, the phone was viewed in 2017 (2015 as well), prior to 2018, and no illegal websites were found in the phone's bookmark, during the hidden review of the phone in 2017, which was withheld from the record. Out of the 400 plus child porn images allegedly found in 2018 (two weeks before trial after the phone was in custody for 3-years), conveniently had no meta data regarding creation access or deletion dates. This is highly relevant to the defense strategy and elements of the crime.

In United States v. Argurs, it was found that the knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves "a corruption of the truth-seeking function of the trial process" "When police or prosecutors

conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight." Banks v. Dretke, 124 S. Ct. 1256. Its alarming, given the fact that Government went out of their way to conceal a chain of custody break, examinations that resulted in no illegal content being found and used perjured testimony and documents to hide the examinations, and additional perjury to connect Mr. Blanks to a T-Mobile wireless service and device, that they were aware he was not connected to, and also, to withhold the locational evidence of the crime. If proven and Napue/Brady/Giglio is fully developed, Mr. Blanks would be entitled to relief.

The Judge finds Mr. Blanks did not specify which claims in his 2255 that perjury and withheld evidence applies to — but this is a contradiction to the Judge's statement: ""Blanks' motion states that his 2255 motion "raised several claims of constitutional violations, more specifically a Napue claim of several perjured statements, multiple false documents and fabricated evidence presented by the Government and their witnesses[.]"" (Doc. 23 p. 2, lines 8-10). For the sake of arguendo, even if Blanks did not specify which claims (even though he did), it should have been liberally construed as such, that perjury would relate to a Napue claim, and withheld evidence relates to Brady. The fact that Mr. Blanks presented evidence of perjury within two documents (chain of custody and request for service form) and highlighted the perjury within the Government's witness's testimonies; and withheld relevant material evidence (viewing of the evidence off the record by an unknown person without signing for it to be released from evidence), should have been "good cause" for discovery. Instead, the Judge found it appropriate for this information to remain withheld, and not allow Mr. Blanks to access documents that likely contained more perjury or further support and establish that the Government was aware of the perjury, which would strengthen his claims for relief. There is a lack of transparency within this case, that must be exposed.

C. Falsified Police Report as Grounds for Discovery

AUSA Robert Livergood admitted a fraudulent, perjured inconstant and altered police report into the record, manufactured to meet the Government's needs, by altering the events within the police investigation report. Former St. Louis County Police Department Detective, Michael Slaughter's Arrest Report (11-49706) dated 8-18-2011, list Mr. Blanks' employer as "Universal Ad" in St. Peters Missouri, and his mobile number as 636-543-5418, which were both correct (Exhibit F).

However, in Detective Slaughter's Investigation Report (11-49706), dated 8-19-2011 (24-hours after the Arrest report), Mr. Blanks phone number changed, and his employer changed to "Pisa Sales Group" in Festus Missouri (Exhibit G). The issue is that Mr. Blanks did not begin working for Pisa Sales Group until 6-9-2016, which was 5-years into the future from the date on the report.

Additionally, within 24-hours, the mobile number also changed to information from the wrong time period. It would have been impossible for the detective or Mr. Blanks to know in 2011 where he would start working at in 2016 (emphases added). This is evidence supporting the police investigation report was altered, perjured, and backdated to appear as the original — but the detective made the vital mistake of not only placing information that was inconsistent with his report made 24-hours prior, but by placing information from 5-years in the future, that was verified by Pretrial during Mr. Blanks bond release, and through Probation during their PSI investigation (Exhibit H). This is a red-flag, and there is no legit reason why two reports written within 24-hours of each other would be inconsistent by the latter one containing information from 5-years in the future. The Government gracefully ignored this claim, but after the Judge was presented with this information and evidence, in response he stated:

"Blanks himself would have been the source of information concerning the identity [sic] of his employer, both when he was interviewed by Detective Slaughter [sic] in 2011 and when he was interviewed for the presenting report.

More importantly, Blanks does not link the assertion concerning his prior employment to any specific discovery request he makes ... of claims in his 2255 ... Contrary to Blanks' assertion, this does not establish fraud and perjury in Blanks' prosecution and trial, and the Court finds it does not establish good cause to support Blanks' discovery request." (Doc. 23 p. 10, lines 3-10).

However, the problem with the Judge's accusations and defense theory fails, because:

1. During Detective's Slaughter's trial testimony, he stated that Mr. Blanks told him that he worked at Universal Ad in St. Peters Missouri (Doc. 236 p. 25, lines 6-7), which is consistent with the arrest report and correct, but conflicts with the investigation report that followed 24-hours later. This means Mr. Blanks was not the source of information from 5-years in the future, as the Judge accused Blanks of being.
2. Mr. Blanks was released on bond in 2016, and Officer Greip from Pretrial Services verified Blanks' employment at Pisa Group, and collected his pay stubs as proof of his employment while on bond with a GPS monitor. Additionally the Probation Office verified and spoke to Pisa Group before placing the information within his PSI report. This disproves the Judge's suggestion that the PSI report did not prove time of employment, because Mr. Blanks simply just told them where he worked and pretrial put it in the report. The judge ignored that the information was verified according to the Probation Office.
3. It is of high significance that the lead Detective in the case, falsified a legal document and altered it, whom also (1) wrote other reports in this case; (2) handled all of the evidence in this case; (3) his altered report contained information

allegedly from "Charter's affidavit", but Charter was absent from trial for cross-examination to prove reliability, as did his other report contained information from other absent witnesses (Google, NCMEC) whom were not cross-examined for reliability; (4) he was the star witness whom testified against Mr. Blanks; (5) this altered document was not discovered by counsel, due to counsel's failure to investigate contributing to Blanks' ineffective claim; and (6) the fabricated falsified police report should not have been admissible, and he should have been impeached as a witness, and not given the weight of credibility he was given by the jurors, which would have likely changed the trial's outcome. There is a reasonable risk of other evidence being tainted by this Detective, therefore discovery was warranted, and this report containing information from 5-years in the future, is of high significance, despite the judge's downplay of the evidence recovered through FOIA.

Therefore, the Judge's theory that he created to defend the Government and law enforcement's misconduct, and simultaneously used for denying Blanks' request for discovery, was highly irrational and bias. Mr. Blanks requested to view emails, other reports and documents associated with his case, based on the above information supporting misconduct, which should have been "good cause".

D. Phone Discovery

In 2015, Mr. Blanks' phone was seized. After Mr. Blanks called his mother from his girlfriend's phone, and told her "someone took his phone", his mother, not knowing the police had the phone, and believed it was stolen, called Straight Talk Wireless' Theft Department, and reported it stolen. Straight Talk then decided to remotely wipe "all" data from the phone (emphases added), to protect her personal and credit card account information (Exhibit I). This is likely why the first time the phone was examined, there was no illegal images or illegal websites bookmarked on the phone, and likely why, this review of the phone in 2017 was withheld from the record through false testimony, the request for service form and chain of custody form. Because (1) all data was remotely wiped from the phone by Straight Talk's Theft Department; and (2) Mr. Blanks did not view or download any child pornography on his phone, nor did he bookmark any illegal websites to his phone. Mr. Blanks requested to subpoena his Straight Talk phone records, to verify to the Court and disprove additional Government perjury such as, during the Government's witness' testimony, forensic phone expert Donya Jackson's testimony, she stated multiple times that the phone they found child pornography on was a T-Mobile device, the IP address and wireless service used to commit the Crime, was T-Mobile, and the phone number listed under Blanks' name was listed under T-Mobile's service, and further stated that Google and NCMEC stated the above same information, which Donya Jackson claimed to have verified as facts (Doc. 236 p. 157, lines 1-15; p. 165, lines 10-12).

However, T-Mobile has confirmed and verified by way of official business letter (reference ID: 63780940), stating Mr. Blanks had never had service through T-Mobile (Exhibit J). This clearly means that according to T-Mobile Inc., the information provided by NCMEC and Google's affidavits (whom were not present at trial for cross-examination) and Donya Jackson's trial testimony, regarding the wireless service, device and phone number, all through T-Mobile listed under Blanks' name; was false. Furthermore, Mr. Blanks' request from FOIA revealed Google Gmail emails from the Government's exhibits, particularly the documents labeled as "Blanks_0390 USA-000111_0001" which is an email from Straight Talk to Mr. Blanks, thanking him for being a customer, and contained a link to access his phone account. The FOIA recovery of Government exhibits also included two other emails from Straight Talk to Mr. Blanks "Blanks_0478 USA-000187_0001" and "Blanks_0717 USA-000211_0001", which were also withheld at trial (Exhibit K).

This is additional evidence of perjury in support of Mr. Blanks' request for discovery, because, phone expert Donya Jackson testified that she reviewed Mr. Blanks' email account and all of the Government's evidence (Doc. 236 p. 142, lines 2-7; p. 143, lines 3-9), which means Ms. Jackson would have known that Mr. Blanks' wireless service, device, and phone number listed in his name, was through Straight Talk and not T-Mobile, as she claimed to have verified, which would have been enough to undermine her credibility and impeach her if known at trial, making the evidence material to Brady standards. Even after presenting this evidence, the Government stated: "none of these claims are supported by the record and appear in large part to be based on misunderstandings of the evidence presented at trial" (Doc. 14 p.3, lines 1-2). This statement completely contradicts and downplays the record and the evidence.

And in reference to Blanks' perjury claims and supporting evidence, the judge stated: "... it appears to be based on either a mischaracterization or misunderstanding of evidence presented at trial" (Doc. 23 p. 4, lines 26-28). "We have held that when the State withholds from a criminal defendant evidence that is material to his guilt or punishment's, it violated his right to due process of law in violation of the Fourteenth Amendment. See *Brady*, 373 U.S. at 87, 83 S. Ct. 1184, 10 L.Ed. 2d 215, In *United States v. Bagley*, 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L.Ed. 2d 481 (1985), we explained that evidence is "material" within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. In other words, favorable evidence is subject to constitutionally mandated disclosure when "it could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." quoting *Cone v. Bell*, 129 S. Ct. 1769 (2009).

The fact that the Government (1) used perjury to connect Mr. Blanks to T-Mobile's service which was allegedly used to commit the crime; (2) knew but withheld that his service and device was Straight Talk; (3) withheld reviews of the phone

prior to 2018, where there was no child pornography and no illegal websites bookmarked or found on the phone, all serve as good cause to obtain discovery, which will support grounds for relief from an illegal conviction.

Because all of the Government's witness' perjury was consistent with each other and concealed a fact proven through the AUSA's email, was also enough to demonstrate "good cause" to obtain: (1) who the unknown person was that examined the phone mentioned within an email from the AUSA, but was withheld from the chain of custody form and the record through perjury; (2) the internet location evidence from Google which was not presented at trial, that would have proven that the crime did not occur from Mr. Blanks' service nor from his grandmother's home, which is material exculpatory evidence; and (3) photos of the phone powered on displaying the serial number, IP address, service provide, service date, and a photo of the phone taking the day it was seized, to prove either (a) the Government knew Mr. Blanks service was Straight Talk and not T-Mobile (as the power up screen will display the logo of the service provider); or that the Government switched his Straight Talk device with a T-Mobile device containing child pornography (which a picture of the phone's serial number, service provider, service date, phone number and IMEI number would prove). This evidence was not challenged at trial, because defense counsel failed to investigate and to follow up on leads from the Petitioner, but this is a separate claim in his 2255.

Consequently, the Judge presiding over his pending 2255 is the same Judge that ignores facts, defended and overlooked Government misconduct, and already has predetermined Mr. Blanks' perjury claims are meritless misunderstandings of the evidence. For the Court to say there is no perjury from the Government, in this case, after being presented with facts, the record and evidence, is an abuse of power and discretion, and defies sound logic. "Prosecutor's dishonest conduct or unwarranted concealment should attract no judicial approbation. See *Kyles*, 514 US, at 440, 131 L Ed 2d 490, 115 S Ct 1555 ("The prudence of the careful prosecutor should not ... be discouraged.")" *Banks v. Dretke*, 124 S Ct 1256 (2004). "The Government must disclose any evidence both "favorable to an accuses" and "material either to guilt or punishment.: *Brady*, 373 U.S. at 87. The *Brady* rule applies to evidence which "impeaches the credibility of a government witness," *Dye v. Stender*, 208 F.3d 552, 665 (8th cir. 2002), *Evenstead v. Carlson*, 470 F.3d 777 (8th Cir. 2006). In contrast to Blanks' case, withheld location evidence that was exculpatory; multiple instances of perjury from Government law enforcement witness Donya Jackson which connected Blanks to an internet and wireless service he did not belong to, and an altered police report from Detective Slaughter, was impeachable evidence. Not to mention, the perjured chain of custody form and request for service form both used to support the witness' perjured testimony, and withhold tampering with the evidence

and a break in the chain of custody of crucial evidence, that should not have been admissible, including the phone and the images allegedly found on the phone that had no meta data confirming the date they were placed on the phone, after it had been tampered with off the record— was all material to the guilt and punishment. Blanks presented this to the Court, which should have been good cause to obtain the discovery that would support and uncover additional misconduct.

E. The Withheld Discovery Was Material to Two Different Elements and Would Have Affected the Credibility of Both Sides

The Government committed multiple instances of perjury and withheld favorable evidence and material to both the element of "any person who" and the state-of-mind element; which was unknown and withheld from the jurors, and also used this perjury and perjured document to: (1) connect Mr. Blanks and his phone number to a T-Mobile wireless service he did not belong to, which NCMEC and Google alleged this T-Mobile service was used to commit the crime; (2) connect him to a T-Mobile device filed with child porn, as at trial, that phone appeared different than his, as his phone had a fully cracked screen, and the phone presented at trial had a small crack in the screen, thus why Mr. Blanks requested photos of the original phone when it was seized to compare the difference with the phone photo presented at trial; after it was examined in 2018; (3) concealed that the phone was reviewed off the record by an anonymous person, that apparently did not sign for the phone or evidence receipt, and was not recorded on the chain of custody form, which during this withheld viewing of the phone, there was no illegal websites found in the bookmark, and no child pornography found on the phone — according to the AUSA's letter, and according to Petitioner's former attorney, Kevin Whiteley, (whom was not his trial attorney); (4) withheld the account holder to the internet service used to commit the crime; and (5) withheld from trial, any evidence of location, such as GPS or internet tower locations of where the email account was accessed, as anyone can access an email account from any location. For example, someone in China can access your email account in the United States, if they have the log in information or hack your account, therefore, because Petitioner's defense was that his account was compromised, it would have been critical to disclose the location evidence as an element to the crime. However, the Government lightened their burden of proof by withholding this locational evidence. The Judge found it is not appropriate for Mr. Blanks to obtain the above withheld evidence, material to the case, and known to exist.

If these facts would have been fully developed at trial, and not withheld, the outcome would have reasonably been different. Therefore, the discovery should have been obtained, to strengthen Petitioner's 2255 Motion claims of constitutional violations. If the jury knew how many times the Government was dishonest with them and how much favorable evidence was withheld, they would reasonably have had a different assessment of credibility which would have affected the trial's outcome. This was good cause for discovery. "(A defendant need not demonstrate that after discounting the

inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict.)", Banks v. Dretke, 124 S. Ct. 1256. Banks v. Dretke applies directly to Blanks' case, as withheld evidence was material, and the Government hid it well, and expect to be rewarded and benefit from misconduct. And in Blanks' case, the Judge is allowing it, regardless of the clear and convincing evidence supporting misconduct. In continuing to withhold this evidence It would secure a miscarriage of justice to not correct this, and would reflect poorly on the judiciary's public reputation. "The State here nevertheless urges, in effect, that "the prosecution can lie and conceal and the prisoner still has the burden to discover the evidence." Tr. Oral Arg. 35, so long as the "potential existence" of a prosecutorial misconduct claim might have been detected, id., at 36. A rule thus declaring "prosecutors may hide, defendant must seek," is not tenable in a system constitutionally bound to accord defendants due process." Banks v. Dretke, 124 S Ct 1256 (2004). The fact that the Government admitted that the withheld the locational evidence (Doc. 16, p. 33, lines 1-3), was enough good cause for the Petitioner to obtain the locational evidence, as the location of the crime was material to the elements of the crime. For example: if the email account was accessed from the France, it would be reasonable to believe Mr. Blanks' account was compromised or hacked, as he stated during his interview with police, and at trial.

Mr. Blanks used FOIA to uncover the majority of the evidence he presents to this Court, and presented to the District Court, but he Eighth Circuit Court of Appeals summarily denied his appeal as meritless and would not allow him to brief or present his argument. The Court allowed and indorsed the withholding of evidence known to exist, and the Government does not want anymore evidence of their misconduct made available to Mr. Blanks, to the extreme of asking the Court to not allow Blanks to utilize FOIA, when they stated: "The Government further notes that this Court should not allow the Petitioner to use his meritless Section 2255 filing to subvert the FOIA process." (Doc. 14 p.3, lines 19-20). It should be noted that since then, FOIA either does not responding to new request, or claims the requested information does not exist, i.e. the chain of custody form used in trial (Exhibit L).

III. Abuse of Discretion

A. Appearance of Vindictiveness

After Mr. Blanks filed a Rule 60 Motion, asking the Court to correct mistakes that were obvious and appeared as if the Judge was intentionally overlooking the facts supporting Government misconduct (Doc. 24) — the Judge denied the Rule 60 Motion, stating such motions are for "mistakes" and not to reargue merits, and Rule 60 Motions are looked at with disfavor by the Courts (Doc. 28). On the same date, the Judge also ordered for Mr. Blanks' Reply to Response of his 2255

to be stricken from the record (Doc. 26), for "filing error", not complying with E.D. Mo. Local Rule 4.01(D): "No party shall file any motion, memorandum, or brief which exceeds fifteen (15) numbered pages, without leave of Court."; and 2.01 (A)(1) "filings shall be in 12-point or larger font, [and] double spaced. This newly enforced "filing error" appears to be abusive and vindictive, because, since 2020, this District Court and the Eighth Circuit, have both accepted well over 30 pro se motions from this Petitioner, up until this Petitioner demanded to be treated fairly and asked the Court to correct clear and obvious errors ignored multiple times by the Court, and for challenging the flaws in the Court's theory it created to defend law enforcement's inconsistent and falsified police report. It should be mentioned that Mr. Blanks requested a copy of the local rules, but the clerk wrote back stating they do not provide copies by mail.

B. Motion Format

The Court's 04/25/2023 order states: " IT IS HEREBY ORDERED that movant Jerris M. Blank' motion for an extension of time to file a reply is support of his 2255 Motion is GRANTED. IT IS FURTHER ORDER that movant shall file his Reply memorandum by July 31, 2023. If movant's Reply is not filed by this date, his right to file such a reply shall be waived." (Doc. # 18). Mr. Blanks fully complied with the Court's order to avoid waiver. Under the Court's rational stricken his memorandum, if Mr. Blanks had the means to type in 12-point font, and comply; the Judge could then strike his motion for not being properly indented, then again for not being properly centered, et cetera.

Mr. Blanks' institution does not provide the equipment to edit font size, as he uses the prison's Trulincs messaging system to type out his documents, which does not allow manipulation of font size, and the prison is short staffed and limited on supplies such as: paper, pencils, type writers and ribbons or wheels, and other materials used for legal work. Furthermore, the Court denied Blanks' request for appointed counsel to assist him with his 2255 Motion. Therefore, Mr. Blanks as a pro se inmate litigant, should not be held to the same expectations or standards as a lawyer.

In the Court's 07/27/2023 Order, it stated: "[t]he fact that the United States was able to respond to a 167-page motion in 44 pages is one indication that Petitioner's filings are unnecessarily long. ... Petitioner is entitled to some deviation from the 15-page limit, but 106-pages is excessively long and unnecessary, particularly where the United States 'response was 44 pages long (Doc. # 27 p. 2, lines 4-5; 8-10)."

Without reading Mr. Blanks' memorandum, the Judge concluded it was "unnecessarily long", and holds Blanks to the same standard as the Government, allowing him to re-file with no more than 45-pages long and typed in 12-point font, double spaced.

However, the Government's response was only 44 pages long, because it ignored multiple claims and arguments. Both the Government and the Court stated there was no perjury or misconduct and the claims appear to be a "misunderstanding"; so Mr. Blanks not only had to reply to the Government's counter arguments — but also had to clarify the misunderstanding in great detail, in an attempt to correct the misunderstandings of a serious matter, and re-explain his claims, as the Government and the Court both misstated and misconstrued multiple claims and ignored multiple facts.

Furthermore, Mr. Blanks' case involved events from 2011 to 2019, and a total of 6 different past defense attorneys, with various ineffective assistance claims, multiple constitutional violations and law enforcement and prosecutorial misconduct. Mr. Blanks only addressed a hand full of different perjury claims within this Petition, out of the 30 instances of perjury related to Napue/Giglio/Brady. The length of the Motions was necessary to fully cover claims for his 2255, as a lot went wrong in this case that must be corrected.

Mr. Blanks asks this Court: if a pro se inmate lacks the equipment or means to type in 12-point font, does he waive his right to reply to the Government or to file post conviction relief? And, if there are enough mistakes and errors ignored by the Government, does a pro se litigant not have the right to fully respond and or to clarify mistakes and misunderstandings?

Conclusion

Based on the foregoing, the Petition for a writ of certiorari should be granted.

Respectfully submitted: /s/ Jerris M. Blanks Date: March 27, 2024