

N~~2~~24-5275

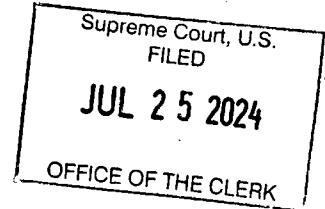
ORIGINAL

In the
Supreme Court of the United States

TERRELL ARMSTRONG,

Petitioner,

vs.



UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Terrell Armstrong
Reg. # 22092-041
FCI Forrest City Medium
PO Box 3000
Forrest City, AR 72336

QUESTIONS PRESENTED FOR REVIEW

Whether the District Court and the Court of Appeals erred in denying the Petitioner's Motion for a New Trial under Federal Rule of Criminal Procedure 33, based on newly discovered evidence that a key prosecution witness recanted her testimony, asserting it was influenced by government pressure."

**PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the Eighth Circuit and the United States District Court for the District of North Dakota.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

TABLE OF CONTENTS

Questions Presented for Review	ii
List of Parties to the Proceedings in the Courts Below	iii
Table of Contents	iv
Table of Authorities	
Opinions Below	2
Statement of Jurisdiction	2
Constitutional Provisions, Treaties, Statutes, Rules, and Regulations Involved	2
Statement of the Case and Facts.....	3
I. Summary of the Case	4
Reasons for Granting the Writ	12
Rule 10 Considerations Governing Review on the Writ of Certiorari ..	12
This court should issue a writ of certiorari because the United States Court of Appeals for the Eight Circuit Court of Appeals has decided a federal question in a way that conflicts with the applicable decisions of this court	12
Argument	
Did the District Court and the Eight Circuit Court of Appeals err when it failed to grant a new trial as provided by Federal Rules of Criminal Procedure Rule 33	13
A. Newly Discovered Evidence	13

1. Witness Agness Reddogg's Sworn Affidavit	13
B. Federal Rule of Criminal Procedure Rule 33 Standard of Review	14
C. Newly Discovered Evidence Requirement	17
D Materiality Requirement	18
E. Due Diligence Requirement	19
F. Interest of Justice Requirement	19
1. Reddogg's Critical Role in the Trial	20
2. Exculpatory Nature of the Affidavit	21
3. Impact on the Jury Verdict	22
4. Maintaining the Fairness of the Trial Process	23
Conclusion	24
<i>United States v. Armstrong,</i> 24-1433 (8th Cir. 2024)	App A
<i>United States v. Armstrong,</i> 2024 U.S. Dist. LEXIS 23574 (D.N.D. Feb. 9, 2024).....	App B

TABLE OF AUTHORITIES

<i>Napue v. Illinois</i> , 360 U.S. 264 (1959)	20
<i>United States v. Armstrong</i> , 39 F.4th 1053 (8th Cir. 2022)	<i>passim</i>
<i>United States v. Beckman</i> , 787 F.3d 466 (8th Cir. 2015)	15
<i>United States v. Campos</i> , 306 F.3d 577 (8th Cir. 2002)	15
<i>United States v. Hey</i> , 2005 U.S. Dist. LEXIS 38550 (E.D. Mich. Apr. 29, 2005)	14, 16
<i>United States v. Perez</i> , 2022 U.S. Dist. LEXIS 215996 (M.D. Fla. Nov. 30, 2022)	18
<i>United States v. Armstrong</i> No. 1:19-cr-031 2024 U.S. Dist. LEXIS 23574 (D.N.D. Feb. 9 2024) .	2
<i>United States v. Rubashkin</i> , 655 F.3d 849 (8th Cir. 2011)	15, 18
<i>United States v. Armstrong</i> 2024 U.S. Dist. LEXIS 23574 (D.N.D. Feb. 9 2024)	2

Other Authorities

Fed. R. Crim. P. 33	13, 15
Federal Rule of Criminal Procedure Rule 33	14
Rule 10.1(a), (c)	12
Rule 29	16
Rule 33	<i>passim</i>

Statutes

18 U.S.C. § 2	3
21 U.S.C. § 841	3
21 U.S.C. § 846	3
28 U.S.C. § 1254	2
28 U.S.C. § 1654	2, 3

No:

**In the
Supreme Court of the United States**

TERRELL ARMSTRONG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Terrell Armstrong, ("Armstrong") the Petitioner herein, respectfully
prays that a writ of certiorari is issued to review the judgment of the
United States Court of Appeals for the Eight Circuit, entered in the
above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit, whose judgment is herein sought to be reviewed, was entered on May 3, 2024, *United States v. Armstrong*, 24-1433 (8th Cir. 2024) and is reprinted in the separate Appendix A to this Petition.

The opinion of the District Court for the District of North Dakota, whose judgment is herein sought to be reviewed, was entered on February 9, 2024, *United States v. Armstrong*, No. 1:19-cr-031, 2024 U.S. Dist. LEXIS 23574 (D.N.D. Feb. 9, 2024) and is reprinted in the separate Appendix B to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on May 3, 2024. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

(a) Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) Newly Discovered Evidence. Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) Other Grounds. Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

Id. USCS Fed Rules Crim. Proc R 33

STATEMENT OF THE CASE AND FACTS

Armstrong was charged by Superseding Indictment on June 5, 2019, with one count of Conspiracy to Possess with Intent to Distribute and Distribute Controlled Substances, in violation of 21 U.S.C. §§ 841(a)(1), 846, and 18 U.S.C. § 2 (Count One). The Superseding Indictment alleged that Armstrong and other members of the Drug Trafficking Organization were responsible for trafficking substantial quantities of methamphetamine and heroin from the Minneapolis, St. Paul, Minnesota area to the Bismarck/Mandan, North Dakota area.

On September 18, 2020, following a five-day trial, a jury convicted Armstrong of the charged conspiracy. On January 27, 2021, the United States District Court for the District of North Dakota sentenced Armstrong to 264 months of imprisonment, with credit for time served

on Count One. Armstrong filed a timely notice of appeal on February 9, 2021. On July 13, 2022, the Eighth Circuit Court of Appeals affirmed the conviction and sentence. *United States v. Armstrong*, 39 F.4th 1053 (8th Cir. 2022). No writ of certiorari was filed.

Armstrong filed a motion for a new trial, based on newfound evidence, that the court denied. The Eight Circuit Court of Appeals affirmed.

I. Summary of the Case

In late 2018 and early 2019, Detective Jeremy Seeklander of the Bismarck Police Department received information concerning males from the Minneapolis-St. Paul, Minnesota, area who were allegedly involved in the distribution of significant quantities of methamphetamine and heroin within the Bismarck-Mandan, North Dakota, region. The information provided indicated that the principal individuals involved in this illegal activity were commonly referred to as "Dre" and "Louis." During the latter part of December 2018, an informant and co-defendant named Burt Robillard furnished Detective Seeklander with a license plate number associated with the alias "Dre." Detective Seeklander conducted a registration check on this license plate, which subsequently led to the identification of the registered

owner as Danae Mansell. Detective Seeklander then disseminated this information to other law enforcement officers involved in the ongoing investigation. Additionally, law enforcement received further information from additional cooperating sources, including Tia Klein, which suggested that "Dre" and "Louis" frequented the Ramkota Hotel and Motel 6 in Bismarck while engaging in their alleged drug trafficking activities. In due course, Detective Seeklander would ascertain the true identities of "Louis" and "Dre" to be Terrell Armstrong and Danae Mansell, respectively. As the investigation continued to develop, law enforcement uncovered that the drug trafficking conspiracy dated back to 2015, during which time Armstrong became acquainted with individuals identified as Gorgianna Hepperle and Agnes Reddogg. (Tr. at 29-30). According to trial testimony, Armstrong provided methamphetamine to Reddogg for her use and resale, with the proceeds being returned to him. (Trial Tr. at 30). Despite her incarceration at one point, Reddogg, upon her return to the community, resumed selling methamphetamine, and Armstrong continued to be her supplier. (*Id.* at 37-40). Armstrong not only facilitated the distribution but also introduced Reddogg to other individuals, including Danae Mansell,

instructing Reddogg to interact with these individuals as if she were him. (*Id.* at 40-41, 44-46, 81-83). Reddogg's involvement in the drug conspiracy persisted through the beginning of 2019, during which time she collaborated with Armstrong, Mansell, Byron Brown, Christopher Rubio, and others in the distribution of substantial quantities of heroin and methamphetamine. (*Id.* at 61-65, 78).

In January 2019, Detective Seeklander was informed of Danae Mansell's anticipated trip to North Dakota. (Tr. Trans. at 770-771). On or around January 16, 2019, confidential information reached law enforcement, confirming Mansell's presence in Bismarck. *Id.* This intelligence was promptly relayed to patrol officers, initiating a search for Mansell's red Ford Fusion, which bore Minnesota license plates, in various Bismarck hotels. (*Id.* at 475-476).

At the Motel 6 parking lot officers began to follow the vehicle. *Id.* In following the vehicle, officers observed a traffic violation—the registration sticker was covered in snow and, therefore, not visible—and a traffic stop was initiated. *Id.* Upon contact with the vehicle, the driver was identified as Deondra Kight, and the passenger as Danae Mansell. (*Id.* at 477). Knight admitted to having a suspended license and was

subsequently arrested. *Id.* Mansell was removed from the vehicle for officers to deploy a canine for a free air sniff. (*Id.* at 477-478). The canine indicated on the vehicle for the odor of controlled substances. (*Id.* at 478-479). A search of the vehicle yielded approximately 7 grams of heroin, US Currency, and a firearm. (*Id.* at 479-480). A search of Kight and Mansell revealed key cards for the Motel 6. (*Id.* at 481). Officers took these key cards to Motel 6 and confirmed a room registered to Kight and Mansell. (*Id.* at 776). A search warrant was applied for and granted for the hotel room registered to Mansell. Execution of that search warrant yielded over 3 pounds of methamphetamine, 170 grams of heroin, digital scales, a Glock firearm, paperwork belonging to Kight, and cellular phones. (*Id.* at 482-485).

During the same period when North Dakota law enforcement officials were conducting their investigation into Armstrong, Mansell, and other associates, a parallel investigation was underway by the Northwest Metro Task Force (NWMTF) based in the Minneapolis/St. Paul, Minnesota, region. In January 2019, the NWMTF employed a confidential informant who provided information suggesting that Armstrong was involved in the trafficking of methamphetamine and

cocaine in the Minneapolis/St. Paul, Minnesota, area. This intelligence was used by law enforcement to secure a Pen Register Trap and Trace, which revealed Armstrong's frequent trips to North Dakota, including one on January 19, 2019. (Tr. Trans. at 568-572, 620-622). Co-conspirators also corroborated this information, attesting that they had received controlled substances from Armstrong. Even following Mansell's arrest, Armstrong was reported to continue his involvement in trafficking controlled substances. (*Id.* at 357-421, 633-698, 719-722).

The NWMTF continued their investigation by conducting surveillance and subsequently obtaining a search warrant. (Tr. Trans. at 568-579). In April 2019, before acquiring the search warrant, law enforcement stumbled upon several items discarded in Armstrong's curbside garbage, including two .45 automatic handgun training rounds, mail addressed to Yazaunie Vanderbilt at a residence in Grand Forks, North Dakota, a U.S. Bank receipt indicating a \$500 cash deposit, a money order receipt totaling \$600, a THC vape cartridge, a THC package from California labeled with 91.47% THC content, and plastic wrap that, upon ion scanning, tested positive for methamphetamine. *Id.* A search warrant application was subsequently submitted to and approved by the

Dakota County District Court in Minnesota. (*Id.* at 579). The execution of the search warrant at Armstrong's residence yielded firearms, ammunition, over \$66,000 in U.S. currency, and additional evidence. (*Id.* at 579-590). Investigator Nicholas Courtright briefly interviewed Armstrong, who claimed to be employed at Top Dog Automotive. However, law enforcement could not locate any records establishing the existence of such a business. (*Id.* at 590-592).

As the North Dakota investigation advanced, in February 2019, law enforcement received information from an anonymous source who preferred to remain unidentified. (Tr. Trans. at 780-781). This tip led law enforcement to the Quality Inn hotel in Bismarck, North Dakota. *Id.* Upon contacting the hotel, officers requested access to the hotel registration, which contained the names and room assignments of all guests. *Id.* One name, in particular, drew attention: Gorgianna Hepperle. *Id.* Hepperle's name held significance for law enforcement because they were aware of her connections to Agnes Reddogg. *Id.* Additionally, law enforcement had information that Reddogg was linked to an ongoing, long-term drug trafficking investigation. Moreover, law enforcement had obtained a Pen Register Trap and Trace (PRTT)

warrant for Reddogg, revealing her travel to and from the Quality Inn hotel. *Id.*

Hepperle was under the supervision of North Dakota Parole and Probation, which included a clause allowing for searches. (Tr. Trans. at 190). Consequently, a probation search was conducted in Hepperle's hotel room. (*Id.* at 190-191). Law enforcement announced their presence and knocked on the door of room 305, the room registered to Hepperle. *Id.* However, upon opening the door, they were met by a black male, later identified as Byron Brown, who immediately displayed combative behavior towards law enforcement. *Id.* Given the exigent circumstances, officers entered the hotel room and observed an unzipped backpack on a chair next to the couch. This backpack contained a substantial sandwich bag filled with methamphetamine, exceeding a quarter-pound in weight, and a smaller plastic bag containing approximately one ounce of heroin. (*Id.* at 191-194). Subsequently, a search warrant was sought and granted to further investigate the contents of the room.

Law enforcement subsequently revisited the hotel room and carried out the search authorized by the granted search warrant. (Tr. Trans. at 193). This search yielded multiple pieces of evidence, including cellular

phones, a digital scale exhibiting traces of methamphetamine, an approximate quantity of 3 pounds of methamphetamine, 37 grams of heroin, a substantial sum of U.S. currency, zip lock bags, and an assortment of paper documents. Among these documents was a Cricket Wireless receipt made out to a person identified as "King Brown." (*Id.* at 193-204). Once again, co-conspirators provided corroborating information linking the controlled substances discovered during this search to Armstrong. (*Id.* at 357-421, 633-698, 719-722).

Throughout the trial, several co-conspirators provided testimony, including Agnes Reddogg (Tr. Trans. at 27-111), Tia Klein (*Id.* at 138-173), Gorgianna Hepperle (*Id.* at 261-306), Burt Robillard (*Id.* at 306-357), Amanda Backman (*Id.* at 357-472), Deondra Kight (*Id.* at 495-565), and Christopher Rubio (*Id.* at 633-755). Each of these individuals recounted either receiving controlled substances directly from Armstrong or witnessing Armstrong in possession of substantial quantities of controlled substances. Many of these co-conspirators also described making multiple trips between North Dakota and Minnesota to facilitate drug trafficking, with the proceeds from these drug sales being funneled back to Armstrong.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE EIGHT CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

- (1) A review of writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
 - (a) When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
 - (b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Id. Supreme Court Rule 10.1(a), (c).

ARGUMENT

I. DID THE DISTRICT COURT AND THE EIGHT CIRCUIT COURT OF APPEALS ERR WHEN IT FAILED TO GRANT A NEW TRIAL AS PROVIDED BY FEDERAL RULES OF CRIMINAL PROCEDURE RULE 33

A. Newly Discovered Evidence

1. Witness Agness Reddogg's Sworn Affidavit

After the trial, Agness Reddogg submitted an affidavit revealing that the majority of her trial testimony was rehearsed and that her involvement was "inaccurate and influenced by external pressures." (See Exhibit A). In her affidavit, Reddogg states, "When I was asked how I knew Mr. Armstrong, I did not provide a truthful response. I met Armstrong through Gina. I met him through Gina because as we [Gina and I] used to steal from stores, he would buy merchandise for his goddaughter, mainly things for kids, but that's how I met him." *Id.* at 4. Essentially, Reddogg admits in her affidavit that she lied during her trial testimony, stating she was "told that they [the government] needed Mr. Armstrong to be 'Luis' for me to receive my offered deal." She further asserts that her testimony was coached to ensure she retained her cooperation agreement. Reddogg explains, "A majority of my testimony against Armstrong was prepared for me by the Agents and the

Prosecutors. I was high most of the time, so they wanted to make sure I said the correct things." *Id.* at 7.

In her affidavit, Reddogg provides specific statements regarding the false testimony she delivered at trial, her drug usage during the proceedings, and the preparation of her testimony by law enforcement and government officials. The most crucial part of her affidavit is her assertion that her "claim that Terrell is innocent and wrongly incarcerated is based on my realization that my prior testimonies were misleading and fabricated under pressure." *Id.* at 22.

Through this affidavit, Agness Reddogg unequivocally recants her trial testimony, stating that her previous statements were false and made under duress. She offers detailed information about the circumstances leading to her false testimony and expresses a strong desire to correct the record.

B. Federal Rule of Criminal Procedure Rule 33 Standard of Review

Federal Rule of Criminal Procedure Rule 33 allows this Court to grant a new trial "if the interest of justice so requires." *United States v. Hey*, No. 03-80863, 2005 U.S. Dist. LEXIS 38550, at *1 (E.D. Mich. Apr. 29, 2005). Rule 33 permits a federal district court to vacate any judgment and grant

a new trial if the interest of justice so requires. The district court is permitted to "weigh the evidence, disbelieve witnesses, and grant a new trial even where there is substantial evidence to sustain the verdict."

United States v. Campos, 306 F.3d 577, 579 (8th Cir. 2002). "[T]he standard in this circuit for a Rule 33 motion is clear and binding." *United States v. Rubashkin*, 655 F.3d 849, 857 (8th Cir. 2011). The rule requires that the newly discovered evidence 'probably will result in an acquittal.'"

Id. at 858; *United States v. Beckman*, 787 F.3d 466, 491 (8th Cir. 2015).

Here, the main witness against Armstrong recanted her testimony. In fact, not only did she recant her testimony, but she also stated that "the majority of her testimony was prepared for me by the Agents and Prosecutor" to convict Armstrong. (Affidavit at 7). None of this new information could have been "newly discovered" before trial as Reddogg was under government control and was being fed the statements she needed to provide.

Rule 33 further provides that new trial motions grounded on newly discovered evidence must be filed within three years after the verdict or finding of guilty. Fed. R. Crim. P. 33(b)(1). The jury verdict was returned

on September 21, 2020. (Dkt. 263). Thus, Armstrong's motion was timely filed.

Several grounds must be met for Armstrong to be successful in the motion for a new trial. *See United States v. Hey*, No. 03-80863, 2005 U.S. Dist. LEXIS 38550, at *16 (E.D. Mich. Apr. 29, 2005). The burden is on the Defendant to show that a new trial should be granted by establishing: "(1) the new evidence was discovered after trial; (2) the evidence could not have been discovered earlier with due diligence; (3) the evidence is material and not merely cumulative or impeaching; and (4) the evidence would likely produce acquittal." Armstrong can meet all these requirements.

One of the grounds for a new trial is the discovery of new evidence that "could not have been discovered in time to move for a new trial under Rule 29." In this case, Reddogg's recantation affidavit constitutes newly discovered evidence that could not have been reasonably discovered before trial or immediately thereafter. It was not until Reddogg contacted Armstrong that the affidavit was provided. Had Reddogg not made contact, the truth would have never come to light. Moreover, the recantation of a key prosecution witness raises substantial concerns

regarding the fairness and accuracy of the trial, as well as the integrity of the criminal justice system.

C. Newly Discovered Evidence Requirement

The first element of this standard requires that the evidence in question is indeed new and could not have been reasonably discovered through due diligence before or during the trial proceedings. Reddogg's recantation affidavit unequivocally meets this criterion. The defense exercised reasonable due diligence throughout the trial and pretrial proceedings, yet it was impossible to uncover this new evidence because it was unknown at the time that Reddogg would provide the affidavit. Reddogg was a government witness and lacked communication with Armstrong. There was no way to interview Reddogg before trial, apart from good cross-examination, to secure a recanted statement. Reddogg determined when she wanted to divulge that she was instructed by the case agents to lie for the government. Additionally, Armstrong did not know Reddogg's whereabouts. Reddogg chose to reach out to Armstrong to correct her misdeeds. This recantation is fundamentally new information that could not have been anticipated or pursued earlier.

D Materiality Requirement

The second element necessitates that the new evidence be material, meaning it has the potential to change the outcome of the trial. It must establish a reasonable probability that had it been presented at trial, the results would have been different. *United States v. Rubashkin*, 655 F.3d 849, 857 (8th Cir. 2011). The rule requires that the newly discovered evidence “probably will result in an acquittal.” Id. at 858. Reddogg’s recantation directly addresses the credibility of her critical trial testimony. Her sworn statement recanting her trial testimony raises profound doubts about the veracity of her prior statements. The impact of such a recantation on the trial’s outcome is clear: it would have led the jury to question the reliability of the entire case against Armstrong, thereby creating a reasonable probability of a different verdict. *United States v. Perez*, No. 3:20-cr-86-TJC-JBT, 2022 U.S. Dist. LEXIS 215996, at *31 (M.D. Fla. Nov. 30, 2022) (“to warrant a new trial, the evidence must preponderate heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand.”). Allowing Reddogg’s statements to stand is an injustice against Armstrong.

E. Due Diligence Requirement

The third element obliges Armstrong to demonstrate that he exercised due diligence in discovering the evidence. In this instance, the defense acted with diligence throughout the pretrial and trial phases. The recantation was concealed by Reddogg, and there were no reasonable means available to uncover this critical evidence before or during the trial. Reddogg was missing post-trial, and Armstrong was not aware of her whereabouts. It was not until Reddogg surfaced and contacted Armstrong that the affidavit and its contents came to light. The defense did not know Reddogg's intention to recant and, as such, could not have been expected to discover it earlier.

F. Interest of Justice Requirement

Finally, the overarching consideration is whether the interests of justice demand a new trial based on the newly discovered evidence. The recantation of a pivotal prosecution witness strikes at the heart of the justice system's commitment to truth and fairness. The Court's paramount duty is to ensure that justice is done, and justice can only be served by allowing this newly discovered evidence to be presented and evaluated in the context of a new trial. To deny a new trial in these circumstances

would be to risk a manifest miscarriage of justice and undermine public confidence in the integrity of the judicial process.

In light of these considerations, the legal standard for granting a new trial based on newly discovered evidence is satisfied in this case. The recantation of a key prosecution witness meets all the necessary elements. The interests of justice undeniably mandate that a new trial be ordered to allow for a fair and just resolution of the matter. Reddogg stated in her affidavit that she was told to testify falsely against Armstrong by the case agents. In essence, the government knew that the testimony of Reddogg was false. See *Napue v. Illinois*, 360 U.S. 264 (1959). Although not directly related to Rule 33, this Supreme Court case underscores the importance of witnesses providing truthful testimony. It holds that the prosecution's knowing use of false testimony, even if unintentional, violates due process.

1. Reddogg's Critical Role in the Trial

During the trial, Reddogg played a pivotal role as a prosecution witness. Her testimony was instrumental in shaping the prosecution's case against Armstrong. The fact that this key witness, who was central to the prosecution's case, has now come forward with an exculpatory

affidavit cannot be understated. The affidavit raises serious questions about the veracity and reliability of the entire trial.

2. Exculpatory Nature of the Affidavit

The statements provided by Reddogg in her affidavit go beyond a basic retraction of prior assertions. She indicates that there was an external influence on her testimony against Armstrong, suggesting potential misconduct or interference in the pursuit of the conviction. Her claims of being guided on what to say—often deviating from her actual experiences or knowledge—raise serious concerns about the integrity of the evidence presented during the trial. This divergence between her affidavit and trial testimony doesn't merely introduce doubt but significantly erodes the credibility of the evidence that the prosecution relied upon. In the realm of criminal defense, the reliability and authenticity of witness testimony are paramount. Any indication that her testimony was manipulated or tampered with casts a shadow over the entirety of the proceedings. Furthermore, evidence with such potential exculpatory value has a profound effect on the fairness of a trial. The nature of her affidavit suggests that, had it been available and presented during the initial trial, it could have fundamentally shifted the balance of evidence and led to a

different verdict. This underscores the importance of ensuring that all relevant and material evidence, especially that which might exonerate Armstrong, is thoroughly vetted and presented in the interests of justice.

3. Impact on the Jury Verdict

The affidavit of Reddogg infuses the case with a powerful and persuasive undertone of skepticism. The document is not a mere correction or clarification; it radically reshapes the storyline presented during the trial. By casting doubt on her prior statement, Reddogg inadvertently shines a spotlight on potential inconsistencies, biases, or manipulations that might have been present throughout the prosecution's entire argument. Moreover, the content of her affidavit doesn't just challenge the integrity of her initial testimony but potentially tarnishes the broader credibility of the prosecution's case. It suggests the possibility that key testimonial evidence might have been influenced or distorted. In the labyrinthine complexities of legal battles, the veracity of each testimony is a cornerstone upon which the architecture of justice is built. If one cornerstone is flawed or compromised, it can destabilize the structure of the entire case. Given the magnitude of the claims in her affidavit, had it been presented during the original proceedings, it would undoubtedly

have resonated with the jury. Jurors, tasked with critically evaluating the evidence and discerning the truth, would have been compelled to consider the weight and implications of such a stark contradiction. This revelation could have engendered a significant amount of doubt to challenge the threshold of "beyond a reasonable doubt," potentially redirecting the course of the verdict.

In essence, the presence of this previously unavailable exculpatory evidence underscores the delicate nature of judicial processes and the paramount importance of comprehensive, transparent, and unimpeachable presentation of evidence.

4. Maintaining the Fairness of the Trial Process

At the heart of any functioning democracy is its justice system, with the fairness of trials and the authenticity of verdicts standing as the twin pillars of its credibility. These elements are not mere procedures or formalities but represent the very essence of justice, ensuring that every individual's rights are safeguarded and that the rule of law is preserved. Permitting potentially exonerating evidence, such as the affidavit from Reddogg, to remain unexplored would fundamentally challenge these foundational principles. It is not merely about the particular case at hand

but about the broader message it sends about the justice system's commitment to thoroughness, transparency, and truth. An unexamined exculpatory affidavit is a potential miscarriage of justice that casts a shadow on the proceedings and raises concerns about other oversights or irregularities.

Moreover, the Court's role isn't merely administrative. It is a guardian of justice, a bastion ensuring that trials are not just processes but profound exercises in discerning the truth. This responsibility mandates that every piece of evidence, especially one that challenges the veracity of prior testimony, is given its due scrutiny. Introducing the exculpatory affidavit of Reddogg is not just an act of due diligence; it is a testament to the Court's unwavering commitment to justice. Given the significance of Reddogg's testimony during the trial and the potential implications of the affidavit on the verdict, it would be prudent for the Court to carefully consider this evidence. In upholding the integrity of the judicial process and safeguarding Armstrong's rights, the Court should have granted a new trial to thoroughly examine the implications of this exculpatory affidavit. That error requires the granting of a writ of certiorari.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the Eighth Circuit.

Done this 25, day of July 2024.


Terrell Armstrong
Reg. # 22092-041
FCI Forrest City Medium
PO Box 3000
Forrest City, AR 72336