

No.

17-8970

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN BLAKENEY - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR REHEARING

Steven Blakeney
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O'Fallon Mo, 63366

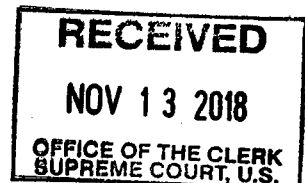


TABLE OF CONTENTS

Table of Authorities	ii
Reasons for Granting Rehearing & Statement of Case.....	1
Argument	5
I. The Court erred in passing on Blakeney's argument that he could not have conspired with Mayor Caldwell, as the Eight Circuit Court of Appeals erroneously opined because the Government on the trial record affirmed to the District Court that Caldwell was not a co-conspirator. The District Court in return prohibited Blakeney from bringing up Mayor Caldwell during his trial. Ultimately, the District Court concluded at Blakeney's sentencing hearing that Mayor Caldwell was not a co-conspirator.....	5
II. The Court erred in passing on Blakeney's argument that police officer Brock did have sufficient independent probable cause at the <u>moment</u> of Nakisha Ford's arrest when Ford knowingly lied to Officer Brock about her earlier conduct. Ford was willfully attempting to misdirect Officer Brock's investigation, a crime in and of itself. The Eight Circuit Court of Appeals committed an egregious error when it opined that Blakeney supplied Brock all of the information that justified Ford's arrest. Officer Brock testified at trial to the exact opposite, that he took statements independent of Blakeney and placed those statements in his police report, justifying Ford's arrest.....	8
III. The Court erred in passing on Blakeney's argument that the Eight Circuit Court of Appeal abused its discretion by finding the District Court <u>did</u> answer the Jury's question of which document Blakeney is accused of falsifying by the District Court referring the jury back to the jury instructions, and the appeal court citing to legal authority, <u>United States v. Hayes</u> , 574 F.3d 460, 481-82 (8 th Cir. 2009)(affirming a conviction when the jury was referred to jury instructions that <u>answered</u> the jury's question). However, it is a <u>historical fact</u> that the instructions submitted to the jury for deliberations made no mention of any document Blakeney allegedly falsified. The jury instructions did not answer the question posed to the court during deliberations.....	10
IV. The Court erred in passing on Blakeney's argument that the Eight Circuit Court of Appeals abused its discretion by finding the District Court did not commit error by instructing a deliberating jury outside the presence of Blakeney and his attorney because the District Court provided Blakeney an "opportunity to object or suggest another response". The trial record undeniably and without confusion shows the District Court communicated with the jury while they were deliberating and denied a jury's request on a vital issue in the case, only making Blakeney and his attorney aware of the question after the request was denied with an erroneous response. <u>After</u> the court sent its communication denying the jury's request, the court later asked Blakeney if he "had anything [he would] like to add".....	12
Conclusion.....	15

Table of Authorities

Cases

<u>Alcindore v. United States</u> , 828 A.2d 152 (D.C. 2003)	11
<u>Bollenbach v. United States</u> , 326 U.S. 607, 90 L. Ed. 350, 66 S. Ct. 402 (1946)	11
<u>Brown v. Illinois</u> , 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975).....	9
<u>Evans v. United States</u> , 284 F.2d 393, 394 (6 th Cir. 1960)	12
<u>Gerstein v. Pugh</u> , 420 U.S. 103, 114-15, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975).....	9
<u>Rice v. United States</u> , 356 F.2d 709, 716-17 (8 th Cir. 1966)	13
<u>Sears v. United States</u> , 343 F.2d 139, 142 (5 th Cir. 1965)	6
<u>United States v. Cherry</u> , 794 F.2d 201, 206 (5 th Cir. 1986).....	9
<u>United States v. Combs</u> , 33 F.3d 667 (6 th Cir. 1994).....	10
<u>United States v. Edwards</u> , 103 F.3d 90 (10 th Cir. 1996)	9
<u>United States v. Falcone</u> , 311 U.S. 205, 61 S. Ct. 204, 85 L. Ed. 128 (1940).....	6
<u>United States v. Faulkner</u> , 636 F.3d 1009 (8 th Cir. 2011).....	9
<u>United States v. Ibarra-Sanchez</u> , 199 F.3d 753 (5 th Cir. 1999).....	9
<u>United States v. Kimmons</u> , 917 F.2d 1011 (7 th Cir. 1990)	6
<u>United States v. Lennick</u> , 18 F.3d 814 (9 th Cir. 1994).....	6
<u>United States v. Manuel</u> , 706 F.2d 908 (9 th Cir. 1983).....	9
<u>United States v. Romel</u> , 2001 U.S. Dist. LEXIS 23262 (D. Neb. March 15, 2001).....	9
<u>United States v. Zarintash</u> , 736 F.2d 66, 69-70 (3 rd Cir. 1984)	14

REASONS FOR GRANTING REHEARING

Granting Rehearing is warranted because the Eighth Circuit Court of Appeals' opinion in this case has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's supervisory power.

This Honorable Court only grants Writs of Certiorari for compelling reasons, and this case now before the Court is such an extraordinary example of why this Court of last resort in this case maintains its vast supervisory power over lower courts so to support the very foundations of justice. **For this Court to allow this judgment to stand would be a complete miscarriage of justice and would pave the way for law enforcement officer's loss of rights and protections from this very Court. This is a published case from the Eighth Circuit that will be used against all law enforcement officers and it's erroneous.**

STATEMENT OF THE CASE

In this politically charged and highly publicized case, the Government charged Steven Blakeney, a municipal police officer, by Indictment with one count of Conspiracy Against Rights in violation of 18 U.S.C. § 241 (Count I), one count of Deprivation of Rights under Color of Law in violation of 18 U.S.C. § 242 (Count II), and one count of Falsification of Records in violation of 18 U.S.C. § 1519 (Count III). Count I alleged that Blakeney conspired with Akram Samad ("Sam") and others known and unknown to arrest Nakisha Ford based on false allegations and without probable cause by having an arrest warrant issued for Nakisha Ford. Count II alleged that Blakeney, under color of law, willfully deprived Ford of her right to be free from unreasonable seizure by causing her to be arrested by an arrest warrant based on false allegations and without probable cause. Count III alleged that Blakeney falsified Pine Lawn Police Department Incident Report# 13-1337 to obtain an arrest warrant for Ford through Prosecuting

Attorney Anthony Gray. Blakeney entered a plea of not guilty to all charges, and the case proceeded to a trial by jury.

In 2013, Pine Lawn Mayor Sylvester Caldwell was running for re-election against Nakisha Ford. Leading up to the mayoral election, Blakeney, a Pine Lawn police detective, went to the Pine Lawn Market to see if he could hang a campaign sign for Caldwell's re-election after speaking with Sam, the store's manager. Blakeney hung the sign in the store's window on the front door. The campaign sign contained a large mugshot of Ford and stated that she had previously been arrested for assaulting and interfering with a Pine Lawn police officer. It contained various other arrests and allegations regarding Ford's criminal past in the City of Pine Lawn.

On March 31, 2013, the day of Ford's arrest, Mario, the owner of the Pine Lawn Market, and April Brooks, the store cashier, were working at the Pine Lawn Market. Ford came into the store and caused a disturbance over the sign when the store was busy with other customers. Specifically, she spoke loudly, threatened to sue the business, and ultimately removed the sign from the store window and left. As the cashier, Brooks was positioned by the store's front door and witnessed the entire incident with Ford. Initially, Mario refused to take the sign down. However, after Ford threatened him with a lawsuit, Mario told her that she could take the sign down because he did not want any more trouble. Mario was afraid that Ford would retaliate against him if she were elected mayor.

After Ford took the sign from the store, Blakeney came to the store and asked Mario about who removed the sign. At first, Blakeney thought Mario removed the sign, but Mario told him that Ford had removed the sign. Blakeney asked to review the security footage where he saw Ford taking the sign. Blakeney left the store and returned with additional officers when Sam

called 9-1-1 to again report Ford's earlier misconduct. Patrol Officer Jesse Brock, independent of Blakeney's actions, interviewed Mario and Brooks at the store regarding the incident with Ford.

Pine Lawn Prosecuting Attorney Anthony Gray responded to the scene to review the security footage at the market. After reviewing the footage, Gray authorized charges for disorderly conduct and stealing under \$500 at the Pine Lawn Market. Based on Gray's on-scene investigation and authorization of criminal charges for disorderly conduct and stealing, Officer Brock himself entered a wanted for the questioning of Ford. A wanted in Missouri does not authorize an officer to arrest or criminally charge a person. No arrest warrant was ever issued for Ford relative to this incident.

Later at the station, Mario and Sam made written statements regarding the incident at their store with Ford through Mohammad Samad, Sam's son, because he could write in English. Both Mario and Sam could not write in English; English is their second language. Mario and Sam told Mohammad exactly what to write and reported what happened in a police interview room, which was recorded and preserved as evidence. At trial, three years later, both Mario and Sam now allege that Blakeney made them make false allegations against Ford in their written statements at the police station. At the time Mohammad wrote these statements for Mario and Sam, each had signed their statements in the presence of a police officer under penalty of perjury. Officer Brock wrote the only police report regarding this case. Later that evening, Patrol Officer Brock, Chief of Police Collins, Detective Blakeney, Supervising Patrol Officer Struckhoff, Patrol Officer Harrington, and the Prosecuting Attorney Gray responded to Ford's residence based on the wanted for questioning. After Ford answered the door, Ford **DENIED** taking the sign from the store. This false statement made by Ford was captured on police body camera and preserved as evidence. Officer Brock placed Ford under arrest, after she made this

false statement to him, for disorderly conduct and for stealing under \$500. Officer Brock had probable cause to arrest Ford at the moment of her arrest.

Approximately six hours after Ford's arrest, Ford was released on a summons after posting a \$750 bond. Ford's case was certified to St. Louis County state court for trial, out of the City of Pine Lawn's venue. Before her trial, the stealing charge was dismissed, and the disorderly conduct was amended to littering by Prosecutor Gray. Ford, through her retained attorney, pled guilty to the amended charge of littering and paid the maximum fine of \$500.

During deliberations at Blakeney's trial, the jury sent two questions to the District Court. The first one was about which document in evidence Blakeney allegedly falsified. The District Court responded by referring them back to the evidence and the instructions submitted. However, the court's instructions failed to answer the jury's question and there were many police documents entered into evidence over the four-day trial that Blakeney allegedly falsified. The district court responded to the jury outside the presence of Blakeney and his attorney on a vital issue in this case regarding the jury's request to review the trial transcripts of three government witnesses that spoke English only as a second language. The district court denied the jury's minute request to review approximately 181 pages of testimony. The district court notified Blakeney's attorney after the court had already responded to the jury in writing instructing the jury there was no transcript to review without any explanation. This response to the jury is problematic because the district court's answer to the jury was erroneous and the jury had already been given this instruction by the time the court asked Blakeney's attorney if he had an objection to it. Soon thereafter, the jury returned a guilty verdict for all three counts. The District Court sentenced Blakeney to 51 months imprisonment, with credit for five months on home detention, followed by three years of supervised release. Blakeney appealed his conviction to the Eighth

Circuit raising several points regarding the sufficiency of the evidence, evidentiary rulings, Government's comment during closing argument, and questions submitted by the jury. The Eighth Circuit denied all points of error and affirmed Blakeney's conviction, and denied rehearing, creating a conflict with Supreme Court precedent and an intra-circuit split on a police officer's lawful ability to make an arrest. This Honorable Court denied Writ of Certiorari. Blakeney now petitions this Honorable Court for Rehearing.

Argument

I. The Court erred in passing on Blakeney's argument that he could not have conspired with Mayor Caldwell, as the Eight Circuit Court of Appeals erroneously opined because the Government on the trial record affirmed to the District Court that Caldwell was not a co-conspirator. The District Court in return prohibited Blakeney from bringing up Mayor Caldwell during his trial. Ultimately, the District Court concluded at Blakeney's sentencing hearing that Mayor Caldwell was not a co-conspirator.

Blakeney's entire trial focused on whether he allegedly conspired with Sam to deprive Ford of her rights. Prior to the presentation of evidence, Blakeney had a serious concern that the Government may attempt to allege Caldwell as a conspirator. The District Court, the Government, and Defense Counsel discussed this issue, and during this conversation, the following occurred:

MR. WRIGHT: So the charge here in this matter of this trial involves a conspiracy.

THE COURT: Right.

MR. WRIGHT: And the conspiracy, I think, is as many people as they want to say are involved in this.

THE COURT: But the conspiracy, though, I thought was with the store owners and managers.

MR. HARRIS: Right.

Tr. Vol. II, pg. 10-11.

Here, the Government affirmed to the District Court that Caldwell was not a potential co-conspirator. Neither the Indictment, nor the Government's opening statement, made any reference to Caldwell as a possible co-conspirator. In fact, at the beginning of Blakeney's trial, the Government moved the District Court to limit Blakeney from adducing evidence about Caldwell, and the District Court agreed. Blakeney was prohibited from bringing Caldwell up at his trial. This representation affected the fairness and integrity of the trial because the Government later named Caldwell as a co-conspirator for the first time during the last part of their closing argument just before the jury retired to deliberate. At this time, Blakeney could not adduce any evidence to combat this allegation and was prohibited earlier by the District Court from defending himself in regard to Caldwell possibly being a co-conspirator.

A conspiracy is an "agreement among the conspirators." United States v. Falcone, 311 U.S. 205, 210, 61 S. Ct. 204, 85 L. Ed. 128 (1940). And, if there is no meeting of the minds, there is no conspiracy. See, Sears v. United States, 343 F. 2d 139, 142 (5th Cir. 1965) "[W]hen the sufficiency of the evidence to connect a particular defendant to a conspiracy is challenged on appeal, 'substantial evidence' should be the test rather than 'slight evidence' or 'slight connection.'" United States v. Kinmons, 917 F. 2d 1011, 1015 (7th Cir.1990). The piling of inference upon inference is not sufficient in a criminal case where innocent until proven guilty reigns supreme. *Id.*

While an agreement may be inferred from the defendant's acts or other circumstantial evidence, "simple knowledge, approval of, or acquiescence in the object or purpose of conspiracy, without an intention and agreement to accomplish a specific illegal objective, is not sufficient." United States v. Lennick, 18F. 3d 814, 818 (9th Cir. 1994). The Government must not only show that Blakeney allegedly set in motion a scheme to deprive Ford of her rights, but

also that he and another individual agreed for this to happen. Id.

At trial, the Government adduced no evidence whatsoever that Blakeney and Caldwell entered into an agreement to deprive Ford of her rights. The 8th Cir. opined that sufficient evidence existed to find Caldwell and Blakeney conspired because: (1) Blakeney supported Caldwell in the mayoral race; (2) Caldwell had motive to sabotage Ford's chances in the election; (3) Blakeney allegedly arranged for the Samad brothers to talk with Caldwell during their interviews; and (4) Caldwell arranged for Blakeney to take the Samad brothers to court. Opinion, pg. 6. This evidence is insufficient to find a conspiracy, and the Panel's decision ignored crucial facts. First, prior to any alleged Caldwell involvement, Prosecutor Gray authorized charges for disorderly conduct and stealing against Ford. The only evidence connecting Blakeney and Caldwell, prior to the authorization of charges, was that Blakeney supported Caldwell and hung his campaign sign. Second, as Sam himself testified at trial, Blakeney never took him to court, and did not show up when Caldwell had allegedly arranged him to. If Blakeney and Caldwell were conspiring, taking Sam to court to testify against Ford would have been the most important component of the conspiracy. Blakeney not doing this demonstrates that he and Caldwell were not conspiring at all.

Further, if Caldwell was a conspirator, the Government would have most certainly charged and prosecuted both him and Blakeney with the conspiracy offense and not waited until their last statements of closing argument and just before the jury retired to deliberate to name Caldwell as a co-conspirator for the very first time. This trial strategy by the Government was a clear case of prosecutorial misconduct designed to deprive Blakeney of a fair trial.

Based on the Eighth Circuit's ruling finding Caldwell was Blakeney's co-conspirator, Blakeney should have been allowed to present evidence and confront witnesses about whether a

conspiracy existed between him and Caldwell. The Government's pre-trial position on Caldwell and the District Court's ruling clearly denied Blakeney's constitutional right to do this. Now, Blakeney's conspiracy conviction rests on insufficient evidence, and he has been systematically deprived of the opportunity to defend himself regarding a conspiracy with Caldwell. For these reasons, Blakeney asks the Court to rehear this case to decide whether Blakeney could have conspired with Caldwell and if Blakeney's right to defend himself regarding a conspiracy with Caldwell was violated, and if Blakeney was denied a fair trial.

II. The Court erred in passing on Blakeney's argument that police officer Brock did have sufficient independent probable cause at the moment of Nakisha Ford's arrest when Ford knowingly lied to Officer Brock about her earlier conduct. Ford was willfully attempting to misdirect Officer Brock's investigation, a crime in and of itself. The Eighth Circuit Court of Appeals committed an egregious error when it opined that Blakeney supplied Brock all of the information that justified Ford's arrest. Officer Brock testified at trial to the exact opposite, that he took statements independent of Blakeney and placed those statements in his police report, justifying Ford's arrest.

The Eighth Circuit Court of Appeals opinion overlooks crucial facts that justified Ford's arrest for disorderly conduct. It should be noted that Ford pled guilty to an amended charge through her retained attorney. While the Eighth Circuit opinion focuses on the allegedly false stealing charge, it is Ford's disorderly conduct that carries the day. Officer Brock interviewed April Brooks, an independent witness, and Mario who told him that Ford caused a disturbance in a crowded market, threatened to sue the business, spoke loudly, and ultimately removed the sign from the Pine Lawn Market. Nothing about Ford's conduct in the Pine Lawn Market was orderly, and it would be disingenuous to suggest otherwise. Because her disorderly conduct that day justified her arrest by itself, she did not suffer a deprivation of rights. Therefore, insufficient evidence exists to convict Blakeney of Deprivation of Rights under Color of Law. Blakeney has been unable to find, and the Panel did not cite, any caselaw that supports or contradicts his position that the attenuation doctrine applies as a defense to the charge of Deprivation of Rights

under Color of Law. This appears to be a matter of first impression that needs to be answered.

District courts and courts of appeals routinely find that an illegal arrest or illegally seized evidence can be attenuated by the development of probable cause independent of the illegality. See e.g., United States v. Rome, 2001 U.S. Dist. LEXIS 23262 at *16 (D. Neb. March 15, 2001); United States v. Ibarra-Sanchez, 199 F. 3d 753, 761-62 (5th Cir. 1999); United States v. Edwards, 103 F. 3d 90, 94 (10th Cir. 1996); United States v. Cherry, 794 F. 2d 201, 206 (5th Cir. 1986); and United States v. Manuel, 706 F. 2d 908, 911-12 (9th Cir. 1983). "[T]he more apt question in a case of an initially illegal police action is whether, granting establishment of the primary illegality, the [arrest] to which objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." United States v. Faulkner, 636 F. 3d 1009, 1016 (8th Cir. 2011).

In determining whether the taint of an illegal action has been purged, the Court must consider: (1) the temporal proximity of the illegal action; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. Brown v. Illinois, 422 U.S. 590, 603-04, 95 s. Ct. 2254, 45 L. Ed. 2d 416 (1975). If independent probable cause to arrest is developed, no deprivation of rights occurs. Officer Brock developed probable cause to arrest Ford while on scene at the Pine Lawn Market. Even if Blakeney's allegedly unlawful conduct dispatched Officer Brock to the scene, Ford's arrest was justified and sufficiently attenuated by Officer Brock's on scene development of probable cause following his independent interviews of Mario and Brooks. A policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of a crime, and for a brief period of detention to take the administrative steps incident to arrest. Gerstein v. Pugh, 420 U.S. 103, 114-15, 95 s. Ct. 854, 43 L. Ed. 2d 54 (1975). It's undisputed that Ford also lied to Officer Brock at

her residence when she told him that she did not take the sign. In doing so, she provided a false statement to Officer Brock. This false statement bolsters the fact that independent probable cause existed to take Ford into custody at that moment Ford was in fact arrested.

Further, Prosecutor Gray authorized charges for disorderly conduct and stealing against Ford after reviewing the store's surveillance footage on March 31, 2013. It was Gray, not Blakeney, who caused the wanted to be issued for Ford. The Government adduced no evidence that, without Prosecutor Gray's authorization, Blakeney would have himself, or through Brock, arrested Ford for disorderly conduct and stealing.

For these reasons, Petitioner asks the Court to rehear his case to decide whether Ford's disorderly conduct arrest and guilty plea justified her arrest and to answer the question of whether the attenuation doctrine applies as a defense to the charge of Deprivation of Rights under Color of Law in this case.

III. The Court erred in passing on Blakeney's argument that the Eight Circuit Court of Appeal abused its discretion by finding the District Court did answer the Jury's question of which document Blakeney is accused of falsifying by the District Court referring the jury back to the jury instructions, and the appeal court citing to legal authority, United States v. Hayes, 574 F.3d 460, 481-82 (8th Cir. 2009)(affirming a conviction when the jury was referred to jury instructions that answered the jury's question). However, it is a historical fact that the instructions submitted to the jury for deliberations made no mention of any document Blakeney allegedly falsified. The jury instructions did not answer the question posed to the court during deliberations.

Upon receipt of questions from a deliberating jury, it is incumbent upon the District Court to assume that at least some jurors are harboring confusion, which the original instructions either created or failed to clarify. United States v. Combs, 33 F. 3d 667, 669-70 (6th Cir. 1994). The District Court must be meticulous in preparing supplemental instructions, taking pains to adequately explain the point that is obviously troubling the jury. *Id.* When a jury explicitly requests supplemental instructions, a District Court must take great care to ensure that any

supplemental instructions are accurate, clear, neutral, and non-prejudicial. *Id.* "When a jury makes explicit its difficulties a trial judge should clear them away with concrete accuracy." Bollenbach v. United States, 326 U.S. 607, 612-13, 90 L. Ed. 350, 66 S. Ct. 402 (1946). And the District Court must not allow that confusion to persist; it must respond appropriately. See Alcindore v. United States, 818 A.2d 152, 155-56 (D.C. 2003). During deliberations, the jury submitted the following question:

"[•••] Which document in evidence are we talking about?[••]"

Tr. Vol. IV, pg. 64.

The District Court responded: "You are to be guided solely by the evidence submitted and the Court's instructions." Tr. Vol. IV, pg. 65. This response is problematic. Blakeney acknowledges that the District Court read the Indictment at the beginning of the four-day trial which, at that time, named the police report as the allegedly falsified document. However, throughout the four-day trial, many police documents were admitted into evidence, including: Sam's statement (Exhibit 9), Mario's statement (Exhibit 11), the wanted entry (Exhibit 15), and the police report (Exhibit 16). The Government's case alleged that Blakeney provided false information for each of these documents. By the time it came to deliberate on the fourth day of trial, the jury was clearly confused and asked the District Court for clarification.

The Eighth Circuit erred and found that "[t]he jury instructions [submitted] included a verbatim recitation of the indictment, which specified that Blakeney was charged with falsifying police report 13-1337." Opinion, pg. 12. This was factually incorrect; the instructions submitted to the jury for deliberations did not answer their question. The instructions made no mention of the police report or any document that Blakeney allegedly falsified. Doc. 50, pg. 16. The Eighth Circuit did not acknowledge this fact and rendered in its opinion factual misinformation. It

cannot be said with certainty that the jury found Blakeney guilty of falsifying only the police report as the Government charged, especially given that Sam and Mario continuously accused Blakeney of forcing them to make false written statements throughout trial, on top of the other police documents admitted into evidence.

Because of the jury's clear confusion; the District Court should have simply provided a supplemental instruction naming the document Blakeney allegedly falsified. Not doing so affected Blakeney's substantial rights and deprived him of a fair trial. For these reasons, the Eighth Circuit abused its discretion in concluding that the District Court did not plainly err in referring the jury back to the instructions submitted. Blakeney asks this Court of last resort to determine if Blakeney was denied a fair trial when the District Court gave the jury an erroneous instruction leaving the jury left to guess what document Blakeney allegedly falsified.

IV. The Court erred in passing on Blakeney's argument that the Eight Circuit Court of Appeals abused its discretion by finding the District Court did not commit error by instructing a deliberating jury outside the presence of Blakeney and his attorney because the District Court provided Blakeney an "opportunity to object or suggest another response". The trial record undeniably and without confusion shows the District Court communicated with the jury while they were deliberating and denied a jury's request on a vital issue in the case, only making Blakeney and his attorney aware of the question after the request was denied with an erroneous response. After the court sent its communication denying the jury's request, the court later asked Blakeney if he "had anything [he would] like to add".

In a felony case, the defendant is required to be present at every stage of the trial except when he voluntarily absents himself. Fed. R. Crim. P. 43 and Evans v. United States, 284 F. 2d 393, 394 (6th Cir. 1960)(reversing defendant's conviction because the instructions given did not relate to trivial, insubstantial matters, but involved vital issues in the case). It is even error for the District Court to instruct the jury in the absence of the defendant even though his counsel was present. *Id.* A defendant is entitled to be present in the courtroom when additional instructions are given to the jury by the District Court. *Id.* at 395. A defendant has the right to see and

observe the manner in which the proceedings are being conducted and to consult with his counsel. *Id.* If a defendant is present, he can object to any part of the instructions and the District Court would then have the opportunity for correcting the instructions if it deemed advisable to do so. *Id.* Communications between the District Court and the jury are presumed prejudicial and can only be overcome by evidence of a clear lack of prejudice. *Rice v. United States*, 356 F. 2d 709, 716-17 (8th Cir. 1966)(reversing defendant's conviction because no evidence suggested that the defendants were not prejudiced by the district court's instruction made in their absence).

Blakeney was not present at the jury question responded to by the District Court during deliberations when the jury asked the court to review the testimony of Sam, Mario, and Mohammed, presumably because they were very difficult to understand because English is their second language. It is undisputed that Blakeney or his attorney were not present when the District Court instructed the jury that "there is no transcript of the testimony to read." Tr. Vol. IV, pg. 65. Presuming prejudice in the District Court's instruction, this Court's inquiry turns on whether there is any evidence that indicates a clear lack of prejudice. See *Rice*, 356 F. 2d at 716-17. No clear lack of prejudice exists in this case. Blakeney certainly would have objected to the response by the court at the time, and before it was sent to the jury, and requested the District Court order the transcript of only 181 pages be prepared for the jury or to have the stenographer's notes read back to the jury, as has been done many times before. Additionally, the jury could have listened to the witnesses' testimony by playing back the audio recording of the testimony recorded by the District Court.

Further, as argued *infra*, the District Court's instruction given to the jury was erroneous. An erroneous instruction sent to the jury undoubtedly prejudices Blakeney and denies him a fair trial, especially in his absence. The Eighth Circuit Court of Appeals erroneously *opined that*

Blakeney was not prejudiced because the District Court provided him an opportunity to object or suggest another response once the district judge "track[ed] down everybody." Opinion, pg. 13.

This is inaccurate. The District Court already responded in writing to the jury's question (denying their request) before the District Court notified Blakeney or his counsel of the jury's question posed to the court. The District Court only provided Blakeney an opportunity to object to the court's response after the jury had already received the court's response to their question. And, that response from the District Court was erroneous. There was a transcript of the testimony taken of the three witnesses the jury wished to review. There were other options for the jury that could have been discussed with the court at the time the jury's question was posed to the court.

A trial judge has broad discretion in deciding whether to accede to a jury's request for a reading of testimony. United States v. Zarintash, 736 F. 2d 66, 69-70 (3d Cir. 1984). But this discretion is based upon a limited, twofold rationale. *Id.* First, that requests to read the testimony may slow the trial where the requested testimony is lengthy. *Id.* Second, that reading only a portion of the testimony may cause the jury to give that portion undue emphasis. *Id.* Thus, a District Court abuses its discretion where the refusal to read the requested testimony is not supported by one of these reasons. *Id.*

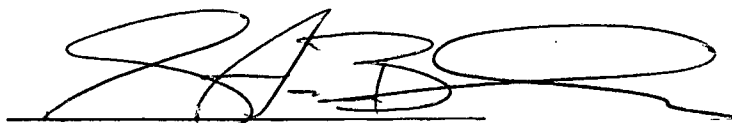
The District Court did not provide the jury with either of these rationales. or any other reason, for not providing the transcript in Blakeney's case. The District Court's denial of the jury's request prejudiced Blakeney because the three witnesses spoke broken English and their testimony that the jury wished to review was the crux of the Government's case. The request was not unreasonable as portions of the transcript were not lengthy, totaling approximately 181 pages. The proceedings could have been delayed for a short while for preparation of the transcripts or the court reporter could have read from the stenographer notes or the jury could

have listened to audio recordings of the witnesses because the court now records them. Reviewing the requested testimony would have certainly aided the jury in determining that no conspiracy existed and that Sam, Mario, and Mohammed were unreliable witnesses who changed their stories depending on whoever was in power in Pine Lawn at the time. The testimony requested by the jury was favorable to the defendant because it highlighted the witnesses' many inconsistent statements and that was extremely exculpatory for Blakeney. The District Court offering the defendant a chance to object or suggest another response to the jury's question after the District Court had already responded and denied the jury's request is akin to being sold a ticket for a train ride after the train left the station. You would be denied a train ride as the Petitioner here was denied a fair trial. Because the District Court's instruction violated Blakeney's right to a fair trial and providing the instruction in his absence was not harmless error, Blakeney asks this Court to grant Rehearing and vacate his sentence, set aside his conviction, and remand this case for a new trial in the interest of justice.

CONCLUSION

For the reasons stated herein, Blakeney requests this Petition for Rehearing be granted.

Respectfully submitted,



Steven Blakeney, Pro Se

Date: 11-8-18

Steven Blakeney
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