IN THE

SUPREME COURT OF THE UNITED STATES

PATRICK J. KILLEN, JR. — PETITIONER

vs.

UNITED STATES — RESPONDENT(S)

APPENDIX A

Order on Application for Leave to File a Second or Successive Motion to Vacate, Set Aside, or Correct Sentence, 28 U.S.C. §2255(h)

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13084

In re: PATRICK KILLEN, JR.,

Petitioner.

Application for Leave to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before ROSENBAUM, LUCK, and ABUDU, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Patrick Killen, Jr., has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if this Court certifies that the second or successive motion contains a claim involving:

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing

> evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec'y, Dep't of Corrs.*, 485 F.3d 1351, 1357–58 (11th Cir. 2007) (explaining that this Court's determination that an applicant has made a prima facie showing that the statutory criteria have been met is simply a threshold determination).

Killen is a federal prisoner serving a 600-month total imprisonment sentence for multiple counts of coercing a minor for the purpose of production of child pornography, distribution and receipt of child pornography, extortion by interstate threats, possession of child pornography involving a visual depiction of a minor under 12 years of age, and possession of child pornography.

In 2019, Killen filed his original § 2255 motion, which the district court denied with prejudice. As relevant, Killen raised a claim that his due process rights had been violated because he was not given the chance to review certain original evidence, which was a violation of his Fifth Amendment rights under *Brady v. Maryland*, 373 U.S. 83 (1963), and a claim that his home and electronic

equipment were searched without a warrant, citing *Katz v. United States*, 389 U.S. 347 (1967).

In his application, Killen indicates that he wishes to raise three claims in a second or successive § 2255 motion based on a new rule of constitutional law. First, he indicates that he wishes to raise a claim of a due process violation based on a new rule of constitutional law announced in *Andrew v. White*, 145 S. Ct. 75 (2025). He argues that an arbitrary list of victims was introduced in his sentencing without supporting evidence of "unknown" individuals, which was prejudicial evidence used to convict him, and that the Supreme Court held in *Andrew* that the introduction of such prejudicial evidence at sentencing violated the Due Process Clause. Killen also states that he was never given the opportunity to confront the victims listed, which he argues was a due process violation under *Hemphill v. New York*, 595 U.S. 150 (2022).

Second, he indicates that he wishes to raise a claim of error under *Napue v. Illinois*, 360 U.S. 264 (1959), as established by the Supreme Court's holding in *Glossip v. Oklahoma*, 604 U.S. 226 (2025). He argues that a witness "created" chat communications evidence based on metadata that the prosecution knew contained false evidence and failed to correct. Killen also states that he was never allowed to examine the metadata, which he argues was a violation of his Fifth Amendment rights under *Brady*, along with warrant-based due process violations.

Third, he indicates that he wishes to raise a claim based on the Supreme Court's holding in *Barnes v. Felix*, 145 S. Ct. 1353

(2025). He argues that, under *Barnes*, courts are required to consider the totality of the circumstances surrounding a threat and that he was questioned without a warrant, his parents, or counsel, was not read his *Miranda*[1] rights, and was threatened by law enforcement agents to consent to a warrantless search of his computers, violating his Fourth Amendment rights. Killen also states that he had a reasonable expectation of privacy in his computers under *Katz*. Killen attaches to his application copies of evidence that was presented at trial, consent affidavits, and warrants from his case.

In *Andrew*, the Supreme Court held that the legal principle announced in *Payne v. Tennessee*, 501 U.S. 808 (1991), "that the Due Process Clause can in certain cases protect against the introduction of unduly prejudicial evidence at a criminal trial," was a "holding" and constituted clearly established federal law for federal habeas review under 28 U.S.C. § 2254(d). 145 S. Ct. at 81. It concluded that, at the time of the original decision at issue, "clearly established law provided that the Due Process Clause forbids the introduction of evidence so unduly prejudicial as to render a criminal trial fundamentally unfair." *Id.* at 82.

In *Barnes*, the Supreme Court held that the "moment-of-threat" rule applied by appellate courts to claims alleging excessive force used by law enforcement officers during stops or arrests in violation of the Fourth Amendment conflicted with the inquiry into the totality of the circumstances for assessing the

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

reasonableness of the use of force by law enforcement. 145 S. Ct. at 1358-59. It stated that, "[a]s [the Court had] explained, a court cannot thus 'narrow' the totality-of-the-circumstances inquiry, to focus on only a single moment." *Id.* at 1360. The Court stated that it considered only the question of whether to look solely at the instant moment of the use of force or also to consider earlier events putting those events in context, not how officers' actions may affect the reasonableness analysis or other issues not properly before the Court. *Id.*

In *Glossip*, the Supreme Court recently held that a new trial is warranted if a *Napue* violation is material, which occurs if there is any reasonable likelihood that the false testimony would have affected the judgment of the jury. 604 U.S. at 246–52. The Court reviewed and applied the materiality standard for the alleged *Napue* error, determining that the *Napue* error was material and violated the defendant's due process rights. *Id.*

In *Hemphill*, the Supreme Court examined a New York precedent that allowed a criminal defendant to open the door to "evidence that would otherwise be inadmissible under the Confrontation Clause if the evidence was reasonably necessary to correct [a] misleading impression made by the defense's evidence or argument." 595 U.S. at 146 (quotation marks omitted, alteration in original). The Supreme Court explained that the New York precedent required a trial court to determine whether one party's evidence and arguments, in the context of the record, created a misleading impression that required correction using additional evidence from

the other side. *Id.* at 151-52. Reiterating the importance of the Confrontation Clause as interpreted in *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court held it required that the "reliability and veracity of the evidence against a criminal defendant be tested by cross-examination, not determined by a trial court." *Id.* at 156. Accordingly, it concluded that the trial court's admission of unconfronted testimonial hearsay over the defendant's objection violated the fundamental guarantees of the Confrontation Clause. *Id.*

An applicant seeking leave to file a second or successive collateral attack must show "a reasonable likelihood that he would benefit from the new rule he seeks to invoke." *In re Henry*, 757 F.3d 1151, 1162 (11th Cir. 2014).

We must dismiss a claim presented in an application to file a second or successive § 2255 motion that was presented in a prior application. *See* 28 U.S.C. § 2244(b)(1) (providing that a claim presented in a successive application under 28 U.S.C. § 2254 must be dismissed if it was filed in a prior "application"); *Randolph v. United States*, 904 F.3d 962, 964–65 (11th Cir. 2018) (holding that the bar under § 2244(b)(1) applies to claims that were raised in a federal prisoner's first § 2255 motion). We have explained that "a claim is the same where the basic gravamen of the argument is the same, even where new supporting evidence or legal arguments are added." *In re Baptiste*, 828 F.3d 1337, 1339 (11th Cir. 2016). We have clarified that this bar is jurisdictional. *In re Bradford*, 830 F.3d 1273, 1277-78 (11th Cir. 2016).

Here, as an initial matter, Killen's *Brady* claim and *Katz* claim have the same basic gravamen as the nearly identical claims in his initial § 2255 motion that his due process rights had been violated because he was not given the chance to review certain original evidence and that his home and electronic equipment had been searched without a search warrant, citing to *Katz*. Accordingly, we lack jurisdiction to hear Killen's *Brady* and *Katz* claims. *See* 28 U.S.C. § 2244(b)(1); *In re Bradford*, 830 F.3d at 1277–78; *Randolph*, 904 F.3d at 964–65; *In re Baptiste*, 828 F.3d at 1339.

As to the merits, Killen fails to make a prima facie showing that his remaining claims meet the statutory criteria in § 2255(h) for a claim based on a new rule of constitutional law. *See* 28 U.S.C. § 2255(h)(2).

The Supreme Court's decision in *Andrew* did not establish a new rule of constitutional law, as the Court merely held that *Payne* was clearly established law for federal habeas review for state prisoners under § 2254(d). *See Andrew*, 145 S. Ct. at 81–82. To the extent Killen is raising a claim based on *Payne*, *Payne* was previously available to Killen because it was decided before he filed his initial § 2255 motion in 2019. *See Payne*, 501 U.S. at 808.

Likewise, the Supreme Court's decision in *Glossip* did not establish a new rule of constitutional law, as the Court merely applied *Napue* and clarified the materiality analysis for *Napue* error. *See Glossip*, 604 U.S. at 246–52. And to the extent Killen is raising a claim based on *Napue*, *Napue* was not previously unavailable to him

because it was decided before he filed his first § 2255 motion. *See Napue*, 360 U.S. at 264.

Next, even assuming that *Barnes* established a new rule of constitutional law, Killen has not shown a reasonable possibility that he would benefit from such a rule because Killen is not raising an excessive force claim but instead is arguing that officers coercively obtained his consent to search his computers. *See Barnes*, 145 S. Ct. at 1360; *In re Henry*, 757 F.3d at 1162.

Finally, the Court's decision in *Hemphill* did not establish a new rule of constitutional law, as it merely applied *Crawford* to New York precedent and determined that evidence must be tested by cross-examination, not a trial court. *See Hemphill*, 595 U.S. at 146-156. To the extent Killen seeks to raise a claim based on *Crawford*, *Crawford* was not previously unavailable to him because it was decided before he filed his first § 2255 motion. *See Crawford*, 541 U.S. at 36. Further, Killen has not shown a reasonable possibility that he would benefit from any new rule in *Hemphill* because the New York precedent at issue did not apply to him as a federal defendant and he has not argued that the district court denied him the opportunity to confront witnesses under a similar rule as to what was at issue in *Hemphill*. *In re Henry*, 757 F.3d at 1162.

Thus, Killen has failed to make a prima facie showing that any of the cases he cited established a new rule of constitutional law that was previously available to him and that there was a reasonable probability that he would benefit from any such rule established in those cases. *See* 28 U.S.C. § 2255(h)(2); *In re Henry*,

757 F.3d at 1162. Killen also indicates that his claims do not rely on new evidence and does not cite to, describe, or attach any new evidence. 28 U.S.C. § 2255(h)(1).

Accordingly, Killen's application for leave to file a second or successive motion is hereby DISMISSED IN PART and DENIED IN PART.

Additional material from this filing is available in the Clerk's Office.