

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

United States of America,
Appellee,

v.

Joseph Cammarata,
Appellant.

Case No. 24-1983

REPLY BRIEF OF APPELLANT

Preliminary Statement

This is a preemptive reply brief, filed to preserve appellant's rights, as the Court has not ruled on his pending motion for appointment of Sixth Amendment criminal counsel and an extension of time to file pending new counsel. The filing deadline was August 25, 2025. Appellant was again denied the assistance of criminal counsel and prejudiced by this Court's inaction. Notably, there remains a pending motion for disqualification of this Circuit pursuant to 28 U.S.C. § 455 (Case No. 24-1381, ECF No. 80). Appellant respectfully requests that the record reflect that he was once more forced to proceed pro se in a criminal appeal, despite repeated and urgent requests for appointment of counsel and an extension to secure representation.

TABLE OF AUTHORITIES

Supreme Court Cases

Brady v. Maryland, 373 U.S. 83 (1963)

Kyles v. Whitley, 514 U.S. 419 (1995)

Banks v. Dretke, 540 U.S. 668 (2004)

Cone v. Bell, 556 U.S. 449 (2009)

Strickler v. Greene, 527 U.S. 263 (1999)

Napue v. Illinois, 360 U.S. 264 (1959)

Mooney v. Holohan, 294 U.S. 103 (1935)

Houston v. Lack, 487 U.S. 266 (1988)

United States v. Bagley, 473 U.S. 667 (1985)

Cheek v. United States, 498 U.S. 192 (1991)

Stirone v. United States, 361 U.S. 212 (1960)

In re Murchison, 349 U.S. 133 (1955)

Crawford v. Washington, 541 U.S. 36 (2004)

Estelle v. Williams, 425 U.S. 501 (1976)

Old Chief v. United States, 519 U.S. 172 (1997)

Barker v. Wingo, 407 U.S. 514 (1972)

Third Circuit Cases

United States v. Perdomo, 929 F.2d 967 (3d Cir. 1991)

United States v. Risha, 445 F.3d 298 (3d Cir. 2006)

United States v. Maury, 695 F.3d 227 (3d Cir. 2012)

United States v. Higgs, 713 F.2d 39 (3d Cir. 1983)

INTRODUCTION

The government's answering brief fails to meet appellant's central claims. This conviction is irreparably tainted by pervasive constitutional violations: egregious suppression of exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), a defective indictment procured through false grand jury representations, violations of the Due Process Protections Act of 2020 ("DPPA"), improper burden-shifting, constructive amendment of the charges at trial, and cumulative prosecutorial misconduct.

The prosecution knowingly withheld three categories of exculpatory evidence: (1) IRS Forms 1042-S confirming settlement proceeds were reported to the IRS and applicable taxes were paid; (2) settlement administrator check statements informing claimants that the proceeds were "generally not taxable income"; and (3) over \$19 million in business expenses which eliminated any alleged tax deficiency. All were in government possession, many bearing government Bates stamps, yet were withheld despite repeated requests.

These violations were compounded by judicial failure to enforce Rule 5(f) of the Federal Rules of Criminal Procedure and the DPPA. The district court struck motions, ignored dispositive evidence, and even denied timely post-trial motions by disregarding the prison mailbox rule established in *Houston v. Lack*, 487 U.S. 266 (1988).

The Constitution does not tolerate convictions obtained by concealment, misrepresentation, and judicial abdication. As the Supreme Court has made clear in *Brady*, *Kyles v. Whitley*, 514 U.S. 419 (1995), and *Banks v. Dretke*, 540 U.S. 668 (2004), reversal is mandatory.

ARGUMENT

I. The Government's Suppression of Exculpatory Evidence Violated Brady and Its Progeny

IRS Forms 1042-S, filed by settlement administrators pursuant to the Affordable Care Act of 2010, proved that taxes were withheld and paid on settlement distributions. Appellant introduced over fifty Bates-stamped copies from fraud trial discovery; the government first denied their existence, then conceded they had not been produced. Suppressing such material evidence violated Brady, 373 U.S. at 87, and Banks v. Dretke, 540 U.S. at 696 (“the State may not hide, then blame”).

Every settlement check was accompanied by a statement advising that proceeds were “generally not taxable income.” These statements, seized by the FBI and in government files, were never produced despite written requests. Reliance on such statements negates willfulness, and suppression violated the standards in Strickler v. Greene, 527 U.S. 263, 281–82 (1999).

IRS Agent Mazur testified he received no business expense records and admitted that expenses would reduce or eliminate liability. Over \$19 million in documented expenses offset the alleged \$16 million income. Withholding them rendered the “tax deficiency” element unprovable, contrary to United States v. Perdomo, 929 F.2d 967, 973–74 (3d Cir. 1991).

The government did not withhold some exculpatory evidence — it withheld all of it. This is the precise concern addressed in Kyles v. Whitley, 514 U.S. at 437.

II. The District Court Failed to Enforce the DPPA and Rule 5(f)

Rule 5(f), as amended by the DPPA, requires trial courts to issue clear orders reinforcing the prosecution's disclosure obligations. Here, no meaningful admonition was given, no enforcement occurred, and repeated Brady motions were denied without analysis. This failure contravened *Cone v. Bell*, 556 U.S. 449, 470 (2009), and violated the Third Circuit's instruction in *United States v. Maury*, 695 F.3d 227, 249 (3d Cir. 2012).

By failing to enforce Rule 5(f), the district court effectively sanctioned prosecutorial misconduct. Such abdication itself is a due process violation.

III. Grand Jury Misconduct and Constructive Amendment Require Dismissal

On September 22, 2022, prosecutors told the grand jury that \$16 million in settlement proceeds were the result of fraud — a claim not yet tried, let alone proven. This misrepresentation violated the Fifth Amendment's requirement of a fair grand jury presentation. As *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), makes clear, convictions based on false evidence are void.

At trial, the government impermissibly shifted theories, arguing appellant “hid” or “failed to report” income — elements of 26 U.S.C. § 7206, not § 7201. This constructive amendment broadened the bases for conviction beyond the indictment, violating due process under *Stirone v. United States*, 361 U.S. 212, 217–19 (1960).

IV. Witness Tampering, Hearsay Evidence, and Judicial Bias Further Corrupted the Trial

Government 302 reports revealed mid-trial interviews of cooperating witnesses designed to coach testimony and blunt exculpatory admissions. Such witness tampering, rejected in *Napue v. Illinois*, 360 U.S. 264, 269 (1959), undermines fundamental fairness.

IRS Agent Mazur admitted he did not prepare the spreadsheets introduced at trial; he relied on others' work and was provided no expense data. His testimony confirmed the tax calculations were incorrect without expenses. Admission of such hearsay spreadsheets violated confrontation rights under *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

The trial judge engaged in *ex parte* communications with the fraud trial judge, denied motions wholesale, and later displayed signs of medical incapacity, culminating in abrupt retirement without ruling on Rule 29/33 motions. Due process demands an impartial and competent tribunal, see *In re Murchison*, 349 U.S. 133, 136 (1955).

V. The Cumulative Effect of Misconduct Requires Reversal

Even if individual errors were deemed insufficient, their cumulative effect compels reversal. As *Kyles v. Whitley*, 514 U.S. at 436, held, cumulative suppression undermines confidence in the outcome. Here, prosecutors lied to the grand jury, suppressed all categories of exculpatory evidence, tampered with

witnesses, and relied on hearsay spreadsheets. The district court failed to enforce Rule 5(f), struck motions proving innocence, and ignored *Houston v. Lack*, 487 U.S. 266 (1988).

Post-trial, the government continued suppression by denying FOIA requests and withholding appellant's seized laptop and devices, echoing the systemic failures condemned in *United States v. Bagley*, 473 U.S. 667, 682 (1985), and *Banks v. Dretke*, 540 U.S. at 696. Confidence in the verdict is irretrievably lost.

CONCLUSION

The government's silence on appellant's central Brady claims, coupled with its misrepresentations to the grand jury, constructive amendment of the indictment, tampering with witnesses, reliance on hearsay, and the district court's refusal to enforce Rule 5(f) or the DPPA, confirm that this conviction cannot stand.

For these reasons, the Court should vacate appellant's conviction or, at minimum, remand for a new trial with full disclosure of exculpatory evidence.

Respectfully submitted,

/s/ Joseph Cammarata

Pro Se Appellant

APPENDIX A

Tax Trial Issues and Constitutional Violations

1. Defective Indictment and Grand Jury Misconduct

On September 22, 2022, prosecutors presented false information to the grand jury, claiming that \$16 million in securities settlement payments were the result of fraud. This misrepresentation was made before any fraud conviction existed, depriving appellant of the presumption of innocence and tainting the indictment. Convictions obtained through false grand jury testimony are constitutionally infirm under *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

2. Denial of Speedy Trial Rights

At arraignment and the first pre-trial hearing, appellant invoked his constitutional right to a speedy trial. The government opposed, and the court denied the request, violating the Sixth Amendment as recognized in *Barker v. Wingo*, 407 U.S. 514, 515 (1972).

3. Suppression of Exculpatory Evidence (Brady Violations)

The prosecution withheld three categories of evidence critical to appellant's defense:

IRS Forms 1042-S, proving settlement distributions were reported to the IRS and taxes withheld.

Settlement check statements, informing claimants that payments were "generally not taxable income."

Business expense records, documenting more than \$19 million in deductions, offsetting any alleged \$16 million "income."

Despite repeated written and oral requests, none were produced. When appellant introduced Bates-stamped IRS forms obtained from other discovery, the government falsely claimed fabrication, then conceded the forms existed but had not been provided. Suppression of exculpatory financial records violates *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Perdomo*, 929 F.2d 967, 973–74 (3d Cir. 1991).

4. Violations of the Due Process Protections Act and Rule 5(f)

The district court failed to enforce the Due Process Protections Act of 2020 and Fed. R. Crim. P. 5(f). No adequate Brady admonition was issued, and the court struck appellant’s post-trial motions raising suppression, further insulating misconduct from review. This judicial abdication contravenes *Cone v. Bell*, 556 U.S. 449, 470 (2009), and *United States v. Maury*, 695 F.3d 227, 249 (3d Cir. 2012).

5. Misrepresentation and Fabrication at Trial

The government misled the court and jury by denying the existence of IRS 1042-S forms, then minimizing their importance once authenticity was proven. Such knowing misrepresentation is condemned under *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

6. Elements of Tax Evasion Defeated by Withheld Evidence

Affirmative Attempt to Evade Taxes: disproven by IRS 1042-S forms showing taxes withheld and reported, consistent with the Affordable Care Act of 2010. Suppression of such evidence violated *Banks v. Dretke*, 540 U.S. 668, 696 (2004).

Willfulness: disproven by settlement check statements assuring recipients the payments were “generally not taxable income.” Reliance on such statements negates willfulness under *Cheek v. United States*, 498 U.S. 192, 202 (1991).

Tax Due and Owing: disproven by over \$19 million in suppressed business expenses. IRS Agent Mazur confirmed that no expense data was provided and admitted his calculations were therefore inaccurate. Withholding records undermining a tax deficiency element violates *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999).

7. Constructive Amendment of Indictment

Although the indictment charged violations of 26 U.S.C. § 7201, the prosecution argued appellant “hid” or “failed to report” income — elements of § 7206, not § 7201. This impermissible constructive amendment broadened the charges beyond the indictment, violating the Fifth Amendment. The Supreme Court in *Stirone v. United States*, 361 U.S. 212, 217–19 (1960), held that constructive amendment of an indictment invalidates a conviction.

8. Improper Government Conduct During Trial

Witness Tampering: government agents conducted mid-trial interviews to coach cooperating witnesses after damaging testimony. Such conduct undermines due process under *Napue*, 360 U.S. at 269.

Hearsay Evidence: the IRS agent admitted he did not prepare the spreadsheets introduced as evidence, relying on work prepared by others. Admission of hearsay violated confrontation rights protected by *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

Prejudicial Exhibits: despite a court order, the government repeatedly displayed spreadsheets labeled “Criminal Tax Calculation” to the jury, violating the presumption of innocence guaranteed by *Estelle v. Williams*, 425 U.S. 501, 503 (1976).

Evidence Outside the Charging Period: the indictment covered 2015–2019, but the government relied on documents only from after October 2019. Using irrelevant “other acts” evidence to imply guilt contravenes due process standards articulated in *Old Chief v. United States*, 519 U.S. 172, 180 (1997).

9. Continuing Suppression and Post-Trial Misconduct

The government confiscated appellant’s discovery laptop, containing defense strategies and attorney work product, and deleted references to business expense accounts from the “Tax Discovery Index.” Seized computers and drives containing exculpatory records were withheld. Subsequent FOIA requests to the SEC, DOJ, FBI, USMS, and IRS were denied, each agency claiming no responsive records existed. This continuing concealment, even during appeal, violates *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

10. Cumulative Constitutional Violations

The tax conviction was obtained only through a combination of defects: a tainted indictment, denial of speedy trial, suppression of all exculpatory evidence, failure to enforce Rule 5(f), misrepresentations at trial, constructive amendment, witness tampering, hearsay evidence, prejudicial exhibits, and continued post-trial suppression. Taken together, these violations deprived appellant of due process and a fair trial, rendering the conviction unconstitutional under the cumulative error doctrine reaffirmed in *United States v. Bagley*, 473 U.S. 667, 682 (1985), and *Kyles*, 514 U.S. at 436.

CERTIFICATE OF SERVICE

I, Joseph Cammarata, hereby certify that on this 24th day of August, 2025, I caused the foregoing Reply Brief of Appellant with Appendix A to be transmitted by email to the Clerk of the Court, United States Court of Appeals for the Third Circuit, for filing in the above-captioned case.

I further certify that a copy of the foregoing was served by electronic mail upon counsel for the United States, Department of Justice, Appellate Section, Criminal Division, Washington, D.C., on the same date.

Respectfully submitted,

/s/ Joseph Cammarata

Joseph Cammarata
Pro Se Appellant