

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 24-1983

UNITED STATES OF AMERICA

Appellee

v.

JOSEPH CAMMARATA

Appellant

**REPLY BRIEF FOR APPELLANT
AND APPENDIX**

Appeal from the Judgment of Sentence of United States District
Court for the District of New Jersey at No. 3:22-cr-00639

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STATEMENT OF FACTS

The statement of the case was included in Appellant's opening brief, pages 11-17. Appellant filed opening brief on March 13, 2025. The Government responded by brief filed June 5, 2025. Appellant requested appointment of new counsel. Current Counsel filed a Motion to Withdraw. Appellant filed a pro se Reply Brief on August 25, 2025. On August 25, 2025, this Court issued an Order that pro se brief will not be acted upon and present Counsel should review such brief consistent with U.S. v. Turner, 677 F.2d 570 (3d. Cir. 2012). This reply brief is being submitted based on such review and expressed written direction of the Appellant himself.

SUMMARY OF ARGUMENT

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 violation 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 nineteen 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 of 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 nineteen million in documented expenses offset the alleged sixteen million income. Withholding them rendered the “tax deficiency” element unprovable, contrary to United States v. Perdomo, 929 F.2d 967, 973-74 (3rd 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.

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.

II. Constructive Amendment Requires Dismissal

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).

III. Hearsay Evidence

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).

IV. 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, constructive amendment of the indictment, 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,

Date: September 4, 2025

/s/ Jack McMahon
Jack McMahon
Attorney for Appellant

CERTIFICATIONS

1. The undersigned hereby certify that a copy of the forgoing Reply Brief for Appellant was served by way of the Court's electronic case filing system upon the following:

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2. The undersigned certify that a virus detection program has been run on the file and that no virus was detected. The program used was Norton Antivirus.

3. Certificate of Compliance with Type Volume Limitations. This document complies with the type-volume of Fed.R.App.P. 32(a)(7)(B) because this document contains 1188 words total.

This document complies with the typeface requirements of Fed.R.App.P. 32(a)(5) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in

Verdana 14 point font.

4. I, Jack McMahon, certify that I am duly admitted to practice law before the United States Court of Appeals of the Third Circuit.

5. I, Jack McMahon, certify that hard copies of this brief have been served on the Court on the date of the ECF filing of this Brief.

6. I, Jack McMahon, hereby certify that the briefs are served in compliance with the Court's rules and identical to one another and the electronic PDF versions.

Date: September 4, 2025

/s/ Jack McMahon
Jack McMahon
Attorney for Appellant

APPENDIX

Tax Trial Issues and Constitutional Violations

1. 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 nineteen million in deductions, offsetting any alleged sixteen 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).

2. 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 (3rd Cir. 2012).

3. 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).

4. 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 nineteen 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).

5. Constructive Amendment to 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.

6. Improper Government Conduct During Trial

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).

7. 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).

8. 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, 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.

CERTIFICATIONS

1. The undersigned hereby certify that a copy of the forgoing Reply Brief for Appellant was served by way of the Court's electronic case filing system upon the following:

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/s/ Jack McMahon
Jack McMahon
Attorney for Appellant