



IN THE DISTRICT COURT FOR TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
Plaintiff,

DISTRICT COURT
FILED

Vs.

MAR 30 2010

Case No. CF-08-1713

FRED ALLEN SHIELDS, JR.
Defendant. SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

DEFENDANT FRED ALLEN SHIELDS, Jr.'s
MOTION TO DISMISS

I.

Proceedings so far

Fred Allen Shields Jr. was named in this case in a three count information filed on 04-14-08, charging him in Count One with trafficking in illegal drugs, in that on 08-16-07 he possessed 5-grams or more of crack-cocaine; and in Count Two with resisting arrest. Count Three charged a misdemeanor of destroying evidence. This was a refile of case no. CF-07-4441, filed 08-21-07. The earlier case was dismissed on 04-03-08. This case is presently set for trial in June.

II.

Defendant's federal case.

Mr. Shields was charged via indictment filed 12-03-08 in case number 08-CR-207-GKF in the Northern District of Oklahoma Federal Court (NDO) with drug and gun crimes which allegedly took place on 08-19-08. He was convicted by a jury on 03-24-09. He filed a motion for new trial outlining police misconduct in the NDO (Doc # 87) on 01-15-10.

In a favorable response the United States Government filed a Motion to dismiss the charges against him. This motion was granted on 02-19-10. However, the same day the State of Oklahoma, just hours after the dismissal, filed a motion to hold Mr. Shields without bond, even though he had never missed a court appearance. This motion was granted, and Mr. Shields remains in jail.

III. Relation to Present case.

At the preliminary hearing of 07-11-08 ATF Agent Brandon McFadden testified that on 08-17-07 he arrested Fred Allen Shields and searched him, finding 5.63 grams of crack-cocaine in his right front pocket of his pants. (Tr. PH. P. 18). The present case rests entirely on McFadden. (ATF Agent McFadden stated at the preliminary hearing: "For fear of being compromised on a search warrant ...we made approach from the rear..." (PH p. 15, emphasis added.) "I began to pat down [Mr. Shield's] person for weapons or other objects of evidence...[i]n his front right pocket, there was

an amount of currency and then two baggies of cocaine base or what I know to be crack cocaine.” (Id. p. 18.))

IV.
Another Related Case.

According to the United States Government, Agent McFadden, who allegedly found the drugs in the Mr. Shields’ right front pants pocket, had, in the recent past, lied on the witness stand in a federal jury trial that resulted in Mr. Larry Barnes being convicted of drug crimes and sent to prison. The incident giving rise to the *Barnes* trial occurred on 05-08-07. The incident which gives rise to Mr. Shield’s state charges occurred on 08-16-07, 3-months after the *Barnes* incident.

The incident which gives rise to Mr. Shields’ federal charges occurred on 08-19-08. This is evidently because a month earlier at Mr. Shields’ state preliminary herein on 07-11-08 the state district attorney asked for “no bond” on Mr. Shields. Judge Cliff Smith reviewed the matter and found that since this was a “refile” and Mr. Shields had made all his court appointments in the prior case, the present bond would remain.

Because Mr. Shields was again released on bond, the police officers obtained another search warrant and raided Mr. Shields again on 08-19-08, resulting in the federal charges. Those charges were, as discussed above, dismissed on 02-19-10, at the request of the United States Government.

According to the United States Government Agent McFadden and others testified falsely, and suborned perjury of a CI, in the *Barnes* federal trial on or about 04-23-08, 3-months prior to the 07-11-08 preliminary hearing of Mr. Shields in the present case. This information was not given Mr. Shields prior to his preliminary hearing.

The Court's attention is directed to the United States Government's Motion to Remand in the *Barnes* case which is attached to this Motion as an Exhibit. (Tenth Circuit cases of *U.S. v. Larita and Larry Barnes*, 08-5147 and 08-5148, filed before that Court on 06-25-09, which is attached to this motion as an exhibit. This document was recently unsealed by order of Federal Judge Eagan on 03-29-10.) In that motion it can be seen that according to the United States Government, Agent McFadden and others committed perjury and suborned perjury.

According to the United States Government ATF Agent McFadden and others also coached the same informant as to how to testify and what to say at the trial before Judge Eagan in the *Barnes* case, according to the government's motion. The United States Government now believes that in the *Barnes* case, there never was a "controlled buy" at all. This *Brady* material is so overwhelming that no reasonable jury could convict Mr. Shields.

Subsequent to the 06-25-09 filing of the Motion to remand in the *Barnes* case, Judge Eagan of the federal Court, on 07-02-09, ordered the *Barnes* case dismissed, and ordered them released from prison forthwith. Larry Barnes would have stayed in federal prison until the end of 2012.

Since McFadden, according to the United States government, falsely testified and ordered false testimony at the *Barnes* jury trial on 04-23-08, there is a good chance he also falsely testified on 07-11-08 that he found 5.63 grams of cocaine base in Mr. Shield's front pocket.

The interests of justice require a dismissal in this case. If there were to be a trial the Defendant should be allowed to cross-examine, at a new preliminary hearing, McFadden and other police officers on the issues raised in the dismissal of the *Barnes* cases, and other related matters.

The CI should be allowed to be called as a defense witness, as well as other related witnesses. The defense should be freely allowed to comment in opening and closing remarks about all the information listed herein, and related information found through further discovery.

Such a trial would of course be bizarre, a sham and waste of time, and would surely end in a not-guilty verdict, plus possible federal charges of perjury against the officers, should they even appear and testify. A dismissal would better serve the interests of justice.

The Defendant contends that the above evidence is *Brady* material in that it was not known to the Defendant or his attorney at the time of his preliminary hearing, and could not reasonably have been discovered by the Defendant or his attorney prior to his preliminary hearing, yet was known by the government (the police), and intentionally not disclosed to the Defendant's attorneys. According to *Brady*, if the police know it, it is *Brady* material, and it does not matter if the District Attorney knows about it or not.


Proper cross-examining of Agent McFadden and others about his past, according to the United States Government, witness-coaching and outright perjury and subornation of perjury surely will sway the jury in his favor. It is clear that the interests of justice would best be served with an outright dismissal, or failing that, at least a remand for a new preliminary hearing.

V.
Prayer for Relief

WHEREFORE, the Defendant prays for the following relief:

1. An order dismissing this case, ordering Mr. Shields' bond exonerated, and ordering his release;
2. Failing that, an order releasing Mr. Shields on his own recognizance, and for a new preliminary hearing;
3. Any other relief the Court deems just and proper.

Respectfully submitted,


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Attorneys for Defendant

Certificate of Service

I hereby certify that on this 30th day of March 2010 I caused a copy of this pleading to be delivered to:

Tim Harris
District Attorney
Tulsa County Courthouse
Tulsa, OK.


Art Fleak

ATTACHMENT

“UNITED STATES OF AMERICA’S MOTION FOR: (1) REMAND TO DISTRICT COURT FOR FURTHER PROCEEDINGS; AND (2) ISSUANCE OF PROTECTIVE ORDER.”

Filed on 06-25-09 in the 10th Circuit Court of Appeals, case number 08-5147.

(Attached immediately following this page.)

06-25-09

IN THE CIRCUIT COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA)	
)	
v.)	No. 2008-5147 and
)	No. 2008-5148
)	
LARITA ANNETTE BARNES and)	FILED UNDER SEAL
LARRY WAYNE BARNES, SR.)	

UNITED STATES OF AMERICA'S MOTION FOR:
(1) REMAND TO DISTRICT COURT FOR FURTHER PROCEEDINGS; AND
(2) ISSUANCE OF PROTECTIVE ORDER

The United States of America, through Jane W. Duke, United States Attorney for the Eastern District of Arkansas, and Patricia S. Harris, Assistant U.S. Attorney for the Eastern District of Arkansas¹, moves this Court to remand these matters to the district court so that the United States may present a motion to vacate the convictions of Larita Annette Barnes and Larry Wayne Barnes, Sr. and dismiss the indictment against them. The United States further requests that the Court issue a protective order as set forth herein. For grounds, the United States asserts the following:

1. On August 10, 2007, a two-count indictment was returned by the grand jury for the Northern District of Oklahoma against Larry Wayne Barnes, Sr. and Larita Annette Barnes, Case

¹ The United States was represented in this matter by the United States Attorney's Office for the Northern District of Oklahoma. However, for the reasons set forth below, the Northern District of Oklahoma has recently requested that the Department of Justice recuse it from this case and that it be handled by the United States Attorney's Office for the Eastern District of Arkansas.

No. 07-CR-135-CVE. In that indictment, the defendants were charged with aiding and abetting the possession of methamphetamine with intent to distribute and distributing methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and 2, and with aiding and abetting the maintenance of a location to distribute controlled substances, in violation of 21 U.S.C. 856 and 2.

2. The case was tried to a jury from April 21 - 23, 2008, before the Honorable Claire V. Egan, United States Chief District Judge for the Northern District of Oklahoma. Witnesses testifying for the United States included BATFE Special Agent Brandon McFadden, Tulsa Police Department Officer Jeff Henderson, and confidential informant Ryan Logston. Logston testified that he purchased 3 ounces of methamphetamine from Larry Barnes and his daughter, Larita Barnes, in a controlled buy conducted on May 8, 2007 for the sum of \$3,000.00, which was official drug buy money provided to Logston by BATFE Special Agent McFadden. Special Agent McFadden and Officer Henderson testified that they utilized Logston as a reliable confidential informant, and that they provided Logston \$3,000.00 in BATFE funds to make the controlled buy from the Barnes. Special Agent McFadden and Officer Henderson also testified as to their surveillance of the controlled buy, and to the procedures that were used both before and after the buy to ensure its validity. There were no audio or video recordings made of the buy and no audio recordings made of phone calls alleged to have been made to set up the buy. In addition, there were no telephone records introduced to corroborate the alleged telephone contact between Logsdon and the Barnes prior to the alleged sale of narcotics.

3. The jury found both defendants guilty of each count in the indictment. Larry

Wayne Barnes, Sr. was sentenced on October 3, 2008 to 66 months in the Bureau of Prisons on each count to run concurrently, a fine of \$2,500.00 on count 1, supervised release of 5 years on count 1 to run concurrently with supervised release of 3 years on count 2, and a special assessment of \$100.00 on each count. Larita Annette Barnes was sentenced on the same date to 120 months in the Bureau of Prisons on each count to run concurrently, supervised release of 8 years on count 1 to run concurrently with supervised release of 3 years on count 2, a fine of \$750.00 on each count, and a special assessment of \$100.00 on each count.² These appeals followed. The cases have been fully briefed and argued before this Court. The parties are presently awaiting this Court's rulings.

4. The United States has now acquired evidence that the testimony offered at trial by Special Agent McFadden, Officer Henderson, and Logston was false. It is the United States' belief that the alleged control buy that formed the basis of the indictment, in fact, did not occur. The following information has been corroborated by a polygraph examination administered to Logston by the Department of Justice - Office of Inspector General on June 22, 2009 in Fort Smith, Arkansas. During that examination, Logston was asked questions pertaining to the false testimony he provided in this case.³ The polygrapher found no indication that Logston was

² Larita Barnes was subjected to an enhanced penalty by virtue of a prior drug trafficking conviction. The United States filed a notice seeking this enhancement against Larita Barnes on April 16, 2008.

³ Logston was asked the following substantive questions:

QUESTION: Regarding the methamphetamine buy with the Barnes, do you intend to answer each question truthfully?

ANSWER: Yes.

QUESTION: Did you do a controlled drug buy from the Barnes on May 8, 2007?

ANSWER: No.

being deceptive in his responses to the questions. The information provided by Logston has also proven to be consistent with other information developed by law enforcement agents during the course of a public corruption investigation concerning certain Tulsa, Oklahoma law enforcement officers.

5. In his debrief on June 10, 2009, Logston advised FBI agents that in early to mid 2007, Officer Henderson provided him with approximately 3 ounces of methamphetamine and told him something to the effect that "you just bought this from Larry and Larita Barnes," meaning that Officer Henderson wanted Logston to falsely state that he had made a controlled buy of the drugs for law enforcement from the Barnes. According to Logston, Officer Henderson explained that Larry and Larita Barnes were major drug dealers in the Tulsa area, but that law enforcement officers had been unable to make a prosecutable case against the Barnes. After Logston agreed to assist Officer Henderson in fabricating a case against the Barnes, Officer Henderson and Special Agent McFadden presented the matter as a legitimate case to the United States Attorney's Office for the Northern District of Oklahoma. The matter was accepted for prosecution and the Barnes were indicted by a federal grand jury as set forth above.

6. According to Logston, prior to the trial, and unbeknownst to the Assistant United States Attorney prosecuting the case, Officer Henderson and Special Agent McFadden proceeded to coach Logston about how Logston had made the purchase of methamphetamine

QUESTION: Did you provide false testimony on buying methamphetamine from the Barnes?

ANSWER: Yes.

QUESTION: Did Henderson and McFadden coach your testimony prior to the Barnes trial?

ANSWER: Yes.

from the Barnes on May 8, 2007 for a total of \$3,000.00. Logston advised that when the case went to trial in federal court in the Northern District of Oklahoma, he, Officer Henderson, and Special Agent McFadden all testified falsely that the controlled purchase of methamphetamine was made from the Barnes on May 8, 2007 utilizing \$3,000 of BATFE buy money, when in fact, there was never a controlled buy at all. According to Logston, Officer Henderson and Special Agent McFadden spent hours preparing him for his false testimony. As set forth above, the Barnes were subsequently convicted and sentenced to prison, where they remain. During his June 10, 2009 debrief, Logston was adamant that the AUSA prosecuting the case was unaware of the false testimony and was not complicit in pursuing a fabricated case.

7. For the reasons set forth in this motion, the United States respectfully requests this Court remand this case to the district court so that the United States can file the appropriate pleadings for the Barnes' convictions to be vacated and the indictment dismissed as to each individual.

8. In addition to requesting a remand, the United States requests that the Court issue a protective order prohibiting defense counsel from disclosing the substance of this motion to any person, including the defendants, until such time as the district court reviews the matter. The United States submits that such a protective order is necessary because the information contained in this motion is related to an ongoing investigation subject to the confidentiality requirements of Rule 6(e) of the Federal Rules of Criminal Procedure. The United States further submits that the information contained in this pleading could jeopardize an ongoing criminal investigation and/or jeopardize the safety of witnesses in that ongoing investigation.

WHEREFORE, the United States prays the Court grant its motion for remand and for protective order, and for all other proper relief.

Respectfully submitted,

ERIC H. HOLDER, JR.
Attorney General of the United States

By /s/ Patricia S. Harris
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Assistant U.S. Attorney

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Certificate of Service

I hereby certify that on June 25, 2009, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which shall send notification of such filing to the following:

- Jimmy Lance Hopkins
- John Mikel Dunn
- Leena Alam
- Phil E. Pinnell
- Robert Thames Raley

/s/ Patricia S. Harris
Patricia S. Harris