

In The
United States Court of Appeals
For The Fourth Circuit

BRIAN DAVID HILL,

Appellant,

v.

**UNITED STATES OF
AMERICA,**

Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AT
GREENSBORO**

PETITION FOR REHEARING OR REHEARING EN BANC

U.S.W.G.O.

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I. INTRODUCTION AND RULE 35(b)(1) STATEMENT

This case involves an appeal from the U.S. District Court denying the motion to disqualify also known as the motion to recuse (See Dkt. #198 Order, Dkt. #203 Notice of Appeal) over the issues of a judge taking things too far, lying about Appellant Brian David Hill (“Appellant”) or making claims contradictory to the record, and ignoring any evidence of facts by the Defense while accepting anything and everything from the Government, from the Corrupt U.S. Attorney Assistant Anand Prakash Ramaswamy who has been caught lying about Appellant and defrauding the Court. This direct appeal case was the only relief available to ensure that Appellant’s right to an impartial Article III judicial tribunal would be guaranteed. The panel’s decision to deny the appeal and affirm the decision of the District Court is on an erroneous basis and is an error of law. The panel didn’t even make a determination on the merits of the arguments and evidence brought before this Honorable Court of Appeals. This doesn’t just affect Brian’s supervised release case, but also affects the 2255 motion and any potential Writ of Error Coram Nobis that Appellant may file if the Habeas Corpus is thrown under the bus. The decision of the panel is allowing a partial and biased judicial officer to act as dictator and refuse any evidence in favor of Appellant and always rule in favor of the Government counsel, even when the Government counsel had been caught lying. This is very dangerous in the United States of America. This is VERY DANGEROUS for a system of checks and balances.

In the highest Courts of the land including the Ohio Supreme Court, it is bias and/or prejudice when a Judge acts to ignore evidence, favors evidence of only a particular party whether it be a Government Counsel or Private Counsel. When a Court is allowed to render the most stringent punishment, the most severe punishment against a particular party while taking nothing into consideration of that same party in favor of the other party on the record, it is biased and/or prejudice.

When a Judge was given filed evidence disproving what the Government counsel had used against the victim of defamation, and the Judge repeats the lies and injuries of defamation against the victim, the victim being Brian David Hill--- Appellant in this case, it is biased and/or prejudice.

What the District Court had done was as close to a fixed opinion as possible, as stated in Black's Law Dictionary: "fixed opinion. (1807) A bias or prejudice that disqualifies a potential juror." A Judge is the same as a juror, a trier of fact. If any Judge or juror has a known bias such as a fixed opinion that will not change the outcome regardless of the evidence that was offered at trial, it is partial and warrants disqualification. Also See Blacks' Law Dictionary: "prejudice, n. (14c) 1. Damage or detriment to one's legal rights or claims. See dismissal with prejudice and dismissal without prejudice under DISMISSAL." If a particular judicial official in a case has an inherit partiality, a fixed opinion, and deprives one parties rights over another, it is partiality.

Ohio Supreme Court decision: State v. Dillehay (In re Disqualification of Weithman), 2019 Ohio 4814, 2-3 (Ohio 2019) ("See In re Disqualification of O'Neill, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting State ex rel.

Pratt v. Weygandt, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956) (*defining "bias or prejudice" as implying " 'a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts' "*). {¶ 7} *As previously explained, [a] judge rarely hears preliminary aspects of a case without forming conditional opinions of the facts or law. These conditional opinions often assist the parties and their counsel in identifying and narrowing the issues in controversy and facilitate the settlement of cases prior to trial. However, the formation of these conditional opinions is not sufficient to counter the presumption of the judge's ability to render a fair decision based upon the evidence later presented at trial.*")

The facts and the law don't equal up to the severe punishment entered by this very Judge, this very Judge does not allow or use any evidence of any mitigating factors/elements that can lessen the offense of Supervised Release Violation or even consider that such punishment was not necessary. Such as for example, that Petitioner's state appeal was still ongoing but Judge Schroeder ignored the state court process and jumped in to order the maximum imprisonment despite a good chance of Appellant being acquitted of his state law charge of indecent exposure reveals that this Judge is out to get Brian and doesn't care what evidence and witnesses might get in his way of delivering his fixed opinion to the Court. A mitigator may be necessary if Appellant was guilty of violating his Supervised Release conditions, but the state court was unclear with the obscenity requirement and Appellant fighting to be found innocent of his state charge of indecent exposure as a matter of law. If he is indeed

found innocent, will the District Court undo its erroneous judgment based on any facts of innocence to the state law violation which was the basis for the Supervised Release Violation? Or will the Hon. Judge Thomas David Schroeder shrug off such acquittal or sleep on the issue without caring that Appellant never broken the law at all.

The Panel's decision deprives Petitioner of impartiality, of fair and equal due process of law guaranteed by the United States Constitution. The law should be equal as well as justice should be equal.

Respectfully, the Hon. Judge Henry F. Floyd, the Hon. Judge Robert B. King, and the Hon. Judge Barbara Milano Keenan have misinterpreted the intent and spirit of the why the direct appeal had been filed, didn't understand the severity of the issues brought forth by Appellant as to the prejudice and bias that place Appellant in greater danger of suffering past, current and future miscarriages of justice and deprivation of due process protections under law. Rehearing is warranted in this case. It was either misinterpreted or overlooked by mistake (Citing one ground for rehearing is: 1. a material factual or legal matter was overlooked in the decision). There is no opinion citing the merits of the basis on the decision that the Hon. Judge Thomas David Schroeder not be recused and not be disqualified from participating any further in the case of United States v. Brian David Hill---criminal case, and Brian David Hill v. United States---2255 case. A partial judge is damaging to the Constitutional rights and integrity of the judicial machinery. If a lower court Judge can openly lie about a particular party on the record which is defamatory, it is dangerous to the American republic, it is dangerous to the integrity of the judicial machinery, and opens to door

to the Government using the Courts to lie about people and throw innocent people into prisons based upon the inherit biases of a Judge when it would be simple enough to change the presiding judicial officer to ensure that the process is fair and impartial.

Rehearing is warranted because the panel's decision will have far-reaching consequences for the conduct of a Judge not making any decision on uncontested motions, lying about the Appellant and not listening to any evidence or witnesses that are contrary to the Government's claims in their quest for punishment against Appellant. It is lawfare at best, LEGAL TERRORISM at worst. It creates one miscarriage of justice after another without merit, without end, and without mercy.

Lies were exposed in the Dkt. #203 Notice of Appeal:

Quote #1: "Error of law #2: Judge Schroeder; Page 7 of 8: "Defendant reportedly hit his grandfather. (Doc. 123 at 22-23, 48.)" Actually it distorts what had entirely happened. USPO Kristy L. Burton had said that "At that moment, everybody was very agitated and flurried, but I wasn't in there long enough for -- whatever had happened had occurred before I got to the home." Page 23 of 84. It even said that the family did not call the police because the entire family was agitated and stressed (or flurried) which is the way families are from time to time. Families go through arguments. Nobody called the police so nobody felt that Brian David Hill was dangerous or aggressive enough to call law enforcement. Renorda Pryor asked USPO Burton "Q Okay. And while you were there in that environment, did they call the police? Was anyone hurt?" Her response was "A As far as I know, they never called the police, no." So it was a small family feud where everybody was agitated which happens in families across the country. To use that against Brian was simply wrong and was an error of fact and an abuse of discretion. Even witness Kenneth Forinash had this to say about the incident: "and his reflex action was that he turned around and hit me. It didn't hurt. And a few minutes later, we all apologized and everything was okay." Page 53 of 84. It doesn't sound as bad as the way it had sounded in the Hon. Judge Schroeder's order."

Quote #2: "Error of law #3: Judge Schroeder; Page 7 of 8: "The Defendant maintained that the child pornography was sent to his cell phone unsolicited and anonymously, which seems unlikely in so far as the cell phone is a prepaid phone belonging to his grandmother (Doc. 123 at 6, 35) and no one would likely have knowledge of the phone number." That is not true as the Defendant/Petitioner had broken no law, and that Defendant/Petitioner had never asked for the child pornography, there is no evidence of it, there is no mentioning of it in this entire case.

The only thing that happened was that Brian David Hill had received threatening text messages before the child pornography had allegedly been reportedly sent to his grandmother's cell phone. Brian immediately thereafter, in good faith, reported the cell phone to his Probation Officer Kristy L. Burton who acknowledged that Brian had voluntarily reported the matter to her, a federal "law enforcement officer" or "agent", and gave her the cell phone. That is an affirmative defense under federal law to any child pornography charge under the federal law. That was why Brian had not been charged for giving the phone to Kristy L. Burton because he is actually innocent of such allegation by turning over the so-called unsolicited such material to a law enforcement officer or agent in good faith. Brian maintains that he complied with the law, and did not do anything wrong to warrant that being used against him. According to Attorney Susan Basko on the record of Document #46 in this case: 1 "The other purpose was to follow the provision in federal child porn law that gives an affirmative defense under this law:" 18 US. Code § 2252A - Certain activities relating to material constituting or containing child pornography"

This decision by the panel endangers the integrity and impartiality forever for Appellant because then a lower Court Judge can ignore any evidence favorable to Appellant, accept any and all evidence by the Government Counsel or even a Deep State Operative (Swamp), the Court can ignore proof of frauds and deceptions all day long and dealt maximum punishment against Appellant without taking anything at all into consideration, and then no average citizen of the United States will ever believe in the Federal Court again. Nobody will ever believe anything a Federal Court has to say anymore because there will be no integrity and then eventually becomes a lack of honor, no justice, just lies and frauds and judicial activism will be filled in the Courts because nobody will do anything about it. Like the saying goes, "*The world is a dangerous place, not because of evil, but because of those who look on and do nothing*" – Quote from scientific genius Albert Einstein.

Should this very Court be sleeping on the issues of partiality of a certain judge? What if a Judge is being secretly blackmailed by the Deep State Swamp like those

connected with Jeffrey Epstein or even Harvey Weinstein or even Madam Hillary Rodham Clinton? Should this Court allow a Judge to have a fixed opinion over a matter before disposing of a charge or issue? Should this Court allow a Judge to lie about somebody on official court records or opinions with no ability to challenge the lies, errors, and frauds?

Under the panel decision, a lower Court can repeatedly ignore motions, lie about a defendant or plaintiff on record, ignore evidence and witnesses if it doesn't fit the narrative of the Government counsel or even the U.S. Probation office, and even refuse to make a decision on any fraudulent begotten judgments while forcing Appellant to comply with unconstitutional, illegal and void judgments. Then those that perpetuate fraud(s) upon the Court can evade legal accountability for this misconduct. They can commit whatever crimes or misconduct that they want to and never be held accountable for any of it. That is a serious and egregious form of miscarriage of justice and legal abuses that will forever be considered acceptable.

If this Court can reconsider its decision to affirm the decision of the lower Court's order denying the motion to recuse, then the Judge can be compelled to step down from the case, and a new Judge can be assigned to the case making sure that the impartiality of the judicial machinery is enforced, and all negative issues pertaining to a certain judicial officer are no longer an issue that has to be dealt with by Appellant just by simply having the assigned Judge step down from the case as a matter of law and having a impartial judge assigned to the criminal case and the 2255 case.

II. BACKGROUND

The Informal Opening Brief and Notice of Appeal are both attached as exhibit/attachment, supporting documentation and will explain the background.

III. ARGUMENT

i. Rehearing Is Warranted Because the Panel's Decision That Was Rendered overlooked the issues, did not state the merits of what was argued, and creates a Dangerous Precedent.

The panel's sweeping refusal to review over the merits of the issues raised in the Informal Opening Brief [Dkt. 11 of this Appeal], and did not what state whether the Appellant had any merit to his claims of the issues raised in the respective Opening Brief, it creates a dangerous precedent for this case and any future legal cases that are assigned to the Hon. Thomas David Schroeder. The dangerous precedent set is that a Judge that has a personal or emotional disagreement/animosity towards a particular party: Brian David Hill, openly makes statements in disregard for the truth or lying about Appellant, and ignores Motions that may vacate fraudulent begotten judgments that were entered favorable to the Government, and that dangerous precedent is that Appellant will always be deprived of justice throughout the Federal case or any cases assigned to the Hon. Schroeder. That means any and all motions not favorable to the U.S. Attorney will either be ignored or denied. The merits will never be reached and even if the merits were ever reached, the Judicial Officer will still deny them. This places Appellant in an uncomfortable, scary or dangerous situation where the fate of his life is in the hands

of a Judge that probably hates him and wants him to suffer with each and every ruling of his. Appellant will likely never get any favorable decision, ever, despite whatever evidence or witnesses are offered. This is contrary to the Bill of Rights and the Constitution, this is contrary to case law, and creates a perpetuate need for Appellant to have to appeal every bad decision ever entered by this Judge because he will keep entering bad decisions contrary to law to make life difficult for Appellant over some personal grudge or hatred or whatnot. Whatever the case may be, it is better in the interests of justice for a new judge to be assigned to the case immediately. For Appellant to have six consistent/ongoing federal appeals after the Supervised Release Violation charge, when usually the Judge respects the higher court for awaiting a single decision, it shows that the Judge would rather deny every single motion and every single piece of evidence ever offered by Appellant. This judge will ignore his Probation Officer like Jason McMurray because he will not commit perjury like Kristy Burton did who was praised by this very same Judge. Judge Schroeder praises Kristy L. Burton even though she was caught lying on the stand but this very same Judge ignored Roberta Hill when talking about the carbon monoxide and ignored anything said from Jason McMurray that was in Appellant's favor. The record shows that when there is such a disregard for the truth, open lies, and disregard of evidence, disregard of perjury when the perjury perpetrator lies with witness in favor of the U.S. Attorney Office's prosecution, it shows that no evidence will ever be accepted if it is against the Government. That is favoritism and any average American will believe that Brian David Hill is a victim of judicial favoritism because he was never allowed to have that very Judge

recused/disqualified to have a better Judge that will not act in this manner.

ii. The Panel's decision creates potential consequences of facing future Partial Decisions and Favoritism towards the United States Attorney.

Respectfully, the Panel's decision creates potential irreversible consequences of facing future partial decisions and favoritism that will end Appellant's very means of achieving any kind of justice through the Federal Judicial System.

See *United States v. Robinson*, No. 18-4245, at *2-3 (4th Cir. Apr. 30, 2019) (“*We review a judge's recusal decision for abuse of discretion.*” *Kolon Indus. Inc. v. E.I. DuPont de Nemours & Co.*, 748 F.3d 160, 167 (4th Cir. 2014). Generally, “*courts have only granted recusal motions in cases involving particularly egregious conduct.*” *Belue v. Leventhal*, 640 F.3d 567, 573 (4th Cir. 2011). In order to disqualify a judge, the “*bias or prejudice must, as a general matter, stem from 'a source outside the judicial proceeding at hand.'*” *Id.* at 572 (quoting *Liteky*, 510 U.S. at 545). “[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” And, “*opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.*”)

Fair Judgment is impossible when a Judge has a track-record in a case as to ignoring evidence, ignoring witnesses in favor of Appellant, refusing to make any decision on the pro se motions to vacate the fraudulent begotten judgments. Any

witnesses favorable to the Government are praised like “Kristy L. Burton” the perjurer, the liar, and yet she can lie multiple times on the stand in open court, committing her perjury while the U.S. Attorney Assistant Anand Prakash Ramaswamy allows her to do so which is subornation of perjury. Any reasonable Judge would have recommended that she be charged with perjury or even have moved to sanction her and Ramaswamy with the Court’s inherent powers. Any reasonable Judge would have reversed a decision when the Government’s only witness “Kristy L. Burton” was caught lying which is fraud upon the court. Any reasonable Judge would only stick with the facts and the law, ONLY the facts and the law. Even Judge John L. Kane was reasonable in the lawsuit of Righthaven LLC v. Brian D. Hill, U.S. District Court---Colorado. There are good Judges and bad Judges, just like with the FreeMasons. There are good Masons and there are bad Masons. There are people that join a group for good purposes, and those who join groups to dominate them and achieve more power and/or money. There are Judges that protect the Constitutional rights of the American people as is their sworn duty, and then there are those working for the Deep State, upholding the Deep State Tyranny. They will do everything to shred the Constitution into a thousand pieces so that the Deep State has unchecked/unlimited power to do whatever they want to any of us to set an example that we are cattle that can be butchered at any time at their whims and that we are slaves who will never be afforded due process of law.

Appellant has suffered enough throughout this criminal case, he has suffered one miscarriage of justice after another. When a Juror has a fixed opinion, a disregard for the truth, a law Clerk filing an unsigned order stating that Judge

Schroeder orders 10 months of imprisonment for Brian David Hill for Supervised Release Violation, then months later files a similar written order with similar typed statements about “*On September 21, 2018, the Defendant was arrested for the commission of a crime.*” And then the same opinion was stated in the signed written judgment for the Supervised Release Violation without ever stating what that “commission of a crime” even was. That statement may be false and fraudulent if Brian David Hill is ever acquitted of his state charge of indecent exposure, then there is no evidence of a commission of a crime. The commission of a crime is based on proving all of the elements of the alleged crime. This Judge also ignored Appellant’s request to appeal, have a continuance at the revocation hearing dated September 12, 2019 [Dkt. #215]. He also didn’t care that Appellant was still involved in the trial de novo in the State/Commonwealth of Virginia which was the opposite treatment from the Hon. U.S. Magistrate Judge Robert S. Ballou of Roanoke, Virginia, who respected Appellant’s constitutional rights and let Appellant out on bond. That judge respected his constitutional rights including trial de novo while the Hon. Schroeder moved to imprison Appellant. However the Virginia Courts stated that one cannot be guilty of indecent exposure without evidence of intent and obscenity. Appellant still has a good chance of being acquitted in the state court, but would any of that matter if Brian was legally acquitted for not breaking Virginia law?????? Is Judge Schroeder showing favoritism against Brian? Should Brian be afforded a new Honorable Judge who is more than likely to be impartial in his criminal case? Will Brian have to consider the costly option of transferring venue and asking to remove his criminal case and

Probation from the Middle District of North Carolina as his only means to get a better Judge assigned to his case?

IV. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant this petition for rehearing or rehearing en banc. Petitioner respectfully requests that this Appeal be re-opened so that the District Court be compelled to recuse the Hon. Judge Schroeder from the case and assign a new Judge to the case(s).



Respectfully Submitted,

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EXHIBITS / ATTACHMENTS

| | | |
|-----------|-----------------------|-----------|
| Exhibit 1 | Informal Appeal Brief | Pg. 1-9 |
| Exhibit 2 | Notice of Appeal | Pg. 10-25 |

CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments):

this brief contains [3,886] words and is 14 pages.

this brief uses a monospaced type and contains [*state the number of*] lines of text.

2. This brief complies with the typeface and type style requirements because:

this brief has been prepared in a proportionally spaced typeface using [*Microsoft Word 2013*] in [*14pt Times New Roman*]; or

this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

Dated: March 18, 2020

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 18th day of March, 2020, I caused this Petition for Rehearing or Rehearing En Banc and attachments to be filed with the Clerk of the Court by mailing the foregoing (Certified Mail tracking no. 7019-1120-0002-2623-4163) with the Clerk of the Court then request that pursuant to 28 U.S.C. §1915(d) that the Clerk of the Court move to electronically file the foregoing using the CM/ECF system, which will send notice of such filing to the following registered CM/ECF users:

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