

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CALVIN BRUCE,

Defendant.

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ORDER

07-cr-57-bbc

Defendant Calvin Bruce was convicted in 2007 of distributing crack cocaine; he appealed and his case was remanded for resentencing, which took place in 2009. He appealed his new sentence but it was affirmed by the court of appeals in 2010. Now he has brought a motion under Fed. R. Crim. P. 33 for a new trial based upon newly discovered evidence. The motion is timely, because it is brought within three years of the finding that defendant was guilty. Rule 33(b)(1). Whether the evidence defendant relies upon qualifies as “new evidence” is a separate question.

Defendant says that since he filed his direct appeal he has learned of matters bearing on his conviction, specifically the firing of Madison police officer Denise Markham. He alleges that the government knew of illegal deeds that Markham had committed but failed

to turn over the exculpatory information to defendant's counsel, that it called Markham as a witness at the grand jury, knowing that she was presenting perjured testimony that violated defendant's rights under the Fifth Amendment, that it knew or should have known that Markham arrested defendant on false pretenses and searched his residence illegally, after coercing witnesses to allow the search. Defendant says that he informed his attorney of a police report that Markham fabricated and which was used as part of his case.

Defendant alleges that Detective Markham was involved in hundreds of illegal arrests and that most of the people she arrested have been released from jail or prison because of her illegal actions. He has attached as an exhibit a redacted version of the investigation report filed by Linda Kosovac, Lieutenant of Police Professional Standards and Internal Affairs.

If, in fact, the United States Attorney was aware of criminal conduct by Detective Markham or of the falsity of testimony that she was giving before the grand jury and in court and relied on her investigations and testimony, defendant would have a strong case for setting aside his conviction. The fact is, however, that defendant has produced no evidence to support his claim of malfeasance by the United States Attorney or by Detective Markham. Not only has he failed to show that the United States Attorney knowingly used false testimony, but he has submitted no evidence that Detective Markham ever gave any false testimony, that she made arrests without probable cause, that she conducted illegal searches

or that she committed any other illegal acts.

The Madison Police Department's investigation report that defendant has submitted does not support defendant's allegations. The investigator addressed seven cases in her report that involved alleged criminal behavior or policy violations by Markham. She and a member of the Public Corruptions Unit of the FBI collected and analyzed Markham's police reports, property queries for cash, drug and other evidence seizures, Nextel phone records, TRACs, in-car video/audio and NCIC history, among other sources of evidence for a five-year period beginning in January 2005 and ending in June 2009, when Markham went on leave. At the end of the months-long investigation, the investigators concluded that Markham had violated departmental policy in a number of respects, such as by mishandling seized evidence, failing to document her work, exhibiting poor judgment, overstepping the bounds of her authority and interfering in other officers' investigations, but that she had committed no illegal acts. Nothing in the 21-page report confirms that Markham ever gave false testimony, conducted a search without having a warrant or probable cause, planted evidence on a suspect or made improper arrests. There was some indication that she had tipped off suspects in drug investigations before they were arrested, but the investigators could not substantiate any specific instance when this had happened.

It is worth noting that the court file contains little indication that Detective Markham played much of a role in defendant's prosecution. She did arrest him in March 2007, but

another detective interrogated him afterwards and was the subject of the motion to suppress post arrest statements that defendant filed. Defendant has only his own assertion that Markham testified before the grand jury in his case. He submitted no evidence to that effect.

In summary, it appears that defendant does not have the new evidence on which he bases his Rule 33 motion. Therefore, the motion must be denied.

#### ORDER

IT IS ORDERED that defendant Calvin Bruce's motion for a new trial under Fed. R. Crim. P. 33(b)(1) is DENIED because defendant has no new evidence to support the motion.

Entered this 28th day of July, 2011.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge