

were overturned and she was released on July 2, 2009. McFadden was indicted on several charges and pleaded guilty to conspiracy to distribute methamphetamine. At his plea colloquy he confessed:

I used the position as a special agent with ATF to further the drug conspiracy and abused my position as a special agent. During this time, myself and Henderson seized drugs and money which were kept for our own personal benefit, falsified investigative reports, and failed to document events, and obstruct justice through falsely [sic] testimony under oath and persuading other individuals to do the same.

Aplt. App. at 73. And he later asserted in an affidavit:

10. The reason I did this was to help the United States of America, as an acting agent of the Bureau of Alcohol, Tobacco, Firearms and Explosives, Jeff Henderson and the City of Tulsa to successfully prosecute the Barnes so they would subsequently be convicted of a criminal offense and therefore be imprisoned.

11. I did not do these acts for personal gain and I did not receive any personal gain or benefit from these acts. . . .

Id. at 178.

Ms. Barnes filed this suit in the United States District Court for the Northern District of Oklahoma. The district court granted the government's motion for summary judgment and Ms. Barnes appeals.

II. DISCUSSION

The FTCA provides a limited waiver of the federal government's sovereign immunity, allowing civil claims against the United States for "the negligent or wrongful act or omission" of a federal employee "acting within the scope of his office or employment." 28 U.S.C. § 1346(b)(1). Under the FTCA the United States is liable on tort claims "under circumstances where the United States, if a private person, would be