

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 6:08-cr-118-Orl-DDD-DAB

JUDE LACOUR,

Defendant

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DEFENDANT'S MOTION FOR A MISTRIAL AND REQUEST THAT A SPECIAL
PROSECUTOR BE APPOINTED

On April 20, 2009, Defendant was informed of the latest criminal misconduct involving an abhorrent attempt to tamper with all the jurors in the matter affecting Jude Lacour. The crime of jury tampering was not totally unpredictable given the Court's reprehensible performance in condoning and acquiescing to lawlessnessincluding perjury, obstruction of justice, and other breaches of the law. The jury tampering is the byproduct of a corrupt judicial system at whose apex is visiting judge David D. Dowd.

On March 16, 2009, this Pro Se inmate filed a Motion to Dismiss for Malicious, Criminal, and Outrageous Prosecutorial Misconduct and respectfully requested that all current members of the government's trial team and the Orlando judiciary, including federal judge David D. Dowd, Jr., be disqualified for participating, condoning and or acquiescing to prosecutorial and judicial misconduct that was committed for purpose other than the faithful discharge of their duties. Defendant, among other things, requested that the U.S. Department of Justice appoint a Special Prosecutor to investigate the handling of this case by the government and the Orlando judiciary. (The motion (Doc. 422) was denied.)

On April 13, 2009, defendant filed a Motion For Recusal / Disqualification Of Visiting Judge David D. Dowd and Magistrate Judge David A. Baker for among other things, targeting the Defendant because he exposed a dishonorable prosecutor, Karen Gable, and causing the dismissal of three federal judges, a high profile defense attorney, J. Cheney Mason, and former federal prosecutor William Bryan. The Defendant further exposed the incestuous conflict between defense attorney Rick Jancha and prosecutor Karen Gable, who were assigned to the same U.S. Attorney's Office at the time Defendant was being investigated. Mr. Jancha's involvement with the prosecutor was in violation of the law.

The two jurists gutted Defendant's ability to defend himself by preventing him from arguing before the jury that his defense was based on law enforcement shoddy investigation, selective prosecution, entrapment, advice of counsel and prosecutorial misconduct, to name a few. During the Opening Statement the prosecutor and Judge Dowd repeatedly interrupted this Pro Se defendant to a point where he was forced to abort his opening arguments. The prosecutor and Judge David Dowd were intent on exploiting an embarrassing moment for Defendant in an effort to make him look unprepared and disorganized.

Defendant alleged that Judge David D. Dowd became an advocate of the government and proceeded to coerce plea agreements and "moved the calendar" in such a way so as to ensure plea compliance. Visiting Judge David D. Dowd inserted himself in the instant matter weeks before

he was certified for this case by United States Supreme Court Justice, John Roberts. Defendant is on record stating that judges are required to be selected at random for each case and using deceptive methods to shop for a favorable judge is illegal and reprehensible.

Defendant went on to say that Judge David Dowd's bias and contempt for Defendant has carried over to the jury and other defense lawyers....On page 8, the undersigned stated that "...This Pro Se defendant is being debased and degraded on a daily basis by the Court and these exchanges are taking place in front of the jury. Defendant has been ridiculed by defense attorney Robert Leventhal is using Judge Dowd's bias against the Defendant as an opportunity to score some cheap points with the Judge...." This motion is still pending.

Against this background, the defendant alleges that the jury tampering letters were composed and sent out by individuals connected to the defense and the prosecution and he is willing to take a polygraph exam and or subject himself to testify under penalty of perjury before the Special Prosecutor, to prove his innocence. So the record is clear, the Defendant and or his defense investigator did not participate in any way, shape or form, in this very sophisticated conspiracy to interfere with jury. The objective of the conspirators were to effectuate a mistrial at the expense of the Defendant.

The motion for mistrial should be made at or near the time of the offending conduct and a judicial officer should not refuse to hear the motion as untimely, so long as the jury has not reached a verdict. The defendant may not wait for the verdict before making a motion for mistrial.

Defendant was denied his right to a fair and impartial jury guaranteed under the 6th and 14th Amendments, his 6th Amendment right to confrontation and cross-examination as well as his right to Due Process under the 5th and 14th Amendments when jury misconduct / tampering became apparent and the court failed to hold a bonafide hearing to determine the impact on the jury. While the judge in the instant matter preliminarily questioned the jurors, he did not inquire

as to whether the juror's formed an opinion that the Defendant was falsely implicated in the outrageous crime of jury tampering. Instead of investigating the crime and making a decision based on the facts of the investigation the court took the easy route of minimizing the crime and refused to grant a request for a mistrial. Once jury tampering has been established and would negatively affect the verdict, the trial court would abuse its discretion if it did not grant a new trial or a mistrial.

The Supreme Court has stated that jury tampering and misconduct implicates the right to a public trial, the right of confrontation, the right to cross-examination, the right to counsel, the right to an impartial jury, and due process. Jury misconduct is a mixed question of law and fact. *Sassounian v. Roe* 230 F.3d 1097 (9th Cir. 2000). The presence of a single biased juror introduces a structural defect not subject to harmless error analysis. *Dyer v. Calderon* 151 F.3d 970 (9th Cir. 1998). (Citing *Arizona v. Fulminante* 499 U.S. 279, 111 S. Ct. 1246, 113 L.ed.2d 302 (1991)).

Jury tampering / misconduct occurred on or about April 18, 2009, when approximately 12 deliberately targeted jurors, received letter(s) from unknown defense and or prosecution sources containing information that was not presented at trial and was not subject to objection, to cross-examination, to explanation, or to rebuttal. The unlawful contamination of the jury, denies the due process right to an impartial jury capable of making their decision based on the evidence presented at trial.

Not only was extraneous information brought to the jury in the instant case but it is obvious from the limited record that the jury tampering affected practically all the jurors and that the act was clearly an attempt at jury tampering. Moreover, the letters received by the jurors falsely implicated Defendant as the source of the letters in an attempt to frame the Defendant.

The 9th Circuit has distinguished a difference between jury tampering and “more prosaic kinds of jury misconduct.” “Jury tampering is a much more serious intrusion into the jury’s processes and

poses an inherently greater risk to the integrity of the verdict.” U.S. v. Dutkel 192 F.3d 893, 895 (9th Cir. 1999) (Discussing Remmer v. United States).

In this situation with the alleged tampering falsely attributed to the defendant it is unknown whether the jurors discussed what role the defendant may have played in the event. Without properly questioning all the jurors the record will remain murky as to what took place and what level of bias may have developed because of the incident and the decision of the jurors prior to bringing it to the court's attention. The jurors know that tampering with the jury is a crime and a reasonable juror would conclude that if the Defendant played a role in the instant crime he must be guilty of crimes that the jury was empaneled for.

Federal case law holds that jury misconduct/tampering creates a presumption of prejudice and in this case the trial court failed to hold a probing hearing to ascertain what each of the jurors had heard, what discussion had taken place about the event among the jury and what impact the alleged tampering incident had on each of them. The highest court in the land has ruled on this need for an investigation long ago. When jury tampering is alleged as it was here there is a presumption of prejudice and the government bears a heavy burden of showing that it was harmless beyond a reasonable doubt. In this case the government failed to meet this burden. A hearing was never held to determine the extent the jury panel was impacted by the misconduct and alleged tampering.

The Defendant is respectfully requesting that the Court grant this motion and seek the appointment of a Special Prosecutor.