

Other Errors and Crimes Not Subject to Harmless Error Analysis

I allege that the following additional errors constitute intentional bad faith and malice by Senior Judge David D. Dowd Jr. and the Orlando Judiciary, who participated in and condoned his misconduct, in order to intentionally and illegally obstruct justice and cover up the crimes committed by the prosecution and the Judiciary to attempt to "save" the case for the Government.

Not only were these errors done intentionally but legally they are not subject to harmless error analysis because once a judge is considered partial, his or her errors are not subject to harmless error analysis. It is clear from the facts of this case that the judge was not impartial.

1. Neither the Government nor the Trial Court responded to or granted a hearing on the following pre-trial motions:

- a. **MOTION TO CONTINUE TRIAL FOR GOOD CAUSE**, Docket Entry 369, filed 03/16/09
- b. **MOTION FOR RECONSIDERATION OF PRETRIAL DETENTION ORDER AND REQUEST FOR EVIDENTIARY HEARING**, Docket Entry 388, filed 03/19/09
- c. **MOTION TO DISMISS FOR MALICIOUS AND OUTRAGEOUS PROSECUTORIAL MISCONDUCT**, Docket Entry 486, filed 04/01/09
- d. **DEFENDANTS MOTION FOR DISCOVERY AND REQUEST FOR A HEARING**, Docket Entry 375, filed 03/17/09
- e. **MOTION TO SEVER DEFENDANTS**, Docket Entry 473, filed 03/30/09

2. Neither the Government nor the Trial Court responded to or granted a hearing on the following motions during trial:

- a. **MOTION FOR RECUSAL AND DISQUALIFICATION OF VISITING JUDGE DAVID D. DOWD AND MAGISTRATE DAVID A. BAKER**, Docket Entry 519, filed 04/13/09
- b. **DEFENDANT'S MOTION FOR A MISTRIAL AND REQUEST THAT A SPECIAL PROSECUTOR BE APPOINTED**, Docket Entry 540, filed 04/21/09 (U.S. v. Dutkel 192 F.3d 893 (9th Cir. 1998))

3. Neither the Government nor the Trial Court responded correctly to or granted a hearing on the following post conviction motions:

- a. **MOTION FOR JUDGEMENT OF ACQUITTAL**, Docket Entry 616, filed 05/20/09
- b. **MOTION FOR A NEW TRIAL**, Docket Entry 623 filed 05/28/09 (U.S v. Dutkel 192 F.3d 893 (9th Cir. 1998)) See also Docket Entries 617, 626, 627, & 628.
- c. **JUDE LACOUR'S MOTION TO REVIEW THE GRAND JURY TRANSCRIPTS, GOVERNMENT NOTES AND SUBPOENAED DOCUMENTS PUT BEFORE THE GRAND JURY, ETC AND NOTICE OF ADOPTION**, Docket Entry 666, filed 06/26/09
- d. **DEFENDANT JUDE LACOUR'S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** Docket Entry 962, filed 1/31/10

4. Defendant was forced to choose between an ineffective lawyer, who filed a motion to withdraw three (3) weeks before trial, or representing himself pro se. (Schell v. Witek, 218 F.3d 159, 1017 (9th Cir. 2000), U.S. v. Cronin 466 US 648, 80 L. Ed. 2d 657, 104 S. Ct. 2039 (1984))

- a. **MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT JUDE LACOUR** Docket Entry 341 Filed 03/07/2009

5. The Trial Court refused to grant the Defendant's written Motion for a Continuance after Defendant's attorney withdrew three weeks before trial.

- a. **MOTION TO CONTINUE TRIAL FOR GOOD CAUSE**, Docket Entry 369, filed 03/16/09

6. The trial court granted the requested limine motion and instruction on deliberate ignorance which resulted in a failure to restrain an over-zealous prosecutor. U.S. v. Rivera 994 F.2d 1563 (1991) (only dealing with deliberate ignorance instruction)

7. The Trial Court denied access to the full Grand Jury transcripts of Lead F.B.I. Agent John F. Groeschner, a testifying witness, and maybe others, despite repeated requests. (Dennis v. United States, 384 U.S. 855, 86 S. Ct. 1840, 16 L. Ed. 2d 973 (1966))

- a. **LETTER TO THE COURT FROM JUDE LACOUR**, Docket Entry 96, filed 7/10/08
- b. **MOTION FOR RECONSIDERATION OF PRETRIAL DETENTION ORDER AND REQUEST FOR EVIDENTIARY HEARING**, Docket Entry 388, filed 03/19/09
- c. **DEFENDANT'S MOTION FOR DISCOVERY AND REQUEST FOR A HEARING**, Docket Entry 375, filed 03/17/09
- d. **MOTION TO CONTINUE TRIAL FOR GOOD CAUSE**, Docket Entry 369 filed 03/16/09
- e. **MOTION FOR RECUSAL/DISQUALIFICATION OF VISITING JUDGE DAVID D. DOWD AND MAGISTRATE JUDGE DAVID A. BAKER** Docket Entry 519, filed 04/13/09 Page 3 paragraph 6; Page 8 paragraph 17
- f. **MOTION FOR A NEW TRIAL**, Docket Entry 623, filed 05/28/09
- g. Plus many other requests on the record

8. The Trial Court denied access to Agent notes made in the course of the investigation, despite repeated requests. (Lewis v. United States 340 F.2d 678, 682 (8th Cir. 1965))

- a. **DEFENDANT'S MOTION FOR DISCOVERY AND REQUEST FOR A HEARING**, Docket Entry 375, filed 03/17/09
- b. **JUDE LACOUR'S MOTION TO REVIEW THE GRAND JURY TRANSCRIPTS, GOVERNMENT NOTES AND SUBPOENAED DOCUMENTS PUT BEFORE THE GRAND JURY, ETC AND NOTICE OF ADOPTION**, Docket Entry 666, filed 06/26/09
- c. **TRIAL TRANSCRIPT VOLUME VI**, Docket Entry 870, page 5 line 19 – page 6 line 10.

9. The Magistrate, Trial Court and prosecution committed a Rule 16 violation by not giving Defendant access to his discovery despite repeated requests and in writing.

10. The Trial Court erred when it allowed 302s that were not signed to be used as Jencks material. (United States v. Saget 991 F.2d 702)

- a. **TRIAL TRANSCRIPT VOLUME VI**, Docket Entry 870 Filed 9/10/09, page 5 line 19 – page 6 line 10.

11. The Trial Court removed the jury when Defendant objected in order to prevent the jury from hearing Defendant's objection. This caused Defendant to stop objecting.

- a. **TRIAL TRANSCRIPT VOLUME V**, Docket Entry 890 filed 9/18/09, Page 8 lines 1-5

12. The Trial Court did not allow impeachment of any of the prosecution witnesses. (Vasquez v. Jones 496 F.3d 564 (6th Cir. 2007), United States v. Baptista-Rodriguez 17 f.3d 1354, 1370 (11th Cir. 1994))

13. The Trial Court committed numerous confrontation errors and denied the right to a full cross examination of government witnesses throughout the trial.

- a. See **DEFENDANT JUDE LACOUR'S APPELLATE BRIEF FILED WITH THE UNITED STATES 11TH CIRCUIT COURT OF APPEALS**

14. The Trial Court allowed the Government to have a lay witness and co-defendant to state an opinion on the law. (Montgomery v. Aetna Cas. & Sur. Co., 898 F.2d 1537, 1541 (11th Cir. 1990))

- a. **TRIAL TRANSCRIPT VOLUMES V AND VI**, Testimony of Prosecution witness Hudson Smith

15. The Trial Court's made several improper and partial comments consisting of, but are not limited to:

- The Court stated that it is the defendant's burden of proof to the jury that a physician does not need to see a patient before issuing a prescription.

- The Court stated, on the record, that..."They tried to run a scam."

- a. **TRIAL TRANSCRIPT VOLUME II**, Docket Entry 868, filed 9/10/09, Page 207 lines 9-12

- The Court stated concerning this defendant, "And he doesn't care what the jurors' problems are. He doesn't care about the other counsel. He doesn't care about the other defense. And he's hoping, before it's over, at least it appears to me, that he'll find some way to disrupt these proceedings."

- a. **TRIAL TRANSCRIPT VOLUME IV**, Docket Entry 889, filed 9/18/09, Page 267 lines 21-25

- The Court said, "Mr. Lacour, he who lives by the sword, dies by the sword" while pointing his finger at defendant.

- a. **TRIAL TRANSCRIPT VOLUME IV**, Docket Entry 889, filed 9/18/09, Page 268 lines 4-10
- b. **MOTION FOR RECUSAL AND DISQUALIFICATION OF VISITING JUDGE DAVID D. DOWD AND MAGISTRATE DAVID A. BAKER**, Docket Entry 519, filed 04/13/09

- The Court said, in front of the jury, "Please deal with facts that are relevant to the claims made by the government: I.e., that you set up a process by which doctors and pharmacists filled prescription orders without ever seeing the patient. That's the problem that you're faced with." A motion for mistrial was made and joined by all defendants because of this matter, but it was denied.

- a. **TRIAL TRANSCRIPT VOLUME X11**, Docket Entry 875, filed 9/10/09, Page 38 lines 18-22; Page 56 line 2 through Page 57 line 22

- After this Defendant made an objection, The Court replied, "Well, I'm not going to listen to it. Lets move on."

- a. **TRIAL TRANSCRIPT VOLUME VI**, Docket Entry 870, filed 9/10/09, Page 277 line 10-12

- The Court, addressing the jury, said "The only evidence that Mr. Lacour can put in is when he testifies under oath..."

- a. **TRIAL TRANSCRIPT VOLUME VI**, Docket Entry 870, filed 9/10/09, Page 81 lines 9-10

16. The Trial Court did not allow Defendant to subpoena witnesses and thereby created an intentional compulsory process error.

- a. **TRIAL TRANSCRIPT VOLUME X**, Docket Entry 909 beginning page 17, filed 10/06/09

17. The Trial Court interfered with Defendant's right to testify on his own behalf.

- a. **TRIAL TRANSCRIPT VOLUME XII**, Docket Entry 875 pages 122-123, filed 09/10/09

18. The Trial Court refused to declare a mistrial after jury tampering where Defendant was made to look like the one who did the tampering. Defendant is no longer a suspect.

- a. **DEFENDANT’S MOTION FOR A MISTRIAL AND REQUEST THAT A SPECIAL PROSECUTOR BE APPOINTED**, Docket Entry 540, filed 04/21/09

19. The Trial Court initiated an FBI investigation into jury tampering during trial that lasted throughout the completion of the trial and still continues today. The jury was interviewed by the FBI at least once and maybe twice before verdict. The pendency of an FBI investigation through the pendency of the trial violates the right to an impartial jury. (Remmer v. United States 347 US 277, 98 L. Ed. 654, 74 S. Ct. 450)

20. The Trial Court refused to declare a mistrial after stating in front of the jury that the law requires a physician to see his patient to prescribe medication.

- a. **TRIAL TRANSCRIPT VOLUME X11**, Docket Entry 875, filed 09/10/09, page 38, lines 15-22; page 56 line 2 – page 57 line 20.

21. The Trial Court allowed the Government to commit intentional Brady violations.

22. The Trial Court intentionally wrote one sentence orders to make appellate review impossible. (Clay v. Equifax, Inc., 762 F.2d 952, 957-58 (11th Cir. 1985), Danley v. Allen 480 f.3d 1090 (11th Cir. 2007))

23. The Trial Court improperly commented, in front of the jury, on Defendant not taking the stand during Defendant's closing argument. (United States. v. Knowles 66 F.3d 1146, 1162 (11th Cir. 1995))

- a. **TRIAL TRANSCRIPT VOLUME XVI**, Docket Entry 877, filed 9/10/09 Page 49 lines 14-16; Page 64 lines 15-17; Page 68 lines 7-11.

24. After two (2) days of being hung, the Trial Court issued a coercive Allen Charge, in light of all the other circumstances in this case. (Doc. 879, pg. 35)

- a. **TRIAL TRANSCRIPT VOLUME XVIII**, Docket Entry 879 filed 09/10/09, page 34 line 7 – page 36 line 8

25. The Trial Court agreed to meet with a deliberating jury but did not inform the defense about the jury's request. (U.S. v. Benavides 549 F.2d 392, 393 (5th Cir. 1977)), (Fed.R.Crim.P. 43)

26. Shortly after this illegal meeting, the jury returned a verdict after being hung for 3 days.

27. The Trial Court did not notify the defense of a jury's question. (Doc. 880, pg. 4) (Gomilia vs. U.S. 146 F.2d 372 (5th Cir. 1944), Rogers vs. U.S. 422 U.S. 35, 45 L.Ed. 2d1, 95 S. Ct. 2091 (1975))

28. The Trial Court denied the Rule 29 Motion for Judgment of Acquittal.

29. The Trial Court denied the Rule 33 Motions for a new trial after verdict without fully addressing the issues or granting a hearing even though jury tampering was mentioned in the motions. (Docs. 617, 623, 626, 627, 628)(U.S. v. Dutkel 192 F.3d 893 (9th Cir. 1998))

30. The Trial Court improperly granted a 4 level enhancement of Defendant's sentence without stating why the Guidelines failed to adequately address the reasons why he granted the enhancement. (U.S. v. Shaw 891 F.2d 528 (5th Cir. 1989))

31. The Trial Court intentionally considered the guidelines mandatory, and committed a blatant Booker violation, by stating "...I can't go below the low number.." (United States v. Martinez-Lugo 411 F.3d 597, 600 (5th Cir. 2005))

- a. **SENTENCING TRANSCRIPT**, Docket Entry 894, filed 9/18/09 Page 10 lines 17-20

32. The Trial Court improperly denied bond pending appeal when all other co-defendant's, who are medical professionals, are out on bond pending appeal. The trial court denied bond pending appeal without an evidentiary hearing or legal authority, after stating, on the record, that the Court expected Defendant's to be successful on appeal. (Doc. 910, pg. 37)

33. It would appear that Judge Dowd has continued the cover up into the Appellate Court, the 11th Circuit. Defendant's recently filed motion for bond pending appeal was denied without a written order by the 11 Circuit, just like Judge Dowd's rulings on Defendant's district court motions, including Defendant's motion for bond pending appeal filed after sentencing in the District Court.

34. The Trial Court did not dismiss multiplicitous counts, 52 counts, which may have affected the integrity of the proceedings. (U.S. v. Zalapa 509 f.3d 1060, 1065 (9th Cir. 2007))