

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FILED

2007 APR 27 AM 9:02

US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
ORLANDO, FLORIDA

UNITED STATES OF AMERICA

Plaintiff,

-vs-

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

JUDE LACOUR,

Defendant

\_\_\_\_\_ /

**MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS  
PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND  
FALSE REPORTS**

1. In Pro Se defendant, Jude Lacour, hereby moves to dismiss the indictment against him based upon **new evidence** adduced during the government's case-in-chief. Defendant has established, as a matter of law, that the government's conduct during this investigation was so outrageous as to violate the Due Process Clause of the Fifth and Sixth Amendment to the United States Constitution.

2. When the government's conduct during an investigation is sufficiently outrageous, the courts will not allow the government to prosecute offenses developed through that conduct, *United States v. Pedraza*, 27 F.3d 1515, 1521 (10th Cir. 1994); *United States v. Mosley*, 965 F.2d 906, 908 (10th Cir. 1992), because prosecution in such a case would offend the Due Process Clause of the Fifth Amendment to the United States Constitution.
3. Defendant has previously filed several prosecutorial misconduct motions and notices informing the Court that prior to the execution of the corporate search warrant in the matter of *United States v. Jude Lacour*, FBI agent John Groeschner and prosecutor Karan Gable used the April 19, 2005, search warrant as a premeditated pretext to falsely detain, interrogate and terrorize Jive Network employees in violation of the law. The officers involved in the raid stormed the corporate offices of Jive Network, pointed and brandished their weapons at them and moved the employees to a parking lot location where they were forcibly detained and interrogated, without being advised of their constitutional rights. In an effort to conceal their misconduct the agents unplugged the surveillance cameras and concealed the videotape depicting the raid. None of the police reports attributed to FBI agent John Groeschner or prosecutor Karen Gable contained accurate information concerning the conduct of the officers during the raid of Jude Lacour's corporate offices.
4. The Court was told that on or about April 12, 2005, FBI agent John Groeschner used an undercover agent to penetrate Jive Network and in his moving papers defendant identified the agent as "Tony Lammatta". The Court was informed that the government was concealing the participation of "Tony Lammatta" and that his employee file was removed from the corporate premises in order to cover up his undercover operation and illegal activities.

5. The Court and the prosecutor were advised through various motions and notices that on April 19, 2005, the agent questioning and or interrogating Jive Network employee “Dolores” **falsified his report** by intentionally misrepresenting the response provided by “Dolores”. Intentionally falsifying an official report is a crime.

**NEWLY DISCOVERED EVIDENCE OF PROSECUTORIAL MISCONDUCT /  
PERJURY AND SUBORNATION OF PERJURY THAT WAS KNOWN TO  
PROSECUTOR KAREN GABLE**

6. On Saturday, April 18, 2009, defense investigator Bill Pavelic caused former Jive Network employees “Dolores” and John Congdon to be served with federal subpoenas to appear as defense witnesses in the underlying case.
7. On Monday, April 20, 2009, “Dolores” appeared at the Orlando Middle District Court and attempted to testify in the matter of United States v. Jude Lacour. During her testimony “Dolores” was unable to respond to many of the questions posed by the Defendant due to excessive objections from the prosecutor whose objective was to prevent her criminal prosecutorial misconduct and impeachment of FBI agent John Groeschner.
8. On April 22 and April 24, 2009, defense investigator Bill Pavelic met with “Dolores” in order to interview her and to obtain a signed declaration from Dolores concerning FBI agent John Groeschner. **(See Exhibit #1)** Mr. Pavelic was in possession of two official FBI documents that were authored by FBI agent John Groeschner, to wit:
  - A.) “MASTER AFFIDAVIT IN SUPPORT OF SEARCH AND SEIZURE WARRANTS” THAT WAS SUBSCRIBED AND **SWORN TO** ON APRIL 15,

2009, BEFORE UNITED STATES MAGISTRATE JUDGE DAVID A. BAKER,  
CONTAINING THE FOLLOWING STATEMENT:

"...On April 12,2005, an **FDA agent** acting in an undercover capacity responded to a classified advertisement in the Daytona Beach newspaper advertising employment at Jive Network, 420 Fentress Boulevard, Daytona Beach[, Florida as a customer service representative. The agent met with two customer service managers. **During her interview**, the agent was told that Jive sells prescription drugs over the internet and that **her job** would require **her** to answer 800 phone calls a day from consumers all over the country who ordered prescription drugs. While in the facility, the agent observed at least 20 stand alone computers and two rooms designated IT room 1 and IT room 2....."

B.) FEDERAL BUREAU OF INVESTIGATION **302 REPORT** "EXECUTION OF SEARCH / SEIZURE WARRANTS" DATED 4/15-22/2005, CONTAINING THE FOLLOWING STATEMENT:

"...On April 19, 2005, at 9:00 a.m., federal agents executed the search warrant at 420 Fentress Boulevard, Daytona Beach, Florida. Upon initial entry to the premises, **all personnel were told to step away from their desks** and remain in the center of main room of the central location. At the same time, **all communications lines were disabled.** All of the persons located on the premises were frisked for officer safety, and were escorted to the parking lot, where they were interviewed by participating agents using a field interview sheet. Copies of these sheets were placed in an FD-340 and are hereby made part of the file. During the execution of the warrant, access to the location was monitored and

secured by uniformed officers from the Daytona Beach Police Department and the Volusia County Sheriff's Office ...."

9. Upon reviewing both official statements attributed to FBI agent John Groeschner the witness concluded they were false and that the raid against Jive Network involved many agents who pulled out their guns at Jive Network employees, including a handicapped person. The only African American employed by Jive Network was singled out and forced to be on his knees with his hands behind his head. And, contrary to FBI John Groeschner's statement under penalty of perjury, the undercover agent was not a female but a male identified as "Tony Lammatta".
10. On April 20, 2009, Defense investigator Bill Pavelic questioned witness John Congdon while he was waiting to testify in the case and he also unabashedly stated that he observed agents brandishing guns during the April 19<sup>th</sup>, 2005, search warrant execution. John Congdon was initially a witness for the prosecution.
11. In her statement, Dolores swore under penalty of perjury that on or about June of 2005, she was requested to make an appearance and to subject herself to an interview at the offices of the Daytona Beach FBI. She was interviewed by FBI agent John Groeschner in front of two unidentified agents. During the interview the agent(s) were trying to get her say that there were no guns exhibited during the raid. She informed them that she was terrified and scared from the experience and that this was an event that she would never forget.
12. Preparation of fraudulent 302s and or other law enforcement reports is a crime and persuading a witness to misrepresent her testimony by FBI agents and or before the grand jury is beyond reprehensible. To her credit, former Jive Network employee "Dolores" was not corrupted by the "Untouchables" and testified truthfully at the 2005 Grand Jury that the agents pointed their guns at Jive Network employees

when they executed the April 19, 2005, search warrant. Defendant has not been able to obtain transcripts from the 2005 grand jury and is unaware of the result of that grand jury investigation.

13. As the Court is aware, the Defendant alleged in previous motions that prosecutor Karen Gable, in concert with Special Agent John F. Groeschner, Jr. knowingly and willfully devised a scheme and artifice to commit various crimes and that they conspired, planned, and coordinated their illegal strategy long before they sought the search warrant from Magistrate Judge David A. Baker. The confederacy and conscious unlawful acts by the prosecutor and her agent involved a conspiracy that was premeditated and necessitated the involvement of substantial resources, planning, and coordination, by some 50 law enforcement personnel. The government and the Court was informed that a conspiracy to commit an illegal act is a crime.
14. Defendant also alleged that Special Agent John F. Groeschner, Jr. was in possession of internal security surveillance camera videotape that recorded the execution of the corporate search warrant. The existence of the tape has not been acknowledged or provided so as to **impede and deny Defendant an opportunity to show the jury the government's excesses when they illegally detained, abused, interrogated, and terrorized his employees. Intentional concealment of evidence is misconduct.**
15. The prosecutor involved in the criminal misconduct appointed herself as the "custodian of records" and has consistently concealed exculpatory evidence from the Defendant. The Government has an obligation under *Brady v. Maryland*, 373 U.S. 83 (1963) to disclose evidence that is favorable to the accused and material to

guilt or punishment. See *U.S. v. Presser*, 844 F.2d 1275, 1281 (6th Cir. 1988). The U.S. Supreme Court has emphasized the basis of the rule:

[t]he Brady rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur. Thus, the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial.

16. The statements attributed to former Jive Network employee “Dolores” and others are exculpatory but have not been provided to the defendant so as to cover up the crimes which were perpetrated by the prosecutor and her agents. Dolores is not the only employee who was intimidated by Karen Gable and FBI agent John Groeschner.
17. Defendant seeks dismissal of his criminal indictment alleging violations of his rights guaranteed by the Fifth and Sixth Amendments to the United States Constitution. The United States Supreme Court has recognized that “[u]nder the Sixth Amendment, a defendant has the right to present witnesses to establish his defense without fear of retaliation against the witness by the government.” *United States v. Dupre*, 117 F.3d 810, 823 (5th Cir. 1997) (citing *Webb v. Texas*, 409 U.S. 95, 98 (1972)).
18. As explained by the United States Court of Appeals for the Fifth Circuit: Th[e] right “to present witnesses to establish a defense” is specifically found in the sixth amendment right to compulsory process. *Washington v. Texas*, 388 U.S. 14 (1967). However, in *Washington v. Texas*, the Supreme Court held that the right was so fundamental to a fair trial that it was incorporated in the Due Process

Clause of the fourteenth amendment. Id. Cases, since then, have been based on due process rights without reference to the sixth amendment. E.g. *Webb v. Texas*, 409 U.S. 95 (1972); *United States v. Henricksen*, 564 U.S. 197 (5<sup>th</sup> Cir.1977). We will likewise refer to this right as a due process right. *United States v. Hammond*, 598 F.2d 1008, 1012 n.3 (5<sup>th</sup> Cir.1979). See also *Washington*, 388 U.S. at 19, **“Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of the law.”**

19. In the instant case, the defendant was essentially denied the right to question his witness “Dolores” and he was prevented from confronting and or impeaching prosecution witnesses, who were involved in outrageous and criminal misconduct. The Court at some point informed the jury that the Defendant would get his turn to impeach witnesses and when that day arrived the Court did everything in its power to impede his questioning of agents who were involved in criminal misconduct.
20. In isolation, any one of these outrageous acts would warrant dismissal, however, collectively these actions mandate dismissal and additional sanction to curb blatant and criminal prosecutorial abuse, that was condoned by the Orlando prosecutor and the judiciary.

Defendant is respectfully requesting that the Court issue an Order dismissing all charges against the Defendant and or hold an evidentiary hearing to put a stop to a repeated pattern of overzealous prosecutorial bad faith tactics that amount to obstruction of justice. Defendant is respectfully requesting that all prosecutorial misconduct motions be submitted to the Office of Professional Responsibility for investigation and adjudication.



I HEREBY CERTIFY that on April 26, 2009, I caused the foregoing to be filed with the Clerk of the Court and Assistant U.S. Attorney by hand delivering this motion to the following entities:

Clerk's Office, US. District Court  
Middle District of Florida, Orlando Division  
United States Courthouse, Suite 1200  
401 West Central Boulevard  
Orlando, FL 32801

Karen L. Gable, Assistant U.S. Attorney  
501W. Church St., Suite 300  
Orlando, FL 32801

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jude T. Lacour", is written over a horizontal line.

Jude T. Lacour, Pro Se Inmate

I DOLORES LEZA DECLARE AS FOLLOWS:

THIS DECLARATION IS BASED UPON MY PERSONAL KNOWLEDGE AND PARTICIPATION IN THE EVENTS DESCRIBED. IF AND WHEN CALLED TO TESTIFY AS A WITNESS, I WILL COMPETENTLY STATE AS FOLLOWS:

I HAVE BEEN EMPLOYED BY JIVE NETWORK FROM APPROXIMATELY 2003 TO 2005.

APPROXIMATELY TEN DAYS PRIOR TO THE EXECUTION OF THE APRIL 19<sup>TH</sup>, 2005 SEARCH WARRANT, I RECEIVED A REQUEST TO SHIP SOME DRUGS TO FLORIDA FOR A PERSON WHO CLAIMED HE WAS FROM ANOTHER STATE BUT WAS VACATIONING IN FLORIDA. THE ORDER WAS REJECTED BECAUSE FLORIDA WAS ONE OF THE RESTRICTED STATES AND THE FUNDS WERE RETURNED. SUBSEQUENTLY, ON APRIL 19<sup>TH</sup>, 2005, I LEARNED THAT THE PERSON WHO MADE THIS ORDER WAS THE SAME AGENT WHO WAS QUESTIONING MY COWORKER AND OR EMPLOYEE BRANDY DOBBINS.

ON APRIL 12, 2005, I HIRED A PERSON BY THE NAME OF TONY LAMMATT. I DID NOT KNOW HE WAS AN UNDERCOVER AGENT. TONY WAS GIVEN A TOUR OF THE COMPANY. DURING ORIENTATION MR. LAMMATT ASKED MANY QUESTIONS CONCERNING THE OPERATION OF JIVE NETWORK. I WENT OVER THE TRAINING MATERIAL WITH MR. LAMMATT CONCERNING THE PROCESS INVOLVING PHYSICIANS, PHARMACISTS AND SHIPMENTS TO STATES WHERE THERE WERE LEGAL RESTRICTIONS. MR. LAMMATT WAS TOLD JIVE NETWORK DOES NOT SHIP ANY PHARMACY ORDERS OUT OF THE COUNTRY.

MR. LAMMATT ASKED FOLLOW UP QUESTIONS OF WHAT SHOULD HE DO IN THE EVENT THE CUSTOMERS POSE QUESTIONS OF A MEDICAL NATURE. HE WAS TOLD TO INFORM THE CALLERS TO CONSULT WITH THEIR LOCAL DOCTORS AND OR PHARMACISTS.

MR. LAMMATT WAS GIVEN A TOUR OF JIVE NETWORK FACILITY AND AT ONE POINT HE ASKED WHAT WAS BEHIND ONE OF THE CLOSED OFFICES. I WALKED MR. LAMMATT THROUGH THIS OFFICE WHICH WAS THE DEPARTMENT IN CHARGE OF WEB DESIGNS AND CONTENTS. I ASSIGNED EMPLOYEE LINDA FORGIE TO TRAIN MR. LAMMATT AND KNOW FOR A FACT THAT HE HIMSELF HANDLED SOME CALLS. DURING ORIENTATION MR. LAMMATT WAS PROVIDED WITH AN EMPLOYEE TRAINING PACKAGE TO FAMILIARIZE HIMSELF WITH HIS NEW ASSIGNMENT.

ON APRIL 19, 2005, THE FBI AGENTS ENTERED JIVE NETWORK, POINTED GUNS AT EVERYONE AND ORDERED THE EMPLOYEES TO PUT THEIR HANDS UP IN THE AIR. AT LEAST ONE MALE EMPLOYEE WAS PLACED ON HIS KNEES WITH HIS HANDS

BEHIND HIS HEAD. NONE OF THE EMPLOYEES WERE ALLOWED TO MAKE OR RECEIVE PHONE CALLS OR GO TO THE BATHROOM WITHOUT BEING ESCORTED BY AN ASSIGNED AGENT. WE WERE ALL SEARCHED AND DIRECTED TO GO TO THE PARKING LOT WHERE WE WERE INTERROGATED. I RECOGNIZED TONY LAMMATTAS AS AN AGENT I HIRED DAYS EARLIER AND I WAS SHOCKED TO SEE HIM THERE WITH A GUN. I WAS NOT ALLOWED TO LEAVE THE FACILITY UNTIL THE INTERVIEW WAS FINISHED.

ON OR ABOUT APRIL 23, 2005 DET. HARRY OAKLY RAN INTO ME AT THE WALMART PARKING LOT. HARRY TOLD ME THAT JUDE LACOUR IS GOING TO BE INDICTED AND THAT HIS HOUSE AND HIS ASSETS WERE GOING TO BE TAKEN AWAY. HARRY TOLD ME THAT HE KNEW JUDE WAS IN CALIFORNIA AND SUGGESTED THAT I GET A NEW JOB BECAUSE JUDE WAS IN A LOT OF TROUBLE. HARRY STATED THAT HE WAS OFFERED THIS CASE BUT DECLINED BECAUSE HE USED TO DATE JUDE'S EX GIRLFRIEND "MONA" AND THAT THE AGENT IN CHARGE OF THE CASE WAS HIS FRIEND "JOSH".

I TOLD HARRY THAT I HAVE WORKED FOR JUDE FOR ALMOST 2 YEARS AND THAT HE DID EVERYTHING BY THE BOOK AND THAT HE WAS AN HONEST MAN WHO WOULD NEVER DO ANYTHING TO JEOPARDIZE HIS COMPANY OR EMPLOYEES.

ON OR ABOUT APRIL 29, 2005, I PROVIDED A WRITTEN STATEMENT TO BILL PAVELIC CONCERNING THE APRIL 19<sup>TH</sup>, 2005, JIVE NETWORK RAID. MANY OF THE ISSUES RAISED IN THIS DECLARATION WERE COVERED IN THE AFOREMENTIONED CORRESPONDENCE.

ON OR ABOUT JUNE 2005, I WAS REQUESTED TO MAKE AN APPEARANCE AND TO SUBJECT MYSELF TO AN INTERVIEW AT THE OFFICES OF THE DAYTONA BEACH FBI. I WAS INTERVIEWED BY FBI AGENT JOHN GROESCHNER. PRESENT AT THIS INTERVIEW WERE TWO OTHER AGENTS WHOSE IDENTITIES I DO NOT KNOW. I WAS ASKED MANY QUESTIONS AND I HAD EXPLAINED TO THE AGENTS PROCEDURES CONCERNING JIVE CONTROLS. I WAS STUNNED WHEN AT SOME POINT THE AGENTS WERE TRYING TO PERSUADE ME THAT THERE WERE NO GUNS EXHIBITED DURING THE RAID. I TOLD THEM THAT I WAS TERRIFIED AND SCARED FROM THE EXPERIENCE AND NOT SOMETHING THAT I WOULD FORGET.

ON OR ABOUT JUNE / JULY 2005, I TESTIFIED AT THE GRAND JURY AND BROUGHT OUT THE FACT THAT GUNS WERE POINTED AT THE EMPLOYEES DURING THE RAID. THE GRAND JURORS ASKED A LOT OF QUESTIONS WHICH I ANSWERED PROMPTLY AND HONESTLY.

FROM MAY 2005 TO APRIL 2009, I HAVE NOT BEEN IN CONTACT WITH ANY MEMBER OF THE DEFENSE TEAM AND OR MR. LACOUR. HOWEVER, ON SATURDAY, APRIL 18, 2009, I WAS SERVED WITH A FEDERAL SUBPOENA TO APPEAR AS A DEFENSE WITNESS IN THE JUDE LACOUR MATTER. ON MONDAY,

APRIL 20, 2009, I APPEARED AND TESTIFIED IN THE MATTER OF UNITED STATES V. JUDE LACOUR. HOWEVER, I WAS UNABLE TO ANSWER MANY OF THE QUESTIONS DUE TO PROSECUTORS EXCESSIVE OBJECTIONS.

ON APRIL 22, 2009 I MET WITH JUDE LACOUR'S DEFENSE INVESTIGATOR BILL PAVELIC IN LAKE MARY. I WAS SHOWN THE APRIL 15, 2005, MASTER AFFIDAVIT IN SUPPORT OF SEARCH AND SEIZURE WARRANTS TO DETERMINE IF THE STATEMENT BY FBI AGENT JOHN GROESCHNER WAS CORRECT. IN THE SEARCH WARRANT AFFIDAVIT, AGENT JOHN GROESCHNER STATED THE FOLLOWING:

"....ON APRIL 12, 2005, AN FDA AGENT ACTING IN AN UNDERCOVER CAPACITY RESPONDED TO A CLASSIFIED ADVERTISEMENT IN THE DAYTONA BEACH NEWSPAPER ADVERTISING EMPLOYMENT AT JIVE NETWORK, 420 FENTRESS BOULEVARD, DAYTONA BEACH, FLORIDA AS A CUSTOMER SERVICE REPRESENTATIVE. THE AGENT MET WITH TWO CUSTOMER SERVICE MANAGERS. DURING HER INTERVIEW, THE AGENT WAS TOLD THAT JIVE SELLS PRESCRIPTION DRUGS OVER THE INTERNET AND THAT HER JOB WOULD REQUIRE HER TO ANSWER 800 PHONE CALLS A DAY FROM CONSUMERS ALL OVER THE COUNTRY WHO ORDERED PRESCRIPTION DRUGS. WHILE IN THE FACILITY, THE AGENT OBSERVED AT LEAST 20 STAND ALONE COMPUTERS AND TWO ROOMS DESIGNATED IT ROOM 1 AND IT ROOM 2....."

THE STATEMENT PROVIDED BY JOHN GROESCHNER IS INCORRECT BECAUSE IT REFERENCES AN UNDERCOVER AGENT WHO WAS A WOMAN. THE EMPLOYEE WHO WAS HIRED AND TRAINED ON APRIL 12, 2005, WAS A MALE WHO REPRESENTED HIMSELF AS TONY LAMMATTI.

ON APRIL 24, 2009, AT THE REQUEST OF DEFENSE INVESTIGATOR BILL PAVELIC, I RESPONDED TO LAKE MARY TO REVIEW A DOCUMENT THAT WAS PREPARED BY FBI AGENT JOHN GROESCHNER ON APRIL 25, 2005. IN THIS 302 DOCUMENT, PAGE 3, PARAGRAPH 5, AGENT GROESCHNER MADE THE FOLLOWING STATEMENT:


"....ON APRIL 19, 2005, AT 9:00 A.M., FEDERAL AGENTS EXECUTED THE SEARCH WARRANT AT 420 FENTRESS BOULEVARD, DAYTONA BEACH, FLORIDA. UPON INITIAL ENTRY TO THE PREMISES, ALL PERSONNEL WERE TOLD TO STEP AWAY FROM THEIR DESKS AND REMAIN IN THE CENTER OF MAIN ROOM OF THE CENTRAL LOCATION. AT THE SAME TIME, ALL COMMUNICATIONS LINES WAS DISABLED. ALL OF THE PERSONS LOCATED ON THE PREMISES WERE FRISKED FOR OFFICER SAFETY, AND WERE ESCORTED TO THE PARKING LOT, WHERE THEY WERE INTERVIEWED BY PARTICIPATING AGENTS USING A FIELD INTERVIEW SHEET. COPIES OF THESE SHEETS WERE PLACED IN AN FD-340 AND ARE HEREBY MADE PART OF THE FILE. DURING THE EXECUTION OF THE WARRANT, ACCESS TO THE LOCATION WAS MONITORED AND SECURED BY UNIFORMED OFFICERS FROM

THE DAYTONA BEACH POLICE DEPARTMENT AND THE VOLUSIA COUNTY  
SHERIFF'S OFFICE...."

AS STATED EARLIER, THE RAID CONDUCTED AGAINST JIVE NETWORK INVOLVED  
MANY AGENTS WHO PULLED OUT THEIR GUNS AND POINTED THEM AT THE  
EMPLOYEES, INCLUDING "LANCE" AN EMPLOYEE WHO IS HANDICAPPED AND  
PARALYZED. THIS INFORMATION WAS OMITTED FROM THE FBI 302 REPORT.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
CORRECT.

EXECUTED AT LAKE MARY, FLORIDA, ON APRIL 24, 2009.

A handwritten signature in black ink, appearing to read 'Dolores Leza', with a long horizontal flourish extending to the right.

DOLORES LEZA