

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

vs.

CASE NO: 8:05-Cr-475-T-27TGW

THOMAS SPELLISSY

and

STRATEGIC DEFENSE INTERNATIONAL, INC.

**ADDENDUM to DEFENDANTS THOMAS SPELLISSY AND STRATEGIC DEFENSE
INTERNATIONAL, INC.'S JOINT MOTION FOR NEW TRIAL BASED ON NEW
EVIDENCE.**

Defendants Thomas Spellissy and Strategic Defense International, Inc. (hereinafter jointly referred to as "Spellissy") through their respective undersigned counsel, hereby jointly move to add an addendum to their previous motion for a new trial under Fed.R.Crim.P. 33 on the basis of additional new evidence was found after the initial motion was filed and this new evidence has a direct impact on the justice of this case.

Defendants restates and incorporates by reference the following paragraphs;

- 1. Witness Tampering by the Government.**
- 2. Burke found guilty of perjury.**
- 3. Polygraph Test.**

of the previously filed motion for a new trial based on new evidence and files this addendum as follows;

- 4. Defendant Spellissy was on active duty for the United States Army when the alleged conspiracy was born.**

On October 4, 2007 Defendant Spellissy received correspondence from the Department

of the Army, Review Boards Agency Support Division. See exhibit A. The enclosure to the correspondence from the Department of the Army, Office of the Assistant Secretary Manpower and Reserve Affairs states “the Government did not discover COL Spellissy’s **misconduct on active duty** until after his retirement, could not discover his misconduct before retirement through due diligence, and did not therefore document his misconduct through conviction in federal district court until after his retirement.” The correspondence continues on and directs him to be retired in the demoted grade of Lieutenant Colonel.

This vindictive move by the United States Army, part of the Executive Branch of the United States Government, pursuant to the United States Constitution, comes days after Spellissy filed the Motion for a New Trial based on New Evidence. This also follows another back door tactic used by the government by having the Internal Revenue Service, part of the Executive Branch of the United States Government, pursuant to the United States Constitution; audit the Defendants for calendar year 2005. For the record, the initial IRS Form 1040 filing for Defendant Spellissy was correct.

The government’s new position after, the indictment, the Franks Hearing, **the trial** and sentencing is now that Colonel (Ret) Spellissy committed the alleged conspiracy while he was on active duty. This is new news to Defendant Spellissy. Certainly, now the United States Army, part of the Executive Branch of the United States Government, pursuant to the United States Constitution, must have other evidence to connect the alleged crimes to him while he was on active duty. This other new evidence was unknown at trial and is still unknown to Defendant Spellissy. According to Court records, the Indictment through Sentencing, Colonel Spellissy was out of the United States Army and this alleged crime of conspiracy had nothing to do with Spellissy on active duty. This new evidence changes the whole scenario under which a jury found Defendants guilty of the alleged crime of conspiracy. Defendants are further mystified by this new evidence because the “real truth” is hidden somewhere unknown to this honorable Court. In fact, the entirety of the Government’s case against Colonel Spellissy continues more than a year later to be both controversial and very misleading as evidenced by this additional newly discovered evidence.

The United States Army, part of the Executive Branch of the United States Government, pursuant to the United States Constitution is now stating that Colonel Spellissy was still on active duty when the alleged crime of conspiracy was committed. This is illogical because while on active duty Colonel Spellissy commanded the most powerful and demanding acquisition unit in the Department of Defense. He was directly responsible for over \$3,000,000,000.00 (\$3 billion) of our Nation’s classified research, development, test and evaluation, and procurement of equipment to support our covert soldiers,

airmen, and SEAL units at war. This responsibility included leading and managing all of the unclassified ground warfare programs, all USSOCOM collateral classified programs for the Joint Special Operations Command, and all of the USSOCOM acquisition classified Special Access Programs. Colonel Spellissy was also trusted with practically all of the nations classified acquisition programs, which included those of the Central Intelligence Agency, the National Security Agency, the National Laboratories and the Department of Homeland Defense. He also had access to, and negotiated with, his foreign counter-parts in order to use selected National Level Classified Programs from others countries, such as the United Kingdom and the State of Israel, to benefit our Special Operations Forces.

Now, the government is saying that Colonel Spellissy who was the highest ranking government official in a sensitive position for classified acquisition is conspiring with a low level government support contractor to defraud the government. This does not pass common sense. Can a reasonable juror find practical reason for a high ranking government official to conspire with a low level non decision making private contractor to defraud the United States Government? The government has changed the underlying facts of this case. The defense strategy for the trial would have been different and the jury's understanding and interpretation of the evidence presented at trial would have been without question, different. There is little doubt that the jury would have found the Defendants not guilty.

At Sentencing, Judge Whittemore said "this defendant, served this country and its armed forces in an exemplary and extraordinary manner for 29 years in the military." (Doc 85, page 3 of attachment) Just as the government disregarded the subpoena for Sergeant First Class Landers to appear for Defendants at trial, now, the United States Army, part of the Executive Branch of the United States Government, pursuant to the United States Constitution, is not satisfied with Judge Whittemore's sentencing order or Colonel Spellissy's outstanding duty performance as a Colonel while on active duty. They have taken judicial judgment and action on their own to further punish Colonel Spellissy. The government has gone through the back door to further punish Colonel Spellissy by reducing his retirement rank by one grade, thus reducing his pension. This is an adverse financial life sentence to Spellissy and his family. This evidence was not known at the time of trial and/or at sentencing and has direct impact on the justice of this case.

5. The Department of Justice doesn't have jurisdiction on Defendant Spellissy.

With this new government position, the U.S. Attorney for the Middle District of Florida doesn't even have jurisdiction over this case because Defendant Spellissy is on active

duty when the alleged conspiracy was executed. It's also very secretive or mystifying that the United States Army, part of the Executive Branch of the United States Government, pursuant to the United States Constitution, knows when the alleged conspiracy began, but the U.S. Attorney, the Probation Office, the Defendants and the Court doesn't. (See Document 85, Sentencing order)

Also, according to the Department of the Army, Headquarters, United States Army Special Operations Command, Fort Bragg, NC correspondence (See Defendants Exhibit A for a Motion for a New Trial Based on New Evidence) this case was prosecuted "in private litigation." Under 32 CFR § § 97.6(c), 516.41, the Army must authorize the appearance of its personnel in private litigation. Defendant Spellissy never received authorization, therefore, he could not testify. The correspondence further states "it is well settled that courts cannot compel a federal agency employee to testify or produce documents in violation of *Touhy* regulations. See *Touhy*, 340 US at 467-70; *Boron Oil Co.*, 873 F.2d at 69-70; and *United States Steel Corp v. Mattingly*, 663 F.2d 68, 68 (10th Cir 1980). The government confused the court by obtaining a search warrant with a misleading affidavit, the lead investigative Department of Defense Special Agent Calvert was dishonest, the government presented a key witness who perjures himself because he receives threats by a dishonest Department of Defense Special Agent, and now a year after the trial the government states that Colonel Spellissy was still on active duty is clear evidence of a government misconduct by hiding the truth, tampering with witnesses, changing the Defendants status or position to suit their needs and without question further proof an all out effort to get Colonel Spellissy at all costs. All of this new evidence is proof that Spellissy's rights under the Constitution to have a fair trial under factual circumstances and present witnesses to testify on their behalf have been violated.

Summary

This court is well aware that one branch of government can not intentionally obstruct another branch or violate the separation of powers. It is evident that the Department of Defense, part of the Executive Branch of the United States Government, pursuant to the United States Constitution has its own agenda with this case by the fact that they have tampered with a witness by preventing him from testifying without court knowledge or approval, this same Executive Branch of Government has also threatened a witness that led to perjury and now we know that the Department of the Army, part of the Executive Branch of the United States Government, pursuant to the United States Constitution has their own interpretation of this case and have concluded that Defendant Spellissy was on active duty when the alleged conspiracy crime was committed which changes the underlying facts of the case to include jurisdiction and

have taken it upon themselves to administer their own punishment to the Defendant which will be a life long financial hardship.

Defendant Thomas Spellissy has executed a valid affidavit to which he has personal knowledge of all the above referenced facts and the original Motion for a New Trial based on New Evidence and the two Motions for Stay of Sentence Pending Determination of a New Trial based on New Evidence.

CONCLUSION

According to Eleventh Circuit authority, this new evidence provides that Defendants Thomas Spellissy and SDI, Inc. are entitled to a new trial, on the basis of new evidence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by Electronic Filing to Sheryl L. Loesch, Clerk of the Court, U.S. District Court, Middle District of Florida, located at U.S. Courthouse, 801 N. Florida Ave., #223, Tampa, FL 33602-3800, and that e-mail notification of this filing will be sent to all interested persons on this 5th day of October, 2007.

/s/ Sean P. Cox

Sean P. Cox, Esquire (FBN 053155)
McGuire Law Offices
1173 N.E. Cleveland Street
Clearwater, FL 33755
Phone (727) 446-7659
Fax (727) 446-0905