

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.

The purpose of this filing is to give Notice of Non-Opposition and recommendation to Defendants Joint Motion for a New Trial Based on New Evidence and Joint Motion for a Continued Stay of Sentence Based on a Determination of a New Trial Based on New Evidence.

Local Rule in the United States District Court for the Middle District of Florida

Rule 3.01 (b) states, "Each party opposing a motion or application shall file within ten (10) days after service of the motion or application a response that includes a memorandum of legal authority in opposition of the request, all of which the respondent shall include in a document not more than twenty (20) pages."

MEMORANDUM OF LAW

Pursuant to Fed. R. Crim. P. 33, the Court "may vacate any judgment and grant a new trial if the interest of justice so requires." In the instant case, the Court should vacate the judgment against the Defendants based on newly discovered evidence. The Defendants have submitted this motion in a timely manner pursuant to the Rules of Criminal Procedure Rule 33 (b) (1).

FACTS

1. On 26 September, 2007 Defendants Thomas Spellissy and Strategic Defense

U.S. vs. THOMAS SPELLISSY
and
STRATEGIC DEFENSE INTERNATIONAL, INC.
Notice of Non-Opposition and Recommendation
Case No: 8:05-Cr-475-T-27TGW
Page 1 of 9

International, Inc. jointly moved for a new trial under Fed.R.Crim.P. 33 on the basis of new evidence that has a direct impact on the justice of this case.

The new evidence consisted of the following:

- a. Witness Tampering by the Government.
- b. Burke found guilty of perjury.
- c. Polygraph Test.

2. On 5 October, 2007 Defendants jointly moved to add an addendum to their previous motion for a new trial under Fed.R.Crim.P. 33 on the basis that 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.

The additional new evidence consisted of the following:

- a. Defendant Spellissy was on active duty for the United States Army when the alleged conspiracy was born.
- b. The Department of Justice doesn't have jurisdiction on Defendant Spellissy.

3. On 26 September, 2007 Defendants jointly requested this honorable court for a continued stay of sentence under Title 28 USC § 2255. Defendants moved to attack the sentence because newly discovered evidence substantiates that the Defendants have been unjustly convicted of conspiracy to defraud the United States in violation of 18 USC § 371. Newly discovered evidence proves that Special Agent Robert Calvert and other Government officials used unethical tactics, and witness tampering, during the legal process of this case.

4. On 5 October, 2007 Defendants provided additional information for this honorable court for a continued stay of sentence under Title 28 USC § 2255.

5. On 9 October, 2007 Defendants provided a 2nd addendum to their joint Motion for a Continued Stay of Sentence Pending a Hearing for a New Trial Based on New Evidence.

6. The government has had over ten (10) days to respond to the above motions and their associated addendums. There is no opposition by the government to Defendants motion for a new trail based on new evidence. By not opposing Defendants Motions the U.S. Attorney has in effect admitted to the truth and veracity of the motions.

7. The government has waived its legal authority to enforce Colonel (Retired) Thomas Spellissy from disclosing classified information because it is superseded by the due process clause of the Constitution of the United States that he has the right to defend himself. This is same issue that was presented in the United States vs I. Lewis Libby, also known as “Scooter Libby”, Case 1:05-cr-00394-RBW.

Other Facts Bearing on the Case

1. Paul I Perez, U.S. Attorney for the Middle District of Florida was appointed by President George W. Bush and sworn into office on March 18, 2002.
2. The investigation of Colonel (Retired) Tom Spellissy was initiated with the knowledge and approval of General Bryan “Doug” Brown, United States Special Operations Command (USSOCOM), Commander.
3. Colonel Spellissy refused to hide \$20 million from the Office of the Secretary of Defense in his classified programs while he was on active duty. The senior leadership at USSOCOM coordinated with Program Managers of the programs who were hiding the money to give false briefings to Congress. This \$20 million was hid in unclassified programs in the Office’s of Program Executive Office, Maritime and Rotary Wing and the Program Executive Office, Fixed Wing. Three companies who benefited from the hidden funds were Sikorsky, Lockheed Martin and Boeing. Our investigation now reveals that money originates from these same three defense companies who donate funding to Congressman C.W. Bill Young’s (R), Florida campaign finances. In other words Congressman Young benefited from the hidden \$20 million.
4. Defendant Spellissy was against awarding a classified sole source contract to eTreppid Technologies LLC. At USSCOM the contract was known as the “Etreppid Contract.” There was at least \$12 million wasted on the contact because no product worked to satisfy user requirements. This contract was directed by General Brown. Colonel Spellissy told his Deputy, Stan Highsmith that he didn’t think it was legal for General Brown to direct a sole source contract without a market survey and getting a recommendation from the classified users at the Joint Special Operations Command.
5. Colonel Spellissy did not cooperate with Congressman Bill Young’s professional

staffer while on active duty when asked to bring a foreign shoulder fired weapon production to the United States. Spellissy did, however, look into doing this and it was cost prohibited because it increased the unit price by over 300%.

6. USSOCOM accepted Congressional \$3.4 million of Procurement plus-up funding for the Magnum Universal Night Sight from the 12th Congressional District, Pennsylvania, and when Colonel Spellissy retired they spent the funding in Florida's 24th Congressional District. This is not consistent with prior protocols when requesting and accepting additional Congressional funding. This is evidence of misappropriation of Congressional funds.
7. The remaining Conspiracy charge to defraud the United States government is not what the original investigation was about; in fact, it is the end result of several different investigations.
8. Colonel Spellissy's final Officer Evaluation Report (in trial evidence) written and signed by Dr. Dale Ulher, Acquisition Executive, USSOCOM and General Brown extols Colonel Spellissy's integrity and patriotism in July 2004.
9. Less than ninety (90) days later the Defendant alleges and believes the same men who praised him publicly embarked on several investigations of him.
10. The first of these was an investigation of how Colonel (Retired) Spellissy had been awarded a contract at the Picatinny Arsenal. This was a matter Colonel Spellissy had kept his superiors apprised of in detail (in evidence). The initial complaint against Spellissy came from a Major General (Retired) Lou Hennies, a close friend to General Bryan "Doug" Brown. Hennies is also a defense consult and a competitor to Colonel (Retired) Spellissy and his company. Hennies complained of Spellissy's company winning a contract at Picatinny Arsenal. Hennies is also a Board Trustee Member for the National Defense Industrial Association. The members of this association are active in providing funding to political leaders. It was determined that Spellissy violated no laws in winning this contract. (This is the first investigation.)
11. Following his retirement an investigation or inquiry began into how this contract was awarded as if it were a mystery.
12. First, the initial complaint was false. The topic sentence stated that Spellissy was buying bunker defeat munitions (BDMs) from the Norwegians and Swedes when he was on active duty. This is completely false. USSOCOM does not buy

BDMs. The Army and Marine Corps buy BDMs from Talley Defense, USA. The complaint goes on to say he was working for foreign governments. Again, absolutely false. Also, since the complaint was about winning a contract, the complaint should have gone to the General Accounting Office, not USSOCOM.

13. The United States Operations Command, Inspector General (IG) presented an abundance of false information to the Defense Criminal Investigative Service (DCIS) and to the Federal Bureau of Investigation (FBI). This false information became the justification for a search warrant. The USSOCOM IG and DCIS never checked on the validity of the complaint. The Department of Justice accepted information that was blatantly false from agents and used this information to prosecute an innocent man. This false information presented by the prosecution caused confusion to the Magistrate Judge, the District Judge, the jury and the Probation Office.
14. Then this case became an inquiry to determine if Colonel Spellissy had violated 18 US Code § 207 a, b and § 208 a. (This was the second investigation.)
15. During the second investigation, the DCIS, Special Agent Robert Calvert, who misleads the Federal Magistrate Judge through omissions of fact and reckless disregard for the truth when writing and briefing his sworn affidavit, alleged violations of restrictions on employment. This was investigated and dropped because nothing Colonel Spellissy had done was done without permission. Defendants also believe that Special Agent Calvert misled the AUSA, Mr. O'Neill and the Department of Justice by not explaining the whole scenario to include the guidance given to him by Department of Defense Officials.
16. A search took place at the residence of Colonel Spellissy. He alleges and believes that part of what was searched for was a document, any document, which was classified because that was the first question by Special Agent Calvert after they secured his house. Agent Calvert asked the Defendant "Do you have any classified documents?" None were found. It is true that Colonel Spellissy has the clearance to see classified material, but as a technical matter his house is not sufficiently secure to house classified material.
17. On or about May 2005, there is a Joint Special Operations Command (JSOC) Inspector General, DCIS and FBI investigation on a classified program, unclassified code name "Rover", at Fort Bragg, NC. At least one officer from Fort Bragg is flown down to Tampa for interrogation by DCIS and the FBI to discuss his relationship with Colonel (Retired) Spellissy. This part of the investigation

was not disclosed by the government to the defense in accordance with Jencks Act. General Brown takes control of the investigation away from the Commander at JSOC because he suspects there is a link between the alleged wrongdoing and Colonel (Ret) Spellissy. (This is the third investigation.)

18. The US Attorney's Office, DCIS and USSOCOM determined sometime in July, 2005 that Defendants did not violate any of the above laws because there were no charges brought against Spellissy or his company.
19. As the investigation progressed and it became obvious that Colonel (Retired) Spellissy had done everything correctly in accordance with the Procurement Integrity Act and had not violated Title 18 US Code 207 a and b, and 208 b. The AUSA and his agents developed a theory that Spellissy had orchestrated a bribery scheme with a low level government private contractor with no decision authority, Mr. William Burke.
20. Federal Law enforcement agencies then came up with the theory that Spellissy was part of a bribery scheme. The scheme allegedly had three people involved. The third person was never identified. (This is the fourth investigation.)
21. The government tolerated Special Agent Calvert threatening and coercing a witness, Mr. Burke, to get him to testify against Defendant Spellissy. Mr. Burke was portrayed by the government as the star witness against Defendant Spellissy. However, this back fired on the government at the trial. Mr. Burke gave un-contradicted testimony that federal law enforcement agents lied to him, threatened him and coerced him into signing a plea agreement. Mr. Burke told the truth on the witness stand during Spellissy's trial, contradicting his plea agreement.
22. Defendant Spellissy never donated money to any political leaders while he was a consultant in private practice. Before he was indicted, he was asked to contribute by a Washington lobbying firm, however, he refused because he believed it was like giving a bribe.
23. Colonel Spellissy was responsible for assisting Senator Patrick Leahy (D), Vermont, in establishing the National Center for Counter-Terrorism and Cyber-Crime at Norwich University, Vermont. This center benefits our soldiers, airmen and SEALs in the war on terrorism.
24. In September, 2003, General Brown was appointed by President George W.

Bush (supported by Secretary Donald Rumsfeld) and assigned as the Commander of the United States Special Operations Command.

25. Kyle Sampson, Chief of Staff and Counselor for the United States Attorney General, Alberto Gonzales, emailed David Leitch, White House Deputy Counsel, that they were out to rid the U.S. Attorneys who were not "Loyal Bushies" on January 9, 2005.
26. On 29 September, 2005 Senior Republican Congressman Tom DeLay (R) Texas, stepped aside as House majority leader after a Texas grand jury indicted him on a conspiracy charge stemming from a long-running campaign finance investigation.
27. We learned during our investigation that the **government had a secret meeting with U.S. Attorney Paul Perez and or with his assistants when they briefed Congressman C.W. Bill Young (R)**, Florida on this criminal investigation on or about October 13, 2005. Congressman Young was in some way connected to the investigation. At a minimum this is evidence that political pressure was placed on the United States Attorney's Office, Middle District of Florida and or the United States Special Operations Command.
28. Congressman Young intentionally and deliberately leaked the information from his secret meeting to St Petersburg Times Investigative Reporter, Paul De La Garza.
29. Paul De La Garza personally told Defendant Spellissy that he [De La Garza] was surprised that Congressman Young had seen or had a copy of Burke's plea deal before it was made public.
30. On November 8, 2005 Paul Perez, U.S. Attorney published a nine (9) page press release announcing the prosecution of Defendants. This was not done on Burke's case.
31. Senior Republican Congressman Randy "Duke" Cunningham, (R) California resigned from Congress on November 28, 2005 after pleading guilty to taking more than \$2 million in bribes in a criminal conspiracy involving at least three defense contractors.
32. Congressional ethics prohibit members of Congress from getting involved in on-going legal proceedings, although Congressman Young did.

33. Paul De La Garza was working on a story regarding Congressman Young's involvement in the hiding of \$20 million at the United States Special Operations Command. De La Garza was investigating why Doug Gregory, Congressman Young's Professional Staffer refused to cooperate with DCIS in the investigation. In October, 2006 Defendant Spellissy was assisting De La Garza with his story and on the weekend before he was going to publish the story, he got sick and died. The story was never printed.
34. In March 2007, Kyle Sampson and Paul Perez resigned within days of each other.
35. Mr. Don Jones, Captain Rowland Huss, Mr. Stan Highsmith, Mr. William Burke, LTC Donald Heilig, Ms. Shirley Westcott, Major Shannon Jackson, Lieutenant Colonel Stoddard and Major Eric Glenn received either movement orders and/or disciplinary action connected with the investigation of Defendants. The senior leadership at USSOCOM interfered with defense witnesses by moving personnel out of jobs, punishing personnel before, during and after the investigation was completed, and prevented witnesses from appearing at the trial. Even today, personnel at USSOCOM, to include private contractors who worked with or for Spellissy, are afraid to speak out because of the threat of reprisal. At a status hearing on March 10, 2005 District Judge Whittemore directed the AUSA to make witnesses available. This behavior by the Department of Defense continued as evidenced by the written correspondence preventing Sergeant Landers from complying with his subpoena to testify for the Defendants.

ARGUMENT

This case is very complex. It is difficult for any person to fully or reasonably understand the underlying facts of this case because the Defendants and the government Prosecutor have been misled by key members of the Department of Defense.

Defendants recognize that the U.S. Attorneys' Office for the Middle District of Florida was greatly misinformed by the Department of Defense Criminal Investigator, Special Agent Robert Calvert, the United States Special Operations Command Inspector General Office and others. This misinformation includes lies, blatant omission of facts, witness tampering and perjury.

The United States Attorney is bound by the constitution to search for the truth and now

we applaud them for **not opposing the Defendants on the current Motions**. It is commendable to see the U S Attorney's office rise above the political pressure. It is now obvious that the U.S. Attorney has a clear picture of what the motivation and circumstances were in the pursuit of Colonel (Retired) Spellissy.

Conclusion

Rule 33 provides a mechanism to correct an injustice. There is no opposition by the government. Defendants request and recommend the Court grant the motion for a new trial based on 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 25th day of October, 2007.

/s/ John F. McGuire
John F. McGuire, Esquire
FL Bar # 000401
McGuire Law Offices
1173 N.E. Cleveland Street
Clearwater, Florida 33755
Phone (727) 446-7659
Fax (727) 446-0905

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