MOTION FOR NEW TRIAL PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 33

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA
Plaintiff,

v.

ROSS-SYLVESTER ELENDU
Defendant

Case No: 3:24-Cr-00142-PDW

MOTION FOR NEW TRIAL UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 33

INTRODUCTION

Comes Now the Defendant, Ross-Sylvester ELENDU proceeding "Pro SE" and respectfully moves this court pursuant to Federal Rule of Criminal Procedure 33 for a new trial in the interest of justice. The verdict in this matter was affected by multiple constitutional and procedural errors, including Brady, Giglio, Jencks and Napue violations, ineffective assistance of counsel, jury confusion regarding essential elements of the charged offenses, prosecutorial misconduct, juror inattentiveness and newly discovered evidence that was not presented to the jury.

The cumulative effect of these errors undermines confidence in the verdict and warrants a new trial.

LEGAL STANDARD

Under Federal Rule of Criminal Procedure 33(a):
"Upon the Defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires."

Courts have held that a new trial is appropriate where errors occurred that substantially affected the fairness of the proceedings or where newly discovered evidence or constitutional violations are present.

GROUNDS FOR RELIEF:

Defendant respectfully asserts the following grounds:

(1) BRADY, GIGLIO, AND JENCKS ACT VIOLATIONS

Defendant recently learned through review of trial transcripts that government witness Rolland ELENDU was interviewed by government agents on or about May 1, 2023 prior to trial and prior to the Defendant's indictment as reflected in Column 605 of the trial transcripts. The government witness claimed in his testimony that he didn't Know who the Defendant represented or have any Knowledge about Colossal Empire Promotions business. During cross examination by defense counsel as reflected in column 579-580 of the trial transcripts the government's witness admitted to counsel about having Knowledge about a show in 2014 where the defendant was representing the musical artist Rihanna.

Additionally, Government witness Phil Swan testified in Column 663-667 that he met with Assistant United States Attorney Matthew Greenley, Alex Schroeder and Ms. Meis before trial or the Defendant's indictment. During that meeting, Mr. Swan acknowledged the existence of an audio recording involving Defendant, Mr. Swan and Lezan Tahir during a second meeting at Gate City Bank. The recording was provided to defence counsel Erich Grant and, upon information and belief was also provided to the government prior to trial.

Defendant further notes that during an earlier preliminary hearing with former defense counsel Rhiannon Gorham the Government acknowledged on the record the existence of additional discovery that was intended to be provided to defense counsel but was never produced.

During trial testimony, the government witnesses acknowledged communications and interviews with government investigators. However no statements, reports, interview memoranda, notes, recordings, summaries, or other materials reflecting those interviews were disclosed to the defense.

To the extent those materials contain Statements inconsistent with the witness's trial testimony, impeachment information, or other evidence favorable to the defense, the government's failure to disclose such materials implicates it's obligations under Brady v. Maryland, 373 U.S 83 (1963) and Giglio v. USA 405 U.S 150 (1972). Evidence affecting the credibility of a government witness falls within Brady when the reliability of that witness may determine guilt or innocence. Giglio, 405 U.S at 154. Had the defense possessed prior inconsistent statements or impeachment material concerning this witness, counsel could have conducted materially different cross-examination and presented the jury with information directly bearing on the witness's credibility. Because the witness's testimony was material to the government's case, nondisclosure undermines confidence in the verdict and warrants a new trial pursuant to Rule 33. The nondisclosure of such evidence raises substantial issues under Brady v. Maryland, Giglio v. USA and the Jencks Act.

CASE LAWS:

* Supreme Court: Brady v. Maryland – The court held that due process is violated when the prosecution suppresses evidence favorable to the accused that is material to guilt or punishment. (Brady v. Maryland, 373 U.S 83 (1963))

* Supreme Court: Jencks v. USA – The court held that the defendant was entitled to witness Statements. (Jencks Act, 18 U.S.C § 3500)

\- 8th Circuit: USA v. Willis – The courts held that failure to produce Jencks material may warrant relief if the Defendant demonstrates prejudice. (USA v. Willis, 997 F.2d 407 (8th Cir. 1993))

* Supreme Court: Giglio v. USA – The court held that impeachment evidence affecting witness credibility falls within Brady and must be disclosed. Promises made to witnesses by any prosecutor are attributed to the government as a whole. The Result: Conviction was reversed. (Giglio v. USA, 405 U.S 150 (1972))

\- 8th Circuit: USA v. Duke – The court held that Brady violation warrants new trial if outcome could change. (USA v. Duke, 50 F.3d 571 (8th Cir 1995))

- 8th Circuit: USA v. Barraza Cazares, 465 F.3d 327 (8th Cir 2006). The court held that evidence is material only when there is a reasonable probability the result would have been different.

(2) JURY CONFUSION AND THE COURT'S FAILURE TO CLARIFY JURY QUESTIONS

During deliberations, the jury submitted written questions demonstrating confusion regarding essential elements of the charged offenses. In column 955 of the trial transcripts Jury Foreman Mark Julik submitted a written question concerning Element Three of a charged offense. The juror asked "Judge Welte, on page F-10 can that element three be rephrased?" signed by Mark Julik. In column 956 element three is as follows "The Defendant did not believe the return to be true and correct as to the business income and business expenses for Colossal Empire Promotions LLC." In column 957-965, defense counsel objected and requested clarification. The Court declined to provide additional clarification and instructed the jury to rely solely on the jury instructions provided to them. Thereafter, in columns 966-969 members of the jury Lisa Ouradnik and Mark Julik submitted a second question asking "Dear Judge Welte, Is any email considered an interstate wire communication?" Again, the court declined to provide further clarification. These questions clearly demonstrate actual confusion concerning critical legal elements of the crime.

Defendant submits that the jury's expressed confusion required a meaningful response to ensure accurate application of the law.

CASE LAWS:

* Supreme Court: Bollenbach v. United States – The court held that when a jury expresses confusion, the trial court must respond with sufficient accuracy and clarity. (Bollenbach v. USA 326 U.S 607 (1946).
A misleading supplemental instruction can require reversal.
The Result: Conviction was reversed. New trial ordered.

- 8th Circuit: USA v. Hayes, 794 F.2d 1348 (8th Cir. 1986). The court held that the district judge must ensure jurors are not left confused regarding essential legal elements.

(3) PROSECUTORIAL MISCONDUCT/COERCION AND MISLEADING JURY

Defendant asserts that statements made during closing arguments improperly appealed to the personal interests and emotions of jurors. The prosecution characterized the SVOG grant funds as retirement income despite multiple jurors having disclosed retirement status during voir dire.

During closing argument in column 899 of the trial transcripts the prosecutor said "This is a case where the Defendant, Ross-Sylvester ELENDU defrauded the government and tried to obtain almost more than $1.4 million from the small business administration. $1.4 million, to a lot of people is retirement income. Like I can retire on that much money." The prosecution knowingly coerced and improperly appealed to the jury's personal financial interests by suggesting that the alleged funds at issue constituted "retirement money", thereby encouraging the jury to convict based on emotion, fear, or personal stake rather than evidence presented at trial. In column 18 of the trial transcripts juror Pearl Stockwell confirmed she was a retired nurse and her husband was retired. In column 22 juror Kari Kragness confirmed to the court she was a retired teacher. In column 34 juror Marcia Larson confirmed to the court that both she and her husband are both retired. In column 41-42 juror Dennis Herner confirmed both him and his wife are retired.

During closing argument in column 902 of the trial transcripts the prosecution gave false information and misled the jury by stating "He the defendant still owed $50,000 to the IRS and the fact that he hasn't paid it is evidence that those numbers are fake." In column 799-803 government witness Inspector Schroeder confirmed pursuant to an exparte order he requested defendant's tax record. Those tax records would've confirmed Defendant's payment of approximately $10,000 toward the tax liability as well as an already agreed upon payment plan that was established between the IRS and the Defendant before trial or indictment.

Defendant respectfully requests review of the trial record and closing arguments to determine whether the prosecution exceeded the bounds of proper advocacy.

CASE LAWS:

* Supreme Court: Viereck v. USA 318 U.S. 236 (1943) – The courts held that prosecutors cannot appeal to emotion, fear, or juror's personal interests. The Result: Conviction was reversed.

- 8th Circuit: USA v. Cannon – The courts held that improper closing argument can justify reversal if they affect fairness of the trial. (USA v. Cannon, 88 F. 3d 1495 (8th Cir. 1996))

(4) INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant experienced substantial deficiencies in reprensentation by former defense counsel Erich Grant. Among other issues, counsel allegedly:

(A) Failed to subpoena and present Mr. Dallas Elhard from Dakota Boys and Girls club as witness for the Defendant.

(B) Failed to subpoena and present representatives from U-Haul regarding Defendant's business activities even though he was instructed to do so by the Defendant through email.

(C) Failed to introduce the audio recording referenced by Phil Swan in columns 663-667 of the trial transcripts as evidence to the jury. The audio recording would have given the jury context to what was being discussed in the Defendant's visit to Gate City Bank after prosecution submitted the video recording.

(D) Failed to present evidence of Defendant's IRS payment plan and payments made toward tax liabilities.

(E) Failed to present financial records, payment records, Venmo transactions, emails, text messages, and business records relevant to the operation of Colossal Empire Promotions and Telaroice.

(F) Failed to provide Defendant an opportunity to review final jury instructions before they were submitted. In column 958 it shows evidence of Defendant confering with counsel Erich Grant and showing confusion when one of the final jury instructions was being read by the court.

(G) Failed to provide Defendant access to Grand jury transcripts.

Defendant asserts these omissions deprived the jury of significant evidence supporting the defense.

CASE LAWS:

* Supreme Court: Wiggins v. Smith, 539 U.S 510 (2003) — The court held that counsel's failure to investigate and present available mitigating evidence was objectively unreasonable under Strickland. The Result: Relief granted.

- 8th Circuit: McCauley v. Dormire, 245 F.3d 1058 (8th Cir. 2001) — The Court applied Strickland and found counsel's failure prejudiced the defendant. The Result: Habeas relief granted. Conviction/sentence relief ultimately ordered.

(5) JUROR MISCONDUCT AND SLEEPING/INATTENTIVE JURORS

Defendant respectfully moves this court for a new trial based upon juror inattentiveness during critical portions of trial testimony. Defendant observed one or more jurors sleeping or otherwise failing to pay attention during portions of the proceedings. Jurors who fail to hear evidence cannot properly assess witness credibility or perform their constitutional duties. Defendant requests an evidentiary hearing regarding the extent of juror inattentiveness and it's impact upon the verdict.

CASE LAW:

- 7th Circuit Court of Appeals: USA v. Freitag, 230 F.3d 1019 (7th Cir. 2000) — The Court held that a sleeping juror claim requires proof that the juror missed a substantial portion of the proceedings and that prejudice resulted.

(6) POTENTIAL NAPUE VIOLATION

Defendant asserts that government witness Inspector Alex Schroeder provided testimony that Defendant made no payments toward U-Haul obligations or Defendant's tax liabilities. Defendant further asserts that evidence exists showing payments were in fact made. If the Government knew or should have known that testimony presented to the jury was false or materially misleading and failed to correct it, such conduct raises serious concerns under Napue v. Illinois.

CASE LAWS:

* Supreme Court: Napue v. Illinois, 360 U.S 264 (1959) — The court held that a conviction obtained through testimony known by the prosecution to be false violates due process, and the prosecution has an affirmative duty to correct false testimony. The Result: Conviction was reversed

- 8th Circuit: USA v. Bass, 478 F.3d 948 (8th Cir. 2007) — The court held that a Napue claim requires proof that the government knowingly used false testimony or failed to correct testimony known to be false.

(7) NEWLY DISCOVERED EVIDENCE

Defendant has identified evidence that was not presented to the jury, including recordings, financial records, payment records, business records, communications, and other materials that Defendant believes would have materially affected the jury's consideration of the case.

Defendant requests an evidentiary hearing so that the court may determine whether such evidence satisfies Rule 33 standards for a new trial.

CASE LAWS:

* Supreme Court: USA v. Johnson, 327 U.S. 106 (1946) — The court held that new trial motions based upon newly discovered evidence are committed largely to the trial court's discretion.

The court recognized that trial judges are in the best position to evaluate whether newly discovered evidence would likely affect the outcome.

* Supreme Court: USA v. Agurs, 427 U.S 97 (1976) — The court discussed situations in which evidence discovered after trial may justify relief when the omitted evidence is material to guilt or innocence.

8th Circuit: USA v. Dogskin, 265 F.3d 682 (8th Cir. 2001) — The court held that a defendant seeking a new trial based on newly discovered evidence generally must show:
(A) Evidence discovered after trial (B) Due diligence
(C) Evidence is material (D) Evidence is not merely cumulative or impeaching (E) Evidence would probably produce acquittal

(8) REQUEST FOR EVIDENTIARY HEARING

Because resolution of these issues requires factual findings regarding discovery, witness statements, recordings, trial preparation, juror conduct, and newly discovered evidence, Defendant respectfully requests an evidentiary hearing.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court:
* Grant an evidentiary hearing
* Order production of any and all undisclosed witness statements, reports, notes, recordings, memoranda and related discovery materials
* Order the production of all hearing, most importantly the preliminary hearing with former defense counsel Rhiannon Gorham.
* Vacate the judgment of conviction and
* Grant a new trial pursuant to Rule 33 in the interest of justice.

WHEREFORE, Defendant respectfully requests that this Court grant the relief requested herein and for such other relief as the court deems just and proper.

Respectfully,
Ross-Sylvester ELENDU
PRO SE Defendant
Inmate Number: 2026-00001971
Cass County Jail
450 34th St. S
Fargo, ND 58103
[signature]
06/15/2026

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2026. I placed a true and correct copy of the foregoing motion in the institution's legal mail system addressed to:

Office of the United States Attorney:
655 1st Ave. N Suite 250, Fargo, ND 58102

Vickers Law (Standby Counsel for Defendant)
808 3rd Ave. S Suite 205 Fargo, ND 58103

and mailed to the clerk of Court for filing.