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THOMAS G BRUTON
CLERK, U.S DISTRICT COURT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Vs

**SHARON ANZALDI) Docket Number 11 CR 0820
PHILLIP DE SALVO) Judge Harry D Leinenweber
STEVE LATIN)**

**MOTION FOR A NEW TRIAL BASED ON RULE 33 (IICLE 12-24 & 12-25)
MISCARRIAGE OF JUSTICE**

**Sharon Alicia Anzaldi in "Propria Persona" respectfully moves this court
for an order based Rule 33 and gross "miscarriage of justice."**

**POINT OF REFERENCE IS THE ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION 12-24
AND 12-25 IICLE.**

1. [12.24] Miscarriage of Justice

**As with a Fed.RCrim.P. 29 motion for judgment of acquittal, a defendant may seek a new
trial after a guilty verdict under Fed.RCrim.P. 33 on the basis that the jury's verdict was
against the manifest weight of the evidence and thus constituted a miscarriage of justice.
*See United States v. Della Rose, 278 F.Supp.2d 928,932 - 933 (N.D.TIL2003) (in prosecution
for conspiracy to produce fake identification, defendant entitled to acquittal, or new trial,
on grounds of absence of evidence). Often, the Rule 33 motion for a new trial based on the
alleged insufficiency of the evidence supporting conviction is brought in the alternative to***

the Rule 29 motion; the benefit of a Rule 33 motion for a new trial is that a trial court generally has broader discretion to review and weigh the evidence and credibility of witnesses. See *United States v. Washington*, 184 F.3d 653, 657 - 658 (7th Cir. 1999).

One decision describes the "miscarriage of justice" that would be sufficient to compel a new trial as when "an innocent person has been convicted." *United States v. Morales*, 902 F.2d 604,606, amended, 910 F.2d 467 (7th Cir. 1990) (clarifying no new test for motion for new trial in context of long mandatory sentences). Another describes the scenario in which a Rule 33 motion would be granted as "exceptional circumstances." *United States v. Kuzniar*, 881 F.2d 466, 470 (7th Cir. 1989). *Kuzniar* is instructive on the illusory notion that on a Rule 33 motion, the district court may sit as a "thirteenth juror." In *Kuzniar*, the Seventh Circuit reminded district courts that "absent exceptional circumstances, issues of witness credibility are to be decided by the jury, not the trial judge." *Id.* The Seventh Circuit then went on to describe "exceptional circumstances" -as in those under which the judge on a Rule 33 motion could set aside a jury's credibility --judgments - as "extremely narrow" and applicable "only where the testimony contradicts indisputable physical facts or laws." 881 F.2d at 471. Accordingly, while the trial judge may well sit as something akin to a juror on a Rule 33 motion, *Kuzniar* suggests that the judge will do so rarely and only when the questioned evidence flies in the face of undisputed facts.

On the contrary, some courts have suggested that new trial motions may be proper even when the verdict is not against the great weight of the evidence and "where no reversible error or violation of the defendant's substantial rights has occurred, but where the district court nonetheless believes that 'the interest of justice' requires a new trial." *United States v. Munoz*, 605 F.3d 359,374 (6th Cir. 2010). The Eleventh Circuit has said that the "interest of justice" is a "broad standard ... not limited to cases where the district court concludes that

its prior ruling, upon which it bases the new trial, was legally erroneous." *United States v. Vicaria*, 12 F.3d 195, 198 (11th Cir. 1994) (affirming grant of new trial when district court, in close case, decided that it should have given jury instruction that it was not required to give). Likewise, the Fifth Circuit found that "in appropriate circumstances the district court does not always need to find a specific legal error in order to grant a motion for new trial made in the interest of justice" *United States v. Munoz* 605 F. 359, 374 (6th Cir. 2010). The Eleventh Circuit has said that the "interest of Justice" is a "broad standard...not limited to where the district court concludes that its prior ruling which it bases the new trial, was legally erroneous." *United States v. Cicaria*, 12 F .3d 195, 198 (11th Cir. 1994) (affirming grant of (affirming grant of a new trial when district, in close case, decided that it should have given jury instruction and it was not required to give). Likewise, the Fifth Circuit found that "appropriate circumstances the district court does not always need to find a specific legal error in order to grant a motion for a new trial made in the interest of justice." *United States v. Scroggins*, 379 F.3d 233,239 (5th Cir. 2004) *judgment vacated on other grounds*, 125 S.Ct. 1062 (2005). *See also United States v. Patterson*, 41 F.3d 577 (10th Cir. 1994). Legal error may not be required to find that a miscarriage of justice has occurred, but, as stated above; the district court should only set aside a jury's verdict in exceptional circumstances.

1. The Trial Jury had no concept of what was being presented before the court, nor, financial background or understanding as to the legality of the process as stated in Memorandum of Law and Points of Authority, as there is no money, there is just a means of exchange, also known as tax credits, which is what 1099 OIDs are. I contend the Jurors could not have possibly reached a conclusion of "reasonable doubt, based on the slanted testimony of the prosecutorial team. The prejudicial version presented to the Jurors was beyond their scope of understanding, consequently, they reached a final verdict within

1 hour, which means, they made up their mind prior to deliberation, as the paperwork alone would have taken that much time. The Jurors were completely biased based on false testimony of the Prosecutors.

- 2. Trial Jurors did not hear exculpatory evidence, which would have dramatically changed the outcome, and final verdict. Jurors were denied actual facts in the case, which Prosecutors had in their possession and entered into evidence as Account Transcript Exhibits 1A and 2A.**

- 3. Prosecutors openly brought "fraud upon the court" by constantly stating I had filed a Tax Return in the amount of \$4,011,360.00 year 2008, filed April 15th, 2009, however, I realized the error in 2009 and promptly corrected the situation by filing a 1040X Form, which zeroed out that amount for 2008. That corrected filing was confiscated by FBI Agent David White on 2/17/2010. By the Prosecutor's own evidence of Account Transcript dated 4-13-2013 from the IRS as Exhibit 1A, which means the Prosecutor intentionally entered false information on the record, to the court and Trial Jurors, further prejudicing the Jurors and final verdict. "Erroneously Admitted Evidence."**

- 4. The Prosecutorial Team further brought fraud upon the court in regards to Exhibit 2A, received by the Prosecutors on 4-13-2013. This Exhibit reflects that the amount \$725,841.00 with a tax liability of \$228,881.00 on a 1040 Form was due, however, the actual fact is that the amount of \$716,125.00 was filed on Form 1041 regarding Trust information and filed under 36 7519763. This particular filing was the result of the corrected 1040X and in accordance with IRS guidelines. This Form was filed on July 2nd, 2010 using the correct OID Forms and Department. On July 22nd, 2010, (11 months and 2 weeks after filing) I received a letter from the IRS apologizing for the delay in my return and any inconvenience they may have caused. My question is, how did this information get transferred to a 1040 Form? I have the actual filing and it was done on a 1041 form. "Erroneously Admitted Evidence."**

- 5. Additional exculpatory evidence was withheld regarding the usurpation of my Power of Attorney by a CPA known as Michael Graf, Jr. Further investigation revealed that Michael Graf Jr. CPA purports himself to be a forensic accountant, fraud investigator with expert litigation support. I was made aware of Michael Graf by calling the IRS directly in March of 2013, and asked by the IRS Agent if it would be o.k. to speak directly with me without my Power of Attorney present. I assured him, I do not know who Michael Graf is, nor, does he have my Power of Attorney. I was also told that Michael Graf Jr. CPA**

had filed a Form 2848 with the IRS for years 2006 – 2013, consequently, all communication between myself and the IRS was diverted to Michael Graf Jr. The lack of direct communication with the IRS severely damaged my ability to resolve any issue with them. I have since removed Michael Graf Jr. CPA officially with the IRS and received confirmation on May 29th, 2013, which was presented to the Prosecutor at Trial on June 2nd, 2013. The Prosecutor immediately objected to the new information, however, I had my Assistance of Counsel add the letter as evidence. The fact that Michael Graf Jr. is an expert witness and was not on the stand as the number one witness for the prosecution is very telling, and that is because after a long investigation, he found the OID process to be completely lawful and legal, as the people are the true creditors. This blatant identity theft further violated my "due process of law" Title 18 242 and appears to be a "conspiracy against rights" Title 18 241 by the prosecution with malicious intent. I have filed an Identity Theft Report with the IRS and a complaint with the Illinois Department Financial and Professional Regulations (IDFPR) against Michael Graf Jr., and have confirmation the complaint was received by same.

§12.21 FEDERAL CRIMINAL PRACTICE IICLE REFERENCE

examination." 363 F.3d at 607. Regardless of the government's knowledge, if the defendant knew or suspected the perjury and discredited the witness in front of the jury, it is unlikely that the court will grant a new trial.

3. [12.21] Prosecutorial Suppression of Evidence When the defendant alleges that the prosecutor withheld or suppressed favorable evidence in violation of the Due Process Clause of the Fourteenth Amendment, the defendant is entitled to a new trial if the defendant can establish the following:

1. that the prosecution suppressed evidence;
2. that the evidence was favorable to the defense (this includes impeachment evidence); and
3. that the evidence was material to an issue at trial. *United States v. Gillaum*, 372 F.3d 848,858 (7th Cir. 2004), citing *United States v. Silva*, 71 F.3d 667,670 (7th Cir. 1995). See also *Giglio v. United States*, 405 U.S. 150, 31 L.Ed.2d 104, 92 S.Ct. 763 1972) (applying *Brady v. Maryland*, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194

(1963), to failure to correct pejured testimony).

Evidence is "material" under *Brady* "only if there exists a 'reasonable probability' that its disclosure to the defense would have changed the result of the trial." *United States v. Irorere*, 228 F.3d 816,829 (7th Cir. 2000), quoting *Silva, supra*, 71 F.3d at 670. The question is, "whether in [the absence of the suppressed evidence the defendant] received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Kyles v. Whitley*, 514 U.S. 419, 131 L.Ed.2d 490, 115 S.Ct. 1555, 1566 (1995), quoting *United States v. Bagley*, 473 U.S. 667, 677, 87 L.Ed.2d 481, 105 S.Ct. 3375, 3381 (1985). In other words, a "reasonable probability" showing is not as stringent a requirement as proving that the suppressed evidence "more likely than not" changed the trial outcome. *Silva, supra*, 71 F.3d at 670. Additionally, evidence bearing on a witness's credibility can be material when it has significant impeachment value. *United States v. Dimas*, 3 F.3d 1015, 1018 (7th Cir. 1993) (remanding for new trial for evidentiary hearing on *Brady* issues).

6. Additionally, there are Grand Jury violations in reference to the 5th. Amendment of the Constitution and violates "due process of law." It is my contention that a Grand Jury Hearing never convened or held, as I have been requesting further information regarding the Signed Indictment presented by the Grand Jury Foreman, the minutes that were to be read on the floor in an open court and a Certificate of Concurrence. My request has been ignored and or denied every single time. I believe if there had been a Grand Jury Hearing my request to verify the facts would have been accommodated. The lack of a Grand Jury Hearing makes the entire case, and Indictment voidable ab initio. I clearly did not waive my right to a Grand Jury Hearing.

This violation of my protected rights is a blatant "miscarriage of justice", and malicious prosecution protected under the 8th. Amendment.

BASIS FOR THE GRAND JURY

[2.2] Fifth Amendment

In the Bill of Rights, the framers of the United States Constitution recognized the function of the grand jury in the Fifth Amendment, which states in pertinent part:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

As originally designed, the grand jury process was intended as a protection for the individual against prosecution by the government not based on probable cause.

Today, defenders of the grand jury are less likely to assert its historical function and more likely to defend it on the basis that it is an effective investigative tool for the government. However, our courts still recognize the grand jury as standing between the accused and the accuser. *Wood v. Georgia*, 370 U.S. 375, 8 L.Ed.2d 569, 82 S.Ct. (1962); *United States v. Calandra*, 414 U.S. 338, 38 L.Ed.2d 561, 94 S.Ct. 613 (1974).

Its role is to find whether there is probable cause to believe that an offense has been committed. *Bacon v. United States*, 449 F.2d 933 (9th Cir. 1971).

B. [2.3] Federal Rules of Criminal Procedure

Federal Rule of Criminal Procedure 7 gives effect to the grand jury provision of the Fifth Amendment. Offenses punishable by imprisonment for a term of more than one year are considered infamous crimes, and, therefore, a grand jury indictment is required unless waived by the defendant under Rule 7(b). Fed.R.Crim.P. 7(a)(1).

Lesser offenses for which there is not a possible punishment by imprisonment for a

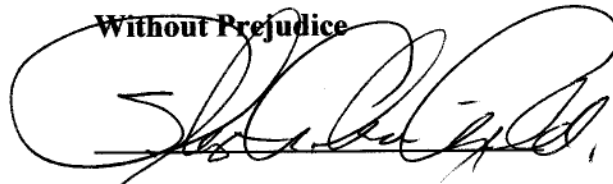
term of more than one year may be prosecuted by way of information without a waiver by the defendant. Fed.R.Crim.P. 7(a)(2). Fed.R.Crim.P. 6 sets forth many of the basic rules relating to the federal grand jury. The annotations to Rule 6 under Title 18 of the United States Code Annotated contain most of the cases that involve rulings on grand jury matters and are a very useful research tool for the practitioner.

CONCLUSION

On June 10th, 2013, and at the end of the Trial, Judge Leinenweber gave all Defense Attorneys 40 days in which to file Post Verdict Motions. It is also on the record that all Defense Attorneys raised Rule 29 Motion for Acquittal at the Trial, and thus, it should be granted in the name of justice, and with Prejudice pertaining to "Fruit of the Poison Tree.

I reserve my right to amend this filing without leave of court.

Without Prejudice

A handwritten signature in black ink, appearing to read 'Sharon Alicia Anzaldi', written over a horizontal line.

Sharon Alicia Anzaldi UCC1 308

CERTIFICATE OF SERVICE:

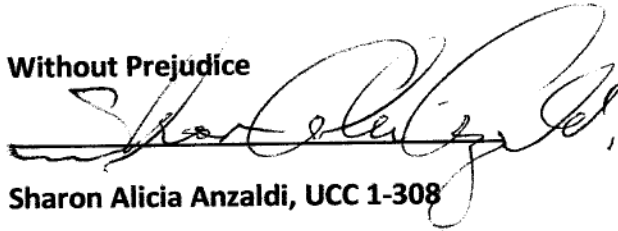
MOTION FOR POST-VERDICT JUDGEMENT OF ACQUITTAL

MOTION FOR A NEW TRIAL BASED ON MISCARRIAGE OF JUSTICE

Copy to: Judge Harry Leinenweber RE 366 181 071 US

Copy to: Prosecutor Rachel Marie Cannon RE 366 181 085 US

Without Prejudice



Sharon Alicia Anzaldi, UCC 1-308

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ELMWOOD PARK BRANCH
 ELMWOOD PARK, Illinois
 607079998
 1615420351-0098
 07/10/2013 (708)453-4390 01:57:16 PM

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Sales Receipt			
Product Description	Sale Unit Qty	Price	Final Price
CHICAGO IL 60604 Zone-0 First-Class Large Env 3.70 oz. Expected Delivery: Thu 07/11/13			\$1.52
Return Rcpt (Green Card)			\$2.55
@@ ~ Registered			\$11.20
Insured Value :		\$0.00	
Article Value :		\$0.00	
Label #:		RE366181085US	
Customer Postage			-\$15.27
Subtotal:			\$0.00
\$1 Wisdom	15	\$1.00	\$15.00
PSA 10c	2	\$0.10	\$0.20

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ELMWOOD PARK BRANCH
 ELMWOOD PARK, Illinois
 607079998
 1615420351-0098
 07/10/2013 (708)453-4390 01:54:46 PM

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Label #:		RE366181071US	
Customer Postage			-\$15.27
Subtotal:			\$0.00
Issue PVI:			\$0.00
\$1 Wisdom	15	\$1.00	\$15.00

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Registered No. RE366181071US

To Be Completed By Post Office	Reg. Fee \$	\$11.20	Special Delivery \$	
	Handling Charge \$	\$0.00	Return Receipt \$	\$2.55
	Postage \$	\$1.52	Restricted Delivery \$	\$0.00
	Received by SC			

Date Stamp
0351
10
JUL 10 2013
07/10/13

Domestic Insurance Is Limited To \$25,000; International Indemnity Is Limited (See Reverse)

Customer Must Declare Full Value \$0.00

With Postal Insurance
 Without Postal Insurance

FROM
Sharon Alicia Anzaldi
2406 North 76th Court
Elmwood Park, Illinois 60707

TO
Rachel Mc Cannon, Asst States Atty
2406 S Dearborn, 5th floor
Chicago, IL 60604

PS Form 3806, February 1995 **Receipt for Registered Mail** (Customer Copy)
(See Information on Reverse)

Registered No. RE366181085US

To Be Completed By Post Office	Reg. Fee \$	\$11.20	Special Delivery \$	
	Handling Charge \$	\$0.00	Return Receipt \$	\$2.55
	Postage \$	\$1.52	Restricted Delivery \$	\$0.00
	Received by SC			

Date Stamp
0351
10
JUL 10 2013
07/10/13

Domestic Insurance Is Limited To \$25,000; International Indemnity Is Limited (See Reverse)

Customer Must Declare Full Value \$0.00

With Postal Insurance
 Without Postal Insurance

FROM
Sharon Alicia Anzaldi
2406 North 76th Court
Elmwood Park, Illinois 60707

TO
Judge Harry D. Leinenweber
2406 S Dearborn Court Room 1941
Chicago, IL 60604

PS Form 3806, February 1995 **Receipt for Registered Mail** (Customer Copy)
(See Information on Reverse)