

C. Special Agent Alvin Cain

Defendant also contends that Special Agent Alvin R. Cain, Jr., perjured himself, and that the government knew or should have known that his testimony was perjured. Defendant's Memorandum, at 160. Defendant asserts that, even apart from all her other claims of error, she is entitled to a hearing and new trial on this basis, since Special Agent Cain's testimony was critical to her convictions. Id. at 160, 170-71.

Agent Cain, a career government employee, is currently a Supervisory Special Agent for the HUD Office of Inspector General. He has been detailed to the Office of Independent Counsel. Defendant would have this Court conclude not only that Special Agent Cain deliberately perjured himself, but that he did so with the complicity of this Office.

Such a charge should not be lightly made; and a false charge of this nature should not be dealt with lightly. As we show below, defendant's allegations against Agent Cain constitute at best a wholly unfounded and reckless slander against a career employee of the United States. But, as we further show, there is evidence here that defendant's allegations are not merely reckless, but perjurious and a deliberate fraud upon the Court.

Defendant charges that Special Agent Cain perjured himself in three respects. First, she claims that he lied when he stated that he did not recall a telephone conversation with defendant in which she was upset about the contents of the HUD-IG's Mod Rehab report and Mitchell's involvement. Tr. 3197-99. Second, she claims that

Agent Cain perjured himself when he stated that he did not recall attending a party at the Beverly Wilshire Hotel paid for by the defendant that allegedly celebrated the retirement of Agent Clarence Day. Tr. 3201-02. Finally, defendant asserts that Agent Cain committed perjury when he "avoided directly answering" the question "whether defendant had come to advise him that certain HUD subsidies were being misused" in connection with the Castle Square project, merely saying instead "that he did not recall whether he interviewed defendant in his office or in her office." Defendant's Memorandum, at 167.

With respect to defendant's first allegation of perjury -- that Agent Cain testified falsely with regard to his telephone conversation with defendant regarding Mitchell -- it suffices as a legal matter to point out that defendant's allegations of falsity are based on nothing more than the fact that Agent Cain's testimony conflicted with her own. Irrespective of defendant's protestations regarding "the improbability that [she] would have testified about [the mention of Mitchell in the phone call]" if it were not true, Defendant's Memorandum at 163, the unlikelihood that "defendant [would have] fabricated the story," *id.* at 164, and "the absurdity of defendant's falsely testifying that she had called [Cain] about the Mitchell payment," *id.* at 167, the law provides that inconsistent testimony between witnesses presents at most a credibility question for the jury and does not support an inference of false or perjured testimony. United States v. Brown, 634 F.2d 819, 827 (5th Cir. 1981).

What is more, the true "absurdity" here is that defendant premises her first allegation against Agent Cain on her word. If nothing else, the jury's verdict in this case stands for the proposition that defendant should not be believed. Not only did the jury find beyond a reasonable doubt that defendant perjured herself on four occasions before the United States Senate, the jury must necessarily also have concluded, as evidenced by its verdict, that defendant perjured herself before this Court as well. Under such circumstances, it is absurd for defendant to use her own apparently perjured testimony to argue that other testimony in conflict with it must be false.³¹

Defendant's argument goes from reckless to fraudulent, however, regarding her allegation that Agent Cain, on cross-examination, falsely denied recalling a party at the Beverly Wilshire Hotel in Los Angeles, California, in May, 1986, allegedly paid for by defendant, in honor of Special Agent Clarence Day. Defendant's affidavit -- made under penalty of perjury, as was her Senate testimony and testimony in trial before this Court -- is unequivocal:

During a trip to Los Angeles, California in May of 1986, Secretary Pierce stayed at the Beverly Wilshire Hotel. During that stay, Agent Alvin Cain's partner Agent Clarence Day was presented an awards [sic] upon his completion of 20 years of government service. This event also marked Mr. Day's retirement. In celebration, Secretary Pierce opened a very expensive bottle of champagne which was shared in his suite among the

³¹ The affidavit of James Scanlan adds nothing in this regard, for Mr. Scanlan -- aside from his obvious bias -- has no first-hand knowledge of defendant's purported conversation with Agent Cain. Rather, he relies solely on what defendant told him.

Secretary, Mr. Cain, Mr. Day, and myself. Afterwards, Mr. Cain, Mr. Day, and I, and several other HUD employees (including Eric Amig and Bob Davidson from HUD Headquarters and several local HUD employees) went to a night club in that hotel for a planned party in Mr. Day's honor. The night club was a famous place called Hernando's Hideaway. I left before others did, but before leaving paid the outstanding bill, which came to \$428.78. A copy of the receipt is attached as Attachment 2 hereto. Shortly after that evening, I received a thank-you note signed "Joe," which I understood to be a reference to the line in the song "Hernando's Hideaway": "Knock three times and whisper low -- that you and I were sent by Joe." It had been a recurring joke during the party.

Affidavit of Deborah Gore Dean in Support of Deborah Gore Dean's Motion for Judgment of Acquittal Pursuant to F.R.Crim.P. 29(a) and (d) and Motion for New Trial Pursuant to F.R.Crim.P. 33, ¶ 12, at 3-4.

Defendant's affidavit here is reminiscent of her testimony at trial in many respects: it is plausible on its face, and defendant seemingly backs it up with documentary corroboration, including a credit card receipt purporting to confirm that defendant paid a bill at the Beverly Wilshire Hotel on May 28, 1986, as well as an explanation as to why the thank-you note was signed "Joe," rather than "Clarence" as one would have expected (since the party was allegedly in honor of Clarence Day's retirement). But like defendant's testimony before the United States Senate and all of defendant's trial testimony before this Court, defendant's affidavit displays here again both defendant's reckless disregard for the truth, as well as her unrepentant willingness to lie to avoid responsibility for her actions.

As is evident from the attached declarations of Clarence Day and Joseph Parker (Appendix tabs D & E), the retirement party recollected by defendant in her affidavit was for Agent Parker, not for Agent Day. Agent Day is still employed at HUD. More to the point, Agent Cain could not recollect such a party -- as he testified at trial -- because he was not there. This is confirmed not just by the declarations of Agents Parker and Day, but by the HUD OIG Secretarial Protection Logs reviewed by Agent Day and attached to his declaration. To be sure, there was a retirement celebration at the Beverly Wilshire Hotel during a Los Angeles trip by Secretary Pierce. But it was for Agent Parker, who had just announced that he would be retiring the following month, and it occurred in May, 1985, not 1986.

Nor can defendant's affidavit be treated simply as an innocent misrecollection. As the Parker and Day declarations make clear, defendant's whole convoluted story about the note having been signed "Joe" and her having "understood [that] to be a reference to the line in the song 'Hernando's Hideaway': 'Knock three times and whisper low -- that you and I were sent by Joe,'" was a deliberate lie, constructed to explain away the inconsistency between her story that Alvin Cain and Clarence Day were the agents at the party, and the facts, which were that the two agents at the party were Joseph Parker and Clarence Day. The truth of the matter is, the note was signed "Joe" for the simple reason that Joe wrote it.

Indeed, defendant does not inform the Court that her own calendar entries for May 28-30, 1986, indicate that she was in

Washington, not Los Angeles. This necessarily raises serious questions about the American Express receipt submitted by defendant to the Court as supposed corroboration of her statements in her affidavit. The receipt -- which is signed "Mary Gore Dean," not "Deborah Gore Dean" -- is apparently dated May 28, 1986. Yet as shown by HUD's Secretarial Protection logs and the Day and Parker declarations, the Los Angeles trip actually occurred in 1985.³²

³² Defendant's affidavit is also demonstrably false with respect to the third specification of Agent Cain's supposed perjury. With respect to the Castle Square project, Agent Cain testified that he did remember interviewing defendant in connection with questions about the funding of that project (Tr. 3199-3201); defense counsel then asked Cain whether defendant had come to Agent Cain's office for the interview, to which Cain responded he could not recall. Id. There were no follow-up questions; instead, defense counsel proceeded to question Cain about the Beverly Wilshire Hotel matter.

There was nothing perjurious about Cain's testimony, which in any event was completely collateral to the issues at trial and outside the scope of direct, as the government's objection indicated. In preparation for filing this opposition, the government has located the interview to which defense counsel apparently referred. That interview of defendant was one of more than one hundred conducted in connection with a HUD Inspector General's investigation of the administration of HUD's Project-Based Certificate Program during Fiscal Years 1988 and 1989, after defendant left HUD. See HUD HQ Reserve Fund -- FY 1988/1989 -- Section 8 Certificate Allocations, HM01-1064 (excerpts of which are reproduced at Appendix tab F).

In her sworn affidavit filed with her motion, defendant states that she attempted to have HUD funding for Castle Square cancelled after she learned that it had been obtained by the irregular action of Demery, and that she reported this fact to Agent Cain, who said that he would begin an investigation. Defendant's Affidavit ¶ 13. She also claims she reported it to the HUD Undersecretary and Deputy Assistant Secretary for Multifamily Housing. Id.

But in fact, as the IG's report indicates, the IG investigation arose out of an earlier HUD-IG Audit. See Appendix tab F. Moreover, far from being the instigator of the investigation, defendant was interviewed by Agent Cain in connection with allegations that she had acted as a consultant for

We request that defendant be ordered to produce this receipt for inspection by the Court and the government.

In sum, defendant's request for a hearing regarding Special Agent Cain -- and for a new trial -- is premised on a false affidavit. The same disregard for the facts infects all of her other arguments as well.

CONCLUSION

For the foregoing reasons, defendant's motion for a new trial should be denied.

Respectfully submitted,

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the developer of Castle Square in connection with obtaining Section 8 certificates. As defendant well knew, she admitted to Cain that she was a consultant for the developer, but claimed that she acted as a friend, not on a consultant fee basis. Id. Indeed, defendant's role as a consultant is confirmed by her October 28, 1988, letter to Hunter Cushing regarding Castle Square. Appendix tab F. In addition, defendant told Cain that she had met with the HUD Undersecretary and Deputy Assistant for Multifamily Housing to obtain funding for Castle Square, not to have it cancelled. Id. Defendant attempted to place blame on Demery both in that interview and in a subsequent telephone call with Agent Cain. See Appendix tab F. Thereafter, defendant's then counsel wrote to the IG declining to make defendant available for further interviews on this matter. Id. Here again, then, defendant's affidavit is at a minimum reckless, and at worst deliberately false.